
CANADA / JUDGMENT

M.M.R. v. Y.M.R.

2003 BCSC 1962

COURT

Supreme Court of British Columbia

DECIDED

31 December 2003

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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Citation:

M.M.R. v. Y.M.R.,

2003 BCSC 1962

Date: 20031231

Docket: D30208

Registry: Kamloops

Between:

M.M.R.

Plaintiff

And

Y.M.R.

Defendant

Before: The Honourable Mr. Justice Blair

Reasons for Judgment

Counsel for the plaintiff

D.A. Paul, Q.C.

Y.M.R. appeared on his own behalf

Date and Place of Trial/Hearing:

December 9 & 10, 2003

Kamloops, B.C.

- [1] The plaintiff, M.S. (formerly R.), brings motions dated July 12 and October 28, 2003, and the defendant, Y.M.R., brings a motion dated August 12, 2002, in which they raise issues relating primarily to their five children, the most contentious being Ms. M.S.'s application to move and live with the children in Manitoba.
- [2] The parties married July 22, 1989 in Manitoba and separated in C.1[] in 2000. I granted a divorce in my judgment filed April 9, 2002 following a 14-day trial which addressed issues of custody, guardianship, access, child and spousal support, property division and costs. The Court of Appeal on November 10, 2003 dismissed Mr. Y.M.R.'s appeal following which the parties set down for hearing their various notices of motion.
- [3] The April 9, 2002 judgment provided that the parties would have joint custody and joint guardianship with the children's primary residence to be with Ms. M.S.. The children are:

T.M.R., born [], 1988

R.G.R., born [], 1990

M.D.R., born [], 1993

D.E.R., born [], 1995

J.H.M.R., born [], 1998

- [4] I ordered that the children spend from Saturday evening to Wednesday morning with their mother and from Wednesday to Saturday with their father. I further directed that the two oldest boys, T.M.R. and R.G.R., now 15 and 13 years old, be able to extend the time with their father if they wished. The parents were to equally divide the children's time during the Christmas, spring break and summer holidays.
- [5] I will deal initially with Ms. M.S.'s application that she be permitted to move with the children to Manitoba. At the conclusion of the hearing on December 10, 2003, I considered it necessary to allay any concern the children might have as to where they were going to live. I indicated at that time that I would not allow Ms. M.S.'s application to move with the children to Manitoba and would address the matter further in these Reasons.
- [6] Ms. M.S. seeks to return to Manitoba where she would enjoy the support of her sizable, extended family coupled with greater opportunities to obtain employment and support her children. In 2002, Ms. M.S. qualified to work in home care programs after completing a five-month program with the University College of the C.2[], but unfortunately she has not been able to obtain employment in C.1[] utilizing her new skills. She continues to work as a waitress on a part-time basis and at little more than minimum wage. Ms. M.S. receives no child support from Mr. Y.M.R. with whom she has a bitter and unhappy relationship.

Counsel advised that Ms. M.S. will remain in C.1[] if her application to move the children to Manitoba is denied.

- [7] In *Gordon v. Goertz* (1996), 134 D.L.R.(4th) 321, the Supreme Court of Canada at ¶49 establishes that the parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child and, if the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
- [8] Clearly the move sought by Ms. M.S. amounts to a change in circumstance, but I am not satisfied that such a move would be in the best interests of the children. When I originally ordered joint custody and guardianship, I considered both parents loved their children and were good parents although with differing parental skills and approaches. Their respective homes are located within easy walking distance for even the youngest child, facilitating a joint parenting arrangement in spite of the difficulties between the parties.
- [9] The children have spent most of their lives in C.1[] and are involved in the community through school, sports and other activities. Mr. Y.M.R.'s family also resides in the C.1[] area and there are ties between the children and that side of their extended family. Further, the children have had ample opportunity to get to know their mother's family through frequent and sometimes lengthy summer time trips to Manitoba.
- [10] Further, I anticipated in my Reasons of April 9, 2002 that the two oldest children, T.M.R. and R.G.R., might well spend more time with their father than the Saturday to Wednesday visitation that I had specified in my Reasons. To remove these two children, aged 15 and 13 years, from their father's home where they now spend most of their time would be disruptive for them. In my Reasons, I also reflected on the importance of these five children staying together as they provided support for each other in dealing with their parents and the difficulties which flow from the animosity flowing between Mr. Y.M.R. and Ms. M.S..
- [11] After considering the unique circumstances of this case, I consider it in the best interests of the children that they remain in C.1[] where they enjoy easy access with both their mother and father as well as with each other. I deny Ms. M.S.'s application to move to Manitoba with the children.
- [12] In my Reasons of April 9, 2002, I determined that the children's primary residence be with Ms. M.S.. I accept that the two oldest children, T.M.R. and R.G.R., stay mainly with Mr. Y.M.R., spending just a couple of nights each week with Ms. M.S. although visiting her home on other occasions. I conclude that the reality of this arrangement which has evolved since April 2002 ought to be reflected in an order providing that the primary residence of T.M.R. and R.G.R. be with their father, Mr. Y.M.R.. The primary residence of the three youngest children, M.D.R., D.E.R. and J.H.M.R., will remain with their mother, Ms. M.S..

- [13] Ms. M.S. seeks in her October 28, 2003 motion an order that Mr. Y.M.R.'s "access" be specified to prevent further disputes and to be accompanied by a provision allowing police intervention should Mr. Y.M.R. fail to return the children at the times specified in the order. I decline to order either specific visitation times or an enforcement order as I fear both would become mechanisms used not for the children's best interests but as yet another means by which the parents could exercise pressure upon each other.
- [14] Mr. Y.M.R. seeks to vary the present visitation arrangement which provides that the three youngest children spend from Saturday evening to Wednesday morning with their mother and from Wednesday evening to Saturday with their father. He would like to see the children spending alternating weeks with each parent with a visit to occur on Wednesday evenings. Mr. Y.M.R. advanced this arrangement at trial and I concluded that it was inappropriate given the ages of the three youngest children and after considering the submissions of Ms. Fuchs who acted as the children's advocate at trial. I decline to vary the present arrangement which also provides that the Christmas, spring break and summer holidays are to be divided equally between the parents.
- [15] In my April 2002 Reasons, I suspended the payment of child support pending the preparation and filing of income tax returns and proper financial statements by Mr. Y.M.R.. The information provided indicates that he has an income of \$15,920.00 a year for the purposes of the Federal Child Support Guidelines. Mr. Paul, counsel for Ms. M.S., reflected his client's belief that although Mr. Y.M.R.'s income from his contracting business is probably higher than what is reported in his income tax returns, she acknowledges that there is little likelihood of her receiving any meaningful child support from Mr. Y.M.R..
- [16] Ms. M.S. supports herself and her children on social assistance of \$739.00 a month, the child tax credit of approximately \$490.00 a month and some seasonal earnings from her employment as a waitress which amounts to between \$640.00 and \$1,000.00 a month plus tips. Her 2000 tax return showed income of \$2,854.00 and her 2001 return showed income from social assistance of \$12,371.00. The material provided did not appear to include a tax return reflecting her 2002 income, but I think it fair to conclude that she has annual income of approximately \$12,000.00, somewhat less than that of Mr. Y.M.R.'s declared income.
- [17] In addressing child support, I consider that the children's time is split roughly equally between the parents and that although Ms. M.S. contributes some monies for the children's extraordinary expenses such as their sports, I conclude that Mr. Y.M.R. pays a larger portion of these expenses and acknowledge that he seeks an order that Ms. M.S. pay a greater share for these extraordinary expenses.
- [18] In considering child support and Mr. Y.M.R.'s claim regarding extraordinary expenses, I take into account the parties' incomes, the financial commitment they each assume in contributing to their children's well being, and the potential which Ms. M.S. appears to recognize that a child support order against Mr. Y.M.R. would further exacerbate the already difficult situation between herself and Mr. Y.M.R. with its negative effect on the children. I

conclude that given the circumstances as they presently exist and the fact that the parties have reached an accommodation, if not an agreement, as to the financial arrangements for the children that an order regarding child support or contribution to extraordinary expenses is unnecessary at this time.

- [19] However, to ensure proper financial disclosure between the parties, I direct that each provide to the other copies of their individual and corporate income tax returns for the past year by May 31, 2004 and annually thereafter, as well as delivering forthwith upon receipt, copies of notices of assessment or reassessment issued by the federal taxing authorities.
- [20] The parties acknowledge that they have difficulties in communicating, particularly regarding the children. I find from the material filed that both Mr. Y.M.R. and Ms. M.S. often fail to discuss in a meaningful manner matters relating to the children and, where those matters are contentious, the discussion such as it is, degenerates into foul and coarse language. During submissions I asked what might be done to improve the level of communication and there appeared to be a consensus that the use of a book in which to exchange information might be of assistance.
- [21] In my April 9, 2002 Reasons at ¶[19] 3 I directed how the parents were to communicate with each other, and I conclude that this provision must be modified to provide that the parties are to communicate in writing using a book devoted solely for that purpose. The messages are to be polite, clearly written and without the use of vulgar or coarse language. If one parent asks a question, the response must be provided within a reasonable time which I would construe to be within 24 hours or, if it cannot be answered, the reason why it cannot be answered.
- [22] The parties will find a means to exchange the book, but I specifically direct that the book is not to be delivered by any of the children. The parties shall ensure that the children do not have access to the book; thereby keeping the parents' issues away from the children. I acknowledge there will be emerging situations where the parties will have to communicate directly either in person or by telephone, but hopefully this will be kept to a minimum and, when it occurs, it will be conducted in a civil fashion.
- [23] I am not prepared to direct the preparation of a custody and access report at this time, but would anticipate that before hearing an application to alter the joint custody and visitation arrangement created in my April 9, 2002 Reasons, as amended by these Reasons, such a report would be necessary.
- [24] I make no order with regard to Ms. M.S.'s applications found in paragraphs 6, 7, 9 and 10 of her motion dated October 28, 2003, as the relief is already covered in my previous judgment or the material sought has been produced. The relief sought in paragraph 2 of Ms. M.S.'s motion dated July 15, 2002 relating to the transfer of the matrimonial home has been satisfied in part, and was to be concluded on December 10, 2003 with Mr. Y.M.R. on that date signing a release of the certificate of pending litigation which he had filed against the home. Ms. M.S. has leave to bring this matter before me on short notice if difficulties continue with

the removal of this certificate.

[25] The parties seek me to be seized of this file, and I appreciate their concern that if the matter were to go before another judge or master, considerable time would be wasted introducing them to the intricacies of their issues. I decline to be seized as situations might arise where I am not readily available and it might well be unfair to delay the hearing of an application. However, I do understand that it is most convenient both for the court and the parties that I continue to hear the applications as might arise on this file and will direct that, when convenient, the trial coordinator arrange for me to hear such applications.

[26] I direct that the parties bear their own costs of this application.

"R.M. Blair, J."

The Honourable Mr. Justice R.M. Blair

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