SUPREME COURT OF YUKON

Citation: *C.M.S.* v. *M.R.J.S.*, 2009 YKSC 32

Date: 20090421
S.C. No. 08-B00031
Registry: Whitehorse

Between:

C.M.S.

Plaintiff

And

M.R.J.S.

Defendant

Before: Mr. Justice L.F. Gower

Appearances:

Christina Brobby — Counsel for the plaintiff
Kathleen Kinchen — Counsel for the defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] In this trial, the plaintiff mother seeks permanent custody of the child C., who is almost 9 months old, as well as an order allowing her to relocate from the Yukon Territory to Ontario with the child. If successful, the mother intends to return to the Yukon once a year for a week-long visit, during which the defendant father would have daily access to C. The mother would also allow the father access to the child in Ontario whenever he travels to that province. The mother also seeks child support and spousal support.

[2] The father seeks joint custody of the child and a residential schedule that allows him to have the child in his care approximately 50% of the time. He also seeks an order

that neither party be permitted to relocate from Whitehorse, Yukon with the child, without the written consent of the other party or an order of the court. The father is prepared to continue paying child support pursuant to the *Child Support Guidelines*.

ISSUES

[3] The following issues arise in this trial:

1. Should the parties have joint custody of the child or should the mother alone have custody?

2. Should the mother be permitted to move from Whitehorse to Ontario with the child?

3. If the mother is permitted to move, how much access should the father have? Alternatively, if the mother is not permitted to move, how much time should the child reside with each parent?

4. How much child support is payable by the father for the child?

5. Is the mother entitled to spousal support and, if so, in what amount and for what duration?

6. Is there a basis for a restraining order against the father in favour of the mother?

7. How should the remaining piece of communal property, a 2005 Ford Explorer, be dealt with?

BACKGROUND

[4] The mother, who is currently 26 years old, met the father in early September 2007, as both were employed at the same business in Whitehorse. The father, who has just turned 30, began dating the mother soon after they met. The relationship quickly became

intimate. In November 2007, the mother moved into the father's rental premises. By that time, the couple had confirmed that the mother was pregnant with C.

[5] Soon after they began living together, the couple started experiencing difficulties in their relationship, with each accusing the other of being over-controlling.

[6] Notwithstanding these difficulties, the couple purchased a condominium in Whitehorse, which they moved into in April 2008.

[7] On or about May 5, 2008, the mother moved back to Ontario to be with her family, claiming that the relationship was over. However, the parties continued to communicate with each other by e-mail and eventually agreed to make another attempt to continue their relationship. One of the conditions of this agreement was that the mother's own mother, K.S., would move to Whitehorse with her daughter to assist her with her pregnancy and the eventual birth and care of C.

[8] The mother and K.S. returned to Whitehorse on May 28, 2008. The parties and K.S. lived together in the condo. C. was born on July 26, 2008. The parties ended their relationship approximately 3 weeks later, in mid-August 2008, but continued to reside together in the family home with K.S. On September 12, 2008, the mother obtained a without-notice order which awarded her interim possession of the condo, interim interim custody of the child, a restraining order against the father, and an order that the father was to have only limited and supervised access to the child.

[9] The parties sold the condo in October 2008 and divided the net sale proceeds. The mother has been living with K.S. in rented accommodations since moving out of the condo. The father has been living with his mother, M.S., and stepfather, L.F., since the without-notice order was made on September 12, 2008.

ANALYSIS

[10] A number of arguments and issues were raised by both counsel in this trial and extensive written submissions were provided. Also, there were many points of conflict in the evidence of the witnesses, and some evidence which I found truly curious with respect to credibility. However, I propose to focus only on the points necessary to decide the issues in the case. Therefore, my failure to refer to certain arguments or evidence should not be taken as a failure to appreciate either.

Issue #1 - Sole vs. joint custody?

[11] The mother stated in her testimony that she wants sole custody of C. because she wants to move with C. to Ontario, and also because she does not believe that she and the father can jointly parent C.

[12] The mother's counsel argued that the communication between the parties could be summarized as difficult, negative, and not improving over time. She cited, as an example, the exchanges of the child during which the parties avoid eye contact with one another and exhibit hostile behaviour. The mother's counsel also referred to the inability of the parties to agree on major decisions affecting the child in the areas of religion and education. She cited the lack of trust that each parent has towards the other. Finally, the mother's counsel referred to her client’s fear of the father, which was the original basis for the without-notice restraining order. She submits that all these factors are not conducive to a joint custodial relationship.

[13] Section 29 of the *Children's Act*, R.S.Y. 2002, c. 31 (“the *Act*”), ensures that applications to the court dealing with matters of custody or access are to be determined in accordance with the best interests of the child.

[14] Section 31(1) of the *Act* states:

> "Except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child."

[15] I acknowledge that the communication between the parties has been primarily by e-mail, and strained, since the without-notice order. However, I agree with the submission of the father's counsel that, for parties who are embroiled in litigation, the communication as evidenced by the e-mail transmissions has been civil and respectful for the most part.

[16] The father acknowledged that he asked his mother not to call the plaintiff after he moved into M.S.'s home on September 12, 2008. However, the reason he gave for this was that he did not want his mother's telephone number showing up on the plaintiff's telephone, as the without-notice order precluded him from having contact with the plaintiff, except by e-mail. I agree with the submission of the father's counsel that strict adherence to a court order should not be mistaken for a non-willingness to communicate.

[17] The comments of Veale J. in *E.J.M.* v. *D.D.I.*, 2008 YKSC 21, at para. 21, are appropriate here:

> "It has been a practice in this court to make joint custody orders despite communication breakdown between the parents to encourage the parents to rebuild their relationship for the benefit of their child. There are, admittedly, some relationships that are so toxic that joint custody makes absolutely no sense as it leads to continued conflict which is harmful for the child. I do not find this parental relationship to be so irreparable that they cannot communicate about their child. Both parents are devoted to the child and sincerely wish for the child's best interests, albeit from their point of view … This child is at a crucial developmental stage and needs the care and contact of both parents."

[18] It is also important to note here that neither party is alleging that the other is an unfit parent or is in any way incapable of caring for C.

[19] In my view, the mother has failed to rebut the *de facto* presumption of joint custody under the *Children's Act*. In these circumstances, and taking into consideration the factors under s. 30(1) of the *Act*, I am satisfied that it is in the best interests of C. to be in the joint custody of both of his parents.

Issue #2 - Should the mother be permitted to move to Ontario with the child?

[20] The leading Canadian authority on the test to be applied in cases where one parent wants to move to a new location with a child and the other parent opposes the move is *Gordon* v. *Goertz,* [1996] 2 S.C.R. 27.

[21] The principles of *Gordon* which are relevant in the case at bar are as follows, and I am paraphrasing here to suit the present circumstances:

1. The inquiry does not begin with a legal presumption in favour of the parent currently having primary care of the child, although that parent's views are entitled to great respect.

2. Each case turns on its own unique circumstances. The only issue is the best interests of the child in the particular circumstances of the case.

3. The focus is on the best interests of the child, not the interests and rights of the parents.

4. The judge should consider, among other things:

    a) the existing custody arrangement and the relationship between the child and the custodial parent;

> b) the existing access arrangement and the relationship between the child and the access parent;
>
> c) the desirability of maximizing contact between the child and both parents;
>
> d) the custodial parent's reason for moving, only in exceptional cases where it is relevant to that parent's ability to meet the needs of the child;
>
> e) disruption to the child resulting from a change in custody; and
>
> f) disruption to the child consequent on removal from the family and community he or she has come to know.

[22] The Supreme Court in *Gordon* summarized the test, at para. 50, as follows:

> "In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?"

[23] The British Columbia Court of Appeal in *Karpodinis* v. *Kantas,* 2006 BCCA 272, at para. 18, referred to the principles arising from *Gordon* and stated as follows:

> "… Ultimately, the role of the court is to review the circumstances of the given case to determine whether the proposed move would be in the best interest of the child. A contextual analysis is required, having regard to the disparate facts of the individual case. …"

[24] While the views of the mother, as the parent with the current primary care of the child, should be considered, in these circumstances her views should not be given greater weight than those of the father.

[25] With the benefit of hindsight, it seems to me that the mother’s without-notice application to obtain interim interim custody of the child, interim possession of the parties’

home, and limited, supervised access by the father, was made on somewhat specious grounds. In her affidavit in support of the application, the mother deposed that the father was becoming "increasingly controlling, possessive and unpredictable emotionally". She described the father as having "a very bad temper which is displayed by him yelling and screaming or raising his voice and, occasionally throwing things". The mother also stated that the father was "trying to pick fights for the smallest of reasons". She was afraid that the father would become very angry at her for commencing these court proceedings.

[26] In particular, she said that she did not believe the father would harm the child, but was concerned that he would take the child and not tell her where the child was in order to punish her.

[27] Those grounds seem insufficient on their face for a without-notice order, and are the type of allegations which are all too common in cases of relationship conflict. Also, the mother’s trial testimony confirmed that her fear of the father was based primarily on two incidents where she alleged he was “out of control".

[28] The first incident occurred when the couple moved from their rental accommodation to a condominium around the end of April 2008. The mother described the father as being frustrated in the course of that move because he was required to do a lot of the heavy lifting on his own. At that time, the mother was pregnant and unable to assist to any significant extent. She said the father became angry at one point and was "throwing things into the house". It later became apparent through the father's evidence and the evidence of N.T., who assisted with that move, that although the father did become upset over the lack of assistance with the move from his own father, B.S., his frustration was manifested merely by kicking some shoes out of the way in the condo and

forcibly putting some things down on the floor. I believe the father admitted to throwing some bags of clothing through the doorway. Viewed objectively, this would seem a pretty trivial incident.

[29] The other incident testified to by the mother as the basis for her fear of the father was an argument that occurred between them on September 4, 2008. At that point, the parties considered themselves to be separated, although they continued to live together in the same house with K.S. According to the mother, she was having a discussion with the father about various matters relating to the condo and their vehicle. She said that the discussion was going well at first, but that the father then kicked her dog. The father denied this, saying that he merely pushed the dog out of the way with his foot. In any event, the mother then said the father began swearing and yelling and she opened the door of the room they were in because of her fear of the father. K.S. then became involved and, when the mother went to breast-feed C., the father and K.S. had a rather bitter exchange of words, during which K.S. threatened to kill the father. K.S. called the RCMP. After the police arrived, the father agreed to leave the home and spent the next couple of days at his own mother's house. Once again, the incident seems relatively trivial when viewed objectively.

[30] Both incidents would seem to be fairly commonplace examples, unfortunately, of the types of arguments between couples experiencing relationship conflict. Even putting both incidents in the light most favourable to the mother, they hardly qualify as demonstrating a pattern of abuse by the father. Certainly, there was never any suggestion by the mother that the father had physically abused her or that he that had

ever threatened to do so. Nor had the mother ever witnessed the father being physically violent with anyone else.

[31] K.S. made repeated references to the "abuse" of the father towards the mother. However, I found K.S. to be somewhat biased in favour of her daughter and prone to exaggeration in her evidence. In her first affidavit, she stated that she was "extremely concerned" for her daughter's safety and for C.'s well-being due to the father's behaviour. She described the father as being "extremely controlling" and "constantly" belittling the mother. She said that she observed the father to be "constantly emotionally, verbally and financially abusive" towards the mother. In her testimony, K.S. was asked to give examples of the father's abuse towards the mother. She said the mother was "never" allowed to go anywhere, drive the family vehicle, or purchase things that she wanted for herself.

[32] Further, in anticipation of moving back to Ontario, the mother and K.S. jointly made an application for housing to "Housing Access to Peterborough" seeking special priority status on the basis that they claimed to have recently moved from "an abusive relationship". While I recognize that this was a subjective assessment on the part of both women, viewed objectively and in the context of the evidence presented at trial, I find that their claim of fleeing an abusive relationship was a misleading overstatement.

[33] C.M., 30 years old, has been a friend of the father since 2001. The two were roommates for a period of time in 2005. At that time, the father was in a relationship with a former girlfriend, H.B. For about six months, the father, H.B., and C.M. all resided together in the father's rented premises. C.M. gave evidence that she had never witnessed the father become violent or abusive, but when he does get angry he "walks

away from situations". This corroborates the father's evidence on the point, which I will address below. Further, C.M. testified about her observations of the relationship between the father and H.B. She said that "most of it was good", but that the father "did whatever [H.B.] wanted him to do" and that H.B. was "dominant" in the relationship. Finally, although C.M. witnessed occasional arguments between the father and H.B., they were never "screaming matches".

[34] I find this evidence to be consistent with the father's description of his relationship with the mother and with other evidence, which tended to portray the father as the subservient party who, rather than being controlling and abusive towards the mother, often tried to avoid conflict by taking steps to appease her.

[35] In my opinion, the evidence of the mother and K.S. in support of the application for the without-notice order was also insufficient to justify limiting the father to "supervised" access. Although the father, immediately after being served with the without-notice order, proposed names of prospective supervisors to the mother, his access to the child was significantly limited over the ensuing weeks, to less than two hours per visit, three evenings a week. Despite retaining counsel shortly after being served and asserting his desire to see the child every day of the week (in a letter from his counsel dated October 9, 2008), it was not until November 11, 2008, that the mother agreed to unsupervised visits of two-and-a-half hours duration, four times per week.

[36] I mention this background to underscore why I feel it would be unfair, because of the *status quo*, to give the mother’s views on the custody of the child any greater weight than those of the father.

[37] The mother's principal reason for wanting to relocate back to her home province of Ontario is so that she can be closer to her extended family and friends. She also has reasonable employment prospects there. It is clear that the mother has many family members and close friends in and around the Peterborough area, with whom she is very close and with whom she maintains regular contact. Indeed, the mother has lived most of her life in that area. After completing grade 12, she worked steadily in the area until early 2006, when she left Peterborough for work in Vancouver, British Columbia, where she lived until March 2007. The mother then returned to Ontario for a brief period before moving to Whitehorse in July 2007.

[38] The mother says that it was never her intention to live permanently in Yukon. Now that her relationship with the father is over, she says that she feels "trapped, isolated and cut off" in the Yukon, as she has no family here, apart from her mother, and very few friends. She notes that K.S. is also very unhappy in Whitehorse and only came here to offer support and assistance to her with respect to C. Lastly, the mother expects that her long-term employment prospects and career opportunities will be better in Ontario than in the Yukon.

[39] With respect, it could be said that the mother's reasons for wanting to move have more to do with her interests rather than those of the child.

[40] The father has extensive family and friends in Whitehorse. He completed his grade 12 education here and has taken a number of college courses. He has been employed in a management position for the past two-and-a-half years, and has been employed for several years by the same local business.

[41] The father has First Nations' heritage. His mother, M.S., is of Teslin Tlingit ancestry, and she is a member of the Kwanlin Dün First Nation. The father's stepfather, L.F., was born in Whitehorse and has roots in the Champagne & Aishihik First Nations. The father's maternal grandmother can read and write Tlingit and is currently a teacher of the language.

[42] Not surprisingly, the father opposes the prospective move by the mother with C. to Ontario. If the move is allowed, the father says that he would be unable to relocate to Ontario for financial reasons. He is also opposed to the limited access proposed by the mother, namely one week each year when the mother returns to the Yukon, plus any occasions the father is able to visit the child in Ontario. Obviously, the telephone access mentioned by the mother, or any other access apart from in-person contact, given the young age of the child, would be no assistance for some time to come.

[43] In my view, the principle of maximizing the contact between the child and both parents is paramount in this case. In their article "Using Child Development and Research to Make Appropriate Custody and Access Decisions for Young Children" (2000) *Family and Conciliation Courts Review*, Vol. 38 No. 3, 297-311, Joan Kelly and Michael Lamb write that the attachment phase for young children occurs between seven and 24 months of age, during which time the child is actively seeking to remain near preferred caregivers. At page 300, they state:

> "The empirical literature also shows that infants and toddlers need regular interaction with both of their parents to foster and maintain their attachments ... Extended separations from either parent are undesirable because they unduly stress developing attachment relationships. In addition, it is necessary for the interactions with both parents to occur in a variety of contexts (feeding, playing, diapering, soothing, putting to bed, etc.) to ensure that the relationships are

> consolidated and strengthened. In the absence of such opportunities for regular interaction across a broad range of contexts, infant-parent relationships fail to develop and may instead weaken. It is extremely difficult to reestablish relationships between infants or young children and their parents when the relationships have been disrupted. Instead, it is considerably better for all concerned to avoid such disruptions in the first place."

[44] I referred to this article with approval in my decision in *D.B.J*. v. *L.A.J.,* 2005 YKSC 65, at para. 33.

[45] In a subsequent article, entitled "Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How?" (2003) *Journal of Family Psychology*, Vol. 17, No 2, 193-205, Kelly and Lamb state, at page 196:

> "Because attachments are more fragile in the earliest phases of formation, it is likely that younger children are more vulnerable to disruptions in attachment formation and consolidation. In assessing the potential psychological risks associated with relocation ..., therefore, it is crucial to consider the child's age and phase of the attachment process when the nonmoving parent have been involved in parenting, even if he or she spent has spent as little as a day or two each week with the child since the separation. It would be ideal if divorced parents wishing to relocate could be persuaded to wait until their children are at least 2 or 3 yeas old, because the children would then be better equipped with the cognitive and language skills necessary to maintain long-distance relationships, particularly when formidable distances separate them from one of their parents."

[46] Later, at page 202, the authors continue:

> "... For very young children, the deterioration or termination of attachment relationships with nonmoving parents may create psychological risks with long-term consequences. To minimize the price that children pay in such circumstances, steps must be taken to promote continued relationships with both parents by attempting to discourage or delay moves with very young children, and by ensuring that children continue to have regular and meaningful interaction with their nonmoving parents. ... "

[47] This article was referred to with approval by the Ontario Superior Court of Justice in *Prasad* v. *Lee,* (2008) 53 R.F.L. (6th) 194, where the court stated, at para. 48:

> "I agree with the respondent that maximum contact is about the frequency as well as the type of contact. There is ample reference in the jurisprudence, and in the relevant literature, that young children in particular need broad and meaningful contact with both parents in order to develop meaningful relationships with them. In assessing the child's best interests, the age of the child and his stage of development can be significant."

[48] The mother acknowledged that C. has First Nations heritage through the father. When questioned about her plan to ensure that C. learns of his culture and heritage if she is permitted to move to Ontario, she answered that would be the father's responsibility and that he could send her items such as books or tapes.

[49] The father gave evidence of his desire to teach C. about his First Nations culture and heritage. The father's mother, M.S., also gave evidence of her desire to teach her grandchild her culture and spoke about how she would to show C. around the Teslin area where she and the father are from. She spoke about exposing C. to the Tlingit language and culture and teaching him Tlingit ways.

[50] While I recognize that C. has inherited a cultural background from each of the parents, there is no evidence before me of the mother’s cultural or ethnic roots.

[51] In the case *E.J.T.* v. *P.M.V.P.,* 110 Man.R. (2d) 219 (C.A.), Scott C.J.M., speaking for the Manitoba Court of Appeal, looked at the issue of the importance of culture to a child of tender years. At para. 19, he stated:

> "... no authority is required to make a convincing argument that culture and heritage are significant factors in the development of a human being's most fundamental and enduring attributes. For anyone, aboriginal or otherwise, they are the stuff from which a young person's identity and sense

> of self are developed. This being so, to suggest that concerns about a child's early upbringing and cultural environment can be addressed as if they were school courses to be taken at some later date totally misses the point. As if this were not enough, the evidence presented at trial makes it clear that any commitment by the respondents in that regard for future "familiarization" is lukewarm at best."

[52] In my view, those comments are also applicable to the case at bar.

[53] I conclude on this relocation issue that the mother has once again failed to persuade me that it would be in C.'s best interests to move to Ontario. Such a move would very likely significantly curtail the amount of contact the father has with C. at a critical time in C.'s development. Rather, it would be preferable for C. to maintain maximum contact with both parents.

Issue #3 - If the mother is not permitted to move, how much time should the child reside with each parent?

[54] The mother is currently breast-feeding C., and has stated that she plans to continue to do so until C.'s first birthday on July 26, 2009. The limited access that the father has had to date has been due primarily to the mother's insistence that C. be returned to her in time for his regular breast-feedings. However, there was some evidence from the father that C. was being introduced to solid foods by the mother over this past Christmas. Whether that is the case or not, it seems probable that C. will be starting on solid foods in the very near future, if not already.

[55] It is interesting to note that the father's counsel addressed this issue at para. 31 of her written submissions:

> "It is submitted that the plaintiff was, and continues to be, the gatekeeper to the defendant's involvement with his son and that she made no efforts to facilitate longer visits by providing pumped breast milk or offering more frequent access or

> accommodating changes to the schedule that might interfere with her plans."

[56] In her reply submission, the mothers counsel stated, at para. 9:

> "While the Defendant criticizes the Plaintiff for failing to offer to provide pumped breast milk, he also failed to request or to suggest this to the Plaintiff."

[57] In other words, the mother did not suggest to her counsel that she was unwilling or unable to provide pumped breast milk, but rather seems to suggest through this submission that she is willing to do so upon request.

[58] Also, when asked why the mother did not agree to a 50/50 split in the care of C., she replied that it was because she was currently the primary caregiver, was breast-feeding C., and that it "would be hard for C."

[59] As stated, the father seeks a residential schedule that allows him to have the child in his care approximately 50% of the time. At trial, he suggested that for the next few years, an appropriate schedule would be one week on, one week off for each parent, where C. would spend a couple of hours, in each of two evenings, with the parent who does not have C. that week.

[60] The father's mother, M.S, is currently employed, but has expressed a willingness to take time away from her work in order to care for C. when the father is unable to do so.

[61] In conclusion on this point, I am satisfied that it would be in C.'s best interests to spend equal time with each parent, as proposed by the father. Therefore, I order that, commencing Monday, May 4, 2009, the child shall reside with the father for one week, and during that week the mother shall have access to C. on each of Wednesday and Saturday evenings from 6 p.m. to 8:30 p.m. The child shall then return to reside with the mother on Monday, May 11, 2009, for the following week, during which time the father

will have evening access to C. on Wednesday and Saturday evenings. The schedule will continue until further order of the court or the parties agree otherwise in writing.

Issue #4 - How much child support is payable by the father for the child?

[62] It is interesting to note that, although the father seeks an order to have C. in his care and control 50% of the time, he did not seek any relief from his obligation to pay child support in that event, which he might have done under s. 9 of the federal *Child Support Guidelines,* S.O.R./97-175. Rather, the father has invited the court to make an order that he pay child support in accordance with the *Guidelines*.

[63] The only issue here is whether the father had more income in 2008 than he actually claimed. Ordinarily, pursuant to ss. 2, 16 and 17 of the *Child Support Guidelines*, I would look to the father's most recent income tax assessment and use the total income figure that is set out therein. In this case, the father's total income for 2007 in his notice of assessment was $41,334. However, the father's most recent information on his income for 2008 is his paystub dated December 28, 2008. That paystub indicated a gross income of $49,600.09. The mother's counsel suggests that I use that figure as a starting point to determine the appropriate amount of child support. The problem here is that the father testified there were three items of income on that December pay statement that were nonrecurring benefits. I am referring here to the "branch incentive plan" for which the father received $2,955, the "lump sum merit" for which the father received $1,000, and the "northern travel" reimbursement of $531.65. These benefits totalled $4,486.65. The father submitted that these should be deducted from his gross income for 2008 ($49,600.09), as they are not amounts which he expects to receive in 2009. That

would reduce his gross income for 2008 to $45,113.44. I agree with this as a reasonable approach.

[64] The mother's counsel also took issue with the father's evidence about income he received from working with his father, B.S. The father's evidence on this point was admittedly confusing. He testified that in 2008 there were perhaps four occasions in which his father gave him various sums of money, ranging from $100 - $600. On two of those occasions, the father said that he had to repay the money. On the other two occasions, the father said that B.S. asked him to work for him to learn certain skills before receiving the money, and on those occasions the father did not have to repay B.S. In the end, the father was asked how much he received in total from B.S. in 2008 which he did not have to repay, and he answered "maybe $800".

[65] The mothers counsel seeks "a modest imputation" of the father's gross income from employment with B.S. for 2008 in the range of $5,000-$10,000, which would break down to an approximate monthly average between $416 and $833.

[66] I agree with the father's counsel that there is no evidence before me that the father earned in the range of $5,000 - $10,000 from working for B.S. I also agree that if the mother believed that the father was earning a significant amount of money from this work, B.S. should have been called to give evidence. He was not. There was also no evidence that the father would continue to work for B.S. in 2009. Therefore, I decline to gross up the father's anticipated income for 2009 based on the possibility he might work for B.S. in the future. Rather, it seems more fair and reasonable to use the father's suggested figure of $45,113.44 as the basis for his anticipated income for 2009. Pursuant to the *Child Support Guidelines* table, that would result in monthly child support of $413.

[67] The father has been paying child support since October 2008 based on his 2007 gross taxable income ($41,334) in the amount of $377 monthly. The mother's counsel sought to make the increased amount of child support retroactive to October 1, 2008, however she provided no rationale for that proposition. In my view, it is appropriate that the father be ordered to pay an increased amount of monthly child support of $413, effective January 1, 2009.

[68] With respect to special or extraordinary expenses under s. 7 of the *Child Support Guidelines*, based on my finding that the father's gross income for 2008 was $45,113.44, and the mother's admitted gross income for 2008 was $32,074.90, as I calculate it, the father should pay 58% of those expenses and the mother should pay 42%. For simplicity's sake, I round those portions to 60% and 40% respectively.

[69] There will, of course, also be a requirement that the parties exchange income tax information annually.

Issue #5 - Is the mother entitled to spousal support?

[70] The mother seeks spousal support in the amount of $300 per month. She calculated this amount based on her desire to travel back to Ontario to visit with friends and family at least two times per year, as well as the anticipated cost of living in Whitehorse. She feels she is entitled to spousal support because she is going to be away from her family and that there should be some way to create a relationship between C. and that family. Somewhat surprisingly, when asked how long she expected to receive such spousal support, she replied that it would be until C. would be old enough (approximately age 16) to decide if he wants to move back to Ontario himself.

[71] In my view, the mother has made no case for entitlement to spousal support. This was a non-married relationship of extremely short duration (November 2007 to August 2008). Further, because the parties were unmarried, the *Family Property and Support Act*, R.S.Y. 2002, c. 83, has no application. The only case authority submitted in support of this claim by the mother's counsel was one involving a married couple, and is therefore distinguishable on that basis.

[72] Finally, the mother's own evidence is that she is eminently employable. Despite only having a grade 12 education, it would appear that she has never been unemployed for an extensive period of time, prior to C.'s birth. Given her background and her apparent skills, I have no concerns that the mother will be unable to find relatively lucrative employment in Whitehorse once she decides to return to the workforce.

[73] I deny her claim for spousal support.

Issue #6 - Is there a basis for a restraining order against the father?

[74] For my reasons given above at paras. 25 through 34, it may be apparent that there is no basis, in my view, for continuing the restraining order against the father. Much was made of the father's anger problem by both the mother and K.S. Indeed, the father himself conceded that he did have an anger problem when he was a child and in his early teens, but that he has since done some reading on the issue and has learned through self-study what triggers his anger and how to remove himself from situations where he may become angry. He said that his normal reaction is to "go quiet" when he gets angry and he tries to walk away from the source of the conflict. He says that it is only if he gets "cornered" that he starts yelling in an attempt to get rid of the person who is causing the problem. Otherwise, he tries to move as far away from the person as possible.

[75] The evidence of the father's mother, M.S., and the witnesses C.M., C.R., and N.T., all seem to corroborate the father's evidence that he is of a normal temperament and not a person who is prone to fits of rage.

[76] The father also acknowledged attending an anger management counselling session arranged by B.S. Strangely, the father said that as soon as he sat down at this session, the counsellor began to accuse him of being an "abuser", apparently without having asked the father any questions on the subject. The father's theory was that the counsellor's opinion was based upon things that B.S had previously told him. I found the father's evidence about this session to be somewhat bizarre.

[77] Nevertheless, I remain unpersuaded that the father's current methods of controlling his anger are deficient or inappropriate. Nor do I find any basis for concluding that the father is a risk to either the mother or K.S. Thus, in my view, there is no basis for a continuation of the restraining order against the father.

Issue #7 - How should the 2005 Ford Explorer be dealt with?

[78] This vehicle was jointly purchased by the parties in December 2007. As I understand the evidence, the mother made a $5,000 down payment on the vehicle (from her own funds) and obtained a loan in her name for the balance of the purchase price. The vehicle remains registered in the mother's name. However, during the relationship, the loan and insurance payments were made jointly by the parties from their joint bank account. It is therefore clearly a piece of communal property.

[79] After being served with the without-notice order on September 12, 2008, the father asked how he would be able to pick up the keys for the vehicle. The mother replied by e-mail that she would only surrender the keys if the father obtained a loan to buy out her

share of the down payment ($2,500), as well as the balance of the joint loan. The father decided to purchase his own vehicle, which he did in October 2008. The mother has maintained possession of the Ford Explorer since having the father removed from the condo. She testified that there is approximately $20,000 owing on the vehicle, and its current retail value is only about $15,000. She takes the position that she can no longer afford to keep it.

[80] As a result of my decision prohibiting the mother from moving to Ontario with the child, I assume the mother will continue to reside and work in Whitehorse for the foreseeable future, as she testified. She will therefore likely require the use of a vehicle. She would seem to have the option of retaining the Ford Explorer for her use absolutely. If she does so, given the father's lack of interest in the vehicle, and given that the vehicle is already registered in the mother's name, then it should be considered entirely her property. Alternatively, if the mother wishes to acquire a less expensive or more fuel-efficient vehicle, and decides to sell the Ford Explorer, if there is a loss on the sale, then that loss should be borne equally by both parties.

CONCLUSION

[81] In summary**,** I make the following orders:

1. The without-notice order of September 12, 2008 is vacated.

2. The parties shall have joint custody of the child C., born July 26, 2008.

3. Neither party is permitted to move with the child outside Whitehorse without the written permission of the other party, or until further order of the court.

4. The child will reside with the father for one week, commencing Monday, May 4, 2009, and the mother will have access to the child on Wednesday and

Saturday evenings of that week between 6 p.m. and 8:30 p.m. The child will then reside with the mother the following week, commencing May 11, 2009, and the father will similarly have access to the child on Wednesday and Saturday evenings. The schedule will continue on this alternating basis, unless the parties otherwise agree in writing, or the court orders otherwise.

5. The father shall pay child support to the mother in the amount of $413 per month commencing January 1, 2009, and payable on the first day of each month thereafter.

6. The parties shall share C.'s special or extraordinary expenses, with the father paying 60%, and the mother bearing 40%.

7. The mother is entitled to retain possession of the 2005 Ford Explorer as her property. If she chooses to sell this vehicle and incurs a loss, then the loss shall be borne equally between the parties.

8. If he has not already done so, I direct the father to take the Level II "For the Sake of the Children" parenting workshop as soon as reasonably possible. Similarly, if she has not already done so, I direct the mother to take both Level I and Level II of this workshop as soon as reasonably possible.

[82] The parties have not addressed the issue of costs. If they are unable to agree on the issue, counsel may ask the trial coordinator to schedule a further hearing before me within 45 days of the date these reasons are issued.

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GOWER J.