

CANADA / JUDGMENT

Grootjes v. Grootjes

2020 BCSC 1130

COURT

Supreme Court of British Columbia

DECIDED

31 July 2020

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2020 BCSC 1130 Grootjes v. Grootjes IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Grootjes v. Grootjes, 2020 BCSC 1130 Date: 20200731 Docket: 41351 Registry: Penticton Between: David Ashley Grootjes Claimant And Kathryn Louise Grootjes Respondent Corrected Judgment: The front page of the judgment was corrected on August 19, 2020 Before: Master J.M. Keim Reasons for Judgment Counsel for the Claimant: K. Ginther Counsel for the Respondent: L.M. Bosdet Written Submissions Received from the Claimant: June 18, & July 6, 2020 Written Submission Received from the Respondent: June 29, 2020 Place and Date of Judgment: Penticton, B.C. July 31, 2020

- [1] This application was made by way of written submissions seeking an order that the respondent not permit any contact, direct or indirect, between Thijs Alister Grootjes, born June 12, 2009, Davina Ann Grootjes, born August 26, 2012 (the "Children") and Arthur Cuncannon. The claimant alleges that Mr. Cuncannon is not an appropriate person to be around the Children as he has acted inappropriately and violently towards the Children on at least two occasions.
- [2] The respondent is opposed to the order being sought and alleges that Mr. Cuncannon has had a long-standing relationship with the Children, that it is a positive relationship and to remove Mr. Cuncannon from the Children's lives would be detrimental to their best interests.
- [3] By way of background, the parties have been separated since July 2018 and share custody of the Children. The parties have an older son, Dante Finlay Grootjes, born May 7, 2007, but the claimant currently does not have any relationship with Dante. I could see nothing in the evidence to indicate that he is taking any steps to repair his relationship with his eldest son.
- [4] In regards to the Children, their time is shared between the claimant and the respondent on alternating eight-day rotation with each parent.
- [5] Mr. Cuncannon is involved in a romantic relationship with the respondent, but does not reside with the respondent.

- [6] The claimant alleges that on December 4, 2019, when the Children were at the respondent's residence, but the respondent was not home, Mr. Cuncannon became angered by Thijs, and picked up Thijs by the front of his shirt forcefully pushing him into the couch. In support of this allegation, the claimant attached a photocopy of photograph of Thijs, which he says depicts a bruise on Thijs' chest.
- [7] The respondent says that she was advised by both Mr. Cuncannon and the parties' older son, Dante, that when Thijs refused to turn off a video game to go to school, Dante turned off the video game which got Thijs upset and he threw his controller. Mr. Cuncannon yelled at Thijs and, when Thijs tried to run past him, Mr. Cuncannon grabbed Thijs' shirt. In the process, Mr. Cuncannon slipped on something on the floor causing Thijs to fall back into the couch while Mr. Cuncannon fell on the arm of the couch.
- [8] It is impossible on an application such as this to make findings of credibility and, therefore, I am unable to resolve the differences in the evidence before me. However, it appears that at a minimum, both parties agree that Mr. Cuncannon became very angry with Thijs and, in some way or another, physical contact between Mr. Cuncannon and Thijs occurred.
- [9] The respondent is very clear in her evidence that Mr. Cuncannon called her and told her about the incident immediately and they discussed the inappropriateness of his behaviour towards Thijs. As a result of that incident, the respondent ensured that Mr. Cuncannon was not left alone with the Children at any time and he undertook three months of grief counselling to assist him with managing the emotions that he was feeling as a result of his mother's death in September 2019.
- [10] The claimant, in his affidavit, states that as a result of this incident Thijs started to have trouble in school in December 2019. The respondent disputes that stating that Thijs has had difficulties with school ever since he began kindergarten. Thijs had a psychological education report done in grade 1 and two intakes with Child and Youth Mental Health Services.
- [11] In early March 2020, the respondent then advised the claimant that she was once again permitting Mr. Cuncannon to be around the Children without her being present. The claimant did not agree with this plan, but sought no recourse at that time.
- [12] On April 25, 2020, when the respondent was present, there was another occasion in which she says Mr. Cuncannon yelled inappropriately at Thijs when Thijs swore at the respondent and called her a "bitch". She says that there was no physical contact between Mr. Cuncannon and Thijs, but the claimant disputes that and says that when he questioned the Children independently, they both described contact between Mr. Cuncannon and Thijs, and that Thijs was pushed up against a wall.
- [13] After the incident in April 2020, Mr. Cuncannon started anger management counselling and did not have any contact with the Children, primarily at the insistence of the claimant.

- [14] On May 25, 2020, the respondent was visited by two social workers from the Ministry of Children and Family Development (the "Ministry"). The social workers interviewed her about both the December and the April incidents and also interviewed all three children separately from the respondent. The respondent deposes that she was told that the social workers were content with her handling of the situation, had no protection concerns and advised her that they would be closing their file. She has not had any further contact from the Ministry, at least not up to the date of swearing her affidavit, which was June 26, 2020.
- [15] The respondent goes on to depose that since the April incident, Thijs has initiated contact with Mr. Cuncannon of his own volition, and that he specifically requested that Mr. Cuncannon come on a camping trip on the weekend of June 12, which had been long-planned.
- [16] The respondent suggests in her materials that although she is confident Mr. Cuncannon has a positive relationship with the Children, and that it would not be in their best interests for him to be cut out of their lives, that she would be prepared to agree to an order whereby Mr. Cuncannon would not be left alone with the Children for a further period of six months, during which time he would continue to address any anger management or grief issues. Assuming that there were no further incidents, then Mr. Cuncannon could resume the type of relationship that he had with the Children prior to these two incidents.
- [17] The claimant says that this court has jurisdiction under s. 37 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], specifically s. 37(2)(a) and (g), to make an order prohibiting Mr. Cuncannon from being around the Children as a result of the impact that the family violence has had on the Children and the health and emotional well-being of the Children.
- [18] The respondent argues that the FLA does not apply in this situation since the FLA defines a "family member" as either:
- (a) the person's spouse or former spouse,
 - (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
 - (c) a parent or guardian of the person's child,
 - (d) a person who lives with, and is related to,
 - (i) the person, or (ii) a person referred to in any of paragraphs (a) to (c), or
 - (e) the person's child,
- [19] Both parties acknowledge that Mr. Cuncannon does not live with the respondent and, therefore, the respondent argues that Mr. Cuncannon does not fit under the definition of a "family member".
- [20] I am satisfied that s. 37(1) of the FLA provides this court authority to make an order regarding contact with a child.

[21] It is trite law to say that this court must occupy itself solely with the best interests of the Children in weighing the evidence in this matter. When looking at the evidence that is not disputed, I draw the following conclusions:

1. Mr. Cuncannon has been in the Children's lives for well over two years;
2. There have been only the two incidents of inappropriate behaviour reported in all of that time;
3. The situation was thoroughly investigated by the Ministry and no protection concerns have arisen as a result of their investigation.

[22] This court recognizes that the respondent has correctly characterized Mr. Cuncannon's behaviour on the two instances as completely unacceptable. While children should ideally never be subjected to inappropriate, physical contact or be yelled at by adults for relatively minor infractions, conflicts do occur between adults and children. When conflict does occur, it is important that children see the adult taking responsibility and working to repair the relationship.

[23] It appears, on the evidence, that Mr. Cuncannon fully realizes that it is his responsibility to ensure his relationship with the Children is healthy and positive. In an adult-child relationship, it is always the adult who needs to step up and address the situation. I am satisfied that Mr. Cuncannon is doing so.

[24] I conclude that it is not in the Children's best interests for Mr. Cuncannon to simply disappear from their lives. I do agree, however, that it is appropriate to continue to monitor the situation for a continued period of time to ensure that Mr. Cuncannon appropriately addresses any anger or grief issues that may continue to colour his relationship with the Children.

[25] I, therefore, make the order that the respondent not permit Thijs Alister Grootjes, born June 12, 2009 and Davina Ann Grootjes, born August 26, 2012, to be in the company of Arthur Cuncannon without the respondent being present for a period of six months from the date of this order.

[26] Although the claimant was not successful on this application, it does appear that the respondent was not prepared to agree to any limitations on Mr. Cuncannon's contact with the Children until after the claimant's application was filed. Therefore, I make no award of costs to either party. "Master J.M. Keim" MASTER KEIM

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Prepared on 26 October 2026 · Esheria