
CANADA / JUDGMENT

Scruton v. Wilson

2020 BCSC 1850

COURT

Supreme Court of British Columbia

DECIDED

27 November 2020

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

2020 BCSC 1850 Scruton v. Wilson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Scruton v. Wilson,

2020 BCSC 1850

Date: 20201127

Docket: 192367

Registry: Victoria

Between:

Colin Scruton

Claimant

And:

Chelsea Dawn Wilson

Respondent

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Counsel for the Claimant:

G.M. Lidstone

Counsel for the Respondent:

A. Duncan

Place and Date of Hearing:

Victoria, B.C.

November 2 & 4, 2020

Place and Date of Judgment:

Victoria, B.C.

November 27, 2020

- [1] Dr. Scruton and Ms. Wilson were divorced by way of a consent order pronounced by Mr. Justice Gaul on July 2, 2020 (the "Gaul Order"). The parties have two young boys, now nine and six years-old. The Gaul Order set out detailed parenting arrangements, with the parties sharing parenting responsibilities and having equal parenting time with the children, on a 5/5/2/2 schedule. It provided that neither parent would relocate the children's residence from Central Vancouver Island, or change the children's school or regular child care arrangements, without a written agreement or court order. The parties entered into a Parenting Plan, and the Gaul Order further provided for the parties to retain a parenting coordinator, to assist in the interpretation and implementation of the parenting arrangements set out in the Gaul Order and in the Parenting Plan.
- [2] The equal parenting time stipulated in the Gaul Order reflected the recommendations made in a psychological assessment (a report under s. 211 of the Family Law Act, S.B.C. 2011 c. 25 [FLA]) authored by Dr. Nicole Aubé. Dr. Aubé's report is thoughtful and thorough, and the parties acknowledge its wisdom. Referring to the general ability and willingness of both parties to act in the best interest of their children, Dr. Aubé concluded:

These children have two biological parents who have great potential and excellent resources. It would be ill-advised not to permit them to benefit from the proficiency of each parent. It is fundamental for the welfare of the children that Mr. Scruton and Ms. Wilson, both, make sound decisions about the children's education, health care, religion, and extracurricular activities. Both parents should be involved in every aspect of the children's lives.

Assigning full guardianship to one parent for each child would be a wrong message to give to the children. It is essential that the children get a clear message that both parents are equal and they both have a predominant role in their lives. Consequently, Mr. Scruton and Ms. Wilson should be involved in every sphere of their children's lives.

I recommend that they share equally any major parenting responsibilities. Both parents have the potential and the resources to be able to make safe decision in respect to the children's Health, Education, Extra-Curricular activities and Religion. Similarly, I am of the opinion that it would be a wrong message to give to the children, if one parent is the last decision maker. It is imperative that [the children] perceive that their parents have an equal role in their lives.

In respect to the allocation of Parenting Time, I recommend a 50/50 model of equal parenting time for each parent. It is essential that [the boys] have a significant relationship with their father as well [as] with their mother. They are equally in need of the love and the guidance of each parent.

- [3] At the time of the Gaul Order, the parties were living fairly close to each other -- about 15 minutes apart by car: Dr. Scruton in a rental property in Lantzville, and Ms. Wilson in the former matrimonial home, in Nanoose Bay. Dr. Scruton was operating an equine veterinary clinic south in Nanaimo. He had been looking for several years to acquire a property where he could build a surgery clinic. Very shortly after the Gaul Order was entered, he was presented with the opportunity to purchase an acreage in the Central Saanich area. He has now purchased the property, has moved there, and intends to proceed with building his clinic. As it is a two-hour drive, approximately, from Nanoose Bay, a change in the parenting arrangements is necessary.
- [4] Ms. Wilson filed the present notice of application, seeking, generally, an order that the children continue to be schooled full-time, in-person, at Nanoose Bay Elementary School; in the alternative, that she be granted responsibility for making decisions regarding the children's education, or at least regarding their extra-curricular activities; and that the parenting schedule in the Gaul Order continue, with Dr. Scruton exercising his weekday parenting time in the Central Vancouver Island region, or, alternatively, that the his parenting time be on alternating weekends - Friday after school to Sunday evening - with additional weekday parenting time on reasonable notice.
- [5] Dr. Scruton points to the availability, during the current health emergency arising out of the COVID-19 pandemic, of remote schooling, supported by teachers from the children's school district. He asks, generally, that his alternating weekends be extended to three days and four nights - Friday afternoon to Tuesday morning - with the children working on home-based learning projects under his supervision on the Mondays when they are in his care (when he is not called away for emergency surgeries). Ms. Wilson is opposed to this plan, for reasons that are described below.
- [6] Before turning to a discussion of the substantive benefits of and objections to Dr. Scruton's proposal, I will briefly address three matters that are of some import, though they ultimately have no impact on my decision.
- [7] First, Dr. Scruton moved to the Saanich peninsula unilaterally; he did not give Ms. Wilson the 60 days' notice required by s. 66 of the FLA, and did not bring this application. His counsel submits that he was exempt from this requirement because the move was not a "relocation" within the meaning of Part 4, Division 6 of the FLA. Section 65 provides:

65 (1) In this Division, "relocation" means a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with

- (a) a guardian, or
 - (b) one or more other persons having a significant role in the child's life.
- (2) This Division applies if
- (a) a child's guardian plans to relocate himself or herself or the child, or both, and
 - (b) a written agreement or an order respecting parenting arrangements or contact with the child applies to the child.
- [8] Counsel for Dr. Scruton submits that his move did not meet the criterion of significance, as it was only from Nanoose Bay to Central Saanich. Counsel relies on the decision of Madam Justice Morellato in *D.L.R.A. v. S.K.C.*, 2018 BCSC 1472 [D.L.R.A.], in which a mother's move from Nanoose Bay to Greater Victoria was found not to be "significant". That decision does not support the claimant. The criterion of significance, under the FLA, is judged according not to distance or time, but to the impact of the move on relationships. In *D.L.R.A.* the mother had previously moved from Port McNeill to Nanoose Bay, without the father opposing the move, and had lived there for two years; it was found as a matter of fact that the further proposed move would not reduce the father's parenting time and would not have a significant impact on the child's relationship with the paternal grandparents. In contrast, in the present case, given that the boys are of school age and are involved in extracurricular activities, the father's move will inevitably compromise the parenting arrangements, disrupting the goal of the children having a symmetrical relationship with their parents. ("Symmetrical" is my term, not one used by Dr. Aubé, but I believe the notion of symmetry expresses the essence of her opinion as to what the boys require and what the parties should be aiming toward). The impact of the move on their relationship with one or both parents will undeniably be "significant" within the meaning of s. 65. Dr. Scruton ought to have given due notice to Ms. Wilson. Ultimately, the fact that the Court is now presented with a *fait accompli* limits the Court's options, but does not change the analytical framework, which remains centred on the children's best interests.
- [9] A second related point is that Ms. Wilson takes the position that Dr. Scruton has failed to meet the requirements of s. 69(4)(a) of the FLA: proving that his relocation was made in good faith, and that he has proposed reasonable and workable arrangements to preserve the children's relationships. I am satisfied that Dr. Scruton's reasons for moving are entirely bona fide. The evidence is that after Dr. Scruton decided to move, the parties undertook discussions, through their counsel, as to the implications for the parenting arrangements. It is apparent to me that the parties remained focused on how each perceived the children's best interests would be advanced. Given that the move has already taken place, my determination of this application will not turn on any technical non-compliance with the FLA.

- [10] Third, Dr. Scruton submits that this is a "COVID case" - that his proposal should be preferred because it minimizes the children's risk of being exposed to the SARS-CoV-2 virus during the current pandemic. In general, it is submitted that the children's risk will be greatest when in school and in after-school care: out of any "COVID bubble", and in close contact with their classmates, teachers, and caregivers. It is submitted that every additional day of contact with potential sources of infection increases the risk, and that reducing their in-class time by approximately one day out of every ten will correspondingly reduce both the risk to the children, and the risk of them directly or indirectly transmitting the virus to their newborn half-brother (the child Dr. Scruton has had with his new partner), to Dr. Scruton's elderly parents who regularly visit and help with child care, and to Dr. Scruton's veterinary assistant.
- [11] I find no merit in this submission. Once the boys leave their father's "COVID bubble" they will be at risk, and they will pose a risk to those who remain in the "bubble" when the boys re-enter it. It seems highly likely that the group of persons with whom they come into direct contact during the school week will remain largely unchanged from day to day. Anyone in that group who is contagious on a Monday the children might miss will in all likelihood still be contagious the following day. There is no evidence that reducing the duration of the boys' exposure to that "outside-the-bubble" population by 10% would result in any meaningful decrease in their risk of infection.
- [12] I turn to the substance of Dr. Scruton's proposal. The children participated in remote learning during the months of April and May, 2020, during the initial pandemic shutdown. As part of their reopening plan, Qualicum School District (the "School District") has made home support available for distance learning. Their reopening plan filed with the Ministry of Education stated:
- We know that there will be on any given day a large number of students working from home, particularly given the need for children to stay home with any level of the many symptoms of COVID. There may also be children needing to isolate or quarantine. Additionally, our Board of Education is allowing parents to keep children at home for reasons of concern for family health and well being. For elementary, the outreach to those children will be via a member of the team of three teachers assigned to each pair of classrooms. Connection to what is happening for children on site will be a top priority .
- [13] In August, Dr. Scruton sought home support, from the School District, for those days when the boys would be in his care.
- [14] The School District's Superintendent confirmed the availability of home support in an email sent to all parents on September 11, 2020. He affirmed the goal of students receiving home support maintaining a connection to the classroom, and confirmed that students studying at home under a school-supported educational program would be considered present for the purpose of attendance. The vice-principal of the boys' school further described the home support program in an email sent to the parties on October 1, 2020:

Our home support teachers work alongside the classroom teacher that the student is enrolled in to give suggested learning activities and help create projects that align with what the students who are attending full time are also working on. Home support teachers will also be doing ZOOM meetings and check-ins to talk to the students about their learning. Zoom meetings are also an opportunity for teachers to do some informal assessments and work towards tailoring a program that addresses student needs individually.

- [15] On September 24, 2020, the children began doing school-related learning under the tutelage of their father - the elder boy working on a project that involved aspects of science, reading, writing, and math, which Dr. Scruton had discussed with the school vice principal; and the younger boy working on his reading. It appears there has been some email contact between the home support teachers assigned to the boys' classes, but formal integration into the home support program has been delayed pending the outcome of this application.
- [16] Ms. Wilson raises several objections to Dr. Scruton's proposal. First, she notes that weekend time with the boys' father in Saanich may disrupt their participation in team sports that take place in the vicinity of Nanaimo on weekends. The practical response to that objection is to order that Dr. Scruton continue to facilitate their participation during his parenting time, to the greatest practicable extent.
- [17] Second, Ms. Wilson points to the risk of the children's education being disrupted and possibly compromised, through it being partly at home and partly in-person. However, there is no evidence of any of the school or School District staff voicing any such concern with respect to the proposed plan. It seems to be the intent of the School District to accommodate to the greatest possible extent the variety of circumstances through which the families of their students will be coping with the challenges of the present health emergency.
- [18] Third, Ms. Wilson points to the fact that home support will presumably only be available so long as the current health emergency lasts. That is true; but it is not a reason not to have the boys participate in the program for as long as it is available, if it will assist in promoting their best interests.
- [19] Fourth, Ms. Wilson notes that a schedule that has the boys being returned to her care on a weekday morning will necessitate the boys being up very early one morning, every other week, for the long drive from Central Saanich to their school in Nanoose Bay. They will inevitably find this tiring, and it will not be in their best interest to arrive at school after such an early morning and long drive. That point has some weight; the question is whether any harm to the boys would be outweighed by the benefit of spending an extra evening with their father. The parties are agreed that if Dr. Scruton's proposal is accepted, an opportunity to assess the impact on the children should be afforded through provision of review following the end of the 2020-2021 school year.

- [20] I find it is in the boys' best interest that the equality and symmetry in their relationship with both parents continue to be promoted to the greatest practicable extent. It remains desirable that they have the greatest possible contact with each parent, so that the bonds between parent and child can continue to strengthen. Dr. Aubé also found it essential to the emotional well being of the children that they "get a clear message that both parents are equal", and I accept that finding. Dr. Scruton's move will necessarily compromise those goals, but it is not desirable that they be compromised by limiting Dr. Scruton's parenting time more than is strictly necessary. The current availability of supported home learning will afford the parties the means of at least temporarily mitigating the negative impact of Dr. Scruton having relocated. The benefit to the boys of having an additional overnight with their father will likely outweigh the negative aspect of having to rise very early one morning, every other week, or of other unavoidable disruptions to their schedule.
- [21] Dr. Scruton asks that I vary paragraph 4 of the Gaul Order - the clause that prohibited the children's residence from being relocated from Central Vancouver Island without written agreement or court order - by changing their place of residence generally to Vancouver Island. Ms. Wilson objects to such variation on the grounds that there has been no formal application made. She submits, instead, that the clause should be varied only to provide that Dr. Scruton may exercise his parenting time with the boys outside the Central Vancouver Island area. (I note it was suggested by counsel for Dr. Scruton that the boys have in fact never resided in Central Vancouver Island, and so some variation of the order is required in any event as Nanaimo is, geographically, more in the south than the centre of Vancouver Island. It is obvious that the parties intended, in drafting the terms of the consent order, something other than a strict geographic interpretation of the phrase "Central Vancouver Island", and must have taken it to include Nanaimo.)
- [22] I find this is one aspect of the parenting regime where the principle of symmetry ought not to prevail. The boys' home, for all practical purposes, will continue to be in Nanoose Bay. That is where they will spend the majority of their time, where their school is, where their friends live, and where their extracurricular activities are centred. Further, giving their residence with their father an equal status to their home in Nanoose Bay, at least at the present time, would overlook the implications of home support schooling likely being only a temporary expediency, rather than a long-term solution.
- [23] Dr. Scruton proposed, through his counsel's submissions on this application, that as the 5/5/2/2 schedule is to be changed, I also vary the summertime parenting schedule. I do not find it appropriate to do so in the absence of a formal application, nor without the parties having first attempted to restructure their arrangements through direct negotiation, and failing that, through the assistance of their parenting coordinator, as provided in paragraph 9 of the Gaul Order.
- [24] I therefore order as follows:

- (1) Paragraph 4 of the Order of Mr. Justice Gaul dated July 2, 2020, (the "Gaul Order") is varied to read:

Neither parent will relocate the Children's residence from Central Vancouver Island without a written agreement or Order of this court permitting them to do so, save that Dr. Scruton may exercise his parenting time with the Children at his home in Central Saanich;

- (2) So long as both in-class instruction and home support schooling are available to the Children through the Qualicum School District, the parenting schedule set out in the Gaul Order is varied to provide that Dr. Scruton's parenting time will be on alternating weekends, commencing on the second full weekend following the date of this Order, from after school on Fridays to Tuesday morning (or, on any weeks when the Monday is not an instructional day, to Wednesday morning), with exchanges taking place at the South Cedar Exit;
- (3) Dr. Scruton will, on those school instructional days when the children are in his care, be responsible for the education of the Children under the guidance of the home support teachers and staff of the Qualicum School District, according to their requirements;
- (4) Dr. Scruton will, on reasonable demand by Ms. Wilson, provide Ms. Wilson in writing with a reasonable level of detail as to the home support schooling taking place under his care;
- (5) Dr. Scruton will facilitate the participation of the children in any sports and extracurricular activities scheduled during his parenting time, to the greatest practicable extent;
- (6) Any significant change in the availability to the Children of in-class instruction and home support schooling shall, subject to further Order of this court, be considered a material change in circumstances of the Children, within the meaning of s.47 of the Family Law Act, S.B.C. 2011 c. 25 [FLA] and within the meaning of paragraph 9 of the Gaul Order, with any necessary variation being determined through the sequential dispute resolution mechanisms specified in the said paragraph 9 prior to any application to the court; and
- (7) At any time after May 31, 2021, either party may request that the terms of this Order be reviewed upon completion of the 2020-2021 school year, regardless of whether there has been a material change in circumstances. Any such review will occur through the sequential dispute resolution mechanisms specified in the said paragraph 9 of the Gaul Order prior to any application to the court; with the additional requirement that the evidence in support of any application to the court must, unless the court otherwise orders, include a report as to the views of the Children, in accordance with s. 211 of the FLA, with the cost of such report being borne equally by the parties, and with each party cooperating in the report's commissioning and completion.

- [25] I decline to grant any of the forms of relief sought in Ms. Wilson's notice of application. There is no need to vary the Gaul Order's arrangements as to decision-making responsibility. Ms. Wilson also seeks an order compensating her for the expense of bringing this application, which she says resulted from Dr. Scruton's violation of the Gaul Order's prohibition on moving the children. However, there is no basis for me finding that her

expenses in this regard have been any greater than they would have been, had the parties sought a relocation determination in accordance with the FLA.

[26] Conventionally, the dismissal of Ms. Wilson's application would result in her bearing the costs of this application. However, Dr. Scruton's position as to how the parenting arrangements should be restructured evolved considerably in the lead-up to this application, and only assumed its final form as the hearing was taking place. In the circumstances, each party will bear their own costs.

A. Saunders, 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/20/18/2020BCSC1850.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/scruton-v-wilson-2020>

Prepared on 29 October 2026 · Esheria