

CITATION: Sehota v. Sehota, 2012 ONSC 848
NEWMARKET COURT FILE NO.: FC-09-033698-00
DATE: 2012-02-13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Minni Taruna Sehota, Applicant

AND:

Hargurjit (“Alex”) Sehota, Respondent

BEFORE: Rogers J.

COUNSEL: Constance Nielson, Counsel for the Applicant

Cynthia Lauer, Counsel for the Respondent

HEARD: December 13, 2011

RULING ON ADMISSIBILITY

- [1] Before the court was a motion by the respondent father of the children in this case seeking primary residence of the children, a restraint regarding a move of residence of the children, a request that counselling be ordered for the children and a reduction of child support related to any order that might bring the children’s time with their father up to 60% of the time.
- [2] Proffered as evidence in the motion was a document authored by Susan Cook who was hired by the parties as a parenting coordinator. The court found that the document authored by Ms Cook would not be admissible as evidence. The court indicated written reasons would follow.
- [3] On December 13, 2011 the court found that, absent the said document authored by Ms Cook, the evidence on the balance of probabilities did not support the father’s motion. The court found the mother’s relocation was acceptable and that the children should attend school in the new location. On consent the court made an order requested by the applicant mother that Susan Cook be removed as the parenting coordinator and that the report should not be shared with any counsellors or professionals in the case.
- [4] There is a consent temporary order of the court dated July 27, 2010 setting out time the children would have with their father. An agreement for parenting coordination services was signed by both parties August 10th and 12th of 2011. At the request of the respondent father, Ms Cook prepared said document called a “Reporting Letter.” This document was dated November 6, 2011. The reporting letter was an exhibit to a brief affidavit of Ms Cook.

Expert Report

- [5] It is unclear if this report was intended to be considered as an expert report but given it has opinions and recommendations, its admissibility as such has to be canvassed.
- [6] This reporting letter was not served in accordance with Rule 23. It could not be received as an expert report on those grounds alone. Certainly Ms Sehota would want to critique this reporting letter or cross examine Ms Cook if the reporting letter was proffered as an expert report. The service and the motion format have made this impossible.
- [7] More importantly, the reporting letter does not demonstrate the essentials of the role of an expert as outlined in Rule 20.1. Said rule states:

RULE 20.1: EXPERTS

DUTY OF EXPERT

20.1 (1) It is the duty of every expert who provides evidence in relation to a case under these rules,

- (a) to provide opinion evidence that is fair, objective and non-partisan;
- (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
- (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue. O. Reg. 383/11, s. 6.

- [8] The first duty of providing evidence that is "fair, objective and non-partisan" is not demonstrated in this reporting letter. Ms Cook's reliance, as noted below, on extensive hearsay and her recommendations that go far beyond the mandate of a parenting coordinator have caused Ms Sehota to feel she was not being fairly treated. The parenting coordinator must not only be unbiased but also appear to be unbiased.
- [9] The court is also concerned that Ms Cook purported to give an opinion on the issue of a party's mental health. This is the issue in Rule 20.1(1) (b). On the second page of the reporting letter Ms Cook states,
- "I note that Alex did not present as a person suffering from Bi Polar Disorder. He was appropriate and clear in his thinking and speech, there were no unusual fluxuations in his manner or attentiveness. He did not appear to be in either a manic phase, and other than being sad about his present situation, there was no sign of any symptoms of depression."
- [10] Ms Cook's curriculum vitae does not show any qualifications to make such a conclusion about a person's mental health. Her educational credits show she has a diploma from Seneca College as a Social Services Worker. Her other courses and experience do not qualify her to opine on mental health diagnoses. Moreover, her education and experience

should tell her that this is not within her ability and she should not hold herself out as being able to comment on such.

Section 30 Assessment

- [11] Counsel for the respondent father indicated the document was not considered a section 30 assessment. The court agrees. Ms Cook was not hired for this purpose. Nor does Ms Cook's curriculum vitae indicate she has the educational or experience background to be qualified to do section 30 assessments.

Views and Preferences of the Child

- [12] Ms Cook interviewed the child, Jai. While this is said to have been on the consent of the parties, the court is concerned that a parenting coordinator would adopt this approach. Presumably, the main purpose of parenting coordination is that the parents are to be assisted with decision-making and communication so as to keep the child out of the fray, not to involve the child by interviewing with forensic findings in mind.
- [13] The task of interviewing a child is very difficult. Lawyers who are on the panel for the Children's Lawyer have extensive training so as to how to interview without leading questions and in a manner that attempts to ascertain the true views of the child. This is a lengthy and cautious endeavour. Ms Cook gave no description of her interview with the child. It would be impossible for the court to know the worth of the interview and the weight to be given to such effort. Nor does the court wish to encourage the interviewing of a child by a parenting coordinator.

Conclusions of Credibility

- [14] Ms Cook makes many conclusions about facts in this case and speaks extensively about such in the proffered document. Based on her conclusions on the credibility of the parties, she makes recommendations. This document was presented on a motion. If the court cannot find credibility on a motion, such conclusions by a parenting coordinator are not helpful.

Hearsay

- [15] The reporting letter is riddled with hearsay. Such comments cannot be accepted for the truth of the matter. The originators of the statements should testify at a trial if the facts are to be determined.
- [16] Ms Cook's affidavit states that she is deposing as to information and belief where information is not within her personal knowledge. However, the comments in the report go far beyond the acceptable limits of evidence that is hearsay and given as to information and belief. Ms Cook refers to conversations with a police officer, states his conclusions about the credibility of the parties and refers to the officer's conversations with the children. The officer's presumed finding of credibility about the parties is

related by Ms Cook and perhaps forms part of her finding of credibility. The degree of hearsay is beyond any acceptable level of remoteness.

- [17] The hearsay in the reporting letter also repeats statements of a counsellor, another police officer and the children's school principal. The reporting letter relates what are said to be opinions of the counsellor and the principal. As well, through the alleged hearsay comments of the principal, the reporting letter recites an alleged opinion of a child protection worker. Not only is this an unacceptable level of hearsay, but none of the persons presumably so opining have been qualified to offer opinion evidence.

Mediation/Arbitration

- [18] It is unknown whether there was a degree of mediation success. In any event, this would not assist the court in this ruling.
- [19] There is an arbitration component to the Agreement for Parenting Coordination. The court did not have submissions as to the validity of such as an arbitration agreement as this was not necessary. The reporting letter did not set out if the necessary steps outlined in the arbitration section were complied with. This court cannot therefore know if any of the decisions were properly arbitrated.

Letter from Ms Cook

- [20] Ms Cook sent a letter to the court that was received after the motion submissions. The letter was undated. Unfortunately the letter was read by the court as the judicial assistant was absent and the other staff did not realize the letter was related to specific court files as there was no reference line. This letter therefore had to be sent to counsel for the litigants in this file as some of the comments may be related to this case.
- [21] The counsel for Ms Sehota replied that they would continue to rely on their motion material and stated, "I believe that Ms Cook's correspondence speaks for itself as to her character, defensive nature and lack of respect for the court process." Ms Nielsen also sent correspondence concerning the letter from her client but the court did not read such as it was unsworn. Said correspondence was returned unread.
- [22] Counsel for Mr. Sehota made no submissions.
- [23] The fact that Ms Cook would attempt to correspond with a judicial officer about matters before the court is very concerning. Worse still, counsel for the litigants had no knowledge of this unacceptable effort. Clearly, Ms Cook does not understand her role in the court process.

Parenting Coordination Guidelines

- [24] The services of parenting coordinators have become an important part of the family law system. The court values the work of such professionals for the vast potential it holds for easing many of the difficulties litigants face. In particular, the court usually sees the

children being benefitted by the help of a parenting coordinator because that person can help the parents to put their children's interests first, to understand how conflict hurts children and to cooperate in spite of their past sorrows and hurts.

- [25] While a relatively new service in the long history of family law, the parenting coordinators have quickly taken up the challenge of assisting parents. The various approaches to doing so have been debated and mulled over by the professionals involved in the Association of Family and Conciliation Courts (hereinafter referred to as the AFCC). Guidelines for parenting coordination were developed by this body. This court takes judicial notice of these guidelines as the court routinely hands out the summary of the guidelines from the AFCC when there is an issue of parenting coordination raised. A copy of the summary of the guidelines is attached as schedule "A" to this ruling.
- [26] Several important issues are noted in the guidelines.
- [27] It is suggested that if a parenting coordinator is not impartial, that coordinator should withdraw.
- [28] A further component of the guidelines is that the order for parenting coordination should be after a final order that sets out the parenting plan. This case illustrates why this is preferable. It is not the job of the parenting coordinator to decide what the plan should be but to nuance the smaller issues of an overall established plan. The parenting coordinator is not to develop the plan, but to help the parties implement a final plan from a final order or agreement.
- [29] The guidelines suggest that the parenting coordinator has considerable authority albeit about only minor issues. A list of the types of issues that might be addressed by a parenting coordinator is found in the Summary at xi (b). They are:
1. Minor changes or clarification of parenting time/access schedules or conditions including vacation, holidays, and temporary variation from the existing parenting plan;
 2. Transitions/exchanges of the children including date, time, place, means of transportation and transporter;
 3. Health care management including medical, dental, orthodontic, and vision care;
 4. Child-rearing issues;
 5. Psychotherapy or other mental health care including substance abuse assessment or counselling for the children;
 6. Psychological testing or other assessment of the children and parents;

7. Education or daycare including school choice, tutoring, summer school, participation in special education testing and programs or other major educational decisions;
 8. Enrichment and extracurricular activities including camps and jobs;
 9. Religious observances and education;
 10. Children's travel and passport arrangements;
 11. Clothing, equipment, and personal possessions of the children;
 12. Communication between the parents about the children including telephone, fax, e-mail, notes in backpacks, etc.;
 13. Communication by a parent with the children including telephone, cell phone, pager, fax, and e-mail when they are not in that parent's care;
 14. Alteration of appearance of the children including haircuts, tattoos, ear and body piercing;
 15. Role of and contact with significant others and extended families;
 16. Substance abuse assessment or testing for either or both parents or a child, including access to results; and
 17. Parenting classes for either or both parents.
- [30] The parenting coordination process is to be non adversarial and to be designed to reduce anger and settle disputes efficiently. This is because these cases are usually ones of high conflict. This point relates to the suggestion above that the coordinator should withdraw if not able to be impartial.
- [31] Using the suggestions of the AFCC guidelines and considering the difficulties this case has presented, the court finds that the parenting coordinator should bend all efforts to assist the parents in reducing conflict, to help them learn how to communicate effectively about the children and to teach the parents how to focus on the children's needs, not theirs. A parenting coordinator should defuse conflict and demonstrate a better approach.
- [32] The parenting coordinator should not have any substantial role in evidence gathering; hence, the preference for a coordinator only after a final order.
- [33] The court also finds that the decision-making function of the parenting coordinator should concern minor issues. Conceivably, there could be crisis issues of greater than "minor" import but any decision- making of this ilk should be only of a temporary nature pending an urgent return to court. Any decision-making by a parenting coordinator should only occur after all the skills of education and mediation have been deployed.

Obviously, these concerns about decision-making powers only apply to a situation where the parties have involved the courts. There may well be private arrangements where the courts have not been involved.

Conclusion

- [34] This reporting letter of Ms Cook has two basic components: fact relating and opinions. The author is not qualified as an expert and cannot offer opinions. The hearsay offered as evidence on much of the supposed facts is far beyond the bounds of acceptability. The few facts offered from direct observation by Ms Cook are compromised by her clear determination to assess credibility and her obvious decision that the applicant mother is in the wrong. It is the court's job to find credibility at a properly constituted trial with admissible evidence. The conclusions by the author of the reporting letter about the facts are not acceptable.
- [35] The reporting letter is not admissible as an expert report or as a factual basis that the court can rely upon.

Justice S. Rogers

Date Released: February 13, 2012