

CANADA / JUDGMENT

York v. York

2024 BCSC 291

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 291 York v. York

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

York v. York,

2024 BCSC 291

Date: 20240221

Docket: E210423

Registry: Vancouver

Between:

Collin Dean York

Claimant

And:

Ateshia Lee York also known as Ateshia Lee Walker

Respondent

And:

Janet Mary Ann York and Samuel Leon Feldman

Respondents by Counterclaim

Before: The Honourable Justice K. Loo

Reasons for Judgment

Counsel for the Claimant:

L.A. Cruickshank

Counsel for the Respondent:

J.W.C. Wong

Place and Date of Hearing:

Vancouver, B.C.

February 6, 2024

Place and Date of Judgment:

Vancouver, B.C.

February 21, 2024

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Introduction

- [1] On this application, the respondent Ateshia Lee York seeks the reappointment of a parenting coordinator who has acted as parenting coordinator for these parties for the last 24 months. The claimant Collin Dean York opposes this reappointment.
- [2] The respondent does not seek an order in the standard terms by which a parenting coordinator is typically appointed. Section 17 of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA") provides that a parenting coordinator may assist the parties in two ways: by assisting in building consensus (the mediation role) and in making determinations (the arbitration role). The respondent seeks the appointment of a parenting coordinator who will fulfill only the arbitral function, subject to the agreement of the parties regarding other functions which might be engaged with respect to any particular issue.

Background

- [3] The parties began to live together in or around 2004, and separated in July 2020. There are four children of the marriage: Walker, born in October 2009; Grayson, born in April 2011; Raylen, born in December 2013; and Ella, born in November 2016.
- [4] An order of this Court dealing with guardianship, parenting, child support, and the division of family property and debt was pronounced by consent on January 24, 2022. One of the terms of that order was that the parties retain Tanya Chamberlain as a parenting coordinator.
- [5] Ms. Chamberlain's appointment commenced in January 2022 and expired in January 2024. There is approximately \$5,900 left in her trust account from the retainers advanced by the parties, of which approximately \$5,600 is held in trust for Ms. York and approximately \$300 is held in trust for Mr. York.

Legal Framework

- [6] This Court has the authority to appoint a parenting coordinator under sections 14 to 19 of the FLA.
- [7] In *O.P. v J.D.P.*, 2022 BCSC 1823, Justice Donegan held at paras. 199 and 200:
 - [199] Division 3 of Part 2 of the FLA establishes a basic framework for the work of parenting coordinators. Parenting coordinators are an option for resolving disputes between parents in high conflict situations and may be put in place by agreement of the parties or by court order. Their role is to assist the parties by building consensus (s. 17(a)), or making determinations (s. 17(b)). In respect of making determinations, the court has a supervisory role: *Fleetwood v. Percival*, 2014 BCCA 502 at paras. 44-45.
 - [200] In high conflict cases, the court should encourage decision-making by parenting coordinators where permissible "to fulfill the purpose expressed in s. 4(c)(i) of the FLA of resolving conflict other than through court intervention": *F.J.V. v. W.K.S.*, 2019 BCCA 67 at para. 40.
- [8] In *Fleetwood v. Percival*, 2014 BCCA 502, Justice Groberman held:
 - [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.
 - [47] As well, while judges possess considerable expertise in family law and in dispute resolution, some cases may be more effectively dealt with by specially trained professionals who are dedicated to dealing with high-conflict parental disputes.

[48] The statute does not set out criteria that must be satisfied before a court will order that a parenting coordinator be engaged to "build consensus" or make determinations. It seems to me that such an order will typically be made only where a judge is convinced that a parenting coordinator will enjoy significant advantages over the court in achieving a resolution that will benefit the parties and their children. As well, because a parenting coordinator will be paid for by the parties, the court must consider the parents' ability to pay, and the economic costs or savings that the appointment of a parenting coordinator will entail.

[Emphasis added.]

Issues

[9] The parties disagree regarding whether a parenting coordinator is needed in the circumstances of this case. Further, the claimant submits that he cannot afford his share of the cost of a parenting coordinator and that he has lost confidence in Ms. Chamberlain. Each of these issues will be addressed in turn below.

Need for a Parenting Coordinator

[10] As noted above, the Court in Fleetwood held that the appointment of a parenting coordinator will typically be made only where a judge is convinced that a parenting coordinator will enjoy significant advantages over the court in achieving a resolution that will benefit the parties and their children.

[11] Broadly speaking, the main advantage of a parenting coordinator is responsiveness. Further, a parenting coordinator has more expertise in the specific areas of children and families than this Court, and has the advantage of continuity whereas the parties may not always be able to appear before the same judge. In this case, Ms. Chamberlain has two years of experience and contact with the family.

[12] In my view, a parenting coordinator in this case would enjoy significant advantages over the court in achieving resolutions that would benefit the parties and their children. As stated by this Court in *Callaghan v. Charbonneau*, 2021 BCSC 1525 at para. 42:

A parenting coordinator may be more cost effective, and can respond quicker and with a wider range of dispute resolution solutions than the court system. A parenting coordinator may be able to build consensus and mediate the dispute. The parties may be able to establish new ways of communicating on the myriad disputes that will inevitably arise from time to time, without the court's intervention. A parenting coordinator may help prevent this from morphing into a high-conflict relationship.

- [13] However, that conclusion does not necessarily answer the question as to whether a parenting coordinator ought to be appointed. If the children's needs are being met by their parents through joint decisions, the appointment of a parenting coordinator may not be appropriate. In this regard, the claimant relies on the decision of Associate Judge Scarth in *K.V.B. v. O.B.B.*, 2015 BCSC 171:
- [19] However, where, as here, the child's needs are being met by her parents through joint decisions, arrived at by discussion, and where the issue of finances has been raised, the cost of a parenting coordinator does not seem warranted.
- [14] In the present case, the evidence regarding the extent to which a parenting coordinator is needed is conflicting.
- [15] The claimant points to an email in which the respondent stated, in November 2023, that "I think things have improved significantly between us lately and we have been able to come to some mutually beneficial agreements but there's still some work to do." The claimant submits that the parties should be permitted and encouraged to use the skills they have learned through the parenting coordinator process to try to resolve matters between them.
- [16] He submits that most or all of the issues raised by the respondent in an email dated November 17, 2023, describing the "main points" between them at that date have since been resolved, or are not suitable for determination by a parenting coordinator. He also submits that the existence of a parenting coordinator encourages adversarial positions, and he alleges that the respondent tends to engage immediately with the parenting coordinator when there is an issue rather than discussing it with the claimant.
- [17] In turn, the respondent asserts that the claimant only agrees to issues when faced with an imminent determination or application. She also submits that she does not have the time and resources to advance a court application every time there is an issue which affects the children.
- [18] In this regard, it is trite that issues regarding children are often time-sensitive, and it is difficult to have such issues resolved by the court in a timely and economical way.
- [19] The respondent refers to a variety of issues which are outstanding or were recently outstanding. Some of these appear to legitimately require third party resolution and others appear to be minor or outside of the jurisdiction of a parenting coordinator.
- [20] I note that the claimant appears to blame certain failures to agree on the respondent. For example, in one of his affidavits, he deposes, regarding scheduling issues, that "if the respondent were more flexible on scheduling requests I believe that we could get these things resolved." In my view, this evidence supports the proposition that there are material differences between the parties and that there is some need for a third-party adjudicator in this case.

- [21] In some cases, the need for the appointment of a parenting coordinator is more obvious because there has been a significant history of court applications. This is not one of those cases but, nonetheless, it is my view that there is some need in this case for a process to resolve disputes involving the children without resorting to the courts. Even if most disputes will be ultimately resolved by agreement, there is value to the parties to have a knowledgeable third-party adjudicator available to them who will render a decision if they cannot agree upon a resolution. Parties are generally more motivated to be reasonable when they are faced with an immediate adjudication process.

Parents' Ability to Pay

- [22] As stated in Fleetwood, when deciding whether to appoint a parenting coordinator, the Court must consider "the parents' ability to pay, and the economic costs or savings that the appointment of a parenting coordinator will entail".
- [23] In this case, the respondent deposes that during their marriage, the claimant was largely supported by his wealthy parents. She deposes that the claimant's lifestyle that he enjoyed during their marriage has continued. She deposes that he travels frequently, continues to live in the family home, has ongoing sessions with a personal trainer, continues to employ a full-time nanny during his parenting time and continues to employ a cleaner or housekeeper.
- [24] In turn, the claimant deposes that he became ill in November 2021 and has been unable to work since then. He deposes that he is only now recovering and is taking realtor courses but is still unemployed.
- [25] He denies living a lavish lifestyle and deposes that his vacations are only possible because his parents let him use a lake cottage and a property in Whistler which they own.
- [26] It is not possible for this Court to resolve all of the conflicts in the evidence regarding the claimant's financial means. That said, it appears that many of the allegations advanced by the respondent - for example, regarding the claimant's vacations and expensive gifts for the children, and his ability to continue to live in the house - are explained by the means and generosity of the claimant's parents.
- [27] The respondent submits that I can take into account the claimant's overall resources, which includes loans or gifts that might be received from his parents, in determining his ability to pay for a parenting coordinator; however, there is no evidence before the Court that financial assistance specifically for a parenting coordinator would be available to him. It is clear that I cannot oblige the claimant's parents to pay for his share of the parenting coordinator, and I am not prepared to speculate that they would provide funds to the claimant for that purpose gratuitously.

- [28] At the end of the day, I am left with the respondent's assertions about the claimant's parents and lifestyle on one hand, and the claimant's evidence on the other regarding his illness, that he is not currently employed, and that the only income he receives is \$2,000 per month for the suite in the matrimonial home, which is not sufficient to cover the related bills and mortgage.
- [29] I note that the claimant deposes that he has a \$25,000 line of credit, \$15,000 of which has been used to meet expenses. I also note that the claimant deposes on at least two occasions that he cannot afford to renew Ms. Chamberlain's retainer for a further 24 months, but he does not say that he cannot afford any contribution towards the cost of a parenting coordinator.
- [30] Upon consideration of the conflicting evidence regarding the claimant's ability to pay, I have concluded that the claimant would have access to some funds which could be used to pay a parenting coordinator; however, there is insufficient evidence to establish that he would be able to bear the cost of a parenting coordinator going forward on an unlimited basis.

Loss of Confidence

- [31] Although not pressed strongly in submissions, the claimant asserts that he has lost confidence in Ms. Chamberlain. He submits that if a parenting coordinator is appointed, he would prefer a fresh start with someone new, for a period of one year. He deposes that in dealings with Ms. Chamberlain, his voice gets "drowned out" and he finds it difficult to articulate his positions.
- [32] In my view, while these concerns may well have some legitimacy, they are insufficient to outweigh the significant advantages inherent in keeping Ms. Chamberlain as parenting coordinator. As discussed, she has two years of knowledge and experience with this family.
- [33] Further, I note that there have been communications between the parties about potentially modifying the determination process to make it more comfortable for the claimant. The correspondence shows that Ms. Chamberlain is willing to discuss such modifications with the parties and I encourage her to do so.

Conclusion and Summary

- [34] For the reasons stated above, I am persuaded that a parenting coordinator would enjoy significant advantages over the court in achieving resolutions that would benefit the parties and their children. I am also persuaded that there is some need for a process to resolve disputes involving the children without resorting to the courts. On the other hand, I have concluded that there is insufficient evidence to establish that the claimant would be able to bear the cost of a parenting coordinator going forward on an unlimited basis.
- [35] Given these competing considerations, it is my view that the appointment of a parenting coordinator on limited terms would be appropriate.

- [36] As stated above, there is approximately \$5,900 left in Ms. Chamberlains' trust account from the retainers advanced by the parties, of which approximately \$5,600 is held in trust for Ms. York and approximately \$300 is held in trust for Mr. York.
- [37] I have concluded that an appropriate order in this case is to require each party to contribute an additional \$6,000 to Ms. Chamberlain's retainer within 21 days of these reasons.
- [38] Despite my concerns regarding the claimant's ability to pay, it is reasonable in my view to conclude on the evidence that the claimant is able to make this limited contribution. As stated in *Silverman v. Silverman*, 2013 BCSC 601 at para. 22, the claimant may have to reprioritize some of his expenses. He may have to borrow some funds, from his line of credit or otherwise.
- [39] Further, the respondent has offered to loan the claimant a portion of her funds held in trust so that the \$5,900 is held for both of them, equally, without prejudice to the respondent's entitlement to claim back the difference from the claimant at a later date. In my view, this equalization is appropriate and, as a result, there will be a total retainer in the sum of approximately \$17,900 held equally for both parties.
- [40] Section 15(4) of the FLA states:
- (4) A parenting coordinator's authority to act ends 2 years after the parenting coordination agreement or order is made, unless the parenting coordination agreement or order specifies that the parenting coordinator's authority is to end on an earlier date or on the occurrence of an earlier event.
- [Emphasis added.]
- [41] Pursuant to s. 15(4), Ms. Chamberlain's authority will end when the retainer described above is exhausted or in two years, whichever comes first. When her authority ends or is about to end, the parties shall be at liberty to apply for further orders regarding a parenting coordinator as they see fit.
- [42] Subject to these limitations, Ms. Chamberlain will be appointed on the terms sought by the respondent - to provide determination or arbitral services only, subject to agreement of the parties.
- [43] In my view, this form of order is appropriate because it balances the need for an independent adjudicator against the parties' financial constraints. It is intended to provide a means by which the parties can resolve disputes, while appreciating the limited means of the parties.

- [44] If the claimant is correct and there are no disputes to be resolved, the costs of the parenting coordinator will be minimal. In any event, it is hoped that the form of order will encourage the parties to use Ms. Chamberlain's services sparingly - that they will appreciate that this resource is finite and ought to be employed only where discussion and communication have been attempted in good faith without success.
- [45] I note that the total cost of Ms. Chamberlain's services over the two years of her first appointment was about \$50,000. Of this sum, approximately \$13,600 dealt with the costs of "intake" - which presumably will not have to be repeated. Approximately \$16,000 related to the three determinations that were made over the course of her initial two-year appointment. I infer that the balance related to meetings and communications among the parties, which will not occur or will be minimized under the limited order proposed by the respondent. These figures suggest that the retainer described above will be sufficient to resolve several issues by determination, if necessary.
- [46] Further, it may be possible to modify the determination process to make it more streamlined and less costly. In particular, it seems that the process and the need for extensive reasons and analysis might be circumscribed depending on the importance of any individual issue. While I am not making an order in this regard, I suggest that circumscribing the process would make it more useful and acceptable to the parties, and would permit the limited retainer funds to be used to determine more issues than would otherwise be possible.
- [47] I consider the success of this application to be mixed. There shall be no costs payable to either party.

"The Honourable Justice Loo"

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