
CANADA / JUDGMENT

McConachie v. McConachie

2008 BCSC 130

COURT

Supreme Court of British Columbia

DECIDED

31 January 2008

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2008 BCSC 130 McConachie v. McConachie

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

McConachie v. McConachie,

2008 BCSC 130

Date: 20080131

Docket: E024945

Registry: New Westminster

Between:

Joanne Rosemary McConachie

Plaintiff

And

Christopher John McConachie

Defendant

Before: Master Keighley

Reasons for Judgment

Counsel for the Plaintiff:

A.M. Lessing

Counsel for the Defendant:

D.T. Paterson

Date and Place of Trial/Hearing:

January 21, 2008

New Westminster, B.C.

- [1] This family law proceeding is scheduled to proceed to trial on April 14, 2008 for 10 days. On June 6, 2007, I ordered the preparation of a s. 15 Custody and Access Report which is now available, having been delivered by Robert L. Colby, its author, in September of last year.
- [2] On this application, the father seeks to implement Mr. Colby's recommendations on an interim and, he submits, urgent basis. Specifically, he seeks:
1. The recommendations of Mr. Robert Colby, contained in the Section 15 Report dated September 11, 2007, in relation to the children of the marriage, namely: Matthew Alan McConachie, born December 18, 1998 ("Matthew"), and Mark Grant McConachie, born March 25, 2000 ("Mark"), (collectively the "Children"), be implemented on an interim basis, pending trial, more specifically, that:
 - (a) The Children be immediately enrolled in joint counselling with a child therapist;
 - (b) Matthew will be immediately enrolled in individual therapy;
 - (c) The Parties immediately retain the services of a 'divorce coach' or other qualified professional, attend at their scheduled appointments with said professional, deal with any parenting issues that may arise from time to time, and abide by the recommendations of the professional;
 - (d) The Plaintiff immediately obtain individual counselling; and
 - (e) The Children spend equal time with each parent, on a weekly rotation with the need for a mid-week visit (whether an overnight or an evening), to be determined.
 2. The Parties share joint custody of the Children, on an interim basis;
 3. The Parties share joint guardianship of the Children, using a Joyce Model, with the Defendant to have the 'final say' on any major issues, including but not limited to issues related to health (physical or mental), schooling, education, religion and the like;
 4. Alternatively, the Parties share joint guardianship of the Children, using a Joyce Model, and in the event of a disagreement of the Parties on a major issue, they shall attend at mediation or a 'divorce coach' (if implemented above), and abide by the mediator/coach's recommendations;
 5. Alternatively, the consent of the Plaintiff be waived with respect to the Defendant's requests to have Matthew tested further for learning disabilities, through his school and/or at the 'Able Clinic', and/or to have both Children tested further for any hearing and/or vision difficulties;

6. The Plaintiff shall immediately cease speaking negatively in front of the children about the Defendant, Mr. McConachie, and/or his partner, Ms. Fischer;
 7. Unless already complied with by the date of the hearing, the Plaintiff honour the Order of Master Keighley, made August 16, 2007, and thereby permit the qualified appraiser selected by the Defendant to attend at 16952 Friesian Drive, Surrey, British Columbia and 16538 60th Avenue, Surrey, British Columbia to prepare the inventory of the household chattels, furnishings and the like and to appraise the aforesaid items on 2 days notice to the Plaintiff, with the said appraiser to contact the Plaintiff and advise her of the date and time he/she will attend and with the cost of said appraisal to be paid by the Defendant;
 8. Unless already complied with by the date of the hearing, the Plaintiff be penalized pursuant to Section 92 of the Family Relations Act, for any outstanding financial disclosure that remains undelivered pursuant to the Order of Master Keighley, made August 16, 2007;
 9. Costs;
 10. Such further and other relief as this honourable Court deems just.
- [3] Items 7 and 8 were not addressed by counsel and will be adjourned generally.

Background

- [4] The parties were married March 29, 1997. They have two young boys, Matthew, age 9, and Mark, aged almost 8 years. The father is 39; the mother 38. The parties separated on or about March 29, 2006, and this proceeding was commenced on May 25, 2006.
- [5] The parties have attended two Judicial Case Conferences, one before Ehrcke J. on November 23, 2006, and another before Master Bishop on January 18, 2007. The matter was first scheduled to proceed to trial on October 15, 2007, but was adjourned to the date indicated above. Attempts to mediate or negotiate a mutually agreeable parenting plan have failed. The mother wishes to have the children in her primary care; the father wishes to share the children on a week-on, week-off basis.

Mr. Colby's assessment

- [6] Mr. Colby says that both boys have difficulty dealing with the break-up of their family, although they express their unhappiness in quite different ways. Mark, the younger of the two, has told Mr. Colby that he wants to live full time with his father, his father's new partner, and her children. He tends to characterize his mother as "mean", mainly because of chores and other domestic issues, but also says that she is critical of his father and his father's new partner. He says his father "doesn't say anything" about his mother. He excludes his mother and brother from his concept of a desirable family unit.

- [7] Matthew, on the other hand, appears to be anxious for a reconciliation between his parents. He says his mother says nothing bad about his father, but says that she says that the father's new partner is "bad woman". He agrees with Mark that the father says nothing about the mother. Matthew's ideal family unit consists of himself and his parents.

The present access regime

- [8] At present, the father has the children from Thursday after school until the following Monday morning, when he drops them off at school. The boys are then with their mother from after school on Monday until she drops them off at school on Wednesday morning. The father then has the children from Wednesday after school until 6:00 p.m. on Thursday, the boys are then with their mother from Thursday evening until she drops them off at school on the following Wednesday morning when the cycle begins again.
- [9] The mother has suggested that in the first week of the cycle the father have the boys from after school on Wednesday, rather than from after school on Thursday. The father has rejected this proposal, indicating that he wants the boys on a week-on, week-off basis.

Mr. Colby's recommendations

- [10] Mr. Colby's recommendations are as follows:
1. In order to maintain these sibling's relationship with each other and their identity as family, it is necessary that they be housed together and that they jointly share a visitation schedule. Any changes in that regard would further fracture the relationship between these two children. However, it is not felt that these children can independently establish their positive regard for each other. It is recommended that the children be in joint counselling with a child therapist specifically to address issues of building a positive relationship between these two young boys consistent with their family identity.
 2. Matthew is the child who is most affected by the breakup of the family and it appears to have had an affect on his communication skills and upon matters of self-identity. He appears to be in the process of taking on the role of trying to re-establish his family. Concern is raised about how responsible he feels for the current situation. It is therefore recommended that Matthew be engaged in individual therapy specifically to address issues in relationship to the marital breakup. It is important that both parents be actively engaged with Matthew's therapist in order to address issues of Matthew's emotional and psychological status.
 3. These children have a close relationship with both parents. Despite Mark's statement of excluding his Mother from his concept of family, when observed in conjunction with his Mother, it is a positive relationship. It is necessary for both of these parents to be actively engaged in the parenting process. There are some concerns raised regarding Mr. McConachie's statement that Ms. McConachie will not engage with the children's ophthalmologist. There are points where she would not engage in a counselling program in relationship to the children and she would not initiate a parenting journal. On the other

hand, there are concerns raised by Ms. McConachie that Mr. McConachie excluded her from engaging the children in appropriate medical care and her ability to engage the children in extracurricular activity on her time. In order for these parents to be able to jointly parent the children, these matters need resolution and these parents need a third party Mental Health Professional to assist them in establishing both appropriate communication and links between the households as well as respect for each other's parenting rights in this process. If this can be established, then these parents can engage in mutual decision-making and responsibility for these children.

4. Concerns have been raised by the children, especially by Mark, in regards to Ms. McConachie's ability to engage with them when the children are in her care. These concerns are raised over and above her engagement in the children's school and sports activities but are more directly related to the interactive involvement of the parent and child. When observed in the office, there were no concerns although the children were more limited in their involvement with their Mother than they were with their Father and Ms. Fischer. It is recommended that Ms. McConachie seek a counsellor who can address issues in regards to matters of parent-child interaction. The therapist may be able to facilitate that through the process of "Recommendation 1". With the children engaging in mutual therapeutic involvement, she can consult with the children's therapist in that regard, especially if any issues are raised by the children in terms of their involvement with their Mother.
5. The current visitation presents rather limited contact for the children with McConachie/Fischer household. Ms. Fischer, has educated herself in the field of Special Education Assistant and will be employed in that field. This presents as a benefit to the children. There are some difficulties in relationship to the McConachie children's acceptance of the Fischer children which may be in part a response to the break-up of the marital relationship. Awareness of this, however, should lead to the McConachie/Fischer household addressing the interactive relationship between the Fischer and the McConachie children. It is a matter that needs to be addressed within the McConachie/Fischer household.
6. The children spend a limited amount of time in the McConachie/Fischer household. Both of them are at an age where they are capable of having a weekly rotation between homes. The parental homes are in close proximity to each other and the children can rotate between the houses without affecting their access to their elementary school and after school activities.

[11] Although there is nothing immediate in Mr. Colby's recommendations, the father says at ¶13 of his affidavit number three, sworn October 1, 2007:

As the Children's father I believe that it that it will cause [the boys] more harm if the recommendations of Mr. Colby are not implemented right away and we have to wait for the Trial.

[12] As the notice of motion indicates, the father is not only concerned with the immediate implementation of the recommended parenting plan but is also concerned that the children's vision, hearing problems, and learning disabilities require immediate attention. He says that the mother simply refuses to recognize that the children have vision problems,

that she half-heartedly participates in the vision exercise regime and prohibits the boys from wearing their glasses at home. He says that she is reluctant to have the boys assessed or treated for learning disabilities. He feels that the only way in which the boys will receive immediate help is if they spend more time with him (so that he can get them to appointments), and if he has final "say" with respect to assessments, counselling, and treatments.

- [13] The mother wonders rhetorically why, if the father is so concerned with learning disabilities, he did not show up for parent/teacher interviews. She says that Matthew is currently receiving learning assistance three times a week although his level of performance appears to be average. She says that Mark is doing very well at school. She says that a "second opinion" indicates that the children no longer require vision therapy and she doubts the need for hearing therapy, particularly of the sort proposed by the father.
- [14] I see nothing in the material, apart from the father's assertion that it is so, that the boys require immediate attention of any sort. I understand that from the mother's point of view, Mr. Colby's findings and recommendations are controversial. Fewer than three months now remain until trial. The parties have now been separated for almost two years and have a workable, if not entirely satisfactory, parenting plan in place. There seems to be no good reason why the status quo cannot subsist until trial, particularly when one considers that any other arrangements I put in place may well be varied yet again at trial, further dislocating the parents and the children.
- [15] With the exception of ¶1(e) and 6, the balance relief sought in the notice of motion is dismissed. With respect to ¶1(e), the present parenting arrangement will be varied to provide that at the commencement of the two week cycle the father will pick-up the boys from school on Wednesday, returning them to school on Monday morning. With respect to ¶6, I will order that neither of the parties speak negatively of the other, and in the mother's case, of Ms. Fischer, in front of the children, and that neither actively discusses this litigation or the issues arising therein with the boys. My use of the word "actively" is meant to suggest that they respond to the boys' inquiries in the briefest most discreet manner, but no more.
- [16] The mother will have the costs of this application in any event of the cause.

"Master Keighley"

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