SUPREME COURT OF YUKON

Citation: *PAM v MRN*, 2025 YKSC 12

Date: 20250203
S.C. No. 19-D5202
Registry: Whitehorse

BETWEEN

P.A.M.

PLAINTIFF

AND

M.R.N.

DEFENDANT

Before Justice K. Wenckebach

Appearing on her own behalf — P.A.M. (by telephone)

Counsel for the Defendant — Lynn MacDiarmid

This decision was delivered in the form of Oral Reasons on February 3, 2025. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): The plaintiff in this family law matter is P.A.M., and the defendant is M.R.N. They have two children of the marriage: L.J.D.N., born [redacted] and R.R.M.N., born [redacted]. The parties separated in 2019. Since then, they have been in court frequently over the children. Unlike in many cases, their disputes have not decreased over time; rather, they have increased. Since 2022, the parties have been in near constant litigation.

[2] On February 8, 2024, I granted M.R.N. interim primary parenting time and decision-making for the children, and supervised parenting time to P.A.M. I also set a review of the mother's supervised parenting time to deal with any issues with supervised parenting time and in hopes that we could start to move away from supervision. Between the time I granted the order and the review date, the mother did not have parenting time, as the parties disagreed about supervisors.

[3] At the review hearing, the mother sought to have unsupervised parenting time. I denied her request in part because the concerns that prompted me to put supervised access in place remained unchanged. I did, however, vary the terms of supervised parenting time to address the problems that prevented the mother from seeing the children. It seemed to me that the parties' evidence would not be sufficient to understand the children's long-term best interests. Therefore, and on agreement of the parties, I recommended that a custody and access report be prepared.

[4] Although the review was completed, there were still outstanding applications: an application for child support from M.R.N. and an application from P.A.M. The child support application has now been dealt with.

[5] These reasons are with regards to P.A.M.'s application.

[6] P.A.M. seeks the following relief:

- that the Court vary the order granting M.R.N. primary parenting time, decision-making, and supervised access to P.A.M.;
- that P.A.M. be granted primary parenting time and decision-making and that M.R.N.'s parenting time with the children be suspended;
- that M.R.N. be held in contempt;

- that M.R.N. have no contact with C., who is her child from another relationship;
- that a permanent injunction be granted against M.R.N.; and
- that the parties not be permitted to bring any new applications without leave of the Court.

[7] I will first begin with P.A.M.'s application to vary my order on parenting time and decision-making.

[8] In the Yukon, family law matters very seldom proceed to trial. Instead, interim decisions become *de facto* final decisions. The local practice is therefore that, generally, interim decisions may be varied upon showing a material change in circumstances.

[9] So, as there is an interim decision in place, P.A.M. must demonstrate that there has been a material change in circumstances. If there is, I must then consider the issues anew. To establish a material change in circumstances, P.A.M. must show that there has been a change in the condition, means, needs, or circumstances of L.J.D.N. and R.R.M.N. and/or the ability of P.A.M. and M.R.N. to meet those needs which materially affects the children; and which I either did not foresee or which could not have been reasonably contemplated when I made the order granting M.R.N. primary parenting time and decision-making with supervised parenting time to P.A.M.

[10] A party seeking to change an order based on material change in circumstances cannot rely on evidence predating the order, especially if it was considered by the judge at the time they made their initial decision. Here, some of the evidence P.A.M. cites relates to incidents before I granted the order and have already been litigated. I will not consider that evidence in my decision.

[11] P.A.M. submits that M.R.N. is unreasonably restricting P.A.M.'s parenting time. He suspended parenting time, leaving P.A.M. without any time with the children. She has not had telephone contact as required by the order. M.R.N. is also disparaging and derogatory in his communications with P.A.M. She submits that M.R.N. cannot communicate with her in a productive manner. Finally, P.A.M. argues that M.R.N. speaks to the children negatively about P.A.M. and involves them in the parental dispute. This, she asserts, constitutes a material change in circumstances.

[12] It is uncontroverted that P.A.M.'s parenting time was suspended for a period of time. The question is why this happened. M.R.N. attests that the supervisors were concerned about the way P.A.M.'s parenting time was unfolding and requested a pause. P.A.M. submits that it was M.R.N. who unilaterally decided that parenting time should be suspended. She notes that the reports back about her interactions with the children were positive. P.A.M. filed emails between her and M.R.N. in support of her position.

[13] I have reviewed all the evidence and conclude that M.R.N. suspended P.A.M.'s parenting time because of the supervisors' concerns. One of the supervisors provided information to M.R.N., stating that although P.A.M. was responding to the children appropriately, she also felt that the Canada Games Centre was a very crowded place and made parenting time difficult. Another had a negative experience during parenting time and noted that P.A.M. fell asleep during it. P.A.M. agrees in part that there was an unfortunate situation at the Canada Games Centre but states that she is not to blame. She also agrees she fell asleep but says that she and R.R.M.N. did while cuddling and it was for a very brief period of time.

[14] The evidence from the supervisors is hearsay but I do not expect the supervisors to provide affidavits themselves. The supervisors are essential in ensuring that P.A.M. gets parenting time. They are doing so because they care about the family and want to help. While the insight they can provide is helpful, I also do not think that they should be drawn into this dispute more than is necessary. I appreciate the concerns that they have shown and, based on the email exchanges, I conclude that M.R.N. had no choice but to suspend P.A.M.'s parenting time. P.A.M.'s parenting time was also reinstated, although on a more limited basis, thus supporting the conclusion that M.R.N. is not intent on simply preventing P.A.M. from having parenting time with the children.

[15] With regard to communication, having reviewed the emails, I conclude that neither party communicates well with the other. This is not new. I will simply reiterate that it does not help to blame and attack the other person. You may believe that you know how you feel about each other is not communicated to your children, but it does affect them. Your children observe so much more than you think. When you attack each other, the children feel the need to take sides. No child, no matter their age, should be in that position. And when they are as young as L.J.D.N. and R.R.M.N. they cannot process it. It causes them harm.

[16] It is also no answer to state that it is the other person who is communicating badly or that they are the one who started a fight. You both bear responsibility. You are also in each other's lives for good now. You may not like in, but it is a fact of life. If you do not learn how to communicate, your children will be stuck in the middle. You do not want your children to decide that you cannot both be invited to their events and

celebrations for fear that it will descend into a fight. I know you both love your children very much, but that is where you are headed now.

[17] So, in terms of communicating, my suggestion is to write to each other as you would anyone else that you are in a business relationship with. Even if you feel that the other person is provoking, do not respond. You cannot control the other person; you can control yourself.

[18] Similarly, neither party should speak to the children about the other parent or about the legal disputes. When speaking of decisions about parenting time or caregiving, the language should be that: We made the decision. Saying that something is being done because one party or the other has made the decision casts them as the bad guy.

[19] Having said that, I do not find in the evidence that M.R.N. has been speaking to the children about P.A.M. in a negative way nor that he is involving them in the dispute.

[20] Finally, I would like to comment on submissions P.A.M. made about what she has done to show her capacity to care for her children. She points out that much of what the supervisors said about her interactions with the children was positive. She submits that she is taking part in therapy and has filed a letter from her doctor. All of this she argues shows that she does not require supervised parenting time.

[21] I agree that much of the information from the supervisors about P.A.M.'s interactions with the children is positive. I have noted it, and I do see it as progress. However, there is still work to be done. In previous decisions, I stated that simply receiving confirmation that P.A.M. was taking part in therapy was not enough. I also stated that I needed evidence from a mental health professional discussing whether

mental health issues are having an impact on P.A.M.'s ability to interact positively with her children; and if so, about whether and how those issues can be addressed.

[22] The letter P.A.M. filed from her psychiatrist states that she does not have the expertise or scope to complete assessments on an individual's suitability and safety as a parent for legal proceedings. The information we need will be, it is hoped, provided through the custody and access report.

[23] I conclude that there has not been a material change in circumstances and will not revisit the questions of parenting time and decision-making responsibilities.

[24] I now turn to the issue of contempt.

[25] A party seeking a finding of contempt has a high bar to meet. They must show, first, the order that was breached must state clearly and unequivocally what should and should not be done. Second, the party who disobeys the order must do so deliberately and wilfully. Third, the evidence must show contempt beyond a reasonable doubt. Any doubt must clearly be resolved in favour of the person or entity alleged to have breached the order. Where there are issues with compliance with court orders, the problem is often not contempt but something else. At times, the party may not be able to comply with the order or the order may not be sufficiently clear.

[26] Additionally, contempt is a tool the courts use sparingly, especially in family law cases. If the party is truly flouting the order, there are other mechanisms a court may use to enforce compliance before resorting to making an order of contempt.

[27] In my opinion, P.A.M. has not met the test for demonstrating contempt. I will not go over each instance that P.A.M. states constitutes contempt but will provide some examples to demonstrate why I am not finding that M.R.N. is in contempt.

[28] First, I will address the claim that M.R.N. violated the most recent court order when he suspended parenting time.

[29] M.R.N. was unable to comply with the order as the supervisors named in it wanted to suspend P.A.M.'s parenting time for a period of time. He does not have the power to compel the supervisors to take part in parenting time.

[30] As another example, P.A.M. seeks that M.R.N. be found in breach because he failed to use OurFamilyWizard. In that instance, M.R.N. stated that he could not afford to use OurFamilyWizard. He looked for other solutions and another individual came forward to help pay for it. In the end, I determined that OurFamilyWizard caused more difficulties than helped and so I rescinded the order. However, what M.R.N. did was show that he was not able to comply with the order and looked for ways to abide by it. This is not contempt.

[31] P.A.M. points out that M.R.N. also did not meet deadlines for filing certain documents. That is not the kind of breach that attracts a finding of contempt.

[32] In this case, both parties failed to abide by court orders at different times. Sometimes there were good reasons for it; sometimes there were not. Either way, the principles of contempt should not be used to address M.R.N.'s actions.

[33] I now turn to P.A.M.'s request that M.R.N. have no contact with C.

[34] I will not get into the details about why P.A.M. seeks that M.R.N. not have contact with C. because I can make my decision based on current circumstances. As it stands, C., who is the half-brother to L.J.D.N. and R.R.M.N., wants to have contact with the children. C.'s father and stepmother, with whom C. lives, have reached out to M.R.N. for C. to renew contact with his siblings. M.R.N. has been opened to contact between the

siblings. P.A.M. does not oppose contact but does not want M.R.N. involved. She proposed a mechanism through which C. could speak with the children without having to speak with M.R.N. M.R.N.'s counsel opposed the solution, submitting that it could lead M.R.N. to inadvertently breach the no contact order.

[35] C.'s father and stepmother presumably have determined that it would be good for C. to have contact with his siblings. As C. lives with his father and stepmother, they are in the best place to decide what is in C.'s best interests, including whether he can have contact with M.R.N. It is also in L.J.D.N. and R.R.M.N.'s best interests to have contact with as much loving family as possible.

[36] I therefore decline to order that M.R.N. have no contact with C.

[37] P.A.M. also seeks a permanent injunction. An injunction requires a party to stop something they are otherwise legally entitled to do. P.A.M. did not clarify what M.R.N. should be prohibited from doing nor why. I will therefore not consider this issue further.

[38] I now turn last to the question of whether leave should be required before the parties make any new applications.

[39] Both parties are in agreement, so I will put that order in place.

[40] However, it is still important for the parties to be able to resolve any problems that arise with supervised parenting time while we await the custody and access report. I will therefore allow the parties to contact the Trial Coordinator, requesting a family law case conference if there are problems with supervised parenting time. The party seeking the family law case conference should, in their email to the Trial Coordinator, explain what the issues are, and must copy the other party as well. The other party should then provide their own position about the necessity for a family law case

conference. The time limit for providing a response will generally be five days, although if there is a matter of urgency, time can be abridged.

[41] Once I receive a request for a family law case conference, I will review it and determine if it is necessary, and so we can resolve in that way any issues with supervised parenting time.

[42] And I do want to say that the supervisors can provide feedback about the mechanics of supervised parenting time, such as where it occurs, the timing of it, and the communications for arranging it. For the purposes of the family law case conferences, I would not seek information from the supervisors about how P.A.M. interacts with the children. And I also want to emphasize that supervisors can provide feedback if they are comfortable but are not required to do so. I do not want them to feel compromised or pressured in any way.

[43] Once the custody and access report has been prepared, P.A.M.'s parenting time can be set down for a review.

[DISCUSSIONS]

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WENCKEBACH J.