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Droit de la famille — 241528, 2024 QCCS 3664

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2024 QCCS 3664 (CanLII)

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF BEAUHARNOIS

No.: 760-04-016047-244

DATE: August 12, 2024

PRESIDED BY THE HONOURABLE IAN DEMERS, J.S.C.

L. R.
Plaintiff
v.
J. G.
Defendant

JUDGMENT

OVERVIEW

[1] The custody of X, the parties' one-year-old daughter, is at the heart of this matter.

[2] L. R., who fled the family residence after months of abuse, requests that she remain the sole custodian of X and that J. G.'s current supervised visitation rights be exercised in a dedicated facility in Town A. Mr. G. denies any abuse and considers he is the victim of a conspiracy to deprive him of his daughter. He requests joint custody although the parties live 200 km apart and have had significant communicational difficulties for years.

[3] Ms. R. will be granted exclusive custody. Mr. G.'s visitation rights will remain supervised, but in a dedicated facility. He has exercised poor judgment that has put his daughter at risk and, despite convincing evidence to the contrary, he has failed to take

any responsibility for his abusive behaviour. Considering the impact of violence on children, X should be protected accordingly.

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ANALYSIS

[4] Although the Court cannot solve all the parties' problems, it can address custody, child support, and recuperation of Ms. R.'s belongings.

1. How should parental time with X be divided?

1.1. The multifactored test for joint custody

[5] Generally, "[e]very decision concerning a child shall be taken in light of the child's interests and the respect of his rights".[1] The moral, intellectual, emotional and physical needs of the child, her age, health, personality and family environment, including the presence of family, spousal, or sexual violence, and any other aspect of her situation must also be considered.[2]

[6] Joint custody may be in the best interest of the child if, among others: (1) both parents have a good parental capacity and may provide stability to the child; (2) they live close to each other; (3) their relationship is not conflictual, and they are able to communicate; (4) their respective life project is compatible with the child's age and needs.[3] Whatever parenting time is granted, a child should enjoy as much time as possible with both parents.[4]

1.2. Exclusive custody will be granted to Ms. R.

[7] All factors stated above weigh heavily in favour of granting exclusive parental time to Ms. R.. None favor joint custody or, as will be addressed in section 1.3, unsupervised access rights.

[8] ***Parental capacity*****.** Although he denies abusing cannabis, the evidence shows Mr. G. is a frequent user[5] at any time of day[6] and was treated for addiction. In more than one occasion, he was so intoxicated that he did not hear X cry. He sometimes smokes on the balcony right outside the apartment he lives in.[7]

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1 *Civil Code of Québec*, CQLR, c. C–1991 (***C.C.Q.***), art. 33 para. 1.
2 *C.C.Q.*, art. 33 para. 2.
3 *Droit de la famille — 091541*, 2009 QCCA 1268, paras. 65–67.
4 *Droit de la famille — 122746*, 2012 QCCA 1782, para. 12.
5 See for example, exhibits P–2, P–10 and D–45, text messages.
6 See for example, exhibit P–2, text message where Mr. G. admits having used cannabis in the early hours of the afternoon.
7 Exhibit P–11, pictures.

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[9] Cannabis paraphernalia is readily available on his nightstand[8] and in the drawer of the living room table. Of course, X is only one year old and cannot reach it. But Mr. G.'s son from another partner (Le. K.) is six years old, and old and tall enough to reach the cannabis.

[10] To this allegation, and to all of Ms. R.'s allegations, Mr. G. answers that he is the victim of a conspiracy; the photographs were staged.[9] However, this explanation is unsubstantiated and contradicts other evidence, including some of Mr. G.'s own text messages, that he uses cannabis regularly. This heavily impedes the credibility of his testimony that he has never driven his car while he was intoxicated and his children, or either of them, were on board.

[11] Ms. R.'s testimony on this point is credible. Despite Mr. G.'s behaviour, including violence against her which the Court will address below, she testified convincingly that she wishes him to be a part of X's life. Of course, not at all costs but a part of it, nevertheless, and despite her opinion as to Mr. G.'s limited parenting capacity.[10]

[12] Her prior consumption of cannabis does alter this finding. Exhibit D–51 consists in a text message conversation where Ms. R. explains that she has used cannabis occasionally. This falls short of an informal admission that Ms. R. has driven while intoxicated as well.

[13] Noteworthily, Ms. R.'s position regarding the role Mr. G. could play in X's life remains the same even after Mr. G. prevented her from accessing X's medical record.[11] X had an extremely high fever and needed urgent medical attention. Ms. R. called the clinic. She was first told she would receive the record by fax for a small fee. Afterwards she was informed by Mr. G., who has never had custody since the parties' separation, that he had instructed the clinic to obtain his prior authorization before X's record could be disclosed. The clinic obliged, and only changed its mind following Ms. R.'s attorney intervention.[12]

[14] Mr. G. having joint parental authority is not an excuse for obstructing access to the records. Had Mr. G. had any care for his daughter's interest, he would have participated in the decisions concerning her. Instead, he forced Ms. R. to resort to her lawyer to solve the problem and tried to force her to consult a pediatrician located 200 km from her new home.

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8 Exhibit P–11, pictures.

9 Mr. G.'s closing arguments, para. 93, relying on exhibits D–35 and D–36, which do not support his allegations in any way.

10 See for example, exhibit D–48, a text message underlining that Mr. G. was making progress.

11 Exhibit D–53.

12 Exhibit P–19.

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[15] In that context, it is difficult to blame Ms. R. for wanting to change pediatrician even if she still did not have one at the time of the hearing. She could no longer be confident that the clinic located in Town B would act in the best interest of the child.

[16] It is true that Mr. G. spent some time alone with her daughter, that he did not hurt her,[13] and that Ms. R. did not oversee X closely at all times during supervised visitations. Yet, in most if not all instances, Mr. G. was left alone for a short period of time. And the very object of supervision is to ensure that a third party looks after the child for his safety. But at other times, his judgment was questionable. For example, Ms. R. had to convince Mr. G. to refrain from taking X to a pro-Palestinian protest which, like any protest, may be either pacific or turn sour. Given X's age at the time—just a few months—the decision not to bring her should have been a no-brainer.[14]

[17] This was not the only occasion where Mr. G. utterly lacked judgment. Although he knew that access to X had to be supervised by a reasonable person, he brought only his son to one of the accesses.[15] It is true that contacts between siblings should be favored. However, a five-year-old should not be used as a supervisor and not be placed in the middle of a conflict so tense. The decision not to bring him should have been a no-brainer.

[18] Mr. G.'s behaviour shows diminished parental capacity and a propensity to place X at risk. The fact that he can provide for the necessities of life, has paid for activities, or is considered a good father and person by his friends who testified or the general director of the daycare where his son went[16] do not alter the overall portrait of Mr. G..

[19] And assuming these allegations are true, they contradict Mr. G.'s own statements. In a letter sent to Ms. R. after this Court granted her exclusive custody, he wrote that he "lost [his] way", lost himself, and hurt Ms. R. in a way words cannot do justice for, and that she "rarely got this side of [him], the caring, sentimental side, the vulnerable side".[17] His description of himself is consistent with Ms. R.'s testimony.

[20] ***Distance between the parties' residences.*** The parties live 200 km apart. X and her parents would have to travel that distance every week to implement joint custody. Assuming the parties are not slowed down by traffic, and taking into account that they would have to stop in Town C to pick her up, she would spend between two to three hours in a car weekly. Inevitably, she would grow tired and would lose a large part of that day. This is not to mention the practical difficulties inherent to joint custody so far apart.

[21] The fact that Ms. R. can work remotely and could relocate nearer Mr. G. is irrelevant to the issue. She has the constitutional right to establish herself where she

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13 See for example, exhibits D–1 to D–11, D–47 and D–48.
14 Exhibit D–37, text message.
15 See exhibit D–27, text message.
16 Exhibit D–12, letter of support.
17 Exhibit P–18, letter to Ms. R..

pleases,[18] and the Court could not force her to change residence to facilitate joint custody. And even if the Court had that power, it would not use it to force Ms. R. to live nearby a man who abused her.

[22] ***Relationship between the parties*.** To say the least, the parties' relationship has been acrimonious.

[23] At the time they formed a couple, the parties had communicational difficulties. To this day, they cannot speak to each other. And for valid reasons, Ms. R. is eager that things stay the same. In her conclusions, she requests that the Court order Mr. G. "not to harass or denigrate [her] in any matter whatsoever, and limit all communicat[ions] with [her] to be specifically by email or text messages and only as concerns the Child once [he] has been given visitation and/or access rights to the Child". At the hearing, she always turned her back on him except during her own testimony. Even then, she did not look at him once. Mr. G. shares this view of the parties' communicational status and requests similar conclusions.

[24] It is difficult to see how coparenting, which sits at the root of a successful joint custody, could be attained in this deeply conflicting relationship.

[25] ***Family violence*.** Mr. G. committed psychological and physical violence on Ms. R..

[26] Mr. G.'s main argument is that he was never charged, arrested, denounced, subject to intervention by childcare services, and that his parenting capacity had never been questioned by his ex-partner Ms. K.[19] or Ms. R..

[27] This does not prove that no violence occurred. Ms. R. kept a low profile in the hope Mr. G. would change behaviour or to avoid outbursts. Her allegations are supported by her mother H. Re…'s credible testimony and some of Mr. G.'s own text messages. And they are consistent with Mr. G.'s conduct during the hearing; the Court had to remind him many times to stop badgering Ms. R. and exhibiting aggressive behaviour.

[28] Mr. G. is a controlling individual. Progressively after Ms. R. moved in with him, he took control of her life and isolated her. He chose her obstetrician. Although Ms. R. is from Town A, where all her family and friends live, he convinced her into selling her car. He arranged the sale of the car without giving her any detail; she has no idea who he sold it to. He needed his own car to go to work, often outside of town, and told Ms. R. it was unsafe although he drove his son to activities with it.

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18 *Canadian Charter of Rights and Freedoms*, s. 6(1).

19 Ms. K., who has requested the review of the joint custody of her son in file number 550–04–023084–243, testified that she was subject to violence similar to that alleged by Ms. R.. However, as she may have an indirect interest in the outcome of the proceedings, the Court will not take her testimony into account. For the same reason, the Court did not consider Mr. G.'s allegations that his relationship with Ms. K. or his son were adequate.

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[29] As a result, Ms. R. had to take the bus with a stroller to attend appointments—X was monitored at the time—or to go shopping for the baby's necessities. It is true that Mr. G. lent her his car a few times and on one occasion, Ms. R. went out for a drink with a friend.[20] Nonetheless, Ms. R. was isolated. Mr. G.'s reaction during his testimony is illustrative of his denial: she could take the bus.

[30] After X was born, Mr. G. began denigrating Ms. R. or complaining that she did not pay enough attention to herself or take good care of the apartment[21] although she was still recovering from a difficult labor and was taking care of Mr. G.'s son.

[31] Violence became physical on one occasion. After insisting for two hours to have intercourse—he had to satisfy his needs—Mr. G. forced himself on Ms. R.. She was recovering from a caesarian and was still bleeding; she felt her body and her mind were not ready. She gave in, and later asked him in vain to stop. Contrary to Mr. G.'s argument, Ms. R.'s behaviour clearly indicated that she did not consent to the intercourse although she probably did not say "no".

[32] It is in that context that Ms. R. finally left the apartment on December 23, 2023. Her decision was not part of a plan to separate Mr. G. from X, but to find security for herself and her daughter. She had good reasons for having had enough of the situation she had twice tried to flee from.

[33] The verbal abuse continued after the separation. On several occasions, Mr. G. used Facetime communications to convince Ms. R. to form a couple again instead of furthering his relationship with his daughter. When he realized he failed, he denigrated her and called and sent her text messages incessantly for longs periods of time. Through her counsel, Ms. R. ended those calls.[22]

[34] Ms. Re.'s testimony corroborates a finding of control. She attended some of the Facetime calls where Mr. G. acted inappropriately. She observed that after separation, Ms. R. constantly told her what she did, where she went, and who she talked to over the phone. She had nightmares, and lost sleep and weight. She is afraid of being alone should Mr. G. show up. Her mental and physical condition reflected on her daughter. X could not be calmed down for two months and a half and would hit her head or scratch herself with the zipper of her sleeping bag.

[35] An excerpt from Mr. G.'s text messages—which he filed himself—illustrates best his desire to control Ms. R. either directly or through his daughter. After informing counsel for Ms. R. that he opposed having no contact with X, he wrote:

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20 Exhibit D–40.

21 See for example exhibit P–16, a text message where Mr. G. uses coarse language inappropriate for reproduction in a court judgment.

22 Exhibit P–14, letter of demand.

> I would like daily updates regarding my daughter's care and whereabouts. Should my daughter be moved to Town A, I will absolutely be contacting the police, as is my right to do so. As I am sure you are aware Mr. Perlini, the courts do not look favourably on parental alienation or false accusations in family court proceedings.[23]

[36] The baseless reference to parental alienation, i.e. brainwashing that could explain why a child refuses to see one of her parents,[24] of a one-year-old child who can barely speak is in itself indicative of an aggressive individual who is ready to make any allegation against the mother of his child while taking no responsibility for his own actions.[25]

[37] Lastly, the fact that Ms. R. did not mention sexual abuse in the sworn declaration she filed in support of the application for a safeguard order does not diminish her credibility. It was unnecessary to expose her situation the way she did at that stage: the facts she relied on at the time were serious enough for this Court to grant her full custody and Mr. G., limited supervised access. The hearing on the merits was the proper forum to expose all relevant facts. And even if the omission had to be taken against her, the fact remains that Mr. G. used psychological violence against her.

1.3. Mr. G. will be granted supervised access rights

[38] Before she left home to live with her mother, Ms. R. was X's primary caregiver. Since then, she has been her only caregiver. X has never spent a night without her mother being present. Even if the evidence had revealed Mr. G. to be an adequate father, joint custody could not have been implemented other than incrementally. The fact that Mr. G. requests otherwise illustrates his disregard for his daughter's wellness and a position centered on his own wishes.

[39] Of course, it is desirable that X be in contact with Mr. G. as much as possible. However, considering the risk he poses for his daughter and his negating of any violence or substance abuse, supervised access must continue.

[40] Supervision should no longer be undertaken by private individuals. It is difficult to ascertain when Mr. G. will be ready for unsupervised visitation rights. And it should not be up to members of the family to assess whether Mr. G. is sober when visiting his daughter. Supervision in a dedicated facility will allow better monitoring of the overall situation and Mr. G.'s behaviour.

[41] The Court is mindful that a few hours every two weeks is a very short period for Mr. G. to create a significant relationship with X and transmit his Indigenous heritage. Had

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23 Exhibit D–42.

24 There is no accepted definition of parental alienation; at the very least, the party alleging it must show rejection of the other parent. See *Droit de la famille — 24915*, 2024 QCCA 767, paras. 75–76.

25 See also Mr. G.'s closing arguments, paras. 42–53.

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Mr. G. behaved properly during video communication, the Court would have ordered that they be reinstated. However, considering Mr. G.'s denial of any abuse, video contact is likely to become yet another occasion to harass Ms. R..

[42] In sum, the situation has not changed since custody of X has been brought to court. Extended or unsupervised access rights can only happen if Mr. G. eliminates behaviour undesirable for X. As long as he focuses on the conspiracy he alleges to be a victim of, he will not have the opportunity to act as a father to X the way he would like to.

1.4. Mr. G. will be ordered to pay $532.08 of monthly child support

[43] Both parties agree that they will earn an income of $50,000 in 2024. They do not seek special expenses for the moment. As Ms. R. will be granted exclusive custody, monthly child support amounts to $532.08. The amount will be paid directly to Ms. R. until the *Percepteur des pensions alimentaires* takes charge of the file.

2. Should the Court order all the other conclusions sought by both parties?

[44] The parties' conflict is not limited to the custody of X. They seek conclusions on several related issues.

[45] Ms. R. demands conclusions that except for two, will not be ordered:

> [45.1] It is implicit that Mr. G. must be sober when exercising visitation rights, an obligation that the visitation facility will undoubtedly enforce if need be; the obligation to be sober before having custody of X is premature;
>
> [45.2] The authorization to sleep over along with X at Mr. G.'s residence, which would put her at risk considering the violence she was subject to;
>
> [45.3] A specific declaration that she was the subject of family violence, which would not have the effect sought (see section 3 of these reasons);
>
> [45.4] A judgment regarding custody and child support is provisionally executed as of right; it is unnecessary to so order.[26]

[46] Although Mr. G. has shown genuine willingness to allow Ms. R. to retrieve her belongings from the apartment they rented together,[27] Ms. R. had not recovered all of them eight months after she left; at the hearing, she was not even wearing her own clothes. Given the conflict between the parties and Mr. G.'s violence, an order will be made to authorize the use of force if necessary. And Mr. G. will be ordered to provide his

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26 *Code of Civil Procedure*, CQLR, c. C–25.01, art. 660 para. 1(1º).

27 See the list in exhibit P–4.

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tax returns for the taxation years 2022 and 2023 to allow Ms. R. to receive child allowances.

[47] Mr. G. requests many conclusions that the Court will not order that:

> [47.1] Ms. R. make a full accounting of her assets, namely the registered retirement savings plan she failed to mention in her schedule I; the parties agreed on their respective income, and any dispute regarding income, fees, or assets should be dealt with based on a specific application and proper evidence;
>
> [47.2] Ms. R. provide proof of daycare enrollment and attendance; this conclusion is not only an abusive and encompassing demand illustrative of the control Mr. G. is trying to exercise on Ms. R.; it also baseless, as Ms. R. does not request daycare fees;
>
> [47.3] Ms. R. pay two months of rent for breaking the lease of their apartment; there is no legal basis for such a premature demand, which may be superseded by the proceeding addressed in section 3 of these reasons;
>
> [47.4] All medical and school decisions be made jointly, which art. 600 para. 1 of the *C.C.Q.* already provides for; however, in the circumstances of this case, it would be appropriate that for the time being, Ms. R. be able to make those decisions alone;
>
> [47.5] Ms. R. be prohibited from attending at Mr. G.'s residence except to collect her belongings, which amounts to a restraining order on the victim of abuse;
>
> [47.6] His rights and recourses, including to appeal this judgment, be reserved whereas a reserve of rights does not exist under Québec law.

[48] However, as both parties agree that all communication between the parties should occur in writing, the Court will so order.

3. Does the Court have jurisdiction to authorize Ms. R. to cancel the lease she co-signed with Mr. G.?

[49] The joint lease of the apartment where the parties resided and where Mr. G. is currently living will expire in October 2024. Ms. R. asks permission to cancel it forthwith.

[50] However, this Court does not have the power to grant permission. Under art. 1974.1 of the *C.C.Q.*, Ms. R. may resiliate her lease if her safety or the safety of her child is threatened. For the resiliation to take effect, Ms. R. must send a notice to the lessor along with an attestation from a public servant or public officer designated by the

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Minister of Justice that a situation of violence exists. The procedure is available on the Québec Department of Justice's website.[28]

[51] As judges of this Court have not been designated by the Minister of Justice,[29] the Court will not order the permission sought.

FOR THESE REASONS, THE COURT:

[52] **GRANTS** exclusive custody of the child X to L. R.;

[53] **GRANTS** J. G. visitation rights to X to be exercised at his expense in a supervised facility located in Town A once every two weeks in keeping with the current schedule;

[54] **GRANTS** Ms. R. exclusive authority to make medical, daycare or school decisions as long as Mr. G. is subject to supervised visitation rights;

[55] **ORDERS** Mr. G. to pay, as of June 1, 2024, monthly child support of $532.08 directly to Ms. R. until the *Percepteur des pensions alimentaires* takes charge of the file;

[56] **ORDERS** the parties to communicate regarding their daughter only and, save in case or emergency, *via* email or text message only;

[57] **ORDERS** Mr. G. to facilitate Ms. R.'s picking up of the belongings listed in exhibit P–4 within 30 days of this judgment; should he refuse, or not grant access to the apartment, Ms. R. is authorized to enforce this conclusion with the assistance of police officers; despite this order, the parties may reach an agreement within the same delay;

[58] **ORDERS** Mr. G. to transmit his federal and provincial tax returns for the 2022 and 2023 taxation years to Ms. R. within 30 days of this judgment.

IAN DEMERS, J.S.C.

M[e] Joseph Perlini
JOSEPH PERLINI AVOCATS
Counsel for the plaintiff

The defendant, for himself

[28] See https://www.quebec.ca/en/housing-territory/renting/leases/terminate-lease-domestic-violence-sexual-assault, accessed on April 28, 2024.

[29] See https://cdn-contenu.quebec.ca/cdn-contenu/adm/org/dpcp/PDF/officiers_publics_bail_residentiel_demande_services_sante/LI_Officiers_publics_designes_DPCP.pdf, accessed on April 28, 2024.

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Date of hearing: April 24, 2024

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