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Docket: E002279
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# IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Mr. Justice Cole
August 20, 2004

BETWEEN:

**SHELLEY-ANN AMELIA GUIMOND also known as**
**SHELLEY-ANN AMELIA WILSON-GUIMOND**

PLAINTIFF

AND:

**ADRIAN FORREST WILSON also known as**
**ADRIAN FORREST WILSON-GUIMOND**

DEFENDANT

Counsel for Plaintiff H. Cunningham

Counsel for Defendant C. Linde

[1] **THE COURT:** This is a family law proceeding under the ***Divorce Act*** and the ***Family Relations Act***. The plaintiff wife and the defendant husband, both 38 years of age at the time of trial, commenced living together in October of 1997. They were married on June 20th, 1998 and their daughter, Natasha, was born October 15th, 1998. They separated in May of 2000 but continued to live in the same house until October of that

year. The grounds of divorce have been made out and I grant a divorce.

[2] The other issues are that of custody, guardianship, access to Natasha, child support, extraordinary expenses and arrears of extraordinary expenses, spousal support and reapportionment of family assets.

[3] When the parties met in April of 1997, the plaintiff had a Bachelor of Arts degree from the University of Toronto and was working full-time to pay for a course in art therapy. She started courses in September of 1997 but when she moved in with the defendant, he wanted her to go to school full-time as he was capable of supporting her. She agreed.

[4] The parties had a good marriage up until the time that Natasha was born when according to the plaintiff, the defendant started to withdraw from the relationship. According to the plaintiff, he had minimal involvement with Natasha. He was only helping out with her after being encouraged to do so. That, however, was not the evidence of the defendant and the witnesses called on his behalf. Their evidence was that the defendant was always very much involved with Natasha considering the fact that he worked full-time.

[5] In October 2000, the defendant agreed to share the extraordinary expenses on the basis of 75/25. According to the plaintiff, he has not fulfilled that agreement and currently owes $1,262.74 for extraordinary expenses.

[6] With the assistance of a mediator, access for the defendant was agreed upon as two evenings per week from 4:00 p.m. until 7:00 p.m. and one day in the weekend from 9:00 a.m. until 7:00 p.m. In the summer of 2002, the access was increased to one evening per week and Friday from 4:00 p.m. until Saturday evening. When the overnight access was instituted, the plaintiff saw that Natasha appeared to be sad. Court applications were made for various periods of access. Most of those were contested by the plaintiff.

[7] On March 4, 2004, Master Donaldson, noting that the trial of the matter was set for two weeks in August, reviewed the history of the marriage and the difficulties with access and ordered that there be access alternative weekends for the following four weeks from Friday at 3:00 p.m. with pick-up at the school and returned to the plaintiff's residence on Sunday at 7:00 p.m. Following that four-week schedule the weekend access was to be extended to Monday at 8:30 a.m. with a delivery being to the day care. Tuesdays would be from

3:00 p.m. until 7:00p.m. the first four weeks and following that would be until 8:30 a.m. the following morning.

[8] The plaintiff's evidence was that since the further increased overnight access, Natasha has reverted to baby talk, sucking her hair and clothing. The plaintiff's concerns are not substantiated by the defendant or the witnesses called on his behalf. They see no change in Natasha other than she is happy to be with the defendant.

[9] Problems have arisen when there have been misunderstandings or mix ups in the dates of the drop off and pick-up for Natasha. The defendant has reverted on four occasions to involve the RCMP. The defendant has, without consultation with the plaintiff, allowed their daughter's pictures to be exhibited on the web site of a psychotherapist, Dr. Sabina.

[10] Approximately a year ago, Natasha asked her father why she could not spend more time with him and he told her to ask her mother. This involvement of the child is clearly inappropriate. Another occasion when the defendant told his daughter they were going to Creston, where his parents live, Natasha wondered why her mother would allow her to go and the defendant told her it was because they saw a judge. He told

her that her mother listens to the court and the police. Again, that conduct is inappropriate.

[11] I am satisfied that the plaintiff has been somewhat less than cooperative in dealing with the defendant. On one application before Master Donaldson he expressed the view that the plaintiff was not being reasonable. Shortly after Natasha was born, the defendant's aunt, Diana Bodvarson, who is a retired nurse, commenced baby-sitting two times a week while the plaintiff was attending school. Sometime in August 2000, the plaintiff and Diana got into an argument and the plaintiff cut off access to Natasha. Later on, Diana started to baby-sit again but that soon ended once Natasha commenced kindergarten. Diana describes a very close and loving relationship between the defendant and Natasha. She is also of the view that the plaintiff is a good mother.

[12] The plaintiff has also cut off communication with the defendant's mother whom she had a close relationship with. That arose as a result of the plaintiff being very critical of the defendant's mother for not supporting the plaintiff when she was opposing the original access to Creston for a Christmas vacation. Because of the litigation, the plaintiff was concerned that anything that she did or said would be

reported to the defendant and consequently the relationship with her mother-in-law has now become non-existent.

[13] A report from Dr. Krywniuk, a psychologist was filed in these proceedings and he was also subject to cross-examination for the plaintiff. He did not interview the infant child or any of the parties but worked from the assumed statement of facts which facts I am satisfied are reasonably accurate and the inconsistencies between the facts and the evidence tendered in court are so minor in nature that they would not have affected the doctor's opinion.

[14] His report dated September 4, 2003 includes as follows:

> Because the daughter had only limited regular overnight access, equal time should probably be implemented on a gradual basis. To at least some extent this should be guided by the reaction of the daughter though it will be important for both parents to support any decisions that are made so that the daughter understands that the goal is to increase access time with the father. I would not see this process extending much beyond six months or perhaps a year but the point of implementation should be chosen carefully, perhaps in conjunction with activities in which the child would become involved either on weekends or after school.

[15] Dr. Sabina, a psychotherapist counsellor, filed a report and gave evidence. He administered a test known as the Benny Anthony Family Relations Test on Natasha on August 23, 2003. The test indicated that Natasha had more ambivalence towards

her mother than her father and in Dr. Sabina's view the anxiety and anger of Natasha would continue to increase as she ages.

[16] At the time the tests were taken, the defendant had Natasha approximately 17 percent of the time and Dr. Sabina recommended that Natasha's father spend perhaps in excess of 60 percent of the time with the defendant in order to offset her sense of ambivalence and therefore anxiety and repressed anger. He also recommended more exposure to Aunt Diane.

[17] I have concluded, however, that very little weight should be given to Dr. Sabina's evidence. He has been the defendant's therapist since the winter of 2000. He has also been the therapist for the defendant and the plaintiff until some time in late 2000. The plaintiff discontinued counselling with him because she felt that the doctor was not professional. Furthermore, it was the defendant who brought Natasha to Dr. Sabina's office and the test was conducted when Natasha and her father could see each other although they were in different rooms. That in itself, in my view, may result in Natasha being more inclined to favour her father because of his potential immediate influence on her. Finally, I found Dr. Sabina was not forthright when being cross-examined. He was argumentative and in my view was not impartial.

[18] One of the witnesses that impressed me was David Epp who was the kindergarten teacher of Natasha. He described how the defendant, starting in around October, would attend school as a volunteer every Tuesday afternoon and he described the close relationship the defendant had with his daughter.

[19] One of the things that Mr. Epp does was to have a student of the week. When it became Natasha's turn she was asked to tell what her three wishes were. They were to go to school, see her father more often and school should be every day. When her mother saw this written on the blackboard, she was concerned it would end up in an affidavit and asked Mr. Epp that it be removed.

[20] On another occasion, at recess, Mr. Epp had a discussion with Natasha. She indicated that her mother and father were not getting along and she was concerned about them being together at school at the same time.

[21] At the opening of the trial both counsel agreed that there should be an order for joint custody and joint guardianship based on the Joyce model. The plaintiff wished to reduce the amount of access, the defendant wanted to increase access. At the close of the trial, however, the plaintiff argued that although she still agreed with joint

custody she should have sole guardianship, or in the alternative, she should have the right to make the final decisions if there is a disagreement. She changed her opinion, she says, mainly because the defendant allowed Natasha's picture to be put on Dr. Sabina's web site as one of his patients.

[22] She also believed the defendant lied about the number of times that the infant met with Dr. Sabina before the test was administered.

[23] While I am satisfied that Dr. Sabina's advertisement was misleading because he really never did treat Natasha, failure of the defendant to obtain the plaintiff's consent to have Natasha's picture used is not in itself sufficient reason to order sole guardianship. I do not accept that the defendant intentionally misled this Court as to the number of times he had taken his daughter to Dr. Sabina.

[24] Section 16(a) of the ***Divorce Act*** provides that:

> In making an order under this section the Court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

[25] Section 16(10) of the ***Divorce Act*** states:

> In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and for that purpose shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[26] With respect to Section 16(10) of the ***Divorce Act*** Chief Justice McLachlin in ***Young v. Young*** stated:

> By mentioning this factor Carmen has expressed his opinion that contact with each parent is valuable and the judge should ensure that this contact is maximized.

[27] You can take s. 24(1) of the ***Family Relations Act*** as being read.

[28] I am satisfied that based on the principles set out in the ***Divorce Act*** and ***Family Relations Act*** that what is in the best interests of Natasha is for an order for joint custody and joint guardianship. I would, however, modify the joint guardianship order that is referred to as the Master Joyce order as in my view there is no requirement for a custodial parent designation. Therefore when one party wishes to make a change in the existing arrangements that parent has an obligation to discuss the issue with the other parent in attempting to reach an agreement. If no agreement is reached then the parent proposing the change will have the obligation

to forthwith set the matter down for mediation and failing mediation set the matter down for court.

[29] The parties have agreed until further order agreement Ross Culver will be the mediator.

[30] I am satisfied that it is in Natasha's best interests to spend equal time with both parents and that should be done in a graduated basis. The difficulty in this case is not so much with Natasha but the parents. There is no doubt that both parents deeply love this child and that both of them are good parents. After this litigation is concluded, I am confident that the parents will reassess their attitudes towards each other, realize that they will always be involved with each other because of Natasha, and that it is in the best interests of Natasha that they put their differences aside and learn to cooperate by not putting the worst interpretation on everything the other party does or says and giving the other party the benefit of the doubt.

[31] In my view, the recent order of Master Donaldson should continue with the addition that if Friday or the Monday that the defendant has access is a school holiday or an in-service day then he will have the extra day with Natasha otherwise Christmas will be shared, the father having the first part of

Christmas this year from the time school is out until 12 noon Christmas day. The mother having access at noon Christmas day until the day school commences.

[32] Natasha's birthdays will be alternated with the father having Natasha's birthday on even number of years. There will be a provision for the respective parents to have their child for Father's day and Mother's Day with the appropriate arrangements being made if the day falls on a school day.

[33] The parties will alternate Easter with the father having Easter 2005 and each odd number year thereafter. Spring break will be alternated with the plaintiff having spring break in 2005 and each odd number of years thereafter.

[34] The parties have agreed that there will be an assessment by Dr. Carter, a psychologist, to determine whether or not Natasha needs psychological treatment. In order to fund that cost, the costs of the potential treatment, the parties have agreed that the monies that are left over from the sale of the matrimonial home which are in excess of $3,000 shall be set aside for that purpose. I order that they be held in trust account of the plaintiff's solicitor in an interest-bearing account until the monies are disbursed.

[35] The parties have also agreed that they will attend counselling to assist with their communication difficulties and learn to conduct themselves in a way that is beneficial to Natasha. The father presently has funding through his employer that provides for some counselling and the parties have agreed to commence counselling forthwith with Susan Gamache.

[36] I am satisfied, based on all the evidence that once Natasha is assessed by a psychologist and if treatment is required then that will proceed, and once the parents learn to communicate in a more effective and less emotionally, Natasha will be under less stress. Therefore, starting in January 2005, the commencement of school, access should be varied so that the child spend one week with each parent and therefore commencing the first part of January 2005 Natasha will spend one week with her father and one week with her mother. Pick-up will be Monday at school as will the drop-off. If Monday is a holiday, then it will be on the following Tuesday.

[37] When the child is not in school then the parent that has the child shall be responsible for dropping off the child at the other parent's residence at the normal pick-up and drop-off time that would occur if the child was, in fact, at school.

[38] The defendant has a guideline income of $44,000 and he will pay child support in the amount of $376 commencing September 1 and order that he provide to his wife 12 post-dated cheques. I am satisfied that he owes arrears for extraordinary expenses of $1,262.74 and there will be judgment in that amount.

[39] The extraordinary expenses that will be incurred are the after-school costs. Those costs will be paid for by the defendant until the plaintiff commences employment. The few hours that she now works per month I do not consider employment such as to warrant any division of that expense. When she does obtain employment then those expenses will be shared in the normal course.

[40] Spousal support. The plaintiff expects to obtain employment in September. However, this is problematic. She would need some assistance until she obtains full-time employment which I think should be within six to nine months. The plaintiff discloses an annual income of $600 per year with expenses of $29,000 per year. She is required to repay approximately $13,000 or $910 per year because monies were used through the Home Buyers' Plan. In addition, she has debts over $100,000 for student loans, $20,000 of that arising

during the marriage which she says some of which went into household expenses.

[41] The defendant's income is $45,792. He claims his expenses of some $71,515 per year and approximately 20 odd thousand dollars of that is interest on loans. He discloses debts of some $216,000. One of those debts he claims is advances on his expense account from the company that employs him. That is presently $77,000. That debt has increased from February 2002 from $35,000 to $77,000 in July 2004. There is no accounting for that debt. Part of the debt he says is for legal expenses but there are no particulars. He also has cashed in $20,000 RRSPs that must be repaid through the Home Buyers' Plan and he puts aside $150 per month for that purpose. The defendant had approximately $50,000 in RRSPs prior to the marriage, $20,000 of that went into the purchase of the home and the RRSP account stands at approximately $26,000 now. He also has a further RRSP through VanCity that was accumulated during the marriage. That is a value of approximately $13,000.

[42] I place very little weight on the financial disclosure of either the plaintiff or the defendant. Their expenses are so unrealistic and they lack documentation. I am satisfied however that on an interim basis the plaintiff is in need of

some support and that her needs must take priority to the payment of debt and I order the defendant pay to the plaintiff the sum of $275 per month commencing September 1 and that amount will be reviewed when the plaintiff obtains employment or at the end of one year whichever eventually occur first.

[43] The plaintiff will also be required to notify the defendant of any change of income and provide to him every two months, the names, addresses and phone numbers and copies of any correspondence in respect to the jobs she has applied for and any responses she has received from those job applications. Both parties will exchange income tax returns on May 1 of each year.

[44] Both these parties are insolvent. Counsel advise me that the student loans the plaintiff has are not subject to bankruptcy proceedings. In any event, the only real asset dispute is the defendant's RRSP with VanCity in the amount of $13,000.

[45] I have considered all of the factors under s. 65 of the ***Family Relations Act*** and the defendant has not satisfied me

that an equal division would be unfair and therefore I order the defendant transfer one half of his RRSPs to the plaintiff that he now holds with VanCity.

[46] There is presently a non-removal clause restricted to the Vancouver area. I do not see that that is required, however, if the child is to be taken out of the province of British Columbia, the other party must be given ample notice and particulars provided as to the itinerary including where the child can be contacted.

The Honourable Mr. Justice Cole