
CANADA / JUDGMENT

Usova v. Harrison

2009 BCSC 1640

COURT

Supreme Court of British Columbia

DECIDED

27 November 2009

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

2009 BCSC 1640 Usova v. Harrison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Usova v. Harrison,

2009 BCSC 1640

Date: 20091127

Docket: E084142

Registry: Vancouver

Between:

Elena Pavlovna Usova

Plaintiff

And:

Robert Shawn Harrison

Defendant

Before: The Honourable Madam Justice Baker

Reasons for Judgment

Counsel for the Plaintiff:

M. Weremchuk

Counsel for the Defendant:

J. Dreyer

Place and Date of Hearing:

Vancouver , B.C.

November 20 and 23, 2009

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2009

- [1] Ms. Usova and Mr. Harrison have a daughter, Kailey, who was born May 29, 2008 and is a few days short of 18 months old. Ms. Usova and Mr. Harrison met through an on-line dating site and had been dating each other for only a short time when Kailey was conceived. Their intimate relationship ended soon after. They continued to date during Ms. Usova's pregnancy and for a few months after Kailey's birth, but their relationship deteriorated largely due to disagreements about parenting, and they ceased seeing each other socially in August 2008.
- [2] Ms. Usova is 39 years old. She grew up in Russia and moved to Canada in 2001. No information was provided about her education or work history. She was not specific about the nature of her current employment except that she works for a provincial government social services agency. She currently works 7:40 a.m. to 4:00 p.m. Monday to Friday at an office building located in South Vancouver.
- [3] Ms. Usova lives in an apartment in Richmond. She has never been married and Kailey is her only child. She has one sister, who also has one child. I infer from the evidence that this sister lives in Russia. Ms. Usova's mother came to Canada from Russia in December 2008 and has been living with Ms. Usova and Kailey in Ms. Usova's apartment since that time.
- [4] Mr. Harrison is 43 years old. No information was provided about his education or work history prior to 1991. He is a firefighter and has been employed by the Surrey Fire Department since 1991. Mr. Harrison works a schedule of two 10-hour day shifts, followed by two 14-hour night shifts, followed by four days off. Between 1997 and July 2008 he also ran an internet advertising company called "BC Homes for Sale". He had a partner in this business. He sold his shares in July 2008.
- [5] Mr. Harrison lives in Langley. He has never been married and Kailey is his only child. Mr. Harrison's father and step-mother live in Comox, British Columbia. He has two sisters who both have children.

- [6] For reasons about which the parties do not agree, neither parent attended pre-natal classes. Mr. Harrison was present in the delivery room when Kailey was born. Kailey had mild hip dysplasia identified at birth, but was otherwise a normal healthy baby. To remedy the hip dysplasia, Kailey wore a pelvic harness and a device referred to as a "Rhino Cruiser". The use of this equipment was gradually decreased until September 2008 and by early in 2009 the hip dysplasia problem had entirely resolved.
- [7] After Kailey's birth, Ms. Usova took maternity leave for a year, returning to work in late April 2009. Ms. Usova and Mr. Harrison have never lived together. Ms. Usova has been Kailey's primary caregiver since Kailey was born. Mr. Harrison deposed that he considers Ms. Usova to be a good mother to Kailey, although he has concerns about what he perceives to be Ms. Usova's excessive interest in hygiene and inflexibility.
- [8] I have already noted that neither parent participated in pre-natal courses. The evidence does not disclose that either Ms. Usova or Mr. Harrison had any experience caring for infants or children before Kailey's birth. Like most parents, Ms. Usova and Mr. Harrison have learned to parent by being parents. Ms. Usova has not taken any parenting courses, but deposed that she has obtained and read written materials about parenting. She participated in a half-day Parenting After Separation course offered by the British Columbia government in early December 2008.
- [9] Mr. Harrison took no parenting courses before Kailey was born and does not claim to have read written materials about parenting before Kailey's birth or in the early days after her birth. As a firefighter, he had received training as a "First Responder", including training about infant development and tips for assessment of the paediatric patient. He took a half-day Parenting after Separation course in early October 2008. He also sought out parenting courses through his employee assistance program and completed an eight-hour seminar on Bonding and Attachment of the Developing Child on a date not specified and a second eight-hour seminar through the same agency called Strategic Parenting and Preparing Siblings(s) in Waiting on October 23, 2008.
- [10] In December 2008, Ms. Usova's mother, Lidia Usova, came to Canada from Russia and moved into Ms. Usova's apartment. Since Ms. Usova returned to work at the end of April 2009, Lidia Usova has looked after Kailey while Ms. Usova is at work. Lidia Usova deposed that she worked in a daycare in Russia for 38 years. Ms. Usova's counsel advised the Court that Lidia Usova does not speak English and in their home, both she and Ms. Usova communicate with Kailey, and with each other, in the Russian language only. Counsel also advised that Kailey does not speak in any language. Mr. Harrison's affidavit and the reports of access supervisor, Anne Wentworth, indicate that Kailey does understand some English words, however, such as the names of facial features and other objects. Mr. Harrison reads English children's books to Kailey during access visits.

- [11] With the exception of several periods of several weeks during which Ms. Usova refused to allow Mr. Harrison to visit with Kailey, Mr. Harrison has seen Kailey for short periods of time every few days. For the most part, Ms. Usova has required that Mr. Harrison visit with Kailey only in Ms. Usova's apartment, and only when one or both of Ms. Usova and her mother are present. Since the couple stopped dating in August 2008, Mr. Harrison has never been allowed to visit with Kailey for more than two hours at a time. Mr. Harrison has deposed that some of these visits were terminated by Ms. Usova after only 35 or 45 minutes, and that during the visits, Ms. Usova or her mother would frequently intervene to take Kailey from him, or, in the case of Ms. Usova, to criticize what he was doing. Ms. Usova has refused to allow Mr. Harrison to take Kailey to his home in Langley. On occasion, she has allowed him to take Kailey outside her home to a nearby park, but never for longer than an hour.
- [12] For reasons that will be explained later in this recitation, Mr. Harrison was not allowed to see Kailey from November 27, 2008 until March 8, 2009 except for a two- hour visit on December 29, 2008 that took place in Ms. Usova's home and was supervised by Ms. Usova or her mother. Ms. Usova offered to allow Mr. Harrison to see Kailey on Christmas eve or Christmas day but Mr. Harrison declined because of pre-existing plans.
- [13] A judicial case conference was held March 3, 2009 before Master Scarth. Ms. Usova was willing to agree to only three specified access visits, to take place at Ms. Usova's home. Ms. Usova consented to an order that she not be present during these visits but on condition that the visits be supervised by Lidia Usova. She also agreed that Mr. Harrison's parents be permitted to attend the first of the three visits. The visits took place on March 8, 14 and 16.
- [14] Mr. Harrison did not see Kailey at all between March 17 and May 3, 2009. On May 8, 2009, counsel for Mr. Harrison and previous counsel for Ms. Usova filed a desk order by consent providing for the parties to share joint custody and joint guardianship on the "Master Joyce" model. A dispute arose about whether the consent order ought to have provided for sole custody for Ms. Usova. On May 15, 2009, Ms. Usova appeared before Justice McEwan on a without notice application to clarify the order and obtained an order that she have sole custody of Kailey; with the parties to share joint guardianship on the Master Joyce model. Mr. Harrison was given liberty to apply on two clear days notice to set aside the order but did not apply. His counsel advised the Court that Mr. Harrison agreed to Ms. Usova having sole custody in the hope that she would feel reassured that he was not intending to try to take Kailey away from her, and would be more generous about access.
- [15] During May, June, July and August, Mr. Harrison had two-hour visits in Ms. Usova's apartment. Ms. Usova was absent and her mother present. Mr. Harrison cancelled three visits in mid-July because he was ill and his vehicle broke down. After an event in late August, 2009 which I shall describe later in these Reasons, Ms. Usova refused to allow Mr. Harrison to see Kailey until October 7, 2009. In order to resume access in October, Mr. Harrison agreed to have his visits with Kailey take place under the supervision of Anne Wentworth, a professional access supervisor, at a community centre and at a day care in

Richmond, B.C. during October and November, 2009. The three scheduled visits immediately before this court application was heard were cancelled by Ms. Usova because Kailey had an ear infection for which she was receiving antibiotic medication. Accordingly, when these applications were heard on November 20 and 23, Mr. Harrison had not seen Kailey since November 8.

- [16] Each of the parties has brought an application for interim relief. In her notice of motion, Ms. Usova is seeking an order that Mr. Harrison be prohibited from entering any premises occupied by Ms. Usova, Lidia Usova, or Kailey, and that he be prohibited from making contact with or interfering with any of them. Mr. Harrison opposes that application.
- [17] Mr. Harrison is seeking an order for unsupervised specified access visits with Kailey. He proposes that access take place on the second and fourth days of his time off. He proposes that he pick Kailey up from Ms. Usova's home at 9:15 a.m. and return her at 7:00 p.m. Based on Ms. Usova's evidence about Kailey's current schedule, this would allow time for Kailey to have her breakfast before Mr. Harrison picks her up and would return her in time for her to have her pre-bed bath.
- [18] Ms. Usova is opposed to Mr. Harrison having any access with Kailey at all until he has completed a "multi-sessional anger-management course with written confirmation of attendance and completion", and a "multi-sessional infant parenting course from an accredited agency with written confirmation of attendance and completion". She proposes that when he has complied with these conditions he be allowed only supervised access, to be supervised by Ms. Wentworth (at Mr. Harrison's expense), but that his visits with Kailey be reduced to one hour in duration.
- [19] Although I invited counsel for Ms. Usova to make submissions in the alternative about an appropriate access schedule and a location for access exchanges in the event I granted Mr. Harrison's application for unsupervised specified access, she declined to make any submissions about scheduling, exchanges, or any other terms, reiterating that it is Ms. Usova's position that any access should be supervised by Ms. Wentworth in Richmond and that it must not occur until Mr. Harrison has satisfied the conditions proposed by Ms. Usova.
- [20] The parties filed voluminous materials - by my estimate, more than six inches of affidavits and exhibits. I had the opportunity to scan the affidavits before the hearing commenced on November 20; many portions were read to me or drawn to my attention and read by me during the hearing on November 20; and I re-read all of the materials during the two days that elapsed before the hearing continued on November 23 with a further 55 minutes of submissions. The parties disagree in their evidence about many of the matters deposed to, and their characterization of other events differs significantly. No examinations for discovery have been conducted and no party sought cross-examination of any affiant on his or her affidavits. No custody and/or access report has been obtained or requested. It is not possible to resolve all of the conflicts in the evidence based on the affidavits and exhibits only. Where it has not been possible to resolve a conflict in the evidence on a point

necessary to the resolution of an issue, the party bearing the onus of proof on that issue must fail.

- [21] The parties have made their applications relying on the provisions of the Family Relations Act, in particular, sections 24, 37 and 38. In response to a suggestion I made to counsel for the plaintiff that the best interests of a child are generally met by providing for as much contact between each parent and the child as is consistent with the best interests of the child - a principle legislated by s. 16(10) of the Divorce Act, counsel submitted that this principle does not apply in relation to applications under the Family Relations Act. I disagree. In my view, s. 16(10) of the Divorce Act simply legislates the generally accepted principle that a child with two parents capable of providing competent care and affection is entitled to have sufficient contact with both parents to allow for the development of a close and loving bond.
- [22] Counsel for the defendant did not tender any authorities for consideration. Counsel for the plaintiff provided the court with two authorities. The first, *Daniels v. Daniels*, 919820 CarswellBC 1727, decided by a local judge of the Supreme Court of British Columbia, is a case in which the father of two infant children had been convicted of assaulting his wife, who was granted a divorce on the grounds of mental and physical cruelty. The husband had also breached probation orders and abused alcohol. A psychologist who assessed the man concluded that he was aggressive and prone to acting out, had inadequate parenting skills and unreasonable expectations for his children's behaviour. The Court in *Daniels* ordered that the father have day-time access to the two children but not overnight access until he had completed a parenting skills course or a child psychology course. In my view, the facts of the case are so very different that the case is of no assistance except for the very general principle that a court may impose conditions on a parent seeking to exercise access.
- [23] The second authority provided by counsel for the plaintiff is the decision in *Matthews v. Matthews*, 2000 BCSC 1649. In that case, Justice Sinclair-Prowse ordered the father of two teenage children to participate in an anger management program as a condition of exercising overnight access. Again, the facts differ significantly from the present case.

THE APPLICATION FOR A RESTRAINING ORDER

- [24] I must consider whether Ms. Usova has established that Mr. Harrison has, or is likely to molest or harass her or Lidia Usova by communicating with them; or to enter any premises where they are present without invitation, unless restrained by court order from doing so. Put more broadly, I must consider whether there are reasonable grounds to believe that Mr. Harrison will engage in conduct that will place Mr. Usova, her mother, or Kailey at risk of psychological or physical harm if he is permitted to continue to have contact with or communicate with them or enter premises occupied by them.
- [25] Ms. Usova's application for a restraining order arises out of two specific incidents. She deposed that on November 27, 2008 Mr. Harrison arrived at her home for a pre-arranged access visit; that he entered the home without speaking to her; that when she finished

changing Kailey's diaper in the bedroom and brought her out to the living room, Mr. Harrison roughly pulled Kailey out of her hands and that Kailey "started screaming like crazy" and pushing away from Mr. Harrison. Ms. Usova deposed that she stretched her arms towards Kailey and held her arms out in a "baby accepting position". She said to Mr. Harrison that Kailey "...is scared. Give her to me".

- [26] Ms. Usova has deposed that Mr. Harrison yelled "No! It's my hour!" Ms. Usova said "Give her to me." Ms. Usova has deposed that Mr. Harrison then started pushing her with his elbow "...fiercely back and forth, back and forth several times. His elbow hit my upper arm and my left breast." Ms. Usova has deposed that she then said "That's it. Get out of here!" and stretched her arms towards Kailey again. She has deposed that Mr. Harrison turned sideways again and hit her left arm with his right elbow and then stretched his right hand and pushed her on the shoulder. She then called 911 and asked for the police. The police arrived; spoke with Ms. Usova and Mr. Harrison separately and then left. No charges have been laid to date arising out of this incident.
- [27] Mr. Harrison's evidence about this incident contradicts much of Ms. Usova's evidence. Mr. Harrison has deposed that when he arrived at Ms. Usova's home, Ms. Usova was in the bedroom with Kailey and that he waited in the living room. Ms. Usova came out and passed Kailey to him, making a sarcastic comment to which he did not respond. He has deposed that Kailey "made strange", having not seen him for a week and started to cry. He began comforting Kailey. He has deposed that Ms. Usova "began grabbing at me to give Kailey to her and told me to give Kailey to her which was creating more upset for Kailey." He has deposed that he said to Ms. Usova "Enough." He has deposed that Ms. Usova continued to grab at Kailey so he turned his body away from Ms. Usova and continued to talk to Kailey to calm her down. He has deposed that Ms. Usova then told him to "Get out of here." Kailey had stopped crying after perhaps 20 seconds. Ms. Usova continued to say "Give me my child back" but that he continued to hold Kailey and talk to her. Ms. Usova again told him to leave and then phoned the police. Mr. Harrison has deposed that he continued to hold Kailey and to play with her while waiting for the police to arrive, and that Kailey was happy and content.
- [28] The second incident said to demonstrate the need for a restraining order occurred on August 28, 2009 and involved Mr. Harrison and Lidia Usova. Ms. Usova's affidavit was translated by a Russian-speaking translator.
- [29] In order to place this incident in context, it is necessary to relate events that occurred on August 23, 2009. Mr. Harrison came to the Usova apartment for a pre-arranged visit with Kailey on that afternoon. Ms. Usova was not home. The agreement between Mr. Harrison and Ms. Usova was that Lidia Usova would remain in the apartment but would stay in her bedroom to allow Mr. Harrison to have an uninterrupted visit with Kailey.

- [30] Following earlier access visits, Ms. Usova had told Mr. Harrison that Kailey had marks on her body and had insisted that Mr. Harrison explain how these marks had been caused. Mr. Harrison did not believe that anything had happened during his visits with Kailey to cause any mark.
- [31] Mr. Harrison decided during his access visit on August 23, 2009 to take photographs of Kailey in order to be able to disprove any allegation by Ms. Usova that he had allowed Kailey to be injured. Kailey was seated on the couch and wearing a diaper while he photographed her upper body. Lidia Usova heard the sound of the camera clicking and came out of the bedroom. In her affidavit, she deposed that Kailey was "... sitting on the couch absolutely naked ...". Lidia Usova did not ask Mr. Harrison what he was doing (likely she could not communicate such a question in English in any event), and did not intervene or say anything to him. However, when Ms. Usova returned home that evening, Lidia Usova told her that Mr. Harrison had been taking photographs of Kailey when Kailey was unclothed.
- [32] Counsel for Ms. Usova was unable to tell the court what would have been objectionable about a father photographing his child when the child was not wearing any clothes. Ms. Usova herself took photographs of Kailey with no clothes on and annexed them to her affidavit material to illustrate an occasion on which Kailey appears to have had a skin rash.
- [33] In any event, Lidia Usova was entirely mistaken in her assertion that Kailey was "absolutely naked", as the photographs annexed to Mr. Harrison's affidavit demonstrate. Ms. Usova did not e-mail or telephone Mr. Harrison explaining that she had a concern about him photographing Kailey. Instead she sent him an e-mail that said:
- I have sent a letter to your lawyer regarding your ongoing access to Kailey. Please speak to your lawyer before you come out to exercise your access on August 28, 2009.
- [34] Ms. Usova sent a letter to Mr. Harrison's counsel by fax dated late on August 24. In the letter she stated as a fact that Mr. Harrison had taken close-up photographs of Kailey "absolutely exposed" and that he had "nude pictures" of Kailey in his possession. She stated that while Mr. Harrison could have access on August 28 as previously arranged, Mr. Harrison would not be allowed to take Kailey outside of her apartment during all future access visits and that he was not to bring any cameras into the apartment or take any photographs of Kailey "... until this matter is resolved."
- [35] Due to counsel for Mr. Harrison being extremely busy and a miscommunication between her and Mr. Harrison, Mr. Harrison was told that Ms. Usova was claiming that he had taken photographs of Kailey when the child was unclothed. He was not made aware of Ms. Usova's unilateral decision that he could no longer take Kailey outside the apartment during access visits. He understood his counsel's advice to be to continue to exercise his access as previously arranged.

- [36] Mr. Harrison arrived for his access visit on August 28 and Lidia Usova buzzed him into the apartment building when he rang the intercom. He began to play with Kailey and Lidia Usova heard him say the word "park" to Kailey. She called Ms. Usova on the telephone, took the telephone to Mr. Harrison and asked him to speak to Ms. Usova.
- [37] According to Lidia Usova's affidavit, after Mr. Harrison spoke to Ms. Usova on the telephone, he threw the telephone down on the table, and walked to the door with Kailey in his arms. Lidia Usova followed him to the door and stopped by the door handle, saying in Russian, "Where are you taking the child?"
- [38] Lidia Usova has deposed that Mr. Harrison started "... hitting her with force away from the door ..." with his right elbow and that he hit her three or four times while still holding Kailey in his left arm. Lidia Usova has deposed that Mr. Harrison then stepped on her shoeless foot and "... sprang out into the corridor". She followed him and grabbed the bottom of his shirt. He pushed her away and sprinted to the elevator.
- [39] Mr. Harrison's affidavit evidence conflicts with that of Lidia Usova on almost every point. He made notes shortly after the incident on August 28 and has deposed that those notes are accurate. He agrees with Lidia Usova that she brought the phone to him and that he spoke to Ms. Usova. Ms. Usova told him that in future he could only visit with Kailey in her apartment, and that she did not want to talk about it while she was at work. Mr. Harrison says that he felt frustrated, picked up Kailey and headed for the door. He says that Lidia Usova started pulling at his shirt as he was opening the door and that he pushed her back and had to push hard as she was being very forceful. He was holding Kailey in his left arm while Lidia Usova was pulling at his shirt. Mr. Harrison deposed in a later affidavit that he does not know if stepped on Lidia Usova's foot, but says that if he did so it was accidental and not intentional. He believed that Lidia Usova would call Ms. Usova and that Ms. Usova would call the police. Mr. Harrison took Kailey outside, walked with her for a time and then played with her in the underground parking of a nearby townhouse complex. When he thought the police had likely arrived at Ms. Usova's apartment, he returned with Kailey to the apartment. Ms. Usova had also arrived and both of them spoke with police. Mr. Harrison showed the police officers the photographs of Kailey that he had taken on the earlier visit. Counsel for Mr. Harrison told the Court that the police have completed their investigation and no charges will be laid.
- [40] While I am unable to decide which versions of events are accurate, based on the conflicting affidavit evidence, some facts are not disputed. These include the fact that Mr. Harrison had entered Ms. Usova's home on both of these occasions with her agreement, or that of Lidia Usova, for the purpose of a pre-arranged visit with Kailey. In each case, Kailey was in no danger and was in her father's arms. Kailey became involved in the tug-of-war between the adults because Ms. Usova or Lidia Usova were attempting to take her from Mr. Harrison, or to restrain him from leaving the apartment with Kailey when they ought to have permitted him to continue holding Kailey or to leave the apartment with her. Having said that, it is also my view that Mr. Harrison did not respond to the interventions as he ought to have done.

When Ms. Usova told Mr. Harrison to leave the apartment on November 28, 2008, he ought to have done so promptly, as he had no right to remain in the apartment once Ms. Usova had told him to leave. I can understand his desire to remain and provide an explanation to the police when they arrived, but he could have waited outside the apartment and ought to have done so. Similarly, even if Lidia Usova did start the physical interaction on August 28 by grabbing Mr. Harrison's clothing, as he says she did, he ought not to have fended her off by pushing her. She is much smaller than he is and there was the potential for her to be hurt. In fact, she did have bruises on her arm and foot. Mr. Harrison should also have realized that the conflict, however it began, should be brought to an end before Kailey was placed at risk.

- [41] I note also, however, that Ms. Usova's unilateral decision to change the access arrangements, even if she mistakenly believed what her mother had told her about Mr. Harrison taking photographs of Kailey, was unjustified. And there is no doubt that Lidia Usova was simply wrong in her assertion that Mr. Harrison was taking photographs of Kailey when Kailey was unclothed.
- [42] What these two incidents demonstrate most clearly is that the insistence by a custodial parent on that access exercised only in her own home or presence can lead to conflict. These parties need to have a court order that clearly spells out the access arrangements and the rights and obligations of both parties.
- [43] As I have already said, I am not able to reconcile the conflicts in the evidence about exactly how these two incidents began or what happened, I am not persuaded that the two incidents demonstrate the need for a restraining order. There is no evidence that Mr. Harrison has ever entered any premises occupied by Ms. Usova, her mother, or Kailey without invitation. He has never threatened to harm Ms. Usova or Lidia Usova. There is no evidence that he has ever gone to Ms. Usova's place of work or followed her to any other location. There is no evidence that he has harassed her. Ms. Usova says that she is afraid that Mr. Harrison might approach Lidia Usova when she is taking Kailey for a walk, because he knows Kailey's routine. However, there is no evidence that Mr. Harrison has ever done this, or threatened to do it.
- [44] Ms. Usova takes the position that Mr. Harrison has harassed her and insulted her by making statements to her orally and in his e-mails that she is neurotic and that she has an obsessive-compulsive disorder. She also considers Mr. Harrison to be harassing her or attempting to intimidate her when he has told her that he will go to court to apply for an order for access.
- [45] I have read the numerous e-mails between the parties annexed to the various affidavits. While Mr. Harrison should refrain from commenting to Ms. Usova about his opinion about her standards of hygiene and mental health, the e-mails do not amount to threats, harassment or intimidation. Ms. Usova has used similar rhetoric in her communications and some of her comments to Mr. Harrison have been even more derogatory.

- [46] Without Ms. Usova's knowledge, Mr. Harrison tape-recorded their conversations during some of his visits, and provided transcripts of portions of those conversations. In one of these conversations, Ms. Usova called Mr. Harrison an idiot. She said "I hate you so much" and "I pray every day that you are not going to be around much longer". She referred to Kailey as "my child" and when Mr. Harrison said she is "our child", Ms. Usova said "You are an asshole; she does not deserve you." Later in the conversation she called him an "asshole" again, and a "scumbag". She brought the conversation to an end by telling him to leave and her closing words were "Asshole. Break your neck." As these conversations took place in Ms. Usova's home, it seems probable that Kailey was present.
- [47] In another conversation, in response to Mr. Harrison saying to her "I think you are neurotic, ok. I think you have some kind of issues.", Ms. Usova said "And I say that if you say one more thing, one more insult, I am going to get a restraining order." This conversation took place October 7, 2008.
- [48] In short, while both parties have said unpleasant and insulting things to the other, and both should desist from such conduct, the evidence does not demonstrate that Mr. Harrison has been harassing or molesting Ms. Usova or her mother.
- [49] In my view, restraining orders ought not to be made without a proper evidentiary foundation demonstrating that absent such an order there is a real risk of harm, physical, psychological or emotional, to the innocent party. Restraining orders should not be granted on the basis of nothing more than the old adage "better safe than sorry". Such orders have implications in the litigation, if ongoing, and may also have implications for the career and general reputation of the party against whom such an order is made. No proper evidentiary foundation has been established here and I dismiss the application for a restraining order.

THE APPLICATION FOR SPECIFIED ACCESS

- [50] Mr. Harrison's affidavit evidence demonstrates that he loves his daughter and wishes to have the opportunity to parent her and to form a close and loving bond with her. He does not dispute Ms. Usova's rights and responsibilities as the sole custodial parent. He acknowledges her love and care for Kailey. He wishes, however, to have the opportunity to spend longer periods of time with Kailey without being subject to the oversight and interventions that have characterized the visits in Ms. Usova's apartment, with Ms. Usova or her mother, or both, present. He also wishes to have the opportunity to take Kailey to his home and to have sufficient time with her to allow her to get to know her paternal grandparents and other members of Mr. Harrison's extended family.
- [51] Mr. Harrison has a responsible job and has been employed by the same employer for 18 years. The evidence does not disclose any psychological problems, addiction, or other behaviour casting doubt on his ability to parent as competently as any other new father. He has taken two parenting courses. He has deposed that if permitted to have the access visits that he is seeking, he will maintain the schedule established by Ms. Usova for Kailey's naps

and meals and activities. When permitted to do so in the past, he has fed Kailey, comforted her, played with her, changed her diapers and provided necessary care and attention.

- [52] Ms. Usova's position is that Mr. Harrison should be allowed only supervised access visits, of not more than one hour in duration, and that even those visits should not occur until Mr. Harrison has participated in an anger management program and has attended a parenting course. In her submissions, counsel for Ms. Usova did not explain why the parenting courses Mr. Harrison has already taken do not satisfy Ms. Usova, or what courses she has in mind. While Mr. Harrison opposes the imposition of these conditions in a court order, through his counsel he had earlier indicated to Ms. Usova's counsel his willingness to continue to seek out and participate in parenting courses.
- [53] The evidence does not establish, in my view, that Mr. Harrison has a problem managing anger sufficient to warrant the imposition of participation in an anger management program. He has not demonstrated anger directed at Kailey. He did respond inappropriately to Ms. Usova and Lidia Usova's interventions in the two incidents detailed earlier in these Reasons. However, looking at the evidence as a whole, few individuals in Mr. Harrison's situation would not have felt some degree of frustration or even anger. Because he wants to continue to have a relationship with his daughter, he has complied with Ms. Usova's demands and directions; has tried to accommodate her uncommonly high standards of hygiene, and has not, at least on the occasions recorded and transcribed, retaliated in the face of remarks that appear intentionally provocative.
- [54] I am also not persuaded that Mr. Harrison should be ordered to take more parent education as a condition of continuing to exercise access with Kailey. Ms. Usova has not taken any parenting courses and has not explained why she considers her parenting skills to be so much superior to those of Mr. Harrison, given that neither has deposed to any child care experience prior to Kailey's birth. Ms. Usova has deposed in her affidavits to a few incidents - some of which occurred more than a year ago, that she submits establish that Mr. Harrison is an incompetent or negligent caregiver. In his affidavits, Mr. Harrison disputes most of these allegations and I am unable to resolve the conflict in the evidence on the affidavits alone. I expect that Mr. Harrison may have made some mistakes. Certainly the incident where Kailey fell and bumped her head indicates the necessity for Mr. Harrison to show constant vigilance where toddlers are concerned.
- [55] I doubt there are many new parents who have not made mistakes in caring for their children - a momentary lapse of attention leading to a bump or fall. Most recently, Ms. Wentworth, the access supervisor, expressed concerns in a couple of her reports about Mr. Harrison allowing Kailey to stand on a change table while he was changing her diaper, and the potential for Kailey to have lost her balance and have fallen. Mr. Harrison has said that he allowed Kailey to stand because Kailey doesn't like to lie down for diaper changes and he was afraid that she would become unduly distressed. He must, of course, recognize that safety must be the priority, even if Kailey responds by crying or protesting.

- [56] In my view, however, the evidence taken as a whole does not establish that Mr. Harrison is not a competent parent, or that supervision is required to ensure that Kailey is safe while in his care.
- [57] Ms. Usova's other concerns, and those of Lidia Usova, seem to be based on their belief that Kailey will suffer emotional distress if she spends more than an hour away from either her mother or grandmother. It does seem that Kailey has been more unsettled during recent access visits than during earlier visits, and on one occasion an access visit was voluntarily terminated shortly before the scheduled time because Kailey was upset.
- [58] I do not consider this a reason to restrict access, however. It appears that Kailey is going through a stage where she is "making strange". Kailey needs to be able to spend sufficient time with her father to become familiar with him and to establish a close and loving relationship with him. During the earlier visits in Ms. Usova's apartment, an artificial atmosphere prevailed, with Ms. Usova or her mother listening and watching and ready to intervene at any moment. In particular, Ms. Usova would intervene whenever she perceived Kailey to become upset - denying Mr. Harrison the opportunity to comfort Kailey himself. Recent visits - held in a public facility, with strangers present and another adult hovering nearby - are also not conducive to a normal parent-child relationship or routine. Ms. Usova remained nearby, ready to respond at a moment's notice.
- [59] I consider it to be in Kailey's best interests to spend more time with her father for a variety of reasons. She needs to learn to communicate with her father, and with others. While it is commendable that Ms. Usova is trying to ensure that Kailey learns to speak Russian; and there is really no alternative since her daily care-giver speaks only Russian; it would be in Kailey's best interests to be able to understand and eventually speak the language her father speaks; as well as the language spoken by the majority of people with whom Kailey will need to interact in future.
- [60] I am also of the view that it would be in Kailey's best interests to have more contact with more people. The evidence indicates that Lidia Usova does take Kailey out for walks and has casual interactions with people they encounter on route, but there is no evidence that Kailey spends any significant periods of time with other adults or children.
- [61] I am concerned that Kailey appears recently to be demonstrating excessive and unwarranted anxiety about separation from her mother. Ms. Usova and Lidia Usova have both deposed that they consider Kailey to be an unusually sensitive child. Ms. Usova has referred to Kailey having an "anxiety attack", having "extreme anxiety" and becoming "hysterical" at night. It is clear that Ms. Usova believes that these are reactions to contact with Mr. Harrison, but there is nothing in the evidence that supports that belief or explains why Kailey would have these adverse reactions. Certainly nothing in Ms. Wentworth's reports suggests that anything done by Mr. Harrison could possibly account for such extreme reactions. There have been long periods of time when Mr. Harrison has been permitted no contact with Kailey. I conclude that either Ms. Usova is exaggerating; or that something is causing Kailey to become an

anxious and insecure child. It should be recalled that even Ms. Wentworth, an experienced access supervisor, was unable to calm Kailey on some recent visits.

- [62] There is no doubt that Ms. Usova is a very cautious, perhaps overly-cautious parent and that her anxiety and concern about Mr. Harrison may unconsciously be transmitted to Kailey. While children must learn to be appropriately cautious for their own safety, excessive emphasis about potential danger can make a child insecure and frightened. Or it may simply be that Kailey has not had sufficient opportunity to feel comfortable and secure in the company of people other than her mother and grandmother.
- [63] The solution, in my view, is not to further restrict Kailey's contact with her father and make him even more of a stranger. I consider it to be in Kailey's best interests to allow her to spend enough time with her father, in his home, to allow the two of them to establish a close and loving relationship, and a comfortable and comforting routine.
- [64] The fact that Ms. Usova and Mr. Harrison disagree about how much hand-washing is enough hand-washing; and how much time outdoors is too much time outdoors; and whether a child will suffer temporary or enduring harm from a period of crying that exceeds 20 or 30 minutes does not mean that one is right and the other wrong. Right-thinking and responsible parents may and often do disagree about these matters. Mr. Harrison has deposed to his willingness to maintain the routine established by Ms. Usova for Kailey from time to time.
- [65] As Ms. Usova is the custodial parent, and the parent having day to day care of Kailey, her views about an appropriate schedule for eating, napping and other activities are entitled to some deference. However, she is not Kailey's only parent; and she is not entitled to dictate to Mr. Harrison precisely how or where he can be a father to Kailey.
- [66] I therefore order that Mr. Harrison shall have access to Kailey on the second and fourth days of his days off. Mr. Harrison shall pick Kailey up at Ms. Usova's home at 9:15 a.m. and return her to Ms. Usova's home at 7:00 p.m. In the event that Mr. Harrison believes that it would be in Kailey's best interests to return her at an earlier time than 7:00 p.m. if she appears to be "homesick" or unduly anxious for her mother, particularly during the first few visits, Mr. Harrison may choose to return Kailey earlier on some visits, but should provide telephone notice to Ms. Usova or Lidia Usova of his intention to do so.
- [67] Kailey's access visits with her father shall occur and Ms. Usova shall not refuse to provide access even if Kailey is suffering from a common childhood illness or ailment, unless Mr. Harrison agrees to forego access. Common childhood illnesses or ailments shall include colds, flu, sniffles, stomach or intestinal discomfort or irregularity, infections, measles or chicken pox. To facilitate communication, the parents shall create a communication book - a notebook or ring-binder would be adequate - in which each shall communicate any information relevant to Kailey's care or well-being occurring since the other parent's last contact with Kailey. Such communication shall include any illnesses or ailments and treatment undertaken or recommended for such; visits to any health care personnel or

facility; instructions for the administration of any prescribed or over the counter medication; suggestions about food and sleeping routines; information about any adverse reactions to food; falls or accidents, and any other pertinent information.

- [68] Mr. Harrison shall ensure that his vehicle is equipped with a proper infant car seat properly adjusted, and that he has inspected his home and has "safety-proofed" it for occupancy by a toddler. He shall ensure that Kailey is closely supervised at all times when she is in his care.
- [69] Mr. Harrison shall provide Ms. Usova with his work schedule with his second and fourth days off clearly marked. In the event that Mr. Harrison is unable to exercise access on one of these days he shall, except in the case of emergency, provide Ms. Usova with no less than 48 hours notice. In the event that Ms. Usova finds it necessary to cancel an access visit for a good reason, Mr. Harrison shall be entitled to make up the missed visit by exercising access on a different day chosen by him any time within 14 days after the missed visit.
- [70] The access schedule proposed by Mr. Harrison - the only proposed schedule, as Ms. Usova declined to propose a schedule - means that there will be a period of five days between the visit on the fourth day of Mr. Harrison's days off and the visit on the second day of his next period of days off. Because Kailey is only 18 months old, I am of the view that a schedule providing for more frequent contact - perhaps one shorter visit sometime during the 5 days - would be optimal. That may not be possible at present but it may be that when Kailey is a little older, telephone visits and visits by internet with camera equipment can be used to maintain more frequent contact.
- [71] Neither parent shall make negative or derogatory remarks about the other in Kailey's presence. In particular, Mr. Harrison should not refer to being sent to jail if he does something disapproved by Ms. Usova. Ms. Usova should do her best to avoid conveying to Kailey her own antipathy to Mr. Harrison.
- [72] Neither party made any submissions in relation to costs. If either party is pursuing an order for costs, they may make submissions in writing. If no submissions have been received on or before December 31, 2009, the order shall be that each party shall bear his or her own costs.

"W.G. Baker 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/09/16/2009BCSC1640.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/usova-v-harrison-2009>

Prepared on 29 October 2026 · Esheria