

CANADA / JUDGMENT

Mead v. Mead

2011 BCSC 566

COURT

Supreme Court of British Columbia

DECIDED

2 May 2011

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2011 BCSC 566 Mead v. Mead IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Mead v. Mead, 2011 BCSC 566 Date: 20110502 Docket: E33985 Registry: New Westminster Between: Jon William Mead Claimant And Jacqueline Laurel Mead Respondent Before: The Honourable Mr. Justice N. Smith Reasons for Judgment In Chambers Counsel for the Claimant: C.E. Humchitt Counsel for the Respondent: M.G. Perry Place and Date of Hearing: New Westminster, B.C. April 8, 2011 Place and Date of Judgment: New Westminster, B.C. May 2, 2011

- [1] The parties were divorced in April 2010, following a judicial settlement conference where they consented to an order that included a detailed schedule for parenting of their two children and payment of spousal support. The respondent—the former wife—now seeks a number of variations to that order, including continued and increased spousal support and a revised parenting schedule to accommodate a proposed change in the children's schools. She wants them to attend schools in Langley, while the claimant seeks an order prohibiting any relocation of the children outside the Burnaby School District.
- [2] The parties began living together in June 1998, were married in February 1999 and separated in August, 2007. Their children, who I will refer to as R and L, are now 12 and 10.
- [3] The litigation between these parties has obviously been lengthy and acrimonious, as illustrated by the fact that the material before me on this application included the claimant's affidavit number 23 and the respondent's affidavit number 32. I do not intend to review that history because a lengthy settlement conference before Leask J. resulted in the comprehensive consent order dated April 23, 2010. The only issues properly before me relate to the implementation and possible variation of that order. Schooling and Parenting Schedule
- [4] The consent order made the parties joint guardians of the children and set out an equal parenting schedule under which the children live with each parent for two weekdays each week and on alternating three day weekends. It also provided that the children are to attend Inman Elementary School in Burnaby until June, 2011. The older child, R, will then be free to choose his secondary school. His sister L will attend Confederation Park Elementary in Burnaby for grades 5, 6 and 7, but may return to Inman Elementary "if absolutely necessary".

- [5] The respondent now seeks an order confirming R's choice to attend the Langley School of Fine Arts. She proposes to move to Langley to accommodate that choice and says that requires a further variation of the order so that L can attend an elementary school in Langley. That would make the current parenting schedule impractical and she proposes a new schedule in which the children would spend three weekends a month and one weeknight a week with the claimant. The claimant objects to any such change because it would make him a "weekend dad" rather than an equal parent.
- [6] There is some controversy about whether the choice of the Langley school truly reflects R's preference. On March 29, 2011, Ker J. ordered preparation of views of the child report on that issue by Dr. Allan Posthuma. Dr. Posthuma interviewed R on two occasions. On the first occasion, when he had been brought to Dr. Posthuma's office by the claimant, R said he had decided in favour of attending North Burnaby high school. Two days later, when the respondent brought him for a return visit, R said he wanted to attend the Langley school. Dr. Posthuma concluded that R's desire to attend the Langley School of Fine Arts represents his reasoned opinion and that his previous expressed preference to remain in Burnaby was a response to actual or perceived pressure from his father.
- [7] While I am prepared to accept Dr. Posthuma's opinion about R's true preference, that preference cannot be determinative. Although the consent order gives R the right to choose his secondary school, it does so in the context of an order that his sister attend a school in Burnaby and a very specific parenting schedule that could only be practical if both parties live in reasonable proximity to one another and to the children's schools.
- [8] Although the respondent says changes will be necessary to those other portions of the order in order to accommodate R's choice of the Langley school, her notice of application does not seek those variations. More important, I do not think the consent order can be interpreted as giving R such an unlimited choice of schools that he can effectively dictate other changes to the order. In the context of the entire order, the provision giving R a choice of schools must be read as a choice of schools within Burnaby or, at most, reasonably accessible schools in adjacent municipalities.
- [9] The respondent has not formally applied for an order stating which school R is to attend and I make none. The claimant has applied for an order that the residence of the children not be changed from the Burnaby School District. I decline to make that order. Although the respondent clearly would like to move to Langley with the children, there is no evidence that she intends to do so while the children are required—as they are by the consent order—to attend schools in or near Burnaby. Spousal and Child Support
- [10] The consent order required the claimant to pay spousal support of \$3,600 a month, with that amount to be reviewed at a further settlement conference before Leask J. in July 2010. If subsequent proceedings before Leask J. resulted in a further order, I have not been able to find it in the three volumes of affidavit material that were put before me, but it appears to be common ground that payments were at some point increased to \$4,000 a month. In

December 2010, Gerow J. ordered that payments of \$4,000 a month continue until the hearing of this application.

- [11] The consent order is silent on child support, although it sets the claimant's annual guideline income at \$130,000 and the respondent's at zero. On that basis, the child support tables would require the claimant to pay \$1,818 a month. I gather the parties found it advantageous to provide for a single monthly payment and to label it as spousal support rather than expressly dividing it between spousal and child support. As the parties are no longer in agreement and both seek changes in the amount to be paid, I must consider child and spousal support separately under the law governing each of them.
- [12] There is no dispute about the claimant's ongoing obligation to pay child support of \$1,818 a month. However, the claimant seeks a reduction in spousal support because he says the respondent has made no real effort to become self-supporting. The respondent has some training as a pastry chef and has now started a home based pastry business, which has so far generated very little income. She says she is also seeking part-time retail work, which she could not seek earlier because of an injury that precluded prolonged standing.
- [13] The claimant says the respondent is not making serious efforts to establish her home-based business and could be earning employment income as a pastry chef in a restaurant or bakery but has made no effort to find such work. He attaches to an affidavit more than 400 pages of job listings in that field that he says he found on the internet over a period of about a year. However, many of those postings appear to require more experience than the respondent has.
- [14] The respondent is now 49 and did not work outside the home during the marriage. She is a U.S. citizen and did not obtain permanent residency status and the right to work in Canada until October, 2009. A letter from her family physician dated October 26, 2010 says that her ability to work had been limited by anxiety and depression as well as by physical injuries, most recently a sprained thumb that prevented her from using this hand while baking.
- [15] While the claimant may be correct that the respondent could have made more effort to become self-supporting, in my view it would be unrealistic to expect her to achieve that goal immediately. I am satisfied that she needs more time and her application to extend spousal support until at least June, 2012 is reasonable. I accept her counsel's calculation of the applicable range under the spousal support advisory guidelines and set spousal support at \$3,022 a month, which is the stated mid-range on those calculations.
- [16] The claimant will therefore pay spousal support of \$3,022 a month, in addition to child support of \$1,818, effective April 1, 2011. Spousal support will be reviewable on the application of either party on or after June 1, 2012. The parties will file and exchange complete and current Form F8 financial statements by May 15, 2012. In the meantime, each party will provide the other with their 2010 income tax returns by May 31, 2011. Other Orders

- [17] The respondent's notice of application seeks further variations in the consent order relating to after school care and to the claimant's obligation to maintain life insurance as well as an order that the claimant comply with provisions of the consent order "regarding medical appointments for the children". The claimant also seeks to add a police enforcement clause to the consent order. These matters were not fully argued and I make no orders in respect of them.
- [18] Success has been divided on this application and the parties will each bear their own costs. "N. Smith J."

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