

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20180928

Docket: [REDACTED]

Registry: Victoria

Between:

[REDACTED]

Claimant

And

[REDACTED]

Respondent

And

[REDACTED]

Respondent

Before: The Honourable Madam Justice MacNaughton

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

D. McLeod

Counsel for the Respondent [REDACTED]

R. Neary

Counsel for the Respondent [REDACTED]

J. Monier-Williams

Place and Date of Trial/Hearing:

Victoria, B.C.
September 28, 2018

Place and Date of Judgment:

Victoria, B.C.
September 28, 2018

[1] **THE COURT:** Mr. [REDACTED] seeks unsupervised parenting time with [REDACTED] the parties' son, every Friday from 3 p.m., or at the end of his preschool day, when he will pick [REDACTED] up at [REDACTED] preschool in Sooke, to Tuesday morning, when he will drop [REDACTED] off at preschool. There is some urgency to this application because Mr. [REDACTED] parents, who currently supervise his parenting time, are about to leave for Europe and unless the current supervision order is varied, Mr. [REDACTED] will be unable to see [REDACTED]

[2] Briefly, the history of Ms. [REDACTED] and Mr. [REDACTED] relationship is one of on-and-off-again dating since high school. Between January 2014 and June 25, 2018, the parties lived together, in a marriage-like relationship, in and around Shawnigan Lake. At first, they resided in a trailer on a property belonging to Mr. [REDACTED] family. Later, they moved into their own home about ten minutes away. When they commenced living together, Ms. [REDACTED] had a daughter, [REDACTED] who was less than one year old and who had limited contact with her biological father. It is clear, on the evidence, that [REDACTED] was raised as a daughter by Mr. [REDACTED] [REDACTED] was born in late December 2014.

[3] The evidence before me demonstrates that Mr. [REDACTED] extended family was extensively involved with the young couple. The children had strong relationships with Mr. [REDACTED] parents; his siblings; and his sister's children, their cousins. By all accounts, both Ms. [REDACTED] and Mr. [REDACTED] and the extended [REDACTED] family were loving and supportive of the two children, and the life the children led was what can only be described as idyllic. Despite the current differences between the parties, Mr. [REDACTED] and his family members, who have sworn affidavits, have acknowledged that Ms. [REDACTED] was a good mother.

[4] The parties separated on June 25, 2018. For the first month after their separation, Ms. [REDACTED] lived with the children in the family home, while Mr. [REDACTED] stayed at his parents' home. During that time, the parties shared parenting time, and the parenting responsibilities. Ms. [REDACTED] did not express any concerns for the children's safety while they were in Mr. [REDACTED] care, including during periods

when the children were ill. This is evidenced by the text messages exchanged between the parties and attached to Mr. [REDACTED] first affidavit. In fact, the text messages are a clear record of the tone of their conversations and their attempts to co-parent post separation. The content of the texts is not disputed by Ms. [REDACTED] in her affidavit filed in response to this application. She concedes the shared parenting, and her lack of concern, at para. 23 of her affidavit.

[5] On July 21, 2018, the parties had a verbal argument when Mr. [REDACTED] was picking up the children to take them into his care until July 24. Ms. [REDACTED] does not allege that Mr. [REDACTED] was physically violent or threatened her during this argument. In her affidavit, she states that the argument ended and Mr. [REDACTED] left the family home quickly after [REDACTED] entered the bathroom while they were arguing. Although in his submissions, Mr. McLeod said that [REDACTED] was upset following the argument, Ms. [REDACTED] affidavit does not mention that fact. In fact, her affidavit does not suggest that [REDACTED] observed the parties arguing.

[6] Mr. [REDACTED] had parenting time with the children from July 21 until July 24. Ms. [REDACTED] did not request their return or express any concerns for their safety despite her reliance on the July 21, 2018 argument as one of the alleged incidents of violence which caused her to leave Shownigan Lake.

[7] On July 23, Ms. [REDACTED] sent Mr. [REDACTED] a text that said, in its entirety, "Eleven at Shownigan Lake coffee house." She alleges that this is evidence of an agreement that, the following day, Mr. [REDACTED] would drop the children off at the coffee house rather than at the family home as had been previously agreed and had been their pattern. Mr. [REDACTED] dropped the children off at the family home on July 24, and the parties had a verbal disagreement as Ms. [REDACTED] had been waiting at the coffee house.

[8] On July 27, Ms. [REDACTED] emailed Mr. [REDACTED] that he would have no access to the children until he had heard from her lawyer "next week", meaning the following week.

[9] Ms. [REDACTED] moved with [REDACTED] and [REDACTED] to Sooke without advising Mr. [REDACTED] that she intended to do so. Mr. [REDACTED] did not hear from Ms. [REDACTED] or her counsel during the following week and by August 8, he retained counsel. His counsel contacted Ms. [REDACTED]. Ms. [REDACTED] counsel replied on her behalf on August 10. Ms. [REDACTED] counsel indicated that any access would have to be in the presence of a professional supervisor.

[10] Since that date, Ms. [REDACTED] has only agreed to Mr. [REDACTED] having limited parenting time with [REDACTED] supervised by his parents. In total, Mr. [REDACTED] has seen [REDACTED] six times, never overnight, and always supervised.

[11] In Ms. [REDACTED] affidavits, and in correspondence from her counsel, Ms. [REDACTED] has offered various reasons for withholding parenting time and requiring supervision. First, she alleges violence in front of the children. In addition to the two arguments that I have referred to in late July, Ms. [REDACTED] refers to three earlier incidents: in the spring of 2017; at the end of July 2017; and at the beginning of December 2017. The details of these incidents are set out at para. 7 of her August 31, 2018 affidavit. It was after the last alleged incident of violence, in July 2018, that she left Shawnigan Lake.

[12] Second, she relies on a recommendation she alleges that a counselor, Kimberley Hopwood, made to Mr. [REDACTED] that he be assessed in relation to alcoholic and violent tendencies. This concern appears in correspondence from Ms. [REDACTED] counsel and in Ms. [REDACTED] affidavit at para. 19.

[13] Third, she relies on alleged self-harming exhibited by [REDACTED] after returning from supervised visits. That allegation appears only in letters from her counsel.

[14] Fourth, she relies on an alleged recommendation from the children's counsellor, at Sooke Transition House, that the children's visits with Mr. [REDACTED] be limited. This concern appears in correspondence from her counsel.

[15] It is of note that the allegation that [REDACTED] is self-harming, and the children's counsellor's recommendation that visits be limited, do not appear in sworn evidence

from Ms. [REDACTED] or anyone else. As they are significant allegations, it is telling that Ms. [REDACTED] has not mentioned them. A letter from counsel is not sufficient to establish these allegations.

[16] I have additional concerns about Ms. [REDACTED] evidence. First, the respondent denies any acts of violence against Ms. [REDACTED] let alone that any violence happened in front of the children. While Ms. [REDACTED] says, in para. 9 of her affidavit, that the children witnessed acts of violence against her, a careful review of her affidavit, in which she details the alleged incidents of violence, makes it clear that even if I accepted her evidence, the children would not have witnessed the events. As I said, Mr. McLeod's submission that [REDACTED] was upset during the argument on July 21 is not supported by the evidence.

[17] At para. 5 of her affidavit, Ms. [REDACTED] asserts that she separated as a result of violence, but she does not allege any incidents of violence in June 2018, the time of separation. This couple's relationship was coming to an end. They were trying to figure out what their life was going to look like as separated parents. Their arguments in July 2018 are not uncommon in those circumstances.

[18] There is no allegation of violence in the approximately six months prior to the date of separation. Throughout the relationship, including the year prior to the date of separation, Ms. [REDACTED] regularly trusted Mr. [REDACTED] with the care of the children while she was in school; while she was working part time; while she was out with friends; and after the separation. For the first month after separation, she continued to trust him to parent the children.

[19] After the argument of July 21, which led her to leave Shawnigan Lake, and ultimately, it appears, to contact the police, she took no steps to seek the return of the children from Mr. [REDACTED] care.

[20] The evidence from Mr. [REDACTED] is that he has never been contacted by the police. The Ministry of Children and Family Development (the "Ministry") has never been involved in respect to this family. It is surprising that if Ms. [REDACTED] had a concern

about [REDACTED] self-harming after parenting time with Mr. [REDACTED] she would not have contacted the Ministry.

[21] Ultimately, Ms. [REDACTED] provides no evidence from family members, or anyone else, to corroborate her allegations of assault, which Mr. [REDACTED] vehemently denies. There are no affidavits from others, to whom she reported the assaults, no visits to a doctor after she alleged an incident of choking, no pictures of any injuries, and no concern expressed, until this proceeding was initiated and her move to Sooke, that she had any concern for the safety of herself or her children.

[22] In response to the allegation that Ms. Hopwood had recommended counselling for alcoholism and violence, Mr. [REDACTED] attached a copy of a letter from Ms. Hopwood as Exhibit 2 to his second affidavit. That letter makes it clear that the reason for Ms. Hopwood recommending an assessment, was not with respect to alcohol abuse or violence, but for autism spectrum disorder ("ASD"). Further, as Ms. Hopwood indicates, the discussion of Mr. [REDACTED] undergoing an assessment for ASD cannot have been after the December 2017 incident, as outlined in Ms. [REDACTED] affidavit, as the notes about an assessment in Ms. Hopwood's files predate December.

[23] In correspondence from Mr. McLeod, he says that upon returning from supervised visits, [REDACTED] displayed self-harming behaviours, and that he is instructed that when [REDACTED] was not seeing his father, the self-harming stopped. There is no sworn evidence from Ms. [REDACTED] in this regard, and she has not provided any corroboration from a doctor, the counsellor at the transition house, or anyone else, to support the allegation.

[24] Again, in correspondence from Mr. McLeod, he says that a counsellor had suggested that Ms. [REDACTED] not allow the children to visit with Mr. [REDACTED] for "as long as nine hours". In response to that letter, Mr. Neary immediately requested a letter from the counsellor confirming that recommendation. There has been no evidence from the counsellor making that recommendation.

[25] Even if I were to accept Ms. [REDACTED] evidence of violence, about which I have some doubt, the evidence does not suggest that Mr. [REDACTED] was ever violent with the children or, in fact, in front of them.

[26] I reviewed Justice Griffin's decision in *F.K. v. M.K.*, 2010 BCSC 563 and the factors set out therein for consideration when making an order for supervised access. I refer specifically to paras. 145-149 of that decision. It helpfully summarizes the law. Both counsel have a copy of the decision. I accept those factors. In my view, supervision orders made, under s. 59(3) of the *Family Law Act*, S.B.C. 2011, c. 25 [Act], are made so as to serve the best interests of children, having regard to the considerations specified in the Act, and not for other purposes. This Court discourages long-time supervision orders, but they can be ordered in circumstances where the best interests of the children require it. I am not satisfied, on the record before me, that there is any need for supervision in this case.

[27] Children have the right to have the appropriate contact with both parents based on the factors in s. 37 of the Act. The relationship and attachment between [REDACTED] and his father does not require supervision, which creates an artificiality to his ongoing relationship with his father. There is no need, on the record before me, to protect [REDACTED] from either physical, sexual, or emotional abuse. In fact, Mr. McLeod's reliance on a sexual abuse case is misplaced.

[28] As a result, I order that Mr. [REDACTED] is entitled to parenting time with [REDACTED] every second weekend from Friday at 3 p.m., or the end of preschool, when he will pick [REDACTED] up at [REDACTED] preschool in Sooke, to Tuesday morning, when he will drop [REDACTED] off at preschool, and on alternate weekends from Saturday evening at 6 p.m. until Sunday at noon in order to allow Ms. [REDACTED] and [REDACTED] stepsister to have weekend time with [REDACTED]. Such further parenting time as to be agreed by the parties. ■

[29] There are to be no further applications until the parties attend a JCC, and I am hopeful that the parenting time can be rationalized.

[30] Although the matter of [REDACTED] was not before me, it may not be in her best interest for her to have no continuing relationship with Mr. [REDACTED] and his extended family in light of the history of her relationships with them. That is to be decided on another day, on a different evidentiary record.

[Discussion of location for pickup and drop off]

“MacNaughton J.”