

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

CARRIE-ANN DILLON

PLAINTIFF

AND:

SEAN KENNETH SHORE

DEFENDANT

**REASONS FOR JUDGMENT OF
MR. JUSTICE HUDSON**

[1] There is one motion on behalf of the plaintiff before the court. What is sought is:

1. The Plaintiff be granted interim joint custody of the child of the relationship, Kenneth Tyler Shore, born February 27, 1995 ("Kenneth").
2. In the alternative, the Plaintiff be granted specified, unsupervised and reasonable access to Kenneth.
3. The Defendant be restrained from removing Kenneth from the Yukon Territory without the written consent of the Plaintiff.
4. Costs of this Application.
5. Such other relief as this Honourable Court deems just.

[2] The Writ of Summons herein was filed on November 7, 1995. An Appearance was filed but no Statement of Defence has been filed or served. Other than numerous

motions, there have been no other pleadings. There have been several counsel involved in the matter.

[3] There have been 13 interim orders, all of them relating in one way or another to custody and access.

[4] A significant factor to the matter is that a Custody and Access Report was ordered. This report was produced by Ms. Joanne Tessier on February 19, 2001 and filed on February 28, 2001. Although it has been filed for over one year, this is the first reference to it in a court proceeding, notwithstanding that it is a comprehensive report, albeit over 50 pages long. Perhaps this is because it requires considerable time to read and consider.

[5] Going back to 1995, there have been allegations and admissions of substance abuse, uncontrolled anger and, generally, a lack of parenting skills on the part of the plaintiff. With respect to the defendant, there are allegations of violence and lack of understanding of the needs and the requirements of the child, Kenneth, and generally, immaturity in the matter of regarding what is in the best interests of Kenneth.

[6] These are all dealt with in the report of Ms. Tessier at length. Ms. Tessier makes considerable first-hand observations and comments thereon. Ms. Tessier also makes recommendations. Comparing this report with the emotional nature of all of the affidavits sworn and filed by the parties (a situation that continues), I have no hesitation in using the Custody and Access Report as the basis for my order herein.

[7] I am concerned that this is a further interim application, as in the last six and one-half years. My order herein is coloured by my desire to see that these parties bring this matter to trial in order that the court may have something more from the parties by way of personal testimony in place of the faceless affidavit evidence which lacks objectivity and, in many cases, maturity of thought. Affidavits are not an appropriate basis to decide the best interests of Kenneth in the long term. The report of Ms. Tessier is a major step in this direction, however, I emphasize that my order herein is most definitely an interim order and is made on the basis that an appropriate application for a final order will be made at a trial to be held as early as possible or, more hopefully, on the basis of consent given after negotiation, discussion and compromise.

[8] The present situation is described in the report of Ms. Tessier, but I shall describe it briefly.

CARRIE-ANN DILLON

[9] Carrie-Ann Dillon, the mother of Kenneth, is presently resident in Whitehorse with her new partner, Mr. Mark Russell. They have a child, a boy, Robin, two-years of age. Ms. Dillon is not employed at this time. Mr. Russell is fully employed and with some assistance supports the family. The plaintiff and Mr. Russell are expecting a second child being born in September 2002.

[10] Assertions have been made as to the history of the difficulties experienced by Mr. Russell in that suggestions were made that he may have been guilty of child abuse. There is apparently no substantiation for this and, as Ms. Tessier says, it behooves all

to move this matter forward so that Mr. Russell can, if possible, relieve himself of this shadow.

[11] The plaintiff and Mr. Russell live with Robin in a rented condominium in a subdivision of Whitehorse. Mr. Russell is 40 years of age.

SEAN KENNETH SHORE

[12] The defendant, Sean Kenneth Shore, is 26 years of age. He is presently unemployed and has a relationship, the exact nature of which is somewhat unclear in terms of place of residence, since he seems to be still living with his mother. His spouse's name is Elizabeth Barrett. She is 36 years old. Mr. Shore is presently unemployed and Ms. Barrett is employed and rents her own home. She has two children, Justice and Ashley, and Mr. Shore and Kenneth sometimes stay over at her house.

BACKGROUND

[13] The affidavits filed describe the relationship between Ms. Dillon and Mr. Shore's mother and Ms. Barrett in a variety of ways. I simply deduce from them that the parties manage to communicate usefully, but are not supportive of each other.

[14] Mr. Russell appears to be a reticent person, not given to participating in the difficulties with respect to the defendant and his mother and spouse, but at the same time is supportive of the plaintiff. He is also an attentive father to his son Robin's needs and, in all the evidence before me, is mindful of Kenneth's needs as well.

[15] The relationship between Ms. Dillon and Mr. Shore is regrettably marked only by bitterness, anger and distrust. It would appear there has been very little mature effort in the interests of the child, Kenneth, to undertake compromises which would enable communication to be taking place between the mother and father to the benefit of the child. While Ms. Tessier regards the present circumstance as preventing her from recommending a joint custody order, and even further, indicates that it might be better in Kenneth's interest that they not have direct communication, this does not mean that they should not bend efforts in the interest of their son to develop avenues of communication to give more ready attention to his needs, without the necessity of communicating through spouses, parents, and supervisors. They should bear in mind that these people will not always be available to help them address the difficulties or needs to be experienced by Kenneth when he achieves adolescence and young manhood. It will be up to them to provide the best support – emotionally and physically.

[16] In view of the foregoing, I do not give any further consideration to the possibility of an order of joint custody, particularly since this is an interim order. Joint custody requires a degree of cooperation, which will ensure that the joint interests and the joint status will not be mired in acrimony. This simply does not exist and there is no order for joint custody.

[17] We are therefore left with four considerations in this matter:

1. Should there be unsupervised access to Kenneth, to be exercised by the plaintiff?
2. What should be the extent of this access?

3. Should there be a non-removal order of the child from the Yukon?
4. What steps can be taken to improve the availability of Kenneth to both his parents jointly, and of those, which can be made part of a court order?

[18] I have read all of the affidavits filed in this matter, but the later ones are of greater interest. I have also read the Custody and Access Report with special regard to the assessments of the author, Ms. Tessier.

[19] The problems experienced in the relationship between Ms. Dillon and Mr. Shore appear to have arisen out of the abuse of alcohol and other drugs giving rise to uninhibited actions which, admittedly, placed Kenneth in jeopardy at the time. Ms. Tessier's report indicated in several instances that Ms. Dillon has achieved considerable success in rehabilitating herself with respect to substance abuse and anti-social conduct. It seems to me that Mr. Shore and his family are rather slow in coming around to the same realization.

[20] On page 37 of the Custody and Access Report, Ms. Tessier quotes a source as saying that:

Mr. Russell and Ms. Dillon stay home with Robin and do not drink.

[21] Ms. Dillon, in her own affidavit, indicates that she has stopped drinking years ago. It appears that Ms. Tessier's investigation supports that affidavit.

[22] With respect to Ms. Dillon, Ms. Tessier reports at page 43 of the Report:

The results (of tests) are on parenting questionnaires show her as having several difficulties, and she falls within the above the (*sic*) normal range on some indices of parenting skills. Assessment of potential for child abuse revealed no indication of child abuse potential.

[23] About Mr. Russell, she says at page 44:

Assessment of potential for child abuse was valid. There was no indication of child abuse potential evidence from other testing and observations.

[24] With respect to Mr. Shore, Ms. Tessier reports at page 46:

Mr. Shore demonstrated the ability to provide for Kenneth's physical care needs, however there were mixed reports from sources regarding the social and emotional interaction between Mr. Shore and Kenneth. The parent's and their respective partner's parenting questionnaire profiles suggest that parental satisfaction, communication and involvement were somewhat lower than normal. This finding was attributed to the limited relationship Kenneth had with these adults at different times in his life.

[25] Ms. Tessier also stated at page 46:

Parenting assessment results suggest that the parents/partners have adequate parenting abilities and child-parent relationships with Kenneth. There were some difficulties identified with each, however there were none that should preclude parenting.

[26] Mr. Shore continues with full custody and has met the requirements of Family and Children Services. Ms. Tessier states at page 47:

A primary concern that is relevant in this assessment is whether Mr. Shore is able to provide consistent care of Kenneth. Some documentation and sources indicated his

lack of understanding for Kenneth's needs and potential neglect of his needs.

[27] Regarding Ms. Dillon:, Ms. Tessier reports at page 47-48:

She no longer uses substances and she avoids social environments that revolve around partying. She now has a child with her present partner and is highly motivated to provide good parenting to him.

...

It is this assessor's opinion that Ms. Dillon is able to parent, and that with continued assistance and counseling her parenting responsibilities might be increased.

[28] Regarding Mr. Shore, Ms. Tessier reports at page 48:

It is this assessor's opinion that Mr. Shore is able to parent Kenneth, however he would likely benefit from access to a professional who can help him understand more effective parenting approaches.

[29] In summation at page 48, Ms. Tessier states:

In summation, it is this assessor's opinion that both parents are now able to provide parenting for Kenneth, but that there needs to be some safeguards in place to ensure that Kenneth's safety and care is protected. Both parents require support in their parenting role.

[30] At page 49, Ms. Tessier states:

Custody arrangements that can take into account Kenneth's need to have both of his parents involved intimately in his life are recommended.

[31] At page 52, Ms. Tessier says:

It is recommended that Ms. Dillon be provided greater opportunity to develop a relationship with Kenneth. However, this should be achieved carefully. ... I recommend that the (*sic*) Kenneth remain in his father's sole legal and residential custody, with the objective of eventually having Kenneth spend more equitable amounts of time with his mother.

...

It is recommended that Ms. Dillon be given permission to move from supervised to unsupervised access and visitation. Furthermore, it is recommended that the time she spends with Kenneth is gradually increased, with the strong suggestion that this be developed in accordance with Ms. Dillon's increasing emotional health.

[32] Based on Ms. Tessier's report, and always noting that this is an interim order, I have concluded as follows:

1. Ms. Dillon should have increased access to her son, Kenneth, gradually moving from supervised to unsupervised access over a period of three months, bearing in mind that Ms. Dillon has advanced somewhat since Ms. Tessier's report was filed.
2. There shall be a non-removal order with respect to the child, binding on both parents.
3. In considering what steps can be taken to improve the availability to Kenneth of his parents acting jointly, I believe that counseling is mandatory, and further, that the parents should, if possible, be given the opportunity to go through this report with Ms. Tessier on a highlighted basis.

[33] I therefore order as follows:

1. The defendant Sean Kenneth Shore shall continue to have interim custody of Kenneth Tyler Shore, born February 27, 1995.
2. The plaintiff, Carrie-Ann Dillon shall have access to education and medical information regarding Kenneth without hindrance from Mr. Shore or his mother or his spouse, all of whom shall cooperate in providing such information as may be requested from time to time.
3. It is ordered that the plaintiff shall have access to Kenneth as follows:
 - a) For the period following this order until May 1, 2002, access from 3:00 p.m. until 5:00 p.m. each Tuesday and Thursday, to be supervised, as in the past.
 - b) For the month of May 2002, from 4:30 p.m. until 7:30 p.m. each Tuesday and from 2:00 p.m. until 5:00 p.m. each Saturday, during which period there shall be supervision for the first hour of each visitation.
 - c) For the month of June 2002, from 4:30 p.m. until 7:30 p.m. each Tuesday and from 12:00 noon until 5:00 p.m. each Saturday, during which period there shall be supervision for the first hour of each visitation.
 - d) For the month of July 2002, from 4:30 p.m. until 7:30 p.m. each Tuesday and from 11:00 a.m. until 5:00 p.m. each Saturday, unsupervised.

- e) During the months of July and August, in addition to the above, the plaintiff shall have four days successively overnight visitation. The plaintiff will indicate when those four days shall occur before June 15, 2002.
 - f) The access for the months of August and September shall be as set out for July or as otherwise agreed to by the parties.
4. Although the court is loath to perpetuate an accusation or an allegation that might not be accurate, out of abundance of caution it is also ordered that the plaintiff shall not allow Kenneth to be alone with Mr. Mark Russell, although Mr. Russell may be with Kenneth in the plaintiff's presence.
5. There should be telephone access on days when there is no visitation between 6:30 p.m. and 7:00 p.m.

[34] All the times refer to the time for the picking up or returning of Kenneth from and to the plaintiff's residence. The defendant shall provide transportation to and from the plaintiff's residence.

[35] It is not my intention to detail access in this interim order for any longer than October 2002. By that time it is hoped that one of three things will have happened:

- a) a trial date will have been fixed;
 - b) the plaintiff might return to court to have the interim access order varied;
- or

- c) the parties may see fit to organize access on a compromised, cooperative basis.

[36] I do not think an interim order should extend to the period suggested in the draft order presented.

[37] There are recommendations in Ms. Tessier's report, which I heartedly agree with but which I do not include as court orders.

[38] Ms. Tessier states on page 49:

Documentation regarding interactions between Ms. Dillon and Mr. Shore suggest that measures should be taken to ensure that visitation between parents should be arranged by the use of a third party or neutral setting. (My emphasis)

With this I agree, with emphasis on the words "visitation between parents". In other words, they should each be there with a third party.

[39] At page 54, Ms. Tessier states:

It is important that each parent know that Kenneth must not be exposed to "put-downs" of the (*sic*) either parent.

I heartedly agree with this and would add that it would be most helpful in Kenneth's development if Mr. Shore and his immediate family and his spouse would discontinue any judgmental approach to Ms. Dillon and, instead, assist in the matter of access on a cooperative basis.

[40] Ms. Tessier accepts that Ms. Dillon has "cleaned up her act" to a considerable degree. In my view, it would appear time for Mr. Shore to do the same.

[41] Arising out of the nature of the matter and the evidence I have heard, the plaintiff should have the costs of this application.

[42] I recognize that my order includes certain aspects of access which were not discussed at the hearing. I invite the parties, in the event there is inconvenience, to compromise by shifting the hours to suit the convenience of all, if possible. I believe it is recognized that I am here attempting to follow the report in letter and in spirit.

[43] I encourage the parties to come together and cooperatively develop the next step. However, if problems appear then either party may return to the court for clarification.

Hudson J.

Kimberly M. Eldred For the Petitioner

Lynn MacDiarmid For the Defendant