

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

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 supervision Order,
made pursuant to s. 126 (1)(a) and s. 127 of the Act;

AND IN THE MATTER OF A. T. and J. T.

Zeb Brown	Appearing for the Director
Samantha Wellman	Appearing for the Mother
Malcolm Campbell	Appearing for the Father

DECISION

[1] FAULKNER T.C.J. (Oral): In this case, the Director of Family and Children's Services, seeks a six-month supervision order with respect to the children, A. and J. T. The application is consented to by the mother, C.T., but opposed by the father, B.T. This matter goes back to August of this year. At that time --

[2] MR. BROWN: Sorry, Your Honour, my friend has just reminded me that at one of the pre-trial conferences, Ms. Patterson had indicated that the Director would be satisfied with a three-month order. The application has not been amended, but I should bring that to your attention.

[3] THE COURT: All right. As I was saying, back in August, when the children were apprehended from their mother's care, there clearly were grounds for the apprehension. At that time they were in the effective sole custody of Mrs. T.

[4] Now what has happened since that time is that the children were placed with the father, B.T. There were some mild suggestions of problems that have arisen while the children have been in Mr. T.'s care. I think a fair reading of the evidence is that there have been no particular concerns that have surfaced, certainly nothing that would have justified an apprehension of the children.

[5] There was some concern expressed by the mother over nutrition issues, but this was not followed up and there is nothing that suggests that if there was a problem of this kind that Mr. T. was not capable of dealing with it.

[6] Similarly there was an allegation that Mr. T. had allowed some unsupervised persons to baby-sit. Again, this has not been substantiated in any way.

[7] Essentially the position of Director at this point in time, as I understand it, is that a supervision order is needed because although there are no particular day-to-day concerns at present with the care provided by Mr. T., that there are nevertheless concerns because of the history of Mr. T.'s involvement with the children.

[8] In particular, the Director complains that Mr. T. essentially did nothing despite his awareness of the bad situation in Mrs. T.'s home, particularly through June through August of this past year. It, however, seems to me that Mr. T. had a fairly limited ability to do more at the time. His job and his lifestyle at that particular time

were, by his own admission, not appropriate for him to assume care of the children. He also indicated that he was torn somewhat with respect to the issue of whether or not he should apply to the Court for custody and so on.

[9] I think it is fair enough to say these sorts of decisions are always difficult and that one might agonize over it, change one's mind and not necessarily want to rush quickly into a custody fight, if alternatives could be found.

[10] It may be true that Mr. T. could have done more back in the earlier part of the year. Undoubtedly he could have, but it appears that from the time that he has in fact assumed care of the children, he has done a reasonable job of looking after them.

[11] The situation, basically, boils down to this: There were grounds to apprehend the children, and there were certainly grounds to continue to monitor the situation after Mr. T. assumed the custody of the children. I think it is also fair to conclude that, as Mr. T.'s counsel urges, that at this particular point in time, there are no immediate grounds to invoke the *Children's Act*. That is to say, that any problems or difficulty in their care or any danger that they may be exposed to is not an imminent threat or danger.

[12] In my view, it does not follow from that that there is not necessarily a need of protection for the children. For example, if a parent, a custodial parent, had very difficult and serious problems, which would warrant the apprehension of his or her children, and that parent had recently straightened out his or her life, had the children back, was doing fine, and so on, the history of the matter and the newness of the recovery could nevertheless suggest that there was a risk of problems in the future, sufficient to justify a finding of need of protection, notwithstanding, on the day of the

hearing, as I say, there were not immediate child protection concerns.

[13] The issue of need of protection, in my view, is not a snapshot of a particular moment in time. The question of need of protection is one to be viewed having regard to the whole history of the care of the children. As I say, at the risk of repeating myself, where there have been past problems and the situation is sort of newly improved, it may nevertheless be prudent to monitor the situation for some additional period of time.

[14] In the case of Mr. T., he is to all appearances doing extremely well in looking after the children at this point in time, but it is also true that he is somewhat new to the task, certainly, of being the sole parent to the children. He is also new to his current lifestyle, which essentially has been transformed since the summer.

[15] There is also the factor that the mother, C. T., is still involved and wants to be involved with the care of the children. She is still involved to the extent that she has access, including unsupervised access, to the children. It seems to me that for that reason as well, it may be prudent to supervise that aspect of the children's care.

[16] Now, as Mr. Brown indicated earlier on, although the Director originally sought a six-month order, he was now only seeking a three-month order. Although I was not made aware of that at the outset, I would indicate that it would not have been my intention to impose a six-month order in any event. I commenced my remarks with the three-month figure in mind.

[17] Now with respect to the level of concern with this case, it seems to me it is at the lower end of the spectrum and that all that is really required at this point is simply

to ensure that the child protection concerns that led to the intervention in the first place have been put to rest.

[18] Accordingly, it does not seem to me that there needs to be an extensive series of conditions to be placed upon the parties and that it would be sufficient to provide that the children continue to reside with Mr. T., access by Mrs. T. be supervised by the social worker, and that both Mr. and Mrs. T. cooperate in providing information requested by the Department relative to the care of the children and their ability to care for the children. Beyond that, I do not see that anything is necessary to be ordered to be done. This is not to say that, for example, the parents should not take a parenting course, simply that it is not necessary that they be ordered to do so.

[19] You wanted to say something?

[20] MS. WELLMAN: I do. The condition number two, where the access by Mrs. T. be supervised, does Your Honour mean in the strictest sense that it be supervised, or more in the sense that it be facilitated?

[21] THE COURT: No, that the social worker have a supervisory role. I understand that Mrs. T. already has unsupervised access and overnight visits. I am not intending in any way to backtrack from that. I think the intervention of the Department has been useful in, Mr. Campbell did not like the word mediating, but sort of refereeing the matter of access as between Mr. and Mrs. T., and I think that is useful, because there may be times when it is difficult for the parties to deal with or make those arrangements directly and it provides another person to, not mediate, but referee the situation.

[22] In the result, there will be a finding in need of protection, but the children should be returned to the custody of Mr. T.

[23] MR. CAMPBELL: Your Honour, given that there is -- obviously what transpires today is going to have a significant effect on the Supreme Court matter. The notice of application that was filed by the Director sought that the need of protection arose because of C. T. being unable to provide proper care, supervision and control over the children. I am wondering what specifically is the need of protection concerns with respect to the father?

[24] THE COURT: Well, maybe you should get a transcript of my remarks and read them.

[25] MR. CAMPBELL: I will undoubtedly be doing that.

[26] THE COURT: Then you can see what I said.

[27] MR. BROWN: Thank you.

FAULKNER T.C.J.