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Children's Act.

M. v. G., 2003 YKSC 41

Date: 20030626
Docket No.: S.C. 02-B0094
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

S. M. M.

Plaintiff

AND:

D. P.G.

Defendant

Debbie Hoffman

For the Plaintiff

Kathy Kinchen

For the Defendant

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH
(via teleconference)**

[1] RICHARD J. (Oral): First of all, by way of preliminary remarks, I just want to state that the Court's decision on this application is to be made in the interest of the child and not in the interest of the parents.

[2] The material before the Court on this application is very troubling to the Court. That material indicates that these two parents, and I say this as a group of two parents, are failing in their joint responsibilities as parents of a nine-year-old child.

[3] The sworn affidavits conflict with each other in many respects. In those affidavits the opposite parent is described invariably as manipulative, or controlling or uncooperative, et cetera. I reiterate to counsel and to the parties that most of the content of these affidavits are of very little value to the Court in these circumstances.

[4] It is clear to me, that as of today, and I stress here that this is many, many years after these two adults separated, they are unable to conduct themselves responsibly as parents on such issues as custody, access or child support.

[5] The end result is that the Court will decide these issues on an interim basis. I have heard submissions on behalf of the parties. The parties may not like some or all of the Court's interim order. However, the parties, as a group of two parents, should remind themselves that they are responsible for these matters having to come to court.

[6] I will be dealing with the notice of motion that is before the Court only. That is the notice of the motion filed April 1, 2003.

[7] I am not satisfied that there is any proper application before the Court to set aside the *ex parte* order of March 27, 2003. Even if there was a proper application or motion filed to that effect, I would be unable to deal with it on the conflicting material before the Court today, so the order of March 27th remains in effect. Also, I am not satisfied that there is any proper application before the Court for joint custody.

[8] So I will deal only with the notice of motion filed April 1, 2003, and that notice of motion seeks relief on the issues of child support, specified access for the father, and matters incidental to that specified access. I want to stress that this is an interim

order only based on the material before me, unsatisfactory as that material is.

[9] I will be directing the parties to proceed to trial without further delay on all outstanding issues between them regarding their son.

[10] On the specific matter of child support, I am going to be setting the mother's income at \$32,000 for purposes of child support guidelines. For the father, I am going to use his present income of \$4,013 per month of WCB benefits. I am going to be setting the father's income for the purposes of the child support guidelines at "X" dollars, which will be \$48,516 per annum, grossed up to account for the non-taxable characteristic of those WCB benefits. I will be directing that the father pay child support based on that grossed-up figure.

[11] I am going to direct counsel, and this will not be in the formal order, so counsel may make note of it, to make that grossed-up calculation. (I will just mention that this should not be difficult, any accountant can do it for you, it is something that they do all the time.) You just take the non-taxable income figure and they will give you back the payroll dollar figure. If the two of you cannot agree on that figure to insert in the formal order, then I am directing that each of you should send me a separate memo on the point within ten days. I will then decide what the grossed-up figure should be.

[12] So the formal order is as follows. The preamble to the order will relate to the notice of motion, the application before the court contained in the notice of motion filed April 1, 2003. The order is as follows:

Paragraph 1:

The amount of the mother's income for purposes of the child support

guidelines is determined to be \$32,000.

Paragraph 2:

The father's income for the purposes of the child support guidelines is determined to be "X" dollars (\$48,156 per annum grossed up to account for the non-taxable characteristic of his WCB benefits).

When I say, "X", counsel, I mean leave that blank and fill it in later.

Paragraph 3:

The father shall pay "Y" dollars child support on the first day of each month, commencing July 1, 2003 until further order of the court.

I will just say here that the "Y" dollars, that will be a corresponding figure from the child support guidelines chart after you determine the grossed up income.

Paragraph 4:

The request for retroactive child support, that is before July 1, 2003, is reserved for determination by the trial judge.

Paragraph 5:

The application for section 7, for proportionate payments of the extraordinary expenses, is dismissed, there being insufficient material before the court to grant such relief.

Paragraph 6:

The father is to have access, to the child D. as follows:

- (a) One continuous period of four weeks between July 14, 2003 and August 31, 2003, commencing on the Monday at 9:00 a.m. and ending on the Sunday at 7:00 p.m. The father is to notify the

mother through counsel on or before July 3, 2003, which four week period he selects.

- (b) Every second weekend, from 5:00 p.m., Friday to 7:00 p.m. Sunday, commencing Friday September 12, 2003.
- (c) The father is responsible for picking up the child at the mother's residence and delivering the child back to the mother's residence when exercising access.
- (d) The father is to provide the mother with one weeks notice if he does not intend to exercise access for a particular weekend. Again, via written communication between counsel.

Paragraph 7:

I direct the parties to take all steps necessary to proceed to trial without further delay on all outstanding issues between them regarding their son, D., so that a trial judge might have the benefit of *viva voce* evidence and make determinations which the parties themselves are unable to make.

Paragraph 8:

The costs of this application shall be costs in the cause.

[13] Now, counsel, I am ready for matters that need clarification for the court's formal order.

[14] MS. KINCHEN: My Lord, if I could just ask. So your order effectively --

[15] THE COURT: To whom am I speaking with?

[16] MS. KINCHEN: It's Ms. Kinchen, I'm sorry. Your order effectively then precludes the father from having any access until July 14th, at the earliest?

[17] THE COURT: I have considered that, yes. It is always open to the parties to arrange access outside of what the court orders. But I have considered the mother's request for access in that particular period in early July and so the father will have his one-half of the summer holiday with the child, and then he can specify alternate weekend access in the school year.

[18] MS. KINCHEN: In September.

[19] Would Your Lordship be open to considering access from -- perhaps for this weekend? That would not interfere with the July 1st. Given that Mr. G. hasn't had access for two weeks.

[20] MS. HOFFMAN: My Lord, Debbie Hoffman addressing the court. Ms. M. has just indicated to me that this weekend would be fine.

[21] THE COURT: All right. Then the parties can carry that out and I do not know if we are going to be in a position to issue the formal order before sometime next week, in any event. So I will leave that between the parties and counsel can document it.

[22] Anything else?

[23] MS. KINCHEN: I think that is everything, My Lord. Thank

you.

[24] MS. HOFFMAN:

Thank you, My Lord.

[25] THE COURT:

Thank you, counsel, and best of luck to the parents and we will close court.

RICHARD J.