SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Bellefontaine v. Slawter, 2011 NSSC 427

Date: 20111117
Docket: SFHMCA-049254
Registry: Halifax

Between:

Amanda Bellefontaine

Applicant

v.

Michael Slawter

Respondent

Judge:	The Honourable Justice R. James Williams
Heard:	August 8, 9 and 22, 2011, in Halifax, Nova Scotia
Written Decision:	November 17, 2011
Counsel:	Ms. Shelley Hounsell-Grey, for the Applicant Mr. Spencer Dellapinna, for the Respondent

By the Court:

[1] This is the matter of Amanda Lynn Rose Bellefontaine and Michael Slawter. The hearing was held a couple of weeks ago and was adjourned to today's date for an oral decision which I am about to deliver.

[2] This is an application to vary pursuant to s. 37 of the **Maintenance and Custody Act**. Amanda Bellefontaine seeks to vary the June 1st, 2010 Consent Order she and Michael Slawter entered into concerning their children, Lacey Lynn Rose Slawter Bellefontaine, born May 2nd, 2006, and Faith Marie Slawter Bellefontaine, born September 29th, 2008.

[3] The order in question provides, in part:

> 2. The Applicant, Amanda Lynn Rose Slawter, and the Respondent, Michael Slawter, shall share in the parenting of the two dependent children whose primary residence shall be with the Applicant, Amanda Bellefontaine. She will have custody of Lacey Lynn Rose Slawter Bellefontaine and Faith Marie Slawter Bellefontaine.
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> 3. The Applicant and Respondent shall keep each other advised in a timely fashion as to any changes in their addresses, personal telephone and cell phone numbers. Michael Slawter shall exercise reasonable telephone access to the children and exercise any additional access agreed to by the parties.
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> 4. The parties will parent the two children, Lacey Lynn Rose and Faith Marie, according to the following schedule:
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> > (a) During the school year or while attending daycare, the children shall have a four-week schedule that will rotate as follows: Monday, Tuesday, Wednesday and Thursday night spent with Michael Slawter; Friday, Saturday and Sunday night spent with Amanda. Monday, Tuesday, Wednesday and Thursday spent with Amanda; Friday, Saturday, Sunday, Monday, Tuesday, Wednesday, Thursday spent with Michael. Friday, Saturday and Sunday spent with Amanda; Monday, Tuesday, Wednesday, Thursday and Friday spent with Amanda; Saturday and Sunday spent with Amanda.

> 7. The Applicant and Respondent will endeavour to make decisions jointly and in the event of an impasse in relation to the above areas, the applicant shall retain the final decision making authority.

[4] Clauses 9 through 16 detail special occasion access. At clause 17:

> 17. The Applicant and Respondent agree to make use of a journal for the purpose of providing ongoing details regarding their parenting times and activities with the children.

[5] There is little or no evidence before me that this journal has been followed. At clauses 18, 19 and 20:

> 18. The Applicant and Respondent agree that in the event either party desires to take the children outside of Halifax Regional Municipality temporarily for a vacation, they are to provide the other with two days' notice.
>
> 19. In the event either the Applicant or Respondent seeks to take the children for a temporary vacation outside Nova Scotia, they are to provide the other parent with a minimum one week's notice.
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> 20. Neither Applicant or Respondent shall relocate permanently from the Province of Nova Scotia with the dependent children without the written consent of the other party or an order of the Court of competent jurisdiction on a minimum 60 days' notice to the other parent.

[6] Mr. Slawter had counsel at the time the Order was entered into, Ms. Bellefontaine did not. Ms. Bellefontaine is seeking the Court's permission to relocate with the children to Kelowna, British Columbia. She proposes that she "cover the cost of air travel for the children and her to visit Mr. Slawter in Halifax twice per year". Mr. Slawter asserts that he does not have the means to contribute to travel. Ms. Bellefontaine does not seek child support.

[7] The legal analysis here is governed by the Supreme Court of Canada case of **Gordon v. Goertz**, (1996) 2 S.C.R. 27. It is summarized in Mr. Dellapinna's brief as involving a two-stage analysis. First, is there a material change in circumstances? If there is a change in circumstances, then a best interest analysis follows - concerning the merits of the variation application as the facts relate to the children and the changes in circumstance.

[8] Is there a change in circumstances? In **Gordon v. Goertz**, the Supreme Court of Canada said at paragraphs 10 and 12:

> [10] Before the Court can consider the merits of an application for variation, it must be satisfied that there has been a material change in the circumstances of the child since the last order was made.
>
> [12] What suffices to establish a material change in circumstances of the child? Change alone is not enough. The change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way. The question is whether the previous order might have been different had the circumstances now existing prevailed earlier. Moreover the change should represent a distinct departure from what the Court could reasonably have anticipated in making the previous order.

[9] I conclude that there are a number of such changes in circumstances demonstrated by the evidence before me. These changes include:

(1) From the time the order was entered into in June of 2010 until May of 2011, the parenting arrangement referred to in the order was not followed. Mr. Slawter did not provide care to the children as agreed. The significant amount of the contact he had with the children came on Saturday and Sundays when Ms. Bellefontaine took the children to Mr. Slawter's mother's home where Mr. Slawter would usually, but not always, visit. I do not accept his evidence that his request for access and contact were refused. Once Ms. Bellefontaine made this application in May of 2011, Mr. Slawter stepped up his contact with the girls. Mr. Slawter's mother, Linda Slawter, has had as much or more contact with these children than Mr. Slawter.

(2) It is evident that Ms. Bellefontaine and Mr. Slawter have an unhealthy, conflictual relationship. Mr. Slawter was convicted of an offence pursuant to s. 264.1(1a) of the **Criminal Code**, uttering threats to cause death or bodily harm in relation to events that occurred June 3rd, 2010. The threat was made against Ms. Bellefontaine. Mr. Slawter was placed on two years probation on July 19th, 2011. This and other evidence makes it clear that the parties' relationship has been unhealthy, conflictual and confrontational. Both have yelled and screamed at the other at times.

> (3) Ms. Bellefontaine, partly as a result of Mr. Slawter's intimidating behaviour, moved in with her parents in June or July of 2010. Ms. Bellefontaine is, I conclude, emotionally and financially dependent on her parents. Her parents have bought a home in Kelowna, B.C. and plan to move there.
>
> (4) Mr. Slawter states that he has severe diabetes which is difficult to control and that this affects his behaviour. Mr. Slawter also stated that he has been diagnosed more recently, it appears, with dementia. As he said, "I have dementia so don't remember some things."

[10] All of these changes impact upon the children and their care and the individual parent's ability to care for them. They also impact on their exposure to conflict and the risk of harm to the children.

[11] The Supreme of Court of Canada in **Gordon v. Goertz** addressed the mobility issue. At paragraphs 49 and 50 of that decision, the Court summarized the law. Paragraph 49 reads as follows:

> [49] The law can be summarized as follows:
>
> (1) The parent applying for a change in custody or access order must meet the threshold requirement of demonstrating a material change in circumstances affecting the child.

I have found that such material changes in circumstances exist in this case.

> (2) If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interest of the child having regard to all of the relevant circumstances relating to the child's needs and ability of the respective parents to satisfy them.
>
> (3) The inquiry is based on the findings of the judge who made the previous order and the evidence of new circumstances.

Here we have a consent order which is presumed to have been correct at that time.

> (4) The inquiry does not begin with a legal presumption of favour of the custodial parent though the custodial parent's views are entitled to great respect.

> (5) Each case turns on its own unique circumstances. The only issue is the best interests of the child in the particular circumstances of the case.
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> (6) The focus is on the best interests of the child, not the interests or rights of the parents.
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> (7) More particularly the judge should consider, among other things:
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> > (a) The existing custody arrangement and relationship between the child and the custodial parent.
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> > (b) The existing access arrangement and the relationship between the child and the access parent.
> >
> > (c) The desirability of maximizing contact between the child and both parents.
> >
> > (d) The views of the child where available.
> >
> > (e) The custodial parent's reason for moving only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child.
> >
> > (f) Disruption of the child of a change in custody; and,
> >
> > (g) Disruption of the child consequent on removal from the family schools and community he or she has come to know.

[12] Paragraph 50 reads:

> [50] In the end the importance of the child remaining with the parent whose custody it has become accustomed to in the new location must be weighed against the continuation of full contact with the child's access parent, its extended family and community. The ultimate question in every case is this: What is in the best interest of the child in all of the circumstance, old as well as new?

[13] These children have been largely raised and cared for by Ms. Bellefontaine. Ms. Bellefontaine has been recently emotionally and financially dependent upon her parents. So, through her, have been the children. Ms. Bellefontaine has had

addiction issues in the past and appears to have them controlled. She is now a licensed daycare worker and has worked over the last year on a regular basis.

[14] She has been in a conflictual relationship with Mr. Slawter for a number of years and the children, I conclude, have suffered harm and risk of harm from their conflicts in the past. She has had a difficult time removing herself from the relationship with Mr. Slawter but has done so. I conclude that she has done so with the assistance of her parents. I conclude that she would not have been able to remove herself from the relationship with Mr. Slawter, and could not do so without the assistance of her parents. I conclude that she has been the primary parent of these children.

[15] Mr. Slawter suffers from two significant diseases - dementia and diabetes. He says he has trouble controlling his diabetes. The evidence would confirm that. He states he has back problems. He was hospitalized in May of this year in very serious circumstances. He receives disability benefits in relation to his health issues. The disability benefits are from the Province of Nova Scotia. His mother indicates he works occasionally cutting wood. He appears to have never paid child support. He appears content to live on assistance and his disability. He has not sought alternative means of supporting himself.

[16] At times he has lived with Ms. Bellefontaine. There is little or no indication that he contributed to expenses when living with her. He has, at times, refused to help her in other ways. At one residence he shared with Ms. Bellefontaine (which was owned by her parents), he had two dogs - a pit bull and a husky mix. He neglected the dogs to the point that they destroyed a back porch. The dogs were apparently trying to get out, having been left there. Mr. Slawter says the dogs were more work than he thought they might be.

[17] Mr. Slawter has refused to leave her residence when asked on more than one occasion. He has engaged in stalking-like behaviour at times, hovering outside windows and following her. He denies this behaviour. I conclude that it occurred. He has slashed the seats of a car that was being repossessed from him, been removed from the Children’s Hospital by security and been convicted of uttering threats against Ms. Bellefontaine and a previous girlfriend.

[18] Mr. Slawter displays little responsibility whether it be for his own health or the care of the children. With respect to his own health, he acknowledges he is not supposed to drink but says he does drink one beer.

[19] Mr. Slawter's evidence was contradictory and inconsistent at times. He says he never called Ms. Bellefontaine a nasty word. The evidence and threat convictions say otherwise. He has little credibility. Ms. Bellefontaine's evidence is preferred to his where their evidence differs.

[20] Mr. Slawter, at times, used bullying behaviour and imposes himself on others. He states or implies that his diseases limit his control over his behaviour. He has difficulty managing his diabetes at times.

[21] At the end of the day, some of his evidence indicates that he is not responsible for his own behaviour.

[22] Mr. Slawter's problems and behaviours compromise what he can offer the children in terms of positive parenting. His mother, Linda Slawter, is a positive factor in his life and that of these children. In the words of Ms. Bellefontaine "she is awesome". She is "a great support".

[23] The child, Lacey, has recently returned to Ms. Bellefontaine from Mr. Slawter with hives. This has occurred more than once. She has been treated with Benadryl. The child, Faith, cannot eat dairy products and is underweight. Ms. Bellefontaine has bought food and supplements for Faith when she has gone to Mr. Slawter's home. She has done so out of concern that Mr. Slawter would not attend to these needs.

[24] Ms. Bellefontaine's reasons for the move are, here, I conclude, related to the children and their care. She has had problems parenting on her own, financial and more general. She needs support to provide and care for the children, to be able to control Mr. Slawter's involvement in her life and that of the children. I conclude the relationship between Mr. Slawter and Ms. Bellefontaine and the conflict that it has consistently engendered over the last number of years is a danger to the children.

[25] Ms. Bellefontaine has not, in the past, been able to deal with Mr. Slawter on her own. Her parents have assisted her and the children. Her parents are moving

and willing to provide support to her and the children if she and the children move too.

[26] Mr. Slawter cannot assist Ms. Bellefontaine financially. He did not exercise his rights to shared care when he had the chance. He has difficulty looking after himself, has demonstrated that he is unable to look after dogs and at times has exhibited behaviour that is a threat to the emotional health of not only the children but Ms. Bellefontaine also. Ms. Bellefontaine and Mr. Slawter both need assistance parenting.

[27] Were Ms. Bellefontaine to remain in Nova Scotia with him, the welfare of the children would be compromised financially. They would be vulnerable to continued conflict between Mr. Slawter and Ms. Bellefontaine. Ms. Bellefontaine would be largely on her own in providing for the children and protecting them from that conflict. I do not believe she could do so. I conclude that it is in the best interests of these children to move to British Columbia.

[28] Mr. Slawter is African-Canadian, as is his family. Ms. Bellefontaine is Caucasian, as is her family. The children have spent time with Linda Slawter and her church community and have benefitted from that. All these are factors I have considered. Mr. Slawter and his mother lack financial resources. It is unlikely they would be able to fly to British Columbia on their own or contribute to that cost. I note that Mr. Slawter does not have a computer but his mother does. Much of his contact with the children has been at the home of his mother.

[29] Mr. Slawter has described his medical conditions as being a factor in his poor behaviour as, perhaps, not an excuse for the behaviour but as a reason for the behaviour. I do not believe that he should be parenting these children on his own. I do conclude that his mother, the children’s grandmother, has much to offer these children.

[30] The existing Consent Order will be varied. The Order was not lived by until Ms. Bellefontaine brought this application.

[31] I conclude that at this time it is in the best interests of the children and the Order should place them in the sole custody of Ms. Bellefontaine, should allow her to move with them to British Columbia, and should allow Mr. Slawter supervised access with the children at the home of his mother, Linda Slawter

(a) for a period of a minimum of five (5) consecutive days prior to their departure for British Columbia;

(b) for a minimum of two (2) weeks each calendar year. The two weeks may be consecutive. The visit will be at the home of Linda Slawter and commence in the year 2012. The cost of the visit will be Ms. Bellefontaine's. The dates will be at Ms. Bellefontaine's discretion, it being obvious that she should consult with Linda Slawter about the dates. Mr. Slawter is not working and there is no evidence that there are dates or special events that would impede the access dates that were arranged. The two weeks of access that Mr. Slawter has will be at dates determined by Ms. Bellefontaine.

[32] An additional condition of the order will be that Ms. Bellefontaine will provide Ms. Linda Slawter with the opportunity to visit the girls for a minimum of one (1) week per calendar year in Kelowna, including accommodation. The evidence is that her parents have purchased a home that has apartment space in it that presumably could be vacated or shared to allow Linda Slawter's visit. The evidence is that Linda Slawter has a positive relationship with Ms. Bellefontaine. The dates for that visit are to be mutually agreed upon.

[33] Finally, Mr. Slawter will have the right to telephone and Skype contact with the children from the home of Linda Slawter. The evidence is that Mr. Slawter is at his mother's home frequently.

[34] Finally, Mr. and Mrs. Bellefontaine, Amanda Bellefontaine's parents, are part of this application. They play a significant role in the lives of their daughter, Amanda, and grandchildren. This Order will be granted provided and conditional upon the following:

(a) That they consent to become parties to this proceeding which would be reflected in the Order. The Order would grant them standing.

(b) Ms. Bellefontaine would consent to this.

(c) Mr. Slawter consents to this. In the event that Mr. Slawter does not consent to it, the Order would recite simply that Ms. Bellefontaine and/or her parents would be responsible for the airfares referred to above.

[35] By adding the Bellefontaines as parties, I believe it enable the financial provisions related to the visitation to be enforced. In other words, if Mr. Slawter chooses not to consent to the arrangement making the Bellefontaines a party to this proceeding, then really all we have is a situation where I am ordering that they pay for these visits but there would be no way of enforcing that if they failed to do so. I think it's in Mr. Slawter's interest that they be a party to the proceeding and that the access be enforceable by a Court if, for instance, the Bellefontaines failed to pay for this.

[36] The plan being put forward to me, essentially, is that they would pay for visitation. If Mr. Slawter does not consent to an Order of this kind within one (1) week of its receipt by his counsel, then the order, as I said, would issue merely referring to the expectation that the Bellefontaines would pay for the access, but I note on the record that it in all likelihood would not be enforceable against them.

J. S. C. (F.D.)

Halifax, NS