

COURT OF APPEAL FOR ONTARIO

CITATION: D.C. v. T.B., 2021 ONCA 850

DATE: 20211126

DOCKET: C69736

Roberts and Thorburn JJ.A. and Tzimas J. (*ad hoc*)

BETWEEN

D.C.

Applicant (Appellant)

and

T.B.

Respondent (Respondent)

Michael J. Stangarone and Aria MacEachern, for the appellant

Christina Doris and Jessica Luscombe, for the respondent

Heard and released orally: November 22, 2021

On appeal from the order of Justice Clayton Conlan of the Superior Court of Justice, dated April 30, 2021.

REASONS FOR DECISION

[1] The appellant mother appeals from the final order of the trial judge granting the respondent father sole custody/decision making responsibility with respect to their child, R., who is 12 years old. The order also temporarily suspended any contact between R. and the appellant or members of the appellant's family. This order was made following a six-day trial of the respondent's motion to change the final order of Gibson J. dated November 9, 2016. Under the latter order, R. resided primarily with the appellant.

[2] The appellant submits that the trial judge made several reversible errors. First, he misapplied the best interests of the child test, particularly in the absence of expert evidence, by making the order he did and failing to consider less draconian options. Further, the appellant argues, the trial judge failed to give adequate weight to R.'s views and preferences, and he misapprehended and failed to give appropriate weight to evidence, specifically, that the appellant attempted to facilitate the relationship between R. and the respondent.

[3] We see no merit in any of these submissions.

[4] This was a very difficult case of parental alienation. In his lengthy and sensitively written reasons, the trial judge painstakingly reviewed the evidence and the parties' arguments. He began and ended his reasons with the same focus, namely, that the most important person in this case is R. His analysis was centred entirely on her best interests. Given the trial judge's finding of the appellant

engaging in parental alienation and manipulation of R., it would not have been particularly useful to ascertain R.'s views and preferences by way of a further assessment or having her testify.

[5] The trial judge's conclusion that the appellant has alienated R. from her father and "has consistently and for many years now engaged in conduct that amounts to parental alienation" is, as the trial judge stated, "well-grounded in the trial evidence", and detailed by the trial judge in his reasons, see, for example, at paragraph 163. His thorough reasons can leave no doubt as to the clear basis for his decision. In our view, expert evidence was not required to permit the trial judge to come to his determination of parental alienation based on the evidence that he heard and accepted at trial. We see no error in the trial judge's treatment of Dr. Fidler's evidence which was appropriate in the context of all the evidence.

[6] There is no question that the final order under appeal changes the status quo and that the trial judge was alert to the fact that the order would represent a drastic change. But the trial judge's reasoning for doing so appropriately followed the court's guidance in *A.A. v. S.N.A.*, 2007 BCCA 363, 243 B.C.A.C. 301, and *A.M. v. C.H.*, 2019 ONCA 764, 32 R.F.L. (8th) 1, and is unassailable. As he stated, at para. 185 of his reasons:

Given this Court's findings, in particular that T. has never abused R. in any way, and that he has never been violent with D. as alleged by her, and that he once had a better relationship with R., and that D. has engaged in a

consistent and long-term pattern of conduct that has alienated the child from her father, I have concluded that to maintain the status quo would be an error. I cannot focus too much on the short-term effects on the child that would result from a drastic change in "custody", and therefore keep the child with the parent who has been responsible for the manipulation.

[7] The trial judge's order also provides for therapy for R. and other means to assist with the transition. It must also be kept in mind that the non-communication order is temporary and will be revisited on November 25, 2021.

[8] The trial judge's final order depended heavily on his assessment of the evidence and the credibility and reliability of the parties and the other witnesses. The appellant is dissatisfied with the trial judge's findings, particularly those adverse to her credibility, and asks this court to reweigh the evidence and revisit those findings. That is not this court's task. We have not seen any error that would permit appellate intervention.

[9] The appellant seeks leave to appeal the \$175,000 costs award against her on the basis that she was motivated by the best interests of her daughter and that the amount of \$80,000 would have been appropriate. We do not see any error in the trial judge's costs award that would warrant leave being granted. An award of costs is highly discretionary. While the amount of the award is high, it is supported by the trial judge's findings in this very difficult case.

[10] Accordingly, the appeal is dismissed.

[11] As agreed, the appellant shall pay the respondent costs of the appeal in the amount of \$15,000, inclusive of disbursements and applicable taxes.

“L.B. Roberts J.A.”
“J.A. Thorburn J.A.”
“E. Ria Tzimas, J. (Ad Hoc)”