Whey v. Brenton

Julia Whey & George Whey, Appellants and Dorothy Brenton & George Brenton, Respondents and Tammy Brenton, an Infant

Newfoundland Court of Appeal

Morgan, Gushue, Mahoney, JJ.A.

Judgment: August 20, 1984
Docket: 64/83

Counsel: Ms. Jean V. Dawe, for the Appellants.

Mr. David C. Day, Q.C., for the Respondents.

Ms. Gillian Butler, for Tammy Brenton.

Gushue, J.A.:

1 This appeal is taken by Julia Whey and George Whey from the dismissal by Steele, J. of the Trial Division of their 'habeas corpus' application taken to obtain custody of Tammy Brenton, the daughter of Julia Whey. The respondents, in whose home Tammy has resided since she was born, are the parents of Julia Whey and the grandparents of Tammy.

2 The basic facts are set out in the Order of the learned trial judge, as follows:

> In April of 1976 Julia (Brenton) Whey was 16 years old, single and living with her parents, George and Dorothy Brenton at Churchill Falls, Labrador, Newfoundland. On April 8, 1976 she gave birth to Tammy Ann at St. John's but returned to Churchill Falls 10 days later with the infant. From April 18, 1976 to June of 1977 Tammy lived in the Brenton home with Mr. and Mrs. Brenton and her mother Julia. Also in the home were two other Brenton children, a daughter Beverly and a son Daniel. Another daughter, Bonnie, was also there on occasions.
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> During the early summer of 1977 the entire Brenton household, including Tammy, moved to the Brenton's "island home" at Trinity, Bonavista Bay for the summer holidays. In July of 1977, at Trinity, Julia met George Whey, her future husband. In August of 1977 Julia left home and went to St. John's with George to look for employment and to be with George with whom she was developing a sound and permanent relationship.
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> The Brenton family, which now included Tammy, returned to Churchill Falls. Tammy has remained with the Brentons at their home in Churchill Falls except for certain visits,

with Mr. and Mrs. Brenton, to the island.

In December of 1978 Julia and George were married. George had obtained his Bachelor of Commerce degree in April of that year and after the wedding they moved to Grand Falls so that George could study for his chartered accountancy exams. He obtained his C.A. in December of 1980. In July of 1981 they moved to Gander as George had accepted the position of business manager with the Terra Nova Integrated School Board, a position he still holds. George was 27 in March, 1983.

When Julia was pregnant in 1976 she quit school while in Grade 8. Since her marriage Julia has greatly improved her education: Obtained her Grade 11 diploma; passed a typing course and successfully completed a basic drafting course. Julia is now 23 years old.

George Brenton is 54 years old and for the past 12 years has been employed by Churchill Falls (Labrador) Corporation as a heavy equipment operator. His gross salary is $27,227,20 plus overtime. He is in good health. Dorothy Brenton is 49 years old and in good health. The Brentons were married in November of 1949, a first marriage for both.

Apart from being with her child for the first 16 months of the baby's life, Julia has had only limited access since.

3 In October, 1980, the Wheys, who had known since they were married that George could not father a child, wrote to the Brentons suggesting that they be given custody of Tammy. That letter is quoted verbatim by the trial judge and, as he says, "it is apparent that Julia and George were very apprehensive about raising the problem of custody knowing that her parents (and her father in particular) would vehemently oppose any request for custody". The request was refused and the application for a Writ of Habeas Corpus was ultimately taken out on August 13, 1982.

4 The hearing before the trial judge took some time and resulted in 645 pages of evidence. All parties gave evidence and considerable time was taken up with details of the Brentons' and Julia's relationships with Tammy over the years, much of the evidence being contradictory. Evidence was also given by Dr. Charles Bodie, a child psychiatrist retained by the Brentons to assess Tammy and her relationship to them. He apparently saw Tammy and the Brentons on three occasions and interviewed them together and independently. He did not meet Julia and George Whey. In Dr. Bodie's opinion Tammy was:

> ...a child who has set down over a period of almost seven years very deep and satisfactory roots within this family and that the feelings have been reciprocated and that the child is now in a very stable and most satisfactory environment which is contributing very well to her present growth. Tammy is a perfectly well-developed, very outgoing, intelligent, little girl who is doing very well in life. I feel that to disrupt this after an uninterrupted period of satisfactory growth for seven years would be exposing this child to unnecessary trauma.

Counsel for the Wheys made an application to the trial judge that he order a similar assessment of Tammy with the Wheys. However, that application was refused.

5 In his judgment, the trial judge analyzed the relevant law in this Province relating to child custody. He referred to Section 47 of the Child Welfare Act, S.N. 1972, cap. 37, as amended by the Child Welfare (Amendment) Act, S.N. 1981, cap. 54, Section 7(3), which states that in any proceeding before any court having to do with custody or upbringing of a child, "*the court, in deciding that question shall regard the best interests of the child as the first and paramount consideration*". He then went on to consider the various authorities dealing with the right of a natural parent, and in particular the mother, as opposed to non-parents, to custody. He adopted the law in this regard as it is stated in *Re Moores and Feldstein*, (1973) 12 R.F.L. 280, a decision of the Ontario Court of Appeal, which says that while the natural blood tie is important, it is a question of fact in every case whether the blood tie will necessarily offer to the child the love and security that it ought normally to bring. Again, the paramount consideration is the best interests of the child.

6 The learned judge then considered what he felt to be the relevant evidence and concluded that, despite the strong feelings of Julia Whey for her daughter and his opinion that the Wheys would make good parents:

> ...the uncontradicted evidence is that Tammy is a normal, healthy, well-adjusted seven-year old girl living in a stable and happy home environment with the Brentons who she regards as her parents and who have obviously cared for and raised her as they did their own children. I can see no justification or reason to upset or disturb Tammy's peaceful and happy social, school and home life. Apparently, she is of above normal intelligence, loveable and in every respect content. There is every indication that her progress and development if uninterrupted, will continue.

7 In reaching his conclusion, no reference is made by the judge to any specific part of the evidence.

8 The grounds of appeal are as follows:

> 1. THAT the Honourable Trial Judge erred in law by assuming that maintenance of the status quo was in the best interests of Tammy, and by giving too much weight to the consideration of maintaining the status quo without taking into account the other evidence before him.
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> 2. THAT the Honourable Trial Judge erred in law in refusing the natural mother custody of her child where the evidence was clear that she had neither abandoned the child nor misconducted herself so as to be disentitled to custody, and where he found as a fact that she and her husband would make "thoroughly good parents". The Honourable Judge thus erred in law by giving no effect to the principle that in a custody issue between a natural

parent and a non-parent the natural parent should be successful unless there is a clear indication to the contrary.

3. THAT the Honourable Trial Judge erred in law by considering the Respondents on an equal footing with the Appellants and by considering the custody issue as though it were a contest between two parents.

4. THAT the Honourable Trial Judge erred in law and in fact in holding that the ability and desire of the natural mother of a child, whom the evidence establishes the child knows and loves, to provide a permanent and stable home for her child is not a compelling and obvious reason to change the child's custodial arrangement in order to place the child in the custody of one of her natural parents, where the Judge found as a fact that the mother would be a good parent.

5.(a) THAT the Honourable Trial Judge erred in law and in fact in failing to consider all of the evidence before him, in failing to make any rulings of fact with respect to disputed evidence, and in finding facts of which there was no admissible evidence before him.

(b) THAT the Honourable Trial Judge's ruling was contrary to the law and to the weight of the evidence.

6. THAT the Honourable Trial Judge erred in law by not granting the Appellants' request to order a psychological assessment of Tammy with the Appellants and a home study of the two homes.

9 In preparing for the hearing of this appeal, it became apparent to the members of this Court that, while the fact situation of the teenage pregnancy and the raising of the child by the grandparents was not of itself unusual, this case had various difficult and unusual features. The child herself seemed bright, happy and well adjusted which could in part at least be attributed to all the parties to this action. The parties themselves appeared to all be decent, caring people, capable and desirous of giving Tammy a good home and a proper upbringing. The evidence also indicated that Tammy was close to and cared for the parties. On the other hand, it was apparent from the evidence that, not surprisingly, the matter had become a confrontational one between the Wheys and Brentons and that there was much ill-feeling between them. While we had no doubt that all were genuinely concerned as to Tammy's best interests, the danger that their own feelings could colour their evidence was always present.

10 As seen, the child is now eight years old and we were particularly concerned as to whether her interests had been adequately represented at the hearing at first instance when there was no evidence which could be classified as independent. In particular, it concerned us that the only evidence given which purported to analyze the situation and to state Tammy's feelings and point of view was that of Dr. Bodie who had been retained by the Brentons and who had seen Tammy only with and in relation to them. This does not reflect in any way on Dr. Bodie who did what he was requested to do. However, this, combined with the trial judge's refusal to allow the Wheys a

similar assessment or to order an independent in-house study and psychological assessment, was a concern. It seemed to us, as well, from reading the transcript that the trial judge refused that application because he accepted the evidence of Dr. Bodie.

11 It was therefore decided that, in order to ensure that Tammy's interests were properly protected and that these interests were known to the Court, she should be represented by her own counsel. The power to make such appointment, even at this stage, was, we felt, within the 'parents patriae' jurisdiction of the Court (see *Beson v. Director of Child Welfare* (1982) 39 Nfld. & P.E.I.Rep. 246 (S.C.C.)) and the appointment of counsel was ordered. The Court was fortunate in securing the services of Ms. Gillian Butler who was given wide latitude to investigate the matter on Tammy's behalf as she saw fit and as well to take any additional evidence which she felt was necessary.

12 Ms. Butler arranged for independent home studies of the Whey and Brenton homes by a social worker and for a psychiatric study of Tammy, conjointly with the Wheys and then the Brentons, and alone. Comprehensive reports were filed and evidence was taken on commission from the professionals, as was additional evidence from Julia Whey, Dorothy Brenton and others. Counsel for the appellants and respondents cooperated fully with counsel for Tammy in these matters. Counsel for Tammy also filed, with the additional evidence, a comprehensive factum and appeared on the hearing of the appeal. The role which Ms. Butler chose to adopt in this issue was one of 'amicus curiae'. In my view, this was the correct approach, particularly so, when Tammy at her age obviously would not have the capacity to instruct counsel.

13 At the commencement of the appeal hearing, the commission evidence was accepted, together with the reports referred to. Included with this evidence was a report prepared in October, 1983 by Gloria Cabaluna, a clinical psychologist, who was retained by the Wheys and who interviewed them and Tammy, conjointly and alone, for the purpose of assessing the psychological well-being of Tammy in relation to the Wheys. Ms. Cabaluna also gave evidence on the commission. It should perhaps be mentioned as well that some objections were registered by counsel for both the Wheys and the Brentons to certain parts of the commission evidence, but I think that it is fair to say that these objections were of a minor nature or went only to the weight to be placed on the evidence in question. I do not intend to deal with them specifically because in my view they could have no bearing on any decision made by this Court.

14 I move now to the grounds of appeal. I intend firstly to deal with ground 5 which relates to allegations that the trial judge did not consider all of the evidence before him, made no rulings with respect to disputed evidence and made rulings on no evidence. I shall deal then with ground 6 which alleges error by the judge in not ordering home and psychological studies, and turn then to grounds 2, 3 and 4 which are concerned with the law to be considered in matters of this nature. I shall then deal with ground 1, i.e., the status quo argument and, finally, apply the law as I view it to all of the facts of this case.

15 As stated above, a great deal of time was spent at trial on the parties versions of their relationship to Tammy over the years, and in particular during the first seventeen months of

Tammy's life when Julia was also a resident of the Brenton household. For example, an inordinate amount of time was spent on testimony as to where Tammy's crib was located during that period. Counsel for the appellant complains that the trial judge did not deal with, and make findings in respect of, these matters. Generally speaking, I see no necessity for the trial judge, or for any trial judge, to deal and make rulings on every specific point raised in evidence if he feels that such is not necessary. What is important is to weigh all of the evidence and to make a logical finding therefrom. The conclusion which the learned judge came to from all of the evidence was that Tammy has been in the de facto custody, and under the care and control, of the Brentons since she was born. That is the finding that has relevance.

16 Having said that, I do agree with the submission of counsel for the appellants that the trial judge should have made a ruling on Exhibit DB #1, the admissibility of certain portions of which was objected to by counsel. DB #1 is a binder placed in evidence by counsel for the respondents containing photographs of Tammy's development in the home, at school and at play. It also contains letters from Tammy's teachers and doctors and reference letter from George Brenton's employer. I would doubt that certain of the pictures are candid shots and are perhaps objectionable on that ground. However, while the trial judge should perhaps have at least referred to the binder at some juncture, I cannot see that it would have itself led to the judge's finding that the Brentons were "exemplary parents". That was a finding which would certainly have been justifiably made on the evidence generally.

17 With regard to the appellants' allegation that the trial judge erred in not ordering home and psychological studies or in refusing to permit the Wheys to have a study done similar to that arranged by the Brentons through Dr. Bodie, I agree, in the circumstances, that the judge ought to have sought additional evidence. Dr. Bodie's opinion was predicated on information supplied to him by the Brentons, some at least of which was in dispute between the parties. Further, in his evidence given at the hearing Dr. Bodie honestly admitted that he lacked neutrality in the issue at that stage. It must also be noted that, Tammy's custody being with the Brentons, the option of having had such an assessment done in relation to themselves was not open to the Wheys.

18 In child custody cases generally, and particularly in difficult matters such as this one, a trial judge should endeavor to obtain as much relevant evidence as possible. In my view, the trial judge should have ordered independent home and psychological studies in this case and this would have overcome the prejudicial nature of Dr. Bodie's evidence, from the appellants' viewpoint, and also given the judge a much better perspective of the issue in general and more satisfactorily enabled him to assess Dr. Bodie's opinions.

19 As stated, I agree with the submission of counsel for the appellants in this regard. The effect of the error will have to be assessed in light of the commission evidence.

20 I move now to the law. While all counsel have dealt with the law at length in their factums, I quite frankly find this unnecessary. Counsel for the appellants, while acknowledging (as she must) that what is in the best interests of the child is the Court's paramount consideration, relies on various authorities, e.g. *Hewlin v. Hewlin* (1977) 18 Nfld. & P.E.I.Rep. 172 (Nfld. S.C.T.D.)

and the Supreme Court cases of *Martin v. Duffell* (1950) S.C.R. 737, *Hepton v. Moat* (1957) S.C.R. 606 and *Re Mugford* (1970) S.C.R. 261, as establishing the principle, or at least the presumption, that in the long term it is in the best interests of the child to be with the natural parent. However, the statements of law on which she relies in these cases must be read in the context of their facts and are not necessarily applicable to all situations.

21 Very simply, as stated, the law in the Province of Newfoundland is statutory and states that any court dealing with the custody of a child must of necessity consider the best interests of the child, primarily and foremost. Everything else is secondary and I accept, as most if not all other jurisdictions in Canada have, that the correct interpretation of the "best interests of the child" is to be found in the judgment of Dubin, J.A. in *Moores v. Feldstein* (supra).

22 To arrive at what is in the best interests of the child in a particular case, the court must first ensure that it has all the pertinent and available facts before it and, having done so, must carefully weigh all of those facts. There are many different considerations which will vary in importance in different circumstances, not the least of which is the tie of a natural parent and his or her child, but as stated by Dubin, J.A.:

> Although in most cases it is to be expected that a child will benefit by the ties of affection of a parent and what naturally flows from it, that must be a question of fact in every case, and I do not think I am bound by precedent to proceed on the assumption that it is inevitably so.

I therefore do not accept the argument of counsel for the appellants that the trial judge erred in law as alleged in paragraphs 2, 3 and 4 of the Notice of Appeal, all of which (in effect) assert the parent-child relationship of Julia Whey and Tammy to be of overriding importance. There is no such special status in law to be given that relationship. The position of Julia in relation to Tammy will be considered by me when I assess the facts.

23 As to the submission of counsel for the appellants that the trial judge erred in law in finding that a maintenance of the 'status quo' was in Tammy's best interests, I see no merit in that position. My reading of the judgment indicates clearly to me that the trial judge was making no legal finding in concluding that "My view is that it is in the best interests of Tammy to leave well enough alone". To the contrary, he came to that conclusion on his assessment of the facts. As already referred to, he may not have had sufficient facts, including expert evidence, to have fairly come to that conclusion, but that will have to be reweighed by this Court in its assessment of all of the evidence.

24 As to the law pertaining to maintenance of the 'status quo', again I would adopt the position as stated by Dubin, J.A. in *Moores v. Feldstein* (supra) and in the House of Lords case of *J. v. C.* (1970) A.C. 668 on which he relies. Where a child has been in a stable and beneficial environment, that child would likely suffer hardship and disturbance to its affections, if moved. Thus, as stated by Mr. Justice Dubin:

> Such a change of custody should not be made lightly. I think that before it is made by order of the Court, the person who asks for the order should show to the satisfaction of the Court that the proposed removal will enure to the welfare of the child.

That is the manner in which I intend to assess the evidence in this case if the trial judge's conclusions as to the nature of Tammy's present environment can be sustained.

25 Julia Whey and Dorothy Brenton each gave further evidence on the commission, mainly for the purpose of elucidating facts which may have arisen since the evidence was taken at trial. Basically, their evidence confirmed the trial evidence, except that George Brenton was now earning approximately $34,000.00 per year and George Whey approximately $45,000.00. Also, difficulties had arisen with respect to access by the Wheys to Tammy, the desirability of which had been commented on by the trial judge.

26 The report of Gloria Cabaluna, the clinical psychologist retained by the Wheys, was accepted into evidence and she was also examined on that report before the commission. The report says that Ms. Cabaluna's assessment was requested "to determine the psychological well-being of Tammy and her relationship with both Mr. and Mrs. Whey". She observed Tammy as being secure and happy with the Wheys and particularly attached to the mother. She concluded that there could well be a "generation gap" between Tammy and her grandparents in a few years and felt that there was no "psychological disorder that would cause maladjustment into another environment". She felt that there had been no loss of primary bonding between Tammy and her mother.

27 It is evident from reading the report that the background information supplied to Ms. Cabaluna is considerably different from the Brentons' version as supplied to Dr. Bodie and to the Court. To this extent, Cabaluna's and Bodie's reports and evidence balance each other out somewhat. It is clear from her evidence given at the hearing that Ms. Cabaluna, without having seen or talked to the Brentons', had developed a considerable bias towards the position of Julia Whey. Dr. Bodie, in his evidence, admitted also that he at that stage lacked neutrality, so there is likewise a balancing here.

28 I must say, however, that I find the background information as presented to Dr. Bodie by the Brentons, although somewhat slanted, to be more in line with the actual facts, as I take them to be, than those contained in Ms. Cabaluna's report. I also find Dr. Bodie's report and evidence to be more persuasive and more professional and it is of some significance as well that, while Tammy made her preferences very clear to Dr. Bodie that she wished to stay with her grandparents, to Ms. Cabaluna she said only that "although she wished to live with her grandparents, she also wished to live with her mother and George in Gander".

29 However, the significant evidence taken by the commission was that of Dr. David Aldridge and Mrs. Maureen Brown. Dr. Aldridge is a highly qualified child psychiatrist who is on the staff of the Department of Psychiatry at Memorial University and is, amongst other positions, consultant child psychiatrist with the Mental Health Services Division of the Newfoundland

Department of Health. He is engaged and experienced in clinical child psychiatry as well as in the teaching field.

30 Mrs. Brown is a social worker and is also highly qualified, having a Master's degree in social work. She is presently marriage and family counsellor with the Family Life Bureau in St. John's and does contractual counselling work with the Unified Family Court in St. John's and with the Department of Health. Both Dr. Aldridge and Mrs. Brown must be accepted as experts in their respective fields. It must be pointed out as well that both were independently retained by counsel for Tammy and knew none of the parties prior to their involvement in this matter.

31 Dr. Aldridge carried out clinical interviews with all the parties, alone and conjointly with Tammy and with Tammy alone. He found that there was a warm, normal parent-child relationship between the Brentons and Tammy. He did not find that such a relationship existed between the Wheys and Tammy. Tammy also made it very clear to him that she wished to stay with the Brentons and to continue visiting the Wheys. He also found she became distressed when faced with the possibility of moving. In his opinion, Tammy's development, attitude and demeanour indicated that she had had good parenting by the Brentons. He stated that the relationship of Tammy to the Wheys was important, but not a close one. It was rather that of a child and a special aunt and uncle.

32 Dr. Aldridge also gave as his opinion that if Tammy were required to move to the Wheys, she would be moving from people to whom she is firmly attached to people to whom she is not attached and that such a move "would be equivalent to an adoption". He then goes on to say:

> Tammy's development and health is at risk if she were to move for a number of reasons. Firstly, any move at this late age increases the risk of disturbance in the child. Secondly, the move would be against Tammy's wishes and would involve breaking firm bonds with people she considers to be her parents. Thirdly, she is already showing disturbance lasting a few days in response to the dispute. This is understood and managed well by the Brentons who have the advantage of a close relationship with Tammy. Fourthly, if difficulties do occur, they may not be well dealt with by the Wheys nor their significance appreciated. The precise form that any disturbance would take is difficult to predict.

33 In his evidence, Dr. Aldridge stated that while Tammy did not have sufficient maturity to weigh the respective benefits of living with either the Brentons or the Wheys, she was capable of communicating her preference as to where she wished to live. While he would expect a child to prefer the 'status quo', those wishes had to be related to the quality of care received and the extent of the attachment to particular people. He also says, significantly, that his observations of Tammy with both families led him to expect her to make the choice which she did make.

34 Mrs. Brown carried out a comprehensive home study of both the Whey and Brenton homes which included not only conjoint and individual interviews of the parties and Tammy, but also collateral contacts with other sources which she felt would assist her. She found through all of her interviews that both the Brentons and the Wheys were decent people having the will, ability

and resources to meet Tammy's physical and emotional needs. However, she further was of the opinion, like Dr. Aldridge, that Tammy's ties and bonding were to the Brentons, and that Tammy regarded them as her parents and her aunt Beverley, who is 17 years old and who still lives at home, as her sister.

35 Mrs. Brown's interviews with others outside the family confirmed her own opinion that Tammy was an intelligent, normal and happy child in a caring home. This, combined with Tammy's expressing the clear preference to her that she wished to stay with her grandparents and continue to visit with the Wheys, led her to conclude that the Brentons are presently meeting Tammy's needs "superlatively" and to recommend that Tammy should remain with the Brentons. In her evidence, Mrs. Brown stated as well that her recommendations would have been the same even if she had received no statement of preference from Tammy.

36 While one does not necessarily have to accept all of the opinions of experts, the evidence on commission makes it abundantly clear that the learned trial judge's findings that "Tammy is a normal, healthy, well-adjusted seven-year old girl living in a stable and happy home environment with the Brentons who she regards as her parents and who have obviously cared for and raised her as they did their own children", and that "the Brentons have demonstrated that they have been exemplary parents" must be sustained. If, as is suggested, he reached that conclusion on insufficient evidence, that defect has been cured by the evidence of Dr. Aldridge and Mrs. Brown. There are many other significant features to that evidence, but this is the most significant.

37 For Julia Whey to succeed in obtaining custody of Tammy, she must demonstrate to the satisfaction of the Court that a move from the Brentons' house to hers will be in the best interests of Tammy. Not only has this not been demonstrated, but the commission evidence verifies the opinion of Dr. Bodie and the finding of the trial judge that "To remove Tammy from her home and resettle her in Gander, a strange place with a new school and no friends is to invite disruption and problems", and, further,:

> The Brentons have demonstrated that they have been exemplary parents. The question that remains is whether Tammy would be as contented and well-adjusted if she were to be taken from her home and the couple she regards as her parents... My opinion is that the disruption and risk of upset for Tammy is not necessary and ought not to be taken in the absence of some very compelling and obvious reason.

38 In the circumstances of this matter, the fact that Julia is the natural mother of Tammy is the only possible "compelling reason". However, it is not sufficient here. The blood tie between parent and child normally presupposes the strongest of ties of affection, but while Julia apparently feels such a bond exists between her and Tammy, the evidence, quite frankly, is that it is one-sided. Tammy regards Julia and George Whey at this stage in the manner of a favorite aunt and uncle, while there is no doubt that the natural bond of affection which reciprocally exists between Tammy and her grandparents, the Brentons, is that of parent and child. It is also clear that the bond has existed unchanged since Tammy's birth.

39 Bearing in mind all of the circumstances of this matter, which I feel have now been fully canvassed, in my view it is in the best interests of Tammy, for the present and for the foreseeable future, to remain in the custody of Dorothy and George Brenton. The appeal must therefore be dismissed.

40 I make only one final comment. One can sympathize completely with Julia Whey and fully realize the distress this decision must cause her. However, the duty imposed on the Court is clear and I think she must accept the validity of the Court's reasoning. She and the Brentons must also realize that, while Tammy does not appear as yet to be adversely affected by the dispute between the parties, such adverse effect is almost, inevitable if the people whom she loves do not work out their differences. I am not unaware that the hostility factor between the Wheys and the Brentons has worsened considerably since the hearing before Mr. Justice Steele and one can only hope that the parties will have the good sense, for Tammy's sake, to bring that hostility to an end. As to access of the Wheys to Tammy, I agree with the comments of the trial judge and trust that this problem can be solved without further recourse to him.

41 The appeal is dismissed, with costs to the respondents. The expenses of counsel for Tammy, whom we commend for an excellent job, are being met by the Government of Newfoundland through the good offices of the Deputy Minister of Justice.

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