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In the matter of an application for a six-month supervision Order concerning C.M., AND in the matter of K.M. and C.M., 2003, YKTC 57

Date: 20030526
Docket No: T.C. 01-T0063
Registry: Whitehorse

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

IN THE MATTER OF THE *CHILDREN'S ACT*,
R.S.Y. 1986, C. 22, AS AMENDED,
AND IN PARTICULAR S. 118;

AND IN THE MATTER OF AN
APPLICATION FOR A SIX-MONTH SUPERVISION
ORDER CONCERNING C.M., MADE PURSUANT
TO S. 126(1)(A) AND S. 27 OF THE *ACT*;

AND IN THE MATTER OF K.M. AND C.M.

Sheri Hogeboom

Appearing for the Director
of Family and Children's Services

Elaine Cairns

Appearing for Defence

DECISION

[1] FOISY T.C.J. (Oral): First of all, I would like to say that I am not being critical at all of Ms. Jennejohn when I speak about the Director's involvement in this. I think there was enough evidence to allow her to get involved and sufficient evidence which, if she had not gotten involved, and something had gone wrong, drastically wrong, she and the Department would have been open to criticism. So I am not faulting her for her actions, nor am I saying that anything that she said was not a view that she honestly held, because I'm sure that it was. I was very impressed

by the fact that she answered questions readily and honestly, in my view, and that she held her views honestly.

[2] That, however, does not end the matter. The application before me is that the Director believes that C.M. is in need of protection because one, and only one, P.M. is unable to provide proper or competent care, supervision or control over him. That, it is trite to say, must be shown by the Director on a balance of probabilities. Balance of probabilities, of course, is certainly not as high as beyond a reasonable doubt, but it has to be more than a possibility and even a strong possibility does not suffice.

[3] It, perhaps, easy for me to say, and certainly tempting for me to say, that what is the harm here, if all I have to do is find on the evidence that yes, the Director has succeeded and place the child under a supervision order for six months; who is going to get hurt. Why not, sort of thing. Well, the reality of it is that the law is such that in this country if the government is going to get involved with a family and with youngsters, and obviously get involved uninvited, the law has to be followed and the law is such that that kind of thinking, while certainly easier on me, is not the answer and should not be a temptation that I give in to.

[4] There was a lot of evidence simply because there were affidavits which involved anonymous callers, for example, and I agree that the social worker, the Director, is under some pressure to maintain a certain amount of anonymity here because otherwise if this kind of information gets out publicly, people will not call, people will not give information which sometimes is essential in these cases. So the

fact that it has to be relied on sometimes by social workers does not mean that at the end of the day, once I have heard the evidence, that I have to rely on it.

[5] I find here that the anonymous callers were unreliable for two reasons. One, their credibility could not be tested. There was no way that this court could assess the credibility of the people who gave these anonymous calls. Secondly, much of what was alleged to be true by these anonymous callers simply did not materialize, I think, as a result of the *viva voce* evidence that I have heard in court here today. It would be dangerous, in my view, to attach much weight to this type of evidence and I decline to do so.

[6] With respect to Mrs. Lewis's evidence, first of all, she has had very little contact with Mrs. M. over the last year. There were other parts of her testimony, and I am not forgetting that, I am taking it into account, but I was left with the distinct impression that her main criticism was the way that Mrs. M. was interacting with her children verbally, and particularly with K. K. is gone. She has now left and she is on her own and things seem to have simmered down around the M. household. I accept that. I think it makes sense to me; it was credible evidence on the part of Mrs. Lewis when she gave it, but it is also credible evidence as to the situation as it has been lately since K. left.

[7] Going back to C., the bulk of the evidence is that he is doing reasonably well. Is he living in a perfect world at home? No. Perfect worlds at home are not to be found. If they are to be found, I have yet to see one. That does not mean, though,

that there is not room for improvement and I am heartened to hear that Mrs. M. is going to continue to work with the social worker and that the CATS program is going to be introduced, as soon as she hears from them, as a result of an assessment that is being done. These things are extremely important.

[8] Also, with respect to Mrs. M.'s personal conduct, I am not being critical because she has a few beers. I am not going to criticize her right to go out and have a good time once in awhile provided that it is under the rules of applying common sense. She may well, and I say this more by way of suggestion than criticism, she may really want to watch consumption of alcohol at home. I am not talking about a beer here or two beers, but I am talking about situations which I think in part - I say in part - gave rise to the confrontation with Ms. Jennejohn which has been referred to at length during the evidence and during examination and cross-examination. I am sure that the social worker honestly held the view that Mrs. M. was intoxicated. Mrs. M. admitted that certainly the alcohol had some influence on her behaviour, but that the intervention of a social worker coming into the home in a situation like that did not help.

[9] I think again, quite candidly, Ms. Jennejohn admitted that yes, sometimes you do not have the best of reactions from people when social workers walk in. It was an unfortunate incident, but I don't think it is one that is happening on a constant or even -- I do not think it has happened more than once. I have no evidence which I am prepared to accept that it did. I certainly hope it never happens again. It is something that, while it does not constitute a situation which shows that the child is in

need of protection, it is something that, nonetheless, I think good sense and good management would make it so that Mrs. M. is going to be very careful about that.

[10] The child does well in school. He has reading problems but these are being helped. Food, nutrition seems to be no problem. Shelter is appropriate. His clothing, his cleanliness and so on is not to be criticized. He has medical problems, however, these seem to be looked after. The mother is certainly concerned, and, I think, doing what she can, and there does not appear to be anything unreasonable with respect to her reaction to this.

[11] Accordingly, I, again with the caution, Mrs. M., that I do not think the Director has gone far enough to get involved in your life and the life of C. for the next six months, and I realize that he is a nine-year-old boy and nine-year-old boys are not necessarily easy to handle. I think they may be a little tougher to handle when they are 18, though, but anyway, that is some nine years down the road. But just bear that in mind. It is not going to be bad for you and it is not going to be bad for C. either.

[12] Alright, having come to that conclusion, it is my ultimate conclusion that the application must be dismissed, and I dismiss it. It is unnecessary for me to consider the second part of the application, namely the granting of the supervision order.

[13] I also understand that the Director was asking me to make a finding with respect to the father's involvement. I think the evidence is clear that he is not

involved and that he is not a person that has to be considered or served under the provisions of the *Act* with respect to an application like this.

[14] Anything else?

[15] MS. HOGEBROOM: Nothing further.

[16] THE COURT: Anything else?

[17] MS. CAIRNS: No.

[18] THE COURT: Alright. We will adjourn.

FOISY T.C.J.