

**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,

W., (T.)  
Born September 30, 1994

APPREHENDED: February 17, 2004

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**REASONS FOR DECISION**

**of the**

**HONOURABLE JUDGE Bernadette SCHMALTZ**

**These Reasons are subject to Publication Restrictions pursuant to s. 87 of the *Child and Family Services Act*, S.N.W.T. 1997, c. 13 (See Appendix "A")**

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Application for a Permanent Custody Order by the Director of Child and Family Services, pursuant to section 28(1)(d) of the *Child and Family Services Act*.

Heard at: Yellowknife, Northwest Territories

Date: February 13 to 17, 2006, and February 27, 2006

Date of Decision: March 20, 2006

Reasons Filed: March 21, 2006

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Counsel for the Director: K. Payne

Counsel for the Child: B.L. McIlmoyle

Counsel for the Mother: T. Nguyen

For the Father: R.H. appeared on his own behalf.

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**I. INTRODUCTION**

[1] This is an application by the Director of Child and Family Services (the Director) for an Order placing T.W., born September 30, 1994 (the child), in the permanent custody of the Director pursuant to section 28(1)(d) of the *Child and Family Services Act*, S.N.W.T. 1997, c. 13 (the *Act*). M.S.W. is the mother, and R.H. is the father, of T.W.

[2] The evidence on this Application was heard during the week of February 13 to 17, 2006, and final arguments were made on February 27, 2006. The Director, represented by counsel, and the father, R.H., representing himself, both appeared on the Application; the mother, M.S.W., was represented by counsel at the hearing, though did not attend the hearing; and the child, T.W., was also represented by counsel though did not attend the hearing. Upon completion of the hearing, I reserved my decision.

[3] At the hearing, the Director called 7 witnesses: four child protection workers who had been involved with this child and the file, the previous foster mother of T.W., and both of the current foster parents, who are T.W.'s maternal grandparents. R.H. called two witnesses, both former employers, and also

testified on his own behalf. No witnesses were called on M.S.W.'s, nor on T.W.'s, behalf.

[4] The following Exhibits were entered on this Hearing:

1. Two Exhibit Books containing copies of court documents and records from the Yellowknife Health and Social Services Authority file on this child;
2. A further 34 pages of the Child Protection Worker's case notes not contained in the Exhibit Books;
3. Affidavit of R.H. dated May 7, 2004;
4. A letter to R.H. from Nunavut Tunngavik Inc. dated June 14, 2004;
5. A Plan of Care Report dated July 13, 2005;
6. A letter to the Court from T.W.;
7. A Poster, and class photograph of R.H.'s class from Fairview College;
8. Photographs from R.H.'s course at Fairview College;
9. A Certificate and photograph from a Heavy Equipment Operator course R.H. took in Cambridge Bay;
10. A class photograph and Record and Certificate of Training relating to Dangerous Goods training R.H. took in Rankin Inlet;
11. A Record of Employment dated November 6, 2001;
12. Photographs taken in Flin Flon, Manitoba in the Fall, 2001;
13. Photographs taken in July, 2002, when R.H. and T.W. were in Edmonton, Alberta;
14. Photographs taken when R.H. visited T.W. at the cabin near Yellowknife;
15. Family Photographs of R.H. and family members;
16. Notice of Denial from the Legal Services Board of the N.W.T. dated August 23, 2002;
17. A receipt issued to R.H. for room and board for himself and his son dated August 10, 2002;
18. A receipt issued to R.H. for School Fees for T.W. dated August 30, 2002.

## **II. HISTORY OF SOCIAL SERVICES INVOLVEMENT**

[5] Yellowknife Health and Social Services Authority (Social Services) was first involved with R.H. in early July 2002. In June 2002, R.H. went to Manitoba, took custody of T.W., and both T.W. and R.H. returned to Yellowknife. On July 11, 2002, R.H. contacted Social Services and requested assistance with caring

for his son; after discussions it was arranged that R.H. and T.W. would live with a family friend, M.F. R.H. would provide for the care of his son directly to M.F. without the involvement of Social Services. There were no child protection concerns at that time.

[6] In December 2002, M.F. contacted Social Services and requested assistance to care for T.W. R.H. and T.W. had been living with M.F., but sometime in November 2002, R.H. was incarcerated and had not made any plans or financial arrangements for the care of T.W. On January 21, 2003, a Child Protection Worker met with R.H. and a Voluntary Support Agreement was entered into; it was agreed that T.W. would continue to live with M.F. as R.H. was unable to care for T.W. at that time. Social Services provided assistance to M.F. to care for T.W. as his foster mother. On June 25, 2003, as R.H. was still not in a position to resume caring for T.W., a further Voluntary Support Agreement was entered into, and T.W. continued to live with M.F. with the assistance of Social Services. While R.H. was incarcerated arrangements were made for him to have visits with T.W.; these visits went well and were described as positive.

[7] On December 4 or 5, 2003, R.H. was released, and met with a Child Protection Worker; it was agreed that the Voluntary Support Agreement would be extended for 2 months in order to allow R.H. to make arrangements for housing and employment and to resume caring for T.W. On December 24, 2003, R.H. signed a 2 month Voluntary Support Agreement (December 19, 2003, to February 18, 2004). Notably, paragraph 5 of that Agreement states “[R.H.] will meet with his social worker regarding his preparations for [T.W.] to return to his care.” R.H. made no contact with Social Services between December 24, 2003, and February 15, 2004.

[8] In late December 2003, R.H. was again incarcerated. On January 2, 2004, a Child Protection Worker heard on the radio that R.H. was in custody. When the Child Protection Worker spoke to T.W. about his father being back in

custody, T.W. said he had already heard it on the radio. R.H. was released from custody on January 5, 2004. As R.H. had not contacted Social Services, and no arrangements had been made for T.W.'s care, T.W. was apprehended on February 17, 2004.

[9] After T.W. was apprehended, attempts were made to reach a Plan of Care Agreement to provide for the care of T.W. until R.H. was in a position to resume care of T.W. T.W.'s maternal grandparents and aunt, the Child Protection Worker, and R.H. were involved in trying to reach an agreement to care for T.W. No agreement could be reached. On March 18, 2004, the Director filed a court application for a 6 month temporary custody order for T.W.

[10] Between March 19, 2004, and April 2, 2004, Social Services made efforts to contact R.H., but could not locate him. Messages were left at places where it was thought that R.H. may be, and with people who may be able to contact R.H. or whom R.H. may contact. On April 2, 2004, Social Services learned that R.H. was incarcerated. On May 10, 2004, a 6 month temporary custody Order was granted placing T.W. in the temporary custody of the Director.

[11] While R.H. was in custody, T.W. visited R.H. approximately once per month; the visits went well, and again, were described as positive.

[12] R.H. was released from custody on or about October 29, 2004. R.H. was still not in a position to care for T.W. On October 28 2004, the Director filed an application to extend the temporary custody order for T.W. for a further 6 months. The matter was adjourned a number of times, with T.W. remaining in the custody of the Director in the interim.

[13] On or about January 18, 2005, R.H. was incarcerated. The Child Protection Worker learned of R.H.'s incarceration on the radio. Prior to January 24, 2005, R.H. was released from custody. R.H. was at the Court House on

January 24, 2005, but did not remain nor attend the hearing dealing with the custody of T.W. On January 24, 2005, a further 6 month temporary custody order was granted and T.W. remained in the custody of the Director.

[14] Prior to April 1, 2005, R.H. was incarcerated. R.H. made no contact with Social Services between January 24, 2005, and June 2005. On June 17, 2005, the Director filed an application for permanent custody of T.W. On June 22, 2005, R.H. was served with court documents in relation to the permanent custody application. On October 24, 2005, after a number of adjournments the hearing of the Application was set for February 13 – 17, 2006.

[15] From July 2002, to November 2002, T.W. and R.H. lived with M.F. From January 21, 2003, to late June 2004, T.W. continued to live with M.F. either pursuant to a Plan of Care Agreement or Temporary Custody Order. Initially, R.H. agreed with T.W. living with M.F. though subsequently became dissatisfied with M.F. having care of T.W. In June 2004, T.W. was moved to the home of his maternal grandparents, R.W. and E.W. (the Grandparents), and is still living with them. Initially, R.H. agreed with this placement as well, but again, subsequently became dissatisfied.

[16] Other than 3 unplanned encounters in the community, R.H. has had no contact with T.W. since early January 2005.

[17] M.S.W., T.W.'s mother, has had sporadic telephone contact with T.W. since T.W. has been in Yellowknife. T.W. enjoys the contact with M.S.W., and even though sporadic, the contact has been described as positive.

### **III. POSITION OF THE PARTIES**

#### **A. M.S.W. (T.W.'s Mother)**

[18] M.S.W. has two other children besides T.W.<sup>1</sup>, and is currently living in Manitoba with her other son A., who is 2 years older than T.W. M.S.W. also has a daughter, B., 3 years older than T.W., who has been in the custody of the Grandparents since she was 2 years old; at times B. has been in M.S.W.'s care, but the custody agreement has always remained in place, and B. is currently living with the Grandparents along with T.W.

[19] M.S.W. had custody of T.W. from his birth until she allowed R.H. to take him in June 2002<sup>2</sup>; T.W. was 7 years old at the time. M.S.W. and R.H. have never lived together in a permanent relationship, though R.H. did stay with M.S.W. for a period of time when he visited T.W. in the fall of 2001.

[20] M.S.W. is consenting to this Application, though would want to have generous access with T.W., and maintain contact with him. Through counsel she has submitted that but for events beyond her control, she would have attended on this Application in person. I accept that. There has been no evidence and there is no reason to find that M.S.W. does not love and care deeply for her son, and I find that her position on this Application is likely one taken after much consideration for the welfare of her son.

#### **B. T.W. (the Child)**

[21] T.W. will be 12 years old this September. Counsel was appointed by court order for T.W. T.W. did not testify on this Hearing. R.H. did issue a subpoena to

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<sup>1</sup> R.H. is not the father of M.S.W.'s two other children.

<sup>2</sup> I do not find it necessary to decide whether or not M.S.W. was under a misapprehension that R.H. had a Court Order giving R.H. custody of T.W. at the time that R.H. took custody of T.W. from M.S.W. There has never been any formal Order giving either parent custody.

T.W. to attend and testify on this hearing. I quashed that subpoena as oppressive and not in the best interests of T.W. It is regrettable that the subpoena issued in the first place, and that issue of it could not have been refused before it could be served on T.W.

[22] For the first 7, almost 8, years of his life T.W. lived with his mother. In late June 2002, his father went down to Manitoba and brought T.W. back to Yellowknife with him; T.W.'s mother remained in Manitoba. For the first 6 months that T.W. was in Yellowknife, he lived with his father at M.F.'s; then his father left M.F.'s home, though T.W. continued to live with M.F. Then after approximately 2 years at M.F.'s home, T.W. was moved in with his grandparents. From the time T.W. was moved to Yellowknife until January 2005, approximately 2.5 years, he had fairly regular contact with his father; since January 2005, other than 3 chance encounters, his father has had no contact with him. Since T.W. moved to Yellowknife he has had telephone contact with his mother and older brother, though from the case notes that have been entered as part of Exhibit 1, many times he has called his mother and there has been no answer even though phone contact had been previously scheduled. I am sure that the last 3.5 years, almost 4 years, have been difficult and confusing for T.W.

[23] T.W. has written a letter to this court stating that he would like to live with his mom and his brother. R.H. has testified that more than once he has asked T.W. who he wants to live with. R.H. says that T.W. says he wants to live with R.H.

[24] I do not know whether R.H. did in fact ask T.W. who he wanted to live with, nor what T.W. may have answered. I do not believe that a parent subjecting a child to questions is an acceptable way to ascertain what a child's views or preferences might be. And further, I would find that a child's answer to a parent would usually be unreliable; most young children would likely feel great pressure from this type of questioning, and likely provide the same answer to



both parents, i.e. “you”. While the answer would not necessarily be honest, it would certainly relieve the pressure<sup>3</sup>.

[25] Unfortunately, this choice, where a child is to live, often has to be made, but there are many alternatives to putting the pressure, the stress, and likely even the trauma, of making the decision on the child. I find it a sad situation that a parent would choose to put this pressure on a child, that a parent would put a child in that situation by posing the question to the child.

[26] I recognize that I have to consider T.W.’s views and preferences, if they can be reasonably ascertained. Subjecting a young child to court procedures, examination, cross examination, is not a reasonable way to ascertain a child’s views or preferences. Court procedures and the adversarial system were not designed with children in mind. Section 84 of the *Act* specifically allows a court to exclude a child who is 12, or older, from a hearing if the court is of the opinion that it is not in the best interests of the child to be present, and further requires the court to exclude a child who is under 12 from the hearing unless it is necessary that the child be present; if it is necessary that a child be present, court must be held in premises other than the ordinary court, or at the very least separate and apart from the other business of the court. The legislators have recognized that requiring a child to attend court in what can only be described as a highly emotional situation for adults, is more than likely a confusing, frightening, stressful, and potentially traumatizing situation for a child. Either R.H. does not appreciate this reality, or has chosen to ignore it, to the peril of T.W.

[27] T.W. is not 12 years old yet, but he is close to 12. Recognizing that it would likely be helpful in ascertaining T.W.’s views and preferences, counsel was appointed for him. I accept that T.W.’s counsel has been able to ascertain T.W.’s

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<sup>3</sup> I refer generally to “questioning a child” by a parent, but if one believes R.H. about what R.H. said to T.W. when R.H. met T.W. by chance over the lunch break on the last day of this hearing, this encounter went far beyond simple questioning. I would find this sort of conduct even more unacceptable and could only result in further stress being placed on a child.

views on this matter, and I am sure, stressful as the situation still is for T.W., that he was better able to express his views to independent counsel who had only T.W.'s interest in mind, and who T.W. could be sure would not take offence to the answer he gave. I accept that the views put forward by T.W.'s counsel are an honest and sincere account of T.W.'s wishes. I accept that T.W. wants to go back to his mother and his brother, but his "second" choice would be to continue to live with his grandparents. The fact that T.W. was able to articulate a second choice perhaps shows a recognition on T.W.'s part that much as his mother loves him, at this point she is not able to offer him the protection and environment that he is entitled to. Hopefully, T.W. also recognizes that this realization on his mother's part is a sign of her love for him, and her desire to do what is in the best interests of T.W.

### **C. R.H. (T.W.'s Father)**

[28] R.H. is opposed to this Application. R.H. loves T.W. and wants to raise him. I accept that.

[29] R.H. is currently living in a room at what I take is a boarding house; the room has a bed, and he shares a bathroom. Prior to living in this room, he lived in a tent in the area behind the legislative building here in Yellowknife. He is not employed right now, and has not had full time steady or permanent employment since November 2002, for well over 3 years.

[30] R.H. has no concrete plans for where he would live with T.W., or where R.H. would work. Though he does have dreams for himself and T.W. And whereas having dreams may be one of the greatest assets one can have, it takes plans, hard work, and often self-sacrifice if they involve a child, to fulfill them.

[31] R.H. says he has “guaranteed” work in Nunavut, yet he has not offered or called any evidence of what he is going to do, or who he is going to work for. He has not submitted any offers of employment, or specific prospects that he might be qualified for. R.H. simply states this as if it were a given.

[32] It may be that R.H. could likely live with any of his extended family in Nunavut. But no evidence was called of such. Do any of his relatives have room in their homes for T.W. and R.H.? What community does he intend on going to, when does he intend on going there, and how does he intend to finance a move to Nunavut? Are there any resources in the community, whichever community it might be, to meet T.W.’s needs?

[33] R.H. took out twenty subpoenas for witnesses he intended to call. Three of those subpoenas were quashed prior to the commencement of this hearing by application to the Supreme Court. I allowed applications brought during this hearing to quash another 5 subpoenas. Some witnesses were released from their subpoenas when R.H. indicated that he would not need to call them.

[34] R.H.’s attitude throughout this hearing, referring to his cross-examination of witnesses, his gratuitous comments made to witnesses and to this court, and his overall demeanour, was one of intense hostility. R.H. was determined to demonstrate that he, R.H., had not been treated fairly, that various people had made him mad and were deserving of his anger and reproach. R.H. was focused on the unfairness in his life, and his perceived corruption in what I will broadly call the system. The only area of his life he seemed unable or unwilling to focus on was his son, and his, R.H.’s, role and responsibilities as a father.

[35] I tried to get through to R.H. that the focus of this hearing was not R.H., but what was in the best interests of T.W. I have to say I was unsuccessful. At the end of the evidence, I knew a little about R.H.’s relationship with his son, I knew nothing of his plans for the immediate future; I did know something of his

qualifications, which he should be proud of, but nothing of how he intended to use them. I knew nothing of how he intended to meet his responsibilities as a father. Nothing beyond him being “guaranteed” work in Nunavut. I knew of his rage at what he perceived as T.W. not being allowed to see or get to know T.W.’s extended family on his father’s side. But I knew nothing of any real plans or desires of members of this family to care for, or to contribute to the care of, or to assist R.H. in caring for T.W. I am not finding that such was not the case, or that there is not extended family who would go above and beyond to care for T.W., but simply that no evidence was called or presented with respect to this issue. Much of this type of evidence could have been presented through affidavit, or other means. None of the subpoenas that were quashed were for witnesses who could offer this type of evidence.

[36] R.H. chose to focus on what he perceived as past wrongs done to him; consequently, the court is left with very little beyond knowing that R.H. has many qualifications, and likely has much to offer his son. But before T.W. is able to get the benefits that he should get from R.H., R.H. has to get himself into a situation where he is ready, willing and able to parent his son. Two of the Child Protection Workers who testified at this hearing, said they had felt threatened or intimidated by R.H. when they had worked with him in the past. With his current hostility and self-absorption, I find that R.H. would not be able to care for a young boy on the cusp of adolescence. I find R.H. incapable of dealing with anyone who disagrees with him, or handling a difficult or disagreeable situation, in a calm and rational manner.

#### **IV. CHILD IN NEED OF PROTECTION**

[37] Section 2 of the *Child and Family Services Act* states, in part, that the *Act* shall be administered and interpreted in accordance with the principle that *children are entitled to protection from abuse and harm and from the threat of abuse and harm*. And further that *parents are responsible to care and provide*

*for and to supervise and protect their children*<sup>4</sup>. Those are important principles to keep in mind – both the right of all children, and the corresponding responsibility of all parents.

[38] In order to succeed on this Application, the Director must first establish that T.W. is in need of protection. Section 7(3) of the *Act* sets out circumstances in which a child will be found in need of protection. There are numerous situations in which a child can be found to be in need of protection, but I will only refer to the provisions of s. 7(3) that are relevant to this application:

7(3) A child needs protection where

- ...
- (i) the child has been subject to a pattern of neglect and there is a substantial risk that the pattern of neglect will result in physical or emotional harm to the child;
- ...
- (p) the child has been abandoned by the child's parent without the child's parent having made adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody;
- ...
- (r) the child's parent is unavailable or unable or unwilling to properly care for the child and the child's extended family has not made adequate provision for the child's care or custody;

[39] I find that the actions of R.H. since November 2002, up until the present clearly show a pattern of neglect in the relationship that he has with his child. I take into consideration the fact that R.H. was incarcerated for significant periods of time, but I cannot ignore that any time R.H.'s status changed he took no steps to ensure that T.W. was cared for and provided for, or to accept the responsibility he had to care and provide for T.W. In December 2002, M.F. who had been caring for T.W. since November out of what could be described as the goodness of her heart, contacted Social Services looking for some assistance in caring for T.W. R.H. had been incarcerated since November 2002, and had done nothing

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<sup>4</sup> *Child and Family Services Act*, ss. 2(b) and 2(e), emphasis added

about the care of his son, had made no arrangements or plans for his son. Perhaps R.H. was confident in the goodness of M.F.'s heart, and it may have been well-placed confidence, but R.H. had responsibilities to T.W., and R.H. ignored those responsibilities. Luckily, M.F. took them on.

[40] The initial Plan of Care Agreement was entered into in January 2003, and Plan of Care Agreements continued through until February 2004, when T.W. was apprehended and has since that time been in the custody of the Director. Since Social Services' first involvement in the care of T.W. in January 2003, R.H. has made no progress in establishing an environment in which he would be able to care for T.W. and assume his responsibilities as a father. It has been over 3 years.

[41] R.H. takes no responsibility himself for his, or for T.W.'s, current situation. From his testimony and demeanour throughout this proceeding, it is apparent that he blames others for his predicaments. R.H. has much potential and cares for his son, and apparently has a supportive extended family, but no plans have been made, or concrete steps taken to take advantage of or put to use his potential or the resources available to him. R.H. testified that he will not work with anyone at Social Services, or stipulates that it must be someone who has had no previous involvement or dealings in this matter. It is notable that R.H. testified that since January 2005, he did not have any further dealings with Social Services in order to protect himself. This resulted in R.H. having no further "dealings" with T.W. Sadly, the consequences to T.W. do not appear to be factored into R.H.'s decisions.

[42] R.H. has had no meaningful contact with T.W. for over a year now. Unfortunately this has been to the detriment of both T.W. and R.H. R.H. has much to offer, but he will not or cannot put aside his hostility in order to enable himself to get the assistance he needs to care for his son, nor will he take the necessary steps on his own. His time, energy, and potential are primarily

focused on R.H. himself, and he fails to see what he is depriving both himself and his son of.

[43] The treatment of T.W. by R.H. over the past 2 years that T.W. has been in care, clearly establishes a pattern of neglect. To come in and out of T.W.'s life with no thought of the effect it may have on T.W., to essentially cease contact because of personal and for the most part I find unfounded conflicts with Social Services or with T.W.'s caregivers can only be described as neglect. Parenting involves more than love and dreams for your child; it involves hard work and often self-sacrifice; it involves being able to see the necessity in some situations of putting aside your personal feelings or even differences for the short and long term benefit of your child. R.H. has chosen to allow others to be responsible to care and provide for and to supervise and protect T.W.

[44] How can this sort of parental relationship do anything but cause harm to a young child. Parents have responsibilities, and if parents ignore their responsibilities harm will come to the child. R.H. has ignored his responsibilities as a father, and has chosen to continue to ignore these responsibilities over the past 2 years that T.W. has been in care.

[45] R.H. wants T.W. back, he wants T.W. on his terms, and he does not believe that Social Services has any place in his or T.W.'s life. On January 24, 2005, R.H. was at the court house, and yet he chose not to stay or to attend court when the application for a further temporary custody order was made. T.W. was found in need of protection then, and nothing has changed since then. R.H. continues to neglect any parenting responsibilities, or to take any steps necessary to enable him to accept parenting responsibilities.

[46] I keep in mind the words of Stortini, Co. Ct. J. in the case of *Re Brown et al.* (1975), 23 R.F.L. 315 (at 319):

... [T]he community ought not to interfere merely because our institutions may be able to offer a greater opportunity to the children to achieve their potential. Society's interference in the natural family is only justified when the level of care of the children falls below that which no child in this country should be subjected to. In deciding on such intervention the court must consider the best interests of the children in respect of their biological, social, emotional, cultural and intellectual development.

I agree with that statement. No child in this country should be subject to the neglect that T.W. has been subject to by R.H. over the past 2 years. All children deserve to be a wanted and needed member of the family, in a loving, caring and stable environment. When R.H. was not available, M.F., and then T.W.'s grandparents provided that environment. R.H. has chosen not to participate or be a part of that environment, and has not taken any steps to ensure or enable himself to create such an environment for T.W.

[47] The burden is on the Director to prove there will be long-term adverse repercussions if T.W. were returned to R.H. The effects of returning T.W. to R.H.'s care must be real, not speculative. I find that at this time R.H. is not in a position to care for, to provide for, to supervise, and to protect T.W. I accept that he wants to be a father to his son, but I find that he is not able to right now. He does not have suitable housing, he gets his food from people who are nice enough to give him food. There are resources and people available to R.H. that could assist him, but he has refused in the past, and continues to refuse, to set aside his hostility to work or cooperate with those who could help him and could help T.W. Unfortunately, R.H. appears unable to focus on T.W.; R.H. chose to use this hearing primarily as a forum to yell and pontificate and attempt to intimidate.

[48] I find that there has been no change in R.H.'s behaviours or attitudes towards the care of T.W. I find a pattern of neglect, which demonstrates either an unwillingness or inability of R.H. to demonstrate that he is willing to care for, or capable of caring for T.W. R.H.'s hostility has resulted in an unacceptable lack of commitment to developing and maintaining a parent/child relationship with



T.W. There is no evidence that R.H. is prepared or able to care for T.W., to protect him from abuse and harm and from the threat of abuse and harm, as all children are entitled to be, and to care and provide for and to supervise and protect him, as all parents are responsible to do. If T.W. was returned to R.H., there would be adverse effects on T.W., as T.W. would be placed at risk of physical or emotional harm. I am satisfied that T.W. is in need of protection.

[49] Having found T.W. in need of protection, I have now considered the Plan of Care Report, and the options available under the *Child and Family Services Act*.

#### **V. THE CHILD AND FAMILY SERVICES ACT**

[50] All children deserve to be a wanted and needed member of the family, in a loving, caring and stable environment. As I stated earlier, T.W.'s grandparents have provided that environment for T.W. They have recognized the needs of T.W., they have perhaps even put his needs above their own wants and desires, they have adjusted their lifestyle to better meet T.W.'s needs, and I find they have done their best to cooperate with others who are and should be important in T.W.'s life, to maintain and foster T.W.'s relationship with them. I realize that the court cannot determine or stipulate where or with whom T.W. shall be placed, but I simply state that from their testimony and from all the other material that has been filed, it certainly appears that E.W. and R.W. have been able to provide stability and love to T.W. to allow him to thrive and meet his potential in life. Further, and perhaps remarkably, it did not appear to me that either E.W. or R.W. held any hostility towards R.H., and should R.H. be able to put his hostility aside for the benefit of T.W., it may be that a healthy relationship between T.W. and R.H. may develop.

[51] Upon considering and weighing all the evidence and the material that has been filed on this hearing, I find that R.H. is not prepared or able to work with Social Services in establishing a parent/child relationship with T.W.

[52] As I have found that T.W. is in need of protection, and there is no realistic potential or even possibility that a supervision order may be effective, there is no other option but to grant the Director's application and place T.W. in the permanent custody of the Director.

[53] Perhaps in the future, R.H. or M.S.W. or both of them may take steps to enable them to properly care for T.W. Should both or either of them take the necessary steps to establish an environment in which they could properly care for T.W., then either parent may bring an application under s. 49 of the *Act* to discharge the permanent custody order. But to delay the permanency and security that T.W. deserves to see if the parents might take some steps is not in the best interests of T.W.

[54] Therefore, the Director's Application for an order that T.W. be placed in the permanent custody of the Director is granted. T.W. will be placed in the permanent custody of the Director, under the following conditions:

- a) M.S.W. and T.W.'s brother A., shall have reasonable and generous telephone access with T.W., and he with them;
- b) So long as M.S.W. lives out of the N.W.T., but within Canada, the Director shall fund at least two visits per year between T.W. and M.S.W. and his brother A., to allow either T.W. to travel to M.S.W.'s residence, or M.S.W. and A. to travel to visit T.W.'s community;
- c) R.H. may have supervised access to T.W. at the discretion of the Director or her or his designate, and in the best interests of T.W.;
- d) The Director may require that R.H. meet with a Child Protection Worker prior to any access visit between R.H. and T.W.
- e) Should R.H. refuse, in the opinion of any Child Protection Worker, to cooperate with any Child Protection Worker, or, in the opinion of the Child Protection Worker, refuse to behave appropriately, access visits may be cancelled or denied;

- f) The Director shall have the discretion to modify the conditions allowing R.H. access to T.W.

[56] Should any of the parties require further clarification or modification of the conditions, the matter may be brought back before me, on notice to all other parties.

Bernadette Schmaltz  
J.T.C.

Dated this 21<sup>st</sup> day of March, 2006, at  
the City of Yellowknife, Northwest Territories.

**APPENDIX "A"**

*Child and Family Services Act, S.N.W.T. 1997, c. 13*

Section 87:

87. No person shall publish or make public information that has the effect of identifying
- (a) a child who is
    - (i) the subject of the proceedings of a plan of care committee or a hearing under this Act, or
    - (ii) a witness at a hearing; or
  - (b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family.

T-1-CW-2004000003

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**IN THE TERRITORIAL COURT OF THE  
NORTHWEST TERRITORIES**

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

**AND IN THE MATTER OF** the child,

W., (T.)

Born September 30, 1994

APPREHENDED: February 17, 2004

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**REASONS FOR DECISION**

**of the**

**HONOURABLE JUDGE Bernadette SCHMALTZ**

These Reasons are subject to Publication Restrictions pursuant to s. 87 of the *Child and Family Services Act*, S.N.W.T. 1997, c. 13.  
(See Appendix "A")

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