

CANADA / JUDGMENT

W.C.X. v. C.M.C

2023 BCSC 238

COURT

Supreme Court of British Columbia

DECIDED

16 February 2023

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

2023 BCSC 238 W.C.X. v. C.M.C

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

W.C.X. v. C.M.C,

2023 BCSC 238

Date: 20230216

Docket: E152859

Registry: Vancouver

Between:

W.C.X. aka W.X.

Claimant

And

C.M.C aka C.C.

Respondent

Before: The Honourable Mr. Justice Veenstra

Reasons for Judgment

The Claimant, appearing in person:

W.C.X.

The Respondent, appearing in person:

C.M.C.

Counsel for the Child, H.X.:

S.J. Narbonne

Place and Date of Hearing:

Vancouver, B.C.

February 8, 2023

Place and Date of Judgment:

Vancouver, B.C.

February 16, 2023

- [1] This family litigation matter has been ongoing for over seven years, including two long trials and innumerable court applications. The court file contains nearly 400 filings. It has undoubtedly been trying for the claimant and respondent, and there continues to be significant conflict between them. It has clearly been traumatic for their son, H.X. He was seven years old when the litigation began. He is now 15.
- [2] These reasons for judgment arise from a hearing at which H.X. was represented by counsel in order to put his views before the court. Three matters were before me at the hearing:
- a) The respondent's application to vary the existing orders to provide that the claimant would have no further parenting time with H.X., unless H.X. was to decide otherwise;
 - b) The respondent's application to vary the existing orders such that the claimant would no longer be entitled to any information with respect to the schooling of H.X.; and
 - c) The claimant's application for an updated psycho-educational report.

Facts

- [3] The background facts are set out in some detail in the reasons for judgment I gave after the second long trial, which are indexed at 2021 BCSC 1438 (the "Second Trial Judgment"). I will not repeat them, other than to excerpt a few specific matters that relate to the issues I am now reviewing.
- [4] At the time of the Second Trial Judgment, I seized myself with respect to parenting matters for a period of one year. Since then, I have heard a number of applications with respect to parenting issues and special expenses. My time seized of certain matters was extended as steps were taken to obtain the views of H.X. I advised the parties at the most recent hearing before me that once I have given these reasons for judgment I will no longer be seized of any ongoing matters with respect to this proceeding.
- [5] With respect to parenting matters, at the conclusion of the first trial in 2018, Justice Milman ordered (among other things) that:

4. The Child shall reside primarily with the respondent, and the claimant shall have parenting time with the Child during school weeks starting on Fridays after school at 3:00 PM until Saturday at 1:00 PM.
5. The parties shall equally share parenting time with the Child on holidays, including one month each during the Child's summer break.

Paragraphs 6 and 7 dealt with additional, more specific parenting matters that are not relevant to this application.

- [6] With respect to information about H.X., the order provided in s. 2(j) that each of the parties was entitled to request and receive health, education or other information respecting the child.
- [7] At paras. 126-139 and 147-150 of the Second Trial Judgment, I reviewed the history of the claimant's parenting with H.X. subsequent to the order of Justice Milman. The respondent did not permit the claimant to have any parenting time from or after March 17, 2020. She attributed this to COVID-19-related health concerns. By the time of the trial before me, the claimant had not seen his son for some 15 months. I expressed my concern about this, and proposed a solution, at paras. 165-169:
- [165] I turn now to certain additional matters that became apparent during the course of the hearing. I raised with the parties my intention to consider potentially necessary orders in the best interests of H.X. pursuant to the court's *parens patriae* jurisdiction, even in the absence of formal application by either party.
- [166] The existing order contemplates H.X. spending half of every summer with Mr. X. However, if Mr. X is working during the summer and H.X. is going to end up spending much of his time hanging out in Mr. X's home or office, then it makes little sense to remove H.X. from his usual home and from being close to his friends. It appears from the Milman Judgment that the summer parenting time of one month was ordered in contemplation that Mr. X would potentially be in a position to travel with H.X. and see family in China. That would, presumably, be a much more attractive way to spend the summer. However, given that Mr. X and Ms. H are busy seeking to establish the FFL business, it may be that long summer vacations are not feasible in the near future. I would direct that the summer parenting time with Mr. X be at Mr. X's option, in consultation with H.X., and would be dependent on the activities that Mr. X is in a position to arrange.
- [167] This change, however, puts at risk what should be regular contact between Mr. X and H.X. I see it as important that Mr. X continue to have regular parenting time with H.X. even under this new system. As a result, I would also order that the Friday to Saturday afternoon parenting time continue even during school breaks.

- [168] It appears to me that Mr. X has some work to do to restore his relationship with H.X. I believe that given the difficulties they have faced in communicating, more frequent contact should be mandated by the court. I would order that Mr. X and H.X. have FaceTime contact on Monday and Thursday evenings, at 8:30 pm or such other time as Mr. X and H.X. may work out directly. Ms. C should not be present in a room with H.X. during such FaceTime contact.
- [169] I would also order that Mr. X may provide H.X. with a mobile phone so that they are able to communicate directly.
- [8] The final order that was entered to reflect the Second Trial Judgment includes the following:
9. The Claimant's summer parenting time with [H.X.] will be at the Claimant's option in consultation with [H.X.] and is dependent on the activities that the Claimant is in a position to arrange;
 10. Friday to Saturday afternoon parenting time with the Claimant will continue and will take place during school breaks;
 11. The Claimant and [H.X.] will have Facetime or other videoconference contact on Monday and Thursday evenings at 8:30 pm or such other time as the Claimant and [H.X.] may agree to directly. The Respondent should not be present in a room with [H.X.] during such contact.
 12. The Claimant is at liberty to provide [H.X.] with a mobile phone so that they are able to communicate directly;
- [9] The evidence before me indicated that shortly after the Second Trial Judgment, the claimant and H.X. had one FaceTime session, which the claimant thought went well, but that the respondent subsequently told the claimant that H.X. no longer wanted to be in contact with him. The claimant received emails, allegedly from H.X., confirming this, but in the claimant's view the emails sounded as if written by the respondent.
- [10] I conducted a judicial interview of H.X. on December 2, 2021, at which time H.X. expressed the view that at the present time he did not wish to be in contact with his father. He also expressed a desire to be able to maintain his privacy.
- [11] A series of judicial management conferences in the first half of 2022 dealt with ensuring arrangements were in place for counselling for H.X., for me to review claims of the respondent for special expenses incurred subsequent to the Second Trial Judgment, and various efforts to ensure that H.X. obtained the educational supports that were discussed at paras. 95-112 and 116 of the Second Trial Judgment.
- [12] With respect to the latter point, the respondent put forward various proposals for educational supports, with costs in the range of \$60,000, and recommendations from the vendors of these services that appeared to be significantly different from the recommendations of the existing psycho-educational report. This gave rise to concerns not only as to the factual foundation for the recommendations, but also because of the amount

of the proposed extraordinary expense given the claimant's income of \$67,200 and the respondent's income of \$35,850.

- [13] At one of the judicial management conferences, I suggested to the parties that, given that the psycho-educational report in evidence was based on assessments conducted in 2018, a new report should be obtained from an independent psychologist so that the court had an appropriate foundation for any orders requiring the parties to contribute to substantial extraordinary educational expenses. The respondent asserted that H.X. was reluctant to undergo further educational testing.
- [14] As well, throughout the series of judicial management conferences, the claimant pressed for information on the educational progress of H.X. The respondent asserted that H.X. did not wish his father to have any such information.
- [15] Finally, the claimant repeatedly pressed for the court to enforce the existing orders with respect to parenting time. The claimant clearly believed that the respondent was pressuring H.X. to refrain from any contact with his father.
- [16] On September 12, 2022, after hearing from counsel from the Child and Youth Legal Centre, I authorized the appointment of counsel on behalf of H.X. pursuant to s. 203(1) of the Family Law Act, S.B.C. 2011, c. 25. My order limited participation of that counsel to matters respecting parenting time, parenting responsibilities and decision-making for H.X., including providing submissions respecting his educational and health needs.
- [17] I subsequently directed that the three issues noted above be set down for hearing on a date convenient to the parties and to counsel for H.X. To ensure that the matters were properly before the court, I directed that the respondent file a notice of application seeking orders to reflect the requests to vary the existing orders as to parenting time and the sharing of information.
- [18] I turn now to the three matters in issue at the hearing before me.

Parenting Time

- [19] The claimant argues that the court should enforce the existing orders so that he is able to be in contact with H.X. The claimant has been clear and consistent in all of the times he has appeared before me that he wants to maintain a father-son relationship with H.X. I accept that he is sincere in that desire. He finds it difficult to believe that H.X. does not want to have any contact with him, and suggests that to the extent that is true it is because the respondent has poisoned their son's mind.
- [20] The claimant is self-represented in respect of parenting matters. I interpret his submission on this latter point as, in substance, raising an allegation of alienation. There are circumstances that could give an air of reality to concerns about alienation - in particular, the respondent's cutting off of parenting time at the start of the COVID-19 pandemic in March 2020, and a subsequent substantial change in the willingness of H.X. to have contact

with the claimant. However, there is no expert evidence to support an allegation that this case involves alienation rather than estrangement - I note in this regard the discussion of this question in *M.Y.T.C. v. L.H.N.*, 2018 BCSC 1174 at paras. 58-61.

- [21] H.X. has been clear and consistent in his views as expressed at the time of the judicial interview in December 2021 and through multiple meetings with representatives of the Child and Youth Legal Centre in the latter part of 2022 and in January 2023.
- [22] Evidence of the views of H.X. was put before the court by way of an affidavit from a roster manager at the Child and Youth Centre, T.N., who notably had previously worked as a teacher and school principal, and who met with H.X. and the lawyer assigned to represent him on January 23, 2022.
- [23] T.N. noted having read the psycho-educational report compiled five years earlier, and commented that she was pleasantly surprised when she met H.X.:

he presented as confident, reflective, mature, astute, and an engaged learner. He has determined where he would like to be in the future and has researched what is necessary to meet that goal.

- [24] I note that my own impression from the judicial interview that I conducted was that H.X. was thoughtful, reflective and mature.
- [25] With respect to parenting time, T.N. reported that H.X. expressed the view that the litigation between his parents has gone on for too long, having started in 2015 when he was only seven years old. He describes the conflict between his parents as a source of trauma for him for half of his life now with no end in sight. With respect to contact with his father:

He is adamant that he does not currently want a relationship with his father. He does not say "never" but he does say that until the litigation is over, and he is able to get on with his academic pursuits, he is not prepared to engage with his father in any way whatsoever. He said, "I want to be able to focus 100% on school - not the other stuff". He says that he will know when he is ready to speak to his father again.

- [26] T.N. also reported that, when dealing with the claimant's requests for information about him, H.X. said he "continues to experience the nervousness that he would feel each Friday when he had to see his father".
- [27] Counsel for H.X. has drawn to my attention the judgment in *O'Connell v. McIndoe* (1998), 56 B.C.L.R. (3d) 292, 1998 CanLII 5835 (C.A.), leave to appeal ref'd [1998] S.C.C.A. No. 576. That was an appeal from an order in which the mother of a 13-year-old child was granted custody, notwithstanding the child's wish that he remain with his father and older brother. Subsequent to the order, the child ran away from his mother's home on five occasions. The trial judge had concluded that, during two years in which the child had minimal contact with his mother, the father had turned the child against his mother. This finding was based on the expert evidence of a psychologist who concluded that "the father could not get over the wife's rejection and that the father's anger and resentment towards his wife created an

unhealthy psychological environment" in which the children "sided with their father in the conflict" and "treated the mother with hostility and contempt".

- [28] There are potential parallels in the present case. The claimant had no contact whatsoever with H.X. for over 15 months, and the respondent's animus and resentment toward the claimant have been apparent every time the parties have been before me. The respondent blames the claimant for everything that has gone poorly in her life and for any challenges faced by H.X.
- [29] Returning to the O'Connell case, Justice Donald did not disagree with the trial judge's description of the family dynamics, but concluded at paras. 11-15 that:
- [11] Craig is too old to be forced to live with his mother. The father's home may not be ideal, but it is Craig's home.
- [13] In order for custody orders relating to children in their teens to be practical, they must reasonably conform with the wishes of the child.
- [14] I believe it to be in Craig's best interests to return to his father's home and put his life back in order. This is not a perfect solution, but in my view, it is the only one that will work.
- [15] This decision will be profoundly disappointing to the mother. It may appear to her that the father has triumphed in his program to alienate her sons from her and that a 13-year-old is allowed to make decisions about his own life which are not in his best interests. It must be recognized, however, that the damage to the relationship with her sons, however it has been caused, cannot be repaired, and indeed will probably be exacerbated, by forcing teenagers to act against their will.
- [30] The principles outlined in O'Connell have been repeatedly applied by the courts of British Columbia in recent years.
- [31] I am satisfied that the strong views of H.X. as to his relationship with his father and his need for stability in order that he may focus on his education are material changes in the needs and circumstances of H.X. justifying a variation of the existing order with respect to parenting time: *S.M.M. v. J.P.H.*, 2016 BCCA 284 at para. 22, *Li v. Hung*, 2022 BCSC 1130 at para. 26.
- [32] Given his age and the consistency and careful thought with which H.X. has expressed those views, I am of the view that they should be accepted as his firmly-held views and given effect.
- [33] I accept that, given the strong views of H.X. and his need for stability as he continues through his upper years of high school and focuses on his education, it is in the best interests of H.X. that the existing order for parenting time be varied. Any attempt to force parenting time that is unwelcomed by H.X. will be damaging to him and likely further damage the relationship between H.X. and the claimant.

[34] I would thus order that ss. 4-7 of the order of Justice Milman made December 14, 2018, and ss. 9-12 of my order made June 28, 2021, be varied such that they are replaced by an order that:

- a) The Child shall reside primarily with the respondent; and
- b) The respondent shall have parenting time with the Child at the instance of the Child and at such times as the Child may request.

Information About Education

[35] T.N. reported that, as a result of their discussions, H.X. gave thought to how a parent might want to know how their child is doing at school. However, he continues to experience nervousness at any thought of his father having direct involvement in his life. Upon discussion with his counsel and T.N., H.X. expressed willingness to allow his father to have copies of report cards and midterm reports if there is no information that would identify his address or contact information.

[36] The rationale for this request is not as easy to understand as the request with respect to parenting time. I have some concern that the request may arise in part from alignment with the respondent's interests - the respondent is currently facing an application seeking to find her in contempt of various orders of the court aimed at enforcing judgments to which she is subject for interest and costs in respect of prior steps in this proceeding, and it is clear that counsel for the claimant is having difficulty collecting those judgments. [The claimant continues to be represented in respect of those collection efforts but not for parenting matters.]

[37] Ultimately, however, I recognize that at the age of 15, the views of H.X. are sincerely held, carefully thought out, and entitled to significant consideration. I accept that the trauma of over seven years of family conflict has impacted on H.X. and that he sincerely wishes to establish his independence from his father.

[38] I order that s. 2(j) of Justice Milman's order be varied to provide that:

- a) The respondent is entitled to request and receive from third parties health, education or other information respecting the Child; and
- b) The claimant is entitled to receive copies of report cards and midterm reports, but such documents shall be first edited by counsel for H.X. to delete any information that would identify the address or contact information of H.X.

Updated Psycho-Educational Report

- [39] The claimant applied for an order that there be an updated psycho-educational report of H.X. This application was made at my suggestion and with a view to obtaining independent and current recommendations as to the educational needs of H.X., given that the existing report is significantly outdated and given the difficulties in obtaining appropriate recommendations for educational supports for H.X. that are within the parties' means.
- [40] The evidence of T.N. who, as noted above, is a former school principal, contains a great deal of information on H.X.'s educational activities since the Second Trial Judgment, as well as information on H.X.'s recollection of the psycho-educational assessment that took place in the fall of 2018. It is noteworthy that the assessment, which took place over three days in November 2018, was in the same month as the trial before Justice Milman. The report noted that H.X. was resistant to some of the tasks in the assessment which, in turn, impacted on the validity of the test results. H.X. reported to T.N. that the assessor did not appreciate the trauma he was going through at the time, which provided an alternative explanation for some of his behaviours.
- [41] T.N. provided a careful and detailed review of H.X.'s report cards from Grade 9 and Grade 10. The learning skills and work habits comments are positive and reflect a commitment to school learning and academic achievement. The grade 9 teacher recommended that H.X. continue in Grade 10 academic math - a recommendation that would not have been made if the teacher believed that H.X. did not have the potential and learning skills required for this advanced stream. During the current grade 10 year, and despite carrying a heavy course load including both Math and English in the same semester, H.X. has obtained interim grades of 94%, 75%, 84% and 85%.
- [42] T.N. noted that, in their discussions, H.X. identified academic success as one of his primary goals. He was able to describe the type of learning environment and instructional practices that are best suited for his learning, as well as his knowledge gaps and weaknesses and the types of supports he has found most useful. He has developed strategies that have worked for him in terms of solving learning problems or issues.
- [43] The evidence indicated as well that H.X. has been attending three after-school tutoring classes each week. These are small group tutoring classes, which he finds helpful.
- [44] Based on all of this information, and particularly in light of the success H.X. has achieved at school, counsel for H.X. submitted that there is no need for a new psycho-educational assessment report.
- [45] The claimant was both surprised and pleased to see the improvement in H.X.'s academic achievement. He did not contest the submission of counsel for H.X. that a new psycho-educational report is unnecessary.

[46] In light of this information, I accept that there is no need for a psycho-educational report at this time.

Conclusion

[47] Having considered the views of H.X., and for the reasons set out above, I order that the 2018 order of Justice Milman and my 2021 order be varied as set out above.

[48] I note that, at the hearing before me, I emphasized to the parties the strong desire of H.X. that the parties' litigation be brought to an end. I strongly encouraged each of the parties to pay the outstanding amounts each of them is required to pay pursuant to outstanding court orders - the claimant with respect to the various special expenses that have been assessed by the court, and the respondent with respect to the outstanding judgments for interest and costs. I had previously directed the claimant to authorities making clear that he is not entitled to set off the debt owed by the respondent to him from payments he is to make for child support or special expenses (see *Jamieson v. Loureiro*, 2010 BCCA 52 and *Litynsky v. Litynsky*, 2012 BCSC 1160 at paras. 47-58).

[49] The claimant advised the court that he has now provided cheques to the respondent for all of the amounts set out in the orders I have made as well as for his contribution to more recent medical expenses for H.X.

[50] Unfortunately, the respondent advised the court that she does not agree that she should pay the outstanding judgments against her. It appears that the litigation in respect of those judgments will continue.

[51] In the circumstances of this case, it is my view that the parties should bear their own costs of the most recent hearing before me.

"Veenstra 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/23/02/2023BCSC0238.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/w-c-x-v-c-m-c-2023>

Prepared on 27 October 2026 · Esheria