
CANADA / JUDGMENT

L.G.P. v. C.F.B.

2018 BCSC 1168

COURT

Supreme Court of British Columbia

DECIDED

10 April 2018

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2018 BCSC 1168 L.G.P. v. C.F.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.G.P. v. C.F.B.,

2018 BCSC 1168

Date: 20180410

Docket: E112007

Registry: Vancouver

Between:

L.G.P.

Claimant

And

C.F.B.

Respondent

Before: The Honourable Mr. Justice Macintosh

Corrected Reasons: These reason were corrected on the cover page
on July 16, 2018

Oral Reasons for Judgment

In Chambers

Appearing in person:

L.G.P.

Agent for the Respondent:

W.J. Deane

Place and Dates of Hearing:

Vancouver, B.C.

April 4-5, 2018

Place and Date of Judgment:

Vancouver, B.C.

April 10, 2018

- [1] These reasons address parenting time for the one child of the parties' marriage, a boy, S., who is now 16. Other, secondary, issues were also raised. I will address them toward the end of these reasons. Mr. P. and Ms. B. have often been in this Court in this dispute since at least 2011. After a trial between them in 2014, I gave reasons indexed as 2014 BCSC 750. The order from those reasons allocated parenting time at paras. 10-12. The parenting time was allocated in precise terms because the parties were and remain unable to cooperate about anything. (I seized myself of the case after the trial, and have written at least six judgments, as well as numerous memoranda to the parties. The hope, despite this litigious history, is that these will be the final reasons.)
- [2] S. lives with his mother, Ms. B. In May 2014, Ms. B. was awarded almost all the parenting rights and duties in accordance with the provisions of the Family Law Act, S.B.C. 2011, c. 25. She retains those today and they are not altered by these reasons.
- [3] Under the May 2014 order, Mr. P. had parenting access every other weekend and Wednesday evenings. Particular times for those sessions were spelled out, along with the parenting times for all holidays, birthdays, vacations, and S.'s teachers' professional development days. That formal schedule has remained in place with some small adjustments. However, over about the last year and a half, Mr. P.'s parenting time has become irregular, and less frequent, due largely to S.'s reluctance to spend as much organized time with him.
- [4] At the request of both parties, and with there being no report under s. 211 of the Family Law Act, I interviewed S. in 2016 when he was 15. He appeared to be a mature, articulate, and reasonable boy. On November 23, 2017, Ms. B. requested that I seek S.'s current views about the parenting time order. Mr. P. responded with a position I did not find to be entirely clear. I decided, by memorandum on February 8, 2018, to obtain S.'s views by having him write me a letter of no more than five pages. In the memorandum, which I directed be shown to S., I wrote as follows:

The letter should state [S.]'s experience in living under the court orders which have been in place to this point, including the benefits and difficulties presented by those orders from [S.]'s viewpoint. It should also state [S.]'s wishes as to how much time he would like to be residing with each parent, when, and why.

If [S.] wishes, he may review the letter before it is finalized with Richard Somerset, who is to see a copy of this memorandum before he assists [S.] with the letter. If Mr. Somerset participates, he is to help organize and edit the letter so that it best explains [S.]'s positions, but he is not to alter [S.]'s selection of facts or [S.]'s statement of his wishes.

Neither parent is permitted to see [S.]'s letter or discuss it with [S.] in any way before it is submitted to me.

- [5] Mr. Somerset, referred to in the memorandum, is S.'s counsellor. S.'s letter to me, in response to the memorandum, is dated March 8, 2018. I found it to be very helpful. S. will be 17 in August. The letter was his plea for him to be given the power to determine informally when he will be with his father. That has been the reality for at least a year. That is, S.'s mother cannot and does not want to force S. to see his father when he does not want to, and S.'s father has not recently been seeking court enforcement of the strict terms of the parenting time order. S. has been seeing Mr. P. at times largely of S.'s choosing.
- [6] Below are paragraphs from my May 2014 reasons relevant in the present application:
- [3] Mr. P., the Claimant, testified about his work history and his work prospects.
- [4] He has had more than 10 jobs since 1985. At present, he is unemployed. For the most part, his jobs were in sales, including the sale of insurance. Mr. P. explained how each job came to an end and usually the termination was not of his choosing. Since 2011, he has worked very little, occasionally as a semi-skilled labourer for a friend who is a contractor. He has been designated by an agency of the provincial government as someone having "persistent multiple barriers to employment", because of some health problems, and the designation benefits him under a government-sponsored program by allowing him more liberal access to income assistance money.
- [5] Despite that designation, in my view, Mr. P. is capable of gainful employment. His primary difficulty on the work front is that he believes he is entitled to better work than is perhaps the case. He queried during cross-examination why he should take employment which does not adequately motivate and challenge him. He cannot afford to maintain that outlook. He needs to get out and do whatever work he can reasonably find, and that is relevant here when I need to determine whether income should be imputed to either party.
- [6] Mr. P.'s income in his Financial Statement for 2014 is \$15,331.68, and he submits that he will make approximately that amount this year. Mr. P. has never been a steady earner and, as I noted above, he is unemployed at present.

- [7] As a parent, the Claimant is loving, and he is eager to be with his son and to do what he can for his son. But I question his parental judgment in some respects. He has posted on Facebook, or other social media, events involving his son, one from last New Year's Eve and another concerning a bullying incident (not where his son was a bully, I should add), which placed his son too much in the public eye in matters which either should not have taken place or, when they did, should not have been publicized. As a sports coach, while coaching his son, Mr. P. has been seriously reprimanded, by the governing sports organization, for angry, uncontrolled outbursts. When his son was accused of harassment at school, Mr. P. wanted to take an adversarial position, or at least was headed in that direction when the matter was otherwise resolved, and the Claimant's approach there would not have helped his son.
- [8] To summarize, Mr. P. is a loving father, eager to help his son, but he is not well-equipped to provide his son with fully mature, parental guidance on the important issues as they arise in a young person's life. These findings are of course germane to the question of parenting, addressed below.
- [9] Ms. B., the Respondent, is more industrious, self-disciplined and self-controlled than Mr. P. Indeed, I observed her to be somewhat controlling by nature, which sometimes exacerbated the tense relationship, particularly after separation, between herself and the Claimant. Although she does exhibit this controlling aspect of her nature, I find her, generally, to have behaved reasonably, in matters involving her son, in the midst of her disputes with the Claimant.
- [10] Ms. B. works hard and has always done so. Her working history is more solid than that of Mr. P. Although she has held a number of different positions, her explanations for her job changes were reasonable and based in part on the fact that a number of the positions, in computer technology, were single-project contracts.
- ...
- [14] As a parent, Ms. B. appears to look after her son's needs and interests in a mature and generally reasonable manner. She has an athletic background, and is mindful and supportive of her son's athletic interests. She deals responsibly with teachers and doctors on her son's behalf, doing her best to ensure his best interests.
- [15] Mr. P. wants to have a role in significant parenting decisions, such as those involving his son's teachers and doctors. He wants that partly because of his love for his son, and partly, I believe, out of wanting to achieve a sense of self-worth, as a contributing father in these important matters. However, it is the son's best interests which are the sole issue, and my rulings below concerning parenting must reflect that.
- ...

- [36] Both parties will be guardians of their son. In the case of Ms. B., that conclusion is obvious in light of my earlier findings. In the case of Mr. P., the conclusion is less obvious. I believe it is the right one however because of the love between Mr. P. and his son, and because Mr. P. is motivated toward his son to do only what is in his son's best interests. The evidence also shows that the son loves his father. Maintaining Mr. P. as a guardian is part of what the son needs for his overall stability at this stage. To the extent I have any concerns regarding Mr. P.'s judgment as a parent, I will address those under the Parenting heading, below.
- [37] Under the headings above, addressing the parties and guardianship, I have expressed some concerns regarding Mr. P.'s parenting abilities. Those concerns are reflected in the following orders.
- [38] Parenting responsibilities are addressed in s. 41 of the Family Law Act.
- [39] I do not intend to address separately each of the listed headings under s. 41. However, s. 41 should be treated as the required backdrop for the parenting orders.
- [40] Ms. B. will have the exclusive right to select medical and other health experts for the son, and to provide the parental supervision with regard to medical treatment for the son. She shall keep the Claimant fully informed in medical matters. The Claimant has the right to reply to the Respondent, to give his views regarding medical matters, but the Respondent is not obliged to take such replies into account.
- [41] I make the same order regarding teachers, and education more generally. Ms. B. has all parental responsibilities for the son regarding teachers and education. She has the duty to keep the Claimant fully informed in matters of education, and the Claimant has the right to reply with his thoughts and advice, but the Respondent is not obligated to follow such advice. My order regarding education extends to extra-curricular activities at school.
- [42] The Respondent has sole authority to receive and respond to any notice to which a parent or guardian is entitled. Here again, Ms. B. has a corresponding obligation to keep the Claimant fully informed and to receive his input, but not to act on it.
- [43] What is set out above regarding parenting responsibilities is not exhaustive. My general intention is that, generally, decisions regarding the son, which have long-term application, are the responsibility of Ms. B. alone, coupled with her obligation to keep Mr. P. informed and to receive his input.
- [7] The evidence of events since May 2014 would lead to almost identical findings for the time from 2014 to now.
- [8] S., in his letter to the Court, expressed substantial concerns about Mr. P. as a parent. S. still loves his father, and does not intend to exclude him from his life, but his expressed concerns show why he does not want to be further obligated by court orders to be with his father, or reside with him, at fixed times. His concerns and requests are reasonably presented.

- [9] The evidence before me as a whole continues to portray Mr. P. as a man who loves his son, but who insists on trying to be a pal for his son, rather than a father. He does not demonstrate the maturity as a parent which would justify the Court seeking to compel a mature 16-year-old to be with him at designated times.
- [10] Mr. P. continues to be unemployed. He has paid virtually none of his child support obligations.
- [11] Ms. B.'s position on this application is that ss. 10-12 of the May 2014 order should be vacated and S. be allowed to see his father when he likes by arrangements informally made between them, that is, between S and his father.
- [12] Mr. P.'s position on this application did not assist him in any respect. He initially said that he was in favour of the new flexibility, whereby S. contacts him and sees him as S. wishes. However, he eventually added, when questioned by the Court, that he seeks an order giving him 40% or more parenting time. When pressed about the seeming contradiction in those two positions, Mr. P. said he needed an order for at least 40% parenting time in order to qualify for certain financial and other benefits from the province as part of a disability program he is on. He said he would be prepared to turn a blind eye, in so many words, to any non-compliance on S.'s part, or Ms. B.'s part, with an order that he have at least 40% parenting time.
- [13] There were of course three disturbing revelations in that position. First, it strongly suggests that Mr. P.'s first concern is not S.'s best interests, but is instead primarily his own interests in acquiring further benefits which would accrue to him. Second, Mr. P. is prepared to ask the Court to make an order the Court knows will not be complied with. Third, Mr. P. is prepared to rely on that hollow order to defraud the provincial government by having it advance benefits to him in the mistaken belief that S. is with him at least 40% of the time.
- [14] Ms. B., in support of her application, acknowledges that she must show a material change in circumstances in accordance with s. 47 of the Family Law Act; *Gordon v. Goertz*, [1996] 2 S.C.R. 27, particularly at paras. 9-13 and 17-19; and *Boychuck v. Singleton*, 2008 BCCA 355 at para. 28.
- [15] Mr. P. did not dispute Ms. B.'s submission that there are materially changed circumstances, and I accept that there are. The biggest change is that S. is 16 now, and was 12 when the parenting time order was made. Resulting from that, I was able to receive S.'s views, both when I interviewed him in 2016, and when the Court received his letter last month. Those were views he was incapable of fully formulating and of expressing when he was 12.
- [16] Another reality, also linked to S.'s age now, is his unwillingness to accept the existing parenting time order. He has grown out of it. What our Court of Appeal said in *O'Connell v. McIndoe* (1998), 166 D.L.R. (4th) 653 at paras. 11 and 13 is relevant:

[11] Craig is too old to be forced to live with his mother. The father's home may not be ideal, but it is Craig's home. Since his mother left, the father and brother have constituted his family unit. The alienation from his mother cannot be fixed by the means chosen in the order. Craig has demonstrated by his running away that he has the ability to frustrate a solution which he does not accept. Further police involvement is not, in my view, appropriate.

...

[13] In order for custody orders relating to children in their teens to be practical, they must reasonably conform with the wishes of the child. See *Shapiro v. Shapiro* (1973), 33 D.L.R. (3d) 764 (B.C.C.A) and *Alexander v. Alexander* (1988), 15 R.F.L. (3d) 363 (B.C.C.A.).

[17] Another material change is the actual parenting time arrangement which has been in place now for more than a year. Increasingly, as I have noted, S. has been seeing his father at times and places he chooses, as opposed to being with his father pursuant to the terms of the May 2014 order. As our Court of Appeal said in *S.M.M. v. J.P.H.*, 2016 BCCA 284 at para. 22:

While a child's views and wishes are not determinative, courts should give considerable weight to the views of an older child, proportionate to their age and level of maturity: *O'Connell v. McIndoe* (1998), 56 B.C.L.R. (3d) 292 (C.A.), leave to appeal ref'd (1999), [1998] S.C.C.A. No. 576; *T.(T.) v. H. (J.M.)*, at para. 54. A child's newly formed views may constitute a material change in circumstances: *Rashtian v. Baraghoush*, at paras. 16-17.

[18] I am satisfied that the evidence supports the conclusion that there has been a material change in circumstances for purposes of changing the parenting time.

[19] Section 37 of the Family Law Act provides that only the child's best interests are to govern the analysis for deciding parenting time. Ms. B. relies on s. 37(2)(a), the child's health; (b) the child's views; (e) the child's need for stability; (f) the respective parenting abilities; and (i) the parents' inability to cooperate and the resulting impact on the child's well-being.

[20] The evidence causes me to accept Ms. B.'s submissions under those headings. I have already discussed the evidence relevant to most of those headings.

[21] S. is stressed by having to be with his father at the ordered times. He needs the stability of his mother's parenting, and I believe his life will be more stable if he is not regularly transferred involuntarily to his father's care and control. The inability of the parents to cooperate is extreme. The two of them no longer arguing about the application of the existing parenting time order will foster S.'s peace of mind. I do not intend to elaborate further about s. 37(2) at this stage. The evidence is strong to support the application of the five lettered subparagraphs named above from that subsection in support of the change to the order, as Ms. B. seeks.

- [22] Ms. B. relies also on s. 37(4) which can make Mr. P.'s conduct relevant to the analysis under s. 37(2). She cites *Richards-Rewt v. Richards-Rewt*, 2015 BCSC 1391, particularly at paras. 44-55, for the proposition that a parent's lack of integrity can serve to inform the s. 37 analysis. Mr. P. in one of his affidavits on this application, said that he and his parents paid for the entire down payment of \$120,000 for the matrimonial home. That was directly contrary to my findings after the trial in May 2014, and is contrary to all the documentary evidence. His affidavits contain numerous other untrue statements, as well. Mr. P. departs from the truth whenever he believes that doing so will strengthen his position. That cannot be conducive to good parenting. Importantly, S., in his letter to the Court, wrote about his father's tendencies to be untruthful. Under the s. 37(4) analysis, all that could save Mr. P. is that his parenting time under the existing order is limited enough that perhaps his tendency to fabricate the facts should not form part of the analysis under s. 37(2)(a) and (f). That, however, is an approach I would find difficult to accept, and I believe that Mr. P.'s propensity to ignore the truth at his convenience is a proper factor to be considered. I have noted already that S. is conscious of this problem, as expressed in his letter to the Court.
- [23] In the result, I am making a final order, varying paragraphs 10-12 of the May 1, 2014 order by deleting them from the order and replacing them with an order that, beginning tomorrow, April 11, 2018, S. will have the exclusive decision-making authority for when he sees his father. That will include the times and durations, as well as the places. He and his father will need to cooperate about this order. Otherwise, the two will never see one another. Despite S.'s criticisms of his father, he has also said that he loves him, and the evidence as a whole supports that statement.
- [24] On a smaller matter, my order of May 23, 2017, and this order, can be entered without Mr. P.'s consent or approval.
- [25] These reasons do not of course remove any duties upon Ms. B. that are contained in the remaining provisions of the May 1, 2014, order.
- [26] That leaves for determination orders 2-7 as requested in Mr. P.'s notice of application dated March 5, 2018. (I have addressed requested order 1 already. It asked to vary paras. 10-12 of the May 1, 2014 order. Mr. P. abandoned his request for order 8 during the hearing.) The only order I make from the six remaining, requested orders, that is orders 2-7, is pursuant to order 5, where I order that Ms. B. obtain from S.'s counsellor, Mr. Somerset, his current C.V. and send it to Mr. P. The other remaining requested orders were not argued at length. I decline to make them, either because in most instances the evidence does not support them, or in other instances, I do not have the jurisdiction to grant them.
- [27] That concludes my reasons.

"MACINTOSH J."

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