
CANADA / JUDGMENT

T.R. v. A.R.

2020 BCSC 2068

COURT

Supreme Court of British Columbia

DECIDED

23 December 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 2068 T.R. v. A.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.R. v. A.R.,

2020 BCSC 2068

Date: 20201223

Docket: E190402

Registry: Vancouver

Between:

T.R.

Claimant

And

A.R.

Respondent

Before: The Honourable Mr. Justice Edelmann

Reasons for Judgment

Counsel for the Claimant, appearing by teleconference:

P. Boles

Counsel for the Respondent, appearing by teleconference:

J. Wong

Place and Dates of Hearing:

Vancouver, B.C.

November 19-20, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 23, 2020

Table of Contents

Introduction. 3

Background. 3

Parenting Coordinators. 6

Order or Agreement Appointing Parenting Coordinator 7

Order or Agreement Regarding Parenting Arrangements. 8

The Role of the Parenting Coordinator 8

Determinations by the Parenting Coordinator 9

Setting aside the determination of a parenting coordinator 11

Analysis. 12

Setting Aside the Determinations of the Parenting Coordinator 12

(a) Assisting the parties to reach consensus. 12

(b) The First Determination. 13

(c) The direction to take parenting coaching. 14

(d) Procedural Fairness. 15

Terminating Parenting Coordination. 15

(a) Cost of Parenting Coordinator 16

(b) Appearance of Bias. 17

i. Mr. Neville's approach to building consensus. 17

ii. Mr. Neville's response to the Claimant refusing to pay his fees. 18

(c) Should the Parenting Coordinator be Terminated?. 19

Failure to comply with orders and determinations. 19

Other Orders. 20

Costs. 21

Introduction

- [1] There are three applications before me. The application of the Claimant seeks to have the parenting coordinator removed and three of his determinations set aside. Two applications filed by the Respondent seek the enforcement of various Court orders and determinations by the parenting coordinator as well as the imposition of fines under the Family Law Act, S.B.C. 2011 c.25 [FLA]. She also seeks an order restraining the Claimant from speaking negatively or disparagingly about the Respondent and her new partner with the children.

Background

- [2] I do not intend to review in detail the personal history between the parties, but will note that the matters before me have been set out in dozens of affidavits in four large binders. The amount of time, emotional energy, and resources that have been devoted to litigation and conflict in this matter is particularly unfortunate given the two children whose lives are directly affected.
- [3] The parties separated in November of 2015 after a ten-year relationship. They have two children together, seven and eight-year-old boys (collectively, the "children"). The parties entered into a separation agreement in June of 2016, which says they are to share guardianship and equal parenting time with the children.
- [4] The current proceeding commenced in February of 2019 when the Claimant obtained an ex-parte (without notice) order suspending the Respondent's parenting time, alleging physical and sexual abuse of the boys by the Respondent and her new partner. The Claimant made reports about the allegations to both the Ministry of Children and Family Development (the "MCFD") and Vancouver Police Department. Both agencies opened files and made some inquiries but have decided not to pursue the matter any further. The Claimant is not satisfied with the investigation by either agency.
- [5] The ongoing conflict has resulted in a series of appearances before the court and resulting orders. I note that large portions of the orders were ultimately made by consent, which indicates that the parties are able to find middle ground in the right circumstances.
- [6] On February 19, 2019, Master Scarth made an order by consent setting out a parenting schedule, and ordering that the children attend counseling by a registered psychologist. The parties were unable to agree on retaining a psychologist.

- [7] On April 29, 2019, again by consent, Justice Morellato appointed Dr. Marcelle Blancato as the counselor for the children, setting timelines for finalizing her retainer. There have been ongoing issues, in particular as the Claimant is of the view that Dr. Blancato has not adequately engaged with or investigated the allegations of abuse.
- [8] On May 17, 2019 following a Judicial Case Conference, Justice Schultes issued an order by consent, which provided, among other things, that the parties appoint a parenting coordinator.
- [9] In July 2019, Mr. Craig Neville was retained as a parenting coordinator by the parties. In the following months, Mr. Neville worked with the parties to draft a detailed agreement on a wide range of issues raised by both parties (the "agreement"). The agreement addressed issues including passports, travel, parenting time during school and holidays, extracurricular activities and attendance at various events.
- [10] Mr. Neville found that there was substantial agreement on the substantive provisions of the agreement, with the exception of the payment of the expenses for counselling with Dr. Blancato. Mr. Neville found that he had jurisdiction to determine this issue.
- [11] On November 19, 2019, Mr. Neville issued his first determination (the "First Determination"), which incorporated the agreement, and determined that the Respondent would pay for the first four sessions with Dr. Blancato and the Claimant would pay for the second four sessions.
- [12] In a series of emails both before and after November 2019, the Claimant repeatedly indicated that the cost of the parenting coordinator was too high and he was not able to afford it. He did not pay Mr. Neville's account in November. In an ongoing series of communications into February and March of 2020, Mr. Neville made it clear that he would continue as parenting coordinator if the Respondent was willing to pay his accounts, subject to seeking reimbursement from the Claimant at a later time. Mr. Neville made it clear that because the Claimant was not complying with his obligation under the court order to pay his share of the costs, that the Claimant would not be able to add items to the agenda for the parenting coordinator. The Claimant would, however, be given an opportunity to respond and provide input on issues raised by the Respondent.
- [13] On March 26, 2020, Mr. Neville made a second determination in relation to counselling with Dr. Blancato. The Claimant was opposed to counselling as he was of the view of that Dr. Blancato was not objective and was not giving sufficient attention to the allegations of abuse. Having reviewed the recommendations of Dr. Blancato and after receiving input from both parents, Mr. Neville determined that it was in the best interests of the children for the older boy to continue with counselling.
- [14] On June 26, 2020, Mr. Neville made a third determination directing the parties to use Our Family Wizard ("OFW") for communications and that the Claimant attend three one-hour sessions of parenting coaching.

- [15] In a series of emails beginning June 29, 2020, the Claimant made his intention not to comply with the third determination clear. He explicitly refused to use OFW and told the Respondent he would not read any communications sent through OFW. As of the date of the hearing in this matter, I understand he was still not using OFW. All three determinations have been filed with the court and there has been no stay granted with respect to any of them.
- [16] The Claimant's application, which is before me, was filed on September 22, 2020. The application seeks to have the parenting coordinator removed and all three determinations set aside. The grounds are set out as follows:
- a) Exceeded his jurisdiction; and
 - b) Adopted an approach which may reasonably give rise to the appearance bias; and
 - c) Failed to consider the position and evidence in support thereof of the Claimant in relation to multiple issues and specifically failed to consider issues including but not limited to:
 - i. The financial situation of the Claimant as it relates to his ability to afford the PC and counselling; and
 - ii. Concerns of the Claimant relating to many issues including possible sexual behaviours in the children[s] environment, A TV's, helmets and communications approaches including historical problematic use of the Our Family Wizard App.
- [17] The following sections will outline the legal framework within which a parenting coordinator operates.

Parenting Coordinators

- [18] In *M.H. v. C.S.*, 2013 BCSC 2232, Justice Butler, as he then was, described the history and context of the parenting coordinator role created in the FLA:
- [36] Parenting coordination is a relatively new process that involves aspects of settlement negotiation, mediation, and adjudication. It developed initially in the United States as a way to give families experiencing high levels of conflict an option other than court to assist in the management and implementation of a parenting agreement or order. It was being used somewhat sparingly in British Columbia prior to the implementation of the Family Law Act. This was because parenting coordination cannot work effectively without the coordinator having adjudicative powers. Legislation was required to give that power. The provisions in Part 2, Division 3, of the Family Law Act now give parenting coordinators formal status and adjudicative powers. It should be noted that parenting coordination is not intended to establish or change parenting arrangements, but rather to assist parents in resolving disagreements that arise with regard to how parenting arrangements or orders are put into effect.

[19] Pursuant to s.14 of the FLA, the required qualifications of a parenting coordinator are set out in s. 6 of the Family Law Act Regulation, B.C. Reg. 347/2012. The FLA sets out the requirements for a parenting coordinator to assist in s. 15:

15 (1) In this Division, "parenting coordination agreement or order" means a written agreement or an order to use a parenting coordinator.

(2) A parenting coordinator may assist only

(a) if there is a parenting coordination agreement or order in place, and

(b) for the purpose of implementing an agreement or order respecting parenting arrangements, contact with a child or other prescribed matters.

(3) A parenting coordination agreement or order may be made at the same time as, or after, an agreement or order respecting parenting arrangements, contact with a child or other prescribed matters is made.

[20] The section effectively requires two types of orders or agreements to be in place in order for a parenting coordinator to assist. First, under s. 15(2)(a), there must be an order or agreement appointing the parenting coordinator. Second, under s. 15(2)(b), there must be an order or agreement respecting parenting arrangements. I will address each in turn.

Order or Agreement Appointing Parenting Coordinator

[21] In the case before me, there is both an order and an agreement in place with respect to parenting coordination. The relevant terms of the order of Schultes J. as they related to the parenting coordinator were the following:

2. By consent, the parties shall appoint a parenting coordinator, with the costs to be shared by the parties.
3. By consent, the parenting coordinator's authority will be restricted only in the sense that he or she will not deal with the change in the amount of parenting time or the allocation of parental responsibilities under the Family Law Act.

[22] The order also set out the process for selecting the parenting coordinator. The parties selected Mr. Neville and entered into a parenting coordinator agreement with him. The form of the agreement appears to largely reflect the precedent agreement endorsed by the BC Parenting Coordinators Roster Society. In M.H., Butler J. considered an agreement made using the same precedent, and found that its terms to be consistent with ss. 15-18 of the FLA (at para. 18).

[23] The relevant portions of the agreement in evidence before me are identical to those cited by Butler J. Neither party has suggested that the agreement is inconsistent with the FLA or Regulation.

Order or Agreement Regarding Parenting Arrangements

- [24] The combined effect of ss. 15(2)(b) and 15(3) of the FLA is that, in order for a parenting coordinator to exercise his or her authority, there must be an agreement or order in place respecting parenting arrangements: see *D.E.E. v. W.L.E.*, 2015 BCSC 612 at para. 57.
- [25] In the case before me, the consent order endorsed by Master Scarth addressed the parenting arrangements in February 2019 and was still in effect at the time the parenting coordinator was retained.

The Role of the Parenting Coordinator

- [26] The role of a parenting coordinator, as legislated, is to build consensus between parties and make determinations on prescribed matters. The FLA outlines the role of parenting coordinators in s. 17:

Assistance from parenting coordinators

17 A parenting coordinator may assist the parties in the following manner:

- (a) by building consensus between the parties, including by
 - (i) creating guidelines respecting how an agreement or order will be implemented,
 - (ii) creating guidelines respecting communication between the parties,
 - (iii) identifying, and creating strategies for resolving, conflicts between the parties, and
 - (iv) providing information respecting resources available to the parties for the purposes of improving communication or parenting skills;
- (b) by making determinations respecting the matters prescribed for the purposes of section 18 [determinations by parenting coordinators].

- [27] In *Fleetwood v. Percival*, 2014 BCCA 502, Justice Groberman of our Court of Appeal described the parenting coordination regime, finding that the legislative intent of the provisions was to establish a new dispute resolution option for high-conflict situations:
- [45] It is apparent, both from the language of the statute and from the legislative debates on the provisions, that the Legislature was interested in establishing a new option for resolving disputes between parents in high-conflict situations.
- [46] Court procedures are not always conducive to the successful resolution of such disputes, and they can become intractable, particularly where animosity between the parties is entrenched. Sometimes, such disputes become bogged down in the complexity and rigidity of litigation processes. A more flexible resolution process may be desirable.

[28] The use of the word "assist" in the FLA describing the parenting coordinator's role has been interpreted as "not intended to prevent parenting coordinators from making decisions on matters permitted by the Act's regulations": F.J.V. v. W.K.S., 2019 BCCA 67 at para. 38.

Determinations by the Parenting Coordinator

[29] Section 18 of the FLA outlines the scope of authority of parenting coordinators to make binding determinations:

Determinations by parent coordinators

18 (1) A parenting coordinator

- (a) may make determinations respecting prescribed matters only, subject to any limits or conditions set out in the regulations,
 - (b) must not make a determination respecting any matter excluded by the parenting coordination agreement or order, even if the matter is a prescribed matter, and
 - (c) must not make a determination that would affect the division or possession of property, or the division of family debt.
- (2) In making a determination respecting parenting arrangements or contact with a child, a parenting coordinator must consider the best interests of the child only, as set out in section 37 [best interests of child].

[30] The scope of matters that a parenting coordinator can make determinations about is prescribed by s. 6 of the Family Law Act Regulation:

Parenting coordinators

6

(3) The following are the matters in respect of which a parenting coordinator may make determinations:

- (a) parenting arrangements;
 - (b) contact with a child.
- (4) For the purposes of subsection (3), a parenting coordinator
- (a) may make determinations in respect of
 - (i) a child's daily routine, including a child's schedule in relation to parenting time or contact with the child,
 - (ii) the education of a child, including in relation to the child's special needs,
 - (iii) the participation of a child in extracurricular activities and special events,
 - (iv) the temporary care of a child by a person other than

- (A) the child's guardian, or
- (B) a person who has contact with the child under an agreement or order,
 - (v) the provision of routine medical, dental or other health care to a child,
 - (vi) the discipline of a child,
 - (vii) the transportation and exchange of a child for the purposes of exercising parenting time or contact with the child,
 - (viii) parenting time or contact with a child during vacations and special occasions, and
 - (ix) any other matters, other than matters referred to in paragraph (b), that are agreed on by the parties and the parenting coordinator, and
- (b) must not make determinations in respect of
 - (i) a change to the guardianship of a child,
 - (ii) a change to the allocation of parental responsibilities,
 - (iii) giving parenting time or contact with a child to a person who does not have parenting time or contact with the child,
 - (iv) a substantial change to the parenting time or contact with a child, or
 - (v) the relocation of a child.

[31] In *Odgers v. Odgers*, 2014 BCSC 717, Justice Bruce held that the scope of a parenting coordinator's mandate is limited to what is defined in ss. 17 and 18 of the FLA, unless the parties agree otherwise:

[38] The legislative intention behind these provisions is to limit the authority of the parenting coordinator to the prescribed matters unless the parties agree to a broader scope of authority. Where the agreement is silent on the issue, or contains terms that are consistent with the Family Law Act, I find that the scope of the parenting coordinator's mandate is essentially determined by ss. 17 and 18 of the Act.

Setting aside the determination of a parenting coordinator

[32] Section 19 of the FLA provides:

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 his or her authority, or
- (b) made an error of law or of mixed law and fact.

- [33] In *Law v. Cheng*, 2017 BCSC 328, Justice N. Smith engaged in a detailed assessment of the standard of review to be applied when deciding whether to set aside a determination by a parenting coordinator under s. 19(1)(b), concluding that the standard of reasonableness should apply. In *A.K.S. v. A.L.E.S.*, 2019 BCSC 419, Justice Gomery held that the same standard of review should apply when setting aside determinations under s. 19(1)(a).
- [34] Both cases were decided prior to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, and I did not hear submissions on its application to the decisions of parenting coordinators. Having considered the decisions before me, I am satisfied that my decision would be the same whether the reasonableness or appellate standard of review were to be employed. I therefore do not consider this an appropriate case to consider the impact of *Vavilov* on prior jurisprudence.

Analysis

- [35] Having reviewed the role of a parenting coordinator and the approach to setting decisions aside, I now turn to considering whether Mr. Neville acted beyond his jurisdiction, and whether the process was unfair or biased.

Setting Aside the Determinations of the Parenting Coordinator

- [36] The Claimant argues that Mr. Neville exceeded his jurisdiction in a number of respects.
- (a) Assisting the parties to reach consensus
- [37] First, the Claimant argued that Mr. Neville acted outside his jurisdiction when he assisted the parties in reaching agreement on a number of terms that clarified the details of their parenting agreement.
- [38] As set out in s. 17(a), Mr. Neville began his engagement by seeking to build consensus between the Claimant and the Respondent. There was an order in place respecting parenting arrangements. In Mr. Neville's experience, the parenting arrangement lacked the clarity and detail that is needed to avoid disagreements in a high-conflict parenting arrangement. This reflects a position Mr. Neville outlined in a paper on parenting coordination that was cited by Butler J. in *M.H.*:
- [38] Parenting coordination is intended to be a cost-effective process to enable parents to resolve parenting challenges. When issues are resolved through the process, it should be less costly to the parties than the litigation process. The intent is to allow the parties to build consensus and obtain determinations without the involvement of counsel, although counsel may still be useful for parents in a consulting role. As Mr. Neville notes in his paper, "the clearer and more detailed the parenting plan, the less costly my work as a parenting coordinator." In other words, it is difficult for a coordinator to be asked to assist the parties in the creation of a parenting plan. The process is more effective when the coordinator's role is limited to assisting the parties with the implementation of a clear plan.

[39] To avoid ongoing disagreement between the parties, Mr. Neville assisted the parties in reaching agreement on details of the parenting arrangement, including the details surrounding parenting time, child exchanges, holidays, and attendance at various events. The Claimant was engaged in the process, and I accept Mr. Neville's conclusion that there was agreement between the parties.

[40] The Claimant argues Mr. Neville exceeded his jurisdiction in working with the parties to reach an agreement about these issues, as it was not part of his role. In effect, Mr. Neville himself made it clear to the parties that it would have been better if they had entered the parenting coordination process with a more detailed parenting agreement. I note that the consent order of Master Scarth explicitly foresees modifications to the parenting arrangements by agreement, starting with "Unless the parties otherwise agree".

[41] While it would have been ideal to enter the parenting coordination process with a more detailed arrangement, I do not agree with the Claimant's position that Mr. Neville exceeded his jurisdiction by seeking to build consensus between the parties on a number of outstanding issues. Mr. Neville's role assisting the parties to build consensus on the specific terms of their parenting arrangement falls squarely within his role under s. 17 of the FLA.

(b) The First Determination

[42] The Claimant argued that the First Determination exceeded the jurisdiction by changing the parenting arrangement contrary to both the regulations and the parenting coordination agreement. The role of a parenting coordinator in this context was addressed quite directly by Butler J. in M.H.:

[19] Shortly after the Agreement was signed, the PC began working with the parties to establish an access schedule. Progress on the schedule was slow. The PC asked the parties to provide a description of what they were hoping to achieve with the coordination process, and in particular were asked what access would look like for the summer and for ongoing regular parenting time from September onwards. A summer vacation access schedule for the respondent was the main focus of the PC's initial work as it was evident to her that the parties could only realistically focus their attention on one contentious task.

[55] As I have indicated, the respondent's view that the PC did not have the authority to consider the ongoing regular access frequency and timing was not correct. The Bowden order did not specify the manner in which the ongoing regular access was to be accommodated. That issue was delegated to the PC. There is nothing in the Agreement that limits the PC from considering such issues. Indeed, there is no question that the Agreement provides that the PC can make such determinations. In that regard, I refer to subparagraphs 3.1(b)(i), (b)(vii), (b)(viii), and (b)(ix) of the Agreement.

[Emphasis added.]

[43] As noted above, the relevant portions of the agreement that was before Butler J. appears identical to the one before me. I find the agreement the parties reached through the parenting coordinator's process and set out as an appendix to the First Determination did not substantially change the parenting time, and that the types of issues addressed fell within the prescribed matters in s. 6 of the Family Law Act Regulations. In effect, these were issues among those that parenting coordinators would often be called upon to resolve. I would therefore not accede to this argument.

(c) The direction to take parenting coaching

[44] The Claimant appeared to take issue with the jurisdiction of the parenting coordinator to direct him to take parenting coaching. In *Odgers*, Bruce J. directly addressed this issue:

[40] I am also satisfied that the authority granted to a parenting coordinator under ss. 17 and 18 of the Act is sufficiently broad to include establishing guidelines and making determinations about coaching and counselling. If the parenting coordinator determines that coaching and/or counselling is required to resolve conflicts between the parties and their children, it is reasonable that they have authority to direct the parties to engage in these processes. If either party is dissatisfied with a determination by the parenting coordinator, they may apply to vary or set aside the direction under s. 19 of the Act. Where the cost of these services is an issue, a parenting coordinator is expected to take this factor into account when considering whether such a direction is necessary and advisable in the circumstances.

[45] I, therefore, find that not only did the parenting coordinator have the jurisdiction to direct the Claimant to attend three hours of parenting coaching, I am also of the view that it was appropriate for him to do so in the circumstances. Attendance at parenting coaching was recommended some time ago by Dr. Blancato, and similar suggestions appear to have been made by MCFD. The Respondent and her partner attended parenting coaching as suggested.

[46] The Claimant points to a lack of time and funds as reasons that it is unreasonable for him to attend the coaching sessions. As held in *Odgers*, cost is a factor that should be taken into account by the parenting coordinator when making determinations about coaching. I am not satisfied on the evidence before me that the cost of three hours of parenting coaching was prohibitive to the Claimant. As for the time that would be required, there is little doubt that much more than three hours was spent drafting the multiple affidavits before me. I would encourage the Claimant to consider that being open to recommendations made by the parenting coordinator may better reflect his underlying interest in doing what is best for his children, rather than focusing resources in adversarial court processes.

(d) Procedural Fairness

[47] The Claimant has also raised issues of procedural fairness in relation to the determinations. As these issues are also at the core of the application to terminate parenting coordination, I will address them in the following section.

Terminating Parenting Coordination

[48] The Claimant has submitted that the parenting coordination should be terminated because Mr. Neville adopted an approach that would give rise to an appearance of bias, and failed to consider the financial situation of the Claimant. I will begin by outlining the law on terminating parenting coordinators, then address the cost of the parenting coordinator and the claims of bias and unfairness.

[49] Section 15(6) of the FLA sets out the circumstances in which a parenting coordinator agreement may be terminated:

15 (6) Despite subsection (4), a parenting coordination agreement or order may be terminated at any time as follows:

- (a) in the case of an agreement, by agreement of the parties or by an order made on application by either of the parties;
- (b) in the case of an order, by an order made on application by either of the parties;
- (c) in any case, by the parenting coordinator, on giving notice to the parties and, if the parenting coordinator is acting under an order, to the court.

[50] In M.H., Butler J. discussed the approach to terminating a parenting coordinator agreement under s. 15(6):

[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.

(a) Cost of Parenting Coordinator

[51] In the Claimant's affidavit #6, he incorporates the content of a number of emails between himself and Mr. Neville into his declarations. At paragraph 8, a reference to his email of September 23, 2019, indicates that some \$20,000 would have been paid to Mr. Neville to draft the agreement. I was taken to the emails in question by Claimant's counsel who submitted that, "Within a couple months they were at \$20,000".

[52] Counsel then took me to further emails which were also referred to in her client's affidavit from October 10, 2019, requesting a payment of \$3,255.23. Claimant's counsel submitted, "We are October it was 20,000 back in mid-September so we are up to 30,000 or thereabouts there."

- [53] On the second day of hearing, Respondent's counsel sought to tender an affidavit setting out the actual payments that had been made to Mr. Neville. Claimant's counsel strongly objected to the admission of the affidavit. However, after being asked how much time would be required to respond to the information in the affidavit, Claimant's counsel conceded the information was accurate and that I could rely on it in coming to my decision. The affidavit sets out the total amounts billed by Mr. Neville from the time he was retained as parenting coordinator in July 2019 until the date of the hearing before me in November 2020. The total amount billed to both parties combined during those 17 months was \$13,583.12. Although a deposit was required for ongoing work, the total billings for both parties combined by October 10, 2019 appears to have been around \$6,500. This is a far cry from the \$30,000 cost that was put forward in the Claimant's submissions.
- [54] I do not consider the representations made in the Claimant's materials with respect to the cost or availability of funds to pay the parenting coordinator to be reliable. In submissions, I was not taken to any information about the Claimant's current financial situation, and I was not taken to any such information that was provided to Mr. Neville. I have only seen a series of bald assertions that the Claimant could not afford the parenting coordinator, the vast majority of which are contained in the emails.
- [55] Although I accept that the financial situation of the parties is a valid factor to be considered in deciding whether the mandate of a parenting coordinator should be terminated, I am not satisfied on the evidence before me that the cost of the parenting coordinator over the past 17 months has been unreasonable, nor am I satisfied that the Claimant is unable to afford it. In effect, I am told that he finally paid his share of the cost shortly before the hearing of these applications.
- (b) Appearance of Bias
- [56] I have reviewed in some detail the correspondence between Mr. Neville and the parties. In my view, his approach was balanced and fair in a difficult situation.
- i. Mr. Neville's approach to building consensus
- [57] I do not find the approach taken by the parenting coordinator at the early stages of his mandate in this case to be unreasonable. To the contrary, it was clear that the existing orders did not provide the level of detail and clarity required to manage the conflict about parenting. Mr. Neville sought to build consensus, and was successful in doing so on a large number of issues. While the Claimant has made a blanket statement that he was "pressured" into positions, I was not taken to any points of ongoing disagreement that were not identified by the parenting coordinator in his determination. In my view, Mr. Neville appropriately exercised his role as parenting coordinator, and he was able to effectively reach consensus on a wide range of issues in a difficult situation.
- ii. Mr. Neville's response to the Claimant refusing to pay his fees

- [58] Contrary to his obligations under the consent order, the Claimant stopped paying Mr. Neville's fees. The Respondent agreed to pay the fees on behalf of both parties, subject to collecting them at a later time from the Claimant. I do not find Mr. Neville's decision to continue in the circumstances unfair. I also do not find that declining to allow the Claimant to set the agenda when he was not in compliance with his payment obligations to have been procedurally unfair or to have raised a reasonable apprehension of bias.
- [59] The reality for a parenting coordinator is that they are involved in situations of high conflict. The provisions for termination in the FLA specifically do not allow for unilateral termination of a parenting coordinator by one of the parties. If the Claimant's position were accepted, one party could undermine the role of a parenting coordinator by simply refusing to pay, irrespective of court orders or other obligations to the contrary. An ongoing ability to set the agenda and drive increasing costs without any financial implications would also allow the party refusing to pay to undermine the process.
- [60] While the approach taken by Mr. Neville does pose some risks of apprehension of bias if not carefully managed, in my view, it was dealt with appropriately in the present case. While Mr. Neville did not allow the Claimant to set the agenda while the Claimant was refusing to pay for parenting coordination, all of the communications appear to have been copied to both parties, and both parties were given the opportunity to make their views heard on the issues that were to be subject of determinations.
- [61] I, therefore, do not find the process to have been unfair in the circumstances, nor was there a reasonable apprehension of bias. The Claimant could have chosen to pay the fees in compliance of the court order or sought a variation of that order. He did not do so.
- (c) Should the Parenting Coordinator be Terminated?
- [62] The ultimate question is whether it would be in the best interests of the children for the parenting coordinator to be terminated. In my view, given the current level of dysfunction and conflict in the parenting relationship between the parties, the involvement of a parenting coordinator continues to be in the best interests of the children for the reasons set out in the outline of the parenting coordinator's role earlier in these reasons.
- [63] I am also satisfied that Mr. Neville should continue to act as parenting coordinator. As I have outlined above, he has been effective in reaching consensus and addressing issues in the past, and has gotten to know the parties and their situation well over the past 17 or 18 months. Implicit in Mr. Neville's decision not to withdraw as parenting coordinator is his view that he can continue to be effective and act in a manner that is not compromised by bias or personal views about one party or the other. His conduct to date has demonstrated a professional and effective approach in a difficult situation. In my view, it would not be in the best interests of the children for the court to order the termination of his mandate. The application is, therefore, dismissed.

Failure to comply with orders and determinations

- [64] The Claimant appears to be under the mistaken impression that the determinations of a parenting coordinator can be ignored until he applies to have them set aside. This is simply not the case, as is clearly set out in s. 18(5) of the FLA:
- (5) Subject to section 19 [changing or setting aside determinations], a determination
 - (a) is binding on the parties, effective on the date the determination is made or on a later date specified by the parenting coordinator, and
 - (b) if filed in the court, is enforceable under this Act as if it were an order of the court.
- [65] If the determination of a parenting coordinator could simply be ignored until it was litigated at some undetermined point in the future, it would defeat one of the core purposes for the adjudicative function of the parenting coordinator. The determinations are binding once made and, once filed, a determination is enforceable under the FLA as if it were an order of the court.
- [66] The only explanation that has been provided for the Claimant's failure to comply with the determinations is that the Claimant disagreed with them. In my view, this is simply not an acceptable position. The deliberate refusal to comply with legally valid orders has consequences, and I find that a fine is warranted in the circumstances to send a clear message.
- [67] Although the Respondent seeks substantial fines, I do not find that fines of that magnitude are necessary or advisable at this stage. I am hopeful that a fine of \$500, in the context of these reasons, will be sufficient to change the Claimant's approach to parenting coordination going forward. I am also hopeful that a more modest fine will allow the Claimant to focus on re-engaging with the parenting coordination process going forward. As I have noted above, there are two children whose lives are directly affected by the conflict and I am hopeful that both parties will be able to focus their time and energy on their best interests.
- [68] I will therefore order, pursuant to s. 230(2)(b)(iii), that the Claimant pay a fine of \$500, to be entered as judgment for his failure to comply with the determinations made by the parenting coordinator.

Other Orders

- [69] The Respondent has sought a number of orders, some of which are already encompassed in the determinations of the parenting coordinator filed with the Court. Given my decision not to set those determinations aside and the clear expectation that they be complied with in the same manner as an order of the Court, I will not incorporate them into an order. Given my view that Mr. Neville should continue to act as parenting coordinator for the parties, I find it is in the best interests of the children for the parenting coordinator to be able to modify current arrangements without the parties having to return to Court.

[70] I do, however, consider it appropriate to make an order restraining the parties from:

- a) speaking negatively or disparagingly about the other party or their respective partners with the children or in the children's presence; and
- b) discussing issues relating to the court action or disputes or disagreements between the parents with the children or in their presence.

Costs

[71] As the Respondent has been substantially successful in relation to these applications, she shall have her costs in any event of the cause.

"Edelmann J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/20/2020BCSC2068.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/t-r-v-a-r-2020>

Prepared on 27 October 2026 · Esheria