
CANADA / JUDGMENT

D.K.W. v. T.J.H.S.

2012 BCSC 1792

COURT

Supreme Court of British Columbia

DECIDED

3 December 2012

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2012 BCSC 1792 D.K.W. v. T.J.H.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.K.W. v. T.J.H.S.,

2012 BCSC 1792

Date: 20121203

Docket: 10430

Registry: Rossland

Between:

D.K.W.

Claimant

And

T.J.H.S.

Respondent

Before: The Honourable Mr. Justice McEwan

Reasons for Judgment

Counsel for the Claimant:

J. Ghilarducci

Respondent appearing on own behalf:

T.J.H.S.

Place and Date of Trial/Hearing:

Rossland, B.C.

November 19 and 20, 2012

Place and Date of Judgment:

Rossland, B.C.

December 3, 2012

- [1] This matter came on for trial on November 19 and 20, 2012. In the course of submissions this court made certain observations that resulted in an order being spoken to, disposing of the issues. I indicated at that time that I would give reasons in writing. These are those reasons.
- [2] The claimant and the respondent lived together from March of 2009, until the end of July 2010. They had one child, G., born November 4, 2010. The claimant seeks sole custody and guardianship with reasonable access to the respondent. The respondent seeks joint guardianship and access.
- [3] The claimant was born May 13, 1988, and is presently 24 years old. She met the respondent when she was working as a waitress in Strathmore, Alberta. The parties began living together shortly afterwards. The claimant worked at various waitressing and retail jobs, often part-time, while the respondent worked as a backhoe operator, when he could find employment. There were money stresses. The claimant describes the respondent, who is 10 years older, as domineering and cruel, and both physically and verbally abusive. She said that he wanted their various domiciles kept spotlessly and his dinner on the table when he got home from work. She says he once physically pushed her, causing her to fall and have a miscarriage, and that on other occasions he hit her. She said he was lazy and inattentive and preferred to spend his time hunting or away from home rather than doing any work on the yard or spending time with her.
- [4] The respondent denies every one of these allegations. He, and particularly his father, who was called as a witness, suggests that the claimant was not much of a housekeeper or cook and that she often slept late. The respondent did not like the claimant going out with her friends and drinking. He had suspicions about her behaviour with other men.
- [5] It is not possible to reconcile the parties' versions of their life together. I think there is a clue to what was going on in an observation made by the claimant's mother, who said that she had been rebellious at home. It seems clear that the claimant's relationship with the respondent was ill-considered and that she was probably not ready to settle down when they got together. The disparity in the parties' ages no doubt also contributed to their inability to get along.

- [6] The parties' poor relationship ended when the claimant made a trip home to Montrose, near Trail, British Columbia, during her pregnancy and refused to return. There was talk of putting the relationship back together but nothing really happened.
- [7] The parties differ completely on their reaction to the news that the claimant was pregnant. The claimant says that the respondent was very unhappy and urged her to have an abortion, and that he took little interest in the pregnancy as it progressed. The respondent says that he was overjoyed.
- [8] When the parties' daughter, G., was born, the respondent was not present. He blames the claimant and says he was told to stay away. He did, however, expect to be notified by someone as soon as the child was born, and was terribly distressed to find that some hours had passed before he was called. He then berated those he spoke to, including the claimant, for ruining what should have been "the best day of his life". When he came to see G. the next day, he put on an extraordinarily histrionic performance according to D.W., the claimant's mother. She said he could not stop crying and that the claimant fell into the role of comforting and consoling him. She said he was distraught.
- [9] The respondent testified that he was crying tears of joy.
- [10] In the aftermath the respondent says that all his attempts to see his daughter have been frustrated by the claimant and her family. He cannot explain how this squares with the fact that the claimant and her father travelled to Alberta shortly after the birth to show G. to the respondent's extended family. Nor has he one specific example of the behaviour he complains of. The upshot is that he has not seen his daughter for most of her two years. He has failed to pay child support except for three payments totalling \$1,550.
- [11] The claimant registered G.'s birth as the sole parent, marking the form "father unknown". The respondent claims that this, and some of the claimant's partying during the relationship got him thinking. He refused - he says, upon a lawyer's advice - to provide his financial information, in spite of lawful demands, until there was a paternity test. He then delayed the test simply to obstruct these proceedings. He did not produce his financial information until the day before the trial. The paternity test ultimately showed him to be G.'s father to a probability of 99.9999%. The evidence at trial suggested very strongly that the suspicions the respondent had as to the claimant's faithfulness predated the weeks when conception occurred by several months. The parties were surrounded by the respondent's relatives at the relevant time, which rendered an undetected relationship highly unlikely.
- [12] The respondent has apparently proceeded to court on the premise that if he simply denies anything that is not helpful to him, the court will be unable to decide. I have tried to explain that the court may choose between his version of what happened and other versions, if the other versions are more worthy of belief. In this regard, I accept the evidence about the respondent's very odd and emotionally uncontrolled behaviour at the time of G.'s birth. I think embarrassment over that event may underlie the respondent's reluctance to communicate with the claimant and her family, and his attempts to shift the responsibility

onto them. I am satisfied that they have always acknowledged the respondent's right to access and have always been prepared to promote reasonable access, despite the matter of the birth certificate.

- [13] Both parties are in new, far more positive relationships. The respondent is in a relationship with a woman named A.W. She says he is a good stepparent to her two young girls. She appeared to be straightforward and sensible. The man she knows is not at all like the person the claimant described. She spoke of how good he is, not only with her children (who call him "Dad"), but with other children in their neighbourhood.
- [14] The claimant has met an RCMP officer, J.R., who shares many of her interests and values. It is apparent from the evidence of D.W. and a friend, L.M., that motherhood has focussed the claimant and that, J.R., her fiancé, is fully prepared to take on the responsibility of a stepparent.
- [15] This is only to say that both parties have met people who seem to bring out the best in them, which was manifestly not the case when they were together.
- [16] The respondent appeared on his own behalf. He had had the benefit of legal advice in the past but had discharged at least two solicitors. Despite the fact that he is a stranger to his daughter, he put the question of custody and guardianship in issue. The evidence of conduct was only useful in establishing responsibility for the existing state of affairs. It was abundantly clear that the fault for the respondent's alienation from his daughter largely rests with him, and that this is not a case, at present, in which joint custody or guardianship is advisable. It might be otherwise if I were satisfied that the claimant was responsible for keeping the respondent from G., but that is simply not the case.
- [17] The claimant's circumstances include the probability that J.R. will be transferred in April to another detachment, probably in northern British Columbia. The respondent opposed her moving from the Trail area on the basis that it might interfere with his ability to exercise access to G. There are two things to say about that. The first is that the evidence suggests that the respondent's work is itinerant and takes him to northern Alberta much of the time. It was not clear that, in fact, such a move as the claimant and J.R. expect would necessarily make access more difficult. The second is that the claimant and the respondent are in a positive relationship that benefits G. The respondent appears to accept this and acknowledged, when questioned by the court, that he would not want the court to make an order that put the claimant to the choice of leaving J.R., or of J.R. giving up his employment with the RCMP.
- [18] The result of all this is that I do not hesitate to say that G.'s best interests lie with the claimant retaining sole custody and guardianship, unrestricted as to mobility. The respondent's focus should be on establishing a positive and reliable track record of access that, in time, may be expanded and lead to a reconsideration of his custody and guardianship status relative to G.

- [19] At the end of submissions I asked the parties to consider a supervised access schedule that would gradually introduce G. to the respondent and provide a basis upon which an expanded relationship might develop. They worked out an arrangement providing for one two-day period each month, for two hours on each of those days, through March 2013. Thereafter, in view of the claimant's anticipated move, the parties will have to work out further arrangements. The terms spoken to will be incorporated into an order which will be prepared by counsel for the claimant. The clear understanding is that access will be expanded gradually if it is working well. The parties shall have liberty to return to court if they have difficulty agreeing on an appropriate schedule.
- [20] The respondent made some \$83,000 in 2011 and is on a pace to make the same for 2012. In 2010 he made \$45,000. There is no excuse for his resistance to paying child support in the circumstances. He wilfully avoided this obligation, and there is no proper basis upon which he should be permitted to avoid a retroactive award. On the basis of the respondent's known income I fix arrears at \$954 for the two months of 2010 at \$477 per month; \$9,348 for 12 months at \$779 per month; and the same (\$779) for the first 11 months of 2012 or \$8,569. The figures are the guideline amounts for the respondent's actual income. From the arrears the respondent may deduct the \$1,550 actually paid.
- [21] From and after December 1, 2012, the respondent shall pay the sum of \$779 per month, until further adjustment, by agreement or order of this court. By May 30th in each year, beginning in 2013, the parties shall exchange their income tax information for the purpose of fixing the correct level of child support and the correct fraction for the division of extraordinary expenses.
- [22] The evidence is that the claimant makes \$10,000 per year. Extraordinary expenses shall therefore be divided on a ratio of 8/9 to 1/9. These expenses currently include day care, but are expected to extend to medical and dental expenses not covered by insurance.
- [23] The claimant shall produce receipts for extraordinary expenses to the respondent each month and the respondent shall pay her his share within 10 days of delivery of the receipts.
- [24] In the circumstances the claimant is entitled to costs.

"McEwan J."

The Honourable Mr. Justice McEwan

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