

CITATION: Bors v. Beleuta, 2019 ONSC 7029
COURT FILE NO.: FS-12-76705
DATE: 20191204

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
CIPRIAN TEODOR BORS)
) Brian Ludmer, for the Applicant
Applicant)
)
– and –)
)
ANA CRISTINA BORS (BELEUTA)) Robert A. Fernandes, for the
) Respondent
Respondent)
)
)
)
) **HEARD:** October 30, 31, November
1, 12, 13, 14, 15 and 18, 2019

2019 ONSC 7029 (CanLII)

REASONS FOR JUDGMENT

VAN MELLE, J.

[1] In January 2019, after a long motion argued in August of 2018, Justice Coroza ordered this Motion to Change to trial.

[2] The applicant, Ciprian Bors, commenced the Motion to Change the Final Order of Justice Snowie dated May 11, 2015 because he was not getting the access to the children pursuant to that order. The parties are agreed that there has been a material change in circumstances and that judicial intervention is

required. The material change in circumstances is Ms. Beleuta's failure to abide by the final order of Justice Snowie.

[3] After seven days of evidence, I made a finding that Ms. Beleuta has alienated the children from their father, and ordered that the best interests of the children required Mr. Bors to have custody of the children. I ordered C to move immediately to his father's full-time custody and M to live with her father from 9:00 a.m. to 8 p.m. everyday. I ordered reunification therapy with Ms. Lourdes Geraldo. I requested the involvement of Jacqueline Vanbetlehem to report to the court on a plan to support the change in custody. Counsel and I agree that Ms. Vanbetlehem is the appropriate person to assist the court in crafting a plan for this family. The costs are to be shared equally between the parties, on a without prejudice basis.

[4] I have also suspended child support payments for the time being.

[5] These are my reasons for making the order.

BACKGROUND

[6] The parties are originally from Romania. They were married in 2002 and separated in 2012. There are two children of the marriage, M born June 25, 2006 and C born January 9, 2012.

[7] Mr. Bors commenced a divorce application in December 2012. The Office of the Children's Lawyer provided a report in 2013. While the parties ultimately reached a consent agreement shortly before a trial was to commence regarding custody and access the report of the OCL recognized that Ms. Beleuta was already causing some difficulty with Mr. Bors' relationship with the children. In any event, the consent was turned into a final order of Justice Snowie. The order provided that Ms. Beleuta was to have custody of the children with Mr. Bors to have access on alternate weekends.

[8] In September 2015 the parties used Brayden Supervision Services to facilitate exchanges. Mr. Bors was responsible for paying Brayden for this service. Despite Brayden's involvement, the children were not always made available to Mr. Bors for access.

[9] On January 23, 2017 Brayden suspended its supervision services until such time as the parties could provide proof of enrolment in Our Family Wizard, an internet communication tool for separated families. Enrolment in Our Family Wizard is one of Brayden's conditions for providing supervision of access exchanges.

[10] Pending enrolment in Our Family Wizard, Brayden suggested that transfer exchanges should continue at 12 Division Police Station. After the suspension of services by Brayden, Mr. Bors did not have access with the

children for five or six weeks. (In January 2017 Mr. Bors had cancelled one visit due to travel.)

[11] On February 17, 2017 Brayden recommenced supervision of access exchanges, Mr. Bors having signed the parties up and paid the fees for both, for a one year's subscription of Our Family Wizard.

[12] In February 2017 Mr. Bors brought a motion without notice to Ms. Beleuta. Justice Andre issued another final order increasing Mr. Bors time with the children and varied the location for the access exchanges so that pickup and drop off of the children would take place at their school.

[13] Mr. Bors filed a Motion to Change the Final Order of Justice Snowie (as amended by Justice Andre) on March 23, 2017.

[14] Ms. Beleuta subsequently brought a motion to set aside Justice Andre's order of February 23, 2017. Ms. Beleuta brought a motion to set aside Justice Andre's order, which appears to have resulted in another final order.

[15] The weekend access resumed on March 3, 2017 with Mr. Bors picking up the children directly from school.

[16] On March 10, 2017 Brayden advised the parties that due to the final order of Justice Andre, they would no longer supervise the transfer of the children.

[17] Justice Andre issued a subsequent final order on April 13, 2017 amending his previous final order. Under the revised final order, the weekend access and pickup and drop off of the children directly to and from school was to continue. The parties were directed to use the services of Brayden for times when the children were not in school.

[18] On May 12, 2017 Brayden terminated their services to the family. Ms. Beleuta testified that the services were terminated because Mr. Bors had not paid Brayden. Ms. Sliwinski from Brayden testified that the services were terminated because Ms. Beleuta's mother refused to speak English at the access exchanges (this is a condition of supervision by Brayden) and because Ms. Beleuta had threatened legal action against a few of the supervisors.

[19] In June 2017 the OCL was asked to provide a new report to the court.

[20] A new transition location was established at the Square One Mall Community Police station for times when the children were not in school.

[21] The OCL released its second report on May 4, 2018. The OCL recommended that Ms. Beleuta have sole custody of both children; Mr. Bors have alternate weekend access to M; week about access to C. Exchanges were to take place at the Community Police station at Square One. The report contained a schedule for holidays, recommendations for mobility, medical care, travel and some miscellaneous provisions.

[22] In June 2018 Mr. Bors brought another motion for access to the children. On June 29, 2018 Justice Coroza ordered the parties to proceed with the motion to change and adjourned the interim motion to a long motion. He also ordered Wendy MacKenzie, the author of the 2018 OCL report to attend for cross-examination. He further ordered that the children attend separation counselling with a mutually agreed upon practitioner.

[23] The long motion proceeded before Justice Coroza on August 13, 2018. Ms. MacKenzie testified and was cross-examined. Justice Coroza reserved his decision.

[24] Mr. Bors has not had access to M for the last two years. Except for July 20, 2018 and the weekend of January 18 – 20, 2019, Mr. Bors did not have access to C from June 2018 through the release of Justice Coroza's decision on January 31, 2019.

[25] C missed two weekends and one mid-week access during February 2019 however generally began to return to see his father as of February 21, 2019.

[26] Ms. Beleuta, without the consent of Mr. Bors, and indeed without letting him know in advance, retained Dr. Andrea Porter in the Fall of 2018, despite Justice Coroza's order of June 29, 2018 ordering the parties to retain a mutually agreed upon practitioner for the children.

[27] On January 31, 2019 Justice Coroza released his Reasons for Judgment. The final order was varied on an interim basis with respect to parenting time. Mr. Bors' time with the children was increased.

[28] Beginning February 21, 2019 to the end of the 2018/2019 school year, C went to Mr. Bors only when he was picked up from the school premises directly. When transitions were attempted at the police station C would not go with Mr. Bors.

[29] Mr. Bors brought a compliance motion on May 31, 2019. Justice Mossip adjourned the motion to no fixed date for a long motion. She scheduled the matter for trial during the week of October 28, 2019. She also told the parties to retain the therapist that Justice Coroza had ordered them to retain. The parties failed to do so.

[30] C attended an access visit with Mr. Bors on September 4, 2019, having resumed school on September 3. C attended another access visit on September 16, 2019. Up to trial that was the last time Mr. Bors had access to C.

[31] Since the beginning of the current school year, C who is in grade 2, has missed, or left early, a large number of days of school. When he is at school he often spends his days at the principal's office or with M in her Grade 8 classroom.

[32] Prior to this trial, the children resided with their mother and grandmother at an apartment in Mississauga.

[33] Mr. Bors resides in a small apartment in Mississauga as well. At the present time his mother, who is visiting from Romania, is staying with him.

[34] Ms. Beleuta has made numerous complaints to the Children's Aid Society of Peel (CAS) regarding Mr. Bors' parenting of the children. The principal of the children's school and Dr. Alison Porter have also contacted the CAS. The CAS file was formally closed on June 28, 2019. Due to C's frequent absences from school, Mr. Bors contacted the CAS. The CAS has opened a new investigation.

THE TRIAL

[35] The difficult subject matter of this trial was made somewhat easier by counsel who did their best to shepherd the evidence in the most efficient way possible. The level of cooperation between counsel was exemplary. They were able to file an Agreed Statement of Facts and examination-in-chief of the parties and the relatives of the parties proceeded by way of affidavit.

[36] The parties filed draft Orders at the outset. Remarkably they were both seeking reunification therapy. I opined that the money spent on this trial (including a very thorough preparation and many document books) would have been better spent on the reunification therapy. It appears that the stumbling block was who would carry out the therapy. This is indeed unfortunate as this family is

of very modest means. Ms. Beleuta's income is approximately \$40,000 per year and Mr. Bors' income is \$60,000. - not enough money to pay for this 8 day trial and for the therapy that must inevitably follow.

[37] At trial Mr. Bors testified to all the attempts that he has made to see the children. He has had problems with access since the separation of the parties. He arranged and paid for the children to go to the Peel After School Program (PLASP) to enable him to pick the children up there. Ms. Beleuta became very angry that he had done this, so the children were removed from the program.

[38] Mr. Bors testified about a trip that he and the children had taken to the Thousand Islands in 2017. They met up with Mr. Bors' brother and his two sons. The weekend seemed to go extremely well.

[39] Mr. Bors testified to all the times he has gone to the police station at Square One hoping to have access to the children.

[40] On November 12, 2019 after a 6 day break in the trial, Mr. Bors was recalled to the stand. He testified that he went to the children's school on November 6. He walked side by side with the children around the school. Another child was with them. Mr. Bors introduced himself to the child to which C said to Mr. Bors: "you are not our father."

[41] The weekend of November 9th, Mr. Bors spoke to the children by telephone. The phone was on speaker. He heard C say in the background: “You are not our father”. He had a 20 minute conversation with M who blamed him for making her ashamed in front of her friend and asked Mr. Bors not to walk with her again.

[42] Ms. Beleuta testified that the reason that M does not want to go to her father was because during the trip to the Thousand Islands M was cold and hungry.

[43] According to Ms. Beleuta, M is embarrassed by her father following her and yelling at her at school.

[44] Ms. Beleuta testified that C does not want to go with his father because he does not feed him enough and because his father “films” him.

[45] Ms. Beleuta testified that she does not feel that the children are safe with their father and that she is afraid that they will “return to her in a coffin”.

[46] Ms. Beleuta denied saying anything negative about their father to the children.

[47] She acknowledged that she does not speak to Mr. Bors. She says this is because she is afraid of him.

[48] She says that she tried to compel the children to go to their father by taking away their access to the family computer.

[49] At paragraphs 100 and 101 she says:

While trying to implement different ways in which to encourage C to accompany his father for access, I agreed to purchase a “glow-in-the-dark” train for him if he agreed to go with his father for a visit, and on the strength of this incentive, a transition successfully took place between him and his father during the weekend of July 20, 2018. I then went ahead and purchased this train for C, at a cost of \$35.00. When I later discussed this approach with the responsible PCAS caseworker (at least at that time) Mr. Emmanuel Ansah, he advised me in reply that “I bribed C.”

This Honourable Court can be [sic] rest assured that I cannot use this sort of incentive on a regular basis as my budget cannot afford it (I am a single mother raising two children on an annual income of only \$40,000).

[50] Ms. Beleuta said that she did not want Mr. Bors picking C up from PLASP because the court order says he is to pick up both children.

[51] Ms. Beleuta acknowledged switching out C’s lunch (either through her mother or M) on the days that C was delivered to school by his father because she felt that the lunches provided by Mr. Bors were not sufficiently healthy.

[52] Ms. Beleuta acknowledged failing to provide medical notes to Mr. Bors as required by Justice Snowie because the notes cost \$20 each and were thus too expensive. She did say in her examination in chief at paragraph 72 that it was Mr. Bors who was continually asking her to furnish him with medical notes to evidence the reason(s) why earlier access visits were cancelled. Although not specifically stated it appears that she believes his requests for medical notes was unreasonable. This despite the fact that Justice Snowie’s Order obligated her to

provide notes and despite the fact that the children were frequently missing access with their father allegedly due to illness.

[53] Ms. Beleuta said that M does not want to go with her father, because in addition to the 2017 weekend visit to the Thousand Islands, Mr. Bors had pushed her down the stairs.

[54] In 2012 Ms. Beleuta called the CAS and the police to report that M had reported to her that Mr. Bors had grabbed her by the arm and pushed her down which then resulted in M getting a small red mark on her elbow. M was trying to go upstairs while her brother was sleeping. Mr. Bors apparently grabbed her arm to come downstairs and she fell. The CAS investigated and had no concerns.

[55] Over time the description by Ms. Beleuta changed to M being pushed down the stairs by her father, to M being “thrown” down the stairs by her father. She was asked in cross-examination if she really believed that Mr. Bors would knowingly throw M down the stairs. She replied that he would, “if M does not obey the house rules”.

[56] Over the years Ms. Beleuta has made a number of allegations against Mr. Bors regarding his “abuse” of the children. While some of the allegations predate the 2015 Final Order of Justice Snowie, I mention them here because they demonstrate a disturbing pattern. The allegations are:

December 2012 - Mr. Bors put alcohol into C's bottle

July 2013 – Mr. Bors giving M a bike without brakes

July 2013 – Mr. Bors “slapping M” leaving a handprint on her face

February 2014 – Mr. Bors grabbed M by the arm and pushed her down

July 30, 2014 – M was hit by her cousin when in Mr. Bors' care

September 2014 – claim that paternal grandparents physically disciplined the children even though they were not in the country

October 2014 – Mr. Bors is “drugging the children”

October 2014 - M sexually assaulted by Mr. Bors

January 2016 – C sick after being with Mr. Bors; M sleeps in bed with Mr. Bors; Mr. Bors may have had sex with girlfriend when children present

November 2016 – Mr. Bors only gives children chips and ice cream for dinner; Mr. Bors stole a pumpkin; Mr. Bors put C on a hot stove (historic complaint); Mr. Bors sleeps a lot; Mr. Bors rips the children's clothes

December 2016 – Mr. Bors slapped C

June 26, 2018 - August 23, 2018, February 22, 2019 – C's frequent nosebleeds were due to Mr. Bors

May 12, 2017, May 24, 2017, June 5, 2017, October 10, 2017, March 21, 2019 – Mr. Bors deliberately ripping/cutting C's clothing and shoes

May 2017 – Mr. Bors slept with earplugs so he couldn't hear the children

May 2, 2017 - May 11, 2017, August 22, 2017, June 26, 2018 – C's “sexualized behaviours”

July, 2017 – Mr. Bors' possible sexual abuse of C

NON-PARTY WITNESSES

[57] Mr. Bors' mother Adelina Bors testified. Unsurprisingly, she supported Mr. Bors' version of events. Mr. Bors' brother, Adrian, testified by video link from Montreal. He has not seen the children since 2017 thus his testimony was of limited value.

[58] Ms. Beleuta's mother, Aurelia Bucsa, filed an affidavit containing her evidence-in-chief and attended court for cross-examination. Ms. Busca is in Canada on a visitor's visa from Romania. She is 67 years old, suffers from high blood pressure and Type II diabetes. Her evidence is important as she helps Ms. Beleuta care for the children and is often alone with them when Ms. Beleuta is at work. Her own evidence is that she is actively involved in the raising of the children.

[59] Many of the events described by Ms. Busca concern the breakdown of the parties' marriage which preceded the Final Order of Justice Snowie. Although Ms. Busca deposes to the fact that she supports the children's relationship with their father, she has nothing good to say about him in general.

GISELLE D'COSTA

[60] Ms. D'Costa has worked for PLASP – the before and after school program at St. Matthew's School, since 2008. She testified that Mr. Bors would come to pick C up for access and that she did not observe any issues with the pick up.

[61] There was however difficulty transferring M into her father's care for the balance of the last school year and the school year before.

[62] Mr. Bors would try to convince M to go with him and if she refused Ms. D'Costa would call Ms. Beleuta to pick up M.

EMILY PLASTINA, PRINCIPAL

[63] Ms. Plastina, the principal of St. Matthew's school where the children are enrolled outlined her efforts and the efforts at school to get C back to regular attendance. She testified about an occasion when Mr. Bors wanted to attend the children's 2018 Christmas Concert. She consulted with the school's lawyers and after they reviewed the Snowie Order, was advised that Mr. Bors could attend the concert as long as he did not interact with the children. Ms. Beleuta did not accept this advice and told Ms. Plastina that if Mr. Bors attended the concert, she would not allow the children to participate. In the end she kept the children from the concert because "C was ill".

[64] Ms. Plastina testified that Ms. Beleuta told her to dismiss the children together because M wanted to see her father.

[65] Ms. Plastina testified that Ms. Beleuta told her earlier in September that she does not want the children going to Mr. Bors because he "beats" the children. Ms. Beleuta has also mentioned that C has marks on his body after visits with his father.

[66] In the presence of and at the urging of his maternal grandmother C told Ms. Plastina that his father videotapes him when he eats.

[67] Ms. Plastina advised the parties that the school does not want to get into the middle of their dispute.

[68] Ms. Plastina confirmed that C (who is in Grade 2) had missed either 23 - 1/2 days of school or 26 days of school since the commencement of the school year in September. On those days that he was in school he spent much of his time in her office or with M in M's Grade 8 class.

[69] She testified that this year has been a difficult transition for C. He doesn't speak a lot. He cries much of the time. At the beginning of the school year he said, almost every day, that he wasn't feeling well. Ms. Beleuta would take him to the doctor. He won't say why he won't come to school but everyday it is a struggle to get him into the school and some days he will not enter the school.

TANYA PANZARELLA

[70] Tanya Panzarella was the Family Services Worker from the Peel CAS and was involved with the family from 2013 to 2015. She testified regarding Ms. Beleuta's fear that M had been touched inappropriately by her father. Ms. Panzarella said that after investigation the allegations were not substantiated. Ms. Panzarella was concerned that other reasons for Ms. Beleuta's concerns were not investigated first. At the end of her relationship with the family she said that Ms. Beleuta was upset with Ms. Panzarella as Ms. Beleuta's concerns against Mr. Bors were not verified.

EMMANUEL ANSAH

[71] Emmanuel Ansah, who also works with Peel CAS, testified that Ms. Beleuta was concerned that Mr. Bors was not attending to the children's food or nutrition and that Mr. Bors was exposing the children to adult related conversations. While Mr. Ansah observed a decline in the children's relationship with their dad, he did not believe the decline was a result of Mr. Bors' behaviour. He said that the children had no justifiable excuse for not going with their father, when questioned they would just say that the visits were boring.

[72] Mr. Ansah testified that Ms. Beleuta told him that she would bring the children to the access exchange and with M would let M make the choice as to whether or not to go with her father. Mr. Ansah offered M counselling, but she declined.

[73] According to Mr. Ansah, Ms. Beleuta would also give C the authority to return to his mother's house during visits with his father if he felt like it.

[74] During visits to his father C would phone his mother regularly who instead of supporting C's visit with his father, would tell him that he could return home.

[75] Mr. Ansah had several discussions with Ms. Beleuta about this and her reply was that if the children were having a good time they would stay with their father and any difficulties that he was having were his own fault.

[76] Ms. Beleuta also told Mr. Ansah that she had a concern with C's "sexualized behaviour." Mr. Ansah reported having no concerns.

[77] Mr. Ansah also provided recommendations for counselling for the family.

MARLO PARABOO

[78] Marlo Paraboo is a Child and Youth counsellor employed by the Dufferin Peel School Board. In mid October of this year she was asked to informally to support C as he was sitting in the office and not attending class. She has been involved with C since early November.

[79] Ms. Paraboo was asked by the principal to meet with C in the principal's office. C was sitting in office and looking sad. C told Ms. Paraboo that he was feeling frustrated. Ms. Paraboo went to class with him and stayed with C in the classroom the entire afternoon. Ms. Paraboo thought it would be a good idea for C to be referred to her as his non attendance was an ongoing issue.

[80] The same day that Ms. Paraboo was in class with C Ms. Paraboo contacted Ms. Beleuta to let her know that she'd been with C that afternoon. Ms. Paraboo offered to review and obtain Ms. Beleuta's informed consent over the phone but Ms. Beleuta wanted to meet. The meeting was rescheduled a couple of times. Eventually the school meeting took place and the consent was reviewed and signed.

[81] Apparently, Ms. Beleuta was unclear as to Ms. Paraboo's role so Ms. Paraboo clarified her role during a telephone conversation.

[82] Ms. Paraboo has been supporting C since first week of November. She describes C as emotionally cautious and worried. She has been trying to get him reintegrated into his classroom and into going out for recess. She has not talked to him about his feelings and where they are coming from.

[83] The only thing C has said to Ms. Paraboo occurs toward the end of the school day. He's worried that his dad is outside. One time C did not want to go out for recess because he was worried that his dad was outside.

[84] C has said that sometimes the classroom is too loud. Ms. Beleuta has conveyed some of what she says are C's concerns, to Ms. Paraboo but those concerns have not been confirmed by C.

[85] During the meeting at the school, Ms. Beleuta said that she felt that C was not trustful of the school and that he was afraid of his teacher. In that meeting she expressed that the teacher yells a lot which C does not like. C was not present at that meeting.

[86] Mom also expressed that C felt mistrustful because Mr. Bors had picked him up and had come into the classroom to do so, and that influenced how C felt.

IRENE LENARCZYK

[87] Ms. Lenarczyk, C's grade 2 teacher testified as well. She has 20 years of teaching experience. She described an occasion when she raised her voice with C because he was running away from her in the school and potentially putting himself and others in danger.

[88] Ms. Lenarczyk testified that the school year started well and that C seemed to enjoy being there. On the second day of school she dismissed C at the end of the school day directly to his father. M came to her class shortly thereafter and asked if C had been picked up. Almost instantly there was a phone call waiting for her, demonstrating that Ms. Beleuta already knew about the pick up. She returned Ms. Beleuta's call and was accused of dismissing C early.

[89] Ms. Lenarczyk felt that Ms. Beleuta was being overly confrontational.

ASHLEY GARBER

[90] Mr. Ashley Garber is a social worker employed by the school board. He has been trying to work with C as well to get him to attend his class. He testified that C's refusal to go to class is one of the most extreme reactions he has seen.

DEBORAH SLIWINSKI

[91] Ms. Sliwinski is a service director with Brayden. Brayden facilitates transfers from one parent to another. Its mandate is to ensure safe, successful

and child focused plans. Both parties are interviewed and a transfer plan is made up and shared with both parents.

[92] Ms. Sliwinski testified that normally once a plan is in place transfers are easy. In this case however, there were always problems.

[93] According to Ms. Sliwinski Brayden has certain expectations. One is not to speak about the other parent; everyone is to speak English, no one is to speak to the supervisors about the transfer and goods are not to be transferred.

[94] In this case, many times Ms. Beleuta would arrive and say that the children did not want to go with Mr. Bors. On many occasions she would tell the supervisors that the father was only “acting” and did not really want to visit with the children. There were issues with the supervisors being given medication and instructions on how to use it. Brayden’s expectation was that communication between the parties would take place on Our Family Wizard and any medications would travel with the children. According to Ms. Sliwinski the transfers never went smoothly.

[95] Ms. Sliwinski testified that there were no issues with Mr. Bors. He did not breach the rules. On the other hand, Ms. Beleuta frequently had negative things to say about Mr. Bors.

[96] Some of Brayden's notes were introduced at trial. It appears that only Ms. Beleuta was aware that they were not all the notes, just approximately one-third. The supervision orders would have to be purchased. According to Ms. Sliwinski the parties would purchase the notes when something happened.

DR. ALISON PORTER

[97] Dr. Porter testified that she had been engaged by Ms. Beleuta to provide therapy to the children who were suffering from anxiety. The Retainer Agreement is dated September 26, 2018. She met with the children approximately once per month as that was all Ms. Beleuta could afford.

[98] Dr. Porter contacted Mr. Bors on November 19, 2018, to introduce herself and to advise that she had been seeing C and M for anxiety related issues. She left a voice mail for Mr. Bors asking him to speak to her or set up an appointment time.

[99] Mr. Bors subsequently contacted Dr. Porter to tell her that her therapy with the children had to stop as there was a court order providing that a mutually agreed upon therapist was to be retained by the parties to provide therapy to the children. Dr. Porter asked to be provided with the most current court order and said she would take appropriate action. She testified that she contacted Ms. Beleuta's lawyer and decided to continue working with M and C.

[100] In March of 2019 Dr. Porter spoke with Mr. Ansah who suggested that Ms. Beleuta was projecting her own divorce history onto the children.

[101] In April of 2019 C blurted out that he was afraid that his father would kill him. He would not say why.

[102] Dr. Porter's file contained an email from Ms. Beleuta dated April 20, 2019, addressed to Dr. Porter and to Mr. Fernandes (Ms. Beleuta's counsel):

My heart is breaking today at the police station when C was taken by force by his father and the police did not intervene at all although the order is not police enforced.

I believe at school is the same situation but is nobody there to witness it.

The pictures that I have attached provide everything. I also filmed but the size is too big to attach it to this email.

Rob, please let me know if I can take these pictures to media, I need, to make this abuse public.

[103] Dr. Porter responded to this email. The relevant portions are:

Thank you for your message. I am sorry to hear how distressed you are and moreover how distressed C is when he met his father earlier today. This is heart wrenching. It is extremely difficult to know C is upset and not be able to help him in this difficult moment. ...

When you do speak with C later today, I think it would be important to state that he looked upset earlier (validate his experience) and then ask him how he was able to cope... Although this whole situation is out of your control and C's, I think it is extremely important for his distress to be acknowledged ... Obviously, it is not up to C to resolve this situation on his own. It is the adults in his life that must ensure he is safe and happy. I realize the family courts, the CAS and his father have made this almost impossible currently and I hope this situation is temporary at best.

...

The fact that C is so upset to go with his dad speaks to the dire need for reunification therapy. Perhaps your video and photos can be used as compelling evidence to stop these access visits or fast track the much needed intervention.

As I have indicated previously, the level of distress that the kids experience when with their father, is traumatizing for them. Forcing them to participate in access visits is not how to heal ruptured relationships.

And lastly, I left a voice mail message for Emmanuel [Ansah] Thursday afternoon. I do not know if the CAS file is closed or remains open. I would nonetheless forward these photos to the Peel CAS. It may help Emmanuel recognize how much duress C experiences and importantly the need for Ciprian to develop child focused parenting strategies.

[104] According to Dr. Porter, she was to support the children, their anxieties and beliefs. Everything she knew about the ongoing issues came from Ms. Beleuta. She testified that she had read the OCL report but on cross-examination was not familiar with its contents. She did not feel there was any problem providing therapy even after she'd been made aware of Justice Coroza's order for mutually agreed upon separation counselling. She did not question the fact that she had not been provided with Justice Coroza's order prior to hearing from Mr. Bors.

[105] Therapy of this nature, conducted at the behest of one parent in the face of an order for mutually agreed upon separation therapy for the children has the potential to do more harm than good, which is unfortunately what may have happened here. Dr. Porter should have contacted Mr. Bors at the outset of her engagement and once told about Justice Coroza's order, should have stopped treating the children immediately. Instead as demonstrated in the email, she gave credence to Ms. Beleuta's behaviour, actually telling her that access to their father was not in the best interests of the children.

THE OFFICE OF THE CHILDREN'S LAWYER – WENDY MacKENZIE

[106] Wendy MacKenzie completed a section 112 Report dated April 30, 2018.

In the summary of the situation on page 2, Ms. MacKenzie writes:

Ms. Bors is requesting that the children's wishes be followed and neither child have access with their father. She is fearful they will end up dead if access continue. Mr. Bors is requesting his access not be interfered with by Ms. Bors and fears she is alienating the children from him.

[107] Ms. MacKenzie conducted a thorough investigation. She spoke to many collaterals some of whom testified at this trial. Her recommendations appear at page 12 of the Report. She recommended that Ms. Beleuta have sole custody of both children. She recommended that M have access with her father every other weekend from Friday after school until Monday at school. She recommended that C have a week about access schedule with each parent with exchanges at C's school each Monday. If the school was closed exchanges to take place at the Square One Community Police Station. She also set out a detailed holiday schedule.

[108] Ms. MacKenzie recommended attendance for both children at a group for children of separation.

[109] She recommended the use of a parenting co-ordinator.

[110] However at page 10 of her report she says:

Both Mr. Bors and Ms. Bors appear to love their children. Both children deserve to have a positive ongoing relationship with both of their parents. At this point, there are serious concerns that Mr. Bors will lose a relationship with both his children if a serious change does not occur. No change has been made in the recommendations concerning access with M. A recommendation to change the access is being made to increase access for C to ensure his relationship with Mr. Bors is preserved. C appears to be impacted by the negativity toward Mr. Bors being conveyed in both the actions and inactions of Ms. Bors. If these continue, serious consideration should also be given to her ability to maintain custody. It is recommended to remain sole custody with a caution. Ms. Bors does not appear to understand the role she has had in negatively impacting the children. Ms. Bors needs to encourage and foster a positive and healthy relationship between the children and their father despite her feelings about him. Ms. Bors should consider counselling support to help her achieve this. If this cannot be achieved, consideration should be given to a change in custody.

[111] The thrust of the testimony is that all the professionals involved with this family are extremely concerned about C in particular but really about the emotional well being of both children. No one has been able to point out anything that would cause me to believe that Mr. Bors is not parenting the children appropriately. Ms. Beleuta on the other hand appears to get angry and annoyed when anyone is not going along with her allegations against Mr. Bors.

[112] Ms. Beleuta admitted telephoning Ms. Lenarczyk but said she was concerned that Mr. Bors was going into the classroom to get C because Mr. Bors was to pick up two children not just one.

[113] She acknowledged telling Ms. Plastina that she did not want Mr. Bors attending the children's Christmas concert because then she would have to bring the children to the school and then be in the same room that Mr. Bors was in.

[114] She acknowledges that she is still afraid that Mr. Bors will harm the children as he is “careless” with them. She says that he does not love the children and does not listen to what the children need.

[115] Much was made of Mr. Bors’ 2017 weekend with the children when he took them to the Thousand Islands. That was the last time M went to an access visit. In cross-examination Ms. Beleuta admitted that she did not address that particular weekend until she had Mr. Bors’ affidavit for trial.

[116] Ms. Beleuta testified that she takes the children to the transition point at the police station at Square One. She waits there for hours to see if they will go to their father. She waits until Mr. Bors gives up and leaves.

[117] She testified that she does not hate Mr. Bors but she is afraid of him.

[118] Despite Justice Coroza’s order calling for separation counselling for the children to be arranged with a mutually agreed to therapist, she did not feel it necessary to consult with Mr. Bors before taking the children to Dr. Porter. That is because she did not feel that the counselling with Dr. Porter was “separation counselling.” No explanation was offered for the failure to provide Dr. Porter with Justice Coroza’s order of June 29, 2018.

ANALYSIS AND FINDINGS

[119] Counsel directed me to the Manitoba case of *L.M.A.M. v. C.P.M.* 2011 MBQB 46. Dr. Michael Stambrook provided a very comprehensive, and in my view accurate, definition of parental alienation. Justice Thomson quoting from Dr. Stambrook's testimony wrote at paragraph 98:

It is a descriptive term that refers to a process. It is not a diagnostic label. It doesn't appear in any nomenclature about mental health disorders. It is a descriptive term that refers to a process where there is a systematic devaluation, minimization, discreditation of the role of, typically the other parent in a parental dyad. One parent systematically, through a variety of physical, emotional, verbal, contextual, relational set of maneuvers systematically reduces the value, love, commitment, relationship, involvement of the other parent by minimizing, criticizing, devaluing that parent's role. It can involve children having their sense of history being "re-written" by a parent's redefinition of history, reframing things, repetitively talking about things. It can involve sometimes very subtle and sometimes not so subtle suasion, coercion, direction, misrepresentation and so on.

It is an abusive practice. It is child abuse when it occurs. It's emotionally abusive. It cripples and stunts children's development because the reality they knew at one point is undermined by this process. It is dangerous for the development because in [an] ideal situation, children should feel free to love and interact with the adults who are important in their lives, unencumbered by twisted turns of relational loyalties that are, unfortunately misplaced in this situation.

So parental alienation is a process, an interactional process where systematically one parent's role in, for the children is eroded over the course of time.

[120] The Ontario Court of Appeal in upholding the decision in *A.M. v. C.H.*, 2019 ONCA 764, quoted with approval from the trial decision the behaviour that Justice Nicholson felt undermined the child's relationship with his father. In the present case Ms. Beleuta has demonstrated many of those same behaviours in that she has:

- Allowed the children to make decisions about contact. The witnesses, particularly Ms. MacKenzie testified, and Ms. Beleuta herself acknowledged that M was permitted to make her own decision about whether or not to see Mr. Bors.
- Refuses to speak to Mr. Bors, refuses to be in the same room or close proximity to Mr. Bors. One example is when C refused to say good-bye to his father after an access visit. While she says she chastised C for not saying good-bye, she did not model appropriate behaviour as she does not speak to Mr. Bors. Another example is the incident regarding the Christmas Concert when she did not bring the children to participate in the concert as she did not want to be in the same room as Mr. Bors.
- Shows no concern for missed visits with the other parent. Despite the final order of Justice Snowie, she has rarely if ever provided a medical report when the children missed visits due to access and has rarely if ever provided make-up access.
- Makes statements and then denies what was said. Ms. Beleuta testified that she never says anything negative about Mr. Bors in front of the children. Yet Mr. Ansah testified that he cautioned Ms. Beleuta about not speaking of Mr. Bors in front of the children and Ms. Swilinski testified that Ms. Beleuta had spoken negatively about Ms. Bors in front of the children.
- Body language and non-verbal communication reveal a lack of interest, disdain and disapproval.
- Rejected parent is discouraged or refused permission to attend school events and activities. As stated above she did not want Mr. Bors to attend the 2018 Christmas Concert. Mr. Bors complained about not being informed about parent teacher interviews and being denied access to other school events.
- While testifying that the children require a relationship with their father, does not really believe it.
- Portrays other parent as dangerous, may inconsistently act fearful of other parent in front of child.
- Exaggerates negative attributes of other parent, and omits anything positive. Ms. Beleuta had nothing positive to say about Mr. Bors at all. In fact, she even attributed his constant efforts to see the children to simply wishing to “get even” with her instead of desiring a real relationship with the children.
- Projection of own thoughts, feelings and behaviours onto the other parent
- Does not correct child’s rude, defiant and/or omnipotent behaviour directed towards the other parent, but would never permit child to do this with others. There were a number of occasions where the children were permitted to be rude and dismissive toward their father. One example was M running away from him when he came to the school to get the children for access. She phoned her mother on her cell phone and her mother told her to call 911.

- Convinced of harm when there is no evidence. In addition to the unfounded abused allegations that I have listed under Ms. Beleuta's testimony, Ms. Beleuta testified, more than once, that she was afraid the children would be returned to her in a coffin.
- False or fabricated allegations of sexual, physical and/or emotional abuse.
- Denigrates and exaggerates flaw of reject parent to child.
- Extreme lack of courtesy to rejected parent.

[121] I would add to the factors enumerated by Justice Nicolson, a continuing failure to abide by Court Orders. This trial is necessitated by Ms. Beleuta's failure to comply with all the court orders in this matter. She has never followed Justice Snowie's Final Order, despite the fact that it was made on consent. She did not comply with Justice Andre's orders, she did not comply with Justice Coroza's orders and she paid no attention to Justice Mossip, who told her unequivocally that she would lose custody of the children if she did not facilitate Mr. Bors' access.

[122] The evidence is overwhelming that the children are alienated from their father and that Ms. Beleuta is responsible. I find as a fact that the children are suffering emotional abused caused by their mother.

[123] This is an extreme case of alienation with a mother who shows absolutely no understanding of her role in coming between the children and their father. Given her lack of insight into the effect of her behaviour on the children and her total disregard for previous court orders, I have no faith in her ability to support the children in their reunification with their father.

[124] The best interests of the children mandate a change in custody. The children must be given an opportunity to forge a strong relationship with their father. Only after that has been accomplished, can a plan be formulated for reintegration with their mother.

[125] A conference call with Ms. Vanbetlehem has been arranged for today. Once I have her input I will decide when to review the situation to best meet the objectives of maximizing contact between the children and both parents.

FINANCIAL ISSUES

[126] Ms. Beleuta seeks a retroactive contribution to section 7 expenses such as daycare and medical expenses not covered by her medical plan. She says however, at paragraph 45 of the affidavit sworn as her examination-in-chief:

Contextually, it also [sic] important to point out that there was no allowance whatsoever in Justice Snowie's Final Order for Ciprian to contribute towards (either of) the children's "special or extraordinary expenses". It was a conscious and deliberate decision made on my part not to pursue contribution from Ciprian for these expenses, as doing so would obligate me to communicate with him directly, "going forward".

[127] She also did not make a claim for section 7 expenses in her Reply to the Motion to Change. She is however seeking \$10,404 in child support arrears and ongoing child support of \$1,209 in base child support per month for M and C. She has used Mr. Bors' 2018 Line 150 Income of \$79,893.

[128] Mr. Bors acknowledges an underpayment of \$2796 for January 2016 to December 2018.

[129] For 2019 Mr. Bors lost his job, was unemployed for a time and found new employment. He states that his income for 2019 is \$60,000 and that support should be adjusted accordingly.

[130] Given that Mr. Bors has custody of both children as of November 18, 2019 support will have to be adjusted accordingly. Consideration must be given to the fact that for the time being, M will be sleeping at Ms. Beleuta's house.

I ordered a suspension of child support to permit the parties to pay for the necessary therapy. The suspension of support is to continue until further order of this court. I envision a review of the support issue to take place when there is a review of how the children are faring with the change into their father's custody. In the new year, the parties should know the exact figure for their respective incomes in 2019. It may be as well that Mr. Bors has a new living situation which will accommodate M full-time and that too will have to be considered.

[131] The other factor will be costs of this litigation. Costs too will be addressed when I see what is happening with the children under this order.

Van Melle J.

Released: December 4, 2019

CITATION: Bors v. Beleuta, 2019 ONSC 7029
COURT FILE NO.: FS-12-76705
DATE: 20191204

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CIPRIAN TEODOR BORS

Applicant

– and –

ANA CRISTINA BORS (BELEUTA)

Respondent

REASONS FOR JUDGMENT

Van Melle, J.

Released: December 4, 2019