

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

In the matter of the *Child and Family Services Act*, SNWT 1997 c. 13 as amended;

And in the matter of the child,

W. (J.)

Born February 24, 2009

Apprehended: June 15, 2014

REASONS FOR DECISION

of the

HONOURABLE JUDGE BERNADETTE SCHMALTZ

**These Reasons are subject to Publication Restrictions pursuant to section 87 of the
Child and Family Services Act, S.N.W.T. 1997, c.13, as amended**

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 of foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family

And further . . .

90. Every person who contravenes a provision of this Act for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000, to imprisonment for a term not exceeding 12 months or to both.

Application for a variation to the Temporary Custody Order, pursuant to section 28(5.1) of the *Child and Family Services Act*

Application heard at: Yellowknife, Northwest Territories

Date of hearing: February 13, 2015

Reasons Filed: February 16, 2015

Counsel for the Director A. Groothuis

Counsel for the father Hayley Smith

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,

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APPREHENDED: June 15, 2014**I. INTRODUCTION**

[1] JW (the Father) brought an application for additional access visits with his son (the Child). It is the Father's position that the Director of Child and Family Services (the Director) is not complying with the current term of the Temporary Custody Order requiring the Director to provide the Father with "generous and reasonable access to the Child at the discretion of the Director of Child and Family Services and in the best interests of the Child". The Director opposes this Application and submits that no change should be made to the current provision providing for the Father's access to the Child.

II. BACKGROUND

[2] On November 24, 2014, the Child was placed in the custody of the Director for a period of four months; this Temporary Custody Order expires on March 23, 2015. The Child has been in the care of the Director since January 30, 2014. The three Temporary Custody Orders made since that time have all been consent orders.

[3] For the purpose of this Application it is not necessary to detail the entire history of the involvement of Social Services in the Child's life. The Child will be 6 years old on February 24; the Child's mother has had very little involvement in the Child's life, and is currently not residing in the Northwest Territories. For most of the Child's life his father has been his sole caregiver.

[4] As stated in the Father's affidavit, filed February 4, 2015, he has "struggled with alcohol" his entire life. Over the past year the Father has taken many positive steps to address his issues with alcohol: he has completed the Withdrawal Management Program as an outpatient through the Salvation Army; he has participated in counselling, and has worked on developing a "Relapse Prevention Plan"; he attends AA meetings regularly; in September and October 2014, he attended and completed a 42 day Addictions Treatment Program at Poundmaker's Lodge in Alberta; while at Poundmaker's the Father participated in optional counselling services with a psychologist, and has continued to access counselling with that psychologist by telephone.

[5] When the Father completed the treatment program at Poundmaker's and returned to Yellowknife, he was encouraged by Social Services to participate in a parenting program and continue with his counselling which he did.

[6] After returning from treatment, the Father's access visits with the Child continued to be supervised visits occurring at the office of Social Services until the end of November. Sometime in November at a case conference with the Child Protection Worker the Father discussed his access with the Child over Christmas; the Father was hopeful that the Child could spend Christmas with him. The Father was told by the Child Protection Worker that as long as he maintained his sobriety, and attended his visits with the Child, and continued with counselling, an "extended home visit" over the holidays was feasible. There is nothing in the material on this file indicating that the Father did not comply with these requests.

[7] During December 2014, the Father was scheduled to visit with the Child on December 9 and 11, for 1.5 hours each day in the community; on December 16 for 2.5

hours, and December 18 for 1.5 hours; and on December 23, 24, and 30 for 3.5 hours each day. No visit was scheduled for Christmas Day.

[8] On December 23 or 24, the Father left the Child in the care of his partner at the time and her children for less than 2 hours. The Father states in his affidavit that at the last minute he was offered \$300 to help set up the Yellowknives Dene First Nation holiday dinner in Dettah; the Father took this opportunity to earn \$300 as he states: "I knew the money could provide a better Christmas for [the Child], [his partner], and the kids [his partner's children], with more food and toys." The Director's response to this at Paragraph 5 of the Child Protection Worker's affidavit filed February 6, 2015, is: "[The Father] did not advise me that he had an opportunity to work; [the Father] left [the Child] with an unapproved caregiver for a period of time. It was requested to [the Father] by legal counsel and me to supply a criminal record check for his partner which was never provided."

[9] On January 7, 2015, the Father did not check in with Social Services for his visit with the Child scheduled that day; the Child Protection Worker went to the Father's home, and when the Father answered the door, he appeared to be intoxicated and admitted he had been drinking. In the circumstances there was no visit that day. On January 8, 2015, the Child Protection Worker again went to the Father's home, and the Father answered the door stating "yes, I'm still drunk".

[10] In the Father's affidavit he admits saying "yes, I'm still drunk" when the Child Protection Worker came to his home on January 8, but says he was not in fact drunk at that time – he says: "I had stopped drinking the night before. I realize this was not an appropriate response, but I was frustrated by the unannounced visit, and I felt like it was what they wanted to hear."

[11] It is not clear whether or not the Father had his visit with the Child on January 9, 2015. From the material filed, a visit was scheduled. The Child Protection Worker states at Paragraph 15 of her Affidavit that she went to the Father's home on January 9, 2015, but there was no answer at the door. There is no indication what time this was or whether this had anything to do with the scheduled visit. At Paragraph 16, she states

that the Father missed his scheduled visits on January 7, 12, and 14, so I assume that the access visit on January 9 occurred and there were no concerns arising at that visit.

[12] With respect to the missed visit on January 12, the Father states at Paragraph 24 of his Affidavit: "I missed my visit with [the Child] on January 12 because I was extremely ill. I called YHSSA ahead of time to cancel this visit. I was fighting a severe infection in my leg, and I took myself to emergency. On January 14, I was admitted to Stanton Territorial Hospital for testing and to treat the infection in my leg. On January 15, both me and my lawyer advised [the Child Protection Worker] that I would be in the hospital for the coming week, and requested access to [the Child]." The Director did allow two supervised access visits while the Father was in the hospital.

[13] The access schedule for February allows for two visits per week. The visits for the first half of the month are one hour supervised visits in the community; starting February 17, the visits are unsupervised, but still in the community. The Father is not allowed to have any home visits with the Child in February. The access schedule for March has not been provided.

[14] The Father asks that access to the Child be as follows:

February 8-14:	2 to 3 unsupervised community visits;
February 15-21:	2 to 3 unsupervised community visits;
February 22-28:	2 to 3 home visits;
March 1-7:	2 to 3 home visits;
March 9-14:	at least 3 overnight visits;
March 15-21:	at least 3 overnight visits.

III. REASONABLE AND GENEROUS ACCESS

[15] I have reviewed all the material filed on this Application, as well as earlier Affidavits filed that set out the history of Social Services' involvement in this family. The relationship between the Father and different Child Protection Workers who have been involved has been and remains acrimonious, and perhaps even hostile on the part of the Father. The Father's behaviour towards Child Protection Workers when he is

intoxicated has been belligerent and inexcusable, and especially so in circumstances when his young son was present.

[16] That being said, while the Father's history has to be a consideration, it cannot be sole consideration or the determining factor here. The Father has taken steps to improve his situation, to do what he has to do in order to be and remain a good father to his son.

[17] The Director's goal is reunification of this family. The Director candidly and in my view properly concedes that if the Father remains sober then there would be no concerns with his ability to be a good father to his son. The Father maintained sobriety from mid-September to January 6, and then at least from January 9 until now. From reviewing the materials, the history, clearly the Father has to have a reliable 'relapse prevention plan', has to have a support system; the Father needs to know what resources are available to him, needs to be encouraged to take advantage of and use those resources, and he has to be willing to take advantage of them. If the Father continues the behaviour and lifestyle he exhibited *prior to attending treatment*, then he will not be able to parent his son. If the Father is not able to maintain his sobriety the situation will be untenable for his son, especially because at this point the Father is the sole caregiver for his son.

[18] It does not appear that the Director has provided support or encouragement to the Father after his relapse in January. But I also want to make it clear that I cannot place the entire fault on the Director or the Child Protection Workers for this. As I have said, the relationship between the Father and Social Services has become acrimonious, and hostile on the part of the Father. I am sure that the Father realizes that if he does not get a plan and support system in place, that he will not be able to look after his son, and at this point there is no other reliable or permanent caregiver in the Child's life. The Father has made great strides but has to ensure that he does not slip back, and if he cannot or will not work with Social Services, then he has to be sure he has an alternative plan and support in place.

[19] However having said that, the Director's response to the Father's relapse or set-back, by consuming alcohol is not a measured or appropriate response. As I have implied, I am not confident that the Father would have worked with the Child Protection Worker or Social Services to maintain his sobriety – it may be that the relationship had deteriorated to a point where the level of trust was simply not there for any effective intervention. But the Father does have other supports in the community, the Director could have ensured that the Father was continuing to see his counselor here in Yellowknife, and speaking with his psychologist in Edmonton. The Child Protection Worker could have checked in on the Father during access visits wherever such visits were occurring; the Father could have been required to check in, in person, to ensure his sobriety prior to any visit. But instead, the Director reduced visits to twice a week, one hour each, supervised at the office of Social Services. I cannot see how this response would be at all helpful in ensuring the Father does not have another relapse, in fostering the reunification of this family, and most importantly how this response could be in the best interests of the Child.

IV. **BEST INTERESTS OF THE CHILD**

[20] I have concerns that due primarily to the behaviour of the Father, especially so when he has been intoxicated, that the relationship between the Father and the Director has overshadowed the paramount concern in this and all child protection proceedings: *what is in the best interests of the child*. Section 2 of the *Child and Family Services Act* states:

2. This Act shall be administered and interpreted in accordance with the following principles:
 - (a) the paramount objective of this Act is to promote the best interests, protection and well-being of children;
 - (b) children are entitled to protection from abuse and harm and from the threat of abuse and harm;
 - ...
 - (d) the family's well-being should be supported and promoted;
 - ...

- (f) measures taken for the protection and well-being of children should, as far as possible, promote family and community integrity and continuity;
- ...
- (k) services to children and their families should cause the least amount of disruption to the family and should promote the early reunification of the child with the family;

Section 3 deals with the term 'best interests of a child':

3. Where there is a reference in this Act to the best interests of a child, all relevant factors must be taken into consideration in determining the best interests of a child including the following factors, with a recognition that differing cultural values and practices must be respected in making that determination:

- (a) the child's safety;
- (b) the child's physical, mental and emotional level of development and needs, and the appropriate care or treatment to meet those needs;
- (c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
- (d) the importance for the child's development of a positive relationship with his or her parent, a secure place as a wanted and needed member of the family, and a stable environment;
- (e) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
- (f) the risk that the child may suffer harm through being removed from, kept away from, returned to, or allowed to remain in, the care of a parent;

...

[21] Consideration of the principles and goals set out in the legislation often if not always requires a balancing of many of them, for example: attempting to develop or foster the relationship between a parent and child has to be done with the child's safety in mind; considering the harm that a child may suffer in being removed from his or her parent must be considered in the context of the child's physical needs and the care necessary to meet those needs and ensure the child is protected from harm or abuse. Determining how to promote the best interests of a child is not always easy or obvious, but it remains the paramount objective.

[22] I doubt very much that the Child in this proceeding understands what has happened, why he can no longer go to his father's home, and why his father only sees

him for two hours per week now. The turmoil, neglect, instability that the Child has experienced so far in his short life is very sad. Earlier affidavits filed on earlier applications give information about the Child and his behaviour. The Plan of Care Report filed with respect to the current temporary custody order states: [The Child] was taken to see a pediatrician and she felt that his behaviour and attachment issues were related to trauma and should dissipate when his life is more stable.

[23] There is very little about the Child, his health, his well-being, his behaviour in the three most recent Affidavits filed on behalf of the Director (filed on January 22, and two on February 6, 2015); these Affidavits focus almost exclusively on the Father's behaviour. I would expect that if there had been any negative effects on the Child due to him being left with an unapproved caregiver, or from the Father's relapse on January 7, that such would be set out in the Affidavits filed on behalf of the Director.

[24] From November to the beginning of January, the Child was gradually seeing his father more and for longer periods of time, he was seeing his father in a more natural setting. And then abruptly the Child only sees his father for one hour, twice a week at the Social Services office. One wonders what effect that has on the Child, how the Child perceives that situation, whether or not the Child may wonder what he did wrong.

[25] I have considered the difficult circumstances in this case, including the Father's previous behaviour, the dynamics between the Father and Social Services which as I have said I cannot blame the Child Protection Workers for, and I would hope in a more sober and rational state the Father realizes both how inappropriate his behaviour can be, and ultimately how harmful it can be to his child. I have also considered the positive steps the Father has taken to improve his situation, and to ultimately have his son in his care in a sober, healthy, safe and caring home.

[26] The Child has to be protected from harm or neglect; his physical, mental, and emotional needs have to be fostered and taken care of; it is important to the Child's development to have a positive relationship with his father, and to feel secure as a wanted and needed part of his family. In order to achieve these goals, the Father has to maintain his sobriety.

[27] I find the measures taken by the Director in allowing the Father only one hour twice a week to see his child, and conversely in only allowing the Child to see his father for one hour twice a week, does not amount to reasonable and generous access, and is not in the best interest of the Child in this situation.

[28] The Father's application to vary the access provision of the Order of November 26, 2014 is granted, and clause 4 of that Order shall be deleted and replaced with the following:

4. The Father shall have reasonable and generous access to the Child, and *at a minimum* that access shall include:

Between February 15-28, 2015: at least two unsupervised visits;

Between February 22-28, 2015: at least two home visits;

Between March 1-7, 2015: at least two home visits;

Between March 8-14, 2015: at least three overnight visits;

Between March 15-21, 2015: at least three overnight visits;

The Father must be in a completely sober state during all visits, and must not consume any alcohol or illicit drugs while the Child is in his care.

The Director of Child and Family Services may grant the Father additional access to the Child as is in the best interests of the Child.

[29] Counsel for the Father shall prepare and submit a formal Order, but the change in the access clause is effective immediately.

B. E. Schmaltz
Territorial Court Judge

Dated at Yellowknife this 16th day
February, 2015

2015 NWTTC 02

Date: 2015 02 16
File: T-1-CP-2009-000017

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