COURT FILE No.: Toronto FO 06 10633 00 A4
Date:2011-10-18

Ontario Court of Justice

BETWEEN:

L. V. P.
Applicant

AND

M.E.C.
Respondent

Before Justice Ellen B. Murray
Heard on October 17, 2011
Reasons for Judgement released on October 18, 2011

No appearance by or on behalf of L. V. P., Applicant, even though served with notice
Mr. Benmor … for the Respondent

Murray, E.B. J.:

1. This is my decision on a motion brought by the Respondent father asking for a temporary order directing the Applicant mother to return the children J.P.F. and M.R.F. to Toronto and to appear before this court, failing which police or peace officers shall locate and apprehend the children and place them in the care of the Respondent. (The children were formerly known under the surname "C" [under the Respondent's last name.]) The motion is brought in the context of a motion by the Respondent to change the order of this court made October 12, 2006. That order was made in a default hearing, and provided that the Respondent have no access to the children. A previous order has been made on consent granting the Applicant custody of the children.

2. The Applicant did not appear or file any response to this motion, despite being duly served pursuant to a substitutional service made on August 23, 2011, which provided that service by mail upon the Applicant's mother in Toronto and upon the principal of the children's current school in Edmonton would constitute proper service upon the Applicant.

3. The original order was made on the basis of the Applicant's affidavit asserting that the Respondent was violent, an alcoholic, and addicted to cocaine who had endangered the life of the parties' youngest child. The Respondent commenced this application in May 2010, seeking an order allowing him to re-establish a relationship with the children, initially through periods of supervised access. He has presented

evidence that he successfully completed treatment for substance abuse by December 2007, and that he has maintained abstinence with the support of after-care programs. Since then, he has been active in volunteering with community agencies, including Covenant House where he acts as a counsellor to children.

4. The Respondent attempted, first through negotiation with counsel and then by the commencement of this action, to re-establish contact with J.P.F. and M.R.F in a gradual and monitored process. The Applicant has ignored all efforts by him to re-establish contact, and has ignored the proceedings of this court, despite the fact that she had notice of such proceedings at least by June 8, 2010. Evidence has established that:

- In March 2010, the Respondent's lawyer wrote to the Applicant with an access proposal. Her lawyer replied that she would not agree to any access.
- On May 31, 2010 the Respondent issued his motion to change the October 12, 2006 order requesting access. The Applicant evaded service. A process server attended on June 8, 2010, at 88 P. Ave., Toronto, the home of the Applicant's mother O.F., and the address for the Applicant as shown in pleadings in the prior action. Ms. F. advised her that her daughter was not home, and that she didn't know when she would be back. The process server left his card, and attempted service again, with no result. 88 P. Avenue is the address shown by the Applicant in other documentary evidence presented to this court, such as the children's school records, up to and including the end of June, 2010.
- On June 23, 2010, the Respondent moved to obtain an order for substitutional service by serving the Applicant's former solicitor. The motion was strongly resisted by that solicitor. That solicitor's assistant deposed that the solicitor was not retained and had no instructions.
- On October 28, 2010, an order for substitutional service was made providing that the Applicant can be served by mailing the documents to her by ordinary and registered mail at 88 P. Avenue, Toronto. An affidavit from a process server who attended at 88 P. Avenue indicates that the Applicant's mother advised that her daughter had moved in late June 2010. She refused to give a forwarding address. Service was completed pursuant to the order. No responding documents were served or filed.
- On December 10, 2010, I made a temporary Order that the Respondent have supervised access at Access for Parents and Children in Ontario (APCO), and gave directions providing that the Applicant attend for intake interview at APCO and deliver the children for access at scheduled times.
- The Applicant did not comply with the order, although it had been mailed to her at her last known address at 88 P. Avenue. On January 26, 2011, I directed that the court forward a copy of the order to the Applicant with a covering letter advising of the next court date, and advising that a further order might be made on that date. This letter was sent to the Applicant at the above address, and in addition pursuant to my order, police delivered

a copy of the order and the covering letter to “any adult person” at that address.

- There was no response from the Applicant. Information uncovered by the Respondent’s counsel as a result of disclosure orders has established that the Applicant moved with the children attended school in Toronto. She appears to have advised the school there that another individual is the children’s father.
- There is no doubt that the Applicant has maintained contact continually with her mother, O.F., who lives at 88 P. Avenue., Toronto. Edmonton school records indicate that Ms. F, at that address, is the emergency contact for the school.

5. When it became known that the children had been removed from Ontario, the Respondent sought a ruling from the court with respect to the court’s jurisdiction to hear his motion to change. On August 23, 2011, I ruled that the court had such jurisdiction, as the evidence established that the children were habitually resident in Ontario at the commencement of this proceeding.

6. The only evidence I have on this motion- because of the Applicant’s failure to participate in the case to date- is from the Respondent. That evidence persuades me that there has been a material change in circumstances since the date of my order of October 12, 2006, in that the Respondent has successfully completed a substance abuse program and has maintained abstinence. The evidence also persuades me that it is in the children’s best interests to re-establish a relationship with him. I would prefer that the Applicant participate in the process of crafting the program of reintroduction. I have almost no evidence as to the children’s or the Applicant’s circumstances in Edmonton, and as to how any order I make will affect them. For example, I do not know if the move is a temporary one, with a plan to return Toronto. The Applicant has chosen not to offer evidence on the effect of the return order requested on the children, and I decline to speculate on this subject.

7. The order that I make is that the Applicant produce the children to this court at 311 Jarvis St., Toronto, on November 14, 2011 at 10 a.m., and that prior to that attendance the Applicant complete the intake interview with Access for Parents and Children in Ontario (APCO), as previously ordered, and that she provide proof of this attendance to the court. The balance of the motion, requesting that the children be permanently returned to Ontario and that police or peace officers apprehend them for this purpose, is put over to November 14, 2011.

Released: October 18, 2011