

SUPREME COURT OF YUKON

Citation: *MB v RMM*, 2016 YKSC 36

Date: 20160802
S.C. No. 03-B0092
Registry: Whitehorse

Between:

MB

Respondent

And

RMM

Appellant

Before Mr. Justice R.S. Veale

Appearances:

MB

Appearing on her own behalf

RMM

Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the mother for an order permitting the parents' 13-year old daughter, B, to pursue a competitive gymnastics regime and that the father share in the additional expense in proportion to his income. The mother and father are self-represented.

[2] I did not appoint a lawyer for the child, but interviewed her with the consent of both parents.

[3] The mother supports her daughter's full pursuit of her gymnastic skills as being in her best interests to develop her self-worth and confidence. She fears that the denial of

this opportunity would be devastating for her daughter. It is undisputed that B is a very talented gymnast.

[4] The father opposes the application, not because he is opposed to his daughter's gymnastic training but because of his reduced time with her, the increased risk of injury and the increased costs. He supports her athleticism but not when it reaches the high competitive stage.

[5] The nub of the dispute is that the daughter trains in gymnastics for 12 hours a week but to be competitive on the national stage, she has to move to 16 hours a week.

BACKGROUND

[6] The parents had a short relationship and upon separating, they entered into a Consent Order dated August 19, 2004. They agreed to joint custody with primary residence to the mother.

[7] At a Judicial Settlement Conference in 2009, they verbally agreed to sharing equal residential time and have since done so without entering a formal order. The father has continued to pay child support.

[8] Ironically, it was the father who initially registered the daughter in recreational gymnastics, which required 2 hours per week in 2007 and 2008. Her hours were increased in 2009 to 4 hours per week. The gymnastics club recommended increasing her time to 6 hours per week but the father did not support this and did not allow B to continue training on his residential time. B continued to train on her mother's residential time. The father agreed to continue her competitive gymnastics in 2010 on his time as well but it became increasingly contentious each year.

[9] In 2015, the issue came to a head when the father objected to increasing B's gymnastic training from 12 to 16 hours per week. The father objected to B attending an upcoming competitive meet in January 2016.

[10] The issue has reached the point where B expressed the view that she did not want to live with her father anymore. The mother does not apply to change the residential arrangement but rather seeks a ruling on B's move from local competition to a national competitive level.

[11] I understand the mother's income to be \$62,000 and the father's to be \$105,000. They split special and extraordinary expenses on a 60-40 basis. The father indicates that he pays 60% of "all associated expenses brought to his attention but wishes a more equitable arrangement concerning out of town competitions when they occur during his residential time with B or unable to attend due to work conflicts or financial issues."

[12] The head coach of the gymnastics club testified and her evidence is helpful. She is a Level 3 certified national coach. She has worked with athletes competing at national championships and at a high-performance level. She reports that B has the motivation and skill to go to the national level. The national level typically involves 18 to 24 hours of training per week as a minimum. B is presently training 16 hours per week on her mother's time and 12 hours on her father's time. Her coach describes her 12-hour week as falling behind because she will not have the physical fitness level to do the routines required for the national level. B has had two injuries to her hands in the past and that is the reason that an increased fitness level is recommended.

[13] Her coach acknowledges the fact that gymnastics is a hard sport with injuries usually based on lack of preparedness and solid training.

[14] The coach herself trained 18 hours a week as a gymnast and was not at as high a level as B is. She acknowledged that participation in gymnastics at a national level takes passion, sacrifice and training and is not without risk. She also says that physiotherapy, massage and chiropractic services can assist in injury prevention.

[15] In cross-examination by the father, the coach stated that training 12 hours a week is risky and training 18 to 24 hours is really the standard. The father attended a recent Vancouver meet with B and the coach agreed that only 3 hours in the four-day trip were spent in active gymnastics competition. The coach said that there is a curfew for B when in competition and agrees it is important but sometimes difficult to enforce so she may get only 7 hours of sleep when 9 hours, which the father favours, would be preferable.

[16] The father challenged the coach over who should have the say when gymnastics was taking away from residential time for the father. The coach replied that B should decide if she wishes to value gymnastics over time with her father. I interject to note that if the application is granted, both parents will sacrifice the same amount of time with their daughter, on a weekly basis. A potential concern arises if the times for national competitions fall disproportionately in the residential time with one parent.

[17] The father raised the question of costs of competitions as the mother had estimated it was about \$1,000 for each trip out of Yukon after funding grants were deducted. The coach indicated that it depended on the location of the competition as well as funding. The mother indicated that there is a possibility of B getting increased funding as a high performance athlete if the matter is resolved in her favour.

[18] While it is not possible to be definitive about the September 2016 to June 2017 Gymnastics Competitive Calendar, it tentatively involves 7 competitive meets, some of which are described as parent travel required or parent travel optional. The meets are generally over weekends and fall on one parent or the other's weekend.

[19] My interview with her revealed that B is a well-motivated young athlete whose goal is to compete in gymnastics at the national level. She indicated that she does not have Olympic ambitions.

ISSUES

[20] There are two issues to consider:

1. Is the cost of competing at a national level an extraordinary expense?
2. Should the parents pay for the additional costs on a 60-40 basis?

ANALYSIS

[21] The starting point is s. 7 of the *Yukon Child Support Guidelines*:

7(1) In an order for child support, the court may, on either parent's request, provide for an amount to cover all or any portion of the following expenses which may be estimated, taking into account the necessity of the expenses in relation to the child's best interests and the reasonableness of the expenses in relation to the means of the parents and of the child, and if the parents cohabitated after the birth of the child, to the family's spending pattern prior to the separation

...

(f) extraordinary expenses for extracurricular activities.

(1.1) For the purposes of paragraphs (1)(d) and (f), "extraordinary expenses" means

(a) expenses that exceed those that the parent requesting an amount for extraordinary expenses can reasonably cover, taking into account that parent's income and the amount the parent would receive

under the applicable table or, if the court has determined that the table amount is inappropriate, the amount the court has otherwise determined is appropriate; or

...

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the parents in proportion to their respective incomes after deducting from the expense any contribution from the child.

[22] The first issue is to determine whether the expense of competing at a national level is an extraordinary expense.

[23] Based upon subsection (a) of the definition of extraordinary expenses, I estimate that the expenses for competitive gymnastics at the national level are approximately \$6,000 per annum after deducting the funding grants available. Considering this cost against the mother's income and child support, it is not an amount that the mother can reasonably cover. I also note that B is apparently the only child in the gymnastics club with the talent to compete nationally in gymnastics, making the expense extraordinary or unusual in an objective sense. I note that in *McLaughlin v McLaughlin* (1998), 113 B.C.A.C 224, the Court of Appeal also considered the combined income of the parents as a determining factor. However, this decision predates the amendment in 2005 adding the definition of extraordinary expenses to the Yukon Child Support Guidelines.

[24] Section 7(1) has two factors that should be addressed in considering the mother's request.

[25] The first is the necessity of the expense in relation to the child's best interests. Both parents have athletic backgrounds and I do not think it is a surprise to either that

their child is talented. Neither has raised the issue of a poor academic record. Their disagreement arises over the time commitment for B and the additional expense.

[26] In my view, the child has progressively moved from the recreational category to a high competitive category. She has diligently applied herself and made the sacrifices to get to this level, initially with the support of both parents. I have no doubt that her achievement and the ability to continue with her sport is in her best interests.

[27] I recognize that there are risks as there are in any sport like hockey or soccer at a high level of competition. The father is perhaps correct that a child does not appreciate the risks in the same way that an adult would. Having said that, competitive sports are generally not without risk. But in becoming competitive at a national level, it is just as risky for B to not have the 4 additional hours per week of training to reduce the risk of injury. One cannot discount the father's wish to have the additional 4 hours a week with B but the expense is nevertheless necessary in the context of her best interests. I also observe that it would not be in B's best interests to make a residential change when she needs the support of both parents.

[28] The second factor in s. 7(1) is the reasonableness of the expense in relationship to the means of the spouses and the child. I do not find the spending pattern prior to separation as relevant given the short relationship of the parents. The child is not in a position to contribute given that she is just entering high school. Considering the spouses joint income of \$167,000, the additional cost estimate of \$6,000 per year is a reasonable expense.

[29] In the result, I conclude that the extraordinary expense of competitive gymnastics is in the best interests of B and a reasonable expense, considering the grant funding

available to support Yukon high performance athletes and the incomes of the mother and father.

[30] I order that the estimated cost of \$6,000 be paid 60% by the father and 40% by the mother and that the mother continue her funding efforts. In the event that grant funding reduces the cost estimate, contributions are accordingly reduced. However, I also order that \$6,000 be a ceiling so that both the father and mother can plan their financial commitment. I have not addressed the issue of whose weekends are impacted by this decision and I ask the father and mother to be collaborative and compensate each other for lost residential time as a result of national travel. Should disputes arise, the parents may return to binding arbitration in Judicial Settlement Conference or Court.

[31] As both parents were self-represented and the time spent in court was scheduled to suit their employment, each party shall pay any costs incurred.

VEALE J.