SUPREME COURT OF YUKON

Citation: *JDT v JE*, 2025 YKSC 61

Date: 20250916
S.C. No. 25-B0044
Registry: Whitehorse

BETWEEN:

J.D.T.

PLAINTIFF

AND

J.E.

DEFENDANT

Corrected Decision: The text of the decision was corrected at pages 4 and 6, where changes were made on September 22, 2025

Before Justice John P.L. McDermot

Counsel for the Plaintiff — Shaunagh Stikeman

Appearing on her own behalf — J.E.

REASONS FOR DECISION

Overview

[1] This was a chambers application concerning the parties' son, who is seven (the "Child"). The Plaintiff is the father of the Child; the Defendant, the mother. The mother is a local lawyer and it was therefore seen to be necessary to have me address this matter as an out of jurisdiction deputy judge.

[2] The parties commenced cohabitation in Calgary in 2015. The Plaintiff Father says that initially both parties used drugs recreationally, but that the Defendant was exhibiting signs of serious drug and alcohol abuse leading up to her pregnancy with the

Child when she ceased using anything. However, J.D.T. says that J.E. picked it up again, and worse, after the Child's birth.

[3] The parties never married and the relationship began to break down in 2020. There were allegations of family violence against the Defendant on the part of J.D.T. which is partially admitted by him. After several reconciliations and separations the parties finally separated in 2022. There is some conflict in the materials as to who primarily cared for the Child after separation but it is common ground that they began to share care of the Child in April 2023 on a week about basis, with exchanges on Sundays.

[4] On August 3, 2025, after his parenting time with the Child came to an end, the Plaintiff arbitrarily overheld the Child and refused to return him to his mother's care. Since then, the Child has lived with J.D.T. and J.E. has had supervised parenting time with her son. J.D.T. says in his affidavit that he overheld the Child because the Defendant was about to be served with his Statement of Claim and Notice of Application and he was fearful of her reaction to being served, especially when she was threatening to move to Calgary with the Child. However, the Defendant said in submissions that she was not served until about a week after the Plaintiff overheld the Child. The affidavit of service provided in the Chambers Record of the Plaintiff confirms that the Defendant was served with process in this matter on August 4, 2025, the day after the Child went into the Plaintiff's care.

[5] The major issues in this application are interim custody of the Child and the parenting time or access that the Defendant is to receive. In addition, the Plaintiff says that the Defendant has been threatening to move to Calgary with the Child and asks for

an order that she not relocate with the Child outside Yukon; in her Statement of Defence J.E. says that she has no intention of relocating with the Child and this order can therefore go on consent. During submissions, the Defendant also agreed that the Plaintiff could travel to Vancouver for brief holidays not exceeding two weeks in duration; I assume reasonable notice will be given of these holidays. The Plaintiff further asked for an order for RCMP assistance in enforcing the order and an order for a custody and access report to be prepared pursuant to s. 43 of the *Children's Law Act*, RSY 2002, c 31 ("*CLA*"); that order is on consent.

[6] The common residence is in the name of the Defendant and was purchased in 2017 with funds provided by the Defendant's mother. The Plaintiff says that the parties had agreed that he would receive $25,000 from the sale of the property and the Defendant has now listed the property for sale. The Plaintiff asks for an order that the sum of $25,000 be paid to him from the net proceeds of sale.

[7] I have mentioned that the Plaintiff used self help to impose a new parenting regime on the Child's mother and it is clear that he did so when he refused to return the Child to the mother's care on August 3, 2025. J.E. submits that any result other than returning to the prior *status quo* would be to condone the Plaintiff's self help actions and this should be rejected. Notwithstanding the result, nothing in these reasons should be seen as condoning the Plaintiff's actions. Self help is always discouraged by this court and the Plaintiff had difficulty in explaining why the parenting issues had become of such urgency to cause him to take steps on his own to arbitrarily change the parenting plan that the parties had previously agreed upon. The Plaintiff deposes that the Defendant was on drugs when they separated and agreed to shared care and that she

still was on August 3, 2025, when he overheld the Child. It would have been better for the Plaintiff to have sought emergency assistance from the court rather than to overhold the Child and if there was insufficient evidence to obtain emergency assistance, then there was no excuse for the Plaintiff's actions.

[8] That being said, parenting issues have to now be based upon the Child's best interests, and not the past conduct of the parties.

Parenting Issues – Primary Care of the Child

[9] The Plaintiff seeks primary care of the Child and that the Defendant have supervised access until she undergoes treatment for her drug abuse issues. That order would be a substantial change in the *status quo* and to make an interim order varying a long term *status quo* concerning the care of a child, the court requires evidence of "compelling circumstances requiring a change in the status quo": see *Ceho v Ceho*, 2015 ONSC 5285. Put another way, the moving party must show "exceptional circumstances where immediate action is mandated": see *Grant v Turgeon*, 2000 CanLII 22565 (Ont. SCJ).

[10] As these parties are unmarried, those circumstances must be in accordance with the best interests of the Child as provided for in s. 30 of the *CLA*. Under those criteria, the major issues in this interim application lie under ss. 30(1)(c), (d), and (f) of the *CLA*. Those provisions concern the Child's requirements for stability as well as the parties' respective abilities to meet the Child's basic needs. The Plaintiff says that those needs are not being met by the Defendant due to her drug abuse. Although the Defendant lives with her father who provided an affidavit, J.D.T. also says that the maternal grandfather fails to prevent the Defendant from using drugs while caring for the Child

and continues to enable the Defendant's drug use. However, it is acknowledged that the Defendant's father, while not a parent, is important to the Child who has a good relationship with him.

[11] The Defendant says that the Plaintiff has not proven that she uses drugs affecting her ability in providing for the needs of the Child. She says that the allegations cited by the Plaintiff are based on innuendo and rumour and that there is no hard evidence of drug use and if there is such evidence, it is dated and inapplicable to the present circumstances. She says, essentially, that the Plaintiff has failed to prove his case and that the parties should return to the *status quo* that existed prior to August 3, 2025.

[12] The evidence proffered by the Plaintiff is contained in his affidavit and the affidavits of a number of other persons. Essentially, his evidence is as follows:

a. Although the Defendant was a successful lawyer and a good mother the Child at one time, the Plaintiff and others depose that she has undergone a marked deterioration in her appearance and general comportment. J.D.T. and the Plaintiff's former friends or acquaintances attribute this change and deterioration to the Defendant's drug use. They say that she is now emotionally unavailable to the Child, and note that she has been administratively suspended by the Yukon Law Society. She no longer has her job with the territorial ombudsman and her economic and emotional well being are alleged to have been affected by her drug use. The Child complained to the father that the mother can be continuously awake all the time for a period of time after which she sleeps all the time.

b. The company that the Defendant keeps in concerning. It has changed over the years and the Defendant has eschewed her former friends who have been blocked on social media for the slightest criticism or concerns expressed. For example, the Child has confirmed that a visitor to the mother's home is an individual named Dustin Foss who was charged on June 3, 2025, with weapons possession as well as possession of cocaine and fentanyl for the purpose of trafficking.

c. The mother has been seen by several people in an intoxicated condition and as being obviously impaired and under the influence of drugs. Heather Hudson, a friend of the Plaintiff, saw J.E. on December 21, 2024, with a friend in Whitehorse – both women were having difficulty walking and they were holding onto one another and acting erratically. Another individual, Stephanie Aube, says that her sister, Charlotte has drug consumption issues and is a friend of the Defendant. Ms. Aube says that the Defendant and her sister had visited her on February 23, 2025, and described the pair as being impaired by drugs. She said that the Defendant was erratic, hyperactive, and speaking rapidly. The Plaintiff says that the Defendant has a history of drug use and he has observed her while under the influence of drugs. He says that he has seen the Defendant driving under the influence of drugs with the Child in the car. He says that the doctor at the local emergency room noted this as well on May 27, 2025 – the doctor in his notes said that he found it difficult to obtain the history of the incident that brought the Child to the hospital (an

> alleged accident in the care of the Plaintiff which she said caused injury to the Child) as the Defendant “was talking very quickly and was tearful and somewhat tangential.”

[13] The mother says that these factors are not proof that she abuses illegal drugs or that the Child is at risk from her behaviour. She says that there are other explanations for all of these concerns and that there is no hard evidence of drug use.

[14] That may be true, but the evidence provided by the Plaintiff provides clear evidence of concern regarding the Defendant’s drug consumption. He provides a good *prima facie* case which means "at first sight" or "on the face of it". Although the Defendant is correct that the onus lies on the Plaintiff to provide evidence of the drug use, the presentation of a *prima facie* case means that the onus shifts to the Defendant to rebut or at least provide specific evidence to respond to the allegations. There is good reason for this: the best evidence as to the Defendant’s drug use is in her possession and she is the one who can uniquely provide evidence as to whether or not she is abusing drugs. She could have provided drug tests or evidence that rebuts the evidence provided by the Plaintiff.

[15] This she has not done. No drug tests were provided in her materials. Other than addressing a police stop instigated by the Plaintiff after the hospital visit, she has not responded with any specificity to the allegations made by the Plaintiff or his witnesses in the various affidavits provided. She only made one general statement that:

> I am not currently using substances that has caused me to be in a state where I am unable to parent. Further, I have never smoked crack or used opiates as alleged by [J.D.T.]. This narrative has been ongoing for years, and arose again after I questioned [J.D.T.] about [the Child]'s injuries at the hospital.

[16] Implicit in this statement is the fact that she is currently using substances, but that they allow her to parent the Child. As well, these substances, while not including smoking crack cocaine or opioids, could run the gamut from marijuana to cocaine itself. It is unknown exactly what the Defendant is using as she does not disclose those drugs or provide drug testing. As I stated during argument, this paragraph was carefully drafted and does not displace the *prima facie* case provided by the Plaintiff.

[17] As well, the Defendant provided an affidavit sworn by her father, who lives with her. If there is anyone who knows whether the Defendant uses drugs, it is him. He acknowledges in this affidavit discussing the Defendant's drug use with the Plaintiff but he denies the Plaintiff's allegation that he was dismissive of the Defendant's drug use. He otherwise does not address or speak to the allegations of drug use. That omission, again, speaks volumes about whether the Defendant is using drugs as the two people who are best able to provide evidence of drug use are refusing to address that issue in any meaningful fashion. The fact that he says that he took the Plaintiff's concerns seriously means that he is acknowledging that the Plaintiff is correct when he said that the Defendant had a serous substance abuse problem. I have to infer from that as well as the maternal grandfather's lack of response that the Defendant is using and, as there are no specifics in the Defendant's affidavit as to her care of the Child, that this drug use impairs her ability to parent her son.

[18] In submissions, the Defendant says that she is self represented and did not know any better. She offered drug tests during argument but that offer was out of time; she provided her lengthy affidavit on the morning of the argument of the motion depriving the Plaintiff of his right of reply and the Court must act on the evidence then before it.

The Defendant is a lawyer and the Plaintiff has put the Defendant's drug use as the primary ground for his self help and for the risk to the Child while in the Defendant's care. It was the major parenting issue before the Court. I simply do not believe that the Defendant did not know that she had to respond to those allegations to address the Child's best interests in this contested application.

[19] The Defendant says that the Plaintiff has not been encouraging her relationship with the Child which is addressed by s. 30(1)(g) of the *CLA*. However, since August 5, 2025, the Defendant has been exercising supervised access at her mother's home, supervised by her mother's spouse (the Defendant's stepfather). Although the Plaintiff may have inappropriately discussed parenting issues with the Child, attempting to obtain evidence from him to support his case, he has not withheld contact between the Child and his mother. The Defendant complains that the Plaintiff refused to provide immediate access to the maternal grandfather when he requested it on one occasion, but he had no notice of that request and offered a visit the next day. I do believe that the Plaintiff is sincere when he says that he is acting protectively and that it is not his intention to deprive the Child of his relationship with his mother.

[20] I therefore find that the Defendant is using illegal and non-prescription drugs and that this use of drugs impairs her ability to meet the Child's basic and other needs. The Defendant's drug use are sufficiently compelling circumstances to allow the Court to make an order changing the previous *status quo*. The home that is best able to address those needs is the Plaintiff's. The Court has little choice but to accede to the Plaintiff's request for interim custody and primary residence of the Child.

Parenting Issues – Supervised Access

[21] Supervised access is not a permanent solution to parenting time with any parent. It is meant to be a temporary remedy to address safety issues for a vulnerable child on a temporary basis. In fact, the Plaintiff is clear that he does not want supervised parenting time on a permanent basis; he says that when and if he is convinced that the Defendant has addressed her drug consumption issues, the need for supervision may then be reviewed.

[22] The granting of supervised access when there is drug use by a parent seems to be a remedy that has been sanctioned by this court on several occasions. In *FAS v SMA,* 2023 YKSC 30, Duncan C.J. ruled that proof of drug use was not necessary to order supervised access and that it was enough if "the mother suspects drug use, based on what she considers to be valid information" (at para. 14) for the court to order supervised access. The concerns in this case are stronger as I have made a finding on the evidence of non-prescription drug use that negatively affects the mother's parenting of the Child.

[23] In *JCE v CDG*, 2020 YKSC 11, another decision of Duncan C.J., she cites *Miller v McMaster*, 2005 NSSC 259, as authority for several situations where supervised parenting time was appropriate including:

a. where the child requires protection from physical, sexual, or emotional abuse;

b. where the child is introduced or reintroduced into the life of a parent after a long absence;

c. where there are substance abuse issues; or

d. where there are clinical issues involving the access parent.

[24] As pointed out by Ms. Stikeman, counsel for the Plaintiff, three out of the four criteria (a, c, and d) noted in *JCE* are present in this case. The parties have been able to arrange for supervised access in the home of the maternal grandmother and supervised by the Defendant's stepfather. That provides familiar territory for the Child and the parties are to be commended for arranging this. That will continue until further order.

[25] If the Defendant can provide three clear drug screens over a three-month period or prove successful attendance at a residential drug rehabilitation program, the supervision requirement in this order may be reviewed.

[26] There shall be access to the maternal grandfather as arranged between him and the Plaintiff. Although he is not a parent, that individual's importance to the Child is acknowledged in the text messages between the Plaintiff and the grandfather.

Investigation

[27] The parties have agreed that there should be an investigation of the parenting issues between the parties. That is therefore on consent, but I am only permitted to make a recommendation in this matter. My review of the materials confirms that there are clinical issues that need to be addressed, and the Court recommends an investigation as requested by the Plaintiff in his Notice of Application.

Police Enforcement

[28] The Plaintiff requests police enforcement of this order. He says that the Defendant is not to be trusted to return the Child after access visits and that she has spoken of moving to Calgary with the Child.

[29] That latter allegation has been put paid to by the Statement of Defence filed by the Defendant. She is clear that she is not intent upon moving anywhere with the Child and has agreed to a non-removal clause as requested by J.D.T. She has been returning the Child after supervised access visits as arranged between the parties without a court order. There is little or no evidence that the Defendant will disobey the court order in this matter.

[30] In fact, if anyone has used self help, it is the Plaintiff who arbitrarily changed the parenting arrangement on August 3, 2025.

[31] The request for police enforcement of this order is dismissed.

[32] There appears to be a request for a restraining order with a 200-metre boundary in the Notice of Application. That issue was not spoken to or argued and that request is dismissed.

Non-Removal

[33] The Plaintiff requests an order that the Defendant not remove the Child from Yukon. The Defendant consents to this, stating that she has no intention of moving from this jurisdiction.

[34] That order will go on consent on a mutual basis.

[35] The Plaintiff asks for an exception allowing him to travel to Vancouver for brief holidays not exceeding three weeks in duration. The Defendant had no objection to this. So ordered, again on consent.

[36] The Defendant may renew her claim to take holidays with the Child out of jurisdiction if she is able to review the supervised parenting time as set out above.

Funds from Common Residence

[37] The Plaintiff says that there is an agreement that the Defendant will pay him $25,000 from her net proceeds of the sale of the common residence which is owned by her. That home has been listed for sale.

[38] The Defendant said in argument that, while there was an agreement when the parties separated, it was never reduced to a domestic contract and that events have overtaken that agreement, making it unenforceable and void.

[39] I am not going to prejudge that issue which should be addressed in the main litigation along with the parenting issues. I am going to protect the Plaintiff's claim by ordering that those funds be paid into trust upon a sale of the common residence and held pending resolution of this action.

[40] There was no request for the signing of a Certificate of Pending Litigation in the Notice of Application. The Defendant said during argument that this would jeopardize the sale of the home. I agreed and ordered that the Defendant give notice of any accepted offer in the sale of the property so that the Plaintiff can take steps to ensure that the $25,000 is placed in trust. However, this was based upon the fact that the Defendant deposed in her affidavit that the mortgage was in good standing and that there was no concern that the equity in the common residence was at risk. I am now advised by court staff that there is an outstanding foreclosure action which has been brought before another deputy judge in this jurisdiction. If that is the case and the mortgage remains in default, the Defendant was not telling the truth when she said that the mortgage was in good standing. Certainly, the foreclosure proceedings were not disclosed to the Court or the Plaintiff during argument of the application.

[41] If there are ongoing foreclosure proceedings which put the equity in the matrimonial home in jeopardy, then the Plaintiff may need a Certificate of Pending Litigation to confirm that his claim to a portion of the equity in the common residence is secured. That would be something that would warrant a further appointment to speak to a Certificate of Pending Litigation to be set by the trial coordinator.

Order

[42] There shall therefore be an interim order to go as follows:

a. The Plaintiff shall have interim custody of the Child.

b. The Child shall have his interim primary residence with the Plaintiff.

c. The Defendant shall have supervised access to the Child as arranged between the parties, but for a minimum of two hours two times per week in the home of the maternal grandmother and supervised by the maternal grandmother's husband.

d. This supervision requirement may be reviewed if the Defendant is able to provide three drug screens (with chain of custody) over a three-month period showing that she is clean and sober and free of non-prescription drugs, or alternatively, the Defendant successfully completes a residential drug rehabilitation program and provides proof thereof to the Plaintiff.

e. The Child will have contact with the maternal grandfather on a weekly basis as arranged between the Plaintiff and the maternal grandfather, and provided that the Defendant is not present for those visits.

f. Order to go as per paras. 6 and 7 of the Plaintiff's Amended Notice of Application.

g. The Court recommends that a report be prepared concerning the Child pursuant to s. 43 of the *Children's Law Act*.

h. The request for police assistance and for a 200-metre restriction (under para. 8 of the Plaintiff's Notice of Application) is dismissed.

i. Upon a sale of the common residence located at 40 Skookum Drive, Whitehorse, Yukon, the sum of $25,000 shall be payable into court or into trust from the net proceeds after payment of the mortgage and costs to the credit of the Plaintiff's claim under an agreement between the parties and/or unjust enrichment and shall not be released without further order of this Court. The remaining funds may be released to the Defendant.

j. The Defendant shall give notice to the Plaintiff or his solicitor forthwith upon an accepted firm offer in the sale of her property and shall provide a copy of the offer to the Plaintiff's solicitor.

k. If necessary due to ongoing foreclosure proceedings, the Plaintiff may set an appointment through the trial coordinator to speak to this Court concerning the signing of a Certificate of Pending Litigation and registration of same against the title to the common residence.

l. This matter is adjourned to a judicial settlement conference on a date to be set through the trial coordinator.

McDERMOT J.