

*In the Matter of an application for
six-month care and custody Order;
And in the matter of R.J., S.J. and B.-L. J.,
2003, YKTC 74*

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Foisy)

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 SIX-MONTH CARE AND CUSTODY ORDER,
PURSUANT TO S. 126(1)(b) OF THE *ACT*;

AND IN THE MATTER OF
R.J., S.J. AND B.-L.J.

Zeb Brown

Appearing for the Director of
Family and Children's Services

Elaine Cairns

Appearing with the mother
of R.J. and S.J.

David Christie

Appearing with the mother
of B.-L.J.

Nils Clarke

Appearing with the Father

Christina Sutherland

Appearing as the Child Advocate

REASONS FOR JUDGMENT

[1] FOISY T.C.J. (Oral): There are two applications before the court;

both are applications by the Director to extend temporary wardship for a period of six-months with respect to the children: B.-L.J., who is three-years old, S.J., who is 12 years old, and R.J., who is 11 years old.

[2] It is clear that for each child, the Director has the onus of showing on the balance of probabilities that the child is in need of protection. It is my responsibility to determine whether or not the Director has met the test. In doing so, I must have in mind what is in the best interests of each child.

[3] For reasons that follow, I have concluded that the evidence meets the test, and that it is in the best interests of each child to declare that each child is in need of protection.

[4] However, the statute gives me a certain amount of latitude with respect to the disposition to be made. It is the disposition that I will now make and each disposition will differ in the case of each child.

[5] With respect to B.-L.J., she is just barely three years of age. She is a very special child that requires the more ingenious disposition. B.-L. is a severely handicapped or challenged child. She is functionally blind, she has a cyst on the brain, and she has hormone deficiencies including thyroid problems. She requires almost constant care including daily injections, the provision of medications twice daily, as well as special feeding methods and other special attention. She requires calm and quiet surroundings. She can neither walk nor crawl.

[6] At the time of apprehension, in December 2002, she weighed about 21

pounds. Since coming into care, and more particularly in the care of Ms. B.N., a nurse, her weight has increased by approximately 20 percent to 25 pounds. After a short time in Copper Ridge Place, a facility for handicapped children, Ms. N., who works at Copper Ridge Place Children's Unit, took the child to her home.

[7] I must say that people like Ms. N. are too rarely found in our society. Her care, compassion and expertise have combined to provide B.-L. with an excellent home and with excellent care.

[8] I am comforted by the knowledge that for another short period of time, Ms. N. will continue to care for the child and will provide assistance with the transition from her home to Ms. N.G.'s home, and will help to provide respite, along with other persons from time to time, when the child is back with her mother.

[9] I am of the view that while I will extend temporary wardship, the period here should be somewhat less than six months. I had contemplated a six-month extension, however, Ms. Sutherland, the child's advocate has convinced me that a shorter period would be sufficient to meet the needs of the child and still gives sufficient time for the mother and the Director to accomplish what has to be done to finalize the transfer.

[10] In my view, an extension of four months should be sufficient, with the period to be shortened if the matters that I list later in these reasons can be completed sooner.

[11] Ms. N.G. is the young mother of B.-L. She is a member of the Kwanlin Dun First Nation. As such, she has certain support systems readily available to her, for

example, housing, transportation and some home-help. Ms. N.G. loves her child and I think it is important that she be reunited with her as soon as reasonably possible. She has acquired a lot of knowledge about B.-L.'s afflictions and how to treat her. I think she has good skills as a mother and as a homemaker.

[12] I have some concerns about her anger-management, although, I note that she has started counselling, and I refer to Leah White's report dated June 4th, 2003.

- (1) Ms. N.G. indicates that she intends to continue with this endeavour and I expect her to do so, resuming sessions as soon as possible.
- (2) I also expect Ms. N.G. to provide a calm, quiet and safe environment for her child.
- (3) I direct that Ms. N.G. will discontinue, entirely, the use of marihuana; it is illegal, and it is unhealthy. The child should have a smoke-free environment.
- (4) I expect that Ms. N.G. will not drink in the home nor allow any drinking in the home and that she will do whatever is necessary to preserve a calm and quiet atmosphere in the home.
- (5) It would also be my direction that Ms. N.G. continues to take parenting courses and here I note that she did attend a course, and I refer to Janice Wood's letter of March 7, 2003; more of this type of instruction is needed.

[13] Ms. N.G. gets along rather well with her social worker, Alla Blysak. Together they should work diligently to accomplish the following before the child is returned to the mother:

- (1) The home-plan must be agreed to and completed as soon as possible.

- (2) The home must be inspected and approved by the Director. Here, I add that, from the evidence, the home seems very nice and well kept. With the addition of the carpet and perhaps a few minor changes, if reasonably required, this item should not pose a problem.
- (3) A family support worker should be appointed in a diligent fashion. If this cannot be done expeditiously, a temporary worker should be named to assist until a permanent worker can be named. Here, I recognize that, as far as the child is concerned, it is better to have the same people working with her as opposed to a number of strangers.
- (4) I expect that Ms. N.G. will recommence alcohol and drug abuse counselling, anger-management counselling, and parenting counselling sessions.
- (5) I would also recommend that overnight visits be instituted as soon as reasonably possible. I leave it to Ms. N.G. and her social worker to work out the details.
- (6) I would hope that Ms. N.G. and the father, Mr. R.J., would, until the transfer takes place, visit the child as often as possible, keeping in mind that a reasonable schedule is necessary to avoid chaos in Ms. N.'s life and in her home.

[14] I turn now to S.J. S., is a severely mentally, psychologically and emotionally challenged young lad. He has a long history of serious and terrifying behavior which stems back to his kindergarten days. While I accept that his father, Mr. R.J., has been able to diffuse many of these incidents, there were some very serious ones that were controlled only after the child's actions placed him at serious physical risk.

[15] Before the apprehension of S.J., there is nothing before me to show that S.'s condition was stabilizing; there were continuous and continued incidents one after another. Since he has been placed in care, particularly since his presence at the Fireweed Residential Youth Treatment Services (RYTS), a treatment centre for youngsters his age, and also particularly of late in a special needs class at school, there is evidence of increasing stability. S. has renewed his interest in school and is making progress. His behavior at the Centre has markedly improved.

[16] I accept the evidence of Mark Peterson and David Michayluk in this regard. I also accept their evidence that S. still has a long way to go. I accept the evidence of Dr. Dawn Oiffer, a psychologist, that there is a real danger to S. if therapy and treatment are terminated at this time. This is a crucial time in S.'s life.

[17] Accordingly, I allow the Director's application and extend the temporary wardship for six months.

[18] Now, having said that, I accept also that his father, Mr. R.J., really loves his son. He has demonstrated that over the years by dogged support and care in very trying situations and has really tried to assist this boy.

[19] I want to impress upon Mr. R.J. that simply because S. is in a centre, it does not mean that he is excluded from his life. To the contrary, it is very important that Mr. R.J. put aside his suspicions and his fears of the centre, and that he work with the staff at the centre as well as Mr. Michayluk, at the school, and that he be actively involved in S.'s life.

[20] I am pleased to note that S.'s grandmother, Mrs. H., is involved with the school and in S.'s life. I know that she cares for S. dearly and her presence can only be a positive thing for S.

[21] Much has been said about physical restraint used upon S. at the centre and at school. No one wants to use physical restraint if it is reasonably avoidable. However, there are times when, for the safety of S., as well as others, reasonable restraint is necessary. While I prefer the type of restraint used by Mr. Michayluk at school, I would not, based on the scant knowledge that I possess, be critical of the methods employed at the centre. I would suggest, however, that Mr. Michayluk's methods be looked into by the staff at the centre to determine if this type of restraint might be less intrusive and just as effective.

[22] Turning to R.J. It was the alleged unreasonable, physical discipline administered by Mr. R.J., R.'s father, that led to the apprehension of R. and her siblings.

[23] A criminal charge of assault was laid against the father and the stepmother, Ms. N.G. The charge against Ms. N.G. was stayed, the charge against Mr. R.J. was dismissed after he went through a type of diversion program. To his credit, he has admitted that he was responsible and that he was wrong.

[24] I accept that he no longer believes in corporal punishment and that it will not happen again. At the time of the assault, life for the J. family was chaotic at best. It has changed and he now lives with his mother, Mrs. H.

[25] On the condition that R. will live with her father and her grandmother at the grandmother's home, I am of the view that the circumstances have changed to the extent that while the child is still in need of protection, she should be allowed to live with her father and her grandmother under the terms of a six-month supervision order:

- (1) Within the next two or three weeks, inspection and/or repairs to the grandmother's trailer will have to be made so that it is safe, particularly, the electrical system. Other repairs are probably not as critical in the short-term because there is room for R. without having to use what referred to as the "spare" room that needs more extensive repairs.
- (2) Also, adequate furniture will have to be on the site to accommodate R. The move can then be made to Mrs. H.'s residence.

[26] The other conditions that I am imposing are as follows. These are not pre-conditions; the move can certainly take place, as the conditions that I am now going to list are ongoing:

- (1) Mr. R.J. will cease smoking marihuana completely. Again, it is illegal, it is harmful to R. and to those around him. It is a poor example to R., and to S. and as Mr. R.J., himself, said, "They are smart kids and they know what is going on." It is better for him to say to them, "Do as I do", as opposed to, "Don't do what I do, but do what I say." Also, Mrs. H. says it stinks.
- (2) There will be no consumption or presence of alcohol in the home and Mr. R.J. will remain in a state of sobriety while in the presence of his children.
- (3) R. will continue her schooling and her attendance at the Child Abuse

Treatment Services (CATS).

- (4) I will not make any order regarding R.'s visits with Ms. H. But if R. indicates that she wants to see Ms. H. from time to time, I would hope that Mr. R.J. and Mrs. H. would be prepared to accommodate any such reasonable requests. Visits with B.-L., I know, will be encouraged and facilitated. Visits with the mother, D.M., (this applies to her, because R. will be with her father; it also applies to visits with S., who is in care) should be allowed only when Ms. D.M. is in a state of sobriety and drug-free. The visits should be monitored with respect to location and activities.
- (5) Mr. R.J. will commence counselling for alcohol and drug abuse in accordance with Mike Lackey's letter dated July 10, 2003.

[26] If any dispute arises about the condition precedent (that is the condition of the H. home) the parties can apply to this court for a rapid and summary determination of the problem. I certainly hope that this will not be necessary but that option is available if there is a problem.

[27] I know that this is only a commencement of the process of reunification of the family. No one can predict for certain how S. will do. I hope the assessment scheduled for next month will help shed some additional light on his problems and, perhaps, additional solutions.

[28] I also want to comment on the impasse that has apparently arisen between Ms. Elliot and Mr. R.J. I am not here to point the finger. My sense tells me that Ms. Elliot is a capable and sincere person, if perhaps, overworked, as most social

workers are. I cannot direct but can only suggest that it might be in the best interests of everyone, especially the children, if another worker were appointed in order to relieve the situation. Alla Blysak might be considered a likely candidate for reasons that have come out in the evidence.

[29] Counsel, is there anything else that should be mentioned?

[30] MR. CHRISTIE: Your Honour, I was just wondering, with respect to your comment that the parties can apply to this court for a fast resolution, does that apply as well to the B.-L. matter, as well, if there is a problem with that? Or is that just S.?

[31] THE COURT: Well, I was considering basically R. because there is a very short period of time, but I would make the same direction if there are problems between the Director and Ms. N.G. I would think that with the given timeframe, and with the social worker and Ms. N.G. getting along, that this should work out all right.

[32] MR. CHRISTIE: I hope so, as well, Your Honour. But that leads me to my second request that I was going to make. I appreciate that you are not in this jurisdiction, but with the benefit of tele-conferences, I would like to make a request that you be seized with this matter, or for at least a time period?

[33] THE COURT: It is going to be difficult, for two reasons. One, is that I am going to be in various jurisdictions traveling for the next while, and then for a while I am going to be flat on my back because of some surgery that I have

to have in November. So, perhaps, rather than risk having a judge who may be under the influence of medication because he is recovering from surgery, you might want to get somebody else.

[34] MR. CHRISTIE: But we can make the request, I guess?

[35] THE COURT: You can make the request.

[36] MR. CHRISTIE: Thank you, My Lord.

[37] MR. CLARKE: Two issues arising, Your Honour, just for greater clarity for all parties. I am assuming that some of pre-conditions with respect to the physical plan or the physical layout of the H.'s and J.'s house are met. What are Your Honour's views of the period of transition?

[38] THE COURT: As soon as they are met, she can move. I mentioned two or three weeks because there has to be some time frame here which is reasonable, but if the parties can move faster, so be it.

[39] MR. CLARKE: As soon as they are met, yes. And then the length of the supervision with respect to R.?

[40] THE COURT: That is six months.

[41] MR. CLARKE: Then, will Your Honour be available within the next two or three weeks if there is an issue with respect to the determination

whether the report card on the physical plan has been met?

[42] THE COURT: I suppose I can be reached within the next couple of weeks. It may be difficult, but I will do my best.

[43] MR. CLARKE: Thank you.

[44] THE COURT: Anything else? All right. Well, lastly, I think I would be remiss if I did not thank counsel for putting up with me for the last five days. It has been a difficult time for everyone and I appreciate the cooperation and I appreciate everybody being willing, sometimes with a little push, to sit later in the day and finish this matter. I think it was important that we deal with it now, and that everyone can get on with their lives as soon as possible.

FOISY T.C.J.