Lennie v. Hrynczuk & Lennie, 2007 NWT SC 38 Date: 2007 06 18
Docket: S-0001-FM2007-000076

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

WILFRED LENNIE and SARAH LENNIE

Applicants

-and-
KRIS DONALD HRYNCZUK

Respondent

-and-

MARIAH LENNIE

Respondent

MEMORANDUM OF JUDGMENT

[1] The Applicants, who are the maternal grandparents of the child whose custody is at issue, seek leave of the Court under s. 20(2) of the *Children's Law Act*, S.N.W.T. 1997, c. 14, to apply for custody of the child. Their application is supported by their daughter, who is the mother of the child, but opposed by the father of the child.

[2] Many of the facts surrounding this application are in dispute. Without making any findings of fact, the essential circumstances appear to be as follows. When the child was born on December 30, 2005, her parents were not married and not living together. The father of the child says that he was not aware of the pregnancy or birth until the child was approximately five months old. The child was born in Alberta, where Social Services had some concerns about the mother's ability to care for her. Arrangements were made with the mother's agreement that the Applicants would take custody of the child and she went to live with them in Tulita shortly after her birth until

she was five months old. The mother of the child says she wanted the Applicants to custom adopt the child.

[3] After the father learned of the child's birth, he moved to Tulita. For some length of time he and the child's mother resided together there with the child. There is a dispute as to what the Applicants' involvement was after that. The Applicants say that the child spent time at their home almost every day. The mother (in an affidavit filed in the related action FM2007000044) says that the child was with the Applicantsevery day while she, the mother, was at school. The father says that he was largely responsible for the child's day to day care.

[4] In November 2006 the father obtained an Emergency Protection Order against the mother, which did not refer to the child's custody but did include a term that the mother could communicate with the father only to arrange supervised visitation of the child. The Applicants say that on November 21, 2006, the father came to their home with the R.C.M.P. and removed the child, claiming that he had custody of her. The father's affidavit makes no reference to the events of November 21.

[5] The father left Tulita with the child and relocated to Yellowknife, where he and the child have been living with his parents. The related action referred to above is his application for custody of the child, which the mother contests. On May 18, 2007, an order was made in that action that the child remain in the care and control of the paternal grandparents, the Shearings, pending further order of the Court and that no one shall remove the child from the City of Yellowknife. In early June the Applicants commenced their application for custody by way of this action.

[6] There is a dispute in the material filed as to whether the Applicants have attempted to have contact with the child since she was taken to Yellowknife, whether they have been rebuffed, or whether they have not tried to have contact.

[7] There are allegations by the mother and the father against each other concerning violence, drug use and mistreatment or neglect of the child. Both are facing criminal charges that may result in jail time. All of this gives rise to the possibility that neither of them may be in a position to care for their daughter on a long term basis.

[8] Section 20(2) of the *Children's Law Act* provides that a person other than a parent may not make an application for custody or access without leave of the court. It does not say what factors a court should consider in deciding whether to grant such leave. Prior to the enactment of the *Children's Law Act*, this Court had inherentparens

patriae jurisdiction to grant standing to a non-parent who wished to apply for custody or access. The principles that applied then remain applicable. The factors that have been taken into account in past cases are whether the applicant has played the role of a caregiver to the child for a substantial period of the child's life, whether the applicant has a connection to the child that can be almost equated to a parental one in the sense of care, nurture and support, whether the application for custody or access is devoid of merit or patently tenuous: *Ipkarnerkv. Sammurtok*, [1996] N.W.T.J.No. 53 (S.C.); *S.J. v. A.H.*, [2005] Nu.J. No. 28 (Nu.C.J.); *G.D. v. G.M.*, [1999] N.W.T.J. No. 38 (S.C.).

[9] The father's opposition to this application is based on his claim to have been the primary caregiver of the child from June 2006 until April 2007, when he was incarcerated. He takes the position that the child was with the Applicants for only a short time, five or six months, after her birth and that they have not continued contact with her since she left Tulita.

[10] The mother of the child supports the Applicants and her counsel indicated that she will likely withdraw her own claim for custody. She also takes the position that a custom adoption may have taken place.

[11] This application for standing is not the time to resolve the many factualdisputes that arise on the filed material nor is it the time to determine the relevance of a proposed custom adoption in these circumstances. I am granting standing to the Applicants because it is clear that they were the child's caregivers for the initial five months of her young life, they continued some involvement with her for the next six months of her life and the discontinuance of that involvement may have been the result of the unilateral action of the father and subsequent non-cooperation on his part rather than a voluntary cessation of contact on their part. I also take into account that the child's sibling is being raised by the Applicants and that the Applicantswill likelyhave an ongoing relationship of some kind with the child no matter what the result of this action because they are her grandparents and becauseof her mother'sapparent reliance on them as caregivers for her children. In all the circumstances, their applicationis not devoid of merit, notwithstanding the time that has elapsed since the child was in their care.

[12] An order granting standing to the Applicantsis thereforegranted. As I indicated to counsel in Chambers, considerationshould be given to consolidating this actionwith

FM2007000044. I also adjourned this matter to Chambers on June 29, 2007 for counsel to make submissions as to the next steps.

Dated this 18th day of June, 2007.

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

Heard at Yellowknife, NT
June 15, 2007

Counsel for the Applicants: Jeanette Savoie
Counsel for the Respondent Mariah Lennie: Donald P. Large, Q.C. and
Andre Duchene, Student-at-law
Counsel for the Respondent Kris Donald Hrynczuk: Trisha L. Soonias
Kathy Shearing appeared in person