

Date: 1998 07 02
Docket: 6101-02601

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**KERRY ANNE GRADY,
also known as Kerry Anne King**

Petitioner

- and -

SEAN PATRICK GRADY

Respondent

Trial of a claim for care and custody of a child.

Heard at Yellowknife, NT, on May 26, 27 and 28, 1998

Reasons filed: July 2, 1998

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER

Counsel for the Petitioner: Lucy Austin
Counsel for the Respondent: Katherine R. Peterson, Q.C.

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REASONS FOR JUDGMENT

[1] This is a case about where seven-year-old Michael Grady should live. He was born, and has always lived, in Yellowknife. Since his parents separated in 1993, he has lived with his mother, Ms. King. She now plans to marry a man she first met on the Internet and to live with him in Louisiana. The question is whether Michael should go with her.

[2] Counsel agree that Ms. King's proposed move is a material change in the circumstances of the child which satisfies the threshold requirement of the leading case of *Gordon v. Goertz*, [1996] 5 W.W.R. 457 (S.C.C.). The inquiry on this trial is therefore what is in the best interests of Michael.

[3] I am called upon to decide which of three options should prevail, those being:

1. that Michael remain in his mother's day to day care with no restriction on his place of residence;
2. that Michael remain in his mother's day to day care conditional upon her continuing to reside in Yellowknife;

3. that Michael is placed in the day to day care of his father, Mr. Grady in Yellowknife.

[4] I have found this case very difficult to decide. Both parents clearly love and are concerned about Michael. As I said at the close of the trial, I recognize that any decision I render will make one of the parents very unhappy. But my duty in law is clear: it is to do what is in the best interests of the child, not what is fair to the parents: *R. v. R.* (1983), 34 R.F.L. (2d) 277 (Alta. C.A.).

[5] The *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, in dealing with orders for the custody of children, provides in s. 16(8) that the court shall take into consideration only the best interests of the child. And in *Gordon v. Goertz*, McLachlin J., speaking for the majority, said that the focus is on the best interests of the child, not the interests and rights of the parents.

[6] My task is as stated by McLachlin J. in *Gordon v. Goertz* as follows:

In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

Background

[7] The parties were married in 1990, when Mr. Grady was 19 and Ms. King was 23. Michael was born on April 18, 1991. They resided as a family in Yellowknife; for just over a year they lived in the home of Mr. Grady's mother, Ms. Cargill, who has had regular involvement with Michael.

[8] Mr. Grady and Ms. King separated in April of 1993. In August of 1994, Mr. Grady went away to school in Alberta, returning to Yellowknife in April of 1995, where he has remained since. He has been living in a common law relationship with Kate Hillman since November of 1996.

[9] Michael has been in Ms. King's daily care since the parties separated. In August of 1995 she obtained a Divorce Judgment and Corollary Relief Order in uncontested

proceedings in which the relief requested and obtained was the same as what she and Mr. Grady had in their separation agreement. The Corollary Relief Order provides that the parties have joint custody of Michael and that he reside in the day to day care and control of Ms. King. There is a provision for Mr. Grady to have reasonable access. I will refer to the history of Mr. Grady's access later in these Reasons for Judgment.

[10] In April of 1997 Ms. King met Greg Duncan, a resident of Louisiana, U.S.A., on an Internet Chat Line. They have had three visits in person since then. In August of 1997 Ms. King asked Mr. Grady to agree with her plan to move with Michael to Louisiana. Mr. Grady did not agree and commenced proceedings in October of 1997 seeking an order that he be granted the day to day care of the child with reasonable access to Ms. King and an order prohibiting her from changing Michael's residence.

[11] An order was made on November 21, 1997 for trial of the custody issue. At the same time, it was ordered that Mr. Grady exercise access on alternate weekends from Friday at 5:00 p.m. until Sunday at 7:00 p.m.

[12] On behalf of Mr. Grady it is submitted that all of Michael's close relationships are here in Yellowknife and that to remove him from this jurisdiction will cause a disruption in the life he has always known and in his family, school and peer relationships. On behalf of Ms. King it is submitted that she should not be prevented from taking Michael to Louisiana as she has always been his primary caregiver, his father's involvement has been much less than hers and that Michael's relationship with his father can be continued and encouraged by increasing Mr. Grady's access.

[13] In *Gordon v. Goertz*, McLachlin J. listed the considerations which must be taken in deciding what is in the best interests of a child where the custodial parent seeks to move from the child's community. I will refer to these considerations and their application in this case.

(a) the existing custody arrangement and relationship between the child and the custodial parent

[14] Ms. King applied for the joint custody order currently in effect which indicates to me an acknowledgment by her that Mr. Grady should play a strong role in Michael's life and have input into decisions which would affect him. She did in fact consult with Mr. Grady on this move, although they have different opinions about it.

[15] Ms. King has been Michael's primary caregiver and the main relationship in his life. No major concerns were raised about her care of Michael. While Mr. Grady expressed concern about her judgment, the only example he gave (apart from her decision to marry Mr. Duncan and move to Louisiana) was a decision he testified she made at one time and then abandoned to join the Jehovah's Witnesses and her consequent refusal to let Michael go out for Hallowe'en on one occasion. Ms. King testified that she was looking into different religions at the time and denied that she had prevented Michael from going out for Hallowe'en; she said there had been a problem because Michael's grandmother kept the Hallowe'en costumes at her home. I found the evidence on this point quite unsatisfactory and it is not at all clear to me what actually happened. I do not therefore accept it as evidence of poor or rash judgment on the part of Ms. King.

[16] There was evidence that although Ms. King has had problems, she has taken steps which show appropriate judgment when it comes to Michael. She testified that she sought help from her doctor and a counsellor at a time when she had been depressed and found she was slapping Michael and snapping at him. Similarly she sought counselling for Michael when he started having problems in school because of her plan to visit Louisiana in November of 1997. She also testified that she took stress leave at one point so as to be a better parent to Michael. So when she has had difficulties that involve Michael she has tried to address them.

[17] It is clear from the evidence of both parties that the issue of the move to Louisiana is causing distress to Michael. Ms. King testified that he did well in kindergarten but started having problems in grade one when she told him she was going to Louisiana without him last fall. He became aggressive with other children and was disciplined at school by being put in the "responsibility room". Ms. King made arrangements for him to see a counsellor, whom he was still seeing at the time of trial, because of the pending move. She testified that since her return from the visit to Louisiana the problems with Michael have decreased.

[18] I have no doubt that the uncertainty and magnitude of the situation is difficult for Michael and I would expect that both the prospect of moving away from the community and people that he is familiar with and the prospect that his mother might move without him are unsettling for him.

(b) the existing access arrangement and the relationship between the child and the access parent

[19] Mr. Grady was 19 when Michael was born. For the first year of his life Michael was colicky and Mr. Grady admitted that he had minimal involvement with him. There were conflicts in the evidence of the parties as to how much time Mr. Grady spent with Michael after the first year of his life. In my view, however, what is more important is how the father and son relationship and access developed after the separation.

[20] After the separation in April of 1993, Mr. Grady drove Ms. King and Michael to and from work and daycare each day and usually stayed at Ms. King's for supper and sometimes into the evening. He would sometimes see Michael on weekends as well, either for short visits in the afternoon or to look after him on Friday nights if Ms. King wanted to go out.

[21] In August of 1994, Mr. Grady went to Alberta to attend school. He maintained telephone contact with Michael, although this dwindled as Michael's age made it difficult to converse and Michael himself became less interested in talking to his father.

[22] Mr. Grady returned to Yellowknife for the Christmas holiday in 1994 and spent approximately a week at Ms. King's home. He went back to school, returning again to Yellowknife in April of 1995. At that time he obtained employment at the Yellowknife Correctional Centre ("YCC"), where he still works.

[23] From May of 1995 until September of 1995, Mr. Grady saw Michael on Monday and Wednesday evenings and Friday overnight. These visits occurred at the home of Mr. Grady's mother, Ms. Cargill, where he was then living. The Monday, Wednesday and Friday routine had been arranged by Ms. King and Ms. Cargill when Mr. Grady was away at school, in part so that Ms. King could attend fitness classes.

[24] From September of 1995 until June of 1996, Mr. Grady worked as a correctional officer at YCC on a rotating shift schedule, which he testified gave him less time with Michael, although Ms. Cargill continued to maintain the same schedule. Mr. Grady's shift schedule changed in June of 1996 such that he had three or four days off at a time. He testified, however, that he was always on call and therefore did not request a change in the access but continued with the established routine.

[25] Ms. King terminated the Monday access when Michael began kindergarten in September of 1996 because she felt that he was too tired, although at a later point he began to attend Beavers on that night. The Wednesday and Friday access continued to be exercised by Mr. Grady and his mother at his mother's home. When Mr. Grady and Ms. Hillman began living together in their own home in November of 1996, Mr. Grady's

mother would have Michael come to her home every Wednesday evening, where Mr. Grady and Ms. Hillman would often come for dinner. Ms. Cargill and Mr. Grady alternated the Friday overnight access. This seems to have continued until sometime in 1997, when Michael began spending every Friday night at his father's, where he has his own bedroom and there is a fenced yard.

[26] In November of 1997, pursuant to the court order, Michael began spending alternate weekends at his father's home and has continued to do so. No concerns were raised about Michael's care while with his father. Although Ms. King testified about drug use and abusive conduct towards her on the part of Mr. Grady at or near the time of separation, Mr. Grady, who testified first, was not cross-examined on those matters and counsel for Ms. King did not rely on them in her submissions.

[27] It is clear on the evidence that Mr. Grady has had regular contact with Michael. I infer from the evidence that when Mr. Grady was employed as a bouncer and on a rotating shift schedule, and therefore was working irregular or nighttime hours, he relied to a large extent on his mother to fill in for him or help with the access. It appears, however, that as his own work schedule has become more regular, he has increasingly taken on the access responsibilities. He testified that he sought a change from shift work so as to have more time with his son. His mother remains involved and he has the assistance of Ms. Hillman.

[28] Counsel for Ms. King submitted that Mr. Grady has not pursued increased access as he might have. However, in my view his circumstances as outlined above and his willingness to stick with the regime worked out by Ms. King and his mother explain that. When Mr. Grady commenced a new daytime position as an Admissions Discharge Officer with YCC in the spring of 1997, before there was any discussion about Ms. King moving away, he suggested to Ms. King that Michael live with him for two weeks at a time. This was not acceptable to her and she suggested instead that Michael be with his father on alternate weekends. She testified that she felt the leap from one overnight visit a week to two weeks overnight straight would be too much and that Mr. Grady should try weekend visits first. Mr. Grady preferred the weekly visiting schedule already in place if he could not have the two weeks, so he did not agree to her suggestion. I think the positions of both parties are understandable in that regard. What Mr. Grady was seeking would amount to a new regime of day to day care, not simply access. The alternate weekends proposed by Ms. King would mean a longer gap between the child's visits with Mr. Grady than the regime already in place. The fact remains that Mr. Grady sought more time with the child.

[29] There was no evidence given about the basis for the November, 1997 order, which I made in Chambers. In reviewing my notes from that Chambers appearance, it appears to me that it was presented as a consent order (at least as to the access aspect of it) at the time.

[30] At the time of trial, Mr. Grady was exercising access in accordance with the November 1997 order. He acknowledged in his evidence that Michael has not been in his sole care for more than 48 hours since the separation.

[31] Mr. Grady said that he has a close relationship with Michael, whom he described as a very loving, intelligent, good natured little boy, who is perhaps too trusting. He expressed concern that if Michael moves, he will be going to a place he does not know to live with a complete stranger. By the time of trial, Mr. Grady had not arranged to meet Mr. Duncan.

[32] Ms. King acknowledged that Michael's relationship with his father is important to Michael, that there is an emotional attachment between the two. Counsel for Ms. King submitted that Ms. Cargill's description of the relationship as that of "buddies" was somehow inconsistent with a father and son relationship. I disagree. In my view and in the context of Ms. Cargill's evidence, it simply indicates that they have a friendly relationship and like to do things together.

(c) the desirability of maximizing contact between the child and both parents

[33] Section 16(10) of the *Divorce Act* requires that I give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child and that I take into consideration for that purpose the willingness of the person seeking custody to facilitate such contact.

[34] Michael's relationship with his father will be disrupted and made more difficult should he move to Louisiana. While the telephone, Internet and video-conference or similar resources are tools which can help maintain contact in an effective way, they are for obvious reasons inferior to personal contact.

[35] Ms. King says that if Michael moves to Louisiana with her she will do everything she can to help him maintain contact with Mr. Grady. She will agree to Mr. Grady having access for two months in the summer, every other Christmas and Easter holidays or spring break. She says she will also accept a reduced amount of child support so as

to assist Mr. Grady with the cost of travel and she will pay for her own ticket to accompany Michael to Yellowknife once a year. Her evidence was that her ticket from Yellowknife to New Orleans return cost \$963.00 inclusive of medical insurance on a seat sale booked a month in advance.

[36] Mr. Grady testified that he did not expect to be able to afford more than one trip per year. I can anticipate that a number of issues will arise with respect to the practicality and expense of access. If any of the access suggested is exercised by Mr. Grady in Louisiana, there will be accommodation and related costs. If Ms. King accompanies Michael for the proposed two month summer access, would she stay the two months and accompany him back to Louisiana and if so, how will that fit in with her future employment and Mr. Duncan's plans?

[37] Mr. Grady, on the other hand, was somewhat reluctant to consider the prospect of Michael visiting his mother in Louisiana in the event that he remains resident in Yellowknife. He testified that he would be leery of sending Michael there because of concerns about American culture and violence. He would prefer that Ms. King have generous access to be exercised in Yellowknife or at her mother's farm near Edmonton, Alberta. Again, financial considerations will make such access difficult.

[38] The reality is that any access will be difficult for the parent exercising same for practical and financial reasons if Ms. King lives in Louisiana. At present, Mr. Grady is better off financially. Ms. King's prospects of employment in Louisiana are unknown and I heard no evidence that she has made any inquiries in that regard. She testified that she would stay at home initially to help Michael settle in.

(d) the views of the child

[39] No evidence was put before me as to Michael's views. At his age, he may well have a preference but I understand that the parties did not want to involve him in this litigation. It might have been helpful to hear from Michael's counsellor, but the counsellor was not called as a witness.

(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

[40] Counsel disagreed on the extent to which I can take into account and assess the reasons for Ms. King's proposed move to Louisiana. The impetus for the move is clearly

Ms. King's relationship with Mr. Duncan and their plan to marry. They have set a tentative wedding date of August 8 this year in Louisiana.

[41] In *Gordon v. Goertz*, McLachlin J. said the following about the relevance of the custodial parent's reason for moving:

Under the *Divorce Act*, the custodial parent's conduct can be considered only if relevant to his or her ability to act as parent of the child. Usually, the reasons or motives for moving will not be relevant to the custodial parent's ability. Occasionally, however, the motive may reflect adversely on the parent's perception of the needs of the child or the parent's judgment about how they may best be fulfilled. For example, the decision of a custodial parent to move solely to thwart salutary contact between the child and access parent might be argued to show a lack of appreciation for the child's best interests: see *McGowan v. McGowan* (1979), 11 R.F.L. (2d) 281 (Ont. H.C.); *Wells v. Wells* (1984), 38 R.F.L. (2d) 405, affirmed (1984), 42 R.F.L. (2d) 166 (Sask. C.A.). However, absent a connection to parenting ability, the custodial parent's reason for moving should not enter into the inquiry.

[42] Counsel for Ms. King relied on the above in arguing that Ms. King's reasons for moving are irrelevant. There is no suggestion in this case that Ms. King wishes to move solely to thwart Mr. Grady's contact with Michael; indeed, she is willing to increase his access.

[43] Counsel for Mr. Grady submitted that the reasons for the move are relevant, arguing that the move suggests a lack of judgment on the part of Ms. King in connection with her perception of Michael's best interests.

[44] To deal with this issue, it helps to review the history of the relationship between Ms. King and Mr. Duncan.

[45] The two met in April of 1997 on the Internet, when Mr. Duncan responded to Ms. King's request for help in using a chat line. After that, they continued to correspond by Internet and telephone. In late June of 1997 they met in person when Mr. Duncan came to Yellowknife for one week. Michael spent a few days of that week with his mother and Mr. Duncan. Ms. King testified that Michael was shy at first but then got along well with Mr. Duncan.

[46] The relationship became more serious after the June visit. Approximately a week after Mr. Duncan left Yellowknife, he and Ms. King began to discuss marriage. They continued to stay in touch by Internet and telephone.

[47] The second time Ms. King and Mr. Duncan met was in November of 1997 when Ms. King spent two weeks with Mr. Duncan in Louisiana. Michael did not go with her as she wanted to have a look at the situation first. By the time of this visit, she and Mr. Duncan had already decided to marry.

[48] During the November visit, Ms. King met and spent some time with Mr. Duncan's family, friends and co-workers. She visited an aquarium and a zoo because those are Michael's interests. She also observed a playground and park close to where Mr. Duncan resides. She did not visit schools or school administration but testified that she wants Michael to attend a private Catholic school in the area where Mr. Duncan resides.

[49] The third time Ms. King and Mr. Duncan met was at the time of the trial of this matter. Mr. Duncan arrived in Yellowknife on May 15, 1998 and testified at the trial on May 27.

[50] Ms. King testified that Michael gets along very well with Mr. Duncan and that Mr. Duncan seems to enjoy being with the child.

[51] Ms. King testified that she wants Mr. Duncan, Michael and herself to be a family. She feels that Michael should have two parents who are happy. She also referred to the fact that due to the Louisiana climate, Michael will have more opportunities for outdoor activities than he does in Yellowknife and that Mr. Duncan's family is excited about meeting Michael, who in turn takes well to meeting people.

[52] Asked about Michael's relationship with his father, Ms. King agreed that it is an important one to Michael and that he enjoys being with his father. She said, in cross-examination, that she considered the father-son relationship when she decided to move to Louisiana and felt that a benefit of the move was that Mr. Grady would have more access to Michael. Of course, there would seem to be no reason why Mr. Grady could not have more access than he does now if Ms. King remains here in Yellowknife. I find there is some inconsistency in Ms. King's position in that she was not prepared to agree to Mr. Grady having more time with Michael when he asked for it in the spring of 1997 but is now prepared to have Michael stay with him for a substantial period of time if she can take Michael to Louisiana.

[53] My impression of Ms. King is that she is and has been for some time very unhappy in her situation in Yellowknife. She has had problems with stress and depression and at the time of trial had been on Prozac for these conditions for almost a year. She has been seeing counsellors on a regular basis since 1993.

[54] Letters from Ms. King's therapists were presented indicating that she has had nine counselling sessions since she began her relationship with Mr. Duncan. She was on stress leave suggested by a doctor at the time of Mr. Duncan's June, 1997 visit.

[55] Counsel for Mr. Grady placed some emphasis on the fact that her relationship with Mr. Duncan has not helped Ms. King's problems with stress and depression. Ms. King insisted that she was and is happy about the relationship with Mr. Duncan. My conclusion is that she is having the problems referred to but is happy about the prospect of joining Mr. Duncan.

[56] I do not question Ms. King's affection for Mr. Duncan; it appears to be genuine. Although their relationship was frequently referred to in argument as an "Internet" relationship, it clearly has gone beyond that and would be better described as a long distance relationship.

[57] The real question is whether the decision she has made to move sufficiently takes into account Michael's interests or whether it shows poor or a lack of judgment on Ms. King's part in connection with Michael's interests.

[58] Since the proposed move will have an impact on Michael, I think it should be examined to determine what benefits it holds for Michael. In my view, the reasons for the move are relevant for the reasons suggested by Professor Berend Hovius in an article entitled "Mobility of the Custodial Parent: Guidance from the Supreme Court", 19 R.F.L. (4th) 292. Professor Hovius suggests that the benefits to the child of a move will be relevant and consideration of those benefits will inevitably entail some exploration of the reasons for the move. There is also reference in the article to the statement in *Gordon v. Goertz* that the reasons for the move can be considered if they are relevant to the custodial parent's ability to parent, which Professor Hovius calls "a fairly flexible test which can be interpreted liberally in individual cases".

[59] I recognize that Ms. King is in a better position than am I to say what Michael will like, what he will enjoy and how he would react to the proposed move. I have to give some consideration to her assessment of the situation, for the reasons set out by McLachlin J. in *Gordon v. Goertz*:

While a legal presumption in favour of the custodial parent must be rejected, the views of the custodial parent, who lives with the child and is charged with making decisions in its interest on a day-to-day basis, are entitled to great respect and the most serious consideration. The decision of the custodial parent to live and work where he or she chooses is likewise entitled to respect, barring an improper motive reflecting adversely on the custodial parent's parenting ability.

[60] I have considered very carefully that Ms. King has been making decisions for Michael throughout his young life. There is no evidence that her decisions have been inappropriate or have had adverse consequences for Michael. There is also no evidence that she has had to make as major a decision as this one in the sense of potential effect on Michael.

[61] I also take into account that in caring for Michael she has had assistance from Mr. Grady and from his mother, whom Ms. King testified she relied on in Michael's early years and who has assisted her in looking after Michael, both during Mr. Grady's absence from Yellowknife and since then.

[62] I also heard evidence from Mr. Duncan. He is 31 years old and has lived in the city of Metairie outside New Orleans since he was 13 years old. His family also lives there. He has never been married and has no children.

[63] For the past three years, Mr. Duncan has worked as a Deputy Sheriff for the parish in which Metairie is located. Prior to that he worked for six years with the Sheriff's Office in New Orleans. He also works as a security guard one night a week. His yearly earnings, which depend on the amount of work he does as a security guard, are in the range of \$28,000.00 to \$31,000.00 (U.S.).

[64] Mr. Duncan's residence is a two bedroom unit in a large condominium complex, with swimming and playground facilities nearby.

[65] Mr. Duncan testified that he likes Michael and that he feels good about taking on the responsibility of a young boy. He said that he would do everything he could to facilitate Michael's contact with Mr. Grady and that he has no intention of trying to replace Mr. Grady.

[66] Mr. Duncan also testified that he has thought about moving to Canada but has made no inquiries in that regard. He said that it is possible that he would consider such a move but he is not aware of how or whether his American law enforcement background could be put to use in this country.

[67] I found Mr. Duncan to be a very straightforward, candid witness. He appeared to be a pleasant individual. One reservation I have is that he was not questioned about his expectations of what would be involved in taking on the responsibility of a seven-year-old child in terms of time, finances or lifestyle. This makes it difficult for me to assess his expressed willingness to take on that responsibility since this is not a situation where I can rely on evidence of a past history between the parties.

[68] On one point there was a significant difference between the evidence of Mr. Duncan and Ms. King. She testified that she had Mr. Duncan look into what amenities, facilities and schools would be available for Michael in Metairie, that she had told Mr. Duncan what she wanted and asked him to make inquiries.

[69] In his evidence, however, Mr. Duncan stated that Ms. King had not asked him to make inquiries for her, that she had simply asked him general questions about schools to which he responded by telling her about where he went to school.

[70] I accept Mr. Duncan's evidence in this regard and I find that other than talking to Mr. Duncan generally about schools, Ms. King has not made or asked him to make inquiries about that issue. This indicates a lack of planning in terms of Michael's needs, particularly when one considers that she was questioned about what she had learned about schools and other facilities when she was examined for discovery in early March of this year and must have anticipated that such questions would arise at trial.

[71] Both Ms. King and Mr. Duncan were questioned by Mr. Grady's counsel about what plans they have made in the event that I rule that Michael remains here in Yellowknife. Mr. Duncan testified that although they have discussed their options, no decision has been made and he has not pressured Ms. King to make a decision.

[72] When asked the same question, Ms. King became extremely distraught and responded that it was not a fair question and that she does not want to think about it until she has to deal with it.

[73] Ms. King's distress at the question is understandable. However, the fact that she has not yet made a decision about what she will do, even though she knows what the

possibilities are, is troubling in the sense that it suggests to me that she has not thoroughly examined all the options from the point of view of Michael's interests, despite having had the move in her plans for almost a year now. Similarly, she and Mr. Duncan have not pursued any serious inquiries about the possibility of a move by him to Yellowknife.

[74] My impression is that Ms. King perceives that the move will make her happy and that Michael will therefore be happy. It does make sense that Michael is more likely to be happy if his mother is.

[75] The problem in this case is that Ms. King's relationship with Mr. Duncan is one that is basically untested. Although they have been in constant communication, they have spent very little time together, only five weeks by the time of trial. Michael has spent even less time with Mr. Duncan.

[76] There is also the fact that Ms. King has spent only two weeks in Louisiana, a place where she and Michael have no connections other than Mr. Duncan and the in-laws of Ms. King's sister, who live some eight hours away from Mr. Duncan's residence.

[77] Another factor I must consider is that there was no evidence of any inquiries or plans about counselling for Ms. King or Michael in Louisiana. I think this is of some importance because Ms. King has been seeing counsellors on a regular basis for several years and still has problems which are being treated with Prozac. She will be leaving behind the people who have helped her in the past. Whether she will be able to rely on the same support in Louisiana is unknown. Although she met Mr. Duncan's family when she was there in November, they are really strangers to her. And although Mr. Duncan testified that he is aware of her problems with depression and stress, his ability to assist or cope with that aspect of her life is unknown because they have spent so little time together.

[78] Ms. King testified that one of the factors which contributed to her depression and stress was financial difficulty. That may well continue to be a factor in Louisiana because she does not intend to work at first and her employment prospects are unknown. Mr. Duncan does not earn a large salary and will be taking on, at least for some time, the sole support of Ms. King and Michael.

[79] Another factor that Ms. King described as having contributed to her inability to cope and her stress leave in June of 1997 was her employment, specifically the fact that her desk was being moved around for a period of time. This suggests to me that change

is likely to be difficult for Ms. King and that counselling or some sort of stress management may well be needed for her to deal with the major change that she is now undertaking.

[80] I agree that if Ms. King is happy in Louisiana, then Michael is more likely to be happy there. But there are so many uncertainties in this move, that it cannot be said with any certainty that Michael will benefit. His mother's happiness would seem to depend entirely on her relationship with Mr. Duncan, a relationship that is neither long-standing nor proven and cannot as yet be said to be a stable one.

[81] I am not saying that the relationship with Mr. Duncan and the move to Louisiana will not work out, just that there are too many uncertainties about the situation to be able to say that it will benefit Michael. In that respect, it is my view that Ms. King has not taken Michael's interests into account.

(f) disruption to the child of a change in custody

[82] Although Michael has always had contact with his father, the main or focal relationship in his life is his mother. If she moves to Louisiana without him, that bond will be affected.

[83] The other elements and relationships of Michael's world would remain the same. The relationships with his father and his paternal grandmother, which have been constant since his birth, would continue. He has known his father's common law wife since 1996 and has a good relationship with her; that would continue. His grandmother's husband has also been part of his life for approximately two years. Ms. King's sister and her family, which includes children Michael's age, live in Yellowknife. He would continue with the friends and schoolmates he knows in an environment familiar to him.

(g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know

[84] Removal from almost everything he has come to know would be a serious disruption for any seven-year-old child. If he moves, Michael will be going to a situation which for him is unknown and untested save for his relationship with his mother. Both he and his mother would have to get accustomed to a new country, new surroundings, new relationships. It will not be easy to maintain the old relationships.

[85] The evidence indicates that Ms. King made a decision to marry Mr. Duncan and move to Louisiana very soon after their initial meeting. She has maintained that decision, but has done little to investigate what life will be like for Michael in Louisiana or to plan for their life there. Little or no real consideration has been given to the option of Mr. Duncan moving to Yellowknife, which would be a less drastic change in Michael's life. The relationship with Mr. Duncan, both for Ms. King and for Michael, is untested. All of this in my view makes it difficult to conclude that moving to Louisiana and leaving behind everything and everyone else familiar to him would serve Michael's best interests.

[86] Having considered all of the above, and having given much anxious thought to this matter, I have come to the conclusion that Michael should remain in Yellowknife.

[87] I recognize that my decision will be very disappointing to Ms. King and that she now has her own very difficult decision to make.

[88] The order for joint custody will remain in place. If Ms. King remains in Yellowknife, Michael will remain in her day to day care. Counsel may speak to the matter of increased access for Mr. Grady.

[89] If Ms. King moves to Louisiana, Michael will be in the day to day care of Mr. Grady. Although I understand Mr. Grady's concern about access being exercised in Louisiana by Ms. King, I would not be inclined to restrict her access to Canada but I will hear counsel on that point if they wish to address it.

[90] Counsel are free to submit a consent order for access and child support once Ms. King's decision is known. Otherwise, they may arrange to speak to the matter before me in chambers.

[91] In my view this is not a case for costs.

[92] I wish to thank counsel for their submissions, which were very helpful to me in this case.

V.A. Schuler,
J.S.C.

Dated at Yellowknife, NT
this 2nd day of July 1998

Counsel for the Petitioner: Lucy Austin
Counsel for the Respondent: Katherine R. Peterson, Q.C.

6101-02601

IN THE SUPREME COURT OF
THE NORTHWEST TERRITORIES

BETWEEN:

**KERRY ANNE GRADY,
also known as Kerry Anne King**

Petitioner

- and-

SEAN PATRICK GRADY

Respondent

REASONS FOR JUDGMENT OF
THE HONOURABLE V.A. SCHULER
