

CANADA / JUDGMENT

# I.J.G.P.G. v. K.M.

2018 BCSC 2468

## COURT

Supreme Court of British Columbia

## DECIDED

21 December 2018

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2018 BCSC 2468 I.J.G.P.G. v. K.M. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: I.J.G.P.G. v. K.M., 2018 BCSC 2468 Date: 20181221 Docket: E044091 Registry: New Westminster Between: I.J.G.P.G. Claimant And K.M. Respondent Before: The Honourable Madam Justice Jackson Oral Reasons for Judgment In Chambers Counsel for the Claimant: N. Bulatovic Counsel for the Respondent: A. Lessing Place and Date of Hearing: New Westminster, B.C. December 21, 2018 Place and Date of Judgment: New Westminster, B.C. December 21, 2018

## INTRODUCTION

- [1] This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.
- [2] For the purposes of background, this case involves a family dispute between the parties under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The trial of this matter occurred over the course of ten days between November 2015 and April 2016, and dealt with, among other things, child support and parenting arrangements. In reasons issued on June 10, 2016 and indexed at I.J.G.P.G. v. K.M., 2016 BCSC 1072, Madam Justice Arnold-Bailey made a number of orders including, but not limited to, parenting time and child support (the "Trial Order"). The issues on these applications arise from the Trial Order. APPLICATIONS
- [3] These reasons pertain to three notices of application (collectively referred to as the "Applications"). The first notice of Application ("NOA 1") was filed by the claimant on November 22, 2017. The second ("NOA 2") was filed by the claimant on September 13, 2018. The third notice of application ("NOA 3") was filed by the respondent on August 22, 2018.
- [4] I received the claimant's response application for NOA 3, but did not receive the respondent's response to either NOA 1 or NOA 2, although I requested them. I was advised by the claimant's counsel that the respondent had provided her with a response to NOA 1, but she was never served with a filed (or unfilled) copy of a response to NOA 2. Counsel for the respondent could not confirm and did not remember filing a response to NOA 2.

- [5] I was advised the respondent had provided counsel for the claimant with an unfiled affidavit the day before the hearing. The timing did not allow the claimant an opportunity to respond to the evidence and therefore I did not review it and have not considered it in my reasons on the Applications. NOA 1
- [6] In NOA 1, the claimant seeks, amongst other things, the following: · the appointment of a parenting coordinator pursuant to the Trial Order; · an order related to the child's counselling as recommended by the s. 211 report; · an order that the parties are to strictly follow the Trial Order; · an order that the child's passport be kept by each parent on a six-month rotation basis; · an order that the parties produce their financial statements; and · an order removing the certificate pending litigation from the claimant's town house.
- [7] With respect to the appointment of a parenting coordinator, I was advised during submissions that the claimant is content to deal with this aspect of NOA 1 in the context of NOA 3, as the respondent seeks a similar relief.
- [8] The claimant also seeks an order that the parties execute a consent for their child to receive counselling as recommended in the s. 211 report prepared by Dr. Ronald LaTorre. Counsel for the respondent advised verbally that this aspect of NOA 1 is opposed. Until I am provided with the filed response to NOA 1, which I understand exists somewhere, I am going to adjourn this aspect of the application generally. In the meantime, I would be satisfied if the parties resolved this matter before it comes back to me.
- [9] NOA 1 seeks an order that the passport of the child be held in a six-month rotation with each party. The Trial Order states the child's passport is to be kept in counsel for the respondent's office, Mr. Aaron Lessing, for the first 12 months after the order, and then is to be kept by a third party as agreed on by the parties. While the claimant conveyed a preference for six-month rotation, there did not appear to be any other basis for the proposed change. In my view, there is no reason to change the Trial Order. If the parties do not agree Mr. Lessing should be the third person holding the child's passport, then a different person, who is agreeable to both parties, should be chosen in compliance with the Trial Order.
- [10] The claimant also seeks an order that both parties comply with and strictly follow the Trial Order. I find this to be unnecessary because compliance with court orders is always required. Counsel for the claimant, who was not the counsel who filed the original NOA 1, was in agreement. Therefore make no order with respect to that relief.
- [11] The claimant also sought production of financial information from the respondent. NOA 2 sought similar, but more detailed, relief and I will address this aspect of NOA 1 when I address NOA 2.
- [12] Finally, the claimant also seeks the removal of the certificate pending litigation ("CPL") on the claimant's town house located at Unit 27-16772 61st Avenue, Surrey British Columbia. Initially, I understood this aspect of NOA 1 had been abandoned by the claimant, as I was not taken to any evidence indicating there are CPLs on the property. However, counsel for

the claimant advised there are two CPLs on the property. Therefore, due to a need for further evidence, I adjourn this issue generally. If counsel for the parties wish to resolve this matter between them in the interim, so much the better, but when it comes back before the Court, I expect there to be evidence relating to the actual title and any encumbrances on the property. NOA 2

- [13] As noted earlier, in NOA 2 the claimant seeks orders for disclosure of the respondent's Form F8 Financial Statements with the necessary attachments, including the respondent's complete financial statements for his business for 2015, 2016 and 2017, as well as the statements for various financial accounts of the respondent for the years 2016, 2017 and 2018. In my view, all of the documents requested are relevant to future child support obligations and potential necessary adjustments to that aspect of the Trial Order. In addition, as pointed out by counsel for the claimant, this information will also be of assistance with respect to some other issues, which I will address shortly, about which the parties do not seem to agree, including choices regarding s. 7 activities of the child (as referred to in the Federal Child Support Guidelines, SOR/97-175). The respondent's evidence is that he has needed to borrow significant amounts of money in order to fund these activities. Accordingly, all of the documents requested in NOA 1 and NOA 2 are to be produced by the respondent. Those documents should be provided by the respondent within 45 days of today's date.
- [14] NOA 2 also sought orders respecting the conduct of the parties, pursuant to s. 225 of the FLA. In particular, the claimant sought orders that the parties would: a) put their child's best interests before their own interests; b) encourage their child to have a good relationship with the other parent and speak to their child about the other parent in a positive and respectful manner; c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in communication with each other or in front of their child; d) not question their child about the time spent with the other parent beyond simple conversational questions; e) not discuss with their child any inappropriate adult, court or legal matters; and f) not blame, criticize or disparage the other parent to their child (collectively the "Conduct Orders"). The claimant's request was for reciprocal Conduct Orders and counsel for the respondent advised those reciprocal Conduct Orders were not opposed. Therefore I make those orders in the terms set out in NOA 2. NOA 3
- [15] In NOA 3, the respondent seeks orders to produce documents in the Director's possession under the Child, Family, and Community Service Act, R.S.B.C. 1996, c. 46, orders pertaining to the sale of the property, and orders relating to a parenting coordinator. In addition, the respondent also seeks an order requiring the claimant to pay a fine pursuant to s. 230 of the FLA for not complying with the provisions in the Trial Order pertaining to the appointment of a parenting coordinator.

- [16] With respect to the records in the possession of the Director, I was advised this issue has already been addressed by a previous order, although I have not seen that order. Therefore, I make no order with respect to that relief sought.
- [17] With respect to the order sought pursuant to the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 for the sale of the property located at 16672 61st Avenue, in Surrey, British Columbia, there was conflicting evidence before me regarding whether there was any equity in that property. I am mindful of s. 71.1(1) of the Court Order Enforcement Act, which states: Subject to section 71.2, the principal residence of a debtor is exempt from forced seizure or sale by any process at law or in equity if the value of the debtor's equity in the principal residence does not exceed a prescribed amount.
- [18] This section does not apply to a corporate debtor or a debtor who is a party to a proceeding in respect of a mortgage: Court Order Enforcement Act, s. 71.1(2), but that exception does not apply in this case.
- [19] I have grave concerns about making an order for the sale of this property, given this is the family home in which the child lives with his mother during her parenting time. In addition, I am unclear from the evidence whether s. 71.1(1) of the Court Order Enforcement Act would preclude me from making such an order. Therefore, I am going to adjourn this aspect of the application. That is not to say the order would not be made if there are other funds available to pay and Ms. Garcia is simply refusing to pay, but further evidence and submissions with respect to the effect of s. 71.1(1) is required.
- [20] NOA 3 seeks an order that the claimant be fined \$3,000 for her failure to comply with the Trial Order pertaining to the appointment of a parenting coordinator pursuant to s. 230 of the FLA. Neither party made submissions with respect to the threshold requirement of s. 230 of the FLA, namely that no other provision in the FLA applies for the purposes of enforcing an order made under the FLA. In any event, I am not persuaded the claimant has failed to comply with the Trial Order with respect to the parenting coordinator. While both parties agree it would be beneficial to have a parenting coordinator, they have not agreed on who it should be, for which I do not fault either party. Rather, based on the evidence, it appears both parties have suggested a few names for a parenting coordinator, some of whom have been unavailable, not the right choice, or have passed away. Therefore, the application for a fine under s. 230 of the FLA is dismissed.
- [21] Regarding the appointment of a parenting coordinator, both parties have made suggestions to each other in the past regarding who they should retain, but as noted, have had difficulty in coming to an agreement. I do not have any evidence with respect to the proposed parenting coordinators' credentials, the cost, or their willingness to accept the retainer to serve as the parenting coordinator for this family. That evidence is necessary to make such an order. Therefore, I also adjourn that aspect of NOA 3, subject to the additional orders which I will now address. Additional Orders

- [22] I make the following additional orders.
- [23] By January 14, 2019, each party is to provide me, in writing, with the names of two parenting coordinators they would accept, who are listed on the roster referred to in the Trial Order. The parties must demonstrate they have made the appropriate inquiries as to who is willing to take on the responsibility and must also provide me with information, which can come from the website, regarding the proposed parenting coordinators' credentials and their hourly rates.
- [24] Also by January 14, the respondent is to file and serve a response to NOA 2, and a copy is to be directed to my attention through trial scheduling. A copy of the respondent's response to NOA 1, which I am advised has been filed but was not provided to me in the application record, is also to be submitted to me through trial scheduling.
- [25] In addition, by January 14, the parties should provide me with written submissions on costs for the Applications. The submissions should not exceed two pages each, one two-page document from the claimant and one two-page document from the respondent.
- [26] Finally, I am seizing myself with respect to the Applications and the remaining outstanding issues.
- [27] MS. BULATOVIC: My Lady, may I just have some clarification with respect to one of the orders?
- [28] THE COURT: Yes.
- [29] MS. BULATOVIC: Because there were two applications by the claimant for financial disclosure, I just wanted to have some clarification as to under which application is the financial disclosure being ordered from K.M.? Is it just the F8, or is it also the additional -- the additional orders that she was seeking in her application in Tab 3 with respect to his bank accounts?
- [30] THE COURT: It is both. So the F8s, I believe, is with respect to the Notice of Application Number 1, it was sought in that context.
- [31] MS. BULATOVIC: Yes.
- [32] THE COURT: And the Notice of Application Number 2 is the itemized document production.
- [33] MS. BULATOVIC: Thank you, My Lady. Thank you for that clarification. "Jackson J."

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Prepared on 29 October 2026 · Esheria