

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

D.H.A.

Petitioner

AND:

K.E. M.

Respondent

Debbie Hoffman

For the Petitioner

K.E.M.

On her own behalf

Kathy Kinchen

Child Advocate

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is obviously a very emotional situation for both parents and to some extent the submissions that I have heard yesterday and this morning go more directly to the issue of custody which has not been decided in this case, but will be heard on October 21, 2003.

[2] The issue before me this morning is whether or not, two children, F. aged 13

and Z. aged ten, can attend a family reunion in Shuswap British Columbia from October 9, 2003 until October 14, 2003.

[3] MS. HOFFMAN: And just to be clear, we were asking if Your Lordship makes that order, that the children actually spend overnight on the eighth with Mr. A., as well, because they are leaving the next morning.

[4] THE COURT: You are seeking that October 8th, after school.

[5] MS. HOFFMAN: That is correct.

[6] THE COURT: Yes. In any event, the two boys, obviously have suffered a great deal through the separation of their parents, and the ongoing difficulties that the parents are encountering in terms of parenting them. Despite all of this, they are very intelligent and articulate young boys, and that is very fortunate because they can express their views to the child advocate.

[7] The order that I made on June 24, 2003, gave the care and the control of the children to Ms. M. from Tuesdays at 9:00 a.m. until Saturdays at 5:30 p.m. Mr. A. would have the care and control of the children from Saturday at 5:30 p.m. until Tuesdays at 9:00 a.m.

[8] From my vantage point, that care and control arrangement has been working reasonably well although it might need some fine tuning, and I am sure that I will hear from the parents with their views about that on October 21, 2003.

[9] Nevertheless, it has brought some stability to the lives of the boys, as they grapple with this new situation. In addition, each parent had significant times of care and control from June 2003 through to September 2003. There was one example, I think, where the parents truly looked out for the best interests of the children when Ms. M. was sick and she asked Mr. A. to look after the children and he was able to do so. That is the kind of cooperation that I look on as being important.

[10] There is no doubt that there are a significant number of events that have occurred in the past that have been extremely upsetting and I think very upsetting to Ms. M. The assaultive behaviour which occurred in 2002 has been very upsetting and it will no doubt take a long time for Ms. M. to overcome.

[11] However, when I look at the situation I am presented with, the children, according to my order of June 24, 2003, would be spending from Saturday until Tuesday with Mr. A. So in effect the application that he is making is to add two additional days, which are school days, and that is a matter of concern.

[12] However, the child advocate in talking with the boys, prior to the application yesterday, did not specifically address the access issue and neither did the boys at that time. When I specifically directed, the child advocate to speak to the boys yesterday, they did not express any particular concern about the access itself. Their concern was more related to the issue of missing school and preparing whatever projects they are working on. That is an important matter.

[13] However, I have to weigh that with something that this court considers very important and that is children attending significant family events, particularly during times of high conflict between the parents. In my view, at the end of the day, it is in

the best interests of the boys to go to the family reunion at Shuswap and I am going to make that order that Mr. A. have care and control of the children from after school on October 8, 2003. What time can you return them?

[14] THE PETITIONER: On Tuesday, early evening.

[15] THE COURT: Okay. To be returned on October 14, 2003 at 5:00 p.m. to Ms. M. I also include in that order that Mr. A. has to contact both teachers to determine what, if any, opportunities the children will miss by missing school on the Thursday October 9, 2003 and the Tuesday October 14, 2003, to do what he can to overcome those concerns.

[16] I would say to both parents, this decision today was not a decision about custody and has no implications for the custody submissions that will be made on October 21, 2003. I am simply making a decision, which in my view, is in the best interests of the children looking to the future and not dwelling on the past difficulties, but it has no implications at all for the custody applications, and the submissions and the decision that will be made on October 21, 2003 or thereafter.

VEALE J.