

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *N.C. v. J.P.C.*, 2005 YKSC 60

Date: 20051003
Docket: S.C. No. 05-B0055
Registry: Whitehorse

BETWEEN:

N.C.

Plaintiff

AND:

J.P.C.

Defendant

Before: Mr. Justice R.S. Veale

Appearances:

Kathy Kinchen

Edward Horembala, Q.C.

For the Plaintiff
For the Defendant

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is an interim interim application by the father for access to a four-month-old girl. The father and mother resided together for less than a year, during which the child was born. The father seeks unsupervised access and the mother is opposed to the unsupervised access but is prepared to allow supervised access to the child, so long as it is not overnight.

[2] The child, on the evidence, has no physical or mental challenges but is of a tender age; she is being bottle fed. The father is not a stranger to the child and has

been involved in dressing and feeding and caring for the child in June and July, prior to the final separation of the parents in August of 2005. However, since that separation the mother has insisted on supervised access by the father. The reason for this relates to the father accessing a website in December of 2004 and January of 2005 that contained links to sexually explicit photographs.

[3] The father denies that the sites contained child pornography. The mother states that the father viewed the child pornographic sites with pictures of young girls aged 12 to 16 years of age in naked sexually suggestive positions. I cannot resolve this discrepancy in the evidence based on affidavits alone and the matter has been set down for further hearing on November 1 and 18, 2005 for cross-examination of both parties and one witness, before which time I will make an interim order.

[4] There is no question that a parent viewing pornographic websites raises the concerns of the Court as to the safety of a vulnerable four-month-old girl. Unfortunately, I do not know to what extent this alleged viewing took place, but the real question is whether it raises concerns about the care this father will give to the child. There is no evidence before me that the father has been inappropriate in his care for the child other than suggestions that he is not well experienced.

[5] The mother was very clearly hurt and upset by the father's visit to what she describes as a "teen porn site." She understandably felt degraded and humiliated. However, she has also maintained that he is a good father and I am referring to the affidavit # 1 of N.C. and Exhibit D on page 4 where the mother states this:

...I want [N.C.] to be in my life and I have told him I want to work through this. I want to rebuild. Anyway, I am so frightened right now that I will be a single mother. I want my child to have more than just visitation rights to his father. I want him to have a father, and [N.C.] would be an amazing father and husband...

This is, as I understand it, an email to the father's mother after the alleged visits to the pornographic website.

[6] Again, at page 20 of the father's affidavit, and this is an email dated August 8, 2005, subsequent to what I will call their final separation:

...You were such a wonderful man to me up to last week. You were wonderful during [J.]'s birth and the weeks following. We have never had a chance to enjoy each other. Let's move on [N], let's put this week behind us and move on... but I need you here in the house, it is too hard otherwise. It is tiring taking care of [J.] unsupported.

[7] Again, at page 22 of the first affidavit of the father, the mother states this in an email dated August 15, 2005:

I have learned a considerable amount about myself by you leaving. You have shown me that (sic) I can not (sic) behave this way.. the back and forth... saying hurtful things and then just saying sorry. That will not suffice and it is not respectful towards you, nor does it build trust.

You are a patient, caring man that deserves trust and respect. How I treated you in the past was disrespectful, untrusting and uncaring. I am sorry. I own this behaviour and am willing to change. I am taking steps towards change and I know I will make progress.

[8] In the first affidavit of the father, there is also some writing from what I understand to be a psychologist that they were both consulting. It is dated August 16, 2005, and the writing is this; it appears to be as a goal and it is paragraph number 5:

Set hours to visit J. solely or with me depending on your preference heading towards overnight visits.

[9] I am left with this, the father has been involved in what can only be described as a stupid and disturbing event, but the evidence does not suggest he would in any way harm his young daughter. If this child is to have a meaningful relationship with both parents, it must start at an early age. I can find no evidence to support that there is a danger to the child and, but for the website visit, all the evidence is that the father poses no danger to his child. I am therefore ordering unsupervised access to the child for four hours three times a week, Tuesday, 4:00 to 8:00, Thursday, 4:00 to 8:00, and Saturday, 1:00 to 4:00 p.m. This is on an interim interim basis until I hear the evidence on November 1 and November 18, 2005.

[10] Counsel, I have put specific times on but if you want to say anything about those times, if they are inappropriate for any reason, we can deal with it now or you can simply speak to the trial coordinator.

[11] MR. HOREMBALA: That's Tuesday, Thursday and Saturday?

[12] THE COURT: Right, and 4:00 to 8:00 being Tuesday and Thursday because of the father working, and then Saturday being 1:00 to 4:00, which I assume would be more convenient for both of them.

[13] MR. HOREMBALA: My understanding is that the defendant, or, I'm sorry, the plaintiff finishes school at 3:10 and the normal bedtime for the child is 7:00, so might I suggest 3:30 to 7:30?

[14] THE COURT: What time is the bedtime?

[15] MR. HOREMBALA: 7:00, normally.

[16] THE COURT: 7:00?

[17] THE DEFENDANT: 3:30 to 7:30.

[18] THE COURT: 3:30 to 7:30 then on Tuesday and Thursday.
Anything else?

[19] Mr. HOREMBALA: I take it that will commence tomorrow?

[20] THE COURT: Yes, unless there is a reason not, it would seem appropriate, Tuesday, October 4. Thank you very much, counsel.

VEALE J.