

2004 CarswellAlta 1148, 2004 ABQB 641

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J. (R.K.) v. S. (M.M.)

R.K.J. (Applicant) and M.M.S. (Respondent)

Alberta Court of Queen's Bench

Lee J.

Heard: September 2, 2004

Judgment: September 7, 2004

Docket: Edmonton 4803-116252

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Counsel: Peter D. Spitz for Applicant Father

Suzanne N. **Spanier** for Respondent Mother

Subject: Family

Family law.

**Lee J.:**

1 This is an application by the father of a seven-year-old child of the marriage requesting that the child's primary residence change from the respondent to the applicant, and that there be a custody/access assessment directed for which the parties will share the cost.

2 During a recent access visit the applicant father, who lives in Edmonton, declined to return the child back to his primary residence with the child's mother. The applicant father proposes that this was done as a result of serious concerns that he had for the child's welfare. The father has since returned the child to the mother's residence in Calgary after the mother obtained an order directing this.

3 These concerns included alleged mental abuse by the mother to the child, a lack of any supervision of child, abuse of alcohol by the mother, and a problematic boyfriend who also negatively impacts on the child. While these types of allegations are serious, they are not unusual. What is somewhat unusual about this case however is that the father and mother of the respondent have sworn somewhat detailed affidavits very much in favor of this application, and very much against their own daughter the respondent.

4 The mother of the respondent is of the opinion that her daughter is emotionally and financially unstable, and that she should not be the child's primary residence. The father of the respondent similarly deposes to some very

negative details about his own daughter in relationship to the child in question.

5 In her affidavit, the respondent deposes that she has always had acrimonious problems with her parents, and that she does not speak to her parents on a regular basis. The respondent does not believe that her parents are objective, nor does she believe that they have much in the way of accurate information to pass on about their grandchild. The respondent goes on to state various negative events involving the applicant and the child.

6 The respondent also provides an affidavit from her close friend of 25 years who is currently a student of law at the University of Ottawa. This friend describes the mother as an interested and dedicated parent of a well-adjusted happy child.

### **Conclusion**

7 I dismissed a preliminary application by counsel for the mother for a change of venue for this application to the Judicial District of Calgary. Counsel presented a number of cases dealing with applications in different provinces, but this matter is being heard within the same province. The authorities submitted by and large do not apply.

8 As for the father's application, there is clearly conflicting affidavit evidence not only between the parties themselves, but also between other related parties. The allegations however being made are very serious ones, and it is unusual for one party's own parents to turn against them as they have in the present matter.

9 I am however always reluctant to order intrusive and expensive assessments to be done unless there is a clear need demonstrated. I am unable given the conflicting affidavit evidence before me to make a definitive finding prior to ordering a psychological assessment, but I am not required to make such a definitive finding.

10 In this case, I conclude that there is enough evidence to support the conclusion that a psychological assessment would be a beneficial tool to aid the court in its ultimate decision as to the primary residence of the child. In coming to this conclusion, I am mindful of the fact that such an assessment will be intrusive and expensive, but on balance I am satisfied that it is necessary.

11 Accordingly I conclude that it is in the best interests of the child that the Court have the benefit of an expert opinion in this matter. The child in this case is only seven years of age, and therefore cannot express any dissatisfaction or unhappiness with either parent or with the present arrangements. The various allegations in this case are sufficiently complex that an outside expert opinion is necessary simply in order to sort out the conflicting positions.

12 I grant the father's application for a custody/access assessment, the cost of which will be shared by both parties. The child's primary residence will remain with the mother during this time.

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