

SUPREME COURT OF YUKON

Citation: *K.M.P. v. J.V.E.R.*
2016 YKSC 10

Date: 20160204
S.C. No. 08-D4058
Registry: Whitehorse

Between:

K.M.P.

Petitioner

And

J.V.E.R.

Respondent

Before Mr. Justice R.S. Veale

Appearances:

Kathleen M. Kinchen
Celia J. Petter

Counsel for the Petitioner
Counsel for the Respondent

REASONS FOR JUDGMENT

INTRODUCTION

[1] The mother of M., a 10 year old child, applies for the recommendation of a Custody and Access Report. Pursuant to s. 43 of the *Children's Law Act*, RSY 2002, c. 31, the Court may request the Director of Family and Children's Services (the "Director") to prepare a report on the custody, support, and education of a child (a "Custody and Access Report"). The Director has no obligation to do so but often does prepare a Custody and Access Report at government expense.

[2] The father opposes the application for a recommendation on the basis that it is premature and unnecessary at this time.

BACKGROUND

[3] The mother and father married in 2004, separated in 2007, and divorced in 2009. M. is their only child of the marriage but each has another child in their new relationships.

[4] From a court perspective, the mother and father have had a relatively amicable separation and divorce. By consent, they agreed to joint custody and guardianship of M. with each parent spending an equal amount of time with M.

[5] However, the mother has had a concern about the father's anger and yelling at M. from a very early age. M. often reports on his father's anger after his visits with him.

[6] In the Fall of 2012, the matter came to a head as M. expressed the view that he didn't want to live with his father as much as he was. Discussions took place with M.'s teacher and M. was assessed for a learning disability but was found to be fine.

[7] In December, 2013 M. put snow in the face of his father's child. M.'s father was angry, picked him up, and slammed him into the snow. M. was not injured but was very upset and had nightmares. It is the father's angry outbursts that ended the marriage.

[8] The mother and father discussed the incident but the father said that he was owed an apology by M. The father stated that the mother sent him a "little shit" every week, who was a "holy freaking terror". I take this as a strong indication that the two households have very different approaches to child rearing.

[9] M. did not want to return to his father's home. M.'s mother requested and the father agreed that M. receive counselling.

[10] M. received counselling from a psychologist biweekly but the father objected to any information being shared with M.'s teacher for fear of M. being labelled. The mother expressed the view that the counselling was giving M. confidence and the ability to deal with two very different households.

[11] In January, 2015 it was necessary for M. to switch to a new counsellor. In discussions with N.B., the new counsellor, the father became very angry and attempted to leave the meeting. The father did not wish M. to continue with counselling.

[12] N.B. arranged for an appointment with M. but the father would not consent.

[13] The mother wished that M. continue in a therapeutic relationship with N.B. and applied in August 2015 for a court order to resume counselling with N.B. as well as the preparation of a Custody and Access Report.

[14] The father consented to an Order for the continued counselling with N.B. until M. no longer wishes to attend or N.B. recommends counselling is no longer required.

[15] The father has not filed evidence taking issue with the foregoing.

[16] The issue in dispute is whether the Court should recommend the preparation of a Custody and Access Report. The mother indicates the co-parenting relationship has deteriorated to the point that her communication with the father is by e-mails to avoid verbal outbursts.

[17] The mother is now taking counselling and wishes to help M. navigate two different homes and the father's anger. She believes a Custody and Access Report will

address the different parenting styles and make recommendations to improve co-parenting and support M.

[18] The father expresses his love of M. and his support for M. growing up to be healthy and confident. The father states that his view of M.'s counselling relationship was affected by his own unsettling counselling experience, as well as the financial claims that were submitted to their respective insurers.

[19] The father acknowledged that his behaviour towards counselling staff was not appropriate. He stated at paragraph 33 of his affidavit as follows:

I am fully supportive of [M.] receiving whatever help he feels is of assistance to him. I am confident that when it is appropriate for his relationship with [N.B.] to come to a close, that he will be able to identify when that point has been reached with his counselor.

[20] The father has also completed the *For the Sake of the Children* course and is committed to take further courses. He remains committed to co-parenting M. with the mother and wants to remain an equally important part of M.'s life.

[21] However, he considers a Custody and Access Report to be an extreme and invasive remedy for the co-parenting issues with M. and believes that the issues can be worked out with the mother using existing resources and support.

DISPOSITION

[22] Counsel for the mother submits that she has put up with concerns about the father's anger issues for three years without success. The mother has reached a crisis and it is unfair for M. to have to cope with the verbal abuse. Counsel submits that the alternative of litigating the issue will be expensive, time-consuming, and destructive to the relationship, rather than a positive step.

[23] Counsel for the father submits the case of *Glick v Cale*, 2013 ONSC 893, in which Kiteley J. sets out a non-exhaustive list of criteria at para. 48 to assist in determining whether to order an assessment.

[24] In my view, each case has its own dynamic that must be assessed. In the case at bar, the conflict is high and clearly disruptive for M. His mother could easily have brought the issue to court asking for a variation to reduce the father's time with M. She has not chosen to do this, nor do I find it particularly helpful to litigate intransigent issues which are better resolved by expert intervention. Ultimately, it is the willingness of the parents to change their behaviour to support M. I do not find it to be a requirement that the parents be involved in a litigious variation application when there are more collaborative ways to address the issues. Ultimately, both parents have to understand that M. will make his own decision based on his experience with each parent. However, this application offers the hope of a remedy that is supportive of M. maintaining a relationship with both parents, which is clearly in his best interests.

[25] Counsel for the father submits that there can be no application for a Custody and Access Report without a *lis*, a legal dispute. This is a legal dispute but I see no reason to require a variation application as a condition precedent. The fact that this application is necessary is significant in itself, particularly when the preparation of a Custody and Access Report has no financial consequences for the parents. Rather than be a waste of resources, this application may result in the best use of resources, i.e. less court time with lawyers and a judge and more time with an expert who may resolve matters or provide recommendations to assist a child coping with two very different approaches to child rearing.

[26] I am mindful of the fact that the father has not denied his anger issues and is searching for a solution. He may no doubt fear a negative experience, which will not serve his personal interests. On the other hand, the involvement of an expert can only assist in moving forward and will hopefully benefit both M. and his parents.

[27] I recommend the preparation of a Custody and Access Report with the following conditions:

1. The report should focus on the impact of the status quo on M. and make recommendations on identified issues;
2. The report should address whether the identified issues arise from transitions between households with different parenting approaches as opposed to one parent's parenting approach;
3. Psychological testing is not required unless the assessor believes it is necessary.

VEALE J.