

Paula BAUHAUS v. Tracy NADON & Richard KINDLA

2009 NWTTC 01
File: T-1-CV-2007000130

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

PAULA BAUHAUS

Plaintiff

- and -

TRACY NADON and RICHARD KINDLA

Defendants

- and -

KB

Third Party

AND BETWEEN:

TRACY NADON, RICHARD KINDLA, CMK & TRACY NADON AS NEXT FRIEND OF CMK (a minor)

Plaintiffs by Counterclaim

- and -

PAULA BAUHAUS AND KB

Defendants by Counterclaim

REASONS FOR JUDGMENT

of the

HONOURABLE JUDGE Bernadette Schmaltz

Heard at:	Yellowknife, Northwest Territories
Trial Date:	July 31, August 1, 2008, & November 7, 2008 Judgment
Filed:	January 16, 2009
For the Plaintiff:	Self Represented
Agent for KB, Third Party:	E. Blacklock
Counsel for the Defendants:	B. Enge

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I. INTRODUCTION

[1] Paula Bauhaus (the Plaintiff) brought a claim against Tracy Nadon and Richard Kindla (the Defendants) for \$780.00 for breach of contract. The Defendants filed a defence to the Plaintiff's claim, and filed a counterclaim in the amount of \$10,000.00 against the Plaintiff, and against KB (Defendant to counterclaim). KB is the Plaintiff's minor son.

II. FACTS

[2] It is undisputed in this case that the Plaintiff provided childcare services to the Defendants for their two young daughters, C and L. The Defendants entered into a written agreement (Exhibit 1) with the Plaintiff on October 19, 2006, whereby childcare services were to begin on October 23, 2006. The fee for the childcare services provided by the Plaintiff was \$700.00 per two week period. A Security Deposit of \$1,400.00 was also paid. The written agreement stated "The parents/guardians will forfeit the security deposit if the Agreement is cancelled without the required notice or payment is not made when it is due." With respect to notice the relevant part of the written agreement stated "The caregiver and parent(s) will give 30 days['] notice if this agreement is to be terminated. ..."

[3] The Plaintiff provided childcare services for the Defendants' children until February 8, 2007. On the evening of February 8, 2007, the Defendant, Ms. Nadon, was getting her child C ready for a bath and noted bruising on her back. The Defendant Ms. Nadon had not noted the bruising on C prior to February 8, 2007. The Defendant Ms. Nadon believed that the Plaintiff's son KB had hit her child C. Photographs of the bruising were entered at the trial. The Defendants did not return either of their children to the care of the Plaintiff after February 8, 2007. The Plaintiff received notice on February 9, 2007, that the Defendants would not be returning their children to the Plaintiff's care.

[4] The Defendants paid for childcare services up to January 26, 2006; the Defendants did not pay for childcare services provided between January 29, 2006 and February 8, 2007. The Defendants did not receive a refund of any of the \$1,400.00 security deposit paid to the Plaintiff.

[5] From the evidence presented on this trial it is impossible to ascertain exactly how C came to have bruising on her back. Neither C nor the minor KB testified on this trial. I find that

the Defendants not returning their children to the care of the Plaintiff was reasonable *in the circumstances*. Though it is not clear to me how C came to be injured, it was a reasonable inference on the part of the Defendants that their child was injured while in the care of the Plaintiff. Though I find this a reasonable inference on the part of the Defendants, I want to be clear that I am not making a finding of wrongdoing on the part of the Plaintiff, nor any finding that the Plaintiff was intentionally or even by negligence responsible for the injuries incurred by C. I do not know how C was injured, but C was injured, and it is likely that C incurred her injuries while in the care of the Plaintiff.

III. ANALYSIS

[6] Section 2 of the *Territorial Court Civil Claims Rules* states:

2 (1) The territorial judge shall hear and determine in a summary way all questions of law and fact and may make such order or judgment, including an order as to costs, as appears to him or her to be just and equitable.

[7] The Plaintiff and the Defendants had a written agreement with respect to the provision of childcare services by the Plaintiff to the Defendants. While in the care of the Plaintiff, the Defendants' child C incurred bruising on her back.

[8] Even considering that it is not possible to determine exactly how C came to have bruising on her back, it would be unreasonable to require a parent whose child had been injured while in the care of another person, to return the child to the care of that person. In the circumstances of this case, to rule that a party must strictly adhere to an agreement or incur financial hardship, would be neither just nor equitable.

[9] *Black's Law Dictionary* (8th Edition) defines the circumstances in which a contract becomes frustrated as follows:

The doctrine that if a party's principle purpose is substantially frustrated by unanticipated changed circumstances, that party's duties are discharged and the contract is considered terminated.

[10] The Defendants' principle purpose in entering into an agreement with the Plaintiff was to obtain childcare for their children. One of their children sustained injuries likely while in the Plaintiff's care, though exactly how she was injured is not known. From the point of view of the Defendants, the circumstances were most certainly changed – their perception was that the Plaintiff's minor son had injured their child. I cannot make that determination on the evidence, but nor can I find that the Defendants' perception was unreasonable. The circumstances changed, and such change was clearly unanticipated. In the changed circumstances, the Defendants' principle purpose was frustrated, and consequently, the Defendants' duties under the contract were terminated.

[11] The Defendants did received childcare from the Plaintiff up to and including February 8, 2007. The Defendants paid for childcare up until January 26, 2006. Section 5(1) of the *Frustrated Contracts Act*, R.S.N.W.T. 1988, c.F-12, provides as follows:

5(1) If, before the parties were discharged, a party has obtained a valuable benefit other than a payment of money by reason of anything done by another party in connection with the performance of the contract, the court, if it considers it just having regard to all the circumstances, may allow the other party to recover from the party benefitted the whole or part of the value of the benefit.

[12] The contract between the Plaintiff and the Defendants became frustrated on February 8, 2007. At that time the Defendants' duties under the contract were terminated. However, the Defendants did receive childcare for both of their children from January 29, 2006, to February 8, 2007, and I find this was a valuable benefit to the Defendants provided by the Plaintiff in connection with the performance of the contract between the parties. Having regard to all the circumstances in this case, I would allow the Plaintiff to recover from the Defendants the value of this benefit. The cost of childcare provided by the Plaintiff was \$700.00 per two week period, or \$70.00 per day; the value of the benefit received by the Defendants was \$630.00.

[13] The Plaintiff claims that the Defendants did not give the required *Notice of Contract Termination* as required by the written agreement between the two parties. This is correct. However the contract having been frustrated on February 8, 2007, the Defendants were consequently relieved of their duties under the contract after that date. The contract was not terminated prior to February 8, 2007. Again, in the circumstances it would not be just or equitable to require the Defendants to continue to take their children to the Plaintiff's dayhome, and the Defendants' duties having been terminated by frustration of the contract, there was no requirement of notice.

[14] The Plaintiff had received a security deposit of \$1,400.00 from the Defendants. The *Childcare Contract* states:

Security Deposit: ...

A security deposit of a one month pay period fee is due prior to the day home operator looking after your child initially. The parents/guardians will forfeit the security deposit if this Agreement is cancelled without the required notice or payment is not made when it is due.

[15] As I found above, the Defendants were not bound by the notice requirement due to the contract being frustrated. Payment for the period of January 29, 2006 to February 8, 2007, was due on February 9, 2007. The Defendants did not pay the \$630.00 due to the Plaintiff on February 9, 2007. The Plaintiff is entitled to payment for that period of childcare which she provided for the Defendants' children. However to allow the Plaintiff to withhold the entire security deposit in the circumstances of this case would amount to an unjust enrichment for the Plaintiff. In the circumstances the Plaintiff shall reimburse the Defendants the security deposit that was paid less the amount due to the plaintiff for childcare services from January 29, 2006 to February 8, 2007, being \$630.00.

IV. COUNTERCLAIM

[16] The Defendants have by counterclaim claimed that the Plaintiff or the third party, KB, caused the injuries to the Defendants' child C. The evidence is insufficient to support such a

claim. I am not satisfied that the Plaintiff knowingly injured the child C, nor am I satisfied that the child C was injured due to any negligence on the part of the Plaintiff. Further there is no evidence to support the claim that the third party KB injured the child C. Though having found that the evidence does not support the claim that the Plaintiff or the third party caused the injuries suffered by the child C, I also find that the Defendants (plaintiff by Counterclaim) did not present evidence to support any damages incurred by either the Defendants nor the child C as a result of the injuries suffered by the child C. Consequently, the portion of the Defendants' counterclaim dealing with general damages against the Plaintiff is dismissed. There is also no basis for the Defendants' counterclaim against the Plaintiff for punitive damages, and that portion is also dismissed.

V. CONCLUSION:

[17] The Plaintiff's claim against the Defendant is dismissed. The Defendants' counterclaim against the Plaintiff is allowed in part with respect to the special damages sought in the amount of \$1,400.00 less \$630.00, for a total of \$770.00.

[18] In the circumstances of this case, especially considering the amount of the Defendants' initial claim against the Plaintiff, and the amount finally recovered, each party shall bear their own costs.

Bernadette E. Schmaltz
Territorial Court Judge

Dated this 16 day of January, 2009

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