

SUPREME COURT OF YUKON

Citation: *V.R.W. v. J.J.W.*, 2012 YKSC 48

Date: 20120124
Docket S.C. No.: 08-D4036
Registry: Whitehorse

BETWEEN:

V.R.W.

Petitioner

AND:

J.J.W.

Respondent

Before: Ms. Justice R. Veale

Appearances:

V.W.

Appearing on her own behalf via
teleconference

J.W.

Appearing on his own behalf via
teleconference

Lenore Morris

Child Advocate

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): The child, C., presently resides with his father in a Yukon community and attends the public school there. The father applies for custody in that community. The mother has found it necessary to move from that community to another province and applies for C. to reside with her.

[2] There is some history to the file in that the divorce petition was originally filed in the spring of 2008, and there have been some orders that I am going to refer to. This is not a case where the circumstances of one parent dictate that the child should clearly reside with that parent. It is a case where, fortunately for C., both parents are loving

parents and willing and able to provide a loving home for him and neither parent should be considered to have better circumstances than the other, and it is not a case of one parent winning and the other parent not winning. I hope that this is a case where the child C. wins.

[3] He has a good relationship with both his parents and could reside happily with either. In fact, that was the case when his parents separated in 2007, and the Court ordered, I believe it was in September of 2008, that there would be interim-interim joint custody of C. with C. residing with each parent on an alternating weekly schedule. That took place more or less until the mother felt it necessary to move out of the territory and apply to take C. with her.

[4] That initial application was denied by the Court in August of 2011, and it was primarily at that time, as I read the file, just that the mother was not all that settled at that particular time and the order specifically said that interim care and residence of C. was granted to the father in the Yukon community, but without prejudice to the mother renewing her application.

[5] The mother did so. She renewed her application in October of 2011 as she is now fully set up in the province with her common-law spouse. Her spouse has five children who are not residing with him, and the mother has three children in their teens, two of whom reside with her. She has a large extended family, brothers and sisters and so on, in the province where she is residing, which is somewhat different than the father in this case, whose family is back east. There is an age gap between C. and his older sisters who are residing with the mother, but I do not have any doubt that he has a close

relationship with his older sisters. The Child Advocate pointed out that the mother has had several common-law relationships that have not stood the test of time, and her present relationship is less than a year. Nevertheless, the mother is employed until November of 2012 and her common-law spouse has permanent employment, although it may require moving at some point to get promotions.

[6] The father of C. resides in a Yukon community with a common-law spouse and has had a steady job in that community for several years and coaches hockey, which is I guess a sport that C. is particularly active in at this time. C. has attended school in the Yukon community and his marks have declined somewhat. In June 2011, he was meeting expectations, which are code words, in all subjects, as indicated on his report card in June of 2011. In November 2011, he was meeting expectations in half his subjects, but definitely approaching expectations in the other half; approaching expectations being somewhat less in achievement than meeting expectations, obviously. The report cards are from different teachers, but both teachers give him a very positive report.

[7] C. has not expressed a preference in terms of his residence, but the possibility of alternating one year in the Yukon and one year in the province where his mother resides has been raised as a possibility. The Child Advocate does not recommend the alternating years concept, though it may be fairer to the parents, but her impression is that C. does not indicate a strong enough academic background at this time so that she would feel confident in making that recommendation. The Child Advocate also indicates her view that the mother is still getting settled somewhat in her relationship and her employment situation in the province where she resides.

[8] My own view is that this is not a case about the parents and their respective strengths and weaknesses, but more about the best interests of C., and my view is that he should remain in the community in the Yukon in the school that he has known for several years and that he is familiar with. The school knows him and he knows the school.

[9] So I am going to order that the mother and father have interim joint custody, but that C. reside with the father during the school year and the mother shall have generous access consisting of Christmas access, spring break, and summer access. The matter can be reviewed once again, as recommended by the Child Advocate, in January of 2013 to consider whether a move should take place or whether the idea of alternating residences should be considered.

[10] I should indicate that if any significant change in circumstances in C.'s life takes place in the meantime, that the parents are open to making any application that may be required, but I should also indicate to the mother and father that with the assistance of the Child Advocate we can also move into settlement conferences where we discuss things over the phone to resolve the difficulties that you run into from time to time with respect to access. I should add to my order that the mother should have access by Skype at all reasonable times that she wishes to have direct contact with C., rather than through expensive telephone calls. I have asked the Child Advocate to prepare the order, but given some of the difficulties we have encountered in the past with Ms. W.'s access, do you want to speak now about what that access should look like for spring break, summer, and Christmas?

[11] THE PETITIONER: I'm not sure at this point what it would look like.

[12] THE COURT: What I am prepared to do is leave it in the general terms that I have left it and when you are in a position to say what you are interested in, my view is you should always just speak directly with Mr. W. if you can, but if that does not work, we just bring it back to this kind of forum where you will be on the phone; Mr. W. may be here, he may be on the phone, and the Child Advocate and I will be present, and we can discuss those issues and work them out. But I am ordering generous access. There has to be fairness to you in the sense that he is not with you all the time, but on the other hand, there has to be some time left, of course, for Mr. W. to have a holiday with him or time off as well. But in terms of Christmas, spring break, and the summer, you are the primary concern. Do you want to just adjourn that issue?

[13] THE PETITIONER: Yes.

[14] THE COURT: Okay. You know how to contact the Trial Coordinator?

[15] THE PETITIONER: Yes, I have her e-mail; is it Iris Proctor?

[16] THE COURT: That is correct.

[17] THE PETITIONER: Okay.

[18] THE COURT: She is the person to contact and to set it up.

[19] THE PETITIONER: Okay.

[20] THE COURT: Okay.

[21] THE PETITIONER: Yes.

[22] THE COURT: Now, I have not made any child support order and I do not intend to, and Mr. W.'s not applying for one, and hopefully the parties can work it out. The costs in the past were worked out so that Mr. W. would bring C. to Whitehorse so he would incur the expense from the Yukon community to Whitehorse, and then from Whitehorse onto the province where the mother is residing would be her responsibility. So I think, generally, that should be the case in this order, but the details often have to be worked out by communication.

[23] THE PETITIONER: Would it not be fair to ask that we split the cost, like, you know, he brings him here, flies him down here and I'll fly him back?

[24] THE COURT: To the Yukon community, you mean?

[25] THE PETITIONER: No, to --

[26] THE COURT: Oh, I see. You take issue with that, do you or?

[27] THE RESPONDENT: Yes, only because it is quite expensive financially to drive down, stay overnight, and drive back the next day, but not only that, the majority of the time so far, I've also had to take time off work.

[28] THE PETITIONER: It's the same in both situations, and that's why I'm asking for what I'm asking for, and the fact is that I have other children here that it causes a hardship on as well.

[29] THE COURT: I am sorry?

[30] THE PETITIONER: I have other children here that it causes a hardship on as well.

[31] THE COURT: Right.

[32] THE PETITIONER: And, you know, we want to see him, we want to be able to have that access with him, but it's not always financially feasible. Like I said, I've had to borrow money the last couple of times, in order to bring him down here.

[33] THE COURT: What would be useful is -- and I do not know whether -- have you both filed financial statements?

[34] THE PETITIONER: No, but I could.

[35] THE RESPONDENT: When we divorced, yeah, when we divorced, but no --

[36] THE COURT: Not lately.

[37] THE RESPONDENT: -- financials, no, the last few years.

[38] THE COURT: Look, I think that is something we can talk about, but I think there would be an obligation on each party to indicate -- I mean I do not want to make a ruling, but what is your rough income, Mr. W.?

[39] THE RESPONDENT: \$60,000.

[40] THE COURT: Okay. You, Ms. W.?

[41] THE PETITIONER: Mine is about, let's see, just give me a second. It's about \$2,600 a month, that's give or take, just before taxes.

[42] THE COURT: So it is like \$32 --

[43] MS. MORRIS: No, 37.

[44] THE COURT: I will just say 32 as a rough figure. Well, thank you for that information, but let us deal with that again when both of you can make submissions on it, okay?

[45] THE PETITIONER: Okay.

[46] THE COURT: Okay. Thank you both. Anything that you are not feeling --

[47] MS. MORRIS: So the order should not mention the access costs?

[48] THE COURT: Yes.

[49] MS. MORRIS: Okay. I mean there's an existing order in place, so it'll just continue throughout your order.

[50] THE COURT: Right.

VEALE J.