

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

J.P.M.

Applicant

- v -

D.E.H.

Respondent

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Transcript of the Decision delivered by The Honourable  
Justice R. Nation, sitting in Yellowknife, in the Northwest  
Territories, on the 6th day of June, A.D. 2013.

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APPEARANCES:

Ms. J. Olson: Counsel for the Applicant

Ms. B. Rattan: Counsel for the Accused

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1 THE COURT: Good morning. Please be  
2 seated.

3 This is the decision in an application that  
4 was brought by Ms. M for two forms of relief.  
5 First, she asked for sole custody of J and,  
6 secondly, she asked to be allowed to move J from  
7 Yellowknife. Firstly, she wants to be allowed to  
8 take J on a trip to Ecuador and Ireland from the  
9 beginning of September 2013, for six months in  
10 Ecuador and, thereafter, likely three months in  
11 Ireland. Her maternity leave requires her to be  
12 back by the end of June of 2014 if she returns to  
13 work in Yellowknife; and, secondly, to have  
14 permission to relocate with the child to an  
15 undetermined place in Canada, most likely British  
16 Columbia, after her return from the trip in the  
17 summer of 2014.

18 This is the first time the issue of  
19 parenting has been before the Court.

20 As the focus of this hearing and decision is  
21 on the child, I first want to spend some time  
22 describing J.

23 J was born October 19th, 2003. She is  
24 currently nine years old and in Grade 4. She is  
25 a good student. She is in the French immersion  
26 program. She lived the first two and a half  
27 years of her life in Calgary and, since then, she

1 has lived in Yellowknife. No health problems  
2 were identified for J other than she has had a  
3 number of throat infections and she may have to  
4 have her tonsils removed. She loves and is loved  
5 by her mother and her father.

6 J has a half-brother, J., who is one and a  
7 half; the child of her father and his wife,  
8 Denise. She recently has another half-brother,  
9 C., who is three weeks old, born to her mother  
10 and her mother's fiancé, C.M.

11 J is involved in various extracurricular  
12 activities. She has taken Ukrainian dancing,  
13 plays piano, done basketball programs, and is  
14 involved in various clubs at school. From all  
15 accounts, she a happy, healthy nine-year-old. And  
16 I have to say from observing at trial that both  
17 parents are very attached to J, each appreciates  
18 how blessed they are to have her in their lives,  
19 and she is an integral part of both families as  
20 they have developed over time and as they  
21 continue to develop.

22 The relevant law that I have to apply is not  
23 in dispute. The question is: What is in the  
24 best interests of J? One has to determine what  
25 is in the best interests of the child looking at  
26 the child's needs and the ability of the parents  
27 to satisfy them.

1           There is a mobility issue here and so I am  
2           guided by the test set out by the Supreme Court  
3           of Canada in Gordon v. Goertz. Because there is  
4           no existing order in existence, I do not have to  
5           worry about the threshold test of a change of  
6           circumstance. I have to consider the following  
7           seven factors: (1) the existing custody  
8           arrangement and the relationship between the  
9           child and the custodial parent; (2) the existing  
10          access arrangement and the relationship between  
11          the child and the access parent; (3) the  
12          desirability of maximizing contact between the  
13          child and her parents; (4) the views of the  
14          child; (5) the custodial parents' reason for  
15          moving only where it is relevant to the parents'  
16          ability to meet the needs of the child; (6) the  
17          disruption of the child of a change of custody;  
18          and (7) the disruption to the child consequent on  
19          removal from family, schools, and the community  
20          he or she has come to know.

21                 So dealing with those:

22                 (1) The existing custody arrangement and the  
23                 relationship between the child and the custodial  
24                 parent.

25                 J has always been in the primary residential  
26                 care of her mother. She spent the first two and  
27                 a half years of her life in Calgary with her

1 mother in what would best be described as a sole  
2 custody situation with occasional access to the  
3 father. J and her mother lived with her maternal  
4 grandparents for a period and then in close  
5 proximity to them in Calgary. J then moved to  
6 Yellowknife with her mother and has been here  
7 since. J's mother has been a major parental  
8 force in her life. Her mother is marrying this  
9 August, so J will have a new stepfather, and she  
10 has a new baby half-brother. It has to be  
11 considered that J has a strong tie to her mother  
12 with recognition that there are significant  
13 changes happening in that family unit.

14 (2) The existing access arrangement and the  
15 relationship between the child and the access  
16 parent.

17 J saw her father only occasionally when she  
18 lived in Calgary. However, at age two and a  
19 half, she came to Yellowknife and has seen  
20 her father regularly since. He saw her Wednesday  
21 and Friday after school, to the evening at first  
22 and then the Friday evening was increased  
23 overnight into Saturday. In addition, her  
24 father, and then later her father and his wife,  
25 Denise, would take J for holidays in the summer  
26 and have her at their house when the mother's  
27 work took her out of Yellowknife, approximately

1 three times a year, Monday to Friday, and also  
2 occasional holiday trips that she took. J spent  
3 before and after school time in the father's home  
4 for a year while his wife, Denise, was on  
5 maternity when J. was born in October of 2011.  
6 Also, Mr. H worked from the fall of 2010 until  
7 January of 2013 at J's school, so he would see  
8 her at school and she could drop by his office at  
9 times.

10 Thus, Mr. H has had access to J. All  
11 reports and all the evidence I heard is that J  
12 has a close relationship with her father, and it  
13 is clear that J has become integrated into his  
14 family both immediate and extended.

15 (3) The desirability of maximizing contact  
16 between the child and the parents.

17 There is a need to keep J in contact with  
18 both her parents. That happens in Yellowknife  
19 and has happened without any court involvement or  
20 a formal order. The families have worked this  
21 out by agreement. J became an integral part of  
22 both parents' families as they have evolved, and,  
23 as I said earlier in court, I am impressed with  
24 the level of communication and facilitation that  
25 has occurred to this point. Both mom and dad are  
26 very involved with J and they are supported by  
27 extended families in the Yellowknife area.

1           The difficulty with Ms. M's proposal is that  
2           it puts J a long way from her father from  
3           September 2013 until next summer. Realistically,  
4           because of her age, she cannot travel  
5           internationally alone and the cost of travel  
6           likely means that email, Skype, or electronic  
7           contact will be the only contact that her father  
8           would have her during that year.

9           In addition, Ms. M wants permission to  
10          relocate to British Columbia. She has no  
11          specific plans. It appears that the couple hopes  
12          to buy property in the interior of B.C. So it is  
13          hard to know at this time what kind of travelling  
14          is involved exactly. However, it is clear it  
15          will be considerable distance and expense,  
16          involving air travel, particularly as J can  
17          likely not fly unaccompanied for a period of time  
18          until she is 11 or 12 or whatever the rules of  
19          the airline are. So there is a high cost of  
20          travelling involved.

21          (4) The views of the child.

22          J is nine years old. Her views were not  
23          conveyed directly. Ms. M's evidence made it  
24          clear that J would be delighted to go to Ecuador,  
25          and she reported that when there was discussion  
26          of the parents going to Ireland without J, she  
27          was upset, and thus the request that J be allowed



1 to be away for a complete year, including the  
2 trip to Ireland.

3 It does not surprise me that a nine-year-old  
4 would be thrilled to do anything, to go on  
5 holiday anywhere. A nine-year-old may not  
6 appreciate the length of time away from both  
7 school, friends, and family. I have to say also  
8 there is no evidence of her views about the move  
9 to British Columbia or elsewhere, which is quite  
10 evident because there are no details involved, so  
11 there would be no specific information or  
12 anything for her to react to.

13 I also want to indicate that although one  
14 counsel did invite me to meet with J, I do not  
15 think that is necessary in this case, and I think  
16 that meeting with a nine-year-old can be  
17 questionable in a situation like this.

18 (5) The custodial parent's reason for moving  
19 only where it is relevant to the parent's  
20 abilities to meet the needs of the child.

21 Ms. M has a one-year maternity leave, she is  
22 marrying someone who is retired and wants to  
23 return to B.C., and she wants to return to  
24 southern Canada. What is important is that any  
25 move is not motivated by a desire to cut the  
26 father out of J's life. It is clear that Ms. M  
27 has made efforts, considerable efforts, in the

1 past, particularly when the child was young, to  
2 facilitate the father's contact with the child.

3 (6) The disruption to the child of a change of  
4 custody.

5 J has lived in Yellowknife most of her life.  
6 She has spent overnights and periods of time at  
7 her father's house, she gets along with his wife,  
8 and she has a half-brother and all reports are  
9 that she is very connected to him. There appears  
10 to be an easy flow between their houses as they  
11 are in close proximity in Yellowknife. If there  
12 was a change in residential care to her father's  
13 house, this would be a house that she is used to  
14 and a situation she is used to being in.

15 However, it would be a huge change for her to be  
16 away from her mother. She has not been away from  
17 her mother for any period more than a few weeks.  
18 A change of custody, meaning that she stays in  
19 Yellowknife, would keep her in her school,  
20 neighbourhood, and a household she is used to,  
21 but the adjustment to life without her mother  
22 present would be significant.

23 (7) The disruption to the child consequent on  
24 removal from family, schools, and the community  
25 she has come to know.

26 Dealing first with the request that J go to  
27 Ecuador and Ireland for a year with her mother

1 and her mother's family, this would obviously  
2 disrupt her schooling as she would need to take  
3 distance learning courses. She would be away  
4 from Yellowknife where her life has been. This  
5 is a one-year plan to take advantage of a  
6 maternity leave. It would give some family time  
7 with her new baby half-brother and her new  
8 stepfather, but it would present challenges to  
9 her to stay in touch with her father because a  
10 physical visit is virtually impossible.

11 The plan to move away from Yellowknife  
12 afterwards is a more significant move for her as  
13 it would mean she would not be returning to her  
14 community and its supports, she would not have  
15 close contact with her father and his family, and  
16 it would completely change all aspects of her  
17 live in terms school, friends, and living.

18 Children can be flexible when they are  
19 young, but, really, there is no evidence before  
20 me of any of the details: place, schooling,  
21 French immersion, any of those issues, so I am  
22 unable to evaluate that plan at the current time.

23 As I understand it, the mother at this time  
24 is asking for permission to explore moving to  
25 southern Canada and, if possible, she would make  
26 that decision with the child's best needs in  
27 mind. The reality of that decision is that there

1 is a high cost associated with visits and the  
2 relationship with both parents needs to be  
3 fostered as both love their child and both seem  
4 to have loving, caring partners.

5 Ms. M's current partner is older than she  
6 is. He is retired and he has expressed time and  
7 willingness to help with child care. Mr. H's  
8 current spouse is a school teacher and has school  
9 holiday times off, and by that I mean summer and  
10 other holiday time. Mr. H recently has taken a  
11 job that gives up the holiday school times, and I  
12 have no idea of Ms. M's holiday situation because  
13 she has not made a decision of what she would do  
14 at the end of her maternity leave or, if there is  
15 a job for her, where they intend to move.

16 In terms of plans this summer, the parties  
17 have reached an agreement which was typed up, and  
18 I am just going to have that marked as Exhibit  
19 "C" in this trial, and that will be the access  
20 over the summer.

21 EXHIBIT "C": TYPEWRITTEN ACCESS  
22 AGREEMENT

23 THE COURT: In terms of Ms. M's travel  
24 plans, she testified that she has booked, through  
25 points or other manners, tickets that leave  
26 Yellowknife August 31st to Toronto. She and her  
27 family are attending a hundredth birthday party

1 and then leaving Canada to Ecuador September 6th,  
2 and their current tickets have them arriving back  
3 in Canada on March 7th, 2014. She wishes to  
4 travel to Ireland, but there are no specific  
5 tickets or plans in place to that.

6 When I look at all those factors, I have to  
7 say that the mother was in a sole custody  
8 situation for the first two and a half years of  
9 J's life. Since her return to Yellowknife, both  
10 parents have been involved. It is clear the  
11 mother has had residential care, but the  
12 situation has been much closer to a joint custody  
13 situation in terms of decisions. Most  
14 importantly, it is clear that J is now strongly  
15 bonded to both families.

16 Ms. M's family is in a state of transition  
17 with a new baby and a marriage this summer.  
18 Mr. H is married with another child, J. Each  
19 parent has relatives and extended family in  
20 Yellowknife, and I understand that that changes  
21 with time. The extended family is clearly  
22 connected to J.

23 So child custody where the parents have  
24 never been married is to be determined under the  
25 Child's Law Act. Section 17 outlines the best  
26 interests of the child test and the factors are  
27 set out in 17(2).

1           In argument, the question was raised that  
2           the father had not actually filed a motion for  
3           custody, although his affidavit, at paragraph 45,  
4           sets out his position that he thinks J's best  
5           interests are served if he and Ms. M were to have  
6           joint custody. The Notice of Motion filed by  
7           Ms. M puts custody in issue and asks that she  
8           have sole custody with the right to move the  
9           child from the jurisdiction. In the  
10          circumstances, a viva voce hearing and the issue  
11          of mobility and residential care being an issue,  
12          this court has jurisdiction to decide the custody  
13          arrangement for the child and should do so.

14                 So I direct that the parents shall have  
15                 joint custody and parenting of J with a need for  
16                 consultation about major decisions in her life.  
17                 Each shall have full access to all medical,  
18                 dental, schooling information, and everything  
19                 that goes with the joint custody arrangement.  
20                 There is no question from the evidence that the  
21                 parents can parent cooperatively and can consult  
22                 in decisions and there is no reason that this  
23                 should not continue.

24                 I need to deal with the parenting plan over  
25                 the next year as the parents are unable to agree.  
26                 Ms. M wishes to take the child to Ecuador for a  
27                 six-month period and she has made arrangements in

1 terms of accommodation and flights. She has  
2 looked into long distance education for J and  
3 this has been discussed in the family. Several  
4 of Ms. M's relatives, including her mother from  
5 Ireland, are booked to visit her while she is  
6 there. Mr. H opposes this. He consents to three  
7 months. But this was to be his Christmas with J,  
8 as the parties were alternating Christmases, and  
9 he has concerns about the length of time away  
10 from him as dad and from his immediate family and  
11 relatives here in Yellowknife, as well as the  
12 length of time away from school.

13 Ms. M also hopes to go to Ireland with J and  
14 her family March to June of 2014, but there are  
15 no specific bookings or details of that plan.

16 In addition, I am asked to make the decision  
17 as to whether Ms. M is free at her option to  
18 pursue a plan that would see her relocating with  
19 her new husband, Mr. M., and C. and the  
20 issues about her ability to take J with her in  
21 any relocation.

22 My decision is that in September Ms. M will  
23 be free to take J to Ecuador for a six-month  
24 period. Upon return to Toronto in March, Ms. M  
25 will return J to Yellowknife so she can finish  
26 her school year here. Residential care of J will  
27 be with her father from that period until the end

1 of June. This will facilitate the six-month  
2 period that Ms. M wishes in Ecuador. However, I  
3 am mindful that during that period, J will likely  
4 not see her father other than through Skype or  
5 electronic means, and so there is a period of  
6 time for J to be in Yellowknife to get  
7 re-established at school.

8 If, during that period, which I understand  
9 may well be a period that Ms. M may travel or may  
10 be arranging things in Yellowknife if she is  
11 planning to move -- if during that period Ms. M  
12 is in Yellowknife, there is to be generous access  
13 to J during that period.

14 In the summer of 2013, each party will have  
15 one month with J. In the fall of 2013, if  
16 Ms. M --

17 MS. OLSON: Excuse me, My Lady. I think  
18 you mean 2014.

19 THE COURT: Oh. 2014. Sorry. In the  
20 fall of 2014, if Ms. M wishes to relocate outside  
21 of Yellowknife, I will allow her to do so, with J  
22 to be in her residential care. Looking at J's  
23 age, her background, and situation, I find that  
24 is in her best interests. However, that  
25 relocation is to happen only if there is a  
26 realistic, practical way to keep her in contact  
27 with her father as it will involve a significant



1           loss of time, and both will have to bear the  
2           financial costs of access.

3           So if Ms. M decides to relocate, J is to  
4           spend six weeks every summer with her father in  
5           Yellowknife or elsewhere where her father and his  
6           family may wish to vacation. She is to have  
7           alternate Christmas holidays, and that is the  
8           whole Christmas holiday vacation, in Yellowknife  
9           starting with Christmas of 2014.

10          Ms. M will be responsible to take J to and  
11          from the nearest airport and to fly back and  
12          forth with J until she is at an age that she can  
13          travel by herself.

14          The parties are to share equally the cost of  
15          airline tickets, and I want the parties to be  
16          realistic about this because it is conceivable  
17          that that cost could be upwards of \$10,000 a year  
18          when one considers the two trips around Christmas  
19          and that two people have to fly there and back,  
20          and I know that that will be a significant load  
21          to each family, and so it is a serious  
22          consideration for Ms. M in terms of her  
23          relocation, but it is an obligation. Secondly,  
24          J's access to her father electronically is to be  
25          facilitated by Skype, email, and all other means.  
26          Thirdly, if Mr. H or any of his extended family  
27          are in the place or vicinity where J is living,

1           they are to have access to her at that place. I  
2           do not mean at J's house, but if J lives in, for  
3           example, Kelowna and Mr. H is in Kelowna for a  
4           weekend or a visit, she is to have access to him  
5           then. And if Mr. H can afford it, he will have  
6           the right to have every spring break, school  
7           holiday, in Yellowknife, and that is at his  
8           option.

9           So I just want to say to both of you, there  
10          is a clear financial cost to this plan and,  
11          Ms. M, you have to make that commitment because  
12          both the monetary aspect and the time flying back  
13          and forth is part of the permission to relocate.

14          I am also going to direct any jurisdiction  
15          in relation to J's custody and access is to  
16          remain in Yellowknife, if there is a dispute  
17          between the parties, so that the jurisdiction  
18          remains here.

19          You know, there was also a request that I  
20          deal with support, but I think that has to be  
21          left between the parties to see to their  
22          disclosure and work that out. I am not going  
23          make at the current time any direction that the  
24          cost of access is out of support. I think it is  
25          important that support continue. However, the  
26          parties can make their own financial arrangement  
27          as they want to about the airline tickets

1           because, clearly, each of them has to bear half  
2           of the cost.

3                        So I believe that deals with all matters.

4   MS. RATTAN:                        Ma'am, with respect, there  
5           were a number of occasions when the Court  
6           referred to Whitehorse.

7   THE COURT:                        Oh, I'm sorry. I have to  
8           apologize. I know that is probably very  
9           offensive to people who live in Yellowknife. For  
10          some reason, I just have Whitehorse on the brain.  
11          I apologize if I said Whitehorse. It should be  
12          Yellowknife.

13   MS. RATTAN:                        As well, I think in the  
14          beginning there was reference to July 31. I  
15          think it's August 31.

16   THE COURT:                        Oh. For the trip to Ontario?

17   MS. RATTAN:                        Yes.

18   THE COURT:                        Okay.

19   MS. OLSON:                         Just a couple of things. Can  
20          I understand that child support is to be paid in  
21          accord with the guidelines?

22   THE COURT:                        Yes. I mean, obviously child  
23          support should be paid in accordance with the  
24          guidelines. And also I'll direct that each party  
25          has to give the other a copy of their tax returns  
26          by May 1st of each year, and then the financial  
27          disclosure just flows. It is a court order and

1           there does not have to be an issue about has it  
2           happened or has it not.

3       MS. OLSON:                    I'd also like to raise the  
4           issue of costs.

5       THE COURT:                    What would be your submissions  
6           in that regard?

7       MS. OLSON:                    Well, it's our submission that  
8           Ms. M's application has largely been successful  
9           and, therefore, we believe that there should be  
10          costs and costs.

11      THE COURT:                    Ms. Rattan?

12      MS. RATTAN:                   Well, with respect, in effect,  
13          it's a divided decision in the sense that it is  
14          not sole custody that is provided to Ms. M but  
15          joint custody to the parties. Yes, she is  
16          successful in being able to relocate, but we  
17          submit that in these type of situations that this  
18          matter be considered as a divided victory.

19      THE COURT:                    Okay. In the circumstances, I  
20          am going to direct that each party bear their own  
21          costs. You can go through, and there has been  
22          divided success, but more than that, you know,  
23          both parents love this child and the motivation  
24          to come to court was not at all unfounded. It is  
25          an extremely difficult decision for parents and I  
26          can understand how one might feel that that is a  
27          decision they cannot make themselves just because

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of the enormity of a child moving away from a jurisdiction. So I am going to direct that each party bear their own costs.

All right. Thank you, counsel, for your submissions, and to both of you, best of luck with J in the future. You have had good communication and I hope that that can continue and you see J grow through her teenagerhood and into a young adult and be proud of your parenting at the end of the day.

.....

Certified Pursuant to Rule 723  
of the Rules of Court

Jane Romanowich, CSR(A)  
Court Reporter