SUPREME COURT OF NOVA SCOTIA
Citation: Doncaster v. Field, 2014 NSSC 234

Date: 20140625
Docket: No. 1207-003679
Registry: Truro

Between:

Ralph Ivan Doncaster

Petitioner

-and-

Jennifer Lynn Field

Respondent

Decision

Judge: The Honourable Justice Cindy A. Bourgeois

Heard: March 6, 2014 at Truro, Nova Scotia

Written Decision: June 25, 2014

Counsel: Petitioner - Ralph Doncaster - personally
Counsel for the Respondent - Janet Stevenson

Bourgeois, J.:

[1] By Notice of Motion filed with the Court, the Petitioner/Applicant Ralph Doncaster ("Mr. Doncaster") moves for:

> An order directing the Respondent (Jennifer Field) to undergo a mental health and parental capacity assessment;
>
> 1. An order directing the Petitioner to undergo a mental health and parental capacity assessment by an assessor appointed by the court.

[2] The motion is supported by an affidavit affirmed by Mr. Doncaster. On the face of the motion, Mr. Doncaster asserts he relies upon "the Civil Procedure Rules" and "The Divorce Act".
The motion is opposed by Ms. Field, the first item of relief being more strenuously opposed than the latter.

Background

[3] The circumstances of this family dispute are well known to the Court. The interim custodial arrangement for the 4 children of the marriage, including a prohibition of access was addressed by this Court in two decisions. See 2013 NSSC 85 (upheld on appeal, 2014 NSCA 39) and 2013 NSSC 149.
In the decision reported at 2013 NSSC 85 the Court reviewed evidence presented in relation to Mr. Doncaster's psychological status and parental capacity and concluded as follows:

> [123] The evidence before the court permits me to conclude that Mr. Doncaster suffers from ADHD. Although he believes he also has Asperger's Syndrome, I cannot reach such a conclusion at this time. Mr. Doncaster requires medication to control the consequences of the ADHD, including impulsivity, lack of tolerance and angry outbursts. At the time of the hearing, his medical status was unclear. He had only seen his new family doctor three times and was just commencing psychiatric treatment. Without his condition being properly monitored and his medication appropriately managed, he will remain at risk for volatility, impulsivity and a lack of emotional control. This impacts significantly on his ability to effectively parent the children, and meet their emotional needs.

[4] Further, in that decision the Court accepted the therapeutic recommendations offered by the psychologist who had prepared both a psychological assessment and parental capacity assessment of Mr. Doncaster, which had been earlier ordered by Scanlan, J. (as he then was). The Court set out a path by which Mr. Doncaster could work towards the re-implementation of meaningful access with his children. The Court directs:

> [138] Mr. Doncaster is to continue treatment with Dr. Taylor and Dr. Amr-Aty and follow any and all recommendations made by them. Before considering implementing direct access with the children the Court will need to know the status of his ADHD treatment and to what extent his behavioural symptoms are under control.
>
> [139] Mr. Doncaster is to make whatever arrangements necessary to commence cognitive behavioural therapy, the goal of which is to assist him in gaining insight as to how his behaviours are perceived by others, including his children, and for him to gain the necessary tools to conduct himself in a way that will be more positively and accurately viewed by others. This should also include a component of anger management.

Position of the Parties

[5] Mr. Doncaster submits that given Ms. Field has put her mental health in issue in the proceedings, that the Court should order her to undergo assessments. He points to the authority contained in Civil Procedure Rule 21 and case authorities in support of his view. He further submits that it would constitute a serious inequality should he have undergone assessments without Ms. Field doing the same. This is especially so, he submits, given that the purpose is to determine what ultimately will be in the best interests of the children of the marriage. With respect to his request for assessments in relation to himself, Mr. Doncaster submits that the Court was unprepared to accept the opinion of the previous assessor as it related to his parental capacity and that a second would be beneficial to determining issues of central importance to the children, most notably access. Further, Mr. Doncaster argues that he is incapable financially to bring forward the type of independent assessment which a court-ordered report would provide.

[6] Ms. Field submits that she has not brought her mental health into question and that it would be entirely inappropriate, based upon the lack of evidence before the Court, to order her to undergo any type of assessment. It is submitted that Mr.

Doncaster had the opportunity to raise such issues in the earlier hearings, which he did not. With respect to further assessments in relation to Mr. Doncaster, it is submitted that such are not necessary, and it would be the taxpayers and Ms. Field who would end up bearing the financial burden of same.

Analysis

[7] There is no doubt that the Court has the authority to order the type of assessments Mr. Doncaster is seeking. In my view the Court, especially where dealing with matters relating to the best interests of children, has inherent authority to order relevant and necessary assessments. Mr. Doncaster relies upon Civil Procedure Rule 21.02 which provides in part:

> (1) A party who, by a claim, defence, or ground, puts in issue the party's own physical or mental condition may be ordered to submit to a physical or mental examination by a medical practitioner.
>
> (2) The party who puts their own physical or mental condition in issue has the burden to satisfy the judge that the party should not be examined.
>
> (3) A party who puts in issue the physical or mental condition of another party may make a motion for an order that the other party submit to a physical or mental examination by a medical practitioner, and the party must satisfy the judge on all of the following:
>
> (a) The party has, by a claim, defence, or ground, put in issue the other party's physical or mental condition;
>
> (b) The claim, defence, or ground putting the other party's condition in issue is supported by evidence;
>
> (c)The examination may result in evidence that proves or disproves the claim, defence, or ground.

[8] The ordering of such assessments is specifically contemplated in s. 32F of the *Judicature Act*, R.S.N.S. 1989, c.240. It provides:

> (1) Upon application or on the judge's own motion, a judge of the Supreme Court (Family Division) may direct a family counsellor, social worker, probation officer

> or other person to make a report concerning any matter that, in the opinion of the judge, is a subject of the proceeding.

[9] Subsection (7) further directs that "a judge may, subject to the regulations, specify in an order made pursuant to subsection (1) the amount of any charge for the report that each party is required to pay".

[10] Ms. Field submits that the above provision does not apply in the present circumstances, as it references only the Supreme Court (Family Division). I find it difficult to accept that in a family matter being heard in a district where such are dealt with by the Supreme Court General Division, that the judges of that Court could not, where they felt it would benefit the children whose interests they were considering, take advantage of the types of resources available in a matter heard in HRM or Sydney.

[11] The more difficult issue for analysis is determining when the ordering of parental capacity and psychological assessments are warranted. There is assistance in the case authorities in this regard, most notably two fairly recent decisions, **Jarvis v. Landry**, 2011 NSSC 116 and **Lewis v. Lewis**, 2005 NSSC 256. Both of these decisions adopt the reasoning of Edwards, J. in **Farmakoulas v. McInnis** (1996) 152 N.S.R. (2d) 52. In **Jarvis, supra**, Justice Jollimore writes:

> 10. In *Farmakoulas v. McInnes*, 1996 CanLII 5447 (N.S.S.C.), Justice Edwards summarized the law relating to applications for assessments. I find his summary very helpful. He said at paragraph 15 that, unless the parties consent, assessments shouldn't be ordered as a matter of course. The burden is on the party requesting the assessment to show that a professional opinion is required. He noted at paragraph 15 that assessments should be ordered where there's a specific need for the type of information generated by them and assessments should be ordered where they are likely to provide information not otherwise available because the information falls within the special knowledge of the expert.

[12] I will first address Mr. Doncaster's request that Ms. Field undergo a psychological assessment and parental capacity assessment. I do not agree that Ms. Field has placed her mental health in issue, as is contemplated by Civil Procedure Rule 21.02. Although at the interim hearing, Ms. Field presented evidence that she was fearful of Mr. Doncaster and his behavior was distressing to her, there has been no indication from Ms. Field that her mental state was such

that it impacted on her ability to parent the children. It is Mr. Doncaster who has theorized that Ms. Field may suffer from Borderline Personality Disorder, based upon his research and reading in the area. The material attached to his affidavit, most notably information from a website entitled "A Shrink for Men", in which a description of the symptomology of women with Borderline Personality Disorder is offered, is of limited use. Mr. Doncaster has not satisfied the Court that it would be appropriate based upon the evidence before the Court, that Ms. Field undergoes the requested assessments.

[13] Mr. Doncaster's request for assessments relating to his own status is also dismissed, albeit with some reluctance. The Court is mindful that Mr. Doncaster has not had access with the children of the marriage for in excess of two years. That is not a situation which the Court sees often. In fact, it is rare. It was concerns surrounding Mr. Doncaster's mental health and insight which have been central to the Court's previous access decisions. It will be the status of same, in conjunction with the children's best interests, which will be central to future considerations surrounding access.

[14] The Court will undoubtedly want to know when revisiting access, the status of Mr. Doncaster's mental health, the treatments he has received and whether his circumstances have changed from the time of the interim access order. Unfortunately, none of this type of information was provided by Mr. Doncaster in his affidavit, or otherwise, in support of the motion. If he has not undertaken the steps recommended in the last assessment, and directed by the Court, it is questionable what difference a new assessment will make. Further, if Mr. Doncaster has consulted with a psychiatrist, undertaken cognitive therapy, or participated in other treatment, those treatment providers have the ability to provide evidence to the Court on the very issues which have been of concern. I am not satisfied that the assessments sought are necessary given the above observations. It is Mr. Doncaster's burden to establish the assessments are warranted, and he has not in the present motion.

Disposition

[15] The motion is dismissed, with costs to be addressed at the conclusion of the outstanding divorce hearing.

J.