

CANADA / JUDGMENT

T.C. v. K.C.

2020 BCSC 472

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Supreme Court of British Columbia

DECIDED

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2020 BCSC 472 T.C. v. K.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.C. v. K.C.,

2020 BCSC 472

Date: 20200110

Docket: E-54946

Registry: Kamloops

Between:

T.C.

also known as T.B.

Claimant

And

K.C.

Respondent

Correction notice: The case name on the front of the page and on the header has been corrected to T.C. v. K.C. on April 2, 2020

Before: The Honourable Madam Justice Matthews

Oral Reasons for Judgment

In Chambers

Appearing on her own behalf:

T. Bekker

Counsel for the Respondent:

D. Komori

Place and Date of Trial/Hearing:

Williams Lake, B.C.

January 10, 2020

Place and Date of Judgment:

Williams Lake, B.C.

January 10, 2020

Introduction

[1] These are supplementary reasons for judgment pertaining to this family law trial. In my reasons for judgment after trial, which are reported at T.C. v. K.C., 2019 BCSC 1299, I ordered that:

. . . subject to matters of which I am unaware, the parties shall share the costs of Dr. Elterman's reports and attendance at court equally and shall otherwise bear their own costs.

[2] The parties have appeared before me to address costs in light of offers to settle that were made, and also to seek clarification on certain issues in my reasons for judgment. I gave these reasons orally after hearing submissions. I have edited these reasons without changing the substance.

[3] In my reasons for judgment at trial, I referred to the parties by their initials. T.C. is the claimant and K.C. is the respondent. At the time of trial T.C. was also known as T.B. as B was the first initial of her last name before she was married. She now goes by her pre-marriage last name. In these reasons, however, I am going to refer to her as T.C. purely for consistency with my reasons for judgment at trial. I mean no disrespect to her in doing so.

Costs of the Trial

[4] K.C. seeks costs of the trial from the date he made an offer to settle, March 13, 2019, through the conclusion of trial for all steps necessary from that date, including today's appearance. K.C. acknowledges that success was mixed at trial, and so he does not seek costs on the basis that he was substantially successful, but rather on the basis that the outcome at trial was better than his offer to settle. Pursuant to Rule 11-1 (5), he asks the court to exercise its discretion in his favour and award him costs of the trial. K.C. submits that Rule 11-1 (5) provides the court with discretion to award him ordinary costs from the date of his offer, as opposed to the position of a party who has "beaten an offer" might take, namely ordinary costs to that date and double costs from the date of the offer.

- [5] T.C. argues that no costs should be awarded. She relies on a line of authorities calling into question the role costs should play in cases involving custody and parenting of young children. She submits that it was reasonable for her to not accept K.C.'s proposal because it was significantly different from that recommended by Dr. Elterman, a s. 211 psychologist who testified at trial, she held the honest belief that T.C.'s proposal was not in the best interests of the children, and she honestly believed he did not have the experience or capacity to care for the children according to his proposal.

Legal principles

- [6] Rule 16-1 (7) of the Supreme Court Family Rules provides that:
- (7) Subject to subrule (9), costs of a family law case must be awarded to the successful party unless the court otherwise orders,
- [7] In *S.J.C. v. S.-J.C.A.*, 2010 BCCA 31, the Court of Appeal confirmed that this usual rule applies in custody and access cases, subject to a discretion to refuse costs to the successful party in certain circumstances, citing *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180 (C.A.) at para. 19; *Karpodinis v. Kantas*, 2006 BCCA 400; *Yassin v. Loubani*, 2007 BCCA 102, 67 B.C.L.R. (4th); and *Falvai v. Falvai*, 2009 BCCA 387, [2009] 10 W.W.R. 453. Some of those cases refer to *T.K. v. R.J.H.A.*, 2015 BCCA 8 at 86.
- [8] The discretion to not award costs to a successful party was discussed by Madam Justice Humphries in *Hansen v. Mantei-Hansen*, 2013 BCSC 1854. Humphries J. declined to award costs in favour of the successful party, where the central issue was the primary residence of two young children but noted that in doing so she was exercising discretion as opposed to applying law that costs should not be awarded in custody cases:
- [12] It is clear from the appellate decisions that, although there is no special principle of general application that costs should not be awarded in custody cases, there is a clear discretion in the trial judge, to be exercised judicially, to decide whether to award costs. *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180 sets out a non-exclusive list of factors to consider when deciding how to exercise one's discretion on costs: hardship, earning capacity, purpose of the award, conduct of the parties, not upsetting the balance achieved by the award, and notes that the facts and issues in each family case vary widely.
- [9] Humphries J. went on to say that "... the 'genuine belief theory' of costs - that is, if you maintain your position on custody in good faith and in the genuine belief you have a legitimate position you are somehow protected from an order for costs" is not a factor that can be taken into account in exercising the discretion, citing *K.D.P. v. A.R.K.*, 2012 BCSC 1025 at para. 19.
- [10] Offers to settle may be considered to modify the order a court would otherwise make under Rule 16-1 (7): Paul, at para. 29.
- [11] Rule 11-1 sub rules, 4, 5 and 6 read as follows:

Offer may be considered in relation to costs

- (4) The court may consider an offer to settle when exercising the court's discretion in relation to costs.

Cost options

- (5) In a family law case in which an offer to settle has been made, the court may do one or more of the following:
- (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
 - (b) award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
 - (c) award to a party, in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;
 - (d) if the party who made the offer obtained a judgment as favourable as, or more favourable than, the terms of the offer, award to the party the party's costs in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle.

Considerations of court

- (6) In making an order under subrule (5), the court may consider the following:
- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
 - (b) the relationship between the terms of settlement offered and the final judgment of the court;
 - (c) the relative financial circumstances of the parties;
 - (d) any other factor the court considers appropriate.
- [12] Where the party seeks costs based on substantial success, the offer to settle is irrelevant. Substantial success is determined by comparing the position taken at trial and the outcome: *Paul v. Pumple*, 2013 BCSC 1344 at paras 16 to 17.
- [13] However, where the party seeking costs is not relying on substantial success, but rather Rule 11-1(5), the offer can be taken into account to permit an award of costs subsequent to the date the offer was made. In such circumstances, the questions are those set out in sub rule (6).

- [14] In *K.D.P. v. A.R.K.*, Justice Goepel, as he then was, applied the principles affirmed in *S.J.C.* to a case in which the successful respondent father had made an offer to settle and sought costs up to the time the offer was made and double costs after that time. Goepel J. held that because of the respondent's conduct during trial and his failure to pay daycare costs that he had previously been ordered to pay, he was disentitled to full costs up to the date of the offer and double costs thereafter, but he also found that the results should not be that the parties bore their own costs. He ordered costs payable by the applicant to the respondent at 60 percent of ordinary costs, and disbursements.

Discussion

Substantial Success

- [15] K.C. concedes that when my order is compared to the positions taken at trial, neither party was substantially successful.
- [16] Both parties agree that the issues around parenting time and decision making were the central issues that caused the case to go to trial. K.C. sought equal parenting time at trial and T.C. sought essentially the status quo with a modest increase to K.C.'s two 24-hour periods per week.
- [17] I ordered that the children's time with K.C. to increase immediately to one 48-hour period per week and one 24-hour period per week. I ordered that in January 2021 parenting time shall be equal. I cancelled the grandparenting time that the children had with G.C., K.C.'s father, because the children live in G.C.'s house and would have more time with G.C. as a result of the increase in time with K.C.
- [18] There were some differences in what was sought in holiday time, particularly summer holiday time, than what I ordered. Those differences are not as important, but do nevertheless detract from clear substantial success in favour of either party.
- [19] I agree that when compared to the positions taken at trial, neither party enjoyed substantial success. On that basis, I would order the parties to bear their own costs and share the costs of the preparation of Dr. Elterman's report and attendance at trial, subject to considerations related to K.C.'s offer which I must consider to determine if it was favourable or more favourable than the outcome at trial and whether it was reasonable for T.C. to reject it.

Whether the offer was one that ought to have reasonably been accepted and whether it was favourable compared to the outcome at trial

- [20] K.C.'s offer was presented as a package such that T.C. had to accept all of the terms or reject all of the terms.

- [21] On parenting time, K.C.'s offer was to increase his time from two 24-hour periods per week to essentially three days per week, with some options set out, one of which was a 72-hour period. K.C. proposed that his parenting time would increase immediately and that that his father would still have parenting time of four hours per week. In April of 2021, which is essentially two years after the offer was made, the parties would share parenting time 50/50 on a go forward basis.
- [22] My order that the children's parenting time with K.C. increase to three days per week broke those days down into one 48-hour period and one 24-hour period. As I have said, I also cancelled the parenting time with G.C. and I ordered that starting January 2021, the children would have equal time with K.C. and T.C.
- [23] Prior to trial, the parties had been operating on an order that provided for a right of first refusal. I heard evidence that it was not working and was not being used. K.C.'s offer essentially provided for a one way right of first refusal. It provided that if he was unable to parent the children during his parenting time, his parents would do so, which effectively meant there would be no right of first refusal in favour of T.C. In addition, his offer stipulated that if T.C. was unable to parent during her parenting time, she would give the right of first refusal to K.C. or his parents if she was required to pay for childcare during that time, and unless her family was available in Williams Lake to care for the children.
- [24] My reasons for judgment eliminated the right of first refusal on the basis that it had not been used and was creating further issues between the parties. I will come to this in due course, but apparently it is still an issue.
- [25] With regard to guardianship, K.C.'s offer provided that both parents have guardianship of the children. That is the order I made.
- [26] K.C.'s offer was that they would share parental decision making, in the event of a disagreement T.C. would have the "deciding vote" and K.C. would have the right to apply to the court if he considered a decision she made contrary to the best interests of the child. That term of the offer was subject to T.C. agreeing that the children would attend Chilcotin Elementary school and a suitable Williams Lake secondary school. I ordered that decision making be shared, neither parent has a deciding vote, but either parent may seek direction from the court in the event of disagreement. That order was not tied to the school at which the children would attend although I did address that topic separately.
- [27] I will not detail the difference in the offer and my orders pertaining to holidays. For the most part they are largely small. The only one that could be said to be significant was that K.C.'s offer provided for two weeks of uninterrupted summer holiday with each parent. I ordered that the children have two one-week holidays with each of their parents that had to be separated by a certain period of time, and that in the future the duration of the holiday time could increase if the parties agreed.

- [28] On child support, K.C.'s offer provided that neither would pay the other, that s. 7 expenses would be shared equally for any medical or dental expense exceeding \$100, and extracurricular expenses would be shared equally if agreed to in writing. I ordered child support arrears in favour of T.C. in the amount of approximately \$2,100. I imputed income to both of them which, on the setoff basis, would result in T.C. paying K.C. a monthly amount, but based on a Contino analysis, I ordered that no setoff amount was payable. I ordered that s. 7 expenses agreed to in advance are to be shared according to the ratios of the incomes I imputed to them.
- [29] K.C. submits that on the central issue, parenting time, his offer was reasonable and he did better at trial. As I have said, his offer was three days per week immediately plus four hours of grandparenting time for his father, increasing to equal time in April 2021. The offer did not stipulate what would happen to G.C.'s grandparenting time in April 2021. I ordered three days a week immediately, but cancelled grandparenting time with G.C., and ordered equal time in January 2021.
- [30] T.C. submits that it was reasonable for her to reject the offer, as the immediate increase in parenting K.C. sought was not only to increase it by 24 hours per week, but to have 72 hours at a stretch, an amount of time she considered too long for the children to be away from her.
- [31] T.C. also argued that the offer was unreasonable because it was an all-or-nothing package offer. She made an offer in response, agreeing with some things but not the others.
- [32] With regard to the offer being a package offer, the question of reasonableness and favourability both arise. Encouraging settlement means that comprehensive offers are good things because they resolve all issues and avoid all trial time. However, all-or-nothing offers put the recipient in a difficult position if there are many issues and one or more of the terms of the all-or-nothing offer are not reasonable or palatable.
- [33] In this case, for example, G.C.'s grandparenting time was, from the perspective of T.C., an add-on to K.C.'s parenting time, so the question arises whether or not K.C. was actually making offers in the terms described in the offer. K.C.'s offer did not address this, nor is K.C.'s offer more favourable than the order made by the court on that front, particularly because the offer was silent about G.C.'s time after the parties have what the offer described as equal time in 2021. I do not regard the fact that my order has the parenting time equal four months earlier than what K.C. offered addresses or offsets the confusion around G.C.'s grandparenting time.
- [34] Another example where the offer is not comparable to the outcome is that I ordered joint decision making with neither party having a deciding vote. K.C. offered T.C. the deciding vote, but only if she agreed that the children would attend Chilcotin Road Elementary school and a suitable Williams Lake secondary school. I did not tie who would have decision-making authority to the schooling issue, but resolved the then current dispute about schooling by ordered that the eldest child, A.C., not be home schooled, be enrolled in Chilcotin Road Elementary school for kindergarten, and that after that, the educational

decision making be subject to the joint decision-making authority of the parents. This is different than K.C.'s offer in that it set the means of education and elementary school for the children in stone.

- [35] K.C.'s offer did not provide for retroactive child support, which I ordered. He argues that this is more than overshadowed by the fact that, as a result of the imputed incomes and parenting time, K.C. winds up with one-half the child support benefit. His offer allowed T.C. to claim the full benefit. However, I did not order that he be able to claim one-half the child support benefit; rather, that is a by-product of the order I made. Notwithstanding, financially K.C.'s offer was more favourable to T.C. than the order I made.
- [36] T.C. says that she had good reasons to reject this offer, including that it did not accord with Dr. Elterman's recommendations about parenting, nor her own belief that K.C. was not capable of parenting the children according to his proposal, and her belief that his proposal was not in the best interests of the children.
- [37] As discussed above, the law does not recognize honestly-held beliefs as a reason to avoid costs orders that would otherwise follow. In addition, I rejected Dr. Elterman's recommendations in his report because they were based on assumptions that did not accord with the facts as I found them. That type of outcome is something that the parties need to take into account when assessing the reasonableness of offers.
- [38] Accordingly, I do not accept the reasons T.C. gives for not accepting the offer. I also do not accept that T.C.'s honestly-held beliefs about K.C.'s parenting are reasonable. I found at trial, and I repeat now, that her disrespect for the role that K.C.'s parenting plays in their children's lives is problematic and not in the children's best interests.
- [39] Taking all of this into account, and notwithstanding that I do not accept T.C.'s reasons for rejecting K.C.'s offer, I conclude that T.C.'s rejection of the offer was not unreasonable because the offer was not clear, including in respect of G.C.'s grandparenting time, and because the term of parental decision making was tied to accepting an educational program set in stone from kindergarten for both children.
- [40] However, in terms of favourability, I am of the view that given that both parties asserted that the parenting aspects were the key issue without which the trial would not have been necessary, and the parenting aspects of the offer were more favourable to T.C. than the judgment, that factor weighs towards making an adjustment to costs in K.C.'s favour.

Financial Circumstances

- [41] Financial circumstances are related to the first discretionary factor described in the Gold case, hardship. Many cases that follow Gold state that it is not a determinative factor. In *K.A.M.R. v. W.H.G.*, 2014 BCSC 783, Mr. Justice Punnett described this factor in the context of whether a party whose offer to settle was more favourable than the outcome as being about financial hardship. He observed that the purpose of offers is to encourage settlement,

and if some financial hardship were the sole criteria, the less well-off party would always be immune to a negative costs award. Hardship is also not synonymous with affordability. If it were, costs would rarely be awarded, as it is the rare family law litigant who can afford the expenses associated with family litigation and to pay costs of the other party.

- [42] In this case, both parties claim they are in debt due to the litigation and that that should be taken into account in their favour. K.C. has sworn an affidavit that he is indebted to his parents in the amount of \$140,000 due to this litigation. At trial, his father, G.C., testified about the financial support he provides to his son and has also provided to his daughter in the past. He also testified that K.C. and the children now live with him and his wife, and that the arrangement is intended to be permanent, except that K.C.'s parents may build themselves alternative accommodation on the same property on which they currently live, so that K.C. and the children will be the sole occupants of the house they currently live in with K.C.'s parents. I accepted G.C.'s evidence that he would never allow his children or his grandchildren to want for anything. I consider that evidence with the evidence of \$140,000 in debt owed to K.C.'s parents. I consider that a costs award in K.C.'s favour may reduce this debt, but I do not find that it is a pressing debt that K.C. must repay on a timeline that is causing him financial hardship.
- [43] T.C. has also not proven financial hardship. I imputed an income to her of over \$69,000. She is currently earning \$2,100 per month as she is arranging her shifts so that she is available to the children during her parenting time. She has not taken advantage of the free daycare that her in-laws or former in-laws offer her so that she can work, and she has not arranged for daycare so that she can work to her earning potential.
- [44] It is only a few months since my judgment, and so this may change, but there is no doubt that T.C. has the capacity to earn more than she does and chooses not to for the reason that she wishes to spend the maximum amount of time she can with the children. I considered this issue at trial pertaining to what income should be imputed to her, and I rejected it as a reason that she could justify to earn less than her capacity. That determination decreases the force of T.C.'s submissions about financial hardship.
- [45] K.C.'s proposed bill of costs totals just over \$40,000, \$14,000 of which is disbursements, including approximately \$6,800 for Dr. Elterman's reports and for Dr. Elterman to attend trial.
- [46] At the end of the day, T.C. has greater earning capacity, but K.C. has greater financial resources because of his parents. Those facts do not assist in resolving costs one way or the other.

Other Factors

- [47] T.C. commenced this litigation in Vancouver, despite that the parties and children live in Williams Lake. She did so because she left Williams Lake with the children without notice to K.C. and sought and obtained a protective order precluding K.C. from communicating with her or the children. She sought and obtained that order in Vancouver, where she went and where she intended to relocate with the children.
- [48] The file was transferred to Kamloops where K.C.'s lawyer is located. The trial was held in Williams Lake. K.C.'s lawyer travelled to Williams Lake for the trial.
- [49] I find that T.C.'s conduct at the outset of this matter, by commencing the action in Vancouver and by seeking and obtaining the protective order under the circumstances I described in my reasons for judgment, caused unnecessary costs and expense. This conduct increased the antagonism and conflict between the parties and has had a direct impact on the expenses incurred by K.C. in having his lawyer travel from Kamloops to Williams Lake for the trial.

Conclusion on costs

- [50] Taking all of this into account, I order that the parties shall share the costs of Dr. Elterman's reports and attendance at trial equally. T.C. shall be responsible for the reasonable travel costs associated with Mr. Komori travelling from Kamloops for trial in Williams Lake, including for today's appearance. With the exception of the orders I have made regarding Dr. Elterman and Mr. Komori's travel costs, the parties shall bear their own disbursements. T.C. shall pay 50 percent of K.C.'s costs of the trial, other than disbursements, from March 13, 2019, up to and including today's appearance, assessed at ordinary difficulty.
- [51] All of that shall be subject to the usual rules and procedures regarding assessment of the bill of costs.

Matters On Which Clarification Was Sought

- [52] I ordered that the children have parenting time with K.C. on his birthday, May 5, if that is not otherwise a parenting day for him. However, in one place in my reasons I described the parenting time as from 9:00 a.m. to 6:00 p.m., and at another place I described it as 9:00 a.m. to when school starts the next day. I clarify that it shall be from 9:00 a.m. to 6:00 p.m. on May 5. If May 5 is a school day, the child or children who are school age shall attend school.
- [53] I also addressed parenting time for T.C. on her birthday, which is March 17, in the event that it falls within spring break, but I did not address it in the event that it does not fall within spring break. I order that if March 17 does not fall within spring break and it is not otherwise parenting time for T.C., the children shall have parenting time with her that day from 9:00 a.m. to 6:00 p.m. If March 17 is a school day, the child or children who are school age shall attend school.

[54] K.C. sought clarification to my order regarding professional development days. The order provides:

... in the event that a Friday of a long weekend or at the start of a holiday period is not a school day due to an educational professional day, the holiday parenting time shall commence at 9 am on that day.

[55] In my view, this order does not require clarification. K.C. did not know whether it applies to educational professional development days that do not precede long weekends or holidays. It does not.

[56] T.C. also sought an order that parents must set their holiday time to start on a day that they would otherwise have parenting time. I decline to make such an order, as it might not always work around Christmas holiday time and long weekends. For summer holidays, I ordered that the parties alternate picking holiday time first each year. The purpose of that order was to encourage the parties to be fair, to put the best interests of the children first and to not pick holiday time to disadvantage the other parent. I do not believe further orders of the type sought will assist.

Issues Pertaining to Education and Parenting Time

[57] In my reasons for judgment, I ordered that the eldest child, A.C., not be home schooled and that he attend kindergarten at Chilcotin Road Elementary school. I held that the children's best interests are served by both parents understanding and participating in their education, and that absent a need for home schooling, it would undermine or eliminate shared responsibility for education and would eliminate the opportunity for objective input on A.C.'s needs and his progress.

[58] A.C. started kindergarten in September 2019, approximately one month after I issued my reasons for judgment. When K.C. advised T.C. that he would be attending the school for the first day orientation, T.C. objected, apparently partly because K.C. had already had an orientation that she was not aware of.

[59] T.C. testified that she felt that A.C. would be stressed if they were both there. She testified that K.C. emailed or texted her that he would pick up A.C. at her house, and she testified that she told him in reply that if he did that, she would call the police. She testified that she did not threaten to call the police if K.C. merely attended at the school, as she knows she could not do that. During cross-examination on this issue, K.C.'s counsel read to her an email or a text in which she said that if K.C. was at the school, she would involve the RCMP.

[60] In light of the email or text which she acknowledged in her evidence, I find that she did threaten K.C. that she would call the police if he attended at the school for A.C.'s first day of kindergarten.

- [61] The next event on this topic is that in November 2019, A.C. brought a letter home from school advising of parent-teacher interviews and asking the parents to pick a time for an interview and return the form to the school with A.C. the following day. Instead of doing so, T.C., who apparently had parenting time on the day the form went home, communicated with the teacher, but not with K.C., requesting separate times for the parent-teacher interview. She did not communicate about this issue with K.C. prior to him learning about it independently, which apparently took place the next day. The parties had separate interview times. There were some communication problems around pickup places and times for the children in conjunction with the interviews.
- [62] In December 2019, A.C.'s Christmas concert was scheduled at a time when his parenting time was with K.C. T.C. attended the Christmas concert without incident or objection by K.C.
- [63] It is obvious that T.C. should attend the Christmas concert, even though it is on K.C.'s parenting time. It is obvious that they both should attend any school events, including meetings with teachers. They must both communicate with each other about such things and not communicate with the school about such things in a way which excludes the other. Regrettably, I conclude that T.C. is taking steps to exclude K.C. from A.C.'s education experience. She must accept and comply with the spirit of the order I made, which does not allow for K.C. to be excluded from either child's education.
- [64] I clarify my reasons regarding joint decision making on education by stipulating that neither party may preclude the other parent from attending the school for activities, events, meetings, orientations, or other matters requiring or offering the opportunity for parent involvement or observation. If either parent has information that he or she reasonably believes the other does not have about the education of the children or any such events, they must immediately inform the other parent and must not communicate with the school in a way which excludes the other parent from information or opportunities he or she should have.
- [65] There is one further issue and that is a request by T.C. for clarification pertaining to parenting time when one parent is not able to provide parenting time or is not intending to provide parenting time. It arises out of an issue that was the subject of evidence and submissions at trial, which is that in January K.C. usually attends an event in the United States where he works supporting a friend who competes in the X Games. T.C. seeks the opportunity to parent the children in K.C.'s absence and has asked for the following clarification:

If one of the parties leaves Williams Lake without the children during their parenting time for a substantial amount of time, would the other parent have the right to care for the children during that time instead of the other party getting day childcare. Example: Respondent attends an event out of country for two weeks. Claimant is uncomfortable with the children being in the care of the Respondent's parents for that amount of time and would prefer to care for the children herself.

- [66] Given the parenting arrangements I have ordered, if K.C. were to attend the X Games for two weeks, there would not be a two-week period in which the children would be in the care of K.C.'s parents because the children do not have parenting with K.C. or T.C. for a two week stretch at any time. The order I have made is that no party has the right of first refusal and that if a parent is not able to care for the children during their time, they are encouraged to use the resource of K.C.'s parents, who have been involved with the children since they were born and who are willing to provide care. I see no reason to change the order I have made and so I decline to do so.
- [67] MR. KOMORI: I do seek some clarification on your order as it related to costs. Just give me a sec here. So the parties will share Elterman's costs?
- [68] THE COURT: Yes.
- [69] MR. KOMORI: Is that report and attendance?
- [70] THE COURT: Yes.
- [71] MR. KOMORI: And the claimant will be responsible for my travel costs, including for today, so basically that's per the -- well, I'll get my costs to travel.
- [72] THE COURT: Yes.
- [73] MR. KOMORI: And then -- just a sec here -- they otherwise bear their own disbursements. She bears half the costs of the schedule amounts for the trial.
- [74] THE COURT: Yes.
- [75] MR. KOMORI: Put it that way. And on the January 9th order or contested chambers application, she pays costs in the usual fashion, is that --
- [76] THE COURT: Is that -- are you talking about today? Today is January --
- [77] MR. KOMORI: No, January the --
- [78] THE COURT: Today is January 10th.
- [79] MR. KOMORI: No, the January -- the chambers application that was previously ordered. There had been -- I'm sorry, just give me a sec here, this is the part that I was confused about. In the bill of costs, I had put the one chambers application of January 7, 2019, that was --
- [80] THE COURT: Three days ago?
- [81] MR. KOMORI: January 7, 2019.
- [82] THE COURT: Oh, one year ago.
- [83] MR. KOMORI: That was the one she had been previously ordered to pay costs, but not forthwith.

- [84] THE COURT: Ah.
- [85] MR. KOMORI: At a contested chambers application. I thought that's what you were --
- [86] THE COURT: That would be costs.
- [87] MR. KOMORI: -- talking about there, but --
- [88] THE COURT: Was it costs in the cause that were previously ordered?
- [89] MR. KOMORI: No, it was -- she was ordered to pay the costs of that hearing.
- [90] THE COURT: Right.
- [91] MR. KOMORI: But not forthwith.
- [92] THE COURT: All right, well, then that order stands.
- [93] MR. KOMORI: Yeah, okay. So then I think I understand. I am going to ask for an order dispensing with her signature on the order. I will draft it up.
- [94] THE COURT: Well, what I will -- the order I will make is this, and Ms. [B], please feel free to ask for clarification of this if you do not understand. Mr. Komori, you should draft the order and send it to Ms. [B]. Ms. [B]. will have two weeks to respond. If she does not respond in two weeks, you may enter the order without her signature. If she does respond with concerns around the way the order is drafted, then it can be sent to me electronically with both parties' positions on it, and if I need more submissions, I will advise the parties, but I will otherwise deal with it. All right?
- [95] MR. KOMORI: Yes.
- "Matthews. J"

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