

SUPREME COURT OF YUKON

Citation: *A.K.S. v. G.S.*, 2014 YKSC 75

Date: 20141219
S.C. No.: 14-D4697
Registry: Whitehorse

BETWEEN:

A.K.S.

Plaintiff

AND:

G.S.

Defendant

Before the Honourable Mr. Justice L.F. Gower

Appearances:
Norah Mooney
H. Shayne Fairman

Counsel for the Plaintiff
Counsel for the Defendant

RULING ON APPLICATION

[1] GOWER J. (Oral): This is a difficult case, as counsel readily acknowledge. It is made difficult because the mother has made some serious allegations of psychological and financial abuse by the father and by the paternal grandparents. Essentially, the mother's position is that because of that abuse, there should be restrictions on the father's access in the next six weeks until this matter is heard in a full hearing.

[2] I begin by recognizing the principles applicable here, which are cited in *Dhillon v. Dhillon*, 2001 YKSC 543, at para. 13:

1. a child should have as much contact with each parent as is consistent with the best interests of the child;
2. the access of a child to a parent is the right of the child;
3. the best interests of the child requires consideration of the condition, means, needs and other circumstances of the child;
4. access may be denied to a parent if it is not in the best interests of the child;
5. the past conduct of a parent may be taken into consideration if it is relevant to the ability of that person to act as a parent of a child;
6. the onus is on the parent seeking access, to establish on a balance of probabilities that access is in the best interests of the child.

[3] So there is an onus on the father, who is seeking increased access from what has been agreed upon to date. However, I would suggest that there is also an onus on the mother because she is seeking, effectively, a limitation on the maximum contact principle, which is the first of the above six principles.

[4] In this situation, the parties have agreed to interim access by the father. I am told that that has been a total of seven hours per week for these two children, who are ages three years and eight months. However, that that access has been restricted in the sense that there has been no overnight access; there has been no ability for the father to have the children with him in the family home where he resides with the paternal grandparents and other extended family members; and that the children have not been allowed any contact whatsoever with the paternal grandparents.

[5] The reason for those restrictions regarding the paternal grandparents arise, essentially, from the mother's allegations that the paternal grandparents have been psychologically abusive towards her, have called her names in the presence of the children, and that the risk of that happening in the future would be contrary to the best interests of the children.

[6] The father is seeking an increase in access with both children from Fridays at 5:00 p.m. until Saturday at 5:00 p.m.; on Tuesdays from 1:00 p.m. until Wednesday at 1:00 p.m.; and finally, on Thursday afternoons from 1:00 to 6:00 p.m. He is also asking that this access be unrestricted, in terms of supervision, and that he be allowed to have the children with him in his family home and that the children be allowed access and contact with the paternal grandparents.

[7] The separation occurred on October 30, 2014. The father immediately retained counsel and has been negotiating with the mother's counsel to obtain the interim access that has been in place prior to today's hearing.

[8] I do not think it is any mystery to counsel what the nature of my concerns are here. There is an onus on the mother because she is seeking restrictions on the amount of maximum contact which is consistent with the best interests of the children. That does not necessarily mean 50-50, given the young age of the children and the fact that the mother has been their primary caregiver. However, the mother is seeking restrictions on the proposed overnight access and, as well, the restriction regarding the paternal grandparents. All of her evidence in that regard has to do with allegations of name-calling and various forms of threats and psychological abuse that she claims to have suffered from the grandparents. She also complains that the father has not stood up for her and defended her when that has happened, and that is ultimately the main reason why she left the family home on October 30th of this year.

[9] Also, almost without exception, the very serious allegations which have been made by the mother have been denied both by the father and by each of the paternal grandparents. There are serious conflicts in the evidence which need to be resolved

some way, some how. And that is one of the other reasons that this has been such a difficult matter.

[10] I have already indicated to counsel my concern about the manner in which the mother has deposed her allegations in her three affidavits. There are repeated statements which I take to be very absolute and conclusive using language such as, "this never happened", "that always happened", and so on and so forth. I will not repeat my remarks in that regard. But, as I said to counsel earlier, life is seldom black and white and yet the picture painted by the mother in her three affidavits would seem to be very black and white. That causes me to have some significant concerns about whether she will be able to prove those allegations on a balance of probabilities when this matter is heard in a more fulsome manner, whether on January 30, 2015 or at a subsequent trial.

[11] The upshot of my reasoning is that the mother has not met her onus here in terms of justifying the restrictions that she is seeking on the proposed access by the father, which I find is generally, with one or two adjustments, consistent with what I expect will be in the best interests of these two children.

[12] There are a number of other matters which counsel thankfully have agreed to, which I will come to in a moment. However, with respect to the key issue of custody and access, I do think it is appropriate in the circumstances to grant an order of interim-interim joint custody of the children to the parties and interim-interim primary residence of the children to the mother.

[13] With respect to the father's access, I will allow the father to have access to both children on Fridays at 5:00 p.m. until Saturday at 5:00 p.m. -- so that will be one

overnight with the youngest child, the eight month old. On Tuesdays, I will allow the father to have access to the older child from 1:00 p.m. until Wednesday at 1:00 p.m., but with respect to the younger child, only from Tuesday at 1:00 p.m. until Tuesday at 6:00 p.m. There will be no overnight with the younger child on Tuesdays. And then finally on Thursday afternoons, the father will again have access to both children from 1:00 to 6:00 p.m. So, there will be one overnight per week with the younger child at least on an interim-interim basis until this matter can be further spoken to in about six weeks' time.

[14] I am told that the younger child is breast-feeding, but I am also told, and it seems to be common ground, that this child is also in the process of making the transition to solid food. I also expect that for the one night a week that the younger child will be spending with the father, the mother can accommodate by providing breast milk in a bottle if that is necessary.

[15] I also decline to order any restriction with respect to where that access can occur or with whom. There will be no requirement, obviously, for supervision. It is my expectation that the father will return with the children to the family home, that they will have access and contact with the paternal grandparents and other extended family members, and that there will be no continuing restrictions in that regard.

[16] As I say, there are a couple of other matters which would be appropriate to deal with now.

[17] There will be an interim-interim order for child support, pursuant to the *de facto* agreement that has been in place whereby the father has been paying, based on a gross annual income of \$69,520, \$1,018 per month for the two children in child support.

That will continue as of January 1, 2015, until the next hearing or until a further order of the Court. He has been paying \$1,000 per month for November and December in spousal support for the mother. That will continue on January 1, 2015, as well until a further order of the Court.

[18] I will order that sworn financial statements be exchanged between the parties no later than January 16, 2015.

[19] I will order that the children not be removed from the Yukon Territory without the written consent of the other parent.

[20] I think that covers everything that I intended to cover.

[21] Counsel, do you have any questions arising?

[22] MR. FAIRMAN: Yeah, probably a clause that says that the matters are to be adjourned to the January 30th date.

[23] THE COURT: You can add that clause.

[24] MR. FAIRMAN: Just in terms of the wording of the child support, it may just be easier for -- to be that child support is to be payable as of November 1, 2014, and similarly with spousal support

[25] THE COURT: That is fine.

[26] MR. FAIRMAN: And if I could just have one moment, My Lord?

[27] THE COURT: Sure.

(PAUSE)

[28] MR. FAIRMAN: In terms of a commencement, today is Friday, so I have just confirmed with my client that he is more than willing to commence the access that you've ordered tonight.

[29] THE COURT: I will leave the drafting of the order to counsel.

[DISCUSSION OFF RECORD]

[30] Thank you, counsel.

GOWER J.