

The Canadian Abridgment eDigests -- Family Law - Ontario

2009-29
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FAM.IX.14

Subject Title: Family law

Classification Number: IX.14

Custody and access -- Miscellaneous issues

Parties married in 1984, had two children and divorced in 1999 -- Children resided with mother, but by 2006 both children resided with father and children were alienated from mother -- Younger child had Klinefelter's Syndrome and was under care of psychiatrist -- Parties agreed to arbitration with regard to custody -- At arbitration hearing psychologist explained concept of irrational alienation and described special program in United States which included forcible removal of child to program's location under consent of rejected parent and no contact with other parent during and for period after program -- Younger child's psychiatrist expressed opinion that coerced participation in program and separation from father and brother would be damaging -- Arbitrator concluded that mother was intentional victim of irrational alienation by children designed and orchestrated by father -- Arbitrator awarded sole custody to mother, including authorization of mother to use special program -- Father's appeal was allowed on basis that arbitrator erred in law in concluding that children should participate in program without first considering particular needs and circumstances of children -- Hearing was held to determine appropriate disposition in light of allowing appeal -- Mother submitted that minimum court should order was sole custody to her, parents and youngest son's participation in counselling and no contact or access by father pending review, except for purposes of counselling -- Arbitrator's award was set aside in its entirety -- Mother's suggestion was attractive, but no order should be made without understanding of youngest son's needs and court did not have adequate evidentiary basis to make this determination -- Also, award of sole custody to mother was part of package including participation in special program -- Staying disposition of appeal pending assessment would likely lead to trial on issue of youngest child's best interests which raised questions about appropriate scope and parameters of such hearing and role of judge in these circumstances -- Better course was to set aside entire arbitration award and expedite trial by judge sitting as trial judge.

B. (S.G.) v. L. (S.J.) (2009), 2009 CarswellOnt 2660, Herman J. (Ont. S.C.J.); additional reasons to *Quigley v. Willmore* (2008), 2008 CarswellNS 704, 2008 NSSC 353, R.J. Willilams J. (N.S. S.C.) [Ontario]

FAM.XV.5.a.ii.D

Subject Title: Family law

Classification Number: XV.5.a.ii.D

Children in need of protection -- Application for permanent custody -- Factors to be considered -- Particular factors -- Physical or mental illness of parent

Child was found to be in need of protection pursuant to s. 37(2)(b) of Child and Family Services Act -- Child had been in care and custody of Catholic Children's Aid Society since birth -- Mother's three previous children had all been made Crown wards without access -- Society brought summary judgment motion under R. 16 of Family Law Rules seeking order that child be made Crown ward and placed in care of Society without access -- Motion granted -- It was apparent from evidence and conceded by all parties that child continued to be child in need of protection -- It was apparent from evidence and conceded by Society that parents loved child and had good faith desire to be parents of child -- Parents had been diligent in attending access visits and had made efforts to improve their instrumental care skills of child -- Evidence was overwhelming that parents had serious continuing mental health problems and that parents' lifestyle created risk of harm to child -- In reviewing concerns with respect to mental health of parents, there was significant risk that child would be physically harmed -- Situation with respect to parents' mental state was not likely to be altered in near future -- Returning child to parents under some form of supervision would not alleviate danger of harm -- Order of Crown wardship was appropriate and in best interests of child -- Parents' evidence would not satisfy either element in two-part test under s. 59 (2.1) -- Pursuant to R. 16(6) there was no genuine issue for trial -- Child was made ward of Crown and placed in care of Society with no access, for purpose of adoption.

Catholic Children's Aid Society of Hamilton v. M. (J.) ([2009](#)), [2009 CarswellOnt 918](#), Lofchik J. (Ont. S. C.J.) [Ontario]

FAM.XX.6

Subject Title: Family law

Classification Number: XX.6

Costs -- Support

Mother applied to vary retroactively and prospectively child support provisions in 1995 divorce judgment -- Mother received some relief since child support for one of parties' two children was increased in accordance with Federal Child Support Guidelines from October 2003 to present -- Also, father was ordered to contribute to child's special and extraordinary expenses for this period -- However, mother failed to have child support readjusted back to 1997 as she originally requested, or to 2003 as requested at trial -- Also, mother failed to receive any contributions to special and extraordinary expenses for second child -- Mother sought costs in amount of \$25,000 inclusive of disbursements, on partial indemnity basis -- Father contended that each party should bear own costs -- Father was to pay mother's costs in amount of \$5,000 inclusive of disbursements -- Issues were not overly complex or difficult -- Full financial disclosure was eventually made and there were no challenging issues regarding determination of income -- It was arguable that both parties contributed to litigation eventually being necessary -- When mother realized father's income had increased and began these proceedings, father unreasonably let mother struggle on as single parent when, as sign of good faith, he should have began paying Guidelines support immediately -- However, father had made six offers to settle, all of which were reasonable and would have provided mother with better outcome than trial -- Ultimate recovery by mother was \$15,380 but her legal fees were \$38,000 and father's were \$23,000, which were both way out of proportion to value of litigation to either party -- Also, mother's lawyer's hourly fee of \$350 was particularly hefty as was inordinate amount of time her lawyers devoted to her file, given that matter raised accounting more than legal issues -- Also, some of minor expenses charged to mother for postage and photocopying were normal overhead of running office and therefore covered by lawyer's hourly rate.

Krivanek v. Krivanek (2009), 2009 CarswellOnt 3111, Aitken J. (Ont. S.C.J.); additional reasons to (2008), 56 R.F.L. (6th) 390, 2008 CarswellOnt 5179, Aitken J. (Ont. S.C.J.) [Ontario]



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