

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

SARAH LYNN HUTCHISON

PLAINTIFF

AND:

CURTIS GARRETT WOODS

DEFENDANT

**REASONS FOR JUDGMENT OF
MR. JUSTICE VEALE**

INTRODUCTION

[1] This is an application by Ms. Hutchison to vary the order of Madam Justice Kenny granting Mr. Woods supervised access with Tyler, born February 18, 1999. Ms. Hutchison applies for an order of no access for Mr. Woods to Tyler.

ISSUE

[2] At issue is the question of whether the order of Madam Justice Kenny can be changed.

FACTS

[3] Mr. Woods and Ms. Hutchison had a dating relationship from 1992 to 1998. In 1992, Ms. Hutchison was eleven years old and Mr. Woods was thirteen. Ms. Hutchison is now twenty-one years old and Mr. Woods is twenty-two. During this relationship, they only resided together for less than two weeks.

[4] The application for access by Mr. Woods was heard on October 23, 2001, by Madam Justice Kenny based upon the affidavit of Mr. Woods. Ms. Hutchison did not file an affidavit because she was unaware of the application. However, she was represented by counsel.

[5] Mr. Woods presented the following evidence to Madame Justice Kenny:

1. He was sentenced to 10 days at the Whitehorse Correctional Institution after an impaired driving conviction. This involved a motor vehicle accident at Ms. Hutchison's home when he wanted to see Tyler.
2. He was the subject of a two year no contact order and did not see Tyler until April 2001, when he had visits every other day for two weeks.
3. Since the impaired driving conviction, he has quit drinking, referred himself to Alcohol and Drug Services and obtained employment.
4. The balance of his affidavit dealt with his access proposal.

[6] Ms. Hutchison applied for a variation of the order on November 22, 2001, to provide no access to Mr. Woods to Tyler.

[7] Ms. Hutchison filed an affidavit, which was uncontradicted by Mr. Woods, setting out the following:

1. Mr. Woods spent some of his teenage years in a group home for sex offenders.
2. From 1996 on, Mr. Woods physically abused Ms. Hutchison on a regular basis. On one occasion, he threatened her with a large knife, which he eventually used to slash himself.
3. Mr. Woods sexually assaulted her on one occasion and urinated upon her when she objected.
4. He constantly called her names like “bitch”, “whore”, “slut” or “skank”.
5. Mr. Woods has a lengthy criminal record which includes violent offences and one charge of sexual assault on his 3 year old adopted sister.
6. On July 12, 1998, when they separated, Ms. Hutchison was pregnant and Mr. Woods claimed it was not his baby, but a friend’s. He threw her to the floor and jumped on her back. He was convicted of assault and sentenced to 30 days in jail and 2 years probation, with the no contact order.
7. Ms. Hutchison offered access to Mr. Woods for a brief period but found he was still under the influence of alcohol and drugs.
8. On April 29, 2001, Mr. Woods drove his vehicle into Ms. Hutchison’s trailer, hitting the porch and breaking windows and a door.

9. On April 30, 2001, Ms. Hutchison obtained an Emergency Intervention Order preventing Mr. Woods from communicating or visiting with her and Tyler for 45 days.

[8] On November 27, 2001, I ordered that a custody and access report be prepared. That report is expected to be completed by April 30, 2002.

[9] On December 18, 2001, I ordered that the order of Madam Justice Kenny be stayed pending the preparation of the custody and access report. I also note that the order of October 23, 2001, did not provide a mechanism for determining the third party supervisor. Hopefully, this can be addressed in the custody and access report.

ANALYSIS

[10] I concede that there is no factual basis amounting to a change of circumstances sufficient to vary Madam Justice Kenny's order of October 23, 2001. The facts presented by Ms. Hutchison, which were unopposed by Mr. Woods, did not occur after the order of October 23, 2001. Rather, this case is more akin to an ex-parte order that is being reviewed in light of all the facts and specifically those that were not presented at the first hearing.

[11] This court has an overriding obligation to ensure that the safety and best interests of Tyler are paramount. Mr. Woods presented a misleading picture of his background and ability as a parent. As a result, based on the uncontradicted evidence of Ms. Hutchison, I have grave doubts that supervised access by Mr. Woods is in the best interests of Tyler.

[12] Access to a child by a parent is the right of the child not the right of the parent. A parent must demonstrate that access is in the best interests of the child. In this case, the suitability of Mr. Woods' proposed access can only be determined by the independent assessment of a child psychologist.

[13] This court has no wish to deny Mr. Woods access to his child. However, he cannot mislead the court in an unopposed application. There are serious concerns to be addressed to ensure that the best interests of Tyler are respected.

[14] I therefore order that the supervised access order of October 23, 2001, be stayed pending the preparation of the custody and access report.

Veale J.

Counsel for the Plaintiff

Lenore Morris

Counsel for the Defendant

Malcolm E.J. Campbell