

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

Citation: *Steinhagen v. Steinhagen*, 2004 YKSC 15

Date: 2004 02 11  
Docket No.: S.C.No.02-D3504  
Registry: Whitehorse

Between:

**GERALD STEINHAGEN**

Petitioner

And

**RONI-SUE STEINHAGEN**

Respondent

Appearances:

Christina Sutherland  
Debbie Hoffman

Counsel for the Petitioner  
Counsel for the Respondent

Before: Mr. Justice J.E. Richard

**REASONS FOR JUDGMENT**

[1] The parties to these proceedings are the parents of two happy, well-adjusted children, ages 11 and 6. The parents separated in January 2000. In May 2000 they signed a separation agreement, a document which dealt with division of matrimonial property and also with matters related to the children — custody, access and child support. In this proceeding under the *Divorce Act*, they now seek legal dissolution of their marriage and a formal custody order. They have been unable to reach agreement on the terms of the custody order.

[2] The parties were married in 1991. At the time of their separation in January 2000 they were living with their two daughters in the matrimonial home in downtown Whitehorse. Without assessing blame, I am satisfied that at the time of separation the marriage was an unhappy one. I am satisfied that it was the Respondent mother's

decision to separate, as she considered the marriage to be an unhappy one and at an end. I am also satisfied that it was the Petitioner father who decided that it was he who would remain in the matrimonial home with their two young daughters. The mother moved in with her own mother at the Takhini Trailer Court. Several months later she moved into a three-bedroom duplex with two other friends.

[3] In May 2000 the parties prepared and signed a separation agreement, apparently without benefit of legal counsel. The agreement provided, *inter alia*, that the father would purchase the mother's equity interest in the matrimonial home and assume responsibility for the outstanding mortgage loan. The agreement provided that both parents would continue to be joint guardians of the children. It was further agreed that the children would reside with the father at the matrimonial home from Monday to Saturday morning of each week, and at the home of the mother from Saturday to Monday morning. The mother agreed to pay \$600.00 per month to the father to assist with the maintenance of the children.

[4] Later in time, the parties verbally agreed to amend their agreement to provide that the children have more time with their mother, specifically a) every second weekend they would be with their mother from Friday evening (not just from Saturday) to Monday morning, b) statutory holidays, c) equal time, as agreed, during school summer vacation and d) weekday evenings, when the father's employment required him to be out of town. In addition, the parties, laudably, have from time to time made accommodations for each other for special events, out-of-town trips, parental illness, et cetera.

[5] The mother testified that since 2002 she has been asking the father to agree to a 50-50 shared custody arrangement. The father does not agree to such an arrangement. He says the present regime is working well for the children and should not be changed.

[6] The father is a pilot. He is presently employed with a local air carrier, and principally flies charter flights, especially medevacs. His present schedule is 10 days on, four days off. He does not work "regular" hours. On the first seven days of his 10 days on, he is "on call" — he must be available to be at the aircraft hangar on 30 minutes' notice. On average, he gets called out three to four times during the seven days. His gross income fluctuates depending on the amount of flying. In the last three calendar years he has earned \$63,745.00, \$62,256.00 and \$71,470.00 respectively.

[7] The mother works for the Yukon territorial government as a website administrator. Her hours of work are 8:30 a.m. to 4:30 p.m., Monday to Friday. Her annual income is approximately \$57,750.00.

[8] The mother has been involved in a relationship with a new partner since 2001. Since July 2003 she has lived with her partner in a three-bedroom home at Marsh Lake, a 30-45 minute drive from downtown Whitehorse. Her partner has similar employment with the Yukon territorial government, with a similar income.

[9] By all accounts each of the mother and father is a good parent to their two daughters. They agree that they should have joint custody of their children. Neither parent has any concerns about the parenting skills of the other, or the ability of the other to properly care for the girls. The evidence satisfies me that the parents have consciously taken steps to ensure that personal differences between them have not had a negative impact on the girls. I commend them for this.

[10] Yet, regrettably, they cannot agree on the details of ongoing care and custody of their children, and the scheduled contact by the children with each parent. The father's proposal is to maintain the status quo, i.e., the children's principal residence being with the father, and two and three-day weekends with the mother. The mother's proposal is for 50-50 shared parenting, with the children spending alternating seven-day weeks at each parent's residence.

[11] The father's residence is within a short distance of the day care centre, the children's school, and the children's regular babysitter. When the father is not working on a week day, he is able to pick up the younger daughter after morning kindergarten and he also tries to be at home when the older daughter returns home from school in the afternoon.

[12] Under the present arrangement the mother drives the children from Marsh Lake each Monday morning and drops them off at school on her way to work at 8:30 a.m. in downtown Whitehorse. She proposes doing so each weekday of the alternate weeks when the children would be residing with her, and she says the children do not mind the 50 kilometre drive to and from Marsh Lake.

[13] The Court, in granting a custody order requested by the parents, is bound by and guided by the provisions of s.16 of the *Divorce Act*. I refer specifically to subsections (8) and (10):

s.16(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

...

s.16(10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[14] In my view, each of the proposals being advanced, in general terms, satisfies the “best interests” and “maximum contact” requirements. There is not an easy and obvious determination to prefer one proposal over the other. The children will benefit from either proposal. There are advantages to each proposal.

[15] Under the present arrangement:

- a) the children will have the stability of one residence for the duration of the school year,
- b) the school and day care centre are a short distance from the father’s residence,
- c) the children are with their mother 30-40% of the time, including every weekend,
- d) the children are adjusted to the present workable regime.

[16] Under the one week/one week proposal:

- a) the children will have more contact with their mother, and equal contact with each parent,
- b) there will be no need for the children to be with a babysitter during the father’s ‘call-out’ situations, i.e., during the weeks the children are at Marsh Lake,
- c) the children will have a normal week (i.e., combination of school days/nights and weekends) with each parent in that parent’s home environment,

- d) as opposed to the present arrangement, the children will have scheduled weekends with their father, including on his days off.

[17] After much consideration, I am of the view that the alternating week proposal is more advantageous to the best interests of the children. It is not a quantum leap from the present arrangement. Yet it is more equitable and offers the children the opportunity of more contact with their mother during the school year. It is regular and predictable.

[18] I am satisfied on the evidence that the children can cope with the change to an alternating week arrangement.

[19] Although the alternating week arrangement is regular and predictable, it need not be rigid. As they have done in the past four years, these two parents can introduce *ad hoc* accommodations, changes, trade-offs, etc.

#### Child support

[20] As mentioned, the parties agreed in May 2000 that as the father would be primarily responsible for the children's maintenance, the mother would pay him \$600.00 per month in child support payments. The father testified that he realized at the time that this figure was less than the amount specified in the *Child Support Guidelines*, however, he was of the view that it was adequate to meet his then anticipated expenses in providing for the children. Under the present arrangement between the parties, the father takes responsibility for all of the children's regular needs and also pays the day care costs. Although he paid a subsidized rate a few years ago, he now pays \$475.00 per month as the basic fee for day care for the younger daughter. In addition, the father, in the past few years, has incurred \$3,500.00-\$4,500.00 per year in babysitting expenses.

[21] Under the present arrangement, the parties share 50%-50% of the cost of any extracurricular activities of the children.

[22] As there will now be a Court order pursuant to s.16 of the *Divorce Act* providing that the children will be with each parent 50% of the time, this brings into play the provisions of s.9 of the *Federal Child Support Guidelines*:

s.9 Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared custody arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[23] With respect to (b) there is no evidence presented to me at trial indicating that there will be increased costs as a result of the order directing alternating weeks with each parent.

[24] These two parents are, in general terms, in the same income bracket. The mother's income from her employment as a public servant is approximately \$58,000.00 per annum. The father's income has varied over the past three taxation years, but has averaged approximately \$66,000.00 per annum. The presumptive amount in accordance with the tables, is, respectively, \$802.00 and \$896.00, or a difference of \$94.00 per month.

[25] Within the circumstances I am required to take into account pursuant to subsection (c) of s.9, I note in particular that the mother (compared to the father who is the sole income-earner in his household) does not have the same level of household expenses in the residence at Marsh Lake where she will be caring for the children. It is her evidence that she shares equally with her common-law partner all mortgage payments and other household expenses.

[26] In these circumstances, on balance, I find, under s.9 of the *Federal Child Support Guidelines*, that it is fair and equitable that there be no amount of basic child support payable by or to either parent.

[27] I turn now to special and extraordinary expenses pursuant to s.7 of the Guidelines. The parties are already equally sharing the expenses of the children's extracurricular activities. This should obviously continue. In addition, in my view there ought to be an equal sharing of the day care expenses pursuant to s.7(1)(a) of the Guidelines. The mother agrees to be responsible for 50% of the day care expenses and expenses for extracurricular activities.

[28] Each parent will be responsible for “babysitting” costs incurred by that parent during that parent’s week of residential custody. The Court encourages the residential parent to call upon the non-residential parent to assist with any “babysitting” requirement when convenient.

Education fund:

[29] At the time of separation, the parents agreed that each would contribute \$50.00 per month into an education fund for the children. This trust fund is presently held in the name of the father only. I direct the parties to take the necessary steps to either a) put the trust fund into the name of both parents as joint trustees, or b) divide the existing trust fund into two equal funds, one in the name of each parent as trustee.

Summary:

[30] I hereby order

- a) a divorce of the spouses,
- b) the parties shall have joint custody of the children of the marriage,
- c) the children shall have their residence with each parent on an alternating week basis,
- d) the father’s income for purposes of the *Federal Child Support Guidelines* is determined to be \$66,000.00,
- e) the mother’s income for purposes of the *Federal Child Support Guidelines* is determined to be \$58,000.00,
- f) there will be no amount of basic child support payable by either parent pursuant to s.9 of the Guidelines,
- g) the parties shall equally share, pursuant to s.7 of the Guidelines,
  - i) day care expenses, and
  - ii) extraordinary expenses for extracurricular activities of the children,
- h) the name(s) of the trustee of the children’s education fund will be changed as directed.

[31] With respect to costs, I direct each counsel to provide written submissions to my attention *via* the Clerk of the Court within 20 days of the filing of these reasons.

J.E. Richard,  
J.S.C.