

Case Name:

P. v. P.

**Between
F.P., applicant, and
T.P., respondent**

[2003] O.J. No. 1088

Toronto Registry No. D-1453/99

Ontario Court of Justice

King J.

Heard: March 3-6, 2003.

Judgment: March 19, 2003.

(17 paras.)

Custody of Child -- Variation -- Grounds -- Best interests of child -- Parenting ability -- Discipline -- Custodial father held very conservative and rigid values because of which 15-year-old daughter by previous union had left his roof -- His care of 7-year-old daughter, however, was consistent and, by all accounts, child flourished in his care -- Access mother, who had now recovered from mental disability during which she had abandoned home and child, sought custody on ground that she had better and more flexible values than father -- Day when child might start to challenge father's rules was still far off and no indication whether father might react inappropriately when that happens -- Nothing to show that child's best interests would be advanced by changing current custodial arrangement in favour of mother.

Custody of Child -- Variation -- Grounds -- Best interests of child -- Provision of guidance, education and necessities of life -- Access mother was admittedly more intelligent than semi-literate custodial father, but father was astute enough to recognize value of education and seriously encouraged child's schooling -- Child seemed well-adjusted and performing well at school and in community -- Nothing to show that child's best interests would be advanced by changing current custodial arrangement in favour of mother.

Custody of Child -- Variation -- Material change in circumstances -- Nature of change -- Rehabilitation of parent -- Five years ago, mother became depressed and manic -- She

abandoned home and child and took up street life -- Father secured custody order and performed creditable job in raising child (now 7 years old) -- Mother's condition now stabilized, she upgraded education and would be highly employable -- Court persuaded that change in mother's circumstances constituted material change in circumstances but dismissed mother's application for custody on its merits.

Counsel:

Steven D. Benmor, for the applicant father.

Murray E. Lightman, for the respondent mother.

1 KING J.:-- This is an application by T. P. to vary a custody order made by Justice Penny J. Jones on 28 January 2000. That order provided that F. P. have custody of F. and T.'s daughter S.. S. was born on 11 April 1996 and, at the time of the custody order, was three years old. She has lived solely with her father since that time. She is now almost seven.

2 T. and F. met in 1990 when T. was 15 and F. 31. T. had left home in Orillia at 13 and by 15 was basically living on the streets. F. had come to Canada as a migrant farm worker in 1978 and, at the time of his meeting T., was working in a restaurant.

3 F. took T. into his home where she felt safe and cared for. T. and F. married in 1991. T. pursued her education, was successfully employed and financially sound.

4 S. was born in 1996 and T. stayed home for the first six months. When S. was seven months old, F.'s other daughter S.H., who was then 10, came from Jamaica to live with F. and T. As well, a nephew of F.'s came to stay for several months. Adding to the pressure of taking care of so many people, T. went back to work on weekdays from 4:30 to 10:30 p.m. It is probably an understatement when T. says she "overextended" herself.

5 Around 1998, first T., and then F., with the children moved into a co-op apartment. By now the marriage seemed to be in trouble; finances were uneven and, worse still, T. began to suffer from severe depression. She took anti-depressants, which initially lifted her mood, but ultimately made her severely manic. She left the home, incurred a number of criminal charges vis à vis F., lived on the street and spent a month in detention. By 12 October 1999, F. had obtained an ex parte custody order that was made final in January of 2000.

6 It took several months for T. to get back on her feet and she did not begin access until October of 2001. Since that time, she has been seeing S. on a regular basis and the visits have gone well.

7 Everyone, including T., attests to the fact that F. has been, and is, a loving and devoted father to S.. As well, everyone, from the parents to the school, attests to the well being of S.. She is happy, bright and friendly. S. has lived in the same co-op since she was a baby and has gone to the same day care at her school since she was 16 months old. She has friends and routines that clearly are working well in both places.

8 T. concedes all the foregoing but alleges that there has been a material change in circumstances since Justice Jones' order and that custody should now be changed.

9 I am satisfied that there has been a material change in circumstances. T. has bravely and persistently dealt with her condition as it manifested itself in 1999. She sees a therapist on a weekly basis and her therapist testified that T. is much more settled and much better able to deal with stress. She is presently taking upgrading courses in MicroSoft applications and will be highly employable. She has an interest in culture and the world around her. She is once again a high-functioning individual.

10 In order to change custody, I must determine whether it is in S.'s best interests. T. argues that it is in S.'s best interests to be in her custody on a number of grounds. First, she argues that she is more intelligent and better educated than F. and will be able to provide more opportunities for S. to fulfil her potential.

11 F. quit school at 15 to help support his family. He has worked at various jobs since that time and has not, it is true, had a broad education. He displayed, however, a seriousness in respect to S.'s education; ensuring her attendance at school; meeting with the teachers on a regular basis; and, assisting, as best he can, with S.'s homework. As well, S. has a "homework club" in her co-op that she often attends. Nor has F. been negligent in other areas of S.'s education; he takes her to the library; on bike rides; and other activities. At home she plays her keyboard, while he plays drums, and they sing together. He also encourages visits by S. to her maternal grandparents -- from whom T. is more or less estranged. S. enjoys these visits -- riding horses and seeing relatives.

12 T. argues that she would be a better role model for S. -- that she is a productive member of the community whereas F. is not working and is on public assistance. F., however, is admirable in his own way. He came to Canada as an 18 year old with nothing and managed to work consistently until just a few years ago. He now attends East End Literacy every weekday from 1:30 to 5:00 p.m. and hopes eventually to obtain a plumber's certificate.

13 T. argues that she is more flexible and has better values than F.. F. accidentally found out in December 2001 that his other daughter S.H. was not attending school. When she came home, he told her he would be depriving her of a number of privileges and she moved out. In the course of telling this story, F. also confessed to his disapproval of nose rings and bare midriffs in adolescent girls. He went on to say that any child of his must obey his rules or leave the house. This may sound extreme and display a rigidity, but so far, nothing of the sort appears to have happened with S. and it is not a foregone conclusion that he will respond inappropriately when S. starts questioning some of his rules. This alleged rigidity on its own, or even with other factors, is hardly enough on which to base a custody decision. As to F.'s values, I was asked to consider the fact that he married a 16 year old when he was 32. Again, that in itself does not tell me much about F.'s values. He displays many other values -- for example, he is a consistent and caring parent -- that are commendable.

14 None of this is to lessen in any way T.'s potential for positive input into S.'s life. T. too is a loving, dedicated and conscientious parent. She has much to offer S.. But, as circumstances unfolded, S. was left with, and has been with, F. since 1999. F. has provided her

with a structured and secure life and S. is thriving. I cannot see how it would be in S.'s best interests to change this significantly. Thus, custody will remain with F..

15 I am satisfied from all the evidence, including S.'s teachers, that S. loves, and is happy to be with T.. I am also satisfied that T. may explore extra curricular activities for S. somewhat more than F. might.

16 When asked, F. seemed satisfied that S. not be with him on the weekends. Apparently, he spends that time doing his own homework; watching hockey; and doing household chores. Even at present, it seems that S. is barely with F. on weekends. She is either with T. or with her maternal grandparents in Orillia. S. will still be able to visit her maternal grandparents whenever she is with F. and F. wishes such visits to occur.

17 Thus, in order to encourage more contact with T. and to allow T. to explore extra curricular activities for S., there will be the following access:

- (1) the first three weekends of every month, from Friday after school until Sunday at 7:30 p.m. If the weekend is a "long weekend" then it will be extended to Monday at 7:30 p.m.;
- (2) one evening a week from after school until 8:00 p.m.; and
- (3) one half of all school breaks, including March break, Christmas break and summer holidays.

As well, T. will be entitled to:

- (1) notice of all school activities and to all reports from school and full access to S.'s teachers; and
- (2) notice of all medical procedures and full access to S.'s doctor.