

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *D.F. v. P.H.*, 2006 YKSC 61

Date: 20061114
Docket: S.C. No. 06-B0003
Registry: Whitehorse

BETWEEN:

D.F.

Plaintiff

AND:

P.H.

Defendant

Publication of the name of a child, the child's parent or identifying information about the child is prohibited by section 173(2) of the *Children's Act*.

Before: Mr. Justice R.S. Veale

Appearances:
Debbie Hoffman
Malcolm Campbell

For the Plaintiff
For the Defendant

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is an application by D.F., the mother of the deceased, D.R.F., who died on April 20, 2005, in Whitehorse, to be administrator of his estate. To some extent, it is a very straightforward application, but it is complicated by the fact that D.R.F. had two children, S. and C., with different mothers. Unfortunately, the respective mothers of those children do not communicate well. That in itself makes it appropriate for a third party who is related to the deceased to administer the estate.

[2] Therefore, I am going to make an order that D.F. shall be the administrator of the estate of D.R.F., on the condition that the statement of assets and liabilities is amended to include a value for the computer, and amended to include the debt or the claim to P.H. for child support - I was just going to update that number - in the amount of \$11,612.45, and on the condition that the error with respect to the Canada Student Loan be corrected to indicate that that is no longer a debt, as it has been forgiven. I say that it can simply be removed from the statement of assets and liabilities.

[3] MS. HOFFMAN: Very well, My Lord.

[4] THE COURT: Now, there is an issue with respect to a coin collection and some jewellery. I think the only appropriate way to deal with that would be if T.M. - I am open to suggestions on this - if T.M., in the presence of P.H. and Ms. S., went to the place where the personal effects are stored and just determine whether or not assets exist. I do not know any other way of really dealing with it. I also make the order conditional upon the two children of D.R.F. being treated on a similar basis with respect to distribution of the personal assets of the estate. Do you hear that, P.H.?

[5] MS. H.: I am trying to hear and --

[6] THE COURT: And this is a difficult thing to do. What I said was that the children should be treated in a similar way with respect to the personal effects of D.R.F., whether it be a computer or jewellery or coin collections or whatever, just so that they are treated on an equal basis. That is a power that the administrator has, to make that division. So I am not going to interfere except to say that it should be done on an equal basis, which I would believe would be the law in any event.

(Submissions by counsel)

[7] THE COURT: This is an application by D.F., the grandmother of S., for access to S. who is now 11 years old. There appears to be a history of some difficulties between S.'s mother, P.H., and D.F., which I am not going to go into in great detail but simply to indicate there is some bad feeling, which remains today, relating to the deceased, D.R.F., the father of S., who died on April 20, 2005.

[8] I should say that to some extent it may relate to the fact that the only major asset of the estate of D.R.F. was a life insurance policy from his employer. The beneficiary of that life insurance policy is D.F., which I understand, D.R.F. deliberately made so that his two children, S. and C. would be treated equally.

[9] P.H. has indicated that she is not opposed to the access of D.F., and that is a positive development. The concern today is the extent to which the telephone conversations of the grandmother, D.F., and S. are monitored, and whether or not an order should be made today with respect to physical access by D.F. to be exercised in Ontario, on the basis that D.F. pays the costs of that access.

[10] The last time that D.F. was granted access to S. was in November 2005, when P.H. and her mother and S. went to Ontario. During that time, S. stayed with her grandmother while P.H. and her mother attended their affairs in Toronto, I believe. I have no concerns about the access of D.F. to S. , but I am prepared to acknowledge that there has been an interruption of this, which is no fault of D.F.'s, and to that extent, monitoring of initial phone calls may be appropriate, not for the purpose of controlling

the access, but simply to give S. the confidence that P.H. is fully supportive of the access that I am going to order.

[11] I am going to order telephone access for D.F. to S. every Monday evening between 6:00 and 7:00 p.m. Yukon time. That access should involve P.H. as well as S. on the first three Mondays that it takes place, but thereafter, it should be access directly between D.F. and S.

[12] The telephone access should also be at the same time and on special days such as Christmas and birthdays, and any other special occasions that I am not aware of. Whenever P.H. and S. are in Ontario, or D.F. is in the Yukon, D.F. should have reasonable access to S. With respect to the access of one week in Ontario, at the expense of D.F., I am going to order that that take place during summer holidays, so it is not to interfere with S.'s schooling, commencing the summer of 2007.

[13] I trust that the parties will be able to make those arrangements without rancour and dispute. It is very important that - and I should say, just for the record, that that be on an annual basis - it is very important that D.F. and P.H. make the greatest effort possible that any remaining disputes that they have, or disagreement that they have, or misunderstandings that they have had in the past, not to interrupt the right of S. as a child to have full and regular access to her grandmother. It is a right of the child that this Court holds very highly and should not be interrupted without very, very valid cause.

[14] I am also including access by email and mail as well.

[15] Anything further?

[16] MS. HOFFMAN: My Lord, if we could be provided with P.H.'s new address. D.F. had pointed out in the affidavit that she does not know where S. and P.H. are living. So a new mailing address, if there is one, as well as the current telephone number so that mail and telephone contact can be facilitated.

[17] THE COURT: The order includes that P.H. provide D.F. with the address and phone number promptly, and any changes to the address or phone number.

[18] MS. HOFFMAN: On moment, My Lord. The only other matter, My Lord, with respect to costs of the application, as well as if we could put in the order that it is to commence this Monday, the telephone access, and actually put the date.

[19] THE COURT: It commences this Monday.

[20] MS. HOFFMAN: And I will put the date into the order, then?

[21] THE COURT: Yes. You are seeking costs?

[22] MS. HOFFMAN: Yes.

[23] MR. CAMPBELL: I am prepared to hear my friend's arguments on costs, because we are opposed.

[24] THE COURT: Yes. Look, I do not want to hear the argument on costs unless counsel insist on making their arguments. I do not think it is appropriate on this occasion. Mistakes have been made, but I do not think it is appropriate on this

occasion to visit costs on P.H. I should indicate, if we come back again, the Court will have to consider whether costs are appropriate.

[25] MR. CAMPBELL: Costs are adjourned *sine die*?

[26] THE COURT: No, there are no costs.

[27] MR. CAMPBELL: No costs.

[28] MS. HOFFMAN: I will make that a provision in the order then, My Lord.

[29] THE COURT: That is appropriate.

[30] MS. HOFFMAN: If I could just have one moment to make sure there is not anything that I missed.

[31] THE COURT: Yes, please do.

[32] MS. HOFFMAN: My Lord, I think that covers everything.

[33] THE COURT: Thank you.

[34] MS. HOFFMAN: Thank you.

VEALE J.