Citation: ☼A.R. and B.R. v. M.W. and L.R. 2015 BCPC 0285

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IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

IN THE MATTER OF
THE *FAMILY LAW ACT*, S.B.C. 2011 c. 25

BETWEEN:

A.R. and B.R.

APPLICANTS

AND:

M.W. and L.R.

RESPONDENTS

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE E.M. RITCHIE

Appearing on their own behalf:	The Applicants
Counsel for Respondent M.W.:	M. Vilvang
Place of Hearing:	Abbotsford, B.C.
Date of Hearing:	September 10, 2015
Date of Judgment:	October 9, 2015

[1] The applicants, A.R. and B.R., brought this matter to court seeking specified, unsupervised contact with A.W., their four year old granddaughter. A.W.'s biological father, L.R., is the son of the applicants. He is not a guardian and has no parental responsibilities. He sees A.W. irregularly and pays no child support. The respondent, M.W., is A.W.'s mother and sole guardian.

[2] Specifically, the applicants are asking for unsupervised contact consisting of two days and one night every Friday and Saturday. In addition, the applicants seek additional contact on holidays and school breaks. The applicants want their contact schedule to be independent of L.R.'s contact.

[3] Difficulties have arisen about the applicants' contact with A.W. because of differences between the parties over what exposure, if any, A.W. should have to the applicants' religion. The applicants are devout Jehovah's Witnesses and they want A.W. to experience that religion. The applicants say that A.W. can decide when she is older whether or not she wishes to be baptized as a Jehovah's Witness. M.W. does not want A.R. involved in any religion at this time. M.W. says that A.W. can decide when she is older whether or not to participate in any religious practices.

Background

[4] The applicants located the respondent and A.W. approximately three weeks after A.W. was born. Before this, the parties had never met. The biological father had advised the applicants that he had fathered a child but he did not tell the applicants the respondent's name or address. The applicants and A.R. in particular, were and are determined that A.W. is part of their family.

[5] The respondent felt and continues to feel that it is important that A.W. has involvement with the applicants. The applicants initially visited with A.W. in the respondent's home. Within a short time the applicants were taking A.W. with them. Starting from when A.W. was very young, the applicants had contact with her for three days and two nights each week.

[6] At times the applicants have also looked after M.W.'s son on days when M.W. was working. There is no dispute that when M.W. returned to work, the applicants assisted with some daycare for both A.W. and her brother.

[7] There is some dispute over whether S.W. actually agreed to the timing and duration of the applicants' time with A.W. or whether the applicants dictated what would happen. This court does not have to make a determination on this issue and it is raised for the purpose of highlighting the different personalities at play. A.R. presents as a well-meaning, determined grandmother with strong views about what she wants and what she feels is best for A.W. She views many of the text messages sent to M.W. concerning visits with A.W. as requests even though the messages simply state the times that the grandparents will pick up and return A.W. M.W. does not like confrontation and did little, in the early years, to convey her concerns or feelings to the applicants.

[8] Another issue causing tension between the parties is the applicants' refusal to comply with M.W.'s wish that A.W. refer to the applicants as "Grandpa and Grandma" instead of "Poppa and Momma". When asked why she did not ask A.W. to call her "Grandma", A.R. answered "Why should I". It is not the court's role to make orders

concerning such issues but this court is concerned about the applicants' refusal to comply with reasonable requests from M.W. if they have a different point of view.

[9] The most contentious issue between the parties is over whether or not A.W. should continue to be exposed to the Jehovah's Witness faith and whether the applicants should be allowed to take her to services at the Kingdom Hall.

[10] From the time A.W. was a baby, the applicants took her to services at the Kingdom Hall. They did not ask the respondent for her permission. The respondent was not happy about the applicants taking A.W. to their church but she did not tell the applicants about her views at first.

[11] In December of 2013 the respondent told the applicants that she did not want A.W. attending services at the Kingdom Hall anymore. The timing of the applicants' contact was changed so that the applicants did not see A.W. on the days that they regularly attended services.

[12] In March 2014 the respondent learned from A.W. that A.R. had taken her to a service at Kingdom Hall. A.R.'s explanation for defying M.W.'s wishes was twofold. First, she stated that the then barely three year old A.W. had "begged to go to Kingdom Hall". Second, A.R. stated that M.W. never explained her reasons for not wanting A.W. to attend services at Kingdom Hall.

[13] AW told her mother about her attendance at Kingdom Hall. The following exchange of text messages then took place between M.W. and A.R.:

M.W: "Did you take [A.W.] to service yesterday?"

"?"

A.R.: "Sorry. My phone was on silent. Just saw ur txt."
You don't need to ask me. You can ask [A.W.] and she'll tell you."

M.W.: "She did tell me you did. And I don't appreciate you going behind my back after I had said I didn't want her going there anymore. So I'll be keeping her"

"this Sunday.

A.R. When u said that I did not agree with you. And she asked me to take her to the Kingdom Hall. She said she misses the Kingdom Hall.

[14] M.W. stopped allowing the applicants to see A.W. on Sundays as a result of them not respecting her wishes about A.W. attending services at the Kingdom Hall.

[15] In April of 2014 A.R. drove A.W. to the Kingdom Hall. Once again, M.W. learned of the A.R.'s actions from the child. Once again, A.R. justified her actions by saying that is what the child wanted.

[16] M.W. then advised the applicants that they could no longer have overnight visits and that future visits would be at M.W.'s home.

[17] The applicants did not react well to M.W.'s decisions. After both the March and April incidents A.R. sent texts to M.W. referring to the possibility that A.W. would "hate" M.W. when A.W. grew up. M.W. explained to the applicants that she, as A.W.'s mother, had the right to decide if and when A.W. was exposed to religious teachings. This explanation fell on deaf ears.

[18] The applicants began visiting A.W. at M.W.'s home at times agreed to between the parties. On one occasion when A.W.'s father was visiting the applicants showed up at M.W.'s house without any prior arrangement. This upset M.W.

[19] The applicants filed an application for specified unsupervised access.

[20] At this time, pursuant to an interim order, the applicants have contact with A.W. once a month at the respondent's home, supervised by the respondent.

[21] During one of these visits A.W. watched, at least for a short time, a Jehovah's Witness video on A.R.'s laptop. M.W. was not pleased that A.R. had once again ignored M.W.'s decision not to expose A.W. to religious teachings. A.R.'s explanation is that it was A.W. who pushed the play icon and that A.W.'s brother had taken the laptop away before A.R. could stop the video. A.R. testified that she was showing A.W. pictures of the times that A.W. was at the applicants' home. There was no explanation of why the video was open on the laptop so that all A.W. had to do was enter one command.

[22] L.R. was disfellowshipped from the Jehovah's Witness faith. He has little contact with the applicants. He testified that they want him to return to Jehovah and he does not believe in that. L.R. also testified that he understands M.W.'s position on the matters in dispute.

Discussion

[23] The *Family Law Act* (*FLA*), s. 40 states that only a guardian may have parental responsibilities. Under s. 41 of the *FLA,* parental responsibilities are listed and include making decisions respecting the child's religious and spiritual upbringing.

[24] The applicants argued that their rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*) are being violated because the *Charter* guarantees their rights to practice their religion. The applicants argue that the *Charter* gives them the right to express views on any topic, including religion, to A.W. when she is with them.

[25] This is not a *Charter* case. No one is questioning the applicants' right to practice their religion. This dispute arises from the applicants' refusal to accept that they have no say in the religious and spiritual upbringing of A.W. They are not guardians and they do not have any parental responsibilities.

[26] It is clear from the testimony of the applicants that they firmly believe that they know what is in the best interest of the child. In their submissions the applicants referred to various subsections of s. 37 (1) of the *FLA* which list a number of factors that I must consider when determining what is in the best interest of the child. I will not recount their entire submission but I have considered it. In summary, the applicants say they provide a good example of a solid marriage, that B.R. is a father figure to A.W., that they have had a strong relationship with A.W., that A.W. will lose her Filipino heritage if contact is cut or limited, and that A.W. will miss opportunities to travel and learn.

[27] The applicants say that if a court order forbids them from taking A.W. to the Kingdom Hall they will obey that order and that they would also obey an order not to initiate discussions on religion. The applicants were frank in conceding that it would be very hard, if not impossible, for them to comply with an order banning them from expressing their religious beliefs in response to questions from A.W.

[28] The applicants view M.W.'s decisions on A.W.'s exposure to the Jehovah's Witness faith as a reflection of her prejudice. They blame M.W. for causing confusion in the child's life and are convinced that M.W. is trying to punish them.

[29] The applicants are wrong to blame M.W. for the diminution in the time they spend with A.W. The applicants have knowingly defied M.W.'s wishes on several occasions. Their explanations include that unless they agree with M.W. they do not have to do as she wants and that they can ignore M.W.'s wishes if A.W., a very young child, expresses a contrary view.

[30] The applicants appear unwilling, and perhaps unable, to accept that they have no parenting responsibilities with respect to A.W. They lack insight into the consequences of their actions.

[31] A.W. is too young to express a view, let along make a decision with respect to what religion, if any, she will follow. She will be exposed to various points of view as she grows through her family, her friends, her schoolmates and the media.

Applicable Law

[32] I have already referred to sections 40 and 41 of the *FLA*. As stated, only guardians may have parental responsibilities including making decisions about the religious upbringing of a child. Section 37 confirms that in making an order for contact with a child the court must consider the best interest of the child.

[33] The applicants also referred to *Young v. Young* (1993) 49 R.F.L. (3d) 117 (S.C.C.). *Young v. Young* involved a dispute between a mother, who had full custody of

the children, and a father, who had access to the children. The mother and father were joint guardians of the children and disagreed over religion.

[34] In *C.T. v. J.T. and B.A.S,* 2007 BCPC 112, a case referred to by counsel for M.W., the Honourable Judge K.D. Skilnick dealt with an application by a grandparent for access to a grandchild. Judge Skilnick paraphrased *Young v. Young* on the applicable law regarding access at paragraph [27] as follows:

> 1. The power of the custodial parent is not a "right" granted by courts for the benefit of that parent. Instead, the child has a right to a parent who will look after his or her best interests.
>
> 2. The custodial parent [has] a duty to ensure, protect and promote the child's best interests. That duty includes the sole and primary responsibility to oversee all aspects of day-to-day life and long-term well-being, as well as major decisions with respect to education, religion, health and well-being.
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> 3. Child placement decisions should safeguard the child's need for continuity of relationships and should reflect the child's (not the adult's) sense of time. This need for continuity generally requires that the custodial parent have the autonomy to raise the child as he or she sees fit without interference with that authority by the non-custodian.
>
> 4. The right to access is limited in scope and is shaped and governed by the best interests of the child. The role of the party exercising access is that of a very interested observer, giving love and support to the child in the background.
>
> 5. The right to access and the circumstances in which it takes place must be perceived from the vantage point of the child. Wherever the relationship to the non-custodian conflicts with the best interests of the child, the furtherance and protection of the child's best interests must take priority over the desires and interests of the non-custodian.
>
> 6. As the ultimate goal of access is the continuation of a relationship which is of significance and support to the child, access must be crafted to preserve and promote that which is healthy and helpful in that relationship so that it may survive to achieve its purpose.

7. Sources of ongoing conflict which threaten to damage or prevent the continuation of a meaningful relationship should be removed or mitigated. While caution may be had about the vulnerability of access rights by abuse of authority by a vengeful custodial parent, courts should not be too quick to presume that the access concerns of the custodial parent are unrelated to the best interests of the child.

8. When disagreements between parents do reach the courts, the judge must always draw the line in favour of the best interests of the child, from a child-centred perspective. The best interests of the child cannot be equated with the mere absence of harm. Courts must attempt to balance such considerations as the age, physical and emotional constitution and psychology of both the child and his or her parents and the particular environment in which the child will live.

[35] In *Chapman v. Chapman* 1993 CanLII 2598 (BCSC), [1993] BCJ 316 (B.C.S.C.), Brenner J summarized the law pertaining to grandparent access at paragraph 24 as follows:

1. The onus is on the applicant to demonstrate that the proposed access is in the child's best interests.

2. The custodial parent has a significant role. The courts should be reluctant to interfere with a custodial parent's decision and should do so only if satisfied that it is in the child's best interests.

3. It is not in the best interests of a child to be placed into circumstances of real conflict between the custodial parent and a non-parent. While the court must be vigilant to prevent custodial parents from alleging imagined or hypothetical conflicts as a basis for denying access to non-parents, in cases of real conflict and hostility, the child's best interests will rarely, if ever, be well served by granting access.

[36] Counsel for M.W. also referred to *T. v. D.*, 2007 BCPC 282 (CanLII) which is another case involving an application for access by grandparents to a child.

[37] All of the cases referred to pre-date the enactment of the *FLA*. Under the *FLA*, what was once referred to as access is now referred to as parenting time when referring

to a guardian and contact when referring to a non-guardian. We no longer refer to the power of the custodial parent(s) to make decisions affecting the child. Instead we refer to parental responsibilities of the guardian(s).

[38] Despite the change in terms the law remains the same. Dealing with the issues before the court on this application, I note:

1. M.W. has a responsibility to look after the best interests of A.W. That responsibility includes making decisions about religion.

2. The court should not interfere with a guardian's decision about religion unless there is evidence, as opposed to simply a different viewpoint, that the guardian's decision about religion is not in A.W.'s best interest.

3. Where the guardian has made a reasonable decision about the A.W.'s exposure to religion, the court should not interfere with that decision regardless of whether that decision reflects the views of the grandparents, society, or the court. The court's reluctance to interfere with M.W.'s decision on religion is neither an endorsement of her views nor a condemnation of the grandparents' views.

4. It is not in the best interests of A.W. to be placed into circumstances of real conflict between her mother and her paternal grandparents.

5. When there are two or more guardians sharing parental responsibilities who have differing religious views, the court will often support the child being exposed to each religion involved. However, when as in this case, the guardian(s) have a different religious view than a non-guardian, the court will respect the decision of the guardian(s).

6. It is in A.W.'s best interest to maintain contact with her grandparents provided that the conflict over religion does not undermine the parental decisions of M.W.

[39] Balancing all of the factors set out, and having considered all of the evidence presented, I am concerned that the applicants' demonstrated inability to respect and comply with M.W.'s decisions on religion will continue to cause conflict. It is not in A.W.'s best interests to be exposed to that conflict.

[40] There are many people with strongly held religious views that do not discuss those views in front of others, and specifically not in front of other people's children. As noted above, the applicants do not appear to be capable of not exposing A.W. to their religious beliefs. Unless and until the applicants satisfy M.W. or the court that they can respect and comply with M.W.'s parental decisions on religion, their time with A.W. must be supervised and limited.

[41] M.W. has two small children and works full time. She is willing to continue to supervise one visit per month between the applicants and A.W. at her home.

[42] I find that it is in A.W.'s best interest to maintain the status quo of one supervised contact visit with the applicants on the first Monday of every month for one hour. That contact time will take place at M.W.'s home and be supervised by her unless the parties agree otherwise. In addition, the parties can agree to additional contact time between them but I am not making an order that either party has to agree to additional contact.

E.M. RITCHIE
Provincial Court Judge