

CANADA / JUDGMENT

Cordukes v. Cordukes

2009 BCSC 1655

COURT

Supreme Court of British Columbia

DECIDED

2 December 2009

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2009 BCSC 1655 Cordukes v. Cordukes IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Cordukes v. Cordukes, 2009 BCSC 1655 Date: 20091202 Docket: E053348 Registry:

Vancouver Between: Bernard Douglas Cordukes Plaintiff And Rebecca Lynn Cordukes Defendant

Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for the Plaintiff:

H.M. Dale Defendant appearing in person: R.L. Cordukes Place and Date of Hearing: New

Westminster, B.C. November 6, 2009 Place and Date of Judgment: New Westminster, B.C.

December 2, 2009

- [1] The plaintiff husband seeks costs of the motion brought in June and July 2009 regarding his claim for custody and various related claims as to guardianship and access to the children of the marriage. The boys are now 10 and 7 years old.
- [2] The parties married in 1997 and separated in 2003. A provincial court order was made as to access on April 28, 2006, which provided the father with three weekends out of four and time after school on week days. The weekend access in effect was Saturday, but in effect became, in practice, to return to the mother before church on Sunday.
- [3] On September 18, 2006 at the time of the divorce a Supreme Court consent order was made granting sole custody to the mother.
- [4] Access by the father, due to his work obligations and his geographic distance, was not regular. But matters changed for him in 2008 when he obtained employment on a regular basis, formed a new relationship, and bought a house near the mother's residence, near the children's school. At much the same time in mid-2008, the mother met a new man. They soon married. Both relationships are good. However, arguments developed over access in part due to lack of communication and differences in personality, which created clashes. The mother has strong religious convictions and is protective of the children. The father felt he was being shut out from the boys. Thus the application brought to change the custody order and vary access provisions.

- [5] The mother represented herself. Her position was that the father had been overly aggressive in his communications and in his behaviour, at one stage using police assistance for access to the children at the school, which was no doubt an embarrassment. She opposed changing custody but did not oppose there being a continuation of regular access. Her position was not greatly different from the third possible access variation proposed by the father.
- [6] Another issue related to overseas visits to the father's in-laws, but that was resolved by the fact that the mother's new husband is Greek and both sides agreed overseas travel was appropriate and was jointly agreed to.
- [7] With respect to the custody application I ruled that it was premature given the father was in effect renewing his relationship with the boys. I said that matter could be reviewed in one year, but if the father was going to pursue it, then he would be obliged to obtain a s. 15 report to assist the court. A small change was also made the guardianship order. The access schedule allowed an improvement for the father's access, a sharing of the holidays, otherwise the father was entitled to access two evenings each week and two weekends each month. As well, each parent was to be first choice for daycare.
- [8] In the circumstances, the plaintiff submits he is entitled to costs. I decline to do so. I agree the father was obliged to come to court to settle issues that were not capable of resolution as between the mother and father but his primary issue was custody which was adjourned for a year. The access, save for the holidays, is marginally less than the prior provincial court order. There is now an equal sharing of holidays. When I consider other matters that should be considered I note that the father makes more than twice the income of the mother. The prior conduct of the father until his own domestic and employment situation settled in mid-2008 did not do anything other than leave the mother as primary parent. Not unnaturally, the new relationships of both parties have caused some concern but it was apparent both relationships now seem on a sound footing and neither parent is critical of the other parent's ability to be a good parent. Matters are therefore in a restorative mode and I see costs as upsetting the balance that is being achieved in the award.
- [9] As well, although there may have been a good deal of work involved for counsel, the hearing itself was dealt with in two half days.
- [10] Indeed, on the costs hearing both sides indicated the new relationships now anticipate new offspring. It is even more important that good communication, planning, and detailed calendars be used to maintain harmony in the two households so that the boys feel equally at home at both houses.
- [11] There will be no order as to costs either for the original hearing or the costs hearing. "The Honourable Mr. Justice Crawford"

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