

Citation: *A.N. (Re)*, 2013 YKTC 59

Date: 20130620  
Docket: 10-T0093  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before: His Honour Judge Luther

IN THE MATTER OF THE *CHILD AND FAMILY SERVICES ACT*,  
R.S.Y. 2008, c. 1, and A.N.

Appearances:  
Tracey-Anne McPhee  
Lenore Morris  
Kim Hawkins

Appearing for the Director  
Appearing as Child Advocate  
Counsel for the mother, K.N.

**RULING ON APPLICATION**

[1] LUTHER T.C.J. (Oral): After some consideration, K.N.'s application under s. 67(1) is going to be partially granted. The only test here is what is in the best interests of A.N. To make it clear, we are talking about A.N.'s access to her mother, K.N.

[2] Given the twists and turns this matter has taken, it is essential that the order be flexible. I feel it is in the best interests of A.N. to have access to her mother for the time frame permitted under the legislation. There is clearly a strong bond.

[3] Visits have generally gone very well. I agree with Chief Justice Stuart in the *R.A. (Re)*, 2002 YKTC 28 case, at para. 244:

... Access after a permanent order should not require exceptional circumstances. It should simply require the same fundamental test - what serves the best interests of a child.

There is nothing in s. 67(1) of this new legislation which requires special or exceptional circumstances.

[4] To be realistic, there are two stressful events coming up for K.N. within the next six weeks: her criminal trial, and A.N. going away on vacation for 15 days. In the past, K.N. has not always responded well to stress. I am uncomfortable with granting unsupervised or monitored access at this time. I leave it to Ms. Hawkins to bring a future application under s. 68 to vary either before another judge in August, before me by telephone, or while I am back in Whitehorse during the first week in September.

[5] While I do not want to micromanage this case, given the amount of time, effort, and resources that have already gone into it, I am certainly prepared to hear further applications when warranted. Realistically, I also want to point out that I do, to a very limited degree, understand the underlying tensions that K.N. feels dealing with the Director of Family and Children's Services through all of this. As to greater one-on-one contact, it should be readily achieved during the family visits with D.C.

[6] The order will include the following:

1. A minimum of two 2.5 hour visits per week, supervised, while A.N. is in the Yukon and while K.N. is available. (These are not culminative. In other

words, if K.N. is not available or if A.N. is out of the Yukon, it does not add to the established visits that I am ordering).

2. Reasonable efforts by the Director of Family and Children's Services to facilitate K.N.'s attendance at child development activities.
3. Sunday or other visits at the residence of D.C. are to continue in the same manner as they have been occurring.

That will be the order.

[7] With regard to the drafting of the order, it is your application, Ms. Hawkins, so I will leave that to you and have the other counsel sign off on it.

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LUTHER T.C.J.