
CANADA / JUDGMENT

Landa-McAuliffe v. Boland

2012 BCSC 1354

COURT

Supreme Court of British Columbia

DECIDED

13 September 2012

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2012 BCSC 1354 Landa-McAuliffe v. Boland

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Landa-McAuliffe v. Boland,

2012 BCSC 1354

Date: 20120913

Docket: E110196

Registry: Vancouver

Between:

Thomas Landa-McAuliffe

Claimant

And

Jenise Katherine Boland

Respondent

Before: The Honourable Mr. Justice Savage

Reasons for Judgment

Appearing on his own behalf:

T. Landa-McAuliffe

Appearing on her own behalf:

J.K. Boland

Place and Date of Trial/Hearing:

Vancouver, B.C.

September 7, 2012

Place and Date of Judgment:

Vancouver, B.C.

September 13, 2012

I. Introduction

[1] This is an application arising between the parties to a family proceeding following a comprehensive order made March 28, 2012, following on my reasons indexed as Landa-McAuliffe v. Boland, 2012 BCSC 465. There are a variety of orders sought which I will deal with seriatim.

II. Police Enforcement Order

[2] The applicant applies for a police enforcement order. The earlier order was comprehensive. It was designed to assist the parties who have some difficulty communicating. Part of that difficulty may arise from the involvement of police early on in the break-down of the relationship, for which there was and is still some residual bitterness.

[3] Section 36 of the Family Relations Act, R.S.B.C. 1996, c. 128 reads as follows:

Civil enforcement of custody rights

36 (1) If custody of a child is awarded to a person by an order made or enforceable under this Act and the person is denied the exercise of custody, a court may, on an application made without notice to any other person, order that the child be apprehended by a peace officer and taken to the person awarded custody.

(2) For the purposes of locating and apprehending a child in accordance with an order under subsection (1), a peace officer may enter and search any place where he or she has reasonable and probable grounds for believing the child may be.

[4] The applicant refers to the decision of Rogers, J., in C.E.A.P. v. P.E.P., 2006 BCSC 1913. In that case, one of the parties over a period of more than two years "consistently frustrated" access, displayed "unwarranted hysteria", and "unreasonably and inaccurately" seized upon events to deny access. The court agreed with the recommendations of a psychologist in a section 15 report, but provided that a three hour delay apply to the use of the clause.

[5] The other case cited is the decision of Judge Skilnick in P. de M. v. L.M.A., 2008 BCPC 293. In that case, the court noted at para. 34 that "such orders should not be issued routinely". I agree with that observation.

- [6] Both parties here seem to agree on the utility of such a clause in this case. I disagree.
- [7] In my opinion, including a police enforcement clause in this case would allow the parties' residual bitterness to occasion unnecessary and ultimately destructive police interventions over misunderstandings, slights and unintentional and even unavoidable contraventions of the established access regime.
- [8] In my opinion, the material before me does not support the imposition of a police enforcement clause in this case. In these circumstances, it is more appropriate that the parties resort to other available enforcement options, which include court application. The application for a police enforcement clause is dismissed.

III. Financial Disclosure

- [9] The respondent asks that the claimant comply with my order that the claimant provide financial disclosure in accordance with the earlier court order. The claimant explains that he has not yet filed a 2012 income tax return as a result of the exigencies of his bankruptcy. The claimant shall provide his 2012 income tax return as soon as it is filed, and any notices of reassessment he receives if and when he receives the same. The claimant shall file his 2012 income tax return no later than October 1, 2012.

IV. Signature on Order

- [10] The respondent asks that the claimant sign the order presented or the Court dispense with his signature on the order. The claimant took issue with part of the order dealing with the name of the child. It seems the parties were not in agreement with respect to that matter, and the Court's disposition may have arisen through a misunderstanding of the parties by the Court.
- [11] In any event, the parties are now in disagreement with that matter, and the order is not entered.
- [12] It is well settled that a court remains seized of a matter and is not functus officio until the formal judgment of the court is entered, and until entry of the order, the court has the power to reconsider, vary or revoke its judgment: *Chand v. Insurance Corporation of British Columbia*, 2009 BCCA 559, *R. v. Roberts*, 2004 BCCA 436.
- [13] As the order is not entered, I intend to revisit that matter on the basis that the parties are in disagreement.

V. Name of Child

- [14] Briefly, Ms. Boland changed Joah's name from "Joah Caetan Tomas Landa" to "Joah Caetan Tomas Boland Landa" in order to include her own surname. She appears to have sought this change under s. 4 of the Name Act, R.S.B.C. 1996, c. 328. That section normally requires consent, although there is provision to waive consent under section 4(6) due to exceptional circumstances.
- [15] Mr. Landa wants a hyphenated surname "Landa-Boland" with his name first. Ms. Boland wants the surname "Boland-Landa" with her name first. Ms. Boland is the primary caregiver of the child.
- [16] In my opinion there is authority for this court under its *parens patriae* jurisdiction to assume jurisdiction in the naming of children: see *Gallant v. Lewis* (2008), 295 D.L.R. (4th) 686. Assuming this jurisdiction requires that any decision made be in the best interests of the child: *E. (Mrs.) v. Eve*, [1986] 2 S.C.R. 388 at para. 72. See also the decision of Deschamps J., in *Trociuk v. British Columbia (Attorney General)*, 2003 SCC 34 at para. 44.
- [17] In *Wintemute v. O'Sullivan* (1985), 48 R.F.L. (2d) 276 at para 7, Justice Sinclair in naming disputes, articulated such factors as (1) the welfare of the child; (2) the short and long term effects of a change in the child's surname; (3) any embarrassment the child might suffer if the surname is different from that of the custodial parent; (4) the potential for confusion of identity; (5) the effect of change of name on the child; and (6) the effect of frequent or random changes of name.
- [18] The courts have found that hyphenated names are beneficial because they promote a relationship with both parents and families: see the decision of French J., in *D.(l.M.) v. S. (J.R.)*, 2010 NBQB 188 at paras. 34-36. In terms of the order of hyphenated names, there is no presumption in favour of having either parent's name first.
- [19] I do not consider there to be any factors, singly or collectively, preponderantly favouring that either parents name go first in the present case. I note and find instructive, however, what the legislature has done under the Vital Statistics Act, R.S.B.C. 1996, c.479.
- [20] By section 4.1 of the Vital Statistics Act, it is provided that the Court, in declaring a child's parentage, may make an order that the child's name be changed, and must order the name to be either the surname of either parent or "a surname consisting of both parent's surnames hyphenated or combined in alphabetical order...".
- [21] As I have said, and the parties seem to be in agreement, a hyphenated last name would promote the child and his collaterals indentifying with both parents.
- [22] In choosing the order of the last names here as "Boland-Landa" on the basis of alphabetization, the decision would be consistent with provincial legislation and does not favour either parent. It is a neutral choice.

[23] The name also has the advantage of being least disruptive to the child, as it is essentially the same name that the child has borne for the past several years. In my opinion the order of the last names alphabetically hyphenated promotes Joah's best interests.

[24] It is ordered that Joah's last name be "Boland-Landa".

VI. Forfeiture of Access

[25] The parties have some disagreement of the forfeiture of access provision in the earlier order. To be clear, there will be a forfeiture of access, at the option of the respondent, if the claimant is not available overnight or is out of the province for more than 12 hours. The claimant is under a duty to so advise the respondent when that occurs.

VII. Child's Caregivers

[26] There seems to be some disagreement over the information to be given to each other about the child's caregivers. The parties are required to give each other the names, addresses, telephone numbers or any other contact information of the child's regular caregivers. By this I do not mean a short term one time baby-sitter. However, if the child has a regular caregiver, that information should be exchanged.

VIII. Medical Insurance Coverage

[27] The parties will disclose to each other information regarding medical insurance coverage arranged for the child before travel.

IX. Medical, Dental, and Extended Benefits Coverage

[28] The respondent says that the claimant may be eligible for medical, dental and extended benefits which would include coverage for the child through the American Federation of Musicians Union.

[29] If the claimant is so eligible he should apply and include coverage for the child, and cooperate with the claimant to minimize the cost to the parties of necessary medical and dental costs.

"The Honourable Mr. Justice Savage"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/12/13/2012BCSC1354.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/landa-mcauliffe-v-boland-2012>

Prepared on 29 October 2026 · Esheria