

CANADA / JUDGMENT

Mangat v. Mangat

2019 BCSC 2057

COURT

Supreme Court of British Columbia

DECIDED

20 November 2019

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2019 BCSC 2057 Mangat v. Mangat IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Mangat v. Mangat, 2019 BCSC 2057 Date: 20191120 Docket: E192634 Registry: Vancouver Between: Kevinder Singh Mangat Claimant And Abhinandan Mangat Before: The Honourable Mr. Justice G.C. Weatherill Oral Reasons for Judgment In Chambers Counsel for the Claimant: K. Shirley-Paterson Y. Li-Reilly Counsel for the Respondent: M. Cheema Place and Date of Hearing: Vancouver, B.C. November 20, 2019 Place and Date of Judgment: Vancouver, B.C. November 20, 2019

- [1] THE COURT: The claimant father seeks a declaration that the respondent mother has wrongfully retained the parties' two children, Siyanna, 8 years old, and Jeeven, four years old, in British Columbia. The father also seeks a declaration that the children are habitual residents of Uganda, a declaration that this court has no jurisdiction over the children, pursuant to s. 74(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], or alternatively, should opt to decline the jurisdiction pursuant to s. 74(3) of the FLA.
- [2] Further, the claimant seeks an order that the respondent return the children to Uganda pursuant to s. 77 of the FLA. He also seeks an order pursuant to s. 77(2)(c) of the FLA that the respondent pay all of the expenses reasonably and necessarily incurred for travel and otherwise. Finally, he seeks an order that the respondent provide to him the children's Canadian and United Kingdom passports.

background

- [3] The parties were married on August 2, 2009. They lived in London, England. In August 2018, they moved from the United Kingdom to Kampala, Uganda, where they resided in a large home owned by the claimant's parents along with other members of the claimant's family, including his brother, Jas, and Jas's wife, Maneghna, who, as it happens, is the respondent's sister. The parties separated while living in Uganda on March 22, 2019, although they continued to reside in the family home.

- [4] There is no question that for several months preceding June 27, 2019, the claimant and the respondent had their matrimonial difficulties. Unfortunately, the claimant's relatives, including Jas, engaged themselves in those difficulties.
- [5] On June 27, 2019, the respondent left Uganda with the children to travel to Surrey, BC for a three-week vacation. She was to return on August 17, 2019. Several of the respondent's sisters live in Surrey. While there, the respondent and the children stayed with one of them.
- [6] Shortly before the respondent was to return to Uganda from Surrey, she decided that she was going to stay in Surrey with the children. She did so without the claimant's consent. The evidence is clear that at no time did the claimant either acquiesce or reasonably delay his opposition to the respondent's decision.

analysis

- [7] Having read the materials filed on this application, I am satisfied that the habitual residence of the children is Uganda. The children are now physically present in BC only because their mother is wrongfully retaining them here, again, having unilaterally made the decision to do so while vacationing with them in Surrey for the summer.
- [8] Given those circumstances, I am unable to make an order under s. 74 of the FLA. However, pursuant to s. 77(2)(c) of the FLA and, to be clear, in reliance upon the claimant's undertaking to this court, as set out in his affidavit #3 sworn November 17, 2019, I am making the following orders:
- 1) there will be a declaration that the respondent has since August 17, 2019 wrongfully retained the children in Surrey, BC;
 - 2) there will be a declaration that the children are habitual residents of Uganda;
 - 3) pursuant to s. 77(2)(c) of the FLA, I am ordering that the respondent return the children to their home in Kampala, Uganda, as soon as reasonably practicable, on the following terms:
 - i) the claimant will pay all the costs and expenses incurred for travel and other expenses of both the children and the respondent; ii) in respect of the travel from Vancouver to Kampala, Uganda, the claimant will pay the respondent for her support in Uganda the Ugandan shilling equivalent of \$1,000 CDN per month for six months commencing January 1, 2020, or until such time as the parties have resolved their dispute or a court order dealing with support, whichever shall first occur; iii) the claimant will pay for the respondent's hotel or other accommodation in Kampala, Uganda, until such time as she has secured reasonable rental accommodation or until February 1, 2020, whichever shall first occur. It will be a term of the order that the respondent is entitled to reside in reasonable proximity to the children; and iv) the claimant will pay for the expenses associated with the children's schooling and other activities pending further court order.
- [9] It is my view that the courts of Uganda have jurisdiction in this matter.

- [10] To be clear, I am making this Order under s. 77(2)(c) of the FLA which provides as follows: In the circumstances set out in subsection (1), a court can do one or more of the following:
- (c) order a party [the respondent] to return the child to a place the court considers appropriate, [Uganda], and in the discretion of the court order a party [the claimant] to pay all or part of the expenses reasonably and necessarily incurred for travel and other expenses of the child and of any parties to or witnesses in the proceeding.
- [11] My reading of the words "and of any parties" includes the respondent. My reading of "expenses" includes the expenses that I have dealt with.
- [12] If the foregoing conditions are not met, I expect that the respondent will apprise the Ugandan courts of that.
- [13] Now, if the parties are unable to resolve their issues, be they financial, parenting, parenting time, et cetera, the matter will have to be dealt with by the Ugandan courts. The respondent has a buffer of some six months, commencing January 1, 2020 until the end of June 2020, to commence her proceedings in the Ugandan courts, if she so desires, before the support obligation I have ordered expires.
- [14] In terms of the flight from Vancouver to Uganda, the FLA stipulates that it is the respondent who must return the children. Accordingly, the respondent will be on the flight with the children. I am making no order with respect to whether the claimant can or cannot be on the same flight. If they are on the same flight home, I am encouraging them to cooperate, be respectful and show civility for the sake of the children. If there is trouble, the authorities will have to deal with it.
- [15] MS. SHIRLEY-PATERSON: I submit that there is no issue in respect to the travel-related expenses and possibly expenses or finances regarding the children, but if you are referring to property division or so on --
- [16] THE COURT: I am referring to expenses to have her -- she left the home with the children, made a decision not to return because of the concerns that she was not welcome in the home. She plainly is not welcome in the home. I am ordering her to go back to Uganda with the children. She has got to have a place to stay. That to me is part of the expenses.
- [17] MS. CHEEMA: Absolutely. So perhaps we could change the wording then. If the parties are unable to resolve their issues -- you have got financial or otherwise and that is what is --
- [18] THE COURT: That is not part of the order. That is just a comment on my part.
- [19] MS. SHIRLEY-PATERSON: That is what I wondered. Okay. Thank you very much.

- [20] THE COURT: I am just going to make it clear to the respondent, primarily, that once she gets back to Uganda, she cannot sit idly by and do nothing. She is going to have some time to find a place to live so that she will have a month of hotel accommodation paid for. Once she finds a place to live she is going to have some support, but that is not going to be forever. That is for six months.
- [21] So if the parties cannot sort out their differences by agreement, she is going to have to commence proceedings in Uganda to do it and a Ugandan court will have to deal with it.
- [22] MS. SHIRLEY-PATERSON: And is Your Lordship going to order anything regarding the passports? I guess if the mother -- we had paragraph 7.
- [23] THE COURT: No, I am not making any order there.
- [24] MS. SHIRLEY-PATERSON: On the understanding she is taking them.
- [25] THE COURT: She is going to get the children back to Uganda and then the Ugandan court will have to deal with the passport issues.
- [26] MS. CHEEMA: And my friend is to draft the order?
- [27] THE COURT: Yeah. I am sure she is quite prepared to.
- [28] MS. SHIRLEY-PATERSON: I already have one, but I will fix it up.
- [29] THE COURT: All right. [SUBMISSIONS RE COSTS]
- [30] THE COURT: I am not prepared to make an order as to costs, but one of the many unfortunate outcomes of a matrimonial breakdown is not just the emotional turmoil, it is not just the effect it has on the children, but it is expensive. It is one of the facts of life, when two parties cannot get along and they separate. There are always victims and, in this case, two of them are the children who did not ask for any of this but they are caught in the middle. The more the parties fight, refuse to get along and disagree on a reasonable outcome, the more expensive it is going to be. Those are my comments, for what they're worth.
- [31] There will be no order as to costs.
- [32] I wish both of the parties the best and I hope that they can sort this out in a rational and adult manner.
- [33] MS. SHIRLEY-PATERSON: My Lord, I am sorry. I do have one more consideration. With the mother bringing the children to Kampala, you said she is to return them to their home there. Do you mean to the father's house?
- [34] THE COURT: Yes I do.
- [35] MS. CHEEMA: Thank you.

- [36] MS. SHIRLEY-PATERSON: And then they will work out parenting times?
- [37] THE COURT: Right. And if they cannot, then it will be a matter for the Ugandan court.
- [38] MS. CHEEMA: Thank you, very much.
- [39] MS. SHIRLEY-PATERSON: Thank you, My Lord.
- [40] THE COURT: They are going to be returned to their home.
- [41] MS. SHIRLEY-PATERSON: I just wanted to clarify that because I would be concerned if that got --
- [42] THE COURT: No, to their home. Where they were living when they left on June 27. "G.C. Weatherill J."
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