

# SUPREME COURT OF YUKON

Citation: *P.J.S. v. R.D.S.*, 2019 YKSC 54

Date: 20191011  
S.C. No. 19-D5172  
Registry: Whitehorse

**BETWEEN**

**P.J.S.**

**PLAINTIFF**

**AND**

**R.D.S.**

**DEFENDANT**

Before Madam Justice S.M. Duncan

Appearances:  
Megan É. Whittle  
Shaunagh Stikeman

Counsel for the Plaintiff  
Counsel for the Defendant

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] Two applications for interim relief were heard in this matter. The first was brought by the mother, P.S., for sole possession of the family home; custody and residence of the child of the marriage, T.S.; supervised access to T.S. by a mutually agreeable third party for one hour per visit in a public place to be provided to the father, D.S.; and restraining D.S. from attending at P.S.'s home, place of work and T.S.'s school. D.S. consented to some of the interim relief requested.

[2] The second application was brought on short notice by D.S. It was for the following relief: a declaration that the family home is a family home within the meaning of the *Family Property and Support Act*, R.S.Y. 2002, c. 83; payment by P.S. to D.S. for half of the rental income received from the family home; joint custody of the child of the marriage, T.S.; equal parenting time and residency with T.S.; reasonable and generous access by D.S. to T.S. without any third party supervision or restrictions on location of access; the inability of either parent to remove T.S. from the jurisdiction without written consent of the other parent; discussion and shared decision-making by both P.S. and D.S. on significant decisions about the health, education, general welfare and extra-curricular activities of T.S.; recommendation of appointment of a child advocate for T.S.; recommendation of the preparation of a custody and access report for T.S.; and filing of Financial Statements in accordance with Rule 63A on or before November 1, 2019.

[3] Although the mother did not have an opportunity to prepare a written response to the father's application, her counsel agreed to argue both applications on the affidavit evidence that was before the Court. Some of the relief was consented to. I further note that many of the matters in the second application are in effect responses to the first application.

[4] I will first address the matters that have been consented to, and then will address the contested matters after providing some background.

***Matters on Consent – interim possession of family home and custody and access report***

[5] The parties have consented to the following:

- i) P.S. shall have interim exclusive possession of the family home located at [redacted], Whitehorse, Yukon, pending the resolution of the division of assets of the marriage; and
- ii) A custody and access report shall be recommended in order to provide assistance to the Court in determining custody and access for T.S. in the longer term. Evelyn Witherspoon is the preferred assessor.

***Background***

[6] The mother and father were married on October 5, 2008. One child of the marriage was born on March 6, 2012. The parties separated on May 9, 2019.

[7] The mother and child left the Yukon on May 9, 2019 for 10 days to visit her brother in Prince George, British Columbia, then returned to live with the mother's sister as the father was still in the family home. The mother deposed she did not feel safe in bringing the child to the family home while the father was there.

[8] In June, 2019, the father left the Yukon to stay with his family on Vancouver Island, British Columbia and the mother returned to the family home. The mother took the child to Vancouver Island to visit the father and the grandparents between July 23 and July 27, 2019.

[9] On August 17, 2019, the father returned to the Yukon. At that time an Emergency Intervention Order ("EIO") was in place at the mother's initiative, commencing August 15, 2019, prohibiting the father from attending at the family home, the mother's place of work, or the child's school. The mother explained that she did so to protect herself and the child because the father had not responded to her questions about his plans to return to the Yukon and she feared for their safety. The father explained that he felt

paralysed in his communication with the mother upon being served with divorce papers on August 15, 2019 and feared communication would escalate tensions. The EIO expired on October 1.

[10] The father is currently living with a friend in the [redacted] area. As of the date of the application, he is not employed, but is looking for work.

[11] The mother remains in the family home, and is employed. The child attends the [redacted] School.

[12] A significant concern for the mother is the father's explosive anger. His angry outbursts, described as verbal, emotional and physical abuse towards her and their child, were what led to the mother leaving the relationship. The father's behaviour has been a source of stress for both the mother and the child. The mother deposes it escalated over the spring of 2019. She gives examples in her affidavit of his escalating behaviour in April and May, 2019, including: attempting to have non-consensual sex with her and shouting at her when she refused; becoming angry when she did laundry without washing his pants and jacket; becoming angry again the following day when she refused to apologize because he knew she was doing laundry and his clothes were not in the hamper; and screaming in the car and driving erratically to her dentist appointment with T.S. in the car, resulting in her taking T.S. with her to the dentist instead of letting the father drive him to school because she did not feel the child was safe in the car with the father.

[13] The mother provides other examples in her affidavit of the father's angry behaviour towards her during the relationship. Some of the examples of the causes of D.S.'s anger are: when she did not iron his shirts or do his laundry in a timely way; when

she did not clean the bathroom thoroughly enough; when she did not want to have sex with him; and when she asked if she could have her own car. The mother describes him as controlling, lecturing and yelling when he becomes angry. Often these outbursts were within earshot of the child.

[14] The father denies that he yelled at the mother about any of these matters. He concedes that he expressed frustration to her that he was left to do the majority of the housework but he did this in a calm manner. He concedes he would have liked her to initiate sex more often but denies sex was anything other than consensual and loving, except for one time in April, 2019 when he said he told her it was “getting weird” and they had an argument, but without any abuse or violence.

[15] The mother says the father’s anger was also directed towards the child. The mother describes him as regularly yelling at the child if he injured himself or spilled food or drink. She describes occasions in which the father became physical with the child while angry and yelling – such as “grabbing him and dragging him by the arm to the point where he left bruises and [she] was afraid he would dislocate [the child’s] arm.” On another occasion she describes the child trying to get away from the father and “hitting his head on the wall, causing a large goose egg and cut on his head.” She describes having to get physically in between the child and the father on a couple of occasions, and also bringing the child to work with her or staying home from work with him to ensure he was safe.

[16] The effect of the father’s behaviour on the child was described by the mother as

follows:

- The child is very self-critical and afraid to try new things for fear of making mistakes;
- The child appears at times to be afraid of his father;
- The child has expressed to his mother and his counsellor that his father is mean and has hurt him; and
- The child has said that it is better when his father lives in a separate home.

[17] On the other hand, the mother deposes that the child does enjoy visits with his father. She says the child has always enjoyed the activities he and the father do together. The father's affidavit evidence describes the activities he and the child have done together including: basketball, swimming, reading to each other, researching on the internet together, kite flying, snow-sledding, shovelling the driveway, playing tag, and playing at the playground. The mother deposes it is not her intention to deny access with the child to the father, and she wants them to continue to have a relationship.

[18] The father denies he has ever been physically, emotionally or verbally abusive to his son. The father denies that his son is afraid of him. He provided many examples in his affidavit of T.S. being very happy to see him and telling his father he was looking forward to spending time with him.

[19] Both parents depose that they have been the primary caregivers for T.S. The father says that after the mother's maternity leave they decided that he would stay home and be the primary caregiver for T.S., rather than putting T.S. in full-time daycare.

[20] Over the course of T.S.'s life, the mother has worked full time (after maternity leave). The father has had part-time work from time to time. T.S. started school in September, 2017. From February, 2015 to March, 2017 he was enrolled in a day-home. The mother says he attended the day-home two to five days a week as the father was struggling to care for him and complaining about the amount of work he had to do. The father says T.S. attended the day home "on occasion" when the father's work schedule required it and to enable T.S. to socialize with peers.

[21] The father says that he was the parent who primarily drove T.S. to and from school, brought him to extra-curricular activities, attended his medical and dental appointments, along with the mother, and participated in school activities, where the mother was often but not always present.

[22] The mother acknowledges that the father stayed at home with T.S. for a period of time before he started school. She deposes she still did most things for the child including: making him dinner and breakfast, taking him to his appointments, putting him to bed and getting him up in the morning, doing his laundry, cleaning the house and comforting him.

[23] All three family members have been attending counselling since 2017 with Zoe Armstrong at Ignite Counselling. It began as grief and loss counselling after the mother gave birth to stillborn twins. All three were seeing Ms. Armstrong separately. The father stopped seeing her at some point. The mother and the child still see Ms. Armstrong. The father believes the counsellor is in a conflict of interest with respect to evidence in this case because she is seeing the mother and the child.

[24] The father was seeing a counsellor in Victoria when he was there between June and August 2019. Now that he is back in the Yukon, he says he intends to continue counselling here.

[25] The father repeatedly denies all allegations of abusive behaviour towards the mother and child and deposes his belief that the mother has fabricated the allegations in order to block him from having custody of and access to the child.

[26] Currently T.S. lives with his mother in the family home. Since the separation, the father has had supervised access visits (except for one occasion when they went to Carcross) on approximately a weekly basis with the child, when the father has been in the Yukon.

[27] Other affidavit evidence was provided by both parties. The mother's evidence included affidavits from her sister who lives in Whitehorse, a friend who lives in Whitehorse and is a social worker, and another friend with whom the father stayed for a couple of nights in August, 2019 when he returned to Whitehorse. Each of them describes their observations of the father's anger. The sister describes hearing his anger towards the mother during the two months she was living with them in 2011, and deposes that he is "unpredictable with his anger" and she does not "believe he is able to control it." She also deposes to his manner of disciplining the child in a humiliating and shaming way when the child spilled things, failed to sit still at the dinner table, or interrupted when the father was speaking.

[28] The social worker friend wrote that she and her ex-husband were close friends with both the mother and father and she enjoyed the father's company as he could be charming, engaging and fun-loving. However, more recently she witnessed a decline in



his ability to manage his emotions. She described him as an intense person, with an underlying tension in his demeanour that could quickly escalate to angry frustration or irritation if triggered. Triggers included a newspaper story, a government policy, the mother not cooking or cleaning the way he thought it should be done, and the child acting up. The friend with whom he stayed in August asked him to leave after approximately one day because the father's continual expression of anger with the mother and frustration about current and past events made the friend and his wife feel unsafe. The friend had initially offered the father a place to stay for a couple of weeks. Knowing the father's propensity to react angrily and with frustration to things in his life, the offer was on condition that if he wanted to vent or needed to talk he and the friend would go out for a walk or a drive. When the father continued to express anger in the house, the friend asked him to leave.

[29] The mother also included a letter dated September 25, 2019 from the counsellor, Zoe Armstrong. She writes that the child has shared with her that his father has hurt his body and his feelings. The child has witnessed his father yelling at his mother and it impacted him. Ms. Armstrong recommends that visits with his father should be supervised by a professional, for one hour in a public space, and it should include interactive activities. The child should be able to leave the visit or the activity at any time. She also writes that in her view the mother is able to provide the child with a safe and loving home that is consistent, reliable and predictable, which is what he needs.

[30] The father's evidence included affidavits from his mother, father, sister, and brother-in-law, all of whom live in Sooke, British Columbia, not in Whitehorse. It is not clear how often they see the father and his family but it is approximately once or twice a

year. They keep in regular telephone contact. They all speak of the father as being a loving, engaged and involved parent. They all deny seeing any evidence of physical, mental or emotional abuse by him of the child. They depose to how much the child enjoyed the many activities in which he and his father engage in, the fact that the father stayed home from work to care for the child, the contributions he made to the household on a daily basis, and that he has always been a loving and protective parent.

[31] One additional letter (not an affidavit) was provided by the father from a person for whom the father cut firewood and with whom he became friendly. The main purpose of her letter was to state her impression that the father was the primary caregiver for the child because he arranged his work schedule around the child's schedule and every time she saw him in town he was with the child. She also wrote that she observed he was "very much a family man who loves and values his wife and son." She never heard him utter a word that could be construed as frustration or unhappiness about his relationship with his family.

### ***Custody of and Access to T.S.***

[32] The mother seeks interim sole custody of T.S. She is not opposed to access by the father, but wants it to be supervised, in a public place and limited to one hour per visit. The reasons for these requests relate to the behaviour of the father; in particular his explosive and unpredictable anger.

[33] In determining custody and access issues, the test is the best interests of the child. Section 16(8) of the *Divorce Act*, R.S.C. 1985, c. 3, provides that "the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child."

[34] This Court elaborated on the best interests test in *E.A.G. v. D.L.G.*, 2010 YKSC 21 (“*E.A.G.*”) at para. 102:

... [O]ther principles that may be considered are:

1. only the best interests of the child, as opposed to the interests of the spouse, are to be considered (s. 16(8));
2. the past conduct may be a factor only if it is relevant to the person’s ability to act as a parent (s. 16(9));
3. maximum contact with both parents to the extent consistent with the best interests of the child is required (s. 16(10)); and
4. a proposed custodial parent’s willingness to permit access to the other parents is a relevant factor (s. 16(10)).

[35] Section 30 of the *Children’s Law Act*, R.S.Y. 2002, c. 31 sets out the following factors to be considered in determining best interests of a child in a custody and access application:

- (a) the bonding, love, affection and emotional ties between the child and each person entitled to or claiming custody of or access to the child ...;
- (b) the views and preferences of the child, if those views and preferences can be reasonably determined;
- (c) the length of time, having regard to the child’s sense of time, that the child has lived in a stable home environment;
- (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance, education, the necessities of life and any special needs of the child;
- (e) any plans proposed for the care and upbringing of the child;
- (f) the permanence and stability of the family unit with which it is proposed that the child will live; and

- (g) the effect that awarding custody or care of the child to one party would have on the ability of the other party to have reasonable access to the child.

[36] The general principles relating to access, some of which are the same as the principles applicable to custody, are summarized in *R.D. v. U.S.D.*, 2001 YKSC 543 at para. 13 (quoted in *E.A.G.*, at para. 105):

1. a child should have as much contact with each parent as is consistent with the best interests of the child;
2. the access of a child to a parent is the right of the child;
3. the best interests of the child requires consideration of the condition, means, needs and other circumstances of the child;
4. access may be denied to a parent if it is not in the best interests of the child;
5. the past conduct of a parent may be taken into consideration if it is relevant to the ability of that person to act as a parent of a child;
6. the onus is on the parent seeking access, to establish on a balance of probabilities that access is in the best interests of the child.

[37] The Court in *E.A.G.* stated at paragraph 106 that it is generally accepted that spousal abuse, whether physical, verbal or emotional, is relevant to a custody and access determination. See also the case of *Dixon v. Hinsley* (2001), 22 R.F.L. (5<sup>th</sup>) 55 (Ont. S.C.) at paras. 56-66, referred to in *G.G. v. H.D.*, 2009 YKSC 52 (para. 27), in which the Court noted the growing body of case law that denies access to an abusive spouse.

[38] Also pointed out by the Court in *E.A.G.* at paragraph 103, the practice in this jurisdiction in interim applications for custody and access, such as this one, is to proceed by way of affidavits. Usually the affidavits from each parent are conflicting and contradictory, as they are in this case. As a result it is “often very helpful to have

affidavits from others somewhat more impartial than the mother and father may be” (para. 103).

[39] In considering the best interests of the child in this case I must make a determination about the behaviour of the father. There is no doubt that the father loves the child, they have an emotional bond with each other, and they enjoy doing many different and wholesome activities together. This is not denied by the mother, who has actively sought to encourage the ongoing relationship since separation, albeit under certain conditions. However, the question is whether I accept the evidence of the mother, her friends and her sister of the father’s angry outbursts, over the complete denial of that behaviour by the father and his family. My acceptance or rejection of that evidence will affect my determination on custody and access.

[40] I do accept the mother’s evidence of the father’s uncontrolled anger outbursts for the following reasons:

1. it is the main reason provided for the breakdown of the marriage - no other reason is provided by the father or mother;
2. the incidents and behaviours are corroborated and substantiated by objective witnesses – long-time close friends of both the mother and the father described very similar behaviours and incidents;
3. the detailed and realistic description of the incidents;
4. the letter given by the mother to the father on April 27, 2019 and attached as Exhibit A to his affidavit describes her desire and intention for change in the patterns of their relationship that are consistent with feeling controlled and subjected to continual anger, negativity and criticism. For

example, the mother wrote “I have fallen into a pattern of enabling and being a doormat”; “as soon as the conversation turns to something not nice, I am going to say ‘Pause’. I will no longer engage and I ask that you respect this and immediately stop talking. We can revisit the conversation later when we are calm” and; “I ask that you allow me creative freedom and refrain from negative comments or opinions.”

[41] The father’s complete and categorical denial of any angry or abusive behaviour, despite his affidavit evidence of attending counselling and of discussing some of his challenges with at least one of his friends, is cause for concern, given my acceptance of the mother’s evidence. The father denies all of the mother’s allegations vehemently and where he does provide alternative interpretations of the incidents described he does not accept that any of his actions were the source of conflict. Failure to take responsibility for the impact of his behaviour on his family is cause for concern.

[42] Although the father’s family members in their affidavits consistently deny his angry outbursts and all the allegations of abusive behaviour, I give them less weight than I do the affidavits of the mother’s friends. First, the family members live in Sooke, British Columbia and they have visited in person only occasionally for relatively brief periods of time. They are not in the same position to observe the behaviours and interactions as the close family friends are, or as the mother’s sister is, especially when she lived with them for two months. Second, as close family members, they are naturally supportive of their son/sibling as he is going through a marriage breakdown. Their objectivity may be compromised as a result of their desire to assist the father. This is evidenced in part by the contradiction between the grandmother’s recollection of the

conversations and incidents occurring in July, 2019 during their visit in British Columbia and the mother's recollection of those same conversations and events.

[43] Similarly, I give little weight to the letter from the father's friend for whom he cut wood as their interaction was limited.

[44] By contrast, the family friends who provided affidavits were friends with both the father and the mother for many years and their evidence is more balanced.

[45] I find that the father's past conduct of explosive and unpredictable angry outbursts towards the mother and the child, escalating over the spring of 2019, does have an effect on his ability to parent the child at this time.

[46] A further consideration is that the father does not yet have a home in Whitehorse. He is staying approximately 40 kilometres from downtown at a friend's place. It is not clear how long he will remain there. He is not employed. Only recently did he indicate his plan was to remain in Whitehorse and not relocate to British Columbia to be closer to his parents and sibling. The father is not yet in a position to offer T.S. a stable and predictable home environment.

[47] It is premature to consider joint custody or equal parenting time and residency at this time. The father's emotional behaviours that cause harm are not yet under control; his living arrangement is uncertain; and he is not employed. This case is distinguishable from the case of *Howard v. Howard*, 2006 SKQB 352 provided by counsel for the defendant in a number of ways. The order for joint custody and a parallel parenting plan in that case was made after a custody and access report had been completed and reviewed by the court. At the time of the court application the parents had been separated for approximately three years and during that time they had shared equal

parenting time with the child. Joint custody was a continuation of the *status quo*. Finally there was no evidence in that case of any concerning behaviour by either parent affecting the child. The distinguishing features between that case and the case at bar support the conclusion that an order for joint custody and equal parenting and residence at this time is premature.

[48] The court's request to the director of family and children's services to cause an investigation and custody and access report, if accepted by the government and once completed, will provide the parties and the court with a significant amount of useful information for the determination of custody and access in the future.

[49] The terms of the access request by the mother are the same as the recommendation from Ms. Armstrong, the counsellor for the child and mother. The mother states her recommendation should be given significant weight because she has been seeing the child for two years and knows both parents, also from a counselling relationship.

[50] The father's counsel says that Ms. Armstrong's view should be given no weight. First, counsel says it is in the form of a letter, not an affidavit, and so must be given less weight on that ground alone. Second, counsel says Ms. Armstrong is in a conflict of interest because she has a therapeutic relationship with the child and the mother and no longer with the father. She is therefore hearing only one side of the story. Counsel did not provide any case authority or code of conduct provisions to support her position on conflict of interest.

[51] I agree with the mother's counsel that weight should attach to the views of a counsellor for the child. It is the usual practice in this jurisdiction for counsellors or



therapists to provide letters and not affidavits to the court to assist in these kinds of applications. It is for the court to determine the amount of weight to place on these letters. In this case, the fact that the counsellor knows both parents and has had or does have a therapeutic relationship with them is in fact helpful to her assessment, in my view. In the absence of legal authority, I am not persuaded that the counsellor is in a conflict of interest such that I should discount her views. She clearly in her letter is focussed on the best interests of the child. I also note that in *E.A.G.*, the Court noted it was fortunate that the report of the counsellor was available to the court to assist in sorting out the best interests of the children (para. 103).

[52] I agree that access to T.S. by the father should be granted for up to one hour at a time, in a public place where interactive activities can occur. Neither party made submissions about how often the access visits should occur and I will leave that to the parties to work out. I encourage the mother to allow for generous and reasonable access under these conditions, to ensure that a positive relationship between the child and the father can be maintained and nurtured.

[53] I am not fully convinced that supervised access visits are necessary, given these other conditions of limited time and public place. However, I do have concerns about the father's failure to take responsibility for how his behaviour may affect the child. This denial may result in a continuation of the hurtful behaviour, even inadvertently, because there is no identification of the issue or commitment to try to change. While the father has been attending counselling, there is no evidence that it involves assistance to him with his anger issues. I also place weight on the affidavit evidence of the mother who deposes that the child has requested that he not visit with the father alone. Although I

recognize it is hearsay evidence and the child is young, I cannot ignore it. Out of an abundance of caution, then, I will order that the access visits be supervised by an adult to be agreed upon between the parties. There will also be no restriction on reasonable telephone or FaceTime calls between the father and the child.

[54] These orders for custody and access are made on an interim interim basis, pending the outcome of the recommendation for an investigation and report on custody and access. If there is a material change in circumstances that may support a request for a change to these orders, the father may bring an application to court, in the absence of agreement between the parties.

### ***Restraining Order***

[55] The mother requests a restraining order that in effect will continue the terms of the EIO. The father says that he will agree not to attend the family home, the mother's place of work, or the child's school and does not want or need a restraining order.

[56] There was no authority provided for the test for a restraining order. The father appears to have taken seriously the restrictions placed on him by the EIO. I am prepared to reflect in the order that the father agrees that he will not attend at the family home, the mother's work or the child's school, as this will provide protection to the mother and child without the imposition of a restraining order from the Court.

### ***Request for recommendation for the appointment of a child advocate***

[57] The father requests the court recommend the appointment of a child advocate for the child. He fears that the child is being manipulated by the mother and states that only through the child's own representative will his true views and preferences be known.

[58] The mother's counsel states that at seven years of age, the child is too young for the appointment of a child advocate. She relies on the general practice in this jurisdiction which is that it is highly unusual for a child under the age of 10 to have a child advocate. The reason for this is explained in *RKK v. BMM*, 2016 YKSC 59 ("*RKK*"). That case was about whether a 14 year old child who had been diagnosed with autism was capable of expressing his views and preferences about custody. After recognizing s. 30(1)(b) of the *Children's Law Act* requires the court to consider the views and preferences of the child in determining their best interests, if those views and preferences can be reasonably determined, the Court reviewed the *United Nations Convention on the Rights of the Child*, which Canada has ratified. "[T]he Convention provides that: (1) children who are capable of forming their own views have the legal right to express those views; and (2) they also have the legal right to have those views given due weight in accordance with their age and maturity" (para. 4). The Court in *RKK* referred to *B.J.G. v. D.L.G.* 2010 YKSC 44, in which the Court wrote that the inquiry into whether a child is capable of forming their own views focuses on whether they have the "cognitive capacity" to do so and to communicate those views. Weight to the child's views is given in accordance with their age and maturity (para. 6).

[59] The guidelines for the Child Lawyer in place in the Yukon allow for the child advocate to act on the instructions and position of the child, if the child is mature enough to be able to do so, or to act as a "friend of the court" by providing the expressed views and preferences of the child in the case where they are not capable of forming instructions.

[60] In this case, I do not see the benefit at this time of recommending the appointment of the Child Lawyer, given the age of the child (seven years old), the uncertainty about whether he can formulate his own views and preferences, and the fact that a custody and access report is being recommended. While a key premise of the legal rights of the child is that hearing from the child is in their best interests, and leads to better decisions with a greater chance of success (*RKK*, para. 5), I am not persuaded that this is a case where an exception to the general practice in this jurisdiction of not appointing a child advocate for a child younger than 10 should be made.

***Inability to remove the child from the jurisdiction without the consent of either party***

[61] Although the mother has been awarded interim interim custody, the father has indicated his strong desire to remain involved as an equal partner in the parenting relationship. That is not possible at this time, for the reasons stated above, but it is appropriate in the circumstances for the mother to advise the father if she plans to leave the jurisdiction with the child, and to provide him with an itinerary so that he may continue to have some contact with the child. Consent is not required at this time.

***Declaration that the property at [redacted] is the family home***

[62] The parties agree that the property at [redacted] is the family home. As noted the father has consented to the mother having interim exclusive possession of the property. He is seeking some assurance that this does not affect his rights pending the division of assets.

[63] I will therefore order pursuant to s. 27(1)(a) of the *Family Property and Support Act* that the property at [redacted] is the family home.

**Financial Statements**

[64] The father has requested the production of financial statements in the form required by Rule 63A. The mother objects, saying they are onerous to complete and should not be necessary. Financial disclosure by the mother was made the day before this application was heard. At the time of hearing, financial disclosure by the father has not been made.

[65] I decline to make an order for production of financial statements under Rule 63A at this time. Once financial disclosure has been provided by both parties, if there are gaps or outstanding issues that cannot be resolved through further requests for information or at a case conference, then this matter may be revisited.

**Payment of half the rental income by the mother to the father**

[66] This issue was raised by the father in his short notice application and the mother did not have an opportunity to respond in writing. I find that this request is premature and should be deferred until financial disclosure is complete and discussions of property and asset division have begun. To rule on this aspect in isolation from the full financial circumstances would be inappropriate at this time.

**Conclusion**

[67] The order shall be as follows:

On consent:

- i) The property at [redacted] is the family home within the meaning of the *Family Property and Support Act*.

- ii) P.S. shall have interim exclusive possession of the family home located at [redacted], Whitehorse, Yukon, pending the resolution of the division of assets of the marriage.
- iii) The director of family and children's services is requested to cause an investigation to be made and to report to the court on all matters relating to the custody, support and education of the child of the marriage, T.S., born March 6, 2012. Evelyn Witherspoon is the preferred assessor.
- iv) The defendant shall not attend the family home, the plaintiff's place of work, or T.S.'s school.

By court order:

- v) The plaintiff shall be granted interim custody of T.S.
- vi) T.S. shall reside primarily with the plaintiff.
- vii) The defendant shall have supervised access to T.S. with a mutually agreeable third party adult, in a public place, for a maximum of one hour per visit. T.S. shall be permitted to leave the visit at any time. The number of visits per week are to be arranged between the parties.
- viii) T.S. and the defendant may have regular reasonable telephone and FaceTime access.
- ix) The plaintiff shall provide to the defendant reasonable notice and an itinerary if she and the child leave the jurisdiction.
- x) The defendant's requests for payment by the plaintiff of half the rental income from the family home and for financial statements in accordance with Rule 63A are adjourned generally.

- xi) There will be no costs of these applications.

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DUNCAN J.