

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N° : 500-04-065242-159

DATE : February 24, 2016

PRESIDING : THE HONOURABLE THOMAS M. DAVIS, J.S.C.

C. W.
Plaintiff

v.

M. W.
and

CA. P.
Defendants

**REVISED REASONS FOR JUDGMENT
RENDERED ORALLY ON FEBRUARY 3, 2016**

INTRODUCTION

[1] Mrs. W., the grandmother, seeks access rights to her four (4) grandchildren.

[2] The grandchildren are aged between three months and ten years old, they are all boys.

THE CONTEXT

[3] The mother, M. W. (**M.**) and her partner Ca. P. (**Ca.**)¹ have been in relationship for approximately eight (8) years.

[4] They oppose the motion as formulated, but throughout the course of the proceedings, at least insofar as Ca. is concerned, they don't oppose the grandmother having a continuing relationship with the grandchildren.

[5] M. describes a difficult childhood, to say the least. She had to endure violent acts of one of her mother's partners and lived in a family where there was incest and other sexual misconduct, although she was not a victim herself.

[6] M. only became aware of who her father was, when she was twenty-eight years of age and that was fairly recently.

[7] Both M. and Ca. are concerned with issues that Mrs. W. has had in the past; many relationships with men; a current propensity to seek out relationships on the Internet; and drug use in 2006, which led to time in rehab and in fact, time in jail for theft.

[8] Despite the challenges that M. had as a child, there were moments where the relationship with her mother was good. This was particularly the case after M. became pregnant while living in Alberta.

[9] She came back home to Montreal and moved in with her mother, where the older child, X was born. During the first year, Mrs. W. assisted her daughter and saw X very often. She was very involved.

[10] Unfortunately, Mrs. W. then became involved with a gentleman who was a user of crack cocaine and for Mrs. W., the pitfalls and drug use began in 2006.

[11] As the Court has said, she went to jail as she was stealing to finance her drug habit and she went to rehab. Mrs. W. acknowledges that during that period of time, M. was very supportive to her and, in fact, she doubts that she could have gotten through the ordeal without M.'s support.

[12] It was around this time that M. met Ca.. Since the time their relationship became a serious one, Ca. has acted as X's father.

[13] Following the release of Mrs. W. from rehab, she did have a continuing role with X and it appears that there may have even been some sleepovers at that time.

¹ The use of first names is simply for ease of reference and no disrespect is intended.

[14] M. and Ca. decided to put an end to those sleepovers five to six years ago, although the precise time is difficult for the Court to discern. It appears that there was a meeting in a local park between Ca., M. and Mrs. W. to discuss the contacts that Mrs. W. was going to have with X going forward. Ca. and M. would have advised her that they no longer wished X to have any sleepovers at her house; Mrs. W. was clearly not pleased and walked away.

[15] The Court acknowledges that Mrs. W. has another version of this event. She related an argument with Ca. over a baby shower, telling the Court that she felt that it was very inappropriate for Ca. to be involved as it was an issue between her and her daughter.

[16] The couple's first child, Y, was born on [...], 2012. At that time, at Ca.'s instigation, there was an effort made so that Mrs. W. could become involved again with her grandchildren. She was always welcome to visit M. and Ca.'s house and spend time with her grandchildren.

[17] That, apparently, was not enough. There was a gradual pull back on her part.

[18] Z was born on [...] 2013. Shortly after, there was another effort made to again include Mrs. W. in the family dynamic and for ten months, that worked quite well; she saw her grandchildren fairly regularly.

[19] Something happened in June 2014. Z's first birthday party was coming up and there was an invitation issued by M. on Facebook. M. later realized that she had invited both her mother, Mrs. W. and her biological father, who she had recently become aware of. She felt that it would not be appropriate for the two of them to meet at this event.

[20] Therefore, M. proposed an alternative to her mother, that being a smaller dinner at M. and Ca.'s home to celebrate the birthdays of X, Z and the maternal grandmother.

[21] This appeared to make Mrs. W. angry and also to be the end of the communication between the parties.

[22] The Court does acknowledge that Mrs. W. stated that there was another date proposed but that she was not available to attend.

[23] The couple separated for a short time after this. Then in June 2015, Mrs. W. sent a demand letter. The Court adds that the separation appears to have been, at least in part, caused by the stress over Mrs. W.'s implication in M. and Ca.'s family life.

[24] The last element of the proof that the Court will relate is that in 2014 and 2015, at the request of her lawyer, Mrs. W. underwent drug testing. Her physician came to testify and opined to the Court that these drug tests illustrate that Mrs. W. was clean and not using drugs during the period of any of those drug tests.

[25] M. explained to the Court that she does not want to see her mother anymore. She feels that she has made all of the efforts that were required. Her mother is not like she used to be; her mother is never satisfied; she always wants to see X in an unsupervised environment and M. and Ca. will not agree to this.

[26] Ca. is concerned about Mrs. W.'s past as well as with some of the family dynamics, such as the incest. This incest was actually proven. A niece has two children with a family member.

[27] Ca. did say that he was prepared to have Mrs. W. visit one Sunday per month for one to two hours while Ca. was at the family home.

[28] Mrs. W. on the other hand has consistently refused any visits supervised by Ca.. The reason she gave the Court is an incident that occurred some five to six years ago, where she was giving what she describes as butterfly kisses to X, in M. and Ca.'s kitchen. Ca. describes it as both X and Mrs. W. touching tongues, which he found inappropriate and invited her to stop this practice.

[29] Mrs. W. and Ca. each have a different version of the word that Ca. used to have her stop.

[30] Mrs. W. would be prepared to accept supervision by a third party, that third party not being identified or defined for the Court.

DISCUSSION

[31] The task of the Court is not an easy one.

[32] Mrs. W. says that she loves her grandchildren; the children's parents have concerns about leaving them alone with her.

[33] In fulfilling its tasks, the Court must first and foremost be guided by the wording of Article 611 of the *Civil Code*:

Art. 611. In no case may the father or mother, without a grave reason, interfere with personal relations between the child and his grandparents.

Failing agreement between the parties, the terms and conditions of these relations are decided by the court.

[34] Given this article, what is protected is interference by the parents with the relations between the child and the grandparent?

[35] There is in fact, a presumption which favours the establishment of personal relations between the grandparent and the grandchild. The Court refers to *Droit de la famille – 152567*² as well as to *Droit de la famille – 151232*³.

[36] How should this article apply to Mrs. W.'s request?

[37] The Court notes that Mrs. W. is asking for access rights. However, access rights are not protected by Article 611, a relationship is.

[38] Justice Catherine La Rosa discussed the difference in *Droit de la famille – 14378*⁴ citing both Justice Sénécal and Justice Mongeon in paragraphs 24 and following:

[24] En 1995, le juge Jean-Pierre Sénécal rend un jugement de principe dans lequel il analyse l'impact de l'article 611 C.c.Q. alors récemment modifié et je cite:

L'Article 611 reconnaît le droit de l'enfant et des grands-parents d'avoir des rapports personnels mutuels. C'est d'abord un droit de l'enfant (le code parle des «relations personnelles de l'enfant avec ses grands-parents»), mais c'est aussi un droit des grands-parents dans la mesure où les rapports ne peuvent qu'être mutuels.

C'est un attribut de l'autorité parentale que de pouvoir faire obstacle aux relations personnelles de l'enfant avec ses grands-parents pour un motif grave. À l'inverse, les relations enfant/grands-parents ne constituent pas pour ces derniers l'exercice de l'un des attributs de l'autorité parentale ni un démembrement de l'autorité parentale, bien que l'interdiction faite aux parents de les empêcher sans motifs graves constitue une limite imposée à l'exercice de leur autorité.

[25] Puis, en 2007, le juge Robert Mongeon de notre cour s'exprime ainsi sur le droit des grands-parents:

Le soussigné comprend l'article 611 comme protégeant les droits de l'enfant à développer des relations avec ses grands-parents et non à accorder aux grands-parents envers et contre tous des droits d'accès envers leurs petits-enfants.

[26] En 2010, la Cour d'appel dans l'arrêt *Droit de la famille 102397*, citant le juge de première instance, reprend les propos suivants:

Le droit reconnu par l'article 611 s'exprime souvent sous forme de visites ou de sorties. Il est toutefois distinct des droits d'accès comme entre

² 2015 QCCS 4724.

³ 2015 QCCA 598.

⁴ 2014 QCCS 723.

parents et enfant. C'est un droit autonome, un droit propre qui existe par lui-même et qui a ses particularités. Il est d'ailleurs remarquable de constater que le code, à l'article 611, parle de "relations personnelles" dont les modalités doivent, à l'occasion, être réglées par le tribunal, non de droits d'accès, de droits de sortie ou de droits de visite. Les relations personnelles peuvent certes avoir cette forme. Mais elles peuvent aussi s'exprimer différemment: contacts téléphoniques, lettres, rencontres familiales, etc.

[27] Ainsi, les grands-parents ne peuvent généralement exiger des droits d'accès au même titre qu'un parent non gardien.

[39] The Court agrees with these passages of Justice La Rosa, but acknowledges that in certain situations, this Court has used Article 611 C.c.Q. to give access rights to a grandparent.

[40] Justice Dubois accorded access rights in *Droit de la famille – 15914*⁵.

[41] The Court does not deny that there may be situations where access rights may be the only way to ensure relationship. This is not one of them as it is not a situation where a relationship is being denied by the parents. The proof shows otherwise.

[42] At the outset of X's life, there was regular contact between him and Mrs. W.. M. was living with her.

[43] Then, Mrs. W.'s life slipped away from her due to drug use starting in 2006, the year after X was born. She underwent rehab in 2007. The relationship resumed thereafter, but became strained again, it seems five to six years ago, following the argument, either over a baby shower or Mrs. W.'s wish for sleepovers.

[44] Mrs. W. says it was over the baby shower for Mrs. W.'s niece and she resented Ca. intervening in this issue, which she felt was between her and M..

[45] The parents say that it was over Mrs. W.'s time with her grandson, but in one case or the other, it seems to be the first time that Ca. had asserted his point of view into a disagreement between M. and her mother.

[46] Whichever situation it was and whichever the Court might accept, it is clear that Mrs. W. walked away from the relationship with her grandson, either over a somewhat petty issue between her and her daughter, or because of Ca.'s involvement in M.'s life. Ultimately, it was Mrs. W.'s stubbornness that came between her and her grandson X at that time.

[47] The Court adds that on this issue, it finds Ca. and M.'s version to be more credible.

⁵ 2015, QCCS 1819.

[48] Therefore, the Court cannot say that the parents interfered with Mrs. W.'s right to see X at that moment. It was really her choice. This behaviour seems somewhat inconsistent with the story that the Court heard of the grandmother who needs to see her grandchildren.

[49] It seems that Ca. was the tolerant person in the relationship. When Y was born in 2012, he encouraged renewed contact with Mrs. W.. This worked well for a while. Although it is not exactly clear why, it appears that the relationship became strained again. Other than the parents placing some limits on Mrs. W.'s time with the children, there appears to be no explanation and yet Mrs. W. pulled back once again.

[50] Following Z's birth, Ca. reached out once more and the grandmother/grandchildren relationship was rekindled until the misunderstanding about Z's birthday.

[51] The Court can certainly understand why M. did not want Mrs. W. and her birth father to meet at this event. The solution M. offered was a very reasonable compromise. Mrs. W. said she had a prior engagement. M. says essentially that she refused the invitation.

[52] The Court has two comments. Firstly, perhaps the grandmotherly duties should have taken priority over the prior engagement. Secondly, if the prior engagement was so important, why was its nature not explained to the Court?

[53] Here again, the Court prefers M.'s testimony. She was forthright and credible. Mrs W., on the other hand, gave testimony which was in times confusing and also contradictory on some issues.

[54] By way of example, she stated that she has not had a drink in over a year and then she said that if she does drink, it is only an occasional glass of wine. She did not initially provide the names of all of her boyfriends and finally, her affidavit contradicts her testimony as to the number of years she has been drug free.

[55] But beyond credibility lies a bigger issue. It does not appear that Mrs. W. made a serious attempt to reconcile with M. following the disagreement around Z's birthday. She states that she texted, but she did not call. In addition, her recourse to a lawyer was very rapid indeed.

[56] Here again, the Court cannot conclude that her right to a relationship with her grandchildren was interfered with; it was her own actions that put it in jeopardy.

[57] But what of the situation going forward. Ca. told the Court that he was always prepared to welcome Mrs. W. into the home, once per month, on a Sunday, for one to two hours.

[58] Mrs. W. has always refused visiting rights supervised by Ca..

[59] The Court must therefore consider whether the wish to supervise the visits constitutes interference and if so, do the parents have a serious reason to do so.

[60] These questions must be answered in light of the Court's overriding duty to put the interests of the child first and also in light of the principle that parental authority belongs to the parents, not to grandmother.

[61] In the context of the present matter, the Court cannot conclude that Ca.'s desire to have the visits occur in the couple's home, with him present, constitutes interference. Essentially, this is where they have always taken place at least subsequent to Mrs. W.'s drug use.

[62] Moreover, the reticence of the parents that visits take place outside their home is understandable. Mrs. W. has a coloured past. She is clean now, but she still has to earn the trust of her daughter and Ca.. The history of incest in her immediate family is certainly a factor that M. and Ca. are entitled to consider in how the visits are to be carried out, as is the unauthorized visit to her brother's home with X.

[63] For the Court, there are other concerns. It seems that the constant disagreements between Mrs. W. and M. have contributed to some fairly serious difficulties in the couple of Ca. and M.. To his credit, Ca. acknowledges other factors.

[64] As a general rule, it is usually in a child's best interests that the parents are together.

[65] On this particular issue, the Court refers to two judgments. Firstly, to judgment of Justice Pierre Dallaire, in *Droit de la famille – 12359*⁶:

[61] Je tiens à répéter que je vois un comportement répréhensible ou inadéquat ici, qui est à la base du problème, du conflit en question. Le comportement du grand-père à l'égard de son fils m'apparaît destructeur et menace la santé de la cellule familiale composée du fils, de sa conjointe et de la petite-fille.

[63] Je vois une grande similarité avec la situation ici. Si j'accordais des droits d'accès dans un contexte où le fils est encore en train d'essayer de se sortir des conséquences psychologiques à long terme découlant de la relation malsaine, toxique avec son père, cela aurait le même effet pervers que dans ce cas-là.

[64] On a jugé que, dans ce cas-là, on ne devait pas permettre des accès aux grands-parents parce que cela compromettrait l'équilibre précaire de la cellule familiale."

[66] The Court also refers to the judgment of Justice Jacques Babin, in *Droit de la famille – 11692*⁷. He also cites Justice Mongeon:

⁶ 2012 QCCS 6409.

⁷ 2011 QCCS 1265

[54] En ce qui concerne l'impact négatif d'une telle attitude sur les enfants, le juge Mongeon ajoutait avec justesse:"

[28] Actuellement, la grand-mère a des droits à faire valoir en vertu de l'article 611 C.c.Q. , mais l'exercice de ces droits, s'il a pour conséquence de créer un conflit entre le père et la mère, la personne qui va subir ces conflits c'est la petite X, l'enfant bien entendu. Elle les subira dans l'immédiat et certainement avec l'écoulement du temps.

[31] Une lecture de la jurisprudence et de certains commentaires dans la doctrine qui m'a été soumise, m'oblige cependant à conclure que lorsque le conflit entre les parents de l'enfant et le grand-parent sont à ce point lourds qu'ils risquent à ce moment là de débalancer l'équilibre de la cellule familiale à l'intérieur duquel l'enfant vit au premier titre, c'est-à-dire avec ses parents ou avec son parent qui en a la garde comme c'est le cas ici, à ce moment là, le Tribunal peut conclure que, compte tenu des faits qui lui sont démontrés, la situation de conflit est assez importante pour constituer un motif grave au sens de l'article 611 C.c.Q."

[67] The Court finds that this also the situation in the present matter.

[68] Ca. has reached out to try to find a solution despite these past issues. He has the agreement of M. but that agreement is fragile. The Court will not at this juncture impose a solution on the parents that will undoubtedly put a strain on their relationship and on their ability to be good parents.

[69] This is all the more case given the incomprehensible reason Mrs. W. has given for her refusal that Ca. be present during her visits in the home.

[70] Mrs. W. needs to earn the trust of her daughter and Ca..

[71] Contacts should indeed be developed whether by phone or by email. These may and probably should lead to appropriate visits.

[72] For those visits to be profitable for all and especially for the children, Mrs. W. will need to demonstrate to Ca. and M. that she accepts the reasonable limits put on her time with her grandchildren.

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

[74] **DISMISSES** Plaintiff's motion;

[75] **THE WHOLE**, without legal costs.

THOMAS M. DAVIS J.S.C.

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Dates of Hearing: February 2 and 3, 2016