

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *A.O.J.T. v. C.A.T.*, 2004 YKSC 68

Date: 20041004
Docket: S.C. No. 04-B0001
Registry: Whitehorse

Between:

A.O.J.T.

Plaintiff

And:

C.A.T.

Defendant

Publication of the name of the child, the child's parent or identifying information about the child is prohibited by section 173(2) of the *Children's Act*.

Before: Mr. Justice R.S. Veale

Appearances:
James Van Wart
C. Lynn MacDiarmid

For the Plaintiff
For the Defendant

MEMORANDUM OF JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): This is an application regarding the custody and access to a 14-month old child. The court action was commenced by the father in April 2004, and it appears that until that application, the father had no access to the child.

[2] Counsel for the mother requested that there be a blood test conducted to confirm the paternity of the father and that was ordered. On July 27, 2004, this Court ordered

that the father was indeed the father of the child and ordered interim interim custody to the mother with supervised access three times a week for two hours. The access was to be supervised in the presence of his mother, at his mother's home where, I understand, he also resides.

[3] The defendant mother was concerned about the access based on her past experience with the father and she flouted the Order of the Court during the month of August and, I guess, 10 access periods were denied to the father. That resulted in a contempt application being brought on which has now, fortunately, been abandoned. But as a result of the contempt application, the father's access to the child has continued to this date.

[4] The mother has some legitimate concerns about the behaviour of the father when they were together, and this is now history, regarding his abuse of marijuana and also his verbal treatment of her. Of course, those are major concerns to the Court, but it is my impression that reducing the contact between the parents may be the best method of resolving those unfortunate situations.

[5] I want to say why it is of concern to the Court when one parent does not treat the other parent with respect, whether it be in a denial of access or whether it be in their previous relationship. The reason that the Court is concerned is that parental behaviour is what shapes the future of the child. So if the child sees the father or the mother behaving in a certain way towards their former spouse, the child learns that behaviour and then the child will have difficulty in her relationships when she grows up. So consequently, the best way you can respect your child and give your child a good and

solid, safe future, is to respect your former spouse. If you show respect to your spouse, your child automatically knows that you are respecting that person. You do not have to show love. I mean, obviously, the relationship has deteriorated and broken up, but nevertheless it is extremely important that these parents start behaving like adults in the presence of their child because if they don't, their child is the one that suffers.

[6] There is an issue of concern regarding marijuana use of the father. I am satisfied that that concern can be dealt with by an Order of this Court in the same way that a concern over having the child in the presence of cigarette smoke can be dealt with, and that is that the Court simply orders that the child not be subjected to that.

[7] My view is that this is a situation where although the parents had a bad relationship, it is not a relationship that is irreparable and one that cannot be resurrected to the extent that they can behave in an adult fashion when making arrangements for the residency of the child.

[8] A Custody and Access Report has been recommended and I am asking counsel to have that completed as soon as possible, although I am advised that it may not take place in the month of October. However, it will be very helpful because I am going to ask that the Order I am going to make be reviewed upon the receipt of the Custody and Access Report. So I say to counsel when that report is received, they should immediately contact the trial coordinator – well, you don't have to necessarily contact the trial coordinator. It can be brought down on any chambers date but it can also be brought down on a special date by contacting the trial coordinator.

[9] So in the meantime, I am going to make an Order of Interim Interim Joint Custody of the child, and that simply means that both of these parents have parental obligations to this child and both have to exercise those parental obligations because it is in the best interests of the child that she know both her parents.

[10] I am going to order that the primary residence of the child will be with the mother but the child will reside with the father on Monday, 9:00 AM until Tuesday at 5:00 PM, and that residency will be supervised by the father's mother in the same fashion as in the July 27, 2004 Order.

[11] I am going to order that there be no alcohol or drug use by either parent when the child resides with them.

[12] I am also going to make an Order about the dogs. Can the dogs be kept outside while the child is there for the two days? The dogs are not to be present during the residency of the child with the father.

[13] I am going to order that each parent take the course entitled "For the Sake of the Children" and you do so by calling the Yukon Family Services Association, 667-2970. There are two courses coming up, one on October 16 and one on November 17, and if the parents do not want to take the course at the same time, they should make arrangements as to who takes the course at a particular time.

[14] I am also going to order that the father participate in what I am going to call the "Healthy Family Program."

[15] MS. MacDIARMID: Your Honour, I don't know if it is a voluntary program so I don't know if it can be ordered.

[16] THE COURT: I am going to recommend that the father participate in the Healthy Family Program because it will benefit the child and him as well.

[17] There will be an Interim Interim Order of child support in the amount of \$159.00 per month, commencing on October 1. Would that be reasonable, Ms. MacDiarmid?

[18] MS. MacDIARMID: Yes. I understand the employment just started two weeks ago.

[19] THE COURT: That is what I understood.

[20] MS. MacDIARMID: That would be appropriate.

[21] THE COURT: Thank you, and each and every month thereafter. I have forgotten the amount of income that you based that on but that should be included in the Order.

[22] MS. MacDIARMID: There were two amounts proposed. We had suggested the \$159.00 remain ---

[23] THE COURT: Yes, I am going with that number.

[24] MS. MacDIARMID: Okay.

[25] THE COURT: Okay.

[26] MS. MacDIARMID: It is \$18,200.00.

[27] THE COURT: That will be based on an imputed income of \$18,200.00 because I understand he is not necessarily guaranteed the earning of that on a regular basis.

[28] Anything that has been left out, counsel?

[29] MR. VAN WART: If I could please have one moment?

[30] There is a problem with the feasibility of the Order in that if the access is to be supervised on Monday and Tuesday that the father's mother has an 8:30 to 4:30 job.

[31] THE COURT: That is a big problem. I am sorry. I have forgotten your name, the Healthy Family Course.

[32] MS. BOSS: Marian Boss.

[33] THE COURT: Marian Boss?

[34] MS. BOSS: Yes.

[35] THE COURT: Are you able to give support to the father starting – this will commence next week, next Monday and Tuesday. Are you able at that time to give support?

[36] MS. BOSS: If you ask that whether I can supervise these visits, no I can't.

[37] THE COURT: No, I am not asking you to supervise; I am asking whether you can give support.

[38] MS. BOSS: Visit with the family?

[39] THE COURT: Yes.

[40] MS. BOSS: You are talking about child development of a 14-month old, yes, we could.

[41] THE COURT: Okay. So what I am going to do then is I am going to make the Residency Order with respect to the father, conditional on the participation of the father in the Healthy Family Course and the Order should contain a condition that the father's mother will continue her supervision once she has completed employment each day.

[42] Anything further, counsel?

[43] MS. MacDIARMID: Perhaps the MEP Enforcement Clause should also be part of the Order?

[44] THE COURT: Yes, you can have that.

[45] Madam Clerk, you can adjourn.

VEALE J.