IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *D.B.J.* v. *L.A.J.,* 2005 YKSC 65

Date: 20051205
Docket No.: S.C. No. 05–D3799
Registry: Whitehorse

Between:

D.B.J.

Petitioner

And

L.A.J.

Respondent

Before: Mr. Justice L.F. Gower

Appearances:

Shayne Fairman — Counsel for the Petitioner
David J. Christie — Counsel for the Respondent

REASONS FOR JUDGMENT

INTRODUCTION

[1] Gower J. (Oral): The Petitioner father has applied for interim joint custody of his 21 month old daughter, D. He is content that D's primary residence remain with the Respondent mother, but seeks directions with respect to his access. The mother opposes joint custody and has cross-applied for interim custody. She wants to move to Vancouver with D. in order to accept a relatively lucrative job offer in her field. She is prepared to allow the father reasonable and generous access in both Vancouver and Whitehorse, at his expense. Anticipating that those expenses will be significant, the mother is prepared to forgo any claim for child support.

[2] This was a short term marriage, which was rife with conflict. Since the parties separated, there have been periods of time when the father has not exercised access. He says this is because the mother has thwarted his efforts to obtain access, to the point where he has effectively been denied access from time to time. The mother says that the father has failed to respond affirmatively to her continual requests for him to exercise access and to maintain a relationship with D. The conflict between the parties during the marriage continued after the separation.

[3] That conflict led to the filing of voluminous affidavit material on this interim application, where the mother and father exchange allegations of emotional and physical abuse against each other, but not with respect to the child. The parties agreed to mutual cross-examinations on their respective affidavits. This was done at the hearing on Friday, December 2, 2005.

[4] The mother is pressing this Court for a decision on the cross-applications as soon as possible, as she says that her prospective employer in Vancouver is not prepared to wait any longer for her to accept the offer. I am therefore delivering this oral judgment on Monday, December 5, 2005, to meet the perceived need that time is of the essence. Unfortunately, as a result, these reasons are not as detailed or comprehensive as they otherwise might have been.

ISSUE

[5] This is a “mobility” case, as the expression goes in the case law, and the global issue is whether it would be in the child’s best interests to allow the mother to move to Vancouver, recognizing that such a move will necessarily limit the amount of access available to the father, whether or not he has joint custody.

FACTS

[6] The background circumstances are as follows. The father is currently 47 years old and the mother is 41. The couple were married near Vancouver, British Columbia, on January 11, 2003. They moved to the Yukon on January 8, 2004, and the child D. was born on March 5, 2004. They lived in a rented home in the Cowley Lake subdivision outside of Whitehorse, which is approximately a 45 minute drive from the city centre. For the first three months or so after the child was born, the couple got along relatively well. The father says they were both at home taking care of D. and spending time together. However, the mother says that throughout this time the father left the home on a regular basis for work related reasons.

[7] Conflict between the parties began to increase and there were periodic arguments which escalated into physical confrontations. They each called the police a number of times to intervene. The mother left the Yukon for Vancouver and stayed there for the months of July and August 2004. The parties were also going through some significant financial difficulties at that time. The conflict continued after the mother returned to the Yukon. The couple travelled to the province of Quebec to visit the mother's family for Christmas 2004. En route, they spent a few days in Vancouver where there were further difficulties and another incident of police intervention. They returned to Whitehorse shortly after Christmas. Each had agreed with the other to consult with a psychiatrist or psychologist. On or about January 2, 2005, they had another confrontation which ended with the father leaving the Cowley Lake home and taking up residence at his cabin on the Haines Road.

[8] Both the mother and father are practicing Baptists and had a strong belief in doing everything possible to try to save the marriage. However, after the father left the family home on January 2nd, he felt the marriage was over. The mother continued to hope that a

reconciliation was possible through the spring and summer of 2005. She now accepts that it is not.

[9] After the separation, there was no contact between the parties for over 4 weeks. The father suggested that he was waiting to hear from the mother. The mother suggested that she had expected the father would stay in contact for the purpose of exercising access to D. She seemed surprised and disappointed that he did not. She also said that she had no idea where the father was living and did not have a phone number to contact him.

[10] This initial impasse was broken when the mother sent the father an email on February 5, 2005. She expressed her need for help, her desire to begin the reconciliation process and also for the father to be present for D. The father contacted the Pastor of their church who asked him to visit the mother at the Cowley Lake home and to help her out with chopping some wood and clearing some snow. The father returned to the home on February 6th, using the opportunity to gather and remove some of his belongings. However, an argument ensued and he did not exercise access to D. About a week later, the mother agreed to drive to Haines Junction in order for D. to have access to the father. D. spent two days with her father on that occasion. On March 18th, the father came to Whitehorse and had overnight access to D., but because he did not have a residence in Whitehorse, they spent the night at a hotel. He also had access on Good Friday, March 25th, when he came to the family home for a visit and ended up staying the night.

[11] The parties exchanged email correspondence in February and March. In this correspondence, the mother repeatedly expressed her desire for the father to exercise access to D. and the father replied with an expression of interest in doing so. Strangely, neither seemed prepared to offer any concrete proposal for access. Further, the father was

still without a fixed address, a home telephone or cell phone. He was phoning the mother periodically with a satellite phone, however this phone could not receive incoming calls. In addition, he would use pay phones or would leave phone numbers where he could be contacted at the homes of various friends. Needless to say, this was a far less than satisfactory state of affairs for access to be regular and predictable.

[12] When the parties reconciled briefly on March 25th, the father announced his intention to take a job in Mexico for about 4 weeks, leaving in early April. Unfortunately, the good will between the parties was short lived and conflicts over the marriage and access flared up again and the email exchange resumed.

[13] The mother had given her notice to vacate the Cowley Lake home by the end of March 2005. However, she says that she asked for some additional time from the landlords, whom she says were friends of the father, due to the fact that she was going to be in Vancouver for a few days with D., visiting a friend. She apparently accepted an offer from her friend to fly her and D. to Vancouver, where she stayed for 9 days. The father says he left for the Mexico job on April 5th. Just before leaving, and while en route through Vancouver, he made a number of email requests for access to D. However, the mother says that she was not reading any of the father's emails for the first two weeks in April, based upon the advice of a counsellor, as she was finding them too upsetting.

[14] The father testified in cross-examination that he went to Mexico because he was not allowed to see his daughter. However, I find that he made that statement in anger over a question from the mother's counsel and that he had previously arranged to go in any event of the access problem. He continued to email the mother about D. while in Mexico, and

receiving no response, he decided to stay an additional 4 weeks. Thus, the father did not exercise any access to D. in April or May.

[15] In early May, the mother began to email the father suggesting that any access should be facilitated by a neutral third party. The father returned to the Yukon on June 5, 2005. The email exchange continued. The mother arranged for a couple of access visits at the Rotary Park in Whitehorse on July 10th and 12th. The mother remained present for these visits, as she felt D. would need to get re-acquainted with the father after his intervening absence. Further visits occurred on July 25th and August 6th. The conflict laden email correspondence continued through June, July and August. The father indicated that he had consulted with a lawyer and the notion of legal assistance to sort out the access problem began to be discussed.

[16] It is important to remember that throughout this period, the father still had no fixed home address, no home telephone and no cell phone. He would email the mother asking for access visits when he was in Whitehorse on other business, but more often than not, the mother could not get these messages in time or was not present when the father telephoned her apartment. At one point, the mother actually changed the voice mail message on her home telephone to specifically advise the father of when he could contact her to arrange access. All this resulted in a significant amount of frustration on both sides.

[17] Unbeknownst to the mother, the father obtained a golden eagle chick in early July, which he planned to raise and use in a tourist attraction business, having a significant amount of experience in raising and training various raptors. At that time, he was living in a wall tent outside of Whitehorse and he also had a pet dog.

[18] The mother retained counsel and prepared a proposal for a schedule of access visits. She had planned to discuss this with the father during a proposed visitation on August 12, 2005. However, for some reason or other that visit did not occur and the proposed schedule was never presented to the father. The missed visit also led to an argument between the parties over the phone.

[19] The father recommenced communication by email on September 2, 2005, once again offering to pursue the access issue legally. The mother's response included the words "pursue legally". The father understood this to mean that she was not going to provide him with access until he obtained some type of court order. The mother's explanation was that she expected the father to come back with a letter from his lawyer proposing a schedule and conditions of access.

[20] An email was sent from the father's counsel to the mother's counsel proposing access in late October. However, at the time this was received, the mother's lawyer was out of town and she felt rushed by the proposal. She responded through a counsellor that she was not agreeing to the specific access being requested, but that she was open to access in the future. The father's response was to commence his Petition for divorce on November 3, 2005. The mother filed her Answer and Counter-Petition on November 14th.

[21] The parties more recently negotiated a recommencement of access through their lawyers. The first of these visits was on November 12th. There were further visits on November 13, 19, 20, 22, 24, 25, 27, 29 and 30, 2005. The father attended and completed a parenting workshop on November 16, entitled "For the Sake of the Children".

[22] The parties also met with their respective lawyers for about 3 hours on November 29th to discuss their problems and to arrange further visitation.

[23] The father exercised further access on Thursday, December 1st at the mother's apartment. On that date, after D. was put to bed, I understand the parties continued to have a civil conversation in the mother's apartment about access.

LAW

[24] The leading case on mobility is *Gordon* v. *Goertz*, [1996] 2 S.C.R. 27, which set out the following principles:

1. The only issue is what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the respective ability of the parents to satisfy them.

2. The rights and interests of the parents, except as they impact the best interests of the child, are irrelevant.

3. There is no legal presumption in favour of the custodial parent, although that parent's views are entitled to great respect.

4. Each case turns on its own unique circumstances.

5. The Court should consider, among other things:

    a. the existing custody arrangement and the relationship between the child and the custodial parent;

    b. the existing access arrangement and the relationship between the child and the access parent;

    c. the desirability of maximizing contact between the child and both parents;

d. the views of the child, if applicable;

e. the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;

f. the disruption to the child if there is a change in custody; and

g. the disruption to the child if there is a move away from the child's family, schools and community.

ANALYSIS

Custody and Access

The Mother's View and Her Reason for Moving

[25] I regret to say that the mother's argument in favour of the move sounded more like it focused on her interests and her right to re-locate for the purposes of pursuing employment in her field than it did about the best interests of the child. Admittedly, the mother stands to benefit significantly from her prospective employment, where she expects to earn an annual income of about $65,000. That is contrasted with her current situation where she has no income and is on social assistance. On the other hand, the mother has made virtually no effort to find work in the Yukon.

[26] The mother has significant job skills, training and experience. She is fluently bi-lingual. She has a background in business administration and financial planning. She has previous experience in the insurance industry, selling policies to brokers. She has also worked with the Bank of Montreal as a french liaison officer. She has been self-employed as a sales and marketing consultant and a french translator. In fact, she was approached to apply for a french translation government job in the Yukon earlier in 2005 and came second in the competition. She is obviously intelligent and articulate and seems eminently employable.

[27] Further, D. is now at an age where the mother feels more comfortable leaving her at a daycare from time to time. Indeed, she is obviously prepared to do so in connection with her prospective employment in Vancouver, which is expected to be full-time, 5 days a week. Thus, I am unable to accept the mother's argument that the only way for her to get out of her current financial difficulties is to move. She is more than capable of finding employment in the Yukon.

[28] In *K.K.Q.* v. *F.W.R.,* 2003 B.C.S.C. 1682, Halfyard J. said at para. 178:

> "… a parent's decision to relocate, even if made in good faith (as is the case here) must either conform to the child's best interests, or be disregarded. …"

[29] I am only to take into account the custodial parent's reasons for moving in the "exceptional case" where it is relevant to that parent's ability to meet the needs of the child. While the mother's prospective employment is relevant to her ability to meet the needs of the child, she does not present an exceptional or compelling case. While she may prefer to work in her field of corporate sales, her job skills, training and experience should be transferable to other related employment.

[30] The mother also argued that there would be a better support network for both her and the child in the Vancouver area. She noted that the child would have the opportunity for regular access with the paternal grandparents, her cousins, aunts and uncles and close friends of the mother's. While that is an important factor, it does not justify the move at this interim stage when pitted against the desirability of maximum contact between the child and both her parents, which I will come to shortly. Further, the mother does have significant supports here. She acknowledged in her testimony that she makes use of counselling services through the Victims Services Branch of the Yukon Department of Justice, through the Pastor of her church, and through a Christian counsellor. She is also active within her

church, which has a congregation of approximately 100 members. She is involved with the nursery and the worship team and participates in the women's bible study group once a week. One of the members of that group of 7 – 10 women she described as a friend. She is further involved in the french cultural association in Whitehorse and attends children's and social functions there. She also appears to have a good relationship with her landlord, since that person took the trouble to swear an affidavit in support of her application.

Maximum Contact with Both Parents

[31] I must also balance the prospective move against the principle of maximum contact between the child and both parents. Clearly, the move would result in less contact between the child and her father. While that is not always a paramount consideration, it is an extremely important one and is codified in s. 16(10) of the *Divorce Act*.

[32] The mother's answer to the issue of maximum contact is to suggest that the father can also move to the Vancouver area, as he has no particular ties to the Yukon. However, it must be remembered that this is an interim application. Consequently, it would be unrealistic to expect the father to make such a drastic change on an interim basis. Rather, that possibility is one which should best await the outcome of the trial.

[33] The young age of the child, 21 months, means that her views are not a factor. However, her age is important in the context of her relationship with her father and her need for bonding. While no expert evidence was tendered at this interim hearing, I note the following passage from a case filed by the father's counsel, *B.A.O.* v. *R.G.*, 2003 SKQB 112, a decision of McIntyre J. of the Saskatchewan Court of Queen's Bench. At paragraph 25 the Court referred to the article "Using Child Development Research to Make Appropriate Custody and Access Decisions For Young Children", authored by Joan B. Kelly and Michael E. Lamb, in the *Family and Conciliation Court's Review*, Vol. 38, No. 3, July 2000,

297–311. In *B.A.O.*, the expert author of the parenting assessment report referred to that article and testified about the stages of attachment involving infants and young children. He said that infants begin forming attachments to their caregivers at six or seven months, continuing through to 24 months and that if a child is removed from a parent with whom he or she is attached, there are negative implications. At para. 27, the Court went on to quote from the article:

> " … The goal of any access schedule should be to avoid long separations from both parents to minimize separation anxiety and to have sufficiently frequent and broad contact with each parent to keep the infant secure, trusting, and comfortable in each relationship."

I accept this as simply underscoring the rationale for the maximum contact principle.

[34] The case of *Scott* v. *Scott* (1993), 49 R.F.L. (3rd) 405, was quoted in *Peters* v. *Peters,* 2005 NSSC 97, at para. 17, filed by the father. *Scott* held that a court should exercise caution before rupturing a child's relationship with one parent, by substantially reducing access pending the final determination of the question of permanent custody.

The Father's Relationship with D.

[35] I find that the father's relationship with the child appears to be good and one worth fostering. As for the history of the access by the father to the child, that has clearly been problematic in the past. I agree with the mother's assessment that the father has a strong personality. I found the father's tone in his testimony at the hearing to be infused with anger and frustration towards the mother. Following the separation, there also appears to have been times when the father acted as if he was retaliating against the mother by cutting himself off from both her and his daughter. For example, he admitted that when he initially met Pastor Daniel Peters after the separation, on or about January 5, 2005, he recalled saying "I've been thrown out, [the mother] is on her own, I'm on the Haines Road". He

acknowledged on cross-examination that he did not ask the Pastor to contact members of the congregation to check in and give support to the mother, contrary to what he said in his first affidavit. In fact, there was a period of several weeks following the separation where the father had no contact at all with either the mother or his daughter. The father said in cross-examination that he was waiting for the mother to "respond" to him. However, she had no way of doing so, since she did not know where the father was living and had no means of contacting him.

[36] It appears that contact was only resumed after the mother sent the father an email on February 5, 2005. Following that, there were occasions of access by the father with D., however, those were sporadic and few in number.

[37] The father then left to go to work in Mexico for what was originally expected to be a 4 week contract. Once down there, the father became further frustrated with the lack of response by the mother to his email requests for information about D., and decided to extend his contract for an additional 4 weeks. Whatever the reason, that put the father out of contact with D. for a further period of 2 months.

[38] Once the father returned to the Yukon, there was again sporadic and irregular access with D. Each party seems to blame the other for not coming forward with a specific proposal for scheduled access over that period. Indeed, the communication between the parties about the issue of access was strained and somewhat dysfunctional. From the father's perspective, the mother was continually imploring him to exercise access, but when he chose to do so, she would put up road blocks. From the mother's prospective, she had no way of contacting the father and was frustrated by the fact that he wanted to fit in access visits during his

sporadic trips to Whitehorse on other business. All this was further complicated by the fact that the father had no home telephone or even a cell phone where he could be contacted.

[39] The problems with access from June through August 2005 were exacerbated by the fact that the child developed an asthmatic condition and could not tolerate being in the presence of pets or wood smoke. At that time, the father had both a dog and a pet eagle and was residing in a wall tent heated by a wood stove. He also had no car seat with which to transport the child. The mother raised these and other concerns with the father almost as conditions precedent to allowing continuing access. While the father did eventually deal with each of these concerns in turn, some were not dealt until very recently. For example, a car seat suitable to the child's height and weight was not properly installed in the father's truck until one week ago. The father also testified at the hearing that he obtained a cell phone about three or four weeks ago, but for some unexplained reason, he did not give the mother his phone number until just recently.

[40] These problems culminated in a misunderstanding between the parties about an access visit proposed for August 12th. When that did not occur, the father again seemed to retreat from both the mother and his daughter in a retaliatory fashion. As I noted earlier, his explanation is that he thought the mother was denying him access until he obtained a court order. In any event, the father had no further access with D. until November 12th.

[41] If that was the end of the story, then I would be inclined to conclude that the father's failure to access D. over these periods had more to do with his anger towards the mother than with her interference with access. It is trite to say that access is the right of the child and not that of the access parent. Historically then, I would have expected the father to have made more reasonable efforts to stay in contact with D., regardless of his conflict with the

mother. For example, had the father obtained a cell phone immediately after the separation, and provided the mother with the number, I suspect that much of the difficulty over access could have been avoided.

[42] However, since November 12th, the father has accepted virtually every offer of access made by the mother – some 11 visits in total. He has addressed the various safety concerns expressed by the mother. He has agreed to accompanied access and is now being allowed unaccompanied and unsupervised access. The mother seems ready to allow overnight access in the very near future. He has a furnished home in Carcross, which is about a 50 minute drive from Whitehorse. He no longer has any pets and the home seems clean and appropriate for a young child. As I mentioned, he has completed the "For the Sake of the Children" parenting workshop as of November 16th.

[43] Therefore, in the last two to three weeks, the father has been demonstrating the kind of consistent, regular and stable interest in his daughter which the mother has always desired. The mother repeatedly emphasized that it is important for D. to have a relationship with her father and she has remained in the Yukon to date for that very reason. However, somewhat strangely, just at the point when the father seems to be forming a consistent and stable relationship with D., the mother wishes to move. When challenged about that, the mother's response is that she has no faith that the father will *continue* to exercise stable and consistent access in the future. Rather, she fears that he is only doing this now to make himself look good for the purposes of this litigation. Once the pressure of the court proceedings is over, she expects that the father will revert to his old behaviour of withdrawing totally from both she and D. In my view, this is speculation on the mother's part. While there may be some history to support that speculation, it is nevertheless an insufficient reason to

justify the mother's move to Vancouver in all of the circumstances. If the mother is correct about this concern, then presumably this will become obvious by the time of the trial.

The Mother's Relationship with D.

[44] There is a significant amount of affidavit evidence that the mother has a good, caring and nurturing relationship with her daughter. I refer here to the affidavits of Darielle Talarico, Pastor Daniel Peters, Lisa McCormack, Claire Drolet and Suzanne O'Flynn. There is also a letter of support from Marlene Walde, the Women's Program Counsellor with Victim Services. In addition, I have had the benefit of observing the mother testify at this interim hearing and I was impressed with her poised, intelligent and thoughtful demeanour.

Disruption to D. if a Change in the Existing Custody Arrangement

[45] I agree with the mother's counsel that this is not an appropriate case for joint custody on an interim basis, because it would likely lead to increased conflict between the parties. As was recognized in *B.A.O.,* cited above, at para. 42, joint custody means that the parents will share decision-making authority for major decisions with respect to the child's education, health care, religion and general welfare. At para. 44, the Court recognized that courts are reluctant to make a joint custody order where there is ongoing and substantial conflict between the parents. While the mere opposition by one party to joint custody is not in itself grounds to reject the option, I find that the history of conflict and acrimony between the parties in this case is reason enough to do so.

[46] I have not lost sight of the fact that the recent cooperation between the parties on the issue of access may well indicate a turn of events which could increase the likelihood of a successful joint custody arrangement. However, I am not yet satisfied that there is enough water under that bridge at this stage.

Conduct of the Parties

[47] While there has been a history of conflict in the marriage, both before and after the separation, I am instructed by s.16(9) of the *Divorce Act* not to take the past conduct of the parties into consideration, unless that conduct is relevant to their respective abilities to act as a parent to the child. The allegations of each of the parties have come perilously close to suggesting that the personality of the other may affect their ability to be a good parent to D. However, when pressed on the point, each seems to concede that the other party is capable of being a good parent and looking out for D.'s best interests. Accordingly, I give the mutual allegations of misconduct and abuse little or no weight at this interim stage.

The Case Law Relied Upon by the Mother

[48] The mother's counsel pointed to a number of cases where the "custodial" parent has been allowed to move with the child or children, often on an interim application:

> *Armitage* v. *McCann,* 2004 Y.K.S.C. 58
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> *Baxter* v. *Benoit*, 2004, Y.K.S.C. 56
>
> *Greenfield* v. *Garside*, [2003] O.J. No. 1344 (Ont. Sup. Ct.)
>
> *Murphy* v. *Murphy,* 2002 Y.K.S.C. 6
>
> *S.G.* v. *R.M.T.*, 2004, Y.K.S.C. 44

However, *Gordon* v. *Goertz* directs that each case should be decided on its own unique circumstances and, in any event, the cases cited by the mother are all distinguishable for various reasons.

[49] In *Armitage*, both parents were moving from the Yukon to different provinces. Therefore, some disruption to the children would have occurred either way.

[50] In *Baxter,* one of the reasons for the father's move from the Yukon to Nova Scotia was admittedly the prospect of regular employment. However, the father also owned land and a

house there free and clear, which was suitable for habitation with his children. Further, while the mother opposed the move, she testified that she was seeking full time employment in the community of Mayo, some 4 or 5 hours drive from Whitehorse and had also submitted applications for similar jobs in other communities such as Old Crow, Carcross and Watson Lake. Thus, even if the father had stayed in Whitehorse, the mother's new employment would inevitably have resulted in decreased time with her children in any event.

[51] In *Greenfield*, the Court found that prohibiting the mother from moving with the child would likely cast the mother "upon the welfare roles", as the father was in no position to provide her with substantial child support. The Court concluded that the potential negative effects on the child from not moving substantially exceeded the potential positive effects from permitting the move. In the case at bar, I have found that the mother is likely very employable in the Yukon and therefore she need not necessarily stay on social assistance. Thus, the potential negative effects of the mother staying in Whitehorse can be minimized by the mother obtaining employment here.

[52] In *Murphy*, the mother's common law husband completed his journeyman's certification as an instrumentation technician. He had sent out various applications and résumés in Whitehorse without success. He even attempted to find work in an alternate field, but to no avail. Further, the common law husband had been offered an employment opportunity outside the Yukon which was described by the trial judge as "outstanding". It included extended benefits, a relocation allowance and a post-secondary education allowance for the children. It was also accompanied by a large signing bonus, which facilitated the purchase of a new home for the family.

[53] Similarly, in *S.G.,* the mother's new husband was qualified as a journeyman utility arborist and a fishing boat engineer and skipper. He had come to the Yukon to work for a company which promised him two years of employment, but was laid off unexpectantly and prematurely. He had since sought other employment, but had been forced to accept jobs outside of the Yukon resulting in him being away for months at a time. Therefore, his efforts to find employment in the Yukon over the previous two years had been unsuccessful. He expected that the move to Vancouver Island would result in regular employment for him either on the fishing boats or as an arborist. Also, the child had a hearing impairment and a learning disability and there was an alternative school near the community where the mother intended to move which could accommodate both of those problems. Finally, the mother had committed to moving with her new husband in any event. Thus, the child would have suffered the disruption of the separation from her mother, her new baby brother and her step-father, even if she stayed in Whitehorse with her father.

[54] Accordingly, I award interim custody to the mother, but dismiss her application for permission to move to Vancouver with the child.

Child Support

[55] The mother has included a claim for child support in her notice of motion. The father has not yet filed a financial statement, but has deposed in an affidavit and in his testimony at the hearing that he expects to earn approximately $28,000 in 2005. Since the separation he has provided the mother with a total of $2,900 in child support to date. That is the equivalent of approximately $264 per month, which roughly corresponds with his projected income. Under the *Federal Child Support Guidelines*, a gross income of $28,000 would result in a child support payment of $250 per month. I am prepared to impute income to the father in that amount on an interim basis. I further direct that the father deliver to the mother the

applicable financial information referred to in s.21(1) of the *Guidelines,* together with a sworn financial statement.

Directions on Access

[56] The father seeks directions with respect to ongoing access, but put forward no specific proposal. The mother proposed specific terms of access but that was premised on her residing with the child in Vancouver. It seems to me that rather than imposing a strict schedule of access upon the parties, it would be more helpful to impose some structure and a list of related conditions, with a view to minimizing conflict between the parties, while still allowing for flexibility. For example, the child generally naps in the afternoon between 1:00 and 3:00 p.m. Therefore, access should occur either before or after those times. Further, the child usually eats supper at about 5:30 p.m. and begins the bath and bedtime ritual at about 7:00 p.m. I will address the specific terms and conditions in the order at the end of these reasons.

Custody and Access Report

[57] The father has asked for a recommendation that a custody and access report be prepared for the trial, pursuant to s.43 of the *Children's Act*, R.S.Y. 2002, c.31. If this recommendation is accepted by the Director of Family and Children's Services, pursuant to the section, I expect a chartered psychologist will come to the Yukon in early 2006 to interview the parties and to prepare what is essentially a parenting assessment report. These reports are commonly quite detailed. They include extensive interviews of each party on the history of the marriage and their parenting arrangements, as well as psychological testing. They are generally objective and helpful to the Court, particularly in high conflict cases. Further, I understand the Yukon is unique in Canada in that these reports, if approved by the Director, are done without any cost to the parties. I am prepared to make such a recommendation.

Removal From Yukon

[58] In his notice of motion, the father also seeks an order preventing the mother from removing the child from the Yukon Territory without the father's written consent or an order of this Court. However, the father did not argue for that relief at the hearing. The mother testified that even if she is unable to move to Vancouver with the child, she still intends to travel with the child to the province of Quebec to spend Christmas there with her family. She also intends to stop in Vancouver en route to visit with the paternal grandparents. I have no difficulty concluding that such a trip would be in the child's best interests and in order to avoid any confusion on the point, I will allow the mother permission to take this trip with the child.

CONCLUSION

[59] In conclusion, I order the following:

1. The mother shall have interim custody of the child D.J.J., born March 5, 2004.
2. The mother shall not remove the child from the Yukon Territory without the written consent of the father or a further order of this Court.
3. The father is granted interim reasonable unsupervised access to D. as follows:
    a. On Tuesday, Wednesday, Thursday, between 9:00 a.m. and 1:00 p.m.
    b. Overnight at his residence in Carcross from 4:00 p.m. Friday to 1:00 p.m. Saturday.
    c. During his access to the child, the father:
        1. will follow proper hygienic practices;

2. will ensure that the child is transported in a properly installed child care safety seat;

3. will ensure the child is not exposed to wood smoke, cigarette smoke or other smoke;

4. will ensure that the child is not exposed to live animals;

5. if transporting dead animals in his vehicle, will ensure that the animals are out of the child's sight;

6. will allow the mother to inspect any place the father proposes for overnight access;

7. will allow the mother to contact the child by telephone during overnight access.

d. The parties will exchange a notebook in which they will record information about the child for the benefit of the other parent, including information about the child's health, moods, needs and anything else deemed significant. The notebook will be given to the father during his access visits and returned to the mother with the child.

e. The parents shall provide each other with current contact information, including telephone and cellular phone numbers, addresses and emergency contact information.

f. The father shall have telephone access to the child on any day he does not exercise his scheduled access.

g. The father is granted such further or other reasonable access, as the parties may agree upon in writing.

h. The parties shall make their bests efforts to provide each other with reasonable notice if an access visit has to be cancelled or missed.

i. The parties shall communicate with each other about the issue of access and the child's needs in a respectful and polite manner and neither shall make negative remarks about the other to the child.

4. The father shall pay child support to the mother in the amount of $250 per month, based upon an imputed gross annual income of $28,000, commencing December 1, 2005.

5. Either party may register this order with the Maintenance Enforcement Program and, once registered, all maintenance payments owing under this order are to be paid to, and enforced by, the Maintenance Enforcement Program.

6. The father shall provide the mother with the applicable financial information referred to in s. 21(1) of the *Guidelines,* together with a sworn financial statement.

7. The mother is permitted to travel with the child outside the Yukon to the province of Quebec, from December 11, 2005 to January 26, 2006, for the purpose of visiting family and celebrating the 2005 Christmas holiday. The father shall have reasonable and generous telephone access to the child over this period.

[60] I further recommend that a custody and access report be prepared for the purposes of trial, pursuant to s. 43 of the *Children's Act*.

[61] Consistent with the practice of this Court, I am prepared to remain seized of this matter for trial, if both parties agree.

[62] Costs may be spoken to later.

GOWER J.

Note: The terms of the above order were spoken to by counsel and the order reflects the outcome of those discussions.