Publication of identifying information is prohibited
by section 172 of the *Children's Act*

Re: Matter of A.J.A.C.
AND an application for a three month
temporary care and custody Order,
2003 YKTC 62

Date: 20030731
Docket: T.C. 03-T0043
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Lilles

IN THE MATTER OF the *Children's Act,* R.S.Y. 1986, c. 22,
as amended, and in particular s. 121,

AND IN THE MATTER OF an application for a three month temporary
care and custody Order pursuant to s. 126(1)(b) of the Act

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

Appearances:
Mike Winstanley — Counsel for the Director
Malcolm Campbell — Counsel for C.C., the Mother

DECISION

[1] A.J.A.C. (hereinafter referred to as A.C.) was born on June 17, 2003 to C.C. The father has not been identified. A.C. was taken into the Director's care on July 4, 2003 at Watson Lake Hospital, Watson Lake, Yukon, because of C.C.'s inability to provide proper care, more specifically, inability or unwillingness to provide sufficient nourishment.

[2] The circumstances leading to the apprehension are somewhat unusual. Jackie Van Langen, a community health nurse, visited the mother on June 23, several days after C.C. and A.C. had returned from Whitehorse where C.C. had given birth. Ms. Van Langen observed A.C. to be jaundiced. A.C. had lost in excess of 10% of his birth weight. It was evident to the nurse that A.C. was not

getting enough food. The nurse was concerned that C.C. did not appreciate that A.C. had to be fed every two hours. The nurse explained to C.C. that, if necessary, A.C. should be wakened in order to be fed.

[3] Ms. Van Langen also indicated that C.C. seemed to be exhibiting "postpartum blues", which I understood to mean mild depression.

[4] Ms. Van Langen was sufficiently concerned that she called the doctor and on his advice, she brought C.C. and A.C. to the hospital for admission to ensure that A.C. would receive adequate nourishment and C.C.'s feeding could be supervised. C.C. agreed to go to the hospital.

[5] Ms. Van Langen saw A.C. again on July 2 at the hospital. A.C. was very jaundiced and looked very poorly. A.C. seemed lethargic. Ms. Van Langen spoke to C.C. about milk supplements, but C.C. was not very receptive to the suggestion.

[6] Ms. Van Langen saw A.C. again on July 4, as did Michelle McFall, a registered nurse. Ms. McFall reported that A.C. was not acting normally, had little muscle tone, was not responding to contact and was jaundiced.

[7] Wenda Sage, also a public health nurse, saw A.C. and C.C. at the hospital on June 24 and June 26. These meetings focused primarily on C.C., her needs and how to support her. On June 30, Ms. Sage observed that A.C. was not doing well nutritionally, even though C.C. had received a lot of instruction about feeding A.C. Ms. Sage spoke to C.C. about the need for a breast milk supplement, but this was resisted by C.C.

[8] On July 2, the case was discussed at a meeting that involved the doctor. A.C.'s condition was of concern. The doctor directed supplemental milk to be fed to A.C. As mentioned earlier, C.C. objected to supplemental feeding, saying she

did not want A.C. to have “nipple confusion”. By July 4, A.C.’s situation was not improving and he was apprehended. After 24 hours of bottle-feeding, A.C. was much improved and within three days he was communicative, responsive, mobile and aware of his surroundings.

[9] C.C. testified that when she returned from Whitehorse with A.C., she was not feeling well as she had had a tubal ligation, had an infection and was taking antibiotics. C.C. said she did not appreciate that A.C. was ill and that he needed to be fed every two hours. C.C. said while in the hospital in Watson Lake, she was not thinking clearly, and that due to her medication she was feeling groggy. C.C. also said that she misunderstood the recommendation regarding breast milk supplements, believing that she was being told to stop breast feeding altogether.

[10] In retrospect, C.C. now understands that A.C. was a very sick baby when he was apprehended. C.C. previously believed A.C. needed to be fed only when he indicated he was hungry, but now understands that A.C. should be fed on a schedule every two hours.

[11] C.C.’s previous medical history and involvement with Social Services in British Columbia are of concern. Reference should be made to the full reports filed as attachments to Shannon McCulloch’s affidavit. As C.C. has only lived in the Yukon for nine months, information regarding past parenting and previous assessments take on particular importance. The circumstances surrounding A.C.’s apprehension are consistent with C.C.’s previous inability to parent and the psychological evaluation by Geoffrey Carr dated March 4, 1997.

[12] I find the following facts gleaned from previous reports and assessments relevant to the application before the court:

a. A previous child, B., was apprehended at approximately two years of age in 1997. B. was largely raised by babysitters;

b. A second child was apprehended at or near birth around the same time because child protection concerns were acute and risk factors were significant;
c. In September 1996, Dr. D. Aylward diagnosed C.C. with “a personality disorder which makes her an unfit mother”. Dr. Aylward concluded that “C. can usually cope for a few minutes to one hour a day with B.” and that in her care “he is at high risk for physical and emotional abuse”;
d. In November 1995, in dealing with B., it was reported that C.C. would not listen to nursing staff about how to deal with him. This bears a striking resemblance to her resistance to accepting feeding directions from nurses in Watson Lake with respect to A.;
e. With respect to B., it was reported that she became very agitated and stressed when he was crying. C.C. apparently admitted that she had difficulty in managing B. for an hour at a time. This explains, presumably, why for 11 of B.’s 17 months (in September 1996), B. had been living with babysitters;
f. C.C. had demonstrated little appreciation for child development and in particular how being raised by babysitters impacted B.;
g. C.C. gets frustrated when things do not go her way and can have a quick temper at times. This is consistent with her reaction when A.C. was taken from her at the Watson Lake Hospital to be bottle-fed against her wishes;
h. C.C.’s diagnosis of Borderline Personality Disorder was explained in the psychological assessment by Geoffrey Carr as follows:

> C. manifests a Borderline Personality Disorder. It is a diagnosis indicating severe and long-lasting psychological disturbance that fluctuates over time. It is difficult to reach a diagnosis of personality disorder based on one interview because people with this diagnosis have brief periods of relative emotional stability so the diagnosis relies on information from past behaviour as well. It involves a chronic pattern of

> strong fluctuating emotions, a chronic feeling of emptiness that the person is desperate to fill with contact with others (yet the others are never found to be adequate to the need), poor planning with impulsive behaviour, a history of unstable and intense interpersonal relationships, suicidal behaviour, paranoia, and dissociative symptoms. People with this diagnosis tend to evoke feelings of exasperation from others and create turmoil in the social service system. They have inevitably had abysmal, abusive childhoods, most often including sexual abuse, and their adult behaviour reflects attempts to deal with past trauma and to obtain a feeling of security that they never had.

i. C.C.'s intelligence is below average and falls at approximately the tenth percentile of the population. Clearly, C.C. is able to maintain a job and look after herself, which C.C. appears to be doing now, working in the hospitality industry;

j. C.C. is capable of learning basic childcare skills, and has demonstrated an interest in doing so. C.C. has taken a number of parenting courses, some in Watson Lake. The assessment suggests, however, that she would have difficulty applying them appropriately without structure and supervision;

k. In 1996, Geoffrey Carr concluded with respect to C.C.'s children that "the most obvious option of being raised by their mother would unfortunately be quite detrimental to them". He also stated: "I do not believe that C.C. is capable of providing minimally adequate parenting to a child and this is not likely to change in the near future".

[13] It is important to note that the foregoing information is dated and that Geoffrey Carr's assessment was made in 1996. C.C.'s parenting of A.C. did not show any improvement in parenting skills.

[14] Unlike the great majority of cases that come before this court, C.C. does not present any current alcohol or drug problems. C.C. is employed and is in a position to support herself and A.C. financially. C.C. has a residence that is a suitable home for herself and A.C. Notwithstanding C.C.'s previous experience with social workers and nurses, C.C. holds no animosity towards the Watson Lake workers, and continues to work with them and they, especially the public health nurses, are willing to continue to work with C.C. C.C. has taken the initiative to arrange for daycare should A.C. be returned to her. C.C. has demonstrated a willingness to learn and has taken numerous courses in parenting. C.C. is currently engaged in personal counseling. Should A.C. be returned to her, she is willing to be supervised by social workers and health care staff.

[15] Several questions remain unanswered. To what extent was C.C.'s care of A.C. affected by her own medical condition at the time and by the "postpartum blues" observed by several of the nurses? Were the instructions and directions given by the medical staff regarding A.C.'s nutrition explained to her in a manner consistent with her level of cognitive functionning? Is C.C. both capable of learning and applying the parenting skills necessary for her to take care of A.C. on her own?

[16] C.C.'s counsel has advised that C.C. takes no issue with the existence of reasonable and probable grounds at the time of A.C.'s apprehension. On the evidence, I find that there were reasonable and probable grounds for so doing.

[17] While there may have been some contributing factors beyond her control that contributed to C.C.'s care or lack thereof of A.C., C.C.'s treatment of A.C. and her conduct is consistent with her earlier but dated treatment of her first child, B. I acknowledge that it is very difficult to predict future behaviour. Past behaviour is the most reliable indicator of future behaviour.

[18] At the current time, based on the evidence placed before me, I am satisfied that A.C. continues to be in need of protection. Based on the circumstances leading to A.C.'s apprehension, C.C.'s previous history as a parent, the earlier assessments by professionals and the similarity of the current parenting concerns to those raised by her parenting of B., I consider that placing A.C. into the care of C.C. at this current time, would place A.C. at risk of serious harm, both physical and emotional. At the current time, those risks are such that they would not be alleviated by supervision in a home placement.

[19] The application by the Director for a three month temporary care and custody order is granted.

[20] I mentioned earlier that there were some unanswered questions that might impact positively on C.C.'s future ability to parent A.C. In addition, the assessments filed with the court are dated. I am unable to rule out the possibility of C.C. parenting A.C. at some point in the future. For that reason, there should be reasonable access on a supervised basis in a "home-like setting". I judge "reasonable" at the current time to be five hours of supervised access per week, consisting of three one-hour visits and one two-hour visit. The court will be open to modifying these access provisions based on material changes in circumstances, including C.C.'s performance during supervised access. I strongly recommend that the Director obtain an updated parenting assessment by an assessor approved by both parties. At the end of the three month care and custody order, the Director should be in a better position to evaluate C.C.'s ability to care for A.C.

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Lilles C.J.T.C.