

SUPREME COURT OF YUKON

Citation: *S.L.H. v. A.W.H.*, 2019 YKSC 1

Date: 20180920
S.C. No.: 18-D5076
Registry: Whitehorse

BETWEEN:

S.L.H.

PLAINTIFF

AND

A.W.H.

DEFENDANT

Before Mr. Justice B. Mahoney

Appearances:
Shaunagh Stikeman
A.W.H.

Counsel for the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] MAHONEY J. (Oral): The *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), does provide for the Court to make interim interim orders. This matter is going to be adjourned to an interim application at 10 a.m. on December 7, 2018, so, in the meantime, I am making this interim interim order.

[2] The preamble to the interim interim order will state: This order is without prejudice to either party and is not to be argued as confining a later order by the justice on December 7, 2018, in any way.

[3] The order will be prepared by Ms. Stikeman and sent to the Court for review, signature, and filing. A copy will then be sent to both parties.

[4] On an interim interim basis, the parenting arrangement will be as follows.

[5] For the first week, Mr. H. will have parenting time from Monday at 7:45 a.m., daycare drop-off, to 6:45 p.m. On Tuesday, the children will be in Ms. H.'s care. On Wednesday, Mr. H. will have parenting time from 7:45 a.m., daycare drop-off, to 6:45 p.m. On Thursday, the children will be in Ms. H.'s care. On Friday, the children will be dropped off at the daycare at 7:45 a.m. and picked up by Mr. H., who shall have them until Sunday at 5 p.m. When I say "daycare pick up at 6:45 p.m.", of course, whose ever day that is. They can pick up earlier if they wish.

[6] As we go through until November, the second week will be the same as the first.

[7] On the third week, allowing Ms. H. to have some weekend time, the parenting arrangement will be: pickup by Ms. H. at Friday daycare at 6:45 p.m. and then Ms. H. will have the weekend and will drop the children off at the daycare at 7:45 a.m. on Monday. That arrangement will be every third week until the matter is heard on December 7, 2018. The parenting time that I set up for the first week will be followed in the second week. The third week, Ms. H. will have that weekend time and then we go back to the first week and second week. Between now and the hearing on December 7, 2018, Mr. H. will have weekend time of his own; Ms. H. will have every third weekend, plus she has the time on Tuesday and Thursday.

[8] I am doing this because I cannot imagine that if this matter is going to be contested that any judge is going to order one day on/one day off, so the two of you are going to have to work out a more conventional arrangement; or, if you are coming to the

Court, the Court is going to set a more conventional arrangement because this is too hard on the children to be going back and forth. Even though that has been the status quo, it is obviously testing the stress level of both parents and the children.

[9] The Act provides that the Court make an order that maximizes the time that each parent is going to have with the children. However, to maximize that time, they have to take into consideration employment, childcare, and also the history of primary or secondary care of the children. There are a number of factors that go into this. This is not a sophisticated parenting plan that I am suggesting. What I am trying to do here between now and December is to relieve the stress on the children by trying to make something a little more stable and then give the parties either time to work out something on their own or have a judge do it in December.

[10] Moving on to the daycare costs, for the purposes of this interim interim order, Ms. H. will be designated the primary caregiver and apply for the subsidy. Mr. H. will pay one half the cost, after the subsidy is applied, on October 1, 2018, and November 1, 2018. The matter then will be dealt with on a more permanent basis when the interim application is heard on December 7, 2018. If this is what it takes to apply and receive the subsidy then, for the purposes of this interim interim order, you have that designation. That no way ties the hands and nor should it be argued that there is any more to it than that.

[11] The claim for rental income is put over to the hearing on December 7, 2018.

[12] The travel restrictions in the Yukon have been agreed to. That clause will be in the order.

[13] The vehicle arrangement is that Mr. H. will have the use of the F-150 and Ms. H. will, on a temporary basis, drive the Range Rover until further court order.

[14] There will be a case management conference at least two weeks before December 7, 2018.

[15] There will be financial disclosure by the parties no later than November 1, 2018.

[16] Ms. Stikeman, if you could send the letter again that sets out the requirements — Mr. H. may have that but just to make sure there is no confusion as to what both parties are being asked to provide — so there is no confusion, please resend the letter that contains the list of items to be produced.

[17] Costs of this application are that neither party is awarded costs.

[18] The matter is adjourned then to December 7, 2018.

[19] MS. STIKEMAN: Your Honour, may I ask a few questions, just to make sure that I can transcribe this order properly?

[20] THE COURT: Yes.

[21] MS. STIKEMAN: With respect to (1), the parenting schedule, did I hear correctly that the schedule for week 1 and week 2 are identical, and it's only week 3 that it changes?

[22] THE COURT: Right. Then it goes back to week 1 and week 2, and then week 3 it changes again. That starts on Monday, September 24, 2018.

[23] MS. STIKEMAN: With respect to daycare costs, Ms. H. is designated as the primary caregiver for the purpose of applying for subsidy and that Mr. H. is responsible for paying half the costs after the subsidy is applied?

[24] THE COURT: Yes.

[25] MS. STIKEMAN: I heard you say that that would apply for October and November. Given that the hearing isn't until December 7th and daycare fees are normally due the third of the month, can this apply for December as well? If the daycare is due December 3rd and we're not appearing before a judge again until December 7th, is it possible —

[26] THE COURT: Because you are going to be before a judge in December and if that arrangement should continue, then the judge can make it retroactive to the 1st of December. I know that puts a little bit of a complication in there but all I am trying to do is to make sure there is an arrangement until a judge makes a more fixed order on December 7, 2018. Should Mr. H. want to voluntarily pay for it on December 1, 2018, he can do so. It is likely there will be an order requiring some contribution towards daycare, but I am not ordering that for December, just October and November.

[27] MS. STIKEMAN: The last point of clarification, with respect to the vehicles, as I understand — if we could just clarify this import — currently, there are three car seats in the truck, to which you are assigning to Mr. H. The Range Rover currently has no car seats. They are sitting in the front hall of Mr. H.'s house. If we could have some kind of direction for Mr. H. to provide the car seats —

[28] THE COURT: Do you mean there are three in the truck and then there are more in the house?

[29] MS. STIKEMAN: There's three in the house that he has, to date, refused to install. It's my understanding they're in the front hall of the house.

[30] THE COURT: What about that, Mr. H.?

[31] MR. H.: We had initially agreed to share the costs on those three car seats and I was waiting to get the changes done to the Range Rover that needed to be made. We had agreed to pay 50 percent of the costs from the time of separation until the date in which she had left and which hasn't been paid, and that's about \$17,000 I've incurred. I'll gladly give up the car seats, once they're paid for — half of it is paid for.

[32] THE COURT: Well, they are paid for now. You mean you want to be compensated for half?

[33] MR. H.: Yes, please.

[34] THE COURT: Well, you can bring that up with the judge on December 7, 2018, but you are to turn the car seats over now or otherwise give up the Ford and let Ms. H. drive the pickup and you can drive the Range Rover. I am taking into consideration what you told me about your disability and using the truck. This may all be resolved later, but the children are going to need car seats for the Range Rover, so I would like you to immediately turn the Range Rover and the car seats over to Ms. H. and she can make arrangements to have the seats installed.

[35] MS. STIKEMAN: Just to confirm, the car seats, Mr. H. will provide them to Ms. H. by 4 o'clock today so that she — because today is her time to pick up the kids —

[36] THE COURT: Yes, today.

[37] MS. STIKEMAN: — and there are no car seats in that car currently.

[38] THE COURT: Yes.

[39] MS. STIKEMAN: Finally, the last direction was for myself to draft it and provide it to you for your review prior to seeking a signature from Mr. H.?

[40] THE COURT: I am not requiring a signature from Mr. H. I am asking you to draft it and I will review the terms. If I am satisfied they reflect what I have ordered, I will sign it, and it will be filed and sent back to both of you.

[41] MS. STIKEMAN: So you are dispensing with no requirement from signature from either myself or Mr. H.?

[42] THE COURT: Yes, I am.

[43] MS. STIKEMAN: Thank you.

MAHONEY J.