
CANADA / JUDGMENT

Butchart v. Pannell

2018 BCSC 489

COURT

Supreme Court of British Columbia

DECIDED

26 March 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 489 Butchart v. Pannell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Butchart v. Pannell,

2018 BCSC 489

Date: 20180326

Docket: E162687

Registry: Vancouver

Between:

Jodi Anne Butchart

Claimant

And

Damian Charles Pannell

Respondent

Before: Master Muir

Reasons for Judgment

Claimant appearing on her own behalf:

J.A. Butchart

Counsel for the Respondent:

S. Glanzberg

Place and Date of Hearing:

Vancouver, B.C.

March 7, 2018

Place and Date of Judgment:

Vancouver, B.C.

March 26, 2018

introduction

[1] This is an application by the respondent for the following orders:

- i. that the parties have regular week on/week off parenting time with the children;
- ii. that the parties have specified holiday parenting time, and
- iii. that the respondent's child support obligations for the eldest child, Z., born June 18, 1997, be terminated and a declaration that she is no longer a child of the marriage.

Background

- [2] The parties were married on August 18, 2007 and separated on January 14, 2016.
- [3] There are two children from the relationship, K., born October 31, 2008 and E., born September 7, 2010 (collectively, the "children").
- [4] Z. is the claimant's daughter from a previous relationship. The respondent would appear to be the only father Z. has ever really known.
- [5] The claimant is a medical laboratory technologist and works 0.73 full-time equivalence. She works in a hospital and her shifts include nights.
- [6] Although there is an eight-week rotation, the shifts are intended to meet the needs of the hospital and, despite an accommodation made for the claimant's circumstances, are not conducive to a regular parenting plan. The claimant's evidence is:

Currently my share of off shifts includes 3 weekends out of 8, 2 of which are evening shifts. These weekend shifts alternate so I have every other weekend off in weeks 1 - 6. Week 7 I have extra days off in the week as well as the weekend off, and week 8 is a straight Monday to Friday days shift.

- [7] I gather the respondent works from home, but I do not know what his occupation is.

- [8] The parties have differing evidence as to the prior care of the children. The respondent says that he has always participated equally with the claimant in the care of the children and that they have had shared parenting since separation. The claimant asserts that she has always been the primary caregiver.
- [9] The parties apparently agreed earlier on to a general 2-2-3-3 schedule of parenting. The respondent says, however, that the claimant dictates the schedule according to her work commitments, that he and the children do not know the schedule for the coming month until quite late and that the result is confusion, disorganization, and strife. Further, he says that the schedule dictated by the claimant results in too many exchanges, and is too disruptive.
- [10] It is the respondent's view that a simple week on/week off parenting schedule would simplify the schedule and minimize exchanges. He says that would reduce the stress for the children.
- [11] The claimant says that she has tried to work with the respondent to set a parenting plan, but that he is openly hostile, frustrates communication and refuses to negotiate. She is adamant that week on/week off parenting would not work for the children. She says they have never been away from her consistently for that long, that the respondent is not sufficiently responsible to make that work and, in particular, alleges that the children's homework suffers during his parenting time.
- [12] I pause to note that the respondent apparently did not have time to file an affidavit in response to the claimant's, which was not filed until March 5, 2018. Although he did not want an adjournment, I was urged to consider the claimant's evidence in that light and that the respondent's evidence would likely dispute all that the claimant says.
- [13] In general, the claimant says that she was the primary caregiver for the children before separation and remains primarily responsible for them now. She says she is the primary contact for their school, manages the majority of the children's activities, medical needs, schoolwork and sports.
- [14] The claimant's evidence is that the informal shared parenting is hurting the children, but she says that is caused by the respondent's hostility and his lack of organization.
- [15] The claimant is concerned that the respondent has refused to allow K. to see or E. to continue to see Dr. Marcello Blancato, a therapist who helps the children with the troublesome changes that marital separations bring. The respondent is apparently of the view that it is sufficient for the children to see their school counsellor.
- [16] In November, the school counsellor emailed both parties the following:

The reason of this email is to let you know that I will send a counseling form home to be signed. I would like to support [K.] inside school so he could be ready for learning. Recently he has been shutting down during class time. Ms. King, his teacher, is concerned about his learning environment, she perceives him down and quiet during class work. I will send a counseling form to be signed so I can support him inside school. However, an outside counseling support will benefit both of your children.

[17] Dr. Blancato stated in a feedback email of February 20, 2018 as follows:

I wanted to provide you a brief update that was also provided Damian.

Consistency is required in terms of a parenting plan. E.'s sadness and losses related to family changes requires a therapeutic space for processing. Additionally he needs a clinician and neutral space to express his perception of the impact of past parent conflict, the changes in his family and current tensions which continue to create ongoing distress for him.

[18] The claimant is also concerned that the respondent has suggested that braces for K. await a resolution of the family matters. The child's dentist has recommended that he see an orthodontist as a baby tooth has not yet been shed and it may be preventing the eruption of an adult tooth.

[19] In addition, the claimant says that the respondent withholds crucial parenting information from her, that he interferes with her telephone access to the children, that he has ignored agreements about curbside exchanges intended to minimize conflict, that he is aggressive and hostile and has refused to return the children at certain scheduled times.

[20] The claimant alleges that there was escalating family violence in the relationship that resulted in the respondent being arrested. She says she continues to fear him and his anger. She says his anger and hostility is commonly evidenced by his refusal to communicate, yelling, intimidation and anger, and even open contempt for her. She says the children witness this and are badly affected by it. She says she is kept in fear of what he will do.

[21] The claimant says it would be in the best interests of the children, on an interim basis, that they have primary residence with her, that she be allowed to make medical and dental decisions, and that the respondent have parenting time every second weekend and one day during the week.

[22] As to holidays, alternating the holidays is difficult for the claimant, as she often works statutory holidays, but holidays appear to be important to both parties and to the children.

[23] The respondent says that he should have had the children on Halloween last year. Halloween also happens to be K.'s birthday. He says that the claimant had the children for Christmas 2016 and 2017. He says further, that although he was to have the children on New Year's Eve and had planned to take them to Gabriola Island, the claimant refused and had the boys that day, spoiling the planned trip.

- [24] The respondent pays child support for the children and \$300 per month in child support for Z., pursuant to an order made by Master Harper on September 26, 2017. I gather that the amount for Z. is less than what the Federal Child Support Guidelines would require, as Master Harper gave consideration to the fact that Z. was able to make some contribution to her own expenses.
- [25] The respondent says that he had a discussion with Z.'s grandfather who told him that Z. is now working full-time as an electrician.
- [26] The claimant says that Z.'s position has not changed since the order made by Master Harper. She says that Z. is taking an electrical program at the British Columbia Institute of Technology, which is a four-year program of classroom time and apprenticeship hours. Although she has now completed the electrical foundations classroom portion, Z. must log 1500 to 2000 apprenticeship hours before continuing the second year course. The claimant says that Z. is completing that requirement, has obtained an apprenticeship, and is paid as such.

Analysis

Parenting time

- [27] In making an order regarding parenting time, s. 37 of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"] directs that the only consideration is the best interests of the children.
- [28] It is clear from all of the evidence that the children require as much consistency as possible in the parenting schedule.
- [29] Given the facts, I cannot impose a consistent parenting schedule that will jibe either with the claimant's work schedule or the respondent's wishes. What I can and must try to do is impose a regime that will maximize safety and stability for the children and allow them quality time with each parent.
- [30] I do not believe that week on/week off parenting time is in the best interests of these children. I have carefully reviewed all of the evidence and have come to the conclusion that shorter blocks of time will benefit the children more at this stage.
- [31] Interim parenting time with the children will consist of two-week blocks as follows:
- i. Claimant: Friday after school until Wednesday after school;
 - ii. Respondent: Wednesday after school until Monday after school;
 - iii. Claimant: Monday after school until Wednesday after school; and
 - iv. Respondent: Wednesday after school to Friday after school.
- [32] If there is no school on an exchange day, the time of the exchange is to be at 4 p.m.

- [33] The interim parenting schedule is to be in place until agreement, evidenced in writing, or further order. It is to commence the first weekend after these reasons are released that the claimant is not working, or as agreed, and is not to be changed except in an emergency without consent obtained in writing at least seven days in advance, or as otherwise ordered.
- [34] The parties are to have regular telephone access to the children when they are not in their care. Regular telephone contact means once per day, other than on an exchange day.
- [35] Although this is not the schedule that either parent would prefer, in my view, this interim parenting schedule is the most consistent for the children that consists of shorter blocks of time, has fewer transitions, allows the children quality time with each parent, and allows for alternating weekends.

Holidays

- [36] The respondent seeks some sort of compensation in terms of time for past holidays. I do not view that as necessary. The interim order for parenting time during the holidays is as follows:
- i. The parties are to share Halloween. If they cannot agree on how to effect that, in 2018 and each even year, the claimant will have the children from after school on October 30 until after school on October 31. The respondent will have the children from after school on October 31 until after school on November 1. The odd years will alternate. As for regular parenting time, if there is no school, the exchange time will be at 4 p.m.
 - ii. The parties are to share equal parenting over the Christmas and spring break holidays. In 2018 and every even year, the claimant is to have the first half and the respondent the second half of these holidays. However, for 2018 Christmas and every even year, the respondent is to have the children from Christmas Eve at 5 p.m. to Christmas Day at noon and the claimant is to have the children Christmas Day at noon until Boxing Day at 6 p.m. The parties will alternate the Christmas access annually.
 - iii. In 2018 and every even year, the respondent is to have the children from New Year's Eve at 5 p.m. until New Year's Day at noon. The claimant is to have the children from New Years Day at noon to after school the following day, when the normal parenting schedule will recommence.
 - iv. Easter and Thanksgiving will fall to whichever parent has parenting time those days, or as otherwise agreed.
 - v. Each party will have the right to have the children for two consecutive weeks during the summer holidays. In 2018, the claimant is to have first choice of summer weeks and she is to advise the respondent in writing of her choice by May 31, 2018. If the claimant does not so advise, the respondent may select his two weeks and advise the claimant. In any event, the respondent will advise the claimant of his choice of summer weeks by June 7, 2018. The first choice will alternate annually.

- [37] The interim order regarding holiday parenting time is in effect until agreement evidenced in writing, or further order.

Conduct orders

- [38] Issues have arisen that appear to have contributed to tension and exacerbated conflict between the parties, which could frustrate the resolution of this family matter. I have concluded that certain conduct orders, in accordance with the FLA, ss. 222 and 227, are appropriate here.

- [39] I note that the respondent deposes that he has spoken to the children about the parenting schedule. His evidence is as follows:

I know this because I have spoken to him and his brother about it and just as in the past, they have voiced their concerns and disappointment in having to switch back and forth between the homes so often. They really dislike not spending the same amount of time with each parent. They say this is unfair. I say the same.

- [40] I consider it unlikely that the children would view a parenting schedule as "unfair" unless there was some impetus for them to do so. Discussing these matters with children is completely inappropriate. These are adult matters and children should not have the stress of trying to please both parents.

- [41] I am of the view that a specific conduct order is warranted in this regard. I, therefore, order that neither party is to discuss the parenting plan with the children other than to advise them what it is and that it is what the court considers best for now.

- [42] The claimant has raised concerns of the respondent travelling with the children without notice to her. There will be a conduct order that, if either party intends to travel with the children outside of the Lower Mainland but within B.C. for an overnight period where that travel does not impact on the other party's parenting time, two days advance notice is to be given.

- [43] Any other travel would require 30 days advance notice with a response within five days as to whether consent is given or withheld. The party proposing such travel is to provide a detailed travel itinerary at least ten days before departure.

- [44] Telephone contact with the children is to be maintained during any travel period unless otherwise agreed.

- [45] Given the obvious tensions and the history of family violence here, I have concluded that distance between the parties is essential. I understand that some agreements have been made in this regard and not adhered to. There will, therefore, be a conduct order that exchanges of the children are to take place at the curbside or in a neutral place. Further, neither party is to attend at or on the other's premises, property or workplace without prior arrangements, agreed to in writing at least 24 hours in advance.

[46] My review of the evidence of strife, the frustration that is obvious in that evidence, and the impact that this is having on the children indicates further orders would assist the parties here. There will, therefore, be conduct orders as follows:

- a) The parties will put the best interests of the children before their own. They will encourage the children to have a good relationship with the other parent and speak to the children about the other parent in a positive and respectful manner.
- b) The parties will make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the children.
- c) The parties will not question the children about the other parent or time they spent with the other parent beyond simple conversational questions. They will not discuss with the children any inappropriate adult, court, or legal matters, or blame, criticize, or disparage the other parent to the children.
- d) The parties will encourage their respective families to refrain from any negative comments about the other parent and his or her extended family and from discussions in front of the children concerning family issues or litigation.

[47] All conduct orders are interim, but are in place until agreement, evidenced in writing, or further order.

Counselling for the children

[48] It is clear to me from the evidence of the children's school counsellor and of Dr. Blancato that both children have been hurt by the strife and tension in their family. I agree that they should continue to have counselling at school and clinical support from Dr. Blancato.

[49] Therefore, pursuant to the FLA, s. 224, the children are to attend counselling with the school counsellor and Dr. Blancato until either those professionals recommend the children stop attending, the parties agree, evidenced in writing, or further court order.

[50] The parties shall share any expense involved, after deducting any insurance or benefits contribution to the expense, in accordance with their incomes.

Z.

[51] I am satisfied that Z. remains a child of the marriage. I understand that her ability to contribute to her own expenses has already been taken into consideration by Master Harper in the reduced child support award.

[52] Obviously, while she is doing her apprenticeship, she is not being paid as a full-time and fully qualified electrician. Further, she will have a need to save in order to support the completion of her education.

[53] I cannot see any basis to vary the order granted by Master Harper. Thus, the application for termination of child support for Z. and for a declaration that she is no longer a child of the marriage is dismissed.

Costs

[54] I cannot say that either party has been substantially successful here. I, therefore, order that each party bear their own costs of this application.

"Master Muir"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/04/2018BCSC0489.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/butchart-v-pannell-2018>

Prepared on 28 October 2026 · Esheria