
CANADA / JUDGMENT

Lyons v. Lyons

2012 BCSC 688

COURT

Supreme Court of British Columbia

DECIDED

3 May 2012

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2012 BCSC 688 Lyons v. Lyons

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lyons v. Lyons,

2012 BCSC 688

Date: 20120503

Docket: E6633

Registry: New Westminster

Between:

Laura Lee Lyons

Claimant

And

Stephen Vincent Lyons

Respondent

Before: The Honourable Madam Justice Stromberg-Stein

Oral Reasons for Judgment

In Chambers

Counsel for Claimant

Kevin Heinrichs

Counsel for Respondent

Janneke P. Lewis

Place of Hearing:

Vancouver, B.C.

May 2, 2012

Place and Date of Judgment:

Vancouver, B.C.

May 3, 2012

- [1] Trey Lyons will be 15 years old on June 26, 2012. His parents separated when he was 2 years old. Since their separation in 1998 until February 2011, Trey lived equal time with both parents.
- [2] When Trey turned 14 it is alleged his mother suggested Trey was old enough to decide what parenting arrangement he wanted in place. At a meeting the mother arranged with the father on January 28, 2011, which Trey attended, Trey announced that he wanted to change access with his father to four days, from 14 days, on a two-month trial period. That meant he would see his father only every second weekend from Friday to Sunday and Wednesday afternoon. The father felt he had no option but to agree because Trey was present at that meeting.
- [3] This meeting was followed up with an e-mail purportedly from Trey on his mother's e-mail account. While she denies being the author of this e-mail, it was clearly not authored by Trey in my view; nor was a second e-mail, purportedly from Trey about continuing the trial access arrangement.
- [4] At the end of the two month trial period the mother refused to revert to the original parenting arrangement, hence this litigation.
- [5] The father seeks increased access to Trey during school time and shared access during the holidays. He wants what he says is in Trey's best interests; specifically he is not asking to revert to the original parenting arrangement and is prepared to accede to Trey's wishes to the extent that access not be shared. However, he perceives his relationship with Trey has deteriorated due to his decrease in access. He feels he is walking on eggshells with Trey. He feels Trey's mother is giving Trey the message that Trey can choose what he wants to do. The father maintains that it is in Trey's best interests to have access with his father every alternate weekend from Friday after school until Monday morning, every Wednesday after school, and every alternate Thursday.
- [6] Trey's father has a child with Trey's stepmother, which makes him Trey's half brother. Therefore, this is not just about Trey, but also about his extended family with his father. I note that Trey's mother is also remarried and there is an extended family on that side as

well.

- [7] In addition, the father seeks counselling for Trey with Jim Smith who has seen Trey in the past, at such times and frequencies as determined by the counsellor. The father has agreed to pay for this counselling. He wants to try and improve what he sees as his deteriorating relationship with his son.
- [8] Trey's father and mother are not far apart in terms of this application. The mother wants to leave access as it is presently: every second weekend from Friday to Sunday and Wednesday afternoon. The mother wants Trey to attend one counselling session and then leave future sessions up to the counsellor to decide, to which the father agrees.
- [9] However, where they differ is that the mother wants counselling to be during the father's access time. Of course that limits the time in which any counselling could occur if the father only has Trey on Wednesday after school and alternate weekends. The father wants the counselling to take place at such times as is suitable to the counsellor.
- [10] The mother's counsel relies on the report of Dr. Koe, who completed a psycho-educational assessment. Trey has been diagnosed with an anxiety disorder and learning disabilities. Dr. Koe suggested Trey should have more influence over his own decision-making processes and be responsible for his decisions. A number of Dr. Koe's recommendations were implemented and Trey is now doing well at school, where he had previously been failing. His anxiety levels have dropped considerably. Trey has gone to counselling with Jim Smith and did so well he was discharged from more sessions. It is difficult to tell if Trey's improvement is due to a change in the parenting arrangement or the implementation of Dr. Koe's recommendations, or probably both.
- [11] Trey is doing very well at the present time, both emotionally and academically. Unfortunately there are no updated school reports available but there is enough to show that he is doing well at school.
- [12] A Views of the Child report was prepared. Trey wants to maintain the present access regime during the school year and a shared parenting arrangement in the summer. He expressed fear of his father during the preparation of that report. The father is at a loss to explain or understand this and is very hurt. That is one of the reasons why the father wants to engage in counselling with his son to try to work out whatever problems there might be.
- [13] For 12 years Trey lived equal times with both parents. Trey is loved by both parents. Both parents live close to each other and to Trey's school. Trey has had anxiety and behavioural issues, as I have indicated, as well as learning disabilities.
- [14] The guiding force for this Court in this matter is the best interests of Trey. The court will consider a number of factors, in considering the best interests of the child. One factor is Trey's views. Trey's views are important.

- [15] The law is clear that a teen's wishes do not bind the court, but is a strong consideration in making access orders. However, Trey's views cannot be considered in a vacuum. His views have to be assessed against the background of his maturity and forces that may be influencing his decision. Ultimately it is for this Court to determine what is in Trey's best interests, particularly where his own views may not necessarily be in his best interest. However, this Court has no desire to push Trey to rebellion. These propositions are taken from cases that counsel provided to the Court, including: *Alexander v. Alexander*, [1988] B.C.J. No. 1570 (C.A.); *T.D.B. v. L.B.*, 2004 BCSC 605; and *Mikkelsen v. Mikkelsen*, [2004] O.J. 5060 (S.C.J.).
- [16] I agree with counsel for the mother that Trey is doing better; that he is doing all the right things; that he is voicing his views on the matter; and that his views are entitled to deference as he is on a positive trajectory. The mother's counsel argues that it is not in Trey's best interests to change the present arrangement.
- [17] However, Trey must understand that although his views are important, someone else may have to intervene and make important decisions, particularly in circumstances where his relationship with his father may be undermined, advertently or inadvertently.
- [18] There is concern that the mother is sending the wrong message to Trey. I agree with counsel for the father that a 14 year old, soon to be 15 year old, needs guidance. He needs the support of two parents in order to steer him away from trouble. This is particularly so where Trey's level of maturity and decision-making have been questionable in the past, and are only just developing in a positive manner.
- [19] There is concern that he has exhibited some very troubling behaviour in the past, which, if the pattern continues, could spiral out of control and get him into a lot of trouble. The father claims that he has not been promptly informed in some circumstances about some of the troubling behaviours. My comment is that both parents need to get on the same page and together guide Trey through the tribulations of teen years safely into adulthood.
- [20] In the result, it is this Court's view that it is in Trey's best interests to spend more time with his father to include alternate weekends from Friday after school until Monday morning, and Wednesday afternoon. Summer access will be shared, as well as all holidays. Mother's Day and the mother's birthday will be with the mother, and Father's Day and the father's birthday will be with the father. Trey's birthday can alternate.
- [21] With respect to summer access, the parties can agree to up to two weeks' continuous access. This summer, the mother has reserved August 20 to September 2, and this Court will endorse that.

[22] There will be an order for counselling on the terms sought by the father. By agreement of the parties there will also be an order for counselling for Trey's mother and father only so that they can develop appropriate lines of communication going forward. E-mails are a good starting point. And having read the materials and heard the submissions and arguments, I think the stepfather will be well advised to back off a bit and let Trey's mother and father try to work things out with respect to Trey.

[23] Counsel can put together whatever order you want in terms of the sharing of the holidays, Christmas and so on. But I agree with the mother's counsel that there comes a point when Trey's going to decide where he wants to spend his holiday time and it may not be with either parent.

[24] With respect to money matters.

(Submissions)

[25] THE COURT: If I can leave it to you to try to sort out. I would think that the father, who wants to have a good relationship with his son, is probably going to want to contribute, let the son know he is contributing.

[26] MR. HEINRICHS: My Lady if we could adjourn that issue such that we could try and settle these matters.

[27] THE COURT: Can I adjourn it generally then? It does not have to come back before me.

(Submissions)

"STROMBERG-STEIN J."

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