

CANADA / JUDGMENT

Hayre v. Bagri

2020 BCSC 1316

COURT

Supreme Court of British Columbia

DECIDED

2 September 2020

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2020 BCSC 1316 Hayre v. Bagri IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hayre v. Bagri, 2020 BCSC 1316 Date: 20200902 Docket: E055203 Registry: New Westminster Between: Jagdeep Kaur Hayre Claimant And Mukham Singh Bagri Respondent Before: The Honourable Justice Branch Oral Reasons for Judgment Counsel for Claimant: S. Sihota Counsel for Respondent: No appearance Place and Date of Hearing: New Westminster, B.C. September 2, 2020 Place and Date of Judgment: New Westminster, B.C. September 2, 2020

- [1] This is an ex parte without notice application to require return to the claimant applicant of the parties' 11-year-old child A (the "Child"), presently in the home of the respondent father in Kamloops. The Child is habitually resident with the claimant in Surrey. There is a second child who is not a subject of this application.
- [2] The concern is that the claimant has given evidence that the Child has advised the claimant of the following facts:
- a. the respondent has guns in his home contrary to an earlier protection order, and he has been allowing the Child to play with the guns;
 - b. the Child has expressed that he wants to come home;
 - c. there are seven other people in the home with the Child; and
 - d. the Child is scared to say anything to anyone in Kamloops about his concerns about staying in the respondent's home.
- [3] The claimant has driven to Kamloops in an effort to retrieve the Child, but has been unsuccessful, and the police have declined to assist.
- [4] Given the urgency of the matter, heard after court hours by telephone, I ordered that the claimant could give oral evidence by phone after having been sworn. She confirmed the contents of a draft affidavit, marked as Exhibit 1, and supplemented this evidence with certain oral testimony.

- [5] There was a further draft affidavit of Aneet Grewal provided to me (the 'Grewal Affidavit'), but I did not consider this affidavit given that it was unsworn and included without prejudice communications. The balance of the Grewal Affidavit provided court orders that the court was able to rely upon without the use of the affidavit.
- [6] On its face, the available evidence obviously raises grave concerns.
- [7] The claimant mother has engaged in very poor decision making that has put the Child in the present situation. She has acted in a way that has undoubtedly made it difficult for the police to navigate the various orders currently in place to determine whether there has, in fact, been a breach that supports police assistance to seize the child and return him to the claimant. However, the test on this application is what is in the best interests of the child. It is not an assessment of the quality of the claimant's decision making, save to the extent that the decision-making may reflect on the best interests of the child.
- [8] Let us first consider the orders in place.
- [9] Most recently, there was an order dated June 9, 2020 (the "June 2020 Order") providing that, inter alia:
- a. the respondent will have supervised and recorded parenting time 30 minutes per week by Zoom;
 - b. commencing June 27, 2020, and continuing every second Saturday, the respondent will have in-person professionally supervised parenting time with the children for a duration of 4 to 6 hours between 12 p.m. and 8 p.m.;
 - c. the respondent will be at liberty to have his in-person professionally supervised parenting time at the residences of any of his family members or such other locations as the respondent may advise from time to time;
 - d. the claimant will be advised of the proposed location for the visit by 11:59 a.m. on Sunday prior to the in-person parenting time, and will provide her position by 11:59 a.m. on Wednesday as to whether the location is acceptable, but shall not unreasonably withhold her consent. If there is a dispute, the parties should inform their respective counsel so that they may discuss the matter further;
 - e. the in-person supervised parenting time is to be supervised by Jesse Atwal; and
 - f. the order is to be interim and remain in place until an earlier ordered s.211 report has been prepared.
- [10] There is a also change of protection order in place, dated September 21, 2018 (the "2018 Protection Order) that provides, inter alia, that:
- a. the respondent shall not enter into a residence where the children reside;
 - b. the respondent shall not possess a weapon; and

- c. the police can apprehend if the children are wrongfully withheld.
- [11] On the same date, another order was made ("September 2018 Order") that provided that:
- a. the respondent must undertake regular drug testing;
 - b. the parenting time be modified from an earlier JCC order, dated August 17, 2017 ("JCC Order") with respect to parenting time exchanges. As of the date of the September 2018 Order, there was apparently unsupervised parenting time allowed to the respondent; and
 - c. the respondent is restrained from removing the children from outside the Lower Mainland region of British Columbia without prior written and notarized consent from the claimant or further order of the court.
- [12] Going back further in time, there was an ex parte order issued on February 3, 2017 ("February 2017 Order") providing, inter alia, that the primary residence of the children shall be with the claimant. On that same date, the claimant obtained a protection order ("February 2017 Protection Order") preventing the respondent from being within one block of the claimant or contacting the claimant, except for limited purposes.
- [13] Notwithstanding these orders, the claimant has recently engaged in steps that are difficult, if not impossible, to square with the carefully designed structure of these orders. On or about August 4, 2017, the claimant sent the Child to the respondent voluntarily because of problems she was having managing the Child. She states that she had previously sought assistance from counsellors, the Ministry of Children & Family Development ("MCFD"), the police, and his school. MCFD advised the claimant that she needed to take steps to remediate the Child's behaviour or he would or should be enrolled in some type of care program. There was a safety plan put in place, although the claimant suggests that MCFD raised no direct concerns about her parenting.
- [14] The claimant sent the Child to the respondent's home in Kamloops, apparently guided by the recommendation of an elder in their community who suggested the presence of his father might be beneficial. The claimant understood that this would only be for a few days, and this was apparently the Child's understanding as well.
- [15] According to the evidence before me, this step by the claimant to send the Child to Kamloops complicates the proceeding in several ways:
- 1. The Child is with the respondent outside of his court ordered parenting time;
 - 2. The Child is with the respondent without the court ordered supervision;
 - 3. The Child is outside of the Lower Mainland in a situation where there is no written or notarized consent of the claimant and no court order; and
 - 4. The Child is located in a home where there is reason to believe that the respondent has guns, notwithstanding the 2018 Protection Order.

- [16] As noted above, although the claimant has a role to play in the fact that the structure designed by the court orders has been undercut, the only issue for the court on this emergency application is to provide for the best interests of the child.
- [17] The court's best expression of its assessment of the best interests of the Child is contained in the court orders already in place. Given that those orders have been undermined, the Court has an interest in putting the parties and the Child back into a situation consistent with the court orders. The Court also has safety concerns given the evidence of the fact that the Child has apparently been allowed to play with guns.
- [18] Hence, on in interim ex parte basis, I am prepared to order the following:
1. The respondent immediately return the Child to the claimant.
 2. If satisfied that the respondent has wrongfully withheld the Child from the claimant, a police officer may apprehend the Child and take the Child to the claimant.
 3. For the purpose of locating and apprehending the Child, a police officer may enter and search any place where he or she has reasonable and probable grounds to believe that the Child will be.
 4. The claimant provide a copy of all the court orders in this matter to MCFD, and advise MCFD that the court has requested that MCFD consider whether any further steps need to be taken to protect the Child.
 5. The claimant provide a copy of these reasons through her counsel to MCFD as soon as they are delivered to her counsel.
 6. The claimant swear, file and serve to the respondent Exhibit 1 at the earliest opportunity.
"Branch J."

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