

SUPREME COURT OF YUKON

Citation: *JLR v JD*
2025 YKSC 30

Date: 20250527
S.C. No.21-B0025
Registry: Whitehorse

BETWEEN:

J.L.R.

PLAINTIFF

AND

J.D.

DEFENDANT

Before Chief Justice S.M. Duncan

No one appearing for the Plaintiff

Counsel for the Defendant

Amy Steele

Appearing as Child Lawyer

Kathleen Kinchen

ENDORSEMENT

Procedural History

[1] This application of the defendant father for interim custody of the Children of the relationship, N.A.D. and E.C.D. (the “Children”), primary residence, supervised access, travel outside Yukon, child support and an RCMP enforcement clause was heard on May 26, 2025, at 2 p.m. The plaintiff mother did not appear and did not answer the phone when she was called at her last known number by the Court at 2:13 p.m.

[2] On March 31, 2025, this application was scheduled to be heard on May 26, 2025, peremptory on the mother. It was adjourned nine times between March 20, 2024 and May 26, 2025. Most of the adjournments were at the mother's request for various reasons, including to give her time to find legal counsel. She had been represented at various times by two different legal counsel, both of whom obtained orders to be removed from the record as her counsel. As of May 26, 2025, the mother was unrepresented and had been so since August 30, 2024.

[3] The last substantive affidavits filed in this matter were dated December 13, 2024, from the father and his partner. The mother did not file any responding material to this application, although she had filed affidavits in 2021 and 2022, when she was represented by counsel.

[4] The Child Lawyer who had been appointed on December 20, 2024, was present in Court on May 26, 2025. She had filed a report to counsel and the mother with the Court on March 26, 2025, after meeting twice with the Children, and advised the Court orally of another meeting with the Children last week.

[5] Given this procedural history, the fact that the hearing of the matter this day was made peremptory on the mother, and that the father, his counsel, and the Child Lawyer were present in Court and ready to proceed, the application was heard.

Order

[6] I granted the father's application for interim custody and primary residence of the Children at his home in Whitehorse. The mother shall have supervised access visits at the Council of Yukon First Nations ("CYFN") Family Preservation Unit as agreed among the mother, father, and the CYFN. Telephone access by the mother is not prohibited but

the Children may choose not to speak with her. The father is able to travel with the Children outside the Yukon upon providing the mother with reasonable notice. The request for the mother to pay child support is adjourned generally. There shall be an RCMP clause to enforce the order.

[7] This order replaces all previous orders, except for the orders confirming removal of counsel from the record. As a result, several clauses from previous orders are to be included in the current order. They are:

- Neither party shall discuss the family law litigation at any time with the Children.
- The mother and the father will communicate respectfully with each other via text message or email and communication shall be limited to issues involving the Children.

[8] Briefly, my reasons for issuing these orders are as follows.

Reasons

Interim Custody and Primary Residence

[9] It is in the best interests of the Children that they reside with the father in Whitehorse and that he has custody of them.

[10] The parties had an eight-year common law relationship that ended in January 2020. In June 2020, the mother moved with the Children from Whitehorse to Dawson City where she is from, without the consent of the father. In 2021, Family and Children Services (“FCS”) became involved with the mother and the Children in Dawson City, due to reports of violence between adults in the mother’s home, requiring RCMP intervention, and observations of intoxication of the mother. FCS created safety plans to

reduce the Children's exposure to substance use and physical and verbal violence. Several letters of expectation were signed by the mother in 2022, and the situation appeared to improve for some months, with the mother receiving supports from family, friends and her First Nation. However, in early 2024, there were several unsubstantiated reports of substance use and harm to the Children. In March 2024, FCS investigated a report of the mother's intoxication while the Children were in her care and confirmed after interviewing the Children again that there were substantiated concerns of emotional harm to them.

[11] It was after the March 2024 incident that the father was asked by G.B., the mother's stepmother who was a caregiver from time to time of the Children in Dawson City, to retrieve the Children, as she was concerned for their well-being. The father spoke to the RCMP in Dawson City after he arrived there, to explain why he was taking the Children to Whitehorse, and the police were satisfied there was no reason to prevent him from doing so.

[12] Since that day, the Children have been living in Whitehorse with their father. The affidavit evidence and the report of the Child Lawyer shows they are thriving. They attend school regularly, are doing well and the father receives positive feedback about their progress from their teachers. Their health care needs are being met. The father supports them by hosting birthday parties, attending their concerts, taking them to spend time with grandparents and other family members, and by engaging in many other activities with them such as playing in the park, walking in the forest, doing crafts, and watching movies. They have made many new friends. They have developed a strong and loving bond with the father's partner, who now lives with them, and engages

in the family activities with them. The father's partner notes that the Children's stress and anxiety levels are diminishing, and their confidence is increasing, with the consistency of routine, the security of knowing they will not be left alone, and the absence of conflict in the home.

[13] The Child Lawyer confirmed through her report of March 26, 2025 and orally on May 26, 2025 that the Children's home life in Whitehorse is very positive. They enjoy living with their father, having his partner in their lives, seeing their sister who lives in Whitehorse, and attending school. On the other hand, they were adamant that they did not want to return to Dawson City to live with their mother or have contact with her. They spoke openly to the Child Lawyer about their negative experiences in Dawson City, from being exposed to their intoxicated mother and violence in the home, and from being left at home alone at night. They said they would lie to the social workers when interviewed because they were afraid of what their mother would do if they told the truth. The Child Lawyer specifically wrote in her report that she believed neither of the Children were influenced in making their statements to her.

[14] The father has created a loving, secure, safe, and fun family home for the Children in which they are happy and thriving. He is to be commended not only for his acceptance of full responsibility for his Children, but also for his obvious efforts in giving them a warm, supportive, affectionate, positive living environment. His partner's contributions to this are also to be commended, as well as those of his extended family. The bonding that has occurred between the Children, their father and his partner has grounded the Children, and given them a sense of emotional stability and safety.

[15] Both the father and his partner have gainful employment and a stable home. Although the mother has been employed in the past, there is no current evidence about whether she is currently working. Nor is there information on the record about her current living arrangements.

Access

[16] The father in his application requested supervised access by the mother with the Children at the CYFN Family Preservation Unit in Whitehorse. This was ordered in December 2024, but as yet no visits have been arranged. Given the fear expressed to the Child Lawyer by the Children of seeing their mother, supervised access is the appropriate approach at this time. This could provide an opportunity for the mother to rebuild the relationship with her Children in a positive, safe environment.

[17] While telephone access was not part of the application, such access was provided in the most recent court orders, not on an interim interim basis. The father had no objection to the mother initiating telephone access but wanted the Children to be able to refuse to talk with her. On the few occasions the mother has telephoned the Children, the calls have not gone well. Unfortunately, in past conversations the father reported the mother became angry at the Children for being with their father in Whitehorse and told them how many people in Dawson City missed them. This created stress and anxiety for the Children. Both the father and the Child Lawyer have stated that the Children do not want to speak to their mother at the moment. The Child Lawyer added during the Court hearing that the Children have been through a lot with their mother.

[18] I recognize the stressful relationship that currently exists between the mother and the Children, and the high conflict that still seems to exist between the parents. While it may not be in the Children's best interests to talk to their mother at this time, I do not want to prohibit the mother from calling her Children from time to time (the calls over the last year have numbered approximately half a dozen). But I also respect that the Children may continue to not want to talk with her. For this reason, I have ordered that the mother may attempt to speak with the Children by telephone, but they can choose not to speak with her if and when she calls.

Travel outside the Yukon

[19] As the father has custody of the Children, there is no reason why he cannot travel outside the Yukon with them. He has quite fairly included a provision that he will provide reasonable notice to the mother of the planned travel.

RCMP enforcement clause

[20] There is affidavit evidence in the record of the mother's aggressive behaviour with the Children and violent emotional outbursts. On the occasions when she did appear in Court to request adjournments, she indicated her strong opposition to the father's application. While the father is hopeful that this clause will never be necessary, he seeks to include it to ensure protection for his Children. I agree the record provides a basis for the request and have ordered it.

Additional clauses from previous orders

[21] The father and mother have had significant communication issues for several years in this high conflict matter. The mother has sought to involve the Children in the litigation. The clause requiring the parents to communicate respectfully by text or email

and to limit the subject matter to information relating to the Children only will assist in reducing the conflict. The clause preventing both of them from discussing the family litigation matter with the Children is helpful to protect the Children from the conflict.

Conclusion

[22] The evidence is clear and uncontested that it is in the best interests of the Children to remain living in Whitehorse with their father and his partner. He has demonstrated his ability to love and care for the Children and to provide for their needs in all spheres. The mother has been given a chance to begin to repair her damaged relationship with her Children by being granted limited access with them.

DUNCAN C.J.