

SUPREME COURT OF YUKON

Citation: *DDR v ALMS*,
2025 YKSC 24

Date: 20250321
S.C. No. 23-B0023
Registry: Whitehorse

BETWEEN

D.D.R.

PLAINTIFF

AND

A.L.M.S.

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

H. Shayne Fairman

Appearing on her own behalf

A.L.M.S.

This decision was delivered in the form of Oral Reasons on March 21, 2025. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): This is a dispute between the parents of the child of their relationship, A.S., born [redacted], about the custody and the amount of residential time that A.S. should have with her father, D.D.R. The mother, A.L.M.S., applied on December 10, 2024, for interim sole custody, decision-making and primary residence with A.S., as well as supervised access of the father with A.S. on a schedule to be determined, an RCMP enforcement clause, and an order that the father not remove A.S. from the Yukon.

[2] The father cross-applied on December 16, 2024, seeking interim-interim joint custody and decision-making and a return to the previous residential arrangement with A.S. of alternating weeks. The father now also seeks the continuation of the interim-interim order clause requiring both parents to abstain from the consumption of alcohol and non-prescription drugs while A.S. is in their respective care.

[3] A third application was brought by the mother on February 24, 2025, for child support. The father requested an adjournment of that application until mutual financial disclosure for 2024 can be made and the residential time for A.S. is sorted out. The mother would prefer to have the support issue determined soon but she recognized the more pressing need to determine custody and residential time and did not object to adjourning her application for support.

[4] So today, I will rule on the two applications about custody, residential time, and any conditions to attach to those orders.

[5] The father is represented by counsel and the mother represents herself. I commend the mother for her composure and her articulate, organized, and respectful submissions during this hearing.

[6] I will review briefly the applicable law, the background of the relationship and its deterioration, the caregiving arrangements for A.S. since the separation, recent events, and then provide my decision.

[7] In sum, the issue arises here because, according to the mother, serious incidents occurred during the parents' relationship, some of which led to arrests and detention of the father and criminal charges against him. These incidents occurred when the father had consumed an excessive amount of alcohol, and some occurred in the presence of A.S. The father's alcohol consumption and resulting behaviours during the relationship

have caused the mother to fear for her daughter's safety while she is with her father.

The relatively recent conviction in December in Territorial Court of the father for sexual assault stemming from a 2022 incident appears to have triggered this fear in the mother, as it was immediately after the conviction that the mother brought her initial application to this Court.

[8] The question for me is whether the mother's fears are grounded in the evidence and whether, if they are, they should at this time affect A.S.'s relationship with her father.

Legal Principles

[9] Turning first, to the law.

[10] The best interest of the child is the overriding consideration in determining custody and access arrangements. In this case, the applicable legislation is the *Children's Law Act*, RSY 2002, c 31 ("*Children's Law Act*"), as the parties were never married.

[11] Section 30(1) of the *Children's Law Act* sets out the factors for determining the best interests of the child. I will read it so that everybody is clear about what law governs:

30(1) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including

- (a) the bonding, love, affection and emotional ties between the child and
 - (i) each person entitled to or claiming custody of or access to the child,
 - (ii) other members of the child's family who reside with the child, and

- (iii) persons, including grandparents involved in the care and upbringing of the child;
- (b) the views and preferences of the child, if those views and preferences can be reasonably determined;
- (c) the length of time, having regard to the child's sense of time, that the child has lived in a stable home environment;
- (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance, education, the necessities [as written] of life and any special needs of the child;
- (e) any plans proposed for the care and upbringing of the child;
- (f) the permanence and stability of the family unit with which it is proposed that the child will live; and
- (g) the effect that awarding custody or care of the child to one party would have on the ability of the other party to have reasonable access to the child.

[12] Subsection (2) of s. 30 is also relevant here:

(2) The past conduct of a person is not relevant to a determination of an application under this Part in respect of custody of or access to a child unless the conduct is relevant to the ability of the person to have the care or custody of a child.

Background

[13] Turning to the background of the relationship.

[14] The parties began dating in 2017 when the father was 19 and the mother was 20. They began living together in July 2018 and A.S. was born on [redacted], when the father was 21 and the mother was 22. The relationship was volatile and it involved drinking and partying. In particular, the father admits that his alcohol consumption was not healthy and contributed to unfortunate behaviours and created difficulties in the relationship. In January 2022, the parties decided to separate, although they continued

to cohabit for financial reasons. Their relationship continued on and off until July 2022, when the father was arrested, charged, and detained.

[15] During their relationship, the caregiving responsibilities for A.S. were shared. The division of labour is disputed, but there was no dispute that both parties contributed to the caregiving for A.S.

[16] After July 2022, on his release the father went to live with his parents, sister, and brother in a home in the to [redacted] subdivision, in Whitehorse, where he has lived consistently since that time. The mother currently lives with her mother in [redacted], another subdivision in Whitehorse. The father has studied to be an electrician and now works for [redacted] and the mother works at [redacted] as an [redacted] clerk.

[17] There were four charges laid against the father on his arrest in July 2022. Three of them were not pursued by the Crown due to a lack of evidence and no reasonable prospect of conviction. His conviction of sexual assault against the mother in December 2024 stemmed from an incident in July 2022. The father's release conditions at that time included a no contact order with A.S.

[18] In March 2023, he was given permission to visit with A.S. at her daycare. When the mother learned of these visits, she prevented them from continuing. She said they did not accord with the safety plan she had in place.

[19] The father started legal proceedings in June 2023 in this Court in order to obtain residential time with A.S. Proceedings were not pursued at that time because soon after, arrangements for access were made and communication between the parents began to improve.

[20] In the spring of 2024, and continuing until the criminal conviction in December 2024, A.S.'s residence alternated one week on/one week off between the

parents. During that time period, there was a reasonably good co-parenting relationship, with co-operation and flexibility, and decisions and actions taken by both parties in the best interests of A.S.

[21] Among other things, the following occurred:

- the parents attended [redacted] School orientation together;
- the parents communicated together with the Child Development Centre about A.S.'s behavioural issues;
- the father made changes to the alternating weekly schedule to accommodate the mother's work schedule and A.S.'s horseback riding on one occasion
- the parents met at Tim Horton's to discuss recent events and issues about A.S.
- the parents co-operated in enrolling A.S. in kindergarten at [redacted] School; and
- the parents co-operated in obtaining extra school photos and arranging the school photos to be taken for A.S.

[22] After the criminal conviction in December, the mother withheld A.S. from the father and brought the application for sole custody and restricted supervised access by the father. The father's response was provided on short notice because of the situation.

[23] Due to the evidence provided by the mother of the circumstances surrounding the sexual assault, an interim-interim court order was issued pending the full hearing of the application, permitting regular access by the father to A.S. but at a reduced time period from the alternating weeks. This arrangement has continued with an increase in

time to include overnight access, and it continued until March 6, 2025, when the mother suspended all contact between the father and A.S.

[24] After agreeing to a schedule based on the timing set out in the court order between March 7 and March 20, the mother then withdrew her agreement, contrary to the court order, without explanation except to say that it was not in A.S.'s best interests for her to see her father.

[25] At the hearing for these applications, the mother stated that she decided to withhold A.S. from her father on March 6 after receiving the father's affidavit material for this hearing. She stated she was concerned, among other things, about the father's ongoing failure to accept responsibility for his alcohol consumption, its impact on her and A.S., and this reignited her fears for A.S.'s safety.

[26] The mother's actions in withholding A.S. relate to concerns about her inability to trust that the father will remain sober while A.S. is in his care, and the potential risks of violence or other dangerous situations that the lack of sobriety may create for A.S. The mother wants assurances from the father that he is committed to sobriety. It is not enough, in her view, for him to agree not to drink while caring for A.S. She wants him to admit that he has a problem and to attend counselling and to be completely sober.

Analysis

[27] Turning to my decision.

[28] I note that the father has denied the mother's allegations but has not provided an explanation in response. Despite his conviction for sexual assault, he denies any wrongdoing in that situation as well. I am unable to make factual findings about these incidents without knowing both sides of the story. I do note that three of the four charges against the father were stayed by the Crown.

[29] I can conclude that the father did drink to excess during the relationship because he has admitted this, and this drinking led to situations, incidents, and behaviours that were unhealthy. I accept that these behaviours can have a negative impact on A.S. if she is exposed to them.

[30] However, I note that these incidents that the mother describes as most troubling occurred almost three or more years ago. The mother says that since the separation, she has no first-hand knowledge of the father's actions or behaviours because of the no contact order and because she is not there during his parenting time. She has relied on third-party information, particularly the affidavit evidence of one friend who provided two affidavits, saying that she was informed by an unnamed person that the father had been partying while A.S. was in his care and had left A.S. with his own mother; and on another occasion, this friend was informed by yet another unnamed person that the father had brought A.S. to a party. No dates were provided for these incidents.

[31] This is insufficient evidence. It is at least double hearsay for me to draw any conclusion that the father is drinking or was drinking while A.S. is in his care or that she is exposed to any behaviours that would be unsafe or have a negative impact on her. The mother provides no evidence of any violence after separation against A.S. by the father.

[32] The mother says that A.S. has behavioural outbursts, with which the father agrees. The mother attributes these emotional outbursts to incidents she says A.S. was exposed to during the parents' relationship. However, there is no evidence of the cause of A.S.'s behaviours. Essentially, the behaviours were described as her having difficulty with emotional regulation. I am unable to conclude that the cause of A.S.'s behavioural issues were the incidents that occurred during the parents' relationship.

[33] In saying this, I am not excluding the possibility that whatever happened during the relationship may have affected A.S., but I cannot conclude that this was a cause and the only cause as the mother has argued. I know there have been changes in A.S.'s residential routine since December 2024 and this could also have contributed to her emotional state in recent months.

[34] The father has provided evidence, which I accept as it is not contradicted, to support his ongoing positive relationship with A.S. He described how happy she is to see him on her arrival at his house or arrival to visit with him, how she is sad and reluctant when she has to leave him, especially in recent weeks, given the change in schedule and reduced time with him. He described how his family, his parents, brother, and sister have embraced A.S., and that she has a positive, loving, and supportive relationship with all of them. He described a stable home environment, that his parents have been together for many years. He described some of the activities he and A.S. do together. He has taught A.S. to skate, to ride a bike, and to use rollerblades. He maintains a routine with her of regular dinner times, and regular bathing and bedtimes.

[35] At the hearing, he also spoke about strategies for helping her to regulate her emotions he has discussed with her school in recent months: for example, having her hold on to a necklace to remind her to breathe and stay calm, and suggesting that she do artwork at school when she is starting to have intense feelings, because he had noticed while at home that her art corner was a place she goes to for calm and solace when she is having trouble managing her feelings. His love and care for his daughter is evident from the affidavit material and his actions in this court proceeding. There is a strong bond there.

[36] Indeed, the mother said more than once at the hearing that she does not want to prevent A.S. from seeing her father. She did not question the father's parenting abilities or his love for A.S. As already stated, her concern is his drinking, the behaviours associated with his drinking, from past experience, giving rise to a fierce desire to protect her daughter from harm.

[37] All of these are legitimate concerns. Except in this case, there is no recent evidence — that is, in the last three years — of a basis for these concerns. There is no reliable evidence of the father's drinking while A.S. is in his care and there is no evidence of any violent episodes.

[38] I want to address what we discussed briefly yesterday, which was the reference in the letter about the six pack of beer. The exact words - I looked when I was preparing this decision - were from the letter written by G.P. G.P. said that the father said he had a six pack of beer to enjoy at home after dinner with Olivier. That night there was going to be a family dinner because Olivier was leaving for Calgary.

[39] The mother interpreted this statement to mean that the father was going to drink the six pack of beer by himself, and she relied on it as evidence that he is continuing to drink excessively.

[40] Another interpretation, though, could be that he was going to enjoy the six pack of beer with Olivier and perhaps other family members, as there was going to be a family dinner.

[41] In any event, the conclusion the mother came to is speculative. Again, it is double hearsay. We do not know what happened, how much was drunk, who drank it, and when. I do appreciate the point that the mother wanted to make was that the father

is still drinking alcohol, has not committed to complete sobriety, and that that worries the mother.

[42] But in this case, I find that the worry without any evidence of an actual occurrence is not enough, especially in the context of these other factors: the father's ongoing commitment not to drink or use non-prescription drugs while A.S. is in his care; his strong, stable family home containing family members who support him and A.S.; a consistent place of residence which is safe and secure; a positive father-daughter relationship where they enjoy wholesome activities together; his commitment to understand and help with her behavioural issues; a clear desire to play a significant role in her life and to co-parent with the mother in a way that puts A.S.'s interests first and moves beyond the conflict in the parents' relationship.

[43] Yes, it would be ideal if complete sobriety were achieved rather than reducing alcohol intake as he has said he has done, but the father's undertaking to abide by the court order not to drink while A.S. is in his care is significant. And I also note that he has pursued counselling with the Canadian Mental Health and Wellness Association.

[44] I find it is in A.S.'s interests to return to some certainty, some consistency, some routine where she has the benefit of both loving parents and their families in her life.

She is entitled to the benefit of each of you giving her your best.

[45] Neither of you has said that the other is a bad parent for A.S. There is a basis here if you focus on A.S. and not on the past, not on the dark days of your relationship. There is a basis for a good co-parenting relationship if you focus on moving forward. It is essential to look forward, not back, not to relive or rehash old wounds. You both demonstrated you could do this in the last six months or so before December 2024 — in the last six months of last year, where you were co-parenting co-operatively. I

encourage you to try to get back to that kind of relationship, that kind of co-parenting arrangement, because that will be in the best interests of A.S.

[46] I also suggest that you take the Family Law Information Clinic courses, Managing Conflict After Separation and Communicating Effectively After Separation. It may help with the ongoing co-parenting relationship.

Conclusion

[47] I will order, then, that there will be joint custody and joint decision-making, that there will be a return to the residential time of alternating weeks (one week on/one week off) starting today if that is possible. I leave that to you to work out when it will start and perhaps I can hear from Mr. Fairman on this if necessary.

[48] The order will continue to contain the clause that neither party shall consume alcohol or non-prescription drugs while A.S. is in their care.

[49] It will contain an RCMP enforcement clause. Hopefully, that will not be necessary.

[50] The application of the mother of December 10, 2024 is dismissed, and the application of the mother of February 24, 2025, is adjourned until financial disclosure can occur and a date can be obtained from the trial coordinator for that.

[51] In terms of the return of A.S. to the father, when can that happen, the one week on/one week off?

[DISCUSSIONS]

[52] Let us start it tomorrow. I think that would be better because she would get a good night's sleep.

[DISCUSSIONS]

[53] Because of the withholding, I think it would be fair to keep it to the next Monday, the 31st, then do the exchange.

[DISCUSSIONS]

[54] We are saying that it is the third parties often that do not understand, do not always appreciate that a joint custody order means that both parents have access to the information, so I think it is probably prudent to clarify it by putting in an extra paragraph. I will let you draft the wording.

[DISCUSSIONS]

[55] I will review it to make sure it reflects what I have ordered. Mr. Fairman will draft it, send it to you, then send it to the Court. I will look at it to make sure that it is accurate, and then it will be entered and sent to you.

DUNCAN C.J.