Citation: *Re Matter of J.H., K.N., R.T.T. and S.S.,* 2006 YKTC 11

Date: 20060125
Docket: 03–T0016
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Lilles

IN THE MATTER OF the *Children's Act*, R.S.Y. 2002, c. 31, as amended, and in particular s. 130;

AND IN THE MATTER OF an application for a conversion of the existing temporary care and custody order to a permanent care and custody order, pursuant to s. 130(1)(c) of the Act;

AND IN THE MATTER OF J.H., K.N., R.T.T. AND S.S.

Appearances:

Lana Wickstrom	Counsel for the Director of Family and Children's Services
Debbie Hoffman	Child Advocate
David Christie	Counsel for P.S.
Fia Jampolsky	Duty Counsel for J.B.
Christina Sutherland	Counsel for V.M.

REASONS FOR DECISION

[1] On January 10, 2006 the Director of Family and Children's Services filed an application for findings of reasonable and probable grounds to take four children into care: J.H. aged 13 years; K.N. aged 10 years; R.T.T. aged 8 years; and S.S. aged 4 years. On January 20, 2006 the Director filed the current application for permanent care and custody pursuant to s. 130(1)(c) of the *Act*.

[2] This is an application by the paternal grandparents of K.N. and R.T.T. for full standing in the permanent care and custody hearing. The Director opposes the application and submits that liberal intervenor status is sufficient. The Child

Advocate recommends full party status be given to the grandparents. I understood the natural mother also supports full party status.

[3] A brief historical overview is helpful in placing the current application into context. I have taken these facts from the oral submissions of counsel and the affidavits filed with the Court and they should not be considered as findings of fact.

[4] The mother of the four children, P.S., has a long standing problem with drug addictions. Child protection concerns date back to 1998. The children were first taken into care in 2003; they were returned to P.S. and J.B., the then partner of P.S. and "stepfather" to the children, under a supervision order which lapsed on February 8, 2005. Shortly thereafter, P.S. relapsed into drug use. In June, 2005 she went to Alberta to take treatment, and prior to departing, she made arrangements with J.B. to provide care for the children.

[5] In early September 2005, P.S. returned to the Yukon to resume care of the children. She and J.B. separated and J.B. applied for and received an interim order for the care and custody of the children on September 6, 2005. P.S. is now back in Alberta and is not in a position to be a parent to her children. M.T., the father of K.N. and R.T.T. is not in a position to parent his children. Similarly, D.S., the father of S.S. is unable to parent. The whereabouts of S.H., the father of J.H., is unknown.

[6] J.B.'s involvement with the children is relatively short lived in that he became involved with P.S., the biological mother, in April 2004. It would be appropriate to describe the children as having special needs and to varying degrees are in need of special programming and therapeutic interventions. Because of their special needs, they demand a lot of attention from anyone parenting them. As early as October 2, 2005, J.B. was beginning to feel overwhelmed with the task. A month later, he was considering placing one of the children, R.T.T., with the Director. Discussions with the paternal grandmother, V.M., who had previously been approved by the Director as a foster parent,

resulted in a proposal to place R.T.T. with her. J.B. later declined to proceed with the plan.

[7] In November 2005, concerns were raised about J.B.'s ability to parent these four special needs children. J.B. himself, was feeling stressed out. On December 21, 2005 he turned all four children over to the applicants, V.M. and her husband, F.M. A placement that was intended to be for a few days, turned into weeks. By the end of December, J.B. verbally expressed his plan to give up his guardianship to the paternal grandparents.

[8] The paternal grandparents were uncertain that they could manage the financial responsibilities of caring for all the children. They were, however, prepared to take them under fostering arrangements with the Director. In any event, they brought the children into Whitehorse on January 6, 2006 and turned them over to the Director.

[9] Since then, the paternal grandparents have decided that they could manage to look after two of the children. They have applied for and received full standing in the Supreme Court application for custody of the two children, K.N. and R.T.T., their biological grandchildren. They are now applying for full standing in the Director's permanent care and custody application.

[10] The paternal grandmother, and the father of the two children, R.T.T. and K.N., belong to the Little Salmon/Carmacks First Nation. The child R.T.T. has been registered as a member of that First Nation, but K.N. has not. There has been no suggestion that K.N. would not be eligible for registration.

The Law

[11] Counsel filed two relevant cases with the Court: *W.(C.K.), Re*, 2002 YKTC 3 and *Q.(N.), Re*, 2003 YKTC 35. I quote from *Re W.(C.K.)*, supra, beginning at para. 20:

> To grant a third party standing in a legal proceeding has significant consequences. It entitles that party to

> call witnesses, cross-examine witnesses called by other parties, make submissions and to be part of any settlement of the action. It also binds that third party to the judgment. Third parties are more likely to be allowed to participate in a proceeding on a more limited basis, for example, to make a written or oral presentation relating it to the matter before the court. This lesser form of standing is called intervener status.
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> The granting of standing and intervener status is largely a procedural matter, which involves the exercise of judicial discretion. The issue underlying the exercise of this discretion is the effectiveness of the court process. Depending on the nature of the proceeding and the forum of the litigation, that discretion may be guided by rules of Court, by legislation or by common sense as part of the trial judge's inherent jurisdiction to conduct the trial in a manner that would be just, efficient and convenient.
>
> The more common reasons identified by Cromwell for exercising judicial discretion to give a party standing are:
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> - In order to avoid a multiplicity of actions arising out of the same factual situation.
> - The need to conserve or make most efficient use of judicial resources.
> - The practical value of the applicant's involvement in the proposed adjudication, including the contribution of the applicant to a just outcome.
> - The value of having the applicant legally bound by the court's decision.

[12] And although the *Children's Act* does not specifically provide the Court with the authority to appoint parties or intervenors, I am satisfied that such authority exists and that it arises both by necessary implication from the legislation itself and as part of its inherent jurisdiction, as described above (see *Re W.(C.K.)*, supra, at para. 35). The Court has a discretion to add a person as a party to proceedings under Part 4 of the *Children's Act* if:

a. their presence is necessary to determine the issues, and

b. that person has a clear legal interest in the proceedings.

(Re W.(C.K.), supra, at para. 36).

[13] I adopt here the statement found in para. 37 of Re W. (C.K.):

> Persons who are not parents or are not entitled to the care and custody of the child will rarely have a sufficient legal interest to qualify as a full party.

[14] A similar position was taken by Faulkner J. in *Re Q.(N.),* supra, at para. 7:

> It follows that any other person, agency, body or group other than the Director, the parent or the child (in the form of a child advocate) will have great difficulty in making a case that they should be added as a "party" to the proceedings.

[15] That case was an application to terminate a permanent care and custody order. The Court noted that in such applications, its powers are quite restrictive. On the facts of that case, I have little difficulty in accepting the narrow principle enunciated at para. 9:

> A person has a legal interest in a proceeding when an order could be made in favour of, or against, that person.

[16] In other applications, such as the case at bar, a "legal interest in a proceeding" may extend beyond those individuals in whose favour or against the Court could make an order. A broader perspective may be appropriate.

[17] I have come to the conclusion that the paternal grandparents of the two children, R.T.T. and K.N., are entitled to be given full party status in relation to the Director's application for a permanent care and custody order as it relates to them. With respect to the other two children with whom they have no biological connection, they will be granted intervenor status, limited to giving evidence and making submissions.

[18] It would be just, efficient and convenient to add them as full parties for the following reasons:

a. They are already parties to a Supreme Court application for custody of the children. If they are successful in that venue and if

the Director's application fails, they would be custodial parents. They have a legal interest in the outcome of the Director's application by virtue of being parties to the Supreme Court action.

b. It was suggested that the Supreme Court may be asked to decide the pending custody application together with the *Children's Act* application, as many of the relevant facts are the same. This would avoid multiplicity of proceedings. It makes little sense for the grandparents to be full parties in relation to the custody component and merely intervenors on the Director's application.

c. Section 128(2) of the *Children's Act* provides:

> If the child is in the care of the director and, at the conclusion of the hearing of an application under this Part the judge finds on the balance of probabilities that the child is not a child in need of protection, the director shall return the child to the concerned parent, or other person entitled to the child's care, in whose care and custody the child was when taken into care.

The children were in the physical care and custody of V.M. and F.M. when they were taken into care by the Director. At that time, J.B. the "stepfather" of the children had indicated orally that he did not want or was unable to care for the children and indeed had left them in V.M. and F.M.'s care and custody. Without deciding, there is an argument to be made that should the Director fail to satisfy the Court that it had reasonable grounds to apprehend the children, the children may have to be returned to V.M. and F.M. In these circumstances, V.M. and F.M. should have full party status at the "reasonable grounds" hearing.

d. There is no doubt that V.M. and F.M. can contribute significantly by being involved in the adjudication, at least in relation to their grandchildren. They can provide relevant information about the

biological father. They certainly have some information regarding their grandchildren. They are well situated to provide information concerning the culture of their grandchildren. In fact, theirs might be the only First Nations voices at the hearing. I should note that this information could also be provided if their participation was limited to intervenor status.

e. Section 33(1) of the *Children's Act* gives grandparents significant rights:

> A parent of the child, or any other person, including the grandparents may apply to the court for an order respecting custody of or access to the child or determining any aspect of the indictments of custody of the child.

V.M. and F.M. have applied for and have full party status in a pending Supreme Court application between J.B. and the natural mother of the children, P.S. A successful permanent care and custody application by the Director will effectively extinguish their "grandparent's rights" under s. 33(1). Justice and fairness requires their full participation in the permanent care and custody hearing as well.

f. For the same reasons, it is important that V.M. and F.M. be bound by the judgment of the Court in the permanent care and custody application. If the Director is successful in its application for permanent care and custody, the grandparents will be bound by the order and their rights will be limited as defined in the *Children's Act*.

g. I have noted earlier that the father and grandmother of the children K.N. and R.T.T. are members of a Yukon First Nation. I take notice of the role played by grandparents, especially grandmothers, in raising their grandchildren. Grandmothers in Yukon First Nations, are often closely involved in raising their grandchildren. They are

> often referred to as “mother” by their grandchildren. This represents a significant difference between First Nations culture and that of the dominant culture. The Court is mandated to take “culture” into account in its decisions.

[19] For the above reasons, I find that full party participation by V.M. and F.M. is necessary to determine the issues, and to avoid multiplicity of proceedings and to avoid inconsistent court rulings. I am satisfied that the applicants have a clear legal interest in the proceedings as it relates to their grandchildren.

[20] As indicated earlier, their full party status will apply to their grandchildren, K.N. and R.T.T. only. They will have intervenor status to give evidence and make submissions regarding the other children.

Lilles T.C.J.