

SUPREME COURT OF YUKON

Citation: *ABC v XYZ*,
2026 YKSC 13

Date: 20260226
S.C.: No. 19-D5202
Registry: Whitehorse

BETWEEN:

A.B.C.

PLAINTIFF

AND

X.Y.Z.

DEFENDANT

Before Justice K. Wenckebach

Appearing on her own behalf

A.B.C.

Appearing on his own behalf

X.Y.Z.

Names have been anonymized to preserve the children’s privacy.

REASONS FOR DECISION

Overview

[1] The Plaintiff, A.B.C. filed an application concerning parenting-time and decision-making for the children of the marriage, D. and E. (collectively known as “the Children”). Because Family and Children’s Services (“FCS”) had been involved with the family, I also ordered that FCS provide its file to the parties. The hearing was scheduled for October 22, 2025. FCS provided disclosure in time for the hearing; however, its disclosure was not complete.

[2] Following the hearing, I requested that FCS provide further disclosure. It did, but relevant documents were still missing. I therefore again asked FCS to provide additional disclosure. I also decided to provide a decision rather than wait for the new disclosure to be filed. The decision had already been delayed; and I had enough information to make a decision. Because disclosure was incomplete, however, I stated in my decision that, once FCS provided further documentation, my conclusions may need to be revisited.

[3] FCS provided additional documents. Another hearing was held to permit the parties to make submissions on the new disclosure. They had no further submissions. I made my ruling at the hearing, with reasons to follow. My review of the additional evidence did not change my decision. A.B.C. shall continue to have primary parenting-time and decision-making for the Children. X.Y.Z. shall continue to have parenting-time on weekends and weekdays with the children. I made my ruling at the hearing, with reasons to follow.

[4] This decision addresses my reasons for maintaining the current order in place. As a preliminary matter, it also discusses FCS' provision of disclosure to the parties and to the Court.

Disclosure of the FCS File

Facts

[5] I ordered that FCS provide to the parties its file related to investigations involving the parties; X.Y.Z.'s wife, P.Q.; and the Children. FCS provided disclosure to the parties. A.B.C. then filed the disclosure. On my review of the materials, it appeared there were documents missing. The parties had informed me of an investigation conducted in 2025, but there were no documents about interviews with the Children

during that investigation. Because the Order required FCS to provide disclosure only to the parties, I ordered FCS to file its disclosure with the Court. FCS filed its documents.

[6] The filed documents also did not contain interviews with the Children from 2025. Contact was thus made with the parties and counsel to FCS. I specified that interviews with the Children seemed to be missing. Further disclosure was requested; and the parties and FCS were invited to request a Case Management Conference (“CMC”) to discuss the issue, if necessary.

[7] FCS filed and delivered videotaped interviews with the Children. Those interviews were from 2023, however, not 2025. I carefully read the disclosure provided. I was able to determine that, in addition to interviews with the Children, a significant portion of FCS’ documentation from 2025 was missing. The parties and FCS’ counsel were contacted again, seeking disclosure and pointing to gaps I identified in the disclosure.

[8] FCS filed and delivered additional documents with the Court and parties. This included written documentation from 2025. In the documentation there was reference to interviews with the Children. No notes were provided about the interviews, however. A CMC was held, with notice to FCS. FCS’ counsel and the parties attended. I requested that disclosure of the interviews with the children be made. Shortly thereafter, FCS filed a flash drive with videos of the Children’s interviews.

Analysis

[9] Some of the problems in disclosure may have arisen because the standard FCS disclosure order could be clearer. For instance, the order states at one point that FCS

shall disclose “documents”, while at another point it references “documents and records”. This may be why videos were not disclosed immediately.

[10] The issue was not only with the Order, however. Parties providing disclosure have an informational advantage over the other participants in the proceedings. They know what documents and records are in their possession: the parties and the court do not. There is therefore an onus on the party providing disclosure to ensure that it is complete.

[11] Mistakes happen even where the party diligently searches for and provides disclosure as required. Perfection is not expected. However, more should have been done in this case to provide complete disclosure. The difficulties in getting complete disclosure had an impact on the case. The parties had to return repeatedly to court. I issued two decisions rather than one. Most importantly, resolution of the matter was needlessly delayed. I hope that disclosure is now complete, and it is possible to move on.

Issues

[12] This Application was focused on the period since February 2024, which was when I awarded X.Y.Z. interim primary parenting time with the Children. Since February 2024, FCS’ involvement with the family has centred on X.Y.Z. and P.Q.’s care of the Children. Because of this, the additional disclosure did not affect my conclusions about A.B.C. It could, however, affect my decision with regard to X.Y.Z. The question to be resolved here, then is:

- A. Should the order change with regards to X.Y.Z.'s parenting-time with the Children?

Analysis

- A. Should the order change with regards to X.Y.Z.'s parenting-time with the Children?

[13] X.Y.Z.'s parenting-time with the Children should not change.

Facts

[14] Numerous reports were made to FCS about the family while the Children were in X.Y.Z.'s care. Because of the complaints, FCS conducted several investigations.

[15] On February 25, 2025, a professional who worked with the Children called FCS. The caller stated that D. was showing a shift in his behaviour and was becoming more aggressive. The caller received reports that P.Q. used physical discipline against the Children, and that both X.Y.Z. and P.Q. locked D. in his room as a form of discipline. The planned intervention was to meet with X.Y.Z. and P.Q. and work to get them supports.

[16] On February 27, 2025, E. reported at school that D. sexually touched her. A worker from FCS interviewed E. She told the worker that the sexual touching had occurred at her mother's home. She stated that she felt safe with D., X.Y.Z. and P.Q. She also mentioned that P.Q. slaps her bum as a form of discipline. The worker noted that several years before, E. also reported that D. had touched her sexually. She had also not stayed at her mother's house in over a year. The worker took into consideration that E. has a poor concept of time. The worker thus concluded that the sexual touching was not something that had recently occurred.

[17] On March 3, 2025, a mental-health professional who worked with the Children phoned FCS. E. told the mental-health professional that D. was made to stay in bed from lunchtime to 3 pm. In addition, P.Q. emailed the caller and reported that, during an argument, D. pulled a knife from the kitchen block on E. E. retaliated by attacking and scratching D. The mental-health professional also stated that D. only goes to counselling once every three months. The caller reported that there seems to be more going on in the home than the parents were sharing.

[18] On March 5, 2025, a worker from FCS made a follow up phone call to the March 3, 2025, call. The notes from the phone call state that the contact believed X.Y.Z. and P.Q. appeared to be twisting the truth about what was going on in the home. The Children also disclosed, more than once, that D. pulled a knife on E. Additionally, X.Y.Z. and P.Q. told D. he was expelled from school, but this was not true: they pulled him out of school. The contact had concerns D. was not getting a proper education at home. D. said that he had to lay on his bed, stare at a poster and copy out letters. The caller stated he cannot spell a word such as “apple” but can spell swear words. The notes also state FCS believes the Children must be in programming, such as counselling.

[19] On March 25, 2025, FCS received additional information that D. had touched E. sexually in the last few weeks. FCS commenced an investigation. It required that, during the investigation, the Children could not be alone together.

[20] On April 4, 2025, a report was made to FCS that E. told her counsellor P.Q. hit her on the head, tummy and back. A worker from FCS had a further discussion with a third-party mental health provider involved in the disclosure. They told the FCS worker that she believed the Children hid information about what was happening at their home.

[21] E. and D. were interviewed as a part of the investigation. E. confirmed that recently, D. had touched her sexually. She also stated that when she and D. are disciplined, they get spanked or grounded. In his interview, D. stated that, when disciplined, he gets toys taken away from him. D. stated he felt safe with X.Y.Z. and P.Q. E. was reported to state that she felt safe with X.Y.Z., P.Q. and D. as long as he is not having “big feelings”.

[22] X.Y.Z. and P.Q. were also interviewed. They denied P.Q. hit E. but stated they had spanked the Children before. The worker interviewing X.Y.Z. and P.Q. confirmed the Children would have separate bedrooms.

[23] At the end of the investigation, FCS concluded that the Children should not be alone together and must have different rooms. Because X.Y.Z. and P.Q. could provide that for the Children, it concluded there were no child protection concerns.

[24] On May 23, 2025, a report from the counselling services was made. The Children were no longer attending counselling. E. was also being pulled out of school. The caller was worried that the Children were being removed from all community resources; and that if they are not visible within the community, they were at risk. The caller also reported that these behaviours by the parents to isolate the Children is concerning and a ‘red flag’ for abuse. FCS took no action because the report was not considered to meet the threshold for risk of harm.

[25] On June 17, 2025, another report was made to FCS, alleging substance abuse, family violence and lack of supervision in the home. One of the reports made was that P.Q. grabbed E. by the ankles and dragged her. It also stated that X.Y.Z. left the Children unsupervised while they were together. FCS began a new investigation. As a

part of the investigation, a worker from FCS interviewed E. and D. The interviews were videotaped. The videotapes were filed with the courts. In the interview, E. confirmed that P.Q. grabbed her. She also stated she felt safe with P.Q. and X.Y.Z.

[26] In his interview, D. agreed to tell the truth but said that if there was a secret about him or his family, he would not be able to tell it. The social worker assured D. that he could tell her secrets. D. then said he might be able to tell her secrets. When asked who asked him to keep a secret, D. said it might have been his dad. He then could not remember what the secret was.

[27] When asked about what happened with P.Q., D. asked if the worker would tell his father what he told her. He did go on to provide details about the incident with P.Q. and E. He told the worker that P.Q. force fed E. olives that E. had left on the floor. D. said he did not feel safe with P.Q., but he did feel safe with his dad. D. said that P.Q. spanked the Children. X.Y.Z. does not spank them, but “kind of” slaps him on the back of the head. He also stated that when X.Y.Z. slaps him on the back of his head it “kind of hurts but it doesn’t hurt that bad” (Affidavit #4 of L. Robinson-Fernandes, Exhibit A, Interview of D. (June 20, 2025) at 00h:22m:10s (video)). He could not remember the last time X.Y.Z. did that. D. also spoke about school, saying he had been expelled and wanted to return.

[28] The worker also spoke with X.Y.Z. They discussed the incident with P.Q. and E., and the allegations of his drug use. X.Y.Z. stated that he and P.Q. had broken up. She would not have contact with the Children again. The social worker also explained that it was important that the Children return to counselling. X.Y.Z. said he would reach out with the Children’s counsellors. At the end of August, FCS confirmed the Children were

back in school. X.Y.Z. also stated that he intended on restarting the Children's counselling. FCS concluded at that point that there were no child protection concerns.

Analysis

[29] The reports are consistent with my analysis about the issues in X.Y.Z.'s house. They support my conclusion that X.Y.Z.'s judgement was not good in making decisions for his children. I also continue to have concerns that he turned a blind eye to P.Q.'s mistreatment of the Children.

[30] The reports additionally led me to consider whether X.Y.Z.'s parenting-time should be supervised. I considered and rejected this option in my previous decision. The question now is whether the information from FCS changes that decision.

[31] FCS concluded that there was no risk of harm to the Children while they were in their father's care. For me, however, a number of questions linger.

[32] First, I do not take at face value the Children's statements about what is happening, or not happening, at their father's home. For instance, E. said that she felt safe with P.Q. even after she physically abused her. This, combined with D.'s statements about secrecy and his concern that what he said would be repeated to his father suggests, as the third-party mental health professional stated, that the Children may not be telling everything that happened in their father's home. The Children's repeated statements to FCS workers in the different investigations that their father does not use corporal punishment (setting aside D.'s reports that X.Y.Z. slaps him on the back of the head) are not determinative.

[33] Second, I also do not take X.Y.Z.'s statements at face value. His statement that neither he nor P.Q. used corporal punishment was directly contradicted by D., when D. spoke of being smacked on the back of his head, for instance.

[34] Third, it appears FCS concluded P.Q.'s presence in the home created the risks to the Children; and, once she left, the risks were diminished. With respect, it seems to me that there were other risks to the Children as well, and which may not have been fully addressed. D.'s interactions with E. are troubling. There is not only substantiated sexual touching, but D. pulled a knife on E., on more than one occasion. It was serious enough that P.Q. contacted D.'s counsellor about one such occurrence. FCS investigated the sexual touching but did not seem to investigate the physical violence.

[35] Possibly, if this is a further risk to E., it is allayed by FCS' requirement that the Children be supervised at all times when they are together. D.'s physicality with E. may have occurred in P.Q.'s and X.Y.Z.'s presence, however. If so, then something in addition to supervision may have been required.

[36] Moreover, although it is essential that the Children not be left unsupervised while together, it is possible that on at least one occasion, X.Y.Z. did not supervise the Children while they were together. Based on the information from one report and on D.'s statements, it appears D. and E. were left alone in D.'s room immediately before P.Q.'s assault on E. Again, FCS did not seem to explore this with X.Y.Z.

[37] It also seems to me that having the Children attend counselling is an additional mechanism for ensuring E.'s safety over the long term. FCS, as well, concluded that the Children need programming. When X.Y.Z. and P.Q. withdrew the Children from counselling, I conclude that increased the risk to E.'s safety. In addition, contrary to

X.Y.Z.'s statements to the FCS worker at the end of August 2025, he did not take steps to recommence the Children's counselling until, during a hearing in October, I requested that he provide proof that he had done so. Thus, an important piece to keeping E. safe was not in place for many months.

[38] D. also told the FCS worker that X.Y.Z. slaps him on the back of the head. This allegation, if true, would seem to increase the risk to the Children of physical harm while in their father's care. It does not appear to have been discussed between FCS and X.Y.Z., however.

[39] No one from FCS gave testimony in this matter. Workers from FCS also had the opportunity to interview and observe X.Y.Z. and the Children. In contrast, I have only the disclosure provided by FCS upon which to base my conclusions. It is possible that FCS did consider all the issues I have raised; and its conclusions may also be based on far more information than I have. X.Y.Z., however, could have provided additional testimony. He did not, and that is concerning.

[40] Despite the issues raised in the FCS disclosure, however, I still conclude that the best option for the Children is that X.Y.Z.'s parenting time be unsupervised. In my original decision on this issue, I concluded that, because supervised parenting-time would require the parents to communicate, and the parental conflict has a negative impact on the Children, supervised parenting-time itself had risks. I balanced this against some of the safety concerns I had about X.Y.Z.'s care of the Children. I concluded that unsupervised parenting-time was the better option.

[41] The notes from FCS raise the spectre that there are risks in permitting X.Y.Z. to have unsupervised parenting-time. It does not, however, clarify whether the risks are

real or how significant they are. Additionally, between June 2025 and January 2026, there were no calls to FCS nor investigations about X.Y.Z. For these reasons, I conclude X.Y.Z. should continue to have unsupervised parenting-time with the Children.

Conclusion

[42] The Order issued January 15, 2026, shall remain unchanged.

WENCKEBACH J.