

Date: 20010628  
Action No. 4803 97388

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

D.L.S.Petitioner  
- and -

D.E.S.R

of the

HONOURABLE MADAM JUSTICE J.C. COUTU

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APPEARANCES:

. K for the Petitioner

for the Respondent

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**INTRODUCTION:**

[1] D.M.S. is 13 years of age, and her brother, A.J.S., is 8 years of age. Their parents, Mr.

[9] In 1996, a psychologist, Dr. H., did an assessment in this case. Unfortunately, his predictions regarding S.S. have come true. At p. 9 of his report he stated:

In the final analysis the one undisputed conclusion to be drawn from a review of the history of this matter is that these children have been exposed to instability, marital



demanding that an assault charge be laid. *(This is the first of many requests by the S's for R.C.M.P. involvement.)*

[23] On December 3, 1994 Mr. S. called the R.C.M.P. again, this time, alleging that Mrs. S. refused to give him the children's diabetic logbooks.

[24] In para. 7 of his January 10, 1995 Affidavit, Mr. S. deposed that on November 28, 1994 he was advised by N.S. that Mrs. S. was working late at a video store and that "the children and their cousins had no adult supervision for approximately four hours". *(It turns out that the children in fact had a 16 year old babysitter.)*

[25] In a January 16, 1995 Affidavit Mr. S. maintained that Mrs. S. "has trouble coping with the stress of attending to the children's medical concerns". *(This was to be a recurring theme over the next seven years.)* Both S.S. and D.M.S. are diabetic. Mr. S. stated "over the last couple of years it has been I who has attended to their medical concerns." *(At trial, Dr. F.*

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5:00 T of the Oothe e intercif that Mrs. S. was wo, ereas Mr. Ss*

[30] On May 16, 1995 Mrs. S. swore an Affidavit in support of an Order to revisit the terms of the February 17, 1995 Order and to require Mr. S. to give her the children's clothes and crib. She deposed that Mr. S. refused to provide S.S.'s glucometer readings; was consistently late in picking up the children and returning them which required her to call her mother to babysit so she could get to work on time; Mr. S. kept his voice mail on at all times and would not return calls; Mr. S. refused to give her the crib for A.J.S. and the children's clothing; and Mr. S. after being evicted from his rental residence for failure to pay rent refused to provide her with a new address or telephone number. *(Mrs. S. testified to all of these matters at trial. Since 1995 most of*

[35] In the July 12, 1995 Affidavit Mr. S. deposed that D.M.S. was “expected to share a bed with her half-brother, Sean Haddow, a 23 year old man with a criminal record for assault who is an abuser of drugs and alcohol.” (*Mrs. S. testified that D.M.S. did not share a bed with Mr. Haddow.*)

[36] On July 24, 1995 the court adjourned Mr. S.’s application for variation of custody of D.M.S., pending examination of D.M.S. by Dr. Cr. The court ordered Mr. S. to provide his phone number to Mrs. S. so that she could communicate with the children.





The Petitioner, of her own choosing, has not exercised alternate weekend access to D.M.S. and A.J.S. since June 1999. (*At trial, evidence was that Mr. S. would not give Mrs. S. unsupervised access.*)



[68] Mrs. S. continued to try and locate Mr. S. She phoned the church and school that the children attended. She was told the children were not returning to M.C.S. but would be attending V.S. (*Mrs. S. testified she understood their school fees had not been paid so the school asked the children to leave. Mr. S. maintained the children were going to change schools as their new school would be closer to his new job.*)

[69] On September 10, 2000 Mrs. S. went to V.S. to see if the children were there. By child fees had yet started and since, Mrs. S. checked. Mr. S. thought if (On September 10, Orherld be) TjT#0.0002 Tc-

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schools. (*At trial, it was established that Mr. S. deceived the court, as on September 10, 2000 Mr. S. had registered them in a new school, V.S.*)

[75] In Mr. S.'s October 20<sup>th</sup>, 2000 Affidavit, para. 32, he deposed that: "On October 1, 2000 the children were forcibly removed from my care by Edmonton Police Services at our church which undoubtedly traumatized the children." (*Mr. S. fails to appreciate that had he abided by the court Order police assistance would not have been necessary.*)

[76] On October 26, 2000 Mr. S. filed another Affidavit. In para. 5 he admitted that on February 22, 1999 he was charged with stealing money (between September 1998 to October 1998) from his employer the Alberta Association for Community Living. However, he said he was acquitted and that "the incident resulted from an employer/employee disagreement." He admitted that on May 6, 1999 he was charged with failing to attend court, however, he said he was acquitted.

[81] The second access visit was also problematic. On the morning of Friday, November 10, 2000 Mrs. S.'s lawyer phoned her to tell her that Mr. S.'s lawyer called as Mr. S. wanted to

court Order. He wanted sole custody and he wanted Mrs. S. to exercise her access in Edmonton.

[88] Mr. S.'s January 23, 2001 Affidavit is again telling of Mr. S.'s attitude. Some paragraphs of that Affidavit are as follows:

#7. The Respondent at this time commenced a relationship with the first of seven affairs with different men.

#8. The Respondent had further conducted a litany of malicious and criminal prosecutions that continues against the Petitioner through the courts, my employers, finances, and the breaking into the homes of the Petitioner stealing documents and mail. (*Mrs. S. testified she never called Mr. S.'s employer as he always withheld information about where he worked, so she never knew where he worked.*)

[89] On January 23, m001 the court dismissed Mr. S.'s application to change custody. Specified access was set out for Mr. S. which included an extended period of four days during the teacher's convention and a ten-day period during Easter/Spring break. The court ordered

S.'s counsel, prior to trial, of any documents he wanted to introduce at trial. (*Mr. S. produced several documents at trial that were not shown to Mrs. S.'s counsel prior to trial.*)





and A.J.S.'s relationship. At pp. 7 and 10, Mr. W. stated: "He (A.J.S.) does not get along with Ms. D. but said her spankings do not hurt. . . A.J.S. said he does not get along with Ms. D., thus they seem to have relationship difficulties."

**CREDIBILITY OF WITNESSES:**

[111] As I stated while reviewing the evidence in this case there are many examples of Mr. S. telling only half the truth, making unsubstantiated and false allegations and telling lies. I do not find Mr. S. to be a credible witness.

[112] Sometimes when witnesses lie it is obvious right from the start. This is not the case with Mr. S. because he was comfortable giving evidence, often lies by leaving out information and he has a good command of the English language. Ais her reason might be that Mr. S. has convinced himself that what he is saying is the truth.

[113] I found Mrs. S. to give her evidence in an honest and forthright manner. Mr. W., the psychologist who did an assessment in May 2001, also found Mrs. S. "to be honest and straightforward". Dr. C., a psychologist who attempted mediation in December 2000 said:



understand, although I do not condone, some delay to seek legal advice. However, that is not what Mr. S. did. For over do month he hid the children from Mrs. S. In fact, the children missed do month of school because Mr. S. was hiding the children.

[123] In December 2000 Dr. C. attempted to mediate a resolution between the S's. Mr. S. refused to attend the last session. At trial, Mr. S. said that the meeting would not be fruitful because "due to the malicious and criminal behaviour of Mrs. S., there is no resolution for such nonsense." He made these same comments to Dr. C. This clearly shows Mr. S. does not have a genuine desire to resolve the issues.

[124] Prior to trial Mrs. S. tried to settle and agreed Mr. S. could have custody so long as she had unsupervised access. Mr. S. refused to allow unsupervised access. At trial, Mr. S. maintained he should have custody and that Mrs. S. should have access but subject to conditions (that she could not work during her access weekends and that her relationships with men "would have to be looked at.")

[125] Frankly, I am concerned that no matter what the court orders Mr. S. will continue to wage war with Mrs. S.

[126] The following comments in my judgment are bolded and they are bolded for a purpose.

[130] Mr. S. has maintained, and he told every expert involved in this case, that Mrs. S. had

***Ability of parent to look after the medical needs of the children:***

[135] At trial, and throughout this lawsuit a considerable amount of time was devoted by Mr. S. to convince the court that Mrs. S. is not capable of looking after the medical needs of the children. There was no medical expert evidence to substantiate these allegations.

[136] What struck me on this issue was that Mr. S. never once complained Mrs. S. was incapable of looking after the children's medical needs during the marriage. Yet, suddenly, right after separation he alleges she was incapable. Further, Mr. S. himself has not shown the concern for D.M.S.'s diabetes as on many occasions Mr. S. did not give D.M.S. her 6:00 p.m. supper or injection.

[137] Mr. S. alleges that all of the children's medical problems are due to Mrs. S.'s lack of care. He fails to recognize that, even if the S's had remained married the children would have medical concerns due to their diabetes.

[138] I accept that when S.S. was a teenager her diabetes was 6 Tmof control due to S.S.'s conduct. However, Dr. F. stated th[13teenagechildren are harder to manage when it comes to their diabetes – just as they are harder to manage or control in many other aspects. A teenager who refuses to take responsibility for his or her own health will suffer the consequences as a parent cannot be with an older child at all times.

[139] Dr. F. also testifi65 TD0 m.S.'s diabetes is of a more serious type than D.M.S.'s. Further, I accept Mrs. S.'s evidence tD0 it was harder to control S.S.'s diabetes as she was diagnosed at eight years of age l, abefore th at she could eat candy l, asweets. In contrast, D.M.S. was diagnosed under the age of two years l, ahas always had a restricted diet. Lastly, Dr. F. testifi65 TD0 stress will exacerbate diabetes. This was likely l factor with S.S.

[140] In conclusion, I am satisfi65 TD0 Mrs. S. is just as capable as Mr. S. to look after the medical needs of the children.

***Ability of parent to provide for financial needs of the children:***

[141] Mr. S. suggested th[13if Mrs. S. separated from Mr. D. she, would not be able to financially support the children on her own. Currently Mrs. S. l, aMr. D. have separate bank accounts but they do share in some of the expenses. Mrs. S. said if she was living on her own tly Mrs. S. l,CTDe in-i[ capw0.5



[147] Further, in Dr. H.'s June 1996 report he



[159] On May 2, 2001 Mr. M. W., a chartered psychologist, prepared a custody assessment. He recommended that there be joint custody and that Mr. S. be the custodial parent. It is the ultimate role of the judge to assess and weigh the evidence. Having done that I do not accept Mr. W.'s recommendation.

[160] In all fairness to Mr. W. he did not have the advantage I had of listening to witnesses being cross-examined. He did not get to compare allegations in Affidavits with the actual evidence at trial. He did not have the benefit of hearing, over a five-day period, the history of the S's custody/access dispute. Lastly, Mr. S. did not always tell Mr. W. the truth. On many issues Mr. W. did not ask Mrs. S. or Mr. D. for their version of events, whereas I heard their version.

down and shaved his head.” (*Mr. W. admitted he never asked Mrs. S. or S.S. for their version of these allegations.*)

[167] Mr. W. stated that he was concerned about

[175] Mr. W. also testified that Mrs. S. has made good strides over the last five years. After 1997/1998 Mrs. S. was no longer suffering from depression; she has remained with the same employer for several years and has been promoted; she has a new common-law relationship with someone who appears to give her love and emotional support and she has financially provided for herself and the child since October 2000. Mr. S. not had a stable job history; (since 1998 four different employers); he has had criminal charges; he has changed residences several

[182] Each year, by June 1<sup>st</sup> of that year, Mr. S. shall provide a copy of his tax return and

HEARD on the 18<sup>th</sup> day of May, 2001.

**DATED** Page: 1388 T41.88 Tm-0.0021 Tc-0.0006 Tw(H at Edmonton, Alberta theis286Tj7.2