

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *P.A.B. v. B.A.B.*, 2006 YKSC 25

Date: 20060322
Docket: S.C. No. 05-D3821
Registry: Whitehorse

BETWEEN:

P.A.B.

Petitioner/Plaintiff

AND:

B.A.B.

Respondent/Defendant

Before: Mr. Justice R.S. Veale

Appearances:
Shayne Fairman
The Respondent

Appearing for the Plaintiff
Appearing on her own behalf

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is an application by Mr. B. for interim joint custody of T.E.B., aged three, and T.G.B., aged 16. It is also an application for an order that Ms. B. return T.E.B. to the Yukon Territory or that Mr. B. be permitted to return T.E.B. to the Yukon Territory immediately.

[2] The application also seeks directions with respect to the occupancy of the family home.

[3] THE RESPONDENT: Hello?

[4] THE COURT: Hello.

[5] THE RESPONDENT: Sorry, I thought I lost you there.

[6] THE COURT: No. This application was filed on March 1, 2006, and Ms. B. was initially represented by Ms. Hoffman, at least at a hearing that took place on March 14 of this year. Ms. Hoffman was directed, at that time, to have an affidavit of Ms. B. filed by March 17, which was last Friday. The matter was set over to today, March 22nd, for hearing, based on the affidavits of both sides.

[7] Ms. Hoffman made an application to get off the record on Friday March 17th, and I ordered that she be removed from the record, but I ordered that today's date remain the same for hearing the application.

[8] Ms. B. was able to file an affidavit and does not have Yukon legal counsel, but she was able to file her affidavit yesterday, March 21, 2006, and she provided a copy to Mr. B.'s counsel on the same day. The upshot is that Mr. B.'s counsel has not had an opportunity to respond to what is a very lengthy affidavit filed by Ms. B. It is an affidavit, just to give some indication, in excess of 70 paragraphs.

[9] Ms. B. is not present in court, but she is present by telephone at, I believe, her home in Alberta.

[10] I would first like to deal with T.G.B., who is 16 years old. I am not going to make any order with regard to T.G.B.. She is at an age where the Court would be unlikely to make an order in any event, but she appears to be residing with friends in Whitehorse and I am under the impression that Ms. B. believes that she is in good hands and there

is no reason for us to interfere with T.G.B.'s family situation at this time. But there is sufficient evidence before me from Ms. B. that there is an unhealthy relationship or rather, at least, an adversarial relationship between Mr. B. and T.G.B. and, as a result of that, I am going to make a no contact order and a no communication order between Mr. B. and T.G.B. Any communication that Mr. B. may wish to have with T.E.B. should be done through the adult persons with whom T.E.B. is presently residing in Whitehorse.

[11] Now, with respect to T.E.B., who is three years old. Mr. B. and Ms. B. have had, I would say, what appears to be a stormy or difficult relationship for a period of some 10 to 13 years, with several periods of separation. However, they were able to get back together from time to time and they did have T.E.B. as their child and she was born on March 12, 2003. Apparently, at this time the parties were separated, but they did get back together in, I believe, September of 2005.

[12] Ms. B., in the late fall of 2005, took stress leave from her employment with NorthwesTel and, in early January of 2006, she, with the blessing of Mr. B., returned to Alberta where Ms. B.'s family is, in order to celebrate Ukrainian Christmas. There was no intention on the part of either Mr. B. or Ms. B. in early January 2006 that there would be a separation; however, Ms. B., on returning to her family, has decided that she is going to stay in Alberta for the present time or the foreseeable future. I do not think there is any indication that she has made a permanent decision in that regard, but nevertheless, she does not wish to return to the Yukon at this time.

[13] The allegations made by Ms. B. with respect to T.E.B. are not of the gravity that would result in Mr. B. not being entitled to have access to and, indeed, custody of T.E.B.

It appears that they have both been involved in T.E.B's upbringing, at least since they have got back together in September of 2005. I also indicate, though, and this may be unfair to say at this time because Mr. B. has not had an opportunity to respond to Ms. B.'s affidavit, but I get some impression from the material that he may not be a model parent and may have difficulties with his temper, but, nevertheless, as I have indicated, they are not of an order that I would deprive him of access or custody.

[14] In submissions made this morning, Ms. B. indicated that if the Court were to order that T.E.B. be returned to the Yukon, it would be her preference that she not be the one that returns T.E.B. to the Yukon but that that be left to Mr. B.

[15] So this morning I am going to make an interim interim order. I am going to order interim interim joint custody of T.E.B. I am going to order that Mr. B. return to the Yukon with T.E.B. immediately, and before we complete this morning I do wish to hear what Ms. B. has to say with respect to access to T.E.B. while she is being returned to the Yukon and when T.E.B. is in the Yukon.

[16] I am going to order that Mr. B. have interim interim possession of the matrimonial home and I am going to order that this matter be set over and heard on March 30, 2006, which I understand is next Thursday. I should indicate that if Mr. B. has any further information to put before the Court, it should be put before the Court no later than Friday. Mr. Fairman, is that reasonable?

[17] MR. FAIRMAN: This Friday?

[18] THE COURT: Yes.

[19] MR. FAIRMAN: No, that would not be reasonable. I would think that next Monday or Tuesday.

[20] THE COURT: Okay. Monday, no later than 4:00 p.m. with a copy of the material forwarded by fax to Ms. B.'s Alberta counsel, Mark Idler. I should indicate that I previously made an order that documents may be delivered to Ms. B. by faxing them to her counsel in Alberta's fax number.

[21] MR. FAIRMAN: My Lord, I wonder if I might have until Tuesday at 4:00 p.m. I say that because I anticipate that for much of the next -- for at least a few days over the next intervening time, my client's not going to be reachable because he will be returning to the Yukon by road.

[22] THE COURT: Oh, he is in Alberta at the moment?

[23] MR. FAIRMAN: Yeah.

[24] THE COURT: Oh I see.

[25] MR. FAIRMAN: And my own personal commitments, I have matters before the court tomorrow, again Friday, and then I'm actually out of town for the weekend, so Tuesday would be --

[26] THE COURT: Yes. No, I am sorry, I forgot that Mr. B. is in fact in Alberta and has to return. So Tuesday at 4:00 p.m. for the filing of --

[27] MR. FAIRMAN: Thank you.

[28] THE COURT: -- Mr. B.'s reply affidavit. Ms. B.?

[29] THE RESPONDENT: Yes.

[30] THE COURT: What about your access to T.E.B. in the meantime, between now and March 30th? What kind of access would you like to have? In other words, they will be on the road, but they will certainly, I would expect, be here by the weekend.

[31] THE RESPONDENT: Okay. So you have them return immediately, then?

[32] THE COURT: Yes.

[33] THE RESPONDENT: Oh, I see.

[34] THE COURT: But you can have phone access. For example, I can make an order that Mr. B. phone your residence on a daily basis, that sort of thing.

[35] THE RESPONDENT: Oh, okay. Any of that sounds good or vice versa.

[36] THE COURT: Okay, but you won't know where they are, though, when they are driving back.

[37] THE RESPONDENT: Oh, right.

[38] THE COURT: So I will make an order that Mr. B. phone Ms. B.'s residence at, let us say at 6:00 p.m. each day?

[39] THE RESPONDENT: That sounds good. Maybe I should give you my cell phone; that would be the best.

[40] THE COURT: Oh, your cell would be best. What's that number, please?

[41] THE RESPONDENT: [Replied]

[42] THE COURT: [Repeated]

[43] Now, is there any issue with respect to - I know there is an order in Alberta - is there any issue with respect to, can you speak to Mr. B.? How is that relationship going?

[44] THE RESPONDENT: I have not spoken with him since the end of January.

[45] THE COURT: Okay. So in other words, you want the use of that cell phone to be for your daughter only?

[46] THE RESPONDENT: Yes.

[47] THE COURT: Okay. So Mr. Fairman, make it clear in the order that that communication to the cell phone is for her daughter only. Now, once they are back in Whitehorse there could be a daily phone call and, the difficulty is, I do not know what time to make those phone calls because I do not know what the employment situation is, but I suppose they could be at 8:00 a.m. and 6:00 p.m. Again, that would not be unreasonable?

[48] THE RESPONDENT: Yeah. No, that's no problem, any time.

[49] THE COURT: Okay, but maybe you should be making those calls, do you follow me?

[50] THE RESPONDENT: Oh, you mean, me phone?

[51] THE COURT: Yeah, I think that would be the best situation because it may be that Mr. B. is not at home or I do not know what his hours of work are and so on, but if I make the order that you will make daily phone calls to speak to T.E.B. at 8:00 a.m. and 6:00 p.m. then everybody knows the situation.

[52] THE RESPONDENT: Okay. In between those hours. I don't have to call at eight and six, is that correct?

[53] THE COURT: What we are trying to do is give specific times so that you do not get frustrated if she is not there, you know what I mean?

[54] THE RESPONDENT: Okay.

[55] THE COURT: Now, if there is another time that you think is appropriate or convenient.

[56] THE RESPONDENT: Well, if they have plans I don't want them to have to, if they're somewhere swimming or visiting, I don't want them to have to rush home because I have to call them at that certain time. I just don't think that would be fair of me.

[57] THE COURT: Okay.

[58] THE RESPONDENT: How about if I call after 6:00 p.m.? It's the most cost efficient time to call, after six o'clock.

[59] THE COURT: Okay. Well, I could just leave it then that there will be a daily phone call after 6:00 p.m.?

[60] THE RESPONDENT: That's right.

[61] THE COURT: Okay. By the way, T.E.B. can call you at any time she wishes, if she able to use the phone.

[62] THE RESPONDENT: Yeah, that's right, or I mean if P.B. is frustrated and he just wants to put her on the phone to settle her down, he can do that as well.

[63] THE COURT: Yes, and I mean that should be in the order. There is no reason that she should not be able to call her mother from time to time.

[64] MR. FAIRMAN: She's three.

[65] THE COURT: I know.

[66] MR. FAIRMAN: All right. And we're dealing here with what's going to happen between today and next Thursday?

[67] THE COURT: Yes.

[68] MR. FAIRMAN: Much of which my client will be on the road.

[69] THE COURT: Well, it is sometimes an upsetting experience to have custody changed dramatically.

[70] MR. FAIRMAN: I appreciate that, but there's another more important matter that needs to be addressed then, which is that none of what you're telling Mr. B.

to do can be done so long as this order in Alberta exists, which would have him arrested if he does any of the things that you are suggesting.

[71] THE COURT: What are you suggesting?

[72] MR. FAIRMAN: I am suggesting that ideally, if Ms. B. could instruct her counsel in Alberta to have this order set aside, then these matters could proceed. Otherwise, I suspect we are going to have to make application in Alberta to set aside this order immediately once we have your order of today's date filed. So maybe a direction or a recommendation from this Court to Ms. B. or a suggestion that if we can resolve -- we have conflict of laws here that's awkward.

[73] THE COURT: Well, Ms. B., what I recommend that you do is speak to Mr. Idler and indicate what my order is, and he can speak to Mr. Fairman and they can determine whether or not they can resolve that matter. My view is that the order I have made today takes precedence over the Alberta order, but you should deal with your counsel in that regard. Can you indicate at this point your intention?

[74] THE RESPONDENT: My intention?

[75] THE COURT: With respect to the order that I have made today. Will you be attending in Whitehorse, for example, on March 30 for the hearing? It is not obligatory, you can attend by phone, but I am just asking what your intention is.

[76] THE RESPONDENT: Okay. I can attend on the phone.

[77] THE COURT: Okay. Anything further, Mr. Fairman?

[78] MR. FAIRMAN: No. These are practical matters, but Ms. B., while you are on the phone, I understand that T.E.B. is with Mr. B. today and has already picked her up; is that right?

[79] THE RESPONDENT: Yes, T.E.B. is with Mr. B. at this time.

[80] MR. FAIRMAN: So I will leave it then, Ms. B., for my client's mother to contact you about recovering her possessions from your home, so that he can return to the Yukon with her; is that satisfactory?

[81] THE RESPONDENT: Yes.

[82] MR. FAIRMAN: Okay.

[83] THE RESPONDENT: They may be at Mr. B.'s parent's right now.

[84] MR. FAIRMAN: Yeah, I will contact him at his parent's home when I leave court today.

[85] THE RESPONDENT: Okay.

[86] MR. FAIRMAN: But you could expect a call probably from Mr. B.'s mother about recovering T.E.B.'s items. I don't know whether he needs to get the car seat, whether he needs to get other items from you.

[87] THE RESPONDENT: Yeah, there's a car seat and then there will be some clothes and toys.

[88] MR. FAIRMAN: Okay. All right. Thank you, Ms. B., and, My Lord, with respect to the items regarding telephone access and contact, I will draft something as best as I can with respect to your comments and send it over for court approval. I ask that the requirement of Ms. B. to sign the order be dispensed with.

[89] THE COURT: Yes, that will be dispensed with, but --

[90] THE RESPONDENT: Can I just confirm something?

[91] THE COURT: Yes, just before you do, though, Ms. B., this order will be signed by the Court and then I am directing Mr. Fairman to immediately fax a copy to Mr. Idler.

[92] THE RESPONDENT: Okay.

[93] THE COURT: Yes, you may.

[94] THE RESPONDENT: I just want to confirm. So Mr. B.'s access was for 10:00 a.m. to 6:00 p.m. today, but you would like me to go get her clothing and toys and such and is she just going to stay with him?

[95] THE COURT: Well, it would seem to me that that is the order I have made, yes.

[96] THE RESPONDENT: Okay.

[97] THE COURT: That she just stay with him and they can start back, you know, tonight or tomorrow morning, depending on what arrangements they have made.

[98] THE RESPONDENT: All right, okay.

[99] THE COURT: Okay. Thank you very much, Ms. B.

[100] THE RESPONDENT: Thank you for your time.

[101] THE COURT: Okay. Just make sure that you are available at this number, you will be at this same number on Thursday March 30 of next week?

[102] THE RESPONDENT: Yes, that's right.

[103] THE COURT: Okay. And it will be 10:00 a.m. Yukon time, 11:00 your time.

[104] THE RESPONDENT: Okay.

[105] THE COURT: Thank you.

VEALE J.