

CANADA / JUDGMENT

Baldus v. Lillow

2021 BCSC 1898

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 1898 Baldus v. Lillow

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Baldus v. Lillow,

2021 BCSC 1898

Date: 20210831

Docket: E1956296

Registry: Prince George

Between:

Jesse Daniel Baldus

Claimant

And:

Jade Hellen Maria Lillow

Respondent

Before: Master Cameron

Oral Reasons for Judgment

Counsel for the Claimant

appearing via MS Teams:

J. Reed

Appearing on her own behalf

via MS Teams:

J. Lillow

Place and Date of Hearing:

Prince George, B.C.

August 30, 2021

Place and Date of Judgment:

Prince George, B.C.

August 31, 2021

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Introduction

- [1] This application is brought by the respondent pursuant to s. 69 of the Family Law Act, S.B.C. 2011 Chapter 5 ("FLA"), for an order that the respondent be entitled to relocate the only child of the parties' relationship. The claimant was given proper notice of the application for relocation, as required by s. 66(1) of the FLA, and he opposes the relocation.

Background

- [2] The parties began to live together in a marriage-like relationship on or about June 5, 2013, and they separated on or about November 20, 2018. The one child of their relationship, M.B. was born on October 30, 2016. In January 2019, the parties entered into a separation agreement, by which they agreed to equal parenting time with the child. The parties had resided together in Mackenzie, British Columbia during their relationship.

- [3] In 2019, after separation, the respondent decided to move because she was in a new relationship and her partner resided and is employed near Clinton, B.C. Having made the decision to relocate, the respondent sought the agreement of the claimant to have M.B. relocate with her, while ensuring significant parenting time for the claimant.
- [4] The parties could not agree and the claimant brought an application pursuant to s. 68 and 69 of the Family Law Act to prevent the respondent from relocating M.B., who was then three years old. That application was heard by Madam Justice Baker on December 19, 2019, and reasons for judgment were delivered on January 9, 2020, allowing the claimant's application and prohibiting the relocation of the child from Mackenzie to Clinton. The reasons are indexed as *Baldus v. Lillow*, 2020 BCSC 22.
- [5] For the purposes of this application, there are observations made by Madam Justice Baker that in my view remain relevant for the outcome of this application. I refer to the reasons for judgment as follows:

Relocation applications are among the most difficult applications for the court to resolve. Circumstances have arisen where the mother wishes to leave their community, and does not want to leave their son behind. This is not a case where either parent is at fault. They are simply both loving parents who wish to be part of their son's life.

The mother seeks the following orders:

- a) Until September 2021, the parents will share a two week rotating parenting schedule, with an exchange in Quesnel, which is halfway between MacKenzie and Clinton, and about a 3 hour drive for each parent.
- b) As of September 2021, when the child starts school, the parents will have to come to an agreement on care arrangements or bring a further application before the court.

The mother has kept track of the hours each parent has had the child since March 2019. She says that from March 2019 to November 2019 she has had care of the child 56% of the time, and the father has had care of the child 28% of the time. The remaining time the child was in the care of a daycare provider. Since November 2019 the mother has been on medical leave and so now cares for their son during the hours he used to be in day care.

The mother will be on medical leave until her child is born in February and then she will be on maternity leave for one year. She will be able to care for her children personally without accessing daycare until she returns to work.

The mother's new partner has a good job and roots in Clinton/Cache Creek area. His family has met the child and are supportive of their new relationship. I have no doubt this is the case. The mother's parents live in MacKenzie, although they state they are planning to move to Kamloops.

The father does not disagree that the child has spent more hours in the care of the mother. However, he says this is primarily because his work begins at 6 am, and he has not been able to get the child into a daycare that opens at 6 am. As a result, the child must sleep at the mother's house on all days the father is at work. This is reflected in the calendar attached to the mother's affidavit, which clearly shows the majority of the nights are spent with the mother.

However, the father says that he has been actively trying to get his son into a daycare which starts at 6 a.m., and once he does that he will be able to have his son overnight.

The father grew up in MacKenzie and his family lives there. His parents, brother and nephew are all involved with the child on a regular basis. The father has a good stable job with the City of MacKenzie. While the mother has expressed concerns about the health of MacKenzie in the face of the forestry downturn, the father does not share those concerns. He points to other employment opportunities in the area, abundant recreational activities in the area, and the safety of the community.

The father expresses concern for the child if he were to be without either parent for two weeks at a time. He says that the child is equally attached to both him and the mother, and is best served by continuing the current shared parenting arrangement.

Because I have found that the parents have substantially equal parenting time, I find that the s. 69(5) of the FLA is the applicable provision on this application. Pursuant to s. 69(5) of the FLA, I must consider the following factors:

- a) that the proposed relocation is made in good faith;
- b) that the mother has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
- c) the best interests of the child.

Pursuant to s. 69(6) I must consider the following factors in determining whether the proposed relocation is done in good faith:

- a) the reasons for the proposed relocation;
- b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
- c) whether notice was given under section 66;
- d) any restrictions on relocation contained in a written agreement or an order.

The reasons for the proposed relocation really relate to the asserted emotional well being of the mother. She is not moving to a new job or to begin a new educational program. I have not been provided with compelling evidence that quality of life for M will be any better in Cache Creek/Clinton than it is in MacKenzie.

I accept that the mother is not making this application to defeat the father's relationship with M, and I accept that she would do all that she could to maintain the child's relationship with his father should I allow the child to relocate.

The mother wants to move to be close to her new partner, and to raise their child together. She is concerned that if she can't move with M to Cache Creek, she will be left as a single mother with two children, alone in MacKenzie. She says she has hopes and dreams for her future, which will be impaired if she cannot leave MacKenzie.

While I am sympathetic to the mother, I must consider this application in terms of what is best for M. It is not only the emotional well being of the mother that I must consider. I must also consider the emotional well being of M, and how it will impact M to be separated from one of his parents for two weeks at a time and then, when he starts school, to be separated from one parent for the majority of the time.

On balance, I do not find that the proposal to relocate has been made in bad faith.

The mother proposes that the parents share parenting two weeks on and two weeks off, with an exchange location that would require each parent to drive three hours.

While this is superficially attractive, I find that it is not reasonable or sustainable.

Further, the rotating schedule will only be effective until the child starts school. The mother proposes to, essentially, defer any assessment on parenting arrangements which will be required once the child starts school. I do not agree that I can make a decision today which will have significant ramifications for the family down the road, without taking into account those future ramifications. I find that I must consider the inevitable outcome, namely that in 1.5 years the parties will have to come to terms with parenting arrangements when their child starts school.

The difficulty with the mother's proposal is that it will ultimately disrupt the child's relationship with one parent once he starts school. The child will have to live in one place or the other during the school year. Weekend access may not be feasible as the parties will be living 6+ hours apart, which would mean virtually the whole weekend for the child on an access weekend would be spent in the car. Parenting time for the other parent would necessarily be remote and focussed on holiday time only.

The proposal of the mother to move the child with her to Clinton represents a significant disruption in the parenting arrangements for the father. He is an active parent, involved in his child's life during the week and on weekends. The child's paternal grandparents, uncle and nephew all live in MacKenzie and are active in the child's life. Their relationships with the child will also be disrupted should a relocation be permitted.

I am not satisfied that the proposal of the mother is reasonable. In the short term, it represents a significant disruption of the current parenting arrangements in place, and places an unfair travel burden on M in the years leading up to his entry into school. In the long term, the disruption of the parenting relationship will be even more severe, as the child will move from equal time with both parents to seeing one parent only on holidays.

I find that it is not in the child's best interests to relocate to Clinton. The change to a two week rotating schedule between the parents for the first 1.5 years would represent a significant disruption in the child's relationships with his parents and extended family. M is very young, only three years old, and his relationships with his parents are still in a period of critical development. The [parties] have not been living separately very long, only 9 months. At this time, a relocation puts the stable development of strong relationships between M and both of his parents at risk, and significantly changes the terms of the agreement reached in November 2019.

I find the child's psychological and emotional security and well being are best protected by maintaining equal shared parenting arrangements in MacKenzie.

I allow the father's application and prohibit the relocation of the child from MacKenzie to the Cache Creek/Clinton area.

- [6] As Madam Justice Baker noted, the time to address the inevitable has arrived, with M.B. to commence kindergarten next week.
- [7] The evidence on this application confirms that the parties have continued to cooperate well to ensure that the shared parenting arrangement has continued in the best interests of M.B. The parties continue to both demonstrate that they are thoughtful and committed parents.
- [8] What has changed since the first relocation application was decided is that the respondent now has a son, K, who is 18 months old, and she has moved with K and her new partner to Quesnel, B.C. The distance between Quesnel and Mackenzie is approximately 300 kilometres and the driving time is approximately three and a half hours, assuming fair road conditions.
- [9] The respondent is currently taking courses at the College of New Caledonia in Quesnel, preparing to enrol in a program to obtain a degree in accounting, finance, and general business. She will be able to provide fulltime care at home for both children and, after completion of her education in two to three years, she plans to work from home doing personal accounting for clients.
- [10] The respondent's partner is employed fulltime for a logging company in the Quesnel area.
- [11] The claimant remains employed fulltime by the City of Mackenzie and remains a single parent to M.B. His work schedule is such that he has enrolled M.B. in an accredited daycare; and, depending on his schedule and the time of year, once M.B. starts school, he will be in daycare for two hours before school and for some part of the year, an additional two hours after school.

- [12] The parties have enrolled M.B., provisionally, for kindergarten in both Mackenzie and Quesnel, pending the outcome of this application.
- [13] The parties are agreed that the parent who will have reduced parenting time as a result of this relocation application should have generous compensating parenting time as best can be arranged.

The Position of the Parties

- [14] The respondent submitted that she will be best able to foster the growth and development of M.B. as part of her new family. She says that he has bonded very well with his younger brother and has been actively involved in sporting and other recreational activities in Quesnel. If M.B. is relocated to Quesnel, he will not need before or after school daycare.
- [15] The respondent also raised a concern that does not appear to have been a factor on the first application. In the past number of months there has been temporary shortages of nursing personnel at the Mackenzie hospital, and this has led to reduced medical services and, on occasion, the closure of the hospital for some period of time. If there is a need for any urgent care when the hospital is not open, patients are taken to Prince George. That is 90 kilometres away by road. The respondent contrasts that situation with Quesnel, that it is a thriving community with a larger population and all of the commensurate public amenities, including medical care, with its size.
- [16] The claimant submitted that the daycare setting has been a positive one for M.B. and he has developed friendships that may very well carry over to kindergarten, as it is expected that some of his friends would attend the same school with him in Mackenzie. It was also submitted that M.B. has the advantage of a close and loving relationship with his grandparents and an uncle who are in the community.
- [17] The claimant has been active with M.B. in outdoor sports and has not experienced any issue accessing medical care, when needed, at a local clinic that serves Mackenzie.
- [18] The claimant believes that the move to Quesnel will be a dramatic change for M.B. and that for his first year of school that change should not be added to the other adjustments that must naturally be made by a child with starting school.

The Law

- [19] Section 69(5) of the FLA provides:

If an application is made under this section and the relocating guardian and another guardian have substantially equal parenting time with the child, the relocating guardian must satisfy the court [that]

- (a) of the factors described in subsection (4)(a), and
- (b) that the relocation is in the best interests of the child.

- [20] Section 69(4)(a) of the FLA requires the relocating guardian to satisfy the court that the proposed relocation is made in good faith; and the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and the best interests of the child.
- [21] Pursuant to s. 69(6), I must consider the following factors in determining whether the proposed relocation is sought in good faith:
- (a) the reasons for the proposed relocation;
 - (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
 - (c) whether notice was given under section 66 . . . ;
 - (d) any restrictions on relocation contained in a written agreement or an order.
- [22] The specific factors under s. 37(2) of the FLA which concern the best interests of the child include:
- a) the child's health and emotional well-being;
 - b) the nature and strength of the relationships between the child and significant persons in the child's life;
 - c) the history of the child's care;
 - d) the child's need for stability, given the child's age and stage of development;
 - e) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities; and
 - f) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members.

Analysis

- [23] The claimant did not argue that the respondent was not acting in good faith in bringing this application. Because the parties cannot agree where M.B. should attend school, one or the other of them was required to bring this application. In this case, the respondent gave the required notice under s. 66 of the FLA, together with reasons to support the proposed relocation.

[24] The separation agreement entered into by the parties does not contain any express term restricting the relocation application and it was evident in the record that the proposed relocation is motivated by a desire to enhance the general quality of life for the child. Accordingly, I find the application to relocate has been made in good faith.

The Best Interests of the Child

[25] The existing parenting arrangements and parenting history are such that either parent could provide a nurturing environment in M.B.'s best interest. Each parent has had equal responsibility to ensure that M.B. is supported in his growth and development since they separated nearly three years ago and each has done so.

Conclusion

- [26] After considering and taking into account all of the evidence led on this application, as I have referred to it, I have concluded it would be best for M.B. to relocate to Quesnel with his mother. He will be part of a growing family and will be able to continue to strengthen his relationship with his younger sibling. The respondent and her new partner have established a stable home in Quesnel, where M.B. will have maximum contact with his mother before and after school and his physical and emotional needs will be well met.
- [27] The move from Mackenzie will result in some disruption in the relationship between M.B. and his father, his grandparents, and other extended family, but that may be addressed by generous time for M.B. with his father during the school year and on school holiday periods.
- [28] I have also considered that, while it may only be a temporary concern, the ability of the claimant to provide ready access for any emergency healthcare for M.B. may be impacted by the occasional closures of the hospital in Mackenzie.
- [29] In making the order to support relocation, pursuant to s. 70(2) of the FLA, the court must seek to preserve, to a reasonable extent, parenting arrangements under the original agreement or order.
- [30] In support of this application, the respondent has proposed that the claimant have parenting time with M.B. in Mackenzie as follows:
- (a) three weekends of every four;
 - (b) alternating long weekends;
 - (c) one half to three quarters of summer break;
 - (d) equal division of spring break and Christmas break; and
 - (e) Christmas Day to rotate between the parties.

[31] In my view, given the travel time between Mackenzie and Quesnel, this proposal complies with the spirit of s. 70(2) of the FLA. The one amendment I would make would be for the claimant to have 60 percent of the summer break with M.B. The parties have agreed that they will meet approximately half way between Mackenzie and Quesnel, in Prince George, for parenting exchanges.

A Section 211 Report

[32] During the course of submissions, I suggested to the parties that it may be wise to obtain a report from a Family Justice counsellor to assess the progress of M.B., after he has spent a number of months attending kindergarten in the 2021/2022 school year, to specifically address his progress and adjustment to school and his new community. Both parties agreed with this, and, as such, I will order pursuant to s. 211(1)(a) and (c) of the Family Law Act, that a Family Justice counsellor prepare a report for the parties and for the court.

Costs

[33] In all of the circumstances, there will be no costs to either party.

"Master Cameron"

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