Date: 20031023
Docket No.: T.C. 03-T0071
Registry: Whitehorse

In the Matter of the Children's Act
And in the Matter of K.C.,
2003 YKTC 81

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Faulkner)

IN THE MATTER OF THE
CHILDREN'S ACT, R.S.Y. 1986, C. 22,
AS AMENDED;

AND IN THE MATTER OF K.C.

Penelope Gawn — Appearing for the Director of Family and Children's Services

David Christie — Appearing with the mother

REASONS FOR JUDGMENT

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[1] FAULKNER T.C.J. (Oral): In this case, the Director of Family and Children's Services received certain information with respect to a child named K.C., a four-year-old girl. That information raised child protection concerns as a result of which the Director sought and received a warrant to apprehend the child for the purpose of determining whether or not she was in need of protection.

[2] The warrants issued under the *Children's Act*, R.S.Y. 2002, c. 31, expire after 14 days and the first warrant expired without the Director being able to locate the child. A second warrant was, therefore, sought and issued. That warrant would, in fact, expire today and, again, has not been executed because the Director cannot

find the child.

[3] Concurrently, and because the Director came to believe that the mother of the child, T.B., was in effect hiding the child from the Director, the Director served on Ms. T.B. a notice pursuant to s. 120 of the *Children's Act* to produce the child before the court today, October 23, 2003.

[4] Ms. T.B. appeared but did not produce the child as directed by the notice served to her. She testified as to her reasons why she had not produced the child. Essentially, what happened was this: Ms. T.B. became aware as early as the 18th of September that there was a warrant for the apprehension of her daughter. At that time, according to Ms. T.B., the child was staying with M.G., who is an aunt. Ms. T.B. did not disclose to the social workers or the police, who had come to execute the warrant, where the child was. After the social workers and police had left, the child subsequently returned home and was in Ms. T.B.'s actual care.

[5] By the 20th of September, Ms. T.B. had sent her daughter on an extended hunting trip with her father, Mr. T.C. Ms. T.B. was extraordinarily vague about where they were going or how long they would be gone. According to Ms. T.B., they have yet to return.

[6] Given that Ms. T.B. knew where the child was on September 18th, when the social workers and the police arrived, given that she had the child in her actual possession subsequent to that day, and given that she then sent the child on this extended trip with her father, it is obvious she is attempting to thwart the Director's efforts to apprehend the child.

[7] Ms. T.B. says that the reason that she is doing so is because she has not done anything wrong.

[8] Now the application today is, firstly, to issue a further warrant for the apprehension of the child. I am prepared to do that based on the affidavit material that was previously filed and without the necessity of reproducing that material or bringing a fresh written application for a warrant. That warrant will be in effect for the statutorily mandated period of a maximum of 14 days.

[9] I am also asked to issue an order directing Ms. T.B. and Mr. T.C., who, according to Ms. T.B., actually has possession of the child, to produce the child.

[10] While there is no explicit power in the *Children's Act* to issue that order, it seems to me to be necessarily incidental to the scheme envisioned by s. 120, otherwise, the purpose of the *Act* could be frustrated by the parents simply refusing to produce the child.

[11] Now, given that the best information that I have at the moment, is that the child is actually with Mr. T.C., and that he should be back by the end of hunting season more or less, I am going to direct that the child be produced within seven days of today's date. That order will be directed to both Ms. T.B. and Mr. T.C.

[12] As to what occurs in the event that that order is not heeded, it seems to me that, parsing, as best I can, the often inscrutable scheme of the *Children's Act*, that while Ms. T.B. would then be in contempt of the court, to ensure that contempt proceedings could be in fact be instituted, it would be necessary for the Director to

file its order that I give today with the Supreme Court, which would then allow the Director to invoke contempt proceedings in the event that the order is not heeded.

[13] MS. GAWN: Your Honour, for the court's information and that of Mr. Christie, there is a section in the *Act* that is very much along the lines of Your Honour's judgment with respect to requiring a child to be put before the court, and that is the s. 174 of the new consolidated *Act*, which says:

> Nothing in this Act shall prevent the court or a judge from requiring the presence of the child in court in any case where the attendance would not be prejudicial to the child's best interests and the interests of justice require the attendance.

[14] THE COURT: I am aware of that section and I am satisfied that I have the jurisdiction to make the order. The puzzling part is what happens when it is not heeded.

[15] MS. GAWN: Yes, and I agree with Your Honour that the filing in Supreme Court is one method that the *Act* provides for enforcement.

[16] MR. CHRISTIE: Just to be clear, so the Director can actually file the order with the Supreme Court, or the Director has liberty to apply -- to commence an action in Supreme Court?

[17] THE COURT: I believe it is s.162.

[18] MR. CHRISTIE: There is the inherent jurisdiction.

[19] THE COURT: No. The s. 162 says that an order can be filed with the Supreme Court and thereupon becomes enforceable as if it were an order of that court.

[20] MR. CHRISTIE: Thank you.

[21] MS. GAWN: I have a form of a warrant, which Your Honour does not require the information to obtain, based on your order. So I will just pass up the warrant.

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FAULKNER T.C.J.