
CANADA / JUDGMENT

S.D.G. v. J.A.M.

2016 BCSC 2498

COURT

Supreme Court of British Columbia

DECIDED

14 December 2016

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2016 BCSC 2498 S.D.G. v. J.A.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.D.G. v. J.A.M.,

2016 BCSC 2498

Date: 20161214

Docket: E162961

Registry: Vancouver

Between:

S.D.G. also known as S.D.B.

Claimant

And

J.A.M.

Respondent

Before: The Honourable Madam Justice Gray

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

L. Rudovica

Counsel for the Respondent:

M. Mohamedali

Place and Date of Hearing:

Vancouver, B.C.

December 14, 2016

Place and Date of Ruling:

Vancouver, B.C.

December 14, 2016

- [1] THE COURT: The applications before me relate to a little girl who is four and a half years old. A big part of the problem here is that the parents are presently living in different places. The claimant mother ("Mother") is living in Grand Prairie, Alberta, and the respondent father ("Father") is living in Surrey, British Columbia.
- [2] The Mother commenced the lawsuit, and there has not been a judicial case conference. The Mother would like some orders to be made before a judicial case conference. Counsel have been able to get a date for a judicial case conference for February 3, 2017. Today is December 14, 2016.
- [3] I will say a bit about the history, and then I will explain the applications.
- [4] The parents have moved around a fair bit. The parents were living in Penticton.
- [5] The Father moved to Surrey early this year, around February of 2016. As I understand it, he says he did this to be in a better environment and to live with an old family friend. She is not a biological relative, but he refers to her as "Aunt Darlene". She has two sons who are 23 and 21 years of age. The Father is 26 years of age. As I understand it, the Father says that the Mother had also agreed to move to Surrey, but she denies that she agreed to move to Surrey. In any event, the Father moved to Surrey and the Mother remained in Penticton.
- [6] There was some shared parenting, but the evidence conflicts about that. The Mother says that it was alternating two-week periods with each parent. The Father says that much more time was with him and that the Mother saw the child less and inconsistently. In this kind of court application, it is impossible for me to determine who is correct and who is incorrect about that.
- [7] The next event is that the Mother went to Grand Prairie with the child. It appears that both parties agree that the Mother said she was going there for a vacation. The Father suspects that was untrue and that the Mother had decided to move there. She promptly found work there. There are some text messages which refer to the Mother earning tips and using day care, both of which suggest that she had moved there.

- [8] The Mother's position is that she wanted to look at Grand Prairie and see how she liked it, and it was only at some later time that she decided to move to Grand Prairie.
- [9] In any event, the Mother has now moved to Grand Prairie, Alberta. I am told that it is a 10- to 14-hour drive from the Lower Mainland and a 60- to 90-minute airplane ride.
- [10] The child has been mostly with the Father in Surrey this fall, and was registered in a preschool in Surrey this fall. The Mother complains that she was not consulted about the child attending that preschool. There is no evidence that the Mother was suggesting an alternate preschool or taking any other active steps to put the child in preschool.
- [11] The present situation is that the child has been with her Father more than with her Mother, at least since August. The Mother wants to have substantial contact with the child.
- [12] The notice of application that was filed on November 30, 2016, includes a request for an order to change the location of the child's residence from Surrey to Grand Prairie, Alberta. That suggests that the child's present residence is in Surrey, B.C.
- [13] The parties are not seeking to resolve this on a final basis before me. What they want is to have something worked out for the period between now and the judicial case conference.
- [14] The Father initially objected to having any application in advance of a judicial case conference. In my view it is appropriate to permit an application in advance of the judicial case conference. That is because of the best interests of the child, the upcoming Christmas holiday period, and the fact that there is going to be a delay of about six weeks until this judicial case conference. In my view it is appropriate to have some kind of arrangements in place for what should happen with this four and a half-year-old.
- [15] The mother has alleged that the child is not safe with the Father. The Mother points out that the Father has a conviction for trafficking in a controlled substance.
- [16] The Father agrees that he has the conviction, but says he is now drug-free and he is willing to take a hair-sample drug test, which is one of the things the Mother is seeking.
- [17] I will make that order, which is by consent as I understand it. Because we are going into the holiday period I will require the test within 14 days of this order. This is item 10 in the Mother's notice of application. I am changing the timing to 14 days. Within 14 days of the date of this order, the Father will attend for and provide a drug test by way of hair follicle sample.
- [18] It says covering a period of time back to June 2016. How do you do that? Do not you just give your present hair?
- [19] MS. RUDOVICA: There is -- there is segments. They can do three months, six months, nine months. If his hair is not long enough, they will not be able to go back six months, but that is the request, or perhaps three months would be more workable, looking at his hair. It is 1 inch per one month --

- [20] THE COURT: Well, he can give a hair follicle sample, and it can be tested as far back as it can be tested.
- [21] Are you agreeable to that?
- [22] MR. MOHAMEDALI: I am agreeable to that, My Lady.
- [23] THE COURT: Okay.
- [24] MR. MOHAMEDALI: Just to clarify one issue, I [indiscernible], that is why I did not make any submissions on that point, that there would be [indiscernible].
- [25] THE COURT: You do want both to be tested. And you are agreeable to that?
- [26] MS. RUDOVICA: Absolutely.
- [27] THE COURT: Okay. Then by consent within 14 days both parties will attend for and provide hair follicle samples that can be tested for drugs, and the result of the drug screens are to be provided simultaneously to counsel on both sides. That order is by consent and made mutually.
- [28] The Mother has raised some concerns about the child's living arrangements. As I understand it, the non-biological "Aunt" Darlene says that she lives in a five-bedroom home with her two sons and the Father and his daughter.
- [29] The Mother has speculated about who might be living there, but her speculation is not admissible evidence. It is just speculation. I do not see a basis in the evidence for being concerned about the Father's living arrangement.
- [30] The Father has a history of drug problems, and as I have said, he is prepared to have the drug testing. There is nothing that has happened particularly recently that has given rise to a concern, except that the Mother says that the child has recently become more aggressive.
- [31] The Father's counsel pointed out some documents suggesting that the child's struggles with aggression are long-standing. At page 126 of the Mother's affidavit No. 1 is a copy of a referral form. It is dated August 13, 2014. It appears to be a referral from a family doctor or a paediatrician treating the child, and it says it is an urgent matter, referring to "aggressive behaviour, biting, pinching, hitting and screaming."
- [32] Then page 128 is a report. It says "printed on August 20, 2014". It includes remarks under the heading "social emotional behaviour". I will not read it out, but there are some concerns expressed about the child's aggressiveness.
- [33] Then there is a discharge summary signed by a psychologist dated December 15, 2015, almost exactly one year ago. It talks about the service which was provided. The daughter was seen due to behavioral concerns by her parents. There are some recommendations. They include to continue Kinder Play preschool; to continue working on a consistent schedule (eating, bedtime, wake time) across parent households; to continue working towards

consistant parenting, i.e., rules discipline, etc.; to continue using "How Does Your Engine Run"; and refer if needed.

- [34] I am satisfied that there have historically been some concerns about this child's behaviour including and aggressive behaviour.
- [35] The woman who the Father calls "Aunt" Darlene has sworn an affidavit. It is her Affidavit No. 1. In paragraph 12 she talks about having observed behavioural issues with the girl, and she says they have markedly improved over the last ten months that the girl has been in the Father's primary care. That is an affidavit dated December 7, 2016.
- [36] The Mother does not agree. The Mother thinks things have gotten worse. She refers to the daughter making a gesture and then making some comments that suggest the daughter may have been spanked by the Father.
- [37] Again, I cannot decide who is right or wrong on those contentious issues, but I am not satisfied that the Mother's concerns about the Father's parenting are to a degree that it is unsafe for this child to be with the Father. The child has been predominantly with her Father for at least the last few months. I am not satisfied that there is evidence of something in particular that has happened in that time period.
- [38] There should be some contact between the child and both of her parents. It is a practical problem when the parties live so far apart.
- [39] The Father is agreeable to the Mother seeing the child from December 26 to January 3. That is a time that was set out in item 9 of the notice of application as a time proposed by the Mother.
- [40] The Mother's counsel argued today that the Mother should have the child for a longer time period. The Father objects to that because he wants to have Christmas with the child.
- [41] In my view it is appropriate for the Father to have some Christmas time with the child. So I will make the order requested in paragraph 9 of the Mother's notice of application, that the Mother will have parenting time with the child from December 26, 2016, to January 3, 2017.
- [42] The Mother says that she would like half of the time between now and six weeks from now when there is a judicial case conference. As I have said, there is a dispute about whether there had recently been 50/50 parenting time. The Mother's position is that there was, but the Father disagrees. The Father's position is that the child needs the consistency of going to her preschool, and that it is not appropriate to disrupt her schedule.
- [43] Preschool is something which is scheduled, but I am not convinced it is something that is so significant that the child cannot miss a few days when she has not seen her Mother for a significant period of time.

- [44] I am just going to calculate numbers of days here. December 26 to January 3 is eight days. That is essentially one week out of the six. In my view the Mother should have more parenting time with the child.
- [45] The Father has proposed January 12 to 18. I think this has to do with the schedule. That is a Thursday to a Wednesday. Then the child would be in preschool just on the 19th or the 19th and 20th.
- [46] If the child could be with the Mother from January 12 to January 23, that would be 11 days. I will permit that additional time as well. The Mother can have parenting time on January 12, and the child should be back the night before the Monday, so she should return to the father on Sunday, January 22.
- [47] Sometimes, with a child who is as young as four and a half, it would be better to have shorter periods with her Mother if she has not recently seen her Mother a lot. The problem in this case is the physical distance between the parties. I have chosen this longer period of ten days because I am concerned about the child having to travel as long as 10 or 14 hours by car or truck. It is not clear that a flight would be practical and affordable.
- [48] To summarize, I granted item 9 in the notice of application, which was the Christmas parenting time.
- [49] With respect to item 10 in the application, I will make the order requested but varied to require the drug testing within 14 days and to make it mutual. The hair can be tested, whatever is on the hair.
- [50] The other order I made was that the Mother can have parenting time from January 12 to 22.
- [51] The Mother wanted an order about jointly exercising parenting responsibilities. As I understand it that is by consent, on an interim basis anyway. Paragraph 7, you have consented to that in the notice of application?
- [52] MR. MOHAMEDALI: Yes, My Lady. I believe just [indiscernible] paragraph 6 which deals with telephone contact, Skype contact, is agreed. Paragraph 7 is agreed. Paragraph 2 is agreed. Paragraph 8 is agreed. So it is back in time, that one.
- [53] THE COURT: Okay. By consent, paragraphs 2, 6, 7 and 8. All right. Is there anything else that needs to be dealt with today?
- [54] MS. RUDOVICA: Costs. Just the issue of costs. And I am asking for costs in the cause. My client asked for more parenting time. She was successful in that. My friend opposed.
- [55] THE COURT: All right. What do you say to that?
- [56] MR. MOHAMEDALI: In terms of the parenting time, that was not specifically asked for within in latest application. That was discussed outside of court. The notice of application asked for relocation and my client's parenting time.

[57] THE COURT: All right. I am not going to make any order as to costs for today because it appears to me that, while there has been consent on a number of matters, the most contentious was the Mother's application seeking to change the location of the child's residence. The Father did not want that. We have not made a final decision about that, but the child is going to be more with the Father than the Mother in the period covered by my order.

[58] In all these circumstances, each party should bear their own costs of today.

[59] MR. MOHAMEDALI: My Lady, just one final point. In terms of the 12th of January, would that be after school? Collection after school?

[60] THE COURT: That was my intention, yes.

[61] MR. MOHAMEDALI: I am grateful, My Lady. Thank you.

[62] MS. RUDOVICA: Thank you.

[63] THE COURT: All right.

"Gray J."

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