SUPREME COURT OF YUKON

Citation: *L.A.B.* v. *M.B.T.,* 2012 YKSC 9 | Date: 20111220
Docket S.C. No.: 05-D3773
Registry: Whitehorse

BETWEEN:

L.A.B.

Petitioner

AND:

M.B.T.

Respondent

Before: Mr. Justice J.R. Groves

Appearances:

Malcolm Campbell — Appearing for the Petitioner
M.B.T. — Appearing on his own behalf
André Roothman — Appearing as Child Advocate

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] GROVES J. (Oral via teleconference): This matter came on before me for a hearing via teleconference on the 14th of December 2011, and these are my reasons as a result of that hearing.

[2] Before the Court is an application filed on behalf of the Petitioner, L.B., seeking reasonable and supervised access to her daughter, A., in a fashion set out in her Notice of Application dated December 9, 2011. Essentially, Ms. B. seeks access every second weekend from Saturday to Sunday, and mid-week access every Monday from 4:00 p.m. to 6:00 p.m., in addition to the general provision that there be additional access at times

agreed to between the parties.

[3] This matter was before me because of what transpired while I was in Whitehorse for a trial of the custody and access issue concerning this child in June of 2011. As a result of what transpired in June of 2011, I granted an order on the 6th of June 2011, and paragraph 4 of that order reads as follows:

> L.B. shall not bring any further applications with respect to this matter, including setting this matter down for trial, without first providing an Affidavit with an attached letter from a medical practitioner stating that L.B. is capable of representing herself or capable of instructing counsel with respect to court proceedings.

This was, as one can appreciate, a somewhat unusual order and, as I commented to counsel for Ms. B. at the hearing last week, that in my over 11 years experience as a presider in Supreme Court, in British Columbia, at least, I have never seen such bizarre behaviour in a courtroom as was experienced when Ms. B. appeared in front of me in Whitehorse on the week of June 6, 2011.

[4] That being said, I have reviewed the affidavits filed in support of Ms. B.'s application today, including her affidavit and the affidavit of Cheryl Olson, and I am satisfied that Ms. B. has the ability to instruct counsel. I have specifically reviewed the report of Robin Routledge, who is a psychiatrist in Duncan. I agree with counsel for Mr. T. that much of Dr. Rutledge's factual determinations are based on the self reporting of Ms. B., but I accept his evidence as a medical expert that Ms. B. is at least capable of instructing counsel, and I will proceed with the application, having made that preliminary determination.

[5] Turning to the substance of the application, which is an application for specified, unsupervised access, I still have significant concerns, despite the medical evidence, about the stability of Ms. B. I have these concerns because of what I experienced as the outburst in court in June of 2011. Additionally, there appears to have been a number of criminal charges resulting from what appears to be actions in the courthouse in Whitehorse on the day I made my order, and also from contacts with members of the RCMP in Haines Junction which, though counsel for Ms. B. says are charges which are likely to be stayed, are nonetheless actions which at least gave rise to charges, and they appear to be somewhat anger or rage-related allegations.

[6] Finally, I have before me in the affidavit of Mr. T. a number of what are called Facebook postings, and these postings have purportedly been authored by Ms. B., and certainly not denied by her in any materials, are suggestive of propensity towards violence and a propensity towards violence with a gun.

[7] I accept what is said by counsel for Ms. B. that many of these actions are historical, having happened in June or July of 2011, but, nonetheless, there is no evidence before me as to what, if any, actions Ms. B. has taken since her behaviour in court, since her behaviour which resulted in the criminal charges, and since her behaviour noted in her postings on Facebook, which would give any comfort to the Court that the underlying issues Ms. B. deals with or is dealing with have in any way been treated or modified or resolved.

[8] With any custody or access application, the test is not what is good for the parent; the test is what is in the best interests of the child. Based on what I have seen of

Ms. B. in court and based on what the additional evidence about what Ms. B. has done outside of court since June satisfies me that it is not in this child's best interests to grant unsupervised access at this time.

[9] In addition to the behavioural concerns, there is limited information before the Court about where Ms. B. is living, what she plans to do, what plans she has for her daughter, and limited information that would deal with historical concerns such as Ms. B.'s past, taking of the daughter outside of the Yukon without Mr. T.'s permission, and Ms. B.'s living in British Columbia for a period of time as what she described to me at a preliminary court procedure as being a "political refugee."

[10] Additionally, I am satisfied, based on the materials before me, that Mr. T. has been responsible about access by Ms. B. to their daughter. Mr. T. sets out in his affidavit a mechanism that he has employed to determine if access is appropriate and, with slight modifications, I think his efforts at maintaining a relationship between daughter and mother and maintaining a safe relationship, and being primarily concerned about his daughter's safety, his actions are commendable in the approach that he has taken.

[11] I accept that his proposal is an appropriate order of the Court except to add a couple of provisions, and those provisions are designed to ensure that there is a regular and significant relationship between mother and daughter. I often say to people in court that children are busy and children's activities sometimes become a priority, but the most important activity for a child is, in my view, to have that child spend quality and reasonable time with each parent under circumstances which are conducive to the

child's best interests. Under no circumstances should any child's social life or outside school activities or recreational activities of any sort take priority over the importance of the child's relationship with the parent and with both parents.

[12] The provisions that I would add to Mr. T.'s program and his means of determining access are these: Commencing in January 2012, there is to be at least one access visit every second weekend, and in the week after the weekend visit there is to be one evening visit; essentially, one evening visit every second week. What this means is that commencing on the weekend of January 7th and every second weekend thereafter, the child A. is to have a visit with her mother for a period not in excess of four hours, unless the parties otherwise agree. And commencing on Monday, the 16th of January and on every second Monday thereafter, the child is to have a visit with her mother over the dinner hour between 3:30 and 6:30 every second Monday. These access visits are still to be supervised, but the supervising of the access is in Mr. T.'s discretion. If at some point he becomes comfortable with them not being supervised, then they no longer have to be supervised.

[13] This will no doubt be an order which Ms. B. does not find agreeable. However, it is my order. I would say that it would be my expectation that any subsequent application brought on my Ms. B. would have to be accompanied by some indication that she has, in fact, received treatment for the underlying difficulties which resulted, in particular, in her behaviour in court in June of 2011.

GROVES J.