FAMILY COURT OF NOVA SCOTIA
Citation: E.L.M. v. J.M.A.M. 2013 NSFC 24

Date: July 18, 2013
Docket: FKMCA-087085
Registry: Kentville, Nova Scotia

Between:

E.L.M.

Applicant

v.

J.M.A.M.

Respondent

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Judge Marci Lin Melvin
Heard:	July 18, 2013 at Kentville, Nova Scotia
Written Decision:	August 13, 2013
Counsel:	Claire Levasseur, counsel for the Applicant J.M.A.M., not represented by counsel or present in Court

By the Court:

[1] This is an application made pursuant to Rule 19 (1)(e) of the ***Family Court of Nova Scotia Rules*** which states:

> (1) An application may be made *ex parte* where (pursuant to Rule 19.02 (1)(e)) the Court is satisfied that the delay caused by giving notice would or might entail serious mischief, or that notice is not necessary.

[2] The Court would be remiss not to recognize that notice being given to the Respondent, given the Affidavit evidence before the Court and the sworn testimony of the Applicant, would indeed cause serious mischief. In fact, the term "serious" mischief" does not even begin to contemplate the harm that could be done, should notice be given. This is perhaps the most heinous case of spousal abuse that I have heard. It is concerning on so very many levels, given the Applicant's evidence , and that she tried to leave the home 17 to 23 times and not being able to do so.

[3] The Court is concerned about the Applicant, even more concerned about the infant children that are being exposed to this violence and abuse, sometimes four times a week, sometimes more than four times a week. According to the evidence

of the Applicant, the Respondent threatened to kill her in front of the children four times a week, and his comments with respect to the children are noted in the Affidavit. According to the Applicant, "he hates them, cannot stand them, and does not want them" and she details other problems that she has encountered with him and his difficulties. In spite of all this, the Applicant even now tries to find a defence for him and to defend his actions.

[4] I found the Applicant to be a credible witness. I find she is fearful of the Respondent. Perhaps moving to Nova Scotia with the children was the only option she had available to her, given that her family is here and given that she has obviously great fear that she may be killed by her husband.

[5] The Court has great concern regarding the Applicant's evidence specifically of the Respondent's comments purportedly made at Christmas of 2012, where he told her that the worse thing he could do to her is not to kill her as he previously thought, but to kill the children and leave her alive, thereby taking the children away from her.

[6] Secondary to the issues that arise from this application in the best interests of the children is the issue of jurisdiction and whether or not Nova Scotia has jurisdiction. I have written considerably about jurisdiction and, as I noted to Ms. Levasseur, provided a reference sheet to counsel of all the aspects that the Court looks at when considering jurisdiction, based on a case decided by this Court: C.L.J. v. R.A.M., 2010 NSFC 5, Melvin, J.F.C.

[7] The first point a Court generally looks at is: Is the child ordinarily or habitually resident in the jurisdiction?

[8] The children have been here for approximately three months. One child is almost two and the other is three. It would be a stretch for the Court to say that they were ordinarily or habitually residents in the jurisdiction.

[9] However, I am going to go through the rest of the points and then I am going to come back to that.

[10] **Is the child present in the forum?**

[11] Both children are in Nova Scotia at this time.

[12] **Does the child have a real and substantial connection with the forum?**

[13] It would appear, given the evidence of the Applicant, that her mother and step-father are here. So the children do have a real and substantial connection with the forum.

[14] **Which province or jurisdiction is the most convenient forum?**

[15] I do not know. Certainly, given all of the other factors of spousal abuse and child abuse and the threat that he may murder the Applicant and the children, I am not so sure that that has a lot of weight.

[16] **Would the child be at risk if jurisdiction is not assumed?**

[17] The Court finds, given the evidence of the Applicant, that both children would be at extreme risk if Nova Scotia did not assume jurisdiction.

[18] **Where is the best evidence available?**

[19] The Applicant is here. She is quite capable of giving evidence, although it was very difficult for her. As she noted herself, she is articulate, if not fragile. But she got all of the information across.

[20] **Which venue allows for a full and sufficient inquiry of the issue?**

[21] Probably New Brunswick but, again, given the extreme seriousness of the allegations made by the Applicant, I am not sure that has sufficient weight for Nova Scotia not to take jurisdiction. I only say that because according to the Applicant's evidence, Child Welfare in New Brunswick have been involved. Her evidence is that a psychiatrist at [...] has been involved treating the Respondent, as have various other health care professionals. It is probably easier to access the evidence in New Brunswick through subpoenaing the witnesses but, again, I think it is a question of weight.

[22] **What is the status of the relationship between the parties?**

[23] The parties are separated. And if the allegations and evidence made by the Applicant are correct and I find, as I said, that she was a credible witness, I would hope that the parties would remain separated. Although that, I suppose, is *obiter*. Just a comment from the Court.

[24] **Has a party to the proceeding consented to the child being in another jurisdiction?**

[25] It would appear from the evidence of the Applicant that the Respondent did consent to the RCMP in New Brunswick that the children could remain in Nova Scotia with the Applicant and her parents. It is not a legal document before the Court but the Court accepts the evidence of the Applicant.

[26] **Has a party to the proceeding acquiesced in the child remaining in another jurisdiction?**

[27] There is no evidence of this, but neither has the Respondent filed an Application with this Court.

[28] **Is there any evidence of abduction by the Applicant of the children?**

[29] It is *ex parte* evidence. The Order, if the Court grants it, is based on her evidence and given the evidence before the Court, there is nothing to indicate that the children were abducted.

[30] **How much time has passed with the child being in another jurisdiction?**

[31] Approximately three months, according to the evidence of the Applicant.

[32] **What is the age of the child as it pertains to the child's familiarity with competing jurisdictions**?

[33] I do not think the age of the children matters at this point. They are two and three years old. According to the Applicant's evidence, C. is high functioning autistic. I do not suppose it matters to children that are two and three years old as long as they are with a parent that loves them, a parent who is kind and protective and keeps them safe, warm, happy and well fed. I do not think it matters what

house they live in or what town they live in as long as they have a parent that is going to protect them and take care of them.

[34] **Are there applications in both jurisdictions?**

[35] There is no evidence before the Court if there have been applications filed in any concurrent jurisdictions so as to avoid multiplicity of proceedings.

[36] **What are the wishes of the children?**

[37] This is something the Court is not able to take into account, given the ages of the children.

[38] **What was the intent of the parties, if any, with respect to the children, where the children would live and the impact on the best interests of the children?**

[39] I do not have any evidence as to what the Respondent's interests are or his intent would be.

[40] **And, of course, most importantly the Court has to determine what is in the best interest of the child, or the children in this case**.

[41] No matter what the other factors a Court must consider in determining jurisdiction, the best interests of the children trump everything else. In a situation where there is evidence of heinous abuse, both spousal abuse, and if not physical child abuse, then certainly psychological child abuse by the Respondent towards his children, the issue of jurisdiction must "take the back seat". Evidence of the possibility or potential of the Applicant and/or the children being murdered by the Respondent in a violent rage, certainly far outweighs any of the other factors that the Court has to consider when considering jurisdiction in this matter.

[42] So whether or not a child is habitually or ordinarily resident of a jurisdiction is not as important as a child's inherent safety and well being. In fact, it is not important at all.

[43] However, they have been here for three months. It is "home" to the Applicant. From her evidence, I believe she has only been living with the

Respondent for three or four years. And in spite of the limited time they have been in Nova Scotia, it is still familiar territory to the Applicant and she does have a support system here.

[44] It is not a legal maxim but rather a well known saying: "it takes a village to raise a child". And it is a global village these days. And so this Court takes a "global village" jurisdiction in this matter in the best interest of these children.

[45] The Court also finds pursuant to, as I noted earlier, Rule 19.02 (1)(e), that giving notice to the Respondent would absolutely cause or might cause or entail serious mischief.

[46] And so the Court, as well as granting the Order that Nova Scotia has jurisdiction in this matter, also finds that the criteria in the ***Family Court Rules*** 19.01(e) has been set out and met.

[47] The Court reserves the right to provide further reasons in writing in this decision.

[48] The Applicant will have full and sole care, custody and control of the children. That the Respondent will have no parenting time whatsoever until further Order of the Court. That the Respondent will pay child support for two children pursuant to the Nova Scotia Guidelines based on $60,862 commencing the 1st of August, 2013, and continuing on the first day of each month thereafter. If there is any issue with respect to retroactivity, the Court will look at that as well.

[49] The Respondent is to be served with a copy of the Order and of the Application.

AS EDITED BY THE COURT

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M. Melvin
A Judge of the Family Court
for the Province of Nova Scotia