IN THE FAMILY COURT OF NOVA SCOTIA
Citation: Giffin v. Muise, 2010 NSFC 7

Date: 2010 04 12
Docket: FLBMCA-068392
Registry: Bridgewater

Between:

Megan Eve Giffin

Applicant

v.

Trevor Jr. Aubrey Muise

Respondent

Judge: The Honourable Judge William J. Dyer

Heard: April 6, 2010 in Bridgewater, Nova Scotia

Written decision: April 21, 2010

Counsel: Robert Chipman, for the Applicant
W. Bruce Gillis, Q.C. for the Respondent

By the Court:

Issue

[1] To be decided is where a contested hearing will be held to deal with unresolved parenting issues between parents who live in different parts of the Province.

Background

[2] Megan Eve Giffin (Giffin) and Trevor Jr. Aubrey Muise (Muise), who lived in a common law partnership for about three years, are the parents of almost five year old Dylan Muise (Dylan).

[3] In an affidavit, Muise wrote that he lives in a small rural community in Annapolis County and that he is a student at the Middleton campus of a community college. By another relationship, Muise has another son who is almost seven years old. Although that child lives in Middleton with his mother, he enjoys a close relationship with Dylan.

[4] Muise recounted the history of his relationship with Giffin and the parenting arrangements for Dylan, including an especially challenging period of time between late 2005 and early 2008 when Muise assumed primary care, by agreement, because of Giffin's admitted cocaine drug addiction.

[5] In her affidavit, Giffin said that she completed a detoxification program and that she has been drug-free since early January, 2008 when the parties agreed to a shared parenting arrangement - despite the distance between the parents' homes. (She was then living in the Halifax area; Muise was then [and still is] in the Annapolis Valley.)

[6] Giffin and her current common law partner live in the eastern part of Lunenburg County. They have an almost one year old child. Her partner works locally and has a son by another relationship. There is a joint custody arrangement in place for that child.

[7] Giffin wrote that she has been responsible for all of the transportation arrangements to facilitate current parenting arrangements. Muise is unlicensed, apparently as a result of a "drinking while impaired" conviction.

[8] Neither party specified the distances between their homes or the drive times by car. However, based on my judicial travels, I am comfortable in judicially noting that the drive times between the Courthouses is in the two-hour range, one way.

The Applications

[9] Giffin started proceedings under the **Maintenance and Custody Act** (**MCA**) on January 2, 2010. She seeks an order for joint custody with day-to-day care vested in her, subject to reasonable access by Muise, plus child support if Muise's financial circumstances warrant. The first scheduled court appearance was at the Courthouse in Bridgewater, Lunenburg County, on March 1st. Muise was not present; and he had not acknowledged service by mail. An income disclosure order was authorized; and the case was adjourned. On the same occasion, Giffin's counsel disclosed that Giffin had very recently received court documents from Muise.

[10] It is now known that on February 11th Muise attempted to start an application with a first appearance scheduled for the Courthouse in Annapolis Royal, Annapolis County, on March 11th. For unstated reasons, officials at the Yarmouth Justice Centre did not issue Muise's originating documents - they were simply returned to him for service on Giffin.

[11] Events continued to unfold. Giffin managed to accomplish service of her documents on Muise. And, the lawyers became aware of each other's involvement and the unusual way in which things had come to pass.

The Submissions

[12] Giffin wants the hearing to take place in the judicial district where she lives - Lunenburg County. Muise thinks it should be held where he lives - Annapolis County.

[13] On behalf of Giffin, Mr. Chipman emphasized the following:

- Giffin's residence in Lunenburg County since May, 2009
- Dylan's attendance at a local pre-school program during Giffin's parenting times
- Dylan's pre-registration for Fall enrolment at a local elementary school
- "a growing number of persons who would be familiar" with the family and child (in a local area)
- as the first Applicant to issue originating documents, Giffin has "the right" to choose the place of hearing.

[14] On behalf of Muise, Mr. Gillis emphasized:

- any delay in the issuance of documents by Muise was not his fault
- currently Dylan's time is divided between the two households - one week in Lunenburg County; one week in Annapolis County
- until January, 2008 Dylan lived full-time in Annapolis County
- Dylan has a half-brother and extended family in Annapolis County with who there are long-standing connections
- Muise is a full-time student with limited financial means and no transportation
- Giffin has part-time employment, some income, and the ability to travel

Discussion/Decision

[15] A colleague presiding at Annapolis Royal who was simultaneously presented with the same issue has deferred to me. By agreement, I heard submissions by teleconference. Counsel were kind enough to provide written submissions in advance.

[16] Family Court **Practice Memorandum 9** states that the proceedings are to be commenced, dealt with, and heard in the judicial district in which the Applicant normally resides. Here, two Applicants started (or tried to start) their cases within days of each other. Whether or not Muise's documents were issued is not crucial because counsel for the respective parties want a judge to make a ruling on where the case should be heard.

[17] The **Memorandum** states that where proceedings concern the custody, access or parenting of a child and the case is contested, the court may transfer the case to the judicial district in which the child ordinarily resides. Importantly for our purposes, the court has been given the residual authority to transfer a matter to any

other judicial district where it is substantially more convenient to deal with a case or a step in a case elsewhere.

[18] In other cases, I have commented that the **Memorandum** seems to point to the hearing of contested cases in the district where the child(ren) normally reside, but this is not mandatory. Because the wording is framed in the present tense, the implication is that the current residence is crucial, not the past residence. Where there is disagreement, the decision rests with the court which must exercise its discretion judicially having regard to all of the prevailing circumstances.

[19] Unique to the present case is the fact that the child does not primarily reside with either parent or in either County - he shares equal time with both parents, in two Counties. So, the **Memorandum** is not of much assistance in that regard.

[20] Understandably, counsel have therefore resorted to more conventional considerations such as the child's residential history, the child's past and present connections to places of residence and to extended families, the circumstances giving rise to the prevailing parenting regime, the most convenient place for the case to be heard; etcetera.

[21] The case is being propelled by the reality that Dylan will soon start school, full-time; and that "week about" shared parenting will not be workable. Although this reality could be anticipated by both parents several years ago, they have not been able to settle the underlying issues; and the resulting strains and stresses on the parents are already reflected in their written materials.

[22] Because the case has just been launched, neither party has identified their potential witnesses - whether they be professionals, family members, friends, neighbors, or otherwise. Therefore, any convenience (or inconvenience) to them is an unknown and does not tilt the decision one way or the other.

[23] Judges sit regularly in both Judicial Districts. Comparative "docket delay" was not mentioned as a factor.

[24] Given the distance between the parties' homes and the Courthouses, one of them will personally suffer some inconvenience and expense. With respect, such is not unique to the present case. In an increasingly mobile society, litigants and their

counsel routinely appear [sometimes by choice; sometimes not] in courts at all levels, at diverse locations, across the Province.

[25] Mr. Gillis underlined that Giffin has the distinct advantages of outwardly better financial circumstances and, importantly, a demonstrated ability to get herself to and from Annapolis County by car - as compared to Muise's limited financial means and no identified means of transportation. Giffin presented no evidence to contradict the latter assertions or to cast doubt on their *bona fides*.

[26] After considering the limited available evidence at this juncture and the submissions of counsel, I exercise my discretion and direct that the case be heard in Annapolis County. I am satisfied it is substantially most convenient that the case be heard there, rather than in Lunenburg County.

[27] As agreed, counsel will arrange for a mutually convenient date to get the matter before a judge presiding in that locale.

[28] Mr. Gillis should submit a brief order to give effect to the ruling.

Dyer, J.F.C.