

SUPREME COURT OF YUKON

Citation: *RKK v BMM*, 2017 YKSC 18

Date: 20170301
S.C. No.: 08-B0053
Registry: Whitehorse

BETWEEN:

R. K. K.

PLAINTIFF

AND

B. M. M. and
R. S.

DEFENDANTS

Before Mr. Justice L.F. Gower

Appearances:

Debbie P. Hoffman (by telephone)

Joni Ellerton

André Roothman

Counsel for the Plaintiff

Counsel for the Defendant, B.M.M.

REASONS FOR JUDGMENT

[1] GOWER J. (Oral): The real issue here, referring to Mr. Roothman's letter of February 13, 2017, is Item 1, namely, whether M. should be given the opportunity to express his agreement or disagreement about going on the trip to Europe this summer.

Time is of the essence.

[2] The other two issues, regarding minimal school-time loss and the itinerary, will be handled by Mr. K. in due course once he makes the final bookings.

[3] M. is a 14-year-old boy with autism. As I have indicated to Mr. Roothman, there is really little or no evidence, one way or the other, as to how much he knows about

what the trip to Europe is going to involve, where he is going to be travelling, the countries that he is going to be in, the languages that he is going to be exposed to, the cultures, the scenery, the historic sites, and so on. We simply do not know what he has knowledge about, in terms of whether this is something that would be appealing to him or not, and that includes the various activities that I expect the family will be wanting to pursue.

[4] The fundamental problem that I have with Ms. M.'s position is that it does not seem reasonable to me to expect M. to give any kind of informed consent about whether he should make the trip to Europe or not. Therefore, the idea of putting that option to him and effectively giving him a veto about whether he travels with the rest of the family is not reasonable.

[5] The other part of my reasoning is that I think it can be presumed to a large extent that this European trip would be beneficial to a 14-year-old, in terms of expanding his horizons, his experiences; it will include some French immersion time, and so on.

[6] It is not unreasonable to expect that the parents of a 14-year-old can make those kinds of decisions for a young teenager, whether M. is totally onside with it or not.

[7] Mr. Roothman has indicated to me that there seems to be some kind of risk that the imposition of this trip upon M. will cause him undue stress and that could have fallout for some time to come.

[8] In my view, with great respect, that position is largely speculative. There is simply no evidence before me, as Ms. Hoffman said, of any imminent dangers associated with this trip. There is no evidence that M. particularly fears this kind of travel. In fact, there is evidence to the contrary. He has travelled for lengthy periods in

airplanes and automobiles and boats and so on and so forth without any adverse consequences. There is no evidence that any particular harm could come to M. by participating in this vacation. There is no evidence that he will be missing any particularly valuable activities here in Whitehorse during that period of time. Hopefully, if all goes well, he will miss little or no school time.

[9] The reasons which have been provided by Ms. M. and the concerns that she raises through Mr. Roothman in his letter of February 13, 2017, in my view, simply are insufficient to justify a requirement that M. consent to the trip. On that basis, I am prepared to grant the order as set out in the Notice of Application.

[DISCUSSIONS]

[10] The 2010 order may not have been clear, in terms of vacation times and overseas travel, but it was unclear for Ms. M. as much as it was for Mr. K. That puts the parties in a position of either negotiating a solution between themselves or one party having to come to court to seek the Court's direction. That is what has happened. I do not see that as an impediment to what would ordinarily be an order for double costs with an offer which has been rejected.

[11] The matter has been litigated. Mr. K. is the successful party. It did not have to be litigated. He was put in that position because a decision needs to be made so that he can make the bookings. I do not see that as a reason for denying double costs and I will grant Ms. Hoffman's request for that relief.

GOWER J.