IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *D.M.M.* v. *T.B.M*, 2004 YKSC 71

Date: 20041008
Docket: S.C. No. 02-D3464
Registry: Whitehorse

Between:

D.M.M.

Petitioner

And:

T.B.M.

Respondent

Before: Mr. Justice L.F. Gower

Appearances:
D.M.M. — On her own behalf
Kathleen N. Kinchen — For the Respondent

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is an application by D.M.M., the petitioner, to vary the order of Mr. Justice Richard, made on November 14, 2003, where he ordered supervised access by the petitioner at a place and location to be "mutually agreed upon" by the petitioner and the respondent, T.B.M. She seeks to have that changed so that she has reasonable and generous access to the child, R., and to ensure that T.M. has no contact, direct or indirect with R. during such access. She also seeks a schedule of

unsupervised access to include a minimum of two days per week and either, as I understand her submission, one day of each weekend, or two days on alternate weekends.

[2] This matter has a lengthy history and numerous conflicting affidavits have been filed to date. I have seized myself of the matter and I understand from the parties that it will be proceeding to trial in the relatively near future.

[3] One of the few pieces of impartial and objective information that has been filed is the Custody and Access Report of psychologist, Geoffrey Powter, dated January 30, 2004. I say that recognizing that D.M.M. may take issue with my characterization of the report, but at this point, on an interim application, I have to be guided by what is in the best interests of the child, R., and on the best evidence that is available.

[4] I am paraphrasing and quoting intermittently from Mr. Powter's report in the following remarks:

> "…in September, 2003, [T.B.M.] called Family and Children's Services with a complaint that [T.M.] had physically hurt [R.] …
>
> In summary, [Family and Children's Services] staff followed up on that complaint, interviewing several sources, especially [R.] a number of times, and for the most part got consistent details: [T.M.] allegedly grabbed [R.] by the hair, with [R.] hitting his forehead on the kitchen table in the process, getting the bruise which brought the incident to [T.B.M] attention. [R.] also apparently stated that [T.M.] had been trying to force feed him, and [R.]'s resistance to this provoked his grabbing [R.]'s hair.

> [T.M.], however, denied any degree of hurting [R.]. He insisted instead that he and [R.] had simply been playing, and [R] had struck his head by accident. [D.M.M.] stated in her interviews with me [Mr. Powter] that she also believed that this was the case – that whatever went on was simply an accident. ...
>
> [R] has continued to tell his story with consistent details a number of times to several different sources (including this writer [Mr. Powter] in January 2004, [R.] told [Mr. Powter] that [T.M.] had "hurt him."). But [D.M.M.] indicated that [R.] has told her that nothing untoward happened - and in my [Mr. Powter's] presence, asked the boy whether anything had in fact happened. Then, [R.] altered the story and said that [T.M.] had "never hurt" him. [D.M.M.] said this has always been [R.]'s presentation to her, and she indicated to me [Mr. Powter] (and to other agencies) that she believed the whole issue is caused by "someone trying to ruin her relationship [with T.M.]."

[5] On October 30, 2003, D.M.M. was interviewed by a Victim Services counsellor and eventually swore a statement against T.M. which resulted in an Emergency Intervention Order being filed against him.

> According to [D.M.M.], the counsellor at Victims Services grossly misrepresented what had been said in the interview. [D.M.M.] said she felt a great deal of pressure to file the order quickly, and did not have sufficient time to read the statement carefully (though her signature of content approval is on the application order). [D.M.M.] said it was only when she saw the immediate consequences of her filing … that she began to understand how "overblown" the steps that had been taken against [T.M.] were.
>
> …
>
> According to [D.M.M.] …the fact that these filed statements were so overblown led her to try to withdraw the EIO. …

> Then, in mid-December 2003, [D.M.M.] again filed complaints of assault against [T.M.] when another episode of violence occurred. The police were once again called, and a second EIO against [T.M.] was filed.
>
> …
>
> Not long afterwards, [T.M.] left the Yukon to attend … a Christian-based program designed to deal with spousal violence. …

[6] According to Mr. Powter, D.M.M. felt that:

> … she should open her heart to [T.M.] once he finishes the program, and try and recreate the hope that they had in their relationship.
>
> [D.M.M.]'s apparently resolute willingness to forgive [T.M.] – and her refusal to consider him a potential risk to her son – construct much of the continuing dispute between [them] and create much of the ongoing confusion and frustration by the many agencies involved in the matter.

[7] Mr. Powter said:

> Indeed, instead of [D.M.M.] taking steps to guarantee the boy's safety, she had also brought an application before the court at the same time to have her *second* complaint against [T.M.] revoked. She insisted yet again that her claims against [T.M.] were once again unjust. The court declined this application as well.
>
> While [D.M.M.] acknowledged that she had been the victim of assaults by [T.M.], she downplayed the depth and relevance of these episodes. She continued to say that her reports to Family and Children's Services and Victims Services had been grossly overblown by the agencies, and repeated that [T.M.] had subsequently been the victim of an unjust persecution. She once again insisted that she and [T.M.] simply needed to privately work out their conflicts, and

> she continued to say that their dynamic of violence was something that was a private call for help, not any kind of criminal or public concern.

[8] Under the heading "Outcomes Desired by the Parties Involved," Mr. Powter noted that:

> [T.B.M.] said he believed in principle that [R.] should have a regular and strong relationship with his mother and that he believed this should take the form of regular and rich contact … but he clarified again that he felt [D.M.M.]'s mental health - and especially her continuing relationship with [T.M.] – would not make such contact reasonable at this point in time.

[9] Under the heading "Information Regarding the Petitioner," Mr. Powter indicated:

> When speaking about her work – or virtually any area of life outside of the dispute – she seems intelligent, articulate and well-thought out, but as soon as she begins speaking about [T.M.] and her desire for a continuing relationship with him, her capacity for reason seems to fall apart. (Though again, she does seem to base all of her thoughts on the conviction that the matters with [T.M.] are simply unjust and unwarranted persecutions – even by herself. I do have to admit that if there were any merit to this conclusion, many of the confusions that myself and others have about [D.M.M.]'s relationship would be lessened greatly. The weight of evidence against [T.M.], however, simply seems far too strong.)

[10] Under the heading "Does the father or mother pose a threat of physical, emotional or sexual abuse to the children?", Mr. Powter said this:

> This would appear to be the dominant – and most confusing issue in the matter. The question before all parties is the degree to which [R.] is at risk in [D.M.M.]'s care – though only, in my opinion because of her relationship with [T.M.]. Outside of *that* relationship, [D.M.M.] appears to have perfectly adequate skills and approaches as a parent, and there would be little in the matter that would go against a recommendation of joint custody.

[11] Mr. Powter continued:

> It would seem to be less of a debate whether [T.M.] ever did harm to [D.M.M.], but she argues even this: at moments saying that he never actually did her any harm, at other moments saying that even though he harmed her in the past, that means nothing in the future, as she is completely convinced he would never do her harm again. And in any case, she argues, harm to *her* does not mean the child is at risk.

[12] Mr. Powter continues:

> In my opinion, [D.M.M.] is clearly lacking as a parent if she chooses to put [R.] in danger by associating with someone who is dangerous. Contrary to what she suggests, I do not think it is wise for her to separate out danger to herself from danger to [R.], and the psychological research completely backs up that opinion: children who witness abuse of their mother are just as psychologically harmed as children who experience it themselves. It seems absurd for [D.M.M.] to think the effects of the conflicts with [T.M.] on her will be invisible to [R.] – especially when she herself characterizes [R.] as such a sensitive child.

[13] Under the heading "Do the father and mother possess good parenting abilities and attributes?", Mr. Powter said this:

> In virtually all dimensions except the issue of measurement of safety, both parents demonstrate rich, flexible and experienced parenting. They both seem to care for the child a great deal, and are able to put that caring into play in direct interaction.

[14] Under the heading "Do the children [as written] have any specific emotional or physical needs that affect custody?", Mr. Powter said this:

> [R.] appears to have adapted remarkably well to the degree of stress in the family.

[15] In the end, Mr. Powter recommends:

> It is my strong sense that [R.] would ultimately be best served by having maximal contact with both parents if the matter of safety could be addressed to the court's satisfaction.

[16] Attached to the Custody and Access Report is a letter from D.M.M.'s then physician, dated January 26, 2004, Dr. Stephanie Buchanan. I am quoting from the third paragraph:

> I am writing this letter because I am concerned about her decision-making in regard to maintaining a relationship with a man who has assaulted her and who himself has been previously charged and convicted of violence against women, although I do not have objective evidence of this but instead relay [as written] on [D.M.M.]'s statement to this effect. …

[17] In her submissions to me in this hearing, D.M.M. raised three points. First, during the time period when the first Emergency Intervention Order was in place and

T.M. was under a no contact order with respect to the child, R., there was an occasion when D.M.M. spent some time overnight with R., with T.M., in a hotel or a motel in Whitehorse. She was emphatic in her view that there was no risk to R. in those circumstances. She said that notwithstanding the fact that only days before, she made allegations about T.M. having committed what was effectively a series of major sexual assaults upon her.

[18] Second, D.M.M. referred to a statement that she had allegedly given to Corporal Hayes in Haines Junction in June of this year. This was referred to in a judicial interim release hearing in the Territorial Court on June 29, 2004. At that point, T.M. had been charged with a number of offences arising, in part, from that statement, and I am quoting from the transcript of the hearing from the Crown's remarks:

> "Corporal Hayes asked, "Do you fear for your safety?" [D.M.M.] responded, "Yes." The Corporal asked, "How?" [D.M.M.] said, "I think someday he may kill me and kill himself." The Corporal asked, "How?" [D.M.M.], crying, said "Smothering or choking." Corporal Hayes asked, "How do you know he'd kill you and commit suicide?" [D.M.M.] answered, "He threatened to kill me, and then, kill himself." The Corporal asked, "When?" [D.M.M.] responded, "I don't want to say anything further because I'll lose custody of my son, [R.]. We are going to court on July 6th. I've already lost custody and it was because of [T.M.] My lawyer has told me not to give a statement. It will be used against me." [D.M.M.] then refused to provide any further information to the investigating officer."

In commenting upon that excerpt from the judicial interim release hearing, or the bail hearing, D.M.M. said that the statement attributed to her was incorrect, that she had been misquoted either by Crown counsel or by Corporal Hayes.

[19] Third, one of the offences which T.M. was charged with at that time was a common assault upon D.M.M., to which I understand he entered a guilty plea on or about September 9, 2004. Notwithstanding that, D.M.M. continues to submit that no assault occurred and that she was an unwilling participant or complainant in those proceedings throughout.

[20] The position of the respondent, T.B.M., is that nothing has changed since the order of Mr. Justice Richard was made and that I should deny the application for that reason. It may be obvious from what I have just said, in referring to Mr. Powter's report and other matters, that I have significant difficulty in accepting some of the submissions of D.M.M., particularly with respect to T.M. I tend to agree, frankly, at this stage on this interim application, that D.M.M. has a blind spot, to say the very least, when it comes to her relationship with T.M.. However, it is not for me to say who D.M.M. should form relationships with. I have to focus on the best interests of R. in this situation.

[21] Having said that, I am satisfied that the one thing that has changed over time is that D.M.M. has demonstrated a track record of taking reasonable care in trying her best to ensure that R. does not come into contact with T.M.

[22] There were a number of instances, some six or seven altogether, at various times since November 2003 where T.B.M. feels that there was either indirect contact by T.M. or attempts by T.M. to contact the child. However, D.M.M. has given explanations for each of those instances. Some of which, I think in retrospect, she concedes were examples of poor judgment on her part. But the fact remains that direct contact has not been made. There is no suggestion that R. has been put at risk or that he has suffered

any particular trauma by what I have characterized as these “near miss encounters”. In fact, in the majority of these encounters, as I understand them, the people supervising access at the time or thereabouts, were either not involved, or if they were involved, they could not have prevented the near misses.

[23] Where that takes me is to conclude that as a parent, leaving T.M. aside, D.M.M. is making her best efforts to try and comply with Mr. Justice Richard’s order. At the end of the day, I am satisfied that, as Mr. Powter concluded, it would be in the child’s best interest to have maximum contact with both parents if the matter of safety can be addressed to the Court’s satisfaction.

[24] I have proposed to the parties, and the parties have agreed, that as a collateral proceeding to this, T.B.M. would initiate a peace bond application under s. 810 of the *Criminal Code*, alleging his fear that T.M. will cause harm to the child. That information has been sworn and T.M. has indicated his willingness to respond to it without the benefit of legal advice and will soon sign a recognizance with certain conditions, which include: no contact, direct or indirect, with the child; not to be within 50 metres of the child; and not to be on the premises of the child’s school, which is Whitehorse Elementary. That recognizance is a peace bond under the *Criminal Code*. It will be enforced for a period of 18 months and is subject to a $1,500 pledge by T.M., without deposit. Should T.M. be found guilty of violating any of those conditions, he could be convicted of the criminal offence of breaching a recognizance and punished accordingly.

[25] It is my intention, as I have indicated to the parties, that a copy of the order that results from the current proceeding, as well as a copy of the peace bond that I have just mentioned, will be sent to a number of relevant agencies, including Family and Children's Services, the child's school principal, the RCMP and Victim Services. It is my hope that, with the awareness of all of those agencies and individuals, I can achieve the security that I think Mr. Powter was alluding to, specifically the assurance of safety for the child.

[26] I have also explained to T.M., in no uncertain terms, that I expect the peace bond will be strictly enforced and that there will be little or no tolerance for any violation of its terms, and T.M. has assured me that he will do everything within his power to avoid the kind of near miss situations that have occurred in the past, so that he does not put himself in a situation where he can be inadvertently or falsely accused of violating that recognizance.

[27] Therefore, I am prepared to order – and I need help from counsel on this – Ms. Kinchen, there was reference to two days a week and every second weekend as the current access schedule. Can you tell me more about that?

[28] MS. KINCHEN: When there was a consent order in place for unsupervised access, that was, I believe, the access. It was two days per week and one day ---

[29] THE COURT: Going from when until when? Is it like 5:00 PM Tuesday to 5:00 PM Thursday or is it just two evenings?

[30] MS. KINCHEN: No, I think it covered the entire two days, I believe. The consent order is on – you have it.

[31] THE COURT: It is? Maybe I can have a look at it. Which one is that?

[32] D.M.M.: Your Honour, the July one that was approved was to have him Tuesdays and Wednesdays during the summer, and I would take those as my weekend days off from work, and then I also had him one day over the course of the weekend. Another time when T.M. was in Ottawa, I had a similar schedule where I was able to have him for a couple of evenings, plus always one day on the weekend, if not the whole weekend, and then alternating. We haven't had a lot of consistency but I've almost always had him for some time on the weekend.

[33] THE COURT: All right. What I am intending to do here is order specified access and it looks as though it should run from Tuesday at 5:00 PM to Thursday at 5:00 PM for starters and that will be each week.

[34] D.M.M.: Your Honour, I have spent some time trying to make this point. T.B.M. has band concerts on Thursday evenings and he has always had someone babysitting R., generally. At one point, he paid for someone to do it and then now he has his partner at home doing that, and I've always thought why can't I have him on Thursday evenings when he is being babysat by somebody else. It is a request I have made for two years and it has just not gone anywhere and I've just been asking. I think it is a reasonable request if I had ---

[35] THE COURT: So you would like it to go from Wednesday at 5:00 to Friday at 5:00 because that would go through Thursday evening then.

[36] D.M.M.: Correct.

[37] THE COURT: Ms. Kinchen?

[38] MS. KINCHEN: I would just like to point out that T.B.M.'s partner is not a babysitter.

[39] THE COURT: No, I appreciate that.

[40] MS. KINCHEN: However, he doesn't have an issue with it going from Wednesday to Friday.

[41] THE COURT: All right. So Wednesday, 5:00 PM to Friday, 5:00 PM, that is each week, and then every second weekend. Would that be from Friday at 5:00 to Sunday at 5:00?

[42] MS. KINCHEN: Yes, that is ---

[43] THE COURT: So every second weekend would be a total of four days; correct?

[44] MS. KINCHEN: That is correct.

[45] THE COURT: All right. Does anyone have a suggestion as to when the weekend access would commence?

[46] MS. KINCHEN: Perhaps because this is Thanksgiving and we have not had a lot of notice on this, D.M.M. has asked if she could have R. for one of the days over the weekend. T.B.M. has already made plans so perhaps we could do something this weekend different and then have the whole access order kick in next week. So I am suggesting perhaps D.M.M. could have him on Saturday and Saturday night, and then he would go back to T.B.M.

[47] THE COURT: Is that agreeable, T.B.M., Saturday and Saturday night?

[48] T.B.M.: Yes.

[49] THE COURT: Is that agreeable?

[50] D.M.M.: Like as in tomorrow?

[51] THE COURT: Yes.

[52] D.M.M.: Yes, Your Honour. And for the following weekend, I need to be out of town, actually for two weekends I am out of town because I didn't know this was coming. But this is where I would like to know how to accommodate changes where we can work out a schedule and the nitty gritty of all of this, and this is why I requested mediation or somebody to assist.

[53] THE COURT: Well, we are not going to get into mediation now because we do not have the time.

[54] D.M.M.: Correct.

[55] THE COURT: Let's deal with one thing at a time.

[56] D.M.M.: Okay, Saturday.

[57] THE COURT: For tomorrow, this Saturday and Saturday evening, that has been agreed to, T.B.M. is leaving, so that is the last chance you are going to get.

[58] D.M.M.: Yes, Your Honour, that is correct.

[59] THE COURT: That does not have to be in the order because it has just been agreed to. I just want to keep the order as simple and predictable as possible. As far as times when you are away, I do not know that we can accommodate every contingency. If you are away, you do not get the child, you have to wait until the following time that you do get the child. I want to keep this order simple and predictable, so that there are as few disputes between you about it as possible. All right?

[60] D.M.M.: Yes.

[61] THE COURT: You will have to juggle your work situation as much as possible around the access order. Now, there were some other conditions that were in Justice Veale's order from July. Are you seeking a continuation of any of those, Ms. Kinchen?

[62] MS. KINCHEN: I am not aware of what those are.

[63] THE COURT: Well, for example, "responsibility for picking up and dropping off shall be shared equally between the parties."

[64] MS. KINCHEN: That it be shared, yes, I think that would be fair.

[65] THE COURT: So that would be a condition of this order, paragraph 7 of Justice Veale's order will be part of this order.

[66] Paragraph 8 says that "the petitioner shall not speak about T.M. with R. or in R.'s presence." Is that realistic?

[67] MS. KINCHEN: Well, it is obviously a concern for T.B.M. Obviously, we cannot monitor it.

[68] THE COURT: Given that there is supposed to be no indirect contact ---

[69] MS. KINCHEN: Would you consider that indirect contact?

[70] THE COURT: Pardon me?

[71] MS. KINCHEN: Do you believe that would fall within indirect contact?

[72] THE COURT: Well, if it came from something that T.M. had generated it would be, obviously.

[73] D.M.M.: Your Honour, this has been a major issue for me and I flagged it when I saw that consent order. My lawyer, at the time, had said, you know, to have something you pretty much have to go with this. R. will frequently talk about Jasmine, which is T.M.'s dog or "remember when T.M. did this?" I don't want to lie to my son and what I have said in this situation is it puts me in a very awkward position. I feel I am really torn and it makes it very awkward between R. and I for the time that we are together. I don't knowingly try to emphasize the relationship but when R. has a question for me or something, I think as a parent I have a right to answer it or have an

obligation to answer his questions completely, not be avoiding something. He picks up on that. So I think that whole clause is a very awkward one and I think that it is very difficult. I will run into somebody on the street and they will say “How is T.M. doing?” and R. will be with me and I just try to change the subject, but I would hate the fact that that is made as a suggestion that I am trying to talk about T.M.

[74] THE COURT: No, I appreciate your point. It struck me that it would be difficult to deal with but I also want to remind you of the point that Ms. Kinchen made earlier that Mr. Powter said that it would be best if you would refrain from pushing stories and recollections about the importance of T.M. onto the child. I know you take issue with that.

[75] D.M.M.: I do.

[76] THE COURT: But I think you understand what the Court’s concern is. Let me be very, very clear here. I don’t see this as the thin edge of the wedge, in terms of T.M. re-establishing a relationship with R. We are going to deal with one thing at a time. I don’t know, frankly, whether six months from now you are going to be in a relationship with T.M., given your track record. So this is simply because I think it is in R.’s best interest to have maximum contact with you, with T.M. out of the picture, and that is the reason for my decision. Let me be very clear about that.

[77] T.M.: Your Honour, if may reiterate to you that ---

[78] THE COURT: It is D.M.M.’s ---

[79] D.M.M.: Your Honour, I just want to say that I am not going out of my way to talk about T.M. Geoff Powter put that in his report. It was the result of a meeting with the specific purpose of talking about stories about T.M. So I regret that he went ahead. I called him on it later but he never modified the report. I told him it was not fair criticism at the time.

[80] THE COURT: Okay, you understand. You understand the point.

[81] D.M.M.: Yes, I understand the point. But I also think that I have an obligation as a parent not to lie to R.

[82] THE COURT: No, I understand that as well. Is it still necessary to hear from you, T.M.?

[83] T.M.: Only to assure you in your mind and heart that I won't leave gifts or pass gifts or any indirect, so I will be out of that equation. What they do is between mother and son. I won't encourage any, I will put it that way, Your Honour.

[84] THE COURT: Thank you. Just so that there is no uncertainty abut it, costs will be in the cause on this which means that whoever wins the day at trial can pick up the costs for this particular application.

[85] I am just wondering, and I am open to suggestion on this, I had thought that it might be useful to have a review of the status of this matter when we speak to the other matter on November 16th. Would that seem logical and should that be part of the order, because this is definitely a trial run on this new arrangement here?

[86] MS. KINCHEN: It is not a long time to actually see how it works but we will be before the Court on November 16th so certainly I think it would be ---

[87] THE COURT: I would like it put in as a term of the order that we review the status of the matter on November 16th at 11:00 AM.

[88] MS. KINCHEN: So just to review the status.

[89] THE COURT: Thank you very much for your patience. I know it has been a long afternoon, but I think it has been a productive one.

[90] D.M.M.: Your Honour, I just want some clarity. If I want to see R. outside of this access schedule, if I want to go to the school, for instance, and spend an hour with him during the daytime hours, and the teacher is there, as well as 19 other kids, as his parent, is there any reason that I should not be able to do that?

[91] THE COURT: I really want to take this gingerly. I don't want to complicate it with, you know, what about this contingency, what about that contingency. You have got unsupervised access, it is reasonably generous. I want to leave it at that and then if things go well, we can look at modifications down the road, and that is why I suggested that we review this matter again in just over a month. In the meantime, I would prefer, in fact, order – it is part of the order that you not have any access at any other time. You have access at those times and at no other time.

[92] D.M.M.: Okay. But for instance, Your Honour, if there is a school concert – like, I missed the information night at the school on Wednesday night. Like, when you are a parent, your life isn't down to those few hours of – like, if there is

something that I really want R. to be at and it is unique and it is something important, I am really limited on that with just this timeframe. Do you understand what I am trying to say? So if I go to the school for a school concert and it is not my time, are you suggesting I can't be there?

[93] THE COURT: Well, technically it is not really exercising access. I mean, you are just there.

[94] D.M.M.: Correct, right.

[95] THE COURT: Ms. Kinchen, do you have ---

[96] MS. KINCHEN: I have no issue with D.M.M., herself, going to her son's school concert. I don't see anything wrong with that.

[97] THE COURT: All right.

[98] D.M.M.: Or, Your Honour, his soccer tournament or if there is a parent day at gymnastics. Like, I've missed out on a lot of things because you're not supposed to be here. And the school incidents happened because I was told I wasn't supposed to be at the school even though I've talked to the Department of Education.

[99] THE COURT: How about this? That we add into the specified access that you may be present at activities which involve R., upon giving so much prior notice to T.B.M. by email as you have been doing. Does that sound reasonable?

[100] D.M.M.: Yes, Your Honour, that sounds reasonable but is it his to say yea or nay to whether I am to be there?

[101] THE COURT: No. You just have to give him notice.

[102] D.M.M.: Okay.

[103] THE COURT: T.M. is not involved, it is just you.

[104] D.M.M.: No, no, just me. But I am just asking if I have to get his permission because that has been ---

[105] THE COURT: But – and this is the other part of it – that does not mean that because you are allowed to be there that you can take him for an ice cream cone. You can just be there and interact with him.

[106] D.M.M.: And watch the event or whatever because – like any normal parent would.

[107] THE COURT: Okay?

[108] D.M.M.: Okay.

[109] THE COURT: Ms. Kinchen, is that reasonable or not?

[110] MS. KINCHEN: That is actually very simple, but I just want to make the point that one of the issues that we had brought up, there is a difference between being there and observing and taking control, and that is what we would hope would not happen, that certainly, as a mom, she wants to be there and see the concert, but that does not mean that she takes over control of R. for the time she is there.

[111] THE COURT: No. I think that is understood. It doesn't mean she can't say hello to him, "How are you doing?"

[112] MS. KINCHEN: No, no.

[113] THE COURT: Okay. D.M.M.?

[114] D.M.M.: Yes, Your Honour, that is fair.

[115] THE COURT: Okay, great. Thank you very much.

[116] MS. KINCHEN: Sorry.

[117] THE COURT: Yes.

[118] MS. KINCHEN: I will be drafting this order. Do I require D.M.M.'s consent or will you be able to ---

[119] THE COURT: No, I will scrutinize the order. Thank you.

_____
G0WER J.