Pilon v. Pilon, 2015 NWTSC 64 S-1-DV-2006-103771

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JEANNINE DIANE PILON, of the City of

Yellowknife, in the Northwest Territories

- and -

ROGER ERNEST PILON, of the City of

Yellowknife, in the Northwest Territories

Petitioners

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Transcript of the Oral Decision delivered by The Honourable

Justice L. A. Charbonneau, sitting in Yellowknife, in the

Northwest Territories, on the 7th day of December, 2015.

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APPEARANCES:

Mr. E. Bruveris: Counsel for Ms. Pilon, Petitioner

Mr. R. Pilon: For himself, Petitioner

This transcript has been altered to protect

the identity of the child pursuant to the direction

of the presiding Judge

1 THE COURT: This case was before me in

2 regular Family Chambers on December 3rd, 2015.

3 Two Notices of Motion, one filed by the mother,

4 the other filed by the father, are before the

5 Court concerning the care and control of one

6 child, A., born in 2001.

7 It is apparent from the record that this is

8 a high conflict and complex matter. I will refer

9 to some of the background. My purpose this

10 afternoon is not to summarize all the past

11 proceedings on this case, but I think some

12 background is necessary to put my remarks in

13 context.

14 A few years after A.'s birth, the parties

15 separated. They lived in the same house for some

16 time and, in 2004, began living in different

17 homes and began a shared parenting regime which

18 was eventually incorporated in a Corollary Relief

19 Order.

20 Some years later, the mother initiated

21 proceedings to vary that Order and obtain sole

22 custody of A. That matter went to trial in March

23 2011. The Court's decision was filed in August

24 2011 and is reported at 2011 NWTSC 41 ("the 2011

25 decision"). It is a lengthy decision which goes

26 over the trial evidence, some of the contentious

27 issues that emerged from that evidence and were

1

1 relevant to the issue of custody, and of course

2 it includes the Court's findings.

3 Ultimately, the Court did not grant the

4 mother sole custody in 2011. But the Court also

5 disagreed with the father's position that the

6 existing custody regime should remain unchanged.

7 The Court decided that A. should spend

8 alternating years with each parent, each year

9 being aligned with the school year. The Court

10 decided that this regime should begin with A.

11 spending the first year with his mother. He

12 would then spend a year with the father starting

13 in September 2012, and this alternating regime

14 would continue from year to year.

15 The Court also concluded that A. has special

16 needs. The Court concluded that of the two

17 parents, the mother was the more reasonable one

18 when it came to dealing with his medical issues

19 and with medical professionals. Although the

20 Court directed that the mother consult with the

21 father and keep him advised of changes and

22 recommendations regarding A.'s medical situation,

23 the Court also ordered that in the event of

24 disagreement as to medication, treatment, or

25 testing, the final decision would be the

26 mother's, and that she also would have authority

27 to consent to testing at school without the need

2

1 to obtain the father's consent. This authority,

2 the Court decided, would remain with her even

3 when A. was spending his year in the care of the

4 father, unless the mother agreed otherwise.

5 As far as the shared parenting regime, the

6 year commencing in September 2014 was a year

7 where A. was with his father. The school year

8 commencing in September 2015 was when he was to

9 return to the care of his mother.

10 As far as the present motions, it is

11 undisputed that A. was returned to his mother's

12 care in August 2015 for what was supposed to be

13 the year in her care; but he has not remained in

14 her care. There is significant conflict in the

15 affidavit evidence about the reasons that led to

16 this.

17 The father's wife and another child have

18 relocated to Manitoba. The father wants to

19 relocate to Manitoba as well. It is undisputed

20 that the father took A. to Manitoba in September

21 2015, registered him in school and, for all

22 intents and purposes, purported to relocate A. to

23 Manitoba to live with the father's family.

24 Again, there is much conflict in the evidence

25 about how this came to be and, in particular,

26 whether this was a unilateral action on the

27 father's part or whether it was something that

3

1 happened with the mother's agreement or

2 acquiescence.

3 The mother filed a motion on November 6th,

4 2015, seeking the immediate return of A. to the

5 Northwest Territories and to her care. That

6 application came before this court for the first

7 time on November 12th. At that point, the only

8 evidence before the Court was the mother's

9 affidavit. The father appeared by phone. He

10 told the Court that he intended on filing a

11 Notice of Motion to vary the custody regime. He

12 told the Court various things about his version

13 of what happened before A.'s move, but of course

14 none of it was under oath and properly in

15 evidence before the Court at that point.

16 The Court ordered that A. be returned to the

17 NWT and returned to the care of his mother by

18 November 20th. The order also prohibited both

19 parties from removing the child from the

20 Northwest Territories and stated that the 2011

21 order would remain in effect. The matter was

22 adjourned to be spoken to on December 3rd, which

23 is when it came before me. By then there were

24 new materials before the Court. The father had

25 filed a Notice of Motion seeking various relief

26 and he had also filed a lengthy affidavit. In

27 addition, the mother had filed a Supplementary

4

1 Affidavit.

2 The mother continues to seek A.'s immediate

3 return to her custody and care. She asks that

4 the order include a clause requiring the RCMP to

5 assist with enforcement if necessary.

6 In the motion that he filed on November

7 24th, the father seeks the appointment of counsel

8 for A., a variation of the 2011 order granting

9 him interim primary day-to-day care of A., child

10 support, and an order permitting him to relocate

11 with A. to Manitoba.

12 I will now refer to the evidence. It is not

13 possible for me to refer to it in all its detail.

14 I do want to make a few preliminary observations

15 about it, though.

16 The first is that some of the topics and

17 events covered in the affidavits were the subject

18 of evidence at the 2011 trial. To the extent

19 that findings were made by the Court at that

20 time, the evidence now presented is of little

21 weight or use because any analysis now undertaken

22 must have as its starting point the findings that

23 were made by the Court in 2011.

24 The second observation I want to make is

25 that while there is significant conflict in the

26 evidence, there are certain relevant facts that

27 are not disputed. Clearly, there have been

5

1 changes in the circumstances since the 2011 Order

2 was made. At the time that Order was made, both

3 parents lived in Yellowknife. It appears from

4 the decision, in particular at paragraphs 109 and

5 121 of the decision from 2011, that while the

6 possibility of the father relocating had been a

7 live issue at one point, it no longer was by the

8 time of trial. Things are different now. The

9 father's wife has lost her employment and she and

10 another child have relocated to Manitoba. The

11 father wants to relocate there as well. That is

12 a change of circumstances compared to what the

13 situation was in 2011.

14 Another change is A.'s age. He was ten at

15 the time the 2011 Order was made. He will turn

16 15 next March. There is no doubt that that is a

17 big difference. In the 2011 decision, at

18 paragraph 149, the Court specifically

19 acknowledged that the custody regime may have to

20 be revisited as A. got older.

21 Another point is that at the time the 2011

22 order was made, although there had been problems

23 between A. and his mother, the situation was

24 found at that point to have been improving. In

25 fact, one of the reasons why the Court felt A.

26 should spend the first year with his mother was

27 to build upon these improvements. It would

6

1 appear that at present, the situation between A.

2 and his mother has deteriorated significantly.

3 At first blush, these changes in

4 circumstances may well open the door for the

5 custody regime to be revisited, but that of

6 course does not answer the question as to how it

7 should be changed. Any decision in that regard

8 must be based on what is in A.'s best interests,

9 and, on that front, A.'s best interests may not

10 necessarily coincide with his present wishes.

11 What I mean by that is that if, for example,

12 one change in circumstance should turn out to be

13 the two parents no longer live in the same

14 community, that does not answer the question of

15 which parent A. should be residing with. That

16 decision would have to be made on an assessment

17 of what is in his best interests, which would

18 include an analysis of whether one parent is, in

19 fact, trying to cut A.'s ties from the other

20 parent. At this point, these are things that are

21 alleged by the mother and denied by the father.

22 It is one of the many conflicts in the evidence.

23 One area where there is conflict in

24 particular is what has transpired since August

25 2015 when A. was returned to the care of his

26 mother. That conflict in these various areas

27 cannot be resolved on the basis of affidavits.

7

1 Unless the parties are able to come to some sort

2 of a resolution, which most unfortunately does

3 not seem very likely at this point, the

4 application for variation will have to be the

5 subject of a hearing with viva voce evidence, and

6 this will not happen overnight. Inevitably, it

7 will take some time before that hearing can

8 proceed.

9 In the meantime, the mother seeks

10 enforcement of the existing Orders. She wants A.

11 returned to her care immediately in accordance

12 with the custody regime that was decided in 2011

13 and which was the basis for the Order made by the

14 Court in November.

15 For his part, the father asks that the

16 custody regime be varied on an interim basis so

17 that A. can remain in his care even though, under

18 the existing regime, this is supposed to be the

19 year he spends with his mother. And I understand

20 that the father also wants A. to be in his care

21 in Manitoba.

22 The factual conflict in the affidavits filed

23 by the parties is very consistent with past

24 history. The 2011 decision includes numerous

25 references to conflicting evidence presented in

26 that case. It is worth pointing out that the

27 Court's findings as to credibility in that case

8

1 were mixed, as was the Court's assessment of each

2 parent's decision about various things. The

3 mother and the father were each found to be

4 somewhat unreasonable or unrealistic about

5 aspects of their approaches and behaviours. This

6 was not a situation where the Court's conclusions

7 were entirely in line with the mother's position,

8 nor were they entirely in line with the father's

9 position. The Court concluded, also, that

10 aspects of each parent's positions were not

11 always in line with A.'s best interests.

12 On many of these topics, there is overlap

13 between the areas that were covered at that trial

14 and some of the things that are now covered in

15 the affidavits, and this makes it all the more

16 difficult to make any decision based on the

17 parties' most recent conflicting affidavits and

18 the assertions that they make about what has been

19 happening over the past few months.

20 Serious allegations are being made in both

21 directions.

22 The father alleges that A. does not want to

23 live with his mother and wants to live in

24 Manitoba. He says that A. is and feels unsafe in

25 the mother's house. The father deposes that A.

26 has recently disclosed to him that there has been

27 physical abuse both on the part of his mother and

9

1 on the part of her common-law spouse while A. has

2 been in their house. The father deposes that at

3 A.'s insistence, he brought him to the RCMP in

4 early October 2015 to make a complaint about this

5 abuse. The father says that the Department of

6 Social Services has also been notified of the

7 situation and are investigating. There is no

8 evidence before the Court at this point of any

9 charge being laid against anyone or of Social

10 Services having taken any specific action in

11 relation to these allegations. In submissions

12 last Thursday, counsel for the mother advised

13 that she had an upcoming appointment with Social

14 Services in relation to these allegations.

15 Another allegation that the father makes is

16 that the mother essentially agreed with him

17 taking A. to Manitoba and that she is now going

18 back on that agreement.

19 It seems undisputed that there was a serious

20 conflict between A. and his mother at the end of

21 a camping weekend at Reid Lake (which is outside

22 of Yellowknife) at the end of the Labour Day

23 weekend. The mother does describe this incident

24 in her affidavit and it seems fairly clear that

25 this incident happened. She deposes that they

26 had been camping as a family at Reid Lake that

27 weekend and were in the process of packing up

10

1 when an argument broke out between her and her

2 son. As a result, he declared that he was going

3 to walk back to town. She decided to let him

4 "walk it off", thinking that within 20 minutes

5 they would have finished packing and would catch

6 up with him on the road. As it turned out, A.

7 hitchhiked and got a ride into town from a man

8 who was driving on the Ingraham Trail and saw

9 him. A. asked to be taken to his father's home.

10 The father deposes that after this incident,

11 he encouraged A. to go back to his mother's place

12 and to work things out with her. At that point,

13 he was scheduled to leave to go to Manitoba for a

14 period of two weeks. He deposes that the mother

15 would not let A. stay with her for those two

16 weeks. He related a lot of things that A.

17 allegedly told him about his exchanges with his

18 mother, including the fact that she told him he

19 had made his choice and that, essentially, she

20 kicked him out. The father deposes that she

21 packed up all of A.'s belongings in 25 to 30

22 boxes and told the father to come pick them up.

23 The father deposes that he believed at that point

24 that the mother was in agreement to letting A. go

25 to Manitoba with him and live there. This, he

26 says, is why he arranged for A. to travel there

27 with him, for his things to be moved, and this is

11

1 why he registered A. for school down there

2 notwithstanding the fact that under the Court

3 Order, A. was to be in his mother's care for the

4 school year.

5 In her Supplementary Affidavit, the mother

6 does not respond to many of the allegations in

7 the father's lengthy affidavit, but she

8 specifically says that her silence on those

9 matters should not be taken as an admission. She

10 deposes that since the Reid Lake incident, she

11 has been unable to have A. return to her care.

12 She does not talk about the aspect of any refusal

13 on her part to let A. return living with her or

14 about packing up his belongings or about agreeing

15 in any way to have him reside with his father,

16 notwithstanding the 2011 Order.

17 The mother's Supplementary Affidavit is

18 focused on the fact that this court's November

19 12th Order still has not been complied with.

20 About that, she deposes that A. did show up at

21 her residence on November 25th, five days after

22 the deadline that had been set by the Court. She

23 deposes that A. told her he did not want to stay

24 there, did not feel safe staying there and wanted

25 to live in Manitoba and should be able to make

26 his own choices about where to live. She says

27 she attempted to lock the door to force A. to

12

1 stay so that they could continue their

2 conversation, but he roughly moved her out of the

3 way by elbowing her in the chest. She also

4 deposes that she looked out the window after A.

5 left and she saw that the father's truck was

6 parked a short distance away and she saw A. get

7 into that truck and drive off with his father.

8 At this point, the mother is persuaded that

9 A. is being influenced and controlled by his

10 father and that this fits with a long-standing

11 pattern of parental alienation on his part. She

12 wants A. back in her care immediately so she can

13 arrange for counselling to "de-program" him and

14 restore their relationship. Her position and her

15 fear is that any additional time that A. spends

16 with his father will be further detrimental to

17 her ability to renew her bond with A. Her

18 position is that if need be, the Order that A. be

19 returned to her should be enforced by the RCMP.

20 In essence, she says A. should be forced back

21 into her care today irrespective of his present

22 wishes. The father's position is that A. should

23 not be forced to live with his mother against his

24 will. He denied attempting to alienate A. from

25 his mother, and he says that given the

26 complainants that have recently been made, there

27 are safety concerns about returning A. to that

13

1 household.

2 Under both the Order that was made in 2011

3 after the trial and the one that was made in

4 November 2015, A. should now be in the care of

5 his mother. The starting point should be that

6 those Orders are complied with. The question

7 then becomes whether, on the evidence now before

8 the Court, this is what should happen, and that

9 is because there is evidence before the Court now

10 that was not before the Court in November.

11 It appears uncontradicted that at this point

12 A. does not want to return to live with his

13 mother. This does not just come from the father

14 relaying what A. tells him but from the mother's

15 own evidence about how things went when A. came

16 to her house on November 25th.

17 A.'s wishes are a factor to consider if they

18 can reasonably be ascertained. Children's Law

19 Act, Section 17(2)(b).

20 The older a child is, the more his views may

21 be ascertainable. But a child's views are not

22 determinative. There are many very good reasons

23 why children should not be burdened with

24 decisions that ought to be made by adults.

25 Giving a child ultimate say on these matters puts

26 incredible pressure on the child even if no one

27 is consciously trying to put that pressure on.

14

1 But it also makes the child vulnerable to

2 pressure if a parent is inclined to try to

3 manipulate the situation. And, of course, if

4 parental alienation is actually established, it

5 is especially important not to give effect to a

6 child's wishes because, if that is done, the

7 parent who has behaved improperly by causing

8 alienation is, in effect, rewarded for that bad

9 behaviour, and more importantly, the child is

10 negatively impacted because the result of the

11 alienation is to cut off that child's bond with

12 the alienated parent. To give effect to a

13 child's wish in those cases is to compound the

14 effect of the alienating behaviour and

15 jeopardizes any chance of restoring the bond

16 between the child and the alienated parent.

17 The mother argues that the decision on these

18 applications should take into account that there

19 has already been a finding in this case of

20 parental alienation. In that regard, in

21 submissions, counsel for the mother referred to a

22 report that was filed in the context of the 2011

23 trial. The father also referred to that report

24 in his submissions.

25 The report in question was authored by a

26 Dr. Seitz who testified at the 2011 trial. She

27 had prepared a report in 2009 and had come to

15

1 certain conclusions on this issue. But it is

2 important for everyone to understand that what is

3 relevant at this point is not what the 2009

4 report said, not even what the doctor testified

5 to in 2011. What is relevant are the findings

6 that were made by the Court in the 2011 decision.

7 The issue of parental alienation was

8 addressed by the Court at paragraphs 110 to 124

9 of the 2011 decision. Among other things, the

10 Court noted that the 2009 report had not been

11 updated by the time of trial and this had an

12 impact on the weight that could be attached to

13 the doctor's conclusion.

14 The Court's interpretation of the doctor's

15 report was not that the doctor concluded this was

16 a situation of parental alienation in the matter

17 that is usually understood. That is apparent

18 when one reads paragraph 113 of the decision:

19 The contentious part of Dr. Seitz's

evidence is her finding that A.'s

20 behaviour and that of his parents

and K. as she observed it in early

21 2009 suggests that there are ongoing

alienating processes at play, by

22 which [the mother] is more and more

the alienated parent. Dr. Seitz

23 made it clear that this is not a

case of what is usually referred to

24 as "Parental Alienation Syndrome",

which she explained as a syndrome in

25 which the child is the victim of

behaviour by one parent which is

26 aimed at alienating that child from

the other parent. What she found in

27 this case was "parental alienation"

which she described as a family

16

1 dynamic, not focused on actions by

one parent.

2

3 Ultimately, the Court concluded that the

4 opinion of the doctor was not significant to the

5 decision that had to be made.

6 At paragraph 124, the Court said:

7 The significant thing in my view is

that Dr. Seitz described all this as

8 a dynamic, not an intentional course

of action by [the father]. Although

9 it is clear that Dr. Seitz tended to

accept what she was told by [the

10 mother] and was more skeptical about

what she was told by [the father]

11 and K., her conclusion was that all

are reasonably good parents to A.

12 And although Dr. Seitz testified

that she would not now change her

13 opinion, her opinion is still

affected by the fact that her

14 observations were made and her

information gathered more than two

15 years ago. The testimony of [the

mother] indicates that her

16 relationship with A. has improved

since then. [The father] no longer

17 has concerns about her mistreating

A. From this I conclude that even

18 if Dr. Seitz is correct and the

family dynamic was causing some

19 alienation of [the mother], that has

significantly decreased or changed,

20 possibly because [the father] and

his spouse have consciously changed

21 any behaviour on their part that may

have contributed to the dynamic.

22 For those reasons, I do not view

Dr. Seitz's opinion as to alienation

23 of [the mother] as determinative of

or very significant for the decision

24 I have to make. I am not saying

there is no validity to her

25 concerns, but they are concerns that

appear to have been addressed.

26

27 In light of these excerpts of the decision,

17

1 I do not think it is accurate to say that there

2 was a finding in 2011 that deliberate parental

3 alienation had been established. The Court's

4 findings were much more nuanced than that.

5 Whether parental alienation can now be

6 established at this point on the basis of what

7 has transpired since 2011 of course is another

8 issue entirely, and one that may well have to be

9 addressed when the variation hearing proceeds.

10 A. certainly seems to now be completely

11 aligned with his father, including on the

12 question of relocating to Manitoba. He is

13 apparently making serious allegations against his

14 mother and her current spouse. Part of the

15 evidence adduced by the father is an email sent

16 to him by the mother in 2013 where she reports

17 that A. made a very serious threat against her;

18 more specifically, to slit her throat. All of

19 these things raise flags and concerns, but it is

20 obviously beyond the Court's ability, without

21 more evidence, to draw any firm conclusion on

22 that issue at this point. But there are elements

23 in the evidence here that do raise concerns.

24 Another area of concern that arises on the

25 evidence, of course, are the allegations of A.

26 being physically abused in the mother's

27 household. Allegations of abuse are not new in

18

1 this matter as it is clear from the 2011 decision

2 that these types of accusations were, at trial,

3 made by both parents against the other. At this

4 point, there is no admissible evidence that such

5 abuse has taken place; everything that is before

6 the Court is hearsay. But A. has told his

7 mother, not just his father, that he feels unsafe

8 in her home. That does not establish that he is

9 actually unsafe or actually even feels that way,

10 as opposed to him saying that because it is a way

11 to remain in the care of his father, but it does

12 confirm that these are things that A. is, in

13 fact, saying, because, again, it is not coming

14 just from the father, it is also coming from the

15 mother herself.

16 Another concern is the volatile nature of

17 the relationship between A. and his mother at

18 this point, irrespective of what has caused it.

19 The incident at her house on November 25th, as

20 well as the Reid Lake incident earlier on,

21 suggests that at this point she is not able to

22 get through to him, and this is a reality that

23 cannot be ignored.

24 The net result of their argument at Reid

25 Lake was that he started walking to town from a

26 very remote area, essentially in the middle of

27 the bush. She may have thought it best to let

19

1 him walk it off, and maybe there was very little

2 a parent could do in her situation, but the

3 situation was not without some risk for A. He

4 could have been picked up by someone with less

5 noble intentions than the man who did pick him

6 up. He could have encountered a bear. All sorts

7 of things could have happened.

8 As for the interaction at the house on

9 November 25th, the mother was evidently not able

10 to convince him to stay with her or reason with

11 him at all at that point. She attempted to lock

12 the door to stop him from leaving and continue

13 the conversation, but it appears that this

14 escalated matters further to the point that he

15 was rough and physical with her. That type of

16 interaction between A. and his mother is not

17 conducive to restoring their relationship; it is

18 more conducive to escalating things further

19 between them and ultimately causing more harm.

20 The father's actions in this matter raise

21 some concerns as well. It is always a great

22 concern when a parent takes a course of action

23 that goes against a Court Order without first

24 taking steps to get that Order varied. Here, the

25 father claims that he thought he had the mother's

26 agreement not only to have A. stay with him, but

27 also to relocate him to Manitoba. I must say I

20

1 find that claim suspect. It would be one thing

2 for the father to think, after a volatile

3 incident between A. and his mother, that the

4 mother was agreeable to have A. stay with him for

5 some time. But a relocation outside the

6 jurisdiction, and her giving up her whole year

7 with A., is a whole other matter. Given the

8 highly conflictual history of this matter, I have

9 some difficulty with the suggestion that the

10 father could have truly believed the mother was

11 agreeing not only to have A. in his care but that

12 she was agreeing to this for the whole school

13 year and agreeing to a relocation to Manitoba. A

14 firm finding cannot be made on this on the basis

15 of affidavits, but I am just flagging it as a

16 concern that emerges from the evidence.

17 In all the circumstances, the unilateral

18 actions of the father do raise concerns, in

19 particular, on the relocation issue, and, for

20 that reason, I do not think that A. should be

21 taken outside the jurisdiction, further away from

22 his mother, under the present circumstances

23 because then he would be completely removed from

24 her and that would make the restoration of

25 communication and relation with her very

26 difficult, if not impossible.

27 I am certainly satisfied that there is an

21

1 urgent need for intervention in this matter and

2 for A. to receive counselling and assistance in

3 dealing with the conflict that has been occurring

4 over the past few months and in beginning to

5 restore communication lines and the connection to

6 his mother. Both parents should cooperate fully

7 on this.

8 I bear in mind that the mother was granted

9 final decision-making in 2011 for medical and

10 treatment issues related to A., and this was

11 because the Court had concluded at that time she

12 was the more reasonable of the two parents when

13 it came to such issues, and this was to be so

14 even when A. was with his father. There is at

15 this point no basis to interfere with that

16 finding. She will have leave to arrange for

17 whatever counselling she sees fit for A.

18 I am also satisfied that A. needs legal

19 representation in these proceedings. Having

20 counsel will assist in giving him a voice and

21 hopefully also in understanding that the outcome

22 of these proceedings, including where he is going

23 to live, will not be left up to him.

24 Counsel for A. may be able to obtain

25 independent evidence to assist the Court in

26 deciding what is in A.'s best interest in the

27 face of this very complicated situation. So I am

22

1 going to make that appointment today. I know

2 that counsel is here for the Office of the

3 Children's Lawyer and I urge that office to

4 arrange for counsel to speak to A. as soon as

5 practicable on this matter because I think it is

6 much needed in this case.

7 I am going to adjourn this matter to

8 December 17th, which is the last Family Chambers

9 sittings before the courts close, and this is so

10 that updates can be provided to the Court about

11 various things, including the status of the RCMP

12 and Social Services' investigation into the

13 allegations of abuse. It may be overly

14 optimistic, but hopefully one or more counselling

15 sessions may be arranged between now and then and

16 this may provide additional useful information

17 and assist everyone involved; and, finally,

18 possibly by then counsel for the child may be in

19 a position to assist the Court as to what the

20 next step should be.

21 The last issue of course is whether A.

22 should be ordered returned to his mother's care

23 immediately. The mother does seek that. She

24 seeks strict enforcement of the existing court

25 Orders even though she recognizes that her son

26 currently seems to want nothing to do with her.

27 Her position as conveyed to the Court through her

23

1 counsel last week is that she is convinced that

2 if she has him back living with her, she will be

3 able to turn the situation around with the

4 assistance of a counsellor. She is so convinced

5 of this that she is asking the Court to go as far

6 as to get the police involved, if need be, to

7 forcibly bring A. back into her home.

8 As I have already said, there is evidence

9 before the Court now that was not before the

10 Court at the November appearance.

11 Even apart from the allegations included in

12 the father's affidavit, many of which I realize

13 the mother disputes, there is her own evidence

14 about what A. told her when he was at her house

15 on November 25th and her own evidence about the

16 physical escalation and him being rough with her

17 when she tried to prevent him to leave. While I

18 empathize with the mother's concerns and her wish

19 to get things back on track with A. as soon as

20 possible, with the greatest of respect, I am not

21 persuaded that it is necessarily realistic to

22 think that she can have the police force him back

23 into her home and then succeed in getting things

24 back on track with him and their communication.

25 There is huge potential for such an action to

26 cause further escalation of the situation and do

27 more harm than good. The chance of turning

24

1 things around would be much greater, in my view,

2 once there has been some sort of intervention

3 with counsellors and may also be assisted by A.

4 having independent counsel to provide an outside

5 perspective on things and some advice to him.

6 So after much thought, and although the

7 Court is always concerned when its Orders are not

8 being complied with, I have concluded that any

9 decision to order A. back into his mother's home

10 should be made only with the benefit of

11 submissions from his appointed counsel and in

12 light of any additional evidence that may be

13 brought forward as a result of counselling

14 process. Forcing A. to go back to that home

15 before then, before there has been an opportunity

16 for some counselling and some professional

17 intervention, and especially ordering police

18 involvement to enforce this, does not seem to me

19 to be in his best interests. And although I do

20 understand the mother does not take that view, I

21 think doing this at this point could also be very

22 detrimental to her relation with him as well.

23 So the Order I am issuing today will be as

24 follows:

25 - The matter is adjourned to be spoken to on

26 December 17th, 2015, at 10 a.m.;

27 - The Order of this court, dated August 16,

25

1 2011, will remain in effect with the

2 exception that on an interim interim basis:

3 1. A. may remain in the care of his father

4 until December 17th, 2015;

5 2. The issue of access over the holiday

6 season will be spoken to on December 17,

7 2015;

8 3. There will be a clause that neither

9 parent shall take A. outside the

10 Northwest Territories until further

11 Order of the Court or without leave of

12 the Court;

13 4. The mother shall be permitted to arrange

14 for counselling for A., and the father

15 shall cooperate and assist in ensuring

16 that A. attends any counselling sessions

17 that are arranged for him by the mother;

18 5. The Office of the Children's Lawyer is

19 appointed to represent A. in these

20 proceedings. The terms of that

21 appointment will be in accordance with

22 the ones that are usually adopted by

23 this court.

24 And I will ask Mr. Kinnear that a separate Order

25 be taken out in the usual form. But just so that

26 all the parties are clear, what will be included

27 in this order in addition to the appointment of

26

1 counsel is that:

2 - The Office of the Children's Lawyer (OCL) is

3 authorized, without further consent of the

4 mother or the father, to make a full and

5 independent inquiry of all the circumstances

6 relating to the best interest of A.;

7 - The OCL may contact and communicate with any

8 and all third parties involved with A.,

9 including but not limited to childcare

10 providers, teachers and school authorities,

11 family and child counsellors and assessors,

12 medical service providers, psychologists,

13 social workers, and any other individuals

14 having contact with or information about A.;

15 - Counsel for the child will be entitled to

16 receive copies of all notes, records, or

17 reports relating to A. from any source

18 whatsoever;

19 - Counsel for the child will have the

20 authority to talk to and meet with A. alone

21 and confidentially, or with others, at

22 any location counsel deems appropriate,

23 including but not limited to the children's

24 childcare, if that is applicable, school, or

25 the parents' home;

26 - Counsel for the child will have leave to

27 communicate directly with A.'s parents

27

1 without the presence of counsel for the

2 parents even if the parents have legal

3 counsel;

4 - All third parties involved with A.,

5 including but not limited to the ones that I

6 have already mentioned, are authorized to

7 release any and all information about him,

8 including documentary information, to

9 counsel for the child, who shall receive and

10 use that information for the purpose of

11 attempting to resolve or have adjudicated

12 the issues of custody and access;

13 - Counsel for the child will be entitled to

14 provide an oral summary to this court of the

15 information acquired in the course of

16 representing A., and, by doing so, shall not

17 be deemed to be a witness in these

18 proceedings; and

19 - Counsel for the child is authorized to

20 participate in these proceedings as though

21 A. was a party and, without limiting the

22 generality of this, will be entitled to

23 production and discovery, toappear and

24 participate in the proceedings, have the

25 ability to examine and cross-examine

26 witnesses, to call evidence, and to make

27 submissions to the Court, including the

28

1 position advanced on behalf of A.

2 These are the standard terms of Orders by

3 this court appointing counsel to a child in

4 Family proceedings and they are designed to

5 ensure that counsel for the child get the maximum

6 information that might be needed in order to

7 present submissions.

8 The final term of the Order I issue today,

9 Mr. Bruveris, is that costs, which you have

10 raised as an issue in earlier appearances, will

11 be adjourned to December 17th to be spoken to,

12 and depending on how things go and what decisions

13 are made then, it may be that that issue is

14 adjourned again.

15 So that is my ruling. The matter is

16 adjourned to December 17.

17 .................................

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20 Certified Pursuant to Rule 723

of the Rules of Court

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Jane Romanowich, CSR(A)

24 Court Reporter

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