SUPREME COURT OF YUKON

Citation: *B.D.C.* v. *B.J.B.,* 2012 YKSC 27

Date: 20120404
Docket S.C. No.: 08-B0048
Registry: Whitehorse

BETWEEN:

B.D.C.

Plaintiff

AND:

B.J.B.

Defendant

Before: Mr. Justice R.S. Veale

Appearances:
Kathleen Kinchen — Counsel for the Plaintiff
Brook Land-Murphy — Counsel for the Defendant

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): This is a case where the mother of E., who is almost 5 years old, resides in a northern Yukon community. She has two other children, one from her present spouse and one from another father also in that community.

[2] The father resides in a southern Yukon community and exercising access requires a day's drive and considerable transportation expenses.

[3] The mother first came before me in October 2010 and *D.C.* v. *B.J.B.*, 2011 YKSC 85, and I ordered interim joint custody, despite the fact that this can be described as a high conflict case, to ensure that the parental role of each parent was preserved, because the indication that I received at that time was that the father was having a great

deal of difficulty in exercising the access, and that is why the access was specified in the order on that in October 2010. The access at that time began as a couple of days a month, but increased quickly to approximately a week each month, and ran through until October of 2011.

[4] The mother and father have come before the Court again with a case that I would still describe as high conflict, although the mother indicates that they are making some progress since September of 2011. Counsel have advised that there are certain areas of agreement and I will go through those. One, they seek a Custody and Access Report and I so recommend that that be prepared by the government. I should say that, so everybody knows, it is possible that the government will not undertake that, and in that situation I guess my expectation would be the parties would come back if there was still an outstanding custodial issue.

[5] The parties have also agreed that this order should include a term which requires both parents to speak respectfully of the other party in front of E., and that is such an obvious thing that one should not have to put into an order, but it is absolutely necessary to do so. I should indicate that if either parent does not respect the order they are in jeopardy of losing the primary custody rights that may exist at the time. There is nothing more destructive for a child than to have one parent say that the other parent is in some way unworthy or make a negative comment, because you have to appreciate it is not a dispute between parents. You are telling this child that he is not worth anything because one of his parents is not worth anything, and it is so destructive and is very disturbing, and it has arisen in this case in October 2010 and is still occurring, and it causes me great concern.

[6] In the order there are items (b), (c), (d) and (e) which the parties have agreed to, and you know what I am referring to, in para. 30 of Ms. Land-Murphy’s outline. Other issues remain outstanding. The question of providing each parent with a list of service providers' names and address and phone numbers, I include in this order, but with respect to doctors, daycare operators, camps, and so on.

[7] Communication remains a difficulty although there is some indication that it has improved. Communication should remain primarily by e-mail to avoid the conflicts that have been occurring between the parents, but I do not in any way prohibit civil, face-to-face communication, which is so important. The parents simply have to get over past disagreements and think of the future of their child, because uncivil communication is very destructive.

[8] I am going to order that a journal be exchanged on pick-up and drop-off of E., but it is not to be a diary but more of an indication from one parent to the other of significant issues of concern, whether they be education-related or illness or injury or something to watch out for, at the time of exchanging the child.

[9] When the child is in the care and control of the other parent, there shall be telephone calls permitted at 7:00 p.m. on the Tuesday and Friday each week. These conversations are to be private conversations and I am going to specifically prohibit videotaping or tape recording the conversations. I am going to reserve judgment and give a written judgment at a later date with respect to the issue of video and tape recording as it occurred in the case.

[10] The care and control by the father will be exercised according to a schedule that is set out in Exhibit I of the father's Affidavit number 3; and I think both counsel are aware of all the terms. I am not going to speak to each term, but I am making this order because it is my view that the father has really gone above and beyond the call of duty in his efforts to maintain his relationship with the child and travelling a great distance and at great expense. I am also taking into consideration that the child will be starting kindergarten in the northern community in August of 2012 and that is going to limit the amount of care and control that the father can exercise with respect to the child. The pick-up will be at 9:00 a.m. and the drop-off at 5:00 p.m.

[11] With respect to child support, my understanding is that since well before my order of October 2010, the father was paying $250 a month by agreement. There is evidence that he has had an average wage over 2008 to 2011 of approximately $40,000, which would attract a child support order of $341 per month. However, his 2010 income is the income that I am going to consider at $28,000 as being the income that exists at the date of this order and I think it is appropriate in these circumstances, he has offered to continue paying $250 a month, and I believe that should be the appropriate support order.

[12] With respect to daycare, the parents should share that in proportion to their incomes, and the mother's income, I understand, is $21,600, Ms. Land-Murphy, is that correct?

[13] MS. LAND-MURPHY: I don't recall off the top of my head, I believe it was [indiscernible].

[14] THE COURT: Whatever is in the document; that is what I think it was.

[15] With respect to extraordinary expenses that occur in the community that the child is in at the time, that should be borne by the parent that has the care and control of the child at that time.

[16] Have I left anything out?

[17] MS. KINCHEN: Can I seek clarification?

[18] THE COURT: Yes.

[19] MS. KINCHEN: You said extraordinary expenses in each community; did you mean extracurricular?

[20] THE COURT: Thank you, I did.

[21] MS. KINCHEN: Thank you. That was my only --

[22] THE COURT: You corrected me, I did not mean that, I said extraordinary. Extracurricular.

[23] MS. KINCHEN: Extracurricular. And I just -- okay. The order that you made regarding providing notice to the other party of caregivers. So you're limiting -- so the onus is on each of the parents to provide information to the other parent about doctors, dentists, daycare people, camps, and you're -- but not necessarily grandparents or a friend?

[24] THE COURT: Not other members of the family; however, if the child were going to be staying with a third party --

[25] MS. KINCHEN: Mm-hmm.

[26] THE COURT: -- that is not a family member, then obviously there is an obligation to advise.

[27] MS. KINCHEN: Okay.

[28] THE COURT: Ms. Land-Murphy, anything on your side?

[29] MS. LAND-MURPHY: Nothing arising.

[30] MS. KINCHEN: Just -- I wonder if we could put in, and I think this might be helpful to both parents, the seven o'clock Tuesday and Friday phone call --

[31] THE COURT: Yes, by the way, I picked those out of the air. If there are more convenient dates that the parties can agree on, that is fine by me too.

[32] MS. KINCHEN: Okay. I am just wondering if we could also put something in, like what if one of the parties was camping and there's no cell. I mean do they have to be home every Tuesday and Friday or can -- okay, so, notification could be sent in advance to the other party?

[33] THE COURT: But you should certainly notify the other party the reason for the non-availability on that date.

[34] MS. KINCHEN: Yes.

[35] THE COURT: Thank you, that is a good point.

[36] MS. LAND-MURPHY: My suggestion would be that it should be worded, “or as otherwise agreed upon by the parties”, and that would give the parties an opportunity to, for instance, if they’re camping on a Friday, to have the phone access be on the Thursday.

[37] THE COURT: I do not mind putting that clause in, but I still think the clause should read as discussed with Ms. Kinchen.

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VEALE J.