

SUPREME COURT OF NOVA SCOTIA

Citation: *Pinkham v. Pinkham*, 2015 NSSC 289

Date: 2015-10-09

Docket: No. SATD-094321

1210-001256

Registry: Antigonish

Between:

Heather Dawn Pinkham

Petitioner

And

Jason Allister Pinkham

Respondent

Judge: The Honourable Justice N. M. (Nick) Scaravelli

Heard: October 1st, 2015, Antigonish, Nova Scotia

Counsel: *Louise Campbell, Q.C. for the Petitioner*

William F. Meehan for the Respondent

Orally By the Court:

[1] The respondent in this divorce proceeding, Mr. Pinkham, has filed an emergency motion on September 30th, 2015 following the unilateral move by the petitioner and their children from the matrimonial home in Guysborough County to Fall River in the Halifax Regional Municipality.

[2] By way of background, the petitioner and respondent were married on September 16, 2000. They have two children of the marriage, boys aged 14 years and 10 years and were residing in Coddles Harbour in Guysborough County.

[3] The parties separated September 26th, 2014 and on December 24th of that year the petitioner commenced divorce proceedings by way of Petition for Divorce.

[4] The respondent filed an Answer on March 6, 2015.

[5] The petitioner filed a motion for interim custody and support on April 9th, 2015. The parties appeared before Justice Wright on July 6th, 2015 and indicated there was a consent order providing for joint custody of the children to the parties with primary care to the petitioner.

[6] The respondent was to pay \$974 per month based on income of \$70,390. There was also agreement on blocks of access. The respondent Mr. Pinkham has been paying child support pursuant to the order.

[7] In August of 2015 the Petitioner moved with the children from Guysborough County to her parent's home in Fall River, HRM without the consent of the respondent. She apparently enrolled the children in school in HRM prior to her leaving and without the respondent's knowledge.

[8] Section 16(2) of the *Divorce Act* provides the court with jurisdiction on interim order relating to custody, to grant such an order upon terms and conditions as it sees fit. Pursuant to section 16(8) the court is to consider the best interests of the child by reference to the child's condition, means, needs, and other circumstances.

[9] Regarding interim proceedings in divorce actions, the status quo generally is the most important factor. The status quo refers to the status quo which existed prior to unilateral conduct of one parent unless it was against the best interests of the children.

[10] In this case the burden of proof would be on the petitioner as she seeks to displace the status quo.

[11] Factors to be considered in the best interests of children have often been referred to in the case of *Foley v. Foley*, a decision of Justice Goodfellow, [1993] N.S.J. No. 347.

[12] In terms of the presumptive status quo I refer to the case of *White v. White*, a decision of Justice Forgeron, [2013] NSSC 368. Counsel also referred the court to the Supreme Court of Canada decision *Gordon v. Goertz*, [1996] S.C.J. No. 52. This is a mobility case.

[13] In terms of the petitioner's reason for moving, considering the evidence overall, it appears to be more for personal reasons than it relates to the children. The petitioner stated the lack of financial support. She was living in the matrimonial home at the time. However, as a result of the interim application, she was receiving regular support for the children. The children of course had been living and attending school in Guysborough County where family are located and presumptively their friends.

[14] According to the affidavits on file and submissions of counsel, the petitioner was employed or had been employed or had employment available to her in Guysborough County.

[15] As indicated the petitioner moved to her parent's home and one of the children is residing in the basement. She is unemployed and there is no evidence of her prospects for employment.

[16] The affidavits acknowledge the children were not happy at the time of the initial move.

[17] The respondent Mr. Pinkham works for the Coast Guard, he is away two weeks per month. He has arranged to have his parents move into the matrimonial home when he is away in the event the children return. The respondent was making arrangements for an apartment elsewhere as a result of their interim arrangement. This was prior to the petitioner leaving the matrimonial home.

[18] In my view at this stage of the divorce proceedings, none of the factors set out in *Gordon v. Goertz* favor the petitioner's actions. There may be a change in the future, however, we are involved here in interim proceedings.

[19] I am not satisfied the petitioner has met the burden justifying the change of status quo of the children prior to the unilateral move from their home. There is no valid reason for the move as it relates to the best interests of the children at this stage of the proceedings.

[20] The petitioner has indicated through counsel that she would return to Guysborough in the matrimonial home if the children were ordered returned. This is what I am prepared to do.

[21] I would order the petitioner to return the children home to Guysborough County forthwith. The petitioner will also return the children's furniture. In the event the petitioner returns with the children to the matrimonial home the interim agreement and order will continue in force with the exception of adding a provision by way of variation that the petitioner is not to remove the children from Guysborough County without the consent of the respondent or court order.

[22] In the event the petitioner does not return the children to the home in Guysborough County, the interim order will be varied to provide joint custody to the petitioner and respondent with primary care to the respondent with access to the petitioner.

[23] In the event mobility becomes an issue in the final divorce hearing, the parties may wish to, this is not part of my order, but the parties may wish to have a Children's Wishes Assessment conducted. As I indicated we are only in interim proceedings at this stage.