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CANADA / JUDGMENT

## Wilson v. Wilson

2009 BCSC 1734

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COURT

Supreme Court of British Columbia

DECIDED

17 December 2009

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2009 BCSC 1734 Wilson v. Wilson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wilson v. Wilson,

2009 BCSC 1734

Date: 20091217

Docket: 12877

Registry: Smithers

Between:

Morgan Marie Wilson

Plaintiff

And

Steven Lloyd Wilson

Defendant

Before: The Honourable Mr. Justice Chamberlist

Reasons for Judgment

In Chambers

Counsel for the plaintiff:

J.S. Maguire

Counsel for the defendant:

D.W. Lindsay

Place and Date of Trial/Hearing:

Prince George, B.C.

November 16, 2009

Place and Date of Judgment:

Smithers, B.C.

### **December 17, 2009**

[1] In this proceeding the defendant father has brought forward his notice of motion, filed October 23, 2009 (dated January 20, 2009) seeking defined access to the children of the marriage, being Halle Marie Wilson, born June 30, 2000, and William Steven Wilson, born November 27, 2001 (presently aged 9 and 8 respectively).

[2] Paragraph one of the defendant's motion sets out the specified access sought, while paragraph two seeks an order that the plaintiff and defendant equally share the transportation costs of the children's access visits such that the plaintiff is responsible to pick up and return the children at the end of the access visit with the defendant being responsible to pick up the children at the commencement of the access visit, with each bearing their own costs. Lastly, the defendant seeks costs of his application.

[3] The specific access sought in the defendant's motion is as follows:

Commencing September 1, 2009:

j) Two weekend visits per month to be schedule[d] around the Children's long weekends and other non-instructional days. One of the weekend visits to include two consecutive missed school days per month, normally immediately before and immediately after a long weekend.

[No k)]

l) Access visits would specifically include the weekends involving Thanksgiving, Remembrance Day, Easter and Victoria Day.

m) The Spring Break vacation in 2010;

n) One-half of the Christmas vacation in 2009, to specifically exclude Christmas Day; and

o) Six weeks during the Children's summer vacation between the end of school in June, 2010 and the Labour Day weekend in September, 2010.

[4] The access visits sought in j), l) and o) and the sharing of transportation costs and costs are opposed.

- [5] With respect to paras. 1 j) and l), the plaintiff consents to access in principle provided that the children do not miss school, that access be in Vernon on normal weekends, and that the Thanksgiving, Remembrance Day, Easter and Victoria Day weekends be rotated between the parties. The plaintiff has consented to paras. 1 m) and n), being the Spring Break vacation in 2010 for one week only and one-half of the Christmas vacation in 2009 to specifically exclude Christmas day. With respect to the access sought in 1 o) the plaintiff consented to this access subject to the defendant having access for only half the summer vacation with the children being returned to the plaintiff before the Labour Day weekend.

## BACKGROUND

- [6] The plaintiff mother is currently 30 years of age and the defendant father is 33. The parties were married on July 31, 1999, and separated in or about October 2002. The parties entered into a consent order on August 12, 2004, which settled all issues arising out of the breakdown of the relationship. The relevant portions of the consent order were that the parties would share joint custody with the primary residence of the children being with the mother; the mother was at liberty to change the permanent residence of the children from Houston, B.C., to Vernon, B.C.; and upon the mother relocating to Vernon the father was provided with specified and detailed access. The father was to pick up and drop off the children of the marriage at the mother's residence except as specifically agreed upon for particular access periods. Finally, the consent order provided that if the parties were unable to agree on an access schedule for the following year then either party could make a court application.
- [7] Shortly after the consent order was entered the mother and the children of the marriage relocated to Vernon, B.C. Although a court application was necessary to resolve the access for the 2005/2006 year, they were able to reach an agreement for the 2006/2007 year. That agreement was reflected in a consent order dated February 9, 2007 but there have been no court orders made for the father's access for the children of the marriage since the end of 2008.
- [8] With respect to the access period September 2007 through June 2008, the father's access to the children of the marriage caused the children to miss a total of 19 school days. The father's access to the children of the marriage from September 2008 until June 2009 resulted in the children missing a total of 14 days of school according to the father, but disputed by the mother.
- [9] The father's proposed access schedule from the period September 2009 through June 2010 would result in the children missing a total of 11 school days but the mother's opposition to the access schedule appears to be based on her position that the children should not be missing school in order to visit with their father. In addition, the plaintiff submits that the children of the marriage will miss activities such as hockey or skating during visits with their father. The defendant's position is that he will do everything he can in order to assist the children with their missed school work and that his time with the children should take

priority over their extracurricular activities. The plaintiff mother has proposed that the access schedule be set such that the majority of the access visits occur in Vernon and she has suggested increased access for so long as the children of the marriage do not miss school or activities.

- [10] A large part of the problem is that the parties' son, William, has had to change schools and repeat grade two because he is behind in his reading comprehension. He has had to take up tutoring through Sylvan Learning to catch up and is also enrolled in learning assistance at his own school. The defendant father, to some extent, blames the mother for this as the mother placed the children in French immersion without consultation with him. The daughter, presently age 9, has no difficulties with her schooling and continues to be enrolled in the French immersion program.
- [11] The defendant, in his affidavit material, states that he has in the past and will continue in the future to work with the teachers of the children of the marriage to ensure that their school work is always kept current during his access visits with them.
- [12] With respect to the parties equally sharing transportation costs and actual transportation for the defendant accessing his children, the defendant argues that it was the plaintiff mother who relocated from Houston to Vernon and that the mother's employment income situation has changed since the time the initial order was made. The defendant points to the fact that the travel between Houston and Vernon is somewhat inconvenient as there is no significant airport in either community and as a result he must use the Smithers airport and the Kelowna airport. In the past the defendant has used air travel frequently but has commenced driving as a more convenient means of transporting the children for access visits.
- [13] The defendant opposes the plaintiff mother's suggestion that access takes place in Vernon with him presumably sleeping on the couch or floor, when in the past on his visits to Vernon he has stayed in a hotel. The defendant also points to the fact that the children love going to Houston and that not only does he have extended family in Houston but also the plaintiff mother continues to have family members residing there as well, and that she could stay with them if she were to bring the children to Houston for a visit. The defendant submits that as well as spending time with him while in Houston the children continue to develop relationships with grandparents, aunts and uncles, cousins, friends, pets and continue to enjoy the lifestyle that they enjoyed prior to their move to Vernon. The defendant's position is that this is of significant benefit to the children of the marriage and without the ability to add additional days to a weekend visit, the travel to Houston and the visit there would be much too rushed.
- [14] The defendant states that he is asking for a six-week period of time during his summer access in order to maintain his relationship with the children and points to the fact that this is a slow time of year for his employment and a good time for him to spend time with the children of the marriage. Finally, he submits that by allowing him to exercise his access

periods around long weekends and professional development days, it is an opportunity to allow a somewhat extended visit between his children while at the same time minimizing missed time from school.

- [15] The plaintiff mother agrees that the defendant should have access and that maximizing the access would be accomplished by centering access times around long weekends that are created by non-instructional days and statutory holidays. She is opposed to the defendant having access for the whole of the spring break in 2010 as it is a full two weeks in 2010 rather than the usual one week. She would also like to see Christmas on a rotational basis and is agreeable to the defendant's proposal for Christmas 2009 access. With respect to the issue of transportation costs which are sought to be decided at this hearing, the plaintiff mother's position is that should be adjourned until the issue of the parties' incomes are resolved and seeks costs of this application.
- [16] With respect to the sharing of access costs, I have determined that an order should not be made with respect to access costs as sought by the defendant father until the incomes of both parties have been determined. I have noted, from a review of the consent order entered into by the parties, that there was no consideration of sharing the costs of access when it was obviously contemplated that there would be access costs incurred by the defendant when the children had relocated with their mother to Vernon. I agree with the plaintiff mother that the number of visits contemplated could result in an inequitable result to the plaintiff given her income and the defendant's income. I am advised by plaintiff's counsel that the plaintiff is in the process of filing an application to determine the defendant's guideline income for the past three or four years.
- [17] In coming to this conclusion I have also considered the defendant's position that both children enjoy the drives from Vernon to Houston although Ms. Wilson has said that Halle does not like the long drive to Houston.

## ANALYSIS WITH RESPECT TO ACCESS SCHEDULE

- [18] Much of the defendant's position relates to what has happened in the past with respect to him accessing his children. The fact however is that when they separated Halle Marie Wilson was approximately 2 years 4 months of age, and William Steven Wilson was some 13 months of age. When the initial consent order was made on August 12, 2004, the children were approximately 4 years and 2½ years of age. At that time in their development they were not enrolled in school. They are now enrolled in school and the early years of their education are just as important to them as socializing and bonding with their father and their extended family in Houston.

- [19] I am of the opinion that the children's success in school ought to be just as important to both parties as the children spending time with the defendant and his extended family. While it is admirable for Mr. Wilson to promise that he will do everything he can in order to assist the children of the marriage with their missed school work while he accesses them, he must recognize that school attendance takes priority over his access times.
- [20] At present there should be no doubt that William requires additional assistance. A letter provided by Sylvan Learning, dated Thursday October 16, 2009, was provided to me at the hearing by counsel for the plaintiff. The letter, written by Erin Rennick, Director of Education, indicates that for William to have a grade 3.0 equivalency by September of 2010 he will be required to attend Sylvan on a very regular basis. Ms. Rennick points out that his schedule is set to have him at Sylvan for four hours per week. Ms. Rennick opines:
- ... If Will misses even 2 hours per month of his regular schedule, there will be academic consequences. He is currently forecasted to complete his Sylvan program between May to June, 2010. Missing 2 hours per month of instruction would mean that he would not likely complete his program until between July and August 2010.
- [21] I do not know the professional qualifications of Ms. Rennick, however, she obviously holds the view that an absence of two or more days per month would equate to a loss of at least one full month of school and also one full month's worth of Sylvan lessons. She goes on to opine that in his present academic situation she does not think that is a loss that William can afford to sustain.
- [22] While the opinions expressed by Ms. Rennick are not properly before the court, her concerns can be taken into account to some extent.
- [23] A similar letter from the Hillview Elementary School, authored by Tyler Galenzoski, Principal, and dated October 2009, was provided to me at the hearing. It is entitled "Dear Parents of Will Higgins-Wilson" and states:

This letter is intended to emphasize the importance of school attendance. Upon reviewing Will's learning needs it has been noticed that he missed 28 days of 181 during the previous school year. To ensure he continues to make progress with his reading and writing Will has to have consistent attendance at school.

- [24] If Mr. and Ms. Wilson were still one family unit with their two children it would be fair to predict that they would not take steps to have their children absent from school either 11, 14 or 19 days per year. Similarly, I would think that if they had one child in the family unit enrolled in learning assistance they would take all steps to ensure no days of instruction were missed. This is especially true here where the additional instruction provided by Sylvan has a substantial cost associated with it.

- [25] The question I have asked myself is whether access schedules should be allowed to interfere with the educational needs of the child. The answer is a common sense answer and must be answered in the negative.
- [26] The parties have been able to agree on access times that in the past interfered with schooling. The children are getting older and will more and more be required to demonstrate success in their schooling to enable them to compete in what has become a very competitive world.
- [27] Although my primary concern is with respect to Will not missing school to access his father at the present time and it is that issue that has convinced me that he should not be missing school for accessing his father, I am mindful that his additional work at Sylvan may propel him into catching up. I would hope that the parties are able to deal with additional access at that time without court application. In any event I have concluded that the following will be the access schedule:
1. Two weekend visits per month while the children are in school to be scheduled around the children's long weekends and other non-instructional days, these weekends to include Thanksgiving, Easter, Victoria Day and Remembrance Day if that statutory holiday creates a long weekend;
  2. Spring break where spring break is one week but if longer than one week as in 2010 where it is two weeks only one week during that particular spring break;
  3. One-half of Christmas vacation on an alternating basis to the extent that Christmas day will be with the plaintiff mother in 2009 and Christmas day will be with the defendant father in 2010, and alternating on that basis thereafter;
  4. Five continuous weeks during the summer school vacation with the father designating the five continuous weeks by April 30 of each year and if no designation is received by that time the mother may determine the five continuous access weeks;
  5. Such other access as is agreed between the parties.
- [28] While there has been mixed success, the principal disagreement with respect to the access issue was the issue of the children missing school for the father's access. That issue has been decided in favour of the plaintiff. The plaintiff will have her costs of the hearing.

"Chamberlist, J."

The Honourable Mr. Justice Chamberlist

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Prepared on 25 October 2026 · Esheria