

CANADA / JUDGMENT

Long v. Shields

2020 BCSC 1162

COURT

Supreme Court of British Columbia

DECIDED

16 July 2020

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2020 BCSC 1162 Long v. Shields IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Long v. Shields, 2020 BCSC 1162 Date: 20200716 Docket: E-87754 Registry: Nanaimo Between: Andrew Joseph Long Claimant And Jennifer Lynn Shields Respondent Before: Master Dick Oral Reasons for Judgment In Chambers Counsel for Claimant, appearing via telephone: P. Dwyer Counsel for Respondent, appearing by telephone: M. Katerberg Place and Date of Hearing: Nanaimo, B.C. July 16, 2020 Place and Date of Judgment: Nanaimo, B.C. July 16, 2020

- [1] THE COURT: This is the respondent's application pursuant to Rules 14-2(4) and 22-2(13) of the Supreme Court Family Rules, B.C. Reg. 169/2009 for an order that this family law action be transferred from the Nanaimo registry to the Fort St. John registry for all purposes, or in the alternative, an order that the trial of this matter be conducted at the Fort St. John registry.
- [2] The Notice of Family claim was filed in 2019 in Nanaimo. There is currently no trial date set in this matter.
- [3] The respondent was born on November 9, 1992, in Rocky Mountain House, Alberta. She moved to Nanaimo with her mother just before kindergarten, and lived in Nanaimo until November 2011. She then went to Hudson's Hope, B.C., and moved back to Nanaimo in November of 2012. Her mother continues to reside in Nanaimo.
- [4] The claimant and respondent commenced their relationship November 2013 and started living together in February 2014, in Lloydminster, Alberta. The parties moved to Nanaimo in August 2014. Their daughter H.L. (the "Child") was born on January 10, 2015 in Nanaimo. I understand the parties separated in July 2017. The respondent relocated to Fort St. John in September 2017. For a period of time, in or around the fall of 2017, both parties resided in the Fort St. John area.
- [5] The claimant has worked in the oil and gas industry in northern British Columbia and Alberta. Since 2018, the claimant has exercised his parenting time with the Child in Nanaimo where he resides. Since COVID-19 hit in March 2020, the parties have basically had a shared care arrangement.

- [6] The respondent has re-partnered and they are expecting the birth of their child on November 23, 2020. She is concerned that she may have an at-risk pregnancy with this baby, as she had with her daughter. The respondent indicates that once a trial date is set, it would be more convenient for her to have the trial in Fort St. John with respect to caregiving arrangements, and having the assistance of her partner during the trial who is employed at the Site C Dam.
- [7] Since March 2020, both parties have been laid off from their employment. At issue in this matter is where the Child will live and attend school. The claimant seeks shared parenting and an order that the Child attend school in Nanaimo. The respondent seeks orders that the Child's primary residence will be in Fort St. John so she will attend elementary school there. The claimant submits the respondent has basically acquiesced to this arrangement as he moved to Fort St. John for a period of time after her move there.
- [8] The respondent argues that having the trial in Nanaimo would cause extreme hardship for her due to the travel time, costs of attendance in Nanaimo for her family and her witnesses, the loss of income, and the need for care for her children. She intends to call parties who live in or around Fort St. John, including her partner, his father and three friends. She also submits that the Child is more substantially connected to Fort St. John which justifies the change of venue.
- [9] The claimant is opposed to the trial being heard in Fort St. John. He resides in Nanaimo, although he has worked in the northern British Columbia and Alberta area. It is unknown where work is going to take him, given he is laid off at this time. The witnesses he expects to call include family members and friends who reside in the Nanaimo area. They will have to pay to travel and stay in Fort St. John if the venue is changed. He notes that the respondent has family and friends in Nanaimo to assist her, including her mother. The Child also has family and friends here as she has spent over half her young life living in Nanaimo.
- [10] The difficulty for the Court is that whether the matter is heard in Nanaimo, or in Fort St. John, there is going to be inconvenience and expense to the party who must travel with their witnesses to testify. There is always the ability to have evidence given by videoconferencing given the COVID-19 precautions that are in place.
- [11] The law is clear that the factors to consider in a change of venue application are: (a) whether it is in the interests of justice; or (b) the preponderance of convenience supports the change. The claimant has picked the registry and place of trial as Nanaimo. To date, the proceedings which have included a JCC, have been conducted in this registry.
- [12] As indicated in *Ellis v. Ellis* at p. 13, para. 64: One of the principles is set out in *Armstrong v. Revelstoke*, . . . 38 B.C.R. 253, [1927] 2 W.W.R. 245. . . [N]othing short of a great or considerable preponderance of convenience and expense would justify the taking from the respondent the right which the law has given to him to select his own place of trial.

- [13] It goes on to quote from McDonald v. Dawson (1904), 8 O.L.R. 72 (H.C.), cited in McPhatter, at p. 498: [T]he burden is on the defendant to make it appear that serious prejudice is likely to arise to him if it is not changed. Usually the question turns on the balance of convenience, based on number of witnesses, distance from the place of trial, and expenses of attendance. It then becomes a question of degree of less or more, and the test is variously expressed as to whether there is a great, or very great, or overwhelming preponderance of convenience shown by the defendant which ousts the right of the plaintiff.
- [14] I am not satisfied in this situation, given the factors to consider including the number of witnesses, distance between locations, and expenses of attendance, that it is in the interests of justice or that the great preponderance of convenience requires this matter be moved from Nanaimo to Fort St. John for trial or that the trial of this matter be heard there. The application of the respondent to transfer the file to Fort St. John or the trial of this matter or that the matter be heard in Fort St. John is dismissed.
- [15] THE COURT: Anything arising from that, counsel?
- [16] MR. DWYER: Costs, Your Honour?
- [17] THE COURT: The claimant will be entitled to his costs of this matter. They will be set under the appendix for a half day of attendance. Not payable forthwith. "Master Dick"

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