Citation: In the Matter of D.I., 2002 YKSC 55

Date: 20021023
Docket: S.C. No. 02-AP-0009
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

IN THE MATTER OF the *Children's Act*, R.S.Y. 1986, c. 22, as amended, and in particular s. 121;

AND IN THE MATTER of an application for a three-month temporary care and custody Order, pursuant to s. 126(1) of the *Act*;

AND IN THE MATTER OF D.I.

REASONS FOR JUDGMENT OF MR. JUSTICE O'CONNOR

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[1] This is an appeal from the decision of Justice of the Peace Cameron, dated July 18, 2002, holding that the Director of Family and Children's Services had reasonable and probable grounds to apprehend the infant D.I., who was about six months of age at the time.

[2] On June 27, 2002, the Court made an order finding that D.I. was a child in the need of protection. The court ordered that D.I. be returned to the care and custody of her parents pursuant to a six-month supervision order, which order was subject to a number of conditions including:

a) The parents abstain from drinking in the presence of D.I.

b) The parents pre-arrange for respite care for D.I. The frequency of respite care shall be agreed upon by the parents and the social worker.

c) The parents were to have pre-arranged alternate places of care for D.I., including an available list of caregivers.

[3] D.I. began residing with the parents on June 27, 2002, immediately after the supervision order was made.

[4] Three days later, on June 30, 2002, a social worker, acting under the authority of s. 119(1) of the *Children's Act*, took the child into care and began proceedings under the *Act*.

[5] The issue in this appeal is whether the Justice of the Peace erred in concluding that on June 30, 2002 the social worker had reasonable and probable grounds to believe, and did believe, that D.I. was "in immediate danger to her life, safety or health," as required by the section, thereby justifying apprehension of the child.

[6] I am satisfied that the conclusion of the Justice of the Peace was supported by the evidence. The evidence showed that on June 27, 2002, the same day the supervision order was made, the parents breached the order. On that evening, the child was left in the care of Sasha Sidney, who was not an approved caregiver under the terms of the order.

[7] Further, on June 30, 2002, the social worker found both parents in an intoxicated condition. When asked by a social worker where the child was, the mother eventually indicated she was with Sasha Sidney at 12 Hanna Road. This proved to be incorrect. On speaking to Sasha Sidney, the worker was told the child was at 40 Hanna Road. Upon entering 40 Hanna, the worker went downstairs and found the baby D.I. in the care of Jamie-Lee Johns.

[8] The social worker knew Ms. Johns, who was 14 or 15 years old. Ms. Johns had not been living at home for some time “and was in the street a lot.” Ms. Johns had suffered many traumatic events in her life, including relationships involving physical violence. In the worker’s view, Ms. Johns was not an appropriate caregiver for D.I. and she would not have approved her as such, if asked in advance.

[9] The appellant points out that at the time the worker approached Ms. Johns, there were 10 people in 40 Hanna; none of them were intoxicated, and none of the people caused the worker a problem. Ms. Johns was sober and polite, and the baby was calm, clean and did not seem to be hungry.

[10] After reviewing the evidence, the Justice of the Peace concluded that there was an immediate risk to the child’s health, justifying apprehension. The Justice of the Peace pointed out that there was no evidence of where the child had been between June 27 and June 30, 2002. That is perhaps a neutral fact. But the evidence also disclosed that the parents had breached the supervision order on two occasions, June 27 and June 30. Moreover, it is significant that on June 30 the parents did not know where their child was. They wrongly believed the child was with Sasha Sidney.

When located, the child was in the care of someone who the social worker quite reasonably concluded was not an acceptable caregiver.

[11] Although the mere fact that a supervision order is breached will not necessarily constitute grounds for apprehension under s. 119(1) of the *Act*, I am satisfied the Justice of the Peace in this case had sufficient evidence to reach the conclusion he did. There was a reasonable and legitimate concern that the child would not be properly cared for in the circumstances as the worker found them on June 30.

[12] For these reasons, the appeal is dismissed.

O'Connor J.

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