

Citation: Re: Matter of *M.G.D.S.*, 2006 YKTC 110

Date: 20061117  
Docket: T.C. 05-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

AND IN THE MATTER OF *M.G.D.S.*,  
A CHILD  
WITHIN THE MEANING OF THE SAID ACT

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

Appearances:  
Lana Wickstrom

Appearing for the Director of Family  
and Children's Services  
Appearing for the mother

David Christie

**REASONS FOR JUDGMENT**

[1] FAULKNER C.J.T.C. (Oral): In this case, the Director of Family and Children Services has filed an application for granting an order of permanent care and custody in respect of a 14-month-old child, M.S. M.S. has been in the Director's care all but five days of his life to date. However, as Mr. Christie points out, the child is still in Pelly Crossing, where his mother lives, and his mother is still much involved with the child. There is clearly a bond between the mother and the child.

[2] The child protection concerns have been acute and ongoing, as can be gauged by the fact that the mother's previous children have been made permanent wards and, as well, by the fact that M.S. was apprehended virtually at birth and has remained in care since. The mother suffers from FASD and, as well, from serious substance abuse problems.

[3] The present application is made because Mr. Christie says the mother has recently taken some steps towards getting her life in order and towards being able to parent her son. Broadly put, the changes are that the mother has now been accepted for a five week residential treatment program which is to commence on November 19<sup>th</sup>. As well, there is evidence from a family support worker, employed by the mother's First Nation, indicating that she has seen some positive changes in the mother's circumstances over the past six months or so.

[4] Additionally, there is evidence that one of the other problems that the mother had, namely lack of housing, is on its way to being solved. There is a letter from the First Nation indicating an allocation of a suite to the mother once she returns from treatment.

[5] In these circumstances, Mr. Christie argues that the Director's application, which is presently set to proceed at the end of this month, should be adjourned to the next assize, which would be in January.

[6] Always in these matters there are competing interests to be weighed. I do not mean the competing interests of the child and the parent, I mean competing factors or interests that weigh on what the best interests of the child may be. Clearly, the

best interests of the child include the right, particularly in a child of this age, to early permanency arrangements being made, but, as Mr. Christie points out, there also is the factor that it may well be in the best interests of the child for the family unit to be maintained, if that is possible.

[7] The best interests of the child test does not always point inexorably in one direction or the other. In making my decision, I give full weight to the contention by Mr. Christie that the maintenance of the family unit is an important consideration, and, obviously, an adjournment might facilitate that. On the other hand, as the Director points out, given the age of the child, there is a fairly narrow window of opportunity here for permanency planning arrangements to be made, given what we now know about attachment issues and so forth with respect to children.

[8] It seems to me that at the end of the day, and recognizing that looking into the crystal ball is never a very certain exercise, it seems to me that, even if the mother was to attend treatment and successfully complete it, and we were back here in January, we would still not be at a place where one could say that her prospects to immediately parent the child were good, given her disabilities and given the long track record of parenting difficulties exhibited by this mother. In short, it would not, I suspect, even in January, be prudent for any judge to order a return of the child to the mother.

[9] The result would be that even if everything went as well as could be expected, from the point of view of the mother, that the net result would be an additional period of uncertainty for the child, which would extend well beyond the two

months contemplated by the adjournment application. That being the case, it seems to me that the need for early permanency arrangements to be made must be the dominant factor for the Court to consider.

[10] That being the case, the application for adjournment is refused.

[11] MR. CHRISTIE: Thank you, Your Honour.

[12] THE COURT: I neglected to say, Mr. Christie, that I fully accept that you have had difficulties in getting instructions from your client and in understanding her position and so on. I do not mean in any way to appear to brush that off. I accept that statement from you as a competent counsel and officer of the Court.

[13] MR. CHRISTIE: Thank you, Your Honour.

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FAULKNER C.J.T.C.