

CANADA / JUDGMENT

N.L.G. v. J.M.G.

2024 BCSC 670

COURT

Supreme Court of British Columbia

DECIDED

16 April 2024

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2024 BCSC 670 N.L.G. v. J.M.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

N.L.G. v. J.M.G.,

2024 BCSC 670

Date: 20240415

Docket: E3561

Registry: Courtenay

Between:

N.L.G.

Claimant

And:

J.M.G.

Respondent

Before: The Honourable Justice Morley

Oral Reasons for Judgment

(Application Re Child Support Order)

The Claimant, Appearing in Person:

N.L.G.

The Respondent, Appearing in Person:

J.M.G.

Place and Date of Hearing:

Courtenay, B.C.

April 15, 2024

Place and Date of Judgment:

Courtenay, B.C.

April 16, 2024

I. OVERVIEW

- [1] THE COURT: These are edited reasons originally delivered orally.
- [2] Mr. G. and Ms. G. are the divorced parents of three children: L.G. (age 16), T.G. (age 14) and E.G. (age 10). The parties agreed to a final consent order in November 2017. This included a provision that Mr. G. would pay monthly child support of \$1,021.
- [3] As is very common, the parties need the child support provisions of their final consent order modified to reflect various changes since they agreed to it. Most of these were, or have proven, uncontentious. In particular, in the course of the hearing, the parties agreed that Ms. G.'s income in 2021, for child support purposes, was \$34,000. The parties have also agreed to terms about financial disclosure and ongoing counselling for the children.
- [4] What remains for me to decide is the length of time during which child support should be calculated based on shared parenting time under s. 9 of the Federal Child Support Guidelines, as opposed to on the basis parenting time was overwhelmingly with Ms. G. It is not disputed that Mr. G. and Ms. G. shared parenting 50/50 between April 1, 2021 and August 31, 2022, nor that this stopped - as a matter of fact - beginning September 1, 2022, after which the children all lived primarily with Ms. G. based on their stated preference. Ms. G. therefore argues that child support should not be calculated on a shared parenting basis after September 1, 2022.
- [5] However, Mr. G. argues that the reason the children stated their preference was to live with Ms. G. was because of what he characterizes as a campaign of parental alienation. He accepts that once he left the Comox School District, child support should be calculated on the basis that Ms. G. had the overwhelming majority of the parenting time. However, he says that between September 2022 and June 2023, child support should be calculated on a shared parenting basis.
- [6] For the reasons that follow, I find that child support should not be calculated on a shared parenting basis after September 1, 2022, because after that point, Mr. G. was not, in fact, parenting the children 40% or more of the time. On the basis of the record before me, I am not prepared to make a finding of parental alienation against Ms. G. That does not mean I

am making any judgments about who was or was not responsible for the children's stated preference to stay with Ms. G., nor am I foreclosing Mr. G. from seeking remedies in that regard. But for the reasons that follow, I find that these issues do not affect the calculation of child support.

II. Background

- [7] As I have mentioned, Mr. G. and Ms. G. have three children of their marriage. Mr. G. also has two younger children, in a second marriage that is the subject of other proceedings.
- [8] On November 7, 2017, the parties reached a final consent order. At the time, the two older children were in school in the Comox School District (SD 71) and Mr. G. did not live there. However, para. 6(b) of the order provided that "upon Mr. G.'s relocation to School District 71, he will have equal week-on, week-off parenting time with all three children."
- [9] In the November 2017 order, child support was set at \$1021/month, payable by Mr. G. to Ms. G., on the basis of shared parenting for one child (E.G., who was not yet in school). The parties provided for two mechanisms to address changes.
- [10] The first was a review. Every July, there would be a review at the election of either party, to "ensure that the quantum of Child Support payable accords with the requirement of the Federal and British Columbia Child Support Guidelines, and the parties' parenting arrangements." While this could of course be used to adjust child support because one or more children went in or out of shared parenting arrangements, it was primarily for addressing changes in income.
- [11] The second means for adjustment was that either party could deliver a written notice to the other if there was a material change of circumstances, such as a change in the children's primary residence. This duplicates what would be available by law even if it were not provided for.
- [12] Mr. G. relocated to the Comox School District on April 1, 2021, and the parties started sharing parenting time on a week-on, week-off basis. They negotiated a change in child support at that time that I am not being asked to examine (at least up to July 2022) and set child support at \$425/month payable by Mr. G.
- [13] Mr. G.'s income is fixed at \$4,200/month. Ms. G.'s main source of income is her work as a teacher, for which she receives a T4 and which everyone accepts is accurately reflected on her tax returns.
- [14] Mr. G. deposes that it was "not possible" to conduct a review for July 2022 because of deficiencies in Ms. G.'s financial disclosure. It is agreed that she had a decline in employment income in the 2021 tax year from roughly \$39,000 to roughly \$30,000. But Mr. G. noticed that Ms. G. was providing childcare services and income from that was not reflected in her financial disclosure.

- [15] On consent, I took oral evidence from both Mr. G. and Ms. G. about Ms. G.'s childcare income. As a result, it was agreed that she had a total income of \$34,000 for 2021, which under the parties' arrangement would permit a review in July 2022.
- [16] Since guideline amount for \$34,000 is \$698, I will adjust the amount owed under a shared parenting arrangement, beginning July 1, 2022, to \$484/month.
- [17] Under the parties' shared parenting arrangement, the children would spend the entire month of July with Mr. G. and the entire month of August with Ms. G and so it is not contentious that this amount is appropriate up to September 1, 2022.
- [18] It was at the end of the summer of 2022, however, that the contentious events took place, when all the children stated that they no longer wanted a shared parenting arrangement. L.G. continued to see her father on weekends, but the other two children were reluctant even to do that.
- [19] The parties did not modify the parenting order. Mr. G. wanted the children to spend their scheduled time with him. On professional advice, however, he did not take the position with them that they had to do so and he asked Ms. G. to answer the question of whether they had to spend parenting time with him in the negative.
- [20] Mr. G. stayed in the Comox School District until June 1, 2023, when he moved to Qualicum Beach.

III. did Ms. G. "Alienate" the Children?

- [21] Mr. G. accepts that actual parenting time after September 1, 2022 has been overwhelmingly with Ms. G. But he says that in the circumstances, the actual parenting time should be departed from, in favour of ordered parenting time, because of what he characterizes as a campaign of parental alienation.
- [22] In answering this question, I must balance two considerations. Shared parenting time is not about whether a spouse has a legal right under an order to parenting time, but whether the parent exercises that parenting time. Section 9(a) of the Child Support Guidelines says:

If each spouse exercises not less than 40% of parenting time with a child over the course of a year, the amount of the child support order must be determined by taking into account [...] (a) the amounts set out in the applicable tables for each of the spouses;

- [23] Thus, in general, shared parenting is a basis for child support only if there was, in fact, shared parenting (if it was "exercised"). This is because child support is the right of a child, not a reward to a parent for being a good parent or family law litigant. There are other remedies for those things. It addresses the child's ordinary financial needs, with the presumption of the Child Support Guidelines being that these arise proportional to actual parenting time. In the words of the Alberta Court of Appeal in *L.C. v. R.O.C.*, 2007 ABCA 158, "there is no place for 'deeming' parenting time to be what it is not", quoted approvingly in *Maultsaid v. Blair*, 2009 BCCA 102 at para. 30.

- [24] On the other hand, there is also a principle that a parent cannot unilaterally keep children more than is allowed under a court order to come within s. 9: *Ness v. Ness*, 1999 BCCA 51 at para. 22. In *Ness*, the parent with what was then called "access" increased their parenting time contrary to the order of the court and then asked for child support to be calculated on a shared parenting basis. But of course the same principle would apply in reverse, where what we used to call a "custodial" parent unilaterally reduces the parenting time of the other.
- [25] Ms. G. denies that she put any pressure on the children not to continue the shared parenting arrangement. She says she supports their decisions, including a recent decision of T.G. to spend a large amount of parenting time with her father. On her account, after the summer of 2022, the children refused to spend the majority of their parenting time with their father. She says Mr. G. told her not to tell them that they had to go. As a result, they spent all or most of their time with her, which of course implied that she had to pay for their necessities.
- [26] In response, Mr. G. refers to behaviour he says constitutes parental alienation on Ms. G.'s part.
- [27] At para. 21 of his affidavit, he reports comments about him after May 2021 that he says he was told by the children. These are hearsay, and I am not prepared to find that they are all precisely reported, but Ms. G. confirms that when the children "ask me about anything, including things they have experienced with the respondent, I answer as truthfully as possible. The children have all experienced times with the respondent that have been confusing and upsetting, so they often talk with me about those experiences. Many of the experiences that the children have had with the respondent are similar in nature to experiences I have had with him."
- [28] I find that while the statements at para. 21 may not be exact, Ms. G. has said things to her children that are negative about Mr. G.'s mental health, work ethic and parenting. I disagree with Ms. G. that this is acceptable just because these are her sincere views as a result of her experience with Mr. G. A parent should of course listen to their children's concerns, including about the other parent, and validate those concerns. He or she is not obliged to lie about their views of the other parent. But I disagree that the most important thing is sharing those reactions. It is very easy for a parent to slip into emotionally harmful denigration of the other parent, even without meaning to. Unless there is proof that the other parent is positively harmful - in which case that proof should be taken to a court or a child protection agency -- each parent's responsibility is to "support the development and maintenance of the child's relationship with the other parent" since a good relationship with both parents is, barring circumstances I do not see here, in the child's interest. It is not enough to respond by saying "I am being as truthful as possible."
- [29] Mr. G. provided evidence of text messages between Ms. G. and Emily G., Mr. G.'s other ex-wife, that appeared to have been sent to one or more of the children. This definitely should not have happened and no explanation was given.

- [30] Some of the information provided by Mr. G. does not appear to suggest Ms. G. was at fault, including comments by Emily G. and by a Family Justice Counsellor.
- [31] Since this is a child support application, it is not my role to try to come to a definitive view on conduct issues by either parent. I do, however, come to the conclusion that the basic rule that child support is based on actual parenting time (as "exercised") should not be departed from in these circumstances. Mr. G. acknowledged that the situation in the Fall 2022 was difficult and I have no evidence that the children did not make up their own minds, possibly influencing each other. Thus the change in parenting time is not "unilateral" on the part of Ms. G.
- [32] In the absence of contradictory evidence, I accept Ms. G.'s evidence that she has tried to encourage them to spend more time with their father, although I also accept that she has sometimes said things that she should not and that may influence their choices. On the totality of the evidence, I have evidence of parents who - imperfectly perhaps - are supporting their children's relationship with the other parent, as opposed to "parental alienation", which occurs when someone deliberately tries to destroy the relationship with the other parent. I see evidence of a parent making comments they should not have, but in the context of overall supporting a relationship with the other.
- [33] Mr. G. did not make any applications to address the situation in Fall 2022. In coming to these conclusions, I am not saying that everything unfolded perfectly, or that he necessarily would have failed if he had done so. But I am persuaded that he did not exercise parenting time of 40% or more after September 1, 2022, which is the relevant question for child support.

IV. conclusion and Order

- [34] I therefore make the following declarations and orders.
- [35] I declare that:
- a) The Complainant N.L.G.'s 2021 income, for purposes of calculating child support, was \$34,000.
 - b) Between April 1, 2021 and August 31, 2022, the Respondent J.M.G. and the Complainant N.L.G. each exercised 50% parenting time with the children of the marriage, namely:
 - i. L.G., born December 25, 2007;
 - ii. T.G., born June 14, 2009;
 - iii. E.G., born May 11, 2013.
 - c) At all other times, the Respondent J.M.G. did not exercise at least 40% parenting time with the children of the marriage.
- [36] I further order that para. 15 of the Final Consent Order dated 7 November 2017 be varied as follows:

- a) Between April 1, 2021 and June 30, 2022, basic child support payable by J.M.G. to N.L.G. is fixed at \$425/month.
- b) Between July 1, 2022 and August 31, 2022, basic child support payable by J.M.G. to N.L.G. is fixed at \$484/month;
- c) Between September 1, 2022 and June 30, 2023, basic child support payable by J.M.G. to N.L.G. is fixed at \$1,182/month.
- d) Beginning June 30, 2023, and until or unless altered by agreement, variation or review, basic child support payable by J.M.G. to N.L.G. is fixed at \$1,182/month.

[37] I make the following further orders, by consent:

- a) The Claimant shall provide an updated F8 Financial Statement, including:
 - i. Complete and legible copies of her 2020, 2021 and 2023 tax returns;
 - ii. All sources of current income, including but not limited to, any business income and income from providing child care services.
 - iii. All sources of previously undeclared income for the years 2020, 2021 and 2022.
- b) Beginning September 13, 2024 and continuing each year unless otherwise agreed or ordered, the weekend schedule for J.M.G.'s parenting time during the school year shall begin on the second weekend after Labour Day.
- c) Beginning September 27, 2024, and continuing each year unless otherwise agreed or ordered, J.M.G. shall have parenting time with the children on the long weekend which includes the National Day for Truth and Reconciliation.
- d) N.L.G. shall do all things necessary to ensure the Children attend counselling sessions at least every two weeks, subject to the availability of counsellors, unless the parties otherwise agree in writing.
- e) Neither party may terminate counselling for any child without consultation with the other party and with the involved professional.

[38] Each party shall bear his or her own costs.

"J. G. Morley, J."

The Honourable Justice Morley

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Prepared on 26 October 2026 · Esheria