
CANADA / JUDGMENT

Reda v. Birch

2021 BCSC 1844

COURT

Supreme Court of British Columbia

DECIDED

2 September 2021

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2021 BCSC 1844 Reda v. Birch

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reda v. Birch,

2021 BCSC 1844

Date: 20210902

Docket: E-52548

Registry: Vernon

Between:

Antonio Reda

Claimant

And

Michelle Lise-Marie Birch

Respondent

Before: The Honourable Madam Justice W.A. Baker

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant

appearing by teleconference:

B. Hardwick

(September 1, 2021)

L. Hogg

(as Agent for B. Hardwick)

on September 2, 2021)

Counsel for the Respondent

appearing by teleconference:

J. MacArthur

Place and Date of Hearing:

Vernon, B.C.

September 1, 2021

Place and Date of Judgment:

Vernon, B.C.

September 2, 2021

- [1] THE COURT: There are two applications before me dealing with the issue of where a child of the marriage will attend school in the 2021/2022 school year. The father, Mr. Reda, brings an application to have the parenting responsibilities for the child's education allocated to him solely on an interim basis. In the alternative, Mr. Reda seeks directions respecting the child's education pursuant to s. 49 of the Family Law Act, S.B.C. 2011, c. 25 ("FLA"). The mother, Ms. Lise, seeks to have the child's school determined by way of a direction from the court pursuant to s. 49 of the FLA. Ms. Lise also sought orders with respect to the COVID vaccine for the two older children but, due to the shortness of time, that aspect of her motion has been adjourned generally.
- [2] By way of background, the parties were married for 10 years, separated in 2015, and entered into a separation agreement on April 11, 2017. They have three children. The eldest, Mario, has completed elementary school at St. James, the Catholic school in the Coldstream-Vernon area. His two younger sisters continue to attend St. James. The family moved to Coldstream before the youngest children started school and continued to live in and around Coldstream through the separation. The parents share parental responsibilities and parenting time equally.
- [3] In March 2021, Mr. Reda brought an application to seek primary care of the children and relocate the children to Kelowna. That application has been set for hearing in October 2021. It has not proceeded as expeditiously as the parties hoped due to Mr. Reda's need to change counsel and the need to obtain a s. 211 report. At the hearing of his application, the court will be asked to consider whether the best interests of the children will be served in

changing the status quo from an equal parenting time regime to one where the children are primarily with their father. The court will also have to consider the impact on the children of moving them from the community they have lived in for most of their life. This will involve considerations far more detailed and extensive than are considered on the application before me.

- [4] Dealing with the application before me, Mario will attend a new school for the 2021/2022 school year. He has gone to the Catholic school in Vernon since grade one. There is no Catholic high school in Vernon. The public school Mario would go to in Vernon is Kalamalka High, which is located very close to Ms. Lise's home. This is the school preferred by Ms. Lise. On this application, Mr. Reda states he wishes Mario to attend the Catholic high school in Kelowna, Immaculata Regional High School. Both parents have secured a place for Mario in the school they prefer. Both schools offer good sports programs. Ms. Lise has enrolled Mario in the hockey academy program at Kalamalka High. From the material attached to Mr. Reda's affidavit, it does not appear that Immaculata has a program for hockey, which is a sport of particular interest for Mario.
- [5] In November 2020, Mario was diagnosed with an auditory processing learning disability. His psychoeducation report was attached to an affidavit of Mr. Reda. Mr. Reda states that the author of the report recommended that Mario would benefit from a smaller class size. This recommendation does not appear in the report itself. Mr. Reda states that Immaculata has smaller class sizes than Kalamalka. A brochure for the school, Immaculata, was attached to an affidavit of Mr. Reda and it states that the school population is around 275 to 300 students. I did not see any information regarding class sizes at Immaculata or Kalamalka in the material. Other than the statements by Mr. Reda, there is nothing in the material which suggests that Immaculata is better able to address Mario's learning disability than Kalamalka.
- [6] Mr. Reda moved to Kelowna in April 2021. Ms. Lise argues that he moved while his relocation application was outstanding, after his counsel had advised Ms. Lise's counsel that he would not relocate without a court order or the agreement of the parties. As a result, Ms. Lise argues that any inconvenience which flows to Mr. Reda from the fact he no longer lives in Vernon should not be taken into account in my decision. Similarly, any conveniences which arise from Immaculata being located in the same community where Mr. Reda is living now should also not be taken into account. In essence, Ms. Lise argues that Mr. Reda should not be entitled to benefit from his unilateral act. I agree with Ms. Lise. I will assess this application on the basis that under the current parenting regime the children are habitually located in Vernon and I will not factor Mr. Reda's current residence in Kelowna into my decision.
- [7] Mr. Reda suggests that Ms. Lise is an inattentive mother who often asked Mr. Reda to take the children on her weeks. He says that she spends half her time in Los Angeles where her partner lives. He suggests that she intends to move with the children to Los Angeles and that her travel interferes with her parenting. I do not accept this characterization of Ms. Lise by Mr. Reda. I accept the evidence of Ms. Lise contained in her affidavit dated May 7, 2021,

where she rebuts Mr. Reda's allegations that she misses time with the children due to travel and she attaches the complete message chains which appear to have been redacted and distorted in the affidavit #3 of Mr. Reda, which I was not provided. I also accept the evidence of Ms. Lise regarding her plans with her partner in Los Angeles, including that she did not go to Los Angeles for almost a year over 2020 to 2021 and that she will not move to Los Angeles until the children have completed school.

- [8] Further, Mr. Reda suggested that because Ms. Lise was out of the country for several months this spring to attend the televising of a program in Los Angeles, he had taken on primary parenting responsibilities. I do not accept this position, either. The parents have had equal parenting arrangements since their separation in 2015. The fact that for a one-time exceptional event Ms. Lise had to leave the country for several months, which was of course impacted by COVID restrictions, does not in any way, in my view, work against her as an involved parent. I am not satisfied on the evidence before me that Ms. Lise is an uninvolved parent or a parent who has divested herself of her parental responsibility.
- [9] In the parties' separation agreement, they specifically agreed the children would be raised in the Catholic faith. The agreement does not specify that the children must attend Catholic school for their entire education. On the application before me, Mr. Reda stressed that it is critical to him that the children attend Catholic school and that both parties agreed on this in the separation agreement. I do not accept these statements by Mr. Reda. In January 2021, Mr. Reda and Ms. Lise exchanged email discussing what schools the children could go to. Mr. Reda proposed Immaculata as his first choice, but he also proposed a wide range of public schools. He also acknowledged that Ms. Lise was not a fan of private schools and stated that he thought the best route would be Canyon Falls Middle School, which is a public school in Kelowna. From this email exchange, which was not created to advance a position in litigation, I accept that Mr. Reda knew that Ms. Lise had not agreed to send the children to private Catholic schools as part of their separation agreement and that he was accepting of the children going to public schools. As such, I reject Mr. Reda's arguments that the separation agreement requires the children to go to Immaculata and that it is critically important to him that the children attend a Catholic school.
- [10] The parties agreed to have Mario attend with Bev Churchill to obtain a Views of the Child report. This report was completed on August 28, 2021. In this report, Mario expresses love and respect for both his parents and a desire to continue the current shared parenting arrangement. He was asked about the schools he might go to and he discussed the pros and cons of both Kalamalka and Immaculata. His answers were thoughtful and displayed maturity. Mario expressed a desire to go to Kalamalka where he was excited about being around more people, going to the hockey academy, and having his friends at the school. He stated it would make him happier to go to Kalamalka.
- [11] Mr. Reda argues that the court may not make an order as to which school Mario must attend. Rather, relying on *N.R.G. v. G.R.G.*, 2017 BCCA 407, he argues that the choice of school is a parental responsibility and only guardians are entitled under the FLA to exercise parental

responsibilities. Therefore, he argues that parental responsibilities for education should be allocated to Mr. Reda to allow him to register Mario in the school of his choice. Ms. Lise argues that s. 49 of the FLA specifically authorizes a guardian to apply to court for directions respecting an issue affecting a child and that section permits the court to direct which school Mario should be enrolled in. If she is wrong, she argues she should be allocated parental responsibilities for Mario's education to allow her to enrol him in the school of her choice.

- [12] Both parties agree that I am to be guided by s. 37 of the FLA in determining the best interests of the child in relation to the issues before me. I also bear in mind that a much more comprehensive order impacting the lives of the children is pending in October of this year. In reviewing the relevant factors set out in s. 37(2) of the FLA, I find as follows. I find that Mario's emotional wellbeing is best supported by enrollment at Kalamalka High. This will keep him in the community he has always lived in, close to the friends and extended family he knows. Mario's views support his enrollment at Kalamalka. While he is young and this factor is not determinative, I found his responses in the Views of the Child report to be mature and well thought out. Mario has strong relationships with both parents and his father's move to Kelowna in April 2021 has not impacted his relationship with his father in any way. I see nothing in the material before me to suggest that enrollment in Immaculata is necessary to maintain Mario's relationship with his father.
- [13] Pending the outcome of Mr. Reda's relocation application, the status quo has been a successful shared parenting regime. Both parents have been able to exercise their shared responsibilities. Transferring parental responsibilities for education to Mr. Reda alone will have a significant impact on Ms. Lise's parenting responsibilities, as such an order would result in Mario being enrolled in Kelowna. This fact will also have a significant impact on Ms. Lise's ability to engage her parental responsibilities towards Mario and her other children as it will involve a significant amount of time travelling between communities. Two children will be enrolled in Coldstream and one in Kelowna which create significant logistical difficulties for Ms. Lise. If Mario stays in Vernon for high school, this creates logistical challenges for Mr. Reda. However, as I have determined that this application will be assessed on the basis that the children are resident in Vernon, I do not consider any inconvenience Mr. Reda has created for himself to be relevant on this application.
- [14] In addition to the factors expressly set out in s. 37(2), I have also considered whether Mario's spiritual health is best served by attendance at Immaculata. I am satisfied that Mario's faith does not require him to be enrolled at Immaculata. In the Views of the Child report, Mario confirmed his faith and stated that he did not need to go to a religious school, but could go to church to pray and develop a better relationship with God. Given that I have found Mr. Reda to have overstated his true need to have Mario attend a Catholic high school, and that there is no agreement between the parents that the children must attend a Catholic high school, I do not find that the best interests of Mario require him to attend Immaculata to support his religious faith.

- [15] I am also concerned that Mr. Reda has overstated the importance of a religious high school on this application. I find that Mr. Reda's overarching goal was to register Mario in a school in Kelowna and he tried to use the fact that Kelowna has a Catholic high school as a means to tip the scales in favour of a Kelowna school. I find that Mr. Reda was not forthright in his position on this application and this gives rise to concerns in granting Mr. Reda's sole parental responsibilities for education.
- [16] In N.R.G., the Court of Appeal determined that the scheme of the Family Law Act envisioned that only guardians may make decisions regarding parental responsibilities. The court clarified that the court may order the allocation of parental responsibilities to guardians and may determine the means of resolving disputes between them. One means of resolving disputes is for a guardian to apply to a court for directions respecting an issue affecting a child pursuant to s. 49 of the FLA. Mr. Reda referred to several recent decisions, *Dunn v. Dunn*, 2018 BCSC 2502, and *M.B.D.C. v. Y.G.D.C.*, 2021 BCSC 1504, where it was held that the court could not make an order as to which school the child might attend, relying on N.R.G.
- [17] I do not agree that N.R.G. prevents a guardian from seeking directions from the court on an issue in dispute. This is precisely what the language in s. 49 of the FLA contemplates. I do not agree that N.R.G. takes away from the specific language of s. 49 of the FLA. In fact, N.R.G. refers to s. 49 as a means available to a guardian in the case of a dispute. At present, both Mr. Reda and Ms. Lise are guardians and share parental responsibilities equally. There is no question that they are the people who must exercise parental responsibilities, and not the court. However, I find that it is appropriate in the case of specific disputes between guardians for one of them to apply for directions to this court.
- [18] The case before me is not in any way equivalent to the case of N.R.G. In N.R.G., there was a complete inability of the parents to effectively co-parent. The Court of Appeal found the trial judge erred in taking on the details of parenting to an inappropriate degree. In the case before me, however, the parents have demonstrated that they are capable of sharing in the exercise of parental responsibilities for their children. They are able to communicate with each other, modify parenting times as needed in a responsible way, and effectively support their children in their schooling, activities, and sports. I do not agree that it would be appropriate in this case to take parental responsibilities for education away from either parent. The sole issue in dispute is the school Mario should be enrolled in. An order allocating parental responsibilities for education to one parent, even on an interim basis, could have serious unintended consequences which extend far beyond the choice of school.
- [19] In this case, s. 49 of the FLA is appropriate as a means of resolving this sole issue in dispute on this application. I find that it is in Mario's best interests that he be enrolled at Kalamalka High School for the 2021/2022 school year, subject to any contrary orders made in response to Mr. Reda's pending application for relocation and primary residence of the children. I dismiss Mr. Reda's application and allow Ms. Lise's application pursuant to s. 49 of the FLA.

[20] I direct the parents, when exercising their shared parental responsibilities, to take all necessary steps to enrol Mario in Kalamalka High School for the commencement of the 2021/2022 school year, and I order costs to Ms. Lise, in the cause.

"W.A. Baker J."

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