Date: 20040915
Docket: F992454
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Mr. Justice Cole
Pronounced in Chambers
September 15, 2004

Between:

Ruth Sealy

Plaintiff

and:

Antony Wayne Sealy also known as
Wayne Antony Sealy

Defendant

Counsel for Plaintiff O. Wong

Counsel for Defendant C. Linde

[1] **THE COURT:** The defendant father of Asia Lauren born May 31, 1992 and Yazmin born September 5, 1996 applies for an order to vary the order of Mr. Justice Burnyeat of February 1, 2001 to include access on the Friday or Monday if it is a school holiday, that the pick-up and the drop-off of the children be in Seattle and that the defendant's mother Yvonne Sealy or aunt, Rosalyn Saito, be able to exercise access if

the defendant is unable to do so and that access not be supervised.

[2] The plaintiff mother applies for an order that access, as ordered by Mr. Justice Williamson of March 14, 2003, be continued, the defendant's access be supervised and he be prohibited from discussing or interrogating the children and that the children be picked up and delivered at McDonald's restaurant on Scott Road in Surrey.

[3] On February 1, 2001, a divorce was granted with a consent order that the plaintiff have sole custody and that there be joint guardianship with access on alternative weekends from Friday at 5 p.m. to Sunday at 7 p.m. on 24 hours notice and alternative Wednesdays from 2:30 p.m. to 7:00 p.m. school nights to Thursday at 7:00 p.m. on non-school nights.

[4] The plaintiff became concerned about the sexual misconduct of the plaintiff and access was withheld. She applied for and was granted an *ex parte* order by Loo J. on January 2, 2003 who ordered supervised access until the matter was resolved by the Ministry of Child and Family Services.

[5] On August 22, 2003, the defendant applied to expand access but because of the plaintiff's concern about the defendant's alleged sexual abuse, the defendant consented to a

lie detector test that took place on September 13, 2003. He was found to be truthful. The plaintiff then insisted that he have supervised access until the police investigation was concluded in respect to the sexual abuse case.

[6] The parties agreed that there would be a psychological assessment to be prepared by Dr. Krywaniuk and on June 20, 2003, Dr. Krywaniuk found that there was no basis to curtail access or have it supervised.

[7] This matter came on before me in January 28, 2004, as the plaintiff was not satisfied with Dr. Krywaniuk's report and the parties agreed to have an assessment of the defendant prepared by Dr. Elterman to determine if the defendant posed a sexual risk to his daughter. Dr. Elterman found there was no evidence to suggest that the defendant was a high risk of abusing his children.

[8] The plaintiff was not satisfied with that report. She felt that the information the defendant provided was not complete and accurate. She sent a letter to Dr. Elterman outlining the specifics of her concern. He considered her representations and concluded that his opinion had not changed. Since that time there has been further evidence with respect to the conduct of the parties, more particularly the fact that the children had discussed with a counsellor their

feelings regarding the fighting between their parents. There was also an incident on August 1, 2004, where there was alleged screaming by the defendant and the upset of the children concerning their reluctance to see their father on an access visit.

[9] There is a great deal of conflicting evidence with respect to what actually happened on August 1, 2004.

[10] I find that the notes of the support counsellor are not of a great deal of assistance because of the children referring to their dad as either the defendant or the plaintiff's new spouse. What I am satisfied of is that both these parents need to have some counselling to deal with their own problems and learn to treat their former spouse in a civilized and respectful manner so these children have as normal an upbringing as possible under these very difficult circumstances.

[11] The primary concern is always the best interests of the children and I have had the opportunity to review all of the material and I am satisfied that it is in the best interests of these children that they have access to their father and that it is not necessary that that access be supervised.

[12] Access will continue as ordered by Judge Burnyeat with the proviso that if the Monday or Friday is a school holiday, that access will include those days. I am not satisfied that the pick-up or drop-off should be in Seattle. The plaintiff does not have a vehicle. She only earns $10,000 a year and I am satisfied that if the defendant is unable to exercise the access that can be exercised by Yvonne Sealy or Rosalyn Saito.

[13] I find no reason to restrict the access to British Columbia. The defendant can take the children to the United States. He will provide the address and phone number of where the children will be so the plaintiff can contact them. There will be unrestricted telephone access and there should be convenient times arranged between the parties for the children to be available for that telephone access.

[14] I therefore set aside the terms in Judge Williamson's order save and except as they are not inconsistent with the order I have made.

[15] I am not making a term of any future application for a variation of my order but I think counsel should be advised that they will most likely want to provide a detailed in-depth psychological assessment of their respective client and that they have demonstrated a sincere effort that both the parties have attempted to settle their difficulties by mediation.

Each of the parties should attend as a minimum the Parenting After Separation course.

[16] As the plaintiff will no doubt realize from my reasons for judgment, I am satisfied that the defendant does not pose a risk to these children. I am of the view that the children are now sufficiently old enough that they are aware of inappropriate touching and that supervision is not required but I think it is important for the plaintiff to realize that unless she gives up her deep-seeded belief that the defendant is molesting these children then it would be difficult for the father to have a meaningful relationship with his children. I am satisfied that the plaintiff encourages these children to see their father, that they will renew their relationship with him and if she fails to take appropriate action to encourage the relationship between the children and their father that may be a significant factor that will be dealt with at a later date.

[17] I have in the hearing of January 2003 expressed my concern about the defendant's family involving these children. I only say this and I make it part of the order that neither of these parents nor their relatives nor anyone who has relationship with these children will discuss with these children the court proceedings or interrogate the children in

respect of the other spouse and that they will both treat the other spouse as decent, caring parents and convey that message to the children.

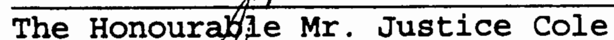
[18] MS. WONG: Just for clarification, your recommendation that they both take Parenting After Separation course, is that an order?

[19] THE COURT: That is an order as a minimum. That is an order. The rest is purely a suggestion.

[20] MS. WONG: And I'm sorry, I didn't quite hear with respect to Yvonne Sealy that if the defendant is unable to exercise --

[21] THE COURT: The grandmother can.

[22] I am not making an order for costs either way at this time. That matter can be spoken to down the road if necessary.



The Honourable Mr. Justice Cole