

SUPREME COURT OF YUKON

Citation: *G.W.C. v. Y.D.C.*, 2012 YKSC 8

Date: 20111117
Docket S.C. No.: 00-D3300
Registry: Whitehorse

BETWEEN:

G.W.C.

PLAINTIFF

AND:

Y.D.C.

DEFENDANT

Before: Mr. Justice R.S. Veale

Appearances:
G.W.C.
Y.D.C.
Lenore Morris

Appearing on his own behalf
Appearing on her own behalf
Appearing as Child Advocate

**REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): The mother is 41 years old, and the father is 81 years old. They were divorced in January of 2001. At that time, there were three children of the marriage. The eldest is now independent, but the 17-year-old daughter is in Grade 12 and, hopefully, going to University in September. The youngest is a boy of 13 years old who is in Grade 8, his first year at a high school in Whitehorse.

[2] This has been a high-conflict case from inception until a consent order was filed on October 4, 2007, when the parents agreed to joint custody of the 17-year-old

daughter and the 13-year-old son, with the primary residence of the daughter and son being with the mother from September to June, and the father in July and August of each year. Although the Court did not see activity on the file from October 4, 2007, until recently this year, it obviously has not always been amicable on the financial side of the relationship, but the consent order that I am referring to did have a clause which indicated that there would be no child support paid by either the mother or the father. The father now applies to vary the consent order with respect to the 13-year-old son to essentially flip the consent order so that the son remains with him as his primary residence from September to June, and with his mother for July and August of each year. The mother opposes the application.

[3] A child advocate was appointed, and she has given a full report based on the wishes of the 13-year-old son. The son's preference to change his primary residence has been expressed for some months now, since the spring of the year, and the parents have made their best efforts. They are both good parents, and they have made their best efforts to resolve the matter but have been unable to do so. The son, from all appearances, in terms of the view of the Child Advocate and a letter dated August 24, 2011, that he sent to his mother indicating his preference to live with his father during the school year has a considerable maturity. In my view, the letter certainly expresses his maturity and his desire to move in with his father. I will make one quote from it. He says:

I would like to change the agreement to where I have permanent residence with dad but may visit whenever I want for as long as I want as long as it does not interfere with any preplanned activities or trips. It looks like it has worked well with [sister] B. and that she is happy with it. I would also like

to say that this is not because I don't love you or that I don't want to live with you because that is not the case. I love you very much, I just hope you can understand this.

It is a very poignant letter from a young man who clearly wants to keep peace in the valley with both parents, but is expressing a preference for a change since 2007.

[4] I am satisfied from the evidence presented that there has been a material change in circumstances. Firstly, the son is now 13 and, in my view, his wishes, although not determinative, must be heard and respected. Secondly, the mother moved her residence from a suburban neighbourhood in Whitehorse to a neighbourhood at the edge of the community, some 15 to 20 minutes from the downtown area. Thirdly, the son is acutely aware that his father is getting older, and he has expressed an interest in spending more time with him. Fourthly, the father happens to live very close to the school that the son attends, his first year in high school. That, of course, still leaves an assessment of the best interests of the son, but I am satisfied that the same factors that constitute the material change in circumstance support the preference of the son to live with his father. I am quite satisfied that it is in the best interests of the son to have his primary residence with the father from September to June, and with the mother from July and August.

[5] I have, though, in stating that, expressed that it is not going to be a relationship where he can come and go as he wishes. The order will be in the same terms as the consent order of 2007. I should indicate that it has been a practice in this court to give serious consideration to the wishes of a child at age 12, sometimes earlier, but certainly at age 12, my view is that there is a general maturity that a child has and their wishes

should be respected at that age. It is very difficult, sometimes, with teenaged children when you ignore their wishes, and sometimes they have to be ignored because children have to remember that it is the parents and the Court, ultimately, that determine where they live. I adopt the reasons that have been given in the recommendation of the Child Advocate. She is satisfied, and so am I, that the son is not being influenced by the father and genuinely wishes to spend more time with the father.

[6] I therefore conclude that the consent order will remain in effect, except that the primary residence of the 13-year-old son will be with the father from September to June, and with the mother from July through August.

[7] I understand that the mother has made an application that the father pay child support for the children, prospectively and retroactively, and I am not in a position to hear that application at this time because it is in some detail, from reading the material, so I am going to adjourn that to a later date. The only date that I have is January 30 at 2:00 p.m., and I am going to ask whether that is an acceptable date to the parents.

[8] Did you hear that? I am sorry, I was not raising my voice, but January 30 at 2:00 p.m. for the financial issues.

[9] THE PLAINTIFF: No, I think I have most of it.

[10] THE COURT: Are you available then, Ms. --

[11] THE DEFENDANT: Yes, I am.

[12] THE COURT: Thank you, Ms. C. I would honestly hope that you

resolve those between now and then, and I appreciate they were issues of some irritation, but I do not think that there is going to be any particular resolution that is going to make anyone happy. I do note that the father indicated that he was prepared to pay child support, I presume now and going forward, on the basis of a set-off. I have no idea what that looks like, but that, at least, is on the table for whatever it is worth. Anything further?

[13] MS. MORRIS: Your Honour, is there a commencement date or is this in effect right now? The --

[14] THE COURT: Oh, yes, thank you very much for that. It should commence, you know, unless there is some reason that it should not, I would say this Saturday; that the move should be made on the weekend. Any reason it should not be made this weekend?

[15] THE PLAINTIFF: It's no problem. Sorry.

[16] THE COURT: Okay. The move will take place then on this Saturday, November 19, 2011. Thank you.

VEALE J.