

# SUPREME COURT OF YUKON

Citation: *S.J.R. v. J.R.L.*, 2021 YKSC 15

Date: 20210212  
S.C. No.: 20-B0074  
Registry: Whitehorse

BETWEEN:

S.J.R.

PLAINTIFF

AND

J.R.L.

DEFENDANT

Before Justice K. Wenckebach

Appearances:  
Paul Di Libero  
Lenore Morris

Counsel for the Plaintiff  
Counsel for the Defendant

## REASONS FOR JUDGMENT

[1] WENCKEBACH J. (Oral): The issue in this application is where the child of the relationship of the parties, A.L.N.R. ("A."), born [redacted], should go to school. The plaintiff, S.R. (the "father"), would like A. to go to a French immersion school located in downtown Whitehorse. A.'s mother, J.L. (the "mother"), the defendant, would like A. to attend a school close to her home.

[2] The parties are also in the midst of discussions about whether A.'s residential schedule should change from a roughly 60/40 split to something closer to 50/50. While acknowledging that this matter is not before me, it was raised by both parties in their submissions.

[3] The sole task for me today is to decide which school meets A.'s best interests. My reasons should not be taken as commenting on whether A.'s residential schedule should change in this way.

### **The Facts**

[4] The father and the mother lived in a common-law relationship and had A. during the relationship. The parties lived in a house on the mother's parents' property in a subdivision of Whitehorse. When the parties separated, the mother continued to live at the house and intends to continue to live there in the future.

[5] Since October 2019, the father has lived with his common-law partner, M., on M.'s father's property in a different subdivision of Whitehorse. M.'s father also lives on the property and M. helps care for him.

[6] The father and M. intend to continue to live at their current residence for the foreseeable future.

[7] The parties live about a 30-minute drive away from each other.

[8] A. lives with her mother about 60 percent of the time and with the father, his partner M., their son, and M.'s son from another relationship for about 40 percent of the time. The shared parenting schedule has been in place since about November 2019.

[9] The mother works as an education assistant at an elementary school located in her subdivision. The father works as a groundskeeper. He begins work at 6 a.m. every day and is often done work by 2:30 p.m.

[10] In September, A. will start kindergarten, which brings us to the application before me today.

[11] The father seeks that the parties register A. at Whitehorse Elementary School, otherwise known as "WES". WES is a French immersion school located in downtown

Whitehorse. The father's plan is that A. would take the school bus from his home and back at the end of the day. M. has a son who will also be attending school, although a different one, so M. can take both children to their respective bus stops. There is also a school bus that goes from the mother's neighbourhood to WES, so A. can take the bus to and from school when she is with the mother. At the hearing, the father's counsel also said that because the father often finishes work at 2:30, he can assist with A.'s transportation back to the mother's residence.

[12] The mother seeks that the parties enrol A. at the school located in her subdivision. There is no school bus between the mother's neighbourhood and where the father lives. The mother's proposal is that when A. is in the father's care, M. will drive A. to a point that is mutually agreeable at about 8 a.m. each day. The mother will meet them and can take A. from there to the school in her area. M. can then double-back and drive her own son to school. As the father finishes work at about 2:30, he can pick A. up from school.

### **Arguments**

[13] The father says that it is in A.'s best interests to attend WES. The father believes that French immersion would be beneficial for A. However, the central reason the father wants A. to attend WES is because there is school bus transportation between WES and both parties' neighbourhoods. If, on the other hand, A. goes to the school in her mother's neighbourhood, it would be almost impossible to transport A. from his house to the school every morning she is with him. The father starts work at 6 a.m. and cannot take A. to school. M. can accompany A. to the bus but cannot drive A. to the school, as she must also accompany her own son to the bus stop. Because her son has special needs, he requires supervision while waiting for the bus. The father says that the

mother's plan is not workable, as it does not give M. the time she needs to get her son to school.

[14] If A. attends the school in the mother's subdivision, therefore, A.'s residential schedule with the father will almost certainly have to change. This would have a significant disruptive impact on A. The school A. attends is not simply a question of convenience, but can affect when and how much time the father can spend with A.

[15] During argument, counsel to the father raised concerns that the mother never discussed with the father where A. would go to school but simply assumed that she would attend in her subdivision. He stated that this reflects a pattern in which the mother makes decisions and expects the father to go along with them.

[16] The father also argues that A. will be capable of making new friends and adapting to school. In this regard, she is no different than many other children attending school for the first time.

[17] For her part, the mother agrees that she has assumed that A. would attend the school in her subdivision. Counsel to the mother states that the mother has been A.'s primary parent, while, until recently, the father has not been consistently present in A.'s life.

[18] In oral argument, counsel stated that the father's proposal regarding A.'s schooling was brought up only very recently. Not only has the mother thought that A. would be attending her neighbourhood school but A. has as well. A. has already established a connection with the school, presumably because the mother works there. She is familiar with the school and many of its staff. A. also takes part in activities in the subdivision. She is excited about attending the school.

[19] The mother states that the case at bar is similar to the case of *Thomas v. Osika*, 2018 ONSC 2712 (“*Thomas*”). There, the judge decided that the child should attend the school in his father's neighbourhood partially on the basis that that was where the child had always lived and it was the school where his friends from the neighbourhood and daycare friends would attend (at para. 42).

[20] Additionally, if A. were to attend WES, the school bus ride would be about an hour long each way. She says it is unreasonable to expect a girl her age to ride on the bus for that long.

[21] Moreover, relying on *Leclerc v. Grace*, 2020 ONSC 5556, the mother submits that while the father is at liberty to move where he wants to, he will also have to bear the consequences of his decisions.

### **Analysis**

[22] Counsel to parties made submissions about whether the mother should have assumed A. would attend the school in the mother's subdivision and whether the father should have been more timely in proposing that A. attend WES. It is not necessary for me to make findings of fact on this or to assess responsibility. Decision-making evolves organically in relationships with roles defined by circumstances, personalities, and other factors. It is rarely, if ever, a question of right and wrong.

[23] Here, the relationship post-separation seems to have developed such that the mother did end up as decision-maker with regards to A. and the father abided by those decisions. It also seems that those roles are changing. The parties are grappling with whether to change the way that parties make decisions for A. and, if so, how. If joint decision-making does occur, then both parties will need to be proactive. Both parties will need to address issues early and be prepared to discuss different options. This may

mean a change for the parties. The father may, at times, be the first to identify an issue and then have to bring it up. The mother may have to reach out to the father when contemplating a problem. If the parties put A.'s needs first, working together will prove better than trying to work alone.

[24] In determining A.'s school placement, I have found that the filed case law provides a helpful list of factors and principles to take into account.

[25] Counsel to the mother referred to the principle found at para. 37(i) of *Thomas*, that the choice of school should be made on its own merits and not based on proximity of the school to a parent's residence or convenience for one of the parents. The mother's counsel submitted that the most suitable school was the school located in the mother's subdivision and attendance at WES was simply a matter of convenience to the father. Because of this, the local school is preferable to WES.

[26] In my view, this principle identifies that proximity and convenience in themselves are an insufficient basis upon which to decide school placement. Instead, the focus must be which school fits the child's needs best. However, this does not mean that proximity will never be a factor. It will be a factor if the distance of the school will have an impact on the child.

[27] Here, the mother is opposed to A. attending WES partially because it will require her to spend two hours on the school bus whenever she is with the mother. I agree that that is a long time in a five-year-old's day to spend on a bus. In this case, proximity is a factor.

[28] I also agree with the father's counsel, however, that the matter of A.'s school attendance at WES is not simply one of convenience. The ability of a parent to transport

a child to school and the possibility that it will impact the child's residential schedule must be factored into any analysis regarding school placement.

[29] It is for this reason as well that I find the facts of the case as cited by counsel to the mother distinguishable. There, the concerns about transportation did not arise in the way they do here.

[30] The factor I find most pertinent in this case is found at para. 37(f) of *Thomas*.

Paragraph 37(f) states:

- f. Factors which may be taken into account by the court in determining the best interests of the child include assessing any impact on the stability of the child. This may include examining whether there is any prospect of one of the parties moving in the near future; where the child was born and raised; whether a move will mean new child care providers or other unsettling features (*Askalan v. Taleb*, 2012 ONSC 4746 (Ont. S.C.J.);

[31] In this case, A.'s attendance at either school could potentially have an impact on her stability. On the one hand, A. has lived in the same subdivision with the mother all her life. Her friends from the neighbourhood and from daycare will be attending the neighbourhood school, she is familiar with the school, and that is where she wants to go. On the other hand, however, there is a very good possibility — the father says a "probability" — that her residential school schedule will have to change if she attends the school in her mother's subdivision. Either way, she is facing instability.

[32] I am persuaded that A.'s residential arrangements will be impacted if she attends the school in the mother's neighbourhood. The plan the mother proposes is not viable. The father states that M. cannot transport A. to a drop-off point and get her son to school as well. It is also problematic to expect a non-party to play such a large role in the execution of the plan. It is one thing for M. to be agreeable to accompany A. to a

bus stop. It is quite another to expect her to drive out of her way back and forth every day. Without a bus from the mother's neighbourhood to the father's neighbourhood, it is difficult to see how A. could live with the father on school days.

### **Conclusion**

[33] Ultimately, I conclude that the potential instability A. faces in going to WES is outweighed by the impacts she faces if she attends the school in her mother's subdivision. I find that it is in A.'s best interests to maintain her current residential schedule. I also find that is best achieved by attendance at WES.

[34] I therefore order that the plaintiff and defendant shall register A.L.N.R., born [redacted], at school at Whitehorse Elementary School for the 2021-2022 school year.

[35] I have not included in my order that the father assist the mother with A.'s transportation from school when she is with the mother, as this was not discussed in any great detail during the hearing. However, given the mother's legitimate concerns about the amount of time A. will be spending on the bus, I hope and expect that the father will work with the mother and assist her with transportation to and from WES.

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WENCKEBACH J.