

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

RICHARD OWEN BATESON

PLAINTIFF

AND:

JACQUELINE RENE BATESON

DEFENDANT

KATHLEEN KINCHEN

For the Plaintiff

LENORE MORRIS

For the Defendant

MEMORANDUM OF JUDGMENT  
DELIVERED FROM THE BENCH

SUPREME COURT OF THE

AUG 10 2001

YUKON TERRITORY

[1] WONG J. (Oral): In this particular case, although a divorce proceeding was commenced by the husband before the parties left the state of California, on the evidence it appears the parties were hopeful of a new start outside of the state of California, be it either in the state of Alaska or in this jurisdiction, the Yukon Territory. However, after having lived here for almost

seven weeks, there has been a change of mind on the part of the wife and she now desires to return to the state of California with their five-year-old son.

[2] I have no difficulty in concluding that, under these circumstances, the best interest of the child requires the following considerations: One is stable and expeditious resolution of the issue of custody, and secondly, the advantage that both parents are currently residing in this jurisdiction.

[3] A home custody and access report, may perhaps be done in three months. The husband and his family are prepared to assist Mrs. Bateson financially in the meantime, while she stays here. I am in agreement that if the parties were to return to the state of California, there are unknown factors, particularly in this case where there are concerns by Mr. Bateson as to the fitness of Mrs. Bateson to parent, although those details were not explained to this Court at this time. However, where there is that concern the need for a custody and access report, and possibly a psychological assessment, is imperative.

[4] When one considers all of these circumstances, I can only come to the conclusion that the best interest of this five-year-old child is to have this Court take jurisdiction and give appropriate directions from this point on with respect to custody. Accordingly, in light of the chronology of events that I have heard, I am prepared to find that, certainly up to the date of separation, Justis was habitually resident in this jurisdiction.

[5] But an alternative reasoning is also that the best interest of the child requires an examination of his current situation here.

[6] Since both parents are residing in the same residence, do you want me to make an order with respect to joint custody and guardianship, on an interim basis, with an order of non-removal from this jurisdiction until further order of the Court?

[7] MS. MORRIS: The parties are not in the same residence at this time. My client has been living at the women's transition home for the last week, since she moved from her mother-in-law's home. We would ask for an adjournment on the issue of custody until my client can make some longer-term provisions for living.

[8] THE COURT: All right. When do you want this returnable? For the next chambers day, in the next few weeks, it will be a judge other than myself who will hear the continuation of this matter.

[9] MS. MORRIS: I would request either August 21st or 28th.

[10] MS. KINCHEN: Either. I'm available either time.

[11] MS. MORRIS: August 28th?

[12] THE COURT: Twenty-eighth? I'm prepared today to make the order for a custody and access report, at least to get it started.

[13] MS. KINCHEN: Yes, My Lord.

[14] MS. MORRIS: Yes. No objection.

[15] MS. KINCHEN: I think that would be appropriate.

[16] THE COURT: All right.

[17] MS. KINCHEN: And perhaps you could order that it be done as quickly as possible, given the circumstances, whatever weight that may carry.

[18] THE COURT: Well, if that assists you in that regard, I certainly will make that request, that priority be given.

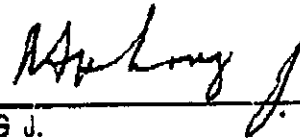
[19] MS. KINCHEN: And I would ask, My Lord, that the non-removal clause continue until the matter is heard again.

Richard Bateson v. Jacqueline Bateson

Page: 5

[20] THE COURT: Yes. Neither party will remove the child from this jurisdiction without consent of the other party or further order of the Court.

[21] MS. KINCHEN: Thank you, My Lord.



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WONG J.