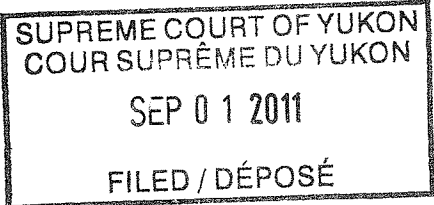


SUPREME COURT OF YUKON

Citation: *S.L.W. v. W.B.S.*, 2011 YKSC 65

Date: 20110824
Docket 09-B0050
Registry: Whitehorse

BETWEEN:

	S.L.W.	
		PLAINTIFF
AND:		
	W.B.S.	DEFENDANT

Before: Mr. Justice L.F. Gower

Appearances:

S.L.W.

Appearing on her own behalf

W.B.S.

Appearing on his own behalf

Kathleen Kinchen

Child Advocate

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is an application by C.M. to be granted interim custody of the child, D.G.W., born October 20, 1993. The application is grounded under s. 33(1) of the *Children's Law Act*, R.S.Y. 2002 c. 31, which authorizes a parent of the child or any other person to apply to the Court for an order for custody.

[2] Pursuant to s. 30(1) of that same *Act*, I am to be governed in such an application by determining what is in the best interests of the child. I am to consider all the needs and circumstances of the child including a number of things which are set out in subsection (1). Those include the views and preferences of the child, the length of time

that the child has lived in a stable home environment, the ability of the person applying for custody to provide the child with guidance, education and the necessities of life (I am paraphrasing), any plans proposed for the care and upbringing of the child, the permanence and stability of the family unit with which it is proposed that the child will live, et cetera.

[3] D. is represented by Ms. Kinchen as the child's lawyer in this matter. I note that Ms. Kinchen is an experienced and competent family law counsel, and she tells me that this is the first time in her experience that she has made such an application on behalf of a child.

[4] D. will be 18 years old on October 20th of this year. Ms. Kinchen described her client as "quite an incredible young lady" who is "incredibly brave" to have done what she has done in initiating this application. Those kinds of remarks are echoed by the child's mother, S.W., who also describes D. as a very mature, confident young woman who "knows what she wants."

[5] Each parent has provided a detailed and thoughtful affidavit in opposition to the interim custody, and each has made eloquent and passionate submissions in this hearing. This is indeed a dark time in the relationship between D. and each of her parents, but it is not the end of that relationship regardless of what I order. As S.W. said, she will always be her mother, and as her father, W.S., said, he still wants to play a role in D.'s life. Nothing I decide today will prevent either parent from offering their love, support, wisdom, and guidance to D. going forward. In some ways, the issue of interim custody is more of a technicality than something that will govern D.'s relationship with

her parents. She loves them and wants them to be part of her life, and any interim custody order in favour of C.M. will not hinder or prevent that from happening.

[6] The deciding factor for me in this case is that D. is an extremely mature young woman, from all accounts, who has taken a great deal of initiative in seeking out family and professional help to better her situation. Mr. Hyde, the social worker with Family and Children's Services, has noted in his letter of August 19, 2011, that since taking over the file he has found that it is clear that D. is making positive and remarkable changes in her life. I also have considered the reasons outlined in the letter from the previous social worker involved with this case, Brenda Jenner, dated July 14, 2011, and the history of instability in D.'s relationship with her parents over the last few years. I infer that what D. wants is the security of the opportunity to live with C.M. and her husband, L.W., and also that any decision-making authority on her behalf will be handled by someone she regards as trustworthy, stable, and safe. Likely, one of the most significant gestures that each parent could offer D. at this point would be to respect that decision and to honour it. This case is not about winning custody or losing custody. It is not about whether it will be "hard" on W.S. as a father. It is not about whether S.W. feels that it is "unnecessary." What this case is about is D.'s healing and well-being going forward, and if she is saying that this is what she wants and needs, then I think we all must respect and honour that.

[7] I want to say something about the issue of communication. Both S.W. and W.S. have made some excellent points in this regard about their reasonable expectation of being kept as informed as possible about D.'s well-being, in a manner consistent with D.'s wishes. C.M. has heard those comments; Andrew Hyde has heard those

comments, and I would hope and expect that greater efforts will be made in the future to keep the parents informed of major issues in D.'s life, if she so desires.

[8] On the issue of child support, I echo what Ms. Kinchen says in that this is an application that is being made on D.'s behalf, not on behalf of C.M. Ms. Kinchen reasonably anticipates that the current stipend which D. receives of \$625 a month to cover her room and board, educational, and various treatment expenses may be insufficient, going forward, to allow D. to purchase various special things for herself as she deems necessary, and that some amount of money should be provided by her parents and set aside for her use as she sees fit. Unfortunately, I have very minimal information from each parent on their current incomes. W.S. says that he is earning something less than \$24,000 a year, but has recently started a plumbing business and has some ongoing plumbing work. S.W. tells me that she has been laid off from her regular wage employment, but is able to obtain temporary contracts doing interview work with elders. Given that scant information, it seems that each parent should be able to make at least a symbolic gesture of paying \$50 per month for D.'s benefit.

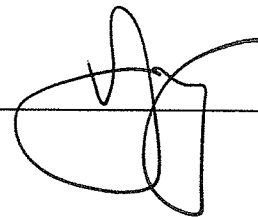
[9] I will leave it to counsel as to how this should be structured, but I do not see any reason, Ms. Kinchen, why that could not be made payable through Maintenance Enforcement, as with any other child support order. I expect that the money would be paid out to C.M., because she will be the adult in charge of D. after my order is made. However, I further expect that C.M. will put that money into a trust account for D.'s benefit, and that it will not go to routine, day-to-day expenses, but rather that D. will have access to that account as she deems necessary from time to time.

[10] In closing, I am going to make the orders sought. I will add C.M. as a party to this action and the style of cause will be amended, going forward. I will grant interim custody of the child to C.M., and I will require that the plaintiff and defendant each pay \$50 a month in child support for D., as I have indicated.

[11] The last thing that I want to say is that I am informed that the treatment program that D. is currently attending near Williams Lake, British Columbia, is scheduled to continue until sometime in December of this year. I am told it includes a component at the end, of some six weeks, where her parents and any other significant family members that wish to be involved can participate in the program. Ms. Kinchen tells me that D. wants her parents to become involved. She informs me that there is funding available through non-insured health services for each parent to attend and participate in that.

[12] Given those circumstances, I say to the parents that what now is no doubt a very dark time may become a wonderful opportunity for each of you. Probably the greatest gift that you can give to D. now would be to attend and participate as she wishes and work towards the restoration and healing of your parent-child relationship. If that heals and D. fully welcomes you back into her life, then the interim custody order that I make today in favour of C.M. is only going to be words on a piece of paper.

GOWER J.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned above a horizontal line.