

LEGAL BULLETIN

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Introduction

In family law proceedings, it is common to see court rulings confirm cases of family violence. However, it is rare to see decisions that confirm cases of judicial violence. Therefore, for the purposes of this case law bulletin, it is appropriate to highlight two court decisions in which the parties, as well as the judges, raised the issue of judicial violence. In both decisions, the Court confirmed that there had been abuse of procedure on the part of one of the parties, and consequently issued an order for punitive damages. In addition to the issue of judicial violence, the second decision dealt with the modulation of parental rights and the interests of the child in a context of family violence.



Droit de la famille — 231579, 2023 QCCS 3557 (CanLII)

In this decision, the plaintiff, a medical student, asked the Court to grant her a divorce and to order Monsieur to pay damages.

The plaintiff, who had been married to Monsieur for ten months, alleged that she was a victim of family violence. She claimed that he had forced her to read and correct his master's thesis. He allegedly subjected her to moral, sexual and financial violence. In addition to her application for divorce, the plaintiff filed two applications to quash the summons to appear, four applications for the appointment of independent counsel, one application for abuse and one application for the sale of their condominium under court supervision.

The defendant, a law professor and a lawyer, responded with a counterclaim for pecuniary damages. He then filed a multitude of claims and exhibits along with numerous motions and other actions, most of which were dismissed.

The Court then qualified Monsieur's actions as an abuse of procedure. Indeed, his multiple actions had

prolonged the proceedings. According to the Court, the short duration of the marriage and the limited number of assets to be shared (in this case, the condominium and car they co-owned) should have led to a short proceeding, but that was not the case. Continuing with its decision, the Court mentioned that the defendant had used judicial violence to maintain his hold on the plaintiff. It confirmed the plaintiff's allegations of various forms of violence towards her, and added that these had continued after the marriage, during the proceedings.

The judge therefore ordered the dissolution of the marriage, the partition of the family patrimony, the payment of several damages to the plaintiff by the defendant and other measures, including a no-contact order.

This decision had the merit of sanctioning the abuse of judicial procedure for personal ends, in particular by prolonging the proceedings and exerting control over the opposing party.

Droit de la famille — 23796, 2023 QCCS 2054 (CanLII)

In this decision, the parties have been divorced since 2019. However, in 2023, a conflict arose that led Madame to take the case to court.

In the wake of the judgment granting the divorce, it was decided that parenting time would be shared equally. However, in March 2023, child Y attained the age of majority and was no longer a dependent child. However, following a disagreement between X and the father, Madame has been exercising parenting time exclusively, contrary to the 2019 order.

She decided to take the case to court so that it could rule on a number of issues, including the ratification of the current parenting time arrangements, the amount of child support, the orders relating to the exercise of parental authority and the claim for damages for abuse of procedure.

In ruling on the parents' right of custody, the Court decided to grant exclusive parenting time of child X to the mother and right of access to the father according to child X's wishes. This solution, taken in the interests of the child, put an end to the equal sharing of parenting time and confirmed the current practice of sharing that time, as requested by the plaintiff.

The issue of support was decided in accordance with article 587.1 of the C.C.Q., which provides for the establishment of support obligations between parents towards their children based on their respective incomes. The amounts were set on the basis of the parties' declarations, and adjustments were made by the Court.

As for the question of orders relating to the exercise of parental authority, the Court affirmed that sole custody exercised by one parent does not entail the dispossession of this right with regard to the

other parent. In principle, the father and the mother exercise parental authority together, as stipulated in article 600 of the C.C.Q. However, the occurrence of obstacles to the exercise of parental authority may lead the holder of that authority to refer the matter to the court. The Court, while contributing to the conciliation of the parents, will rule in the best interests of the child. As a result, Madame will have to consult Monsieur on important matters relating to the child, such as the child's health. However, this obligation does not apply in cases of minor illness or minor events.

With regard to the abuse of procedure alleged by the applicant, the Court based its decision on articles 51 et seq. of the C.C.P., as well as on a number of precedents, including *Ville de Sainte-Anne-de-Beaupré v. Cloutier*.

At the end of its analysis, the Court concluded that there had been an abuse of procedure against the plaintiff. In fact, it asserted that Monsieur's attitude towards the plaintiff was reprehensible and guided by bad-faith intentions aimed at harming her. In keeping with his decision to give her a hard time, he has constantly bombarded her with multiple pleadings. He has kept her in a legal relationship, sometimes making the same demands in two different proceedings.

The defendant was therefore ordered to pay damages to the plaintiff.

This decision, like the previous one, emphasizes the need to make good use of the judicial process. Pleadings made with the aim of causing harm are thus blameworthy and liable to sanctions.

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