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s. 172 of the Children's Act.

S. v. B., 2003 YKSC 28

Date: 20030611  
Docket No.: S.C. 03-B0007  
Registry: Whitehorse

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

J.D.S.

Plaintiff

AND:

M.K.B.

Defendant

David Christie

For the Plaintiff

Elaine Cairns

For the Defendant

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**MEMORANDUM OF RULING  
DELIVERED FROM THE BENCH**

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[1] VEALE J. (Oral): This is an interim application for the custody of two twins, S. and D., who are two years old. The application of J.S., their mother, who is 19 years old, seeks interim custody with reasonable access to their father, M.B. M.B. is 20 years old, and he seeks joint custody with an equal sharing of time with the children.

[2] There is also an application for child support, financial disclosure and non-removal from the Yukon.

[3] The parents are, unfortunately, not communicating well at this time, and there is a great deal of animosity building up which is affecting the care and control of the twins.

[4] It is impossible for me, on the conflicting affidavits, to determine where the truth lies with respect to all the allegations, but I note that both parents are very young and allegations of marihuana and alcohol abuse are not unusual in family matters.

[5] J. S. says she does not have an alcohol problem, and I accept that. M.B. indicates that he smokes marihuana but he is working on quitting completely. I accept that. Those issues really do not have any great impact on the decision that I am making right now.

[6] What is clear to me, though, is that these two parents have two lovely children who are an incredible responsibility. Twins are a great challenge to parents who are getting along. When the parents are not getting along, twins can be overwhelming. It is not surprising that tempers get short and communication breaks down.

[7] The role of the courts in these disputes is to ensure that the best interests of the children prevails. It is not a question of winning or losing, as the parents may sometimes view the situation but rather to ensure that these twins have the benefit of the love, care, and affection of both parents.

[8] I have no doubt that both these parents and their extended families love these children and want the best for them.

[9] I find that J.S. is the more suitable parent to be the primary caregiver. She has been responsible for the bulk of the obligations of raising and caring for the twins.

[10] M.B. also has a great interest in being involved with his children and this is to be commended and encouraged. However, at this time, he is not capable of taking on the primary responsibility for the children without the assistance of his parents, who, I might add, are most willing to assist when the twins are in M.B.'s care and control.

[11] In order to encourage both the father and the mother to play an active role in their upbringing of their children, joint custody is a concept that we often apply. Joint custody does not necessarily mean an equal sharing of the care and control of the children, but rather it is an important statement that each parent still has an important role to play in the lives of their children.

[12] Parents often oppose joint custody because they fear that it will limit the parent's right to move from the jurisdiction. However, joint custody has no greater impact on a decision to move out of the jurisdiction than a parent who enjoys and exercises generous access. Joint custody does encourage parents to communicate and cooperate rather than having the result that a parent who simply has an access right is sometimes ignored.

[14] I am, therefore, going to make an order of interim joint custody of S. and D. to J.S. and M.B., with the primary care and control to J.S. M.B. will have care and control of the twins every alternate weekend. I am suggesting Friday at 6:00 p.m. to Sunday at 6:00 p.m.; Mondays and Wednesdays, 4:00 p.m. to 8:00 p.m.; and such

additional times as may be agreed upon by the parents. It is a condition of M.B.'s care and control of the twins that he not smoke marihuana during such time or 12 hours before such time.

[15] J.S. will have the primary day-to-day care and control of the children and the responsibility to advise M.B. of any matters of a significant nature affecting the children.

[16] Each parent shall have the obligation to discuss significant decisions respecting the health (except for emergencies) education, religion, and general welfare of the children and, where possible, reach agreement.

[17] Where no agreement can be reached, J.S. shall have the right to make the decision subject to M.B.'s right to apply to the court to review any major decision on the grounds that it is contrary to the best interests of the children.

[18] Each parent shall have the right to obtain information concerning the children from third parties, such as teachers, counsellors, medical professionals and third party caregivers.

[19] There are no grounds, that I can see, for a non-removal order based on the evidence that I have heard to date.

[20] M.B. shall pay child support in the amount of \$158 per month commencing May 1, 2003, based on an annual income of \$16,380.

[21] The order may be registered with the Director of Maintenance and Custody

Enforcement.

[22] M.B. shall inform J.S. of his employment and income.

[23] I recommend that J.S. and M.B. take the course called For the Sake of the Children. I also recommend that a custody and access report be prepared and that this case be reviewed in family chambers on November 25, 2003, or at such later date as may be necessary if the custody and access report has not been completed.

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VEALE J.