

SUPREME COURT OF YUKON

Citation: *D.F.A.S. v L.A.*, 2016 YKSC 57

Date: 20161114
S.C. No. 16-B0040
Registry: Whitehorse

Between:

D.F.A.S.

Plaintiff

And

THE DIRECTOR OF FAMILY AND CHILDREN'S SERVICES and L.A.

Defendants

Pursuant to s. 173(2) of the *Children's Law Act*, no report of a proceeding in which the name of the child or the child's parent or in which the identity of the child is otherwise indicated shall be published, broadcast or in any other way made public by any person without the leave of the judge.

Before Mr. Justice R.S. Veale

Appearances:

Celia Petter

Counsel for the D.F.A.S.

Lauren Whyte

Counsel for the Director of Family and Children's Services

L.A.

On her own behalf

André Roothman

Lawyer for the child

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by D.F.A.S., the child's maternal grandmother for custody and primary residence of the child. The child is a teenager and has resided with the grandmother for approximately two years on the child's initiative when he left his mother in April 2014 and went to live with his grandmother.

[2] The Director of Family and Children's Services (the "Director") has had supervision of the child since September 16, 2014, during which time the child has been placed in the temporary care of the grandmother. The most recent Territorial Court Order was granted on April 21, 2016, and lapsed on October 21, 2016.

[3] On August 17, 2016, the grandmother filed a custody application for the child in the Supreme Court of Yukon with the support of the Director. As is the practice in Yukon, when there is a child protection proceeding in the Territorial Court and a custody application in the Supreme Court of Yukon, a Supreme Court judge will hear the custody application and sit as a Territorial Court judge to hear the child protection hearing. If custody is granted to the grandmother, the Director will not apply for another supervision order in the Territorial Court of Yukon. In the event that the grandmother's application is not granted, I will sit as a Territorial Court judge on that child protection application.

[4] I granted interim custody of the child to the grandmother on August 30, 2016, pending this custody hearing and the further order of this Court.

[5] Under s. 1 of the *Children's Law Act*, R.S.Y. 2002, c. 31, the paramount consideration in this proceeding is the best interests of the child which shall prevail if the wishes of the parent and child conflict.

[6] There is a long history to the anguish and distress in the family relationships that are the focus of this case: teenage child, mother and grandmother. These Reasons will be written from the child's perspective but will necessarily address the grandmother/mother relationship that presents challenges as well.

[7] The four principal affidavits are from the grandmother, mother, another daughter of the grandmother who resides with the grandmother and the case worker. The striking

feature of these affidavits is that the mother does not challenge the evidence of the grandmother and the other daughter, i.e. her sister, to advocate that she should have custody of the child. Rather, she focusses on her difficult relationship with her mother. Similarly, the sister and case worker support the grandmother but do not directly address the flagrant allegations of the mother about her relationship as a child with the grandmother.

[8] In any event, in April 2014, the child made a decision to live with his grandmother. As stated, the child has lived with his grandmother under the supervision of the Director by Territorial Court order since September 2014. The Territorial Court Orders have been approved by counsel for the mother without the necessity of a trial or hearing.

[9] Counsel for the mother applied to be removed as counsel of record for the mother and was removed by Territorial Court Order dated January 14, 2016. The mother is self-represented in this application and opposes the grandmother's application for custody of the child on the grounds that the child is not safe with the grandmother and should be placed with family or friends. The mother does not seek custody of the child.

BACKGROUND

[10] I begin with direct quotes taken from a poignant letter written by the child:

- I hated my old life living with my mom. I was abused the most and lived with it for so long.
- So after a while ... we were 2 hours away from mama (grandmother) I was happy but we weren't allowed to see her and if we did our mom would spank us ...

- I stole a lot of money from her (the mother) and she just started beating me but besides that she would throw things at me, curse at me, call me retard, pig and more.
- ... a lot of things would happen there so I just stayed in my room all the time because that's where I felt safe but she would do nice things sometimes. I felt really depressed for so long I just couldn't stand living there.
- I ended up talking to a new social worker (name deleted). I was talking with her at school asking her if I could live with Mama (grandmother) ... and I heard her say yes so I was happy.
- ... after some more calls from my mom a police man came and asked if I wanted to stay and I said yes.
- I love my new life, living with Mama (grandmother) is much better, I don't get abused or called down and when I need anything she is there for me.
- I want to live here with Mama (grandmother) I don't want to go back to my mom.

[11] I accept this child's evidence as fact and my judgment could end here but for the affidavit of the mother opposing the continued custody of the grandmother.

[12] I accept the evidence of the grandmother and find it to be factual. I summarize it as follows:

- The child is profoundly attached to her as he bonded with her early in his life as she has been a caregiver to him since infancy.
- He chose the grandmother's home of his own free will and she is now his primary caregiver.

- She has seen a marked improvement in him since he moved in with her.
- The grandmother was, in effect, the primary caregiver for the first four years of the child's life as well as that of his twin sister, while the mother moved from their small community to Whitehorse and then Yellowknife.
- The mother, her spouse and the twins moved back to the grandmother's house in 2005.
- The grandmother was a full-time parent to the child and his twin and paid for all the collective living expenses.
- The mother left again, had two more children, but returned to the grandmother's in the spring of 2007.
- Although very dependent on her mother, the mother's relationship with the grandmother became strained over the abusive treatment of the twins by her spouse who was not their biological father.
- Efforts by the grandmother to report the abuse to the RCMP were not supported by the mother.
- The mother and her spouse moved to Nova Scotia from 2008 – 2011.
- Again, the mother called on the grandmother to assist when she was threatened with the state taking away her children.
- The grandmother went to Nova Scotia and was shocked with the deplorable conditions the children were living in but spent a great amount of time and money to bring the mother's residence to a state fit for the children to live in, with the assistance of the mother's sister.

- The mother finally broke up with her abusive spouse and with some court difficulty returned to Yukon in April 2011.
- Despite the assistance of the grandmother, her relationship with the mother deteriorated, at a time when the grandmother was going through her own divorce.
- The child in issue began to report the abusive treatment at the hands of his mother, and the grandmother reported the abuse but there was no direct intervention until the child moved in with her in April 2014.

[13] In the summer of 2014, all four children left the mother's home to live with their grandmother. The children, including the child in this case, were apprehended by the Director.

[14] The Territorial Court ordered that the child reside with the grandmother under the supervision of the Director.

[15] During the grandmother's two years of custody, the child's life has improved considerably. He is taking counselling, he is engaged and performing well in school, he has friends and he is playing sports and developing his considerable artistic talents. He has engaged with his First Nation and is clearly thriving. Most importantly, he is becoming more positive about himself and gaining self-esteem at a crucial time in his life as a teenager seeking self-confidence and independence in a secure and stable home with his grandmother.

The Child's Mother

[16] The mother is self-represented but a very capable person in her own right. She is employed by her First Nation and very proud of her own accomplishments. She expresses some self-awareness as she acknowledges that she cannot have custody of

her child and that she has to remain apart from him until he is ready to engage with her some time in the future.

[17] Her submission to the Court is essentially that the child should be residing with other family members, rather than her mother. Her case unfortunately focusses on the terrible relationship she had with her mother before she started her own family. She makes many horrendous allegations about the grandmother that are not supported by any independent objective party such as the social worker or her own sister who resides with the grandmother and the child in issue.

[18] The issue in the case is not her past history with her mother but rather the best interests of this child. I fully accept the evidence of the worker and delegate of the Director who swears that the child will likely be physically or emotionally harmed by the mother. This conclusion is based upon the mother's inappropriate physical discipline, behaviours that can cause emotional harm such as being exposed to inappropriate sexual behaviours, neglect, parentification of the children, lack of supervision and poor hygiene. These behaviours have been confirmed in a Territorial Court judgment, cited as *J.A. (Re)*, 2015 YKTC 36, relating to another child of the mother.

[19] Another worker confirms that the serious allegations of the mother against the grandmother were made back in 2014 when the Director commenced protection proceedings. The Director investigated, assessed and determined that the grandmother was a suitable caregiver.

[20] I do not find the mother's allegations about the grandmother are credible or relevant to the situation of the child today. He is clearly afraid of the mother and thriving in the custody of the grandmother as confirmed by his excellent report card from school.

[21] I find that the mother has a certain amount of self-awareness about her own strength and weaknesses. She candidly stated in court that she respects the wish of the child not to be involved with her.

[22] However, she presents as a person somewhat obsessed with a power struggle or vendetta with the grandmother which does not address the best interests of her child in this custody application before the court.

[23] I would hope that someday the child and grandmother will be prepared to reconcile with the mother. Unfortunately, that is not remotely possible in the present circumstances.

DISPOSITION

[24] I order the following:

1. that the grandmother shall have custody and primary residence of the child;
2. the mother shall have no access to the child unless the child gives his written consent which may include the terms and conditions of access;
3. the mother is prohibited from molesting, annoying or harassing the grandmother and child in any way.

VEALE J.