

CANADA / JUDGMENT

Jawanda v. Dhaliwal

2017 BCSC 2243

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Supreme Court of British Columbia

DECIDED

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2017 BCSC 2243 Jawanda v. Dhaliwal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jawanda v. Dhaliwal,

2017 BCSC 2243

Date: 20171110

Docket: E50241

Registry: New Westminster

Between:

Sheldon Sundeep Singh Jawanda

Claimant

And

Anjuman Kaur Dhaliwal

Respondent

Before: Master Muir

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

K. Kohler, appearing as agent for C.A. Meghji

Counsel for the Respondent:

N. Deol, appearing as agent for

M.A. Verdun-Jones

Place and Date of Hearing:

New Westminster, B.C.

November 8, 2017

Place and Date of Judgment:

New Westminster, B.C.

November 10, 2017

- [1] THE COURT: This is an application by the claimant, Mr. Jawanda, regarding parenting time with the parties' child, Azadeh Mila Jawanda, born June 1, 2015.
- [2] The claimant seeks increased parenting time, including overnight parenting time, holiday parenting time, and orders regarding shared pick-up and drop-off responsibilities for the child. Other relief in the notice of application, specifically paragraphs 1(c) and (d), paragraphs 3, 4, and 7 were not proceeded with in the interests of time and those are adjourned generally.
- [3] Turning to the background, the parties met in about March of 2010 and were married on October 2, 2010. They separated on August 19, 2015 when the respondent apparently took the child and moved out of the family home without notice to the claimant. The claimant says that, thereafter, the respondent denied him parenting time so that he was forced to bring on an urgent application for parenting time.
- [4] The claimant says that due to the volume of material produced by the respondent, the application was unable to be heard and he was forced to agree to a without-prejudice consent order with conditions and restricted parenting time. As a result, the claimant did not have any parenting time with his daughter until September 3, 2015 under conditions that he considered to be overly restricted and unnecessary.
- [5] The respondent's evidence differs in this regard and she disagrees that she has ever denied appropriate parenting time to the claimant. I gather there has been at least one further application regarding parenting time which, again, could not be heard due to the time estimate for the hearing and which, again, according to the claimant, forced him to consent to a without-prejudice order that he considered too restrictive.
- [6] The present parenting time is pursuant to the consent order made by Master Keighley on February 8, 2017. That order first makes the declaration that the claimant is a guardian of the parties' daughter and then sets out:

2. BY CONSENT, On an interim and without prejudice basis, that the Claimant [will] have parenting time with Azadeh on the following two week schedule, with week two (2) to commence this Thursday, February 9, 2017:
 - (a) Week 1:
 - i. Thursdays from 5:00 p.m. to 7:00 p.m.; and
 - ii. Saturday from 10:00 a.m. to 5:00 p.m.
 - (b) Week 2:
 - i. Mondays and Saturdays from 10:00 a.m. to 5:00 p.m.; and
 - ii. Thursday from 5:00 p.m. to 7:00 p.m.
3. BY CONSENT; On an interim and without prejudice basis the Claimant will perform all of the pick-ups and drop-offs of Azadeh, such exchanges to occur at the Respondent's home;
- [7] I note that the respondent argued that the status quo should prevail and that given there is an interim order in place and there has been no significant change in circumstances, any changes to the parenting regime should await the trial. That, however, ignores the fact that the orders were consented to on a without-prejudice basis. Obviously, that was done so as not to prejudice either party's right to bring an application with respect to parenting time and, in my view, the respondent's position in this regard has no merit.
- [8] The parenting schedule set out in the order of Master Keighley has become impossible due to a change in the claimant's employment. He deposes, beginning at paragraph 17 of his affidavit sworn October 10, 2017:
 17. For the past 10 years I have been working for the Ministry of Children and Family Development as a Youth Mental Health Counsellor. I specialize in child and adolescent psychology, parent-child relationships and cognitive behavioural therapy for anxiety disorders and depression. I have been working in counselling for over 14 years.
 18. In the summer of 2017, I applied for a new position with the New Westminster School District as a Guidance Counsellor. I have been wanting to transition to getting a position at a school because I believe it would be beneficial for Azadeh if I worked the same times as she would be in school (I have always maintained that it was my goal to have a 50/50 shared parenting schedule with Azadeh as I believe this schedule is in her best interests).
 19. Soon after I accepted the position with the New Westminster School Board, I advised the Respondent of my change in employment, and that I would no longer be able to have Azadeh every other Monday. My position with the MCFD allowed me to take every other Monday off, and on those days, I would have a full day of parenting time with Azadeh from 10:00 a.m. to 5:00 p.m.

20. I asked the Respondent if I could switch my every other Monday, to every other Sunday. The Respondent refused. Both myself and my counsel made attempts to switch my parenting time with no avail. I did not want to have to resort to a Court Application for this.
21. Since the Respondent would not agree to me switching my days, I advised my counsel to send a letter to the Respondent, advising her and, since she is not agreeable to a change, my parents, would be receiving Azadeh during my parenting time. This way, they would be able to bring Azadeh during my lunch hour so I could at least spend an hour with her.

The claimant attaches correspondence from counsel advising them of this. That did not come to pass.

[9] On March 16, 2017, a consent order was made by me with the following terms:

2. BY CONSENT, Pursuant to Section 211 of the Family Law Act, Dr. Larry Krywaniuk will be jointly retained by the Claimant and the Respondent to complete a full report, as well as an interim report on the issue of the Claimant receiving an immediate overnight parenting with the child, AZADEH MEELA JAWANDA, born June 1, 2015 (hereinafter referred to as the "Child")
4. BY CONSENT, the Claimant and the Respondent agree to follow the recommendations as set out by Dr. Krywaniuk in his interim report regarding the issue of the Claimant receiving an immediate overnight parenting time of the Child, however should either party take issue with Dr. Krywaniuk's proposed recommendation, the party taking issue may set down an application on 2 days' notice (subject to mutually convenient dates of counsel), however until such time as the Application is heard, the parties will follow the recommendations as set out in the interim report . . .

[10] Dr. Krywaniuk was allegedly delayed in producing his report due to the lack of cooperation of the respondent. That is denied. He has now produced the contemplated interim report. It is dated September 13, 2017 and is worth quoting at length. It is addressed to counsel for the parties and I am going to read the whole thing:

Thank you for asking me to see this family for a Section 211 Parenting Assessment. This family consists of the father, Sheldon Jawanda, the mother, Anju Dhaliwal and their daughter Azi, who has just turned two years old. My understanding is that a brief interim report around the issue of overnight visits for Azi with Mr. Jawanda is required.

I was able to have a conversation around this issue with Ms. Dhaliwal and then made a visit to Mr. Jawanda's home on September 9, 2017 when Azi was present.

I understood from Ms. Dhaliwal that Azi continues to sleep with her mother and not in her own bed in her own room. I also understood that Ms. Dhaliwal continues to breast-feed her at night, although mostly for comfort. Mr. Jawanda told me that he has not had Azi at his home overnight but that he does have regular visits with her.

When I visited Mr. Jawanda at his home, he and Azi had just arrived. The home is a fairly standard three-bedroom home with the main living area on the upper floor. It is appropriately equipped and appeared to me to be well cared for, clean and reasonably well organized. Azi has her own room with an appropriate crib and clothing appropriate to her visits. Mr. Jawanda told me that Azi has not yet had naps in her crib but that she usually falls asleep on a couch in the living room.

Azi presented as a very bright and articulate two-year-old girl who is full of energy. She was very perceptive for her age and was able to continue a running discussion about what she was doing and the environment around her. She systematically named all of the articles on the mantelpiece and all of the individuals in the pictures that were posted there. She had available to her a number of toys that were appropriate to her age. She took turns with each one in a systematic fashion.

It was clear that Azi was very comfortable with her father and related to him easily and warmly. They were able to engage in appropriate conversations around their activities and it seemed evident that this was a family routine for them. Mr. Jawanda had a nice manner with her and used every opportunity to teach her or extend her awareness, knowledge and vocabulary.

Mr. Jawanda is very aware of Azi's needs and, at various times during the visit asked her if she needed the bathroom/diaper change or if she wanted a snack. Azi seemed very aware of her needs as well and at one point agreed that she would have a snack of pasta, which Mr. Jawanda had prepared. He told me that Azi had some dietary needs and restrictions of which he was fully aware and with which he complied.

As noted, Mr. Jawanda informed me that he has not yet had Azi for overnight visits but that this was one of his goals and feels that this would be an appropriate time for this to happen. As also noted, he has not yet made an attempt to have Azi nap in her crib. Usually, she either falls asleep on the couch or perhaps in his arms.

My overall impression is that Mr. Jawanda is a caring parent and that his home is appropriately prepared for a child of Azi's age.

With respect to the question of overnight visits, I would note that Azi has still not detached from her mother at night and slept independently at her mother's home. She does breast-feed at night although probably more for comfort and closeness than for any other reason. As well, she has not yet had overnight visits at her father's home and has not slept in her own bed in her own room there, even for a nap.

Given the somewhat limited routines around Azi's sleep, my impression is that Azi is not yet prepared for overnight visits and that simply instituting them without appropriate development of sleep routines and sleep habits may result in some difficulties with regard to her adjustment to the experience.

While I feel it is appropriate and reasonable for Azi to begin having overnight visits at the home of her father, it is also my opinion that this requires a careful transition and preparation for this to run smoothly and be successful. In this regard, I feel that the parents should work with a sleep consultant who can provide them with appropriate strategies to ensure that the transition from home to home and bed to bed goes smoothly.

In order for a smooth transition, both parents will need to work in a cooperative and supportive fashion so that Azi develop the kind of sleep patterns and habits that she can build on as she gets older. As part of the process, the sleep consultant can help the parents ensure that Azi is also emotionally prepared for the changes in routines and activities that are likely to occur when she begins to stay overnight at her father's home. This will include issues associated with breast-feeding. It will be important that each parent supports this transition and help build her confidence in making this adjustment to her routines. The sleep consultant will be in the best position to develop a timeline and schedule for the transition to overnight visits at Mr. Jawanda's home.

- [11] I conclude, based on the evidence I have seen and the report of Dr. Krywaniuk, that the claimant is a caring and capable father and that he has an excellent relationship with the parties' daughter.
- [12] The claimant submits that the parties should cooperate in preparing their daughter for overnight visits with him. He is concerned, however, due to his perception of the respondent's resistance to him having parenting time, that she will drag her feet. His position is that a date should be set for his overnight parenting time to commence and he seeks that it commence on December 1, 2017.
- [13] The respondent says she is in favour of the claimant having this parenting time, but is concerned that the transition be made properly so that the child is prepared and will not suffer any trauma due to the necessary changes in her life. It is the respondent's position that the sleep consultant should be engaged and should work with the parties to facilitate the change and establish the timetable for it.
- [14] The claimant points out that the child has no emotional or developmental issues and that there is no reason to expect that she will not be able to readily adapt to the necessary changes.
- [15] While I appreciate the positions of both parties and certainly value the assistance of Dr. Krywaniuk, I do not want the retainer of a sleep consultant to delay the increase in time that the child will be able to have with her father. It is certainly generally considered beneficial and codified in the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) that, absent factors which I find do not exist here, the child is to have as much time as possible with both parents. She is at an age now where increased time with the claimant can and should be facilitated.

- [16] It certainly appears to me that, despite what the respondent says, she has limited interest in cooperating and facilitating the claimant's parenting time. I cannot conclude that embracing a process that would allow further delay either due to the sleep consultant's schedule, the unavailability of the parties or their failure to cooperate fully would be in the child's best interests. The best interests of the child are, of course, the only factor relevant here.
- [17] It seems to me that the changes required are obvious. The child needs to learn to sleep independently at her mother's and be weaned from breast-feeding. She needs to become used to sleeping in her crib at the claimant's. There may be recommended procedures for making these changes that I am not aware of. There may be other changes that will assist in making this transition.
- [18] I have concluded that a sleep consultant should be retained, but in a manner that will provide the parties with advice, but not require meetings or consultations or active facilitation. Accordingly, I order that the claimant shall immediately take steps to retain a sleep consultant and obtain recommendations with respect to transitioning the child to overnights with the claimant based on the observations in the report of Dr. Krywaniuk.
- [19] Recommendations of the sleep consultant will be shared with both parties. The parties will make their best efforts to implement the recommendations of the sleep consultant.
- [20] The claimant will pay for the sleep consultant initially with liberty to argue at trial that the cost should be apportioned or allocated to the respondent.
- [21] If there are difficulties in the retainer or ability of the sleep consultant to make the recommendations ordered, there is liberty to apply.
- [22] As to the present parenting schedule, obviously, there are problems with the schedule in place and, as a result, the claimant has missed parenting time and, more importantly, the child has missed having valuable time with her father.
- [23] The claimant suggests that going forward, he should have parenting Thursday evenings and every Saturday and Sunday from 9 a.m. to 6 p.m.
- [24] The respondent works Wednesday, Thursday, and Friday. Thus, she has the benefit of Mondays and Tuesdays off that the claimant does not have. She is reluctant, however, to concede weekends to the claimant as she says that is a time when many children's activities are available and she would miss out on activities with the parties' daughter. I agree that her having some parenting time on weekends with the child is reasonable.
- [25] Thus, going forward, the claimant's parenting time will be as follows.
- [26] This Sunday, November 12, from 10 a.m. to 5 p.m. Thereafter, an alternating schedule, commencing the week of November 13, as follows:
- Week 1 - Thursday from 5 p.m. to 7 p.m., Saturday and Sunday from 10 a.m. to 5 p.m.;

· Week 2, Thursday from 5 p.m. to 7 p.m. and Sunday from 9 a.m. to 6 p.m.

[27] As to the holiday time sought by the claimant, his evidence is that he will have holidays from December 22, 2017 to January 5, 2018. He seeks to have parenting time each Wednesday, Thursday, and Friday during that period instead of the child being in daycare while the respondent works.

[28] The respondent, however, points out that she, too, will not be working during this period. I am of the view that the child's time with each parent should be maximized during this period. I believe that the child would benefit from two consecutive days with each parent.

[29] Thus, the winter break holiday period parenting time for the claimant will be from 9 a.m. to 6 p.m. on the following days:

- December 22 and 23, 2017;
- December 26 and 27, 2017;
- December 30 and 31, 2017; and
- January 3 and 4, 2018.

[30] Assuming that both parties are off work for the same time period during spring break, the same two-two schedule will apply except that the two-day parenting time of the claimant will be continuous and include the overnight period. Thus, it will run from 9 a.m. on day 1 to 6 p.m. on day 2, or as otherwise agreed. If either of the parties have work obligations that prevent this schedule, there is liberty to apply.

[31] Returning to the issue of overnight parenting time, I agree with the claimant that there must be a fixed date for that parenting time to commence. Thus, regardless of the parties' ability to implement any sleep consultant's recommendations, the parenting time schedule will change commencing January 6, 2018. The claimant will have parenting time from Saturday, January 6 at 10 a.m. to Sunday January 7, at 10 a.m. Then there will be alternating weeks. The next week, that is, beginning January 8, will commence week 1.

[32] The schedule will be:

- Week 1 - Thursday at 5 p.m. to Friday at daycare, or if no daycare, to be returned to the respondent by 8 a.m. on Friday; Saturday at 10 a.m. to Sunday at 10 a.m.;
- Week 2, Thursday from 5 a.m. to 7 p.m., Saturday at 10 a.m. to Sunday at 4 p.m.

[33] This is intended to be an interim step to ease the child into overnights with the father. I anticipate that Dr. Krywaniuk's s. 211 report will address his recommended future parenting regime.

- [34] The trial of this matter is scheduled in July 2018. In my view, any further changes to the parenting regime can await the trial, absent a change in circumstances. If the trial does not occur in July 2018 or prior, there is liberty to apply without a change in circumstances to vary the parenting regime.
- [35] The claimant also seeks an order that the parties share the pick-ups and drop-offs of the child. The respondent resists this and seeks that the exchanges begin to be made in a neutral location and that there be an order that the claimant's parents not be involved in the transitions. She pointed to some very dated and isolated incidents in support of this position. It makes sense to me that the parties should share the facilitation of parenting time with each other. This is not a favour being granted to the claimant such that he should have to do all of the legwork.
- [36] The order will go that each party will pick up the child at the start of their parenting time.
- [37] I see nothing in the material that convinces me that a neutral location for the exchanges is required, nor can I see any reason why, if the claimant is not available, that his parents should not be able to pick up the child on his behalf. Either parent should have the option of having someone they trust pick up the child where circumstances do not allow them to do so in person.
- [38] Thus, the order will go that the pick-ups and drop-offs be at the parties' homes or at the child's daycare, should she be there, and that the parties will either pick up the child in person or designate someone to pick up the child if necessary. The designated person must be known to the child and to the other party and, if it is other than a parent or sibling of the party, written authorization must be provided to that person and be shown to the party from whom the child is being retrieved.
- [39] Of course, I expect that the parties and persons involved in the child's life and transfers will conduct themselves as reasonable adults and not create any disturbance for the child. In support of that, I have concluded that conduct orders are appropriate.
- [40] I make the following conduct orders:
1. The parties will put the best interests of the child before their own interests, encourage the child to have a good relationship with the other parent and speak to the child about the other parent in a positive and respectful manner, and make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the child.
 2. The parties will not question the child about the other parent or time spent with the other parent beyond simple conversational questions, discuss with the child any inappropriate adult, court, or legal matters, or blame, criticize, or disparage the other parent to the child.

3. The parties will encourage their respective families to refrain from any negative comments about the other parent and his or her extended family and from discussions in front of the child concerning family issues or litigation.

[41] In my view, neither party has been wholly successful on this application and I would order that costs will be in the cause absent any submissions that you wish to make to the contrary, counsel.

[42] MR. KOHLER: Thank you, Your Honour. My instructions from counsel are to ask for liberty to address costs at a later date, either by written submission or setting a further date where both counsel can -- of record can appear.

[43] MS. DEOL: Your Honour, I have no instructions in regards to costs.

[44] THE COURT: All right, then. I appreciate that you were not counsel on the actual application. So I will adjourn the issue of costs. We will make costs of this application at the discretion of the trial judge and that will resolve that issue. Counsel at the trial can speak to it. Is that sufficient?

[45] MS. DEOL: Yes, Your Honour.

[DISCUSSIONS RE ORDERS MADE]

[46] MR. KOHLER: Your Honour, I am so sorry to interrupt. I just want to make one point on the order you have made with respect to costs being adjourned to the trial judge. While I am not intimately familiar with this file, my brief understanding is that my client has been forced to bring more than one chambers application and it would be my submission that it would be a more appropriate order to allow counsel to either make written submissions or reappear on the issue of costs in advance of the trial because, in the event that trial is adjourned, it could be a while before my client has the opportunity to recover those costs. And I know it's been exorbitant, and I think in the interests of fairness, my client, through his counsel, should be allowed the opportunity to make submissions to the Court, whether that be by counsel, in person or by written submission in an attempt to recover some of those costs in advance of the trial. Thank you.

[47] THE COURT: All right. There will be leave for the parties to file written submissions with respect to costs. Those submissions must be filed with the registry in Vancouver and directed to my attention by November 24, 2017.

[48] Is that satisfactory? All right. Thank you.

"Master Muir"

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