

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-04-038517-059

**IN THE PRESENCE OF:
THE HONOURABLE MR. JUSTICE MARK G. PEACOCK, J.S.C.**

R. H.
Plaintiff
v.
T. M.
Defendant

REASONS FOR JUDGMENT RENDERED ORALLY ON MARCH 17, 2008¹

[1] This application concerns mainly one particular aspect of child support (contribution for semi-private education) brought by Ms. H. (the Mother) for her four year-old daughter X.

[2] The Court's focus - as required by law – is to decide in the best interests of X.

[3] X's name is prophetic and the Court Xs that this judgment will bring stability to her young life and that of her parents.

¹ Reasons for judgment transcribed and reviewed for form on March 20, 2008.

[4] The issues before the Court are:

- a) whether Mr. M. (the Father) is required to contribute to semi-private schooling that has been suggested by the "Mother"; and
- b) whether the Mother is entitled to security for costs.

[5] The Mother's position can be summarized with regard to the semi-private schooling as follows: she alleges that X is gifted in languages and that should X be diagnosed with dyslexia – a special learning need that exists in Ms. H.'s family and which she herself has – that being in the semi-private system will provide better education in the future for X.

[6] It is the Father's position that he is not able to afford this additional cost and that a public education will provide good and sufficient education for X.

[7] The judgment presently binding on these two parties is that of the Circuit Court of Cook County, dated August 18, 2004, which was homologated by judgment of this Court on May 10, 2005. In that judgment the award of child support for X was based upon the \$40,000 (U.S.) annual income of the Father at that time and has been indexed to the present wherein he is paying \$731 (Canadian) per month.

[8] For the record, the revenues agreed to between the parties are: \$145,972 (U.S.) for the Father and \$85,185.32 (Canadian) for the Mother.

A- Semi-private Schooling

[9] With regard to awarding what are called "particular costs" – which include semi-private schooling – the Court has a large discretion. The general principles in this regard are to be found in the leading legal text on the subject.² The basic principle is that the Court must act reasonably to balance the means of the parents with the specific needs and interests of the child in question. In doing so, jurisprudence has shown that courts have allowed such expenses in such matters as private education after-school activities, and special courses where children have particular gifts such as in horse-back riding or in hockey.

[10] The Court must be mindful of the present economic situation of both of the parties and of X's particular circumstances.

² See Michel TÉTRAULT, *Droit de la famille*, 3rd Ed. (Cowansville, Qc: Yvon Blais, 2005) and in particular at pages 952 through to 954.

[11] In the case of the Chicago area-resident Father, the Court notes that he recognizes the benefit of private education. His two children from his marriage in the United States benefit from private Catholic education. He also recognizes the importance of bonding with his family. For example, he and his wife take an annual vacation with their two children that costs them in the order of \$7,500 (U.S.).

[12] In the case of the Montreal-resident Mother, she is the sole parent raising X. Since the time of X's birth, the Father has provided certain monetary support but has not been involved in any other emotional or supportive way in X's upbringing. He has not seen X since August, 2003.

[13] Accordingly, the Mother alleges that she is entitled to make the educational decisions concerning her daughter X. She, after some research, has decided that X should attend a semi-private educational institution, subsidized by the [...] government, the A School, which is approximately a 10-minute drive from her home. X is eligible to start school in Fall of 2008. The cost is approximately \$624 (Canadian) per month.

[14] The Court places particular weight on the following reasons which support the Mother's choice:

- a) X appears to have a particular interest and gift in languages. She presently speaks French and English and the A School in addition to teaching these languages also teaches [...]. X's maternal step-grandmother is [...] speaking and under Art. 611, *Civil Code of Québec*, enhancing the bonding between children and their grandparents is a factor that the Court considers;
- b) the particular situation of X is impacted by the fact that her older sister, Y has a particular learning disability, dyslexia. Y presently attends the neighbourhood school, B Elementary, which is a very short walking distance from the Mother's home. As a result of Y's special needs, the Mother is required to ensure that Y obtains additional specialized education outside of the traditional school day and to do this she pays for special tutoring. What impact does this have on X?
 - i. what this creates for X is a situation where her Mother, who is required to work full-time to support both children, does not have the same additional time available to care for X that she otherwise would;

- ii. Quebec law recognizes that children of a young age need stability. It is important that the Superior Court consider the stability of X in all of its decision-making;
- iii. X presently has not been diagnosed with dyslexia. However, this is a learning disability that is apparent on the Mother's side of the family;
- iv. no one at this stage can predict whether the particular requirements for this special need will affect X. However, in these particular circumstances and given the limited availability of her Mother, it is essential that the Court seek to ensure stability for X in her educational surroundings; and
- v. if X is diagnosed with dyslexia – which can only occur at the time she starts to read, likely in grades two or three – the A School (unlike B Elementary) has specialized education to assist dyslexic students. Since the A School is both primary and secondary, continuity and stability is enhanced. In the present circumstances, the Court considers this a factor amongst the others that favours the semi-private education that the Mother proposes.

[15] To be able to undertake remunerative employment, the Mother has had to incur daycare expenses – for which she has not charged the Father – beginning six months after X's birth.

[16] The amount in issue she testified is approximately \$12,000 (Canadian) which she has not to this date charged him, for which he could be liable at law. The Mother has, in this regard, been very fair to the Father.

[17] The Father has not been involved in any decisions thus far regarding X's life. There has been correspondence between he and the Mother concerning this particular issue. However, in view of the absence of his involvement in any prior decisions, the Court gives a preponderance to the reasoned wishes of the Mother in the present circumstances.

[18] The Court accepts that X could receive good schooling were she in a local, public school. However, in her particular circumstances, the Court decides that it is in her best interests, and particularly in the interests of ensuring her secure education in one educational facility, without having to move for secondary education. The public system would require her to move from a primary to a secondary school.

[19] Therefore, the Court decides that this is one of those circumstances where semi-private education is in order.

[20] The Court will not require the Father to pay a higher ratio of the semi-private school fees based on the income differential with the Mother but accepts the recommendation of the Mother's counsel that a 50/50 split would be appropriate. The Court will so order.

[21] Now, the Court will deal with the Father's allegations of difficulty or hardship as specified in Art. 587.2, *Civil Code of Québec*.

[22] This argument was strenuously and ably pleaded by counsel on behalf of the Father. The burden of proof was on the Father to show that given his present family obligations to his children in the United States, hardship is created for him and this should be taken into account in the Court's consideration of the amount of his support for X.

[23] In considering this article, the leading case is a 2007 Court of Appeal decision.³

[24] In the present case, the Court bases its conclusion that the Father has not met his burden of proof regarding hardship for the following reasons:

- a) the discretionary annual expense of \$7,500 (U.S.) for a family vacation that he and his wife choose to take with their children;
- b) the fact that his present income has more than tripled from the time when the original Order was made by the Circuit Court of Cook County;
- c) the fact that while his expenses are important, the Court is not satisfied, on the balance of probabilities, that there is not sufficient flexibility to allow the Father – who the Court perceives as a responsible, open and honest individual – to meet the obligations as required by this Court with regard to X; and
- d) the Court needs to balance, as the Court of Appeal decision mentions, the needs and interests of the children of the blended families and in this regard believes that the decision by the Father and his wife to send their own children to private schools denotes an importance given to private education which translates to creating certain similar expectations for X in this jurisdiction.

³ *Droit de la Famille - 07934*, E.Y.B. 2007-118709 at para. 49 and following.

[25] The Mother has requested security for costs. To obtain security for costs, an applicant must show that such is required to ensure access to justice or to penalize an opposing party for abuse of the Court's process, as alleged here.

[26] The Court is mindful that the Mother received certain financial documents from the Father only after the present Court proceedings were taken. However, the Court is satisfied that the Father's counsel acted promptly, upon receiving the said proceedings and although it is unfortunate that the documents were not provided beforehand, the Court is not satisfied that this case reaches a level of abuse for which security for costs is warranted.

B- Conclusion

[27] **FOR THESE REASONS, THE COURT:**

[28] **ORDERS** the Father to pay child support beginning on March 1, 2008 in the amount as agreed between the parties of \$777 (Canadian) per month, indexed annually;

[29] **ORDERS** the Father to pay for childcare (daycare) in the amount of \$146 (Canadian) per month, adjusted annually, and \$500 (Canadian) for other activities (including sports) for X, from August 2, 2007, the date of the original demand letter;

[30] **ORDERS** the Father to pay \$312 (Canadian) per month for school fees for the A School as of August, 2008, with adjustments based on the Mother furnishing copies of receipts (as she receives them from the school) to the Father;

[31] **ACKNOWLEDGES** the parties' agreement that the Mother will provide to the Father, on a regular basis and as she receives them, all report cards and other relevant documents emanating from the A School relating to the progress of X's education;

[32] **ACKNOWLEDGES** that for the time being, the Father waives his parental right to be involved in X's education, except as set-out above;

[33] **ACKNOWLEDGES** that except as specified in this judgment, the Mother waives any claims she may have had to past child care contributions from the Father, which she estimated at approximately \$12,000 (Canadian);

[34] **ACKNOWLEDGES** the parties' agreement that the Father permits the Mother to obtain any passport or related documents on behalf of X by herself without requiring any written consent from him;

[35] **ALL WITHOUT COSTS.**

(S) MARK G. PEACOCK

MARK G. PEACOCK, J.S.C.

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Date of hearing: March 17, 2008