

2000 CarswellAlta 1497, 2000 ABCA 328, 11 R.F.L. (5th) 295, 281 A.R. 146, 248 W.A.C. 146

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Deiure v. Deiure

Leanne Susan Deiure (Appellant / Plaintiff) and Frederick James Deiure (Respondent / Defendant)

Alberta Court of Appeal

Conrad, McFadyen, O'Leary JJ.A.

Judgment: December 8, 2000

Written reasons: December 20, 2000

Docket: Calgary Appeal 19100

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Counsel: F.J. Deiure for himself

D.P. Castle, for Appellant

Subject: Family

Family law --- Custody and access — Access — Variation of order — General

Order was made denying access until bilateral assessment and risk assessment were made — Case management judge made order varying terms of access — Case management judge made order without any notice to mother and without any affidavit or other evidence — Mother appealed — Appeal allowed — Order set aside without comment on merits — Case management judge erred in making order without proper notice to mother and without supporting application with evidence.

APPEAL by mother from order made by case management judge varying terms of access in earlier order.

Memorandum of judgment delivered from the bench. *Conrad J.A.*:

1 We are in a position to give our judgment and that unanimous judgment will be delivered by Mr. Justice O'Leary.

O'Leary J.A. (for the Court):

2 This is an appeal from an order made by a case management judge varying the terms of access contained in an earlier order. The earlier order denied access until such time as a bilateral assessment and risk assessment were made. The order under appeal was made without formal, or any, notice to the appellant, and without any affidavit or other evidence.

3 In our view, it was an error on the part of the case management judge to make an order in these circumstances without proper notice to the appellant and without supporting the application with evidence. That is especially so here where the order appealed varied the terms of an order made several months earlier denying access.

4 We set aside the order appealed without comment on its merits. The respondent is, of course, at liberty to make an application for the relief granted in the appealed order at any time upon proper notice to the appellant and upon appropriate supporting evidence.

Conrad J.A.:

5 Costs follow the event. The only thing that we would add is that we strongly encourage both parties to try to resolve these differences because otherwise it is going to be a continuous return to the courts on matters involving children. We are anxious to see it resolved, particularly where the issue of supervised access is recognized as one. I would say while they no longer have an appeal here, we would be prepared to offer judicial dispute resolution to the parties if you felt this was an avenue you would like to proceed with. You can contact me through Ileen Moore.

Appeal allowed.

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