

2008 CarswellAlta 319, 2008 ABQB 143, [2008] A.W.L.D. 1581, [2008] W.D.F.L. 2042

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Mahowich v. Mahowich

Kimberly Lisa Mahowich (Plaintiff / Respondent) and David Nicholas Mahowich (Defendant / Applicant)

Alberta Court of Queen's Bench

J.B. Veit J.

Heard: March 3, 2008

Judgment: March 4, 2008

Docket: Edmonton 4803-139013

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Counsel: Diann P. **Castle** for Applicant, David Mahowich

Deborah L. Baradziej for Respondent, Kimberly Mahowich

Subject: Family

Family law --- Custody and access — Factors to be considered in custody award — Best interests of child generally.

Regulations considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

Federal Child Support Guidelines, SOR/97-175

s. 7 — referred to

J.B. Veit J.:

1 The Respondent asks for an adjournment of the Defendant's application on the grounds that there is no emergency so that — while she has had the requisite notice — some additional time should be given to her to respond.

2 While it is obvious that the contested custody application cannot be heard in morning chambers — even if an adjournment were granted — not every aspect of the application should necessarily be treated in the same way. Specifically, Mr. Mahowich has requested a bilateral custody assessment. With respect, I agree with Mr. Mahowich that there is an urgency with respect to that issue.

3 In coming to that conclusion, I particularly note the opinion of Dr. Massey relating to the special needs of one of the children of the marriage. That opinion, an opinion which had been requested by both parents, was provided almost 3 years ago on March 30, 2005, and speaks of a "vulnerable youngster", one with "longstanding, organically-based deficits" requiring specific support, "lapses of awareness" which may point to a physical disorder which requires exploration and of various forms of assistance which could usefully be provided to that child.

4 These issues need to be addressed now: a child's development takes place over a relatively short period of time. It is not in a child's best interests to dawdle on recommendations relating to development. It will be imperative for a court to have current information about the needs of these children and the ability and willingness of each parent to meet those needs in order to make a custody decision.

5 Therefore, a bilateral assessment is required; because of the special needs of one of the children, information from a professional is required in addition to the information that will be provided by each of the parents. If within 7 days from today's date, the parents cannot agree on a bilateral custody assessor, they will return to court on Wednesday, March 12, 2008 at 10:00 a.m. for a hearing on that specific issue.

6 As to the Applicant's request for sole custody and related relief, not only is the Respondent's request for an adjournment granted, but the parties are directed to have that application returned in special chambers. As to a specific date, Mr. Mahowich must find a date that will allow each party to comply with the court's practice and procedures for special chambers hearings. That delay will provide sufficient time for Ms. Mahowich to respond.

7 As to the Applicant's request for a psychological and psychiatric assessment of the Respondent, that application is adjourned to March 12, 2008 at 10:00 a.m.

8 The Applicant's request for costs is adjourned to the hearings on the merits.

9 I have not considered whether a s.7 intervention — separate from an assessment — would be useful here. That is also a matter that could be raised at the March 12, 2008 hearing. However, if Mr. Mahowich intends to pursue that possibility, he should, by noon on March 6, 2008, provide to Ms. Mahowich a specific proposal concerning the type of intervention which he suggests would be in the children's best interests.

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