

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Thomson v. Thomson*,
2016 BCSC 904

Date: 20160516
Docket: 13-1275
Registry: Victoria

Between:

John Warrener Thomson

Claimant

And

Diane Ruth Loland Thomson

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment in Chambers

Counsel for the Claimant:

C.H. Tyhurst

Counsel for the Respondent:

K. Melbye

Place and Date of Trial/Hearing:

Victoria, B.C.
May 13, 2016

Place and Date of Judgment:

Victoria, B.C.
May 20, 2016

[1] I have before me an application of the claimant in which he seeks an order for the preparation of a Hear the Child Report under s. 211 of the *Family Law Act*, S.B.C. 2011, c. 25 [FLA], with respect to parenting arrangements for the child of these parties. The respondent has taken a preliminary objection to the application, stating that in the circumstances of this case, which I summarize below, I have no jurisdiction to grant the order sought because s. 211 requires a “companion application” addressing a family law dispute as defined in the *FLA*. The respondent alleges there is no “family law dispute” between the parties.

[2] Although not before me at the hearing of the claimant’s application on May 13, 2016, I have been advised of a pending application of the respondent scheduled for hearing in Victoria on May 30, 2016, in which the respondent seeks a cessation of the claimant’s parenting time with the child “until the claimant confirms in an affidavit that he will comply with the arbitration award of Eugene Raponi, Q.C. made March 10, 2014, going forward”.

[3] At the conclusion of the hearing on May 13, 2016, I advised the parties I would be issuing brief reasons on the application of the claimant so that my decision is available prior to the hearing of the respondent’s application scheduled for May 30, 2016. These are those reasons.

Background

[4] These parties have one child, Madeleine, who was born in March 2001 and is now 15 years of age.

[5] The parties separated in 2009 and never resumed cohabitation. Since that time, parenting issues have been forefront in their relationship. Two previous parenting reports were sought and obtained in 2010 and 2012 which reports were filed in this proceeding.

[6] Instead of proceeding through the courts, the parties entered into an agreement for mediation/arbitration with Eugene Raponi, Q.C. and the

mediation/arbitration proceeded over two days in the fall of 2014. Evidence at the arbitration included the two reports referred to above.

[7] Mr. Raponi, Q.C. issued his arbitration award on March 10, 2014, in which he awarded joint custody of Madeleine, who would continue to reside primarily with the respondent who would also “be primarily responsible for Madeleine’s care”.

Mr. Raponi, Q.C. allocated parental responsibilities between the parties and also granted generous parenting time to the claimant in a detailed schedule, a procedure for pick up and drop off and ordered communication between the parties be by email. The award was filed with the court under a requisition on March 19, 2014.

Relevant Provisions of the FLA

[8] Section 37(1) of the *FLA* requires a court in making an order respecting parenting arrangements or contact with a child to consider “the best interests of the child”. Under s. 37(2), in determining what may be in the best interests of a child, all of the child’s needs and circumstances must be considered, including “the child’s views, unless it would be inappropriate to consider them” under s. 37(2)(b).

[9] Section 211 of the *FLA* provides:

Orders respecting reports

211 (1) A court may appoint a person to assess, for the purposes of a proceeding under Part 4 [*Care of and Time with Children*], one or more of the following:

- a) the needs of a child in relation to a family law dispute;
- b) the views of a child in relation to a family law dispute;
- c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.

....

[10] Section 1 defines “family law dispute” as a dispute respecting a matter to which this Act relates, which would of course include an application respecting parenting arrangements.

The Current Circumstances

[11] Lengthy affidavits have been filed by both parties detailing allegations of past misconduct of the other.

[12] In the claimant's affidavits filed in this application, he deposes as to the strong and healthy relationship between him and Madeleine, a desire to spend more time with her, the controlling demeanour of the respondent in relation to parenting matters, the respondent shortening or denying periods of contact with Madeleine, and what he interprets as a rigid interpretation of the terms of the arbitration award by the respondent. The complaints of the claimant are many and most express his frustrations in dealing with the respondent on parenting issues.

[13] Attached to his affidavit of February 3, 2016, is a letter from Madeleine which includes a schedule that she would like to have for her parenting time with her father. The respondent has deposed that the letter from Madeleine was influenced if not suggested by her father.

[14] The respondent, for her part, has alleged several breaches on the part of the claimant relating to his parenting time with Madeleine. In the notice of application issued by the respondent she has sought a cessation of the claimant's parenting time and other relief including an order that the respondent's denial of parenting time to the claimant from October 1, 2015, to the present was not "wrongful" and other relief regarding conduct, communication and exchanges of the child.

Decision

[15] I am satisfied after a review of all of the evidence before me that there is currently a "family law dispute" between the parties, especially in light of the matters alleged and sought in the notice of application filed by the respondent. The respondent is seeking to cease parenting time for the claimant and to make other changes to the claimant's parenting time should his parenting time not be suspended. Section 211 of the *FLA* authorizes a report "for the purposes of a

proceeding under Part 4” of the *FLA* which relates to “Care of and Time with Children”. Such is obviously the case before me.

[16] Based upon the depositions of the parties relating to Madeleine’s maturity and intelligence together with her needs and circumstances, she is most capable of expressing her views regarding parenting time which is a factor for consideration of what may be in her best interests under s. 37 of the *FLA* and the court should hear her views.

[17] Accordingly, I order that a report be prepared under s. 211 of the *FLA* to be completed by an independent person from the Hear the Child Society. The cost of that report is to be shared equally by the parties.

[18] If the report is not available in sufficient time prior to the hearing currently scheduled for May 30, 2016, that application will be adjourned to a subsequent date depending on the availability of counsel and the parties.

[19] The claimant is entitled to his costs for this application, to be assessed on the basis of it being of ordinary difficulty.

“Jenkins J.”