

CANADA / JUDGMENT

Ferguson v. Ferguson

2014 BCSC 401

COURT

Supreme Court of British Columbia

DECIDED

12 March 2014

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2014 BCSC 401 Ferguson v. Ferguson THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ferguson v. Ferguson, 2014 BCSC 401 Date: 20140312 Docket: 1444161 Registry: Prince George Between: Charles Joseph Ferguson Claimant And Shannon Alexandra Ferguson Respondent Before: The Honourable Mr. Justice R.S. Tindale Reasons for Judgment In Chambers Counsel for claimant: J.H. Cluff Counsel for respondent: T.E. Hudson Place and Date of Hearing: Prince George, B.C. March 7, 2014 Place and Date of Judgment: Prince George, B.C. March 12, 2014

INTRODUCTION

- [1] The claimant, Charles Joseph Ferguson ("the claimant"), by way of a notice of application filed on December 24, 2014 seeks the following orders:
1. The claimant, Charles Joseph Ferguson, be granted interim defined access or parenting time with the children, namely: Kendall Ann Ferguson, born May 8, 2002 and Kelly Marie Ferguson, born October 26, 2006 (hereinafter referred to collectively as "the children" and individually as "Kendall" and "Kelly");
 2. That an alternate caregiver clause be added to the existing order whereby the parent who is exercising parenting time with the children, if unavailable, would first look to the other parent before engaging the assistance of a third-party caregiver.
 3. Costs.
- [2] This application was brought by way of short notice and without the necessity of the parties attending a judicial case conference.
- [3] The respondent, Shannon Alexandra Ferguson ("the respondent"), in her application response consented to an order for an alternate caregiver clause. The parties agreed that the parent exercising parenting time if unavailable to care for the children for a period of longer than three hours would first look to the other parent before engaging the assistance of a third-party caregiver.
- [4] I make that order.

- [5] The parties are in disagreement as to what the defined access of the claimant should be.

BACKGROUND

- [6] On February 11, 2014 I released reasons on this file which are indexed as Ferguson v. Ferguson, 2014 BCSC 216. Among other things I ordered that the respondent would have exclusive occupancy of the family home located in Kitimat, British Columbia and that the claimant would have until February 28, 2014 to vacate that residence.
- [7] I also ordered that the children would reside primarily with the respondent and that the claimant would have reasonable and generous access to the children.
- [8] The parties began living together February 1, 1996. They were married on April 10, 1999. They separated on January 1, 2014.
- [9] The respondent is employed as a social worker with the Ministry of Family and Child Services.
- [10] The claimant is employed as a firefighter and paramedic by the local district. He is also self-employed as a property manager for private residences and apartment buildings. POSITION OF THE PARTIES
- [11] The claimant, who works four days on and then has four days off, seeks to have access to the children from 5 P.M. on his first day off until 5 P.M. on the fourth day that he has off. He says that this would mean the children would be in his care for three days out of every eight days.
- [12] The claimant has recently vacated the family residence and found a new residence.
- [13] On February 15, 2014 the claimant sent an e-mail to the respondent informing her of his wishes for access to the children once he moved out of the home.
- [14] The respondent seeks to have the access phased in on an interim basis with the claimant having access every other day during the week and overnight every second weekend with the children. The respondent also seeks to have a parenting coordinator appointed.
- [15] The parties exchanged e-mails between February 15, 2014 and February 19, 2014 dealing with the issue of the claimant's defined access.
- [16] On February 19, 2014 the respondent sent the following e-mail to the claimant: Chuck, Until you are out of the home and the children and I have had some time to get comfortable with all that has gone on it is my suggestion that for the first few weeks after you move out, you have the children during evenings/days when you are not at work, but they come home after supper and for bedtime. Then on the weekend they can have overnight. This ensures the girls have their own home and bed while they get comfortable with the idea of living in two homes, rather than one. In a few weeks after things have had a chance to settle, we will discuss formal arrangements VIA our lawyers. I am not comfortable, nor do I feel safe, negotiating with you directly. . . .

- [17] Mr. Cluff, counsel on behalf of the claimant, sent a letter on February 18, 2014 to Mr. Hudson, counsel for the respondent, outlining his client's position with regard to access to the children.
- [18] Mr. Hudson responded to that letter and, among other things, informed Mr. Cluff that because he had been sick and had court commitments he would get to his letter in the following week.
- [19] Mr. Cluff, on behalf of the claimant, filed a requisition to have this matter heard on short notice on February 24, 2014. DISCUSSION
- [20] As I stated in *Ferguson v. Ferguson*, supra, the parties are volatile with one another and clearly do not get along.
- [21] This is the second application to come before the courts without the parties attending a judicial case conference.
- [22] The test in considering any parenting arrangements for the children is the best interest of the children. Section 37 (2) of the Family Law Act, S.B.C. 2011, c. 25, summarizes a number of factors which must be considered: To determine what is in the best interest of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationship between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's needs for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibility;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed towards child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family member;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

- [23] The claimant is in effect seeking a shared parenting regime. Despite the order that I made February 11, 2014 and before he had even moved out of the family home he began making those requests.
- [24] The children are young. Their parents have very recently separated. In my view it is not in the best interests of the children to immediately thrust them into a situation where they are living between two houses. This is not to say that a shared parenting regime could not occur at some point but at present it is premature to make such an order.
- [25] I had hoped that the parties would be able to cooperate in determining the claimant's access to the children. This has not occurred.
- [26] The parties, in my view, would benefit greatly from a judicial case conference.
- [27] The claimant will have interim defined access to the children in the following manner:
1. Monday through Friday on alternating days from after school until 7 P.M.
 2. Alternating weekends from after school on Friday until 7 P.M. on Sunday beginning the weekend of March 21, 2014.
- [28] This schedule will continue for 60 days from the date of this order or until the hearing of the judicial case conference whichever comes first at which time either party will be at liberty to apply to change the schedule.
- [29] The respondent has also suggested that a parenting coordinator would be beneficial. The claimant is opposed to this primarily because they have not received notice of any application to that effect. In my view without an application before the court I will not make such an order.

CONCLUSION

- [30] The claimant will have interim defined access to the children Monday through Friday, on alternating days from after school until 7 P.M. The claimant will also have interim defined access to the children on alternating weekends from after school on Friday until 7 P.M. on Sunday starting the weekend of March 21, 2014. This schedule will continue for 60 days from the date of this order or until the hearing of the judicial case conference whichever comes first at which time either party will be at liberty to apply to change the schedule.
- [31] There will be a further order that the party exercising access with the children, if unavailable for a period longer than three hours would first look to the other parent to care for the children before engaging the assistance of a third-party caregiver.
- [32] The respondent has been largely successful in this application and will have her costs in the cause. "R. S. Tindale, J."

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