
CANADA / JUDGMENT

Wright v. Hudson

2018 BCSC 1828

COURT

Supreme Court of British Columbia

DECIDED

23 October 2018

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2018 BCSC 1828 Wright v. Hudson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wright v. Hudson,

2018 BCSC 1828

Date: 20181023

Docket: E151548

Registry: Vancouver

Between:

Kimberly Wright

Claimant

And:

Leigh Hudson

Respondent

Before: The Honourable Mr. Justice D. M. Masuhara

Reasons for Judgment

In Chambers

Agent for the Claimant:

S.L. Specht

Counsel for Respondent:

L.A. Cruickshank

Place and Dates of Hearing:

Vancouver, B.C.

October 4-5, 2018

Place and Date of Judgment:

Vancouver, B.C.

October 23, 2018

- [1] This decision deals with a parenting plan regarding the only child of the parties. He is presently seven years old and resides with the claimant, his mother in Nova Scotia. The respondent father lives in Vancouver, B.C. I am advised that the trial judge was not available to hear the application before me.
- [2] The parties began cohabiting in 2009. Their son was born in 2011. The parties separated in June 2013.
- [3] Ms. Wright sought relocation of the child to a community where she grew up and intended to move to in Nova Scotia. The issue was the subject of a 14-day trial in 2017. The trial judge dismissed the relocation application, determined primary residence would be with Ms. Wright, and equal parenting time between the parents.
- [4] The decision was successfully appealed. In May 2018 the court of appeal set aside the order from trial and permitted the relocation of the child. The court did not address Mr. Hudson's parenting time, leaving the matter to the parents to resolve with liberty to apply to this court if no agreement could be reached. The court also left intact the finding at trial Ms. Wright's annual income as \$30,000; found Mr. Hudson's annual income for 2017 as \$128,059; and set monthly child support payable by Mr. Hudson at \$1,151.
- [5] I am advised that Mr. Hudson has sought leave to appeal to the Supreme Court of Canada and all of the materials have been filed with that court.
- [6] Mr. Hudson also sought a stay of proceedings from the court of appeal but was unsuccessful.
- [7] On July 20, 2018, an interim order on parenting was issued by a judge of this court which included parenting time to Mr. Hudson Sunday, July 22 to Friday, July 27; Thursday, August 30, to Monday, September 3 in Nova Scotia; Thursday, October 5 to Monday, October 8 in Nova Scotia; and Thursday, November 8 to Monday, November 12 in Nova Scotia.
- [8] Mr. Hudson has now applied for terms of a parenting plan. He also seeks return of their son's ski equipment which Ms. Wright has retained.

- [9] Ms. Wright's primary position is that this matter should be adjourned pending the Supreme Court of Canada leave application. She argues that their son is just getting settled in Nova Scotia; that if the appeal succeeds any present parenting plan will be moot; that there is a lack of evidence as to the present and future best interests of the child given the relocation has just happened; and that Mr. Hudson has cancelled some of his parenting time which demonstrates his intentions to foster a relationship with his son.
- [10] In my view, there is uncertainty as to when the leave application decision will be handed down and that some parenting measures should be put in place to cover the period of uncertainty. The current interim order does not go past November and it is fair to assume that a determination on leave will be sometime into the new year. Moreover, if leave is granted it may be some time for the appeal to be heard. If leave is not granted there will be a need for the parties to attempt to work out an acceptable schedule absent going back to court. The trial decision contemplated equal parenting. The court of appeal contemplated parenting time for Mr. Hudson. Just prior to Ms. Wright relocating the child to Nova Scotia, the child spent a considerable time with his father. In my view, the best interests of the child includes parenting time with his father. The parenting plan I propose is to be interim.
- [11] Though Ms. Wright objects to a parenting plan being put in place, I do not find her position to be reasonable in the circumstances. She has set out an alternative plan in her materials which contemplates sharing which I have considered. Mr. Hudson's initial position was to have virtually all of the holiday time. I found that too was unreasonable. At the hearing he provided an alternative proposal which contemplates sharing.
- [12] The breaks provide time for a child to have more uninterrupted time with parents in a setting different from the regular daily school and extra curricular routine. Some type of equal time with a parent should be afforded the child.
- [13] The parties advise that the school Winter Break, Spring Break and the Summer Break periods for 2018/19 are:
- (a) Winter Break: December 21 (last day of classes) to January 3 (first day of classes);
 - (b) Spring Break: March 15 (last day of classes) to March 25 (first day of classes); and
 - (c) Summer Break: June 28 (last day of classes) to September 4 (first day of classes).
- [14] As an interim measure for 2018/2019, the parenting schedule will be as follows:
- (a) Winter Break: Ms. Wright will have the child over Christmas Day. Mr. Hudson will have the child from Boxing Day at twelve noon and will return the child on January 6, 2019 in sufficient time for the child to attend the first day of school after the break.

- (b) Spring Break: The parents seem to be in agreement that on an alternating year basis that a parent will have the child for a two week period over Spring Break. For 2019, Mr. Hudson will have the child from either March 11 to March 25; or from March 15 to March 29. Mr. Hudson is to inform Ms. Wright in writing which period he selects by the end of January. Mr. Hudson will be responsible for returning the child to Nova Scotia.
- (c) Summer Break: Each parent will have the child for half of the Summer Break. The Summer Break will be divided equally. Mr. Hudson will have first choice as to which half he selects for the 2019 Summer Break. Mr. Hudson is to inform Ms. Wright in writing which half he selects by the end of April. Mr. Hudson will be responsible for returning the child to Nova Scotia. I understand this may interfere with the annual camping holiday of Ms. Wright's family but it could be that those dates may be adjustable or that she and son may be able to attend for a portion of the annual camp. In any event, the schedule for the Summer Break is interim.
- (d) Additional parenting time for Mr. Hudson: In addition to the parenting time set out above, Mr. Hudson will be afforded parenting time with the child in the event that Mr. Hudson is able to be in Nova Scotia provided that Mr. Hudson gives Ms. Wright 30 days notice in writing of the date he will be available to take the child including over long weekends. Such parenting time will not exceed 7 days.
- (e) Skype: When the child is in the care of Ms. Wright, she will facilitate Skype, FaceTime, or telephone calls between the child and Mr. Hudson at 4:00 p.m. (PST) on Tuesdays and Thursdays each week, and such other additional times as may be arranged by the parties. Ms. Wright will be responsible for initiating the calls. Ms. Wright will not interfere in Mr. Hudson's calls with the child and will provide the child privacy during the calls with his father.

Similarly, when the child is in the care of Mr. Hudson, Mr. Hudson will facilitate Skype, FaceTime, or telephone calls between the child and Ms. Wright at 4:00 p.m. (PST) every three days. Mr. Hudson will be responsible for initiating the calls. Mr. Hudson will not interfere in Ms. Wright's calls with the child and will provide the child privacy during the calls with his mother.

The contact times are obviously adjustable if the parties agree to alternative times and days. Such agreements are to be in writing.

- (f) Exchange Point: Unless the parties agree otherwise, such agreement being in writing, the parties will exchange the child at the Halifax International Airport. Ms. Wright is to be at the airport with their son not less than an hour prior to the scheduled arrival of Mr. Hudson; and she is to be at the airport to receive their son not less than two hours prior to the scheduled departure of Mr. Hudson. Mr. Hudson is to be at the airport to deliver their son into the care of Ms. Wright not less than two hours prior to his scheduled departure.

- (9) Itinerary: Mr. Hudson is to provide his flight itinerary to Ms. Wright one week prior to his arrival to Halifax when he is exercising his access for the periods set out above and will have a continuing obligation to provide all updates to his itinerary to Ms. Wright in writing until his departure.
- [15] If further orders or directions regarding their interim parenting schedule are required, the parties are to arrange an appearance before me through Scheduling.
- [16] On the question of undue hardship, Mr. Hudson seeks some credit from his child support obligation with respect to the travel costs he will incur in order to have parenting time with his son. There is no question that the relocation approved imposes considerable travel costs. However, it is notable that Ms. Wright waived spousal support and property division from Mr. Hudson. While it is not clear why Ms. Wright did not pursue those claims, there is little doubt that Mr. Hudson's financial position is better than had the claims been pursued. His financial situation, taking into consideration his child support obligations, appears to be significantly higher than that of Ms. Wright. His income of \$143,000 for 2017 was much higher than set for his support obligations. His present Form F8 date September 20, 2018 indicates that his annual income is \$130,827 and that he has substantial assets. The child support guidelines creates a high hurdle in terms of undue hardship and the materials do not support the relief Mr. Hudson is seeking. Mr. Hudson has not made out the case for a reduction in child support due to hardship.
- [17] In terms of the return of the ski equipment, this issue requires a broader view of the dispute between the parties. As a result, I decline to make any order regarding this issue as the materials are not sufficient for me to make a proper determination. I will note however, that it seems to me that the tension between the parties could be lessened if Ms. Wright were to voluntarily return the equipment. Their son is growing and the time of usefulness of the ski equipment is limited.

"The Honourable Mr. Justice Masuhara"

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