IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stolman v. St. Clair,*
2014 BCSC 2118

Date: 20140926
Docket: E114000
Registry: Vancouver

Between:

David Stolman

Claimant

And

Sheena St. Clair

Respondent

Before: The Honourable Mr. Justice G.C. Weatherhill

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:	S. Ahuja
Counsel for the Respondent:	K. Groves
Place and Date of Hearing:	Vancouver, B.C. September 26, 2014
Place and Date of Judgment:	Vancouver, B.C. September 26, 2014

[1] **THE COURT:** This is a high conflict family matter. The parties were never married, but as a result of their relationship they have a five-year-old child named Colby. It is not disputed that Colby has been diagnosed with Autism Spectrum Disorder.

[2] The claimant resides in Langley. He is a salesman whose sales area includes Vancouver, Richmond, Delta, Surrey, and Langley. The respondent resides in Surrey, approximately 15.5 kilometres away from the claimant's residence. She works in Langley. I was not advised as to what her occupation is or where in Langley she works.

[3] A s. 211 Child Custody, Parenting Capacity and Parenting Time report under the *BC Family Law Act* ("*FLA* ") is pending in this matter in respect of the circumstances of this family proceeding.

[4] On March 31, 2014, Colby was registered by the parties in the Langley School District. The manner in which that registration took place is in issue. While the respondent does not dispute that she signed the registration form, she deposes that she was pressured by the claimant into doing so at a time when she was feeling particularly vulnerable and when she was led to believe by the claimant that the Langley school that Colby would be registered in was Alice Brown Elementary, not Simonds Elementary School, which is the school that Colby is now registered to attend. That school is very close to the claimant's residence, but is over 15 kilometres away from the respondent's residence.

[5] The respondent seeks an order pursuant to s. 45(1)(a) of the *FLA* that the parental responsibility regarding the school in which Colby will be enrolled be allocated to her such that she is at liberty to register Colby in a school in Surrey. Both parties agree that the only consideration is what is in the best interests of Colby.

[6] The respondent seeks this order for several reasons. First, as stated, she maintains that her consent to Colby being enrolled in the Langley School District was

coerced from her by the claimant. The claimant maintains that the respondent was not pressured and signed the enrollment forms after having sought and received legal advice and knowing that there was never any guarantee that Colby would be enrolled in Alice Brown Elementary.

[7] I am not satisfied on the evidence before me that the respondent's signature on the school enrollment form was coerced. However, I am not persuaded that there was the urgent need to have the decision made and enrollment forms signed in one day, namely March 31, 2014, which apparently was the deadline for enrolling the student beyond the catchment area. No explanation was provided as to why the parties waited until then to consider and decide upon the school that Colby would attend for kindergarten. Regardless of who is to blame, I am satisfied that the decision the parties made on that day is not determinative of what is in the best interests of Colby. Accordingly, I place little weight on the fact alone that Colby is currently registered at Simonds Elementary School. Indeed, he has yet to attend that or any other school.

[8] I will decide this matter guided by what is in Colby's best interests, including his health and emotional well-being, as I am required to do pursuant to s. 37 of the *FLA*.

[9] The respondent says that the Surrey School District offers better support for autistic children than does the Langley School District. She points to the late-filed affidavit of Robert Livingston, who describes himself as a school board-certified behavioural analyst and has been Colby's therapist since January 2013.

[10] Mr. Livingston sees Colby approximately weekly. Mr. Livingston deposes that the Surrey School District employs applied behavioural analysis support workers, who are trained to supervise and support children with autism with their scholastic work and social situations. Apparently, these workers are required to have more than 1,000 hours of experience working with autistic children before they are employed by the Surrey School Board.

[11] Mr. Livingston deposes that, in contrast, the Langley School District employs special education teacher assistants who, while having a special education teacher assistant certification, do not necessarily have the extent of dedicated experience working with autistic children that the applied behavioural analysis support workers have. Mr. Livingston further deposes that he is unaware of the experience that the Langley special education teachers assistants have with autism. For this reason, the respondent submits that Colby's needs will be better met if he is enrolled in a school in Surrey.

[12] The respondent proposes that Colby be enrolled in Goldstone Park Elementary, which is very close to her home and less than 15 kilometres from the claimant's residence. Unfortunately, there is a waitlist for enrollment in that school. As an alternative, the respondent proposes that Colby be enrolled in Hyland Elementary School, which is less than 1 kilometre from her home and 16 kilometres from the claimant's home. I am advised by the respondent's counsel that Colby can readily be enrolled in that school.

[13] The claimant points out that Colby is already enrolled at Simonds Elementary School, has been assessed by a school psychologist employed by the Langley School District and has already qualified for special needs assistance, whereas no such assessment has been done by the Surrey School District.

[14] Based on the evidence before me, I am in no position to assess the relative merits of the special needs resources available within the Surrey School District versus those available within the Langley School District. A review of the prospective curriculums that one must successfully pass to become an applied behaviour analysis support worker versus a special education teacher assistant is insufficient to make any such determination.

[15] Indeed, based upon the evidence before me, I am satisfied that the support for autistic children available within Langley School District is likely equivalent to that available in Surrey. I would be surprised if it were otherwise. I certainly have not been persuaded that it is inferior. Moreover, I have little doubt that since Colby has

qualified for special needs assistance in Langley, he will easily qualify for the same assistance in Surrey. Accordingly, my decision is not based upon the relative merits of the special needs programs in Surrey versus Langley.

[16] The respondent submits that all of the special needs workers currently treating and working with Colby are located in Surrey. They include his speech therapist, his behaviour consultant, and his special needs social worker. None of them are located in Langley. Moreover, Colby's playgroup and all of his extracurricular activities, such as swimming, take place in Surrey.

[17] There is no perfect answer in a case like this. The court must decide the issue before it in the absence of the pending s. 211 report and in the face of conflicting evidence. The court sympathizes with both parties. Colby is caught in the middle of a relationship breakdown he has had nothing to do with. As indicated, it is his interests, and his interests alone, that my decision must be based upon. It is truly unfortunate that two people who know Colby best and who should know what is in his best interests insist that a judge, who has never met Colby and is a complete stranger to him and his family circumstances, decide what is in his best interests. However, that is the task I must face.

[18] I have no doubt that both the claimant and the respondent are loving, caring parents. However, I am also convinced that, at Colby's age and stage of development, he would be better off with stability in his life rather than the disruption that will necessarily result from him having to go to school in an area outside of his usual daily routine and activities.

[19] The order made at the judicial case conference in this case provides that the claimant's access to Colby is on weekends and one overnight per week on Tuesday evenings. At all other times, he is with the respondent. In my view, it makes little sense to subject Colby to a 30 minute drive each way to and from his school four days out of five.

[20] As difficult as it is, I must say that I consider it is in Colby's best interests to attend a school that both adequately provides for his needs and allows him to be close to his extracurricular care and other activities. I am satisfied that it is in his best interests that he be enrolled in Hyland Elementary School in Surrey.

[21] The respondent's application is granted.

[22] MR. GROVES: Thank you, My Lord. Does Your Lordship wish to hear submissions on costs?

[23] THE COURT: In a case like this, costs should be in the cause.

[24] MR. GROVES: Fair enough.

[25] THE COURT: This is a very difficult case and I do not think it warrants an award of costs, all right.

[26] MR. AHUJA: Thank you, My Lord.

[27] THE COURT: Thank you.

[28] THE CLERK: Can I just confirm that the further application is adjourned?

[29] MR. GROVES: It's adjourned generally.

[30] THE COURT: The further application is adjourned.

[31] MR. GROVES: Yes.

"G.C. Weatherill J."

G.C. Weatherill J.