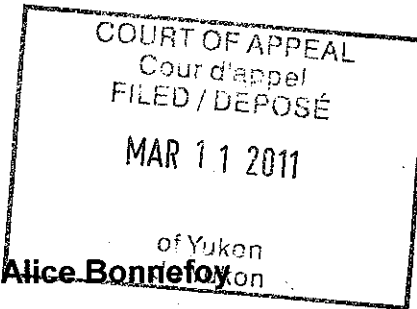


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COURT OF APPEAL FOR YUKON TERRITORY

Citation: *Bonnefoy v. Travill*,
2011 YKCA 1



Date: 20110131
Docket: YU0663

Between:

Linda Alice Bonnefoy

Appellant
(Plaintiff)

And

Michael Bernard Travill

Respondent
(Defendant)

Before: The Honourable Madam Justice Rowles
The Honourable Mr. Justice Groberman
The Honourable Mr. Justice Hinkson

Review of chambers order from: Court of Appeal for Yukon Territory,
December 6, 2010 (*Bonnefoy v. Travill*, Yukon Docket No. 05-D3773)

Oral Reasons for Judgment

Appellant appearing In person:

No one appearing on behalf of the
Respondent:

Place and Date of Hearing:

Vancouver, British Columbia
January 31, 2011

Place and Date of Judgment:

Vancouver, British Columbia
January 31, 2011

ORIGINAL

[1] **ROWLES J.A.:** This is an application to review a chambers order denying indigent status with respect to an appeal of an order made by Mr. Justice Foisy of the Yukon Supreme Court on May 27, 2010. The order reads as follows:

THE APPLICATION of the Respondent ... coming on for hearing at Whitehorse, Yukon on the 27th day of May, 2010, and on hearing Stephanie Schorr, lawyer, for the Respondent, and on the Petitioner ... not appearing although duly served.

THIS COURT ORDERS that:

1. The Petitioner shall have access with [the child] in Haines Junction or Burwash Landing commencing with the Petitioner picking [the child] up from school in Whitehorse at 3:05 p.m. each Friday and returning [her] to the Respondent's residence in Whitehorse by 5:00 p.m. each Sunday.
2. With respect to summer holidays, [the child] shall reside with the Respondent from the last full day of school June 15, 2010 to August 1, 2010. [The child] shall reside with the Petitioner from Sunday August 1, 2010 to Saturday August 28, 2010 and the Petitioner shall return [the child] to the Respondent's residence at 5:00 p.m. on that day. On the request of [the child] and the consent in writing of the Respondent, [the child] shall have access with the Petitioner at other times during the summer.
3. Any peace officer, including any R.C.M.P. officer having jurisdiction in Yukon, who on reasonable and probable grounds believes that ... the Petitioner, is in breach of the terms of this Order may upon being provided with a copy of this Order, apprehend [the child] and return her to the custody and care of ... the Respondent.
4. The Respondent's application with respect to contempt of court is adjourned *sine die*.

[2] The Petitioner filed a notice of appeal from the order of Mr. Justice Foisy in the Yukon Court of Appeal. We do not have the benefit of transcribed reasons of the chambers judge refusing Ms. Bonnefoy's application for indigent status, however, the judges of this division have listened to a recording of the argument that was made on the application as well as the reasons given by the chambers judge. The essence of the reasons given for denying the application was that this Court is without jurisdiction to determine the appeal.

[3] The Yukon Court of Appeal does have jurisdiction to hear an appeal from an order made by the Yukon Supreme Court under the *Children's Act*, R.S.Y., 2002, c. 31, regarding a matter of custody or access; therefore, this Court could have

determined an application for indigent status with respect to an appeal from the order.

[4] Along with the application for indigent status, the Petitioner brought an application for an extension of time to appeal but that application was not specifically addressed by the chambers judge.

[5] We are all of the view that this Court, that is, the Yukon Court of Appeal, has jurisdiction to hear the appeal from Mr. Justice Foisy's order and therefore also had jurisdiction to hear the application for indigent status. For that reason we would allow the review application and set aside the order made.

[6] However, it is important to recognize that the application to extend the time to appeal would have to be granted before the appeal could proceed. If an extension of time is not granted, the application for indigent status would become moot.

[7] In the result, we would set aside the order that was made by the chambers judge and refer the application to extend the time to appeal and the application for indigent status to the chambers list to be determined.

[8] Counsel for the respondent and the child advocate must be served with the notice of the applications.

[9] We request that the Registrar of the Yukon Court of Appeal send a copy of these reasons to the respondent and to the Child Advocate. We also request that the Registrar of the Yukon Supreme Court provide to the Registrar of the Yukon Court of Appeal copies of all orders that have been made in these proceedings subsequent to the order made by Mr. Justice Foisy on May 27, 2010.

[10] That is the extent of the order made by the Court today.

(discussion with appellant)

[11] **ROWLES J.A.:** We are also all of the view that a transcript of the proceedings before Mr. Justice Foisy on May 27, 2010, will be needed by a chambers judge to

determine these applications. We request that the Registrar of the Yukon Supreme Court arrange for a transcript to be obtained and that it be provided to the Registrar of the Yukon Court of Appeal.

[12] **GROBERMAN J.A.:** I concur.

[13] **HINKSON J.A.:** I concur.



The Honourable Madam Justice Rowles