

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RONALD DOUGLAS TECSY

Applicant

- and -

BERNADETTE SIBVIAK SAMOK

Respondent

MEMORANDUM OF JUDGMENT

[1] The parties are the parents of four children, the three youngest being the subject matter of on-going litigation. Various orders have been made respecting the children. Each party has brought an application seeking changes to the current access arrangement. The circumstances are somewhat unusual hence the need for these written reasons.

[2] On December 21, 2001, an order was issued giving the father interim custody of all 4 children. In September 2003, the children were apprehended by child protection workers. On June 30, 2004, the father was convicted of charges under sections 152 and 166 of the Criminal Code in relation to the eldest child, a daughter now 19 years old (she is not involved on this application). The father was subsequently placed on a conditional sentence of 2 years less 1 day. The conditional sentence expired on July 8th of this year. On October 1, 2004, an order was issued whereby the mother was given sole custody of the eldest child and joint custody was ordered with respect to the three younger children but with the mother having day-to-day care and control.

[3] The three younger children are now ages 11, 10 and 8. The father's access to those children has been extremely limited since his conviction. The October 1, 2004,

order imposed supervised access. A subsequent order of February 17, 2006, set out specific terms for telephone access. Another order of March 2, 2006, set out terms for a specific supervised access period during the children's spring school break. The children now live with their mother in Fort Fitzgerald, Alberta.

[4] The father wishes to set terms of specific access for the next 12 months. He wishes to take the children on an extended vacation in the weeks prior to the start of school in September. He also wishes to set dates for further specific access (particularly over Christmas). And he wants access to be unsupervised. He has provided reports from a psychologist who has been counselling him for the past 2 years in which he is described as being a low risk to re-offend. The psychologist supports his request for unsupervised access.

[5] The mother is not opposed to access but she is opposed to any change to the supervision requirement. Her counsel proposes that access be considered on a step-by-step basis so that there be an evaluation as to how things proceed with extended access and then consider unsupervised access. One of the mother's major concerns is the father's plan to take the children out of the jurisdiction for the proposed vacation.

[6] The mother also seeks changes to the terms ordered for telephone access. She says they are cumbersome and too inflexible. The father for his part complains that the mother has not been complying with the terms of the order.

[7] When this matter came on for hearing in civil chambers, I had the benefit of submissions by counsel for the Director of Child and Family Services. The children are not now under any form of protection order but child protection workers have been involved with them since the apprehension in 2003. I found those submissions very helpful.

[8] The Director's counsel noted that she had already discussed matters with counsel for both parties. While the Director does not want to be seen as taking sides, counsel made it clear that the Director will not guarantee that the child protection authorities will simply stand by and do nothing should the father's request for unsupervised and extended access be granted. But she did state that the Director would agree to hold off doing anything if the father agrees to a supervision order with the department for those periods of time when the children are in his care. Counsel submitted that this court has the jurisdiction, if it is in the best interests of the children to do so, to order that the children be subject to a supervision order pursuant to s. 28(1)(b) of the *Child and*

Family Services Act, S.N.W.T. 1997, c. 13. The father's counsel stated that the father is willing to comply with the Director's conditions.

[9] It is certainly unusual to consider making an order under the *Child and Family Services Act* when there is no proceeding taken under that statute. The Director has brought no application. The present proceedings are simply a custody dispute between the parents brought pursuant to the *Children's Law Act*, S.N.W.T. 1997, c. 14. Nevertheless, considering that the father is prepared to abide by any demand made by the Director, and the fact that the mother sees such a supervision order as being in the best interests of the children and for their protection, I am prepared to issue it without the need for a separate application. I too think such an order is in the best interests of the children.

[10] In my opinion, there is merit in taking a step-by-step approach. The Director's suggestion of a supervision order should alleviate some of the mother's concerns and eliminate the need to involve non-professional third parties as constant supervisors for the access. The father will enjoy greater involvement with his children but not totally unfettered by oversight. Once the period of summer access can be evaluated, then consideration can be given for further periods of extended access.

[11] It is important to keep in mind that the children should be given an opportunity, if at all possible, to develop a normal and meaningful relationship with their father. There has been no evidence of any improper conduct by him toward these three children. Supervision over access has been imposed because of a concern to protect the children in light of the criminal conviction. But that has been, it seems to me, more out of an abundance of caution. Supervised access is meant to be a temporary and time-limited measure. It is rarely appropriate as a long-term remedy. If the father and the children cannot develop a meaningful relationship, then clinical intervention or a denial of access may be warranted. But I have not seen evidence to warrant that. The aim at this point is to try to establish a healthy relationship. After all, one of the guiding principles on questions of custody and access is the presumption that it would be in every child's best interest, in the absence of evidence to the contrary, to have a meaningful post-separation relationship with both parents.

[12] Therefore, an order will issue granting the father specified access to the three children for the period of August 1, 2006 to August 27, 2006. This access is subject to

a supervision order in favour of the Director of Child and Family Services providing as follows:

1. The father, prior to August 1, 2006, shall meet as required with the designated child protection worker to discuss safety planning, strategies and support systems.
2. The father shall provide to the child protection worker, and to the mother through counsel, a detailed itinerary and schedule for his access visit with the children, whether it is within or without of the Northwest Territories.
3. The child protection worker, and any such official designated in any other province or territory where the father and children are located, shall be given access to any and all children at such times and places as the child protection worker may decide.
4. The father shall not impede a private meeting with any or all children and the child protection worker.
5. The father shall not remove the children from the Northwest Territories without the prior approval of the child protection worker.
6. The father shall abide by any other reasonable terms and conditions deemed advisable by the child protection worker.

[13] I want to make it clear that a contravention of any of these terms or conditions is to be considered a violation of a court order and therefore make the father subject to criminal prosecution pursuant to s. 127 of the *Criminal Code*.

[14] Counsel did not speak about arrangements for the pick-up and return of the children. Unless the parties agree otherwise, I see no reason why arrangements similar to those used for the access period this past March could not be used again.

[15] With respect to other periods of access, I think that will be best left until the parties are able to assess the success of the August access. I am confident that they,

with the help of counsel, will be able to negotiate terms for access over Christmas, for example. I therefore decline to order any other specific periods.

[16] On the question of telephone access, it is apparent that there have been problems. I think both parties have to recognize that a certain degree of flexibility is required. For example, although the current order provides for telephone access for a period of one hour, between 7 p.m. until 8 p.m. each time, it may be that the children do not want to talk for a whole hour. They may not have that much to say. The father should take a practical approach and not insist, in such circumstances, that the children stay on the telephone for the entire hour. The mother, however, also has to remember that she should make the children available at the designated times.

[17] After reviewing what both parties said about telephone access, I am satisfied that certain adjustments should be made. I therefore vary the order made on February 17, 2006, so as to provide for telephone access two evenings each week, every Sunday and Wednesday, between the hours of 6 p.m. and 7 p.m. This will commence on Sunday, July 23, 2006.

[18] As no submissions were made on the subject of costs, there will be no order regarding same.

J.Z. Vertes
J.S.C.

Dated this 18th day of July 2006.

Counsel for the Applicant: Kenneth Allison

Counsel for the Respondent: D. Jane Olson

Counsel for the Director of
Child & Family Services: Shannon Gullberg

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