

CANADA / JUDGMENT

Streichert v. Streichert

2002 BCSC 179

COURT

Supreme Court of British Columbia

DECIDED

4 February 2002

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RICHARD ERIC STREICHERT

PLAINTIFF

AND:

VICTORIA JACQUELINE STREICHERT

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE T.M. McEWAN

Counsel for the Plaintiff: P. Gartner as agent for

P. Daltrop

Counsel for the Defendant: T.W. Pearkes

Date and Place of Hearing/Trial: January 21, 2002

Nelson, BC

- [1] On February 15, 2001 Master Bolton made an interim order which provided that the plaintiff, Richard Eric Streichert would have access to the child of the marriage, Spencer Jordan Streichert, born September 22, 1995, three weekends out of four. The order was the subject of an appeal to this court which was dismissed, on the grounds that the Master's decision was not clearly wrong on the circumstances that then obtained.
- [2] Now, approximately a year later, an application is brought for variation of that order on the grounds that circumstances have changed. On the material filed, and having had the benefit of the submissions of counsel, it remains unclear exactly how much time this child actually spends with his father when he exercises his access and how much is spent with the plaintiff's parents and other members of the plaintiff's extended family.
- [3] This has been a source of some friction in this case. The parties are exercising joint-custody, and it appears, at the time of the hearing before the Master, the Master was moved to attempt to maximize contact not only for the parties but to each extended family. The plaintiff defends the existing order on the basis that there has been no material change in circumstances since the last order and on the basis that, inasmuch as the order is interim, it should not be disturbed until there is a final hearing of the matter.
- [4] When the Master made his order, it is evident that he formed the view, from the defendant's reported part-time employment and her plan to establish a horse breeding enterprise at her parents' rural property, that she and her family would have significant amounts of time with Spencer, and that the three weekends per month regime was an attempt to adjust the time available to each parent and their families.
- [5] The defendant has now produced material which shows that she works a significant amount of time and that her opportunities for leisure time with Spencer do not necessarily outweigh those of the plaintiff. She seeks an amendment to the interim access order that would allow her half the weekends rather than the one out of four presently provided.
- [6] On the basis of the material which has been filed since the Master made his order I am satisfied that the defendant's work situation has been such that the apportionment that the Master made in favour of the plaintiff is not in the present circumstances, justified. The order is varied such that the parties shall alternate weekends commencing on February 9, 2002, when Spencer shall be with the defendant and alternating from there on.
- [7] The parties have brought a number of other applications respecting document production and other procedural matters. Those applications are dealt with as follows:
1. I declare that the plaintiff is in arrears of child support in the amount of \$102 and order that it be paid forthwith.

2. In addition to the change I have directed in the access, the Wednesday access shall be varied to 3:00 pm to 6:00 pm to reflect the fact that Spencer is now in school. If that interferes with a church meeting scheduled that day the weekday access may be changed at the defendant's discretion to Tuesday or Thursday at the same times.
 3. Each party shall provide to the other an affidavit of documents by February 28, 2002 at 4:00 pm.
 4. For greater certainty those documents shall include all those in the plaintiff's possession enumerated in paragraph 5 of the defendant's May 10, 2001 notice of motion and those included in paragraph 2 of the plaintiff's May 10, 2001 notice of motion and paragraph 5 of the January 18, 2002 notice of motion.
- [8] If the documents respecting the sale of timber or logs from the property owned jointly by the defendant and her parents are not available to the defendant but are in the possession of her father and/or mother, they are not within the ambit of this order but may be the subject of an application for third party production under Rule 28, upon appropriate material being filed.
- [9] I understand that the lands and premises located at 3309 Koch Siding Road shall be listed for sale on terms to be incorporated in this order by consent.
- [10] The property listed in paragraph 7 of the defendant's motion shall remain in the possession of the plaintiff, there being a dispute about its utility to the parties, but none of the items shall be disposed of, or used in any manner by the plaintiff that might depreciate their value.
- [11] The parties shall each be restrained from attending each other's residence except for the purpose of exchanges respecting Spencer, as necessary. The plaintiff shall reside in the former matrimonial home until it is sold or until further order of this court.
- [12] In his February 15, 2001 Reasons for Judgment, Master Bolton made the following comments:
- [29] So far as the Section 15 report is concerned, I really do not see why a Section 15 Report is necessary here. I am not going to order it under any conditions at all. If either party insists on some sort of analysis, they can pay for it themselves. So there will be an order that both parties cooperate if the other party requests an assessment of the psychologist. So that if one of them does want to pay for such a study they can do it but, on the face of it, I do not see why a Section 15 report is necessary here at all.
- [13] The defendant has, in fact, obtained a report which the plaintiff co-operated with to the extent that he permitted himself to be interviewed so that the report could be prepared. There is now a form of report in the possession of the defendant. She claims privilege over it but is prepared to release it to the plaintiff upon payment of half the fee for its preparation. The order of the Master was clear: He did not order a report, but did order the other party to co-operate if one or the other of the parties chose to obtain a report and pay for it. Under the

circumstances, particularly inasmuch as the plaintiff was under a form of legal compulsion to co-operate, I do not think the report is in any sense privileged. The Master made it clear the party who thought a report necessary would pay for it. I therefore order the report produced to the plaintiff forthwith without charge. The question of who should ultimately pay may, of course, be revisited on the eventual taxation of costs and disbursements.

[14] The school spring break shall be divided equally between the parties. The defendant shall choose which half she wishes to have and communicate that choice to the plaintiff by February 15, 2002, at 4:00 pm.

[15] On the basis of the material filed, I am not satisfied that Mr. Streichert should be permitted to cash the RRSP's. There shall be no disposition of those assets until further order of the court.

[16] The parties shall have liberty to apply respecting the implementation of this order should that be necessary.

"T.M. McEwan, J."

The Honourable Mr. Justice T.M. McEwan

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