

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

SABRINA WHANE

Applicant

-and-

NNAMDI OKOROEGBU

Respondent

MEMORANDUM OF JUDGMENT

OVERVIEW

[1] On this application, the Applicant, Sabrina Whane (“Whane”) seeks child support from the Respondent, Nnamdi Okoroegbu (“Okoroegbu”) for two of her three children, S., now 8 years of age and T., now 17 years of age. They are Whane’s biological children but are not Okoroegbu’s biological children. Whane submits that Okoroegbu stands in the place of a parent and is thus obligated to pay child support. Okoroegbu asserts that the nature of the relationship he had with the children is not sufficient to confer a legal status on him.

[2] Initially, Whane sought an order in relation to her third child, now an adult, however, Whane later clarified that she was only seeking an order in relation to the two youngest children, S. and T.

[3] As the issue of Okoroegbu’s obligation to pay child supports rests on a determination on whether he stands in the place of a parent, the matter was set for a special chambers hearing on that preliminary issue.

[4] The evidence on this application consists of three affidavits from Whane and two affidavits from Okoroegbu. In addition, both Whane and Okoroegbu gave evidence at the special chambers hearing and were cross examined.

[5] The application is based on ss 57 and 58 of the *Children's Law Act*, SNWT 1997, c 14:

s. 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.

s. 58 A parent has an obligation to provide support for his or her child where the parent is capable of doing so.

[6] If Okoroegbu stands in the place of a parent, he will be obligated to pay child support as is any parent of a child subject to arguments regarding the role of the biological fathers. If he does not stand in the place of a parent, that will be determinative of the application.

[7] For the reasons that follow, I have determined that Okoroegbu does not stand in the place of a parent,

HISTORY OF THE RELATIONSHIP

[8] Whane and Okoroegbu met in 2018 in Yellowknife and were married on December 30, 2018. The parties lived together for 3 years and nine months until they separated on September 18, 2022. Whane had three children from earlier relationships who lived with her. At the time of the marriage, the children were 17 (O.), 11 (T.) and 3 (S.) years of age. Whane had child support orders from the fathers of O. and T. She did not have a child support order from the father of S., however, received some informal support from him.

[9] The parties did not live together prior to the marriage and Okoroegbu had his own accommodation which he continued to maintain after the marriage. The reason given for this was that Okoroegbu was not able to be added to Whane's lease as he was not a legal resident of Canada at the time the parties married. Whane resided in publicly subsidized accommodation with rules around who was able to reside in the residence. As such, Okoroegbu continued to rent an apartment but primarily resided with Whane and the children.

[10] Both parties worked during the marriage. On the evidence, Whane was the primary income earner as Okoroegbu initially did not have legal status in Canada. That changed during the marriage as Whane sponsored Okoroegbu's permanent residency application in 2019. That application was granted in August or September 2022 (there is a minor discrepancy on this point in the evidence of the parties) shortly before the parties separated. Nonetheless, on the evidence, Whane was the primary income earner and the bulk of Okoroegbu's income was spent on his maintaining his separate residence.

[11] On occasion, Whane was employed at a remote mine site which resulted in Okoroegbu caring for the children in her absence. When Whane was not working outside Yellowknife, the parties appeared to share caregiving and family type functions.

[12] As is common, the parties enjoyed family holidays together which included the children. As Whane was the primary income earner, Okoroegbu's evidence was that Whane would do most of the planning and financing for the family holidays and he would contribute what he could.

[13] By all accounts, the relationship was not always a happy one. Both alleged that the other was abusive to them. On one occasion, Whane laid criminal charges for assault against Okoroegbu and obtained a no contact order, resulting in Okoroegbu having to leave the family home. These charges did not proceed when Whane asked the Crown to drop the charges.

[14] Whane admitted to calling the police on multiple occasions because Okoroegbu was allegedly abusive. Okoroegbu gave evidence to the effect that Whane was the abuser and he was asked on many occasions to leave the family residence when they were fighting. When that occurred, Okoroegbu would spend periods of time at his rented accommodation. Okoroegbu estimated that 40% of his time was spent at his rented accommodation. Whane's evidence was that Okoroegbu primarily lived with her except for the periods of time when he was not legally able to have contact with her.

[15] The relationship ended shortly after Okoroegbu obtained his permanent residency. The parties had an argument with respect to Okoroegbu having gone out to celebrate this occasion and he left the home. According to Okoroegbu, this was at Whane's request. He never returned to the family home. There is no ongoing relationship between Okoroegbu and the children.

ANALYSIS

[16] The onus on a person seeking a declaration that a person stands in the place of a parent is on the person claiming the support order: *Whitton v Whitton*, 1989 CanLII 8868 (ON CA), *Fair v Jones*, 1999 CanLII 4436 (NWTSC).

[17] The parties are in agreement that 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 CanLII 707 (SCC). *Chartier* makes it clear that the Court must look to the nature of the relationship between the step-parent and the children at the time that the family functioned as a unit. While *Chartier* was a case decided under the *Divorce Act*, R.S.C., 1985, c 3 (2nd Supp.), the principles and test are equally applicable to cases decided under the *Children's Law Act* given the identical wording used in the *Divorce Act* and the *Children's Law Act*.

[18] *Chartier* sets out a number of factors to consider in determining whether a person will stand in the place of a parent. One of those factors is the person's intentions, which may be expressed formally but which also may be inferred from actions. Other relevant factors are:

- a. Whether the child participates in the extended family the same way as would a biological child;
- b. Whether the person provides financially for the child, depending on ability to pay;
- c. Whether the person disciplines the child as a parent;
- d. Whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child; and
- e. The child's relationship with the absent biological parent.

Chartier, para 39.

[19] *Chartier* makes it clear that the above factors are non-exhaustive. *Widdis v Widdis*, 2000 SKQB 441, sets forth additional factors, as follows:

- a. Whether the child calls the adult Mom or Dad;
- b. Whether there has been a change in surname;
- c. Whether there has been discussion of adoption;
- d. Whether the adult engages in activities with the child;
- e. The degree of affection between the adult and the child;
- f. Whether the adult gives the child gifts; and
- g. Whether the adult engages in decisions about education and attends parent-teacher meetings.

Widdis at paragraph 16, citing Professor Carol Rogerson in *The Child Support Obligation of Step-parents*, a paper prepared for the Federation of Law Societies National Family Law Program, July 2000, at pp 9-28.

[20] Not all of these factors are applicable in the case at bar.

[21] Since *Chartier*, there has been considerable discussion as to the threshold for a finding that a person stands in the place of a parent. Professor Nick Bala, in his paper “*Who is a ‘Parent’? ‘Standing in the Place of a Parent’ & Canada’s Child Support Guidelines, s 5*”, 2015 CanLIIDocs 5306, submits that the case law in Canada illustrates that the courts are divided on the issue of the threshold to be applied to a finding, with some courts holding that there should be a “relatively high” threshold and others holding that the threshold should be lower.

[22] The case of *Cook v Cook*, 2000 CanLII 49243 (NSSC) is an example of a case where the court adopts a relatively high threshold. In that case, Campbell, J notes at paragraph 23:

An affirmative finding attaches a financial obligation for support paid by the step-parent - an obligation that can represent significant quantities of money over many years and one which is ordinarily associated with having brought the child into the world or having legally adopting him or her. Financial responsibility to support other persons arises generally out of the formation of a dependency relationship. It follows in my view that parental status should not be assigned automatically or from the mere willingness of the step-parent to share with children and to assist with their financial, emotional and physical needs. *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.* On the other hand, a child who has been made to be dependent upon a step-parent by actions of the adults in the definition of their relationship with each other and with the child should not be deprived of that support in appropriate circumstances. [emphasis added]

[23] In the case of *Pitt v Mouland*, 2015 NWTSC 4, Schuler, J adopts Justice Campbell’s statement as being very helpful in assessing the significance and weight of the various factors and determining the result they should lead to in a particular case. I do so as well.

[24] I now turn to an assessment of the evidence based on the factors which are relevant to this case.

Intentions of the parties prior to marriage

[25] Whane's evidence was that Okoroegbu had met her children before the parties married, shortly after they started seeing each other. She stated that they were often with her when, for example, she would drop off lunch for the respondent when he was working. Okoroegbu's evidence was that he had only met the children on several occasions and that his primary focus was on his relationship with Whane, not with the children. From his evidence, the children appeared to play a very peripheral role in his life prior to the marriage. Nor did Whane describe any significant contact between the children and Okoroegbu prior to the marriage, apart from them accompanying her when she would drop off lunch.

[26] With respect to discussions prior to the marriage about what role Okoroegbu would have in the family unit, Whane's evidence was that Okoroegbu said he would "step up" and help her with her boys. Whane understood that would mean that he was going to be there for them and be a father to the boys. She stated that before they got married, he did say he would be the father to the children. No concrete detail as to what that meant was provided.

[27] Okoroegbu's evidence was that he saw his role as being one of helping the applicant. He loved Whane and wanted to assist her. He agreed that he said he would step up but disagreed that he said he would be the father to the children.

[28] Neither party asserted that there was any discussion about Okoroegbu adopting the children or formalizing the legal relationship between Okoroegbu and the children.

[29] With respect to the wedding, the two oldest children did not attend. Only the youngest child, S., attended the wedding. Under cross-examination, Whane agreed that S. attended the wedding in Edmonton because she could not leave him behind in Yellowknife, presumably for childcare reasons. S. did not play a role in the wedding.

[30] On the whole, I find that there is nothing in the evidence to suggest Okoroegbu agreed, either implicitly or expressly, that he would stand in the place of a parent prior to the marriage. There is nothing in the evidence that suggested a close relationship between Okoroegbu and the children prior to marriage. The fact that two out of the three children did not attend the wedding, and the third child only attended because Whane could not leave him behind, suggests that there was not a close relationship prior to marriage. While it may have been Whane's sincere hope

that Okoroegbu would play a parental role, simply agreeing to “step up” and assist Whane is insufficient to find an expressed intention to assume this role.

Functions performed within the family home

[31] The evidence revealed that Okoroegbu did perform parent-like duties with the children, particularly when Whane was working away from Yellowknife. While Whane characterized this role as akin to a parent-child role, Okoroegbu characterized his role as more of a caregiver or baby-sitter. He stated that he took his direction in terms of caring for and disciplining the children from Whane. He relied on one text exchange wherein Whane asked him to try to get one of the children asleep by ten as illustrative of the fact that he took direction from Whane on parenting matters.

[32] I find, on balance, that Okoroegbu did perform parent like functions within the home notwithstanding his attempt to minimize his role. I reject that he was simply taking direction from Whane. On Okoroegbu’s own evidence, he performed many of the tasks that a parent would, particularly when Whane was away working. These activities include waking the children up, preparing breakfasts and lunches, taking the children to and from school, assisting with homework, making dinner, socializing with the children at night and putting the children to bed. The text exchange between the parties regarding bedtime hours referenced above is simply an example of the back and forth that will often occur between parents, whether biological or stepparent, as to the welfare of the children. I do not find that Okoroegbu’s role was akin to a babysitter and find that he genuinely participated in the day-to-day functioning of the household and raising the children.

[33] Whane points out that Okoroegbu held himself out as a parent to others, pointing out that he attended parent-teacher interviews and was added to the school contact information list as a guardian. Okoroegbu argues that it was simply easier, in terms of communication, for him to be on the school emails, particularly when the applicant was working out of town. There is logic to Okoroegbu’s submission.

[34] I am, however, mindful that simply assuming a parent-like role by sharing in household and child rearing tasks is not, by itself sufficient to confer a legal responsibility on a step-parent. As noted by Campbell, J in *Cook v Cook*, at paragraph 26:

In marriages...involving children of a previous relationship, the adults and children will necessarily show signs of family life together. There will be a division of labour between the adults and, inevitably the step-parent will perform certain aspects of the role previously performed by the natural parent. This should be encouraged. Re-marriage or other forms of second families should be encouraged; it is good for children that their custodial parent finds happiness in a new relationship. There must be a balance between addressing the needs of children that arise out of legitimate dependency relationships with a step-parent and a requirement that the step-parent must behave in unnaturally cold or parsimonious ways toward the children in order to avoid the inference being drawn [that he stands in the place of a parent]. In finding parental status, a court must take care not to penalize a step-parent for behaving kindly or offering emotional, physical and financial assistance to the natural parent who would otherwise be raising the children alone or with some assistance from the non-custodial natural parent.

Family activities

[35] There was no question that the parties took holidays together. Whane's evidence was that these were discussed and planned by the parties, as any family would do. Okoroegbu indicated that these holidays were largely planned by Whane as she would be the one paying for the holiday. Pictures were introduced into evidence by Whane showing the parties and the children enjoying activities together on their vacations.

[36] Some emphasis was also placed on the role played by Okoroegbu in coaching S.'s soccer team. Whane asserted that Okoroegbu took the initiative to arrange for S. to be enrolled in soccer and played a key role in coaching soccer. Okoroegbu disputes being the 'lead' on organizing soccer but acknowledges that he stepped up to assist when it was clear that the coach had too many children to coach.

[37] On the evidence, I find that it was Whane who took the lead role in planning holidays and family activities. Much as Okoroegbu assisted Whane in parenting, he also played a facilitating role with respect to the holidays and other family activities but did not actively organize them, likely because Whane was bearing the cost of the holidays.

[38] I also do not place great importance on the role played by Okoroegbu in S.'s soccer activity. Whether or not it was Okoroegbu who suggested S. enroll in soccer is not particularly relevant to the issue of whether Okoroegbu was acting as a parent. It was only one organized activity in a household of three children. Okoroegbu offered to assist in this one activity. One might expect that any adult with an

appropriate skill set regularly attending these practices might offer to be of assistance.

[39] I find that Okoroegbu played a relatively passive role with respect to arranging family activities.

Representations to the children, family or world

[40] The evidence was that S. referred to Okoroegbu as “dad” and that the two older children generally referred to Okoroegbu by his first name. There is evidence that Okoroegbu had a good relationship with T., although Whane also led evidence that by the end of the relationship, T. was mad at Okoroegbu because of Okoroegbu’s alleged use of corporal punishment within the family home.

[41] Whane asserted that the family celebrated Father’s Day with Okoroegbu. This was denied by Okoroegbu.

[42] The evidence was uncontested that Whane introduced Okoroegbu to her extended family, and that they interacted on a regular basis. Notwithstanding Okoroegbu having some extended family in Yellowknife, Okoroegbu did not introduce Whane or the children to those family members. Additionally, while Okoroegbu interacted regularly with his extended family in Nigeria via FaceTime, the evidence was that most of these interactions did not include Whane or the children. Whane met Okoroegbu’s mother and sister but there was no evidence of there being any ongoing relationship between Whane and members of Okoroegbu’s family. There was no evidence led about the children having met any member of Okoroegbu’s extended family. If Okoroegbu had intended to step into the place of a parent and treat Whane’s children as his own, one would reasonably expect that he would have introduced the children to his extended family, particularly those family members who resided in Yellowknife. That did not occur.

[43] Whane’s evidence was that she met some of Okoroegbu’s friends in Yellowknife and while on vacation, however, there was no evidence that Okoroegbu held himself out to his friends as having a parental role in the life of the children.

[44] Whane points out that Okoroegbu held himself out as a parent to others, pointing out that he attended parent-teacher interviews and was added to the school contact information list as a guardian. Okoroegbu argues that it was simply easier,

in terms of communication, for him to be on the school emails, particularly when the applicant was working out of town. There is logic to the Okoroegbu's submission.

Financial support

[45] The parties spent time on the issue of a life insurance policy with Okoroegbu as the insured and the three children being the beneficiaries. Whane asserted that Okoroegbu made arrangements to obtain and pay for the insurance policy. Okoroegbu said that Whane had made arrangements for the policy, that she knew what she was doing and that he paid the premiums. Regardless of whose idea it was to purchase the insurance policy, the evidence is clear that both parties knew of the existence of the policy and supported the policy. Having said that, the insurance policy is the only evidence of any intention for Okoroegbu financially support the children. On the evidence, it appears that all Okoroegbu's resources went to his separate accommodation and to pay the insurance policy premiums. There is no evidence of any ongoing financial support for the children, but for the insurance policy.

Role of biological fathers

[46] With respect to the role of the biological fathers, the evidence was clear that the children had a limited relationship with their fathers. T. had no relationship with his father nor his extended family. S. has more involvement with his biological father but that involvement did not appear to be a regular occurrence. Okoroegbu suggested that the limited role that T. had with his father was because Whane discouraged any relationship as T.'s father was in arrears in child support. Whane disputed this. There was evidence as to S. having met members of his paternal extended family during a family trip to Edmonton. Certainly, the willingness of Whane to introduce S. to his extended family members suggest that she would be likely to also encourage a relationship between T. and his father. Additionally, even if Whane had not fostered a relationship between T. and his father, that is of limited weight, on these facts, to the issue of whether Okoroegbu stood in the place of a parent. What is clear on the evidence of both parties is that there was a limited to non-existent relationship between the children and their biological fathers.

Separate residence

[47] It is also important to note that Okoroegbu maintained his own residence throughout the marriage. Both parties agreed that this was because he was not able to legally be on the lease in Whane's unit as a result of his non-resident status,

however, the effect of this was that Okoroegbu essentially split his time living between two places and almost all his resources went to pay for that residence, not to the family unit. On Okoroegbu's evidence, he spent approximately 40% of his time in his own residence. On Whane's evidence, the time Okoroegbu spent at his separate residence was less than that asserted by Okoroegbu. Notwithstanding the difference in the evidence of the parties on this point, there is no doubt Okoroegbu was often out of the family home because of the volatile nature of the relationship. The fact of maintaining a separate residence, and spending considerable time in that residence away from Whane and children, is inconsistent with the formation of a parent-child relationship.

CONCLUSION

[48] In all the circumstances, I find that Whane has not met the threshold of establishing that Okoroegbu stood in the place of a parent. I do find that Okoroegbu took pains to minimize his role by denying any meaningful involvement in the lives of the children. For example, in some of the pictures entered into evidence which depicted the parties and the children, he pointed out that the children were leaning towards their mother, suggesting that this meant they were not close to him. He referred to himself as simply following Whane's "directions" when he was caring for the children. At one point, he noted that he was called a "glorified babysitter". At times, his evidence about his minimal role appeared to be exaggerated and unrealistic and tailored to seeking a finding that he did not stand in the place of a parent. Whane's evidence about the fluidity about the family relationship and the joint nature of their family life was more realistic and believable and I accept her evidence over Okoroegbu's evidence on aspects of their family life together.

[49] Nonetheless, even on Whane's own evidence, I am not persuaded that she has met the onus of establishing that Okoroegbu stood in the place of a parent, even though she may have genuinely hoped and wished to find a partner who would assist her in parenting her children. I find that given the relatively short nature of the relationship, the fact that the children did not meet any member of Okoroegbu's family, the lack of any evidence of express intention to assume parental responsibilities, the lack of his financial support for the family unit, and, most significantly, the maintenance of a second residence at which Okoroegbu spent a considerable amount of time, all support a declaration that Okoroegbu did not stand in the place of a parent. Accordingly, I make a declaration to that effect and dismiss the application for child support.

[50] On the issue of costs, I am mindful of the fact that Whane is the sole support of three children. While she has support orders in place for two of the children, there is evidence that the fathers are in arrears. The financial evidence filed on her behalf suggests that her means are very modest. While she has not been successful in her application, she had an arguable case to put forward and was a credible witness. By agreeing to a preliminary determination of the issue of Okoroegbu's status, rather than, as was suggested by Okoroegbu's counsel, having the three fathers of Whane's children added to the litigation, she took steps to resolve this issue in a cost-effective and timely manner. Additionally, Whane agreed to have Okoroegbu and his counsel appear remotely, minimizing Okoroegbu's travel and legal costs. As such, notwithstanding the usual rule that costs follow the cause, I order that each party shall bear their own costs of this application.

[51] I would like to thank both counsel for the able advocacy and submissions on behalf of their clients.

S.M. MacPherson
J.S.C.

Dated at Yellowknife, NT, this
21st day of February, 2024

Counsel for the Applicant:

Catherine Akello

Counsel for the Respondent:

Sai Ravikumar

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