

CANADA / JUDGMENT

L.C.T. v. R.K.

2013 BCSC 1438**COURT**

Supreme Court of British Columbia

DECIDED

15 July 2013

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2013 BCSC 1438 L.C.T. v. R.K. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: L.C.T. v. R.K., 2013 BCSC 1438 Date: 20130715 Docket: E101598 Registry: Vancouver Between: L.C.T. Claimant And R.K. Respondent Before: The Honourable Madam Justice H. Holmes Oral Reasons for Judgment In Chambers Counsel for the Claimant: Tracey L. Jackson The Respondent, R.K.: Appearing on his own behalf (via teleconference) Place and Date of Trial/Hearing: Vancouver, B.C. July 15, 2013 Place and Date of Judgment: Vancouver, B.C. July 15, 2013

- [1] THE COURT: In reasons I gave on June 5, 2013, denying the mother's application for an order implementing recommendations made by Dr. Peggy Koopman, I indicated my preliminary view that Dr. Rebecca England should be asked to update and develop the March 2011 report she prepared as requested under s. 15 of the former Family Relations Act.
- [2] The mother asked to make submissions setting out her opposition to further investigation and reporting by Dr. England. Through her counsel, she delivered before today an 18-page written argument, which she supplemented with oral submissions this morning.
- [3] The father delivered in advance a short written summary of his position, and also made oral submissions this morning. He does not oppose Dr. England's further appointment, and submits that Dr. England, selected by the mother from the start, conducted her investigation in a neutral, impartial, professional, and competent manner and is in the best position to prepare an update.
- [4] The mother submits that Dr. England's appointment has been of no assistance to the court thus far and, in fact, has been a detriment to the progress of the case and to the best interests of the children. She submits that any further appointment also would not assist.
- [5] In my view, many of the mother's complaints about Dr. England's approach and her methodology and conclusions are submissions or complaints that she also made in the application I denied on June 5th. Some of these objections take out of context statements Dr. England made during her lengthy cross-examination, or essentially quibble with answers she gave. Some of the criticisms presuppose the accuracy of the mother's own perspective on the facts; the facts are much in dispute in the litigation and have not been subject to any form of determination. Some of the mother's objections amount to simple disagreement

with Dr. England's conclusions.

- [6] Certain of the mother's submissions -- for example that Dr. England "excitedly finds support" for a theory put forward by the father, and that she proceeded in a "zealous" fashion -- in my view have no foundation, and demonstrate an unfortunate approach in the litigation. There is no doubt that this litigation involves allegations with very serious potential consequences. However, charged and inflammatory statements in the parties' submissions are neither helpful nor appropriate.
- [7] Based on her report and the extensive cross-examination which was before me, I took Dr. England's observations and opinions as preliminary, based on the information available to her at the time she made or reached them. Of course, Dr. England's conclusions and her opinions remain to be considered in light of all the evidence and the submissions in the trial.
- [8] It is true that a s. 15 report (now a report under s. 211 of the new Family Law Act) will be the most valuable to the court and to the parties when the writer of the report has the parties' full confidence. However, in a high-conflict dispute concerning parenting -- and this case involves extremely serious conflict arising from potentially very serious allegations or conduct -- one party's dissatisfaction with a report or with the process that led to it should not, of itself, dictate a whole new assessment by a different professional.
- [9] I am alive to the risk of manipulation of the court's process. However, in the somewhat unusual circumstances in which we find ourselves here, I conclude that it will likely serve the children's interests best to have a more current investigation and report by a professional fresh to the case.
- [10] This conclusion implies no criticism of Dr. England's work, but rather flows from the parties' unusual circumstances and from the issues in this particular litigation, including that Dr. England's report was more than two years ago, which is a significant period in the lives of the two young girls. Dr. England has no established or ongoing relationship with the girls that would militate against a change to another professional.
- [11] As I indicated to Ms. Jackson during her submissions, I would not appoint Dr. Koopman to provide an updated assessment, because her involvement in this case to date has been on the mother's retainer to, it seems, critique Dr. England's investigation and report. However, I would accede to the mother's alternative application for the appointment of Dr. Elterman, who I understand has no prior involvement with the case and is available in the near future.
- [12] I will ask Dr. Elterman to conduct an investigation and to report as though he were the first professional to do so. He should have access to Dr. England's and Dr. Koopman's reports, and to all the information available to them. However, he should not view his task as being to comment on their opinions and recommendations. His task, rather, is to reach his own opinions and recommendations on the basis of the most complete information he feels will assist him.

- [13] If Dr. Elterman has any questions or concerns about the nature or scope of the materials or other information he understands he is asked to review, he may seek the court's guidance on notice to both parties. The objective is to make the most effective use of Dr. Elterman's knowledge and experience, to help the court in its determination of the children's best interests in relation to custody and access or parental responsibilities and parental time.
- [14] As to the precise terms of what Dr. Elterman is to be asked to do, the parties may wish to make further submissions. If the parties are ready, I will hear their submissions now concerning that matter or any other matters that need to be addressed. [SUBMISSIONS RE ISSUES FOR DR. ELTERMAN'S REPORT]
- [15] THE COURT: Perhaps that is a good way to go. If, Ms. Jackson, you could prepare what you think is a suitable outline of topics that Dr. Elterman would be asked to address, please.
- [16] Madam Registrar, perhaps the speaker could be moved back toward me, please.
- [17] R.K., I am going to repeat that so that you can hear properly.
- [18] R.K.: Thank you, My Lady.
- [19] THE COURT: I am going to suggest that Ms. Jackson prepare -- and I will put a timeline on this in a minute -- a list of topics that she recommends Dr. Elterman be asked to consider. She will send that to you and ask for your further comments. Obviously, if you agree with it entirely you can so indicate, and Ms. Jackson will then send it to me, indicating that you agree. If you disagree, then you should prepare either a commentary on Ms. Jackson's draft, indicating what it is you do not agree with, or your own alternative list of topics. Ms. Jackson's draft and your document in response, if you do not agree with her draft, should then come to me, and I will make a determination of what topics Dr. Elterman will be asked to consider.
- [20] If I find that the matter has become complex and that I will need further submissions, then I will notify the registry and we will set up some sort of hearing like this morning's. However, I doubt that will be necessary.
- [21] If that is acceptable to both of you, we should put a timeline on the process, and I think it should be a fairly short one. Are there any concerns about that process?
- [22] R.K.: Not at this point, My Lady, no.
- [23] THE COURT: Could you get something to me in 48 hours, or get something to the father in 48 hours, Ms. Jackson?
- [24] MS. JACKSON: Yes, I have no problem doing that.
- [25] THE COURT: R.K., can you respond in some fashion also within 48 hours?
- [26] R.K.: Yes, I can, so that would put us at Thursday afternoon, My Lady?

- [27] THE COURT: Roughly. It could be earlier if Ms. Jackson does not take her full 48 hours.
- [28] MS. JACKSON: Right.
- [29] R.K.: Okay.
- [30] THE COURT: I would like to get the process moving, because I know there are concerns and we want to get things to Dr. Elterman as soon as possible.
- [31] MS. JACKSON: And My Lady, the other issue, I am assuming that Your Ladyship is having an order that the parties will share the cost of the report equally? That was the order that was in place for Dr. England.
- [32] THE COURT: Do you have anything to say about that R.K.?
- [33] R.K.: I apologize, I didn't hear what Ms. Jackson said. There was rumbling of the microphone during the beginning of it.
- [34] MS. JACKSON: R.K., I said that I was assuming that the court was ordering that the parties would share the cost of Dr. Elterman's report equally, as that was the order made regarding Dr. England.
- [35] R.K.: Right, that sounds good to me.
- [36] THE COURT: All right, then the cost will be equally shared. [SUBMISSIONS ON COSTS OF TESTIMONY OF DR. ENGLAND]
- [37] THE COURT: I do not take quite the same view of the cross-examination. I am not pronouncing on any sort of final basis about how the costs of Dr. England's cross-examination should be borne. That in my view should be determined after the trial.
- [38] At this point I would leave as is, the sharing of the cost of her testimony, which I understand does place the lion's share, to use Ms. Jackson's phrase, with the mother. That is something for reconsideration, as appropriate, at the conclusion of this litigation. "H. Holmes, J." The Honourable Madam Justice H. Holmes

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