SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Sevgur v. Islam, 2013 NSSC 19

Date: 20130117
Docket: 1201-064014
Registry: Halifax

Between:

Serperi Beliz Sevgur

Applicant

v.

Muhammad Rafiqul Islam

Respondent

Revised Decision: The text of the original decision has been corrected according to the erratum dated February 26, 2013. The text of the erratum is appended to this decision. This decision replaces the previously released decision

Judge: The Honourable Justice Douglas C. Campbell

Heard: December 12, 13, 19 and 20, 2012, in Halifax, Nova Scotia

Counsel: Tanya G. Nicholson, for the applicant
Muhammad Rafiqul Islam, self-represented

By the Court:

[1] The Petitioner, Serperi Sevgur, hereinafter referred to as "the mother" is the mother of the two children who are the subject of this proceeding, those children being Jaan, hereinafter referred to as "the older child" and Ali, hereinafter referred to as "the younger child".

[2] The Respondent, Rafiqul Islam, hereinafter referred to as "the father" is the father of those two children, hereinafter referred to collectively as "the children".

[3] The father and the mother, hereinafter referred to collectively as "the parents", have had numerous appearances in this Court relating to their marital breakdown and corollary issues arising therefrom. They might properly be described as "high conflict" litigants.

[4] The parties were divorced on December 9, 2010 at which time a consent Corollary Relief Order was made, although not issued until July 21, 2011. It contained detailed provisions with respect to corollary matters and attached a detailed schedule of parenting arrangements which provided that the parents would have joint custody of the children.

[5] The terms of joint custody were extensive. They included a parenting time schedule, the regular portion of which related to a two-week repeating timeshare whereby in the first week the children were with the father from Thursday after school until Saturday morning and during the second week they were to be with the father from Wednesday after school until Monday morning. Generally, they were to be with the mother at the other times. This translates approximately to 6 of 14 days with their Dad during the regular schedule.

[6] In addition, the schedule calls for specific parenting times with the father and the mother for certain special times such as their school breaks at Christmas and in the spring and summer and for certain Muslim holidays. In total, the arrangement is close to an equal time share of parenting. The mother, through counsel, confirmed that she does not seek to change this part of the arrangement.

[7] This family most recently became involved with the court as a result of the mother having applied to vary the Corollary Relief Order with respect to certain

terms of the parenting provisions. More details will be given below; however, essentially the issue arose because the older child had been expelled from school, banned from the school property and not entitled to return the following year. This occurred toward the end of his grade 8 year. The parties were unable to agree on a choice of school. Because a decision was immediately required, the mother brought her application to vary as an emergency on August 28, 2012.

[8] The father responded to the application but sought an adjournment in order to obtain counsel. I considered the serious prejudice that would come to the father if he was forced to proceed without counsel weighed against the even greater prejudice that I felt would occur for the mother and the older child if the adjournment resulted in an impasse regarding choice of school or the possibility of that child not being registered for school in September with respect to the 2012/2013 school year. I indicated a willingness to grant the adjournment if the father would agree to terms that included assigning to the mother the exclusive discretion with regard to the decision for the choice of school and on the basis that the father would not take part in school activities or attend on school property until further order of the court. The father agreed to those conditions and therefore the adjournment order was granted on those terms.

[9] The adjourned dates were set for December 12th, 13th, 19th and 20th, 2012. At the opening of that hearing, the father moved for my recusal based on his affidavit filed late in the afternoon of the previous day, being December 11th. Despite the very late notice of the motion for recusal, I concluded that I must hear it before deciding whether to proceed with the case. After hearing arguments from both sides, I briefly referred to the case law and concluded that there was no merit to the motion and therefore declined to recuse myself.

[10] The parties were then in a position to proceed with the merits of the case. Notably, the father continued to be self represented despite the fact that his adjournment request had been based on a desire to retain counsel. He indicated that he had been unable to do so. I note that he had been represented in the past by many lawyers over time and that each lawyer's retainer had ended, sometimes shortly and unexpectedly.

[11] In terms of process, one problem was that the father had not filed any updated affidavits dealing with the merits of the case despite his intention to bring

one professional witness and three others along with testimony from himself. He was well beyond the limits in the Civil Procedure Rules for the filing of affidavits from witnesses or the filing of an expert report from a professional witness. I might well have denied his participation accordingly. However, in the interest of having the best evidence available to make a decision designed to be in the best interest of the children, I allowed him to file his own affidavit at the end of the first day, and with the consent of the mother through counsel, to bring his professional witness, without a report, to testify on the next day. I refused to allow the father to bring affidavits or viva voce testimony from other witnesses given the extreme lateness of the request.

[12] Because this case is time sensitive in that the older child would be best served if my decision could have been rendered before the school term was to resume in January 2013 (or at least very soon thereafter), I feel compelled to keep these remarks to a bare minimum. Accordingly, my reasons will not be as elaborate as I would prefer but I can assure the readers of this decision that I have considered all the evidence very carefully and have concluded that the evidence supports the conclusions that I have reached.

[13] The father is from Bangladesh and the mother is from Turkey. They are members of the Muslim faith.

[14] The children were first enrolled in the Halifax Independent School which is a private secular school not connected to any particular religion. The older child became involved in a clash with school administration over what I have concluded were adult issues. Counsel for the mother argues that the older child's problems with the school were the result of inappropriate behaviors by the father, who was also engaged in conflict with the school administration. It is clear from the evidence that, as between the two parents, the school was in conflict with the father and not the mother. It is not necessary for my decision to make a determination as to whether or not the father's conduct was blameworthy. It is enough to note that the older child was expelled from that school and that the administration was not in conflict with the mother.

[15] For the school year that followed, the older child was enrolled in a private school called the Maritime Muslim Academy. The father had a positive relationship with the administration at that school in the beginning of the year and

was himself a teacher there for a period of time that year. The relationship between the administration and the father broke down. Significant conflict developed between the older child and the principal of the school after he had written certain things in a publication. Negative relations between that school and the father are so significant that the school administrators saw fit to obtain an order under the *Protection of Property Act* which banned the father and the older child from attending on school property. The older child was expelled from that school and was not permitted to re-enroll in the next school year.

[16] As mentioned above, my adjournment order gave all decision-making authority with respect to both boys' schooling (including choice of school) to the mother and excluded the father from attending on school property, engaging with administration or dealing in any way with decisions or matters affecting both boys' schooling. That order was granted in August 2012 with the expectation that it would achieve the goal of having both boys in school for September 2012. Until the beginning of this hearing, I had assumed that that goal had been achieved.

[17] In December 2012, it was confirmed to me by the father that the older child was not in school at all. The older child, subsequent to my August order and before that, was spending very little time with the mother and was not following the parenting time schedule above referred to. The older child, having been expelled from school before he finished grade 8, wanted to "skip" grade 9 and enroll in grade 10. His father had taken steps to have him write a Math and English exam for the provincial Department of Education that would qualify him to move to grade 10. The mother was unaware.

[18] The mother proceeded to enroll the older child in a public school for grade 9 for September 2012 and the boy appeared cooperative. However, he did not attend when school commenced. Prior to my August order, the father had arranged for the older child to write the above noted exam. He failed the math exam but it was determined that there had been a defect in the mathematical calculator that caused his answers to be wrong. The father arranged for him to therefore rewrite the exams in the fall of 2012 at which time he passed both exams with sufficient grades that the provincial Department of Education indicated, according to the father's evidence, the boy's readiness for grade 10. The father contends that he had been home-schooling the boy in the fall of 2012 but confirms that he was not officially registered with the department for home-schooling. In

the result, the boy is in chaos for his education, is not spending much time with his mother and does not know whether he would be placed in grade 9 or grade 10 in the public school system. He is officially not in school and the parents disagree as to which grade level is appropriate for him if he were to attend.

[19] The father contends that he was not operating in violation of my August order because the exams, although rewritten in October were first written before my order was made. With respect I disagree. I conclude that the father's action in pursuing the "skipping" of grade 9 (a decision with which the mother had not agreed and about which she was not consulted) is the fundamental reason why the child is not in school. The father's pursuit of the higher grade registration for the older child was clearly in violation of the spirit of my order that such matters were to be within the exclusive domain of the mother.

[20] Counsel for the mother contends that the father has mental health issues. She relies in part on the fact that the father seems to be in serious conflict in regard to most relationships in his life. She refers to his being terminated as a professor at Dalhousie University. She refers to the conflict at the two schools that the older child attended. She points to an incident where television cameras were brought to the school when the boy was served with his eviction papers by the police and she alleges that the father arranged for that to happen. In addition, she relies on the conclusions of a psychological report written by Debra Garland dated August 16, 2010. This report was part of the record in earlier proceedings but it was attached as an exhibit to the mother's affidavit in this hearing and there was no objection made to its introduction in evidence.

[21] The 21 page report ends with a recommendation that the then current custody arrangement continue:

> only if [the father] can restrain himself from attempting to interfere in the daily activities of [the mother's] home..... if [the father] persists in unsubstantiated referrals and characterizing [the mother] in a negative manner then [the children] should be placed in [the mother's] primary care with scheduled access with [the father].

[22] The second recommendation of that report states:

> "it is recommended that [the father] become involved with a psychologist experienced in working with divorced parents. [The father] is not accepting of the Divorce and does not have insight into how his actions impact on the difficulties of his children....."

[23] The corollary relief order which followed directed that the father not only obtain personal counseling as recommended in the above report but required him to authorize that counselor to speak freely with the mother and her counsel and to provide to the mother updates and to ensure that the counselor was aware of the issues.

[24] The father saw Mr. Martin Whitzman on two occasions but did not authorize the communication between that counselor and the mother. Counsel for the mother contends therefore that the father did not comply with the order in that respect.

[25] The evidence contains references to a number of behaviors by which the mother through her counsel contends that the father has serious mental health issues that are impacting negatively on the older child and have resulted in the child being alienated by the father against the mother. It is safe to say that the relationship between the older child and the mother is strained and may not be capable of repair. It is equally clear that the father has not participated in the type of counseling recommended by the report of Debra Garland which was included in the previous order of the court, which would have been designed to help the father gain insight into the question of how his behaviors are impacting negatively on the children.

[26] This development is a change in circumstance that is material to an outcome that would promote the best interest of the children. The fact that the older child has been expelled from private school and is not welcome to return and the fact that he has been in conflict with the school administration on adult matters such as curriculum are additional circumstantial changes or developments that demand a change in the current order.

[27] It is not insignificant to note that the father, after having been a teacher at the private school, was given the same rebuke by the school as the older child; that

being that both were banned from school property by invoking the *Protection of Property Act*. It seemed clear to me from the evidence that the older child and his father were of the same mind in regard to political views expressed by the older child as published by him and that it is highly probable that the older child is being significantly influenced in that regard by his father. I concluded from the evidence that the mother's attempt to intervene in regard to the older child's attitude toward the school administration was interpreted by the older child as a show of lack of support for him which has resulted in his seeing very little of his mother in recent months. The need for change of attitude by the father as envisaged by the Debra Garland recommendations and the subsequent court order clearly has not been achieved. It may be unimportant to conclude whether or not this amounts to "parent alienation" (as alleged by the mother through counsel) because there was, at the very least, a lack of support by the father of the relationship between the mother and the older child which had the effect of thwarting the mother's efforts to assist her son.

[28] I am concerned by the fact (which I accept as being accurate) that the older child has threatened jihad against the school. There was not a significant elaboration in the evidence about this threat and it is therefore difficult to place it in a context that would help assess the degree of seriousness, given the number of meanings for which the word "jihad" can be used to describe a struggle driven by religious duty that may involve either a violent or non-violent strategy. Suffice it to say that it gave me cause for concern.

[29] Mr. Robert Wright filed a report as to the older child's wishes regarding parenting. This could be summarized as indicating that he prefers to live with his father, wishes to travel internationally with either parent and wishes to have the power to decide whether to stay with his mother or friend when his father is traveling out of province or country. He wishes that his father would be responsible for decision-making in regard to his (the older child's) education. He further concluded that the older child had sufficient maturity and competence to have his independent views presented to the courts. I have concluded that Mr. Wright was not given sufficient information about many historical factors including the extent of the political conflict between the older child in the school, among others. I accept Mr. Wright's conclusion as to the details of the child's expressed wishes regarding parenting but I must conclude that those wishes do not suit the older child's best interests.

[30] The younger child is not the subject of the above noted concerns. The evidence discloses that the father is more deeply engaged with the older child. Nonetheless, the mother has expressed a fear that, over time, the younger child will fall victim to his father's influences and that, accordingly, any decision that will result from this application to vary parenting arrangements should apply to both children. I agree.

[31] The father's habit of frequently making decisions for the children without consultation with the mother ranks high in the order of causation of problems affecting the children. It needs to be addressed. The above-mentioned recommendation of addressing it through counseling has not succeeded. The father needs to gain insight as to how his behaviors are negatively affecting the children. He lacks that insight. That shortcoming seems to sabotage any likelihood of addressing the problem through counseling in at least in the near term.

[32] In the end, the only plan left that might assist the children and diminish the conflict between the parents in which the children are caught is to assign to the mother all decision-making in relation to the children's schooling (including choice of grade level for the older child) and other matters affecting their general welfare. I direct that all documents or items in the possession of the father relating to the question of the older child's readiness to by-pass grade 9 and enroll in grade 10 be given immediately by the father to the mother.

[33] This decision shall operate as authority for all persons associated with the provincial Department of Education, school boards or school administrators to deal directly with the mother and not with the father in relation to all matters relating to the schooling issues that affect the children or either of them.

[34] There shall be an order issued forthwith that captures the above named regime and repeats all of the provisions of the adjournment order dated August 28, 2012. This order that arises from this decision which shall be in the form of a so-called "final order". That order shall contain one additional clause that provides that the mother shall be responsible for deciding any issue affecting the children's lifestyle, medical attention, religious upbringing and general welfare which, after

meaningful consultation by the mother with the father, the parties have been unable to resolve.

[35] For further clarity, the effect of this order is not to be interpreted to prohibit the father from being involved with either or both children in religious or other non-school activities. However, in the event that a decision in the area of religious activities, lifestyle, medical attention or general welfare needs to be made for the children, and after the mother has consulted in a meaningful way with the father, the mother's final decision shall govern the situation. This is in addition to the mother's final and exclusive decision-making authority for school related matters above referred to.

[36] Further, the father shall make no major decision in regard to the religious upbringing medical attention lifestyle in general welfare of the children without first having meaningful consultation with the mother. In the event of an impasse after that consultation occurs, the mothers final decision shall govern.

[37] The parenting time in the previous order shall remain in effect. I have not lost sight of the practical difficulties regarding execution of that arrangement. I encourage the mother to earnestly pursue the repair of the older child's relationship with her, with the help of counselors if she sees fit.

[38] If either party wishes to raise a claim for costs of this variation application, he or she shall within 15 days of the date of this decision contact the Scheduling Office of this court at the Devonshire Avenue location and ask for a one half hour appearance on my docket for that purpose. Notice of the date and time shall be given to the opposite party and, preferably, the opposite party would be contacted by the Schedulers before the date is set so as to ensure the availability of both parties and counsel, as may be applicable.

CAMPBELL, J.

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Heard: December 12, 13, 19 and 20, 2012, in Halifax, Nova Scotia

Counsel: Tanya G. Nicholson, for the applicant
Muhammad Rafiqul Islam, self-represented

Erratum:

Paragraph 29 reads:
[29] Martin Whitzman testified as to the older child's wishes regarding parenting. This could be summarized as indicating that he prefers to live with his

father, wishes to travel internationally with either parent and wishes to have the power to decide whether to stay with his mother or a friend when his father is traveling out of province or country. I have concluded that Mr. Whitzman was not given sufficient information about many historical factors including the extent of the political conflict between the older child and his school, among others. I accept Mr. Whitzman's conclusion as to the details of the child's expressed wishes regarding parenting but I must conclude that those wishes do not suit the older child's best interests.

Paragraph 29 should read:

[29] Mr. Robert Wright filed a report as to the older child's wishes regarding parenting. This could be summarized as indicating that he prefers to live with his father, wishes to travel internationally with either parent and wishes to have the power to decide whether to stay with his mother or friend when his father is traveling out of province or country. He wishes that his father would be responsible for decision-making in regard to his (the older child's) education. He further concluded that the older child had sufficient maturity and competence to have his independent views presented to the courts. I have concluded that Mr. Wright was not given sufficient information about many historical factors including the extent of the political conflict between the older child in the school, among others. I accept Mr. Wright's conclusion as to the details of the child's expressed wishes regarding parenting but I must conclude that those wishes do not suit the older child's best interests.

CAMPBELL, J.