

SUPREME COURT OF YUKON

Citation: *M.S.S. v. A.K.S.*, 2017 YKSC 32

Date: 20170605
S.C. No.: 17-B0003
Registry: Whitehorse

BETWEEN:

M.S.S. and S.K.S.

PLAINTIFFS

AND

A.K.S. and G.S.

DEFENDANTS

Before Mr. Justice R.S. Veale

Appearances:
Joni Ellerton
Norah Mooney
No one

Counsel for the Plaintiffs
Counsel for the Defendant A.K.S.
Appearing for the Defendant G.S.

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): The mother and father, as I understand it, were married in Punjab, India, on March 5, 2011. They obviously came to the Yukon; had two children, now ages three and five; and lived with the father's parents in Whitehorse until they separated on October 30, 2014. There was a lot of animosity between the two parties and it involved, of course, the father's parents, who obviously have an interest in the matter as well. It was a high-conflict divorce case. Two judicial settlement conferences were held. Ultimately, after a number of court orders, a consent order was agreed to that allowed the sharing of the custody of the two children on a 50-50 basis, a week on and a week off.

[2] What brings this application to court is that the father was charged with assault on the three-year-old child. I am not at all clear on the nature of that, except that apparently there was a bruise on the child's face and there was reporting by the eldest child. Ultimately, Children and Family Services and the RCMP became involved.

[3] On March 24, 2017, after investigation, a charge of assault was indicated by the RCMP. There was an undertaking signed by the father. Term 3 reads as follows:

Have no contact directly or indirectly or communicate in any way with [names of mother and the two children] except with the prior written permission of the bail supervisor after consultation with Victim Services, the Spousal Abuse Program, Family and Children's Services, and the Royal Canadian Mounted Police.

[4] That is the undertaking that is in existence now and that relates to the Territorial Court assault charge.

[5] The application before me today comes from the brother and sister of the accused father, who wish to resume their contact with the two children. The evidence indicates that they certainly had contact with the children when the parents were together and they had contact subsequent to their separation when there was a 50-50 order for custody that would have been through their brother, the accused father. They have had no access since March of 2017 because the mother is refusing access, as a result of the allegations in the criminal matter.

[6] I should indicate to all parties that a lot of what we are dealing with here today are allegations.

[7] What is clear is the fact that the mother makes some allegations of financial and psychological abuse by the paternal grandparents. There is evidence in support of that, namely, a lawsuit by the grandfather for \$2 million. The evidence before me,

uncontradicted, indicates that that was to be discontinued as a result of settlement conferences in the family matter, but I understand it has not been discontinued.

[8] The only other information that I think is uncontested is that the brother and sister of the accused father have made efforts to contact the children either through daycare or the school. Those efforts, as I understand it, have not been successful. I would advise the brother and sister not to pursue those avenues until there is a court order indicating that access is appropriate.

[9] At this stage of the proceeding, the interests of the Court is not to favour either the mother, the father, or the father's brother and sister. The interests of the Court, at this time, are the interests of the children. It is the children's safety and the children's interests that are of the highest priority, and those are the ones that I take into consideration. When I say that, I am not saying that any of the parties are particularly at fault. I am simply saying that it is not the parental interests or the interests of the father's family that are paramount. What is paramount is the interests of the children.

[10] It is an unusual application in the sense that often these matters are worked out but what is unusual is that when there is a criminal charge — and I appreciate that it is an allegation — it is a very delicate situation. I take that from the wording of the RCMP undertaking when it says that there must be consultation with consultation with "Victim Services, the Spousal Abuse Program, Family and Children's Services, and the Royal Canadian Mounted Police." That is a lot of parties to be consulted. I assume that it is in there for a purpose.

[11] I should indicate that the brother and sister are prepared to have supervised access, which may be an appropriate way to deal with this matter. That is objected to

by counsel for the mother at this particular time because there are a number of concerns that may arise out of potential influence. There is no evidence that there is going to be influence but it is a very delicate situation and, of course, the children are the ones that need the protection.

[12] I do not know the facts surrounding the allegations. It is doubtful they will ever be agreed upon, in any event. However, I am concerned about what has been presented so far, namely, the attempts to contact the children and the allegations of financial and psychological abuse.

[13] At this time, I am not prepared to order supervised access, which I think would be the appropriate way to go if the facts were to support it, but I am going to recommend that an advocate for the children be appointed. I am going to recommend Kathy Kinchen. I know her to be the most experienced lawyer in town with respect to these matters. I am assuming that she has no conflict of interest in this particular case. If there is some conflict, counsel should let me know if they are aware of it.

[14] At this time, I am recommending that the advocate for the children not speak to the children but, rather, do as the undertaking says and speak to Victim Services, the Spousal Abuse Program, Family and Children's Services, the Royal Canadian Mounted Police, and anybody else that she considers to be relevant to making a recommendation to the Court with respect to the best interests of the children.

[15] If for some reason the children should be involved, I think she should come back to court to make that application, rather than do it on her own and get involved in an unfortunate way in the criminal process.

[16] I should indicate that it has been made clear that there is going to be an application from the grandparents as well.

[17] I am going to adjourn the application to Thursday, June 22, 2017 at 10 a.m., hopefully, to hear the report of the advocate for the children.

[18] As the father was served but has not participated in this proceeding, his signature is not required. The only signatures would be the signatures of counsel.

[19] If there are any difficulties arising out of this, counsel know that we can set up case management to deal with it and get the matter resolved.

[DISCUSSIONS RE KATHY KINCHEN AND POTENTIAL CONFLICT]

[20] It does not strike me as being a conflict straight up, but at least I am glad you made the disclosure. Counsel can give that consideration. I appreciate how it may be perceived to be in conflict. I do not know that it is. However, if there is an issue, you can come back to me if you cannot agree.

VEALE J.