

SUPREME COURT OF NOVA SCOTIA

Citation: Hurst v. Gill, 2009 NSSC 426

Date: 20090917

Docket: 1207-003211(059939)

Registry: Truro

Between:

Christine Hurst

Petitioner

v.

Christopher Gill

Respondent

Interim Decision

Judge: The Honourable Justice Cindy A. Bourgeois

Heard: September 14, 15, 16 & 17, 2009, in Truro, Nova Scotia

Oral Decision: September 17, 2009

Written Decision: June 30, 2010

Counsel: Mr. Bradford Yuill, Solicitor for the Petitioner
Mr. Patrick MacMillan, Solicitor for the Respondent

By the Court (Orally):

[1] Firstly, I want to address someone who is not a party to these proceedings. I want to address Michael Gillard. I am sorry that Michael Gillard has been brought into these proceedings because notwithstanding the fact that he is an adult and he has a child of his own, he is still very much a child of Mr. Gill and a step-child of Ms. Hurst. I believe he has been put in a very, very difficult situation. This family, regardless of what happens, is still a family, and I hope that none of the children, regardless of their ages, have to be brought into situations like this again. Both Ms. Hurst and Mr. Gill bear some responsibility for that. I wish Mr. Gillard luck with his daughter, Bridget.

[2] I want to address first the issue of the matrimonial home. I want to make it abundantly clear what my order is in relation to the matrimonial home. I do not want to find us in a situation twelve months from now with either party saying, “Justice Bourgeois did not mean this”, or “Justice Bourgeois did not mean that”, or putting an incorrect interpretation on what was intended by the Court.

[3] If a satisfactory agreement is not reached with Wendy Dobson for the sale of the property by September 30, 2009, at 4:30 p.m. that is signed by both parties, I

am directing that the matrimonial home be immediately listed for sale. I am satisfied, given the evidence that I have heard and his previous involvement, that the listing shall be with Mr. Bruce Berry. The listing price will be what Mr. Berry deems is reasonable in the circumstances and after his review of the property. He is to be given free access to the property and he is to be requested through one or both parties, or their Counsel, to take a series of current photographs of the inside and the outside of the matrimonial home and for that to be provided to both parties. He will need that for the purpose of preparing a listing and putting the house on MLS regardless. Until the home is sold, Mr. Gill is entitled to continue to occupy the matrimonial home. I am directing that Mr. Gill shall participate in the listing of the home, including signing the agreement. I do not intend that my words are interpreted to mean that he will “take steps.” He will list the home as I am directing. If either party refuses to sign the listing agreement, should it become necessary, then I am authorizing the other party to sign on the other’s behalf as their agent. Further, if the discussions with Wendy Dobson does not produce a sale, a reasonable closing date of October 30, 2009, then I am directing, after the property is listed for sale through Mr. Berry, the parties accept any offer of \$380,000.00 or higher. Again, if either party refuses to enter into an agreement for

any such offer, then the other may sign all documentation required to effect the sale on the other's behalf.

[4] I find it is not reasonable for Ms. Hurst to continue to have to pay the expenses of carrying this home indefinitely. There has to be a conclusion and there should have been a conclusion on that particular issue well before this point in time. I can certainly understand when families separate there may be emotional attachments to homes. This is a beautiful home. I have seen the photographs. I am impressed with the work that was done in that home by Mr. Gill. I do believe he did significantly contribute to the value of it. That being said, when circumstances change, a house cannot be the priority. The financial well-being of all members of the family has to be the priority. It is not reasonable for an executive home valued at \$375,000.00 or more to be carried indefinitely for a family composed of a mother, father and one child, regardless of where Kaitlyn goes to live.

[5] I want to turn now to Kaitlyn. She is the most important person. She is a 13 year old girl who is the subject matter of some very emotional conflict between her parents, her siblings and others who care about her. I want to make it clear that

I do believe that everyone genuinely cares about Kaitlyn. What people view as being in her best interest may differ, but I think the intent is, whether well placed or otherwise, to have things work out well for her.

[6] Before I talk about Kaitlyn's relationship with her parents I want to talk about Kaitlyn's relationship with her siblings. I have some direction with respect to that. I think it is reasonable for the Court to address the sibling relationships, especially after all we have heard about Nancy. We have heard about the fact there has been an earlier prohibition with respect to Nancy's contact with Kaitlyn made at an interim hearing before Justice Scanlan. He did subsequently order a parental capacity assessment and a psychological assessment. He was faced with affidavits, so he had some evidence. An interim application was made before a parental capacity was available to the Court. That assessment was ordered because the Court felt it was necessary to have that type of additional insight, presumably to see what was going on in this incredibly messy situation.

[7] Michael Gillard should have every opportunity to have free and liberal contact with his sister via telephone or otherwise. I am going to direct, and I believe Mr. Gillard will follow my direction in this regard, that he not talk to

Kaitlyn about anything relating to Court, her relationship with dad, her relationship with mom, or her relationship with Nancy. I am going to ask him to confine those comments and conversations with her to such things as: "Hey kiddo how's life going?", "Been on any great ski hills lately?" I want Ms. Hurst to take the lead in encouraging Kaitlyn to have that type of contact with her brother. I think it is appropriate, for at least the first several phone calls, that Ms. Hurst can listen in to ensure that there is no inappropriate conversation taking place. I am very hopeful that once Kaitlyn knows what the substance of Michael Gillard's conversations with her is going to be, things are going to improve. His sister needs him. He needs his sister. I say to Ms. Hurst, her daughter needs a big brother.

[8] I now want to turn to Nancy. She is another child who has been pulled into conflict and has suffered the results of that. I raise that and I have raised Michael's situation because I think it bears on what is in Kaitlyn's best interest. Kaitlyn's relationship with Nancy bears on Kaitlyn's best interests. I do not feel, based on the evidence that I have heard, that Nancy should be prohibited any further from having reasonable contact with her sister Kaitlyn. I viewed the photographs attached to the affidavits depicting Nancy. I can tell you in my previous life when I had a face book account, I have seen numerous similar photographs of young

ladies involved in social activities that I would probably not appreciate very much if I was their parent. However, I see nothing about those photographs that suggests to me that Nancy is an evil person, a bad person, or will be an improper influence on her 13 year old sister. That being said, I trust that Nancy would not engage in certain types of discussions with her sister and that her discussions will be age appropriate. To ensure that happens, again, I want Ms. Hurst to monitor any telephone calls or e-mail communications between Kaitlyn and her sister, Nancy. I understand Nancy is in Newfoundland. Should the content of those discussions be inappropriate, they are to be terminated. That includes any type of discussion about the court case, custody and most importantly Nancy's feelings about Mr. Gill. Kaitlyn does not need to hear it. She does not need to know about it. Nancy and her father's relationship is something separate from Kaitlyn. I believe that Ms. Hurst will follow my directions in that regard.

[9] I also feel that the recommendation made by Dr. Humphreys that Nancy have some counselling relating to her relationship with Kaitlyn is a solid recommendation. Nancy is 24. Again, she has had a difficult time. She has had some upheaval in her own life. In order to ensure that she understands how important it is that such does not wash over to her younger sister, before they start

having any type of unsupervised access with one another in person, I would direct that Nancy have the opportunity to speak with a counsellor about those types of issues. I would be satisfied that Lorraine Logan-Smith would be appropriate for such counselling, given that Ms. Logan Smith is aware of Kaitlyn's issues and the issues that have been dealt with herein. There will be a price to that, and I am going to ask Ms. Hurst to bear that cost as part of improving her daughter's circumstances and that of her step-daughter.

[10] I have absolutely no hesitation in saying that both parents involved in this situation have made some mistakes. Probably decisions that in hindsight could be termed as unfortunate, maybe even "dumb". Some of those decisions and mistakes have had some significant impact, not only on Kaitlyn but the ability of the parties themselves to move forward with resolution of the matters before the Court. Ms. Hurst has not responded and acted at the gold standard level of a parent in all instances. I find the same for Mr. Gill. No parents do. The insight of a parent as to the nature of their behaviour and the impact that it has, is key. It is not the fact that mistakes are made. It is the fact of how parents view those mistakes. More importantly, how do we go forward from here?

[11] Ms. Hurst is a busy professional. She is a busy mother. She juggles her clinic. She juggles her family obligations. When she was residing with Mr. Gill they juggled a circle of friends. She was busy.

[12] Mr. Gill has been busy as well. He worked at the clinic. He worked at home. He pursued his music career. He had a circle of friends and he also attended to family obligations.

[13] Both of these parties have been described as lovely people by those who know them socially, even gracious I believe I heard. I accept that. I accept that description. It is not how nice somebody is, how gregarious somebody is, how professional somebody may be in the conduction of their physiotherapy practice, or how unprofessional, that is the concern of the Court. It is the interaction of those two lovely, gracious people with each other as it impacts on Kaitlyn directly and indirectly which is of concern.

[14] I return to my earlier comment about insight and the importance of it. I find, based on the expert evidence and other evidence presented before the Court, and in particular Ms. Hurst's evidence, that she possesses a mature level of insight as to

how her conduct both past, present, and future, will impact on her child. I accept that she acknowledges that she has made decisions which in hindsight she may wish she would do differently if she could. She has not been the model of perfection. In particular, her sharing with Kaitlyn during the marriage of the difficulties that the family was going through and discussing with her that it may not be forever, is problematic. Again, in hindsight, it is easy for this Court to say that such should not have been done, but difficult for someone who has not been in that situation to say they would not, if in the same position do the same thing.

[15] I find, based on the evidence, both the expert evidence before the Court and the evidence of the parties, including Mr. Gill himself, and probably most importantly the evidence of Mr. Gill himself, that he lacks insight as to how his behaviour has impacted on Kaitlyn both in the past, present, and future. I accept and find, based on the evidence, that Mr. Gill has, as alleged, involved Kaitlyn in improper discussions regarding the marital concerns of her parents. This has been done as recently as September, earlier this month. That being done notwithstanding his receipt of reports from Dr. Humphreys and Lorraine Logan-Smith cautioning against the continuation of this type of behaviour and, in particular, the detriment that such would have to his daughter. I find this type of

conduct does, and has, caused emotional and psychological harm to Kaitlyn. It must stop. I am hopeful it will. I am satisfied that Mr. Gill has the ability and capacity to adequately care for Kaitlyn's physical needs. I am satisfied that she loves him. I am satisfied he loves her. I am satisfied that when they are together, in certain contexts, they enjoy each other's company and have a loving and close relationship. I am also satisfied, however, that Kaitlyn has expressed legitimate concern about having unsupervised access with her father when she feels that the circumstances may give rise to her, once again, being involved in discussions pertaining to issues involving her parents, be that reconciliation, custody, or other matters. Because of this trepidation on Kaitlyn's part she has expressed, and I find that she has done so and that it is legitimate, that she would prefer, at least at the present time, for her access with her father to be supervised by Mary Thompson.

[16] I recognize fully that the standard we work from is joint custody with both parents having unfettered and liberal access with the child. I always start from that presumption. I do not believe, at the present time, that such would be in the best interests of this child. I sincerely hope that the situation will move to that of joint parenting, because I believe that Kaitlyn needs her father. He certainly needs her and I believe he has a lot to offer to this child. I cannot, however, let that situation

exist until such time as Kaitlyn has a degree of comfort that she will not be put in a situation where she is having inappropriate conversations with her father. I am ordering at this time that Mr. Gill will continue to have access with Kaitlyn. That it is to be liberal. It is to be as often as it can be arranged. It can include overnight, but if Kaitlyn wishes for it to be supervised then it shall be supervised by Mary Thompson. The parties shall continue to bear the cost of that. I am hopeful at some point that this 13 year old girl will say, "Mom can I go to dad's tonight?" and mom will say, "Sure, are you taking your overnight bag?" We are not there yet. It is really up to Mr. Gill whether we get there.

[17] Again, based on the circumstances I do not believe this is a situation where these parties, at this time, can co-parent effectively as it relates to Kaitlyn. Because of that, I am ordering that Kaitlyn will be in the sole care of her mother, Ms. Hurst, with access as I have outlined to her father, Mr. Gill. That being said, I say to Ms. Hurst she has indicated that her only difficulty with Mr. Gill is his insistence on involving Kaitlyn in these types of inappropriate discussions and the resulting pressure that is put on the child. There is absolutely no reason why Mr. Gill should not know what is going on with Kaitlyn from an educational point of view and a social point of view. I would expect that he continue to receive ongoing

information in that regard, whether that is by way of copies of school information or being made aware of when there is parent/teacher interviews. He should know if there is a piano recital. Those are all things that he should know about so that he can actively participate in Kaitlyn's life and be an active participant. That does not mean that Mr. Gill can use an e-mail from Ms. Hurst advising him of that type of information, as an invitation to have further discussion with her. I am envisioning information only being passed along. I am hopeful these parents will get to the point where they can talk about making joint decisions about their child. That, however, takes two people who are willing to listen to the opposite view and recognize there is merit in what someone else has to say. Based on the evidence before me, I have concerns whether Mr. Gill has that ability at this particular point.

[18] With respect to child support, at the present time Mr. Gill is not employed. That is not a situation that can last indefinitely. I encourage Mr. Gill for his own well-being and mental health, he has a lot to offer, that he engage himself in the community in efforts, be it work, be it volunteer. Get out of that house and start doing things to help himself, in particular in obtaining employment. At this particular point I am not going to order child support. Although I am indicating

that is something the Court will be expecting Mr. Gill to contribute to in the reasonably near future based on employment efforts.

[19] Based on the submissions of counsel, I am not going to address spousal support at this particular point in time. Suffice it to say, unfortunately the situation is such that Ms. Hurst is going to have to continue paying the expenses of the matrimonial home pending a sale. She is the one with the income.

Notwithstanding the comments of counsel, I would not have been inclined to order any additional spousal support to Mr. Gill in the present circumstances given the expenditures that are being made to his benefit in support of the matrimonial home at this time.

[20] Because of the very positive exchange between Mr. Gill and Kaitlyn when supervised visits are in place, the submissions have been and I accept those submissions that Mr. Gill behaves appropriately when others are around, I see no reason why Mr. Gill would not be able to attend public events where Kaitlyn may be, such as when Kaitlyn may be in a play. I also do not see any reason why Mr. Gill may not be able to contact a teacher and inquire with respect to how Kaitlyn is doing in school. If those contacts become excessive or abusive the Court always

has the authority to rule contrary to that. Mr. Gill is not to be a stranger in his daughter's life. Mr. Gill needs to have the opportunity to assure Kaitlyn, not through his words but through his actions, that she need not have continuing concern about their interactions when they are alone. By attending events, that is one step for him to be able to do that.

[21] Any funds arising from a sale of the matrimonial home, should be held in trust. In light of the fact we know that the Revenue Canada judgment has been acknowledged to be a matrimonial debt, that should be paid. Regarding the Wickwire Holm judgment, funds equivalent to that judgment should be held back from the proceeds of sale until such time as it is determined how the other property divisions and the claim to the business will be dealt with. If Mr. Gill is successful in establishing that he has a claim to the business of some monetary amount, then it can be a tallying of those debts and credits to each party's respective benefit.

J.