

CANADA / JUDGMENT

X.R.L. v. J.S.

2025 BCSC 1967

COURT

Supreme Court of British Columbia

DECIDED

18 June 2025

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2025 BCSC 1967 X.R.L. v. J.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

X.R.L. v. J.S.,

2025 BCSC 1967

Date: 20250618

Docket: E250677

Registry: Vancouver

Between:

X.R.L. also known as L.X.R.

Claimant

And:

J.S. also known as S.J.

Respondent

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

K. Thauli

Counsel for the Respondent:

S.Y. Kim

Place and Date of Hearing:

Vancouver, B.C.

May 2, 2025

June 18, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 18, 2025

This is the written version of judgment granted orally on June 18, 2025. I have made edits to improve or correct grammar and style, but no substantive changes have been made. In addition, because this decision will be published and the judgment concerns parenting of a young child, I have made the decision to anonymize the parties in the style of cause.

- [1] THE COURT: This application was before me on May 2, 2025. At that time, I had ordered that there should be a continuation, and unfortunately because of my schedule and intervening events, it was not able to continue until today. I appreciate counsel responding and doing their best efforts to be available, and it is regrettable that I was not available earlier. I thank counsel and the parties for being patient.
- [2] I asked for that continuation because the nature of the allegations the parties were making and their extreme differences in opinion about something very serious, which were allegations of family violence. These cases are always extremely difficult when it is high conflict, involving a young child, and such difference of view on the potential of family violence perpetrated, not only between the parties but also allegations about violence as against the child.
- [3] This is a very difficult case. I have already told counsel my view is that they ought to push for an early trial date, but I am aware that they have a Judicial Case Conference coming up, and I would encourage them at that time to also seek an early trial date if the situation remains the same.
- [4] I do not have time, nor is it necessary, to go through all of the different allegations, but the background to the application is set out in the notice of application. What prompted that was a change in the respondent's access to the child. The parties had enjoyed roughly equal shared parenting since their separation, and then the claimant got a without-notice protection order and withheld the child from the respondent. That protection order expired, and there was no application to extend it.

- [5] Because of the delay in this continuation, the respondent filed an affidavit in anticipation of an unfortunately rescheduled continuation date, and most recently filed an affidavit on June 12, 2025. The claimant has responded to that only very recently, and the respondent -- not unreasonably -- objects to that late filing. I have decided to accept it and allow it for filing because it is helpful to me.
- [6] This Court is always in a very difficult position when people make very serious allegations, and on an interim basis with affidavit evidence, the Court has to be extremely careful in drawing any conclusions about what has happened. Making those types of findings is best left for trial. However, there are cases where the nature of the allegations and objective evidence brought forward is sufficient on an interim basis to indicate that one party may be exaggerating and/or not necessarily completely reliable or credible with regard to such allegations for the purpose of obtaining an advantage in litigation.
- [7] Reluctantly, I have come to the conclusion that the preceding aptly describes the claimant's behaviour as demonstrated in the material before me, and I do not make that comment lightly. When somebody makes these types of allegations and provides what I am concerned are only portions of text messages to support that narrative, a red flag is raised. When there is police involvement and both parties are suggesting they did not try and report the other party, but only one of them gets taken away by the police, that raises a red flag. And, in this case the person making the allegations is the one that was taken away.
- [8] I viewed some video evidence at the first hearing of behaviour at the child's school that was very concerning. There was at least one incident of an objective third party confirming the respondent's version, and not the claimant's.
- [9] These parties need to learn to co-parent much better, that is clear. But, as between the two of them, I am very concerned by the claimant's behaviour. It causes me great concern. I think there is a valid basis for the respondent's submission that there may have been fabricated allegations. I do not make that finding, but the respondent's position is not without a basis in the material before me.
- [10] The most telling and the most compelling thing is that in the response to the application, the claimant stated she was in fear for the safety of the child and herself, and yet she then comes to Court and changes her position. Now, her counsel ably argues that the change in position was in consideration of comments made by the Court at the last hearing. However, that is not what she says to the respondent in her text messages. She simply offers up additional parenting time. She does not explain why she is no longer concerned for her own or her child's safety.

- [11] You are either concerned for the safety of your child or you are not. If these allegations had merit, I would expect any responsible parent would not so easily capitulate, but that is what has happened here. That capitulation in and of itself and the nature of it in relation to what has happened and how easily it came about again raises that red flag that I mentioned before.
- [12] I am going to rule on the notice of application that was filed, and I base it on the material that is put in front of me, including the most recent affidavits.
- [13] In the notice of application dated April 17, 2025, the respondent asks that pursuant to s. 64 of the Family Law Act, S.B.C. 2011, c. 25, the claimant be prevented from removing the child from the Lower Mainland without the written consent of the respondent or further court order. The claimant's changed position today was that ought to be a mutual order, and rather than being stated as an order pursuant to s. 64, it would be more appropriate for it to be a permissive order. Also, her position is that rather than the Lower Mainland, it be extended to BC, noting that in her view, the problems the parties have had relate to inter-provincial or international travel. Also, there should be a term added that any consent must not be unreasonably withheld, and that the parties are at liberty to provide for a change without having to demonstrate a material change in circumstances.
- [14] I agree that the order should be mutual because that is simply in the best interests of the child, even though I am not suggesting that there was reason or concern of the respondent being a flight risk. It seems to me that in these cases, a mutual order is always the preferred route, but I do not agree that it should be changed to BC. It will be as sought in paragraph 1, the Lower Mainland. There is no indication of them wanting or needing to travel outside the Lower Mainland, so I do not see why we would expand that.
- [15] I also do not agree that I would add a term that consent not be unreasonably withheld. That is implicit, and if you add a term to that, I find in high-conflict cases it just gives an additional leverage for parties who are having difficulty agreeing on things to bring an application about what is reasonable. I certainly do not agree to grant them liberty to bring an application without a material change in circumstances. That would have to be by their consent, but it would open the door to the possibility, again, of parties misusing the court process.
- [16] In summary, the order sought in paragraph 1 is granted, with one alteration, and that is it is a mutual non-removal order pursuant to s. 64.
- [17] The order sought in paragraph 2 was that the claimant have to surrender all of the child's travel documents to the respondent's counsel. At the last hearing, I did provide an interim order asking the claimant to surrender all of the documents to her own counsel, and I am told that the passports were, in fact, turned over. There is a disagreement about whether a NEXUS card exists. It is not clear to me if everything else was turned over. Counsel for the respondent tells me that was not done immediately, and she does not blame her friend for that, but raises the concern about the claimant's adherence to court orders.

- [18] I find it appropriate in this particular case that the order in paragraph 2 be granted, and I do order that claimant's counsel provide the documents to respondent's counsel before the end of day tomorrow. It should be in the same wording as paragraph 2.
- [19] If there is no NEXUS card, then there is no breach of the interim order in not turning it over, but it would surprise me if parents do not have the children's birth certificates or if there was some reference in the affidavit to things being lost. I would think that if the claimant cannot find certain things and the respondent does not have it, she needs to provide a very thorough explanation of why she cannot find it and what she has done to replace it.
- [20] So, the additional order there is that for any document listed in paragraph 2 that is not turned over, the claimant shall make best efforts to explain why she cannot find the documents, and if some are lost, she will take all reasonable efforts to replace them as soon as possible.
- [21] With regard to the orders sought in paragraph 3 of the notice of application, that is now going by consent. Although it was previously opposed in the response, but the claimant has changed her position as of today. I will come back to paragraph 4, which is the parenting schedule for the parties. Paragraph 5 is going by consent, and my understanding is that was always consented to.
- [22] With regard to paragraph 6 of the notice of application, the claimant's position is that OurFamilyWizard should only be used for tracking s. 7 expenses, and she offers up that her first language is not English and that she may have a greater confidence in an application that allows for her to use her native language. She has had no problem putting forward text messages to this Court in English. If her English is not perfect, I have seen no indication that the respondent of this Court has been unable to understand her.
- [23] It is clear that the communication between the parties is a problem. There is a great deal of distrust, and both sides do not agree with how the other side is characterizing things. They disagree about even who called the police and what happened. It seems to me that the best system for moving forward to ensure consistency and continuity is that they do as provided at paragraph 6. All communications will be in English in written messages through OurFamilyWizard, so the order is granted in the terms sought.
- [24] Paragraph 7 is going by consent. It sounds like maybe there were a few occasions where video parenting time was not provided, and that should not be the case going forward. It may be that every now and then, it is not possible, but when it is not made possible, there should be a reasonable explanation provided immediately after. That is not part of the order; I am just making that comment.
- [25] I will return, then, to the parenting schedule. The claimant has suggested a gradually increasing schedule that would result by September in equal shared parenting, but rather than a week on/week off, on a two/three/two schedule. The notice of application asks for equally shared parenting commencing immediately, week on and week off.

- [26] We often find that with younger children more frequent exchanges are appropriate because it allows for more frequent contact with each parent. It sounds like this family may be somewhat unusual in that they have the luxury of being able to travel quite a bit, and there have been times when the child is very young and spent perhaps as much as a month with one parent or another. That apparently was the case prior to the most recent events that led to this application.
- [27] As I said, there has been material in front of me suggesting that the parenting exchanges have produced difficulties. I do find it appropriate at this point that the parenting schedule be week on/week off and that they have equally shared parenting. The start of the week on for the respondent will start when he chooses, and that communication will be made through his counsel.
- [28] I think that deals with all of the orders that were sought in the notice of application except special costs, which I will come back to. There were a few other orders that the claimant suggested, and to the extent I have not already addressed them, I will just briefly do so now.
- [29] This was not specifically discussed, but any change to the parenting schedule of pickup or drop-off must be only by consent of the other party, communicated in writing at least 24 hours in advance. That is a standard term. It does not sound to me like it would be problematic to impose it, and I do so.
- [30] The other terms that were suggested, again, are sometimes standard terms such as there will not be a change in any agreement between the parties without consent, such consent not to be unreasonably withheld. I think counsel indicated that would apply not only to parenting time but also to applying for passports and other things.
- [31] I am not going to grant that order. As I said, I am very concerned by the inability at the current time of these parties to reasonably co-parent, and that is driven primarily by my concerns about the claimant's attitude and behaviour thus far. Providing that kind of an order would open up the door, I am concerned, to further court applications about what is reasonable or not.
- [32] The parents are already expected to act reasonably and to not withhold consent on an unreasonable basis, but I do not want that to become a provision where they can allege breaches of court orders and promote further litigation in an unnecessary manner. I also do not agree that they can be at liberty to bring an application without showing a material change in the circumstance for the same reasons.
- [33] The respondent sought special costs of the application. The respondent's position is that the behaviour, based on the totality of the submissions but most particularly in what the claimant said, has been at the very least an exaggeration, if not a misrepresentation, of very serious allegations. The respondent submits that amounts to reprehensible behaviour justifying special costs.

- [34] The respondent further points out that this unfortunately, in his view, has been a pattern when the claimant has not been successful, late affidavits are filed or in one instance a change of counsel at the last minute just on the cusp of the parties agreeing to parenting time after the protection order.
- [35] Counsel makes the valid point that this Court has a limited ability to police the parties. The only way we do it is through the clunky and cumbersome process of coming to Court on an interim basis before a trial. It is on affidavit evidence, and that is less than ideal. One of the most effective mechanisms to try and bring a more reasonable approach to litigation and a more reasonable approach to co-parenting in a high-conflict case is the imposition of costs.
- [36] The claimant's position is that adequate notice was not provided because while special costs is listed in the notice of application, there was no case law attached to that or explanation of the case law.
- [37] The test for special costs is well known. I expect every lawyer that comes to this Court ought to be aware of it, and I do not find it was necessary for there to be explicit cases mentioned in the notice of application. The notice of application itself in its narrative makes clear the basis upon which special costs is being pursued, and I am not satisfied, with respect, that there was not fair notice.
- [38] Special costs are meant to be rare, and they are meant to be exceptional. They are meant to rebuke behaviour, and they ought not to be granted very often.
- [39] I have already made comments about my concerns in this case about the claimant's behaviour, and I have listed what I call the red flags. There is probably nothing more insidious, from the Court's point of view, than a false allegation of family violence against a child being used for the purpose of advantage in litigation. It is, without a doubt, reprehensible and terrible conduct for any parent to do that.
- [40] There continues to be, in the claimant's text messages that I saw, an attitude that can be fairly described as being manipulative. It defies belief that there was any harm done to that child when the police took no action for that, and I recall seeing the police report where the police specifically went and checked the child. Notwithstanding that, she continued to make that allegation. That is absolutely reprehensible behaviour. That should not happen, and it justifies an order of special costs in this case, which I grant. Those shall be paid forthwith.

"Sharma J."

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