
CANADA / JUDGMENT

Goldsmith v. Holden

2020 BCSC 1163

COURT

Supreme Court of British Columbia

DECIDED

31 July 2020

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2020 BCSC 1163 Goldsmith v. Holden

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Goldsmith v. Holden,

2020 BCSC 1163

Date: 20200731

Docket: E171343

Registry: Vancouver

Between:

John Charles Goldsmith

Claimant

And

Meg Cleary Holden

Respondent

Before: The Honourable Madam Justice MacNaughton

Oral Reasons for Judgment

Counsel for the Claimant:

J. Cudmore

(Via telephone)

The Respondent, appearing in person:

M. Holden

(Via telephone)

Place and Date of Trial/Hearing:

Vancouver, B.C.

July 22, 2020

Place and Date of Judgment:

Vancouver, B.C.

July 31, 2020

- [1] The parties were in a 12-year common law relationship from August 2002 to September 2014. They are the parents of 12.5-year-old twin daughters (the "Children"). The Children start high school in September 2020, and the parties disagree about where the Children should attend school.
- [2] When the parties separated, the claimant moved out of the family home, and the Children and the respondent have continued to reside in it.
- [3] Master Vos issued a detailed interim order with respect to these parties on September 28, 2017 (the "Vos Order"). Pursuant to one of its terms, the Children were interviewed by Sandra Jennings for the purpose of a Hear the Child Report. Ms. Jennings reports that the Children have a warm relationship with both parents and wish for their parenting arrangements to stay the same or for them to have more flexibility in the arrangements. The parenting arrangements the Children were commenting on were set out in Master Vos' interim order.

The Mediated Settlement

- [4] The parties achieved a mediated settlement of all of their family issues in January 2018. The terms of settlement were incorporated into a final order filed in court on April 17, 2018 (the "Final Order"). As it relates to the Children, the Final Order confirmed that they were both guardians, established a near 50/50 parenting regime, and provided that each parent could exercise all of the parental responsibilities under s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [5] At para. 33 of the Final Order, the parties agreed that neither party would move the Children's residence outside an agreed geographical boundary which was within a 15 kilometer radius of the family home located at 713 - 428 West 8th Ave. in Vancouver B.C. (the "AGB").

- [6] As it related to decisions about the Children's schooling, the Final Order provided that the parties were to consult with each other and use their best efforts to reach agreement: para. 17(a).
- [7] Paragraph 34 of the Final Order provided for the appointment of a parenting coordinator ("PC"), on or before April 1, 2018, for a term of no less than 24 months. The PC was to be a mental health professional and a neutral third party. At paras. 34(j)(iv)-(v) of the Final Order, the PC was given jurisdiction to resolve disputes about the Children's education and, if the parties were unable to agree, to make decisions about which school the Children would attend within the AGB.
- [8] The Final Order also provided that, with respect to all major decisions relating to the Children, the parties would use their best efforts to come to agreement, taking into account the Children's needs, to the extent that these are age-appropriate, and, if unable to agree, refer the dispute to the PC: para. 17(d).
- [9] Up until now, the parties have been able to agree about where the Children went to school.
- [10] In addition to seeking an order about where the Children are to attend school in September, the respondent's notice of application also sought an order that, for future court proceedings affecting their rights, the Children be appointed a legal advocate from the Child and Youth Legal Centre of the Society for Children and Youth of BC. She did not pursue this relief in the argument before me. In any event, I would not have made such a prospective order on the evidence in the record. There are other ways in which to have the Children's views communicated to the court, and the level of parenting conflict in this family would not currently have warranted such an order.

The Parties' School Preferences

- [11] The respondent seeks to enroll the Children in Moscrop Secondary School ("Moscrop"), which is close to the residence in Burnaby where she will be living in mid-August 2020. She says that that is where the Children wish to go to school. I note that the respondent's new residence is within the AGB set out in the Final Order as it is approximately 10.5 Km from the former family home. I accept that the respondent has good reasons moving, including housing affordability and proximity to her employment at Simon Fraser University.
- [12] The claimant seeks to refer the matter of where the Children attend school to a PC in accordance with what he says was the parties' intent as reflected in the Final Order. Alternately, he submits that they should continue to attend École Jules Verne ("JV") where they attended for Grade 7. In the final alternative, he says that they should be enrolled in an English program at Kitsilano Secondary School ("KSS").

The History of the Children's Schooling

- [13] The respondent is fluently bilingual. The claimant is not. Nevertheless, the parties agreed to have the Children attend francophone schools. They attended École Rose des Vents from K-6 and JV for Grade 7. Although administered separately, both schools are located in the same building in the South Cambie neighbourhood of Vancouver. Students are bused from all over the Lower Mainland to attend JV. JV provides instruction through to Grade 12 and offers an International Baccalaureate ("IB") program in French.
- [14] Because the Children were educated in French, historically, the claimant has been less involved in the Children's education. The respondent has assisted with homework and attended at school activities. She has served on the parent teacher association and, at one point, due to a shortage of teachers, assisted in teaching social studies at the Children's school. I accept, on the evidence, that the claimant has assisted the Children where he was able and, in particular, with their math skills. The Children have been accepted into an advanced math program at JV for September.
- [15] In July 2019, the respondent advised the claimant that the Children were interested in applying to the Vancouver School Board mini-school program for Grade 8 beginning in September 2020. Mini-school enrollment is based, in part, on an entry exam. The Children attended extra schooling to prepare them for the examination. They were also interviewed for the program. They hoped to be accepted into the Windermere mini-school program located at the Windermere Secondary School on E. 27th Avenue in Vancouver. Both parents participated in the application process.
- [16] The Children were not accepted into the mini school program. Although the respondent suggests in her 4th affidavit that the claimant may have negatively impacted the Children's application for the mini school program, he refutes that suggestion, and there is no independent evidence to support it. He did take the Children to one of their interviews. It is not necessary for me to make a finding in that regard.
- [17] The claimant proposed that the Children attend the French immersion program at KSS. For the purposes of the French immersion program, the claimant lives within the catchment area for the school.
- [18] At various times, the claimant has expressed discontent about the Children attending francophone schools and his wish to improve their educational opportunities in English. He has also expressed his dissatisfaction with the fact that he is not as able to assist the Children with their education as he would like. In particular, as it relates to JV, he wrote in a March 5, 2020 email:

JV is also an option. But on that note, French school means I'm limited in my involvement and it's something I've never been pleased about. While I don't discount the benefits of the girls' French education, there are other aspects of the curriculum to consider.

[19] The respondent responded in a March 9, 2020 email:

The key for our quiet kids is a low student teacher ratio, as far as I'm concerned. JV offers that. The only real hesitation for next year that the girls have is But enough parents have made noise about this this year that I am pretty confident [that the matter has resolved].

[20] The claimant wrote in reply on the same day. He said, in part:

While JV is a fair option, the girls would benefit by a program that offers strong education in English along with a multitude of other important classes in the core curriculum and extra curricular activities. This will provide the best opportunities for a successful future including English based universities.

[21] On March 10, 2020, the claimant wrote:

Today I spoke with a parent of a Kitsilano French immersion grad whose son had attended École Bilingue. She attested that Kits gave him a great education. The small class sizes were helpful in keeping him challenged even with his proficiency in French. I'm encouraged that this [is] a realistic option. and the best choice for our children. JV just doesn't offer the same opportunities and there is a reason many parents are choosing other schools.

[22] The respondent replied on March 11, 2020. In part, she wrote:

John, this is not surprising because [École Bilingue] is also a French immersion school so that makes sense for those kids to continue in Fr immersion. The VSB French immersion program is designed for children for whom French is a second language. French is our daughters' mother tongue, one of the languages they learned as infants and still speak and understand with their mother at home. Immersion is therefore a step backward for them.

Every public school in BC offers the same curriculum. The francophone school where they have also excelled and are currently enrolled remains a great option given their small class sizes, the girls reputation and rapport with friends and staff, and also their accelerated math program, which is unique. JV also offers the only French IB program in the school board, and you mentioned you were a fan of IB, this would also really distinguish them on their university applications.

[23] The claimant responded the same day. He wrote, in part:

While I value the girls' French education, I believe it's important to ensure their English is also at a level where they can excel in university and their careers. If they need to advance several grades so their French language also advances, that is the best of both worlds. They could even consider taking other languages of value.

I would also like to be involved in the girls' education to a greater extent than I've had in past years due to French education. I think this too, will be beneficial. While the IB program is of interest and I won't discount the value, it's not the only consideration. Kits is a great school with lots of opportunities that the smaller JV doesn't offer.

- [24] The respondent contacted KSS about the possibility of the Children's enrollment in its French immersion program and was advised that the program is full for September 2020 admission and there is a waiting list.
- [25] The respondent does not live within the catchment area for the English program at KSS, and the Children would have to apply to attend a cross-border school. There is no guarantee that they will be able to attend KSS in September 2020.
- [26] As I have said, the respondent now seeks to enroll the Children in Moscrop near her new home. In her submissions, she said that Moscrop is within walking distance of her new home and the Children can walk or bike to school. She says that the school has a strong reputation for health sciences, a number of language options, a dance program, and many extracurricular options, all of which are appealing to the children and the parents. It offers an attractive advance placement program which has more flexibility than the IB program. She submits that it is the best available alternative for the Children's high school under the circumstances, and will allow them to continue to learn and develop their many interests in a supportive learning environment and to make new friends in their new neighbourhood with their mother.
- [27] The respondent proposes a revised parenting plan to facilitate the Children's attendance at Moscrop. The respondent's proposal would result in the Children spending less time with their father.
- [28] Based on these facts, I now turn to the parties' submissions and my conclusions
- Should the matter be referred to a PC?
- [29] I have concluded that it is not appropriate to refer the determination of where the Children will attend school to a PC. That is because the parties do not currently have a PC.
- [30] Following the Final Order, the parties signed a parenting coordination agreement appointing Mark Smith, a Registered Social Worker, as their PC for a 24-month period beginning March 29, 2018. Parenting coordination did not go well. During Mr. Smith's tenure, the claimant complained of intrusions into his parenting time by the respondent. This eventually led to two determinations by Mr. Smith. The respondent participated in the first determination but not the second. As a result of the respondent reporting Mr. Smith to his professional regulatory body, he resigned as the parties' PC.
- [31] In a notice of application dated March 17, 2020, the respondent sought an order terminating the parties' parenting coordination agreement and an order setting aside Mr. Smith's second determination. The respondent argued that Mr. Smith had not been properly appointed and that he demonstrated bias against her and proceeded unfairly. She believed that his decisions were punitive against her.
- [32] In response, the claimant sought the appointment of a replacement PC and that the respondent pay her share of Mr. Smith's outstanding fees.

- [33] Both applications were heard by Justice Brundrett on July 7, 2020. Justice Brundrett refused to terminate the parties' parenting coordination agreement. He noted that Mr. Smith's term had expired and there was no PC currently in place. He also refused to set aside Mr. Smith's second determination. Justice Brundrett ordered the respondent to reimburse the claimant for the fees he had paid to Mr. Smith on the respondent's behalf.
- [34] Finally, Justice Brundrett declined to appoint another PC because he concluded that, unless the parties agreed to cooperate with a PC as a dispute resolution mechanism, the work of the PC would be very challenging. Justice Brundrett left it to the parties to agree on the retention of a further PC on consent in accordance with the terms of the Final Order. No such agreement has been reached.
- [35] In my view, referring the decision about where the Children will go to school in September to a person who has yet to be appointed, and may never be, is an exercise in futility. An immediate decision is necessary as the parties need to begin planning for the start of school in September. I also note that despite the parenting coordination term in the Final Order, there is no requirement that the parties engage the PC, or any other dispute resolution process, before applying to court.

Where should the Children go to school?

- [36] As the parties cannot agree on the Children's schooling, the decision must be made by the court. Pursuant to s. 41(d) of the FLA, decisions respecting a child's education are parental responsibilities. The parties agree that, where the parties cannot agree, the court has jurisdiction to make the decision.
- [37] As is the case with all parenting decisions, the only consideration is the best interests of the Children as set out in s. 37 of the FLA.
- [38] Although, in her submissions, the respondent said that the Children wished to attend Moscrop, it is of note that there is no evidence, in either party's numerous and lengthy affidavits, about the Children's wishes. In their communications, both parents comment about what they understand the Children's wishes to be, but they do not agree.
- [39] It is also of note that both parents appear to have altered their positions with respect to their views about the appropriate school. The claimant's expressed concerns about his inability to be involved in the Children's schooling, and his desire that they improve their English skills, have been supplanted by his stated desire that the Children continue to attend JV. The respondent's expressed satisfaction with JV, and the fact that the Children are well settled and well respected by their teachers and friends at JV, have been supplanted by her stated desire that the Children attend Moscrop where the curriculum is neither French nor French immersion.

- [40] Thus, I must make this determination on what I find to be in the Children's best interests. Although not binding on me, some of the questions considered in *Burke v. Bouzanne*, 2020 ONSC 3336 provide a helpful framework for analyzing the factors under s. 37 of the FLA.
- [41] In this case, the Children are francophone. They have been educated for the last eight years in affiliated French schools. The Children have done well and, at the end of Grade 7, were accepted into an advanced math program for September. JV has an IB program which, before this crisis, was of interest to the claimant and will set the Children apart when it comes to university applications. Both parents are able to participate in the Children's education at JV. Although the claimant has been less involved, he has an advanced degree in mathematics and will be able to assist the Children in the advanced math aspect of their education.
- [42] In addition, continued enrollment at JV is consistent with the parties' joint decision-making to date and will ensure that the Children have stability in their education. Although education at a neighbourhood school may, in some cases, be preferable, these Children have never attended a neighbourhood school and, because of their involvement in Irish dancing, have friends from many different parts in the Lower Mainland.
- [43] In one text exchange, the respondent describes the Children as quite and stated a preference for a small class environment. I have concluded that the small class environment which they have grown used to, in a school in which they are well-known and respected, is in their best interests. Until June 2020 when she advised of her pending move to Burnaby, JV was the respondent's fall back position, second behind the Children's enrollment in a mini school program. She expressed one concern about JV but indicated that she thought it had been resolved. She never expressed any interest in the Children attending an English program. The only thing that has changed is the respondent's move to Burnaby, but parental convenience is not, in itself, a factor in determining the Children's best interests. As enrollment in a mini school program is not a possibility, JV is the best option.
- [44] On the evidence, I see no good reason to disrupt the Children's school placement for 2020. There is no convincing evidence that a change of schools is in the Children's best interests.
- [45] I realize that there will be transportation challenges as a result of the respondent's pending move but see no need to vary the parenting plan to accommodate the respondent's new residence. This is especially so, because the variation proposed by the respondent would reduce the claimant's parenting time.
- [46] In his submissions, the claimant suggested that the respondent should be responsible for the travel necessary for the Children attending JV. I would not make that order. The inclusion of the AGB in the Final Order suggests that the parties contemplated moves within it. As a result, the parties should cooperate to facilitate the transportation required for the Children's continued attendance at JV, and I leave that to them to work out in light of my order.

[47] The respondent is entitled to his costs of this application which was of ordinary difficulty.
"MacNaughton J."

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