Date: 20031125
Docket: E013185
Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Master Brine
October 30, 2003

BETWEEN:

RAVINDER KAUR GREWAL

PLAINTIFF

AND:

DEPINDERJIT SINGH GREWAL

DEFENDANT

Counsel for the Plaintiff: R. Ross

Counsel for the Defendant: K. Taunk

[1] **THE COURT:** With respect to the plaintiff's application, first of all, for a s. 57 declaration, I am satisfied that such an order should go. So there will be a s. 57 declaration.

[2] With respect to the plaintiff's application for sole interim custody of the children, that is not opposed. There

will therefore be an order that the plaintiff shall have sole interim custody of the children.

[3] The third item on the plaintiff's Notice of Motion is for child support pursuant to the *Child Support Guidelines*. The issue for determination here is just exactly what is the defendant's income for the purposes of *Guideline* determination. I am less than satisfied as to the sufficiency of the information available to me for the purposes of determining income. The defendant deposes that his gross income for the year 2003 will be $24,000. This is based upon a letter from his apparent employer in Ontario to the extent that by September he had earned some 16-odd-thousand dollars. I, quite frankly, am not satisfied that this information is sufficient for me to make a determination as he has requested.

[4] It is apparent that in the year 2002 his gross income was some $49,000. For tax purposes, his taxes were assessed on the basis of income of some $36,000. While I do not know the details of the expenses that were included in his return, and apparently allowed by Revenue Canada, at the very least it seems to me his income for the year 2002 would have been approximately $36,000. I do not have sufficient information as to why I would expect to see his income reduced substantially this year. He points to the Iraq war as somehow

causing this reduced income, but no further information beyond that. I would expect that if his current employer were unable to provide him with the amount of work that enabled him to earn an income commensurate with his previous year's income, that he would locate and obtain alternate work. I would have been happier, I should point out, had I had full copies of his 2002 income tax return, which I do not have.

[5] For the purposes of child support, I think it is appropriate that I base it upon his 2002 notice of assessment which, for my purposes, I am going to determine to be $36,000 per annum. For two children, this translates into monthly child support payments of $516 per month.

[6] He has been voluntarily paying, for the past two months, $360. The order will therefore go that commencing November 1, 2003, the defendant will pay the sum of $516 per month for the support of the two children of the marriage.

[7] The fourth order sought by the plaintiff is for spousal support. It is based upon the fact that the plaintiff apparently earns only $1,400 per month as an on-call teacher. In addition, she receives the Child Tax Credit and the bonus, such as it is available to her. This totals about $2,000 per month, more or less.

[8] It also is apparent that the house in which she is residing, the matrimonial home, has at least one rentable suite located in the premises. I do note that her financial statement does not contain her income tax returns for the past years. No reference is made to income from the source. I am going to, therefore, adjourn the plaintiff's application for spousal support to a date following the judicial case conference, which is currently scheduled for November 21st. So to a date following November 21st, 2003, in the event that, for whatever reason, the judicial case conference does not go ahead on that date.

[9] Now, with respect to the defendant's Notice of Motion, the defendant seeks an order that he be permitted to obtain an appraisal of the matrimonial home, and I indicated during the course of submissions that I would make such an order but that the cost, rather than being borne equally by the parties, would be borne by the defendant entirely; the cost to be costs in the action generally, or to be considered a disbursement, I suppose, in the action.

[10] The second matter that counsel for the defendant spoke to was seeking joint guardianship of the children. However, I notice that it is not part of the Notice of Motion before me, so I think it is, quite frankly, not appropriate that I

consider that application, if such was made actually on behalf of the defendant. However, I should indicate to counsel that at this point in time I am not inclined to make any guardianship orders. The defendant has voluntarily chosen to remove himself from the children's lives since May of 2001, some two-and-a-half years. He has not made any reasonable effort to maintain contact with them at all. The plaintiff, on the other hand, has been the one who was left with the responsibility of maintaining and rearing and nurturing and caring for the children, and has done that. It would be inappropriate, I think, for the plaintiff to be saddled, I suppose, with the potential burden of the defendant's interference with the actions that she has taken and the plans that she has for the children in the short term. That is not to say that in the longer term that the defendant should not have the right to be fully involved as a guardian in the children's lives, but I think that that right must be earned and the defendant has to demonstrate that he is entitled to be so involved. To date, he has not taken any steps to demonstrate that entitlement.

[11] With respect to the defendant's application for access to the children, he is seeking the right to be able to contact the children either through correspondence or by telephone.

The plaintiff has expressed her position, through counsel, that she does not think it would be in the children's interests that the father have any contact whatsoever with the children. There is no independent or objective evidence indicating that any contact would be contrary to the children's interests. The defendant is and will always be the children's father and must be afforded an opportunity to play some role in their lives. He, for the past two-and-a-half years has chosen, for whatever reasons or motivations that he might have had, to absent himself from the children's lives. That is, while perhaps not reprehensible, certainly inappropriate in terms of an apparently loving father that he asks the court to find he is.

[12] Nevertheless, I think it is important that the defendant be afforded an opportunity of reinserting himself into his children's lives. I think that telephone contact or correspondence is certainly the least threatening of any potential contact, from the plaintiff's perspective. She would be able to vet, I suppose, correspondence that comes to make sure that it is appropriate for the children to receive and to read. But nevertheless, I see no good reason why the defendant ought not to be afforded that opportunity. Similarly, with telephone calls, the defendant should, I

think, be permitted to contact the children by telephone. The plaintiff, should she choose to, will have the right to record those telephone conversations in the event that there arises any question as to the content of the conversations and the appropriateness of the content of those conversations at some later time. The defendant will know, of course, that those conversations may be recorded, and I presume will conduct himself appropriately.

[13] It would be my wish that prior to the judicial case conference currently set for November 21st, to which I understand the defendant will be in attendance, that an opportunity be afforded for the defendant to meet with the children on terms and conditions that are suitable and satisfactory to the plaintiff. In other words, a visit that may be supervised by somebody who is satisfactory to the plaintiff. I think that it would be an appropriate step to be taken prior to the judicial case conference in order that the parties will be able to be in a position to discuss with, hopefully, some knowledge of what has transpired during this visit, with the intention, again hopefully, of advancing the children's contact with their father in a positive manner. I leave that, however, to the parties to arrange. Mr. Taunk, you will know what your client's schedule is and when he is

planning to arrive here, and I will leave it to you to contact Mr. Ross to see what arrangements can perhaps be made in that regard.

[14] **MR. ROSS:** Is that part of the order, Your Honour, because that wasn't requested.

[15] **THE COURT:** No, it was not requested. I did not indicate that it was an order. I said that it was something that I wished to see happen.

[16] **MR. ROSS:** Okay. I will certainly speak to my client about that, Your Honour, and try to -- try to arrange it.

[17] **THE COURT:** All right. The point is that if it becomes apparent that the plaintiff, for example, is trying to deliberately interfere with the defendant's right to endeavour to become a parent to the children, that, I think, unless there is very, very good reason, objective reasons, for doing so, then that would not be looked on with any great affection from the court, it seems to me.

[18] **MR. TAUNK:** Your Honour, can my client mail a letter to -- to his children?

[19] **THE COURT:** Yes, I have indicated that there can be telephone and correspondence contact.

[20] **MR. ROSS:** The telephone correspondence would be a reasonable -- shall we say --

[21] **THE COURT:** Reasonable -- yes, that's right. It is not to be abused, clearly. And, as I say, the telephone conversations can be recorded and the plaintiff can review the letter that is sent before the children see it.

[22] **MR. TAUNK:** Your Honour, if my -- if my client calls for -- to his children, then how could we -- he confirm that the letter is actually shown to the -- to the children? Can we say that if the children can sign the copy of the letter and send it back to me or to Mr. Ross? That will --

[23] **MR. ROSS:** Your Honour, the children are three and five years old. I don't know that -- I don't know that -- I think we have to have some trust here.

[24] **THE COURT:** Well, I expect it to go something like this. A letter will go to the house. Sometime later your client will be making a telephone call and your client will be asking the children if they got his letter and they will respond, "Yes, we saw it, Daddy. Thank you very much," or they will say, "No, we never saw anything," at which point we will know there is a problem. Okay? So that is how it is going to go.

[25] All right. The costs: I think, on balance, the plaintiff has been largely successful with respect to the application, so I am going to award her costs at Scale 3, and they will just be costs in the cause.

[26] **MR. TAUNK:** Your Honour, about my application, the costs with -- about my motion, Your Honour.

[27] **THE COURT:** No costs of that application. I consider that to be a minor part of the applications before me. The major part dealt with the financial arrangements for the children and for the visitation and guardianship and other aspects of the applications with respect to the children.

(EXCERPT CONCLUDED)

The Honourable Master Brine