

CANADA / JUDGMENT

Sandhu v. Mangat

2025 BCSC 920

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 920 Sandhu v. Mangat

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sandhu v. Mangat,

2025 BCSC 920

Date: 20250401

Docket: E163595

Registry: Vancouver

Between:

Mandeep Sandhu

Claimant

And

Rupinder Singh Rocky Mangat, Karamjit Kaur Mangat as litigation guardian for Harpal Singh Mangat and Karamjit Kaur Mangat

Respondents

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

W. Fernandes

The Respondent Rupinder Mangat, appearing in person:

R. Mangat

Place and Date of Trial/Hearing:

Vancouver, B.C.

March 5, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 1, 2025

This is a written version of judgment delivered orally on April 1, 2025. I have made edits to correct or improve grammar and style, but nothing about the analysis or conclusions has been altered.

- [1] THE COURT: This is an application filed by the respondent to set aside a determination made by the parties' parenting coordinator dated July 19, 2024. The matter was heard for one day on March 5, 2025.
- [2] The respondent originally filed an application on August 22, 2024, seeking the same relief, but he amended that to seek additional relief on February 21, 2025. The claimant filed her response to the original application on October 21, 2024, and completed an amended response on February 28. The parties did not file their amended material until the date of the hearing.
- [3] The parties were married in July 2009 and separated on December 15, 2016. They have three young children who were born in 2013, 2014, and 2016.
- [4] In the notice of application, the respondent seeks the following orders:
 - a) setting aside paragraphs (a), (b), (c), and (d) from the determination made by the parenting coordinator;
 - b) imposing a maximum limit on the number of extracurricular activities that the children can be enrolled in which overlap both parents' parenting time to a maximum of one per child;
 - c) in the event the court determines the parenting coordinator's decision is unreasonable beyond a mere technicality, an order pursuant to s. 15(6)(b) of the Family Law Act, S.B.C. 2011, c. 25, setting aside the parenting coordinator agreement, and an order pursuant to s. 19(2) of the Family Law Act.
- [5] The claimant opposes all the orders sought.
- [6] The current dispute centres on the parenting coordinator's treatment and determination regarding certain specific s. 7 expenses.

- [7] This matter was a high-conflict dispute characterized by frequent applications in court before the parties hired a parenting coordinator. Many of those were commenced by the respondent, including his filing two civil claims against the claimant.
- [8] The parties had scheduled a 29-day trial in 2019, but they decided to attend an arbitration. Eventually, they settled the parenting issues during a two-day mediation in April 2019.
- [9] That settlement is reflected in an order that was entered April 30, 2019. At that time, the parties had joint guardianship, but the children resided primarily with the claimant. The respondent had gradually increasing parenting time, such that by August 2021, the respondent had six overnights out of 14, which did qualify as shared parenting, although the claimant at that time still had the children the majority of the time.
- [10] The remaining issues, which were primarily financial, were settled during another mediation that took place in August 2019. That resulted in the final order dated August 23, 2019. Among other things, that order provided for a review of child support, but that review could take place no sooner than August 2021.
- [11] In August 2022, the parties entered a consent order that adjusted the parenting time, such that each party had equal time on what is known as a 2-2-3 schedule. This schedule ensures the children do not spend more than three days away from either parent. It requires frequent rotation, thus it requires each parent to take the children to their regularly-scheduled activities.
- [12] The parties had a s. 211 report prepared, which was completed on July 31, 2018. Given the high-conflict nature of their relationship, the author recommended that the parties retain a parenting coordinator, which they did. They first retained Ms. MacKinnon.
- [13] The claimant points out that at his examination for discovery in March 2019, the respondent specifically acknowledged that having a parenting coordinator was helping the parties to make decisions, communicate, and maintain stability for the children. The April 2019 order contained a term that they continue to retain Ms. MacKinnon, but then, as her replacement, appoint their current parenting coordinator, Fiona Beveridge. They retained Ms. Beveridge in about August 2020. Their most recent agreement with her was signed in January 2024 for a two-year term.
- [14] Starting in March 2024, the parties had a dispute about which soccer activity the children should attend: one in Vancouver and one in Richmond. They asked the parenting coordinator, Ms. Beveridge (the "PC") to make that decision. On March 22, the PC determined that the children would be enrolled with the Richmond United soccer program, which was the claimant's choice. I note this determination is not the one that is being challenged today.

- [15] That same day as that determination, the claimant enrolled the children in that program, and she asked for the respondent's contribution to the cost. The respondent raised the objection that he should not have to contribute to that cost, and this took the claimant by surprise. She says that was the first time he had objected to an activity that he had agreed the children can do.
- [16] The parties continued to have disputes about expenses and eventually took the issues to the PC, who asked for and received submissions from the parties. The determination was issued on July 19, 2024, and is Determination #3; this is the one the respondent challenges (the "Determination").
- [17] Before reviewing that determination, I will set out the relevant aspects of the parties' parenting coordinator agreement. I am not going to read out the sections, but I will note which ones I am specifically referring to.
- [18] I specifically point to and rely on Clauses 2.00, 2.01 and 2.02, that deal with the waiver of the right to litigate; and Clause 3.01, 3.02 and 3.03, that talk about the role of the PC. The agreement states what services the PC can provide to the parties. Those are listed in Clauses 4.01(a)(i)-(xi). Under 4.01(b) are a list of things upon which the PC can make a determination about, listed at paragraphs (i)-(x).
- [19] At Clause 4.02, the agreement sets out those things the PC would not decide. Clause 4.03 confirms that the PC can also make any other decisions that are consistent with the best interests of the children, and Clause 6.07 sets out that the PC can set the time, place, and manner of the determination process, and then it lists three options.

The Determination

- [20] The Determination starts by noting that the PC was appointed pursuant to the parties' agreement, as well as consistent with the final order that was entered in August 2019.
- [21] The PC identified the issue between the parties, which was whether certain extracurricular activities should be considered special and extraordinary expenses to be shared under s. 7 of the Federal Child Support Guidelines. She referred to the relevant court orders at paras. 5-6, and I will not read those out.
- [22] She confirmed her jurisdiction, which comes from not only the court order, but also the parties' parenting coordinator agreement, and she emphasized again that any decision must be guided only by what is in the best interests of the children.
- [23] She then listed the emails that she got from the parties regarding these issues, and set out that the question was whether certain specific activities, mainly math tutoring, soccer, and a summer soccer camp can be considered special and extraordinary expenses, such that they must be shared by the parents.
- [24] She stated her decision in paras. (a)-(d):

- a) Starting June 1, 2024, the math tutoring is a shared s. 7 expense for the youngest child.
 - b) Starting April 1, 2024, the cost of registration and equipment for all three children to attend the soccer activity in Richmond that she previously determined is a shared s. 7 expense.
 - c) Starting July 1, 2024, the parents are each responsible for the shared cost of one sport camp each summer.
 - d) She confirmed that the parties shall share those expenses proportionate to the incomes, which means the respondent is responsible for 75 percent and the claimant 25 percent.
- [25] At paras. 1-3, she set out accurately and carefully the evidence that was submitted to her. The decision itself at the bottom of page 4 and top of page 5. Following that, she provided her reasoning.
- [26] At paras. 3-6 of those reasons, she set out the general law and approach to assessing s. 7 expenses. She also relied on and referred to the most recent court order regarding the parties' income. That imputed the respondent to have an income of \$194,750 and the claimant \$23,674. She specifically noted that she has to rely on those figures, even though the respondent argued the claimant's income had gone up because she started working full time. As noted, the parties have a specific procedure in the court order to review levels of support and income, so that did not appropriately fall within her purview.
- [27] At para. 6, the PC stated that many cases consider s. 7 expenses, but they all turn on their very specific facts. She then addressed each of the disputed expenses: math tutoring is addressed at paras. 7-12; soccer at paras. 13-18; and summer camp at para. 19.

Legal Principles

[28] The relevant provision is s. 19 of the Family Law Act:

19 (1) On application by a party to a determination made by a parenting coordinator, the court may change or set aside the determination if satisfied that the parenting coordinator

- (a) acted outside the parenting coordinator's authority, or
 - (b) made an error of law or of mixed law and fact.
- (2) If the court sets aside a determination, the court may make any order that the court may make under this Act to resolve a dispute between the parties in relation to the subject matter of the determination.
- (3) If the court does not set aside a determination, the court may make any order that the court may make under this Act to enforce compliance with the determination.

- [29] The court's approach to assessing determinations made by a parenting coordinator has been discussed in many cases. The starting point is *M.H. v. C.S.*, 2013 BCSC 2232, where Justice Butler made the following comments at a time when parenting coordinators were still relatively new. His comments remain pertinent, and I rely specifically on paras. 38 and 41, but I will just read out the latter part of para. 41:
- [41] The intent of the legislation in formalizing parenting coordination is to create a cost-effective alternative process to litigation and dispute resolution. It would be counterproductive to the entire coordination scheme to adopt an overly technical approach to applications to terminate coordination agreements. On an application to terminate a coordination agreement, it is important to examine all of the circumstances to determine if the parenting coordination process is generally being carried out in accordance with the provisions of the Family Law Act and the terms, if any, of the agreement. If it is, then a court should be reluctant to terminate an agreement for a minor or technical or temporary misapplication or breach of an agreement or order.
- [30] I note that the respondent is seeking a termination of the agreement in this case.
- [31] Also helpful are the comments from *F.K.L. v. D.M.A.T.*, 2025 BCSC 364. After quoting s. 19(1) of the Family Law Act, Justice Brongers stated the following:
- [71] In other words, there are two bases upon which the court may set aside a determination. The first is when the court finds that the parenting coordinator lacked the lawful authority to issue the determination (s. 19(1)(a) of the FLA). The second is when the court finds that, while the parenting coordinator was acting within their lawful authority, they nevertheless made an error of law, or an error of mixed law and fact, with respect to the determination (s. 19(1)(b) of the FLA).
- [72] There has been some discussion in this court's jurisprudence of the standard of review that applies to s. 19 FLA applications. Several cases have concluded that it is "reasonableness", even though that is a deferential administrative law standard, and parenting coordinators are not public officials who perform administrative law functions: *Law v. Cheng*, 2017 BCSC 328 at paras. 28 to 35; *A.K.S. v. A.L.E.S.*, 2019 BCSC 419 at paras. 28 to 34 and 49; *T.R. v. A.R.*, 2020 BCSC 2068 at paras. 33 to 34; *C.M.W. v. K.M.C.N.*, 2021 BCSC 1986 at paras. 26 and 43; *C.J.C. v. N.J.C.*, 2021 BCSC 1930 at para. 6; and *Jeanes v. Shirzad*, 2024 BCSC 381 at paras. 26 and 37, and 2024 BCSC 2493 at para 24. The Court of Appeal does not appear to have addressed this issue as of yet.
- [73] However, Ms. L's challenge to Determinations #1 and #2 is based on her assertion that they were made outside the scope of the Coordinator's legal authority. As such, it is an application for relief pursuant to s. 19(1)(a) of the FLA. In my view, this means that there is no real issue of standard of review in this case. If the court finds that the Coordinator exceeded her lawful authority, then the determination should be set aside. An unlawful determination cannot be afforded deference, no matter how "reasonable" it might otherwise be.

- [74] The scope of a parenting coordinator's authority to issue determinations is limited by ss. 15(2), 17(b) and 18(1) of the FLA, and ss. 6(3) and 6(4) of the Family Law Act Regulation, B.C. Reg. 347/2012 ["FLAR"], which read:
- [32] I should note that the effect of that decision is that, to the extent there is a standard of review for the allegation that a parenting coordinator exceeded their authority, it would be correctness.
- [33] In *C.M.W. v. K.M.C.N.*, 2021 BCSC 1986 at paras. 26-27, Justice Lamb stated that the standard of review under the Family Law Act is reasonableness. Among others, she relied on *Law v. Cheng*, 2017 BCSC 328. From that case, I will refer to the following paragraphs from that case:
- [32] The standard of review applicable in family law arbitration was discussed by Mr. Justice Punnett in *McMillan v. McMillan*, 2015 BCSC 2177, aff'd 2016 BCCA 441. Punnett J. set out the distinction between questions of law and questions of mixed law and fact at para. 27:
- [27] ... Questions of law "are questions about what the correct legal test is" [citations removed]. Questions of mixed fact and law are defined as "applying a legal standard to a set of facts"[citations removed].
- [33] Punnett J. then noted at paras. 39 and 40 that the FLA and its regulations set specific requirements for the expertise of family law arbitrators, which invites a greater degree of deference; and that the FLA clearly anticipates arbitration to be "part of the alternate dispute mechanism as opposed to one more layer of litigation". He concluded at paras. 44 and 54:
- [44] A review on a question of mixed fact and law does not permit review of the arbitrator's factual findings. Rather it permits a review of mixed fact and law on the standard of reasonableness, not correctness.
- ...
- [54] As a result in considering this appeal it is not open to the court to substitute its own findings of fact for those of the arbitrator. In considering any questions of mixed fact and law and whether the arbitrator applied a particular legal standard or test it is to the facts as he found them. In doing so the court must consider whether the arbitrator's conclusions fall within an acceptable range with due deference to the arbitrator's reasoning.
- [34] I find that, as with the family law arbitration considered by Punnett J., parenting coordination was intended to be "part of the alternate dispute mechanism as opposed to one more layer of litigation". The Legislature's intention would be defeated if parties unhappy with the decision of a parenting coordinator could too easily look to the court for a different result.

- [35] As with arbitrators, the FLA and its regulations establish the professional qualifications and experience necessary for parenting coordinators. For practical purposes, the effect of a determination by a parenting coordinator is similar to that of an arbitrator's decision, albeit one arising from a more informal process in which the parenting coordinator first tries to facilitate an agreement between the parties. In my view, a determination by a parenting coordinator should be accorded the same deference as an arbitration award and subject to review on the same standard of reasonableness.
- [34] Taking all of this caselaw into account, I express the same caution as Justice Brongers did about the inherent difficulty in using a standard of review derived from the caselaw regarding statutory decision makers and public officials to a parenting coordinator who, while authorized by legislation, ultimately performed services that the parties agreed to by contract.
- [35] Nevertheless, the cases of this Court appear to state fir errors of fact and law or errors of law, the standard of review is reasonableness. I agree with Justice Brongers that for an allegation that a parenting coordinator acted outside the authority, the standard of review should be correctness.
- [36] However, I also take into account all of the comments, that the court should be reluctant to agree that an issue is one about authority and should scrutinize those claims carefully.
- [37] In C.M.W., Justice Lamb summarized the important principles about how to apply the reasonable standard, and she quotes from *Sierra Club of BC Foundation v. British Columbia (Environmental Assessment Office)*, 2020 BCSC 596 [Sierra], where Justice Murray summarized the principles drawn from the Supreme Court of Canada's decision in *Vavilov*. At para. 38 of *Sierra*, Justice Murray wrote the following about how to apply reasonable standard:
- 8) Two fundamental flaws would render a decision unreasonable:
- i. First, if the decision is irrational, illogical or the conclusion reached cannot follow from either the analysis or the reasons read in conjunction with the record: paras. 102-103 [of *Vavilov*];
- ii. Second, if the decision is not justified based on the underlying facts or law: paras. 105-107, 135 [of *Vavilov*].
- [38] Those two tenets, in my view, neatly encapsulate the essential question when reviewing a decision for reasonableness. Regardless of the concerns I have expressed about the jurisprudential basis for applying that standard of review in the parenting coordinator context, that approach accords with common sense, and I adopt it here.

- [39] The impugned determinations relate to the assessment of s. 7 expenses and whether specific activities should be a shared s. 7 expense. With respect to the legal approach towards those expenses, the following extracts from *Bodine-Shah v. Shah*, 2014 BCCA 191 at paras. 65-66 are relevant:
- [65] Nor do I find any error in his order for s. 7 Guidelines support at \$300 based on the imputed income of \$90,000, retroactive to January 1, 2011, for that calendar year. Sections 7(1)(a)-(e) list special and extraordinary expenses as: (a) child care expenses incurred by a custodial parent for employment, illness, disability, education or training for employment purposes; (b) the child's portion of medical and dental insurance premiums; (c) health-related expenses; (d) extraordinary expenses for the child's educational needs; (e) expenses for post-secondary education; and (f) extraordinary expenses for extracurricular activities. Section 7(1.1) defines extraordinary expenses, referred to in ss. 7(1)(d) and (f), as:
- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table
 - (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
 - (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table
 - (ii) The nature and number of the educational programs and extracurricular activities,
 - (iii) any special needs and talents of the child
 - (iv) the overall cost of the programs and activities, and
 - (v) any other similar factor that the court considers relevant.
- [66] Special expenses listed in ss. 7(1)(a)-(c) and (e) are distinct from extraordinary expenses referred to in ss. 7(1)(d) and (f). Special expenses are defined as relating to child care, medical or dental insurance premiums, health-related costs, and post-secondary education. They must be found to be reasonable and necessary. Extraordinary expenses are not defined. Their extraordinariness is determined in the context of the combined income of the spouses, as well as other considerations, including the nature and amount of the individual expense, the nature and number of the activities, any special needs or talents of the child, and the overall cost of the activities. They also must be found to be reasonable and necessary. Relevant considerations for the tests of necessity and reasonableness include whether the expenses are necessary in relation to the child's best interests, and reasonable having regard to the means of the spouses, the child, and to the family's spending pattern prior to separation. See *McLaughlin v. McLaughlin* (1998), 1998 CanLII 5558 (BC CA), 57 B.C.L.R. (3d) 186 at paras. 81-82 (C.A.). In assessing "means", the court may consider the parties' capital assets, income distribution, debts, third-party resources, access costs,

support obligations, receipt of support, and any other relevant factor: *Delichte v. Rogers*, 2013 MBCA 106, 37 R.F.L. (7th) 81 at para. 38. Courts may consider whether the non-custodial parent was consulted regarding the expense, though a lack of consultation does not automatically preclude a finding that the expense is reasonable and necessary: *Delichte* at paras. 39, 44.

- [40] The preceding caselaw and legislation provides the framework for this application. Before turning to my analysis of the legal issues, some general comments are warranted.
- [41] The starting point is that it is important to keep in mind the respondent bears the burden to persuade the court that the determinations should be set aside. The respondent presented a written argument in which he refers to numerous court decisions in support of his position. Some of the cases he cites are relevant to the issues. However, for the most part, he relies on isolated extracts from the cases to support discrete points he makes without considering or explaining how the particular quote is relevant to the facts that were before the parenting coordinator.
- [42] However, many of the legal principles he put forward and case law he relies on to support those principles are not relevant to the issues in this application. I give two examples.
- [43] In support of his argument on procedural fairness, he cites a number of cases concerning adjudicative and quasi-judicial decision makers. Those cases have minimal value, if any, to the facts here. That is because, as I have explained, there was already established caselaw in this Court about the proper approach to take to the standard of review of determinations by parenting coordinators.
- [44] He also purported to rely on the principles governing contract law to support his interpretation of court orders, but, as I explained to him during the hearing, those cases also probably have minimal, if any, value to this application.
- [45] He also expected, at least implicitly, that the parenting coordinator ought to have taken into account what he says has been the change in the parties' income, despite there being a court-ordered procedure for the parties to review that.
- [46] These concerns that I have described permeate his submissions, both oral and written, and renders large portions of his position irrelevant. In making that finding, I am not being critical, as I appreciate Mr. Mangat is a self-represented litigant. To be clear, this Court is well aware of the challenges faced by those who represent themselves.
- [47] Recently, in *Hainan Dehong Real Estate Development Corporation v. 0952130 B.C. Ltd.*, 2024 BCSC 2362, I wrote the following:

- [373] I am mindful of the fundamental duty of this Court to ensure a fair trial, a duty heightened when a party is self-represented. However, a trial that is fair must be fair from the perspective of all litigants. I adopt and rely on *M.P.W. v. City of Victoria*, 2019 BCSC 1448, where this Court states its vigilance to ensure fairness to self-represented litigants includes granting to them a margin of leniency, but "does not relieve them of an obligation to comply with the Rules or order made by the Court".
- [48] To that, I would add that margin of leniency cannot go so far as to require this Court to overlook or not take into account fundamental deficiencies in a party's position, including their legal arguments, nor can a margin of leniency provide any kind of shortcut to relieve a self-represented litigant who seeks a remedy in court of the essential obligation and burden borne by all litigants bringing claims to prove the elements of the claim. That is particularly important here because, as noted in this notice of application, the claimant bears the burden.
- [49] I also find that, overall, the respondent's position, for the most part, rests on an overly technical and sometimes unfair interpretation of the Determination or correspondence amongst the parties and the parenting coordinator, contrary to the caselaw's direction not to take that approach. For example, in the Determination under the heading "Reasons", the PC wrote:

In coming to this Determination, section 37 of the Family Law Act and Section 7 of the Federal Child Support Guidelines are considered. Both parents have provided some case law summaries, which the [parenting coordinator] has reviewed, and the [parenting coordinator] has done a cursory search for relevant cases that relate to this issue.

- [50] Quoting from the respondent's written submissions, he included the following (page 27, paragraph 1):

The parenting coordinator had before her binding caselaw from 16 legal precedents involving 19 honourable members of this court and a total of 22 paragraph references spanning 1998 to 2024, including the Court of Appeal. Despite this, the parenting coordinator failed to apply the correct legal framework, exceeded her jurisdiction, and departed from binding legal precedent without providing any justification.

- [51] On page 29 at paragraph 6, he stated:

The parenting coordinator failed to apply the legal framework I provided, which clearly outlined the proper test for determining whether a s. 7 expense qualifies as extraordinary. Many of the cases I submitted contain explicit non case-specific rulings on the issue, including what the honourable members of this court say is the leading case in this province, *McLaughlin v. McLaughlin*.

- [52] While it may be that the parenting coordinator applied the incorrect legal test, which I analyze later, the respondent's complaint is that she did not apply the test the way he had framed it. He harbours a belief that he provided the correct test.
- [53] Unfortunately, as I have explained, he relies on isolated sentences from cases without any context, so that his claim that he provided to her the proper test is not borne out in the material. Accordingly, the very foundation upon which he based the bulk of his arguments is flawed.
- [54] In my view, these defects describe the overwhelming majority of his submissions in writing and orally at the hearing. Accordingly, I do not intend to address in detail everything that he raised.
- [55] By way of context I also emphasize one aspect of the claimant's submissions, which I find to be relevant. She expressed significant concern about the respondent seeking to terminate the parenting coordinator agreement. In doing so, she set out the procedural history of the litigation, which I have already noted was one characterized by high conflict.
- [56] Her position is that that history is important. She submits that it is instructive because it illustrates the degree to which the parties were in conflict before the appointment of the parenting coordinator when compared to after.
- [57] I agree there is a stark difference. Her view is that with the parenting coordinator, the parties have generally worked well together, there has been less conflict, and this pattern held for five years.
- [58] She submits that the transition to the 2-2-3 schedule has created more disputes, which is perhaps not surprising, given the increased frequency of the parents having to be in contact and exchange the children. I agree that the claimant referring to this context is relevant to the overall analysis.
- [59] However, I confirm, notwithstanding the concerns I have identified with the substance of the respondent's submissions, I have considered all of the properly-raised arguments about whether the parenting coordinator made any reviewable errors or exceeded her authority.

Issues

- [60] The respondent identifies a number of alleged errors in the notice of application and his written submissions. Many of them overlap, and I will address each in turn.
- [61] However, I start by noting that I agree with the claimant's position that the PC applied the correct legal test for s. 7 expenses. I also find that the test, despite the respondent's submissions, is actually not controversial.

- [62] I also emphasize that in conducting this review, it is important to look at the whole of the decision. One must properly analyze the reasons that the PC has given in light of her summary of the evidence and the position of the parties.

Soccer

- [63] The respondent alleges the PC determined soccer expense was a s. 7 expense without making findings first whether it was extraordinary. This is an allegation that she erred in law and, on that basis, the appropriate standard of review is reasonableness.
- [64] I am not persuaded that she erred. Reading the Determination, it is clear she understood and applied the correct test. Her reasons on that issue must be read as a whole, but I place particular emphasis on para. 17:
17. While the argument has been made that soccer only an ordinary expense because the children have no particular talent in the sport, it is difficult to say so at this juncture as it is an activity that they have just started, Rocky makes that argument that he takes the Children skiing and golfing and that should be taken into account. Those activities are recreational activities that he enjoys with the Children and are not an organized sporting activity like soccer. Each parent is free to enjoy activities together with the Children and that is their choice. However, those expenses are not Section 7 expenses. If there were formal lessons in those sports, then that would be a discussion to have between the parents.
- [65] She goes on to consider the expense relative to the activities that the children are doing to conclude it should be shared.
- [66] Again, reading it as a whole and looking at the relevant factors under the test for s. 7, I am not satisfied the Decision is either incorrect or unreasonable.

Summer Camp

- [67] The respondent argues the parenting coordinator determined summer camp expense was a s. 7 expense without any legal basis and without determining which subsection of s. 7 it fell under. It should be noted that summer camp was a soccer camp.
- [68] Again, I find that the respondent's position is an overly technical reading that focuses only on a few paragraphs.
- [69] At para. 19, the PC said she concluded, for the same reasons set out for the soccer expense, it is not unreasonable for both parents to contribute to one sporting camp per summer.
- [70] The whole decision must be read. Doing so makes it clear her reasoning with regard to soccer was that it was an extraordinary expense for extracurricular activities. She applied that reasoning to the summer soccer camp. It is not uncommon, unreasonable, or incorrect for a PC or, in fact, most decision makers to incorporate reasoning without completely repeating it.

[71] In my view, this was a technical argument, and I do not give effect to it. I do not find her determination on this issue to be unreasonable or incorrect. I am satisfied it has a proper legal basis, which is the correct test for s. 7.

Misapplied the Test for s. 7

[72] Although it is not entirely clear, the respondent appears to allege two other errors, with regard to soccer and summer camp, but I will assume that he makes the argument regarding all aspects of the Determination. He says that the parenting coordinator misapplied the legal test by failing to consider the financial position of the parties or the skills of the children.

[73] I do not agree. She specifically mentions both and provides her consideration of both.

[74] Importantly, she references the financial position of the parties by referring to the most recent court order that imputed income to the respondent. That was not only appropriate, but also she would have erred if she did not consider that court order determinative.

[75] The respondent argues that a child's participation in an activity cannot fall under s. 7 unless their participation "goes beyond the average child", relying on the case of *K.A.M.R. v. W.H.G.*, 2014 BCSC 103.

[76] To the extent he suggests that it is mandatory to make a finding that the child has more than average skill, I do not agree. The comments of the judge in that case are closely tied to the particular facts of the case and the situation of those parties, including their income. It is true that the court refers to general statements from case law, but the conclusion is an application of those general statements to the particular facts of that case. Therefore, the notion that it is mandatory for there to be a specific finding of extraordinary talent is not consistent with the wording of s. 7.

[77] Moreover, a plain reading indicates that special talent is only one factor of many in the s. 7 consideration. Those factors are non-exhaustive. This is confirmed by trial decision in *Bodine-Shah v. Shah*, 2013 BCSC 1500 at para. 123;

[123] The respondent's attitude toward special and extraordinary expenses, as expressed in submission is more than a little unfortunate. I quote a portion of it:

289. In the absence of exceptional talents, activities are not extraordinary but are to be met by the basic child support payment: *D. (N.A.) v. D. (S.A.)*, (2010) BCSC 269.

290. The Court must consider the following non-exhaustive factors in determining if an activity is extraordinary: the combined incomes of the parties, the nature and amount of the individual expense, the nature and number of the activities, the special talents of the child, and the overall cost of the activities: see *McLaughlin v. McLaughlin* (1998), 44 R.F.L. (4th) 176 (BCCA).

291. In the case at bar, the evidence indicates that the child is average at violin. He has no special talent in that category, but enjoys to play and attend lessons. Witness Daphne Hughes stated, in terms of where he is in relation to the other students: "he is in the middle". This should not be considered an extraordinary expense.
292. The child also attends piano lessons. He regularly gets honours, meaning that his exam scores are 80% or above. There is no evidence however that he is a virtuoso, that he is exceptionally talented, or that he plays beyond what an adept child of his years might be expected to accomplish. There was no evidence proffered as to what percentage of piano playing children fall into the above-eighty cohort. This should not be considered an extraordinary expense.
293. The child also attends at speech arts. He studies elocution, poetry, singing, drama and other related endeavours. He has attended at provincial competitions. Again, there was no evidence to indicate that the child is unusually gifted in this regard.
294. There was no evidence tendered that the child excels at figure skating, or that this activity was anything more than a hobby or pastime.
295. What is extraordinary in the case at bar is the expense that the Claimant has incurred, without regard to the modest financial position of the parties, and without regard to the consent or approval of the Respondent.
- [124] What is extraordinary, I would suggest, is how disparaging the submission is of activities Sebastian enjoys, and of which he has reason to be proud. All of the activities noted will develop skills that will be useful to Sebastian, perhaps none more than those that oblige him to get up in front of an audience and speak or perform. These things are manifestly good for Sebastian and should be supported by both parents to the extent they are able.
- [78] The Court of Appeal upheld this decision: 2014 BCCA 191 at para. 44.
- [79] The point being made is that the lack of extraordinary or special talent of a child at the time of incurring a cost does not disqualify that activity as being an extraordinary expense when taking into account the other factors and looking at the issue, bearing in mind the only guiding principle is the best interests of the child.
- [80] The potential for future skill development, even if it is not related solely to that particular activity, is important. That potential can be in developing other aspects, such as what Justice McEwan referred to as self-confidence, which is relevant to the consideration under s. 7. To that, I would add the well-known benefits of a child participating in teen sports which go beyond the actual skills of that particular sport.

- [81] The respondent submits that he took the children golfing and swimming, but did not ask for a contribution, and that the same approach should apply here. I agree with the PC that team sports and registered sports programs and camps are different than individual activities that are more recreational in nature. Therefore, going swimming and golfing is different than signing the child up for registered courses or lessons or a camp.
- [82] Also, the expenses at issue fell within both parties' parenting time because they have equally shared parenting. The claimant's argument is that the respondent left the responsibility for registering the children for activities to her, even though they have equal parenting. Therefore, she ends up bearing the costs, despite their significant disparity in income. She refers to the history that she had no reason to expect he would not share the cost, having agreed that they can participate in the activity.
- [83] The PC also had information about the parties' family situation before and after separation, and how the parties dealt with these expenses, noting that for a time post-separation, the costs were shared. I agree that is highly relevant. These are only some of the reasons that underlay the PC's decision. Overall, I am not persuaded that the Determination was either wrong or unreasonable.

Inaccurate Findings

- [84] The respondent alleged the PC made inaccurate findings in the application of the legal test, but that argument was not clearly articulated.
- [85] The court can set aside a determination if it is persuaded that the parenting coordinator made an error of mixed law and fact, but I have already determined that with regard to the proceeding and all of the determinations, the PC applied the correct test. It is not clear what the respondent meant by this, but I will consider it to overlap and to be included in the following analysis to which I now turn.

So-Called Retroactive Expenses

- [86] The next argument the respondent raised is what he called the retroactive nature of the Determination. This argument was somewhat convoluted. However, distilled to its basics, he argues the PC's determinations are not consistent with the final order, specifically paragraph 5(e).
- [87] The opening words of paragraph 5 of the final order states, "upon the Children having the following special and extraordinary expenses pursuant to s. 7". In other words, it starts with a declaration of what are special and extraordinary expenses.
- [88] The final order then goes on to list at paragraphs (a) to (d), specific things, including childcare, medical and dental expenses not covered by insurance, preschool for the youngest child, and pre-agreed-upon costs for post-secondary.

[89] The controversy comes with subparagraph (e):

- e. such other expenses arising in the future that the Claimant and the Respondent Husband agree in writing qualify or, failing agreement, are determined by the parties' parenting coordinator to qualify as special or extraordinary expenses within the meaning of the Federal Child Support Guidelines in advance of the parent incurring such special or extraordinary expense.

[90] The paragraph is not a model of clarity.

[91] The respondent reads it to mean that in order to be classified as a special or extraordinary expense, the parties must either agree in writing or the PC must make that determination before the expense is to be incurred. In his view, there must be an advance determination that an activity meets the threshold of being extraordinary before the PC could order the parties to share that expense. In that way, he says that the PC exceeded her jurisdiction and made a determination that she could not make.

[92] It is on this point where the respondent relied on what I have found to be inapplicable legal principles and caselaw. However, more importantly, this argument was not clearly articulated in the notice of application. In my view, that is sufficient to dismiss of it entirely. However, if I am wrong about that conclusion, I will go on to analyze it.

[93] Even if I were to accept the respondent's interpretation, which I do not, that would not prevent the PC from making a determination when the cost is already incurred. That is because of Clause 4.01(b)(ix)(5) where the parties specifically agree the parenting coordinator can make determinations about extracurricular activities and corresponding extraordinary expenses. That clause in the agreement is silent with respect to the timing of the incurring of the expense. Accordingly, when you read paragraph 5(e) together with their agreement, the respondent's interpretation is strained.

[94] Also, the PC had the claimant's submission that the respondent generally paid contributions to activities if he agreed that the children could attend them. In this case, he agreed they could attend soccer, but he disagreed as to which soccer activity. Therefore, the claimant had no reason to believe, based on his past behaviour and approach, that she required a determination in advance, and she had no advance notice that he decided to change his approach.

[95] The claimant says the respondent did not raise the specific jurisdictional challenge based on the wording at paragraph 5(e) with the PC, and therefore it cannot be a basis upon which to set that aspect aside, relying on C.M.W. at para. 74. The claimant argues this is especially true when the respondent agreed to initiate the determination phase with the PC after knowing the expense was already incurred.

- [96] I agree with that reasoning. It would be fundamentally unfair to allow him now to raise this argument if he had not raised it before. In any event, he agreed to the process, and therefore I find the argument cannot be persuasive.
- [97] Furthermore, I find the respondent's interpretation is not the correct one for the reasons identified by the claimant in the written submissions, which I will read out. I adopt these in their entirety. At paragraph 33(b) on pages 16 and 17 of the written submissions, the claimant submits she disagrees with the respondent's interpretation for the following reasons:

The words in advance apply to the words "agree in writing" not to the words "determined by the parenting coordinator". To require the parenting coordinator to make all determinations in advance would be unduly burdensome and not in the children's best interests. Frequently parenting coordinators resolve several months or years of past s. 7 expenses /contributions at once for reasons of cost and efficiency.

The interpretation advanced by the respondent would have a chilling effect on the children's participation in disputed s. 7 items. The children may be withheld from activities out of caution, simply because of the uncertainty as to whether the parenting coordinator will be able to render a decision before payment is due. The interpretation could also create mischief if a party intentionally delays the parenting coordination process beyond the date by which an expense must be incurred, and there is no prejudice to allowing a determination to be made after expense is incurred. If the determination is that the expense is not shareable, then the non-incurring party is not prejudiced and potentially the incurring party is not prejudiced if they are within the timeframe to cancel without penalty. If the determination is that the expense is shareable, then again the non-incurring party is not prejudiced and may actually enjoy the benefit of not having to contribute immediately to the expense.

- [98] For all those reasons, I do not agree that the determination of any of the s. 7 expenses were outside the authority of the parenting coordinator, and I do not find that they were wrong or unreasonable based on the respondent's interpretation of s. 5(e) of the final order.

Procedural Fairness

- [99] In the notice of application, the respondent stated under the "Legal Basis" that the Determination was not procedurally fair, but he gives no explanation for that, including not identifying what particular actions he said are unfair. He expanded on that in his written submissions.
- [100] The parties have an obligation to give fair notice to the opposing side of arguments that they intend to raise. The respondent raised numerous arguments in his written submissions that were not even implicitly referred to in his notice of application, including this one, and I dismiss this ground summarily on that basis. However, I will go on to explain why, even if it had been properly raised, I would dismiss it.

- [101] He bases his argument to a large degree on what I find to be his misinterpretation of Clause 6.0(7) of the parenting agreement. I am not going to read that section out, but that is the section where the parenting coordinator says she can decide the time, place, and manner of the process, and three options are listed.
- [102] The respondent reads those in a way that suggests you have to proceed through all three options as set out. He complains that the PC did not follow the "formal process" and, therefore, he was deprived of certain procedural matters.
- [103] I do not agree. It is very clear that the PC determines which of the three options she will follow and it can be any one of them, not all three sequentially.
- [104] The rest of his submissions on this point do not raise any substantive procedural or legal issues relating to the fairness of the process. I confirm, having reviewed the entire record, which includes the emails amongst the parties, their affidavits, and talk about the process the parenting coordinator followed and how she came up with that, I am satisfied that both parties were treated fairly and there was no basis in the evidence or on any standard that can be applied to find that her process was unfair.
- [105] It is useful to refer to an examples from the case law. The claimant referred to F.K.L. to illustrate the stark difference to the facts in that case where the court did find there were problems. I agree with the claimant that the circumstances there do not come close to what has occurred or even been alleged here:
- [108] Having reviewed the application record, I find that this is an exceptional case in which termination of the parties' parenting coordination agreement is warranted. I so find for two reasons in particular.
- [109] First, I accept that Ms. L has genuinely lost all confidence in the Coordinator to fairly, impartially, and effectively assist the parties. I also find that this subjective loss of confidence is objectively justified. There are multiple examples in the record of email messages from the Coordinator which give rise to an appearance that the Coordinator has developed an antipathy against Ms. L and her views, and a sympathy for Mr. T and his views.
- [111] Second, I am concerned that the two determinations under review and several comments made by the Coordinator in her emails reveal a fundamental misunderstanding and misapprehension of a parenting coordinator's role. That role is to build consensus, make certain determinations under court supervision, and to encourage parents to resolve conflict other than through court intervention: *Fleetwood v. Percival*, 2014 BCCA 502 at para. 44, and *F.J.V. v. W.K.S.*, 2019 BCCA 67 at para. 40. A parenting coordinator is not, however, a judicial official who enjoys inherent decision-making authority so long as it is exercised in the best interests of children.

[106] I confirm the evidence in the case before me does not approach the extremes discussed by Justice Brongers in F.K.L.

[107] The respondent also raised an issue that the parenting coordinator had predetermined the outcome or was somehow biased, based on what I find to be his tortured reading of her clear emails, which are neutral in tone. This allegation has no merit, and I dismiss it.

Conclusion

[108] For all those reasons, having found no aspect of the Determination to be either without authority, unreasonable, or wrong, the notice of application is dismissed in its entirety.

[109] Anything further from the parties?

[110] CNSL W. FERNANDES: Yes, Your Honour, just the -- just the issue of costs, if I may make submissions.

[111] THE COURT: Are you seeking costs?

[112] CNSL W. FERNANDES: Yes, Justice, we are seeking costs. Perhaps -- we would submit that the respondent -- the claimant has been substantially successful and we would seek fixed costs. It was a full-day hearing and, on the tariffs, I believe it is a \$2,000-costs award, and we -- we were doing some extra photocopying and so -- on the basis that the respondent did not have certain materials ready for the hearing. And I would submit that, rather than having to deal with the registrar, we would simply do a pretty conservative \$200 reimbursement for disbursements. So we would be seeking fixed costs in the amounts of \$2,200, Justice.

[113] THE COURT: Mr. Mangat, what do you say about that? What is your position?

[114] RUPINDER MANGAT: Like I would -- yeah, like -- like whatever the scale is for the court costs, I will pay the court costs.

[115] THE COURT: Okay, Mr. Mangat, thank you for that. The -- sorry, what do you say about my setting the amount rather than having to have a bill rendered and then sort it out, if necessary, to the Registrar. Do you -- do you agree with that approach, Mr. Mangat?

[116] RUPINDER MANGAT: Yeah.

[117] THE COURT: And do you agree with the amount of \$2,200?

[118] RUPINDER MANGAT: Yeah.

[119] THE COURT: Okay. Thank you, Mr. Mangat.

[120] The claimant seeks fixed lump-sum costs totalling \$2,200, which includes the tariff for one day, as well as a modest \$200 for disbursements. I find that is appropriate, and I do thank Mr. Mangat, who did not oppose that particular order.

Sharma J.

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