

CANADA / JUDGMENT

S.E.B. v. B.W.M.

2023 BCSC 2571

COURT

Supreme Court of British Columbia

DECIDED

20 December 2023

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2023 BCSC 2571 S.E.B. v. B.W.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.E.B. v. B.W.M.,

2023 BCSC 2571

Date: 20231220

Docket: E136366

Registry: Kelowna

Between:

S.E.B.

Claimant

And

B.W.M.

Respondent

Before: The Honourable G.P. Weatherill

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

J.C. Spelliscy

Counsel for the Respondent :

A.C. Price-Stephens

Place and Date of Trial/Hearing:

Kelowna, B.C.

December 20, 2023

Place and Date of Judgment:

Kelowna, B.C.

December 20, 2023

- [1] THE COURT: These are my reasons. I intend to make this relatively brief.
- [2] There are two applications before me. On November 15, 2023, the claimant mother filed an application that she be designated as the parties' one-year-old son's primary parent, that the respondent's parenting time with him be professionally supervised and that there be a s. 211 report ordered.
- [3] The respondent opposes all of those orders.
- [4] On November 21, 2023, he filed his own application seeking specified unsupervised parenting time and that Master Schwartz's September 11, 2023 order requiring him to pay child support be varied such that no child support is payable.

Background

- [5] Briefly by way of background, the claimant is currently age 32 and the respondent age 34. They have roughly the same incomes. The claimant says that the parties began cohabiting September 1, 2020. The respondent says it was June 1, 2020. In any event, they were married on August 15, 2021 and separated on December 31, 2022. They have one child, E., who was born in April 2022, making him just 20 months' old currently.
- [6] The claimant has been his primary caregiver since birth. She returned to work as a winemaker in April 2023, and E. attends daycare and has attended daycare at Bright Path in Kelowna during the work week since then.
- [7] The claimant filed the notice of family claim on February 6, 2023, a month or so following separation. The response to family claim and counterclaim was not filed until August 31, 2023, and then the response to counterclaim on September 28, 2023.
- [8] A judicial case conference, which is mandatory, was held before Master Schwartz on September 11, 2023 where a consent order was made requiring the respondent to pay the claimant child support of \$656 per month, I assume based on his Guideline income of \$70,000.

- [9] This matter is now set for a 10-day trial to commence in November 2024, some 11 months hence.

Issues

- [10] So now the dispute. The core dispute between the parties is over the respondent's parenting time with E. The respondent says pre-separation he was a very involved and devoted parent and cites various examples of that. He says the claimant is now attempting to alienate E. away from him and is denying him parenting time. Soon after they separated, the claimant insisted, he says, that any parenting time that he had must be professionally supervised. Her concern then and now is that the respondent, as a first-time parent and as someone who has experienced/is experiencing mental health and some anger management issues, becomes overwhelmed and cannot properly manage parenting a toddler.
- [11] While acknowledging that he has some mental health issues such as anxiety, depression, and problems with anger management, the respondent denies the suggestion that he is unable to properly parent E. and he seeks a gradual move towards co-parenting.
- [12] When faced with being unable to see E. unless the visits were professionally supervised, the respondent reluctantly agreed to supervision because he was desperate to have a relationship with his son.
- [13] A series of 13 parenting visits between February 28, 2023, and May 22, 2023, were supervised by Crowning Life Counselling, a firm in Kelowna owned and operated by Ms. Iris Wagner, who is a relatively well-known family counsellor involved with supervising parenting.
- [14] By my count, 11 of the 13 visits were supervised by an employee of Crowning Life, a Ms. Katherine Archibald, whose reports that are in evidence suggest that those parenting visits went very well. Ms. Wagner supervised one of the later sessions and then authored a summary report that characterized the respondent's parenting as just "playing and not really parenting". The respondent takes issue with Ms. Wagner's report in that he says it minimizes the positive parenting experience that he had with E. It is apparent that there is no longer any rapport between Ms. Wagner, the respondent, and his counsel, so any further supervised parenting with Ms. Wagner's firm is likely impossible.
- [15] The respondent's request for parenting subsequent to his last visit on May 22, 2023, has been denied by the claimant, so the respondent last saw E. on May 22, 2023, some seven months ago.
- [16] As mentioned, the claimant's primary concern relates to whether the respondent has the ability to properly care for E. at his young age.

- [17] At the JCC in September, Master Schwartz encouraged the parties to each consider family members who could supervise the respondent's parenting. The respondent complied and proposed either his mother, H.M., or his aunt, D.M., who is a licensed social worker, but both proposals were summarily rejected by the claimant.

Discussion

- [18] In cases such as this where the parties do not appear to like each other, have some difficulty communicating with each other in a civil manner (although I am told that communication is improving), where affidavits are voluminous and in conflict and, more importantly, where there is a young 20-month-old toddler involved, decisions respecting parenting are always difficult. I do not propose to review the affidavit material that has been presented in this case. The highlights of those affidavits have been nicely summarized by counsel, for which I am grateful.
- [19] In short, the parties had a very short relationship that produced young E. They have been separated for less than a year. That separation has not gone smoothly and the animus between the parties has continued. They are both first-time parents.
- [20] Quite understandably, the claimant has concerns that her son be safe and that the respondent demonstrate that he is not only a loving but a capable parent who can handle E. properly, not only when things are going smoothly but when E. is sick, is crying, or perhaps in crisis.
- [21] Regrettably, shortly after the separation last December 31st, the respondent made statements in writing which do not put his parenting abilities in the best of light. Some of his text messages suggest hostility and immaturity in dealing with parenting and other issues, perhaps due to the recent breakup, which exacerbated his emotional and mental instability.
- [22] It is evident, and he does not deny, that he has anxiety and anger management issues for which, happily, he is receiving psychological counselling. He has been recently diagnosed with a psychiatric condition known as an adjustment disorder with anxiety and depressed mood. According to his psychologist, it is in partial remission. The respondent continues to have some residual issues with depression, anxiety, and anger management, which, as I mentioned, is being treated. In addition, the respondent's family doctor has apparently diagnosed him with ADHD this past July.
- [23] The respondent's psychologist provided a report which is in evidence (albeit not an admissible expert report under the Rules) that provides an opinion that the respondent's symptoms are likely in response to the ongoing stressors related with him being unable to have contact with E., whom he has not seen since the end of May.
- [24] So with these two applications, I am dealing with a young 20-month-old boy, E., who has been living with primarily the claimant and who has not had the benefit, since the parties separated, of having much, if any, one-on-one parenting time with his father. The

respondent says he is frustrated and depressed over the inability to develop a relationship with E. and blames the claimant for denying him parenting time. In response, the claimant says that the respondent has shown by his past behaviour that he is incapable of properly parenting E. without professional supervision.

- [25] Now, in deciding issues of parenting children on these types of applications, and as both parties know, the only relevant consideration is what is in E.'s best interest. Not only is it the only relevant consideration, it is the only consideration.
- [26] Now, even though I have not met E. and I do not know him, I do understand that at the age of 20 months, he is still a toddler. However, I recognize that despite his young age, it is in his best interest to, and he is entitled to, develop and have a relationship with each of his parents, not just his mother.
- [27] Over the lunch break and the break this afternoon, I had the benefit of reviewing the supervised parenting time reports that are in evidence. I believe there are 14 of them. Those reports inescapably show, at least for the purposes of the decision I must make, that the respondent is a capable, focused, and engaged parent who, when he is with E., is capable of meeting E.'s needs, at least in a supervised setting.
- [28] So in sum, what is at play in both these applications before me is not so much whether the respondent should have parenting time, and the claimant rightly concedes that he should, but rather whether the parenting time should be professionally supervised or unsupervised. The appropriate considerations and factors respecting whether parenting time should be supervised were discussed by Justice Griffin, as she then was, in *F.K. v. M.K.*, 2010 BCSC 563, and summarized by Justice Giaschi in *Grisenthwaite v. Clavora*, 2023 BCSC 1864, a decision that was released on October 24th of this year.
- [29] While each case turns on its own facts, it is clear that exceptional circumstances must exist before parenting time will be ordered to be supervised. As Justice Griffin aptly stated:
- ... an order for supervised access, like termination of access, requires ... exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship ...
- [30] On the evidence before me, while I am satisfied that the respondent has displayed some psychological and anger management issues, most likely stemming from the frustration he is experiencing from being unable to see his son, and from what he views as the claimant's attempts at control, those issues are currently being professionally treated and he is making progress. The evidence does not persuade me that even if supervised parenting may have been subjectively required in the past, and I mean by subjective, the claimant's subjective views, because of the claimant's concerns, and I am not making that determination one way or the other today, I am not persuaded that such concerns are justified or that supervised parenting by a professional is still required, if it was required in the first place.

- [31] The circumstances the claimant maintains as reasons why I should order professionally supervised parenting fall below the threshold of being exceptional. As Ms. Price-Stephens put it in submissions, the standard is not perfection.
- [32] Having said that, I suspect that the discord between the parties will continue past the trial which is set for November of next year. Counsel have candidly agreed that the parties simply do not like or trust each other, and the affidavits which are in conflict that they have filed makes that point very clear.
- [33] To solve the conflict and to allow the parties to move forward, the trial judge who hears this case in November next year will require the assistance from a third party expert to provide objective reporting of observations and discussions with the parties and others. One of the most beneficial reports that a trial court sees in cases like these is a s. 211 report. As Justice Forth stated in *J.L.H. v. P.J.H.*, 2017 BCSC 1628, s. 211 reports are the "eyes and ears" of the court.
- [34] Now, when considering parenting time, it is necessary to weigh and balance all kinds of factors, but they all come down to what is in E.'s best interests, which I emphasize includes his right to know and to have a relationship with each of his parents and includes the fact that limiting contact with one parent will have, in my view, a negative impact on him: Grisenthwaite at para. 149.
- [35] While the parties disagree on whether or not supervised parenting is in E.'s best interests, I conclude that what is not in E.'s best interests is to deny him the chance to spend time and develop a relationship with his father. The fact that there has been no parenting time since the end of May is, in my view, most unfortunate.

Decision

- [36] So on that backdrop, I am going to make these interim orders:
1. E. will reside primarily with the claimant. Paragraph 1 of the claimant's notice of application is granted.
 2. I want the respondent's parenting time to commence as soon as reasonably possible. We are in the midst of the Christmas season. In my view, the respondent should have parenting time with E. as soon as possible, so I am going to order that he will have parenting time with E. on Boxing Day morning, December 26, 2023, from 10:00 a.m. to 12 noon. Thereafter, regular week-time parenting time will commence on Wednesday, January 3, 2024. The respondent is to pick E. up from daycare at 4:00 p.m. that day and return him to the claimant by 7:00 p.m. at a mutually-agreeable location, and his parenting shall continue the following Monday, January 8, 2024, and thereafter on Mondays and Wednesdays from 4:00 p.m. until 7:00p.m. until further order; so pickup will be at 4:00 p.m. at daycare and drop-off with the claimant by 7:00 p.m. at a mutually-agreeable location. Regarding weekend parenting, the respondent is to have parenting time on Saturdays from 10:00 a.m. to 12:00 noon commencing December 30, 2023, and continuing every Saturday from 10:00 a.m. to 12:00

noon until February 3, 2024, when his parenting shall be increased on those Saturdays from 10:00 a.m. to 6:00 p.m., with exchanges to take place at a mutually convenient location.

3. Now, for the time being, although I am not satisfied that professional supervision is required, I am going to order that the respondent's parenting time initially be monitored and supported by the respondent's aunt, Ms. D.M. I am making that order because E. is still only 20 months' old and the respondent has not had any parenting time since May, so he will need some assistance to get up to speed, and also to hopefully allay the claimant's concerns about the respondent's ability to properly parent E. I have read Ms. D.M.'s affidavit that was filed November 29, 2023, which I found to be helpful. She is a qualified social worker who knows the respondent, describes him in a positive manner, and emphasizes that she is willing to monitor the respondent's parenting time and ensure E.'s safety. So I consider it to be in E.'s best interests to have another adult, such as D.M., present to help with any issues that may arise with E. So that order shall be in place until the end of January 2024, that is the monitoring order with D.M., with liberty to apply to the claimant if there are problems.
 4. I am also granting the claimant's application for a s. 211 report to be prepared by Dr. Simon Elterman, and that the costs of the assessment and report be shared equally by the parties.
 5. Depending on how parenting goes and pending the receipt of the s. 211 report, the respondent shall have liberty to apply to increase his parenting time, including overnight visits, but that application cannot occur until receipt of the s. 211 report.
 6. And the last order is that the respondent must continue to pay child support to the claimant. His application to vary Master Schwartz's order respecting child support is accordingly dismissed.
- [37] Respecting costs, I consider the parties have had divided success, so they shall bear their own costs.
- [38] Anything arising, Ms. Spelliscy?
- [39] CNSL J. SPELLISCY: No, Justice. I just want to confirm the pickup times for the weekday parenting time that commence on January 3rd?
- [40] THE COURT: Four o'clock.
- [41] CNSL J. SPELLISCY: Four o'clock and so is the respondent to pick up E. from daycare?
- [42] THE COURT: At daycare.
- [43] CNSL J. SPELLISCY: At daycare, and then the claimant is to -- and then meet the claimant at seven o'clock at a mutually-agreeable location?
- [44] THE COURT: Yes. Now, in other words, I have taken the respondent's application -- notice of application and granted essentially what is being sought, except that I have changed the times and the dates.

- [45] CNSL J. SPELLISCY: Okay, and that the parenting time is to be monitored or supervised by Ms. D.M.
- [46] THE COURT: Until the end of January.
- [47] CNSL J. SPELLISCY: Until the end of January, all right. Thank you, Justice.
- [48] CNSL A. PRICE-STEPHENS: Thank you.
- [49] THE COURT: Ms. Price-Stephens?
- [50] CNSL A. PRICE-STEPHENS: Thank you.
- [51] THE COURT: Any -- who is going to draft the order?
- [52] CNSL J. SPELLISCY: Ms. Price-Stephens is on holiday, so I will -- I will do that.
- [53] THE COURT: Okay, very good. Okay, I wish everyone a happy holiday and good luck with the new parenting regime, thank you.
- [54] CNSL A. PRICE-STEPHENS: Thank you.
- "G.P. Weatherill J."

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