

CANADA / JUDGMENT

Perks v. Mueller

2018 BCSC 1864

COURT

Supreme Court of British Columbia

DECIDED

31 August 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 1864 Perks v. Mueller IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Perks v. Mueller, 2018 BCSC 1864 Date: 20180831 Docket: E140481 Registry: Victoria Between: Megan Janet Lynn Perks Claimant And Leigh Tyler Mueller Respondent Before: The Honourable Madam Justice Murray Oral Reasons for Judgment In Chambers Counsel for the Claimant: M.G. Norton Counsel for the Respondent: J.B. Fraser Place and Date of Hearing: Victoria, B.C. August 30, 2018 Place and Date of Judgment: Victoria, B.C. August 31, 2018

- [1] THE COURT: The respondent seeks an order for interim residency of the parties' child.
- [2] The claimant in a cross application, applies to have the child continue to reside with her.

Background

- [3] By way of background, the parties began cohabiting in 2005, were married on December 28, 2007, and separated in December 2009. They have one child together, a daughter, Maeli, born November 16, 2006. Pursuant to a consent order dated June 2, 2014, the parties have joint guardianship of the child, with shared care on a week-on/week-off basis.
- [4] In November 2016, while the parties were still engaged in this parenting arrangement, the claimant moved to Bellingham, Washington, without Maeli, to be with her new husband. From November 2016 to September 2017 Maeli lived with the respondent and his wife and their children, Maeli's stepsiblings, in Victoria.
- [5] In August 2017 the respondent agreed that Maeli should have the opportunity to live with her mother for a school year so she could see if she enjoyed living in Washington State. The parties agreed that at the end of the 2017 - 2018 school year they would determine as a family what arrangements would be in Maeli's best interests for the next school year, taking into account Maeli's views and wishes. On that basis Maeli moved to Bellingham in September 2017.
- [6] During the time she was living with the claimant the respondent had visits once a month and more during school holidays. As the end of the school year drew near, the parties began discussing Maeli's future living arrangements.

- [7] On March 11, 2018, the parties and their new spouses had a phone call. The details of that discussion were not provided to me but it appears that they discussed Maeli returning to Victoria. I come to that conclusion as a few days later, on March 13, 2018, in response to an e-mail from the respondent about holidays, the claimant wrote the following: Thanks for the e-mail. I think that every other Christmas would be still a good plan, so it doesn't take away experiences for Maeli in both homes. Summers 50/50 or something of that nature. Her desires are strong to live with you in Victoria. As hard as it's been for me, I don't want to put her in a position of unhappiness and she feels forced. [unhappy face] With the flexibility I have, I am able, thankfully, to travel often to visit and have time with her in Victoria as well, here and there. [Emphasis added.]
- [8] On March 18, 2018, the parties and their spouses had another phone conversation. During that phone call all agreed that Maeli would live permanently in Victoria as this was what Maeli wanted and what all agreed was in her best interests. The parties set a plan to get together in person on April 1, 2018, to advise Maeli of their decision.
- [9] On April 1, 2018, all four parents in Maeli's life met with Maeli. The respondent started the conversation by telling Maeli that they had all agreed that she would live in Victoria. To his surprise the claimant had changed her mind and no longer agreed to that. Maeli explained that she wanted to live in Victoria. The meeting ended quickly after that.
- [10] Following that meeting, on April 8, 2018, the claimant wrote the respondent the following e-mail: After more thought and your response, it is clear that there is no respect, nor trust. Also, there is undermining of my parenting. You have said to me on a few occasions now that you believe Maeli is better off with you, as you believe you're a better parent. May I ask you why you have ever said that? I don't agree with you at all. Maeli clearly is more comfortable lying in front of me for some reason, as she did in the park that day we all talked. I'm not sure why she felt she had to do that, but she did. There is a part of her that wants to be here and it will benefit her to be with her biological mother through these years of growing. I believe it is best for her. So, until someone else of authority tells me different, that's my decision. Fearful that the claimant would not return Maeli, the respondent retained counsel.
- [11] In July 2018 the parties agreed to have a "views of the child" report prepared by Eliot Lowey, the director of Cascadia Counselling Clinic in Victoria, for the purpose of helping decide where Maeli should live. The specific request and purpose of the report was set out in a letter from the parties to Mr. Lowey as follows: The parties will conduct review prior to the 2018 - 2019 school year to determine as a family what arrangements would be in Maeli's best interests for that school year and taking into account Maeli's views and wishes.
- [12] The report prepared and dated August 21, 2018, is basically a transcript of two meetings Mr. Lowey had with Maeli on July 31 and August 16. Maeli makes clear many times throughout those meetings that she wishes to live in Victoria.

- [13] The claimant questions the reliability of the "views of the child" report on two bases. First, she argues that the respondent has manipulated Maeli by promising her trips, a farm, puppy, and a horse. And, secondly, she says that Maeli gave answers to the writer that were untrue.
- [14] An undated but obviously recent text exchange between the claimant and Maeli demonstrates Maeli's state of mind. In it the claimant wrote, "This Friday I'm picking up your school schedule. You can find out who your teachers are and who's in your classes [exclamation, exclamation, happy face]. Amina (phonetic) has been looking for you. Her mom had to call me and ask where you have been". Maeli responded with, "I don't know if I'm going to live there though."
- [15] The parties intend to take this matter to trial and hope to get a trial date late this year or early next year. Issue
- [16] The lone issue to be decided on this application is where on an interim basis Maeli should live. The Law
- [17] The court's sole consideration in making orders regarding parenting arrangements is the best interests of the child. This is codified in s. 37 of the Family Law Act, S.B.C. 2011, c. 25 which reads, in part, as follows: 37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
- [18] Section 37(2)(b), which requires the court to consider the child's views unless it would be inappropriate to do so, does not mean the child's views are the only consideration or that children can make the decision about where they will live.
- [19] In *L.R.A.C. v. S.M.L-C.*, 2013 BCSC 1622, the court held that the views of the children are to be given due weight in accordance with the age and maturity of the particular child.
- [20] In *Decaen v. Decaen*, 2013 ONCA 218 at para. 42, the Ontario Court of Appeal stated the following: In assessing the significance of a child's wishes, the following are relevant: (i) whether both parents are able to provide adequate care; (ii) how clear and unambivalent the

wishes are; (iii) how informed the expression is; (iv) the age of the child; (v) the maturity level; (vi) the strength of the wish; (vii) the length of time the preference has been expressed for; (viii) practicalities; (ix) the influence of the [parent or parents] on the expressed wish or preference; (x) the overall context; and (xi) the circumstances of the preferences from the child's point of view: ...

- [21] Section 47 of the Family Law Act allows the court to vary parenting arrangements anytime that there is a change in circumstances of the child to ensure that the arrangements continue to reflect the child's best interests as the child's needs or circumstances change over time.

Analysis

- [22] Before I begin my analysis, I wish to make clear that this is not an application for relocation. The agreement between the parties, who it appears were, until the beginning of April of this year, able to co-parent most cooperatively, was that Maeli was to experience living in Bellingham for a year so she would be able to decide where she ultimately wanted to be. It was never an agreement that that would be a permanent living arrangement. The parties were ad item that Maeli's living situation would be reconsidered before the beginning of the 2018 - 2019 school year, taking into account her desires.
- [23] I also want to state that it is obvious from all of the evidence before me and all that has been said that Maeli is much loved. There is no question that she has two sets of capable, caring parents that love her dearly. There is no doubt that Maeli would be well cared for in either home.
- [24] With that said, I now turn to the difficult issue before the Court.
- [25] The respondent takes the position that it is in Maeli's best interests to reside in Victoria, where she has significant family connections, friends, activities, and where she wants to live.
- [26] The claimant counters that it is in the best interests of Maeli to live in Bellingham for the following reasons:
- 1) She lived there last year;
 - 2) She would be returning to the same school that she was comfortable with;
 - 3) She has friends there;
 - 4) She has a 2-year-old half sister that she is close to; and

- 5) They stress that if she moved back to Victoria her permanent residency status in the U.S. would be lost and her ability to re-enter the United States to see the claimant, her stepfather, and her half sister would be uncertain. In support of this last contention the claimant filed a letter from a lawyer in Washington State. I am not persuaded that Maeli's ability to visit the United States would be in jeopardy should she return to live with her father in Victoria. In any event, I do not find it to be a determining factor.
- [27] Maeli made clear in her interviews with the unbiased third party that she wants to live in Victoria. Although that is not determinative, it is definitely a consideration.
- [28] I reject the claimant's assertion that Maeli was somehow manipulated to say to Mr. Lowey that Victoria was where she wanted to live. The claimant herself realized that last spring, as evidenced in her e-mail of March 13, 2018. That e-mail is significant. The words are strong. She stated, "Her desires are strong to live with you in Victoria. As hard as it's been for me, I don't want to put her in a position of unhappiness and she feels forced". It was undoubtedly a decision that the claimant had come to with much consideration and much difficulty, but it was obviously clear to the claimant, after Maeli had lived with her for seven months, that Maeli wanted to live in Victoria. Why the claimant did an about-face is unknown.
- [29] Victoria is where Maeli was born and raised. It is where she is surrounded by family, including three sets of grandparents, one set of great-grandparents, aunts, uncles, and she would be living with her two stepsiblings with whom she is very close. In fact, when she was asked by Mr. Lowey what her favourite activity was, she said, "Being outside playing with them", meaning her stepsiblings.
- [30] Having considered all of the evidence and all of the submissions, I am satisfied that it is in the best interests of Maeli to reside in Victoria with the respondent.

Conclusion

- [31] In conclusion, I order that Maeli Dru Mueller reside in Victoria with the respondent on an interim basis.
- [32] The claimant is to return her to Victoria September 2nd, 2018, at a time agreed upon between the parties.
- [33] There will be costs to the respondent. "The Honourable Madam Justice Murray"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/18/2018BCSC1864.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/perks-v-mueller-2018>

Prepared on 30 October 2026 · Esheria