

Citation: Re: *In the matter of B.J.*, 2007 YKTC 7

Date: 20061103
Docket: 96-T0041
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief 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 B.J.; A CHILD
WITHIN THE MEANING OF THE SAID ACT

Publication of the name of a child, the child's parent or identifying information about the child is prohibited by s. 173(2) of the *Children's Act*.

Appearances:
Lana Wickstrom

R.J.

Appearing for the Director of Family
and Children's Services
The father, appearing on his own
behalf

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): This is an application by the Director of Family and Children's Services for a permanent care and custody order in respect of six-year-old B.J. The application is opposed by the girl's father, R.J. The mother, who has taken only sporadic interest in the proceedings, did not appear for the hearing of the Director's application.

[2] B.J. is a special needs child. She is nearly blind, suffers from seizures and a brain cyst, a pituitary hormone deficiency and significant developmental delays in virtually every aspect of her functioning. She cannot walk unaided and spends a considerable amount of her time in a wheelchair. She has very limited speech and is totally dependant on her caregivers for virtually all aspects of basic daily living.

[3] The child was originally apprehended in April of this year and made subject to a temporary care and custody order. The present proceedings for a permanent order were launched in July.

[4] This is not the first time that the child has been in care. She was under the Director's care on two prior occasions, between 2002 and 2005.

[5] At the time of B.J.'s apprehension, Mr. J. was a single parent and was having a great deal of difficulty with both his personal life and in providing adequate care for his daughter.

[6] Since coming into care, the child has resided at the Copper Ridge Treatment Centre in Whitehorse and is attending Selkirk School. Her progress, since coming into care, has been nothing short of remarkable. Clearly, consistent and knowledgeable care has been the reason.

[7] To make a long story short, it is obvious to me that B.J. has been much better off since April than she was previously. I accept that Mr. J. loves his daughter and that he wants and tries to do his best to care for her. I accept that he needs his daughter and feels a profound sense of loss now that he is no longer the person with

custody of her. However, the question before me is not about Mr. J.'s needs, of course; it is about his daughter's needs.

[8] If Mr. J. were able to put aside the emotion and look at the matter objectively, I think he would be forced to admit that, due to his own circumstances and his daughter's extreme needs, her best interests would be served by leaving her where she can get the best, most professional and most consistent care.

[9] Mr. J. indicated to the Court that over the last year or so he has struggled with a morphine addiction and other problems, leading to what he himself described as a meltdown last spring and summer. However, he indicates that he has now got himself straightened out and deserves a chance to prove that he can be a good father to B.J.

[10] In my view, there are several difficulties with this position. First, the child protection concerns surrounding B.J. and Mr. J.'s other children go back as far as 1999, well before the period of difficulties acknowledged by Mr. J.

[11] Second, the *Children's Act* provides that children's interests come before the parent's interest, thus giving parents another chance is not permissible unless it is in the child's best interests to do so. In my view, there is, in this case, too great a risk that the progress B.J. has made will be undone if she is shifted once again into her father's care. What this child clearly needs is stability, consistency, permanence and persistence on the part of her caregiver.

[12] Third, Mr. J. told the Court that he is more than willing to learn better care giving skills and more than willing to accept assistance from the Director and other support agencies so that he can provide the level of care his daughter deserves.

[13] I assume that Mr. J. is genuinely making this commitment, but in light of his long history of doing just the opposite, it is unlikely, in my view, this commitment can be sustained.

[14] As previously stated, I accept fully that Mr. J. loves his daughter. I accept that he tried to do his best. I do not, however, accept that he should be her primary caregiver either now or within a period of time that would warrant the making of a further temporary care order. In the view of the Court, the best interests of this child will be served by achieving permanency as soon as possible.

[15] I want to make it clear that I am not making this order simply because B.J. will be better cared for by the Director or that it will be easier to provide her with the help she requires, though both things are clearly true. The evidence is quite clear that B.J. was not receiving minimally adequate care while in her father's custody and that she was in need of protection. Her school attendance was minimal, there were extended problems with head lice, she was often dirty and sometimes inadequately clothed. At one point, her wheelchair was damaged and dangerous, and there were missed medical appointments. B.J. was making little or no progress in any area of functioning.

[16] It should also be noticed that once B.J. was in care, her father visited only sporadically and her mother not at all.

[17] Mr. J., although I am making a permanent care and custody order, it is unlikely that your daughter will be adopted. The result of that is that there is still a real opportunity for you to maintain a meaningful relationship with your daughter over the long term. I hope that you can find the strength and resolve to do that and to do so in a consistent and positive manner.

[18] I want to comment on one additional matter. Mr. J. twice sought an adjournment of these proceedings so that he could obtain counsel. Those applications were refused because Mr. J. had done nothing until the eve of the trial to obtain counsel, counsel that would have been provided to him at state expense had he only applied for it on a timely basis. I held that adjourning the hearing would not have been in B.J.'s best interests and in the result Mr. J. appeared at the hearing without counsel. Despite what he may think of his abilities to represent himself, Mr. J. actually did a very good job of putting his case before the Court. I doubt that a lawyer could have done any better at conveying to me Mr. J.'s love for and commitment to his daughter. However, no lawyer would have made any change in the result.

[19] There will be a finding that the child is in need of protection. She is committed to the permanent care and custody of the Director.