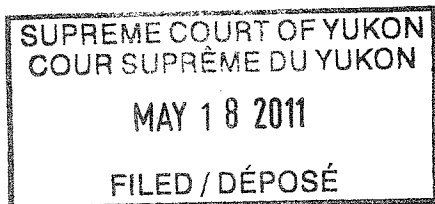


SUPREME COURT OF YUKON

Citation: *J.C.L. v. D.M.H.*, 2011 YKSC 44

Date: 20110427
Docket S.C. No.: 10-B0035
Registry: Whitehorse

BETWEEN:



J.C.L.

Plaintiff

AND:

D.M.H.

Defendant

Before: Mr. Justice L.F. Gower

Appearances:
Stephanie Schorr
D.M.H.

Appearing for the Plaintiff
Appearing on her own behalf

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): I have read all of the affidavits that were relevant to the two applications. I have not read every single e-mail, or transcribed phone call, or piece of correspondence line by line, but I have read enough to get a sense of what the problem is in this relationship, and that clearly is communication.

[2] Now, I am not so naïve as to think that in any high-conflict situation like this that all the blame lies with one party and not the other. It is only common sense that it generally takes two to tango, and I am not presuming that Mr. L., perhaps even his spouse, are blameless in any of this. Having said that, the communications that have been filed are evidence of things that Ms. H. has said and has written, have been

recorded over the telephone, in addition to things that Mr. L. says that she has said in his presence, to his face. I find it highly likely, in all of the circumstances, and for the reasons given by Ms. Schorr, that at least some of these abusive, vulgar, profane remarks coming from Ms. H. would have been made in the presence of this four-year-old child. To me, that says it all.

[3] Ms. H., number one, you have to understand that this is something that cannot be in the child's best interests. Number two, it also indicates that you have virtually no respect whatsoever for Mr. L. as a co-parent of this child. He is going to remain the co-parent of this child for as long as the child lives, and you are going to have to communicate with him on an ongoing basis until the child is living on her own. It is not going to happen if you communicate in the fashion that you have.

[4] I am highly surprised that you tell me that you have taken at least one level of the For the Sake of the Children. If you have, you are certainly not putting those skills to use. I have made a direction that you take the second level of that course, if you have not taken it. That is an order of the Court, and I expect you to comply with it. I would also strongly recommend that you engage in some form of counselling, because this is unacceptable behaviour, pure and simple. As I have said - I am repeating myself - it is not something that is in the child's best interests for her to overhear, nor is it in the child's best interest for you to be so antagonistic towards Mr. L. every time there is a problem that arises.

[5] Regarding the April 12th incident with the little bit of a half a tube of cream, I agree with Ms. Schorr, that whole incident was unnecessary, in my view, absolutely

unnecessary, and could have been resolved by a reasonable discussion with Mr. L., if you were upset about the fact that you had paid for the cream. Again, that kind of an example speaks volumes as to what is going on below the surface here.

[6] What you said to me today with respect to some of the financial issues, and some of these other things that have come up in the affidavits, what I see is an oppositional attitude to all of these issues that have arisen in the notice of application and in your cross-application. You make things unnecessarily complicated because you want to fight with Mr. L. about everything that you can fight about, and that has got to come to an end for the sake of P. This business about the income and whether they are comparable or not, whether it is \$5,000 difference or a couple of grand more or less, it seems to me that, clearly, the incomes have become comparable, given the overall circumstances, given what Justice Veale said when he made his ruling last August, and I read that decision.

[7] So I am persuaded for the reasons given by Ms. Schorr on this application that the following relief should be granted: Firstly, para. 2, I am referring to Mr. L.'s application filed April 14th, that will be effective February 1st, as indicated.

[8] With respect to para. 3, I will grant that relief with the following additional wording:

"The parties shall be able to leave the Yukon with P. during the regularly scheduled week that she resides with him or her, provided that 30 days notice in writing is given to the other party, and such plans do not disrupt P.'s attendance at school."

[9] THE DEFENDANT: So for three -- once a year, we take it out?

[10] THE COURT: Do you have any comment on that, Ms. Schorr?

[11] MS. SCHORR: Well, I think how it reads is that the parties shall be able to travel up to a three-week period - so that is more than their one week - once a year, and that during their one week, they can travel with notice. Right? So the three week is just an extended holiday, because right now they're limited to one week, one week, one week. And so if Mr. L. wants to go to Nova Scotia for three weeks, because it will take some travel time, once a year, he gets to go to Nova Scotia for three weeks, provided notice is provided, that's what I --

[12] THE COURT: And then the additional is just indicating that they can travel --

[13] MS. SCHORR: On their week.

[14] THE COURT: -- during their week.

[15] MS. SCHORR: Yes.

[16] THE COURT: Providing the notice is given.

[17] MS. SCHORR: Yes.

[18] THE COURT: So you are satisfied that that covers that off. All right.

[19] Continuing on with the conditions of the order, I am going to grant the relief in para. 4.

Paragraph 5 will read that, "P. shall spend up to three weeks during Christmas 2011 with the defendant," and rather than saying in California or Jamaica, I will insert the words, "who may travel outside of Canada with P.," and then continuing on with the previous wording in accordance with para. 3 above, "and thereafter P. shall spend alternate Christmas days with each party."

[20] I will grant the relief in paras. 6, 7, 8, and 9.

[21] Now, turning to Ms. H.'s notice of application filed April 26th.

[22] THE DEFENDANT: Yes.

[23] THE COURT: It is implicit that I have dismissed her relief sought in para. 1. Paragraph 2 is also dismissed. Paragraph 3 will be granted. I will leave the wording to Ms. Schorr, but it should generally state that the financial information required by the Child Support Guidelines shall be exchanged by the parties annually, no later than June 1st of each year.

[24] Paragraph 4 is dismissed because that matter was adjudicated by Justice Veale, and there was a previous agreement between the parties, as indicated by Ms. Schorr.

[25] Paragraph 5 will be ordered, such that the special or extraordinary expenses under s. 7 of the Child Support Guidelines shall be shared equally between the parties, providing that they are previously approved by both of the parties in writing. Paragraph 6 is dismissed. Paragraph 7 is agreed to by Mr. L., and will form part of the order.

[26] THE DEFENDANT: Your Honour, that means that that 5:30 thing would

no longer apply in his order, because then I won't be restricted, because they wanted me to be home at specific days between that time for him to call. So just as long as it's clarified that I don't have to be home, because I have a cellphone on my person, so wherever -- any time he calls, that I'm available for that time.

[27] MS. SCHORR: I think the order just reads, "The parties shall have daily telephone access." It doesn't say that she needs to be home.

[28] THE DEFENDANT: Between 5:30 and whatever.

[29] MS. SHORR: Yes.

[30] THE DEFENDANT: So they need to change the wording on that because --

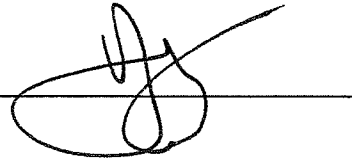
[31] THE COURT: What is the problem? I do not understand what the problem is.

[32] THE DEFENDANT: Okay. Never mind.

[33] THE COURT: All right. I am granting the relief in para. 7 of Ms. H.'s application, as well as paras. 8 and 10. Given the history of this matter and the attempts by Mr. L. to resolve it at not one but two family law case conferences, given what I have seen in the materials from and about Ms. H. and her oppositional attitude towards this conflict, I think it is entirely appropriate that special costs be awarded against her in a lump sum of \$1,000.

[34] Now, I am going to dispense with Ms. H.'s signature approving the form of the order, but I direct that it come up to me before it is issued.

GOWER J.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a vertical line and a horizontal stroke, positioned above a horizontal line.