

CANADA / JUDGMENT

# V.G. v. K.S.

2019 BCSC 2299

## COURT

Supreme Court of British Columbia

## DECIDED

27 September 2019

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

2019 BCSC 2299 V.G. v. K.S. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: V.G. v. K.S., 2019 BCSC 2299 Date: 20190927 Docket: E114947 Registry: Kelowna Between: V.G. Claimant And K.S. Respondent Before: The Honourable Mr. Justice G.P. Weatherill Oral Reasons for Judgment Counsel for the Claimant: T. Brice-Nicolson Appearing on his own behalf: K.S. Place and Date of Trial/Hearing: Kelowna, B.C. September 27, 2019 Place and Date of Judgment: Kelowna, B.C. September 27, 2019

- [1] THE COURT: There are two applications before. The first was filed by the respondent on August 9, 2019 and the second was filed by the claimant on August 22, 2019. Both applications relate to issues regarding the couple's son, L.S.G., who is currently five years of age.
- [2] This is not the first time this matter has been before the Court. There have been previous court orders made that both parties seemingly have had trouble complying with.
- [3] As one example, a consent order was made at a judicial case conference on September 14, 2017, before Master Wilson, as he then was, that provided, among other things, that the respondent must communicate with the claimant by way of text messaging and only between the hours of 8:00 p.m. and 9:00 p.m.
- [4] Further, there are issues relating to the late payment of child support by the respondent to the claimant, failure to disclose financial records, tax returns, notices of assessment, notices of reassessment and financial statements and an issue respecting the claimant enrolling L.S.G. in a Kelowna school without notification or consultation with the respondent.
- [5] On May 31, 2018, Justice Betton ordered the parties to enrol in the online platform, OurFamilyWizard, to assist with their communication difficulties. He also made a specific order respecting L.S.G.'s parenting. Those orders have also not been followed.
- [6] Despite another order that the parties were both L.S.G.'s guardians, the claimant unilaterally and without prior discussion, enrolled L.S.G. in kindergarten in Winfield at the Peter Greer Elementary school. The claimant kept that information from the respondent until today when it was first disclosed.

- [7] Both parties are guilty of failure to follow the terms of various orders.
- [8] It is on that background that I am faced with today's applications. The respondent seeks an order for 50/50 parenting time, one week-on/one week-off, and seeks to have equal holiday vacation time with L.S.G. He also seeks an order that he be provided L.S.G.'s school and medical information. The claimant counters with an application seeking to remove the respondent as L.S.G.'s guardian, a declaration that he be found in contempt for failing to follow previous orders, an order that she be given sole parenting responsibilities for L.S.G., an order that they have no contact between them other than in the case of emergencies, a protection order, or alternatively a conduct order, an order that a fine be imposed for the respondent's failure to comply with the orders for financial disclosure, an order for production of financial information, an order for a reassessment of child support retroactive to September 1, 2017, an order that this matter be transferred to the Provincial Court, an order of right of first refusal for parenting time, and for an order that the respondent pay a proportionate share of s. 7 extraordinary expenses.
- [9] My assessment is that both parties are to blame for the situation they find themselves in. Both seem to be stubborn and refuse to accommodate each other or refuse to follow the orders that have been in place since the JCC. It does not help when unflattering or disparaging text messages are sent, regardless of the state of frustration that the respondent apparently has regarding his efforts to get parenting time.
- [10] My assessment is also that the parties are not prepared to bury the hatchet between them and act in their son's best interests. There is no doubt, even though I have not met L.S.G., that it is affecting him and will continue to affect him, probably long after he has matured into an adult. There is no doubt that he will remember this time in his life and remember both parents and how they have handled this very tumultuous and unpleasant separation.
- [11] So I am going to make some orders that I think need to be made today which, after reviewing the materials and hearing submissions, are, in my view, in L.S.G.'s best interests and in the interests of this court process continuing in an orderly fashion.
- [12] Firstly, dealing with the failure to comply with the orders of Master Wilson of September 14, 2017 and Justice Betton on February 28, 2018. It is apparent to me that neither party appreciates the seriousness of court orders and what they mean. Just to be clear, and so there is no doubt, orders are orders and must be followed until the orders are varied.
- [13] I have concluded that both parties have breached court orders regarding, firstly, financial disclosure which was required of each other commencing June 30, 2018. Neither side has provided the other with financial disclosure. I have also concluded that the claimant, for reasons that are unclear, has failed to follow Justice Betton's order regarding the online platform, OurFamilyWizard.com. Further, I have concluded that, in further breach of Justice Betton's order, the claimant has wrongfully denied the respondent parenting time. I have concluded that the respondent has wrongfully breached the orders regarding communication with the claimant outside of the parameters of 8:00 p.m. to 9:00 p.m.

- [14] I consider these breaches to be serious. Orders are made for a reason. The parties have both told me that they have spent significant money seeking court orders. I have no doubt that obtaining the orders were costly. Orders need to be followed. They were not.
- [15] I am going to make this following order regarding the breach by both parties of the orders that are in place:
- a) Firstly, each party is fined \$1,000 pursuant to s. 228(3) of the Family Law Act, and that fine is to be paid into court within 14 days; and
  - b) Secondly, pursuant to s. 227 of the Family Law Act, I order that each party post security in court of \$2,000 to ensure that, not only orders that have been previously made and are still in effect are followed, but also that orders I am making today will be followed. That money must be paid into court within 30 days. It will be held in court to the credit of this action for 12 months, following which each party can apply to have the security paid out to them.
- [16] Now, I am going to deal with parenting time.
- [17] I am not persuaded that it is in L.S.G.'s best interests that the respondent have equal parenting time on a week-on/week-off basis. L.S.G. has just started kindergarten in September. He has a routine and he has a stable environment, and he has some structure. To change and disrupt that routine at this point in his life is not, in my view, in his best interests. Therefore the respondent's application for a 50/50 parenting regime is dismissed.
- [18] There will be an order, however, that the parenting schedule set out in Justice Betton's order of May 28, 2018, be varied to the following:
- a) Commencing October 2, 2019, which is next Wednesday, the respondent will have parenting time with L.S.G. commencing at 2:30 p.m. with pickup by the respondent at Peter Greer Elementary school in Winfield, overnight Wednesday night with drop-off at school, Peter Greer Elementary, Thursday morning before 8:30 a.m. If the respondent is late for picking up L.S.G. after school on Wednesdays by 30 minutes or more, his parenting time for that Wednesday will be forfeited and the claimant will be at liberty to pick up L.S.G., provided that the pickup time and the respondent's failure to attend to pick L.S.G. up is confirmed in writing by a teacher, a certified educational assistant, or other independent third party adult at Peter Greer Elementary school; and
  - b) The order of Justice Betton regarding parenting time on Sundays will continue as set out in that order. I am not changing it.
- [19] Now, this parenting order I am making will be in effect until December 31, 2019, with liberty to the respondent to vary this parenting schedule. In other words, it is going to be in place for three months to see how things go and see how the parties behave.
- [20] Respecting vacation and holidays, going forward, the vacation schedule commencing Christmas 2019, will be on an equal basis with each parent having L.S.G. for one-half of the Christmas vacation. Regardless of the parenting schedule, and alternating each year, the

respondent will have L.S.G. for the first half of the Christmas vacation starting this year in odd years, and the claimant will have L.S.G. for the second half of the Christmas vacation. Starting now in 2020, subject to any further orders, it will alternate such that the claimant will have L.S.G. for the first half of the Christmas vacation and the respondent will have him for the second half, alternating each year thereafter.

- [21] Respecting Easter 2020, again regardless of the parenting schedule in even years, commencing 2020, the respondent will have L.S.G. for the period Thursday after school until Tuesday return, and the claimant will have L.S.G. for the same period during those odd years.
- [22] The claimant will have L.S.G., regardless of the schedule, for Mother's Day. The respondent will have L.S.G. for Father's Day.
- [23] For school vacations commencing 2020, the respondent, by June 1, 2020, and alternating each year thereafter, will advise the claimant of which two consecutive weeks he would like L.S.G. during that school vacation and by June 15, 2020, the claimant will then advise the respondent of which two consecutive weeks she would like L.S.G. during that vacation, and that will alternate in subsequent years with each party having the first right to choose two consecutive weeks.
- [24] I will now deal with the issue of random drug testing. One of the allegations raised by the claimant is that, despite an undertaking given by him in Provincial Court, the respondent continues to use drugs and alcohol. He denies this allegation and has consented to an order for random drug testing. Therefore, by consent, I order that the respondent provide a sample of hair follicle to an appropriate facility in the Kelowna area for testing to determine if he is using any illicit or illegal drugs and/or using excessive amounts of alcohol, and those results will be provided by the respondent to the claimant. The cost of testing will be paid for by the respondent.
- [25] The respondent initially sought an order for a police enforcement clause, but during submissions he indicated he does not believe that would be in L.S.G.'s best interest. I agree, so there will no police enforcement order at this juncture.
- [26] I am going to deal with child support and s. 7 expenses. Firstly, as mentioned, the parties have not complied with the Master Wilson's order made at the JCC. There will be an order that each party provide updated and up-to-date F8 financial statements to the other within 30 days. The claimant's application for arrears of child support and arrears of s. 7 expenses will be adjourned pending receipt of the financial information. Meanwhile, I have reviewed the respondent's financial information that was produced today, although not in affidavit form. I am told it is a sampling of his tax returns for the last two years, and his company's financial statements. The company is called --
- [27] K.S.: [K.S.] Enterprises Limited.

- [28] THE COURT: Thank you. [K.S.] Enterprises Ltd., through which he earns his income. It is essentially a one-man company. From my review of the financial statements, the years ending September 30, 2017, and September 30, 2018, looking at the gross revenues of the company, properly-deductible expenses, and combining both his dividends and other income earned through the company and the net income the company earns, net of those dividends, wages, I have concluded and I am going to impute income to the respondent of \$65,000 per year. Liberty to the parties to apply, once they have had an opportunity of reviewing each other's financial information, but on an interim basis, until further order, the respondent's income is imputed at \$65,000.
- [29] Accordingly, and based on the Federal Child Support Guidelines, child support going forward payable by the respondent to the claimant is \$616 per month. That will commence October 1, 2019.
- [30] K.S.: Say that again, six?
- [31] THE COURT: Six hundred and sixteen dollars, six-one-six.
- [32] K.S.: Thank you.
- [33] THE COURT: Liberty to the claimant to apply to review that child support once the F8 financial statements have been disclosed.
- [34] I have also reviewed some tax information that the claimant has provided during submissions. I am imputing income to her at \$22,000 based on that information, again liberty to apply to the respondent.
- [35] Accordingly, by my calculations, the respondent is responsible to pay 75 percent of L.S.G.'s s. 7 expenses and the claimant is responsible to pay 25 percent of those expenses. Those s. 7 extraordinary expenses will include costs net of any insurance for employee benefit that the claimant may have, speech therapy, occupational therapy, physiotherapy, childcare expenses, orthotics, prescription eyeglasses, and eye patches.
- [36] K.S.: Can I get receipts for those, please?
- [37] THE COURT: Well, just bear with me. The claimant is obligated to provide the respondent with receipts of those expenses, and any proposed s. 7 expenses exceeding \$200 will be reviewable and provided to the respondent in advance of incurring the expense.
- [38] I have already mentioned that arrears of child support and s. 7 expenses will be adjourned to a date to be set.
- [39] I am going to deal now with guardianship. I am not satisfied on the evidence before me that the order that both parties share joint guardianship of L.S.G. should be interfered with. That application is dismissed.

- [40] Respecting a non-contact order, I am not satisfied that a non-contact order in these circumstances is warranted or would work. The parties still have to exchange L.S.G.. The claimant works for Interior Health. There could be a situation where the respondent has to be at the hospital or wherever she works for some other legitimate medically-related reason, and I can just picture issues arising, given the history between these two parties. I am also not satisfied that the claimant has proven that the respondent has misconducted himself, other than to the communication with the claimant outside of the parameters from 8:00 p.m. to 9:00 p.m. that were put in place by Justice Betton.
- [41] Respecting communication, the parties have 14 days from today's date to implement the order that Justice Betton put in place regarding OurFamilyWizard. I want that in place and up and running by October 14, and just so there is no doubt, if there is a concern about that, and I sense there is by the claimant, the OurFamilyWizard platform provides a neutral space for parent communication to assist them in managing parenting issues with L.S.G. that, like it or not, they are going to have to deal with going forward.
- [42] Once OurFamilyWizard is set up, all communications between the parties shall be through that platform, OurFamilyWizard.com, unless in case of an emergency or other court order. The parties shall refrain from making disparaging and/or unflattering comments or remarks about each other, either in L.S.G.'s presence or otherwise.
- [43] If the orders that I am putting in place are not working, the next step is the appointment of a parenting coordinator to assist the parties in sorting out issues regarding L.S.G. without having to come to court. The parties should be aware that parenting coordinators, although usually effective, are expensive. They will require a retainer in the range of \$10,000. You will be paying the parenting coordinator's expenses from there. They can get very, very expensive. No one has applied for a parenting coordinator, but if this does not work, that seems to me to be the next logical step.
- [44] All right, so that is my decision. Anything arising?
- [45] MS. BRICE-NICOLSON: A few things, My Lord. With respect to the posting of security and the fines, Your Lordship just noted that Mr. K.S. makes three times more income than Ms. V.G. For Ms. V.G. to come up with \$3,000 in the next month, when that is one-seventh of her annual income, that is a pretty tall order.
- [46] THE COURT: It is.
- [47] MS. BRICE-NICOLSON: So would Your Lordship consider reducing it to be more commensurate with her annual income?

- [48] THE COURT: Well, I want these orders complied with. It is that simple. And for her to unilaterally take it upon herself to violate these court orders is unacceptable. A message needs to be sent. She needs to understand that orders are orders. If she has an issue with an order because it is not working, she comes back to court and applies to have it changed. I am serious about these orders, they have got to be followed.
- [49] MS. BRICE-NICOLSON: Would Your Lordship consider reducing hers by half, because I think \$1,500 is going to be just as hard for her to come up with as \$3,000, and for her to have to come back to court is going to cost more money which she doesn't have.
- [50] THE COURT: I am concerned that there have been two orders that both parties have seemingly turned their noses up at. They spent thousands of dollars to come to court to get orders and they just ignore them, so I have got to make sure this time that they are followed.
- [51] Yes, Ms. --
- [52] V.G.: The only thing that I, you can consider, have breached is --
- [53] MS. BRICE-NICOLSON: No, no, sit down. Sit down.
- [54] THE COURT: There have been two at least. One, parenting time.
- [55] MS. BRICE-NICOLSON: Sit down.
- [56] THE COURT: Two, OurFamilyWizard.
- [57] V.G.: He -- [indiscernible].
- [58] THE COURT: I have concluded that he did. That is my decision, based on what I have seen.
- [59] V.G.: That he did?
- [60] MS. BRICE-NICOLSON: Okay, stop.
- [61] THE COURT: All right. Anything, Mr. K.S.?
- [62] MS. BRICE-NICOLSON: Actually, Your Lordship, I am not quite done. So your initial order that you made with the security and the fines, that is remaining as is?
- [63] THE COURT: Well, I am going to -- I am going to listen to Mr. K.S. here, but --
- [64] MS. BRICE-NICOLSON: Okay, the other issue that I circled was when Your Lordship was talking about summer parenting time, you talked about each of the parents having a two-week block of parenting time in the summer and then alternating about who gets to choose their first two weeks.
- [65] THE COURT: Yes.
- [66] MS. BRICE-NICOLSON: Is it going to be what I am going to call the default parenting time schedule for the remainder of the summer period outside of those two two-week blocks?

- [67] THE COURT: Yes.
- [68] MS. BRICE-NICOLSON: So that should be a term of the order then, as well?
- [69] THE COURT: Well, I do not know why it does, but what I am saying is that the respondent gets two weeks, starting in 2020, his choice, and then it alternates. So starting in 2021, Ms. V.G. will say, "These are the two weeks I want."
- [70] MS. BRICE-NICOLSON: But for the remainder of L.S.G.'s spring break, when Mr. K.S. is not having his two weeks, then the --
- [71] THE COURT: Are we talking about summer or spring?
- [72] MS. BRICE-NICOLSON: Summer, pardon me, so when Mr. K.S. is not having his special two weeks and Ms. V.G. is not having her special two weeks, then whatever the regular default parenting time schedule is, that is what will govern the parties in terms of parenting.
- [73] THE COURT: Correct.
- [74] MS. BRICE-NICOLSON: Okay, I just want to be able to put that into the order. Your Lordship dismissed the application for Ms. V.G. or for Mr. K.S. to be removed as a guardian, but Your Lordship didn't speak about Ms. V.G.'s application for sole parenting responsibilities, and just to cover everything off --
- [75] THE COURT: That is dismissed.
- [76] MS. BRICE-NICOLSON: Okay. Your Lordship didn't talk about Ms. V.G.'s application for the right of first refusal. We didn't hear from Your Lordship on --
- [77] THE COURT: Yes, I know, I actually -- that order -- it seems to me that order is already in place.
- [78] MS. BRICE-NICOLSON: The Justice Betton one, if they can't do it for six hours, then they're at -- they should be --
- [79] THE COURT: I am not going to change that.
- [80] MS. BRICE-NICOLSON: Okay.
- [81] THE COURT: So I am going to leave that in place.
- [82] MS. BRICE-NICOLSON: And then, Your Lordship, there was the issue of the matter being transferred to the Provincial Court and I had suggested there was pros and cons of doing that, but --
- [83] THE COURT: No.
- [84] MS. BRICE-NICOLSON: -- we didn't hear from Your Lordship on that.
- [85] THE COURT: Sorry, no, that application is dismissed. We are going to keep it in Supreme Court.

- [86] MS. BRICE-NICOLSON: And then there's the issue of the passport that was brought up at the very end of the day.
- [87] THE COURT: I forgot about the passport, but that one is by consent, so the claimant is at liberty to apply for a passport for L.S.G. and she will have custody of that passport. The passport is to be given to the respondent if required to take L.S.G. out of the jurisdiction and it must be returned to the claimant within 48 hours of returning to the jurisdiction.
- [88] If the respondent proposes to take L.S.G. out of the jurisdiction such that he requires the passport, he is to give the claimant 30 days' notice of the request, together with an itinerary of the travel arrangements. The parties then have liberty to apply in that 30 days if there is an issue with him taking L.S.G. out of the jurisdiction.
- [89] MS. BRICE-NICOLSON: And I believe the second part of that was Ms. V.G.'s request to be able to travel outside of the jurisdiction without getting a travel consent from Mr. K.S. I heard him say he consented to that.
- [90] THE COURT: I do not think that should be a problem. I do not know that you need a travel consent if you have got --
- [91] MS. BRICE-NICOLSON: They will need a travel consent to take him out of the country if they are each a guardian.
- [92] THE COURT: So unless there is a court order?
- [93] MS. BRICE-NICOLSON: Unless there is a court order.
- [94] THE COURT: All right, you can add it to the court order that each party can take L.S.G. out of the jurisdiction without the necessity of obtaining consent from the other.
- [95] MS. BRICE-NICOLSON: Did you say each of the parties?
- [96] THE COURT: Yes, each. So in other words, he does not need her permission and vice versa.
- [97] MS. BRICE-NICOLSON: May I suggest a slight amendment to that? The fact that you are putting Mr. K.S. on giving 30 days' notice of the intent to travel and provide an itinerary, perhaps it could be neither party have to provide travel consents to the other, if they can show proof that they have provided notice to the other party, an itinerary, and contact information? Because that's all --
- [98] THE COURT: Does that work for you, Mr. K.S.? That seems reasonable.
- [99] MS. BRICE-NICOLSON: That's usually the order people are looking for. Does the other party have notice --
- [100] K.S.: Yeah.
- [101] MS. BRICE-NICOLSON: -- or if there is a court order.

- [102] THE COURT: All right, that is fine.
- [103] K.S.: Yeah, that's reasonable, yeah.
- [104] THE COURT: You can put that in.
- [105] THE CLERK: Sorry, can you [indiscernible] that one how you want it worded?
- [106] MS. BRICE-NICOLSON: Sorry.
- [107] THE CLERK: I'm sorry, My Lord.
- [108] MS. BRICE-NICOLSON: By consent, neither party shall require a travel consent from the other party to travel outside of the jurisdiction of British Columbia with L.S.G., upon the party proposing to travel with L.S.G. providing the non-travelling party with 30 days' notice of the travel plans, a detailed itinerary, and contact information for L.S.G. throughout the duration of the travel.
- [109] THE COURT: That makes sense.
- [110] K.S.: Yeah.
- [111] THE COURT: And then I did not cover costs. I am going to order that each party bear their own costs of today's application because of the divided success.
- [112] Now, in terms of the order, you are going to draft the order, Ms. Brice-Nicolson?
- [113] MS. BRICE-NICOLSON: Yes, and I think Your Lordship was going to touch base with Mr. K.S. about those security for costs and the penalties.
- [114] THE COURT: Oh, that is right. Do you have anything to say about that?
- [115] K.S.: I -- you know, I'm going to do my part with regards to everything that you've laid out and I don't want V.G. to have to pay any more than -- I'd like her to pay the very minimum if -- or nothing, if possible, and I'd just both like to really --
- [116] THE COURT: How do you propose these orders be followed? And there needs to be --
- [117] K.S.: Oh, you --
- [118] THE COURT: You told me earlier during your submissions, you want something in place --
- [119] K.S.: Yes.
- [120] THE COURT: -- dealing with -- to ensure that these orders are complied with.
- [121] K.S.: Oh, I didn't know that the \$2,000 was held for that.
- [122] THE COURT: Yes, that is what that is, security.
- [123] K.S.: Okay. What is the penalty if it's breached, \$2,000?
- [124] THE COURT: You lose the money. If you do not breach it, you get the money back.

[125] K.S.: Okay.

[126] THE COURT: It is like a deposit.

[127] K.S.: Yeah. I know that V.G. might not be in such a good financial position and I don't want to impede on that, and if we can make that smaller and more affordable for her, it's still a penalty, and I'd be okay with that.

[128] THE COURT: I want these orders followed, you two.

[129] K.S.: I do. I'm -- I'm all about it.

[130] THE COURT: All right. I am going to reduce the security to \$1,000. I am not reducing the fine.

[131] K.S.: Who does the fine go to?

[132] THE COURT: The court.

[133] K.S.: Okay.

[134] THE COURT: Orders are orders.

[135] MS. BRICE-NICOLSON: And yes, Your Lordship, I am happy to draft the order. Now, with Mr. K.S. being unrepresented, what is Your Lordship's thoughts about dispensing with his signature?

[136] THE COURT: You provide him with a draft of the order for his input. Mr. K.S., so what is going to happen is Ms. Brice-Nicolson will draft the order I have made.

[137] K.S.: Okay.

[138] THE COURT: So similar to what --

[139] K.S.: Right.

[140] THE COURT: -- the other orders are, like you have seen. You are going to have seven days to respond --

[141] K.S.: Okay.

[142] THE COURT: -- with your concerns or if it is not accurate.

[143] K.S.: Yeah.

[144] THE COURT: If you do not respond in seven days, then I am going to order that your signature on the order be dispensed with. So what that means is the order will get entered. You will have seven days to discuss the order.

[145] K.S.: Right.

[146] THE COURT: To make sure that it is accurate.

[147] K.S.: Okay.

[148] THE COURT: The order then comes to the registry and is vetted with Madam Clerk's notes to make sure it is accurate --

[149] K.S.: Okay.

[150] THE COURT: -- before it gets entered.

[151] K.S.: Awesome.

[152] THE COURT: Okay. So you can have seven days to input, but I do not want this thing dragging.

[153] K.S.: No, me either.

[154] THE COURT: All right, thank you all. Have a good weekend.

[155] MS. BRICE-NICOLSON: Thank you, Your Lordship. "G.P. Weatherill 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/19/22/2019BCSC2299.htm>

CASE PAGE              <https://chat.esheria.ai/case-law/canada/v-g-v-k-s-2019>

Prepared on 29 October 2026 · Esheria