
CANADA / JUDGMENT

C.J.C. v. D.W.B.

2012 BCSC 1802

COURT

Supreme Court of British Columbia

DECIDED

30 November 2012

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2012 BCSC 1802 C.J.C. v. D.W.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.J.C. v. D.W.B.,

2012 BCSC 1802

Date: 20121130

Docket: 1241357

Registry: Prince George

Between:

C. J. C.

Claimant

And

D. W. B.

Respondent

Before: The Honourable Mr. Justice R. S. Tindale

Reasons for Judgment

In Chambers

Counsel for Claimant:

C. Fletcher

Counsel for Respondent:

J.H. Cluff

Place and Date of Hearing:

Prince George, B.C.

August 9, 2012

Place and Date of Judgment:

Prince George, B.C.

November 30, 2012

- [1] The claimant by way of a notice of application seeks the interim sole custody and guardianship of the child, D. S. B., born July 24, 2010 ("the child").
- [2] The claimant, during the course of this hearing, proposed an access schedule whereby she would have the child for 4 days per week and the respondent would have the child 3 days per week.
- [3] The respondent seeks joint custody and joint guardianship of the child on the Master Horn model. The respondent also seeks a parenting schedule with each party having the child for approximately 50% of the time.
- [4] This application was brought on short leave and without the necessity of the parties attending a judicial case conference. The parties are excused from attending a judicial case conference for this application only.
- [5] The claimant also brought an application for interim child support of the child however that application did not proceed.
- [6] At the end of this hearing I made an order, on a without prejudice basis, that beginning August 10, 2012, at 10:00 a.m. the claimant would have the child for three days and then the respondent would have the child for three days and this access order would continue until further order of the court. I also ordered that the pickup and drop-off location for the child would be at the intersection of Foothills Boulevard and North Nechako Road in the city of Prince George.

BACKGROUND

- [7] The parties commenced a common-law relationship in approximately November of 2007. The claimant has two other children who are currently ages 11 and nine years from a previous relationship.
- [8] The parties separated from one another in approximately June of 2012.
- [9] The claimant ceased working approximately one month prior to the birth of the child and did not work again until about two months after the child was born.

- [10] The claimant, when she commenced working after the birth of the child, was working on a part-time basis about four hours per day and two days per week. This work schedule continued until approximately one year after the birth of the child. Then the claimant began to work approximately 4 days a week for about four hours a day. This schedule remained in place until approximately April of 2012.
- [11] In April 2012 the claimant's mother was diagnosed with cancer. The claimant's mother passed on June 4, 2012. The claimant, from April until June 2012, would stay with her mother during the week.
- [12] After her mother's death the claimant moved into her father's house with the child and her two other children. The claimant, by June 15, 2012, began to move her possessions into her father's home.
- [13] On June 19, 2012, the respondent was in a motor vehicle accident and suffered two broken legs.
- [14] The respondent is self-employed as a plumber/gasfitter.

POSITIONS OF THE PARTIES

- [15] The claimant seeks sole custody and guardianship of the child. She deposes that she was the primary caregiver of the child and when she was working the child was in daycare. She takes the position that the respondent did very little to care for the child as he was busy with work. The claimant deposed that the respondent would often work weekends or be consumed in his significant daily exercise regime.
- [16] The claimant also takes the position that as a result of the motor vehicle accident that the respondent was in, he cannot care for the child and that it is the respondent's parents who are actually looking after the child during her access visits.
- [17] The claimant also points to the fact that the child has a close and loving relationship with her siblings and it is difficult for the child to be away from her siblings for any extended periods of time.
- [18] The respondent seeks joint custody and joint guardianship of the child as well as an approximate 50% parenting schedule with the child.
- [19] The respondent argues that he is capable of caring for the child since his accident and has in fact done so.
- [20] The respondent, in his affidavit #1 sworn on August 7, 2012, deposes to the fact that he has been heavily involved in the child's care since she was born. This includes him changing the child's diapers, feeding her, helping her to get ready in the mornings, comforting her when she was upset and crying, shopping for baby supplies, attending doctor's appointments, reading books and playing with her, taking turns with the claimant getting up in the middle of the night with her, taking her in a stroller when he goes jogging or other outdoor

activities, taking her to visit friends and taking her to Edmonton to visit family members.

- [21] The respondent also deposes in his affidavit #1 that he last had the child in his care from August 3 to 7, 2012.
- [22] The respondent deposes that he has been told by his physiotherapists that he would likely be off work from the accident which occurred on June 19, 2012 for another 6 to 8 months.
- [23] The respondent also takes the position that the claimant did not actually want to have the child and that the parties separated because of the child. In support of this he filed an affidavit from his sister P.S. She deposes to complaints the claimant made to her about being pregnant and having another child . I have to say this evidence was of little assistance and quite frankly given the claimant's relationship with the child I am not putting any weight on it.

DISCUSSION

- [24] The best interests of the child are paramount to my analysis on this application. The Family Relations Act at s. 24 states as follows:
- (1) When making, varying or rescinding an order under this Part, a court must give Paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:
 - (a) the health and emotional well being of the child including any special needs for care and treatment;
 - (b) if appropriate, the views of the child;
 - (c) the love, affection and similar ties that exist between the child and other persons;
 - (d) education and training for the child;
 - (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.
- ...
- [25] There is no evidence on this application that the child has any special needs for care and treatment. The child appears to be doing well. The evidence is clear that both the claimant and respondent love and are very close to the child. It is also clear that the child has a close and loving relationship with her siblings.
- [26] Given the age of the child, the factors of education and training and the views of the child are not appropriate considerations for this analysis.

- [27] It is clear on the evidence that each of the parties is fully capable of looking after the child. The respondent, despite his injuries, has cared for the child and is able to care for the child into the future.
- [28] There are no presumptions for or against a joint custody order and each case must be decided on its own facts; see *Robinson v. Filyk* (1996) CanLII 3310 (BCCA).
- [29] The dispute between the parties in this case really comes down to whether or not the claimant will have the child for an additional day each week.
- [30] In my view, based on the facts of this case, it is in the best interest of the child that the parties share joint custody and joint guardianship of the child. The respondent has suggested that joint guardianship should follow the Master Horn model. Given that there may be some disputes with regard to third-party caregivers in the future, that suggestion is reasonable.
- [31] Also as I have found that each party is fully capable of caring for the child an equal parenting schedule is in the best interest of the child. I have already made an order that the parties will follow a three-day-on/three-day-off parenting schedule. On an interim basis this seems to be preferable as it does not take the child away from her siblings for any extended periods of time.

CONCLUSION

- [32] I order that the parties shall have interim joint custody of the child. The parties will also have interim joint guardianship of the child on the Master Horn model.
- [33] I further order that on an interim basis the parties will continue to have access to the child on a three-day-on/three-day-off parenting schedule until further order of this court. The drop-off and pickup location for the access will be at the intersection of Foothills Boulevard and North Nechako Road.
- [34] The respondent has been largely successful and shall have his costs of this application in the cause.

"R. S. Tindale, J."

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