Citation: *Re: Children's Act and S.G.*, 2004 YKTC 39

Date: 20040507
Docket: 96-T0044
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**
Before: His Honour Judge Barnett

In the Matter of the *Children's Act*, R.S.Y. 2002, c. 22
as amended, and in particular s. 118.

And in the Matter of S.G.

Appearances:

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|---|---|
| Lee Kirkpatrick | Counsel for the Director of Family and Children's Services |
| Christina Sutherland | Child Advocate |
| Fia Jampolsky | Counsel for L.G. |

**REASONS FOR JUDGMENT**

[1] These are child protection proceedings. The Director of Family and Children's Services filed an application on February 26, 2004 seeking a four-month extension of an existing temporary care and custody order.

[2] The child who is the subject of these proceedings is S.G. (hereinafter referred to "S") Her 11th birthday will be on May 12, 2004.

[3] S's birth father is S.B. He has not played a role in S's life for many years.

[4] S's mother is L.G. She enjoys an intermittent domestic relationship with D.H., who S calls "dad". Both L.G. and D.H. testified during the course of this hearing.

[5] S is the youngest of five children born to L.G. The oldest, N, was born on September 29, 1977. N was apprehended on May 30, 1978 because L.G. was drinking excessively. That apprehension, more than 25 years ago, was followed by many more similar events. N and B spent their childhood years in their grandmother's care. S was raised by her grandmother. J was apprehended as an infant and later adopted.

[6] L.G. is now 46. The evidence makes it very clear that she has been abusing alcohol for many years. She has been unable to gain control of her own life and in those circumstances she has been unable to parent her children in a satisfactory manner. (I do not say nor believe that alcohol is the only problem but it is central to L.G.'s inadequate parenting.)

[7] S was first apprehended from L.G.'s care on July 9, 1996. There was a hearing before Judge Faulkner in September 1996 and on October 2, 1996 he gave reasons for finding that S was then a child in need of protection. S was not returned to L.G. until May 21, 1997.

[8] S was apprehended a second time on September 11, 1997. L.G. consented to a temporary order. S was returned on January 22, 1998.

[9] S was apprehended a third time on November 22, 2001. L.G. did not attend the court hearing which followed and a temporary order was therefore made in her absence. S was returned on April 4, 2002.

[10] S was apprehended a fourth time on January 20, 2003. L.G. consented to the making of a temporary order on June 19, 2003 and to the extension of that order on October 20, 2003. But she opposes the Director's present application and says that S should now be returned to her.

[11] I do not believe that any good purpose could now be served if I were to attempt a review of all the incidents which brought L.G.'s children into protective care since N was first apprehended. It is sufficient to state that there is an abundance of evidence which supports the following findings:

1. L.G. has abused alcohol for many years. She has told social workers and other persons many times that she stopped drinking but if she ever did it was never for long. L.G. has an alcohol abuse problem still.
2. L.G. has consistently failed to provide a home for S which is peaceful and safe. S has been exposed to harmful and even dangerous situations when L.G. has been drinking.
3. L.G. has long blamed other persons for her problems (I note that the affidavit of Valerie Mogck filed after S was first apprehended records that in 1989, L.G. was claiming that her drinking was "because her mother was seeking permanent custody of N, B and S". See Ex. 8, Tab 3, para. 8(m)).
4. L.G. has long denied that her drinking is a problem, or has claimed that she stopped drinking and has correspondingly claimed that she is addressing the other issues in her troubled life by self-healing efforts.
5. L.G. cannot look to her now adult children or members of her extended family for help. She is estranged from N and B and also from her siblings. I am sure there are real reasons for all these situations but the overall picture is quite remarkable. L.G. is isolated in a manner that is not healthy for S.
6. L.G. has most often approached persons working within "the system" with suspicion and hostility. It has been unusually difficult for her to trust any person who might be able to offer some real help. These attitudes have caused her to reject suggestions that she attend a residential substance abuse treatment center, join AA, allow a family support worker into her home, attend for professional counselling, take a parenting course, etc. And again, these attitudes are long standing.

[12] I listened carefully while L.G. testified for a full two hours on April 22 and I have read her affidavit (Ex. 11) many more times than once. I believe that this evidence fully supports the findings which I have summarized and that it also reveals another difficulty: L.G. has fixed her focus upon her own issues and grievances and has still not given enough consideration to S's needs and well-being.

[13] When S was returned to L.G.'s care on April 4, 2002, a three-month supervision order was made. The Director allowed that order to lapse although the Director's social workers knew perfectly well "that [L.G.] (sic) did not comply with the terms of the supervision order" (See Ex. 8, Tab 9, para. 9(d). L.G. was drinking excessively throughout 2002, a fact which she now acknowledges. L.G.'s home was a "party house" and a place to which the Royal Canadian Mounted Police were called on five occasions during 2002.

[14] The events which culminated in the apprehension of S on January 20, 2003 began at L.G.'s home during the night of December 5, 2002. L.G. and D.B. were drunk and fighting. S was in the home. The RCMP attended. D.B. was arrested upon L.G.'s complaint. He was charged with assault. The charge was stayed when L.G. would not provide a statement as she had said she would do. And when L.G. failed to respond to the determined efforts of Ms. Jennejohn, a social worker, to discuss matters with her, S was apprehended. These events are more fully described in Ms. Jennejohn's affidavit: Ex. 8, Tab 9.

[15] Ms. Jennejohn tried hard to work with L.G. and she was, it seems, beginning to achieve some success before she took other employment in the fall of 2003. Before S's file was turned over to a new social worker, Ms. McCormack, it was decided that S would be retuned to L.G. at the end of February 2004 when the temporary care and custody order made October 30, 2003 was due to expire. L.G. knew this and so did S.

[16] Ms. McCormack was not entirely comfortable with the decision which others had made and which she was expected to implement. She suggested that S remain in the Director's care for a further short period of time but L.G. did not agree.

[17] On February 21, 2004, Ms. McCormack received a report concerning an incident which happened at L.G.'s home on February 20, 2004. That report caused the Director to reconsider matters and the present application followed.

[18] L.G. was angry. She believes that events of February 20, 2004 were entirely the fault of her daughter, B. When this hearing commenced, L.G.'s stated position was that "I believe that I have done everything that the Director has asked of me, however, every time [S] is set to return home, the Director finds another reason why she should not" (See Ex. 11, para. 4). Once again, L.G. felt "the system" had cheated and betrayed her.

[19] I understand L.G.'s frustration. Similar thoughts are often expressed in child protection cases and sometimes they are justified. But Ms. McCormack reached a correct conclusion in February when it was decided that the Director would apply for an extension order: S was then still a child in need of protection and a supervisory order would not then have been sufficient or appropriate. It is likely that the events of February 20, 2004 did not happen just as they were initially reported to Ms. McCormack but that is not a matter of any great concern. Such incidents simply do not happen in homes which are acceptably safe for young children. L.G. needs to understand that no excuse can be good enough.

[20] S is, by all accounts, a generally happy girl. She tries hard in school but some subjects are very difficult for her. She is very loyal to her mother and she is anxious to be able to go home. She does need some special help and she has been receiving that help while she has been living in the Zakarow's home.

[21] L.G. herself says that S asked her to stop drinking “a long time ago”.

[22] L.G. has not stopped drinking. She says that she can now control her drinking. She says that she knows that she can go to the bar to have two or three beers with her friends and then walk away with no problems. She believes that. I do not. There is no such thing for L.G. as the “good drinking” which she has foolishly discussed with S. The only “good drinking” for L.G. is no drinking at all. Alcohol has blighted her life and if she cannot now stop drinking then I believe it is inevitable that she will lose S.. L.G. needs to understand that she very likely is in a “last chance” situation.

[23] The Director and the Child Advocate made similar submissions. They said that S should probably be returned to L.G. sometime, but not just yet. They said that L.G. has not sufficiently recognized her problems and acknowledged that S is a child in need of protection. They said that L.G. has not yet demonstrated the will or the ability to make necessary changes. It cannot be denied that there is merit to such submissions.

[24] I have given this matter a great deal of anxious consideration. I believe that L.G. still has a long road ahead of her and that her journey will not be an easy one. But I am convinced that if S is ever to be returned to L.G., that must happen now. I believe that S’s safety will be assured and that it is therefore in her best interests that the reunion with her mother not be indefinitely postponed once again.

[25] I believe that L.G. has made important changes and commitments. These did not come quickly or easily. They are:

1. L.G. has established a meaningful relationship with Joanne Hutsul who is (I am told) a well-qualified psychologist and who L.G. tells me she

trusts. L.G. tells me that she is committed to continuing this therapeutic counselling.

2. L.G. is committed to attending a residential treatment center, likely in British Columbia or Alberta and with S.
3. I believe that the promises L.G. made when she testified on April 22 and confirmed in court on May 6 are meaningful and important. They are not merely conditions imposed upon her by a social worker or by a court order. I expect that L.G. will make every reasonable effort to honour these promises. (And I note that L.G. was honest to tell me when an “absolute abstention” commitment was suggested, that she could not yet make that promise.)

[26] When this matter was again before the court on May 6, 2004 I made an order which, in its most essential terms, provides that S will be returned to L.G.’s care and custody on June 18, 2004 subject to a two-year period of supervision by the Director and subject to conditions which reflect the promises and commitments which L.G. has made. These reasons explain and complement the decision (which was delivered orally and which is to be transcribed).

[27] A copy of these reasons will be sent to Dr. Hutsul. When the transcript from May 6 is available a copy of it will also be sent to Dr. Hutsul.

[28] This matter is to be reviewed in court before me during August 2004. Counsel and the Child Advocate will consult with the trial coordinator to arrange this.

Barnett T.C.J.