

Child Support

Parsons v. Watt, 235 Man R. (2d) 32 2008 MBQB 328 (CanLII)

Facts:

Mr. Watt and Ms. Parsons moved in together in 2000. Both had children from previous relationships. Ms. Parsons' child was 10 years old and Mr. Watt had a 14 year-old child who lived with him and a 7-year-old daughter who primarily lived with her mother. The parties separated in 2004. Ms. Parsons' child had never had a relationship with his biological father and Ms. Parsons had never been in a common-law relationship until meeting Mr. Watt. Mr. Watt treated the child as his own, enrolling him in activities, such as Cadets with his biological son, attending parent-teacher interviews, participating in discipline and affection with the child, and otherwise appearing as a family unit. Mr. Watt argued that the child was very close to his maternal grandfather and therefore already had a father figure in his life and that any participation in discipline of the child was at the urging of the mother.

In regards to child support, the biological father was under a court order to pay support of \$347 per month but he was in significant arrears for lack of consistent payments.

The Issue:

Did Mr. Watt stand *in loco parentis* (in the place of a parent) to Ms. Parsons child from a previous relationship? If he did stand *in loco parentis*, how much child support should he pay?

The Decision:

On an objective analysis and considering the intention of Mr. Watt, he was found to stand in loco parentis to Ms. Parsons' child. The court then looked at how much child support would be appropriate. Even though Ms. Parsons had not tried to get more support from the biological father, the court decided that she had taken reasonable steps considering the difficulty she had experienced trying to locate the father and secure support payments previously. Even though the child was 18, the court decided he still needed support because he was going to school full-time.

The court ordered child support payments of \$91 per month. This was the difference between what Mr. Watt would pay according to the child support guidelines and what the biological parent had been ordered to pay (\$438 - \$347). Mr. Watt was also ordered to pay retroactive child support back to the date that Ms. Parsons filed in court.

Discussion Questions:

1. Considering the short time period of the relationship, were you surprised that Mr. Watt was held to be in loco parentis?
2. How would the facts have to be different in order for Mr. Watt not to be found to be in loco parentis?
3. Was it a good argument on behalf of the father that the maternal grandfather and the child were very close?

Online Resources:

You can read the entire case at:

<http://canlii.ca/t/22253>

Relevant Law:

The law of in loco parentis has been settled by the Supreme Court of Canada decision *Chartier v. Chartier*, 1999 CanLII 707 (SCC), [1998] S.C.J. No. 79 and the Manitoba Court of Appeal decision *Monkman v. Beaulieu* 2003 MBCA 17 (CanLII). The court also referred to section 36(4) section of *The Family Maintenance Act*, C.C.S.M. c. F20, that deals with *in loco parentis* involving parties who are not married:

Person standing in loco parentis

36(4) A person who stands in loco parentis to a child has the obligation to provide reasonably for the support, maintenance and education of that child, but the obligation is secondary to that of the child's parents under subsection (1) and is an obligation only to the extent that those parents fail to provide reasonably for the child's support, maintenance or education.

The court must decide objectively whether an individual has intended to take on a true parental role, considering the behaviour and conduct of the involved parties. The *Chartier* case sets out the factors to consider when deciding whether a parental relationship has been established (para. 39):

- (1) whether the child participates in the extended family in the same way as would a biological child;
- (2) whether the person provides financially for the child (depending on ability to pay);
- (3) whether the person disciplines the child as a parent;
- (4) whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child;
- (5) the nature or existence of the child's relationship with the absent biological parent; and
- (6) the opinion of the child regarding the relationship with the stepparent.

When considering child support, the court must consider *The Family Maintenance Act* which sets out the obligation for an in loco parentis parent to provide reasonably for the care of the child. However, this obligation is secondary to that of the biological parent and should only be ordered where the biological parent fails to reasonably provide for the support of the child.