

CANADA / JUDGMENT

S.A.R. v. S.D.A.R.

2025 BCSC 1422

COURT

Supreme Court of British Columbia

DECIDED

2 July 2025

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2025 BCSC 1422 S.A.R. v. S.D.A.R. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: S.A.R. v. S.D.A.R., 2025 BCSC 1422 Date: 20250702 Docket: E213863 Registry: Victoria Between: S.A.R. Claimant And: S.D.A.R. Respondent Before: The Honourable Justice LeBlanc Oral Reasons for Judgment In Chambers Counsel for the Claimant: B.M. Pearce Appearing on her own behalf: S.D.A.R. Place and Date of Trial/Hearing: Victoria, B.C. June 25, 2025 Place and Date of Judgment: Victoria, B.C. July 2, 2025

Introduction

- [1] The claimant seeks a declaration that the respondent is in breach of the consent order dated December 2, 2022, (the "Consent Order") setting out the parenting schedule for the child of the marriage and an order that the respondent comply. Further, the claimant seeks payment pursuant to s. 230(2)(b)(i) of the Family Law Act related to this application along with the claimant's costs of the application.
- [2] The respondent acknowledges that there has been non-compliance with the Consent Order but argues that her actions are justified. The respondent says that non-compliance has been done in good faith, based on legal and safety concerns and with the guidance and support of the Ministry of Children and Family Development, the Child's counsellor, the Child's schoolteachers, and in response to the Child's desire not to spend time with his father. The respondent further takes the position that she is leaving the decision of parenting time with the Child as he is mature enough to make the determination. Factual Background
- [3] The parties were married on April 9, 2014 in Brazil and separated in November of 2021.
- [4] The child of the marriage was born on April 7, 2013, and is 12 years old (the "Child").
- [5] The Consent Order provides, in part, for the following parenting time schedule:

- (a) The parties will continue with the current interim parenting schedule wherein the claimant has the following time and the respondent the remainder each week: first week, claimant, Tuesday after school until Wednesday morning and Friday after school until Monday morning and, on the second week, the claimant, Tuesday after school until Friday morning; and
- (b) Each party shall have a right of first refusal to care for the Child in the event a party with parenting time is unable to care for the Child for six hours or more in a time period.
- [6] In addition, the Consent Order provides how summer vacation time and holidays will be allocated.
- [7] The respondent concedes that the above-noted schedule has not been followed. The evidence shows the claimant making attempts to obtain some time with the Child, even if it is less than what is provided for in the Consent Order. The evidence further demonstrates a pattern of the respondent telling the claimant that other plans have been made during his parenting time or that he can talk to the Child directly to arrange time.
- [8] Following the Consent Order, a s. 211 Report, Views of the Child, was prepared on May 5, 2022. The report indicates that the Child wanted to continue a schedule whereby he spends time with the claimant on Tuesday evening and overnights, Thursday evening, and Friday to Monday morning in Week 1, and on Wednesday and Thursday overnights in the Week 2. The claimant paid for this report.
- [9] On April 10, 2024, the claimant was contacted by the Ministry of Children and Family Development and advised by a social worker that a complaint of a child in need had been filed against the claimant. On April 29, 2024, the claimant met for an interview with the Ministry concerning the complaint. On May 7, 2024, a further interview was conducted with the claimant and the Ministry with the Child present. A further short-notice visit and interview was conducted in the claimant's home along with interviews of two collateral witnesses. In the early summer of 2024, the claimant received a text message from the Ministry which reads as follows: Sorry for the delay I've been off nearly all week with a sick kid. I have got your file in for closing, you've addressed any concerns we had and you've done really well. I will send you a letter that says all this. I have called your son's mom to let her know this file would close and to confirm that we had no ongoing concerns so she is aware. If she is still making access difficult then I would suggest you reach out to your lawyer to get some assistance with how to move forward. There's also the justice access centre downtown that can help if you haven't retained a lawyer. But at this time MCFD will take no position on your access. I hope you are doing well, and that you and the puppy are having a nice weekend!
- [10] For reasons that are not explained, the claimant did not receive a closing letter from the Ministry until April 18, 2025.

- [11] From September 3 to September 6, 2024, the claimant was hospitalized and requested that the Child be in the respondent's care during this time. The respondent says that she withheld the Child from the claimant thereafter as he had attempted to take his own life and this is why he was hospitalized. The claimant deposes that he was hospitalized for a frontal dermal haematoma following an accident and he did not attempt to take his own life. An affidavit from the claimant's mother has been filed rejecting the claims advanced by the respondent concerning the suicide attempt.
- [12] On March 26, 2025, counsel for the claimant writes to the respondent requesting compliance with the Consent Order. A portion of that letter is reproduced below: [The Child] is twelve years old. He is not entitled to make decisions respecting parenting time or whether to comply with court orders. Please note that [the claimant] has never and would never withhold [the Child] from you in contravention of the court order regardless of any resistance [the Child] might be exhibiting. We expect the same from you. Should you continue to refuse to return to the parenting schedule set out in the order of Justice Blake, we are instructed to proceed with an application without further delay. As this should not be necessary, we will be seeking enhanced costs against you in addition to a fine for your defiance of the order.
- [13] On June 3, 2025, the respondent filed a notice to resolve a family law matter with the Provincial Court. The respondent sought to resolve parenting arrangements and child support. Under part 5, the respondent answered "no" to the question of whether there was an existing court order (of any level of court). This is incorrect as there are numerous orders in this court and a trial date pending. The Provincial Court assigned the file to a mediator and that file is ongoing despite the claimant's position that the Supreme Court has jurisdiction over the matter.
- [14] On June 10, 2025, the respondent emailed the claimant and advised that he is to communicate directly with the Child concerning parenting time as he is becoming more independent in managing his own time and preferences.
- [15] This application was filed on June 13, 2025. Position of the Respondent
- [16] The respondent, on one hand, says that she is leaving parenting time up to the Child and, on the other hand, says that the Child should not be with the claimant as it is not safe. These positions are at odds with one another.
- [17] With respect to safety, the respondent makes allegations concerning the claimant's past issues with substance abuse and the investigation undertaken by the Ministry. She says this justifies her non-compliance with the Consent Order. I disagree.
- [18] With respect to past substance abuse, the claimant admits to having issues with substance abuse. To address those issues, the claimant has participated in programs and counselling. In addition, the claimant continues participating in support meetings and counselling and has registered with SoberLink (a Breathalyzer device that he submits to four times daily) and

random biological testing. The claimant deposes that he attended Cedars Recovery Centre in 2015 and was sober until 2024 when he had a relapse for which he sought treatment. He deposes that he has been sober since October 2024.

- [19] In an earlier application before this Court, while the claimant was in relapse, the respondent argued that the arrangement of shared parenting should be maintained in support of her position that a s. 211 report should not be ordered. Based on the position taken by the respondent, the claimant's application for the s. 211 report was dismissed. Now the claimant seeks to advance the relapse as her justification for breaching the Consent Order. The respondent has not presented evidence to suggest that the claimant is putting the Child at risk through the use of drugs or alcohol and advised this Court previously that she was not concerned for the Child's safety when the claimant was addressing his relapse with counselling.
- [20] With respect to the investigation undertaken by the Ministry, the file was opened following an anonymous complaint. The Ministry investigated and closed its file, indicating it had no concerns with the Child being with the claimant. The respondent was notified of this in the summer of 2024; however, continues to cite the investigation to continue her unsupportable claims and says that she is following the directions she received from the Ministry to keep the Child away from the claimant. There is no evidence to suggest that the Ministry has any present concerns with the Child being in the care of the claimant.
- [21] The respondent says that members of the community share the same concerns that she has; however, there is no evidence to support this. Instead, the respondent has summarized the positions of these other persons which is hearsay and is not admissible.
- [22] Lastly, the respondent says she is respecting the Child's wishes not to be with his father. As a s. 211 report was not prepared in 2024, the views of the Child are not known. There is at least some evidence to suggest that the respondent has been taking the Child on trips and outings during the claimant's scheduled parenting time without consultation with the claimant and then putting the Child in the position of having to tell his father that he has other things planned. This puts the Child in an extremely difficult position and works contrary to fostering a good relationship between the Child and the claimant. I would remind the respondent that the Child is not a trophy to be won and both parents are to ensure they foster a positive relationship between the Child and the other parent.
- [23] Having regard to all the evidence, I am satisfied that the respondent has denied the claimant parenting time without a reasonable excuse: *K.R. v. J.W.*, 2016 BCSC 225.
- [24] In *F. (K.E.) V. P. (T.W.)*, 2016 BCSC 1706, the court found the father in contempt of parenting orders because he deliberately failed to use his parenting authority to override the children's wishes to spend less time with their mother. That is similarly the case here. The respondent is aware of the Consent Order and has shown little regard for the court process. This becomes even more apparent when one considers that the respondent misled the Provincial Court concerning the status of the matter in this court to venue shop for a different outcome

concerning the parenting arrangements.

[25] The claimant does not seek an order of contempt. He simply wants the respondent to comply with the Consent Order. Having regard to my findings, what the claimant seeks by this application is reasonable and ought to be granted. Orders Made

[26] Accordingly, as sought in the notice of application, I make the following orders:

- (a) A declaration that the respondent is in breach of the Consent Order, setting out the parenting schedule for the Child.
- (b) There will be an order that the respondent comply with the terms of the Consent Order with the parenting schedule to resume no later than July 7, 2025.
- (c) Pursuant to s. 230(2)(b) of the Family Law Act, the claimant shall have his expenses reasonably and necessarily incurred as a result of the respondent's actions, including those fees and expenses related to the family dispute resolution, and those costs are to be payable forthwith.

[27] I am also making the following orders which I find to be in the best interests of the Child after reviewing the material before me in this application:

- (d) A full s. 211 report shall be prepared by Dr. Snell, if she is agreeable, with the costs to be equally split between the parties.
- (e) Under s. 225 of the Family Law Act, for the purposes of electronic communication and the administration of a family calendar, the parties will communicate with each other only through OurFamilyWizard. The monthly cost of this will be shared equally between the parties.
- (f) The parties will:
 - i. Put the best interests of the Child before their own interests; ii. Encourage the Child to have a good relationship with the other parent, and speak to the Child about the other parent and that parent's parent, if applicable, in a positive and respectful manner; iii. Make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the Child.
- (g) The parties will not:
 - i. Question the Child about the other parent or time spent with the other parent beyond simple conversational questions; ii. Discuss with the Child any inappropriate adult, court, or legal matters; or iii. Blame, criticize, or disparage the other parent to the Child.

[28] Those are my orders. Is there anything arising from that?

[29] CNSL B. PEARCE: No, thank you, Madam Justice.

[30] THE COURT: Anything arising?

[31] All right, thank you. "Justice LeBlanc"

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