

SUPREME COURT OF YUKON

Citation: *M.W.U. v J.A.J.S.*, 2013 YKSC 23

Date: 20130327
Docket: S.C. No. 12-D4477
Registry: Whitehorse

BETWEEN:

M.W.U.

Plaintiff

AND:

J.A.J.S.

Defendant

Before: Mr. Justice L.F. Gower

Appearances:
M.W.U.
Carrie Burbidge

Appearing on his own behalf
Appearing on behalf of the Defendant

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): I will say, at the outset, I am in substantial agreement with the mother's counsel on this application. I am to have regard to the maximum contact principle under s. 16(10) of the *Divorce Act*, which requires me to keep in mind that the children of the marriage should have as much contact with each parent as is consistent with their best interests. Secondly, pursuant to s. 16(9), I should not take into consideration the past conduct of a parent, unless that conduct is relevant to the ability of the parent to provide care for a child.

[2] I am also keeping in mind my Reasons for Judgment which were filed October 30, 2012. At that time, the father had indicated through his counsel that he agreed that it was in the best interests of the children to have maximum contact with their mother. However, given the then recency of her treatment program and her relative sobriety, he submitted that it was still too soon and too risky to allow the mother equal time with the children. He suggested that the Court should proceed cautiously. It is also important to recognize that in that decision I was satisfied that the mother had established a material change in circumstances since the Separation Agreement earlier in 2012. I made a number of points there, including: the fact that she had five additional counseling sessions through her Employee Assistance Program; she had apparently stopped alcohol and illegal drug usage; she had obtained her own residence; and she had been evaluated by her psychiatrist in September of 2012, who opined that she was then stable and able to provide for herself and others, providing she continued her substance abuse counseling and her DBT therapy. The mother had also attended two Parenting After Separation workshops in September of 2012. Finally, as of October 4, 2012, Family and Children Services no longer had any concerns about her exercising unsupervised access with her children, providing she continued to access all her supports and participating in counseling.

[3] So in following up with those points, the mother has provided evidence on this application that she is continuing to see her ADS counselor, Kaelin Shea, whom she has been seeing since October 11, 2012. Ms. Shea provided a letter, dated February 14, 2013, confirming that Ms. S. has attended for her appointments on time and has actively participated in strategies supporting her treatment. Ms. Shea is working with

Ms. S. in pursuing her DBT therapy and she reports that Ms. S. currently presents as maintaining a successful recovery.

[DISCUSSION RE NUMBER OF APPOINTMENTS ATTENDED]

[4] THE COURT: Ms. Shea also confirmed in her letter that Ms. S. has attended 11 one-hour outpatient counseling sessions since initially meeting with Ms. Shea on October 11, 2012. That is a significant continuation of her counseling, in my view.

[5] In addition, Ms. S. provided a letter from Dr. Heredia, who has been her psychiatrist since October 2009, confirming that she has been to see him on November 26, 2012, and again January 28, 2013, and that she was compliant with those scheduled appointments. Dr. Heredia says he found that Ms. S. has been active in seeking out care. Although she did not follow up with his recommendation to seek DBT therapy through Mental Health Services, Ms. S. did report to him that she is seeking treatment at ADS and that she is receiving DBT from her ADS worker.

[6] Dr. Heredia says that clinically he found Ms. S. to be stable at the time of his last assessment, and that she appeared to be stable of mood. In the conclusion, he said that although she continues to suffer from Borderline Personality Disorder and other psychological issues, he believes that all of those conditions are treatable. Dr. Heredia believes that her current psychiatric symptoms are stable at the time of that letter, which was February 21, 2013, but that Ms. S. will require continued treatment in the areas of personality disorder, mood anxiety, alcohol, and illicit substance abuse. He did not feel that her psychiatric condition would impair her ability to provide for herself and others,

nor did he feel that she suffered from any condition which would impair her ability to make appropriate informed decisions or to be able to distinguish right from wrong.

[7] The letters of Ms. Shea and Dr. Heredia are two significant pieces of evidence, in my view, regarding the mother's continuing efforts to stabilize her life.

[8] The residence that Ms. S. obtained at the time of the October hearing, she is still in.

[9] One of the issues that was extant at the time of the October hearing was the mother's history with engaging in multiple intimate relationships. That appears to have stabilized as well since the mother has engaged in a relationship with Mr. W. whom she has known for several years. In fact, Mr. W. moved from British Columbia to reside with the mother in her home here in Whitehorse, sometime in November. He has filed affidavit material indicating that he is not a drug user, that he is currently employed, and plans to pursue some schooling in August of this year in the field of working with troubled disabled youth as a residential care worker. As I recall, his evidence is consistent with that of the mother in that they both deny any ongoing abuse of alcohol, although, the mother does admit to the occasional alcohol consumption with meals.

[10] So, in general, things look much more stable than they were in October of last year and while there continue to be disputes between the parties about various aspects or attitudes or methods of their respective parenting, those kinds of disputes are not uncommon and are not a reason for dismissing the mother's application at this time.

[11] I am also very much alive to the issue raised by the mother's counsel regarding stigmatization of a person suffering from mental disorders. While the mother concedes

that she has such a disorder in the form of Borderline Personality Disorder, in particular, she also acknowledges that she is continuing to, and will for some indefinite period, continue to receive treatment for that disorder in order to keep it under control. So while she is doing that, I can see no reason not to employ the maximum contact principle under the *Divorce Act*, because it would seem to me self-evident, as even the father conceded to a point last time, that it is in the children's best interest to have maximum contact with both parents.

[12] There are, and have been, issues identified in this hearing regarding communications. I would expect those will improve over time, although it probably would continue to be wise to limit the communications between the parties, as I did last time, to email, but perhaps adding texting, providing that all those communications have to do with the exchanges of the children and their ongoing care. I would also encourage, as I indicated in the hearing, that if either parent learns of any issues regarding the children, either with respect to their health or their education primarily, that those issues or information items are passed on to the other parent so that both parents are as up to speed as possible regarding all ongoing issues regarding the children's care.

[13] Although there was no separate Order filed following the Reasons for Judgment of October 30th, I am going to vary the Order that I made in my Reasons at that time to allow the mother's application, such that the parties will have interim joint custody, since this has not been a trial, of the three children. The children will reside with each parent on an alternating week basis, with the exchange to take place each Friday at the children's daycare or as otherwise agreed between the parties in writing.

[14] I will further order that the children spend one month respectively with each parent during the summer break. The parent with whom the children are residing during those one-month periods will be entitled to travel with the children outside of the Yukon, providing advance notice is provided to the other parent of the travel itinerary and contact information for the children during the vacation away from the Yukon. That information is to be provided no later than two weeks before the departure date. So, it goes without saying, that such travel will be allowed without the written consent of the other parent.

[15] I will further order that the children continue the counseling that is currently underway, with the consent of both parties, for so long as the counselor or psychologist overseeing the program deems that to be appropriate.

[16] I will further order that while the children are in the care of one parent spending residential time with them, they will have reasonable telephone, email, and texting access to the other parent, and that reasonable telephone, email, and texting access will continue through any summer vacation periods as well.

[17] The Christmas schedule, which I set out in my October 30th Reasons, will continue. For the 2012 Christmas season, the mother was to have access from noon Christmas Eve to noon Christmas Day. For the following Christmas, which is this year, 2013, the mother is to have access from noon Christmas day to noon Boxing Day, with that alternation continuing from year to year. That alternating Christmas residential time will continue, subject to any further or other agreement between the parties in writing.

[18] I will continue the order, as I have indicated, that the only form of communication between the parties be by email or texting and only for the purposes of matters relating to the children.

[19] THE COURT: I am sorry that this has been a bit choppy but, Ms. Burbidge, have I left anything out?

[20] MS. BURBIDGE: No, Your Honour.

[21] THE COURT: Okay. So, Mr. U. will be required to sign his approval to the form of that order. I assume you have contact information for him to arrange that?

[22] THE CLERK: Yes, I do.

[23] THE COURT: Okay. Mr. U., do you have any questions?

[DISCUSSION RE QUESTION TO BE DISCUSSED AT A LATER DATE]

[24] THE COURT: I have addressed all the points that I intended to.
Thank you.

GOWER J.