NOVA SCOTIA COURT OF APPEAL
Citation: *Turyk v. Lonergan*, 2014 NSCA 21

Date: 20140228
Docket: CA 412638
Registry: Halifax

Between:

Benjamin Anthony Turyk

Appellant

v.

Jillian Catherine Lonergan

Respondent

Judges:	MacDonald, C.J.N.S.; Saunders and Oland, JJ.A.
Appeal Heard:	February 19, 2014, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Saunders, J.A.; MacDonald, C.J.N.S. and Oland, J.A. concurring.
Counsel:	Appellant in person Sharon Cochrane for the respondent

Reasons for judgment:

Introduction

[1] Mr. Turyk, who is self-represented, appeals the decision of Family Court Judge Corrine Sparks rendered orally following a trial heard in Kentville. This matter is part of ongoing proceedings between the parties which generally concern care, custody, residence, access and financial support for their children.

[2] Mr. Turyk and Ms. Lonergan are the parents of two children, a son born May 25, 2008 in Alberta and a daughter born December 21, 2010 in Nova Scotia. The parents started living together in Alberta in June, 2007; separated in August, 2009; reconciled in early 2010; and subsequently separated in the fall of 2011.

[3] At trial Judge Sparks was faced with two "competing" applications. Ms. Lonergan's was first in time. She applied to vary an earlier order of the Family Court such that she would be given primary care of their two children with reduced contact and access by their father. Ms. Lonergan's stated objective was to maintain a more consistent and stable environment for the children and alleviate the frustration and emotional impact brought about by Mr. Turyk's insistence that he be allowed nightly access using Skype software linking him in Manitoba, to the children appearing on the respondent's IPad in Nova Scotia.

[4] Mr. Turyk applied to vary the order by securing primary care of the children for himself and moving the children to "reside primarily" with him in Manitoba. At trial various affidavits were filed and the appellant and the respondent and other witnesses were cross-examined.

[5] After considering the evidence and final submissions Judge Sparks gave an oral decision dismissing Mr. Turyk's application for primary care and permission to relocate the children to Manitoba. The judge allowed Ms. Lonergan's application for primary care with reduced parenting time and access by their father.

[6] In his Notice of Appeal Mr. Turyk lists 12 grounds of appeal which counsel for Ms. Lonergan has more conveniently framed and properly characterized as: alleged errors of fact; a failure to properly consider the appellant's evidence or

unfairly preferring Ms. Lonergan's evidence over his own; and allegations of bias on the part of Judge Sparks.

[7] After carefully considering the record and the parties' written and oral submissions I propose to deal summarily with Mr. Turyk's complaints. Largely for the reasons expressed by Ms. Cochrane in her comprehensive and compelling factum on behalf of the respondent, I am satisfied that Judge Sparks fairly and impartially considered all of the evidence; did not overlook or misconstrue any evidence; made strong findings of fact favouring the position advanced by Ms. Lonergan; and properly applied the law in arriving at a decision that addressed the needs and best interests of the children, and was fully supportable both in law and in fact.

[8] I will conclude by addressing the appellant's most serious allegation. He says the trial judge's conduct shows bias or at least the perception of bias in the manner in which she heard the case. While I can understand that some of the words exchanged between Judge Sparks and Mr. Turyk might, to his ears, have seemed sarcastic or left him with the sense that the judge was "against him" or was not treating the merits of the case impartially, I am satisfied that when those impugned words are considered in context they would properly be understood by a reasonable and duly informed observer to be little more than a judge exercising a firm but fair hand in effectively managing the case before her.

[9] Simply to illustrate, the transcript is replete with examples of the trial judge interjecting to instruct Mr. Turyk on the rules of evidence; or remind Mr. Turyk as a self-represented litigant why evidence had to be presented in proper form and in compliance with the Rules, or draw Mr. Turyk back to the issues in dispute; or remind him of the shortcomings in his proposed plan; or inform him that much of his evidence and arguments were scandalous and inflammatory; or cautioning him when he interrupted or "talked over" the judge's repeated efforts to offer guidance and more effectively deal with the pertinent issues during the trial.

[10] There are many demands upon judges who are called upon to fairly manage and decide difficult disputes in courtrooms across Canada, day in and day out. Particularly when people by choice or circumstance represent themselves before the court, how a judge guides and explains matters is important. Certain words, expressions or tones of voice can be interpreted differently than the judge intended. As a result, judges should, and do, strive to exercise a high standard for patience and civility.

[11] In conclusion, while some of the exchanges might well have sounded sharp or offensive to Mr. Turyk, they do not give rise to a reasonable apprehension of bias on the part of the judge when the context is considered as a whole. Put simply, I am not persuaded that a reasonable person, fully informed of the circumstances, would view any conduct or comments on the part of Judge Sparks as indicative of bias against Mr. Turyk. See for example, **R. v. S.(R.D.)**, [1997] 3 S.C.R. 484; **MacKay v. Murray**, 2006 NSCA 84; **Nova Scotia (Community Services) v. T.G.**, 2012 NSCA 43 and **C.B. v. T.M.**, 2013 NSCA 53.

[12] I think it is important to note that Judge Sparks continues to deal with these parties. She includes a stipulation in her orders that matters are adjourned, to be revisited by her after intervals of 4-5 months, so that she can maintain a supervisory role to address such ancillary matters as parenting time and child support. Other litigation involving these families continues unabated. At this appeal hearing we were told that there were two new motions to be considered in the Family Court, two days hence.

[13] Before concluding these reasons I wish to offer a suggestion which I hope will not be seen as little more than a gratuitous comment. Having listened to Mr. Turyk, and read the record of these proceedings, it seems obvious that both he and Ms. Lonergan are bright, articulate and respectful individuals who, despite their differences, are loving and devoted parents to their two children. Many of the irritants described by Mr. Turyk at the hearing in this Court would appear to involve impediments or limitations – whether real or perceived – to the exercise of access at reasonable times for both Mr. Turyk and his own parents so that his two children can continue to enjoy the bond they have with their Dad and their grandparents and may celebrate the wonderful traditions of their Ukrainian heritage.

[14] In cases like this, with parents and grandparents living thousands of miles apart, the strains and pressures of litigation often make it a poor vehicle for dispute resolution. One would hope that a measure of sensitivity and accommodation by and between both parents would go a long way towards arranging schedules that are fair, realistic and effective, having regard to the needs and best interests of these two children at this stage of their young lives.

[15] Often terms and conditions imposed by trial judges because the parties refuse to negotiate and find themselves embroiled in ongoing litigation, fail to produce a lasting and satisfactory solution. The parties dig in, people take sides,

factions develop and parents and relatives become consumed with things that really have little to do with the best interests of the children. Often parental alienation, on one side or the other, is the unfortunate result. Given these circumstances it may be that some sort of quick and timely mediation process would better serve this family so that Mr. Turyk and Ms. Lonergan might be encouraged to confer and work out a sensible plan, which would address each other's circumstances and achieve their ultimate objective as parents which is to do what is in the best interests of their children.

[16] I would dismiss the appeal and make no award as to costs.

Saunders, J.A.

Concurred in:

MacDonald, C.J.N.S.

Oland, J.A.