
CANADA / JUDGMENT

Zazula v. Zazula

2016 BCSC 288

COURT

Supreme Court of British Columbia

DECIDED

23 February 2016

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

2016 BCSC 288 Zazula v. Zazula

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zazula v. Zazula,

2016 BCSC 288

Date: 20160223

Docket: 17141

Registry: Smithers

Between:

Christian David Zazula

Claimant

And

Robyn Barbara Zazula

Respondent

Before: The Honourable Mr. Justice Affleck

Reasons for Judgment

Counsel for the Claimant:

R.D. Lyons

Counsel for the Respondent:

T.E. Hudson

Place and Date of Trial:

Smithers, B.C.

November 24-27, 2015

Place and Date of Judgment:

Smithers, B.C.

February 23, 2016

- [1] The contested issues on this trial have been the custody, guardianship and parenting arrangements for the four-year-old child of the marriage ("the child") and the financial support arrangements for the child and for the claimant. The parties invoke only the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
- [2] The parties both seek a divorce and the respondent seeks a change of surname to "Howe". I will refer to her in these reasons as Ms. Howe.
- [3] In the notice of family claim, Mr. Zazula proposes there be joint custody of the child on the following terms:

The child shall continue to reside primarily with the Claimant, with reasonable and generous access to the Respondent

1. In the event of the death of a spouse, the surviving spouse will have sole custody of the child;
2. Each spouse will have the obligation to advise the other spouse of any matters of a significant nature affecting the child;
3. Each spouse will have the obligation to discuss with the other spouse any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
4. The spouses will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
5. In the event that the spouses cannot reach agreement on a significant decision despite their best efforts, the Claimant will be entitled to make those decisions and the other spouse will have the right to apply for an order respecting any decision the spouse considers contrary to the best interests of the child, under s. 16(1) of the Divorce Act; and,
6. Each spouse will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counselors, medical professionals, and third party care givers.

[4] In her counterclaim, Ms. Howe proposes:

shared custody, and shared parenting time within each calendar year. Splitting parenting time 6 months with each parent having main residency for 6 months out of each calendar year, if the claimant decides to continue residing in Hazelton BC. If the claimant moves from Hazelton, I propose shared parenting time with a week on week off rotation if both natural parents reside on Vancouver Island.

[5] At trial the parties had different proposals to make about the arrangements for the child. I asked the parties to provide drafts of the order they each seek. Mr. Zazula's proposed order is as follows:

1. Pursuant to s. 5 of the Name Act, R.S.B.C. 1996 c. 328, the name of Robyn Barbara Zazula be changed to Robyn Barbara Howe (hereinafter "Ms. Howe").
2. Pursuant to s. 16 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.) Christian David Zazula (hereinafter "Mr. Zazula") shall have sole custody and primary residence of [the child]
3. Pursuant to s. 16 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.) Mr. Zazula and Ms. Howe shall have joint guardianship of [the child].
4. Pursuant to s. 16 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.) Mr. Zazula shall have primary residence of [the child] and reside in Hazelton, British Columbia.
5. Ms. Howe shall have reasonable and generous access to [the child].
6. Mr. Zazula and Ms. Howe shall exchange their filed T1 tax returns on or before July 1 of each year that [the child] remains a child of the marriage, and child support shall be paid by Ms. Howe to Mr. Zazula pursuant to the Child Support Guidelines.
7. Mr. Zazula and Ms. Howe shall exchange their filed T1 tax returns on or before July 1 of each year that spousal support is to be paid, and spousal support shall be paid by Ms. Howe to Mr. Zazula in the amount of \$_____.

[6] Ms. Howe's proposed order is as follows:

1. Pursuant to S. 5 of the Name Act. R.S.B.C. 1996 c. 328, the name of Robyn Barbara Zazula be changed to Robyn Barbara Howe (hereinafter referred to as "Ms. Howe").
2. Pursuant to S. 16 of the Divorce Act. R.S.C. 1985 c. 3 (2nd Supp) Ms. Howe shall have sole custody and primary residence of [the child]...
3. Pursuant to S. 16 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp) Ms. Howe and Christopher David Zazula (hereinafter "Mr. Zazula") shall have joint guardianship of [the child]. Joint guardianship means:

- (a) in the event of the death of either Mr. Zazula or Ms. Howe, the remaining party shall be the sole guardian of the persons of [the child], and the surviving party must facilitate at least four access visits per year with the other party's immediate family with the total access time being at least 21 days per year; [Emphasis in the original.]
- (b) Ms. Howe has the obligation to advise Mr. Zazula of any matters of a significant nature affecting the best interests of [the child];
- (c) The parties will discuss any significant decisions which have to be made concerning [the child], including significant decisions concerning the health (except emergency decisions), education, religious instruction and the general welfare of [the child] and shall try to reach agreement on those major decisions;

[subpara. (d) was omitted in the original.]

- (e) in the event the parties cannot reach agreement with respect to any major decision concerning [the child] despite their best efforts, Ms. Howe, who has the primary responsibility for the day to day care of [the child], shall have the right to make such decision;
 - (f) in the event the parties have not reached agreement with respect to any major decision concerning [the child] despite their best efforts. Mr. Zazula may review any decision that he believes is contrary to the best interests of [the child];
 - (g) each party shall have the right to obtain information concerning [the child] directly from third parties, including teachers, counsellors, medical professionals and third party caregivers.
4. Pursuant to S. 16 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp) Ms. Howe shall have primary residence of [the child], and [the child] shall reside with Ms. Howe in Nanaimo, British Columbia.
 5. Either party with the written consent of the other party, may travel and/or obtain a passport for [the child] to travel with said passport to be held, when not in use, by Ms. Howe; and,
 - a. the party required to consent to travel must not unreasonably withhold consent;
 - b. the party travelling with [the child] shall, at least 14 days prior to departure, provide a detailed itinerary including:
 - i. travel dates - start date and return date;
 - ii. destination,
 - iii. Route and stops along the way,
 - iv. method of travel.
 - v. a telephone number that [the child] can be reached at throughout the travel period, and,

- vi. as the address where [the child] will be at upon reaching the destination of travel.
6. The parties shall share parenting of [the child] on a week about basis with the pick ups and drop offs being at either [the child's] school, pre-school or daycare provider on Monday mornings.
 7. Holidays shall be shared equally based on the school calendar in Nanaimo, or such other school calendar where [the child] shall reside, as follows:
 - a. In odd calendar years Ms. Howe shall have [the child] from the last day of school at the end of the day until Boxing day at noon, and Mr. Zazula shall have [the child] for the last half; this schedule shall be reversed in even calendar years;
 - b. In odd calendar years Mr. Zazula shall have [the child] for the first half of the spring vacation commencing at the end of the last day of school and continuing until noon on the day that is halfway through the regular school break; this shall reverse in even calendar years.
 - c. Summers shall be shared on a rotating week about basis save and except that each parent, on 30 days written notice to the other, may have two weeks of uninterrupted parenting time with [the child];
 8. Mr. Zazula and Ms. Howe shall exchange their filed T1 Tax Returns on or before June 1 of each year that [the child] remains a child of the marriage, and child support shall be paid by Mr. Zazula based on his Line 150 income as set out in his T1 Tax Return increased by 20% to reflect his barter and trade income so long as he remains on the Canada Pension Plan Disability program; and, Mr. Zazula shall provide an annual report, at his own expense, from his rheumatologist outlining his level of present disability.
 9. Each party shall bear their own daycare expenses, and the parties shall equally share the costs of two extracurricular activities per annum, with the expense for same not to exceed \$1,000.00 per year. If the expense exceeds \$1,000 the party signing [the child] up for the activity shall bear the costs of the difference.
 10. In the event Mr. Zazula does not relocate to Nanaimo, Mr. Zazula's access shall be as follows:
 - a. Reasonable and generous access when he is in Nanaimo for medical appointments or to visit his family, with such access occurring on no more than 7 consecutive days out of every 14 consecutive days;
 - b. Reasonable and generous telephone and skype access as agreed upon in writing in advance by the parties;
 - c. Spring break from the day after the conclusion of school until the day before the last day of Spring break;
 - d. Christmas break from the day after the conclusion of school until the day before the last day of the Christmas Break in even calendar years;

- e. Summer vacation Mr. Zazula shall have either five consecutive weeks from the day after school ends or the last five weeks prior to school resuming with [the child] being returned no later than noon on the day before the day school resumes; and,
 - f. Such further and other reasonable and generous access as agreed upon by the parties from time to time.
11. Pursuant to S. 222(b) of the Family Law Act, R.S.B.C. 2011, c. 28, when [the child] is in Mr. Zazula's care, Mr. Zazula shall provide Ms. Howe with Skype and / or Telephone access on Mondays, Wednesdays for one hour between 6:00 and 7:00 p.m., and Saturdays for one hour either between 9:00 and 10:00 a.m. or between 6:00 and 7:00 p.m.
 12. Pursuant to S. 222(b) of the Family Law Act, the parties shall communicate about the best interest of [the child] via the following means:
 - a. Email regarding decision making and updates on how [the child] is doing and the party receiving any such email must respond to the email within 3 days of receipt;
 - i. each party shall provide to the other party an email address within seven days of the decision herein, and immediately update that email address any time there is a change of email address;
 - b. Text message regarding any medical emergencies or changes to regular access when the child is in his or her care that will affect the child;
 - i. each party shall provide to the other party a cell phone number within seven days of the decision herein, and immediately update that cell phone number any time there is a change of email address.
 - c. In the event of Mr. Zazula refusing to correspond about the best interests of [the child] via email or text, or denying access via skype or telephone he shall be deemed to have breached this Order and shall be subject to a fine of \$500.00 pursuant S. 228(1) with such fine being payable to the other party for the benefit of [the child] within 7 days of the breach being proved to the satisfaction of a court of competent jurisdiction or parenting coordinator.
 13. Pursuant to S. 222(b) of the Family Law Act neither party shall speak about the Court matters in the presence of [the child], or in circumstances where it is likely [the child] will learn of the discussion, and each party shall ensure that no third parties speak about such matters either.
 14. Pursuant to S. 222(b) of the Family Law Act neither party shall speak negatively about the other parent in the presence of [the child], or in circumstances where it is likely [the child] will learn of the discussion, and each party shall ensure that no third parties speak about such matters either.

15. In the event Mr. Zazula does not exercise his prescribed access time as set out in this order, save and except in circumstances that are completely beyond his control, his access time shall not be made up
16. Pursuant to S. 10 of the Child Support Guidelines, in lieu of the payment of child support, Mr. Zazula shall cover his own costs of access with [the child].
17. The application of Mr. Zazula for spousal support is dismissed.
18. Ms. Howe shall have her costs of this proceeding.
- [7] The parties began to live in a marriage like relationship in September 2008, were married on August 22, 2009, the child was born on January 20, 2012 and the parties separated in June 2014.
- [8] In argument this matter was treated somewhat vaguely as a relocation application. I do not view the present custody dispute as a relocation application. Mr. Zazula resides in Hazelton and Ms. Howe in Nanaimo. The child frequently travels between the homes of the parties. The custody order arising from this trial is not intended to change that arrangement. Nevertheless, the custodial parent will have the "full bundle of rights" for the care and control of the child. One of those rights will be to decide where the child primarily lives.
- [9] In *Falvai v. Falvai*, 2008 BCCA 503, Madam Justice D. Smith made the following observations:
- [33] The imposition of restrictions which narrow the geographic region in which a custodial parent shall live is contrary to the historical concept of custody. In *Gordon*, L'Heureux-Dubé J., for the concurring minority, canvassed this issue extensively at paras. 72-100. She explained that, at common law, a custodial parent had the sole responsibility of overseeing all aspects of the day-to-day and long-term care of a child, as well as determining all major decisions, including the place of residence of that child, as an incident of his or her custody. She summarized this notion of custody as follows:
- [77] Thus, custody at common law has been historically recognized as a wide and inclusive concept which grants the person entrusted with it, inter alia, the power to choose where the child shall live, subject to the right of the non-custodial parent to oppose such choice by seeking a variation order of the custody or access terms and such other limitations as may be warranted on the facts of the case.
- [34] After reviewing the provisions of the Divorce Act, as well as judicial and academic commentary on its meaning, L'Heureux-Dubé J. concluded, at para. 81, that custody of a child within the context of divorce retained the same meaning ascribed to it at common law.
- [10] At paragraph 36 in *Falvai* Smith J.A. described a custody order as involving:

the full bundle rights relating to the physical care and control of a child, as well as the decision-making authority over a child, [but this] is somewhat ameliorated in this case by the award of joint guardianship. Joint guardianship allows for continued joint decision-making by the parents

of a child in regard to significant issues in the child's life, such as medical, educational, and religious decisions. Where the joint guardians cannot agree on those decisions, s. 32 of the [Family Relations Act] permits a guardian to "apply to a court for directions concerning a question affecting the child and the court may make the order in that regard it considers proper." That remedy would be available for issues involving the residency of the child.

- [11] At paragraph 37 in *Falvai*, Smith J.A. wrote that although a custody order "entails the full bundle of rights" regarding the care and control of a child, a "narrower concept of custody has become increasingly more prevalent in today's custody arrangements, which often include orders for joint guardianship, thereby permitting a non-custodial parent to have continuing input into the major decisions that impact the life of his or her child".
- [12] Mr. Zazula is 39 years old. He suffers from a condition known as ankylosing spondylitis which causes rigidity in his spine. One result of this condition is that he has had limited employment for many years. He has been advised that as he ages the condition may no longer progress. It will not be reversed. His income is largely derived from the Canada Pension Plan and is about \$14,550 annually.
- [13] Much of the trial was taken up with evidence about the respective merits of the parties as parents for the child. I will discuss that evidence but before doing so will comment that both parents clearly want the best for their child and both are loving and caring parents. Their respect for each other as parents is reflected in the proposals they each made in the notice of family claim for Mr. Zazula and the counterclaim from Ms. Howe for the parenting arrangements of their child. They each spoke of sharing custody. The contest between them as the trial approached caused those proposals to alter and caused their respective positions to harden. A regrettable feature of this litigation may be that the custody order to be made in this matter may be seen as a defeat or at best a criticism of the non-custodial parent and a victory for the custodial parent. That would be inappropriate. The order I will make is intended largely to preserve the status quo which in my view is in the best interests of the child. The custody order must be made, but should not change the arrangement by which the child resides with each parent to the maximum extent possible in the circumstances. At four years of age the child will have many changes in her life as she starts school and her current parenting may need to be altered.
- [14] Ms. Howe is critical of Mr. Zazula as a father and as a husband. She described him as emotionally distant and yet controlling. A particular concern of Ms. Howe is that the child has an allergy to peanuts and exposure can put her into anaphylactic shock. Ms. Howe perceives that Mr. Zazula is not sufficiently attentive to that risk. I have also heard rather vague evidence about some of Mr. Zazula's friends whom Ms. Howe did not welcome into their home when they were living together. Ms. Howe says the claimant is only minimally involved in the child's activities, such as a program called "Little Flowers" where young children engage in crafts and socialize with other children of their own age. Ms. Howe and her witnesses described Mr. Zazula as unhelpful about the house. It is said he did little to assist Ms. Howe with household chores and when he was responsible in the past for the

homeschooling of the older child of Ms. Howe, who is not the child of Mr. Zazula, he was neglectful of his obligations in that regard.

- [15] There may be some substance to these criticisms but I believe they are somewhat overdrawn as can occur in custody disputes. I do not find that Mr. Zazula has generally had an irresponsible attitude to the child's welfare. Moreover, some of his conduct is doubtless explained by the effects of his condition. That does not mean I have ignored the evidence of Ms. Howe and her witnesses regarding Mr. Zazula's conduct. I am mindful of Ms. Howe's concerns and I must have regard for them when considering the best interests of the child.
- [16] One of the serious complaints Ms. Howe has had about Mr. Zazula's conduct is that he has used marijuana, in her view excessively, to the extent that he even had his own grow-op for his use in the basement of the house where the parties lived together. Ms. Howe objected to Mr. Zazula's regular use of marijuana to which she says both her children were often exposed. She testified that her complaints about this to Mr. Zazula were dismissed. One particular complaint Ms. Howe had is that Mr. Zazula smoked marijuana at home in sufficient quantities that on at least one occasion she arrived at her employment smelling of marijuana. This put her job at risk. I accept Ms. Howe was appropriately concerned about Mr. Zazula's use of marijuana and I accept that he was often unwilling to accommodate her concerns.
- [17] I have heard evidence about Mr. Zazula's activities with the child and with Ms. Howe's older daughter who has spent extended periods of time in Hazelton. Although Mr. Zazula is not the father of Ms. Howe's older daughter he nevertheless appears to have been closely involved in her life over many years. One of the effects of the involvement of both parents with both children is that the children apparently have a very close and supportive relationship with each other notwithstanding their difference in years. This is much to the credit of Ms. Howe and Mr. Zazula.
- [18] Ms. Howe is a social worker who, when living in Hazelton until early 2015, worked frequently with First Nations people. Apart from maternity leave, she has been fully employed as a social worker throughout most of the marriage. She has continued in social work since moving to Nanaimo in April 2015. Her income was the largest means of financial support for the family during the marriage. Ms. Howe's annual income is about \$69,550.
- [19] Ms. Howe was described by her witnesses as an attentive and loving mother. Mr. Zazula does not contradict that few.
- [20] Both parties have family connections on Vancouver Island with whom it appears they are close and with whom the child is close.
- [21] Mr. Zazula acknowledges that he uses marijuana recreationally and as a means to overcome difficulties associated with his spinal condition. I am loath to criticize Mr. Zazula for his use of marijuana when he suffers from a chronic and partially disabling condition. I am concerned, however, that he appears to smoke marijuana perhaps to excess. The

implications that may have for him alone are not for me to consider but those for the child I must consider. I cannot ignore, in coming to my decision on custody, the use of marijuana in Mr. Zazula's home.

- [22] A further factor I have taken into account in making a custody decision is the close relationship between the child and her half-sister who is eight years old. The evidence is that both children enjoy each other's company and it appears Ms. Howe has recently established a close and perhaps marriage-like relationship with the father of the older child.
- [23] A further factor I have considered in regard to custody is the advantages and disadvantages of Hazelton for the child as her place of residence if her father is the custodial parent and continues to reside there. As I have mentioned in these reasons, the place of residence of the child is not to be decided on this trial but I cannot ignore where the parents each now live so far as that consideration bears on the best interests of the child.
- [24] I have heard evidence about the many social and economic problems, particularly faced by First Nations people in or around Hazelton. It was suggested by several witnesses that those problems experienced by First Nations people could have a deleterious effect on a young child who is not predominantly a First Nations descent. I make no finding that such fears are justified. A witness who impressed me as a forthright and perceptive man with many years of experience living in Hazelton, who is not a First Nations man, but who has much involvement with both First Nations and non-First Nations people, is strongly attached to Hazelton and its diverse population. I have been favourably impressed by his description of the pleasures of living in Hazelton. I am not persuaded the child is likely to suffer any adverse consequences from living in Hazelton.
- [25] On the other hand, Nanaimo - because it is a much larger city and is much closer to other metropolitan areas than is Hazelton - has more to offer than Hazelton in the way of schooling, healthcare and other amenities for a young child.
- [26] I have concluded that on balance the best interests of the child are served by the respondent having sole custody. I impose no restrictions or conditions on that order but, as the authorities have increasingly emphasized, sole custody does not mean the non-custodial parent has limited contact with the child or a limited role in the child's life. In addition to the custody order, there will be a joint guardianship order thereby reinforcing the need for both parents to cooperate in the parenting of their child. There will be no significant disruption in the child's life by her mother having custody but sharing guardianship.
- [27] I do not intend in these reasons to address the details of the arrangements for the child to have contact with her father. Now that Ms. Howe will be the custodial parent I conclude it is best to allow the parties themselves to reach an agreement on the arrangements for contact between the child and her father. I emphasize that the claimant should have generous access. The current arrangement by which the child lives alternatively with each parent over extended periods of time seems to be satisfactory and should continue. If the parties cannot agree on the access arrangements, I will be seized of that question. If necessary, difficulties

in regard to parenting arrangements may be addressed in a telephone or video conference.

[28] I understand that Mr. Zazula has the means to obtain some modest extra income beyond that which he receives from the Canada Pension Plan. In my view there ought to be a compensatory spousal support order made in his favour on the basis of his need for support to relieve economic hardship following the breakdown of the marriage. See: Bracklow v. Bracklow, [1999] 1 S.C.R. 420. The relationship between the parties was about 5 ½ years. Ms. Howe will pay \$400 each month, which is the mid-range of the guideline amount, and for 18 months. The extent of child support cannot be determined at present until the parenting arrangements have been agreed, or if that is not possible, determined by this Court. So long as the child is living primarily with Ms. Howe and Mr. Zazula's income remains low I see no basis to impose a child support order on Mr. Zazula.

[29] My orders are the following:

1. there will be a divorce order in the usual terms;
2. pursuant to the Name Act, R.S.B.C. 1996, c. 328, the respondent's surname will be changed to Howe;
3. Ms. Howe will have sole custody of the child of the marriage;
4. Mr. Zazula and Ms. Howe will have joint guardianship of the child;
5. Mr. Zazula will have generous access;
6. the parties will exchange their filed T1 tax returns on or before June 1 of each year, so long as the child remains a child of the marriage;
7. Ms. Howe will pay spousal support to Mr. Zazula in the sum of \$400 each month commencing on the first day of March 2016 and continuing thereafter on the first day of each month until the first day of September 2017;
8. the parties will bear their own costs.

"Affleck 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/16/02/2016BCSC0288.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/zazula-v-zazula-2016>

Prepared on 25 October 2026 · Esheria