
CANADA / JUDGMENT

D.H.C. v. G.J.C.

2004 BCSC 415

COURT

Supreme Court of British Columbia

DECIDED

29 March 2004

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

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.H.C. v. G.J.C.,

2004 BCSC 415

Date: 20040329

Docket: E020416

Registry: Vancouver

Between:

D.H.C.

Plaintiff

And

G.J.C.

Defendant

Before: The Honourable Mr. Justice Joyce

Reasons for Judgment

Counsel for the plaintiff

Paul Daltrop

Counsel for the defendant

Craig Neville

Date and Place of Trial/Hearing:

March 24, 2004

Vancouver, B.C.

- [1] The parties have brought cross applications seeking various relief. Due to lack of time, only the two most pressing issues were dealt with at the hearing: (1) whether the plaintiff should be restrained from moving the children to a different school; and (2) whether the defendant should be permitted to provide after-school and before-school care for the children. The other items of relief are adjourned generally and I am not seized of the applications.
- [2] By way of background, the parties were married in 1995 and divorce by order dated August 20, 2003. They have two children, M., who is nearly 10 and in grade 4, and J., who is 8 and in grade 2. Both children are enrolled in a French Immersion program.
- [3] On the very eve of trial, following hard fought and bitter litigation, the parties managed to reach a compromise agreement with regard to corollary relief. The agreement is reflected in the August 20, 2003 consent. I am satisfied the order strikes a very fragile balance between the parties' competing interests. Unfortunately, the children find themselves caught up in the middle of the balancing act.
- [4] Under the order the parties share joint custody and guardianship of the children. The children reside primarily with the plaintiff but have generous access time with the defendant, including alternate weekends, four additional overnight visits per month and extended holiday access. The access times and manner of access exchange are set out with great particularity, which indicates they are unable to be flexible in relation to access.
- [5] Despite the fact the parties have joint custody, it is clear that the parties have not been able to meet the challenge of effective communication and cooperation. They must communicate by e-mail and each is restrained from contacting the other.
- [6] Terms of the consent order that are material to the matters requiring decision are set out below:
4. The Plaintiff will consult with the Defendant with respect to any major decision affecting the children in the manner described in Paragraphs 21 and 23 of this Order but if the parties are unable to reach agreement, the Plaintiff will have the right to make the decision, save and except that the Defendant will have the right to seek a review of any decision which the Defendant considers contrary to the best interests of the Children.
21. Dr. Jennifer Montgomery, if she agrees, will mediate the parties' concerns with each other.
23. All communication between the parties will be by email and/or through Dr. Montgomery. While Teresa Pimental is available and so consents, the Plaintiff and Ms. Pimental will coordinate any issues regarding scheduling for the children.

24. Except as provided for in this Order, the terms of the Restraining Order made November 22, 2002 will remain in effect. Specifically, the Defendant shall be restrained and enjoined from harassing, annoying, molesting, or communicating with the Plaintiff for the Children when the Children are in the presence of the Plaintiff or attempting to do so, save and except if the Children approach the Defendant of their own accord. In the latter circumstance, the Defendant shall not interfere with the Children's return to the Plaintiff.
25. All police officers or peace officers who on reasonable and probable grounds believe that the Defendant has breached this Order, may forthwith arrest such person and bring him before this Court on the next Court day following the arrest to be dealt with on a inquiry to determine whether the Defendant has committed a breach of this Order or is in contempt of this Court.
26. The Defendant may attend the Children's sporting events and school special events but will be in breach of the Restraining Order if he comes within 30 feet of the Plaintiff. The Defendant will defer to the Plaintiff's judgement and decisions regarding the Children's needs in relation to these sporting events and school special events. School special events shall be defined as school concerts, school plays, Sports Day, annual barbeque, Family Fun Day and science fair. Each parent will schedule his or her parent-teacher interviews (sic) to take place on his or her access days.
27. The Plaintiff undertakes to the Court that she shall not harass, annoy or molest the Defendant.
28. Save and except for paragraph 26, neither party will attend at the Children's school unless it is that party's access day and that party is volunteering in either child's classroom or at the school or accompanying either child on all field trips or meetings with the Children's teachers or counsellors. If the Plaintiff will not be in attendance on a school field trip taking place on one of her days, she will advise the Defendant, at least 24 hours in advance, that she will not be attending and that he has the option of attending.
31. The Plaintiff shall not change the residence of the Children outside of the GVRD and the Plaintiff shall not change the Children's schools unless she purchases a residence within the GVRD, in which case, the Plaintiff is at liberty to change the Children's schools, on 30 days notice to the Defendant, unless the Court orders otherwise.
- [7] I understand Dr. Montgomery and Ms. Pimental, who is or was the Defendant's girlfriend, have declined to be involved any longer in attempting to mediate between the parties or facilitate access.
- [8] The defendant lives across the street from the school the children currently attend. The plaintiff currently resides in rental accommodation located a five minute drive from the school but is about to take possession of a home she has purchased in Surrey approximately fifteen minutes drive from the school. She has also established a business located very close to her new home. On February 19, 2004 the plaintiff notified the defendant, in accordance

with paragraph 31 of the order, that after Spring break she intended to enrol the children in a school near to her new home and place of work. The new school does not have a French Immersion program.

- [9] The defendant complains that the plaintiff failed to consult with him about the decision beforehand contrary to paragraph 4 of the order. There is no doubt in my mind that any attempt to consult would have been met with an immediate and unyielding refusal to agree to the move.
- [10] The inclusion of paragraph 31 indicates the parties contemplated that the plaintiff would likely purchase a house and, in that event, might want to change schools. The parties disagree as to the nature of the onus under paragraph 31. The defendant concedes he has the obligation to make an application to restrain the plaintiff from changing schools but says that once the matter is before the court the test is whether the plaintiff has established that the move is in the best interests of the children. The plaintiff submits that once she buys a house within the Greater Vancouver Regional District she is free to move the children to the school closest to her home unless the defendant demonstrates the move is contrary to the children's interests. She submits the court ought to give great respect to her decision.
- [11] While I am inclined to the view that the plaintiff's submission is correct, I need not decide this case on the basis of the onus of proof. Even if the plaintiff has the onus of proof I am satisfied she has met the onus.
- [12] The plaintiff puts forward two reasons for changing schools:
- (a) The new school is close to her new home and place of work. The children reside primarily with her and the new school will be more convenient for them because they will be able to walk to and from school and will be able to attend school with children from the same neighbourhood.
 - (b) The children are struggling in the French Immersion program and they will benefit by being transferred into the English language program.
- [13] The defendant says the present school is only 10 minutes farther away from the plaintiff's new home by car and that any advantage in being closer to the plaintiff's home is outweighed by the negative effects of a change of school environment. The defendant also says that if the children remain in their current school he is available to provide after school care now that the plaintiff is working. He says further that the evidence does not establish that a change from French Immersion to an English program is necessary.
- [14] I will deal firstly with the defendant's application that he be able to provide after school care for the children. The defendant says the nature of his business enables him to be at home in the afternoons with the exception of three days per month when he travels out of town. He has a wholesale business and his hours are flexible. I note, however, that according to his tax return the defendant earned no income in 2003 so I have to wonder how long he can continue with his current business before looking for other work that might very well

occupy his afternoons.

- [15] Ordinarily, one might consider it preferable to have a joint custodial parent provide after school care as opposed to a third party. However, this is far from an ordinary joint custodial arrangement. In this case the parties are subject to an order that strikes a very fragile balance between their respective rights and interests. Ordinarily, one would expect that a joint custodial parent who lives across the street from the children's school and who is at home during the day would be free to attend the school at lunch time or to have the children come across the street for lunch. That is not the case here. The parties can attend the school only in accordance with very strict requirements. In my opinion, acceding to the defendant's application would upset the delicate balance under which the parties have agreed to operate.
- [16] My concern is not for the parties' interests but for the effect such variation would have on the children. I am of the view that changing the access regime would greatly exacerbate the already high level of friction that exists between the parents and would draw the children even further into the parent's conflict with each other. That would be contrary to the children's best interests.
- [17] Furthermore, I am concerned that the restraining order contained in paragraph 24 of the consent order would present problems in picking up the children and with respect to after school activities that the plaintiff might wish to arrange for them.
- [18] I conclude the variation sought by the defendant is not in the best interests of the children and that part of his application is dismissed.
- [19] With regard to the change of schools, I am satisfied the children would benefit by attending a school in the neighbourhood where they will spend the majority of their time, particularly if it is within walking distance of home. A change of schools would not prevent the defendant from exercising access in accordance with the consent order. What I must consider is whether the benefit is outweighed by the disruption of changing schools and switching to English only instruction.
- [20] Before the youngest child started school the parents jointly decided to enrol their children in the French Immersion program. However, on the evidence I am satisfied they are not doing well in French Immersion.
- [21] J.'s latest report card contains a statement that he has made good progress in all areas of the curriculum. However, it goes on to say that "in French Language Arts, J. is meeting at a minimal level the learning outcomes taught this term", which indicates to me that J. is struggling with the French language. It stands to reason that if he struggles to communicate in French he will have difficulty with subjects that are taught in French.

- [22] M.'s report card states that she has made satisfactory progress in all subject areas yet notes that she needs to work further on her French speaking skills. Her French language arts grade dropped from a "C" in the first term to a "C-" in the second term.
- [23] The plaintiff has provided two letters dated March 12, 2004 signed by the school principal, the children's teachers and their learning assistance teachers. Their comments concerning M. included these:

As indicated in her second term report card, M. continues to struggle with her French comprehension and oral skills, as well as reading and writing. She has attended the Learning Assistance Program at S.[] since Grade One. As a matter of fact, M.'s teacher had recently suggested bringing her name up at our School-Based Resource Team Meeting in order to discuss the testing and subsequent steps necessary for a possible transition to the English Program. Their Learning Assistance Teachers performed a French Immersion Achievement Test (FIAT) to gauge M.'s level of need for further testing. At that point, we were informed that your children would be moving to another school and leaving the French Immersion Program. We therefore discontinued any further testing. We would like to state that we feel that the English program would probably be of great assistance to M.

- [24] The letter concerning J. stated, in part:

We wish J. all the best in his new school. As you know, he has struggled academically in the French Immersion Program and has needed the support of Learning Assistance in French speaking, reading and writing. We are hoping that he will find learning in English easier and less stressful. He will likely experience greater success in the English Program, which will in turn promote both his self-esteem and a positive attitude toward school and learning.

- [25] The defendant submits the testing that was undertaken with regard to M. should be completed before any decision is made to switch from French Immersion to English. It appears to me from the letters of March 12, 2004 that the children's teachers and learning assistance teachers are clearly of the opinion that moving the children to the English program will benefit both of them and that they support the plaintiff's decision to place the children in the English program.
- [26] I conclude that the plaintiff's decision to move the children into an English language program is in their best interests.
- [27] Two questions remain: should the children be moved into the English program at their present school rather than change schools and, if a change of schools is to be made, should it take place now or at the beginning of the next academic year?
- [28] The change in programs means the children will have to integrate with new classmates and new teachers whether they stay at their present school or move to a new school. Of course, a student's school environment is broader than just their classmates or teachers but considering the relatively young ages of these children it is my view their closest connection is likely with their classmates. I expect the children will be able to handle the disruption and

quickly make new friends. Given that there will be some disruption whether they stay or move, I am of the view that the benefits of attending school in their new neighbourhood, close to the home where they spend most of the school week outweighs whatever greater disruption might be associated with a move.

- [29] As to whether the change should take place now or in September, it seems to me there are potential benefits with each alternative. Continuity is usually a good thing for children and a change of schools mid-term is generally seen as something to be avoided if possible. The children will have to adapt to a new house and neighbourhood and it may be difficult for them to adapt to a new school and program at the same time.
- [30] On the other hand, the children are struggling in French and it may be helpful to make the move without further delay so that they can receive instruction in English. That should not involve any change in curriculum, only a change in the language of instruction. It would not make sense to change programs at the present school then move schools in September. If they change schools now, there may be a greater opportunity for them to meet new playmates from their neighbourhood thereby easing their integration into the new neighbourhood. There is also the question whether holding the children in limbo, so to speak, will be hard on them.
- [31] Having weighed the competing factors, I conclude that the move should take place at this time.
- [32] I want to say something about the children's views. The plaintiff thinks the children are content and even excited at the prospect of changing schools. The defendant thinks they do not want to leave the French Immersion program or change schools. Dr. Du, a psychologist who had been providing counselling for the children concerning issues surrounding their parent's separation, testified over the objection of the plaintiff. Dr. Du discussed the matter with the children. He testified they expressed some unhappiness about changing schools. He said they were upset about the issue, although it was not clear to me whether they were more upset about the prospect of the move or that it has created another topic for disagreement between their parents.
- [33] Dr. Du could not say whether the parents have influenced the children in their view but I am satisfied the proposed change has been a topic of conversation between the parties and the children and I suspect very strongly that each parent has attempted to persuade the children to adopt their point of view.
- [34] Considering the ages of the children and the likelihood that the parents have exerted pressure on them, I do not find my decision on the expressed views of the children.
- [35] With regard to costs, I am satisfied the plaintiff is entitled to costs relating to those parts of the applications disposed of by this order. The determination as to how the costs for the entirety of the motions should be apportioned and assessed should await the determination of the balance of the applications.

"B.M. Joyce, J."

The Honourable Mr. Justice B.M. Joyce

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/04/04/2004BCSC0415.html>

CASE PAGE <https://chat.esheria.ai/case-law/canada/d-h-c-v-g-j-c-2004>

Prepared on 29 October 2026 · Esheria