
CANADA / JUDGMENT

Verasia v. Verasia

2010 BCSC 659

COURT

Supreme Court of British Columbia

DECIDED

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2010 BCSC 659 Verasia v. Verasia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Verasia v. Verasia,

2010 BCSC 659

Date: 20100507

Docket: E34020

Registry: New Westminster

Between:

Salim Verasia

also known as Salim Habib Verasia

Plaintiff

And

Hamida Verasia

also known as Hamida Salim Verasia

Defendant

Before: The Honourable Mr. Justice Williamson

Reasons for Judgment

The Plaintiff, Salim Verasia:

Appearing on his own behalf

The Defendant, Hamida Verasia:

Appearing on her own behalf

Place and Date of Trial:

New Westminster, B.C.

April 26, and 28 - 30, 2010

Place and Date of Judgment:

New Westminster, B.C.

May 7, 2010

- [1] In this trial, the plaintiff father seeks a divorce, an order that the defendant mother's surname be changed to her maiden name, an order for joint custody and joint guardianship of the children, cancellation of arrears of child support, and permission to move the children to Brampton Ontario.
- [2] The mother opposes neither the granting of a divorce nor the change of name. However, she seeks sole custody of the children, their primary residence to be with her, joint guardianship, child support, and by way of a counterclaim, distribution of funds held in a lawyers trust account in Ontario, as well as the return of jewellery which she claims is in the possession of the father. Each side seeks costs.
- [3] I note that both the plaintiff and the defendant acted on his or her own behalf. As a result, it was almost impossible to enforce the normal rules of admissibility. Certainly, there was a great deal of hearsay evidence which must be treated very cautiously. I also add that the defendant filed a counterclaim on March 18, 2010, well after the time that the claim should have been filed. However, the counterclaim dealt only with the distribution of the trust funds held in Ontario, and the matter of her claim for jewellery. It did not touch upon the critical issues concerning the children. In these circumstances where the parties are self represented, and given the general principle that a failure to comply with the Rules of Court shall be treated as an irregularity, I would not exercise my discretion to strike the counterclaim.
- [4] The parties were married in an arranged marriage on March 19, 1995, in India. They ceased to live together on December 23, 2005, although there had been one period of separation prior to that.

- [5] Significant in this case is that fact that there were a number of orders in the Ontario Court of Justice commencing in February 2006, as well more recent orders in the Provincial Court of British Columbia, before this proceeding was commenced in the Supreme Court of British Columbia. In all three courts and in all applications the plaintiff or applicant is the father. This fact is important given the position of the mother that the father has used the court system to harass her and her family.
- [6] There are two children of the marriage, both boys, born in September 1996 and January 2000. The older is now 13; the younger 10.
- [7] Although the parties came to Canada shortly after the marriage, what followed was extensive meandering which commenced in early 1996 when the parties moved to Atlanta. Between 1996 and 2002, the parties lived for a time in Houston, San Antonio, Toronto, Austin, Knoxville, Albuquerque, and finally Brampton, Ontario. The parties resided in Brampton from October 2002 until December 2005 when the mother left the marriage and moved with the children to British Columbia, settling in Burnaby. The father followed to Burnaby in May 2007.
- [8] Shortly after the mother left the marriage in December 2005 to come to Burnaby, the father commenced an action in the Ontario Court of Justice. In an ex parte application, he succeeded in obtaining an order, February 13, 2006 that gave him sole custody of the children and ordered the mother to return the children forthwith to Brampton, Ontario. The order included a so-called police enforcement clause.
- [9] However, less than a month later on March 7, 2006, that order was set aside by a subsequent order of the Ontario Court of Justice. In this second pronouncement, Justice J.D. Karswick ordered that the two children would reside with the mother in Burnaby, that the father would have access to the children during the March break of 2006, and that he would have telephone access to the children "around 7:00 p.m., B.C. time" each evening. The parents were directed to communicate only through counsel or by email.
- [10] Later that year, on November 16, 2006, the same judge in the Ontario Court of Justice ordered that the father have access to the children during the Christmas break of that year, that he pay child support at \$375 per month, and that he pay arrears in child support. The Court also ruled that the issue of child support would be withdrawn from the Family Responsibility Office, the office in Ontario that deals with delinquent child support payments. Instead, post-dated child support cheques were to be forwarded to the mother's counsel.
- [11] Approximately five months later in March the father applied for further access. His application was dismissed. The court ordered, however, that he could have communication by email with the children on the condition that the mother would review each email to decide whether it should be delivered to the children.

- [12] After the father moved to British Columbia, he commenced proceedings in the Provincial Court. On May 20, 2009, Judge Potheary ordered that the parties would have shared custody with primary residency of the children with the mother. Access was specified. The court also ruled that once the father settled in Burnaby, residency of the children would be shared 50/50, transitions occurring on Monday mornings.
- [13] Each party was imputed to have a Guideline income of \$40,000, but no child support was to be paid should the 50/50 arrangement take place. In the meantime, the father was to continue to pay \$375 per month.
- [14] On August 8, 2008, another judge of the Provincial Court of British Columbia ordered that the father deliver to the mother identification papers in his possession concerning the children, including their birth certificates, passports, and various medical cards. The court also reduced child support by the sum of \$4,000, which left a balance of arrears of \$3,850. A s.15 report was ordered.
- [15] The mother opposes the father's application to return the children to Ontario. She points out that they have been here since 2005, well over four years, and that he has been here about three years himself. They lived in Brampton, Ontario for only three years. She submits that the children are established in school here, involved in myriad sporting and other activities, have extended family here, and are active in their mosque.
- [16] Noting that the first order requiring her to return the children to Ontario in early 2006 was obtained ex parte, she submits the plaintiff father misled the Ontario court and that was the reason a month later the first order was set aside.
- [17] During her testimony, she set out six reasons to suggest that she should have sole custody of the children.
- [18] First, she submitted that the father was not really interested in talking to the children, and second that the evidence of his constant telephone calls is consistent with a determination upon the plaintiff's part to harass her and her family. She points out that the March 7, 2006 order from the Ontario Court of Justice specified the father could have telephone access to the children "around 7:00 p.m. B.C. time" and that the parties were to communicate only through counsel or by email. She testified, however, that the father repeatedly telephoned her in Burnaby in a harassing manner, often at times he knew the children would be in school.
- [19] To substantiate this, she put into evidence telephone records from the relevant telephone company which demonstrate that not only did the father telephone far outside the specified "around 7:00 p.m. B.C. time" window, but also that he made dozens and dozens of phone calls to the mother's Burnaby home. For example, these records disclose that in the three weeks from February 16, 2006, until March 12 of that year, the father called the mother's home 37 times, with six calls on March 8 alone. In the period March 13 to April 7, he called her home 56 times. Few of these calls were "around 7:00 p.m." She submits this indicates that

the father was more intent on harassing her, in contravention of the Ontario Court order, then in talking to the children.

- [20] Third, she testified that she was threatened by the father that he would not return the children from their December access visit to Brampton. Indeed he did not. Ontario authorities had to apprehend the children and take them to the airport. This, she submits persuasively, cannot be seen to be in the best interests of the children.
- [21] Fourth, she notes that he has a history of not paying child support, evidence she submits manifests of a lack of concern for the wellbeing of the children.
- [22] Fifth, she points out that he has commenced application after application in both the Ontario courts and the British Columbia courts. She emphasizes that in the first *ex parte* decision he obtained sole custody but, as noted above, within a month that decision was set aside. Then a year later he commenced another application but was granted no access. After that he moved to British Columbia where he obtained an order for weekend access. Eventually, in May 2009 he received a provincial court order given him 50% access. However, she points out that only two months after that order was entered, he commenced this action, claiming it is in the best interests of the children that he and the children return to Ontario, a step that would effectively reduce her access to almost none.
- [23] Sixth, the mother testified that the father repeatedly said he would give her no money. She submits that if he is permitted to take the children to Ontario to live with him, he will use that fact to obtain child support from her.
- [24] As evidence of the father's attitude, she notes that on a child support cheque dated January 1, 2007, and made out to "Hamida" the defendant's first name, he wrote the word "bhik". She testified, and the father conceded, that in their native tongue, Gujarati, "bhik" means money given to a beggar. I note that in any case no money was "given" because the cheque was stopped.
- [25] The mother also testified that the father used the police and family and children's services to harass her. When she came to British Columbia with the children in December 2005, the police, upon investigating her circumstances as a result of a report by the father, took no action. On at least two occasions, the Ministry of Children and Family Development assessed the question of whether the children of the marriage could be in need of protection. They dismissed those concerns. A letter dated February 28, 2006 is in evidence. In that letter, a social worker with the Ministry wrote the following:

At this time I have no protection concerns about the children being in your care and I will be closing the file.

I would like to take this opportunity to inform you that I would, however, have protection concerns if the children were to be in the care of your ex-spouse, Salim Verasia, without there first being a comprehensive assessment, intervention, and/or support services in place.

- [26] The father, on the other hand, says that the children used to live in Brampton and that is really their home. He says they have friends there as well as extended family on his side. He also says that the cost of living is lower in Brampton than it is in Burnaby and that the children would therefore have a better standard of living. He claims that if it is ordered that the children can return to Ontario with him, he will purchase a home in Brampton.
- [27] He testified that as he is an employee of a major chartered bank, he has obtained approval for a mortgage in the amount of \$260,000 at the rate of 1.75%. He said this would permit him to buy a home in Brampton on which he has made a "subject to" offer. In support of this testimony, he put into evidence a letter from the chartered bank dated April 23, 2010. However, the letter says that the interest rate is 4.5%. He testified that this difference is explained by the fact that the letter is a "pre-approval" of a mortgage so the bank is unable to quote the actual rate of 1.75%. There is nothing to corroborate that testimony. I do not find it credible.
- [28] Eighteen months ago, a s.15 report was prepared by a clinical psychologist. It appears to have been written in an extreme rush, so that some of the sentences are perplexing. The psychologist did not testify. Nevertheless, the report is written by a psychologist who prepares these reports frequently and his opinion should be given weight. He interviewed both parties extensively, as well as the children, administered psychological testing, and reviewed a number of other documents. He also interviewed or contacted two collateral witnesses for each party.
- [29] As a result of the testing, he concluded that the scores on the abuse scales for the mother are "within normal limits." However, with respect to the father he concluded that scores on the physical aggression, anger and hostility scales are above average. While his findings with respect to the mother were generally positive, he was concerned about her "incorrect" perception that the children do not want to see their father. With respect to the father, he found that while he presented as calm, and patient, the psychological testing suggested otherwise. He wrote:
- I also know from experience that I should pay attention when the psychological testing tells me otherwise. This is particularly so when there are allegations raised by the other parent that are more consistent with the testing than how the client has tried to portray themselves interpersonally in my office.
- [30] He concluded that contact between the parents is "likely to be a mistake". He therefore recommended sole custody to the mother, but joint guardianship. He recommended that the father have the children on alternate weekends from Friday after school until Monday morning before school.
- [31] I note, as I said earlier, that report is 18 months old.

- [32] I am satisfied however, that the situation has not changed much if it has at all. I accept that the communication between these parties is abysmal. Importantly, I accept the submission of the mother that the father has inappropriately used the telephone to harass her, and has used courts and other authorities to force the mother to defend herself repeatedly. This cannot be beneficial to the children.
- [33] I turn to the property issues. There are essentially two. How should the remaining trust funds from the sale of the matrimonial home some years ago in Ontario be distributed? Second, does the father still have jewellery given to the mother by her family at the time of the marriage in 1995?
- [34] With respect to the trust funds, the uncontroverted evidence discloses there remains \$30,827.02 in the trust fund of a barrister and solicitor in Mississauga Ontario. A trust ledger statement is in evidence. It shows that \$245,128.47 was received from the purchaser on the closing of the sale of the matrimonial home. A mortgage of just over \$145,000 was paid out. So were real estate fees and legal fees and disbursements with respect to the sale. However, some other payouts are in dispute. The first is a payment of just over \$11,000 to a bank, said to have paid out a line of credit. The mother claims, and there is some documentary evidence to support her testimony, that the father had taken a cash withdrawal on that line of credit of just under \$10,000.
- [35] Other payouts listed on the trust statement were, I conclude, for the benefit of the father. There were legal fees in the amount of \$3,710 and two payments totalling \$11,750 for arrears in child support.
- [36] Further, a line of credit that originally had a maximum of \$25,000 had grown, with interest and penalties, to just over \$32,000. The mother concedes that \$7,500 of that is her responsibility. She says that the balance is the responsibility of the father. I accept her testimony on this point. None of his testimony or submissions has persuaded me otherwise.
- [37] He says that the \$30,827 should be paid out to his sister as a result of a loan she made to them when they originally purchased the house. The mother denies this.
- [38] I made two observations about these claims. First, the father says that he has not had time to gather the necessary evidence to prove the loan to the sister. I reject that submission. He has known specifically of this claim since March 19, 2010, some six weeks prior to this trial. Second, it is obvious that the trust funds were much earlier the object of court orders for payouts. If indeed this money was owed to his sister, it is incomprehensible that he did not ask earlier that those funds be paid out to her.
- [39] As the funds which have been disbursed to the benefit of the father are probably over \$50,000, but taking the most conservative interpretation are just over \$40,000, I am satisfied that the funds held in the trust account of Larry R. Plener in Mississauga, Ontario should be paid to the defendant mother.

- [40] As for the jewellery, I am faced with conflicting evidence. The mother says the jewellery was left behind in the matrimonial home when she fled to Burnaby with the children in December 2005. The father says he does not have the jewellery. I accept the evidence of the mother. The jewellery will be returned to the mother within 30 days of the release of these Reasons, or the father will pay to the mother \$3,500.
- [41] I return to the critical issues concerning the children.
- [42] I am not persuaded that the best interests of the children can be served by their being uprooted from the place where they have lived longer than any other place in their lives to return them to Brampton Ontario. I do not accept that they would have extended family in Ontario but not here. The evidence is that the mother and father of the defendant are here, as well as her brother.
- [43] I am not persuaded that the children are not doing well in school. The independent evidence suggests otherwise. I note as well the evidence that they are very active in extra-curricular activities, including sports, and that they regularly attend the mosque.
- [44] Further, I am not persuaded by the father's evidence of his possible purchase of a home in Ontario. As the mother has submitted, there is no evidence that if he could raise the mortgage funds which he has said he can, he would not be able to buy a modest two bedroom townhouse or condominium in greater Vancouver.
- [45] I am satisfied that the best interests of the children require a measure of stability. I am not persuaded that in the circumstances of this case, taking into account among other things the hostility between the parties, and the history of harassment carried out by the father, that a 50/50 arrangement is in the best interests of the children. I am also cognizant of the recommendations of the s. 15 report set out in para. 30 above.
- [46] In the result, the mother will have sole custody of the children. The principal residence of the children will be with the mother. The mother and father will share joint guardianship on the following terms:
1. The parents are to be the joint guardians of the estate of the children;
 2. In the event of the death of either parent, the remaining parent will be the sole guardian of the person of the children;
 3. The parent who has the primary responsibility for the day to day care of the child will have the obligation to advise the other parent of any matters of a significant nature affecting the children;
 4. The parent who has the primary care will have the obligation to discuss with the other parent any significant decisions which have to be made concerning the children, including significant decisions concerning the health (except emergency decisions), education, religious instruction, and general welfare of the children;

5. The parent who does not have primary care will have the obligation to discuss the foregoing issues with the parent and each parent shall have the obligation to try to reach agreement on those major decisions;
 6. In the event that the parents cannot reach agreement with respect to any major decision despite their best efforts, the primary care parent shall have the right to make such decision;
 7. The other parent shall have the right to seek a review of any decision which that parent considers contrary to the best interests of the children;
 8. Each parent will have the right to obtain information concerning the children directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
- [47] The father will have access to the children every other weekend from after school Friday until the commencement of school Monday morning.
- [48] The father will have access to the children for two uninterrupted weeks in July or August, the dates of those weeks to be agreed upon by the parties no later than June 15th each year.
- [49] The father will have access to the children for one-half of the school Christmas holidays, commencing with the first half during the Christmas holidays for 2010, and the second half for the Christmas holidays in 2011, alternating each year thereafter. As well, he will have an uninterrupted seven days access during the school spring break each year by adding the necessary days to his regular weekend access.
- [50] I turn to child support.
- [51] The father seeks cancellation of arrears of child support of \$1,125 for the months of June, July, and August 2009 on the grounds that at that time the children were living with him as much as with the mother. In the alternative, he proposes that that amount should be paid into the registered education savings plan which the mother has been carefully augmenting. I accept the latter as a reasonable order and in the best interests of the children. The mother is not opposed to this alternative. The funds will be deposited by the father into the children's RESP within 90 days of the date of these Reasons.
- [52] As the father's most recent financial statement shows his annual income at just over \$26,000, child support will be payable from May 1, 2010, and on the first of each month thereafter, in the amount of \$409 per month.
- [53] The mother is currently, through no fault of her own, unemployed. When the institution for which she worked ceased to exist, she was given three months' severance pay, which will carry her until the end of June 2010. She will then be eligible for employment insurance of just over half her salary for the next 12 months. It was her evidence that she expects that long before that she will have obtained employment again.

- [54] Given these facts, I am satisfied that an order should go that the parties will exchange their income tax assessments each year no later than June 1st. The parties will then adjust the child support payments accordingly, pursuant to the Federal Child Support Guidelines.
- [55] Finally, given the history of the repeated commencement of proceedings by the father in this matter, and notwithstanding clause 7 of the terms of joint guardianship set out above, I have given considerable thought to whether I should make an order pursuant to s.18 of the Supreme Court Act, R.S.C. 1985, c. S-26 that legal proceedings may not be commenced by the father without the leave of the court. However, I have heard no submissions upon this and I therefore decline to make such an order. Nevertheless, I suggest that should the father commence further legal proceedings, the mother consider bringing my concerns to the attention of the court dealing with that proceeding.

Summary

- [56] The parties will be divorced, subject only to s.12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The surname of the defendant will be changed to Batala.
- [57] The mother will have sole custody of the children. Primary residence of the children will be with her. The mother and father will share joint guardianship of the children on the terms set out in para. 46 above. The father will have access as specified in paras. 47 to 49 above.
- [58] The outstanding arrears of child support will be deposited into the children's RESP within 30 days of the date of these reasons.
- [59] The remaining trust funds held in the trust account of Larry R. Plener in Mississauga, Ontario, will be paid out to the mother.
- [60] The father will return to the mother the jewellery given to her by her parents at the time of the marriage, or in the alternative will pay \$3,500 to the mother within 90 days of the date of these Reasons.
- [61] The mother, having to the greatest extent prevailed, will have her ordinary costs.

"The Honourable Mr. Justice Williamson"

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