Citation: *Re: A.J.A.C.*, 2004 YKTC 17

Date: 20040312
Docket: 03-T0043
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

IN THE MATTER OF the *Children's Act*, R.S.Y. 2002, c. 31, as amended, and in particular s. 130;

AND IN THE MATTER OF an application for a conversion of the existing temporary care & custody Order to a permanent care & custody Order pursuant to s. 130(1)(c) of the Act;

AND IN THE MATTER OF A.J.A.C.

Restriction of Publication:
PUBLICATION OF IDENTIFYING INFORMATION IS PROHIBITED BY SECTION 173 OF THE *CHILDREN'S ACT*.

Appearances:
Keith Parkkari — Counsel for the Director
Elaine Cairns — Counsel for the Mother

REASONS FOR DECISION

[1] The Director of Family and Children's Services has applied for an order for permanent care and custody of A.J.A.C., an eight-month-old boy. His mother, C.C. opposes the application. The father of the child is unknown to the Director and to the Court. Hereafter in this decision, A.J.A.C. and C.C. will be referred to as A and C respectively.

[2] At the conclusion of the hearing, held in Watson Lake, Yukon on February 10 and 11, 2004, I granted the Director's application and indicated that I would provide reasons. These are my reasons.

[3] This is not a typical child protection case. In fact, it is the sort of case that gives judges grey hair. Typically, children are in care because their parents have severe alcohol or drug dependence problems. Typically, the parents do not regularly visit their children while they are in care. Typically, the parents are unwilling or unable to participate in counselling or treatment.

[4] In this case, there is no persuasive evidence of alcohol or drug dependency. Since her son has been in care, C has been faithful and consistent in exercising access. She has attended counselling and completed parenting courses. What then, is the problem? The problem is that there is overwhelming evidence that, despite every good intention on her part, C is simply unable to provide adequate care for her son.

[5] The first indication that C is unable to parent flows from her history as a parent. She has three sons. The first son, B, born in April 1995, passed from C's care in somewhat bizarre circumstances. C, then living in Dawson Creek, B.C., had married. She and her husband soon separated. C then began a relationship with B's father, who in turn separated from C before B was born. When B was about six weeks old, C was in a shopping mall when she met a 23 year-old woman, T. C agreed to give her baby to her new acquaintance to be baby sat and then departed without providing her address or phone number. C did not contact the babysitter for two days. From this point, the baby stayed almost continuously with T's family. C seldom phoned or visited. When she did have the baby in her care, even for an hour, T's family observed that she seemed utterly unable to care for the child. In fact, C never had her son in her care overnight except on one occasion after the child was four months old. Ultimately, B was apprehended by British Columbia's child protection authorities. He remains in foster care to this day.

[6] Meanwhile, C had again become pregnant (by another man, J). Dr. Aylward, who was C's physician, advised social services that, in his opinion,

C suffered from a personality disorder which rendered her unfit to parent. C had also had two admissions to the Dawson Creek Psychiatric Unit in 1995 and 1996. She was diagnosed as depressed and suffering from an unspecified personality disorder. The British Columbia Ministry was sufficiently concerned that C's second son, R, was apprehended at birth in November 1996. R was subsequently placed with his father, where he still resides. C has never had care and custody of R.

[7] The B.C. Ministry engaged a psychologist, Dr. Geoffrey Carr, to evaluate C and provide an opinion on her ability to parent. Dr. Carr's thorough and detailed report, dated March 4, 1997, concluded that C suffers from borderline personality disorder, "a severe and long-lasting psychological disturbance". Dr. Carr also found C to be of significantly below average intelligence – falling at approximately the tenth percentile of the population as a whole. Based on these deficits, Dr. Carr was of the view that C was unable of providing even minimally adequate care to a child and that this situation was unlikely to change.

[8] In 2002, C again became pregnant. During her pregnancy, she moved to Watson Lake.

[9] A was born June 17, 2003. Almost immediately, there were serious problems, leading to A's apprehension. The circumstances of that apprehension, and the subsequent granting of a temporary care and custody order are set out in the decision of Lilles, C.J. in *A.J.A.C. (Re),* [2003] Y.J. No. 83, 2003 YKTC 62.

[10] Essentially, what occurred was that A was in his mother's care on June 23, when the public health nurse visited C's home. It was obvious that A was not getting enough food. He was jaundiced and losing weight. C did not seem to realize that the baby needed to be fed every two hours. The nurse was sufficiently alarmed that she arranged for mother and baby to be admitted to the hospital so that feeding could be supervised and A would receive adequate

nourishment. Even in hospital, A's condition continued to deteriorate. C was breast feeding her baby but appeared unable to do so adequately. She was repeatedly told by the Doctor and the nurses that supplemental feeding was clearly required. C was uncooperative. The Doctor ordered bottle-feeding. C continued to resist. Ultimately, the child was apprehended. Bottle-feeding was started and within a few days A recovered and began to thrive.

[11] It is quite clear that if there had been no intervention, A would have died. C seems to have been oblivious to the gravity of the situation.

[12] In the result, we have a situation where C has been demonstrably incapable of adequately parenting any of her children. C says that she now appreciates the seriousness of the situation surrounding the first days of A's life and is both determined and able to do better in the future. It is suggested that she has matured and that the situation has changed.

[13] Unfortunately, the psychological opinion recently prepared by Ms. Dawn Oiffer makes it clear that nothing has changed. The report is entirely consistent with Dr. Carr's findings in 1997. C suffers from a borderline personality disorder and the situation is unlikely to improve through either treatment or the passage of time. Ms. Oiffer concludes that:

> … the risk of significant harm and/or neglect of [A] should Ms. C. be charged with his care appears to be inordinately high… The findings of this assessment do not support the reunion of this infant and his mother.

[14] The conclusions of Dr. Carr and Ms. Oiffer are fully supported by C's history as a parent. To date, she has proved incapable of providing even minimally adequate care to any of her children. This appears to be the result of cognitive deficits coupled with long-standing and deep-seated mental health problems. Nothing suggests the situation is amendable to change.

[15] Other health care professionals who have assessed the situation have also recommended against placing A in the care of C. These include Dr. Bousquet, who was asked to assess A's condition last July and Sandra Stubbs, a social worker who provided mental health counselling to C during the summer and fall of 2003.

[16] With respect to the child's best interests, Ms. Oiffer was of the view that it was unlikely that C could properly assess her child's needs or that, even supposing she could, that she "could reliably manage to place [A's] needs before her own". In her evidence, Ms. Oiffer painted a rather chilling portrait of the future that awaits children "parented" by mothers or fathers suffering from borderline personality disorder.

[17] I should mention that considerable evidence was led of observations by the psychologist, family support workers and social workers of C's interactions with her son. All the witnesses testified that C had difficulty recognizing and responding appropriately to her baby's needs. While I accept this evidence, I do not accord it undue weight since I recognize that many of these observations occurred during supervised visits. This is a somewhat artificial situation and a parent could well feel she was under a microscope, be ill at ease, and not act as she normally would.

[18] I accept that C loves her son and has every intention of being a devoted parent. Nevertheless, I am led inescapably to the conclusion that A's best interests lie elsewhere than in his mother's care. It appears that A is a healthy normal infant. A is in long-term stable foster care and has every prospect of finding an adoptive home provided that permanency planning begins now.

[19] Accordingly, I find that A continues to be in need of protection. A is committed to the permanent care and custody of the Director.

Faulkner T.C.J.