
CANADA / JUDGMENT

Scheiber v. Phyll

2010 BCSC 135

COURT

Supreme Court of British Columbia

DECIDED

6 January 2010

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

2010 BCSC 135 Scheiber v. Phyll

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Scheiber v. Phyll,

2010 BCSC 135

Date: 20100106

Docket: D1805

Registry: Powell River

Between:

Liisa Scheiber

Petitioner

And:

Christian John Phyll

Respondent

Before: The Honourable Mr. Justice Savage

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

I. Fleming

Appearing on his own behalf:

C.J. Phyll

Place and Date of Hearing:

Powell River, B.C.

January 5-6, 2010

Place and Date of Judgment:

Powell River, B.C.

January 6, 2010

- [1] THE COURT: This is an application by the mother/petitioner, Liisa Scheiber ("Scheiber"), to change the residence of Liam George Phyll ("Liam") for the period of January 2010 to the year ending essentially December 2010. There are some refinements on that. It is largely consented to but with qualifications by Liam's father, Christian John Phyll ("Phyll").
- [2] There are previous orders of the court relating to guardianship, custody, and access for Liam, including an order of this court made by Mr. Justice Curtis, March 31, 2005, which provided that "there will be no further applications to change the child's residence without leave of this court".
- [3] In the particular circumstances of this case, I grant leave for the purposes of this application only and will decide the application on the merits.
- [4] The occasion of this application was brought about by Liam's attendance in New Zealand, the place of residence of Scheiber and her husband, during the summer of 2009. During that visit, Liam expressed a desire to stay in New Zealand and reside for a year with Scheiber. Scheiber alerted Phyll to Liam's desires. Scheiber made a court application under the Hague Convention based in part on other considerations. That application was never formally concluded.
- [5] Phyll attended in New Zealand, and following a mediation, an agreement was struck between the parties concerning, inter alia, Liam's residence during 2010. It is apparent from that agreement that the parties at the end of the mediation in New Zealand believed that they had resolved the issue of Liam's residence for the year 2010 and his access to his father during that period of time. I note that Liam has expressed a desire for this arrangement himself, and it is not something that is opposed directly by Phyll.
- [6] In short, the agreement contemplated that Liam reside in New Zealand for the 2010 year, but return to Canada for three weeks during June and July and reside with his father for a period of not less than three weeks and return again to Canada for a period of not less than seven weeks during the New Zealand summer vacation period, which would be over the Christmas period 2010 to 2011.

- [7] The agreement between the parties (including, I might add, Liam) is one which has been partially implemented. For example, Liam returned to British Columbia in August 2009 instead of remaining in New Zealand with his mother until September 2009.
- [8] Phyll has some reservations about the agreement, reservations that were not apparent in the agreement signed in New Zealand. He is concerned about Liam's eligibility to attend school in New Zealand. The agreement contemplated that he would attend school. He is also concerned about whether he will be faced with another court application arising in New Zealand should he receive no assurances otherwise, and he has reservations regarding Scheiber carrying through should such an agreement be reached.
- [9] I have reviewed the history of this family and the background that brings this matter before the court as described in the affidavit material.
- [10] I am of the view that the arrangement agreed upon is in the best interests of Liam, reflecting as it does an arrangement that he agreed to, as well as his parents. The arrangement, I might add, is supported as being in the best interests of Liam in the affidavit material before the court.
- [11] Of course, in considering this matter, I am cognizant of s. 24 of the Family Relations Act, the best interests of Liam, and I pay particular consideration to section 24(1)(a), (b), (c), (d), and (e).

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.
- [12] As I read the history of this matter, it seems that Scheiber has conducted herself appropriately. She has made court applications and not taken unilateral actions to change the custodial relationship.
- [13] The agreement also contemplates that the parties will give considerable weight to Liam's own desires regarding the post-2010 situation. I have no indication that both parties would not abide their obligations under that agreement.

- [14] In the circumstances, I am prepared to make the order in the terms requested in the notice of motion. In light of Scheiber's conduct, I consider it unnecessary that she post a bond as requested by Phyll.
- [15] In addition to the orders requested in the notice of motion, which I grant, I make an order that Phyll provide Liam with his passport to allow for his travel to New Zealand later this week and Phyll do all that is necessary to facilitate such travel.
- [16] I also order that Scheiber provide Phyll with written verification that Liam is enrolled as a student in Waiuku College by February 15, 2010. The latter point is not unimportant. The whole basis of the agreement is that Liam should attend school in New Zealand and not lose a year of his education, that his academic performance be at acceptable levels, and that his behaviour in New Zealand be appropriate.
- [17] I would also add the following observation, that apart from very extraordinary and exceptional circumstances, I would find it a breach, at the very least of the spirit of the agreement reached, should either party seek further court orders regarding custody and access prior to Liam completing his school year in New Zealand and returning to Canada for the New Zealand summer vacation and prior to him canvassing his views in person with both parents and the parents thereafter consulting with each other.
- [18] As I read the agreement reached by all the parties and by Liam that is what was contemplated, which resolved the issues that arose in New Zealand, notwithstanding the correspondence of September 4, 2009, from the family court.
- [19] I would urge the parties thereafter to abide the wishes of Liam, or at least give them due consideration, who at the time he has to make the next important decision will be 15, whose views should be given considerable weight in accordance with the spirit of the agreement.
- [20] There is no order as to costs. Each party shall bear their own costs of this application.

The Honourable Mr. Justice Savage

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/10/01/2010BCSC0135.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/scheiber-v-phyll-2010>

Prepared on 29 October 2026 · Esheria