
CANADA / JUDGMENT

B.A.J. v. V.L.

2014 BCSC 895

COURT

Supreme Court of British Columbia

DECIDED

22 May 2014

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2014 BCSC 895 B.A.J. v. V.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.A.J. v. V.L.,

2014 BCSC 895

Date: 20140522

Docket: E21927

Registry: New Westminster

Between:

B.A.J.

Plaintiff

And:

V.L.

Defendant

Before: The Honourable Mr. Justice D. M. Masuhara

Reasons for Judgment

In Chambers

Plaintiff appearing on his own behalf:

B.A.J.

Defendant appearing on her own behalf:

V.L.

Place and Date of Hearing:

Vancouver, B.C.

April 17, 2014 and

May 6, 2014

Place and Date of Judgment:

Vancouver, B.C.

May 22, 2014

Introduction

[1] In my last decision in this matter (there have been many since 2006) I directed that there be a review regarding the parenting arrangements regarding the two children of the parties. This is my determination.

[2] The children reside with their father, B.A.J. He is the sole guardian of the children. V.L. has supervised access once a week. The most recent decision, indexed at 2013 BCSC 131, noted that V.L. had taken some bona fide steps forward in improving her ability to parent harmoniously with B.A.J. However, I noted that V.L. had not paid any child support for the children and had posted images and information on the internet regarding the children which potentially expose the children to risk. As well, she posted critical remarks about B.A.J. on various websites. I noted that increased access would be dealt with progressively. In directing a review, I stated:

the court will review what progress Ms. L has made in dealing with her attitude toward Mr. J, including her ability to support as opposed to undermining Mr. J in his role as parent, removing personally identifiable information, such as the names and location of Mr. J and the children and photographs of the children, from the internet as she purported to have requested. In addition, at that time the court will review whether Ms. L has made the child support payments required of her to cover her arrears and ongoing obligations.

[3] In this review each party has sought various orders.

[4] V.L. seeks to have me disqualify myself from these proceedings. She also seeks a variation granting her sole custody of the children; an order that B.A.J. be prohibited from removing the children from Canada; an order that the children be assessed by a psychologist; and damages of \$1 million from B.A.J. for the pain, stress, psychological, physical, emotional financial injuries caused by B.A.J. in this litigation.

[5] V.L.'s application for sole custody of the children is dismissed. The evidence is insufficient for such a change.

- [6] V.L.'s application prohibiting the children being removed from Canada is dismissed. Her concern arises from a comment to her by the children that they may visit Tanzania with B.A.J. and his now common-law spouse, who originates from that country. V.L. says the country is dangerous. It is not clear as to whether there are firm plans to go to Tanzania. If and when there are, B.A.J. is required to provide V.L. advance notice in writing of such intent.
- [7] V.L.'s application for damages for emotional, physical and other injuries is dismissed. Such claims are not appropriate to be adjudicated as part of this proceeding.
- [8] B.A.J.'s application included orders relating to financial matters. In this regard, I reminded B.A.J. that this review was to deal with parenting issues and that financial issues would have to be set down separately including an application to have monies held as security for child support paid out of court. I am not seized of financial matters and therefore this may be set down for a hearing before any judge of this court. In regard to his request for an order prohibiting V.L. from contacting the children's school or attending any activities, there is limited evidence that supports that such an order is necessary. As a result, that application is dismissed. In terms of prohibiting V.L. from contacting his mother from who he is estranged, I do not see a justification for this. In regard to posting the names and images of the children as well as B.A.J. on the internet, that matter is considered below. In terms of a prohibition against V.L. using the internet or internet devices, though there are concerns with what V.L. has done on the internet, again there will be no order made in this regard; however, my ruling below addresses this concern.
- [9] Turning to whether I should disqualify myself from these proceedings; this has been raised by V.L. on prior occasions. During this hearing, her list of assertions included that I have intimidated her, threatened her, violated her civil rights, discriminated against her because of her Romanian heritage, slandered her and her parents, and coached B.A.J. V.L. also argues bias on the basis that all of my decisions have favoured B.A.J.
- [10] In regard to the argument that I have always favoured B.A.J., the focus of these proceedings has never been a contest of me choosing a winner or loser as between the parties; rather it is the determination of what is in the best interests of the children. I would remind V.L. that my original trial decision appointed her as the primary parent, ordered that B.A.J. pay her child support, awarded her lump sum spousal support and found she was entitled to an interest in the family home. The parenting arrangement was changed because of the conduct of V.L. which led to the children being apprehended by the Director of Family and Child Services and only after another full trial before me. I note as well, my own motion to enable the payment of \$220,750 to V.L. which represented lump sum spousal support and her interest in the family home.

- [11] As I have said in past decisions, the best interests of the children require me to remain involved. Family breakdowns and disputes which involve young children are difficult matters for the court. They are tragedies. This case has been no different. For reasons which I have outlined in prior decisions, judicial continuity is required given my involvement in this ongoing litigation. The application to disqualify myself is dismissed.
- [12] I turn now to the question of parenting.
- [13] At present the children are in Grade 3 and Grade 6. They are doing well in school as evidenced by the positive comments and results in their report cards. The children have been involved in activities such as martial arts, gymnastics, school athletic teams, skiing lessons, and family swims. The eldest child has recently had dental braces put in place which are not inexpensive. The supervised visit reports are consistent with generally healthy, happy, and active children. The children reside with their father and his common-law spouse. The latter works as a medical office assistant and B.A.J. is a drywall contractor.
- [14] Though V.L. continues to apply to have the children assessed by a psychologist, there is nothing to suggest the need for such an order. As I have noted in the past, the children have undergone a host of sessions with professionals and counsellors. Concerns regarding damage to the children at the hands of B.A.J. as alleged by V.L. were unsubstantiated. The evidence is that the children are doing well emotionally and physically in the care of B.A.J. The application is denied.
- [15] The key concerns at the end of the last hearing was that of V.L. posting images and commentary that identifies the children on the internet. V.L. had stated that she had asked to have those images taken down. See my decision indexed at 2013 BCSC 131 for a description of the postings. She has failed to do so and in fact continues to post images and commentary. She again, in this hearing, stated that she had asked to have the images taken down; however, she did not produce any documentation to establish this. Given V.L.'s lengthy submissions on her right to freedom of expression, I doubt she has made any attempt to have the images or information taken down. The postings contain lengthy commentary on alleged wrongs which have been committed against V.L. They mention the children's names as well as B.A.J.'s name and the general area where they live. This is concerning.
- [16] In my view, the images of the children and the postings which identify the children by name are inappropriate and bring into question V.L.'s understanding of her responsibility to protect the children from the abuses that can arise from publicity on the internet. From the supervised visit reports, it appears that the eldest child has some awareness about these postings and is concerned. One visit report has the child reporting to the supervisor that a device of V.L.'s had been recording the visit. V.L. was confronted by the supervisor. It is apparent that the child is uncomfortable that the recording occurred. V.L., it appears, refused to erase the recording on the device. B.A.J. expressed considerable concern regarding how to protect the children from seeing these postings. V.L. does not seem to

accept that her internet postings may pose problems for her children now or in the future. B.A.J. properly raised concerns and referred to recent tragedies in the news involving children who have been "cyber bullied." V.L. it seems, does not see the connection and risk for the children through her own activities.

[17] The commentary in her postings also brings into question V.L.'s ability to parent co-operatively with B.A.J. The commentary is disrespectful and damaging. They make disparaging comments of B.A.J., social service ministries and the justice system. The inability to co-parent was a concern identified in my first decision and was a key aspect of my subsequent decision to place the children in B.A.J.'s care.

[18] What remains concerning is V.L.'s lack of progress in her attitude towards B.A.J. In my decision of June 2010, I stated that:

A review of the parenting arrangement may be in order when Ms. L. has demonstrated that she acknowledges that her conduct has contributed to the discord between the parents and that it has been harmful to the fostering of a positive relationship between the children and their father; that she has made bona fide efforts to change these behaviours; and that she can demonstrate that she can present positive behaviours in place of her negative behaviours toward Mr. J. and his role as father to the children.

[19] The concern in the past has been whether V.L. was able to facilitate a healthy relationship between the children and their father.

[20] In the most recent decision, I had noted some progress. However, V.L.'s argument in this hearing and her continuation of her postings brings into question whether she has really progressed toward fostering a healthy relationship between her children and their father. Contrary to her promise in the past to remove the images of her children from the internet, she has not.

[21] I note here that my comments are not aimed at repressing her freedom of expression. I am well aware that freedom of expression is protected in our Charter of Rights and Freedoms. What is at issue here is not her right to make such public postings, but the wisdom of doing so in light of what is best for the children. I make these comments so that, in the future, when exercising her freedom of expression, V.L. consider the risks inherent to posting information about her children on the internet, as well as the importance of showing an ability to work co-operatively with B.A.J. in their parenting.

[22] The criticisms by V.L. and her internet postings have had a clear effect on B.A.J. His comment at the end of the hearing that V.L. should be limited to only two visits a year reflects this. As mentioned during the hearing, this is not an outcome which I consider appropriate. B.A.J. should recognize that the hope of this court is for a parenting arrangement that is closer to the norm.

- [23] In this hearing, V.L., as she has previously, made denigrating comments regarding the father of her children. She accused B.A.J. of "brainwashing" the children against her and being a "dictator" in his conduct towards her. She implied that B.A.J. was not adequately caring for the children. She distorted the children's proud news to her that they had cleaned their rooms and that the younger child had even cleaned the washroom in their home to the accusation that B.A.J. was treating the younger child as a household slave to clean the toilets for B.A.J. and his common-law spouse. V.L. sought to have the children promise that they would not clean toilets. This was a clear attempt to undermine a proper step of a parent to instil in a child responsibility for tidiness and cleanliness of a home. It is unfortunate that she refuses to acknowledge that B.A.J. may have had some positive impact on the children in terms of his parenting.
- [24] V.L. has also made negative comments about an access supervisor. The access reports indicate that when the supervisor attempted to have V.L. adhere to access guidelines, V.L. challenged the supervisor and referred to her as "gestapo" and threatened to put her on the internet. A new access supervisor had to be assigned. Negative characterization also can be found in V.L.'s internet postings regarding the social workers who have been involved with this family over the years.
- [25] Other instances of undermining B.A.J.'s parenting arising out of the reports include her statement to the children that they would be better off living with her. On one occasion the report indicates that she stated to the children that if they were to live with her that she would buy them everything. On another, she stated that if the children did not accept all of her gifts that she would not give them \$100.
- [26] A further area of concern is that there have been at least four instances where V.L. has not respected and adhered to the guidelines for supervised access. These instances involved V.L. recording the access visit; refusing to take direction from the supervisor to permit the children to choose gifts brought by their mother instead of insisting, to the stress of the children, that the children take all of the gifts that she had brought; using a cellphone during a visit; and refusing to follow directions from the supervisor regarding the required procedure for the exchange of the children between the parents.
- [27] V.L. is reminded that my earlier court order specifically stated that cell phones are to be turned off during visits and that audio and/or video recording devices are not permitted at visits, remain in place.
- [28] V.L. has also not adhered to Justice Truscott's court order requiring her to pay child support. She has made no payments of monthly child support and special expenses. The older child has required glasses and braces yet she has done nothing to contribute to these costs. The arrears are now \$7,668. V.L. says the \$18,000 of income imputed to her for child support purposes is unrealistic, yet she has not made any application to have the order varied. She states that she has a part time job doing "paperwork" at a hair salon and earns \$700/month. She was, however, able to travel to Europe for the month of August this year and provided a

cash gift of \$200 to the older child and \$20 to the younger child at an access meeting. She has also bought expensive electronic gifts for the children. Despite these expenditures, she will not make regular support payments. V.L.'s response as to why she has not paid child support is that custody and guardianship should be reversed and then B.A.J. could pay her support, thereby securing financial support be paid to the children. This response does little to build confidence that V.L. understands her responsibilities as a parent or the need to respect and adhere to court orders. As I have mentioned to her in the past, child support is the right of the child.

- [29] The above concerns are serious and are more so because her conduct appears to be wilful and deliberate.
- [30] Despite these concerns, I am of the view that it is in the best interests of the children to see more of their mother. However, an increase in access must be preceded by a demonstration that V.L. recognizes that her responsibilities include protecting the identity of her children from unwanted internet postings and adhering to the rules at access visits.
- [31] As mentioned, the access will be progressive. Further steps to fuller access in graduated steps may be granted if V.L. removes from the postings any images of the children, their names and that of B.A.J., as well as references to where they reside. If these conditions are met to the satisfaction of the court, then supervised access can be increased to twice a week. V.L. is to file an application upon meeting these conditions to authorize the change in access and a review period will be determined at that time. My comments should not be taken as approving the commentary in the posting in respect to the best interests of the children.
- [32] With further progress, supervision should be determined to be unnecessary if the reports show that guidelines have been followed and that she can cooperatively work with B.A.J. Contributing to the financial support of the children would also be important. This will eventually lead to further increases in access including overnights. Achieving this is in the control of V.L.

"The Honourable Mr. Justice Masuhara"

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