

CANADA / JUDGMENT

K.G. v. D.G.

2020 BCSC 2294

COURT

Supreme Court of British Columbia

DECIDED

25 September 2020

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2020 BCSC 2294 K.G. v. D.G. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: K.G. v. D.G., 2020 BCSC 2294 Date: 20200925 Docket: E201110 Registry: Vancouver Between: K. G. Claimant And D. G. Respondent Before: The Honourable Mr. Justice Edelmann Oral Ruling Re: Application for Various Orders to Vary and Enforce a Separation Agreement In Chambers Counsel for the Claimant: M. Sodagar A. Hamati (A.S.) Counsel for the Respondent: A. James Place and Date of Hearing: Vancouver, B.C. September 23, 2020 Place and Date of Ruling: Vancouver, B.C. September 25, 2020

- [1] THE COURT: This is an application under the Family Law Act and the inherent jurisdiction of the Court to for various orders to vary and enforce a separation agreement between the applicant and the respondent. I am giving oral reasons in this matter in order to provide a timely decision. I will edit these reasons for clarity and to add references to the legal sources should a written version be requested. I do not intend to canvass in great detail the issues between the parties as there is broad agreement on most of the terms sought in the order.
- [2] There are three children of the marriage, but the most contentious issue is in relation to S., who is currently 15 years old.
- [3] I have reviewed the voluminous affidavits filed by both parties. In my view, this is a circumstance in which both parents appear to be genuinely devoted to their children, and to S. in particular. However, the history of their relationship and the acrimony between various family members has led to a situation in which the respondent's involvement with S.'s mental health issues has at times become an impediment to her best interests. While I do not find any intention to act against S.'s best interests by the respondent, it is clear on the materials before me that at this time his involvement will impede her ability to access the types of counselling and psychological assistance she requires.
- [4] I note in particular that S. does not want her father involved with her psychological care, and it appears likely that she will not participate fully, if at all, in any care plan in which he is involved. Given her age and maturity demonstrated to the mental health professionals who have treated her pursuant to the Infants Act, RSBC 1996, c223. I find that S.'s views should be given substantial weight in relation to her psychotherapeutic care.

- [5] However, I find that the order being sought by the claimant is too broad, in particular given the respondent's training and practice as a pediatric pathologist. In my view, it continues to be in S.'s best interests that her father be involved in decision-making with her mother about medical care.
- [6] In my view, the issue of consent to the extracurricular activities was specifically dealt with in the separation agreement and should be given weight by this Court. Although I accept that the respondent's past conduct in relation to the separation agreement has been problematic and that he has breached various terms of that agreement, I do not find that this should result in the ability of the claimant to incur costs without consultation or consent. In my view, the inclusion of the term of the separation agreement that reasonable consent not be withheld will underline what is expected of both parties in this respect. Should reasonable consent be withheld, that issue can be dealt with at that time.
- [7] I will therefore make the following order with respect to S.'s care:
1. The respondent shall refrain from and shall not seek access to any psychotherapeutic records for S., including records from psychiatrists, psychologists and counsellors, except with S.'s prior written consent, with the exception of information about prescription medications to which he would otherwise have lawful access.
 2. The respondent shall refrain from and shall not seek access to mental-health records for S. except with her prior written consent.
 3. The respondent shall refrain from seeking mental-health information related to S. directly or indirectly from either of the other two children without her consent.
- [8] The claimant may seek and consent to therapy and counselling treatment for S. as required without the prior consultation or consent of the respondent. This does not include consent to the prescription of drugs or medication. I acknowledge that those would be medical interventions in any event. So if there is a disagreement about the wording, perhaps I can hear from counsel afterwards. Both the claimant and the respondent shall refrain from discussing the family law matters with the children and from making disparaging comments about the other party or their family to the children.
- [9] With respect to the other orders, I will follow the ones set out in the notice of application, and I will make the order which is by agreement, which is included at number 4.
4. Pursuant to clause 9 of the Separation Agreement, the Respondent shall have in person parenting time with the Children (the "Parenting Time") as follows:
 - a. That the Respondent has parenting time with whomever of the Children that wish to see him, no less than alternating weekends.
 - b. That the Parenting Time should be at least between noon on Saturdays to 9:30 pm, and on Sundays 11 a.m. to 4 p.m.

- c. The parties should each provide at least 3 months notice in writing for any proposed vacation times.
- d. If there are parenting responsibilities during the Parenting Time or vacation times, the Respondent shall carry out these parenting obligations, e.g. pick up and drop off at activities.
- e. The Parenting time is subject to change as agreed upon in writing between the parties.
- f. The Parenting Time with the Children is to be in accordance with their wishes.

[10] I will make the order at number 5, with the variation that there be four days notice instead of seven days notice.

- 5. Pursuant to Section 28 of the Ontario Children's Law Reform Act, R.S.O. 1990, c. C.12, Sections 24 and 49 of the BC Family Law Act SBC 2011 chapter 25 and the inherent jurisdiction of the Court, and subject to paragraph 4 of this Order, the Respondent shall provide to the Claimant in writing the parenting time schedule he seeks at least [4] days in advance of when the parenting time is to take place with the Children.

[11] I will make the order at number 6 by agreement.

- 6. Pursuant to clauses 53 to 70.3 of the Separation Agreement, the Respondent, shall within 14 days of date of this order, reinstate the following insurance policies he has cancelled:
 - a. Life insurance policies, with the Claimant listed as the sole and irrevocable beneficiary of both entire policies:
 - i. RBC Life Insurance: Policy #NXXXXX95 ii. RBC Life Insurance: Policy #NXXXXX78
 - b. Disability insurance policies:
 - i. RBC Disability Insurance: Policy #NXXXXX64 ii. RBC Disability Insurance: Policy## UXXXXX07
 - c. Critical Illness insurance;
 - i. RBC Critical Illness Policy# NXXXX85
 - d. Extended health and dental insurance; and
 - e. Any other insurance policy included in the Separation Agreement that he has cancelled

[12] I will make the order at number 7;

- 7. Pursuant to paragraph 6 of this Order, the Respondent shall provide to the Claimant, within 14 days of this order the following:
 - a. Documentary proof that the Claimant is listed as the sole and irrevocable beneficiary of the insurance policies listed in paragraph 6(a) and

- b. provide proof of reinstatement of the insurance policies listed in paragraph 6. With the following addition: The respondent shall provide written consent or authorization sufficient to allow the claimant to communicate with the insurance company for her to independently verify that she is listed as the sole and irrevocable beneficiary of the policies.

[13] I will make the order at number 8 by agreement.

- 8. Pursuant to clause 53 of the Separation Agreement, the Respondent, shall within 14 days of the date of this order, obtain extended health benefits pursuant to paragraph 6(d) from the Doctors of BC Health Benefits Trust Fund Plan ("HBTF") extended health and dental benefit plan, if he is not eligible for coverage through the Vernon Jubilee Hospital, and provide proof of insurance coverage to the Claimant.

[14] I will make the order at number 9.

- 9. Clause 19 of the Separation Agreement with respect to the sharable Section 7 Expense is varied such that the consent of the Respondent is not required for the following shareable S. 7: Expenses:
 - a. Orthodontic treatment, dental prescription drugs, hearing aids, glasses and contact lenses that exceed insurance reimbursement by at least \$100 for the Children;
 - b. professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy for S.;
 - c. any tutoring expenses incurred for the Children;
 - e. And any other S. 7 Expenses previously agreed upon in writing by the parties. However, I will not be making the order at number 9d but will incorporate the term from the separation agreement, and the wording from the separation agreement can be used with respect to reasonable consent not being withheld.

[15] I will make the order at number 10 with the variation that the respondent shall within 30 days pay the arrears of the s. 7 expenses.

- 10. Pursuant to clause 19 of the Separation Agreement and Section 15.1 (1) of the Divorce Act R.S.C., 1985, c. 3, the Respondent shall within [30] days of this order pay the Claimant the arrears of the Section 7 Expenses for the following: Child For Period Section 7 Expenses
Total Amount Respondent's Share Amount G. Feb 21, 2020 Orthodontics \$7,000.00 \$3,500.00
G. Feb 21, 2020 Orthodontics - reimbursement deposited into Respondent's account which has not been shared \$656.50 \$656.50
G. Feb 21, 2020 Orthodontics - remainder of reimbursement claim \$343.50 \$343.50
S. Sep 2019-January 2020 Figure Skating Lessons \$583.16 \$291.58
S. July 2020-August 2020 Summer Camps \$550.00 \$275.00
S. October 2019-July 2020 Therapy and Counselling \$6,120.00 \$3,060.00
TOTAL \$15,253.16 \$8,126.58

[16] I will make the order at number 11,

11. Pursuant to clause 19, 56 and 57 of the Separation Agreement, the Respondent shall within 10 days of this order pay the Claimant for the following expenses due to the cancellation of the extended health policies: Date Expense Occurred Expenses Owed to the Claimant Total Amount Respondent's Share Amount November 6, 2019 Claimant's Physiotherapy \$76.00 \$60.80 November 28, December 5, 11, 19, 2019 Claimant's therapy \$720.00 \$576.00 January 14 and 21, February 7 and 14, March 13, and April 19 and 21 Claimant's therapy \$1,350.00 \$1,000* (amounts are calculated at 80% reimbursement. Maximum claimable for therapy is \$1000/ year.) TOTAL \$2,146.00 \$1,636.80 With the addition that the claimant will cooperate with the reimbursement by the insurance company to the respondent of the amounts in question.
- [17] Given the evidence of non-compliance with the separation agreement that is before me, I will incorporate this element of the separation agreement into the order of the court, with the one change with respect to paragraph 12: Pursuant to clause 39 and 41 of the separation agreement, the respondent shall continue to pay the claimant the periodical spousal support payments in the amount of \$6,285 per month until varied by agreement or an order of the court.
- [18] Should the parties not be able to agree on costs, written submissions may be made within 30 days. (DISCUSSION)
- [19] THE COURT: So I have heard from both parties with respect to clause 9d. In my view, the issue of consent to the extracurricular activities was specifically dealt with in the separation agreement and should be given weight by this court. Although I accept that the respondent's past conduct in relation to the separation agreement has been problematic and that he has breached various terms of that agreement, I do not find that this should result in the ability of the claimant to incur costs without consultation or consent.
- [20] In my view, the inclusion of the term of the separation agreement that reasonable consent not be withheld in my order will underline what is expected of both parties in this respect. Should reasonable consent be withheld, that issue can be dealt with at that time. Should a written version of these reasons be requested, I order that they be anonymized. "Edelmann J."

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