CW 0126, 1999 NWTTC 1

Date: 1999 10 21
Docket: 3-CW 0126

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Child and Family Services Act,*
S.N.W.T., 1997, c.13, as amended;

AND IN THE MATTER OF the child,
K., (B.)
born on October 23, 1990

Application for variation of the terms of a Consent Temporary Custody Order made January 27, 1999.

Heard at Yellowknife, NT, October 14 and 15, 1999.

Reasons filed: October 21, 1999

REASONS FOR JUDGMENT OF THE HONOURABLE JUDGE B. A. BRUSER

Counsel for the Applicant: John Bayly, Q.C.

Counsel for the Director: Paul Smith

Counsel for the Mother: Andrew Fox

Counsel for the Child: Catherine Stark

[1] This is a child protection proceeding. It involves B.K., who was born in October, 1990. He is in need of protection because of his behaviour. Nobody is saying that B.K. is a bad person; what his parents and child protection workers say is that some of his behaviour has been wrong. Because some of B.'s behaviour has been wrong, it has been in his best interests to live at a group home since May 2, 1998. The home is in Regina, Saskatchewan and is part of a facility called Ranch Ehrlo. At Ranch Ehrlo there are qualified professionals who are able to give B. the sort of highly specialized help he requires.

[2] The reason I am using the initials of B.K. is to protect his privacy. Since this is a child protection matter, the proceedings have been held in private. For privacy reasons, there are documents in the file which are in a sealed envelope. The envelope can not be opened unless a judge gives permission.

[3] B. might read this judgment one day. It is important for him to know that his parents love him very much. Even though they no longer live together, they are united in their determination that he receive the best possible care. They have always wanted the best for him. The evidence which I have heard shows that they are willing to sacrifice a great deal for his benefit.

[4] If you read this B., please be aware that your mom and dad would have preferred that you continue to live in either Aklavik or Inuvik with one of them. Unfortunately, you began to behave in ways that worried them and others. This is why it was necessary to send you to Ranch Ehrlo. You know from your experience there that Ranch Ehrlo staff have worked hard to help you enjoy a safe and happy childhood.

[5] You were taken into the care of a child protection worker on May 1, 1998, and the next day were on a plane to Ranch Ehrlo. This was hard on your mom

and dad. If there had been adequate facilities in Inuvik or elsewhere in the Northwest Territories, you would not have had to go to Saskatchewan.

[6] Your father wisely decided that a judge should look into this matter for two reasons. This is what the rest of the judgment is about.

[7] S.B. is the father. We call him the applicant because it is his application which I have been asked to rule upon. He asks:

> 1) That the court allow him (and B.'s mother) more visits to Ranch Ehrlo, and that the government assist in paying for the trips;
>
> 2) That the court make some comments about what happened when the child protection worker took B. into care in Inuvik and flew away with him the next day to Ranch Ehrlo. The applicant says I should comment about this because in his opinion B., and B.'s parents, were not treated fairly.

[8] On October 15, 1999, after two days of evidence, I ruled that each parent be permitted at least one visit to Ranch Ehrlo of not less than seven days duration, at least once every 60 days. The first visit will take place no later than November 15, 1999, subject only to the ability of the parents to travel to Regina by that date. Telephone and other access will be generous.

[9] B.'s mother is on income assistance. She can not afford to pay to go to Regina. It is only fair to require the Director to pay all her reasonable costs. If the Director does not do this, what would be the point in making an order for access allowing her to visit Ranch Ehrlo? An order of access which can not be carried out is not in B.'s best interests. Court orders which are unworkable do not make good sense and cause the public to lose confidence in the administration of justice. B. needs to have both parents make telephone calls and face - to - face visits, and the visits should be more frequent than they have been. I say this

because I am satisfied that frequent personal visits by the parents are necessary for B. to continue making progress.

[10] B.'s father works. Visits to Regina are expensive. Child protection workers have expertise available to them to assist in determining the financial affairs of people. They will have to sit down with B.'s father to determine his income situation. Once they have done this, the Director will have to cover whatever reasonable expenses S.B. can not afford to pay on his own. If there is a dispute about what is a reasonable expense, I can hear about it later in court. This could take place either in Inuvik or Yellowknife, depending on which location provides the quickest and least expensive access to the court.

[11] I will now say something about what happened when B. was taken into care.

[12] The child protection workers moved quickly. It seems that at least one worker thought that if they did not take B. away quickly, his father might have fled with him.

[13] The evidence is clear that the fear was unreasonable. S.B. knew that his son needed help, and he was committed to being a player on the team; however, he did not attempt to be the team captain. At a meeting with child protection workers in April, 1998, (before B. was taken into care) he objected to what he thought might be a plan to send B. to an "institution." He suggested that a placement in Whitehorse would be better because of the location. Unfortunately, Whitehorse was not an option. S.B.'s objections and suggestions were part of his ongoing commitment to B.'s best interests. S.B., by objecting and by suggesting, was not intending to do anything against his son's best interests. As the custodial parent at the time, S.B. would have had a right, which he chose not to exercise, to move away from Inuvik with B., there being no court order or other prohibition in law against doing so.

[14] I am of the view that the legal rights of B. and his parents could have been more carefully addressed before the application was made to this court on May 1, 1998 for a temporary care and custody order. I say this because it appears that the mother was not served with a copy of the Notice of Motion returnable for May 1 until May 12. The father was apparently served during the morning of May 1, shortly before the return time of 11:00 a.m. I heard weak evidence that it was necessary for him to go quickly to Ranch Ehrlo because the facility had an available bed which might not have been ready if there had been a delay. In their determination to apprehend and place B., the rights of the parents were not adequately addressed by the Director (formerly the Superintendent of Child Welfare). My assessment of the evidence is that their right, at the initial stage of these proceedings, to have sufficient time to consider their options was compromised in the unnecessary haste to remove B. from Inuvik. As well, there is evidence to show that the applicant was led to believe that the placement at Ranch Ehrlo was for assessment purposes only. Despite these failings, the child protection worker was right to apprehend B., and she chose the best available place for him (Ranch Ehrlo). Nevertheless, the matter could have been handled with more sensitivity and with less urgency.

[15] B.'s father says that at least some of his costs in bringing this matter to court should be paid by the Director. I agree. He had legitimate concerns in making this application. He cooperated in reducing the trial estimate from several days to two days (which was exactly how long the hearing lasted), he made every effort to keep expenses down (e.g. by cooperating in the video-conferencing of some of the key witnesses), he was successful in his application for improved access, and he consistently had the best interests of B. in sight at all times. Unlike some applicants in cases like this, he did not come before the court under the guise of the best interests of the child while actually attempting to advance selfish interests. The lawyers may address the cost items and the amounts by written submissions which are to be filed and exchanged on or before November 22, 1999.

[16] The reasoning in this judgment is specific to the unique facts. It draws upon reasoning from a September, 1999, judgment of the Supreme Court of Canada, and other case law. Whether payment of access expenses and payment of costs to a parent will apply to future child protection cases will depend upon the facts and issues relevant to such proceedings. As for the payment of access expenses in particular, it is not the purpose of this judgment to set directives, standards or guidelines for future apprehensions where the child is removed from the Northwest Territories. It is because of the unusual circumstances of this case that I have expanded the access portion of the order made on January 27, 1999, to include payment of access expenses for the parents.

[17] I thank all four lawyers for their ongoing cooperation in this difficult matter. The standard of preparation and presentation has been of the highest calibre, and the assistance provided to the court at every stage has been excellent.

B. A. Bruser, J.T.C.

Dated at Yellowknife, NT, this
20th day of October, 1999

Counsel for the Applicant: John Bayly, Q.C.
Counsel for the Director: Paul Smith
Counsel for the Mother: Andrew Fox
Counsel for the Child: Catherine Stark

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APPLICATION FOR VARIATION

THE HONOURABLE JUDGE B. A. BRUSER

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