

SUPREME COURT OF YUKON

Citation: *KLS v SB*, 2016 YKSC 31

Date: 20160624
S.C. No.: 13–B0017
Registry: Whitehorse

BETWEEN:

KLS and
MJS

PLAINTIFFS

AND

SB and
PB

DEFENDANTS

Before Mr. Justice RS Veale

Appearances:

Debbie P. Hoffman (by telephone)
Norah Mooney
Amy Steele
PB

Counsel for KLS
Counsel for MJS
Counsel for SB
Appearing on her own behalf

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): I am going to make a ruling now. I am going to assume that everyone is not objecting to the custody order going to both SB and PB, the mother and maternal grandmother. Now is the time to say nay if that is not the situation.

[2] This case first came to court in 2013 as a result of the death of the father of the two children. And there was an order without notice in May of 2013 giving care and custody of the children to KLS and MJS, the paternal aunt and the paternal grandmother. That was a controversial issue, but matters were resolved by a Consent

Order dated September 25, 2013, which was an interim joint custody order for the children. And the basic order was that the children resided with paternal aunt and paternal grandmother during the school year but in the summertime resided with the mother and the maternal grandmother. And there was reasonably generous access to all parties when they did not have care and control or custody of the two children.

[3] The Consent Order operated quite well until the fall of 2015 when there were allegations of improper care, specifically sexual touching. Those were investigated by the Family and Children's Services who decided that there would be no action arising out of the allegations. And I thank Family and Children's Services for providing the files to counsel in this matter so that they could all be apprised of that situation.

Unfortunately, the matter did not return to the *status quo* under the consent order, but the mother and maternal grandmother continued to have the children because of their concern. And the matter has now come to this date.

[4] The paternal aunt and paternal grandmother have certainly agreed that the custody will be returned to the mother and maternal grandmother. The reason that this has not been activated by a consent order is simply because there was not agreement until today about the appropriate access for the paternal aunt and paternal grandmother, but, as I understand it, that has been agreed to by the mother, who is here in court, and I thank her for indicating that agreement.

[5] So I am going to order custody of the two children to the mother and maternal grandmother.

[6] I am going to order generous access to both the paternal aunt and paternal grandmother. The paternal grandmother's access will be from 1 until 6 p.m. each

Saturday at her residence, her new residence. And she will have overnight access two times a month on Friday night. So when she has overnight access on Friday nights, she will have the children until 6 p.m. on Saturday. But on the alternate Saturdays, she will have the children from 1 until 6.

[7] With respect to the paternal aunt, she will have access to the children at any time by text or telephone, and she will also, of course, have access when the paternal grandmother has access to the children as indicated. I am also going to order what I will call optional access for the paternal aunt for one week at the end of each school year, one week during the Christmas holiday, and one week during the spring break. But it is not to be ordered as a matter of fact in each case, but will be activated by her notice one month in advance indicating the time period that she is going to be in Whitehorse or will be able to have the children flown to Vancouver where she now lives.

[8] There has been a request for an RCMP assist order. And that was originally in the order without notice of May 9, 2013. And because of the past difficulties, I am going to continue the RCMP assist order, but the wording will be changed, as I have indicated, to "may." So the RCMP do not have to intervene, but if for some reason things go sideways again, that is available. But I am really hopeful that the mother and the maternal grandmother have reached an accommodation on this and realized that their custody of the children is in jeopardy when they refuse access to the other family.

[9] I think it is important, extremely important that both First Nation families that are involved in these children's lives continue to have a relationship with the children, because it is really important for the children to know both sides of their family. And it is important for the parents and the grandparents to demonstrate to the children how you

get along with the other side, even though you may have deep-seated disagreements.

But I think that you have demonstrated in the last month that all sides can do that. And I certainly appreciate the efforts that have been made.

[10] I have made an order last time with respect to the appointment of a children's lawyer, and I am not going to revisit that at this time.

VEALE J.