SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Brewer v. Brewer, 2011 NSSC 154

Date: 20110419
Docket: 54530
Registry: Sydney

Between:

Lavinia and Percy Brewer
Applicants

v.

Vicki Brewer and John Reid
Respondents

Judge: The Honourable Justice Theresa M. Forgeron

Heard: February 22 and April 19, 2011, in Sydney , Nova Scotia

Oral Decision: April 19, 2011

Written Decision: April 27, 2011

Counsel: Lavinia and Percy Brewer, applicants, self-represented
Mark Gouthro, for the respondent, Vicki Brewer
John Reid, not appearing

By the Court:

I. INTRODUCTION

[1] Aaron is 14 years old. He lives with his grandparents, Percy and Lavinia Brewer, according to the terms of the 2008 court order. Aaron's mother, Vicki Brewer, was granted supervised access to Aaron, together with weekly telephone contact. The relationship between Vicki Brewer and Aaron has deteriorated since the last court order. Aaron is refusing all access. At the request of the parties, Dr. Landry completed an assessment and formulated recommendations for the court.

[2] A contested access hearing was held on February 21, 2011. Dr. Landry, Lavinia Brewer, Percy Brewer, and Vicki Brewer testified. Submissions were also provided, and the court adjourned its decision until today.

II. ISSUES

[3] The sole issue which I will determine is as follows:

> Should access be terminated, suspended, or enforced?

III. ANALYSIS

[4] *Position of Lavinia and Percy Brewer*

[5] Lavinia and Percy Brewer seek to terminate all access between Aaron and Ms. Brewer. They state that access is not in Aaron’s best interests at this time, and that access should not be reinstated until Ms. Brewer makes fundamental and lasting changes to her lifestyle. They submit that Ms. Brewer fails to appreciate the problems that her lifestyle caused, and will continue to cause Aaron. As a result, access has not been beneficial. To the contrary, access has been an ongoing negative experience for Aaron. Access should therefore be terminated.

[6] *Position of Vicki Brewer*

[7] Ms. Brewer accepts Dr. Landry’s recommendations, subject to one caveat. Ms. Brewer wants to have ongoing contact with Aaron while counselling and therapy are resumed. Ms. Brewer is concerned that she will lose Aaron permanently unless some form of access is ordered. Ms. Brewer blames Aaron's refusal to attend access on her parents. She believes that her parents have alienated Aaron against her. Ms. Brewer is hopeful that through therapy, her relationship with Aaron will improve, and a regular access regime initiated.

[8] *Legislation and Law*

[9] Before the court can change the access terms of the 2008 court order, a material change in circumstances must be proved pursuant s. 37(1) of the *Maintenance and Custody Act*. Further, in all access matters, I must apply the child’s best interests as outlined in s. 8 of the *Act*.

[10] In **Gordon v. Goertz** [1996] 2 S.C.R. 27, the Supreme Court of Canada discussed the meaning of a material change in circumstances. A material change can include a circumstance where something unexpected happens, or where something that was expected to happen, does not. A material change must be more than a minor or a temporary change; it must be of a substantial and continuing nature. The change must materially affect the child, or the ability of the parents to meet the best interests of the child. A material change occurs when a judge would likely have crafted a different order, had the new facts existed at the time the original order was made. The new facts could not have been reasonably contemplated or foreseen at the time the original order was made.

[11] In **C. (R.) v. McDougall** 2008 S.C.C. 53, Rothstein J. confirmed that there is only one standard of proof in civil cases - proof on a balance of probabilities. In all cases, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred. The evidence must always be clear, convincing, and cogent to satisfy the balance of probabilities test. Testimony must not be considered in isolation, but rather examined based upon its totality.

[12] Credibility plays a significant role when assessing the burden of proof. The court considers a number of factors when making credibility determinations. These were reviewed in **Baker-Warren v. Denault** 2009 N.S.S.C. 59, at paras 18-20, and have been considered by me in this decision.

[13] Our courts have consistently held that there is no absolute right to access, although the best interests of the child is generally promoted when a child has meaningful contact with both parents. A child is ordinarily entitled to share in the daily lives of his/her parents unless such is not in the child's best interests to do so. Access is the right of the child, and not of the parent. There is no presumption that contact with both parents is in the best interests of the child: **Young v. Young** (1993) 160 N.R. 1 (S.C.C.), and **Abdo v. Abdo** (1993), 126 N.S.R. (2d) 1 (C.A.).

[14] In **Abdo v. Abdo**, *supra*, the Nova Scotia Court of Appeal reviewed three legal principles relevant to the determination which I must make. They are as follows:

a. The right of the child to know and to be exposed to the influence of each parent is subordinate in principle to the best interests of the child.

b. The burden of proof lies with the party who alleges that access should be denied, although proof of harm need not be shown in keeping with the decision of **Young v. Young**, *supra*.

c. The court must be slow to extinguish access unless the evidence dictates that it is in the best interests of the child to do so.

[15] In considering the arguments advanced by the parties, I have considered the civil burden of proof, and the totality of the evidence. I have looked for clear, convincing, and cogent evidence. I have made specific credibility findings based upon the evidence, and in light of the civil burden of proof.

[16] *Decision*

[17] I find that a material change in circumstances has indeed occurred since the rendering of the last court order. Aaron steadfastly refuses access with his mother and wants no relationship with her. Further, Ms. Brewer has not continued with all of the therapy that was required. In particular, Ms. Brewer has not seen Dr.

Christians in over six months, and is only now connecting with Mr. Ron Gillis, the mental health practitioner suggested by Dr. Landry.

[18] I further find that it is in Aaron's best interests to incorporate the recommendations of Dr. Landry into the variation order. All access between Ms. Brewer and Aaron is suspended at this time, pending completion of the 2008 court ordered therapy. In reaching this conclusion, I make the following findings of fact:

a. Mr. and Mrs. Brewer did not alienate Aaron from his mother.

b. Mr. and Mrs. Brewer are not motivated by spite, bitterness, or ill-will. They are two dedicated grandparents who have entered the parental arena out of love for their grandson. Aaron needed to be protected from the chaos, insecurity, and instability that defined his life while he was living with his mother.

c. Mr. and Mrs. Brewer continue to offer comfort and care to Ms. Brewer despite all that has transpired. They purchase food, toiletries, and other creature comforts for Ms. Brewer. Further, Mr. Brewer continues to rescue Ms. Brewer from unsafe circumstances as was evidenced by his intervention during Christmas of 2010. Mr. and Mrs. Brewer do not persecute Ms. Brewer. Instead, they are parents who continue to love their daughter, but who are not unmindful of the very real problems that Ms. Brewer is experiencing.

d. I accept Dr. Landry's assessment that Mr. and Mrs. Brewer do not experience any mental health problems, nor significant psycho pathology. Neither have a substance abuse disorder. Neither will likely physically abuse a child in their care. Mr. and Mrs. Brewer are well-functioning adults who provide a loving and nurturing environment for Aaron.

e. In contrast, Ms. Brewer experiences much emotional distress, high levels of anxiety, and overwhelming feelings of depression. She has not developed a stable, adult identity. Ms. Brewer employs poor coping skills and reacts inappropriately to many of life's challenges. The SASSI screening indicates that Ms. Brewer likely has a substance abuse disorder. Ms. Brewer engages in maladaptive behaviours. Ms. Brewer experiences much conflict in her relationships because of her disorders and maladaptive coping strategies.

f. Ms. Brewer has limited insight into the causes and extent of her problems. As a result, she is unable to assume responsibility for her actions, but, rather assigns blame to others, especially her parents. Because of her lack of insight, Ms. Brewer is unable to effect permanent lifestyle changes. The instability, chaos, and confusion of her life continue to be played out, and exposes Aaron to ongoing harm, even in a supervised setting.

g. The harm is evidenced in Ms. Brewer's tendency to overwhelm Aaron physically and emotionally, and in front of his peers. As a result, Aaron becomes further entrenched in his negative feelings because of Ms. Brewer's actions. Aaron's anxiety, worry, and anger grow because of this, and the obvious fact that his mother's lifestyle has not improved to any extent.

h. Aaron is an articulate, mature, young man. He performs well academically, and is involved in sports. Aaron's discussions with Dr. Landry were spontaneous; they were not contrived or rehearsed. Aaron's wishes are deserving of respect.

I. Aaron's access has been a negative experience. Aaron has not received any benefit from access with his mother.

[19] Access is thus suspended at this time, pending Ms. Brewer' successful completion of psychotherapy, and participation in ongoing mental health support. Ms. Brewer must gain better insight into her problems; she must learn healthy coping skills. Dr. Christians, or such other psychiatrist, and other mental health professionals involved in Ms. Brewer's care, will be provided with a copy of this decision, order, and Dr. Landry's assessment to assist in the therapeutic process. Hopefully through therapy and counselling, Ms. Brewer will make the necessary lifestyle changes to allow for the resumption of access that will be a positive experience for, and, in the best interests of Aaron.

[20] I also order Mr. and Mrs. Brewer to enroll Aaron in therapy. Dr. Landry is concerned that past life experiences will diminish Aaron’s ability to form healthy adult relationships in the future. It is in Aaron’s best interests to therapeutically resolve these issues now. Dr. Landry recommends a qualified, trained professional, such as those found at Family Services of Eastern Nova Scotia. I accept this recommendation. The school counsellor is not trained, and as such, is not the appropriate counsellor for this purpose. The therapist will be given a copy of this decision, and order, as well as Dr. Landry’s assessment, to assist in the therapeutic process.

[21] In addition to Dr. Landry’s recommendations, I order Mr. and Mrs. Brewer to keep Ms. Brewer informed, in a general way, of Aaron’s circumstances. Mr. and Mrs. Brewer will provide Ms. Brewer with monthly updates as to the status of Aaron's health, education, and general welfare, including progress updates on any sporting activities. Ms. Brewer is not to attend Aaron’s games or practices, and thus hockey schedules need not be disclosed. Ms. Brewer must advise her parents, in writing, of the address where the updates are to be sent. If Ms. Brewer does not supply her address, Mr. and Mrs. Brewer are not obligated to provide the status updates.

[22] Further, Mr. and Mrs. Brewer will provide Aaron's school with a written authorization/direction to release a copy of all Aaron's report cards to Ms. Brewer on an ongoing basis. Ms. Brewer is to keep the school apprised of her address, and any changes thereto. If she fails to do so, Ms. Brewer will not be provided copies of the report cards.

IV. CONCLUSION

[23] A material change in circumstances has been proven. It is in Aaron’s best interests to suspend all access at this time. Therapeutic interventions must be undertaken by Ms. Brewer and Aaron. A review will be scheduled in 18 months. An organizational pre-trial will be scheduled three months before the hearing. Mr. Gouthro will draft the variation order to conform with the provisions of this decision.

DATED at Sydney, Nova Scotia, on 19th day of April, 2011.

Forgeron J. NSSCFD