

QUEEN'S BENCH FOR SASKATCHEWAN

Date: **2008 02 08**
Docket: Div. No. 005359 of 2006
Judicial Centre: Battleford, Family Law Division

Citation: **2008 SKQB 63**

BETWEEN:

[B.S.P.]

PETITIONER

- and -

[D.G.P.]

RESPONDENT

Counsel:

[B.S.P.]
[D.G.P.]

petitioner, on her own behalf
respondent, on his own behalf

JUDGMENT
February 8, 2008

ACTON J.

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- 1) A petition for divorce, joint custody with the primary residence being with the petitioner, access and child support based on the Federal Child Support Guidelines [*Divorce Act Regulations*, SOR/97-175], an order under s. 23 of *The Children's Law Act, 1997*, S.S. 1997, c. C-8.2 and an order under s. 96 of *The Queen's Bench Act, 1998*, S.S. 1998, c. Q-1.01 was filed on November 17, 2006.
 - 2) The petitioner and respondent were married on June 8, 1990 at Denholm, Saskatchewan and ceased to cohabit on or about April 20, 2005.
 - 3) The parties were residing in North Battleford, Saskatchewan at the time of their separation and both parties continued to reside in North Battleford, Saskatchewan at the time of the hearing.

4) There were two children of the marriage, [K.A.P.], born April 15, 1993 (now 15 years of age) and [B.L.P.], born July 10, 1995 (now 13 years of age).

5) From the evidence provided, it appears that the petitioner has always been employed and supported the family on her meagre income, supplemented at times by social assistance.

6) The respondent, on the other hand, has, according to unrefuted testimony, only worked for approximately three years in the last 20 years. He spent much of his time during this period enjoying life on a small patch of land outside of town. His main and only source of income since 1997 appears to have been Workers' Compensation and social assistance. However, the respondent did indicate that he has now started his own security business.

7) The evidence provided would indicate that during first 13 years of their daughter's life, the petitioner was the sole and almost exclusive caregiver to both children. Often, when things were desperate, the respondent's brother would help the petitioner by paying for and assisting in the delivery of groceries to meet the family's needs.

8) Initially, when the respondent was asked to leave the family home on or about April 20, 2005, the children remained in the custody of the petitioner. The petitioner appeared to be coping relatively well and was beginning to get on with a life for herself and her two children, with the respondent having reasonable access.

9) The petitioner is somewhat timid and withdrawn especially when faced with an aggressive individual. She would avoid confrontation at almost any

cost. The petitioner is a well-spoken, kind-hearted and responsible individual who cares dearly for her children. The respondent is extremely possessive and domineering. He runs an orderly household and, in his own way, has the best interests of his children at heart. However, he is manipulative and has attempted to use the children to get their mother to return to his control. When this did not work, he subtly turned the children against their mother.

10) By the end of August, 2006, the children were spending more time with the respondent and less time with their mother. Whenever the children were returned by the respondent to the petitioner, everyone had to listen to the verbal abuse of the petitioner by the respondent and the false allegations respecting her unfitness to be a parent if she did not return to him.

11) In the fall of 2006, the respondent moved into the same block on the same street as the petitioner and increased his hold on the children, using them as pawns to deliver notes, demanding that the petitioner reconcile with him or that she was an unfit mother and a prostitute. In the late fall of 2006, the times the petitioner had with her children were limited to a few hours, seldom an overnight access. Even when the petitioner had the children for a few hours, the respondent would show up at McDonald's Restaurant or wherever they were. He would continue his repetitious requests for reconciliation. His aim was to promote with the children the idea that the separation and the termination of their family relationship was the sole and personal responsibility of the petitioner. His actions verged on stalking of the petitioner and promoted the parental alienation of the petitioner by the children.

12) Parental alienation occurs when one parent convinces the children that the other parent is not trustworthy, loveable or caring – in short, not a good

parent. As indicated in the Children's Voices Report ordered by Mr. Justice Maher December 14, 2006 and filed with the Court on April 16, 2007, such manipulation of the children, with the resulting alienation, carries very high risks. The Children's Voices Report states: "It can seriously distort a child's developing personality and subsequent life adjustment. The sooner it is identified and appropriate interventions are implemented, the better the child's chances of avoiding its worst long-term effects." In the report, an example was provided from Darnell, Douglas, 1998 *Divorce Casualties, Protecting Your Children From Parental Alienation*, where a mother was described as an "obsessed alienator". She stated that "the children are frightened of their father. If they don't want to see him, I'm not going to force them. They are old enough to make up their own minds". This statement mirrors the respondent's opinion, not only as explained to the preparer of the Children's Voices Report, but also as stated *verbatim* to the Court.

13) The authorities quoted in the report go further to describe an "obsessed alienator" as enmeshing the children's personalities and beliefs into their own. The report filed with the Court indicates strong evidence of this obsessed alienation behaviour in interviews completed with the respondent and the children in the current situation. Even the preparer of the Children's Voices Report felt frustrated with the programmed answers of the children, parroting the words of their father.

14) Unfortunately, the respondent provided the children with unending amounts of information respecting their mother's personal life and the conflicts and struggles between their parents. As stated in the report, each of the parties has a responsibility to shield their children from this information and type of

activity. The report went on further to quote Thomas, Shirley, 1996: *Parents Are Forever, a Step-By-Step Guide to Becoming Successful Co-parents After Divorce*, wherein it states “the child needs both parents to become a secure adult, even if one of the parents is imperfect or prone to making mistakes. It is an unchanging fact that every child’s reality includes both parents of his or her family of origin”.

15) The preparer of the Children’s Voices Report also quoted Stahl, Philip, 2000: *Parenting After Divorce, A Guide to Resolving Conflicts and Meeting Your Children’s Needs*. The publication provided guidelines with respect to children’s developmental needs and indicated symptoms of failing to have these needs met. In particular, children of the age of [B.L.P.], if put in the middle of the conflict and not having their needs met, would exhibit symptoms including tantrums, regression, sleep problems, behavioural and academic problems in school, withdrawal and aggression with peers and depression.

16) Older children, such as [K.A.P.]’s age group, would be subject to academic failure, eating and sleeping disorders, suicide, delinquency, promiscuity or substance abuse.

17) This report was completed approximately 14 months prior to the trial of this matter. Uncontradicted evidence was presented at trial which would suggest that the children are both exhibiting examples of these types of symptoms. [B.L.P.] is having problems at school respecting aggression with his peers and is in a bridging class due to academic problems, particularly in the area of mathematics. [K.A.P.], who previously had a high academic record, is now requiring assistance because of her failure to keep up with mathematics. In

addition, she is showing signs of depression as evidenced by her indication to her mother that she is unhappy with her life.

18) In his testimony, the respondent dismissed the Children's Voices Report as being prepared by people who "didn't know the situation".

19) An example of the respondent's need to control the lives and thoughts of every member of his family was evidenced in the undisputed testimony of the maternal grandmother. She indicated that she and her son Albert had given her grandson, [B.L.P.], Albert's bike which he used in his childhood. The maternal grandmother was advised that the respondent kicked the spokes out of each of the wheels. When she confronted him with these allegations he immediately acknowledged having done so and indicated he would certainly do it again if she gave her grandson another bike. He has, whenever possible since the separation of the petitioner and respondent, done his utmost to isolate the children from their maternal grandmother and anyone on that side of the family.

20) There was a further interim order of this Court on the 26th day of April, 2007 after receipt of the Children's Voices Report wherein primary residence of the two children was ordered to be with the respondent and the petitioner having access to the child, [B.L.P.], every Wednesday at 4:00 p.m. to Friday at 4:00 p.m. commencing Wednesday, May 2, 2007. The petitioner was to pick up the child from school on Wednesdays at 4:00 p.m. to exercise this access. The petitioner was to have access to the child, [K.A.P.], a minimum of two occasions per month from Wednesday at 4:00 p.m. to Friday at 4:00 p.m. on weeks decided by the child, [K.A.P.].

21) Evidence was provided to the Court that the respondent would be at school to pick the children up shortly before 4:00 p.m. when the petitioner arrived.

He would ask the children if they wanted to go with their mother. They would respond “no” and he would then advise the petitioner that she would not have access, and would proceed to take the children home to his house.

22) There was evidence provided of the respondent’s constant attempts to control and manipulate the minds of the children in spite of the clear warnings of the Children’s Voices Report.

23) The respondent continually advised the Court of his alleged belief that the children were old enough to make up their own minds as to whether or not they wished to visit with their mother and he was not about to force them to visit with their mother if they did not express a wish to do so. I have no doubt that the children were well aware of the wrath of their father if they were to suggest any desire for visitation time with their mother. This is a classic sign of promoting parental alienation.

24) In spite of the Court ordering clear and explicit access by the petitioner to her children, these attempts have been thwarted at every turn. By the time of the trial on February 4, 2008 the petitioner had not seen her children since November 30, 2007. Before that short one-day visit, her last time spent with the children was for three days in July of 2007. The respondent attempted to cut that visit short by attempting to locate the children at the maternal grandmother’s home and demanding they come home with him. The only reason that he was unable to succeed was that the maternal grandmother was advised that he was coming and took the children to her other daughter’s for a visit.

25) The Court also ordered that the petitioner was to have telephone access at 7:00 p.m. on specific evenings each week. Once again, there was unrefuted evidence at trial that upon the Court making such an order, the

respondent changed his telephone number on four different occasions within six months. Each time he failed to advise the petitioner of his new phone number. The petitioner had obtained his most recent telephone number in the immediately preceding month. However, when she telephoned the number, they were either not home or the children were not allowed to answer the phone. In spite of Court orders and the Children's Voices Report to the contrary, the respondent has continued for 16 months in his development and promotion of the parental alienation of the petitioner by her children.

26) The respondent's obsessive control and manipulation of the children was even evident in the courtroom. At the close of the respondent's case, with both parties being self-represented, the Court adjourned for lunch and indicated a desire to speak with each of the children who are now 13 and 15 years of age. Court reconvened at 1:15 p.m. and the children were present in the back of the courtroom. However, on further reflection and discussion with more senior members of the bench, the Court decided not to interview the children. The Court advised the parties of the change and that the children were free to return to school if there was anyone available to drive them. Their maternal grandmother, being the only adult other than the petitioner and respondent sitting in the courtroom, assured the Court in her quiet manner that she was available and quite prepared to drive them back to school. The petitioner had no problem with this offer. The Court had no problem with this offer. The children immediately looked at their father to see what their reaction was to be. It was very evident that the respondent did not want the children to be alone with their maternal grandmother. He made numerous excuses for the Court. He had told the teachers the children would be absent for the afternoon. Therefore they should not return. It was now 1:20 p.m. and they would be late for class. Therefore they

should not return. The justifications were a feeble attempt to cover up his need to maintain total control of the children and with whom they communicated and associated. On the other hand, the petitioner was in tears of joy at actually having seen her two children for the first time since November 30, 2007, albeit only for a fleeting moment.

27) The petitioner is not an alcoholic nor a drug addict. She is not a prostitute. She is a warm, loving, caring individual and mother of two teenage children that she has raised and cared for from birth, except for the last 16 months. She is hard-working, responsible and caring. The actions of the respondent, on the other hand, are abusive and manipulative towards the petitioner and, as indicated previously, verge on stalking. The respondent has subtly but blatantly ignored the Court orders of physical and telephone access by the petitioner with her children. The respondent has developed and promoted the parental alienation of the petitioner by her children. The respondent has no qualms about demanding respect and responsibility from his children when it comes to cleaning his house and obeying his orders respecting curfews and “not wandering the streets”. However, when it comes to parental access by the petitioner and obeying orders of this Court, he indicates that he will not force his children to comply and works hard to ensure that they do not comply.

28) In reaching its decision, the Court has reviewed in particular the article entitled *Parenting After Divorce: Using Research to Inform Decision-Making About Children* by Rhonda Freeman, M.S.W. as published in the Canadian Journal of Family Law, (1998) 15 Can. J. Fam. L. 79-129, in particular, paras. 51 through 61, inclusive, dealing in great detail with parental alienation and, in particular, research which identifies six factors which lead to a child’s

reluctance or refusal to spend time with a non-residential parent, namely, at para. 55:

- child's basic anxiety about separating from the primary attachment figure, especially when parents are overtly conflictual with one another;
- child's limited cognitive capacity to be aware of both divorcing parents' opposing viewpoints and feelings, so that an alignment becomes the resolution to painful loyalty conflicts;
- intensity and longevity of parental disputes (this also contributes to the likelihood that an alignment will develop);
- child's inability to extricate his or her feelings and ideas from an emotionally distressed residential parent;
- child's exposure to traumatic emotional abuse and physical violence between parents; or
- child's sense of counter-rejection and retaliation by the rejected parent and others.

29) The Court has also reviewed the case of *R.A.L. v. R.D.R.*, 2007 ABQB 79, [2007] A.J. No. 163 (QL), the decision of Martin J. in the Alberta Court of Queen's Bench, involving activities of parental alienation in many ways similar to the current situation. Martin J. states at para. 156 that:

[156] ...parental alienation occurs along a continuum of behaviors and that it is not necessary to find a certain number of indicia before such a conclusion is appropriate. ...it does not have to be proven that the child hates the mother before intervention is warranted. ...it is very damaging and destructive to the child to be put into a position where they have to dislike the other parent and align with the alienating parent, and the sooner a remedy is implemented, the better. It is clear that encouraging negative feelings towards one parent may impede the normal emotional development of the child and deprive that child of love and support....

30) As indicated in *F.D.R. v. M.D.P.*, 2004 ABQB 956, [2004] A.J. No. 1502 (QL), Greckol J. stated at para. 119:

[119] Parental alienation syndrome describes a situation in which one parent attempts to alienate the child against the other parent. In *Elliot v. Elliot*, [1996] Alta. D. 1541 - 01, appeal dismissed (1996), 193 A.R. 177 (C.A.), Langston J. wrote at para. 16:

...alienation can take the form of overt acts or words or can be more subtly directed by means of gifts or bribes intended to influence the mind of the child against the other parent. The initial bond between a mother and child which flows from the process of birth, and which develops into a sense of intellectual attachment, can be impeded or destroyed through the effects of parent alienation syndrome. So while the child in this case is presently securely attached to each parent, the impact of the syndrome would be to thwart the natural growth of the child's attachment to one of the other of the parents. This in turn hinders the child's normal development.

31) The Court has also considered *Pettenuzzo-Deschene v. Deschene* (2007), 40 R.F.L. (6th) 381 (Ont. S.C.J.), a decision out of the Ontario Superior Court of Justice delivered by W. L. Whalen J. which deals with parental alienation syndrome and sets forth other Canadian cases having dealt with parental alienation. I have reviewed not only the decision, but the cases referred to therein and, as stated by Whalen J. at para. 32:

[32] In *C.S. v. M.S.*, [2007] O.J. No. 878 at paragraph 92, Perkins J. described parental alienation as follows:

Children who are subject to the parental alienation syndrome (I will call them PAS children) are very powerful in their views of the non-alienating parent. The views are almost exclusively negative, to the point that the parent is demonized and seen as evil. [...] PAS children feel empowered and are rewarded for attacking the other parents and feel no remorse or shame for doing so. [...] PAS children have a knee jerk, reflexive response to support the alienator against the targeted parent, often on the basis of minimal evidence or justification. PAS children broaden their attacks

to encompass members of the other parent's extended family. [,,] PAS children are recruited by the alienating parent and alienated siblings to the alienating parent's cause. [...] With PAS children, you cannot be sure who you are listening to - is it the child, is it the alienating parent, or is it Court Watch [an advocacy group supporting the father]?

32) The Court has also followed the Supreme Court of Canada in *Van de Perre v. Edwards*, [2001] 2 S.C.R. 1014, 2001 SCC 60, and, in particular, para. 9 which states “[t]he principal determination to be made in cases involving custody is the best interests of the child...”. The Court has also considered the other comments and the law as stated therein by the Supreme Court of Canada respecting cases involving custody and access issues to be considered and the weight to be given to the facts in the particular case.

33) Martin J. in *R.A.L. v. R.D.R.*, *supra*, goes on at para. 191 to state:

[191] A custody determination is based on what is in the best interests of the child under the circumstances, while taking into consideration numerous factors. These factors include:

- a) The mental, emotional and physical health of the child and her need for appropriate care or treatment, or both;
- b) The views and preferences of the child, where such view and preferences can be reasonably ascertained;
- c) The effect upon the child of any disruption of the child's sense of continuity;
- d) The love, affection and ties that exist between the child and each person to whom the child's custody is entrusted, each person to whom access to the child is granted and, where appropriate, each sibling of the child;
- e) The need to provide a secure environment that would permit the child to become a useful and productive member of society through the achievement of his full potential according to his individual capacity; and
- f) The child's cultural and religious heritage.

34) Justice Greckol, *F.D.R. v. M.D.P.*, *supra*, goes on further at para. 126 to state:

[126] In *Starko v. Starko* (1990), 106 A.R. 62 (Q.B.), Picard J. (as she then was) set out a number of factors that she considered addressed the best interests of children:

1. He must be provided with the necessities of life including proper physical care and health care. He must be loved.
2. He must be provided with an environment and interactions to foster good mental health and emotional well-being. He needs stability and consistency in his life.
3. He needs the opportunity and resources to learn. This goes beyond the basics of learning to communicate and use his hands and should include the transmission of cultural, moral and spiritual values.
4. He needs to be presented with realistic limits to his conduct and to be disciplined in a fair and consistent manner. He has to be taught to behave appropriately.
5. He must be given the opportunity to know his family and to be loved by them and to reciprocate with love. I define the family to go beyond siblings and parents to include grandparents and in many cases aunts, uncles, cousins and so on.

As he gets older he must be given the opportunity to form relationships with other children and adults and he should be guided and assisted in doing so.
6. He must be given the opportunity and freedom to grow. It is not the right of a parent to have the child fulfill his or her needs but to be responsible for guiding the child toward fulfilment in adulthood.

35) Further, in reaching a decision, the Court has reviewed *Tremblay v. Tremblay* (1987), 10 R.F.L. (3d) 166 (Alta. Q.B.), wherein it is stated at page 170:

In deciding questions of custody one needs to take into account the best interests of the child. It is in the children's best interests to live with the parent who is prepared to be co-operative with respect to access in cases where both parents can equally well look after the children or, even if there is a divergence in

parenting skills. as long as the co-operative parent is fit to look after the children....

The Court went on further to state at page 171:

In this particular case, Mrs. Tremblay has been given ample opportunity to comply with the various court Orders. Short of sending her to jail, everything has been tried to convince her that Mr. Tremblay is entitled to access to the children. ...

This quotation applies equally well in the current situation to the respondent.

36) The Court has considered as well, in particular, ss. 16 and 17 of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) which read, in part, as follows:

16(1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

...

(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

...

(10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

17(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

...

(b) a custody order or any provision thereof on application by either or both former spouses or by any other person.

...

(5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

37) In quoting *Tremblay v. Tremblay, supra*, Trosser J. states at page 170:

The Court should not automatically change custody if the custodial parent refuses access or otherwise interferes with the development of a normal parent and child relationship between the non-custodial parent and the child of the marriage. However, where the parent refuses access serious questions are raised about the fitness of that person as a parent. The refusal to grant access after it is ordered is a change in circumstances sufficient to satisfy s. 17(5) of the *Act*.

38) On the evidence before me, I am satisfied that it is the best interest of the children and that the petitioner, [B.S.P.], will properly care for the children and will give [D.G.P.] generous access as she has shown to do in the past when the children are living with her.

39) This Court does hereby order:

- (i) The parties are hereby divorced which judgment shall take effect 31 days from the date hereof.
- (ii) The parties hereto shall have joint custody of their children, [K.A.P.], born April 15, 1993 and [B.L.P.], born July 10, 1995.
- (iii) The primary residence of the children shall, effective immediately, be with the petitioner for a period of three

consecutive months from the date hereof and then shall alternate one month with the respondent, followed by one month with the petitioner, so long as each child remains a child within the meaning of the *Divorce Act*.

- (iv) In addition, access for the respondent is suspended for a period of three months from the date hereof during which time the following conditions shall apply:
- (a) there shall be no contact directly or indirectly between the respondent and either of the children by any means, including telephone, text messages, facsimile, email, regular mail, other web-based text, audio or video;
 - (b) there shall be no contact directly or indirectly by any of the above means with the respondent's family, or any agent of the respondent or his family;
 - (c) the respondent is enjoined from communicating with either child or being within 200 metres of either child or the school attended by either child, or the place of his or her activities;
 - (d) there is to be no surveillance of any type of either child by the respondent or any of his family or otherwise associated with them;
 - (e) the respondent is to report to the Court any contact he receives from either child;

- (f) the respondent is enjoined from providing either child with a cell phone or other method of communication.
- (v) The respondent shall deliver the children's personal effects to the petitioner and the children through the assistance of his friend and witness at the trial who shall deliver the personal effects to the petitioner and the children within 24 hours of the date of this order.
- (vi) In the event that either or both of the children shall leave the custody of the petitioner without her permission at any time during the first three-month period, the petitioner shall have the assistance of the local detachment of the RCMP, if requested by her, to apprehend and return the children to her immediately.
- (vii) The respondent shall comply with s. 21 of the Federal Child Support Guidelines, by supplying a copy of his most recently filed income tax return on an annual basis on or before the 15th day of May in each and every year.
- (viii) Shall the respondent fail to comply with the terms and conditions of the within order he shall be considered in contempt of court and subject to the penalties available therefor.
- (ix) Based on the information available respecting the income of each of the respective parties, there shall be no child support orders at this time.

- 40) As both parties are self-represented, no costs will be awarded.

J.
M. D. Acton