
CANADA / JUDGMENT

N.D.G. v. G.M.W.

2003 BCSC 1650

COURT

Supreme Court of British Columbia

DECIDED

15 September 2003

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2003BCSC1650

Citation

N.D.G. v. G.M.W.

Date:

20030915

2003 BCSC 1650

Docket:

E022377

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment

Master Bolton

September 15, 2003

BETWEEN:

N.D.G.

PLAINTIFF

AND:

G.M.W.

DEFENDANT

Counsel for Plaintiff

T.L. Jackson

Counsel for Defendant

L.N. MacLean

Place and Date of Hearing

Vancouver, B.C.

September 15, 2003

- [1] THE COURT: This is an application basically to require the court to decide where two children are going to go to school and daycare. It is not a decision of the sort that courts are well equipped to deal with, particularly in the context of litigation like this, rather than a judicial case conference which might provide everyone with a better forum for discussing the relevant factors. But since the parties have been unable to agree, then the court will have to make the decision based on the affidavit material and the submissions of, fortunately, able counsel appearing on both sides of the issue.
- [2] The issue relates to two young boys. I do not believe I was told their ages, but they are quite young. J., the elder, will be going to kindergarten, and J. is going to be part-time in preschool.
- [3] The parties lived in Burnaby for the last three years, I believe, of their life together, but separated about a year ago when the wife took the children with her back to Calgary. I do not propose to get at all into the circumstances of her leaving and arrival in Calgary.
- [4] Dr. Elterman has done a report. As best I understand it, his recommendation is that the mother should have custody, but the children share their time equally between the parents, if they are in the same locality. That last eventuality is now the case, since the father recently himself moved to Calgary, and the parties will be sharing time with the children. They have, in fact, already been doing that, while he still lived in Burnaby, on approximately a two-week-on/two-week-off schedule.
- [5] The mother proposes that the children go to a combination of school for -- kindergarten for J. and preschool for J., plus daycare for essentially full-time Monday to Fridays, since she works full-time.
- [6] The father has moved into a neighbourhood about 15 kilometres away. He proposes the same sort of formal schooling schedule for both children, but he proposes that on Tuesdays and Thursdays he would take care of J. all day, and take care of J. in the afternoon after his morning kindergarten finishes, even if the children are scheduled to be with their mother that week.

- [7] He says he will be able to do that because he is working on a project through a university, I believe, doing some sort of research in any event, and working largely by computer at home. He says he can fit those times with the children into his schedule quite conveniently, as to a considerable extent he was able to do when the parties were together and during the children's time with him in Burnaby following the separation.
- [8] However, his contract runs out in October, and he has not found another position to replace it. Counsel for the father suggests that his employment history is such that it will likely be replaced by something similar, doing some sort of research from home where he is able to work relatively limited hours and to set his own hours. But there is no guarantee of that.
- [9] Obviously, there are reasons to prefer the father's suggestion, simply on the basis of the additional time that the children will have with one of their parents, as opposed to a daycare provider. There is also the question of expense, which is not all that significant, I gather, or at least counsel did not dwell on it, but it is, nevertheless, a factor to take into account. Presumably the expense of the husband's proposal would be significantly less than the mother's, simply because of the lesser time being spent in daycare.
- [10] As to the choices between schools and daycare and so on, and also the choice as to neighbourhood, then, in my view, the court should not get involved in value judgments of such things unless one party is clearly acting unreasonably. That is, I am satisfied, not the case here. I have no intention of getting involved in the debate as to whether or not a small school is preferable to a big one; the smaller one presumably with more individual attention available for the children, the larger one with more social opportunities for the children and a greater wealth of programs. Unless one party is acting unreasonably, it is no business of the court to start selecting schools based on criteria such as that, and I have no intention of doing so here.
- [11] Similarly, with regard to the neighbourhoods, people choose different neighbourhoods for different reasons, and the court should not start second-guessing unless there is some clear objective reason to suggest that one party is acting in a less than reasonable or straightforward manner.
- [12] In my view, the decision is not easy. The husband's proposal does have one obvious advantage that I have already pointed out, the time that the children would be spending with him rather than a daycare provider. But it has one big detriment, in my view, which is the fact that the certainty of that regime is still unknown. If he does end up with a position similar to the one that he has had in the past, then I do not think there is much doubt that his proposal would be preferable, but there is no guarantee that he will find the sort of work that he desires.
- [13] I have no idea about the particular industry or part of academia that he works in, and just what the prospects are for him being able to pick and choose a position. He is now limited geographically to Calgary, given his desire to be near his children. Obviously I am not going to be holding anything against him that results from such a laudable position. But,

nevertheless, he is geographically relatively limited in the sort of positions he can apply for, assuming some local contact is necessary at all, so it may turn out that the only positions using his education and expertise and desires will be in a straight 9:00 to 5:00 job or something along those lines.

- [14] In my view, the position of the mother should be accepted in this application simply because the father's position is so uncertain. Her position is not unreasonable at all, and it offers the benefit of stability over the short-term. His proposal, while inherently preferable if everything concerning the parties' hours of work were to remain exactly the same, is less certain, and for that reason alone, then I conclude that the proposal made by the mother should be accepted.
- [15] I was going to go on to deal with another reason that had been niggling at me throughout a good deal of this application, which was the thought that the father had essentially caused this problem himself by choosing not to move into the neighbourhood where the mother and children were already established. She and the children have been in Calgary for a year. It seems obvious that any preschool and school she is going to select for the children will be close to her neighbourhood, and if the father had simply moved close to that neighbourhood, himself, we could have avoided the whole problem by having one school and one daycare close to each, when the court might, in the event of a disagreement, and despite my protestations, have to actually choose between competing schools and preschools and daycare providers in the same neighbourhood.
- [16] I had originally thought that perhaps this was another reason to prefer the wife's proposal, or her solution to the problem, simply because it was the husband who had initiated the problem in the first place by moving into a neighbourhood 15 kilometres away.
- [17] Having put the proposition to his counsel, though, I am satisfied that that is not really something that could appropriately be held against him. I am satisfied that he moved into that neighbourhood because of real concerns about the neighbourhood where the wife was living. I should not say "concerns" -- a real preference based on the fact that she had lived there before the parties began living together and then, when they did, she moved from that neighbourhood into another neighbourhood closer to the one, more upscale, that he now lives in.
- [18] I have raised this issue in my reasons because I did raise some concern about it in my questions to counsel, and I say categorically that I have not taken that into account at all. I am satisfied that the husband's reasons for choosing the neighbourhood he did are such that it would not be appropriate to put any particular onus on him of solving a problem which arose, not inevitably, but without fault of any party.
- [19] I have not turned my attention to the terms of the notice of motion.
- [20] MR. MacLEAN: Tab 2.

[21] THE COURT: I presume the order will be strictly in the terms of the notice of motion. The order for costs will be costs to the defendant in the cause; that is, if she has the costs of the entire proceeding, she should have the costs of today, but not otherwise.

(DISCUSSION BETWEEN THE COURT AND COUNSEL)

THE COURT: No, I think it is reasonable. There will be an additional term that during the children's time with the father, the plaintiff, he not be required to utilize the daycare facilities chosen by the defendant. I have phrased it that way to suggest that even if he does find it necessary to use daycare, I do not see any reason why he should not on an ad hoc basis choose daycare himself during his week with the children. I appreciate the mother's habit of spending lunchtimes with the children, but in the circumstances, I think it is better that they spend the time, in the weeks with the father, with the father.

"Master N. Bolton"

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Prepared on 26 October 2026 · Esheria