

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Lien v. Lorenz,***  
2009 BCSC 359

Date: 20090316  
Docket: F993943  
Registry: Vancouver

Between:

**Susan Erdine Lien**

Plaintiff

And

**Steven John Lorenz**

Defendant

Before: The Honourable Mr. Justice Slade

## **Reasons for Judgment**

The Plaintiff: No appearance

The Defendant: Appearing on his own behalf

Date and Place of Hearing: January 14 and March 12, 2009  
Vancouver, B.C.

**I. INTRODUCTION**

[1] The parties are the parents Steffany. She was born in British Columbia on March 19, 1998.

[2] In August 1998, the mother, Susan Lien, took the child to Nebraska without consulting the father, Steven Lorenz. When he learned of this, the father applied to the Provincial Court of British Columbia for orders that the parties have joint custody and guardianship, and that no person would be entitled to remove Steffany from British Columbia. The order was granted. The mother returned to British Columbia with Steffany in September 1998, and remained in British Columbia until the fall of 2000.

[3] The mother commenced this proceeding. She seeks an order for the sole custody of Steffany, and an order that would permit her to remove Steffany from British Columbia to Lincoln, Nebraska. The father opposes these applications. The father originally sought an order for joint custody, and specified access with Steffany. He now seeks an order for sole custody.

[4] The mother applied, in this action, for an order granting her sole custody pending a full trial to determine permanent custody. After a hearing in September 2000, a justice of this court awarded sole interim custody to the mother, and permitted her to remove Steffany to Nebraska. Mr. Justice Davies considered the father's concern that the mother would use sole custody and geographical distance to reduce his involvement with the child, and noted that this concern was shared by Dr. William J. Koch, who had prepared a court-ordered custody and

access report. Davies J. concluded that the move to Nebraska was not intended to interfere with the development of a healthy relationship between Steffany and her father, and was satisfied that the mother would abide by the interim access regime he ordered.

[5] The mother returned with Steffany to British Columbia on several occasions after moving to Nebraska. While this to some extent gave effect to the father's access as ordered by Davies J., it was not fully compliant with the terms of the access order.

[6] After her return from access time in April 2004, there were allegations that the father had neglected, physically abused, and sexually abused Steffany. The father denied these allegations, and voluntarily suspended his access while the police and representatives of the provincial government ministry responsible for the welfare of children conducted an investigation.

[7] In addition to his voluntary suspension of access, the father has, on his own initiative, submitted on two occasions to polygraph testing, and to a psychological assessment to determine whether there are indicators of a potential for abusive behaviours.

[8] The investigation of these allegations has included interviews by social workers, in British Columbia, of the child.

[9] The investigations carried out by the police and social workers in British Columbia have established no basis for a belief that the father has neglected or in

any way abused Steffany. Test results indicated that the father does not present a risk to the child. The British Columbia police have not recommended charges, and the provincial child welfare authorities have not ordered any measures to ensure Steffany's safety while in the care of her father.

[10] The parties had set the trial of the issue of permanent custody down for a hearing to commence February 11, 2008. Although she had brought the action, the mother did not attend. The trial went ahead. The trial judge ordered counsel for the father to present all material in his possession that had been introduced in the Nebraska proceedings. This was done.

[11] The trial judge, Madam Justice L. Smith, awarded interim sole custody of Steffany to the father and his mother, Joan Lorenz, and ordered Susan Lien to return Steffany to British Columbia by March 31, 2008. The return of the child was required in order that a psychologist's report on custody and access could be completed. Smith J. intended that the ultimate determination of custody would follow.

[12] Susan Lien did not return Steffany to British Columbia.

[13] The father, Steven Lorenz, applies for an order for permanent custody of the child. I granted that order on March 12, 2009, with reasons to follow.

**II. PROCEDURAL HISTORY AND ORDERS OF THE BRITISH COLUMBIA & NEBRASKA COURTS**

[14] In November 2004, the mother applied to this court for an order that it relinquish jurisdiction over custody and access of Steffany to the courts in Nebraska. This court declined to relinquish jurisdiction. One basis for declining to do so was that the allegations of neglect and abuse were being investigated in British Columbia, and that evidence that may result from those investigations would be relevant to the ultimate determination of the permanent custody and access regime that would be in Steffany's best interests.

[15] The order of Mr. Justice Goepel dismissing the mother's application to have the British Columbia Supreme Court decline jurisdiction was appealed to the British Columbia Court of Appeal. The appeal was dismissed.

[16] The mother brought another application before Madam Justice Baker for an order relinquishing jurisdiction to the Nebraska court. This application was dismissed.

[17] On March 14, 2005 the District Court of Lancaster County, Nebraska, Judge Merritt presiding, heard the mother's application to suspend the father's access. This application was heard on the eve of the father's access as ordered by Justice Davies. The Nebraska court heard evidence alleging neglect and abuse, and, in an exercise of its emergency jurisdiction, ordered a temporary suspension of the father's access.

[18] The father took further proceedings in Nebraska to enforce the access order pronounced by this court. The mother countered with an application to the Nebraska court to “assume jurisdiction” to modify this court’s custody and “visitation” orders. Her application was dismissed by Judge Merritt on December 22, 2005. On February 2, 2007, the Supreme Court of Nebraska ruled on the mother’s appeal of the Nebraska court’s December 22, 2005 dismissal of her application. The ruling is as follows:

We affirm the district court’s conclusion that pursuant to §§ 43-1239 and 43-1240, the Canadian courts have exclusive continuing jurisdiction over child custody determinations concerning Steffany and that it could not ‘assume jurisdiction’ to modify the Canadian orders.

[19] In its February 2, 2007 reasons for dismissal of the mother’s appeal from the December 22, 2005 order of Judge Merritt of the Nebraska District Court, the Supreme Court of Nebraska noted that “[the mother] has not sought in the Canadian courts a full hearing on the alleged abuse”.

[20] On May 9, 2006, the mother once again applied to this court for an order declining jurisdiction over this matter. This would have left the matter to the jurisdiction of the Nebraska court. I heard and dismissed that application, with oral reasons for judgment delivered on that day. I also ordered that the parties engage the services of a psychologist to carry out an investigation and prepare a custody and access report under s. 15 of the ***Family Relations Act***, R.S.B.C. 1996, c. 128. This was intended to provide assistance to the judge that would ultimately hear the trial on questions of permanent custody, guardianship, and access.

[21] On June 23, 2006, I ordered Steffany's attendance in Vancouver for the purpose of facilitating the preparation of the s. 15 report. On July 10, 2006, I ordered that the father's access to Steffany would commence on July 28, for a period of 32 days. At the request of the father, I ordered that this access be in the presence of the father's mother, Joan Lorenz, or his aunt, Diana Duncan. The access took place, and was the last occasion on which the father saw Steffany.

[22] In December 2006, the father applied to the Nebraska court to order the enforcement of his December access with Steffany. The mother applied once again to have the court exercise temporary emergency jurisdiction and suspend this access. The court once again exercised its temporary emergency jurisdiction, and suspended the father's court-ordered Christmas access with Steffany. There is no indication that the Nebraska court had been informed of the measures ordered by Goepel J., in November 2004, that incorporated the father's request that access with Steffany be supervised. On the evidence presented (it does not appear that any of the relevant evidence gathered in British Columbia was before the court) the court found that "credible and convincing evidence exists that Steffany is subjected to or threatened with mistreatment or abuse when she is in the care, custody or control of the [father] in Canada". The father's access was stayed, temporarily, pending "the issuance of an order by the Supreme Court of British Columbia following a hearing that addresses the allegations of abuse alleged to have occurred in August 2006 during Steffany's parenting time with the [father] in Canada".

[23] On July 20, 2007 I heard an application by the father for an order finding the plaintiff in contempt of Mr. Justice Davies' access order pronounced October 18, 2000, and my access order pronounced May 9, 2006. I ordered the mother to attend court on August 10, 2007 to show cause why she should not be held in contempt of these orders.

[24] The matter came back before me on August 10, 2007. The mother did not attend. After a review of the evidence, I wrote:

All of this leads me to draw an inference that what is escalating is the mother's campaign to marginalize the father and eliminate his parental role with [Steffany].

Dr. Koch's opinion that the mother is unlikely to facilitate access appears prescient in the circumstances that have since developed.

There is, in my view, ample evidence to arouse suspicion that [Steffany's] allegations have been influenced by the mother, or generated by [Steffany] to resolve the ongoing anxiety that her mother has over the continued involvement of the father and his family in [Steffany's] life.

[25] In light of the foregoing, I ordered that the father's mother, Joan Lorenz, have interim custody of Steffany. I also ordered that the mother relinquish Steffany to the appropriate authorities in Nebraska, in order that she may be returned to this jurisdiction. I then suspended these orders to allow the mother to voluntarily attend the court, with Steffany, on or before September 4, 2007. She failed to attend.

[26] The mother was represented by counsel in the matter before this court. While still retained, he and counsel for the father had set a trial date to commence



February 11, 2008. Counsel for the mother, acting on her instructions, applied on January 25, 2008 for an order adjourning the trial. This application was dismissed.

[27] The mother, though given notice of the trial date, did not appear in person or by counsel. Madam Justice Lynn Smith presided at the trial. When the matter came on for hearing on February 11, 2008, counsel for the mother withdrew as solicitor of record. The trial proceeded, and the trial judge directed counsel for the father to bring all relevant evidence before the court. In particular, he was required to produce material that ordinarily would have been produced by the opposing counsel, including the transcripts of Nebraska police interviews with the child, letters of psychologists produced by the mother, and copies of all of the Nebraska proceedings.

[28] The trial judge said this, concerning her decision to proceed with the trial in the absence of the mother:

With the plaintiff unrepresented, either in person or by counsel, the question was whether to proceed in the absence of a party as is permitted by Rule 39(33). In all of the circumstances, I concluded that it was necessary to take this unusual step and to proceed with the trial. Those circumstances included the age of the child, the length of time during which the question of her custody and access have remained unresolved, and the request from the Nebraska Court for an order following a hearing that addresses the question of abuse. Another relevant circumstance was the apparent danger to Steffany's well-being while the issue remains unresolved, given that she is making allegations of abuse which, if true, suggest that her father is not suitable to be a custodial parent and which, if false, raise a question whether her mother may be fomenting the allegations and for that reason may not be suitable to have custody.

[29] In her reasons dated March 20, 2008, Smith J. said

The fundamental question is where Steffany should be living and be raised and what, if any, shared parenting arrangement should be in place. Because the Court has not had the benefit of a report from an independent expert who makes a recommendation as to what is in the best interests of the child and because of the unusual circumstances of this hearing with only one side being represented, I have decided that the issues which it is possible to determine are as follows:

1. How can an orderly process of assessing the child's best interests be completed;
2. Is the child at risk if she spends a period of time in the custody of her father and his family while a section 15 report is prepared;
3. Is the child at risk if she remains in the custody of her mother;
4. What shared parenting arrangement should be in place.

[30] Smith J.'s reasons include a lengthy discussion of the evidence adduced at trial.

[31] Smith J. concluded:

I am firmly convinced that the best way to further this child's well-being is to order that she be returned to British Columbia so that the report by Dr. England can be completed. The evidence I have heard supports a conclusion that Steffany would be safe in the custody of her father without any conditions. The evidence I have heard supports a conclusion that Mr. Lorenz and his family members are decent people who are worthy of belief and who are not responsible for any abuse of this child. However, although the plaintiff's non-appearance and non-representation at trial was a matter of her own choice, I take into account that I have not heard evidence from the plaintiff or from witnesses she might choose to call and that the witnesses who testified before me were not subject to cross-examination.

Therefore, I have concluded that it is in the best interests of Steffany that she be in the interim joint custody of her father, Steven Lorenz, and her grandmother, Joan Lorenz, and that the existing conditions on

female persons being present while Mr. Lorenz is with the child be continued. I am satisfied that Steffany will not be at risk in that situation. In my opinion it is more likely that Steffany will be at risk if she remains with her mother without seeing her father and her paternal family and without the completion of the section 15 report.

Ms. Lien will have reasonable and generous access. I would consider imposing the condition that she surrender her passport and that of the child prior to the exercise of such access. I believe that such a condition would be appropriate given the history of this matter.

[emphasis added]

[32] Smith J. ordered that Steffany be returned to British Columbia on or before Monday, March 31, 2008.

[33] On January 11, 2007, the judiciary committee of Legislature of Nebraska heard the first reading of Legislative Bill 341. At the introduction of this bill, testimony was given by a local attorney, who, it is reported, “gave a very impassioned account of what allegedly happened to [Steffany]”. There was no testimony in opposition.

[34] Legislative Bill 341 introduces the new Uniform Child Abduction Prevention Act in Nebraska, and amends the Uniform Child Custody Jurisdiction and Enforcement Act of the State of Nebraska.

[35] Bill 341 received first reading three weeks before the Supreme Court of Nebraska issued its findings that jurisdiction over the present matter remained in the Supreme Court of British Columbia.

[36] The final version of Bill 341 was enacted into law in Nebraska on February 2, 2007, the same day that the Nebraska Supreme Court affirmed, on appeal, this

court's jurisdiction over the matter. It adds the following new provisions to section 43-1230, which deals with international application of the Uniform Child Custody Jurisdiction and Enforcement Act:

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines

(1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and

(2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) of section 43-1238.

(e) The changes made to this section by Laws 2007, LB 341, shall be deemed remedial and shall apply to all cases pending on or before February 2, 2007, and to all cases initiated subsequent thereto.

[37] As a result, the mother has filed an application in the District Court of Lancaster County, Nebraska under the Uniform Child Custody Jurisdiction and Enforcement Act, for:

an Order not recognizing or enforcing the child custody determinations by Supreme Court of British Columbia, namely, *Orders* entered by the Supreme Court of British Columbia, Vancouver, Canada on August 10, 2007 and October 1, 2007, Docket: F993943, respectively, awarding interim custody of the minor child, to [the father's] mother, Joan Lorenz, and the *Oral Reasons for Judgment* of the Supreme Court of British Columbia, Vancouver Canada dated March 20, 2008, Docket: F993943, awarding joint custody of the minor child, to [the father and the father's] mother, Joan Lorenz; assuming full jurisdiction over the

custody of the child; awarding sole legal and physical custody of the minor child to [the mother]; and prohibiting direct or indirect contact with the child by [the father] or by an agent of [the father] including but not limited to appearing at the child's school, extracurricular activities, removing her from the jurisdiction of this Court, and performing surveillance on the child.

[38] The grounds for the application are, in summary, that the father committed various acts of battery and sexual assault, as specified in the text of the filed motion, and inflicted emotional distress on the child by withholding food and threatening that she would not be permitted to see her mother again.

[39] The filing of this motion confirms the mother has, in effect, abducted Steffany, as the relief sought could be available only where a foreign court, in particular this court, has determined the matter of custody in favour of the father.

[40] The motion stipulates that it will be heard Judge Merritt on March 20, 2009, in Lincoln, Nebraska.

[41] It is noted that all orders made by this court, since allegations of abuse and neglect were raised, called, at the request of the father, for supervised access.

[42] Appended to the above motion are the reasons of Judge Merritt for the order of December 22, 2006, which, in an exercise of the court's temporary emergency jurisdiction, stayed the father's "visitation". The following passage from Judge Merritt's reasons are, in my opinion, significant:

The court's emergency jurisdiction remains in full force and effect until such time as a hearing is held before the Supreme Court of British Columbia addressing the allegations of abuse alleged to have occurred in August 2006 during Steffany's parenting time with the [father] in

Canada. Until the issuance of an order by the Supreme Court of British Columbia addressing those allegations following a hearing, the [father's] parenting time with Steffany is stayed, unless otherwise ordered by the court.

[emphasis added]

[43] This refers to the very hearing that the mother sought to have adjourned, and that went ahead in her action in this court.

[44] The history of proceedings between the mother and father would be incomplete if I failed to mention the action commenced in the District Court of Lancaster County, Nebraska, Case No. CI 05-4875. The style of cause is as follows: S.L., et al, a minor by her next friend, guardian and mother, Susan Lien, Plaintiff v. Steve John Lorenz, Defendant.

[45] The father, due to lack of funds to retain counsel (his funds having been used up in his effort to secure the mother's compliance with orders of this court which, by reason of its own orders, and orders by the District Court and Supreme Court of Nebraska, retains jurisdiction over the matter) was unable to defend. In the result, judgment by default was granted in favour of the mother. The judge's findings of fact, based on the limited evidence adduced before him, are now set out as the grounds for the motion brought by the mother in the Nebraska court, now scheduled to be heard by Judge Merritt on March 20, 2009.

### **III. DISCUSSION**

[46] The issue is whether the father should be granted a final order for the sole custody of Steffany.

[47] The governing consideration is the interests of the child.

[48] Canadian law recognizes that it is in the interests of children to have the benefit of the love, support, and direction of both parents. Parliament has given express recognition to this in s. 16(10) of the **Divorce Act**, R.S.C. 1985, c. 3 (2<sup>nd</sup> Supp.):

In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

As these parties were never married, the **Divorce Act** has no application. But the same principle is recognized where parents of a child are not married.

[49] In mobility cases, where one parent wishes to relocate with the child to a place distant from the child's ordinary place of residence, the willingness and capacity of the relocating parent to facilitate ongoing access to the other parent is a significant factor in the court's determination whether relocation of the child will be permitted: **Gordon v. Goertz**, [1996] 2 S.C.R. 27; **Nunweiler v. Nunweiler**, 2000 BCCA 300, 78 B.C.L.R. (3d) 1. This was a factor considered by Davies J. in his decision to permit the mother to relocate Steffany to Nebraska. Although he recognized the father's concern, which had been endorsed by Dr. Koch, that the mother's preference that the father and his family not be involved in Steffany's life would be facilitated by the move, he was persuaded by the mother that her intention was to provide continued access.

[50] In the several years following the mother's relocation, with the child, to Nebraska, there was substantial compliance with the access order of this court. This changed in 2004, ostensibly due to allegations by the child of neglect and abuse while with her father, and his family, in British Columbia.

[51] Questions arise over the truth of the allegations of neglect and abuse. Questions also arise in relation to the behaviour and actions of the mother. Included in these is the fact that the mother has succeeded in preventing the full hearing, at trial, of evidence that is plainly relevant to the determination of the custodial and access arrangements that best serve the interests of the child. I refer to both the evidence of abuse, and expert evidence from a neutral psychologist, appointment pursuant to court order, to conduct an inquiry and prepare a custody and access report. Also relevant, and important in the circumstances, would be evidence that may afford greater insight into the possible role of the mother in fomenting the allegations. It is important in this regard to note that both this court and the Nebraska court (District Court, order dated December 22, 2005; Supreme Court, opinion filed February 2, 2007), all recognize the British Columbia Supreme Court as the court properly exercising jurisdiction in this matter. Yet the mother, as noted in the February 2, 2007 opinion of the Supreme Court of Nebraska, has taken no steps to advance the very hearing called for in the order pronounced by Judge Merritt on December 22, 2006:

The court's emergency jurisdiction remains in full force and effect until such time as a hearing is held before the Supreme Court of British Columbia addressing the allegations of abuse alleged to have occurred in August 2006 during Steffany's parenting time with the [father] in Canada. Until the issuance of an order by the Supreme Court of



British Columbia addressing those allegations following a hearing, the [father's] parenting time with Steffany is stayed, unless otherwise ordered by the court.

[emphasis added]

To the contrary, the mother has flouted the series of orders of this court that call for her attendance in British Columbia. Each of these orders made provision for supervision when Steffany is in the company of her father. I emphasize that the father requested this provision, not because he had any concern that he might act improperly, but rather to ensure that someone could bear witness if, after returning to her mother's care, further allegations of misconduct were made. This includes the March 20, 2008 order of Smith J., which left the matter of permanent custody open pending the completion of the custody and access report that would be facilitated by the return to British Columbia of the mother and the child before March 31, 2008.

[52] It is not mere speculation that the mother may be acting to alienate the father contrary to the interests of the child. Evidence before this court in the various proceedings up to and including the trial before Smith J. included the following:

1. evidence of Laurie Baldwin, the godmother of Ms. Lien, who says in her July 27, 2004 affidavit:

As stated above, I have known Susan, the plaintiff, for a long time and we were very close, sharing many personal and private things with one another. Given my intimate knowledge of Susan, I previously mentioned to Steven – that is Mr. Lorenz – that I felt that Susan might try and make accusations against him with reference to his relationship with Steffany, either of a sexual or physical kind. From past experiences, it has been very common for Susan to use false information to meet her

own needs, regardless of the cost to the person falsely spoken of.

2. evidence of Diana Duncan, a Vancouver elementary school teacher.

She says, in her affidavit sworn July 29, 2004:

If I ask her [Steffany] anything about what she does in Nebraska, she gets very agitated and tells me she is not supposed to say anything because her mom will be mad. I have learned not to pressure Steffany about telling anything about Susan or her life in Nebraska, because it is too upsetting for her.

3. evidence of Angela Drescher from her affidavit sworn 11 August, 2004.

She was born in May 1982. When she was nine years of age, Ms.

Lien and her father, Anton Drescher, began dating and eventually lived together for a few years while Angela Drescher was in elementary school. She recounts unfortunate recollections of her relationship with the plaintiff, saying, among other things, "Susan made unkind and hurtful comments to me on a regular basis".

4. the evidence of Leanne Clapperton, whose father, Bill Clapperton had a relationship with Ms. Lien. She asserts that the plaintiff would sit her down and tell her not to mention anything that took place in their household to her [Leanne's] mother and threatened her that if she did, "her and my dad would stop loving me".

She also said that she would hurt me if I mentioned my mom ever. She would use both these threats on many occasions. She repeatedly told me that she would make sure that I would not see my dad or come over to their place.

5. the evidence of Timothy Lorenz, the father's brother, in his affidavit sworn August 2004. He is Steffany's godfather. Timothy Lorenz has a teaching degree in general and special education and a masters' degree in special education. He has centred his life around child advocacy and child safety. He deposes at paragraph 11:

Steffy on more than occasion spoke of how her mother had forbidden her from telling Steve -- the father, Mr. Lorenz -- that she loved him.

He refers to the last couple visits having been sad, "as I could clearly see how Steffy was pained by her fear of answering simple questions pertaining to her home life in Nebraska". He says, at paragraph 15:

The incident that sticks out in my mind as the most regarding the level of power and intimidations lobbied against Steffy by her mother came at the end of one of Steffy's visits. I clamped on to Steffany's suitcase a picture of her and Steven going down the log ride at Playland in Vancouver. The picture showed Steven and Steffy laughing as they went down a waterfall. Steffy noticed the picture on her luggage and went into an absolute panic. She began to plead with me to remove it. At first I wasn't too sure as to what she was referring. Steffy stated, please Uncle Tim, get this off. Get it off now. She was trying to rip it off herself, but the clamp was too tight. I assured her I would remove it and everything was going to be okay. I have never forgotten the look on Steffy's face to this day when she thought her mother might see a picture of her and father having a good time at the local amusement park.

6. Dr. Koch, who prepared an assessment for the court long before there was any suggestion of parental neglect or abuse by the father, testified before Justice Smith that "...Ms. Lien has a very low opinion of the

Lorenz family and appears to regard them with a degree of suspicion that borders on paranoia”.

[53] There is, of course, the question why Steffany would make untrue allegations. Here are some extracts from Smith J.’s reasons:

[142] At the request of the Delta Police Dr. John Yuille provided an opinion on the credibility of Steffany’s allegations that the defendant abused her. His report is dated April 26, 2006. Dr. Yuille is a registered psychologist in British Columbia and is Chair of the Forensic Psychology program at the University of British Columbia.

[143] Dr. Yuille had read Dr. Koch’s report and Dr. Bowden’s report (it is safe to conclude, since he refers to a “sexual risk assessment of Mr. Lorenz 5/31/05”) and additionally he had read the transcripts of two interviews of Steffany conducted by the Nebraska police since Dr. Bowden’s report. He referred to other interviews with persons whose names have been redacted.

[144] Dr. Yuille was not able to meet with Steffany and in his report cautioned that because of this “I have not had the advantage of observing non-verbal cues and behavioural signs that might inform my opinion”.

[145] The salient parts of Dr. Yuille’s conclusion are excerpted below:

The allegations made by [Steffany] over the course of her interviews have some features of credibility. She described several inappropriate interactions with her father (Criterion 5) and she provided some context for the alleged events (e.g., a mall, a pool, the Christmas visit, etc. — Criterion 4). However, she did not provide detail about these alleged events, that is, there was a lack of the amount and type of detail one would expect from a child this age who had been abused. Also, she did not demonstrate spontaneity in describing the allegations. In short, although these allegations are a cause for concern, they do not have sufficient features to be consistent with episodic memory. I note that there are several other aspects of the case that are consistent with the conclusion that [Steffany’s] allegations are not based in experience:

1. [Steffany's] father passed a polygraph concerning some of these allegations.
2. Mr. Lorenz was found to be on low risk of sexual offending.
3. Steffany's language seemed age inappropriate (e.g., "I am a little embarrassed to say it but...").
4. Many details (e.g., hurting her crotch, her wet nightgown, were not spontaneous but appeared as a result of suggestion (by the investigating officer).

I note that I do not put much weight on any one of the above four factors but I do note that all four are consistent with the conclusion that the allegations of sexual abuse are not credible (as defined earlier in this report).

[Unidentified person] reported observing a number of behavioural changes in [Steffany] after a visit with her father. These changes are signs of stress and could be due to a variety of factors, including: the dispute between her parents; the stress of travelling a long distance; sexual abuse; the stress of the continued investigation; or some other stressor in her life.

This leads me to conclude that the most likely explanation of the lack of credibility is that the alleged events did not occur.

If the alleged sexual abuse did not occur, Steffany is still repeating these allegations for a reason. The reason could be that someone has coached her to do so. Another possible reason is that she is angry at her father for some other reason. Another option is that she has developed a negative stereotype of her father and has created (not deliberately) these allegations to reflect that stereotype. Another possibility is that she is making these allegations in the hope that the dispute between her parents will end.

[54] The mother's avoidance of the opportunity to have this matter properly resolved, based on a full hearing, is plainly not due to a want of energy or resources. She has, by her attorney, participated in hearings before the Judicial

Committee of the Nebraska Legislature. This, apparently, with such vigour that the Nebraska Legislature has seen fit to amend its child custody legislation. She has, in addition, commenced an action in the Nebraska District Court in which she purports to raise, ostensibly on Steffany's behalf, the very allegations that have been raised in proceedings before Judge Merritt of the Nebraska District Court in her application for the exercise of a temporary emergency jurisdiction to stay the father's "visitation" as ordered by this court. It is of considerable interest that she succeeded in obtaining findings of fact, in default of appearance by the father, as alleged in support of her application to Judge Merritt to invoke the court's temporary emergency jurisdiction. It is in relation to those very allegations that Judge Merritt and the Nebraska Supreme Court expected a full hearing in the British Columbia Supreme Court. This strategic move on the mother's part lays the groundwork for the circumvention of the findings of both the District and Supreme Courts of Nebraska that: (1) confirmed the jurisdiction of the British Columbia Supreme Court, and (2) contemplated that a full hearing would take place in this jurisdiction.

[55] I am left with no basis to conclude otherwise than that the mother is determined to obstruct a full hearing of the evidence relevant to a determination of the custodial arrangements that best serve Steffany's interests. She refuses to return Steffany to this province despite this court's orders that would, at the request of the father, ensure that no question could arise over her safety.

[56] There is much to support a conclusion that the mother has, for reasons unrelated to the interests of the child, acted to prevent her from having the benefit

of her father's presence in her life. This is contrary to the child's interests. In these circumstances, the only appropriate remedy is the order sought by the father. I order that Steffany be in the sole custody and guardianship of her father, Steven John Lorenz, and his mother, Joan Lorenz.

[57] The mother, Susan Erdine Lien, is ordered to forthwith return the child to this jurisdiction. She is at liberty to apply for access. She may also apply for an order that would advance the completion of the custody and access report, and give some comfort to her that Steffany is in no danger.

[58] The defendant, Steven John Lorenz, is awarded the costs of this application.

"H.A. Slade J."  
The Honourable Mr. Justice H.A. Slade