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Director of Family and Children's Services
v. Q., 2003, YKTC 30

Date: 20001103
Docket No.: T.C. 97-T0189
Registry: Whitehorse

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, AND AS AMENDED,
AND IN PARTICULAR S. 118

AND IN THE MATTER OF AN APPLICATION
FOR A PERMANENT CARE AND CUSTODY ORDER,
PURSUANT TO S. 126(1)(6) OF THE ACT,

AND IN THE MATTER OF N.G.Q.

Gordon Coffin

Appearing for the Director
of Family and Children's Services

Fia Jampolsky

Appearing for the Mother

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): The Director of Family and Children's Services applies for a permanent care and custody order in respect to N.Q., a four-year-old boy. His mother, S.Q., opposes the application. The father, though served, took no part in the proceedings. He has not been involved at all in parenting the child and is not a concerned parent.

[2] This case raises the unfortunate circumstance of intergenerational

involvement with the child protection authorities, as Ms. Q., herself, was once the subject of a permanent wardship order.

[3] The difficulties with respect to N.Q.'s care arose because of Ms. Q.'s ongoing battle with alcoholism. She is now 22, and has been abusing alcohol since the age of 14.

[4] N.Q. was first apprehended in 1998. Ms. Q. left the child with a babysitter and disappeared on a drinking spree. The babysitter called child protection staff, and N.Q. was apprehended.

[5] The child was returned to his mother's care within a few days. He was apprehended, again, about six months later. This time, Ms. Q. had left N.Q. with L.Q., who was S.'s mother. At the time of the apprehension, L.Q. was very intoxicated and obviously unable to care for the child. N.Q. was taken into care, where he remained for the next 17 months. During this time, N.Q. was in an excellent foster placement, with the T.'s.

[6] The boy had significant developmental delays and serious behavioral problems. However, both these situations were significantly ameliorated while he was in care.

[7] While N.Q. was in foster-care, S. continued her battle with substance abuse. In the latter part of 1999, however, she relocated to Victoria, B.C., and there appeared to make considerable progress. She attended and completed a course of alcohol treatment, as well as after-care programming, and participated in other relevant counselling and courses. Things appeared to be going so well that, in

February of this year, the child was returned to his mother's care under a supervision order.

[8] Unfortunately, there was still a problem. S. had started and continues in a relationship with one, A.D., a man that she had met while in treatment. In her evidence, S. attempted to portray her relationship with A.D. as normal. However, the information provided by B.C. police and child protection authorities clearly shows otherwise.

[9] In my view, S. idealizes what was, and is, a violent and rocky relationship. Information provided by the B.C. authorities indicates that Mr. D. has an extensive criminal record, including numerous entries for crimes of violence. The material also reveals that, between November of 1999 and March of 2000, the police responded to five domestic disputes involving S. and A. The most serious of these occurred on January 7th of 2000.

[10] The B.C. report describes that incident as follows:

On January 7th, 2000, at 4:22 a.m., the police received a report of yelling and crying in S.'s apartment. When police arrived they were denied access to the suite. They forced entry, given the history of domestic's at the address. A. was lying on top of S. on the couch, preventing her from answering the door. The police hit him twice with their baton, resulting in a cut to the back of his head. They also pepper-sprayed him, twice, before being able to arrest him. Both S. and A. were intoxicated. There were empty beer cans, beer bottles and liquor bottles everywhere, and the suite was in total disarray with furniture and clothing thrown everywhere. S. had bite marks and bruising about her face and body. She told police that her relationship with A. involved constant violence and she was the victim of continuous physical assaults. She told the police that in the past she had been punched, choked-out and thrown around. She

feared for her safety and wanted to cease contact with A. During this assault she had been bent over the back of the couch until she thought her back would break. A. had refused her to leave or let the police in. A witness had told the police that he had seen A. strike S. in the face, push her, drag her on the floor by her hair. On one occasion, A. was kneeling over her and forcibly banging her head on the floor. The witness told police that he feared that A. would kill S. A. was arrested and went to jail.

[11] Ms. Q. now attempts to minimize this and other incidents. It is clear that this incident, in particular, was viewed by independent persons and shows that there was a relationship marked by violence and alcohol abuse.

[12] When N.Q. was returned to S. under the supervision order, it was a condition of that order that S. have no contact with Mr. D. Ms. Jampolsky suggested that the child protection authorities had been somewhat high-handed in refusing to countenance any involvement by Mr. D.

[13] In my view, the position that the B.C. authorities took was unimpeachable. To the contrary, they could have been properly subject to criticism had they allowed it. S.Q. was well aware of the no-contact condition involving Mr. D., but chose to ignore it. When the authorities learned that S. was continuing to co-habit with Mr. D., N.Q. was re-apprehended.

[14] In my view, this incident clearly illustrates the risk that would result if the child were to be returned to S. In February, S. was faced with a choice of A. or N.Q., but she wanted to have both. This was not Sophie's Choice. Rather, this was a choice between what S. wanted and what was best for N.Q. She chose the former.

[15] What is to be done now? S. says that she should be given another chance. In my view, taking a chance is hardly in N.Q.'s best interests. I am also of the view that her plan is not appropriate at this time. She intends to continue living with A. in Victoria, and in fact is now pregnant with A.'s child. S. admits that she is not ready at present to parent N.Q. as she is still heavily involved in counselling, as well as in sorting out her relationship with Mr. D. She wants N.Q. to be left in the care of the foster parents, the T.'s, for the time being. Later on, she would like the child moved to a foster home in B.C., from where he would be slowly reintegrated with her family, that is to say S., A., and the new baby. In my view, this plan will simply cause further disruption at a critical stage of N.Q.'s development.

[16] I am urged to adjourn the application for six months to allow S. further time to complete treatment and become more settled. However, the whole scheme of the *Children's Act*, is to discourage extended temporary care, and to encourage speedy decision making.

[17] The decision I have to make in this case is not an easy one. I have no doubt that there is love between S. and her son, N.Q. There is no doubt in my mind that S. is sincere in wanting to maintain sobriety, and to provide a suitable home for her son. She is to be commended for the efforts she has made to date. I sincerely hope that she will succeed because she is soon to be responsible for another child.

[18] In deciding which course to take, I am guided by the belief that past history is a more likely predictor of future events, than protestations of future intent, however sincerely held. Having regards to the factors enumerated in s. 131 of the *Children's Act*, I have come to the conclusion that further delay in the final resolution of the matter would not be in the child's best interests. I find that N.Q. continues to be in

need of protection, and he is committed to the permanent care and custody of the Director.

FAULKNER T.C.J.