

# SUPREME COURT OF YUKON

Citation: *L.B.M v. R.D.E.*  
2016 YKSC 4

Date: 20160127  
S.C. No. 14-D4722  
Registry: Whitehorse

Between:

**L.B.M.**

Plaintiff

And

**R.D.E.**

Defendant

Before: Mr. Justice R.S. Veale

Appearances:

André Roothman  
Michelle Chan

Counsel for the Plaintiff  
Counsel for the Defendant

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] This is an application by the defendant mother (the “Mother”) for an order that the child M., currently seven years old, is a child of the marriage pursuant to the *Divorce Act*, RSC 1985, c 3 (2nd Supp).

[2] M. is the biological child of the Mother but had been living with L.B.M., (the “Husband”) and the Mother from April 2012 until the Mother and the Husband separated in October 2014.

[3] The Mother and the Husband have their own child, H., born September 2012, who is a child of the marriage.

[4] The Mother's position is that the Husband has treated M. like his child. The Husband says he has treated M. in a friendly and civil way but never intended to become the child's father.

### **BACKGROUND FACTS**

[5] The Mother and the Husband met in April 2011, moved in together in April 2012, and married on July 28, 2012.

[6] The Husband knew at the beginning of the relationship that the Mother was a single parent to M., a three year old child, who was born on August 30, 2008.

[7] The Mother and the Husband are the biological parents of the child H., born on September 30, 2012.

[8] The Mother and the Husband separated in October 2014.

[9] Both the Mother and the Husband were cross-examined on their affidavits. I do not find that the credibility of either was challenged to the extent that I found their evidence should be wholly discredited. However, the Husband was evasive and argumentative in answering questions about the timing of photographs of him with the two children, which had to have been taken during the relationship or marriage.

[10] The biological father of M. has no relationship with M. and provides no financial support. The Mother lived in Thailand with the father for six months but has had no contact since January 2010. The Husband is the only father that M. knew, although she was aware that he was her stepfather rather than her natural father. The Husband alleges that the Mother was, in fact, married to the father of M. but he relied on a

conversation that a friend had with the Mother in which she allegedly used the word “husband” referring to the father of M. There is no compelling evidence to support this allegation and I find that the Mother did not marry the father of M.

[11] The Mother acknowledged that M. had some difficulty adjusting to the Husband’s role as he was not her biological father. After some adjustment, the Mother says M. accepted the Husband’s role as father.

[12] The Mother says that the Husband assisted with day-to-day care of M. and contributed financially. The Mother was the primary caregiver of the children. The Husband does not deny that he supported the family.

[13] The Husband treated M. as his child in a public way as evidenced by numerous photographs of him with M. and H. in his arms at various public events and places attended by the family. There is no doubt that publicly the Husband treated M. in the same way as he treated H., i.e. as his child. There is no suggestion that the Husband treated M. differently in private.

[14] The Husband also referred to M. as his daughter publicly and she called him “Daddy”. The Husband acknowledged this but says that was a public posture and that at home, M. called him by his first name. The child’s name remained her Mother’s name while the child H. used a hyphenated last name using both the Mother’s and the Husband’s last name.

[15] The Mother says that the Husband insisted that M. call him “Daddy”. She provided a note written by M. that said “To Dady I love you so much Love M.” The Husband did not respond to this evidence in his affidavit in response. M. celebrated Father’s Day with the Husband and the Mother. There is no doubt that M. referred to the

Husband as her “Dad”. There is no evidence that the Husband ever objected to being called “Dad” or “Daddy” by M. I am satisfied that the Husband used the term himself when dealing with M.

[16] The Husband, on the other hand, denies that he had a parenting role with M. and states that he was directed by the Mother not to discipline M. The direction not to discipline is supported, to some extent, by the Mother as she related an incident where the Husband left M. in a park near their house because M. refused to come home with him and he said he was not going to argue with her. However, the Mother presented this evidence in the context of the Husband’s lack of judgment as a co-parent.

[17] The Mother also provided a copy of an application for an adventure camp which described the Husband’s relationship to M. as “Dad”. The Husband said he was not aware of the document, which he did not prepare. The cost of the adventure camp was shared by the Mother and the Husband.

[18] The Husband, who was originally from Tanzania, explained his relationship with M. in his third affidavit as follows:

In my culture it is not acceptable to pretend to be the father of a child unless the child is adopted, either by formal legal formalities or according to local custom and tradition and with the approval of the heads of the families. For that reason I would never have considered myself to be standing in the place of a parent for M. I always considered her to be the child of another man and not my responsibility. That did not prevent me from playing with her or dancing with her at a party that her mother also attended, or taking her on outings with H. It would have been cruel to exclude her from any fun that I had with H.

[19] I add that the Mother and the Husband have raised numerous issues about the parenting ability of the other because they are in substantial dispute on custody and access issues with respect to H.

[20] This has led to the Husband alleging marijuana use by the Mother, which I do not accept.

[21] There is no doubt that the Mother and the Husband had an unhappy relationship related to the Mother's postpartum depression after the birth of H. and the Husband's absence for work purposes and their obvious disagreement about parenting roles.

[22] Suffice it to say that their relationship deteriorated significantly after the birth of H. The Mother required the Husband to sleep in a separate bedroom after the birth of H.

[23] The Husband has also attempted to discredit the Mother with allegations of physical assault. The most significant altercation took place in March 2014. The Mother clearly assaulted the Husband by punching him in the stomach. She admitted this, but said it was in response to the Husband grabbing her arm and asking for sex. She explained that she punched him in order to get away from him. I accept the Mother's explanation.

[24] To summarize, I find the following facts:

1. the Husband was fully aware that M. was the child of the Mother from April 2011 when they started living together to September 2014 when they separated;
2. the Husband treated M. as his child publicly in the same way that he treated his biological child H.;
3. M. called the Husband "Daddy" in public and he referred to her as his daughter;
4. the Husband did not discipline M. at the request of the Mother;

5. the child M. called him “Daddy” and, from a child’s perception, had a father-child relationship, although she may also have called him by his first name at home;
6. the Husband did not disavow the father-child relationship until after separation;
7. the Husband contributed financially to the raising of M. and H. but there was no specific allocation for either child.

### **Child of the Marriage**

[25] For the purposes of this application, a child of the marriage is set out in s. 3(2)(b) as “any child of whom one is the parent and for whom the other stands in the place of a parent”.

[26] The leading case interpreting this section is *Chartier v. Chartier*, [1999] 1 S.C.R. 242 (“*Chartier*”). In that case, the Court set out the following non-exhaustive factors in paragraph 39 to be considered in determining whether a child is a child of the marriage:

- (a) Whether the child participates in the extended family in the same way as would a biological child;
- (b) Whether the person provides financially for the child;
- (c) Whether the person disciplines the child as a parent;
- (d) Whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child;
- (e) The nature or existence of the child’s relationship with the absent biological parent.

[27] In *Chartier*, there was little doubt that the child in question was a child of the marriage because the parties had discussed adoption and the husband had acknowledged in a consent judgment that the child was a child of the marriage and was granted access to her.

[28] The Court established, in paragraphs 32 and 39, a number of other principles as follows:

- (a) a person cannot unilaterally withdraw from a relationship in which he or she stands in the place of a parent;
- (b) the question of whether the person stands in the place of the child does not require formal expressions of intent but should be viewed objectively from all relevant factors;
- (c) the actual fact of forming a new family is a key factor in drawing an inference that the step-parent treats the child as a member of his or her family;
- (d) the manifestation of the intention of the step-parent cannot be qualified as to duration, or be otherwise made conditional or qualified, even if this intention is manifested expressly;
- (e) not every adult-child relationship will be determined to be one where the adult stands in the place of a parent and each case must be established from the evidence that the adult acted so as to stand in the place of a parent to the child.

[29] The objective test is not determined exclusively from the perspective of the child but the child's opinion is important as one of the many factors to be considered.

[30] Finally, the policies and values reflected in the *Divorce Act* must relate to contemporary Canadian society and a modern understanding of these words.

[31] In the case of *Cook v. Cook*, [2000] 182 N.S.R. (2d) 299 (S.C.), Campbell J. decided that the husband did not stand in the place of the children's natural father. The wife had a child from a previous marriage and the natural father had an active relationship and significant involvement with the children, paid child support, and split the costs of some extracurricular activities. The new husband and wife had cohabited for four years and were married for less than two years.

[32] In *Cook*, the parties' incomes were pooled, the husband took charge of the combined monies, and the father and mother, along with the two children, went out together publicly and shared meals and activities. The mother thought that the father had a significant role in disciplining but the father said he followed the mother's direction.

[33] Campbell J. provides a very thoughtful analysis in his judgment. He expresses the general view that parental status should not be assigned automatically or from the mere willingness of the step-parent to share with the children and assist with their financial, emotional, and physical needs. In other words, as he states at paragraph 23: "there must be a relatively clear assumption of responsibility shown by or inferred from the step-parent's actions over a sufficient period of time for that relationship to constitute a commitment".

[34] In *Monkman v. Beaulieu*, 2003 MBCA 17, the parents lived together as common law spouses. The mother had a daughter from a different biological father. The child was a month old when the relationship began and three-and-a half years old when it ended. The Manitoba Court of Appeal found that the *in loco parentis* relationship had been established and could not be unilaterally terminated. The Court decided that there should be no distinction between married and unmarried relationships. The crucial element was the relationship between the child and the adult, not the relationship between the adults.

[35] In *Monkman*, the child, from the age of two called the husband "Dad, he shared all parental responsibilities, and the child had no relationship with her biological father.

[36] The Court agreed with Campbell J. in *Cook v. Cook* that being pleasant and financially generous to a child should not be used to penalize a step-parent. The Court

also referenced Bastarache J. in *Chartier* at paragraph 23 where he quoted with approval from *Laraque v. Allooloo* (1992), 44 R.F.L. (3d) 10 (N.W.T.S.C.), at para. 33:

At the risk of being repetitious, it is well settled law that it takes a properly informed and deliberate intention to assume parental obligations for support of a child, on an ongoing basis, to bring the in loco parentis status in law into being.

[37] Steel J.A. repeats at para. 69 that acts of generosity in and of themselves will not result in a legal determination that an adult has taken on the role of a parent.

[38] She concludes at para. 70:

Given the growing numbers of blended families, it is not unusual now to have multiple parenting figures in a child's life, all of whom can add to the child's best interests. The law should seek to endorse broad visions of family that encourage the continuation of nurturing and support of children within those relationships. The *Chartier* case was a positive step in this direction.

### **Analysis**

[39] Despite the difficult and volatile relationship between the Mother and the Husband, there is no doubt that the Husband supported M. financially as a member of the family and treated M. in the same way he treated H., his biological child. He presented in public as though he was M.'s Daddy and it appears that he was the only "father" figure that the child knew.

[40] On the other hand, the Husband is adamant that he did not consider himself to be standing in the place of her biological father. He did not indicate any intention to adopt M., nor did he ask that she take his last name. He stated that according to his Tanzanian culture, it was not acceptable to pretend to be a child's father unless a formal or custom

adoption took place. While I respect the Husband's cultural tradition and that it may be the Husband's subjective view of the matter, it is not the law of Canada.

[41] The law of Canada as set out in *Chartier* establishes an objective test that takes a number of factors into consideration. I will first address the express factors set out in *Chartier*.

[42] The first factor is whether M. participated in the extended family as would a biological child. I have found that M. was treated as a member of the family from the time the family was created by living together in April 2012 and following the marriage in July 2012.

[43] There is no dispute that the Husband contributed financially to support the family. There may not have been direct financial support to the child M. but it was support for the family generally.

[44] As to disciplining the child as a parent, the Mother requested the Husband not to discipline M. This factor tends to weaken the case against the Husband but it would not be the first case where one parent assumes the role of disciplinarian.

[45] As to representing that he was responsible as a parent to M., the Husband has done so explicitly to the world, the family, and the child by his actions and words used, by the child calling him "Dad" or "Daddy", and physically, as demonstrated by the photographs of the Husband with both M. and H. together. There is no evidence that the Husband expressed directly or indirectly that he did not accept M. as his child.

[46] Unlike the situation in *Cook v. Cook*, M. had no relationship with or support from her biological father. The Husband was the only "Dad" or "Daddy" that M. knew or had a relationship with.

[47] Unlike *Chartier*, the Husband did not express an interest in adopting the child nor did he acknowledge in any court documents that he stood in the place of a parent.

[48] As to duration, I infer from the evidence that the Husband treated M. as his child for the duration of the relationship from April 2012 to September 2014, i.e. 2½ years.

There is no specific number of months or years required in any case law and 2½ years is a sufficient time period to show an assumption of responsibility and commitment.

[49] The relationship of the Mother and the Husband was clearly deteriorating from the birth of H. in September 2012. However, it is not the strength or weakness or volatility of the Mother/Husband relationship that determines the role of a parent. Despite disagreements or outright hostility between the parents, the test is whether the Husband stood in the place of parent for M.

[50] Taking all the factors into consideration objectively, I conclude that the Husband stood in the place of parent of M. I order that M. is a child of the marriage under the *Divorce Act*.

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Veale J.