

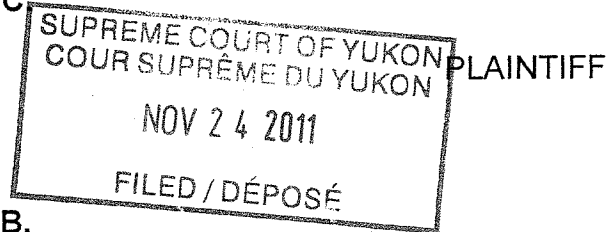
SUPREME COURT OF YUKON

Citation: *B.D.C. v. B.J.B.*, 2011 YKSC 85

Date: 20101004
Docket 08-B0048
Registry: Whitehorse

BETWEEN:

B.D.C.



AND:

B.J.B.

DEFENDANT

Before: Mr. Justice R.S. Veale

Appearances:
Kathleen Kinchen
André Roothman

Counsel for the Plaintiff
Counsel for the Defendant

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): I am going to make the interim joint custody order for E., and I want to make clear of what that means. It is not fifty-fifty where he is going back and forth one week on or one month on, and so on. It is a relationship. You both were mother and father at one point; you both worked with each other to make decisions for E., and I am saying when I make a joint custody order that is how it should continue.

[2] You should both talk to each other. You want him to go to daycare, so what is the daycare, what are the options? You want him to go to school; where is he going to go to school? I suppose in your community there are not that many options, but nevertheless,

there are still discussions you have. Is he going to go to French immersion? So, those are issues that you two can discuss and hopefully agree on, and you always know if you have disagreements you can come back to what we call a settlement conference. Settlement conferences are sometimes worthy to come to, and I am not suggesting you do not come with lawyers. You can come on your own or come with lawyers as you see fit, but often it is just a discussion and a resolution is worked out at that discussion. Ask your counsel about it if you want to pursue that.

[3] I am going to order access to Mr. C. on the dates set out in Exhibit A of his Affidavit number 2. The cost of that access, in these circumstances, will be borne by Mr. C. I would put it in the order that grandparents may participate in the pickup and drop off of E., acknowledging that it is preferable that it be Mr. C. that do that, but there are some occasions where it may not be possible because this is a very significant access schedule in terms of once a month having to go back and forth. It is an extremely heavy schedule, but certainly in the best interests of E., and I did not use the word "supervised".

[4] Does that Exhibit A cover everything, Ms. Kinchen?

[5] MS. KINCHEN: For -- well, it's, yeah, it was intended --

[6] THE COURT: Like, it includes the Christmas and?

[7] MS. KINCHEN: Yeah, I think the problem will be it was only intended to be for a year. We weren't thinking that every Christmas would be with Mr. C.

[8] THE COURT: No, no, let me put this to you. If you are able to work it

out, Ms. B. and Mr. C., this could be a model that you could follow until the point where he enters into kindergarten, and then, obviously, you have to renegotiate and work out something different, but you can share on alternate occasions; Christmas, Easter, birthdays.

[9] THE DEFENDANT: I do have one request. Can the March visit be altered by one week, because my other son's birthday falls in that week span?

[10] THE COURT: This is -- what is your other son's birthday? March?

[11] THE DEFENDANT: March 20, Your Honour. If we could do either the week before or the week after.

[12] THE COURT: We can do it, so just choose the week before or the week after, okay?

[13] MS. KINCHEN: The week after.

[14] THE COURT: Okay, the week after. We did not discuss, Mr. Roothman, the 14 days travel outside the Yukon. Is that satisfactory for both?

[15] MR. ROOTHMAN: That's fine.

[16] THE COURT: You did not deal with the issue -- I guess we do not need to worry about a passport, or do we?

[17] THE DEFENDANT: His passport is due for renewal. I had one signed --

[18] THE COURT: Oh, you have one already?

[19] THE DEFENDANT: Yes, it's due for renewal, so I can grab one and submit it for him to sign.

[20] THE COURT: Okay, and is the passport in the right name?

[21] THE DEFENDANT: Yes, all of his documents are in the right name. As his name is hyphenated, I choose to go by B. and they choose to go by the name of C.-B. with him, it would be beneficial for both parties.

[22] THE COURT: Well, why do you not get that straight. Use the hyphenated. That would be really confusing.

[23] THE DEFENDANT: Your Honour, he's barely figured out all of his middle names.

[24] THE COURT: Anyway, I think you should both use the hyphenated name so he knows what his name is. Custody and access report, you are both still convinced that is a necessary thing. By the way, I want to include in the access order that Mr. C. has that whatever treatment he is receiving from the Child Development Centre be mirrored here to the extent possible.

[25] MR. ROTHMAN: On that note, I was just thinking of it, the psychologist that he's seeing now.

[26] THE COURT: Yes, is this the woman that you mentioned, Sue Lancaster?

[27] THE DEFENDANT: Yes.

[28] THE COURT: She is a psychologist.

[29] MS. KINCHEN: I'm not exactly sure. She's got a whole bunch of educational training with regards to children and their developmental issues.

[30] MR. ROTHMAN: Is she private or does she work for YTG?

[31] MS. KINCHEN: She works for the CDC, so I guess she's government.

[32] THE COURT: So, she might make a recommendation on how that could be done down here.

[33] MR. ROTHMAN: Because if she's a psychologist in -- I mean, let's at this stage go for the custody and access report, but if Ms. Kinchen and I have more information from her perhaps it may throw a different light on the thing and we perhaps would --

[34] THE COURT: Yes. My feeling, just on this, you know, I am reluctant on this particular one because I actually think there are two good parents here that can work things out when they know what the best interests of the child are, and that perhaps counsel could come back at a later date. Let's say if things go sideways in the next six months and you know you are going to be back, I am going to be seized of this, and you can put that in the order. And if you think a custody and access report is required then, fine, but this is a child at three who has seen a lot of experts, and to add one more may not be necessary.

[35] MR. ROTHMAN: If we can perhaps have the order to that extent that --

[36] THE COURT: The parties can come back to discuss or?

[37] MR. ROTHMAN: Well, that both of the parties or counsel is entitled to full disclosure of that, because I know from experience some of these people from YTG, Child Development or whoever --

[38] THE COURT: Will not give it to the other party unless it is --

[39] MR. ROTHMAN: Without a court order they won't give it to us, so if we can have that in the order.

[40] THE COURT: I think that is a useful idea, to spell it out, even though we have said joint custody and the *Children's Law Act*, RSY 2002, c. 31, indicates what you can get without a court order, but put it in the order that each parent is entitled to whatever reports are available on the child, whether school or their --

[41] MS. KINCHEN: From any provider.

[42] THE COURT: -- their physical wellbeing.

[43] MR. ROTHMAN: No, but the incident, I think it was last week where an organization, a government agency simply said, bring us the order, then we'll give you --

[44] THE COURT: Yes, bring us a court order, right. That does not cost much, does it?

[45] MS. KINCHEN: Your Honour, there's one other thing I'm wondering; if E.'s documents could travel with him, so that if he has a passport it could travel with him when he comes to Whitehorse in case they want to go to Skagway or something, and

then when he goes back home it travels with him and it stays at home.

[46] THE COURT: Could he have a travel bag, you mean, or what do they call that?

[47] MS. KINCHEN: There is a term for it? I'm not sure.

[48] THE COURT: Some kids go back and forth with little books.

[49] MS. KINCHEN: Oh, that's the log.

[50] THE COURT: The log, okay.

[51] MS. KINCHEN: The log that goes back and forth.

[52] THE COURT: So -- no, I think it would be very useful if there were a travel bag --

[53] THE DEFENDANT: Would that include his health care card?

[54] MR. ROOTHMAN: Yes, it should.

[55] THE COURT: Well, you can put in the documents that will be needed.

[56] THE DEFENDANT: A certified photocopy of that? Because I keep mine in a safe place and so that -- because I don't really ever need it even when I travel.

[57] THE COURT: You can do a certified one if you wish, or keep --

[58] THE DEFENDANT: And that way, he can keep that copy with him so that I

keep the original passport.

[59] THE COURT: Sure, but I think the passport should go back and forth too, in case they go to Skagway or whatever. And maybe he has a special doll or something, who knows.

[60] THE DEFENDANT: No, I'm very adamant against that.

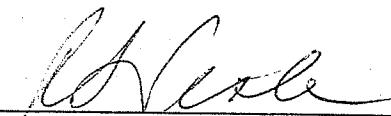
[61] THE COURT: Okay. Is there anything else?

[62] MS. KINCHEN: Well, we did seek costs as well.

[63] THE COURT: Yes, and I think a costs order would be punitive in this situation. I appreciate this has cost your client a great deal, but hopefully the discussion that we have had will suffice to ensure we are not here again on a contested basis, but if we are here again on a contested basis, a costs order will be considered. Anything else, Mr. Roothman, that you can think of?

[64] MR. ROOTHMAN: Not for me, Your Honour.

[65] THE COURT: Great, thank you very much, and good luck with your child.



VEALE J.