
CANADA / JUDGMENT

T.N.S. v. G.V.

2020 BCSC 1866

COURT

Supreme Court of British Columbia

DECIDED

16 October 2020

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2020 BCSC 1866 T.N.S. v. G.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.N.S. v. G.V.,

2020 BCSC 1866

Date: 20201016

Docket: E142019

Registry: Vancouver

Between:

T.N.S.

Claimant

And

G.V.

Respondent

Before: The Honourable Madam Justice Matthews

(appearing by teleconference)

Oral Reasons for Judgment

In Chambers

Claimant appearing on her own behalf by teleconference:

T.N.S.

Counsel for the Respondent appearing by teleconference:

M. Brandon

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 16, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 16, 2020

Overview

- [1] These reasons for judgment were given orally on the same day the application was heard because of what I perceived to be the urgency of the application. A transcript of the reasons was requested which I have edited without changing the substance.
- [2] The parties are the parents of a 12 year old daughter, M.V. M.V.'s father, G.V., brings this application to enforce the terms of a consent final order made June 5, 2017 and to seek other orders pertaining to the parenting of M.V., including guardianship. Some of the orders he seeks, on their face, vary the June 5, 2017, final order and some arguably result in variation of the June 5, 2017 final order.
- [3] G.V.'s application to enforce the final order is based on the fact that he has not had any parenting time with M.V. since August 2020. M.V.'s mother, T.S., (who now goes by T.R. but I will refer to her as T.S. consistent with her initials on the style of cause, and in doing so I mean no disrespect) asserts that M.V. has not had parenting time with her father since August 2020 because M.V. refuses to attend parenting time with G.V. T.S. asserts that short of physical coercion, she cannot force M.V. to go. She seeks orders to vary the parenting time set out in the June 5, 2017 final order, an order for counselling to restore what she calls the broken relationship between M.V. and G.V., and she seeks a views of the child report, among other things. The orders she seeks will arguably vary the June 5, 2017 final order.
- [4] G.V. brought his application in September 2020 with a time estimate of 45 minutes. It was adjourned to today's date to be heard for one day. G.V.'s application binder is 5 ½ inches thick and contains tabs for 27 affidavits although a handful of the affidavits were apparently not provided to his counsel at the time for filing the application record. They appear in T.S.'s supplemental application record which is contained in two further binders. Those two binders include two notice of application which T.S. filed on September 28, 2020 and October 2, 2020.

- [5] It was apparent at the outset that not all matters could be dealt with today. It would be best if they could all be heard together. However, based on a cursory review of the material and the volume of the material, I estimate that three days would be required to properly deal with the applications and cross applications. Counsel for G.V. advised that he sought time for a three day trial because T.S. says a trial of the issues are necessary. G.V.'s counsel says the first available dates for a three day trial are May 2021. In the meantime, 12 year old M.V. is not having parenting time with her father and an order of this court is not being complied with. These are serious matters. Accordingly, I determined that I should proceed with the first item of relief sought in G.V.'s application, an order pursuant to s. 222 of the Family Law Act, S.B.C. 2011 c. 25, that the parenting time provided for in the June 5, 2017 final order recommence. I adjourned the rest of the relief sought in his application and all of the relief sought in the September 28, 2020, and October 2, 2020, applications of T.S.
- [6] I do so knowing that another presider may be called upon to decide those applications and there are many evidentiary matters on which the parties do not agree that pertain to parenting issues of M.V. I have avoided finding facts on contested matters. Most of the competing facts have to do with whether M.V. has been alienated and/or manipulated by her mother, the subject of two s. 211 reports commissioned by the parties by consent, the latest of which was released to the parties on March 1, 2020. T.S. is highly critical of the s. 211 reports and argues that they are biased against her. She has commissioned a critique report and an affidavit from M.V.'s counsellor both of which take issue with whether the s. 211 reports should be accepted.
- [7] I do not need to address and resolve those factual matters because the issue to be decided on this application is whether there was a justification to deny parenting time contained in a court order pursuant to s. 62 of the Family Law Act. The analysis does not focus on the behaviour of the parent whose parenting time is intact, but the situation of the parent whose parenting time has been interrupted. In other words, on this application, T.S. does not need to establish that she has not alienated M.V., but rather that there is a s. 62 justification for M.V. not attending parenting time with her father.
- [8] T.S.'s justifications are based in part on hearsay evidence of M.V.'s reasons to resist parenting time with her father. In that regard, G.V. submits that the s. 211 report author found that M.V. had been alienated by her mother, has trouble expressing any views that do not align with her mother, has become co-dependent with her mother, and does not express her own views, but rather the views of her mother which she has adopted as her own. Because of this, G.V. says that the hearsay views of M.V. set out in the affidavits ought to be taken with a grain of salt. In my view, the reported statements of M.V. do not justify disruption of the parenting time pursuant to s. 62(1) of the Family Law Act, and so I do not need to "take them with a grain of salt" or make a finding on whether they are her views or those of her mother to decide this application. I make no finding either way.

- [9] The issue is whether any of the s. 62(1) factors apply to render the denial of parenting time in accordance with the June 5, 2017 final order not wrongful.

The June 5, 2017 Final Order and the Cessation of Parenting Time

- [10] The June 5, 2017 final order was entered into by consent of the parties after receiving the first s. 211 report authored by Dr. Aube. That report was issued in May 2017 and recommended equal parenting time, counselling for M.V., counselling for T.S. and shared guardianship subject to T.S. addressing certain issues. In the event that T.S. did not address those issues, Dr. Aube recommended that G.V. have sole guardianship.
- [11] The consent final order set aside previous interim parenting orders and provided that:
- (a) 1. BY CONSENT: The schedule of parenting time in paragraphs 1, 2 and 4 of the Minutes of Settlement signed and dated April 8th, 2015, and in paragraph 3 in the Order of master Muir pronounced the 6th day of November 2014, and in paragraphs 1,4, and 8 of the Order of madam Justice Saunders pronounced the 25th day of June, 2014, and in paragraphs 2(a) and (b) of the Order of Mr. Justice Voith pronounced the 30th day of May, 2012 will be varied commencing September, 2017 so that the parties share alternating weeks of parenting time, and [M.V.] will reside with the respondent commencing on Friday, September 15th, 2017, from after school Friday through to drop off at school on the following Friday morning;
- ("the respondent's parenting time");
- (b) "the claimant's parenting time" will be all other times which are not defined as the respondent's parenting time;

AND

- (d) and both parents will maintain [M.V.]'s residence within 28 km of her school.
- (e) Insofar as possible the schedule of parenting time with [M.V.] will be coordinated so that [M.V.] is allowed to share time with her step sister and step brothers in the [D.R.] family when they have parenting time with their father;
- [12] Paragraphs 3 and 4 of the order are:
3. BY CONSENT: On their respective parenting times, both parents will ensure that:
- a. [M.V.] attends all counselling appointments with Nancy Matechuk;
- b. [M.V.] attends all scheduled dance classes, dance competitions and dance recitals during the school year as well as attending any educationally enriching programs in her school catchment area and as recommended by the school; and

- c. cooperates with the other parent in getting [M.V.] ready for competitions and recitals so that [M.V.] is returned to the claimant's care 3 hours in advance of the call times; [M.V.] will return to the respondent's care at the end of the recital or competition and his parenting time will continue. Both parents will be encouraged to attend the competitions/recitals; but if the respondent is not able to attend recitals/competitions on his parenting time, the claimant will drop off [M.V.] at the respondent's residence at the conclusion of the event; and
 - d. The claimant will provide notice to the respondent of recital /competition dates and call times so soon as she receives notice by email;
4. BY CONSENT: Regardless of the schedule of parenting time, both parents will be involved in [M.V.]'s counselling appointments with Nancy Matechuk (or such other counsellor as agreed by both parties) by
- a) each parent taking [M.V.] to every alternate appointment;
- and
- b) meeting with the counsellor as she recommends;
 - c) attending any joint appointments scheduled for [M.V.]'s parents as recommended by the counsellor; and
 - d) The therapy sessions and records will not be used for litigation purposes unless otherwise ordered by the Court;
- [13] I do not need to set out the rest of the terms of the order. They have to do with parenting time on Mother's Day, Father's Day, what school M.V. will attend for elementary school, and how school holidays will be addressed. They are not germane to this application.
- [14] G.V. deposed that starting in 2018, he noticed behaviour from M.V. that he thought was consistent with T.S. alienating M.V. from him. In 2018, the parties agreed to an updated s. 211 report to be authored by Dr. Aube that included the views of M.V. That report was issued March 1, 2020. T.S. takes issue with Dr. Aube's opinions and with the opinions Dr. Aube expressed in her first report.
- [15] There have been occasions when M.V. has not had parenting time with G.V. in accordance with the June 5, 2017, order. However, this application was instigated when the parenting time ceased altogether in August 2020.
- [16] It is not clear why the parenting time ceased. T.S. refers to evidence in the form of a transcript of a telephone call between M.V. and her father that T.S. recorded without G.V.'s knowledge. T.S. deposes about M.V.'s statements to her and excerpts from M.V.'s diaries. Leaving aside the challenging nature of such evidence, the excerpts and transcripts of calls do not make it clear as to exactly why M.V. has not had parenting time with G.V. since August 2020. In a call in late August 2020, the call that T.S. recorded, M.V. asserted that she wanted to attend parenting time with her father, but not all of it, just a portion, and that she wanted

to attend her sister's birthday party. T.S. asserted that G.V. would not agree with the limits that M.V. stated she wanted on her parenting time with her father and, after that, M.V. refused to go and has refused to go since.

- [17] I do not mean to suggest this one call was the entire stated reason. Rather, it appears to be the last significant interaction before parenting time with G.V. ceased altogether. According to T.S., M.V. had been growing more and more reluctant to have parenting time with her father and specifically was reluctant to have parenting time that lasted for a week at a time.

Section 62 Factors

- [18] Sections 61 and 62 of the Family Law Act read as follows:

Denial of parenting time or contact

61 (1) An application under this section may be made only

- (a) by a person entitled under an agreement or order to parenting time or contact with a child, and
 - (b) within 12 months after the person was denied parenting time or contact with a child.
- (2) If satisfied that an applicant has been wrongfully denied parenting time or contact with a child by a child's guardian, the court on application may make an order to do one or more of the following:
- (a) require the parties to participate in family dispute resolution;
 - (b) require one or more parties or, without the consent of the child's guardian, the child, to attend counselling, specified services or programs;
 - (c) specify a period of time during which the applicant may exercise compensatory parenting time or contact with the child;
 - (d) require the guardian to reimburse the applicant for expenses reasonably and necessarily incurred by the applicant as a result of the denial, including travel expenses, lost wages and child care expenses;
 - (e) require that the transfer of the child from one party to another be supervised by another person named in the order;
 - (f) if the court is satisfied that the guardian may not comply with an order made under this section, order that guardian to
 - (i) give security in any form the court directs, or
 - (ii) report to the court, or to a person named by the court, at the time and in the manner specified by the court;
 - (g) require the guardian to pay

- (i) an amount not exceeding \$5 000 to or for the benefit of the applicant or a child whose interests were affected by the denial, or
- (ii) a fine not exceeding \$5000.
- (3) If the court makes an order under subsection (2) (a), (b) or (e), the court may allocate among the parties, or require one party alone to pay, the fees relating to the family dispute resolution, counselling, service, program or transfer.

When denial is not wrongful

62 (1) For the purposes of section 61 [denial of parenting time or contact], a denial of parenting time or contact with a child is not wrongful in any of the following circumstances:

- (a) the guardian reasonably believed the child might suffer family violence if the parenting time or contact with the child were exercised;
- (b) the guardian reasonably believed the applicant was impaired by drugs or alcohol at the time the parenting time or contact with the child was to be exercised;
- (c) the child was suffering from an illness when the parenting time or contact with the child was to be exercised and the guardian has a written statement, by a medical practitioner or nurse practitioner, indicating that it was not appropriate that the parenting time or contact with the child be exercised;
- (d) in the 12-month period before the denial, the applicant failed repeatedly and without reasonable notice or excuse to exercise parenting time or contact with the child;
- (e) the applicant
 - (i) informed the guardian, before the parenting time or contact with the child was to be exercised, that it was not going to be exercised, and
 - (ii) did not subsequently give reasonable notice to the guardian that the applicant intended to exercise the parenting time or contact with the child after all;
- (f) other circumstances the court considers to be sufficient justification for the denial.
- (2) If, on an application under section 61, the court finds that parenting time or contact with a child was denied, but was not wrongfully denied, the court may make an order specifying a period of time during which the applicant may exercise compensatory parenting time or contact with the child.

[19] T.S. did not relate her submissions to s. 62(1) but I will review them within that framework.

[20] With regard to s. 62(1)(a), T.S. referred to an issue that arose between M.V. and G.V. in 2017 when M.V. was 9 years old. It is described in an affidavit sworn by M.V.'s counsellor. I am concerned about that affidavit being in evidence, given the term of the order which I have already addressed which provides that the counselling records will not be used in the

litigation without a prior order of the court. However, the issue is also referred to in the second s. 211 report of Dr. Aube. In brief, the evidence is that M.V. raised an issue about being uncomfortable with her bedtime routines with her father, which included cuddling while reading stories. Apparently the counsellor raised it with G.V., who attended a meeting with the counsellor to discuss it, and after that meeting the issue was not raised again. There is no evidence that M.V. currently regards this as an issue. There is no assertion from T.S. in her evidence that this is an ongoing issue. Accordingly, I conclude that it is not a s. 62(1)(a) factor that T.S. believed that M.V. might suffer family violence.

[21] T.S. has not raised any other issues relating to s. 62 (1)(a) through (e).

[22] The issues that T.S. asserts are:

- a) M.V. refuses to have parenting time with her father and, short of "dragging her by the hair", T.S. cannot make her go;
- b) G.V. has not engaged in the counselling that M.V. and T.S. want to repair the relationship between G.V. and M.V.;
- c) G.V. has moved and his new residence is 45 minutes from M.V.'s school, dance activities, and friends; and
- d) G.V. does not support M.V. in her schooling or dance, the two things that are most important to M.V.

[23] I will address each of these in turn.

T.S. cannot force M.V. to have parenting time with her father

[24] There are many statements in the affidavits attributed to M.V. that are to the effect that M.V. does not like the 50/50 parenting time arrangements, she finds a week at a time too long to be away from her mother and that she misses her mother. T.S. deposed that M.V. starts becoming upset the Tuesday prior to when her parenting time is to start with her father, and on those occasions ends up in tears and cannot be consoled. T.S. deposed that she has supported M.V. to explain to G.V. why she does not like the arrangement. T.S. deposed that she has encouraged M.V. to have parenting time with G.V. T.S. attached emails that she has written to G.V., inviting him to pick up M.V. and drag her to her parenting time, but stating that she, T.S., will not drag M.V. to her parenting time with G.V. T.S. has appended an email to G.V. and/or G.V.'s counsel's office saying that she will not drag her daughter to parenting time with G.V. and there are no other options. T.S. submitted that her inability to force her daughter to attend parenting time is why she is suggesting reduced parenting time (one 3 hour visit per week and every other weekend), to be accompanied by counselling, to assist the reunification process between M.V. and G.V.

- [25] I do not accept that T.S. has no other options to address the situation. The evidence does not demonstrate that she has used her parental authority to explain to M.V. that it is not a matter of choice as to whether M.V. has parenting time with her father, and that she, her mother, insists that M.V. have the agreed-upon and court-ordered parenting time with her father. There is no evidence that T.S. has used appropriate parental disciplinary techniques in response to M.V.'s defiance, if that is what it is, such as removing privileges or curtailing extra-curricular activities until M.V. is prepared to behave in accordance with the rules her parents set.
- [26] Without commenting on the alienation / manipulation debate, it is my impression, based on the evidence of T.S., that she has enabled M.V.'s defiance. There are more statements in T.S.'s affidavit about how she has encouraged M.V. to explain her reasons why she does not like the 50/50 week on week off schedule to her father than there are statements of how she has encouraged M.V. to comply with the agreed upon schedule.
- [27] T.S. deposed that she encouraged M.V. to discuss her reasons for not wanting the full parenting time with her father on a call in late August. T.S. recorded that call without telling G.V., but, she deposes, with the permission of M.V. She advised the court that she recorded the call in case it was needed for use in court. She has not provided an audio recording of the call to G.V. or his counsel. She relies on a transcript of the call that she prepared from the audio recording she made. G.V. denies it accurately reflects the contents of the call. In these circumstances, I cannot accept it as accurately setting out what transpired. However, I accept that by attempting to create an evidentiary record of this phone call, T.S. has cooperated with M.V. to thwart her parenting time with G.V.
- [28] Another issue that gives me pause in accepting the assertion that short of physical coercion M.V. will not see her father, is that T.S. proposes significantly reduced parenting time between M.V. and G.V., and counselling, to repair what she calls the broken relationship. It is apparent that T.S. believes that M.V. will attend parenting time with her father without having to be physically forced if the parenting time is in accordance with the reduction that T.S. seeks. That is evidence that T.S. does have parental authority and that she believes that she can use it to persuade M.V. to have parenting time with her father.
- [29] I do not accept that T.S. has established that she tried to persuade M.V. with all of her parental tools. Rather, the evidence demonstrates that she has supported M.V.'s reluctance and has insisted that it be addressed through counselling and a reduction of parenting time.
- G.V. has not engaged in the counselling that M.V. and T.S. want to repair the relationship between G.V. and M.V.
- [30] Both parties seek orders for counselling beyond that which is already provided for in the consent final order of June 5, 2017. The evidence is that counselling ceased in 2019, but it is not clear why.

- [31] I am not hearing the applications pertaining to counselling today. I will address the stance the parties took towards counselling as it relates to the application pertaining to resumption of parenting time. G.V. has sought counselling. It is apparent that his prime reasons for counselling are to address what Dr. Aube stated in the s. 211 reports and what G.V. believes is T.S.'s alienation and manipulation of M.V. and the co-dependent relationship between them. T.S. stipulates counselling as a pre-condition to the resumption of parenting time with G.V. and as an aid in reunification to rebuild a broken relationship between G.V. and M.V. She blames G.V. for the broken relationship.
- [32] It is apparent that both parties blame each other for the situation that M.V. is in. Counselling should be approached by both parties as parents of a young child who is caught in the middle of a very acrimonious situation and who is clearly suffering. The focus must shift from blame of each other to M.V.'s well-being. It should be approached from the perspective of M.V.'s well being and not as a sword to criticize the other parties' behaviour or a shield to prevent discussion of each party's contribution to the issue.
- [33] In any event, there no evidence that G.V. refuses counselling and so no reason to order it as a pre-condition of resumption of parenting time. I conclude that counselling should not be a pre-condition to the resumption of the parenting time provided for in the June 5, 2017 final order.
- [34] I support the mutual intention of the parties to engage in counselling to address this situation. It should be approached from the perspective of M.V.'s well being, as already stated. I encourage the parties to start it immediately and not get bogged down into what counsellor they choose or whether, when, and where the sessions shall take place. Counselling should take priority over extracurricular activities and other commitments of the parties. My comments on counselling are comments and encouragements to the parties. They are not findings on the applications of the parties relating to counselling, which I have not heard.

G.V. has moved and his new residence is 45 minutes from T.S.'s school, dance activities and friends

- [35] The June 5, 2017 final order provides that neither party shall move his or her residence more than 28 kilometres from M.V.'s school. G.V. has recently moved into a rental house while he builds a new house. According to his counsel, the rental house is 25.7 kilometres from M.V.'s school and a 32 minute drive. According to T.S. the rental residence is 32 kilometres "from my home and M.V.'s school and a 41 to 46 minute drive without traffic." T.S. says this means commuting an hour each way between home and school and home and dancing every day that M.V. has parenting time with G.V.

- [36] I cannot reconcile the evidence pertaining to the distance and the time to drive it as stated by the parties. I do note that T.S.'s statement of the distance and time appears to measure the distance between G.V.'s rental home and M.V.'s school and her mother's residence. The order only addresses the distance between the party's respective homes and school.
- [37] T.S. says that she must have the address of the new home being built, and the court must also have it to determine if the new residence will be too far from the school and dance. According to G.V.'s counsel, he will not provide the new address, but he says the new home is closer to the school than the rental home, so there is no issue. In my view, that issue is premature and can be addressed at the time the move is made if the distance is not in accord with the June 5, 2017 final order, or if T.S. asserts that it constitutes a material change.
- [38] I conclude that the location of G.V.'s rental home is not a reason to cease parenting time. G.V. does not support M.V. in her schooling or her dance, the two things that are most important to M.V.
- [39] There is evidence from M.V.'s teacher from last year that M.V. does not get as much help with her homework as she would like. This is evidence of the teacher repeating what she says M.V. has told her, so it is double hearsay. G.V. asserts that he is supportive of M.V.'s homework and does homework with M.V. as he is able, but he is not always able because, by his assertion, T.S. sometimes keeps the homework so that G.V. cannot assist M.V. with it.
- [40] There is also evidence from M.V.'s dance teacher that she does not see G.V. very much at the dance practices and other activities. She said that she had an email from G.V. asking her about the dance schedule and who sets it, and that she replied that it was set by the academy. She deposed that after she sent that reply, G.V. thanked her for the information.
- [41] There is significant evidence that dance is important to M.V. and part of her self-esteem. Its importance appears to be reflected in the June 5, 2017 order, which was a consent order. G.V. asserts that the dance schedule has interfered with counselling and limits their ability to engage in counselling because M.V. dances after school on Mondays through Thursday, and also takes horse riding. He said the frequency of dance and the horse riding are not matters on which his agreement was sought, in violation of the June 5, 2017 final order.
- [42] There is no evidence before me that G.V. does not support M.V.'s participation in dance, but there is evidence that there is some friction as to the frequency and the amount of time it consumes.
- [43] Whether the amount of support that G.V. provides M.V. in her extracurricular activities and school work is appropriate should be addressed through counselling and not through cessation of parenting time. Those issues are not reasons to cease parenting time pursuant to s. 62(1)(f).

Conclusion

[44] I conclude that T.S. has not provided a satisfactory reason for the cessation of the parenting time provided for in the June 5, 2017 final order.

[45] I grant the order sought in paragraph 1 of G.V.'s notice of application filed September 17, 2020. The other relief sought in that notice of application is adjourned generally. The relief sought in T.S.'s notice of application filed September 28, 2020 and October 2, 2020, is dismissed[1].

[46] Costs of this application shall be in the discretion of the presider who hears the balance of the applications.

[DISCUSSIONS AT 4:20:57 P.M. TO 4:24:24 P.M.]

[47] THE COURT: Okay, all right, so for clarification purposes, parenting time shall resume in accordance with the schedule had the schedule not been interrupted.

"Matthews J."

[1] Immediately after I gave these reasons, but after court had been adjourned and the parties were off the telephone line, I realized that I stated that T.S.'s applications were dismissed in this portion of the reasons while above at paragraph I correctly stated that I did not hear them because of insufficient time. I stated that the balance of G.V.'s applications and all applications brought by T.S. were adjourned. I correct the error in para. 45 of these reasons. The entered order reflects the corrected decision.

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