

2011 CarswellOnt 3230
Ontario Superior Court of Justice

Cook v. Cook

2011 CarswellOnt 3230, [2011] W.D.F.L. 3432, 202 A.C.W.S. (3d) 792

Cook v. Cook

Backhouse J.

Heard: April 14, 2011
Judgment: April 15, 2011
Docket: FS-10-362369-00

Counsel: J. **Stanchieri**, for Mother
Duane Cook, for himself

Subject: Family

Related Abridgment Classifications

Family law

X Custody and access

X.12 Access

X.12.a Best interests of child

X.12.a.x Miscellaneous

Headnote

Family law --- Custody and access — Access — Factors to be considered — General principles

Table of Authorities

Rules considered:

Family Law Rules, O. Reg. 114/99

R. 1(8) — referred to

R. 14(23) — referred to

R. 19(10) — referred to

Backhouse J.:

1 The father seeks access to his 6 1/2 year old daughter on every other Friday from 6 p.m. to 9 p.m. and every other Saturday and Sunday from 1 p.m. to 9 p.m. in the week where he is not exercising weekend access, he proposes that he

exercise access Tuesday and Wednesday. He also seeks I month's summer access to visit his family in Nova Scotia with his daughter.

2 The mother proposes that access take place every Saturday from 10 a.m. to 7:30 p.m. and every Wednesday from 4 p.m. to 7:30 p.m. She is agreeable to summer access for a 2 week time period provided that the father follow through on exercising regular access between now and the summer and that he actually goes to Nova Scotia with the child to visit his family.

3 The mother seeks to strike out the father's pleadings (other than his claim to access) for failure to comply with the interlocutory orders for child support and financial disclosure. The mother also seeks an order to allow her to obtain information directly from third parties and to vest the father's one-half interest in the parties' investment property in trust as security for support and equalization.

Finding

4 In my view, the mother's access proposal is preferable because I consider 9 p.m. too late for a 6 1/2 year old child to be returned and the regularity of the father seeing the child on the same days every week is preferable to the schedule varying each week as the father proposes. Provided the father regularly exercises access on Saturdays and Wednesdays until the summertime, two weeks vacation is appropriate, whether or not he exercises it in Nova Scotia or Toronto. I would expect that access would move to overnight in the fall provided that the father exercises access regularly in the meantime.

5 During the marriage, the father was the primary income earner. The mother immigrated from the Ukraine in 2003. The father refused to pay child support following the parties' separation on June 26, 2010. On October 12, 2010, the father was ordered to pay child support in the amount of \$650/month based on his stated income of \$70,000 commencing July, 2010. He has never complied with this despite \$169,000 going through his bank accounts between December 2009 and July, 2010. Depositing the child tax benefit the mother receives and her income tax refund into their joint account does not comply. Given the timing of the father's termination from his employment immediately following the court ordered support causes me concern that this was deliberate. I am not satisfied that he has made good faith efforts to obtain new employment. The current child support arrears are \$5,690. The father has failed to pay \$5000 in costs awarded to the mother.

6 The Father has not made the court ordered disclosure. The mother has been seeking disclosure since July, 2010. After numerous very specific requests, the father produced bank statements from one of his accounts from December 2009 to July, 2010 which disclose large unexplained deposits. On October 12, 2010, a very specific disclosure order was made. The very specific and detailed affidavit of the mother sworn April 8, 2011 makes it abundantly clear that the father is stonewalling on his disclosure.

7 This case has all the hallmarks of a party who has adopted a scorched earth policy and is seeking to run the other party out of money in order to force her to give up her claims. I find that the father's answer (other than his claims regarding custody/access) shall be struck pursuant to [Rule 14\(23\) of the Family Law Rules](#).

8 The mother has had the property in which she and the child are residing appraised, municipally known as 11 Sheffer Terrace Toronto, Ontario and legally described as Lot 77 Plan 66 M2439. The property has equity of approximately \$24,000(\$12,000 each). Given the default and the striking out of the father's pleading, this property shall be transferred to the mother as security for the mother's claims in this action including outstanding child support and costs, to be accounted for.

9 Given what I find to be the father's deliberate non-compliance with the disclosure order, I order under [Rules 1\(8\) and 19\(10\)](#) that the mother may obtain disclosure from any bank or other financial institution or any federal or provincial government agency, including federal and provincial taxation agencies, of any information that the father could obtain on request from that institution or agency, as if the mother were expressly authorized by the father, in compliance with any applicable law governing or any policies adopted by the institution or agency to obtain the information on his behalf. If this proves insufficient to allow the mother to obtain the disclosure, the father is ordered to sign any consent or release necessary to allow the mother to secure the information. The costs of obtaining any such disclosure are recoverable in full from the father.

10 The mother shall have 14 days following the release of this decision to deliver brief written submissions regarding

costs. The father may have 14 days thereafter to respond.

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