

CANADA / JUDGMENT

Daem v. Szarapka

2020 BCSC 2286

COURT

Supreme Court of British Columbia

DECIDED

19 May 2020

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2020 BCSC 2286 Daem v. Szarapka IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Daem v. Szarapka, 2020 BCSC 2286 Date: 20200519 Docket: E58689 Registry: New Westminster Between: Chad Ryan Daem Claimant And Marnie Skye Szarapka also known as Marnie Daem Respondent Before: Master Keighley Oral Ruling Re Application for Exclusive Occupancy of a Family Home and Other Relief In Chambers Counsel for the Claimant: K.E. McNeilly Counsel for the Respondent: R.M. Sabir Place and Date of Hearing: New Westminster, B.C. May 19, 2020 Place and Date of Ruling: New Westminster, B.C. May 19, 2020

- [1] THE COURT: This is a family law proceeding, and before me today is an application by the respondent, the wife and mother, for various forms of relief which I will not review specifically at this point. The affidavit material before me, while it consists of only one affidavit from each party, is extensive, detailed and conflicting. It is not unusual, of course, for the Court to deal with conflicting affidavit material in family matters, but here the conflict is considerable between the parties with respect to the material issues, particularly those relating to allegations of family violence brought by each of the parties and particularly concerning the best interests of the child and the environment in which he is being raised.
- [2] While the court makes its best efforts to resolve such conflicts in the evidence on interim applications, that is not always possible given the inability of the court in most cases to hear evidence viva voce, to observe the parties giving their evidence and undergoing cross-examination as well as having an opportunity to consider other factors which might assist a trial judge in resolving conflicts. I do not have the benefit of those mechanisms here. What I am left with is a very real appreciation, whomever I believe, that the relationship between the claimant and the respondent is a toxic one. I am satisfied that in the interests of curtailing or preventing family violence, and in the interests of providing a safe and nurturing environment for the child, the claimant and the respondent need to be kept apart.
- [3] One of the items of relief sought on the application before me is an application by the respondent for exclusive occupancy of the parties' home in Abbotsford, B.C. In order to considering granting such an order, I must first be satisfied that a sharing of the home is a practical impossibility. In the event that I find that such is the case, I then go on to consider

on a balance of convenience who should have the right to occupy the home to the exclusion of the other. Now, I have already dealt with the first aspect of the two-stage test in finding that the relationship is a toxic one. I gather the parties have locks on their bedroom doors. That does not seem to have been working, if I believe at least some of the evidence in the material before me. The conflict between the parties, both interpersonally and in terms of their versions of what has transpired in the home while they continue to share it suggests that they cannot continue on in this way.

- [4] I am not satisfied that the circumstances in this case support the respondent's application for interim sole occupancy of the home. She says that, at least in partial support of her application, that she has limited means at the moment. The pandemic has meant that her business, a driving school, is effectively shuttered. Her other business, relating to snow removal, is, in the Lower Mainland of British Columbia, highly seasonal and of no assistance to her at this point. I am told by the claimant that she has a sideline in marijuana edibles, but I really do not know very much about that or how much income that might, even if she is, in fact, operating such a business, add to her income.
- [5] I am satisfied in terms of living arrangements that it is appropriate to put in place a nesting arrangement, as it is sometimes called. In other words, each party will have exclusive occupancy of the family home in Abbotsford during his or her respective parenting time with the child. Now, in terms of parenting time, I gather the status quo, at least in legal terms, is set out in Judge Rounthwaite's order of July 22, 2019, which is in the material before me. It provides that the father will have parenting time each week from Thursday at 3:15 p.m. to Monday at 8:00 p.m., with the mother having parenting time by inference for the balance of the week, with the pickup at gymnastics and the drop-off in front of the Abbotsford police station. That seems to be the status quo in terms of parenting arrangements, and that schedule will determine the parties' respective rights to exclusive occupancy of the home.
- [6] This aspect of the order, then, will commence this Thursday, May 21, at 3:15 p.m., with the father exercising his parenting time with the child in the home and with exclusive occupancy to the respondent and the commencement of her parenting time being the following Monday at 8:00 p.m. That appears to be Monday the 25th of May, 8:00 p.m. With respect to restraining orders, I am satisfied that it is appropriate in that context to order that except with respect to communications by text or email concerning the interests of the child, the parties will have no direct or indirect contact with each other. Although they may attend at the same place, whether as indicated or otherwise, for the exchange of the child at the commencement or end of their respective parenting time.
- [7] The materials before me suggests that on some occasions, the claimant may have followed or "tracked" the respondent. I am left with some uncertainty from the parties' conflicting evidence as to whether that has, in fact, occurred, but it seems to me in the interests of safety, it is appropriate to make an order that henceforth the claimant will not follow the respondent or track her whereabouts by electronic or other means. This order is in the

nature of a conduct order. I will make a further conduct order that the claimant will not attend at the residence while it is occupied by the respondent, will not attend her place of employment or work or any other place at which from time to time he may know she may be or will be.

- [8] I am going to adjourn the application for a peace officer assist provision generally. As a further conduct order, I am going to direct that neither party will disparage the other or speak ill of the other in front of the child or allow the child to be exposed to such comments made by others within the child's presence or earshot. Also pursuant to s. 225, I will make the following conduct orders. Each of the parties will put the best interests of the child before their own interests. Each will do their best to encourage the child to maintain a good relationship with the other parent and that parent's partner or family. Each will make their best efforts to minimize the child's exposure to COVID-19.
- [9] I am going to direct the claimant to by 5:00 p.m. today advise, through counsel, of the name, address and telephone number of any counsellor seen by the child at his instance. The application for sole exclusive occupancy of the home by the respondent is dismissed. The respondent's application for equal parenting time with the child is adjourned generally. Each party will be restrained from entering the family residence during the other's occupation of it, pursuant to the terms of this order. "Master Keighley"

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