
CANADA / JUDGMENT

Goldsmith v. Holden

2020 BCSC 1501

COURT

Supreme Court of British Columbia

DECIDED

16 September 2020

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2020 BCSC 1501 Goldsmith v. Holden

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Goldsmith v. Holden,

2020 BCSC 1501

Date: 20200916

Docket: E171343

Registry: Vancouver

Between:

John Charles Goldsmith

Claimant

And

Meg Cleary Holden

Respondent

Before: The Honourable Madam Justice W.A. Baker

(via Teleconference)

Oral Reasons for Judgment

In Chambers

Appearing on his own behalf:

John Goldsmith

Appearing on her own behalf:

Meg Holden

Place and Date of Hearing:

Vancouver, B.C.

September 16, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 16, 2020

- [1] THE COURT: In this application, the mother of twin girls, Brookelyn Cleary and Penelope Lily Holden-Goldsmith, seeks an order that the children be afforded a legal advocate from the Child and Youth Legal Centre of the Society for Children and Youth of B.C. in any future court proceedings that affect their rights. In the alternative, she seeks an order pursuant to s. 202 of the Family Law Act, S.B.C. 2011 c. 25, that a non-evaluative Hear the Child Report be prepared for the children and that either, Arlene Henry or Sandra Jennings be appointed to prepare such report.
- [2] The children's father opposes a non-evaluative report being prepared. He argues that no report should be prepared to set out the views of the children but, if such a report is to be ordered, he seeks an evaluative report. The father has no specific application before me to seek an evaluative report which would be made pursuant to s. 211 of the Family Law Act.
- [3] The parties had a common law relationship between August 2002 and September 2014. Their twin girls were born on November 3, 2007.
- [4] The parties were able to negotiate a final order dealing with their family law issues in 2018. Before that final order was made, the parties appeared before Master Vos in September 2017 on applications for a number of interim orders. One of those interim orders was a Views of the Child Report prepared pursuant to s. 211 of the Family Law Act. In December 2017 Sandra Jennings, a family law lawyer on the Hear the Child roster, prepared a Views of the Child Report. This was a non-evaluative report which set out the children's views on the parenting arrangements between the mother and father. At the time Ms. Jennings interviewed the children, they were nine years old and a few months shy of their 10th birthday.
- [5] The girls are now almost 13 years old. The mother and father share parenting time with the girls on a roughly equal basis. In the past year, there have been issues arising from the fact the girls are entering high school. The mother moved to a new home in Burnaby. The children have been attending a French language school in Vancouver. An English language school close to the mother's home was put forward by the mother as an option for the girls

to attend high school. The father was opposed to this. The girls also applied for a mini school at Windermere High School. The Windermere option appeared to be supported by both parents, although there were difficulties in finalizing acceptance into that school.

- [6] In July 2020, the parties appeared before Madam Justice MacNaughton to resolve the issue of where the children would be registered for school. The reasons of MacNaughton J. are recorded at *Goldsmith v. Holden*, 2020 BCSC 1163. Madam Justice MacNaughton determined that the children should continue in their French language school and found that there was no convincing evidence that a change of school would be in the children's best interests. In her reasons, she also noted that there was no evidence about the children's wishes before the Court, and that each parent in their communications between themselves set out conflicting views of what the children's wishes were. I note, parenthetically, that since that decision, the parties have been able to negotiate an agreement whereby the children will be attending Windermere High School.
- [7] The mother says that the two children are mature and as they enter their teen years they have strong views on matters affecting them. She is concerned that, if the parties are unable to resolve the issues that may arise in the future, the court should be provided with a statement of the children's views prepared by a neutral third party.
- [8] The father says that the views of the children are important, but that their views are not determinative. Further, he says that he and the mother are capable of receiving the children's views without engaging a third party. He is concerned about drawing the children into litigation between their parents, which he sees as an unhealthy development for them.
- [9] There are a number of mechanisms by which a court can receive the views of a child in family litigation. Section 202 of the Family Law Act allows the court to admit hearsay evidence of a child and give any other direction the court considers appropriate concerning the receipt of a child's evidence. This section is protective of children in the litigation context as it does not require them to be witnesses in any litigation. It allows a neutral third party to prepare a report setting out the child's views and this report can be received by the court notwithstanding its reporting of hearsay evidence.
- [10] Section 203 of the Family Law Act is a more intrusive instrument for the court. It allows a court to appoint a lawyer to represent the interests of a child in the proceeding. This section is used where there is a degree of conflict between the parties which is so severe that it impacts the parents' ability to act in the best interests of the children. An appointment under s. 203 essentially makes the child a party to the litigation. It is not an order which I would make lightly.

- [11] Section 211 of the Family Law Act allows an independent assessor to assess the needs of the child, the views of the child, and the ability and willingness of a party to a family law dispute to satisfy the needs of a child. A section 211 report has an evaluative aspect to it in that it is designed to allow a qualified professional to make an assessment of the views of the child, amongst other things.
- [12] In his reasons in this case, Master Vos referred to a number of cases commenting on the value of the court's finding hearing the views of the child:
24. In *Marsden v. Berkowitz*, an unreported 2012 decision of the British Columbia Supreme Court, the court commented that even though the preparation of such reports may cause an intrusion into the lives of the parties and the child, that inconvenience is far outweighed by the probative value of the evidence with respect to issues that are of great significance to all concerned. The court stated that these reports are almost invariably a valuable source of information for a court faced with the onerous task of making fundamentally important decisions about the welfare of a child in the wake of a marriage breakdown. The court suggested that a broad and generous approach should be taken to applications for reports under what is now section 211 of the Family Law Act and that the threshold justifying the ordering of a report to be set quite low.
25. The respondent referred to *Kowblich v. Hanson*, an unreported decision of the British Columbia provincial Court dated June 14, 2017. That case concerned an application for a views of the child report under s. 211(1)(b) of the Family Law Act in a case that involved a child who was a bit more than nine years old at the time of the application. At paragraphs 25 and 26 the court pointed out that empirical studies suggest that not listening to what children have to say during the divorce process can have negative unintended effects and that not only the content of the report but the process itself may be important to the children. The court ordered that the report be prepared.
- [13] In 2019, Justice Skolrood in *P.J.D. v. W.K.W.*, 2019 BCSC 1188, stated at paragraphs 41 to 43:
- [41] As I will return to below, one of the key factors to consider when determining parenting arrangements is the views of the child or children. A child's views, depending upon his or her age and level of maturity, are regularly considered as part of the "best interests" analysis which is at the core of any parenting decision [citations omitted].
- [42] More weight may be attached to the children's views or wishes depending upon their age and level of maturity. Some cases have recognized that at a certain age, children "vote with their feet", in the sense that they are acknowledged as having the capacity to make choices about preferred parenting arrangements. In such cases, the courts generally recognize the futility of ordering a child or youth to comply with a parenting arrangement with which they disagree, as the child or youth will simply leave either to return to the other parent or go elsewhere [citations omitted].

- [43] The children here are about to turn 13 years old. They are arguably still just shy of the age when they will "vote with their feet". Nonetheless their views carry considerable weight.
- [14] In the case before me, in the last few years, the parents had used the services of a parent coordinator to assist them. The appointment of the parenting coordinator was a term of the final order made in 2018, which required a term of appointment of no less than 24 months. The parenting coordinator is no longer involved with this family. The children were seeing a therapist for a period of time, but that arrangement has also stopped.
- [15] I was provided evidence of text messages written by the girls, and letters written by the girls, expressing their views to their parents. I am satisfied that these girls are mature and capable of clearly expressing their views.
- [16] Further, the mother provided affidavit evidence that the daughters had learned of the Child and Youth Legal Centre ("Centre") from friends they met at school and expressed a desire to contact the Centre. After the mother had a discussion with this friend's parent, she then assisted the children in contacting the Centre. The Centre has had two private videoconference meetings with the children. The mother deposes that the children have formed a supportive relationship with their legal advocate at the Centre. I have no evidence before me from the Centre to indicate that it would be willing to take on the girls as clients. However, the Centre does provide free and independent legal advice to children to assist them in navigating family law disputes.
- [17] The mother also provided evidence of communications with Arlene Henry, QC, who is the chair of the B.C. Hear the Child Society, and Ms. Henry indicated that she would be able to take on the preparation of a Hear the Child Report. The cost for Ms. Henry's services would be in the neighbourhood of \$2,800 to \$3,500. The mother has suggested that Ms. Jennings, who provided the Views of the Child Report in 2017, could also provide another report. No estimate of the cost of a report by Ms. Jennings was provided.
- [18] The mother says that it is her intention to bring on an application to address certain issues regarding the parenting schedule. She wants to have the views of the children heard on that application and this is one of the reasons why she brings this application before me.
- [19] The father consents to an evaluative report being prepared pursuant to s. 202 of the Family Law Act and he suggests a number of professionals who could be engaged for this purpose, including two psychologists and one social worker. The father submits that the mother is engaging in behaviours which suggest she is alienating the children from their father and notes that recently the children have become vocal about changes they wish to seek to their arrangements. I note, parenthetically, that s. 202 is not the relevant section for preparing an evaluative report. That would be s. 211 which is available for those reports.
- [20] I am not satisfied that the recent communication challenges experienced by this family are suggestive of parental alienation, or of stresses on the children sufficient to justify an evaluative report prepared by a psychologist or social worker. Rather, the girls are becoming

teenagers and are resisting the strict routines for parenting time set out in 2018. As children become teenagers, parents need to be flexible and responsive to their changing needs. Schedules and routines may need to be adjusted to reflect the desires and needs of teenagers. Parents need to cooperate with each other and work together to best address the needs and desires of their children.

- [21] Given the age and maturity of these children, I am satisfied that their views should be taken into consideration by the court on any application which may affect parenting arrangements. This is not to say that their views must be taken into account on every application. But where the children have an interest in bringing their views before the court, I am satisfied that a mechanism should be in place to allow that to happen. I should note, also, that resort to the courts on changes to parenting arrangements as the children age and express their views should be a last resort. Parents must make every effort to work out changes cooperatively, taking into account the views of the children before bringing in the application before the court.
- [22] I find that at this time it would be inappropriate to provide the children with their own legal advocate pursuant to s. 203 of the Family Law Act. The children have good relationships with both parents. The parents have had some challenges between them in communicating and recognizing the roles and responsibilities of each of them, but I do not find a level of conflict which would justify an order under s. 203. Further, for the same reasons, I find it is unnecessary to provide an assessment of the children pursuant to s. 211 of the Family Law Act.
- [23] The appropriate section for the order I make is s. 202 of the Family Law Act. It is important that an appropriate mechanism be put in place to ensure that the children do not feel any obligation to contribute to proceedings. Rather, the appointment I make under s. 202 of the Family Law Act will provide an avenue for the children to make their views known, if they so choose. An advocate trained in communicating with children as they negotiate the impact of family law disputes on their lives, is able to help the children understand how any legal issues may impact their lives, receive the views of the children in this respect, and communicate those views to the court.
- [24] Given that the children have established a relationship with an advocate at the Child and Youth Legal Centre and such services are provided to children free of charge, I am inclined to appoint an advocate from the Centre to assist the court in providing the views of the children. However, I do not have any affidavit material or representations from the Centre before me. Ordinarily, I would want to seek submissions from counsel for the Centre on the terms of their appointment.

Order Terms

- [25] I make the following orders.

- [26] I order that counsel for the children will be appointed pursuant to s. 202 of the Family Law Act to advise the children on any court applications which may affect their interests and to communicate the children's views on such applications to the court. My order with respect to the specific terms of the appointment is adjourned to allow a representative for the children to appear before me and speak to such terms.
- [27] I order that a transcript be prepared of these reasons and that this transcript be provided to the mother and father.
- [28] I order the mother to provide a copy of my reasons to the Child and Youth Legal Centre of the Society for Children and Youth of B.C. for the specific purpose of allowing a representative of the Centre to appear before me and speak to the terms of their appointment, if they are prepared to accept such appointment.
- [29] If the Child and Youth Legal Centre is not prepared to accept an appointment in this respect, a copy of my reasons shall be provided to both Arlene Henry, Q.C., and Sally Jennings by the mother. If both Ms. Henry and Ms. Jennings are available to assist, the children will decide which lawyer they would like to have represent them and that person will appear before me to speak to the terms of their appointment.
- [30] Both the mother and father have leave to make submissions on the hearing to settle the terms of appointment.

"Baker J."

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