
CANADA / JUDGMENT

S.A.H. v. J.J.G.V.

2018 BCSC 2278

COURT

Supreme Court of British Columbia

DECIDED

20 December 2018

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2018 BCSC 2278 S.A.H. v. J.J.G.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.A.H. v. J.J.G.V.,

2018 BCSC 2278

Date: 20181220

Docket: E180475

Registry: Vancouver

Between:

S.A.H.

Claimant

And

J.J.G.V.

Respondent

Before: Master Muir

Reasons for Judgment

Counsel for the claimant:

P.T. Busch

The respondent appearing in person:

J.J.G.V.

Place and Date of Hearing:

Vancouver, B.C.

November 29, 2018

Place and Date of Judgment:

Vancouver, B.C.

December 20, 2018

introduction

- [1] These are cross-applications.
- [2] The claimant seeks orders regarding the children's school attendance, parenting time, their primary residence, child and spousal support, s. 7 special or extraordinary expenses of the children, that a s. 211 report on parenting capacity under the Family Law Act, S.B.C. 2011, c. 25 [FLA] be prepared with the respondent paying 100% of the cost associated with it, conduct orders, and guardianship orders with respect to the children with final decision-making granted to her.
- [3] The respondent seeks orders granting the parties equal parenting time for the younger children, A.V., C.V., B.V., T.V., and N.V., an imputation of income to the claimant, that the claimant pay child support to the respondent for the three older children, J.V., S.V., and M.V., that the parties split the children's private school fees, that two of the children, A. V. and T.V., attend counselling with the respondent, that a s. 211 report be prepared by Dr. Elterman with the cost to be shared equally by the parties, and for guardianship orders with respect to the children with final decision-making granted to him.

Background

- [4] The parties were married on November 20, 1999 after having known one another through their church for several years. The parties separated on July 19, 2017.

The Children

- [5] The parties have eight children, aged from 5 to 17:
1. J.V., born February 14, 2001;
 2. S.V., born September 20, 2002;
 3. M.V., born February 17, 2004;
 4. A.V., born June 7, 2005;
 5. C.V., born December 28, 2006;

6. B.V., born July 14, 2008;
 7. T.V., born November 30, 2009; and
 8. N.V., born July 31, 2013.
- [6] The eldest child, J.V., has graduated from school and is working. He resides with the respondent.
- [7] The second oldest child, S.V., is still in school and resides with the respondent. The respondent indicates S.V. wants to be homeschooled so that he can complete his high school on an accelerated basis. The claimant seeks an order that S.V. be required to attend school.
- [8] All the children attend or have attended a private school connected with the parties' church. The school fees presently total \$740 per month. The respondent is seeking to have the fees shared equally between the parties while the claimant is seeking to have the respondent be solely responsible for the cost.
- [9] The two eldest children have apparently sided with the respondent and spend little time with the claimant.
- [10] The third child, M.V., spends time with both parents as he chooses.
- [11] The rest of the five children are primarily resident with the claimant. Two of the children, A.V. and T.V., have had a troubled relationship with the respondent and have not seen him for some time. They are both presently attending counselling.
- [12] The respondent has been seeing the other three children, namely, C.V., B.V., and N.V., from Saturday evenings to Tuesday mornings. He says his parenting time has been unilaterally limited by the claimant. He says he has had increased parenting time over the summer. As noted, the respondent seeks equal/shared parenting time.
- [13] The claimant seeks a variation to the current parenting schedule with respect to A.V. and T.V. so that the respondent would not see them until they are ready to do so and that he would see C.V., B.V., and N.V. from Saturday at 5 p.m. to Monday before school one week, and from Sunday at 1 p.m. to Tuesday before school on alternating weeks.
- [14] In addition, the claimant seeks orders for her to have primary residence for the five younger children, final decision-making ability for them, and shared holiday time and birthday time for these younger children.

Religious Issues

- [15] The parties have been for most, if not all, of their lives, members of a Christian church in Vancouver, BC (the "Church").
- [16] The respondent has historically had issues with the leadership of the Church, which came to a head when the parties' relationship became troubled.

- [17] There is extensive detail in the respondent's materials, which I have reviewed, as to his differences with the Church elders. The respondent is an articulate man, who, although self-represented, presented his position clearly and forcefully.
- [18] The respondent felt particularly betrayed by the position of the Church elders regarding the claimant separating from him and regarding her taking legal proceedings. The respondent viewed both of these as being counter to God's teaching. He also viewed the Church elders' actions as being biased against him.
- [19] This is compounded by the fact that several of the Church elders are related to the claimant.
- [20] As a result, the respondent has met with the Church elders and sent many, very lengthy emails and letters to both the Church elders and the congregation, accusing the Church elders of going against God's teaching and being influenced by Satan. The Church elders finally resorted to banning the respondent from the Church and Church activities. The respondent alleges that in doing so, the Church elders addressed the congregation in ways that were both defamatory of him and false.
- [21] The respondent has had the support of some of the congregation, and several of their emails are included in his materials. He has also included letters from the three oldest children in his materials.
- [22] The respondent has resorted to starting a web page, on which he has posted much of his correspondence. Some of this correspondence includes references to the claimant, the children, the separation, and the legal proceedings.
- [23] The respondent has also directed emails and letters to the claimant and at least one of the children, A.V., in which he vehemently argues that the claimant's actions (and for that matter, the children's actions) are counter to scripture, influenced by Satan, and sinful.
- [24] The claimant has provided an affidavit from Karen McAndless-Davis, a Registered Professional Counsellor, Certified Trauma Therapist and ordained minister in the Presbyterian Church in Canada. Ms. McAndless-Davis deposes that one of her areas of expertise is how spiritual abuse is used to bully and control spouses.
- [25] Ms. McAndless-Davis says that in her 20 years of work, she has had considerable experience with this type of abuse. She opines that the actions of the respondent are not only spiritually abusive, but that the spiritual abuse being perpetrated here by the respondent is the worst she has seen.
- [26] She gives several examples, including references to the various emails, letters, and the web page the respondent created. Ms. McAndless-Davis says that, in her opinion, these are very disturbing and are intended to further spiritually abuse, manipulate, and control the claimant and the children.

- [27] The respondent says that Ms. McAndless-Davis has never spoken to him and has a biased view of his actions, viewed only through the lens of the claimant.
- [28] He denies that his emails are abusive, rather, characterizing them as challenging and sometimes encouraging. He says he started the website so that all the material would be easily accessible in one place and that it is a tool he is using to help the congregation recognize the errors of the Church elders.

Employment and Income

- [29] Prior to the births of the parties' children, the claimant worked as a registered nurse. Since then, she has abandoned that career to be a full-time mother. She says that in order to work as a nurse in the future, she would have to be retrained completely. Her position is that she is unable to work due to her childcare responsibilities, including staying at the children's school all day to assist with the issues of one particular child.
- [30] The respondent says the claimant is capable of working as the children are now all in school and she should be imputed an annual income of \$26,000 for child and spousal support purposes.
- [31] The claimant's income is presently \$15,714.72 from social assistance and \$44,859.96 from Child Tax Benefit and BC Family Bonus.
- [32] The respondent was trained as an architectural technologist but, apparently, has not worked in that occupation for some time. He has embarked on some entrepreneurial ventures that have failed and, as a result, he has incurred debt of approximately \$115,000.
- [33] He presently works as a handyman and makes additional income by finding recalled Ikea dressers on the internet and returning them to Ikea for a credit. He says his annual income is \$48,000.
- [34] The claimant says the respondent is intentionally underemployed.
- [35] The two eldest children living with the respondent also work and he says their income is \$30,000 total.
- [36] The parties do not have any significant assets.

Parenting

- [37] The claimant says that the respondent's unpredictable work schedule often requires him to leave suddenly such that the older children are required to care for the younger ones.
- [38] In addition, she notes that despite the fact that the former matrimonial home is a rented property, the respondent is consumed with undertaking extensive renovations to it. She says that the renovations have, at times, made the premises unsafe particularly for the younger children due to missing windows and railings, furniture and fridges strewn around, and tools left out. She says that the property was also uncared for with lengthy grass, broken

glass, and the house has an ongoing mouse infestation. She brings photographs of these issues as well as an affidavit from a neighbour of the respondent who raises similar concerns for the children. This neighbour also confirms that the claimant is a loving and caring mother.

- [39] The claimant also has concerns about the number of days of school that the children have missed when in the respondent's care.
- [40] In addition, since the summer, the respondent has insisted the younger children spend more time with him to the point of picking them up early from school on days that the children were to have been with the claimant. The children are conflicted about which parent's wishes they are to respect.
- [41] The respondent says that the landlord is keeping his rent low as a result of the renovations he is undertaking on the property. He denies that there is a danger to the children and brings his own photos of rooms that apparently have been finished.
- [42] The respondent says he is perfectly able to parent the younger children 50% of the time, although he does acknowledge that, occasionally, the older children will have to look after the younger ones. He says more often he will just take the children with him if he needs to pick up a dresser, for example.
- [43] The respondent says that the claimant has her own issues with the children, pointing to a recording that he had one of the children make of a dispute between the claimant and A.V.
- [44] The respondent admits that he has sometimes kept some or all of the children home from school so that they could spend quality time with him. He says that is necessary because the claimant is limiting his time with them.

Analysis

- [45] This is a very difficult, unfortunate, and unusual situation. The parties are not only polarized in their relationship, but in their religious lives.
- [46] The respondent is completely convinced of the righteousness of his position. He clearly loves his children and believes that, other than reconciliation, only a 50/50 parenting plan is in their best interests. He is of the view that the claimant has alienated the two children, A.V. and T.V., who refuse to see him, and that if he could talk to them the issues would soon be resolved.
- [47] With respect, I believe that the respondent has underestimated the negative impact of his actions on the children.
- [48] By essentially painting himself with truth and goodness and the claimant with lies and evil, he is unintentionally tormenting the children, who are forced to ally themselves with the alleged evil in order to be with the mother they love.

[49] It goes deeper than that, however, as the children are also torn between the teachings of their father and the teachings of the Church and its elders, some of whom are their relatives.

[50] The only concern here is for the best interests of the children. From the FLA:

Best interests of child

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;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[51] Family violence is defined in the FLA as follows:

"family violence" includes

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

- [52] The FLA has a very broad definition of family violence. It does not have to be the intentional infliction of harm. The circumstances of this case are an example of an apparently well-meaning but fixated father inflicting psychological and emotional abuse on his family.
- [53] I accept the opinion of Ms. McAndless-Davis that the actions of the respondent amount to spiritual abuse and, in my view, they constitute family violence as defined in the FLA.
- [54] I think it is extremely unlikely that the respondent will willingly stop his efforts to persuade others that he is right. What he must do, however, is to stop inflicting this fight on the children.
- [55] I believe the younger children require stability and security during this troubling time. I am of the view that the claimant is better able to provide that at this point. The respondent's work is not stable. His past entrepreneurial failures have left the parties with substantial debt. He is consumed by his dispute with the Church elders and appears to be or to have been consumed by renovations to the former matrimonial home.
- [56] I do not believe it would be in the children's best interests to accede to the respondent's desire for 50/50 parenting. I do agree, however, that it is in the children's best interests to maintain a relationship with their father.
- [57] The two older children clearly have aligned themselves with the respondent and I see no benefit to them in ordering any change to that situation. They are old enough to explore reconciliation with their mother on their own.

orders

Primary residence

- [58] The primary residence of the two older children is to be with the respondent. The parties are joint guardians of those two children and they will share parental responsibilities, with the respondent having final decision-making authority and the claimant having liberty to apply.
- [59] The primary residence of M.V. will be shared between the claimant and the respondent. The parties are his joint guardians and they will share parental responsibilities, with the respondent having final decision-making authority and the claimant having liberty to apply.
- [60] The primary residence of the five younger children will be with the claimant. The parties are joint guardians of these five children and they will share parental responsibilities, with the claimant having final decision-making authority and the respondent having liberty to apply.

Parenting time

- [61] The three older children may choose with whom they wish to reside and when they see each parent.

- [62] The respondent will have parenting time with the younger children other than A.V. and T.V. on a two week rotation -- during week 1 from Saturday at 5 p.m. to Monday before school and during week 2 from Sunday at 1 p.m. to Tuesday before school. In addition, the parties will share parenting time of these children during Christmas and Spring Break, alternating each year for parenting time on Christmas Eve and Easter Sunday. The respondent will have three weeks of summer time with these children.
- [63] The children, A.V. and T.V., will continue to attend counselling with a view to reconciling with their father and will reintegrate with their father only as recommended by the counsellors or as agreed by the claimant. For the present, the respondent shall not have any scheduled parenting time with them.

School attendance

- [64] As to schooling for S.V., as long as he is embarked on at least a full-time accredited and ministry recognized home school program, he does not have to attend school. The respondent is entitled to sign all documents for this child in that regard.
- [65] As to the rest of the children, other than the eldest, who has finished school, the respondent is to ensure that they attend school while in his care unless they are ill or their absence is somehow unavoidable.

Support

- [66] Although the respondent claims hardship, he did not present any detailed analysis of that claim. Although he is only earning \$48,000 presently, I am of the view that he is capable of earning more.
- [67] Further, I must consider that at least the eldest child is out of school and working and thus he could be contributing to his own support.
- [68] I cannot see a basis for departing from the Federal Child Support Guidelines, SOR/97-175 [Guidelines] in the circumstances.
- [69] I accept that, at present, the claimant's child-care responsibilities and lack of training preclude her from working and I do not believe it is appropriate to impute additional income to her.
- [70] Thus, based on a guideline income for the claimant of \$15,714.72 for child support purposes and for the respondent of \$48,000, the claimant will pay child support for the two children in the respondent's primary care and the respondent will pay child support for the five children in the claimant's primary care. Support for M.V. is to be shared by the parties on a set off basis according to the Guidelines. The respondent may set off the amount owed to him by the claimant. Child support is to be paid monthly on the first day of each month, commencing December 1, 2018 until agreement or further order.

- [71] If there is any difficulty in calculating the amount owing, there is liberty for the parties to arrange with Supreme Court Scheduling to reappear before me, or if that is not possible, to apply in Chambers.
- [72] As to spousal support, on a means and needs analysis I cannot justify an interim award of spousal support and that application is denied, without prejudice to the ability of the claimant to argue for spousal support at a later date.

Section 7 Special or Extraordinary Expenses

- [73] It is patently obvious that these parties cannot afford private school fees of \$740 per month.
- [74] I appreciate, however, that private school may be overwhelmingly important to these parties due to the affiliation between the school and the Church. They have obviously sacrificed in other ways to allow the children that schooling in the past.
- [75] In those circumstances, it seems fair that should the parties wish to keep the children in private school--which will be decided by the party with decision-making authority for the child--the parties will contribute equally to the cost.
- [76] Any outstanding fees for 2018 will be payable forthwith. Future fees will be payable annually as required by the school.

Section 211 Report

- [77] The parties cannot afford a full, privately funded, s. 211 report. I had initially been of the view that I should order a publicly funded report to be completed by family justice counsellors through Family Justice Services.
- [78] I have since learned, however, that the wait time for a full report would likely be a year. Thus, the report would not be ready for the trial of this matter scheduled in October 2019.
- [79] I am hopeful that the orders I am making will give the parties the stability they need to move forward and that it will be possible for them to present their positions to the trial judge without the need for a s. 211 report.
- [80] Thus, the applications for a s. 211 report are denied.

Conduct Orders

- [81] Authority for conduct orders is found in the FLA, including as follows:

Purposes for which orders respecting conduct may be made

222 At any time during a proceeding or on the making of an order under this Act, the court may make an order under this Division for one or more of the following purposes:

- (a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;

- (b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
- (c) to prevent misuse of the court process;
- (d) to facilitate arrangements pending final determination of a family law dispute.

Other orders respecting conduct

227 A court may make an order requiring a party to do one or more of the following:

- (a) give security in any form the court directs;
- (b) report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- (c) do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222 [purposes for which orders respecting conduct may be made].

[82] I am satisfied that the behaviour of the respondent, particularly in his emails to the claimant and the children and his publication of details of the parties' separation and litigation warrant conduct orders. Accordingly, I am making the following conduct orders:

- a) The parties will put the best interests of the children before their own interests;
- b) The parties will encourage the children to have a good relationship with the other parent and speak to the children about the other parent in a positive and respectful manner;
- c) The parties will make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the children or in any public forum;
- d) The respondent is not to call, write, email or text the claimant other than regarding the care of the children and parenting time scheduling;
- e) The respondent is not to call, write, email or text the children residing primarily with the claimant other than through the claimant and as allowed by her and his communications are to be polite and respectful, refraining from any negative or hostile criticism, communication or argument;
- f) The respondent is not to include commentary on the claimant, the children, the separation or the litigation in any email or other publication, including on a web page or addressed to the Church, the elders or the congregation;
- g) The parties will not question the children about the other parent or time spent with the other parent beyond simple conversational questions;
- h) The respondent will not record or cause the children to make recordings of the claimant or the other children;

- i) The parties will not discuss with the children any inappropriate adult, court or legal matters; and
- j) The parties will encourage their respective families to refrain from any negative comments about the other parent and his or her extended family, and from discussions in front of the children concerning family issues or litigation.

Costs

- [83] In my view, the arguments raised by the respondent not only resulted in delay in hearing this application, it required that the application be scheduled for a full day. The arguments he advanced were often only peripherally relevant to the issues that had to be decided.
- [84] The claimant has been substantially successful on both applications. Considering the actions of the respondent, in my view, the claimant should have her costs of the applications payable forthwith in any event of the cause.
- [85] As the claimant's and the respondent's applications were argued together, I will assess the costs as for one full-day application such that the claimant is entitled to her costs of the full day in the amount of \$2,000 plus \$500 for disbursements, for a total costs award for both applications of \$2,500.

"Master Muir"

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