
CANADA / JUDGMENT

Luc v. Washington

2020 BCSC 1003

COURT

Supreme Court of British Columbia

DECIDED

3 July 2020

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2020 BCSC 1003 Luc v. Washington

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Luc v. Washington,

2020 BCSC 1003

Date: 20200703

Docket: E160751

Registry: Vancouver

Between:

Anna Luc

Plaintiff

And:

Cornell Dwayne Washington

Respondent

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

Counsel for the Plaintiff:

S.J. Rauch

Appearing on his own behalf:

C.D. Washington

Place and Date of Hearing:

Vancouver, B.C.

June 15 and 22, 2020

Place and Date of Judgment:

Vancouver, B.C.

July 3, 2020

Introduction

- [1] Ms. Luc and Mr. Washington met online in 2007 and began dating in late 2012. The relationship was long distance as Ms. Luc lives in Vancouver and Mr. Washington, in California, United States. They had a child, Ayva, on July 11, 2014. The parties have never lived together. It is unclear when their relationship ended.
- [2] Since her birth, Ayva's primary residence has been in Vancouver with her mother. Mr. Washington has exercised regular parenting time in both Vancouver and at his home in California.
- [3] The parties have had ongoing issues regarding parenting time and child support. There have also been problems regarding communication between them.
- [4] In order to settle these matters, a trial was set for October 24, 2019. By agreement of the parties, the trial turned into a settlement conference over which I presided. In the end the parties agreed to a resolution which formed the basis of a consent order. That order includes the following terms:
 - 1) Mr. Washington has parenting time with Ayva for approximately six weeks each summer from mid-July to late August, with the exact dates to be agreed upon by the parties. That parenting time may be in California;
 - 2) Mr. Washington is to purchase travel medical insurance for Ayva each time she travels to the USA to visit him;
 - 3) Mr. Washington is to pay child support to Ms. Luc in the amount of \$100 per month, beginning December 1, 2019 and continuing on the first day of each month until agreement of the parties or further order of this court;
 - 4) Mr. Washington is to provide a copy of his 2017 and 2018 tax returns to Ms. Luc by December 1, 2019 and his annual tax returns by June 1 of each year thereafter;
 - 5) Ms. Luc is to accommodate FaceTime visits between Mr. Washington and Ayva for five minutes every Wednesday morning between 8:00 a.m. and 8:30 a.m. as well as on at least one other day per week as arranged in advance by the parties.

- [5] As part of the consent order I ordered that a date be set in June 2020 to review child support and parenting time.
- [6] That review took place over two days, June 15 and 22, 2020 with all parties appearing via phone. These are my reasons for judgment.

Issues

- [7] The issues to be decided are:
- 1) Whether Mr. Washington can take Ayva to California for his parenting time this summer; and
 - 2) Whether child support should be increased.
- [8] I will deal with the issues separately.

Parenting Time

- [9] It is an understatement to say that the current pandemic has made shared parenting challenging. In the case of parents that live in two different countries, the challenges are exponentially greater.
- [10] Mr. Washington wants parenting time with Ayva in California for approximately a month this summer. He suggests July 14 to August 17, although he is flexible regarding dates.
- [11] Ms. Luc has always agreed to Ayva going to California for lengthy visits with Mr. Washington; in fact Ayva was there for five weeks in December/January 2020. I understand that a month in the summer is the norm. This year however Ms. Luc is concerned about Ayva travelling to California this summer for a number of reasons, all of which involve the Covid crisis:
- 1) Travel would place Ayva at risk;
 - 2) The US/Canada border is currently closed. It is unknown when it will open, and if it opens, whether it will remain open; and
 - 3) Mr. Washington will not be able to get medical insurance for Ayva that covers Covid-19.
- [12] To be clear, Ms. Luc is not opposed to Mr. Washington having parenting time. The concern is with Ayva travelling to California. Her suggestion is that Mr. Washington exercise his parenting time with Ayva in British Columbia. She says that he can visit anytime. Mr. Washington opposes this idea as he wants to have Ayva at his home with his family and says that he cannot afford to holiday in B.C.
- [13] There are two issues with respect to Ayva travelling to California:
- 1) Whether travel medical insurance can be purchased for her that will cover Covid-19; and

- 2) Whether it is safe for Ayva to travel to California.
- [14] With regard to travel medical insurance, this is a recurring issue between the parties. In October 2019, during the settlement conference, Mr. Washington demonstrated a lack of understanding of the importance of having medical insurance for Ayva when she is in California. He maintains that the hospitals will treat anyone. He does not seem to be concerned about the medical bills that will follow.
- [15] On June 15, during this review, I explained to Mr. Washington that the best interests of Ayva require that she have medical insurance that includes coverage for Covid-19. Over Mr. Washington's objections that I was "playing the insurance game again", I adjourned the matter to June 22, 2020 to allow him time to gather information to show that such was available.
- [16] On June 22, 2020 Mr. Washington advised the court that he learned through inquiries that:
- 1) "There is nothing that is going to specifically say anything about Covid";
 - 2) If Ayva gets sick, "as long as she has any insurance, they won't turn her away. She's a child";
 - 3) There is "nothing that says Covid is excluded".
- [17] Mr. Washington agreed that while Ayva might be treated medically, a bill for services will follow. He disagreed however that Ms. Luc would be in any way responsible for paying that bill, forcefully maintaining that it was his child and his country.
- [18] Ms. Luc advised that her inquiries revealed that no insurance company will cover Covid and that she will be responsible for any hospital bill incurred by Ayva.
- [19] There has been no evidence presented that satisfies me that Mr. Washington is able to purchase travel medical insurance for Ayva that covers the virus.
- [20] With respect to the latter issue, the safety of Ayva travelling, this too is a genuine concern.
- [21] Mr. Washington argues that he will keep Ayva safe. While I accept that he believes this and that he will do his best, no guarantees of safety can be made by anyone at this time. It is clear that travelling poses a heightened risk.
- [22] The issue of children travelling in these extraordinary times was dealt with recently by this court in *Hasan v. Hasan*, 2020 BCSC 862, where Shergill J. stated the following:
- [35] There is ample evidence that the respondent's actions by travelling across international barriers during this pandemic have put the children at real risk of harm. The government prohibition against non-essential international travel, the closing of the Canada-US border, and the requirement of a mandatory quarantine period of two weeks when one returns from travel to the United States, are clear indication that the governmental and health authorities consider the coronavirus to be so dangerous that protection of the public requires these extreme measures be put into place.

- [36] As noted by the Court in Morgan at para. 8, "it falls within the accepted bounds of judicial notice for us to take into account the fact of the COVID-19 pandemic, its impact on Canadians generally, and the current state of medical knowledge of the virus, including its mode of transmission and recommended methods to avoid its transmission."
- [37] To the extent that it is necessary, I also take judicial notice of the fact that a variety of agencies and institutions, including the BC Supreme Court, have released well-publicized guidelines to address the risks posed by the ongoing COVID-19 pandemic. The global travel advisory issued by the Government of Canada advising against all non-essential travel outside of Canada, the fact that the RCMP and local police have been given powers to enforce the quarantine imposed by the federal government for people returning from international travel, and the extremely stiff penalties for breaking self isolation orders are all indicative of the seriousness of the potential risk of contracting or transmitting coronavirus.
- [38] I note also that several recent decisions have commented on the risks involved in long-distance travel during the current pandemic, even where that travel is within Canada. In *Amirzada v. Alemy*, 2020 ONSC 1979, the Court refused the mother's application to allow her to travel from Ontario to Vancouver, noting at para. 31(d) that such travel is against the advice of public health experts. The Court determined that this interprovincial travel both posed a threat to the children's health and created public health concerns.
- [39] In *Onuoha v. Onuoha*, 2020 ONSC 1815, the Court noted at para. 10 that it would be "foolhardy" to expose children to international travel given the evolving nature of international travel restrictions.
- [23] I too take judicial notice of the risks of the virus. As stated above, these are frightening, unprecedented times. Everyone is at risk, including children.
- [24] Mr. Washington knows well the seriousness of the pandemic as his immediate family has been struck by the virus. Mr. Washington lives with his mother, Ms. Johnson and two nieces who are 12 and 14 years of age. Tragically Ms. Johnson's partner of 14 years, who lived with them, passed away from the Covid virus on April 7 after being ill at home. Ms. Johnson tested positive for the virus on April 3. Ms. Johnson advises that she is now virus free. Mr. Washington and his two nieces were never tested.
- [25] The sole consideration on an application involving parenting arrangements is the best interests of the child. As directed in s. 37(3) of the Family Law Act, an order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- [26] Even if Mr. Washington could get medical insurance that covers the virus, I am persuaded that it is not in Ayva's best interest to allow her to travel outside British Columbia or to travel anywhere by plane. The medical and travel warnings are clear. To allow travel outside this province would be to increase her risk of exposure to the virus.

- [27] Accordingly, I order that neither Mr. Washington nor Ms. Luc are to remove Ayva from British Columbia or to travel with her on an airplane until further order of this court or by agreement of the parties.
- [28] If Mr. Washington wishes to exercise his parenting time, it will have to be in B.C. until it is safe to travel. As stated earlier, Ms. Luc has made clear that she will accommodate his visitation with Ayva whenever he is able to be in Vancouver. Of course he must comply with the Covid-19 safety measures that apply to all, including a mandatory quarantine period. If Mr. Washington is not able to travel to B.C., I urge Ms. Luc to allow increased FaceTime visits.
- [29] Turning now to the second issue.

Child Support

- [30] As stated above, child support is an ongoing issue between the parties.
- [31] The October 2019 order that Mr. Washington pay \$100 a month was made in an effort to get some support for Ayva as at that time he said he was unemployed. From the records Mr. Washington has produced, it appears that he has paid the support most months.
- [32] Mr. Washington failed to provide tax returns as per the October 2019 order. He advised that he did not file a tax return last year as he did not make any money.
- [33] During this hearing, Mr. Washington advised that his usual occupation is as an unarmed security guard but that there is not much work for a guard that is not armed and he refuses to carry a gun. He further advised that during the pandemic he has been occasionally working delivering food.
- [34] I make no orders at this time regarding child support. If Ms. Luc wishes to pursue an increase in child support, she will have to file an application.

Conclusion

- [35] I make the following orders:
- 1) Both parties are prohibited from removing Ayva from British Columbia;
 - 2) Both parties are prohibited from travelling with Ayva on an airplane.
- [36] These orders are in force until further order of this court or by agreement of the parties.
- [37] I remain seized of this matter.

"The Honourable Madam Justice Murray"

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