

# SUPREME COURT OF YUKON

Citation: *R.L.M.F. v H.M.K.*,  
2021 YKSC 37

Date: 20210726  
S.C. No. 06-B0102  
Registry: Whitehorse

BETWEEN:

R.L.M.F., T.H., and M.R.

PLAINTIFFS

AND

H.M.K. and M.O.F.

DEFENDANTS

Before Justice D.R. Aston

Counsel for the plaintiff, R.L.M.F.

Lynn MacDiarmid

Counsel for the plaintiffs, T.H. and M.R.

Kathleen M. Kinchen

Counsel for the defendant, H.M.K.

Brian Goldsworthy

M.O.F.

No one appearing

Child's Lawyer

Stephanie Dragoman

## REASONS FOR DECISION

### INTRODUCTION

[1] There are compelling reasons to grant interim joint custody of the child, X., to T.H. and M.R. Neither of them is biologically related to X., but that fact pales in comparison to the other evidence.

[2] X. will be 16 in October. His views and preferences carry great weight in determining what is in his best interests. I find the evidence from the Child’s Lawyer, Ms. Dragoman, quite persuasive and prefer it to the mother’s self-serving and unsupported opinion that her son wants to live with her.

[3] X. was in his mother’s day-to-day care for most of his life until two years ago. In June 2019 he ran away from her, accusing her of assault. He has since made many other troubling accusations respecting his mother, H.K., and his time in her home. She was charged with assaulting X. in June 2019. Those charges are still pending. Though she is presumed innocent, there are two aspects of the pending charges that weigh heavily against her today. First, X.’s own perspective – his reality – is that she mistreated him. She is unable or unwilling to acknowledge that perspective. Second, H.K. has been subject to a “no contact” order, so she has not had any contact with X. for more than two years. The notion that he should suddenly be returned to her care when, and if, she is found not guilty is nonsensical. X.’s relationship with his mother can only be repaired, if at all, one step at a time.

[4] The affidavit evidence of H.K. is mainly blanket denials and empty rhetoric. The affidavits of T.H. and M.R. on the other hand are replete with detailed, corroborated facts that support the conclusion X. is thriving in their care, as he never has before. His educational successes are corroborated and no doubt largely attributable to the efforts of T.H. and M.R. They have scrupulously attended to X.’s medical and psychological needs. He is learning life skills, like cooking and guitar. He has chores and earns an allowance. The applicants have taken the initiative in having X. reconnect with his father and other extended family members. X. has cemented ties with M.R. and her two

children, ages 15 and 18, ties that began in 2012 or 2013 during T.H.'s access time. T.H. himself has been a part of X.'s life since birth.

[5] I do not doubt that H.K. loves her son dearly, misses him and sincerely believes he should "come home" to her primary care. However, it is not in his best interests to disrupt the status quo and put at risk the gains he has made over the last two years.

[6] Given the child's age, there is no need for supervision of X.'s time with his mother or maternal grandmother, R.L.M.F., but their access ought to be at X.'s discretion if it is to be a positive experience for him.

[7] With respect to child support there are two issues to address. First are the payments of \$700 monthly being made by X.'s father, M.F. Second is the obligation of the mother herself.

[8] She does not oppose an order that M.F.'s payments, going back to February 1, 2021, be redirected to T.H. and M.R. Nor does she oppose an order requiring her to pay them the table amount of child support based on her 2020 tax return or current rate of pay. She is also content that, if requested, her child support be paid through the Maintenance Enforcement Program. Counsel assure me that they can incorporate those provisions into a consent order. If not, we can reconvene for the purpose of sorting out any issue.

[9] The question of any other retroactive support and s. 7 expenses is left for another day.

## **CONCLUSION**

[10] For the foregoing reasons an order is granted as follows:

1. The plaintiffs T.H. and M.R. shall have interim joint custody of the child, X.J.K. born October 3, 2005.
2. X.J.K shall reside primarily with the plaintiffs T.H. and M.R.
3. H.K. and R.L.M.F. shall have access to X.J.K. at the child's discretion, including communications as well as time spent together.
4. The defendant M.F. shall have reasonable and generous access to X.J.K.
5. The child support payments for X.J.K. that have been made to H.K. by M.F. in the amount of \$700 monthly since February 1, 2021, shall be paid to T.H. and M.R., either by H.K.'s counsel or by the Maintenance Enforcement Program.
6. Child support payments by M.F. through the Maintenance Enforcement Program after the current month are to be paid to T.H. and M.R. for as long as X.J.K. is residing with them and eligible for child support.
7. H.K. shall pay monthly support to T.H. and M.R. commencing August 1, 2021, in an amount to be determined under the Yukon *Child Support Guidelines*.
8. The issue of further retroactive child support and s. 7 expenses shall be addressed at a later date.
9. H.K. shall pay to T.H. and M.R. costs of this application fixed in the amount of \$1,500.

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ASTON J.