Date: 2015 01 14
Docket: S-1-FM-2014-000087

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JENNIFER PITT

Applicant

-and-

NICK MOULAND

Respondent

MEMORANDUM OF JUDGMENT

[1] On this application, the Applicant seeks child support from the Respondent for her two children, D., age 10, and M., age 8. They are the Applicant's, but not the Respondent's, biological children.

[2] The Applicant and the Respondent cohabited and were engaged to be married, however the relationship terminated several months before the marriage was to take place. The question is whether the Respondent stood in the place of a parent to the children and is thus obligated to pay child support. The Respondent argues that the evidence is insufficient for a finding that he stood in the place of a parent, however if the Court finds that there is sufficient evidence, any order should be interim only.

[3] The evidence on this application consists of an affidavit of the Applicant, an affidavit of the Respondent, and a further affidavit of the Applicant in reply. The evidence has not been tested by cross-examination. Counsel for the Respondent indicated a wish to conduct cross-examinations, and perhaps file further evidence,

however by the time this matter came before me in special chambers no steps had been taken in that regard. Counsel for the Applicant takes the position that no cross-examinations are needed and that the evidence is sufficient for a finding that the Respondent has an obligation to pay child support.

[4] The application is based on sections 57 and 58 of the *Children's Law Act*, S.N.W.T. 1997, c. 14:

> 57. "parent" in relation to a particular child, includes a person who stands in the place of a parent for the child, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody.
>
> 58. A parent has an obligation to provide support for his or her child where the parent is capable of doing so.

[5] Although not directly relevant to the determination as to whether a person stands in the place of a parent, s. 7 of the *Child Support Guidelines* under the *Children's Law Act* clearly contemplates that child support for a child may be payable by more than one person:

> 7. Where a person from whom support is sought stands in the place of a parent for a child, the amount of support for a child is, in respect of that parent, such amount as the court considers appropriate, having regard to these guidelines and any other parent's legal duty to support the child.

[6] The leading case on the factors to be taken into account in determining whether a person stands in the place of a parent to a child is *Chartier v. Chartier*, [1999] 1 S.C.R. 242. That case makes it clear that the Court must look at the nature of the relationship between the adult and the child. The existence of the parental relationship must be determined as of the time the family functioned as a unit. Factors relevant to the nature of the relationship include express and inferred intention on the part of the adult; whether the child participates in the extended family in the same way that a biological child would; whether the adult provides financially for the child; whether the adult disciplines the child as a parent would; whether the adult represents himself, explicitly or implicitly, to the child, the family and others as a parent; the nature or existence of the child's relationship with his/her biological parent.

[7] Additional factors that have been considered are whether the child calls the adult Mom or Dad; whether there has been a change of surname; whether there has been discussion of adoption; whether the adult engages in activities with the child; the degree of affection between the adult and child; whether the adult gives the child gifts; whether the adult engages in decisions about education and attends parent-teacher meetings: *Widdis v. Widdis*, 2000 SKQB 441 at paragraph [16] quoting Professor Carol Rogerson.

[8] Other factors may contraindicate a parental relationship, such as a poor relationship between the adult and the child, an older child, an involved biological parent and the short length of the relationship: *Widdis*, at paragraph [17].

[9] Some of the cases filed by counsel refer to the fact that a finding that an adult stands in the place of a parent carries with it financial obligations that in some cases can continue until the child reaches the age of majority, or even beyond that if the child remains dependant: for example, *Cook v. Cook*, [2000] N.S.J. No. 19 (S.C.). In today's society, where blended families are not uncommon and parents may form successive relationships, if the threshold for a finding of parental status is low, the result may be that a number of adults have not only financial obligations, but also custody or access rights to a particular child. In *Cook*, Campbell J. states that the threshold for a finding of parental status should not be a low one: "There must be a relatively clear assumption of responsibility shown by or inferred from the step-parent's actions over a sufficient period of time for that relationship to constitute a commitment" (at paragraph [23]). In my view, that statement is very helpful in assessing the significance and weight of the various factors and determining the result they should lead to in a particular case.

[10] In this case, the affidavit evidence indicates that the Applicant and the Respondent began a relationship sometime in the last half of 2010. In May or June of 2011 they began to cohabit together with the Applicant's two children. They purchased a home together. The purchase occurred in January of 2012 according to the Applicant; the Respondent says it was January of 2013. They became engaged in the summer of 2013 and a wedding date was set for August 2014. According to the Applicant, the Respondent announced the engagement to the children and gave them each a bracelet to commemorate it. The Respondent says that at some point he wanted to postpone the wedding until some bills were paid off. The Applicant says that shortly after she returned from a trip to buy a wedding dress, he announced that the relationship was over. Both agree that they separated in January 2014.

[11] Following the separation, the Respondent terminated his relationship with the children and does not exercise access to them.

[12] In her first affidavit, the Applicant makes a number of statements that the Respondent acted as a parent or was in *loco parentis*. These statements do not assist in the determination whether he stood in the place of a parent as they are conclusions of law. The Court can only draw those conclusions if the facts substantiate them.

[13] On some of factors that are significant in determining the nature of the Respondent's relationship with the children, the affidavits are contradictory. For example, the Respondent denies contributing to expenses for the children; the Applicant says that he did and gives as an example that he paid for half of the after-school program for the children. The Applicant also relies on the Respondent's contributions to the mortgage on the home they purchased and to household expenses. He admits that he contributed to the mortgage and to household expenses. Neither party has provided evidence as to the nature of the household expenses and whether or to what extent they were attributable specifically to the children. However the Applicant and the Respondent also disagree on how long that arrangement was in place because they differ as to the date of purchase of the home. If the Respondent is correct, and it was purchased in January of 2013, the arrangement was not in place for very long.

[14] The Applicant also relies on the Respondent having put the children on his health insurance through his employment. His explanation is that the employer for whom he began working in August 2013 asked him to name a beneficiary for his policy and he identified the Applicant and the children. He then removed them from the policy shortly after leaving the home in January 2014.

[15] The Respondent says that he had no role in the decisions relating to the children and was not consulted about such decisions or about the welfare of the children. He maintains that those decisions were made by the Applicant or by the Applicant along with Mr. Tees, the biological father of the youngest child. The Applicant, on the other hand says that the Respondent was involved in most decisions about the children, including discipline. Her affidavits contain no information about the role played by Mr. Tees in decisions about the children.

[16] The Applicant does say that the biological father of the oldest child plays no role in the child's life; the child does not know him. There is a child support order in place but he is significantly in arrears. As to Mr. Tees, with whom the Applicant resided from 2005 to 2010, counsel for the Applicant advised that an application that he pay child support has recently been filed with this Court.

[17] The only evidence about the role played by Mr. Tees, the biological father of the second child, comes from the Respondent. As indicated above, the Respondent says that Mr. Tees makes some of the decisions about the children jointly with the Applicant. The Respondent also says that Mr. Tees has access to both children at regular intervals, that the children spend a lot of time with him, and that the children spent the summers of 2012 and 2013 with Mr. Tees' parents. The parental role played by Mr. Tees could, therefore, be a significant factor, however there is very little evidence before me about that and the parties do not agree on his role in decision-making about the children.

[18] Both the Applicant and the Respondent say that the children referred to the Respondent by his name. The Respondent says that in public the children would correct people who referred to him as their father, telling them that he was their mother's boyfriend. He says that when he and the Applicant got engaged, they told the children that he would be their stepfather when the marriage took place. This evidence may contradict a parental relationship.

[19] There is evidence in the Applicant's affidavit about the Respondent showing affection for the children, about gifts given to the children by the Respondent and time he spent with them and the fact that he involved one of them in a sporting activity. The Respondent does not comment on any of that in his affidavit. There is also evidence from the Applicant about visits to members of the Respondent's family and what she refers to as relationships between the children and members of his family, however that evidence is lacking in specifics. In my view, none of the evidence I have just referred to, even with the evidence about the parties having lived together with the children, is sufficient to ground a finding that the Respondent stood in the place of a parent to the children, that he assumed responsibility for them and made a commitment to act as their father. Because of the conflicts in the affidavits on significant matters such as decision-making, discipline and payment of expenses for the children, and the lack of evidence about the role played by Mr. Tees with the children, I am unable to say that the Applicant has made out a *prima facie* case, which is the test on an interim application.

[20] I therefore direct a trial of the issue. Counsel are directed to file a certificate of readiness before submitting their available dates for trial. They should also consider whether any other outstanding issues between the parties should be tried at the same time.

V.A. Schuler
J.S.C.

Heard at Yellowknife, NT, the

2nd day of December, 2014

Dated at Yellowknife, NT, this

14th day of January, 2015

Counsel for the Applicant: Donald Large

Counsel for the Respondent: Baljindar Rattan

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