

Citation: *Re: In the matter of M.M. and S.M.*, 2007
YKTC 67

Date: 20070906
Docket: T.C. 07-T0016
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

IN THE MATTER OF THE *CHILDREN'S ACT*, R.S.Y. 2002, c. 31,
as amended, and in particular s. 123

AND IN THE MATTER of M.M., and S.M., CHILDREN
WITHIN THE MEANING OF THE SAID ACT

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

Appearances:
Christina Brobby
D.M.

Counsel for the Crown
Appearing on her own behalf

DECISION

[1] FAULKNER C.J.T.C. (Oral): The first issue in this matter is the question of whether or not the court has jurisdiction to set aside a supervision order, as the applicant requests. It is far from clear that the Territorial Court has jurisdiction to do that. There is no express power provided in the *Children's Act*. On the other hand, there are express powers given to the Court to set aside or vary a temporary care and custody order, or a permanent care and custody order, which the normal rules of statutory construction might suggest, since supervision orders are not mentioned, that there is no power to modify or set aside those orders.

[2] On the other hand, as the Director will be aware, there have been certain decisions of the Court which have found that, in keeping with the general intent of the *Act*, the Court does have implicit powers in some respects, even though the *Act* does not speak directly to the matter in issue.

[3] In any event, in my view, it is not necessary to decide that issue in order to dispose of the present application. As I have indicated, the applicant seeks to have the order set aside. In my view, a case for doing that has not been made out. In the first place, the order was consented to by the applicant. It appears that she now chafes under the strictures of the order. In short, she is finding it to be more onerous than she may have perhaps have thought it would be at the outset. Moreover, the difficulties that the applicant alleges in the actual day to day carrying out of the order, even if true, would not, in my view, form a sufficient basis for setting the order aside in its totality.

[4] The applicant also alleged that, in effect, her consent to the order was obtained by malfeasance or fraud, or something of that nature. The allegations in that regard, in my view, have not been made out.

[5] The other arguments made by the applicant simply consisted of rearguing or disputing certain matters which were, in effect, settled by the first hearing, that is, for example, issues of whether certain orders -- certain provisions or conditions should, or should not have been, included or whether they should have been worded in the way that they were.

[6] In short, as I say, assuming I have the jurisdiction to set the order aside, I would not exercise my discretion to do so. Accordingly, the application must stand dismissed.

FAULKNER C.J.T.C.