
CANADA / JUDGMENT

S.E.B. v. T.J.B.

2009 BCSC 1650

COURT

Supreme Court of British Columbia

DECIDED

1 December 2009

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2009 BCSC 1650 S.E.B. v. T.J.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.E.B. v. T.J.B.,

2009 BCSC 1650

Date: 20091201

Docket: 05-0008

Registry: Victoria

Between:

S.E.B.

Plaintiff

And

T.J.B.G.B also known as J.B.G.T.B.

Defendant

Before: The Honourable Mr. Justice Greyell

Reasons for Judgment

Counsel for the Plaintiff:

K. Melbye

Appearing on his own behalf:

T.J.B.

Place and Dates of Trial:

Victoria, B.C.

October 26 - 30, 2009

Place and Date of Judgment:

Vancouver, B.C.

December 1, 2009

- [1] This matter concerns two cross applications relating to custody and access rights to the parties' 6-year-old daughter, R.B. The plaintiff S.E.B. is the mother; the defendant is the father.
- [2] The plaintiff seeks sole custody of R.B. with the defendant having restricted rights of access to those he currently has. The defendant seeks joint custody and extended rights of access. I will briefly review the relevant background, the law I must take into consideration and then discuss the reasons for my decision.

Background

- [3] The parties were married on March 7, 2003. R.B. was born September 3, 2003, and is now six years old and in grade one. The parties separated in November, 2004, although they attempted an unsuccessful reconciliation between March and June, 2005. R.B. has lived with her mother since the separation. By all accounts (and this is not disputed by the defendant) the two have a close relationship and she is providing good care. Various arrangements have been in place for the defendant to have access to his daughter which I will describe later.
- [4] This action was commenced January 4, 2005. The parties were divorced by decree issued February 24, 2006. The defendant has since remarried and he and his new wife are expecting a child.
- [5] The parties' history before, during and following their marriage demonstrates they had a tumultuous relationship, very much full of strife. There were lengthy periods of separation when the plaintiff considered it necessary for her personal safety and emotional well being to leave the matrimonial home or when the defendant was away on military duty with the Navy. Following their separation in November 2004, the parties often quarrelled over the defendant's access to R.B.
- [6] Notwithstanding their difficulties, with the assistance of legal counsel the parties did manage to reach agreement on their matrimonial issues including custody and access to R.B. On October 25, 2005, they entered into a comprehensive Separation Agreement settling the issues of spousal and child support, division of matrimonial property and custody and access. They agreed the plaintiff was to be granted sole custody of R.B. with both retaining joint guardianship. The defendant was given access rights which were to be exercised

between defined hours on each day of the weekend. Because there had been confrontational difficulties with the defendant picking up R.B. at the plaintiff's residence, the agreement provided that a Separation and Divorce Resource Centre would be the pickup and drop off point for access. The agreement specified that the access schedule was to be flexible and that the arrangement was temporary with the defendant's access to increase in the future.

- [7] The parties negotiated an "Amending Agreement" on April 27, 2006, replacing the provisions in the former agreement relating to custody and access. They agreed to share joint custody with the plaintiff as R.B.'s primary caregiver. They agreed to share joint guardianship of R.B. which they defined as including the obligation to inform each other of and consult on significant issues and major decisions concerning R.B. The defendant was granted increasing rights to access under a schedule which set out dates and times. Effective June 2006, he was granted access overnight each week from 4:30 p.m. Wednesday to 7:30 a.m. Thursday and from 4:30 p.m. Friday to 4:30 p.m. Saturday. In addition, he was granted defined increased access during the summer and Christmas holiday periods and at New Years. Pickups and drop offs were to be at a named shopping mall.
- [8] The present applications were brought seeking to vary the terms of the Amending Agreement. The plaintiff brought her application on February 16, 2007. She seeks sole custody and guardianship of R.B. with restricted and supervised access by the defendant and other related relief arising from a s. 15 report filed in this matter. The defendant brought his application on March 8, 2007, seeking joint custody and shared access on a week on/ week off basis with pickup and drop off points near the plaintiff's residence.
- [9] The applications were adjourned by Master McCallum on May 11, 2007, pending the completion of a s.15 custody and access report. He ordered the custody and access provisions of the Amending Agreement remain in effect pending further order of the Court.
- [10] My determination of the issues relating to custody and access will in large measure depend on my conclusions concerning the recommendations contained in two s.15 reports prepared by Dr. Larry Waterman, pursuant to the Family Relations Act, R.S.B.C. 1996, c. 128.
- [11] The parties jointly retained Dr. Waterman to prepare a s. 15 report in contemplation of these applications being heard at an earlier date. Following his review of the file and interviews with each parent, a home assessment in each parent's home with R.B. present, and interviews with a number of persons who each party provided as references, Dr. Waterman made a number of recommendations in his 71-page report dated April 16, 2008. His recommendations included:
- that the plaintiff be awarded sole custody of R.B. with reasonable and generous access to the defendant;
 - that the defendant have reasonable and generous access when home (from his naval duties) and in particular every second weekend from Friday evening to Sunday night and one evening each week;

- the parties share joint guardianship;
- special occasions (birthdays, Christmas and summer holidays) be shared approximately equally; and
- other recommendations concerning phone access, access on family special events, etc.

[12] Dr. Waterman's first report was an extensive one which included two different psychological tests of each party. It concluded with a 'strong' recommendation the parties engage the services of a mediator to reduce the level of animosity between them. In the conclusion portions of his report which preceded his recommendations he noted R.B. at that time appeared "to be experiencing some difficulty at this point in her life." He was of the view "she is feeling quite insecure and has a high need to be in control. Children can react in this way when they do not see their life as being positive, predictable and consistent. Often children of [R.B.]'s age who get caught in the middle of their parent's acrimonious situation feel insecure and unsure of their life." He also concluded R.B. had a good relationship with each of her parents, that the plaintiff presented as a mother who was "very involved with caring for and raising R.B." and that there was "no doubt" the defendant also loved R.B. and "wants what he believes is best for her." He found the defendant and R.B. appeared to have a "very positive relationship and [R.B.] appears to enjoy the interactions that she has with her father."

[13] Immediately preceding the hearing of these applications, the plaintiff sought a further updated report from Dr. Waterman. The defendant through his counsel at the time consented to an updated report and participated fully in the process including attending a further interview with Dr. Waterman.

[14] The plaintiff sought the updated report because, from her perspective things had changed for the worse following the first report. She was concerned R.B. was showing signs of stress when visitations with the defendant were about to occur. R.B. at times acted out and did not want to leave home to visit her father. The plaintiff was concerned one of the causes of the stress and apparent anxiety being exhibited by her daughter was the defendant's remarriage in September, 2008, and the quite abrupt change in circumstances. Those circumstances included the relationship the defendant expected R.B. to have with his new wife and the fact the two were expecting a new child. The defendant had told R.B. she was going to have a new brother. R.B. also told her mother the defendant tried to insist R.B. call his new wife "mom" and that he disciplined her by giving her a "time out" if she did not. The plaintiff had taken R.B. to a counsellor, Ms. P., because of her concerns with her daughter's reaction to these events.

[15] Dr. Waterman's second report is dated October 20, 2009, approximately one week before the trial. He followed the same methodology as his first report, interviewing both parties individually, the defendant's new wife, R.B. at each of her parent's homes, as well as conducting telephone interviews with the Ms. P. and the plaintiff's mother and sister. Based on these interviews Dr. Waterman made significantly different recommendations to those contained in his earlier report. His second report recommended:

- i) Given the current relationship between [R.B.] and her father, [T.J.B.]'s wish to continue with Joint Custody of [R.B.] with [S.E.B.] is not supported. Based on the information that was gathered during this Updated Assessment, it would appear that [T.J.B.] has been putting his own needs ahead of the needs of his daughter which is not in [R.B.]'s best interest. Therefore, it would appear that Sole Custody by [S.E.B.] would be better for [R.B.] at this time.
- ii) It would appear that [R.B.] is afraid of her father in terms of what he says to her and what he threatens to do. This is not a positive parent - child relationship. Therefore, it is recommended that [T.J.B.] and [R.B.] attend for sessions with [Ms. P.] for [T.J.B.] to learn to build a more positive relationship. At [Ms. P.'s] discretion, [J.B.] could join those sessions when it is appropriate to do so.
- iii) Until such time as the relationship between [T.J.B.] and [R.B.] has improved, it is recommended that overnight access end. Once their relationship has improved, based on [Ms. P.'s] opinion, overnight access could be reinstated.
- iv) It is recommended that [R.B.] see [Ms. P.] on a regular basis, either once a week or once every two weeks. One purpose for implementing sessions is so [Ms. P.] can monitor the relationship between [R.B.], her father and [J.B.]. If there are any indications whatsoever that [R.B.] is being punished by [T.J.B.] and/or [J.B.] for what she revealed during the course of this Updated Assessment, it is recommended that supervised access be initiated.
- v) It is recommended that [T.J.B.] and [J.B.], if she is willing to attend, participate in appropriate parenting programs to help them learn how their behaviour can impact on a child. Such programs are often offered by the MCFD and it is anticipated that [Ms. P.] would be able to make appropriate recommendations to [T.J.B.] about which programs would be best for him.
- vi) If [T.J.B.] wants to have the kind of close and loving relationship with [R.B.] that he reports he wants, he is going to have to make significant changes in terms of how he talks about and deals with [S.E.B.] and her family. [R.B.] is extremely aware of her father's dislike for her mother and her family and this is having a significant impact on her perception of her father. [T.J.B.] talked about wanting [S.E.B.] to "get on with her life". While [T.J.B.] has made some significant changes in terms of his career and having a new wife and child on the way, he appears to be very much stuck in the past as far as [S.E.B.] and her family is concerned. Perhaps [Ms. P.] might be of assistance to him in this regard as well.

- [16] Dr. Waterman's recommendations were based on a number of observations. He noted there had been significant changes in R.B.'s life since his last report. Those changes included the fact the defendant had quit his job with the Navy and that he had remarried quite quickly which Dr. Waterman concluded had "surprised" and "shocked" R.B. The defendant and his new wife J.B. were expecting a new baby shortly. He concluded R.B. was well aware of the ongoing tension between the plaintiff and defendant and that she was reacting to it.
- [17] Dr. Waterman outlined several areas of concern which he described as "problematic". The first was that the defendant had unduly influenced R.B. to support his claim for increased access by suggesting to her the amount of access he should have. He noted that at the first interview he had with R.B. at her father's home R.B. had suggested voluntarily and "out of context" that she "wanted to spend seven days with her father and seven days with her mother starting with her mother". The assessor noted that when he questioned her about this R.B. said her father had talked to her about access. He also reported that other interviewees told him about conversations they had with R.B. in which she volunteered the defendant told her she had to spend more time with him or else he would move away taking their pet dog with them. The dog had been bought by the defendant as a gift for R.B.
- [18] Dr. Waterman also noted a significant difference between how the defendant and his new wife described their relationship with R.B. and how R.B. had reported that relationship to others. The defendant reported to Dr. Waterman and testified in court that R.B. was excited about his marriage to J.B., that she voluntarily called her "mom" and was excited about having a baby brother. The report however outlines incidents where R.B. had expressed anger that the defendant had remarried quickly and that she was disciplined by being given "time outs" for not calling his new wife "mom".
- [19] Dr. Waterman reported on his conversation with Ms. P, the counsellor, as follows:
- [Ms. P.] reported that [R.B.] had a number of concerns which were identified in her sessions. She reported that [R.B.] very much felt caught in the middle between [S.E.B.] and [T.J.B.] but clearly sided with her mother in the conflict. She stated that [R.B.] was angry with her father for becoming involved with [J.B.] so quickly and presented in a way that indicated that she was both stressed and frightened by what was happening. [Ms. P.] reported that [R.B.] told her that [J.B.] "freaks out at me" and that "Dad gets mad at Mom" both of which scared her. She stated that at one point [R.B.] reported that she wished that her father were caught in the middle so he could see what it was like for her.
- [Ms. P.] reported that [R.B.] clearly wants to live with her mother and not her father. Initially, she didn't like [J.B.] and continued to feel caught in the middle. She didn't like her father saying mean things about her mother and reported that he was also mean to her at times such as when he gave her "time outs". When asked what she would like to wish for, [R.B.] apparently wished that her father would stop being mean to her mother and that her parents would get back together.

[Ms. P.] reported that [R.B.] seemed to have a lot of negativity towards her father. [R.B.] reported she couldn't talk to her father and stated that he didn't do anything with her. When questioned further, she reported that her father did play with her but when he did it wasn't fun. [R.B.] also told her that she had bad dreams at times at her father's home but her father denied that those were happening. [R.B.] didn't seem to feel that she could talk to her father but could talk to her mother. When [Ms. P.] offered to talk to her father on her behalf, [R.B.] did not want her to do that.

[20] He was of the view that R.B. was anxious about being placed in a position of conflict where she wanted to please both parents. He concluded much of her anxiety was the result of the defendant's statements to her concerning the plaintiff, his desire to have more access and his new marital relationship.

[21] The assessor opined:

There is no doubt that [R.B.] would like to have a close and loving relationship with each of her parents. However, at the present time, based on the reasons outlined above, that does not seem to be the case, particularly in terms of [R.B.]'s relationship with her father. In the Assessor's opinion, these reasons clearly indicate that there are problems between [R.B.] and her father that need to be addressed before [R.B.] can have the kind of relationship with her father that she has with her mother.

Discussion and Analysis

[22] The importance of a s. 15 report was discussed by Parrett J. in *P.A.B. v. T.K.B.*, 2004 BCSC 72 where he stated:

[27] I had occasion to consider the role of a Family Justice Counsellor in *Goudie v. Goudie*, [1993] B.C.J. No. 1408 and again in *L. v. L.*, 2002 B.C.S.C. 1808. In *Goudie*, at para. 33, I described the role in these words:

In family law cases generally, and in custody and access cases in particular, the issues are often obscured by the emotional overtones of such proceedings. In such circumstances, the Court's power to order an investigation by an independent person with specialized training is an invaluable tool. The procedure anticipated by s. 15 is one in which the investigator interviews the people involved, observes the relationship and the reaction between the spouses and the children, and reports those observations, facts and impressions to the Court. In the truest sense these individuals act as the Court's eyes and ears in what are all too frequently highly emotional areas of conflict. The safeguards built into the process include the early delivery of investigation Reports, the opportunity to call the investigator to the witness stand, and the opportunity to respond to the Report generally by other avenues. . . .

[28] After quoting this passage in *L. v. L.*, I went on to observe, at para. 77:

77 It goes without saying that in preparing a s. 15 report a Family Justice Counsellor is a representative of the court who has been involved in the preparation of the report by a decision of the court that such an independent view of the situation was necessary.

[29] A somewhat similar issue was addressed by Martinson J. in *L.E.G. v. A.G.*, 2002 B.C.S.C. 970. In that case, at issue was the effect of standards adopted by the College of Psychologists of British Columbia in relation to the preparation of s. 15 reports. Martinson J. wrote, in part:

68 The requirement in the Standards that there be no appearance of bias is a very important one in the preparation of a custody and access report. The author of the report is doing an investigation on behalf of the court, not for one party or the other. While the ultimate purpose of the report is to assist the court, it is also a tool to assist the parties to come to an agreement with the benefit of the opinion of a professional. The parties must have confidence in the impartiality of the person conducting the investigation before the report can assist in an early resolution by agreement.

[23] I accept these comments as setting out the proper approach to be followed in this case. Dr. Waterman's two reports represent the "eyes and ears" of the Court in what has been and remains a highly confrontational relationship. The reports present a unique view of the circumstances of the parties and the impact of those circumstances on R.B. which the Court would not otherwise have access to. Dr. Waterman is a psychologist who has been conducting custody and access assessments for over twenty years. He has had extensive training in the area and has been accepted as an expert witness by our courts on numerous occasions. His second report is particularly helpful to the Court in bringing his experience and training to bear on the questions the Court must address in this case.

[24] In *Goudie*, Parrett J. also discussed the hearsay nature of the facts underlying s. 15 reports. As in this case, those facts are in large measure based on interviews with those who are familiar with the family circumstances, with the attributes of the parents and who have close relationships with the child who is the subject of the report. He stated at para. 32:

32 At p. 109, [Collings P.C.J. in *Hamilton v. Hamilton* (1983), 50 B.C.L.R. 104] goes on to conclude:

(2) What is the status of the facts stated in the report?

By this I mean, are the facts related by Ms. Karnouk to be accepted by me into evidence without separate proof? Looking again at s. 15 and noting again that the court has ordered her to do an investigation and make a report, I must conclude that they should be. She is the court's investigator. If what she says is not accepted as *prima facie* true, what is the point of the investigation? Of course, the report has been delivered to the parties and so either may lead evidence to contradict any statement she makes. Likewise, the evidentiary weight of anything she says is still an issue. But I think it would be against the sense of the statute to say that her report was not *prima facie* evidence of the truth of its contents.

33 I can add little to what was said by the learned Provincial Court judge. I agree entirely with his conclusions. The process of the preparation and reception in evidence of a s. 15 report has within it a series of safeguards which are an inherent part of a process destined to place important and sensitive information before the court.

[25] The protections afforded to the parties are that such reports are prepared by an independent expert qualified in the preparation of custody and access reports. Each party is able to call and cross-examine the author on the facts, conclusions and recommendations made and may lead evidence to challenge those conclusions and recommendations.

[26] This is an important factor in the present case. The defendant represented himself. He had retained counsel up to the hearing. His counsel had consented to the original report and to the updated report. The Court made it clear to the defendant several times during the hearing that it would place considerable weight on the reports of Dr. Waterman and that if the defendant intended to challenge the contents of the reports, he should consider calling Dr. Waterman for the purpose of cross-examination. On each occasion I raised the matter with the defendant he declined the opportunity to do so.

[27] Accordingly, I intend to rely on the findings and recommendations contained in his second report. I have not done so, however, without considering the evidence called by both the plaintiff and the defendant in support of their respective positions.

[28] The questions to be determined in addressing these competing applications must focus on the best interests of R.B. That is, are the current needs of R.B. being met and do each of the parties have the ability to meet those needs?

[29] The applicable law is set out in s. 24(1) of the Family Relations Act:

24 (1) When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:

- (a) the health and emotional well being of the child including any special needs for care and treatment;
- (b) if appropriate, the views of the child;
- (c) the love, affection and similar ties that exist between the child and other persons;
- (d) education and training for the child;
- (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.

[30] The section also provides that the conduct of a spouse is only relevant in so far as it affects one of the factors listed in s. 24(1).

- [31] The particular subsections which are brought into focus on this application are (a), (b) and (e).
- [32] As stated earlier, the evidence demonstrated the parties' relationship has been full of strife from the beginning. The plaintiff led evidence that the defendant's conduct has been abusive and controlling. The evidence supports her position. The defendant has chosen to express himself and his anger in inappropriate ways. Some of this anger arose from frustration that the plaintiff would not allow him to see R.B. on the terms he wanted. Some was not. These include: breaking into the matrimonial home when the two were separated such that the police had to be called; attempting to intimidate the plaintiff by fabricating lies to her sister C., and her husband, that the plaintiff was denying him access at Christmas time; engaging in long and persistent telephone calls to her when he was abroad that occupied hours.
- [33] The emails filed by the defendant at trial which were intended to show the reasonableness of his position simply, in my view, demonstrate his abusive and disrespectful attitude to the plaintiff and to her parents. There were many other incidents referred to at trial which I do not need to review for the purposes of this decision as they relate to conduct which is not relevant to the factors outlined in s. 24(1).
- [34] However, I do accept Dr. Waterman's conclusion that much of the conduct of the defendant is highly relevant to a determination of the best interests of R.B.
- [35] Dr. Waterman spoke to Ms. P., a counsellor R.B. had seen on a periodic basis since September, 2008. He related the following from that conversation:
1. The plaintiff took R.B. to Ms. P. because of her concern the continuing conflict between her and the defendant was impacting R.B.
 2. R.B. felt caught in the middle but favoured her mother.
 3. R.B. was angry with her father for becoming involved with another woman so quickly and reported to the counsellor that "[J.B.] freaks out at me" and "Dad gets mad at mom".
 4. She has had bad dreams at times at her father's home but he denies it happens.
 5. Her father has told her that if he does not get more time with her he will not see her.
 6. Her father wanted her to call J.B. "mom" and when she did not he got mad at her.
- [36] Ms. P. offered to talk to her father but R.B. said if she did that he would get mad at her. When she did get R.B.'s consent and spoke to the defendant he was "shocked and angry" (his words to Ms. P.) and "did not see he had done anything wrong and felt that he was completely blameless." Dr. Waterman reported Ms. P. told him the defendant blamed the plaintiff "for everything" and said he had no issues with R.B. that needed to be resolved. The defendant did agree however to see Ms. P. again once the court case was resolved.

- [37] The plaintiff's sister, A.S., who was close to R.B. and a "special auntie" in whom R.B. confided, testified R.B. had told her the defendant had said he would move from the province and take her dog if she did not visit him more frequently and that the defendant made her call his new wife "mom". A neighbour who sees R.B. at daycare testified R.B. confided in her she was troubled "the other woman replaced her mom". Several witnesses who were friends or neighbours of the plaintiff who knew the plaintiff and R.B. testified R.B. had voiced a concern in their presence that she did not want to visit her father; she acted out and became upset close to visitation times. The plaintiff testified there were times R.B. hid under the table when it was time to go and visit the defendant. A number of witnesses testified that on each occasion where R.B. expressed reluctance to visit the plaintiff encouraged her to go.
- [38] The plaintiff as well as several other witnesses testified R.B. was upset by the defendant's quick remarriage. The defendant met his new wife, J.B., in March, 2008, and they were married in September, 2008. R.B. met J.B. in June, 2008. The defendant testified he "slowly" introduced R.B. to her. He said when he told her he was going to get remarried "R.B. was so excited - she jumped up and down" and asked "can I call her "mom"". The defendant said he had given R.B. short "time outs" when she called J.B. "it", "she" or "you".
- [39] The defendant's evidence about R.B.'s comfort level with his new marital relationship and her enthusiasm about calling J.B. "mom" is not consistent with evidence given by other witnesses called by the plaintiff and by what R.B. told the counsellor, Ms. P. It is also inconsistent with the close relationship which R.B. has with her mother that she would want to call someone who was essentially a stranger to her, her "mom". I do not accept the defendant's evidence on this matter.
- [40] While the defendant maintained he loved R.B. and wanted to share custody and have equal access with the plaintiff, his evidence at the trial demonstrates his ongoing anger with the plaintiff. He is consciously or unconsciously using R.B. as a vehicle to express that anger. Of particular concern was a conversation the defendant had with R.B. concerning an abortion the plaintiff had, telling R.B. her mother would "go to hell" for it. The defendant has told R.B. he had to quit his job with the Navy because the plaintiff would not allow R.B. to see him and that he had no money because he had to give it all to the plaintiff.
- [41] The defendant appears to have little if any appreciation of how his conduct is impacting his daughter. He appears not recognize that the separation has had a huge impact on R.B. who still harbours hopes her parents will get back together. He does not recognize his derogatory comments about the plaintiff in R.B.'s presence and his threats to leave the province and not see R.B. if he cannot see her more often are significantly harming her mental and emotional health. He does not recognize that his changed circumstances are having an impact on her.

- [42] The defendant's efforts to portray himself as a good, loving and caring parent are coloured by his conduct. While the defendant called a number of neighbours to testify he was a loving and caring parent while R.B. was at his place, that he did much for her and that he and his wife appeared to have a very good relationship, those witnesses had no knowledge of the relationship he had with the plaintiff or of the impact his conduct was having on R.B. as outlined by Ms. P. and Dr. Waterman.
- [43] The evidence established the plaintiff has provided R.B. with strong emotional and physical support through a very difficult period of time. She has endured the hostility of the defendant, seeking to protect R.B. from it while at the same time encouraging her to see the defendant during periods he had access. Many times the plaintiff took R.B. to transfer places at the shopping mall or the Divorce Centre when the defendant did not show up because he wanted the transfer to take place somewhere else. The plaintiff has encouraged R.B. to go and see the defendant at defined access times even though R.B. objected strenuously. She has arranged for R.B. to see a counsellor to help her to work through the issues arising from the defendant's conduct.

CONCLUSION

- [44] For these reasons I consider it appropriate to implement the recommendations contained in Dr. Waterman's updated report of October 20, 2009. Dr. Waterman's conclusions were fully supported by the evidence I heard at the trial. The plaintiff has been the custodial parent even though the Amending Agreement provided for joint custody. The plaintiff is awarded sole custody of R.B.
- [45] Dr. Waterman recommends overnight access to the defendant cease. I agree with that recommendation. The defendant currently has access to R.B. overnight from Friday at 4:30 p.m. to Saturday at 4:30 p.m. I order Friday access cease and that Saturday access will be from 9:30 a.m. to 4:30 p.m. Wednesday access will continue to be from 4:30 p.m. to 7:30 p.m. I make this order for twice weekly access with some hesitation and only because the plaintiff and Dr. Waterman are prepared to agree it be continued.
- [46] The Amending Agreement sets out detailed access over the holiday and summer vacation periods. That access will continue on the days referred to in the Amending Agreement but there will be no overnight access. For greater certainty, the defendant will have access to R.B. on December 25 from 2:00 p.m. to 9:00 p.m. and he will return R.B. at 9:00 p.m. on New Year's Eve or New Year's Day instead of having her overnight as set out in paragraph 4.4(g) (iii) and (iv) of the Amending Agreement. The defendant will have access on Father's Day from 9:30 a.m. to 4:30 p.m. There will be no overnight access during the summer months as set out in paragraphs 4.4(d) and (e) of the Amending Agreement.
- [47] In making this order as to access, the defendant should appreciate that the Court has ongoing jurisdiction to ensure its orders are made in the best interests of the child. Should the defendant continue to engage in conduct which undermines or demeans the plaintiff in

the presence of R.B. or try to alienate R.B. from the plaintiff or should he attempt to influence R.B. to increase access in the manner he has in the past, the Court may be required to further limit access. The defendant is cautioned he is not to discuss the evidence in this case or the contents of Dr. Waterman's two reports with R.B. In particular, he is not to discuss with her what she has said in past or says in the future at counselling sessions with Ms. P. or what she said to Dr. Waterman in his interviews with her leading to the preparation of his two reports.

- [48] The access transfer point will be at the shopping plaza as in the past.
- [49] The defendant will attend counselling sessions with Ms. P. (or such other counsellor as he and Dr. Waterman consider appropriate) as he indicated he was prepared to do. Those sessions may be alone, or with R.B., and J.B. may attend as the counsellor considers appropriate, always keeping R.B.'s best interests in mind. The defendant is to pay for the cost of these sessions.
- [50] The plaintiff is to continue having R.B. seen by Ms. P. on a regular basis in order that the counsellor can monitor the relationship between R.B. and the defendant and J.B. Overnight access may be reinstated upon agreement between the plaintiff and defendant based on the recommendation of the counsellor or Dr. Waterman or upon the Court being satisfied it is appropriate. The parties are to jointly share the cost of these visits.
- [51] Given the relationship between the parties I am prepared to grant three further orders sought by the plaintiff:
1. that the plaintiff be at liberty to travel with R.B. without the consent of the defendant;
 2. that the defendant be restrained from attending the plaintiff's home; and
 3. that all communication between the plaintiff and defendant, except for medical emergencies, be by email until such time as Ms. P. or Dr. Waterman recommend otherwise.
- [52] Costs are awarded to the plaintiff.

"GREYELL J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/09/16/2009BCSC1650.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/s-e-b-v-t-j-b-2009>

Prepared on 30 October 2026 · Esheria