

SUPREME COURT OF YUKON

Citation: *A.J.S. v. D.M.T.*, 2009 YKSC 37

Date: 20090421
Docket No.: 08-B0062
Registry: Whitehorse

BETWEEN:

A.J.S.

Plaintiff

AND:

D.M.T.

Defendant

Before: Mr. Justice R.S. Veale

Appearances:
Fia Jampolsky
Elaine Cairns

Counsel for the Plaintiff
Counsel for the Defendant

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): This is an application by the father of a seven-and-a-half-year-old child for this Court to maintain its jurisdiction in this custody and access application until May 13, 2009, when the jurisdiction application will be formally heard. The application is opposed by the mother, who resides in Saskatchewan with the child.

[2] The child was born in Manitoba in September 2001, when the parents were living separate and apart after a relationship in the Yukon. The mother has always had custody of the child and obtained a Manitoba custody order in November 2002.

[3] The mother returned to the Yukon for approximately three months in 2001 and

again for approximately three years, from October 2003 to December 2006. She left the Yukon in December 2006 and has spent the last two years in Saskatchewan.

[4] The father alleges that the mother has prevented him from having access to the child for approximately two years. He applied for custody and access in Manitoba but they were unable to locate the mother and the Court declined to hear the matter.

[5] The father then applied in the Supreme Court of Yukon in December 2008 for interim custody and, alternatively, access.

[6] I ordered that the matter be set for hearing on January 23, 2009, and on that date the father was aware that the mother and child were in Saskatchewan but he did not know where. I ordered substitutional service on her place of employment and I also ordered that the Maintenance Enforcement office in Whitehorse disclose her address so that she could be personally served. There was some delay in obtaining the address in Saskatchewan but she was ultimately served on February 27, 2009.

[7] The mother appeared personally by telephone from Saskatchewan in this Court on March 3, 2009, and she advised that she wished to retain counsel. I ordered that the application be adjourned to April 21, 2009, to permit the mother to obtain counsel. I also ordered that the father have interim, supervised access and telephone access to the child from Monday to Friday at 7:00 p.m.

[8] The mother ultimately retained Whitehorse counsel, who requested an adjournment of the April 21st, hearing to May 13, 2009, in order to file affidavits. Counsel for the father consented to that adjournment.

[9] The mother then applied for custody of the child in Saskatchewan and a hearing date has been set for April 22, 2009, in Regina. I am advised that counsel for the mother in Saskatchewan has refused a request from counsel for the father for an adjournment of the Saskatchewan hearing on April 22, 2009.

[10] There is a great deal of disputed evidence in this matter. The father alleges that the mother has been denying access for a period of two years and the mother alleges that there was an incident back in the Yukon in 2003 when the father abused the child, as well as some abuse with respect to her own person, and I am not, at this point, able to make any comment with respect to which allegations are true.

[11] This Court has already assumed jurisdiction in this matter by making an interim custody order before any application was brought in Saskatchewan. It is also important to note that this Court can make an interim custody or access order pursuant to s. 39 of the *Children's Act* R.S.Y. 2002, c. 31, even in circumstances where the Court declines to exercise jurisdiction.

[12] Given that the mother had not made an application for custody in Saskatchewan until she was served with process from this Court, and the fact that the date was set for hearing in this Court before the mother's application in Saskatchewan, I am of the view that it is appropriate for this Court to maintain jurisdiction until the issue of jurisdiction is fully heard and explored on the hearing date of May 13, 2009, as originally agreed by counsel for the parents.

[13] MS. JAMPOLSKY: My Lord, if I could for clarification for drafting of the order, is the order for the Court to maintain jurisdiction until the hearing date of May

13th?

[14] MS. CAIRNS: And is it interim jurisdiction?

[15] THE COURT: I just said jurisdiction. In effect, though, it is interim, and I am content to have you do the order up as interim jurisdiction because that is effectively what I am ruling in the matter. Thank you, counsel.

VEALE J.