

# SUPREME COURT OF YUKON

Citation: *W.C.M. v. A.M.S.S.*,  
2023 YKSC 9

Date: 20230222  
S.C. No. 20-D5268  
Registry: Whitehorse

BETWEEN:

W.C.M.

Plaintiff

AND

A.M.S.S.

Defendant

Before Justice K. Wenckebach

Appearing on his own behalf

W.C.M.

Counsel for the Defendant

Mark Chandler

**This decision was delivered in the form of Oral Reasons on February 22, 2023. The Reasons have since been edited for publication without changing the substance.**

## REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): The plaintiff, W.C.M., and the defendant, A.M.S.S., began living in a common-law relationship in May 2010, married on July 24, 2016, and separated May 29, 2019. They have two children of the marriage, J.I.M. born [redacted] and F.W.M. born [redacted]. A.M.S.S. has brought an application concerning the children. She is essentially seeking primary parenting time as well as child support. In

addition, the family home has not been dealt with. A.M.S.S. seeks that a summary trial be held to determine the division of that asset. W.C.M. opposes the application and seeks that parenting time be split equally between the parties. He takes no position on whether the division of the family home should proceed by way of summary trial.

[2] At the hearing, the parties agreed that child support could be determined after parenting time has been decided. The issues to be resolved then are whether there should be a summary trial for the division of the family home and where the children should live.

[3] I will first address the question of whether there should be a summary trial on the division of the family home.

[4] At this point, it appears there could be a summary trial but more information is required to determine whether it would be suitable. Factors that help determine whether a summary trial is appropriate include whether the Court can make factual findings to decide the issues of fact and law, whether it would be unjust to proceed by way of summary trial, the amount involved, and how complex the matter is and its urgency (*Ó Murchú v DeWeert*, 2020 YKSC 41 (“*Ó Murchú*”) at para 16).

[5] A summary trial is not appropriate when the litigation is extensive; where there is a substantial risk that the summary trial would waste time and produce unnecessary complexity; and where the issues proposed to be dealt with by way of summary trial are interwoven with the issues that will be resolved at trial (*Ó Murchú* at para 11).

[6] In this case, the only relief A.M.S.S. is seeking with regard to division of assets is the division of the family home. Many of the issues related to division of a family home, such as valuation, can be decided upon documentary evidence. If the trial remains only

about the family home, then it would concern a discrete issue and would be appropriate for a summary trial.

[7] However, W.C.M., who is self-represented, has not provided any response on the division of the family home. It is therefore unclear if he opposes division completely; and if so, on what basis, or if there is a question about how the division should occur. From W.C.M.'s point of view, there may also be issues about other assets or liabilities. If new considerations arise, a summary trial may not be appropriate.

[8] It is therefore premature to determine whether the matter should proceed by way of summary trial. Instead, at the end of this decision, I will make orders about the filing of financial statements and set a case management conference to ensure that there are no other issues about assets and liabilities that should be resolved with the division of the family home.

[9] Turning to the children's residential schedule, the only consideration is the best interests of the children. In the case at bar, the following factors are addressed by the parties: the history of the care of the children; and the ability and willingness of each parent to care for and meet the needs of the children.

[10] A.M.S.S. argues that the history of care of the children supports her application for primary parenting time, as she has been the children's primary caregiver their entire lives. I find, however, that the history of care of the children is a neutral factor.

[11] While the parties were married, A.M.S.S. was the primary caregiver of the children. However, the parties separated in May 2019. Three months after that, the parties moved to a shared residential schedule for the children starting with a two-week

rotation and then shifting to a weekly rotation. Except for the period between March to August 2020, the children have lived equally with both parties.

[12] A.M.S.S. submits that she is the primary caregiver, however, because she continues to take the children to all their appointments and extracurricular activities.

[13] In my opinion, this does not mean that A.M.S.S. is the primary caregiver. While the children are with W.C.M., he is responsible for providing for the majority of their day-to-day needs, including providing basic necessities, ensuring their schooling is going well, and responding to the issues that regularly arise with children. That A.M.S.S. has chosen to take the children to appointments does not alter the fact that W.C.M. is the caregiver as well. I conclude that nothing turns on this factor.

[14] The more important question in this case is whether both parties are able and willing to meet the needs of the children.

[15] A.M.S.S. has concerns about W.C.M.'s parenting. She submits that W.C.M. has not protected the children from exposure to adults who abuse alcohol. She also submits that W.C.M. continues to have his own battles with alcohol and mental health issues which affect the children.

[16] For his part, W.C.M. also raises questions about A.M.S.S.' parenting, including about the children's health, their hygiene, and their living arrangements.

[17] A.M.S.S.' lawyer submits that W.C.M. makes promises about how he will behave and then does not follow through.

[18] On this point, I am not in agreement with A.M.S.S.' lawyer. A.M.S.S. bases this submission partially on an incident that arose with W.C.M.'s former partner D. In 2022, W.C.M. rented out the basement suite in his house to D., whom he knew had an alcohol

problem. On April 4, 2022, D. came into the house and yelled and swore at J.I.M., causing J.I.M. to run and hide. D. was intoxicated and W.C.M. was required to defuse the situation.

[19] Counsel to A.M.S.S. also notes that, in the parties' interim parenting agreement, W.C.M. agreed that he would not knowingly expose the children to contact with any other person who is under the influence of alcohol or non-prescription drugs. Counsel submits that the incident with D. shows that W.C.M. did not follow through on his commitment in the parenting agreement.

[20] W.C.M. attests that, when he rented out the apartment to D., he believed that she was addressing her issues with drinking. After the April 4, 2022 incident, D. moved out. She does not and will not have further interactions with the children.

[21] It seems to me that it would have been better for W.C.M. to ensure that his children did not have contact with D., as there had been incidents involving her and the children before April 2022. However, it also appears that W.C.M. was acting in good faith and trying to help a friend. Moreover, what occurred did not rise to the level that W.C.M. knowingly exposed the children to a person who is under the influence of alcohol. It was, instead, a case of misplaced optimism or where he allowed his hope to affect his judgment. I do not consider that the incident reflects on W.C.M.'s abilities to care for his children on an ongoing basis.

[22] A.M.S.S.' lawyer also submits that W.C.M. has not adequately addressed his problems with alcohol and mental health, and this has had an impact on his children. I have no doubt that both parties love their children very much and want to be engaged

and involved in their children's lives. This is a very important factor. However, I also find that there are concerns about W.C.M. that he has not effectively addressed.

[23] W.C.M. attests that he had alcohol issues in 2018 and 2019, but addressed them through counselling and medication for his depression in the summer of 2020. It is to W.C.M.'s credit that he recognized his issues and sought help. There is evidence of incidents that occurred after the summer of 2020, however, which suggests that these problems continue to have an impact on him and on his parenting.

[24] A.M.S.S. attests that on April 2, 2021, W.C.M. had care of the children but called her to pick them up. He and D. had had a negative interaction and D. phoned the police. When the RCMP arrived, they saw that children were present and called Family and Children Services. A.M.S.S. went to get the children. A.M.S.S. attests that, from what she understood, W.C.M. was intoxicated at the time. W.C.M. does not deny this.

[25] In addition, A.M.S.S. attests that on two occasions in October 2022, the children told her that W.C.M. had spent most of the day in bed. The children eventually took care of themselves by eating Pop-Tarts or going to a friend's house for a meal. In response, W.C.M. states in his affidavit that he always had appropriate food in the house. However, he does not address the main issue, which is that he did not provide adequate care for the children on those days.

[26] W.C.M. is self-represented and this can affect how he presents his evidence. However, the allegations raised by A.M.S.S. are important and he should have responded to them specifically. As he did not do so, despite responding to other matters raised by A.M.S.S., I must conclude that W.C.M. continues to have problems in his life

and that these problems interfere with his ability to care for his children on a regular basis.

[27] The concerns W.C.M. raises about A.M.S.S., on the other hand, are either specifically refuted by A.M.S.S. or about parenting styles rather than problems with the way she parents. W.C.M. says that A.M.S.S. does not tend to the children's hygiene. However, she denies this. Similarly, A.M.S.S. refutes the claims W.C.M. makes about A.B.S.S.' personal relationships. W.C.M. also worries that A.M.S.S. does not take care of the children's health, but it appears that the parties simply have a different approach to dealing with health concerns. There is no evidence that the children's health is compromised.

[28] In addition, W.C.M. submits that A.M.S.S. does not have adequate housing for the children, as, for instance, the house she lives in does not have running water. I take judicial notice that there is limited availability of rental housing in Whitehorse and it is expensive. A.M.S.S.' housing might not be ideal, but the children are not being harmed.

[29] Finally, W.C.M. is perhaps not in the best position to criticize A.M.S.S.' housing, as he has stayed in the family home and there has been no division of the equity in the home.

[30] I therefore conclude that it is in the best interests of the children that they live primarily with A.M.S.S.

[31] My order is as follows:

1. The defendant shall have primary parenting time with the children of the marriage, J.I.M. born [redacted] and F.W.M. [redacted].

2. The plaintiff shall have parenting time with the children every second weekend from Friday after school to Monday morning before school, and every Tuesday and Thursday from after school to 7 p.m. or as can be agreed upon by the parties.
3. The plaintiff shall not consume or be under the influence of alcohol or non-prescription drugs during the time that the children are in his care and shall not allow the children to be in the presence of people who are consuming or under the influence of alcohol or non-prescription drugs.

[32] In terms of the financial issues, I am going to order that:

1. The parties file and deliver their financial statements with parts 1 to 7 completed by March 22, 2023.

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WENCKEBACH J.