
CANADA / JUDGMENT

G.M.W. v. J.M.M.

2015 BCSC 739

COURT

Supreme Court of British Columbia

DECIDED

6 May 2015

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2015 BCSC 739 G.M.W. v. J.M.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

G.M.W. v. J.M.M.,

2015 BCSC 739

Date: 20150506

Docket: E046874

Registry: New Westminster

Between:

G.M.W.

Claimant

And

J.M.M., W.R.M. and M.A.M.

Respondents

Before: Master Caldwell

In Chambers

Reasons for Judgment

Counsel for the Claimant:

S. Bobb

Counsel for the Respondent:

P. Daltrop

Place and Date of Hearing:

New Westminster, B.C.

March 24, 2015

Place and Date of Judgment:

New Westminster, B.C.

May 6, 2015

- [1] There are a total of five Notices of Application before me in this matter. They relate to parenting issues and schedules, child support and s. 7 expenses, the appointment of a counsellor and a parenting coordinator, communication issues, various procedural matters and restraint on the removal of the child from the province of B.C. The claimant and the respondent have each filed seven affidavits plus sworn financial statements; there are 13 affidavits filed by collateral individuals and a further three affidavits of legal assistants.
- [2] The parties are each 51; they married in September of 2007 and separated in May or June of 2014 although the material seems to indicate that the parties were separating over an extended period of time dating back as far as 2011. There is one child born of the parties, E., who is 7 years of age. The claimant has a 15 year old daughter, A., from a previous marriage.
- [3] The claimant is a registered nurse, works at VGH Monday to Thursday, inclusive, from 8:30 a.m. to 4:30 p.m. and earns approximately \$69,000 before deducting union dues.
- [4] The respondent is a chiropractor who operates through a professional corporation from offices on Columbia St. in New Westminster. His work schedule is Tuesday (noon to 8:00 p.m.), Wednesday and Thursday (8:00 a.m. to 6:00 p.m.), Friday (8:00 a.m. to 5:00 p.m.) and Saturday (8:00 a.m. to noon). He claims earnings of approximately \$65,000 for the calendar year 2014 - coincidentally the year of the separation - but his past income pattern shows income of \$103,000 (2011), \$71,000 (2012) and \$99,000 (2013). The average of the three most recent years is approximately \$78,300. The average of the three years immediately preceding the separation is approximately \$91,000.
- [5] The parties entered into a consent order on July 22, 2014 which provided for them to communicate directly with each other only regarding parenting arrangements and then only via e-mail and text; it further provided that the respondent was to have parenting time with E. "every Monday to Tuesday morning" and "from Saturday to Tuesday morning every 2nd week". The order was made "without prejudice to any party and on an interim basis until further order or agreement".

- [6] A detailed review of the sworn material of the parties discloses little, if any, common ground. The great majority of the material consists of allegations of misfeasance levelled by each party against the other, which allegations are categorically denied by the alleged wrongdoer. There are however certain aspects of these affidavits and the submissions of counsel which have been of assistance in reaching my conclusion in these applications and I will make reference to those later in these reasons.
- [7] The collateral witness affidavits also provide a wide range of prospective and allegations regarding the parties.
- [8] The respondent's sister, S.M., provides her observations regarding several incidents of explosive anger, confrontation and violence by the claimant. These range from incidents of screaming, physical gesturing, the presence of bite marks on her brother's arm, poor house-keeping and physical assault on her person. It is notable that she also comments on having noticed "a significant change in my brother's personality" over the past several years which has seen him move from "pleasant, polite and outgoing with a good sense of humour" to being "severely withdrawn"; she attributes the cause of the change to the claimant's presence in her brother's life. Of some interest, she seems to find it unreasonable that the claimant was upset about being forbidden entry into the garage and furnace room of the house in which she lived. Those spaces were being used by her father and brother respectively for their own purposes because the claimant "had commandeered all other cupboard space".
- [9] Ms. D.B., a long-time friend and patient of the respondent, notes observing both parties in their parenting roles with E. and describes the respondent as warm and loving and the claimant as more distant. In a later affidavit Ms. D.B. relates one or more conversations which she had with E., which conversations led her to report various concerns to the Ministry of Children and Family Development. That report resulted in an investigation by the Ministry and a finding that there were no concerns regarding E. in the care of the claimant. She also related her version of events as they occurred at one of E.'s soccer games (February 15, 2015) and one of her subsequent practices (February 19, 2015). She indicates that the claimant made various negative comments about the respondent's presence at the game and that E. appeared tense and strained while playing. She also relates her version of the subsequent conversation between the respondent and E.'s coach at the February 19 practice and describes the coach as provocative.
- [10] E.'s soccer coach, C.B., also provided two affidavits. The first was sworn in January of 2015 and indicated that the respondent attended approximately two games and practices prior to the 2013 Christmas break but that she had not seen him for the last half of the 2013/14 season or any of the 2014/15 season. She observed that E. only attended games every other week. C.B.'s second affidavit was sworn in early March and related to the conversation which took place at E.'s practice on February 19. It is, not surprisingly, somewhat different than the version contained in Ms. D.B.'s affidavit. She says that she was focussed on E.'s best interests. She says that the respondent indicated that his presence at the prior game and this practice had to do with C.B.'s first affidavit. She says that she told the respondent that the presence of

both parents clearly created a tense situation which could be avoided by their arranging to attend on an alternating basis so that they were not in attendance at the same time and she notes that such arrangement appears to be in place and is working well.

- [11] K.L., a neighbour of the parties, describes her interactions with her young neighbour E. and provides her observations of the parties and their relationships with their daughter.
- [12] S.M. and C.S., both friends of the claimant, provided affidavits; both were made up almost entirely of hearsay related to what the claimant told them over the years or double hearsay as to what others told one or other of them about what they had heard from others. Except as to their evidence regarding their actual observations, I reject their evidence and give it no weight.
- [13] D.K. is associated with the respondent by way of the Canadian Armed Forces Reserves. He speaks to the respondent's general character and observed use of alcohol. He provides no evidence regarding the respondent's family relationships or parenting.
- [14] J.L. is a friend and patient of the respondent. She provides her observations of the positive relationship between the respondent and E.
- [15] W.R.M. is the respondent's father. He provides evidence almost exclusively directed to financial matters in general and the New Westminster home in particular.
- [16] Certain aspects of these collateral affidavits have also been of assistance to me in this matter.
- [17] After a full review of the affidavit material and the submissions of counsel it is virtually impossible to catalogue all of the evidence, allegations, denials and cross-allegations however the following is a list of some of the matters which I have found particularly useful in assessing the material and reaching my conclusion.
- (1) The original interim order regarding parenting was made on July 22, 2014, some eight months before this matter came before me. Although that order was stated to be made without prejudice pending further court order, it is impossible and a complete fiction to pretend that the passage of eight months has not established a status quo situation. Eight months is approximately 10% of E.'s entire life and approximately 80% of her life since the parties separated.
- (2) Although related to the first issue, the parties have been actively involved in the litigation process since separation and since the July order. They have been represented by counsel throughout. They have actively focussed on dealing with the issues relating to the claimant's claim to an interest in the New Westminster home in preference to the issue of E. and her situation under the existing court ordered parenting schedule. The parties are not to be blamed for that decision but they must accept that their decision in that regard has reinforced the parenting status quo.

- (3) The overall material seems to indicate that the claimant was the parent more involved with the parenting of E. It is not disputed that the claimant took maternity leave following E.'s birth and that she returned to work outside of the home on a part-time basis thereafter for several years. The respondent purchased a chiropractic practice while the claimant was on maternity leave or shortly thereafter and worked sufficiently hard to maintain and grow the practice to financially support the family. The neighbour, K.L., observed considerable interaction between the claimant and E. but not with the respondent; she never saw E. in the respondent's car. The soccer coach, C.B., observed that the claimant was actively involved in bringing E. to soccer; during the past two seasons she saw very little of the respondent and noted that E. was absent from games on alternating weekends. The respondent only began attending soccer after C.B.'s first affidavit outlining these observations and the result was an increase in tension and upset to E. While there is evidence from the respondent himself as to his involvement with E., overall I am satisfied that the claimant was E.'s primary caregiver during the relationship and that she has continued in that role since separation and the order of July 2014.
- (4) The respondent appears to be more prone to plan and carry out actions calculated to improve or increase his position of control within the family situation at the expense of others, including E. During an argument, he calls his sister to come to his home to witness the argument. He controls the areas of the house to which the claimant has access and enlists a family member to justify such action because the claimant has "commandeered all other cupboard space". He removes tap handles and window openers, including openers in the children's bedroom; while the respondent explains that this was done in the winter of 2013/14 because the children left the windows open, his subsequent text sent June 12, 2014 reads "If u cannot leave the house secure (windows left wide open) as I have pleaded many times then u do not deserve to the privilege of having them". He fails to take E. to soccer games but, apparently unilaterally, registers her in gymnastics and horseback riding and uses those activities as incentive to have E. spend more time with him. When he does attend a soccer game and practice in early 2015 he is accompanied by a person whom he introduces as his "[M.]"; that person, two weeks earlier, initiated a report to the Ministry of Children and Family Development regarding E. which, when investigated, resulted in a finding of no concerns on the part of the Ministry. He delivers written notice of separation to the claimant at the same time as his father delivers a notice of eviction to the claimant; this is accomplished at the family home in the company of a police officer. This overall pattern of increasing confrontation in an attempt to control or win rather than focussing on de-escalation and problem solving is not in anyone's interest, least of all E.'s.
- (5) Both on the material and as acknowledged by counsel in submissions, it is clear that there is open dislike of the claimant on the part of the respondent's family. The evidence of S.M. and of W.M. is that they, and other family members, disliked and did not trust the claimant from the outset of the parties' relationship; that situation has not improved but rather appears to have worsened over the years. The allegations by the claimant that these feelings are being made known to E. seem, in all of the circumstances, to have the air of truth. This is certainly

not in E.'s best interest.

- [18] On balance and for the purposes of this application I find that the claimant is and should remain, on an interim basis, the parent primarily responsible for parenting E. The existing order, although made without prejudice, has set in place a status quo of long standing. That order as it relates to a parenting schedule can properly be adjusted in order to provide more certainty as to when the respondent's parenting time should start and finish and where the transition points should be; it would not, in the circumstances of this case, be appropriate to completely re-write it to a shared parenting regime as sought by the respondent.
- [19] The above comments relate only to the ongoing parenting plan during the school year; the previous order did not address the summer period and I believe that it is appropriate to make provision for a summer parenting schedule.
- [20] The parties will share joint custody pursuant to the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) the respondent's regular parenting time, during school, schedule will be:

Week 1

Monday pick-up from school if a normal school day until Tuesday delivery to school;

Sunday 7:00 p.m. if Monday is a school holiday, until Tuesday delivery to school, with the respondent picking E. up at the claimant's home by attending to curbside outside the residence, remaining in the vehicle with the windows closed and having E. walk unaccompanied from the residence to the respondent's car;

Week 2

Saturday 9:00 a.m. until Tuesday delivery to school with the Saturday pick-up occurring in the same fashion as outlined above, save and except that the respondent may have an agent, known to the claimant, pick E. up if the respondent is working;

- [21] The rotation will begin with this weekend, May 9, 2015, being week 1, E. will be with the claimant this weekend and will be with the respondent Monday May 11, after school until Tuesday May 17th when the respondent will deliver her to school.
- [22] If Mother's Day falls on a Sunday that would see E. with the respondent under the above schedule, the claimant will have E. from 9:00 a.m. until 7:00 p.m. on Mother's Day; she will pick E. up at the beginning and drop E. off at the end of the day by way of the same mechanism outlined above except that it will occur at the respondent's residence. This will be precisely mirrored if Father's Day falls on a Sunday which would see E. with the claimant on that day under the normal schedule so as to ensure that E. is with the respondent on Father's Day.
- [23] The summer schedule is proposed as a shared regime; that proposal is not seriously opposed. The summer schedule will be a 7 on - 7 off schedule. The summer schedule will commence on E.'s last Friday of school. The claimant will have E. with her from that Friday

at 7:00 p.m. until the following Friday at 7:00 p.m. The party to whom E. is transferring will be responsible for the pick-up on the same terms as outlined above for the regular schedule transfers. This rotation will continue on a week about basis throughout the summer break. The Friday before the Labour Day weekend will end the summer schedule in that the Labour Day weekend will become week one of the resumed normal rotation.

- [24] The parties will have telephone or electronic (e.g. Skype) contact with E. once on each "away" day (excluding exchange days) for up to 15 minutes between 7:00 p.m. and 7:30 p.m.
- [25] I have heard the parties' positions on a counsellor for E. and agree that a counsellor is appropriate. I have considered the expressed concerns about Mr. Findlay in that regard however I am satisfied that Mr. Findlay is extremely experienced in these types of situation and is the appropriate person to undertake that role. There will be an order appointing him as E.'s counsellor; the parties will cooperate in scheduling appointments for E. with Mr. Findlay and will transport her to and from such appointments during the time that E. is with each of them. The parties will share the cost of such counselling equally.
- [26] There is a request for the appointment of a parenting coordinator; in the circumstances of this case I am of the view that the involvement of such a person would be a waste of time and money and I dismiss that application.
- [27] For purposes of child support, I would fix the claimant's Guidelines income at \$69,000. Based on his past pattern of income, I am satisfied that the respondent is intentionally under-producing since the separation and would fix his Guidelines income at \$85,000. Basic child support is set at \$793 per month commencing January 1, 2015 and continuing until further order or agreement of the parties.
- [28] On an interim basis, I would approve soccer and private school as appropriate s. 7 expenses to be shared by the parties proportionate to their respective incomes. Soccer is approved as it is an activity of long standing and is one which it appears was approved by both parents. Private school may ultimately fall outside of approved s. 7 expenses, but for now I consider it appropriate that it be maintained for E.'s best interests and stability of social and other circles until a final parenting regime can be established following trial or agreement. Based on the fixed Guidelines incomes, the claimant will be responsible for 45% of these two expenses and the respondent will be responsible for 55%.
- [29] The parties are ordered to each provide the other with a schedule of all of E.'s activities on a monthly basis and by the beginning of each month. E. is not to be enrolled in any further or new activities unless agreed by the parties or as approved and ordered by the court.
- [30] Neither party may remove E. from British Columbia without written consent of the other or court order.

- [31] The parties, through counsel, are ordered to fix as early a trial date as may be conveniently accommodated by counsel and will allow appropriate time for Dr. England's report and other trial preparation. Examinations for discovery are ordered to be concluded 90 days before the start of the trial however both parties will have liberty to apply in the event of unforeseen circumstances.
- [32] The parties have each enjoyed partial success and suffered partial defeat; costs will remain in the cause.

"Master Caldwell"

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