
CANADA / JUDGMENT

Russell v. Murphy

2014 BCSC 782

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Supreme Court of British Columbia

DECIDED

28 April 2014

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2014 BCSC 782 Russell v. Murphy

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Russell v. Murphy,

2014 BCSC 782

Date: 20140428

Docket: E131948

Registry: Vancouver

Between:

Joy Russell

Claimant

And

Randall Murphy

Respondent

Before: The Honourable Mr. Justice Butler

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

D.E. Labun

The Respondent:

Appearing in Person

Place and Date of Hearing:

Vancouver, B.C.

April 22, 2014

Place and Date of Judgment:

Vancouver, B.C.

April 28, 2014

- [1] THE COURT: Joy Russell, the claimant, applies to have this court assume jurisdiction over her children. She also applies for a number of other orders dealing with custody, parenting time and parenting responsibilities. The children's father, Randall Murphy, opposes the application. He says the Pennsylvania courts should continue to exercise jurisdiction over their children.
- [2] I will set out a brief history of the parties' relationship and the court proceedings to date before providing my ruling on the applications.
- [3] The parties were married in December 1996. They have two children, H., who is now 13 ½ years old, and R., who is almost 12 years old. The parties were married in Pennsylvania and the children were born and raised there. The children are American citizens.
- [4] The parties separated in July 2008 and were divorced by order of the Pennsylvania court in October 2011. After separation and pursuant to a May 6, 2010 order, the children lived primarily with their father in Pennsylvania, while the claimant, Ms. Russell, had scheduled access. In 2011, Ms. Russell moved to British Columbia and remarried. Mr. Murphy continues to reside in Pennsylvania.
- [5] Pursuant to a Pennsylvania court order in June 2012, the children were permitted to visit Ms. Russell in British Columbia for a month. At the end of the month, they did not return to Pennsylvania. H. refused to get on the plane and created a scene at the Vancouver Airport. The RCMP attended at the airport, and based on statements from the children, did not let them board the return flight to Pennsylvania. Since that time, the children have maintained that they do not want to visit their father in Pennsylvania. They say he is rude and difficult and that they are frightened of him.
- [6] These events led to a prolonged series of applications to the Pennsylvania court. While Ms. Russell lived in British Columbia, she actively contested the proceedings in Pennsylvania and was represented by counsel throughout, as was Mr. Murphy.
- [7] A brief summary of the Pennsylvania court proceedings and orders includes the following:

- July 31, 2012 - When the children were not returned to Pennsylvania, Ms. Russell sought and obtained an order that the children remain in her custody in British Columbia pending further order of the Pennsylvania court.
- August 9, 2012 - Judge Saylor confirmed the earlier order that the children should remain in Canada pending a custody decision of the Pennsylvania court. A psychologist, Dr. Glenn Jacobson, was appointed to prepare a custody evaluation report. In addition, a guardian ad litem was appointed to report to the court on behalf of the children. The children were ordered to return to Pennsylvania for a visit to see their father from October 20 to 28, which coincided with the custody hearing. Dr. Jacobson's very detailed report is dated August 28, 2012, and the guardian ad litem's report is dated October 31, 2012. Both recommended that Ms. Russell should be the primary custodian of the children. Dr. Jacobson recommended that the children spend most of the summer, Christmas and spring breaks with their father.
- October 28, 2012 - An interim order was made which provided that Ms. Russell would have "primary physical custody" of the children in British Columbia, while Mr. Murphy would exercise "partial physical custody" during visits scheduled to take place during the summer, at Christmas and spring break. The court also ordered that a final custody hearing would take place on March 21 and 22, 2013. The court ordered that the non-custodial parent would have 20 minutes of phone or Skype access each day.
- March 21 and 22, 2013 - The parties attended for a custody hearing. During the course of that, the parties arrived at consent terms for an order which provided that Ms. Russell would continue to have primary physical custody of the children. In other words, their primary residency was agreed to be in Vancouver. The order contained numerous other terms, one of which was that the Pennsylvania court would continue to exercise jurisdiction over the children.
- April 1, 2013 - The Pennsylvania court made a custody order based on the negotiated terms which adopted the recommendations contained in Dr. Jacobson's detailed report. Primary physical custody of the children was granted to Ms. Russell, with specified scheduled visits to Mr. Murphy. Those visits included an extended summer visit of approximately six or seven weeks, a two-week spring break visit, as well as a Christmas visit. All of the visits were to take place in Pennsylvania. The parties did not agree as to who should pay for the costs of the visits, and the court ordered Ms. Russell to pay for the children's flights to Pennsylvania.
- May 17, 2013 - The April 1, 2013 order was made final (the "Final Order").
- The children refused to travel to Pennsylvania for the scheduled 2013 summer visit. As a result, Mr. Murphy brought contempt proceedings. Ms. Russell commenced this proceeding in British Columbia, and on August 9, 2013, filed this application.

- September 5, 2013 - Ms. Russell did not attend at the contempt hearing because she was not properly served. She applied to have the Pennsylvania court transfer jurisdiction over the children to British Columbia. However, she was not in attendance at the court and the court declined to hear her application to change jurisdiction. The contempt motion was scheduled to be continued on October 31, 2013, and Ms. Russell was ordered to attend with the children.
- October 31, 2013 - Ms. Russell and the children attended in Pennsylvania for the court proceedings and an access visit. The contempt proceeding started but did not conclude. The parties and a number of other witnesses gave evidence. The children were interviewed by the court and cross-examined by counsel and the guardian ad litem in the absence of their parents. The transcripts have been produced for this application. The contempt hearing was adjourned to December 11, 2013.
- December 11, 2013 - The contempt proceeding concluded, and Mr. Murphy's application to have Ms. Russell found in contempt was dismissed. The Final Order was modified to provide:
 - a) An additional one week of parenting time for Mr. Murphy, to be exercised in Canada at Thanksgiving each year. Ms. Russell is to contribute \$1,000 to the travel cost.
 - b) Each party is to allow the children to have access to phones and other means of communication when the children are with them to facilitate communication with the other parent.
 - c) Ms. Russell is to ensure that the children arrive in a timely fashion for Pennsylvania visits and if the children cannot be boarded on an airplane, Ms. Russell is to deliver them to Pennsylvania by car, train or bus within three days. This term was added because of the extreme difficulty Ms. Russell was having in getting the children to voluntarily board an airplane for the purpose of a parental visit.
 - d) Mr. Murphy was to have the "Watchful Shepherd" program in place for both children prior to any further visits. This program gives the children a panic button to press to call for assistance. This was included as a term of the order given the children's expressed concerns about visits with their father.
- [8] Subsequent to these events, Ms. Russell set this matter down for hearing. It was adjourned twice at Mr. Murphy's instance. He had counsel on those occasions but is now self-represented. I was assigned to hear this application on March 12, 2014, and I granted an adjournment at that time. I indicated that the children should attend in Pennsylvania for the scheduled spring break visit. Ms. Russell had purchased tickets for the children to leave Vancouver on March 17. I also ordered that Mr. Murphy should provide confirmation that the Watchful Shepherd program was installed in his home and was working. A letter confirming this was provided on March 14.
- [9] Unfortunately, the children did not fly to Pennsylvania for the visit. They threw their passports out of the window of Ms. Russell's car as they were driving to the airport on March 17. Ms. Russell says she did not see that happen, but the children told her what they had

done when they were a few miles down the highway. The passports were not located. Ms. Russell says she tried to get the children on the flight without success. She says she tried to get replacement passports but has been unable to do so, in part because of Mr. Murphy's failure to cooperate. He denies that and says Ms. Russell is the one who must obtain the replacement passports and has not been pursuing that properly.

[10] That ends my summary of the proceedings to date.

Issue 1: Should the British Columbia court take jurisdiction over the children?

[11] The first issue I must consider, and the primary question on this application is whether the British Columbia court should take jurisdiction over custody, guardianship and parenting arrangements of the children.

[12] I have determined that it should and that the proper way to effect that in these circumstances is to recognize the Final Order and permit Ms. Russell to apply for a variation of the terms of that order. I will briefly set out the arguments of the parties and explain why I have arrived at this decision.

Argument of Ms. Russell

[13] Ms. Russell says the children are now habitually resident in British Columbia pursuant to the Pennsylvania court orders. She says that courts generally, and the British Columbia courts in particular, have recognized that it is desirable for the court in the location where children are habitually resident to take jurisdiction over those children. This is because the sole consideration when dealing with parenting issues is the best interests of the children. The evidence about the best interests of the children will be readily available in the location where they are habitually resident.

[14] Ms. Russell further says that, pursuant to s. 74 of the Family Law Act, S.B.C. 2011, c. 25 ("FLA"), this court must take jurisdiction over the children. Alternatively, she says the court should proceed by way of ss. 75 and 76 of the FLA. In other words, Ms. Russell argues that this court should recognize the Pennsylvania order, and if that is done, the court should then consider her application to vary the terms of that order.

Argument of Mr. Murphy

[15] Mr. Murphy is frustrated with the process and the result in the Pennsylvania court proceedings. He maintains that Ms. Russell wrongfully retained the children in British Columbia. He also believes that she has alienated the children against him. He acknowledges that he consented to the order which was made final on May 17, 2013, but says he felt compelled to do so at the time. The one term in the order which provided him with some protection was the provision that the Pennsylvania court would retain jurisdiction over the parenting issues. He notes that Ms. Russell consented to this term and argues that she should not be permitted to withdraw her agreement and challenge jurisdiction. He says

that, as the children are American citizens, an American court should have jurisdiction over them. In essence, he says he bargained away his right to be the custodial parent in exchange for having the Pennsylvania court retain jurisdiction so that he would have an accessible way to enforce his rights to parenting time.

Analysis

[16] The common law has always accepted that the primary basis for a court to take jurisdiction over a child is the fact of habitual residence of that child within the court's territorial jurisdiction. This is done because the most convenient and appropriate place to determine what is in the child's best interests is the location where he or she lives. In *Anderson v. Sullivan* (1996), 22 R.F.L. (4th) 115 (B.C.C.A.), a case which has a great deal of similarity to the circumstances of the present case, the Court of Appeal overturned the chambers judge's decision, which rejected a mother's application to have British Columbia assume jurisdiction over parenting issues, including custody and access. The Ontario court had retained jurisdiction after granting primary residence to the mother and permitting her to move to British Columbia. The child was unhappy with all of the travelling required for the visits to her father. In arriving at the decision, McEachern C.J.B.C. stated as follows at para. 33:

In my view, the evidence was overwhelming that British Columbia was the most convenient and appropriate place in which to determine what is best for the child. She has lived here now lawfully with her mother and step-father and with the consent of her own father, for two years or so. Her home is here. Her school is here. Her friends are here. Her current psychological consultant is here. Her medical doctor is here and her activities are here. She is clearly a permanent full time resident of this community.

[17] As a starting point for the present analysis, I note that the children here have now lived in British Columbia for almost two years. They have done so lawfully pursuant to the Pennsylvania court orders. They attend school in British Columbia, have friends here, their doctors are here, and they are actively involved in the community as full-time residents. There is no doubt that the most relevant evidence regarding their physical and emotional well-being, as well as their recreational, educational and spiritual and other needs will be in British Columbia.

[18] Of course, the provisions of the FLA make habitual residence of a child a basis for the assumption of jurisdiction by this court. Relevant portions of s. 74 provide:

- (1) This section applies if an order respecting guardianship, parenting arrangements or contact with a child may be made, respecting the same child, in more than one jurisdiction.
- (2) Despite any other provision of this Part, a court may make an order under this Part respecting guardianship, parenting arrangements or contact with a child only if one of the following conditions is met:
 - (a) the child is habitually resident in British Columbia when the application is filed;

- (3) A court may decline to make an order under this Part if the court considers that it is more appropriate for jurisdiction to be exercised outside British Columbia.
- [19] It is not simply the common law and British Columbia statute law which make habitual residence the basis for jurisdiction. The Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980, Can. T.S. 1983 No. 35, is based on the principle that determinations regarding custody should be made in the jurisdiction where a child is habitually resident.
- [20] In light of the children's habitual residence in British Columbia, the principle that the court in the location where the child resides is usually the most convenient and appropriate to take jurisdiction, and the provisions of the FLA, there is no doubt that this court would normally take jurisdiction over the children in preference to the Pennsylvania court.
- [21] The difficult question which arises in this case is whether this court should decline jurisdiction because of the term in the Final Order. The relevant term of the Final Order reads as follows:
31. This court retains exclusive and continuing jurisdiction of this case until further order of court. This court does not enter any determination regarding jurisdiction over child support which Mother may [sic] in her choice of location.
- [22] I assume the word "bring" is missing from the last sentence in that order.
- [23] I agree with Mr. Murphy that this was an important term of the order. That was noted by the guardian ad litem in his updated report to the Pennsylvania court on August 13, 2013. In that letter, he also described the difficulty presented by the visits to Mr. Murphy:

It was a bit of a surprise to me to find out that a Motion for change of jurisdiction had been filed by the Plaintiff [Ms. Russell] in this matter. Although I would agree that legal grounds may exist for the request, my notes and independent recollection recall that it was agreed as part of the overall stipulation that jurisdiction would not be transferred out of Pennsylvania to give the Defendant [Mr. Murphy] a comfort level with making the concessions he did in this matter.

Further, it should be noted that there have been a tremendous amount of problems with the Plaintiff mandating the children to get on the airplane necessary to have Father's visits. I understand that the Mother may be in fact doing everything she can. Formerly H. now most recently R. has allegedly thrown fits at the airport which would trigger the airport not allowing them to get on the plane.

- [24] While the provision which kept jurisdiction with the Pennsylvania court was an important concession by Ms. Russell, the Final Order does not prevent her from applying to change jurisdiction. Indeed, the terms contemplate the possibility of a future order to change jurisdiction. The Pennsylvania court only retained jurisdiction "until further order of court". Importantly, the order does not provide that the further order must be of the Pennsylvania court. Ms. Russell's application to this court is not a breach of the Final Order. There is

nothing which prevents the British Columbia court from making an order to assume jurisdiction.

- [25] The proceedings which took place both before and after the Final Order are an important consideration here. Ms. Russell properly accepted the jurisdiction of the Pennsylvania court and the custody issues were contested with the participation of both parties in that jurisdiction. After the Final Order was made and the children did not attend for the scheduled summer visit with Mr. Murphy, the Pennsylvania court once again considered the situation in detail. While the motion before the court was for contempt, the substance of the motion was an analysis of Ms. Russell's actions in relation to the access terms of the Final Order and the legitimate views of the children with regard to their visits to their father in Pennsylvania. The court considered all of the relevant evidence and directly heard the views of both children at the October court hearing. It concluded that Ms. Russell was not in contempt for failing to deliver the children to Pennsylvania and by inference, must have accepted that the children were expressing their own views.
- [26] Of course by considering whether or not to exercise jurisdiction, I must give deference and respect to the legitimate decision of the court of a foreign state. The principle of comity requires no less.
- [27] Here, there were extensive proceedings in Pennsylvania under family law principles that are similar to those applied in British Columbia. The decision was based on the best interests of the children. In these circumstances, there is good reason to give effect to the Final Order. As I will explain for Mr. Murphy's benefit, it is possible for the British Columbia court to recognize that order while taking jurisdiction over the children with respect to parenting arrangements, guardianship and contact.
- [28] Considering all of these circumstances, I conclude there is no reason for this court to decline jurisdiction. I am of the view that the circumstances are appropriate for the application of ss. 75(1) and (2) of the FLA. The relevant provisions include:
- (1) A court must recognize an extraprovincial order if all of the following apply:
 - (a) the extraprovincial tribunal would have had jurisdiction to make the order under the rules that are applicable in British Columbia;
 - (b) each party to a proceeding in which the extraprovincial order was made had
 - (i) reasonable notice that the order would be made, and
 - (ii) a reasonable opportunity to be heard respecting the order;
 - (c) the extraprovincial tribunal was required by law to consider the best interests of the child;
 - (d) it would not be contrary to public policy in British Columbia to recognize the order.
 - (2) On recognition by a court,

(a) an extraprovincial order has the same effect, and may be enforced, as if it were an order made under section 45 [orders respecting parenting arrangements], 51 [orders respecting guardianship] or 59 [orders respecting contact], as applicable, and

(b) the court may, if necessary to give effect to the extraprovincial order, make any order that the court may make under this Act.

[29] When the parties embarked on the litigation in Pennsylvania, the children were habitually resident in that state. The parties had notice of all of the proceedings and made submissions to the court. The court considered in detail the best interests of the children, and there is no reason not to recognize the Final Order as modified by the December 11, 2013 order.

[30] Accordingly, I formally recognize the Final Order, which will have the same effect and may be enforced as if it were an order made under the FLA respecting parenting arrangements, guardianship or contact.

Issue 2: Should the British Columbia court vary the Final Order as modified by the December 11, 2013 order?

[31] I also conclude that s. 76(1) is relevant to the circumstances before this court. That section provides:

(1) On application, a court may make an order that supersedes an extraprovincial order that has been recognized under section 75 [recognition of extraprovincial orders] if satisfied that

(a) the child would suffer serious harm if that child were to

(i) remain with, or be returned to, the child's guardian, or

(ii) be removed from British Columbia, or

(b) a change in circumstances affects, or is likely to affect, the best interests of the child and subsection (2) of this section applies.

[32] Ms. Russell has argued that there is a material change in circumstances which is relevant to the terms of the Final Order regarding access visits. She has raised a number of considerations which are, in my view, critically important to the present circumstances. The most significant of these of course is the position of the children, which was again dramatically demonstrated by the attempt to visit Pennsylvania last month.

[33] Other factors she has noted include:

1) The Pennsylvania court did not hear evidence from Dr. Arnold, the children's treating psychologist, or from Dr. Holm, the emergency doctor who saw H.

- 2) The British Columbia court has the advantage that expert witnesses with valuable, relevant information - the children's doctors and psychologists - are not protected by witness immunity in the Pennsylvania court unless the parties agree. Mr. Murphy declined to agree to that term when it was proposed that those witnesses testify. Those witnesses will have the benefit of that immunity in British Columbia.
 - 3) The Pennsylvania court has not heard evidence regarding the last access visit in December or the evidence regarding the failed March 2014 access visit.
 - 4) The new provision which provides that Ms. Russell is to get the children to Pennsylvania in three days if they will not board an airplane has not been tested, but it certainly appears to me to be impractical and unreasonable. I note that no evidence was ever presented regarding that provision in Pennsylvania.
 - 5) Both children and H. in particular, are at an age where their views need to be fully considered. While the Pennsylvania court heard their views, another six months has passed since that occurred.
- [34] I conclude that this court requires further evidence before making an order to vary the terms of visitation to Mr. Murphy in Pennsylvania. In particular, a current views of the child report for both children should be obtained. Of course, I have already mentioned that Dr. Arnold and Dr. Holm have not provided evidence, and this court should hear that evidence.
- [35] I also want to provide Mr. Murphy the opportunity to make further submissions regarding possible alternate terms for access visits which attempt to take into account the concerns that have been raised.
- [36] Accordingly, today I am going to make the following orders, and will do so with reference to the paragraph numbers from the notice of application:
- Paragraph 4 - The order sought is granted. The parties are relieved from the requirement to attend a judicial case conference.
 - Paragraph 6 - An order recognizing the Final Order as modified by the December 11, 2013 order is granted. As I have noted, that is in accordance with s. 75 of the FLA.
 - Paragraph 7 - I order that, pursuant to s. 211 of the FLA, a views of the child report be prepared. Ms. Russell provided the names of five qualified individuals who she would be prepared to accept for preparation of that report. The difficulty will be in finding someone who can complete the report in sufficient time so that an application can be made to this court before the scheduled summer access visit. I order that the report be prepared by one of the five individuals named, so long as the report can be delivered by June 16. If Mr. Murphy has a preference for any of those five individuals, he should advise Ms. Labun whom he prefers, and he should do that within 24 hours. If he has not done so, Ms. Russell may choose the individual to prepare the report. The report is intended to obtain the views of the children with regard to visits to their father in Pennsylvania and the terms of telephone or Skype visits. The author should give consideration as

to the maturity of the children and whether the views expressed are their own. Of course, consideration should also be given as to whether there has been parental alienation by either parent. Mr. Murphy may participate by telephone. The parties are to follow the directions of the expert as to how the interviews are to take place, including any directions regarding when and how the children are to attend at the interviews. Ms. Russell shall pay the initial cost of the report. However, division of the final cost between the parties will be subject to further order once the application to vary the visitation terms has been heard.

[37] I will remain seized of all applications relating to this matter.

[38] Now, finally, I will also make orders which are pursuant to Part 4, Division 2 of the FLA and are in essence pursuant to s. 75(2)(b) of the Act, which is to put in place parenting responsibilities using the British Columbia terms. In that regard, I am referring now to the numbering from the written argument that Ms. Labun used in her submissions. I will go through the requested provisions so that there is clarity on the terms of the order:

- 1) Making day-to-day decisions affecting the children and having day-to-day care, control and supervision of the children - Ms. Russell will have that responsibility.
- 2) Making decisions respecting where the children will reside - that is Ms. Russell's responsibility.
- 3) Making decisions respecting with whom the children will live and associate - again Ms. Russell.
- 4) Making decisions respecting the children's education and participation in extracurricular activities including the nature, extent and location - that will be Ms. Russell's responsibility in relation to extracurricular activities including the nature, extent, and location. With regard to education, that will be a joint matter.
- 5) Making decisions respecting the children's cultural, linguistic, religious and spiritual upbringing and heritage - that is a joint responsibility.
- 6) Subject to s. 17 of the Infants Act, R.S.B.C. 1996, c. 223, giving, refusing or withdrawing consent to medical, dental and other health-related treatments - that is joint, but if there is an inability to agree, then Ms. Russell may make that decision.
- 7) Applying for a passport, licence, permit, benefit, privilege or other thing for the children. Now, I am a bit unsure about that one because I have heard some conflicting evidence about what is required for applying for a passport. It strikes me that the application for a passport may require both parties' involvement, and so I think that has to be joint. With respect to other matters, permits, benefits, privileges for the children, that will be Ms. Russell's responsibility.
- 8) Giving, refusing or withdrawing consent for the children if consent is required is Ms. Russell's responsibility.

- 9) Receiving and responding to any notice that a parent or guardian is entitled or required by law to receive. Ms. Russell is responsible.
- 10) Requesting and receiving from third parties health, education or other information respecting the children - that is a joint responsibility.
- 11) Subject to any applicable provincial legislation, starting, defending, compromising or settling any proceeding relating to the children and identifying, advancing and protecting the children's legal and financial interests - that will be a joint responsibility.
- 12) Exercising any other responsibilities reasonably necessary to nurture the children's development will be a joint responsibility.
- [39] I will also make the order which is at para. H of the outline of argument that though the claimant and the respondent remain joint guardians of the children, they will consult with each other with respect to decisions that they are jointly responsible to make. In the event of an impasse, Ms. Russell shall have the right to make the final decision, subject to the right of the respondent, Mr. Murphy, to apply to the court to challenge any such decision if he is of the opinion that the decision is not in the best interests of the children.
- [40] The final order I will make is that Mr. Murphy file a sworn financial statement within 30 days. This is with respect to Ms. Russell's application for an order that child support be paid.
- [41] That concludes my reasons. I will also make an order that dispenses with Mr. Murphy's signature to the form of the order. And, Mr. Murphy, I am doing that just because of the logistics. Having you in Pennsylvania, it is much easier to have it done up here, and the order will be reviewed by the court.

[DISCUSSION RE: SIGNATURE]

- [42] MS. LABUN: My Lord, I can update on a few doctors have gotten back with their availability, and I can advise that the following have said they're available. Dr. Korpach - she is able to do a views of the children with interviews occurring May 5 and a report done by June 1. That was as of April 25. Dr. Latorre is able to do it. We heard from Jesse Elterman the same day as the hearing - the 22, and he believes he is available. We also heard that Bob Findlay was available as well. So I will communicate with Mr. Murphy -
- [43] THE COURT: Well, I can tell you that if Dr. Korpach is available, she would be my preference, because I do have familiarity with her work, and that would be my preference. So I am going to make the order today. Mr. Murphy, I am assuming you do not have knowledge of the -
- [44] MR. MURPHY: I have no knowledge whatsoever of who's there, sir.
- [45] THE COURT: Well, I am going to make that order then that Dr. Korpach prepare the s. 211 views of the child report.

[46] MS. LABUN: Thank you, My Lord.

[47] THE COURT: Now, I can tell you that I am sitting during the week of June 16 and I could hear an application at 9:00 o'clock for an hour, and we can even do that for two days if there was a need to fit it in. If the anticipation is that it would be longer, it may be difficult to get court time. I am not sitting in court on the week of June 23. But I would be prepared on the week I am not sitting to hear the parties for an hour or two at some time to deal with this matter, and I would be prepared on the week I am sitting to hear the parties at 9:00 in the morning. I would suggest that you set that down, Ms. Labun, as soon as you can.

[48] MS. LABUN: Thank you, My Lord.

"Butler J."

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