
CANADA / JUDGMENT

Z.R. v. S.A.

2022 BCSC 1705

COURT

Supreme Court of British Columbia

DECIDED

30 August 2022

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2022 BCSC 1705 Z.R. v. S.A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Z.R. v. S.A.,

2022 BCSC 1705

Date: 20220830

Docket: E201587

Registry: Vancouver

Between:

Z.R. also known as Z.R.A.

Claimant

And

S.A.

Respondent

Before: Master Hughes

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Stanislaus

Counsel for the Respondent:

S. Jamal

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 25, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 30, 2022

- [1] THE COURT: The issue before me is that of the primary residence of the parties' youngest child, M. In particular, the respondent father seeks an order requiring the claimant mother to return the child to his primary care. He is concerned that if M. remains in her mother's care she will not attend school, which starts next week. The trial of this matter is set for nine days commencing October 16, 2023.
- [2] By way of brief background, the parties began living together in 1998, were married on July 18, 1999, and separated on February 15, 2019. They have three children: two sons, age 17 and 13; and a 9-year-old daughter who is the subject of this application. Each of the children is extremely intelligent and very dysfunctional.
- [3] An interim order was made by Mr. Justice Milman on September 25, 2020, which dealt with a number of issues, some of which went by consent. One of the consent orders was that the parties would have equal shared parenting time with the children in accordance with a schedule that is in the children's best interests. At that time the parties were living separate and apart in the family home with the children.
- [4] Another interim order was made by Master Elwood, as he then was, on May 19, 2021, in anticipation of the sale of the family home. Master Elwood ordered by consent that once the respondent moved out of the family home, the parties would have equal parenting time with the two younger children on a week-on, week-off basis with exchanges on Friday afternoons. Parenting time with the eldest child was not specified in the order but was agreed to be at the child's discretion.
- [5] Following Master Elwood's order and after the respondent moved out of the family home, the eldest child lived with the father and the middle child remained with the mother. Only M. resided with each parent equally on alternate weeks as anticipated.
- [6] As part of Master Elwood's order, the parties also consented to the appointment of a parenting coordinator who would provide a recommendation on counselling for the children and whether a section 211 report is necessary. The parties retained Craig Neville as their parenting coordinator. In addition, there has been an array of professionals involved with these parties, including various counsellors, psychologists, and psychiatrists for the

children, and parenting coaches and counsellors for each of the parties. In December 2021, after having followed the alternate week schedule for approximately six months, M. refused to return to the father's home after spending time with the mother. During this time she also refused to attend school and was effectively expelled from [the] school where she had been enrolled.

- [7] Dr. Elterman prepared a section 211 report dated March 2, 2022, in which he recommended that M. live primarily with her father and see her mother on Wednesday evenings and on Sundays each week. The primary reason for Dr. Elterman's recommendation was the concern that M. was being negatively influenced by her brother, K., who has not attended school since early 2020. In particular, Dr. Elterman said "I would recommend that [M.], between now and September, reside primarily with [S.A.] because I think that the influence of [K.] not attending school is counter-productive to her motivation."
- [8] With the assistance of Mr. Neville, the parties agreed to and did implement Dr. Elterman's recommendation, effective March 25, 2022. Immediately upon M. beginning to live with her father, she started attending a new school and did so regularly for the remainder of the school year.
- [9] The parties agreed to engage Dr. Elterman again to prepare an updated section 211 report following implementation of his original recommendations. He interviewed both parties and M. on various dates between June 6 and July 8, 2022. M. expressed a desire to return to the alternate week parenting arrangements that had been in place from June to December 2021. K. declined to participate at the last minute.
- [10] Dr. Elterman's updated assessment was released on July 20, 2022. However, the situation with M. changed just prior to the release of Dr. Elterman's second report. The parties had agreed, through the parenting coordinator, that the mother would have some make-up parenting time with M. on July 16, 2022, to compensate for missed parenting time during a vacation that M. had spent with her father in late June.
- [11] M. refused to return to her father's home at the end of the agreed make-up time and has refused to return since that date. Counsel spent some time reviewing the unfortunate circumstances of that evening, which included the parties' oldest son getting involved in trying to coax his sister out of her locked bedroom, followed by the police being called to conduct a wellness check. I will not belabour the details, other than to comment that it was clearly a difficult evening for all involved.
- [12] In his updated report, Dr. Elterman said that "while I have serious concerns about [K.'s] influence on [M.], I think that she should be given an opportunity to proceed to week-on week-off. This should start now in the summer if she wants to demonstrate that she is able to move between the homes. However, should there be any slipping back into not attending school, then the immediate response should be that she has to return to living primarily with [S.A.]. [M.] has done well academically, emotionally, and socially living with [S.A.], but she has become increasingly angry in the summer at the lack of time that she has been

spending with [Z.R.] even though this was a necessary consequence of pulling her out of the many months of non-school attendance."

- [13] S.A. has brought this application to essentially force M. into returning to reside with him. He says that this must happen before the school year commences on September 6 so that he can get her back into a routine at his home. He seeks an order from the court requiring the mother to deliver M. to his front door or to a specified natural location. He does not seek police enforcement at this time, although that may well be the next step.
- [14] The father is concerned that if M. does not return to live with him, she will again refuse to attend school as she did in the beginning of 2022. Neither parent wants to see M. follow her brother's path in refusing to attend school to the point where he is now significantly behind in his education. K. should be starting grade 8 but is assessed at a grade 4 academic level despite being highly intelligent.
- [15] The mother also wants M. to attend school but says that she cannot force her to go any more than she can force her to go to her father's home. Z.R. says that the reason M. did not attend school from January to March is that she was afraid that her father would come to the school and pick her up and that she would not be allowed to see her mother or communicate with her friends using her iPad. She says that M. does not have a positive experience in her father's home, including complaints of arguments between the father and his mother, his former girlfriend, and the oldest child. She says he is too restrictive in his parenting style.
- [16] Conversely, the father complains that the mother is too permissive and allows the children far more autonomy than they should have. He says that the mother should be able to get M. to attend school and that it is her responsibility as a parent to make parenting decisions and not defer to M.'s wishes where it is clearly not in M.'s best interests.
- [17] Everyone agrees that M. needs to attend school. The challenge is how to get her there. The father says that the mother is not capable of getting M. to attend school and that the only option is to have M. once again living primarily with him. The mother says that if M. is forced to live with her father against her wishes she might do something drastic. She outlines a number of issues as being at the heart of M.'s current resistance to seeing her father. The father's response, simply put, is that it is the mother's responsibility to make her go.
- [18] One of the challenges with the father's application is a procedural one. Although the parties had reached an agreement with Mr. Neville's assistance to implement Dr. Elterman's initial recommendations in March, they did not formalize those arrangements in a court order. Accordingly, the most current court order dealing with parenting is that of Master Elwood, which provides for equal parenting time in alternate weeks. As Mr. Stanislaus correctly pointed out, there is no application before the court to vary the parenting arrangements as ordered by Master Elwood. The notice of application asks for an order that the mother return M. to the father's primary care, which was the de facto status quo from March to July.

[19] The father's counsel contacted Dr. Elterman at the beginning of August to ask his opinion regarding an application for police assistance to enforce the parenting schedule. Dr. Elterman's response was as follows:

Given the history of this case, I am not a fan of let's see how this plays itself out over the long term. I predict that September will arrive and [M.] won't start school but I would like to be proven wrong. It is a sad case because these children are so very bright but are each self sabotaging to diminish their potential. I think Craig [the parenting coordinator] may not be able to enforce changes but a good start would be to have the parents working together and be on the same page in terms of their goals. They can both start by insisting that there be week on/off schedule with [M.]. Regarding court I think there is no harm in waiting to see what [M.] does until school starts in a month.

[20] M. has been seeing a counsellor, Abby Petterson, since earlier this year. By all accounts M. has a good rapport with Ms. Petterson. One of the options recommended by the parenting coordinator is that the parties schedule a joint meeting with Ms. Petterson and M.. At the end of the hearing before me, I encourage the parties not to delay while waiting for my reasons but to proceed with such a meeting as soon as possible.

[21] And I have been told this morning that that meeting is now scheduled between Ms. Petterson, M., and her father for tomorrow afternoon. I am hopeful that some progress can be made at that point.

[22] It is trite to say that the court's only concern is what is in the best interest of this particular child. In my view, the key considerations as they relate to some of the factors set in section 37 of the Family Law Act are:

- a) It is important for M.'s health and emotional well being that she attend school. It is also important that she spends time with each of her parents.
- b) M. has expressed a wish to return to the alternate week schedule. She was unhappy living primarily with her father as she wanted to spend more time with her mother. M. has also expressed a desire to return to [her previous school], which she will not be able to do if she remains out of school. The mothers' evidence is that [the previous school] may have a spot for M. for the 2023-2024 school year.
- c) M. has a history of refusing to attend school or see her father while in her mother's care. While residing primarily with her father earlier this year, M. attended school and activities regularly.

- d) M. clearly has a need for stability. Her life has been somewhat tumultuous over the last three years since the parties' separation, living in several different homes, attending different schools, and living with each parent at different times. When living exclusively with her mother, M. did not attend school and did not see her father. When living primarily with her father, M. had a routine, which included attending school and other activities and also seeing her mother regularly.
 - e) Both parents have the ability to exercise their parental responsibilities, although the mother, as noted by Dr. Elterman, tends to defer to others to make decisions rather than acting as the agent of change herself. Those others may be professionals or sometimes the children themselves.
 - f) Dr. Elterman has noted that it is important that the children know that their parents are communicating. This way, there is less likelihood that the children will be able to play the parents off against each other, and would signal to the children that the situation is improving. That is important.
 - g) M. has expressed some perceived grievances regarding her father. The professionals appear to agree that she is not at any risk of harm, and her perception is likely skewed as a result of the stark comparison between her mother's very permissive, lenient parenting style and the father's stricter, more structured approach. Regardless, the ongoing participation of M.'s counsellor and engagement with the parents will be important during these formative years as M. transitions from being a child into a preteen.
- [23] Taking all of these factors into consideration, and particularly Dr. Elterman's view that there is no harm in seeing what M. does when school starts, I am ordering that the alternate week schedule as set out in Master Elwood's order shall resume for M., effective this coming Friday, September 2, 2022.
- [24] Z.R. shall deliver M. to S.A. at 3:00 p.m. on September 2, either at S.A.'s home or to a neutral location that the parties may agree upon. S.R.'s week shall start with pick up after school on Friday, September 9, 2022, and the parties shall alternate weeks thereafter.
- [25] In the event that M. does not attend school during the mother's parenting time without a justifiable reason, such as being ill, the father is at liberty to apply to vary the parenting schedule.
- [26] I am not making the order to return M. to the respondent's primary care, as that is not the current legal status of the parties' parenting arrangements, despite their informal agreement. If either parent wishes to apply to vary the interim order, they should bring on an application giving appropriate notice of such. I am also not granting leave to apply on one-day's notice. Sufficient notice must be given.
- [27] That being said, if M. reverts to not attending school, I expect that a further application will be brought forthwith.

[28] M. needs to be clearly told by both parents that they are on the same page and that they expect her to attend school. If she does so, the alternate week arrangement will continue. I am hopeful that Abby Petterson can be of assistance in this communication to M..

[29] Counsel, would you like to make brief submissions as to costs?

[SUBMISSIONS RE COSTS]

[30] THE COURT: All right. Each party shall bear their own costs.

[31] Thank you everyone. And to the parents, I do wish you well and I hope you are successful in getting M. back into school.

"Master Hughes"

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