

CANADA / JUDGMENT

Askounis v. Carpenter

2020 BCSC 394

COURT

Supreme Court of British Columbia

DECIDED

28 February 2020

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2020 BCSC 394 Askounis v. Carpenter IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Askounis v. Carpenter, 2020 BCSC 394 Date: 20200228 Docket: E091052 Registry: Vancouver Between: Nicolaos Askounis Claimant And Nicole Carmel Carpenter Respondent Before: The Honourable Madam Justice Gropper Oral Reasons for Judgment In Chambers Counsel for the Claimant: W. Van Der Sande Counsel for the Respondent: F. Lowther Place and Date of Hearing: Vancouver, B.C. February 28, 2020 Place and Date of Judgment: Vancouver, B.C. February 28, 2020 THE COURT:

Introduction

- [1] The respondent/applicant mother seeks an order that she be permitted to take and remove the two children, Konstantino and Anthony, from British Columbia, Canada, from March 11, 2020, to March 31, 2020, for the purpose of taking the children on a trip to Egypt. The claimant/respondent father opposes the application.
- [2] At the outset, I will say this. It is clear that there are many issues between these parties: guardianship, parenting, conduct of the father towards the children, the children's apparent reluctance to see their father, a pending s. 211 report, involvement of a psychologist, Dr. Gamache, who has undertaken a process to address the relationship between the father and the children. There have been several matters before several judges of this court. Although I have heard about these matters, I have made it clear, and counsel understand, that these matters are not be before me and are certainly not resolvable on a half day application.

Background

- [3] In July 2019, the mother booked and paid for a trip with the children from July 15th to August 2, 2019. The father objected. The parties appeared before Madam Justice Dillon on July 8, 2019. She granted an order approving the trip. She also made an order specifying parenting time for the claimant.

- [4] In October 2019 the mother had booked and paid for a trip for herself and the children to go to Disneyland from October 8-16, 2019. The father opposed the trip. The parties appeared Mr. Justice Crossin, who granted an order approving the trip.
- [5] The mother booked and paid for this trip to Egypt on November 22, 2019. She told the children about it and they are, naturally, excited. She now seeks court approval of the trip.
- Position of the Parties
- [6] The mother says that she advised the father of the trip on November 29, 2019. He has refused to sign a consent form. She points out that he has done this before, and considers that it is unreasonable for him to withhold consent.
- [7] The mother says that the children have been looking forward to this trip for many months and have prepared for it. They are researching and studying about Egypt and strongly express their desire to go. The children have travelled extensively and have an appreciation for the world and its various people. She considers that it is in the children's best interests to take this trip.
- [8] The mother also refers to an incident between the father and one of the children in December 2019 that has resulted in the children not seeing their father except for a meeting as part of the Gamache process in February, 2020.
- [9] The father opposes the mother's application on several bases:
- (1) Egypt is dangerous and there is a concern about coronavirus worldwide;
 - (2) The mother has not proposed any makeup time for the claimant;
 - (3) The mother knows that parenting time is in issue and that the father has court-ordered parenting time;
 - (4) There has been a pattern of the mother making the travelling arrangements by booking and paying for them without the claimant's agreement;
 - (5) The children will miss school and their attendance and performance at school is described by counsel for the father as "less than stellar";
 - (6) The mother has booked the entire spring break in spite of the father expressing a wish to spend time with the children during that break;
 - (7) The trip interrupts the preparation of the s. 211 report and the Gamache process, ordered by Madam Justice Fitzpatrick in October 2019; and, finally,
 - (8) The trip disrupts the relationship the children have with the claimant's extended family.

Analysis

- [10] Both parties have referred to a pattern: the mother books and pays for trips and the father objects to them. I have referred to two such incidents in 2019 where the mother had booked and paid for a trip, the father objected, and the court has had to resolve the matter. This occurred twice before the mother booked this trip to Egypt. Despite the fact that she is aware of the claimant's objections, she told the children about the trip and they are very excited about going.
- [11] There is clearly a problem here. This cannot continue. There must be a process in place concerning either parents' desire to travel out of British Columbia. I am advised that this is a matter that is being discussed before Mr. Justice Harvey in a matter that is continuing before him.
- [12] When the mother booked and paid for the trip in November 2019, the apparent circumstances were:
- (1) She knew the father had objections to her travelling with the children without his having agreed;
 - (2) She knew that the father had specified parenting time, in accordance with the decision of Dillon J., that would continue through the spring break, but proposed no makeup time;
 - (3) The mother knew there was a s. 211 report to be prepared;
 - (4) There was no issue of the children refusing to see their father, as the incident in December of 2019 had not occurred;
 - (5) There had been a psychologist appointed to address parenting issues; and
 - (6) The trial date was scheduled for February of 2020.
- [13] It is not the court's role to rubber stamp a trip because it has been booked and paid for. That is not a factor that I will consider.
- [14] I am not able to comment on the safety of a visitor to Egypt or the spread of coronavirus. I assume that both parties are concerned about the safety of their children.
- [15] In November 2019, the mother should have been aware of legitimate concerns of the father. She did not seek that father's consent to the trip, instead, she ignored those concerns and booked and paid for the trip to Egypt. It was unwise to do so in the circumstances.
- [16] To be clear, I will repeat the circumstances as they stood in November 2019. She knew that the father had objections. She knew that the father had specified parenting time that would continue through the spring break period, yet proposed no makeup time. She knew that there was a s. 211 report that was being prepared. She knew that there was no issue of the children refusing to see their father at the time. She knew that a psychologist had been appointed to address parenting issues. She knew that the trial date was scheduled for

February 2020.

- [17] For all of these reasons, I do not approve of the trip to Egypt and dismiss the application.
- [18] I make this comment, as I did at the beginning, that neither party should book and pay for a trip until these parties until they devise a meaningful process for determining what trips the children will make, with whom, and when, or there is a court order in respect of such a process. [SUBMISSIONS BY COUNSEL RE COSTS]
- [19] THE COURT: I order costs in the cause. There are many issues between the parties, this is just one of them. On that basis, costs in the cause is appropriate. "Gropper J."

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