



SUPREME COURT OF CANADA

CITATION: Richardson v.
Richardson, 2021 SCC 36

APPEAL HEARD: October 13,
2021

JUDGMENT RENDERED:
October 13, 2021

DOCKET: 39123

BETWEEN:

Sylvia H. C. C. Richardson
Appellant

and

Mark Edward Richardson
Respondent

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer
and Jamal JJ.

UNANIMOUS Kasirer J.

JUDGMENT READ

BY:

(paras. 1 to 7)

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Canada Supreme Court Reports.

Sylvia H. C. C. Richardson

Appellant

v.

Mark Edward Richardson

Respondent

Indexed as: Richardson v. Richardson

2021 SCC 36

File No.: 39123.

2021: October 13.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Family law — Custody — Variation — Change of residence — Best interests of child — Mother bringing motion to change custody order following her relocation to Ottawa area from Niagara region — Parties agreeing to settlement during trial according to which children would relocate to Ottawa area to live with mother — Trial judge rejecting proposed settlement and continuing with trial — Trial judge dismissing motion to change and ordering that children’s primary residence remain in Niagara region with father on basis of best interests of children —

Court of Appeal upholding decision — Changes with respect to children that affect record occurring prior to appeal being heard by Supreme Court of Canada — Incomplete record preventing meaningful guidance on best interests of children.

APPEAL from a judgment of the Ontario Court of Appeal (Rouleau, Huscroft and Nordheimer J.J.A.), 2019 ONCA 983, 35 R.F.L. (8th) 265, [2019] O.J. No. 6313 (QL), 2019 CarswellOnt 20744 (WL Can.), affirming a decision of Ramsay J., 2019 ONSC 2175, dismissing a motion to change the custody order regarding the two children of the marriage and amending the access schedule. Appeal dismissed.

Shawn Duguay and Lauren Wilson, for the appellant.

Aaron Franks, Michael Zalev and Samantha Eisen, for the respondent.

The judgment of the Court was delivered orally by

[1] KASIRER J. — The dispute regarding the custody of the parties' two children involved in this appeal turns on a proper appreciation of their best interest. When leave to appeal was granted, among the matters in dispute was whether the parties' 16-year-old daughter and their 10-year-old son should live principally with the appellant in Ottawa or with the respondent in Niagara.

[2] On October 6, 2021 — one week before this hearing —, the parties wrote a joint letter to the Registrar to advise the Court of what they described as “changes with respect to the children that affect the record in this matter”.

[3] These included a statement that the parties’ daughter has resided in Ottawa for over a year and that, given her age, the respondent does not intend to take further steps to enforce the trial judge’s order regarding that child.

[4] We note further that the parties have not filed a motion for new evidence before this Court regarding the current best interests of the children.

[5] In the unusual circumstances of this appeal, and given the state of the record which the parties acknowledge as incomplete, we are of the unanimous view that the appeal should be dismissed, without costs before this Court. The appropriate forum for identifying and resolving whatever ongoing dispute may subsist between the parties is the Superior Court where, should the legal requirements be met, a variation order relating to custody and access could be sought.

[6] Given the tenor of the parties’ joint letter and the state of the record, we are unable to provide meaningful guidance on the best interests of the children in the circumstances.

[7] In the result, the appeal is dismissed, without costs before this Court.

Judgment accordingly.

Solicitors for the appellant: Gowling WLG (Canada), Ottawa.

Solicitors for the respondent: Epstein Cole, Toronto.