
CANADA / JUDGMENT

J.V.V. v. D.H.L.

2017 BCSC 1278

COURT

Supreme Court of British Columbia

DECIDED

31 May 2017

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.V.V. v. D.H.L.,

2017 BCSC 1278

Date: 20170531

Docket: E151160

Registry: Vancouver

Between:

J.V.V.

Claimant

And

D.H.L.

Respondent

Before: The Honourable Madam Justice Burke

Oral Reasons for Judgment

Counsel for the Claimant:

R. Yousefi

No one appearing for the Respondent

Counsel for the Ministry of Children and Family Development:

C.P. Hahn

Place and Date of Trial:

Vancouver, B.C.

May 29-31, 2017

Place and Date of Judgment:

Vancouver, B.C.

May 31, 2017

- [1] THE COURT: These are my oral reasons for judgment. I reserve the right to edit or add to them; the substance will, however, not change.
- [2] It is important that a decision in this matter be rendered sooner rather than later. The reasons, therefore, will be brief. They do not contain the detail that otherwise might have been included.

INTRODUCTION

- [3] Ms. V. commenced this family law proceeding in Supreme Court on April 29, 2015. Ms. V. seeks parenting time, parental responsibilities, child support, spousal support and property division. The case involves troubling allegations of violence. This has caused the Ministry of Family and Children Services to be involved.
- [4] Three separate court proceedings in both the Provincial and Supreme Court have arisen as a result of the disputes between the parties; including proceedings initiated by the Ministry.
- [5] Ms. V. has applied for a number of orders under the Family Relations Act, R.S.B.C. 1996, c. 128, arising from her separation from Mr. L. The couple began living together in a marriage-like relationship in August 2012 and initially separated in April 2015. After a period of attempted reconciliation, they entered into a final separation in December of 2015.
- [6] Along with a number of requested orders, the most important concerns that of the guardianship of the couple's daughter, A. A. was born on October 16, 2013 and is currently three and a half years old. At present, the Ministry has temporary custody of A. under the Child, Family and Community Services Act, R.S.B.C. 1996, c. 46. This order is in effect until July 2017. As part of that order, the Ministry has placed the child in the temporary care of Ms. V. As a result, neither party has custody of the child.

- [7] This situation arose in part due to Mr. L.'s conduct in abducting A., after the separation on April 15, 2015, and the continuation of his anger issues. This has raised concerns about the safety of the child. In addition, Mr. L. has subjected Ms. V. to verbal and physical abuse, some of which has occurred in the presence of the child. The Ministry has therefore been involved with the family since April 2015, following the previously mentioned abduction of A. by Mr. L.
- [8] At the outset, I note Mr. L. did not attend the trial. He had previously attended the trial management conference. His counsel ultimately advised this court she was no longer his counsel. She indicated, however, she had reminded Mr. L. of this trial in the week before it commenced. An affidavit of service of the notice of trial was also filed as an exhibit in this matter.
- [9] In view of the above, I am satisfied Mr. L. had notice of the trial and its significance. As per Rule 14-7(76), I proceeded to hear the matter in the absence of Mr. L.

ISSUES

- [10] Four main issues were raised in this trial.
1. Should sole guardianship of A. be given to Ms. V.; with supervised access to Mr. L. on certain conditions?
 2. What is the appropriate child support?
 3. Is spousal support due and owing?
 4. What is the appropriate division of assets and debt?
1. Should sole guardianship of A. be given to Ms. V.; with supervised access to Mr. L. on certain conditions?
- (a) Jurisdiction of the Court
- [11] I will not go through the procedural history in detail. It is rather complex and there are many court orders. With respect to the jurisdiction of this court to deal with this matter however, I note:
- In May 2015 Mr. L. commenced proceedings between the parties in Provincial Court. A final consent order of the Provincial Court of October 9, 2015 exists that grants shared parenting to the parties. This consent order is the subject of a variation claim by Ms. V.
 - A Provincial Court order of February 2, 2016 exists whereby the Ministry has temporary custody of the child for three-month periods which it has been renewing. It remains in place at the time of this trial.

- On September 21, 2016, at the judicial case conference in the family law proceedings in Supreme Court in this matter, the Supreme Court ordered all matters in the Provincial Court are to be heard in Supreme Court.
- On November 23, 2016, the British Columbia Supreme Court, by order of Mr. Justice Williams dated November 23, 2016, accepted the Provincial Court orders addressing parenting arrangements as orders of this court.
- In view of this latter point, I accept the claimant's argument that the Supreme Court is the only court with jurisdiction to vary this order. (See s. 194 of the Family Law Act, S.B.C. 2011, c. 25 and S.M. v. V.V., 2014 BCSC 565.)

(b) Guardianship and Parenting of A.

- [12] As per s. 47 of the Family Law Act, an order may be varied if there is a material change in circumstances. A material change is something that would not have been in the contemplation of the parties at the time of the order. In considering whether a material change has been established, I note the following.
- [13] The Provincial Court consent order of October 9, 2015 concerning parenting arrangements was entered into at a time when the parties were attempting to or were reconciled. Ms. V. then sought a final separation in December of 2015. Her concerns about the welfare of A. became sufficient that she concluded the family unit with Mr. L. would not enable her daughter to thrive. Rather, it would pose harm to her daughter.
- [14] Importantly, the behaviour of Mr. L. after that point in time created escalating violence issues with potential harm to A.. This occurred during supervised exchanges between the parties to enable Mr. L. to visit with his daughter.
- [15] I accept the evidence of Ms. V. concerning the escalating family violence issues. Amongst others, there are especially troubling incidents including January 7, 2016 where Mr. L. jumped on the hood of the car of Ms. V.'s mother who was transporting A. from daycare, to prevent her from doing so. The police intervened in this situation. There was also a troubling incident in August 2016 when Mr. L. arrived without supervision for the exchange of A. He simply took A. from Ms. V. and pushed her to the ground.
- [16] At the end of that difficult day when Mr. L. finally returned A. to the Ministry office, Ms. Lacharite, a team leader in the Ministry, described A. as sobbing in a corner for 30 minutes before she recovered. The police were also involved in the recovery situation. As noted, Mr. L. had earlier abducted the child from Delta, British Columbia, when Ms. V. initially separated from him in April 2015. Mr. L. and A. were found later that day in Merritt, British Columbia. Mr. L. was given a suspended sentence for these actions.
- [17] Ultimately, when allegations of violence continue to arise and involve or affect a child, the question of material change is overtaken by the best interests of the child.

- [18] Ms. V. seeks therefore to have Mr. L. removed as guardian along with a number of other orders. I must therefore consider as per s. 39 of the Family Law Act, whether Mr. L., despite being a parent, should not be the guardian of A. In the circumstances of this case, I conclude Mr. L. should not be the guardian of A.
- [19] Mr. L.'s behaviour shows poor or no insight into parental responsibilities such that the child's interests are seriously adversely affected. While there is evidence the child is attached to her father, I accept the evidence of Mr. L.'s violent or abusive behaviour against Ms. V., Ms. V.'s mother, and Ministry staff. A. was present when Mr. L. pushed her mother to the ground. She was in the car with her grandmother when he launched himself onto the hood of the car to stop it from proceeding, and has been present when Mr. L. is verbally abusive to Ministry staff.
- [20] Ms. Lacharite also relayed instances in her office where she heard Mr. L. say to A., words to the effect, that the Ministry staff and/or police were "child abusers" or "abductors" and not to trust them.
- [21] These actions in the presence of such a young child are particularly troubling. They demonstrate an individual who does not consider the interests of his young daughter, the effect of which on A. has been aptly described by Ms. Lacharite.
- [22] I have considered the factors under ss. 37(2)(a) and (b) in assessing the family violence. The child's health and emotional well-being is at risk and the child's need for stability clearly demonstrates that Mr. L. not be considered a guardian. Suffice it to say that these factors demonstrate that the order removing Mr. L. as guardian should be granted. There are many other details which I need not outline as harm to the child in this situation has been sufficiently described for the purposes of the Family Law Act and my decision in this case.
- [23] In view of all of the above, I grant the orders as requested by Ms. V. pursuant to ss. 40 through to 43 of the Family Law Act. These orders are as follows.
- 1) Ms. V. should be the sole guardian of the child.
 - 2) Mr. L. is not a guardian of the child.
 - 3) Ms. V. shall have sole parental responsibilities as set out under ss. 40-43 of the Family Law Act and shall exercise these without the need for the consent of Mr. L. They are:
 - a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
 - b) making decisions respecting where the child will reside;
 - c) making decisions respecting with whom the child will live and associate;
 - d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;

- e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- f) subject to s. 17 of the Infants Act, R.S.B.C. 1996, c. 223, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- h) giving, refusing or withdrawing consent for the child, if consent is required;
- i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- j) requesting and receiving from third parties health, education or other information respecting the child;
- k) subject to any applicable provincial legislation:
 - i) starting, defending, compromising or settling any proceeding relating to the child;
 - ii) identifying, advancing and protecting the child's legal and financial interests; and
 - l) exercising any other responsibilities reasonably necessary to nurture the child's development.
- 4) Ms. V. is at liberty to travel inside or outside of British Columbia with the child without the consent of Mr. L. Ms. V. parents' live in Point Roberts, and therefore there is a need for that liberty.
- 5) Ms. V. is at liberty to apply in obtaining a passport, Nexus card, or travel documentation for the child without the consent of Mr. L.

[24] For the same reasons as I have set out earlier, I conclude that:

- 1) A. shall reside primarily with Ms. V.
- 2) Mr. L. shall not have contact with the child until he provides:
 - a) proof of having taken and completed an anger management course;
 - b) proof of having completed the Parenting After Separation course; and
 - c) proof of having attended classes or counselling catered to teaching him how to co-parent or parent and improve his behaviour in the presence of the child. He shall provide a letter or report indicating that he has attended counselling for at least three months.

[25] With respect to completing a psychiatric evaluation, if Mr. L.'s counsellor is of the view that is necessary or of assistance, that may well become a condition. The letter from his counsellor should indicate he has attended counselling and that he does not need a psychiatric evaluation.

- [26] Subject to these conditions, Mr. L. can have supervised contact through a professional agency with A. once a week for the duration of three to four hours. After six months of consistent supervised contact, the parenting arrangements may be reviewed and adjusted in the best interests of the child. Mr. L. shall also pay for any expenses related to supervised contact.
- [27] I note the position of the Ministry is that if this court makes an order for sole custody to the mother and supervised contact with the father, the Ministry will disengage and discontinue its Provincial Court proceedings.
2. What is the appropriate child support?
- [28] With respect to child support, the court has already imputed an income of \$48,000 to Mr. L. in its order of November 23, 2016. Mr. L.'s income as set out in previous tax returns was:
- a) 2013: \$63,000
 - b) 2014: \$87,000
 - c) 2015: \$52,000
- [29] Mr. L. was ordered to pay monthly child support of \$439 a month from January 2016 to November 2016 as retroactive child support. He has only paid \$350. There are, therefore, arrears of child support of \$4,040 which I order to be paid.
- [30] I conclude retroactive child support in this monthly amount is also owing from May 1, 2015 to September 1, 2015, being the time of the original separation between the couple.
- [31] As Mr. L. has not paid the child support ordered on November 23, 2016, he is now in arrears for those amounts and Mr. L. is ordered to pay retroactive child support for the months of December 2016 to May 2017 in the monthly amounts of \$439.
- [32] Going forward, Mr. L. is ordered to pay child support in the amount of \$439 on the first day of every month, commencing June 1, 2017.

Section 7 Expenses

- [33] Mr. L. is ordered to pay \$100 per month for s. 7 expenses. These amounts will be applied to the matters and activities set out in the application including:
- a) child care expenses;
 - b) medical and dental insurance premiums;
 - c) health related expenses;
 - d) extraordinary expenses for primary or secondary school education; and

- e) extracurricular activities such as swimming, gymnastics, martial arts, art classes, skating, ballet, hockey, any dance classes, multi-sports, languages, health, optometry, emergency health care needs, sports uniforms and equipment. These specifics are set out to prevent any future arguments between the parties as to what this monthly \$100 contribution can be applied to.

Daycare

- [34] Daycare expenses should be shared between the parties. Mr. L. is, however, at liberty to apply to vary that order.

Miscellaneous

- [35] The parties shall exchange tax and income information by June 1 of each year commencing June 1, 2018.

- [36] As I am not able to quantify an amount owing to Ms. V. with respect to the vehicle at issue, I am unable to make an order concerning that issue. I am also concerned that the order requesting the vehicle be seized and sold, will create an escalation in violence.

3. Is spousal support due and owing?

- [37] Ms. V. is entitled to spousal support from May 1 to September 1, 2015, and January 1, 2016 to May 1, 2016 of \$659 per month. That calculation, which is in the low range, can be included in the order.

- [38] After the parties' separation, Ms. V. returned to school to better her education in order to obtain sufficient income for herself and the child. Her tax returns show that her previous income prior to obtaining her legal assistant degree was less than \$25,000.

- [39] I conclude during the time she attended school and after separation, she was entitled to spousal support. Mr. L. was working and should have provided Ms. V. with spousal support.

4. What is the appropriate division of assets and debt?

- [40] Mr. L. shall pay to Ms. V. \$7,000 which represents half of the RRSPs he withdrew at the time of separation.

- [41] Finally, Mr. L. shall pay to Ms. V. \$3,500, being his 50% responsibility for the debts incurred by Ms. V. for family purposes post-separation, i.e. the \$7,000 debt outstanding on the MasterCard.

[DISCUSSION CONCERNING PROTECTION ORDER]

- [42] I also grant a restraining order under s. 183 that Mr. L. be restrained from having any direct or indirect contact with Ms. V. except written communication confirming pick-ups and drop-offs of A. relating to her exchange. That order will continue for two years, at which point Ms. V. will be at liberty to have it renewed. I also grant a protection order under s. 183 that Mr. L. not attend at Ms. V.'s workplace at 999 West Hastings, Vancouver, British Columbia.
- [43] A peace officer may arrest Mr. L. if he or she has reasonable grounds to believe that Mr. L. is in breach of these orders or if he withholds the child in breach of the specific terms of the order.
- [44] MS. YOUSEFI: And lastly, My Lady, I do have submissions on costs, but since it's going unopposed and given his litigation conduct and lack of financial disclosure, lack of response, lack of cooperation, we would be asking for an order for special costs.
- [45] THE COURT: Yes. I understand his troubling behaviour here. I would think in the circumstances, to a certain extent, however, his lack of presence here has shortened the proceedings.
- [46] MS. YOUSEFI: It has.
- [47] THE COURT: As a result, I decline to order special costs.
- [48] Costs are awarded from the commencement of the Supreme Court proceedings to this date.

The Honourable Madam Justice E. Burke

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