
CANADA / JUDGMENT

Schuck v. Frey

2014 BCSC 1504

COURT

Supreme Court of British Columbia

DECIDED

11 August 2014

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2014 BCSC 1504 Schuck v. Frey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Schuck v. Frey,

2014 BCSC 1504

Date: 20140811

Docket: E044506

Registry: New Westminster

Between:

Florian Alexander Schuck

Claimant

And

Melanie Daniela Frey

Respondent

Before: The Honourable Mr. Justice Crawford

Reasons for Judgment

Counsel for the Claimant:

E. Chapman

Counsel for the Respondent:

A. Liggett

Place and Date of Hearing:

New Westminster, B.C.

July 17, 2014

Place and Date of Judgment:

New Westminster, B.C.

August 11, 2014

Introduction

- [1] At issue in these proceedings are custody, parental responsibilities, access, child support, and spousal support.
- [2] The situation when this matter began was jurisdictionally complex: the couple had ended their relationship; the mother had moved to and is currently living in Germany with their daughter; and the father is currently living in Vancouver.
- [3] Initially this matter came before me on November 1, 2013 pursuant to the provisions of the Family Law Act and the Hague Convention on the Civil Aspects of International Child Abduction [Hague Convention].
- [4] Ms. Frey had pursued the issue of the child's custody in the German family court.
- [5] The initial question was whether the BC Court should assert jurisdiction but an evidential matter concerned me.
- [6] In my reasons given November 12, 2013 (Schuck v. Frey, 2013 BCSC 2057), I indicated that an issue before me was a document Ms. Frey had written and Mr. Schuck had signed. In the document, Mr. Schuck agreed to pay child support and he also conceded the child's residence in Germany.
- [7] Mr. Schuck denied that the wording about the child's residence in Germany was on the document when he signed it. In other words, he alleged that section was a forgery.
- [8] I asked the German court, as the holder of the original document, to examine whether the document was as Mr. Schuck says it was when he signed it - i.e., only stating his intention to provide child support - or whether it was as it appeared before me - i.e., that he also conceded the child could reside in Germany.
- [9] Mr. Schuck then applied to the German court under the Hague Convention for return of the child. While ruling against Mr. Schuck the German courts did so on the basis of Mr. Schuck's acquiescence to the claimant and child going to Germany with his knowledge and assistance in December 2012. The parties have not provided me with an English translation of the German trial and Appeal Court's decisions and I am not aware if they made a determinative finding on the issue of whether Mr. Schuck had agreed in writing to the child staying in

Germany on July 28, 2013.

Proceedings before me on July 17, 2014

- [10] The parties came back before me on July 17, 2014. Ms. Frey in her May 23, 2014 application to this Court sought orders for interim child support; interim spousal support; contribution to special or extraordinary expenses of the child pursuant to s. 7 of the Federal Child Support Guidelines; and that retroactive support arrears be paid "up to date".
- [11] Due to a lack of communication between counsel, affidavits in this proceeding were filed late. And also unfortunately, the affidavits fail to specifically address what has happened in the German courts in the past year.
- [12] Counsel do agree that Mr. Schuck went to the family court in Germany and made an application for custody under the Hague Convention, but his claim was dismissed. He then appealed to the Appeal Court in Nuremberg, and his appeal was also dismissed. I gather a form of judicial review was also undertaken and that application was dismissed.
- [13] I do not have English translations of the German Courts' judgments, but it does not appear they made an express finding of fact about the controverted document. Rather Mr. Schuck's claim for return of the child was decided against him on the basis of his acquiescence to the child coming to Germany with her mother in December 2012.

Preliminary Opinion

- [14] After argument from and discussion with counsel, I voiced my preliminary opinion. Both parties attorned to the jurisdiction of the BC Court. As I saw it, the effective result of the German court decisions was that Ms. Frey was the primary caregiver who provided the child's primary residence. The cost of the continuing court battle dictated that the best interests of the child were best served by the court recognising the current situation and making suitable orders under the Family Law Act.
- [15] On that basis, I made preliminary orders:
1. the parents were joint guardians and Ms. Frey had primary parenting rights and responsibilities;
 2. an interim order for child support, including a start date for the child support order;
 3. that Mr. Schuck be given generous access to the child - i.e., at Christmas, birthdays, holidays (Easter, Spring Break and Summer) so that the child might have the best of her German families and overseas father; and the parties consult and agree on an access schedule;
 4. that given the late affidavit filings and necessity for further financial disclosure to calculate spousal support, I would adjourn that aspect generally.

- [16] Both parties' counsel agreed in principle with the preliminary orders I voiced. I then said I would provide short reasons, and these are those reasons.

Hague Convention

- [17] This case is not one where a parent disappeared from a jurisdiction without notice or warning to the other parent. Rather, the parents' relationship began in 2006 in Germany, and it saw the parties travel to London and then to Vancouver following Mr. Schuck's career in film editing. But the relationship came to an impasse in late 2012 resulting in Ms. Frey going to Germany.
- [18] While it may have been Mr. Schuck's wish that the trip would simply be a break to assist in the relationship's revival, one way tickets were bought, and he paid for a one month rental in Germany.
- [19] Soon after going to Germany, Ms. Frey advised Mr. Schuck that she was obtaining low cost housing in Germany and intended to stay.
- [20] Plainly, by staying in Germany in those circumstances, Ms. Frey was depriving the child of her father because he had not consented to Ms. Frey and the child staying in Germany. However, he did have access to the German court system, and this year he tried to obtain return of the child in the German courts system without success.
- [21] Without translation of the German court's reasons, I will assume that the decisions were made in the child's best interests and resulted in decisions effectively in Ms. Frey's favour.

Jurisdiction

- [22] This Court can take jurisdiction (and indeed the parties agreed) over the matters under the Family Law Act, namely guardianship and parenting; access (which is best left in the control of the parties, but as I say is crucial to the best interest of the child); child support (which flows from the father's acknowledged skills in the film editing business); and spousal support (which I will not deal with at this time, but it should reflect the relatively brief relationship of some six years and the evident and expressed wish of Ms. Frey to become independent and self-supporting).
- [23] I find that while Ms. Frey may have unilaterally moved with the child to Germany, she did so with Mr. Schuck's knowledge and acquiescence at least in the short term.
- [24] Further, given the uncontroverted part of the document he signed in July 2013, he agreed to pay child support for 2013 and 2014, and that fact is further evidence that he did not necessarily expect the child and mother to return to Vancouver.

Guardianship and Parenting

- [25] In the short term, the parents are to organize father's access by consultation and forward planning, and may I suggest that each year in the summer when the child's school calendar for the coming year becomes available, that planning build on the schools calendar, the child's activities, school holidays, and the parents work schedules.
- [26] Doubtless as their daughter becomes 10 and then 12 and then 15, she likely will become aware of the benefits her father is able to provide - e.g., international travel; English language and writing skills; and the other knowledge one acquires as a citizen of this world that can only benefit and be to the best interests of the child. And to that end the access calendar will change. That is for the parents to do keeping in mind the best interests of their daughter.
- [27] The Family Law Act, Part 4 deals with parental care and time with children. I note that the Family Law Act now speaks in terms of guardianship and parenting and no longer uses the term "custody".
- [28] Section 37 provides that the primary concern for the Court is the best interests of the child.
- [29] Section 39 provides that parents are generally guardians.
- [30] Section 40(1) provides that only a guardian may have parental responsibilities and parenting time with respect to a child.
- [31] Section 40(2) provides that each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardian unless consultation would be unreasonable or inappropriate in the circumstances.
- [32] Section 40(3) provides that parental responsibilities may be allocated under an agreement or order such that they be exercised by each guardian acting separately.
- [33] Section 41 lists parental responsibilities such as making day to day decisions and having day to day care; control and supervision of the child; making decisions with respect to a child's education and participation in extracurricular activities; making decisions regarding a child's cultural linguistic, religious, and spiritual upbringing; etc.
- [34] For present purposes, Ms. Frey is the effective primary parent, and she will have those day to day responsibilities.
- [35] When Mr. Schuck has the child in his care, he will have those day to day responsibilities, but they will be in periods of time, generally speaking, when the child is on a holiday.
- [36] Over the years that arrangement might change, particularly if the child is able to attend a private school or travel to Canada or such other place as Mr. Schuck may find work and be exposed to different school systems, again, all of which would be in the best interests of the child and the parents desire to create a young adult able to navigate the modern world.

- [37] Therefore, I am leaving the provisions of the parenting and parenting time for the parties, in consultation with their counsel, to fashion an appropriate parenting and access schedule.
- [38] That arrangement may be done under the form of order I now make, i.e., that Ms. Frey has primary parenting responsibilities and that during Mr. Schuck's parenting times he shall exercise his parental responsibilities of making day to day decisions effecting the child and having day to day care, control, and supervision of the child: see s. 42(2). s.44.
- [39] I do note that Ms. Frey has already expressly stated in her affidavit material that she has no difficulty with the child having visits with Mr. Schuck's family in Germany. She is undoubtedly aware of the value of having and keeping a child's relationship with her father alive and well so that he is able to contribute to her material support and provide nurture when he has parenting time.
- [40] As well, I note that the parties have already set up Skype programs so that Mr. Schuck is able to communicate with his daughter on a regular basis and that should provide part of the access arrangement for Mr. Schuck.

Child Support

- [41] Under the Federal Child Support Guidelines, Mr. Schuck's income of \$114,000 per year results in a monthly child support payment of \$1,037.
- [42] The agreement that was made on July 28, 2013 provided that Mr. Schuck was to pay Ms. Frey 225 euros per month for June, July and August 2013 and then for 2013 and 2014.
- [43] At the present time, 225 euros is approximately \$329.87 Canadian.
- [44] Ms. Frey's application for interim child support, dated May 23, 2014, sought child support payments commencing on November 1, 2012.
- [45] The Court recognizes that Mr. Schuck's employment is by way of individual contract for each film the edits; thus his income is variable.
- [46] Therefore, he will have an ongoing obligation to keep Ms. Frey informed as to his employment and expected annual income. However, he will have an ongoing and overriding obligation to provide for his child in substantial fashion in accordance with his skills and income.
- [47] In considering when the obligation to support a child begins, I take into account that ongoing child support obligation; the fact that Ms. Frey has taken the child effectively in a unilateral fashion to Germany; and that Mr. Schuck did agree in writing on July 28, 2013 to provide support. But he did not continue to make those payments while he contested custody.
- [48] As well, the motion seeking retroactive child support was not forwarded to his counsel until May 2014.

- [49] In the circumstances, I order that Mr. Schuck's obligation to pay child support begins January 1, 2014 and he is to immediately begin paying the monthly amount of \$1,037.
- [50] The parties are to forthwith set up a bank account by which Mr. Schuck can deposit monies in Vancouver to an account that Ms. Frey may have access to in Germany, and such payments to be made on the first of each and every month until further court order, or agreement of the parties.
- [51] Regarding the short fall from January 1, 2014 to now, the parties will need to calculate what has been paid and what the shortfall is. Mr. Schuck then shall have 15 months to retire the shortfall in equal payments.
- [52] There will be an order that each parent is to provide the other with a copy of their tax return within 30 days of filing same.
- [53] As special expenses arise Ms. Frey will have the obligation to notify and consult with Mr. Schuck before the expense is incurred, and the expenses are to be shared in proportion to their incomes.

Spousal Support

- [54] I adjourned this aspect of the application as both counsel were seeking disclosure.
- [55] I would expect over the next two months that the parties agree on spousal support based on the Spousal Support Advisory Guidelines. They must take into account Ms. Frey's intention to become self-supporting in her chosen field of foreign language correspondence, and she indicated the training would finish in 2015 and give her options such as a foreign language correspondent, secretary, office assistant, or in office administration.
- [56] The parties are at liberty to come back before me on due notice to the Trial Scheduler.

"Crawford J."

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