

SUPREME COURT OF YUKON

Citation: *B.J.G. v. D.L.G.*, 2010 YKSC 55

Date: 20100917
Docket S.C. No.: 99-D3183
Registry: Whitehorse

BETWEEN:

B.J.G.

Plaintiff

AND:

D.L.G.

Defendant

Before: Mr. Justice E.W. Stach

Appearances:
Kathleen Kinchen
D.L.G.

Counsel for the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] STACH J. (Oral): This is an application brought by B.J.R., formerly G. In her application made on short notice, she seeks an order of this Court that K.L.G., a child of the marriage between B.J.R. and D.L.G., be returned to her care immediately. Additionally, she seeks an order specifying that the return date for the child each week be on Friday at 3:30 p.m. She seeks the assistance of the RCMP through an order of the Court, should such assistance be necessary to effect the return of her son. She asks, finally, that the respondent D.G. be found in contempt of a court order and she seeks costs on a solicitor and client scale.

[2] I note at the outset that this is not an application for variation. It is a summary application to enforce a custody order made by this Court on June 25, 2010, as recently as two and one half months ago. The result of that hearing was a decision by the Court to continue the sole custody of the mother and to provide for access on a week on, week off basis. This application is inspired by the fact that her son was not returned to her as agreed on the 12th of September, 2010.

[3] In his submissions made personally to the Court today, D.G. says that he is merely abiding by the wishes of his son, who does not want to return to the home of his mother. D.G. appears content to permit K. to make that decision. In my view, it is fundamentally wrong for D.G. to take that position. By simply allowing his son to decide in respect of a serious matter is, in my view, not responsible parenting. To permit that in the face of a court order, deliberately and recently made, is simply not on.

[4] There are grounds to believe in this case that D.G. may well be embarking on a process of alienation of the affections between himself and the child's mother. The material is too scant for this Court to draw any firm conclusion about that, but I am mindful of the findings of other judges when the matter previously came before the Court. There is an indication of disrespectfulness and abusive behaviour on the part of D.L.G. towards B.J.R., and although D.G. denies that his own application for full time custody of K. that he made in June was not motivated for financial reasons, that proposition by Mr. G. is gainsaid by the finding of Madam Justice Martinson.

[5] Among other things, the applicant seeks a contempt order. I decline to make that order. A finding of contempt is a serious matter. It requires, among other things, that the

person against whom the contempt allegation is directed have the opportunity to engage counsel and to appear before the Court or otherwise to purge his contempt. The suddenness of this application does not permit Mr. G. either of those options. I do not dismiss the potential for a finding of contempt from the present conversation; rather, I cling to the view that Mr. G. should be given the opportunity to purge his contempt or otherwise to show why he should not be found in contempt. I therefore direct that D.L.G. appear before this Court on the 17th of November, either to purge his contempt or to show cause why he should not be held in contempt.

[6] In the event that there exists a sincere desire to alter the week on, week off access arrangement that exists by order recently made, it is open to D.L.G. to bring that application for variation. Should he elect to do so, it is open for him also to request that the Court appoint a child advocate. The findings that I make today and the directions I give are without prejudice to the right of Mr. G. to bring a variation application.

[7] Leave for the present application to be heard on short notice is hereby given to B.J.R. An order is to issue that K.L.G., born July 31, 1997, be returned to his mother's care by 3:30 p.m. Friday, September the 17th. I direct further that the time for changing homes in the week on, week off access order that continues in existence be varied to Friday of each week at 3:30 p.m. unless otherwise agreed by the parties in writing.

[8] I think it regrettable in the extreme, Mr. G., that the RCMP be involved in enforcing the custody order made by Madam Justice Martinson on June 25, 2010, and it is a situation that, in my opinion, ought scrupulously to be avoided, if it can be. But obeying court orders is important and, if necessary, and I hope sincerely it is not, I direct

that the RCMP assist in enforcing the terms of the order as requested.

[9] As to costs, it ought not to have been necessary, in my opinion, for K.'s mother to bring this summary application. Despite your denials, I have the impression that you have a far greater involvement in the background to this than you allege. I order costs in favour of the applicant, B.J.R. She shall have special costs of this application equal to the expense for legal fees that she entails in respect of this application.

[10] We will stand adjourned.

[11] MS. KINCHEN: Your Honour? Sir, could I ask one thing? Because Mr. G. isn't represented, I wonder if we could waive the need for him to approve the form of the order? We typically do that when it's someone that is a self rep. I'll draft the order and send it up to you, and then I will provide a filed copy to Mr. G.

[12] THE COURT: The order that I made is straightforward in its terms, so I think it fair that Mr. G. have the opportunity to review the draft that you prepare, but I do not think it is necessary that he approve it as to form.

[13] MS. KINCHEN: Okay. Thank you.

[14] THE COURT: Obviously, if there is some oversight, I assume it will be rectified. Thank you.

STACH J.