
CANADA / JUDGMENT

M.C. v. B.A.

2020 BCSC 1205

COURT

Supreme Court of British Columbia

DECIDED

14 August 2020

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2020 BCSC 1205 M.C. v. B.A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.C. v. B.A.,

2020 BCSC 1205

Date: 20200814

Docket: E53751

Registry: New Westminster

Between:

M.C.

Claimant

And:

B.A.

Respondent

Before: The Honourable Mr. Justice Steeves

Reasons for Judgment

Counsel for the Claimant:

M. Sahlstrom

In Person:

B.A.

Written Submissions Received:

Victoria, B.C.

August 5, 2020

Place and Date of Judgment:

New Westminster, B.C.

August 14, 2020

A. INTRODUCTION

- [1] In an application filed July 13, 2020, the respondent father, B.A., seeks either a report on the views of the child or appointment of counsel for the child, or both. The claimant mother, M.C., opposes the respondent's application.
- [2] The application is made under the Family Law Act, S.B.C. 2011, c. 25 ("FLA"). It is not stated specifically but I presume that ss. 211 and 203 of the FLA are relied on. This matter was heard by means of written submissions pursuant to the Court's COVID-19 guidelines (COVID-19 Notice #14, revised July 20, 2020).
- [3] I have anonymized the names of the parties in order to protect the privacy of their children.

B. BACKGROUND

- [4] The parties began to cohabit in February 2007 in a marriage-like relationship and they separated in August 2017. They have three children.
- [5] One of the children, D, is the subject of this application and he is 12 years old. He has had some medical and other issues. A choking incident at age 3 caused psychological effects and he has been diagnosed with attention deficit disorder and high anxiety. There was a sexual assault at age 6 by a 14-year-old boy. He has had some language development issues. In school, D has been part of an individual education plan that is intended to deal with issues such as anxiety, difficulty with change, self esteem, social skills, anger management and listening/following directions.
- [6] An Order of this Court dated October 20, 2017 provided that the children would primarily reside with the claimant and it also provided for parenting time for the respondent. The respondent's parenting time was changed through a consent order dated December 1, 2017. At that time the parties both lived in or near the New Westminster area.
- [7] In about 2018 the respondent moved to the Nanaimo area in British Columbia, where his family lives. The parties agreed on the respondent having parenting time of one weekend a month, usually on a long weekend. For the 2020 spring break, the parties agreed on extra parenting time. This started on March 15, 2020 and it was to end no later than March 29, 2020 so the children could be back in school on March 30, 2020.

- [8] On April 1, 2020 the respondent sent a text message to the claimant to say that D would not be returning to her. The claimant attempted various means to have D returned including contacting the respondent, contacting the police and retaining counsel who wrote a letter to the respondent requesting that D be returned. During this time the respondent made a complaint to the Ministry of Children and Family Development about the care provided by the claimant. An investigation took place and no action was taken.
- [9] The claimant then applied for an urgent hearing to have D returned to her. The matter was heard on May 8, 2020, the claimant was successful and the respondent was ordered to return D to the claimant on May 16, 2020. The previous parenting time schedule from December 2017 was also confirmed. D returned to the claimant on May 16, 2020 and she reports that D was happy to see her.
- [10] The respondent now applies to obtain the views of D or for the appointment of counsel to represent him, or both.

C. ANALYSIS

- [11] The respondent seeks the following orders in his application:

The claimant has not been co-operative in agreeing to a views of the child report, or legal representation for their son. Prior to applying to vary the existing parenting order I am seeking one of the following options or both as ordered by the Honorable Court:

-An Enhanced Views of the Child Report

With Albert Elterman (Clinical and forensic Psychologist [contact information deleted]). I the respondent am willing to pay the expenses for this report which is estimated at \$2,000-\$3000.

I feel this is an urgent matter to address our sons views for his mental, emotional and physical wellbeing. Only if the Honorable court deems just will I seek partial reimbursement for the cost of this report. I would like this ordered that [D]'s mother would attend any required sessions and as well accommodate transportation for [D] to attend the scheduled appointments.

-Legal representation for [D]

This would be provided as a free service by the Society For Children And Youth Of B.C.

[contact information deleted]

[D] has completed the intake process and has personally requested Legal representation from this service. They are willing to represent him to bring his views forward in applying for a future application of a variance to the existing parenting order. This service has given reassurance to assist and expedite future proceedings while protecting my son and empowering him to bring his views forward by an impartial and unbiased person.

- [12] In my view, the current circumstances are not good ones for the ordering of a views of the child report or for counsel to be appointed for D.

- [13] The respondent unilaterally and without notice simply refused to return D to the claimant. There does not appear to have been a court order about parenting time for the respondent in Nanaimo, but there was one that stated D was to reside primarily with the claimant. The respondent apparently breached that order, he refused to comply with it when he was contacted by the claimant and her counsel and it took an urgent application by the claimant to eventually have D returned more than a month later. During the time the respondent held D, D was separated from his mother and siblings and the respondent made an unsuccessful complaint to the Ministry about the claimant mother's care of D.
- [14] It is also significant that D is a vulnerable and impressionable individual with genuine developmental issues. He has been diagnosed with attention deficit disorder and he is in a program at school for anxiety to help him cope with change, among other difficulties. It seems to me that the claimant mother was reasonably concerned about the disruption to D's life by the respondent's unilateral and sudden actions. D is back with his mother, the December 2017 parenting time schedule has been re-established, and D is reportedly happy.
- [15] The respondent relies on the following excerpt from an "Individual Education Plan" for D, dated June 18, 2020, from his school:
- Term 3: [D] really struggled in the last term and leading up to spring break with his feelings about wanting to live with his dad. This affected his mood and readiness to learn on a somewhat regular basis. [D] should continue to work on self-regulation and coping strategies moving forward.
- [16] It is not clear what role the respondent has played in the feelings of D underlying this observation. And it is not at all clear how unilaterally and suddenly removing D from his mother and siblings is a responsible answer to this statement. Nor is it surprising that a child with separated parents is torn between them.
- [17] The same report states that D was "off to a great start so far" and he has made positive connections with his peers with fewer conflicts. He states that he has "no friends" in his class but his classmates disagree. He has few social connections outside class. He does a "good job" of coming to the support room when he is upset and angry but he needs to work on strategies of self-regulation. Overall, the report from the school demonstrates that D has ongoing and complex behavioural and cognitive issues and his vulnerability is beyond that of other 13 year olds. There is no evidence that the claimant is not responding to these difficult issues appropriately.
- [18] The respondent also relies on an email from his mother. She describes D as being tearful and upset when he leaves his father and having strong attachments to his extended family in Nanaimo. The grandmother believes that D requires a "strong male role model." These comments are noted but they do not explain why the respondent acted contrary to a court order. I note the efforts it took the claimant mother to restore the order and the disruption caused to D. I add that the anxiety children suffer when they are exchanged between parents is, unfortunately, a common feature of separated families. I take D to be particularly vulnerable to this.

- [19] As the respondent makes clear in his application, he intends to apply to vary the current parenting time order, apparently to give effect to what he tried to do in violation of the previous court order. Obtaining the views of D (or appointing counsel for him) is a first step towards that objective. However, D is young, impressionable and vulnerable and, in my view, there is reason to be concerned about the genuineness of any views he might express now. Obviously, obtaining the genuine views of a vulnerable 12-year-old child is a delicate matter in any circumstances.
- [20] I conclude that a period of time is required for D to settle back into the care of his mother and to recover from the sudden and significant change imposed by the respondent on him. The situation was relatively stable until the respondent acted unilaterally and illegally. The proper course, and one that is the easiest on D, is one that follows the usual legal steps. To that extent, the respondent's application is an appropriate one but consideration of it must now include the respondent's recent actions. Apart from the suspicions of the respondent, there is no basis for questioning the care D receives from his mother and I am not satisfied this is the right time to further engage D in more acrimony generated by the respondent.
- [21] The respondent's recent actions have set in train significant, unilateral and sudden changes in the life of a vulnerable 12-year-old child. Those actions have also caused disruption in the relationship between D and his mother, made her the subject of an investigation by the Ministry, and undoubtedly caused her anxiety and additional cost. None of this is in the best interests of D. Further, the idea of appointing separate counsel for D of course assumes that the claimant mother is not acting in D's best interests or is even acting contrary to the best interests of D, and there is no evidence of that at all.
- [22] With the above in mind I conclude that the respondent's application must be dismissed, as granting this application now is not in the best interests of D. However, the respondent will be entitled to resubmit an application for a s. 211 report after February 1, 2021. By that time D will have had the opportunity to re-establish his relationship with his mother and he will have returned to his school (where he may be able to obtain some additional support). The expectation is that D will have largely recovered from the disruption caused by the respondent's actions and it would then be possible to obtain an accurate account of his views. To be clear, the respondent's application would not be granted on that date, it would only be considered again. And at that time, there may well still be medical and psychological reasons for D not to be the subject of the kind of scrutiny contemplated by the respondent. At all times D will require the support of both of his parents (and grandparents) to make sure his best interests are always being met.
- [23] The claimant has been substantially successful and she is entitled to her ordinary costs for this application from the respondent.

"J. J. Steeves, J."

The Honourable Mr. Justice Steeves

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