

Citation: *Re: M.N.*, 2005 YKTC 27

Date: 20050407
Docket: 03-T0078
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

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 SIX-MONTH
TEMPORARY CARE AND CUSTODY ORDER MADE PURSUANT TO S. 130
(1)(A) OF THE ACT;

AND IN THE MATTER OF M.N.

Appearances:

Lana Wickstrom

Christina Sutherland

Elaine Cairns

Counsel for the Director of
Family and Children's Services
Child Advocate
Counsel for the mother

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

REASONS FOR DECISION

[1] In the matter of M.N., born March 1, 2002, the Director is seeking a six-month extension of the existing temporary care and custody order. K.N., M's mother, opposes the application and argues that M should be returned to her under a supervision order. M has been in the care of the Director for the better part of the last two years.

[2] I am of the view that Ms. N is not yet ready to resume full time care of M, but neither am I satisfied that any extension of the existing order need be as long

as that requested by the Director. All parties are agreed that there is a strong bond between M and her mother, and that Ms. N has, in the past, demonstrated an ability to effectively parent. Ms. N is an intelligent and capable woman. There is every reason to believe that M can and should ultimately be returned to her mother's care. The question is when is it in M's best interests to do so.

[3] In support of the application to extend the temporary care and custody order, the Director has, in the affidavit of social worker Cleo Smith filed March 14, 2005, identified five areas of child protection risks and concerns. They are as follows:

1. Drug and alcohol use interfering with parenting,
2. Inconsistency of visits,
3. Mental health issues,
4. Ms. N's reluctance or disregard for addressing the child protection issues that continue to bring M to the attention of the Director, and
5. Ms. N's pattern of leaving M with inappropriate caregivers and/or not making appropriate childcare arrangements when leaving M with caregivers.

[4] In reviewing the totality of the evidence, I find that the first two of the five issues identified by the Director do not, on balance, amount to child protection concerns in this case.

Drug and Alcohol Usage:

[5] In terms of drug and alcohol use interfering with Ms. N's ability to parent, I find there is no evidence before me to suggest that this is in fact the case. On the contrary, the evidence indicates that Ms. N is not currently a frequent or habitual user of either alcohol or illicit substances. Indeed, I found her to be very candid and forthright both in both her testimony and with the Director about her past and present usage. At best, there have been only a couple of incidences in the past year in which Ms. N, while under extreme stress, resorted to the consumption of some alcohol. These incidences do not cause me undue concern. Ms. N clearly recognizes the negative impact of drugs and alcohol on her ability to parent. This

is evident in her very intelligent decision to cancel a scheduled visit with M on one of those rare occasions where she was under the influence.

Inconsistent Visits:

[6] Similarly, the issue of inconsistent visits did not present as a significant child protection concern in this case. While there may have been the occasional visit that should have occurred but did not, by and large the evidence demonstrated that much of the inconsistency in visits could be attributed to the process set up to accommodate visits. Ms. N was required to telephone and speak directly to the social worker before a prescribed time on the morning of each scheduled visit or the visit would not proceed. Ms. N does not have a telephone, and, at times, the unavailability of the assigned social worker created a barrier when Ms. N was able to get to a telephone.

[7] In addition, transportation problems presented a significant barrier to visits. Firstly, Ms. N experienced problems with her unreliable vehicle, and later, she found it difficult to meet the scheduled start and end times of visits when relying on public transportation. More recently, the Director has provided transportation for Ms. N, which has greatly improved the consistency of visits.

[8] I believe it is fair to say that, by the end of the hearing, the Director recognized the need to revisit and to streamline the visitation process. As a result, I have placed little to no weight on the inconsistency of visits in assessing the child protection concerns in this matter.

[9] The remaining three issues identified by the Director, mental health concerns, efforts to address child protection issues, and the pattern of leaving M with inappropriate caregivers, are each interrelated and lay at the very heart of this case.

Mental Health Issues:

[10] It is not in dispute that Ms. N has encountered more than her share of adversity and tragedy over the past few years. Beginning in 1999, she was subjected to a traumatic threatening incident in the workplace. As a result, Ms. N now suffers from post traumatic stress disorder or PTSD.

[11] Next, Ms. N has had to struggle with grief related issues as a result of an inordinate number of deaths of family members and close friends in the past year and a half, among them her two sisters, two cousins, an aunt, and the particularly devastating loss of her father.

[12] Ms. N's resulting anxiety, grief and depression were further compounded by additional stressors in her life including a house fire, a stolen vehicle, and the stress associated with M being taken into care, along with the obvious friction in Ms. N's relationship with the Director.

[13] The sheer number of traumatic incidents could not help but have a negative impact on Ms. N's state of mind and her ability to function. Furthermore, Ms. N presents as someone who finds it difficult to reach out and to trust others for assistance.

[14] Notwithstanding this, she has made some efforts towards addressing her mental health issues, which included the following:

1. Approximately 10 counseling sessions with Joanne Hutsul, who was with Mental Health at Whitehorse General Hospital,
2. Two years of counseling with psychologist Alberta Rooney,
3. Completion of a program at Whitehorse General Hospital on how to manage PTSD and anxiety, and
4. Regular sessions with her family doctor.

[15] With the exception of meeting with her family doctor, Ms. N has not engaged in any formal counseling in the past year.

[16] Ms. N also identified a number of community supports with whom she has regular contact: George White at the Salvation Army, Sister Christine at Mary House, Betty Sjodin at Kaushee's Place, Delores Springgay the Kwanlin Dun Healthy Families worker, and her aunt Mary Battaja, an Anglican minister with experience in grief counseling. With the exception of Ms. Battaja, Ms. N indicated that each of these supports has been in place for more than a year. Her evidence suggested that she relied on each on an ad hoc basis to assist with day-to-day issues and frustrations as opposed to engaging in formalized counseling sessions designed to address her underlying issues of PTSD, grief, anxiety and depression. Ms. N herself characterized their support as "emotional and physical" as opposed to counseling.

[17] She did indicate that she has met two or three times with Dennis Jackson, a spiritual healer, but it appears that he is taking a year off, and, again, there is no formalized counseling relationship established between them.

[18] I would note that other than two dated letters from Alberta Rooney and Dr. Sherillynne Himmelsbach, I did not receive any objective information from Ms. N's supports or former counselors on her mental status or progress.

[19] The Director is of the view that Ms. N has not adequately addressed her underlying mental health issues, and remains adamant that Ms. N participate in a mental health assessment. Ms. N has for some time maintained that she has done all that she need do to address her issues and that a mental health assessment would be a fishing expedition to find information that could be used against her.

[20] This stalemate over the mental health assessment is reflective of the overall relationship that has developed between the Director and Ms. N.

Reluctance or Disregard for Addressing Child Protection Issues:

[21] The Fourth child protection concern raised by the Director, Ms. N's reluctance or disregard for addressing child protection issues, is in my view more properly characterized as a concern with respect to the very conflicted relationship between Ms. N and the Director, and it is less a child protection concern, than it is the barrier that is preventing the parties from reaching everyone's stated goal of ultimately returning M to her mother.

[22] Ms. N is by her own admission a strong-willed and opinionated individual. When asked if she accepts any responsibility for the relationship that has developed with the various social workers, she responded, "I totally do. I'm stubborn and bullheaded. I will not budge if I feel strongly about something". It is also clear that Ms. N finds it difficult to trust in any relationship, and she is highly suspicious of the motives of the Director. This is clear in her belief that the mental health assessment is a fishing expedition and in her recent insistence on having a support person present in all of her dealings with her social worker.

[23] What the Director has perceived as Ms. N's unwillingness to address child protection issues stems in large part from her inherent distrust of what she is being asked to do. She clearly sees the reason behind the request for a mental health assessment as something other than an attempt to access objective information about her progress in managing her PTSD, anxiety and grief. And, consistent with her personality, she has dug in her heels and is not likely to budge on the issue.

[24] As for the Director, Ms. N has dealt with a succession of social workers. Each has inherited the frustration of the previous social workers in dealing with Ms. N; each has maintained the same position with her on the mental health

assessment; and each has been equally unsuccessful in developing a trusting, cooperative relationship with Ms. N. In both her affidavit and *viva voce* evidence, Ms. Smith indicated that she recognized that she is triggered by Ms. N's very strong, confrontational personality, and that she has taken steps to structure their interaction to prevent herself from becoming frustrated.

[25] In my view the Director has taken some positions that have exacerbated this already difficult relationship. On the issue of the list of appropriate caregivers, Ms. N has been given conflicting positions. She has been asked to provide a long list, a short list, a different list. It is no surprise that Ms. N feels she has met this condition even though the Director does not.

[26] Of even greater concern to me is the manner in which the family support worker resource provided to Ms. N was terminated. In her affidavit, Ms. Smith indicates that the resource was terminated because Ms. N did not use the time productively to work on the child protection issues identified by the Director. However, I find as a fact that Ms. N was never advised that her use of her time with the family support worker to vent her frustration about her relationship with the Director was an inappropriate use of the resource. I also find as a fact that Ms. N was advised at a case management meeting that if she was not prepared to sign the case plan agreement or work on the issues identified by the Director, the family support worker resource would be terminated. It is not surprising that Ms. N viewed this as a form of blackmail. Such an approach could only exacerbate an already tense and distrustful relationship.

[27] In all of the circumstances, it is not surprising that this relationship has developed into a stalemate over the mental health assessment, and both sides must share in the responsibility. However, this stalemate has prevented any real progress being made towards returning M home. If we are to get to that point, both sides must make efforts to rehabilitate the relationship. Ms. N must open herself up to working with the Director in a more cooperative and less suspicious

fashion. However, it must also be recognized that Ms. N does not have the power or resources that the Director does. With such an imbalance, the Director has a higher onus to ensure that frustrations do not prevent forward movement. While I commend Ms. Smith for her insight into her own triggers and her attempts to avoid unproductive confrontation, the Director has to do more, in my view, to rehabilitate the relationship with Ms. N.

Pattern of Leaving M with Inappropriate Caregivers:

[28] The last child protection concern identified by the Director, that of Ms. N leaving M with inappropriate caregivers, is the most critical of the five concerns identified.

[29] On December 27, 2002, Ms. N left M, then ten months old, in the care of M's 13-year-old sister, C, for over 48 hours. This unfortunate and ill-advised decision was to develop into a pattern of behaviour for Ms. N.

[30] On August 5, 2003, Ms. N left M in the care of Fabianne Bolton, indicating that she would return in about an hour. She did not return that night or the next day.

[31] On October 30, 2003, Ms. N leaves M with Mazie McLeod and did not return to pick her up that day. M is taken into care, but returned to Ms. N under a supervision order on November 6, 2003.

[32] On November 7, 2003, only one day after M is returned, Ms. N leaves M in the care of a man named Rick, who disappears on the morning of the 10th, leaving M once again in the care of her older sister C in contravention of the conditions of the supervision order.

[33] On April 16, 2004, only weeks after having M returned on another supervision order, Ms. N leaves M overnight with C in contravention of the conditions of the supervision order.

[34] On August 20, 2004, Ms. N is to have her first overnight visit with M on the Temporary Care and Custody order. She again leaves M alone with C.

[35] Ms. N has provided explanations for each incident, some easier to believe than others. With many of the explanations, Ms. N endeavours to shift the blame onto others for what had happened. As Ms. Poyntz testified, Ms. N may now acknowledge leaving M was inappropriate, but she focuses on the situational things around why the scenario happened as opposed to focusing on what she could or should have done differently to prevent it from happening in the first place.

[36] As an example, her explanation for the most recent incident is that she had gone to M's father's place for him to work on her vehicle, but that he began shooting up drugs and would not let her leave. Clearly she does not feel she should be held accountable in the circumstances. What I find difficult about the scenario, however, is not what M's father did or didn't do, but the fact that Ms. N would make arrangements to be absent for any length of time and for any reason on M's very first overnight, something Ms. N had been demanding for some time.

[37] Ms. N appears to lack insight into her own behaviours as they relate to this pattern that has developed. There is clear evidence that, as a result of her underlying mental health issues, Ms. N feels the need to remove herself from situations where her level of stress and anxiety overwhelm her. Examples are seen in her need to separate herself from her social worker or from C when things get too confrontational. That is not to say that it is wrong for her to do so. On the contrary, it is healthy for her to recognize when she needs to take a break from a difficult situation, but what is of concern is the fact that she does not seem

to recognize that it is likely the very same motivation that causes her to continually repeat the pattern of leaving M with inappropriate caregivers. On only one occasion in her evidence did she acknowledge that it was likely the stress and anxiety that brought on the repetition of the pattern. At all other times, she focused on her excuses.

[38] Ms. N needs to fully appreciate **why** she leaves M so that she can ensure that when she feels the need to do so, she makes safe and healthy choices about M's temporary caregivers.

[39] Ms. N maintains that if M were returned to her under a supervision order the pattern would not again repeat itself. To justify this assertion she points to the fact that she feels healthier in her mind and heart, that she has a number of community supports in place, and that she would now feel comfortable contacting the Director when she needs respite care, whereas in the past she would have been afraid doing so would be used against her.

[40] Unfortunately, I have nothing beyond her own assertion that she is now healthy enough and ready to resume full time care of an energetic 3-year-old. There is no objective evidence before me as to her progress, and I would note that she felt similarly ready to care for M on the overnight visit in August of 2004, and yet still left her in C's care. In addition, while her community supports are valuable to her and should be maintained by her, almost all of them have been supporting her for some time, including during those more recent times when she left M with inappropriate caregivers. Lastly, I am not fully satisfied that Ms. N has developed enough trust to be comfortable contacting the Director voluntarily for assistance. In short, there is really nothing before me to indicate that anything is really different today than it was in August of 2004, beyond the mere passage of time.

[41] For each of these reasons, I am of the view that there remains at present a very real risk of Ms. N repeating this pattern of behaviour. As a result, I find that M remains in need of protection. And, as I am of the view that an immediate return of M would be overwhelming not just for Ms. N but for M as well, I further find that it is not in M's best interests to return her to Ms. N under a supervision order at this time.

[42] However, I am also mindful of the importance of the very real bond between mother and child in this case. There is a need to ensure that everything possible is done with a view to returning M to Ms. N in the very near future.

[43] There will be an extension of the existing temporary care and custody order, but that extension will only be for a period of three months and it will have certain conditions attached to it. It is my expectation that there will be a conversion to a supervision order at the end of the three-month period.

[44] The first condition of the temporary care and custody order is to address the need to somehow access objective and measurable information as to Ms. N's state of mind and her progress. The Director and the Child Advocate both argue that a mental health assessment should be completed. As noted, Ms. N objects quite strongly to participating in an assessment as she feels her mental abilities are being questioned. In my view, we already have a very clear idea of what the mental health issues are. What we need is some objective information about how Ms. N is dealing with those issues. Such information can be obtained without resorting to a mental health assessment.

[45] It will be a condition of the order that Ms. N commence one to one counseling as soon as possible with a psychologist or counselor qualified to assist her with PTSD, anxiety, grief and depression, such person to be agreed upon by both the Director and by Ms. N. Perhaps some consideration should be given to Ms. Rooney, as Ms. N appears to have done well with her in the past

and she is already aware of the history; however, I will leave the choice to counsel. If an agreement cannot be reached, the matter should be brought back before me.

[46] As a second condition, Ms. N will sign an appropriate release to enable the psychologist or counselor to report both to the Court and to the Director about her progress.

[47] Thirdly, Ms. N will participate in a parenting assessment to assess the impact of her mental health issues on her ability to parent, such assessment to be completed by a practitioner agreed upon by both parties as soon as possible. I understand His Honour Judge Lilles has circulated the name of an individual from Alberta who may be available to complete parenting assessments. Again, if the parties cannot agree, the matter should be brought back before me.

[48] The issue of visitation also needs to be addressed. Having heard from counsel for the Director, it is my understanding, and my expectation that everything will be done to streamline the existing visitation process, including the continuation of providing transportation. Furthermore, from a transitional standpoint, the frequency and length of visits needs to be incrementally increased each week to ensure that both Ms. N and M are prepared and ready for the eventual return. I would ask all three counsel in consultation with your clients to develop an appropriate visitation schedule and file it with the Court.

[49] It will also be a condition of the order that during visits M is not to be left alone in the care of C for any length of time. In making this condition, I am not suggesting that C is incapable of caring for M for short periods of time, but given the history of this case, I feel that it is safest and in the best interests of both M and C for there to be an absolute ban to ensure that there is no ambiguity.

[50] As an additional condition, the family support worker resource will be reinstated.

[51] As a final condition, this matter will be brought back before me for a review within six weeks.

[52] As a final note, there is a need for all parties to explore developing a plan for the supervision order to follow, assuming the conditions of this order are met. Of specific concern to me is the issue of respite care. Based on everything that I have heard, I am persuaded that the best option on a supervision order would be to arrange for M to be placed in an approved foster home when Ms. N is in need of respite both on a scheduled and an emergency basis. I understand that currently respite care could not be made available on an emergency basis. It is my recommendation that the Director try to figure out a way to remove whatever obstacles there presently are to emergency respite care, over the next three months.

Ruddy T.C.J.