
CANADA / JUDGMENT

P.K.N. v. D.S.N.

2018 BCSC 492

COURT

Supreme Court of British Columbia

DECIDED

28 March 2018

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2018 BCSC 492 P.K.N. v. D.S.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.K.N. v. D.S.N.,

2018 BCSC 492

Date: 20180328

Docket: E38113

Registry: New Westminster

Between:

P.K.N

Claimant

And

D.S.N.

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Claimant:

M. Dionyisius

Counsel for the Applicant Grandparents:

D. Gautam

S. Bisla

Place and Date of Hearing:

New Westminster, B.C.

March 13, 2018

Place and Date of Judgment:

New Westminster, B.C.

March 28, 2018

- [1] In this application, the paternal grandparents of two of the children of the parties of this family dispute have applied to vary an order made following a trial in 2014 which limited the parenting time of the paternal grandparents with the two youngest children to supervised parenting time. More specifically, the paternal grandparents seek unsupervised visits with the two children for two hours per week in the grandparents' home in Surrey, BC.
- [2] The oldest of the three children of the parties, who I refer to as "T", is now 16 years of age and refuses to spend time with his paternal grandparents. He now regularly spends positive parenting time with his father, the respondent.
- [3] For reasons not relevant to the application now before me, the grandparents were unsuccessful in their efforts to spend parenting time with the two children which resulted in an application by the grandparents for specified parenting time with the two youngest children. That application resulted in a consent order of Blok J. on May 3, 2017, which provided for two hours parenting time on Saturday afternoons in a section of the grandparents' home with the assistance of an independent supervisor. The grandparents were to pay for costs of the supervisor.
- [4] Counsel for the grandparents submits that a material change in the circumstances of the children that justifies an order for unsupervised parenting time: (*Gordon v. Goertz*, [1996] 2 S.C.R. 27).
- [5] This application requires a reference back to the reasons for judgment at trial in which the parenting time of the paternal grandparents was to be supervised. At the time of those reasons, the two youngest children were living with their mother, the claimant, while the eldest child, T, was residing with his father and his parents in the former family home on a blueberry farm in Surrey. In those reasons, recorded at 2014 BCSC 1156, I stated, *inter alia*:

- [14] During the early stages of this trial, the evidence disclosed a major disagreement over T's well-being. I clearly observed that one most significant factors in this proceeding was the respondent father's parents. Indeed, their involvement gave rise to the parties separating and T becoming alienating from his mother. They have not only interfered in raising the children while all were living at the blueberry farm but they also interfered, rather significantly, with T's relationship with his mother and father.
- [15] The paternal grandmother, who testified at trial, had become abusive to the claimant, and she would consistently disparage the claimant in the children's presence. Such conduct has caused or, at very least contributed, to the alienation between T and his mother.
- [16] The evidence before me also established that the respondent father has been and continues to be dependent on his parents, both financially and emotionally. Moreover and perhaps more importantly, the respondent would not do anything that may conflict with his parent's will. His willingness to concur with his parent's wishes in their conflict with his wife has also been a major contributing factor to the marriage breakdown. Importantly, the respondent has consistently avoided conflict with his parents to safeguard his likely inheritance on their passing.
- [17] When the claimant left the family residence in March 2011 following a physical dispute with the paternal grandmother, the claimant wanted to leave the residence with all three of her children. The physical dispute between the paternal grandmother and the claimant resulted in the RCMP attending the family residence at the blueberry farm, and it precipitated the claimant leaving before T arrived home.
- [18] The paternal grandfather who was picking T up at school when that incident occurred, however, did return T to the family home after the incident.
- [19] On the evidence before me, I am satisfied the paternal grandfather deliberately kept T away from the incident at the family residence in the hope that the claimant would leave without T in her custody.
- [20] After leaving the family home, the claimant did not see T for a very lengthy period, and she stayed in a "safe house" with her two youngest children. Since March 2011, she has subsisted on social security and nominal child support.
- [6] Due to conflicting evidence at trial as to the welfare of the children, I ordered a s. 211 parenting report which was to included an assessment of the paternal grandparents and their influence on the children. Neither of the parties, or apparently counsel, advised the author of the s. 211 report, Dr. England, of my order that the report include an assessment of the grandparents until after the report had been prepared.
- [7] Dr. England, when commenting on the estrangement of T from his mother, included the following quote which was reproduced in the reasons for judgment at trial:

. . . [the respondent] should be aware that the recommendations will increase to and include the point to where the writer would be prepared to recommend that [T] be removed from his father's care, with his father (and the father's extended family) having no contact with all children, until the reunification is achieved.

[8] In the same reasons for judgment, I concluded, regarding the grandparents' time with the children:

[31]

d) Due to my concerns regarding the paternal grandparents' influence on the children - and T in particular - the grandparents are to only have time with the children while in the presence of a third party agreed to by the claimant.

[9] The reunification referred to by Dr. England was the counselling recommended for T and his mother considering the alienation between T and his mother upon which the grandparents had a considerable influence. Since the trial, the reunification has taken place and the parties agree it has been very successful in re-establishing the relationship between T and his mother. T has been living with his mother and two siblings in a basement suite in Surrey since 2015.

[10] Following the order of Blok J., the paternal grandparents have had 15 parenting sessions with the two youngest children and the professional supervisor has prepared reports following those visits. Those reports are exhibits to the affidavit of the paternal grandmother. Those reports are all very factual and record, for the most part, exchanges between grandparents and grandchildren, as well as the respondent during the visits which would be expected between caring grandparents and their grandchildren.

[11] I will refer to the younger children as "J" and "C". The reports of the supervisor include the following statements:

· May 13, 2017 (the first visit with the grandparents) - "Grandma tells J that he can go upstairs and see which bedroom is theirs" and "C and J go upstairs and look around the rooms. Grandpa come to show them the rooms. J sees dad and they both run downstairs towards dad. Grandma asks what room they will pick to sleepover in. Supervisor tells grandma that they cannot talk about that. . . . Supervisor says that they cannot talk about that because it is not allowed. Grandma tells dad that he should leave now because its now their visit time and the kids are playing with him now. Dad says okay and leaves".

· December 31, 2017 - "J says he understands what they did to mom now" and later, "J says he understands what they did to T now".

[12] The claimant mother, P.K.N., has filed an affidavit sworn March 11, 2018 which includes the following:

4. The grandparents are very wealthy and their house is located on a 30 acre blueberry farm . The [grand]parents alienated me from the respondent; in particular the eldest son [T] who was made to sleep in their portion of the house.
14. The respondent is living in the section which was originally a garage and converted to a one-bedroom suite. I asked the respondent that the Children are growing and there will be no room for them to sleep in this section. The respondent asked the grandparents and was told that the children will be sleeping in their portion of their house because they have plenty of bedrooms.
15. I do not wish to take a risk by allowing the Grandparents to have unsupervised visits to [J] and [C]. They refused to comply with the counselling requirement that was suggested by Dr. Rebecca England in her report In the best interest[s] of the Children, the removal of the supervision should be considered only after the Grandparents attend the counselling sessions and acknowledge their mistakes.
18. The Grandparents by declining to participate in the counselling by Dr. Bob Finlay have indicated that they have done no wrong and nothing to learn although they have caused serious emotional damage to [T]. As their approach or attitude has not changed, unsupervised visits would put the Children at risk. . .
21. Recently, the respondent has told [T] that the grandparents have hired a private investigator to follow me and track down my movements.
22. Despite the repeated attempts/invitation by the Family Reunification Counsellor Dr. Robert Finlay the Grandparents adamantly refused to attend any counselling. In fact, they made it difficult for the respondent to enjoy his parenting time as [T] would not go to their house as all. I know [T] loves his father, unfortunately, the respondent is still under the control of his parents and would not live in a place where [T] can have freedom.
- [13] The court has not been provided with an affidavit of the respondent father, D.S.J., in support of this application.
- [14] Having reviewed all of the affidavit material before me as well as the reasons for judgment in my earlier decision, I have considerable concern that the risk of the children being left with the paternal grandparents is not in the best interests of the children, which is the only factor for consideration.
- [15] The affidavits reveal that the grandparents continue to exert considerable control, both financially and emotionally over their son, the respondent, which was a major factor in my earlier decision to require supervised visits with the grandparents. Also, at the time of the trial of this action, there were serious concerns of the claimant, corroborated in part by a witness who was married to one of the other sons, regarding the relationship between, in particular, the grandfather and T. If the grandparents have refused counselling as had been urged by Dr. Finlay, it is indicative of the likelihood that the grandparents have not accepted their previous conduct which led to the orders granted in 2014. The grandparents have not

denied the refusal to attend counselling.

[16] The application of the grandparents is dismissed with costs on Appendix B to the claimant.

"Jenkins J."

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