

CANADA / JUDGMENT

A.M. v. K.P.

2015 BCSC 1065

COURT

Supreme Court of British Columbia

DECIDED

22 June 2015

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2015 BCSC 1065 A.M. v. K.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.M. v. K.P.,

2015 BCSC 1065

Date: 20150622

Docket: E47399

Registry: New Westminster

Between:

A.M.

Claimant

And

K.P.

Respondent

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for Claimant:

D.K. Maser

Counsel for Respondent:

S.T Taylor

Place and Date of Hearing:

New Westminster, B.C.

December 19, 2014

Place and Date of Judgment:

New Westminster, B.C.

June 22, 2015

Introduction

- [1] The claimant, A.M., seeks an order vacating an interim protection order of Madam Justice Dardi made on October 23, 2014 and an order establishing a shared parenting regime. The respondent, K.P., opposes the relief sought. She also brings her own application, seeking orders for, inter alia, the preparation of a section 211 report, interim child support and equal division of section 7 expenses.
- [2] The parties began a common law relationship in 2005, were married in 2008 and separated in August 2014.
- [3] Both parties hold responsible positions as firefighters. They earn good incomes. Until the fall of 2014 they lived with their two children in the family home in Abbotsford, B.C. The children of the marriage are C.M., born March 16, 2010 and J.M., born June 30, 2012. Prior to separation the parties worked as firefighters four days on and four days off with some overlapping shifts. Both parents were fully involved in child care; a 17-year old neighbour was employed as a babysitter to cover their overlapping shifts. At the end of August 2014, the parties had commenced counselling with a certain Pat Crawshaw. Mr. Crawshaw recommended that A.M. obtain a separate counsellor.
- [4] Unfortunately, a combination of negative behaviours by A.M. and a considered need for protective measures by K.P. for herself and her children led to a separation and court proceedings in the fall of 2014. The claimant was about to begin counselling with a certain Jim Smith when separation occurred.
- [5] At the time of this hearing, both parties were temporarily off work; A.M. was dealing with a medical problem related to arthritis, and K.P. was intending to return to work in January 2015.

Applications of the Parties

- [6] A.M. seeks an order that the protection order be vacated entirely and an order specifying a shared parenting regime.

- [7] K.P. seeks an order that a s. 211 report be prepared by Dr. Robert Colby, and that, pending the receipt of that report, the protection order made by Dardi J. remain in force except as varied with the consent of the parties. K.P. submits that the cost of the report should be shared equally between the parties.
- [8] K.P. also seeks child support commencing December 1, 2014 in the amount of \$1,377 per month based on a Guidelines income of \$89,405 for A.M., together with equal sharing of child care and pre-school expenses as section 7 expenses. She also seeks equal division of mortgage payments and property taxes on the family home, as well as payment of the utilities and household expenses by A.M. who has been occupying the home.

Background

Allegations of A.M.'s Abusive Behaviour

- [9] According to the evidence in affidavits given by K.P., in the latter years of the marriage A.M. exhibited hostile and threatening behaviour, including voicing direct and implied threats towards K.P., members of K.P.'s family, and K.P.'s friends and co-workers. In her affidavit dated December 16, 2014, K.P. outlines numerous examples of A.M.'s abusive behaviour. (At this point these are only allegations as they have yet to be tested in court.) There is no need to detail every allegation, but examples include the following:

- K.P. reports numerous instances of death threats made by A.M. towards her and members of her family. For instance, in August 2014 A.M. told K.P. that "if anything happens to the kids while your parents and sister are babysitting them, I'll kill them."

- In June 2014, A.M. threatened K.P. that if she cut the children's hair, he would cut off her hair. When K.P. cut C.M.'s hair because her hair was badly knotted, A.M. drew with a permanent felt marker a circle with a line through it on the head of the family dog, Kilo. A.M. confirmed this event by sending K.P. a text message which read "I won't chop your hair it's too pretty, but I hope you like kilos hair cut. I think it looks great. Have a nice day." A photograph (attached as an exhibit to K.P.'s affidavit) taken of Kilo's head that day shows the circle and line.

- K.P. detailed several examples of A.M.'s impatience and anger issues associated with parenting the children, including:

- o On April 14, 2014, while looking after the children when K.P. was at work, A.M. sent K.P. a text message stating: "[J.M.] woke screaming @ 12 and again @ 12:30. I'm losing my mind."

- o On July 3, 2014 at 4:29 a.m., while K.P. was working a night shift, A.M. sent K.P. a text message stating: "I'm having a hard time keeping my cool. [J.M.] got her bed time bubba @8:45 she was awake crying for another at midnight then 12:30 now again at 4:30 after letting her scream for an hour. I haven't slept and I'm getting angry."

- K.P. states that when she began dating A.M., she played several sports to maintain a job-related fitness standard, including fastball, soccer, floor hockey and ice hockey. Over the years of the marriage, A.M. began interrogating her about these activities and the identities of others involved in the sports, including the identities of spectators. He told her the only reason people were involved in such sports was to cheat on their spouses. Eventually, to limit the interrogation and arguments which followed her participation in these activities, K.P. ceased to be involved in these activities.
- K.P.'s parents and extended family live in and around Sechelt, B.C. A.M. did not want to travel to Sechelt to visit K.P.'s parents and if K.P. asked to visit them in Sechelt A.M. would become extremely agitated.
- A.M. conducted detailed monitoring of K.P.'s telephone and social media records. A.M. questioned K.P. about the names of contacts with whom he was unfamiliar, and demanded that K.P. remove the names of contacts, including co-workers.
- K.P. related a number of incidents, both before and after the birth of their second child, involving aggressive or abusive treatment of the children by A.M. These included aggressively brushing C.M.'s teeth and physically forcing C.M. to shower with him over C.M.'s objections.
- In June 2012, after an anonymous complaint was made to the Ministry of Children and Family Development concerning child abuse by A.M., he questioned all of their neighbours about the source of the complaint and finally accused K.P. of making the complaint. He then accused members of K.P.'s family.
- During a camping trip in late August 2014, A.M. was insulting K.P. in front of C.M. while J.M. was napping. C.M. stepped in front of K.P. and asked A.M. to stop. C.M. then looked at K.P. and asked "why does Dad want to kill you?"

Separation and Court Proceedings

- [10] Upon returning home from the camping trip mentioned above, K.P. was so concerned with the behaviour of A.M. and the fear that she had developed as to her own safety and that of the children that she arranged an appointment with her counsellor Pat Crawshaw for August 29, 2014. As a result of that appointment, K.P. packed up the children and a few belongings and travelled to Sechelt to be under the protection of her family.
- [11] A protection order was made "without notice" by the Provincial Court in Sechelt, B.C. on September 2, 2014. The protection order prohibited A.M. from contacting or communicating with K.P., the children and K.P.'s family. The order restricted attendance by A.M. at residences, places of employment or schools of all of the above mentioned people.
- [12] A transcript of the Provincial Court proceedings was exhibited in this case. Provincial Court Judge Challenger was told of separation and that A.M. had a testing appointment for a psychologist set up by K.P.'s counsellor. A.M. attended a first counselling appointment on September 3, 2014 with Jim Smith. This appointment was not for psychological testing. The

information given to Challenger P.C.J. was incorrect in relation to the significance of this first appointment with a new counsellor for A.M. While he was at the counselling appointment, it was asserted that K.P. attended the family home and removed possessions.

- [13] A social worker at the Ministry of Children and Family Development conducted a Family Development Response assessment and in a letter dated October 1, 2014 made the following recommendations to K.P. and A.M. to address child safety concerns: (1) to attend family and individual counselling; (2) initial supervised visits with A.M. in coordination with A.M.'s counsellor Jim Smith; and (3) parenting after separation course completion.
- [14] Shortly thereafter, the parties arranged, through legal counsel, to move the file from the Provincial Court to the Supreme Court. On October 24, 2014, by consent, Dardi J. made variations to the no contact orders to permit A.M. to have supervised parenting time with his daughters as well as contact through legal counsel with K.P. A.M. had supervised visits with the children in Sechelt and later in the Lower Mainland when K.P. returned from Sechelt.
- [15] On November 23, 2014, the Crown approved a peace bond application under s. 810 of the Criminal Code, R.S.C. 1985, c. C-46. A.M. signed the peace bond recognizance on November 24, 2014. The terms of the peace bond included no contact with K.P. or her family members except through legal counsel, no contact with the children except as provided in a court order or written separation agreement, and no attendance at the residences, workplaces or schools attended by K.P. or other named family members.
- [16] (A difficulty presented by that order is that the parties work at the same place. The employer has agreed to arrange a safety plan for when A.M. returns to work.)
- [17] At the hearing before this Court, counsel confirmed that a charge of uttering threats had been approved by the Crown against A.M. and that A.M. would be appearing in the Provincial Court shortly after the hearing of this matter.
- [18] Two letters prepared by A.M.'s counsellor, Mr. Smith, were exhibited. Mr. Smith and A.M. met eight times in person and had 12 meetings by telephone or email. Mr. Smith expressed no negative concerns about A.M. and reported that A.M. has found the inability to see his children very stressful, but, in the circumstances, was coping.
- [19] Three reports from supervised visits by A.M. with the children were exhibited and the reports of the visits are positive. The behaviour of A.M. with the children was appropriate. One of the children is reported to have said that she did not want to be spanked by her father, but also asked when the family was returning to Abbotsford. Lots of hugs and kisses were also reported.
- [20] It was not necessary to relate all of the details contained in the numerous affidavits filed by the parties to decide this case and the facts related above have therefore been limited in scope to essential matters.

Analysis and Conclusions

- [21] This is a case where the Court is not in a position to make specific findings of fact relating to alleged parental misconduct and in particular the kind of threats that apparently have caused the Crown to recommend laying an information. That matter will be determined in another proceeding in a different court.
- [22] Section 37(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides that the only consideration to be taken into account in making an order respecting guardianship, parenting arrangements or contact with a child is the child's best interests. Section 37(2) then outlines a number of non-exhaustive factors for the court to consider:
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
- (e) the child's need for stability, given the child's age and stage of development;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- [23] The phrase "family violence" is defined in s. 1 of the FLA and includes psychological or emotional abuse of a family member.
- [24] Section 38 of the FLA requires the court to consider, when assessing how family violence impacts the best interests of a child, the following factors:
- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

- [25] These factors reflect the recognition that family violence, even if not directed at a child, can be harmful to the child. The presence of criminal proceedings in this case is a factor to be considered under s. 37(2)(i) and requires the Court to consider the involvement of the parties in those other proceedings which are relevant to the safety, security and well-being of the children.
- [26] Based on the material that has been presented, and in particular the existence of criminal proceedings, it would not in my view be appropriate nor in the best interests of the children to vacate a protection order which arose in circumstances related to those proceedings. Once those other proceedings have been fully resolved, a court will be in a better position to consider the need for a protection order or to assess the particular features of a parenting order that are appropriate in the circumstances. I therefore decline to make an order setting aside or vacating the protection order as it applies to A.M.
- [27] There was little dispute that a s. 211 report ought to be prepared in this case. I therefore appoint Dr. Robert Colby to conduct the necessary investigations and interviews to prepare a report under s. 211 of the FLA. Subject to his recommendations contained in the said report, there should be consideration to the appropriate counselling or support for the two children in this case. The cost of this report will be shared equally between the parties. If it is necessary that one party bear more than their share of the cost of the report in order to have it prepared without further delay, then the party advancing funds to obtain the report shall be entitled to any disproportionate share advanced payable by the other party at the conclusion of this proceeding.
- [28] Given that the parties have separated and K.P. currently has custody of the children, an interim order for child support is appropriate, to be paid by A.M. to K.P. Based on a Guidelines income of \$89,405 per annum, the appropriate quantum of support for two children equates to a monthly payment of \$1,377, commencing on the first day of December 2014 and on the first day of each month thereafter pending further order of the court. If there are arrears as of the date these reasons are published, those arrears will be payable at the rate of \$750 per month until the entire arrears are paid in full.
- [29] Because of the parties' separation and the restrictions on their contact contained in the protection order pronounced by Dardi J., expenses related to pre-school and child care for the children shall be considered special and extraordinary expenses pursuant to s. 7 of the Federal Child Support Guidelines, SOR/97-175.
- [30] The parties agreed that because of their separation, each should be paying one-half of the mortgage payments and property taxes and if those payments have not been made equally, adjustments should be made with the assistance of legal counsel.
- [31] As A.M. has been living in the former matrimonial home, he shall pay all of the utilities and household expenses for his tenure in the home as no occupational rent is being paid.

Costs

[32] K.P is entitled to the costs of this application as a matter of ordinary difficulty. If the parties are unable to agree on the quantum of costs then costs will be assessed and payable forthwith.

"Ball J."

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Prepared on 28 October 2026 · Esheria