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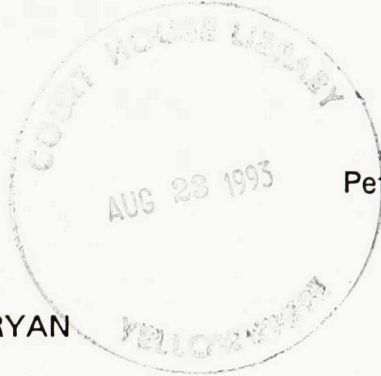
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RONALD McBRYAN

- and -

LYNNE MARIE ANN McBRYAN



Petitioner

Respondent

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Applications by both parties for sole interim custody of the two children of the marriage, and for exclusive possession of the matrimonial home, adjourned for further submissions regarding terms of the order to be granted.

Heard at Hay River on March 30th and 31st 1993  
and at Yellowknife on April 1st 1993

Judgment filed: April 5th 1993

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Petitioner: Katherine R. Peterson, Q.C.  
James T. Floyd, Esq.

Counsel for the Respondent: Ms. Lucy K. Austin

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THE COURT OF THE DISTRICT OF COLUMBIA  
IN RE: [Illegible]

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FOR THE COURT

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REASONS FOR JUDGMENT

Interim custody, care and control of the two children of the marriage in this divorce action are in dispute between the parties. The children are a boy, aged 6, and a girl aged 3 years. They are at present living with the wife in the matrimonial home at Hay River, a town with a population of about 3500 people.

There appears to be no immediate hope for any attempt to mediate between the parties, since the wife has complained to the police that the husband sexually assaulted her in February this year, the police having laid formal charges on March 3rd last, even if the wife's complaint was not made to the police until the day after she was served with the divorce petition, an *ex parte* order granting sole interim custody of the children to the husband, and a notice of motion for a further order confirming that custody award and conferring exclusive possession of the matrimonial home on the husband. The husband is at present required to remain away from the home pursuant to

the conditions of his undertaking to a justice of the peace upon being released from police custody following his arrest on the sexual assault charges.

3           The boy is described as having a hyperactive condition for which he receives prescribed medication, administered by his mother, who is employed full time during the week as the receptionist at the local public health clinic. Her hours of work are between 8.30 a.m. to 4.30 p.m. from Monday to Friday. The boy now attends kindergarten and the girl attends a daycare facility, both five days a week. On Saturday afternoons until Sunday afternoons the boy stays with his mother's parents and the girl stays with the father's parents. Both sets of parents reside at Hay River.

4           As between the parties, the wife is the primary caregiver for the children. The husband travels out of Hay River quite frequently during the week for his employer, Buffalo Air Services, by whom he is regularly employed as an aircraft mechanic. From time to time he is absent from Hay River for longer periods in connection with his work. The husband also operates a tractor unit in the evenings and on weekends as an independent contractor for the Town of Hay River. He is described by his father as being very industrious and as spending many hours at work either for Buffalo or for the Town. When occasion permits, the husband takes the children for drives in his vehicle and on a snowmobile. He also takes them down to the hangar where he works, where they play while he is engaged on his work.

5           The mother's father testified that the boy is terrified of his father; but no other member of the family went so far, and I consider this to be a gross exaggeration even

though I accept that the boy may be intimidated to a degree by his father, as stated by the mother in her testimony. According to the boy's paternal grandfather, the boy and his father have a normal father-son relationship. Allowing for partisanship on both sides, I accept that the boy prefers to remain with his mother's parents, where he is probably over indulged to a degree, rather than return to his own home with his father. There is no question regarding the girl's affection for both her parents and for her grandparents on both sides.

Were this all that requires to be considered, I should have no difficulty in awarding interim sole care and control of the children to their mother, on the basis of continued joint custody, with reasonable access to their father by agreement with their mother, on the understanding that the pattern of the children's lives up to now would be disturbed as little as possible, thus maintaining the *status quo* for the time being with no more change than is absolutely necessary to allow for the present conditions of the father's undertaking, pending trial in the divorce action.

There is however an additional factor which I am unable to ignore. This is the problem which the mother seems to have with alcohol and other drugs. In the not so distant past she was convicted of a drinking-driving offence. She is currently facing a fresh charge of unlawful care and control of a motor vehicle while her ability to do so was impaired by alcohol or a drug, contrary to the **Criminal Code**. Of course, the law presumes her to be innocent of this offence until a duly constituted court finds otherwise. Nevertheless, for present purposes, the fact that she has again been charged with an offence of this nature is not to be altogether ruled out of consideration. Then there is the

evidence of her habitual purchase of over-the counter drugs containing codeine in quantities which were seen by the local pharmacist as being so excessive that he refused to continue selling them to her without a medical prescription (which she declined to obtain). Although she vigorously denied attempting to continue her supply of these drugs by having her bookkeeper obtain them for her, I disbelieve her denial and accept the contrary evidence of the bookkeeper. The occasional use of these drugs by the husband for his back pain does not explain the magnitude of the amount of these drugs as purchased, and apparently used in the past (if not in the present), by the wife.

8           The husband's concern in regard to the wife's alleged abuse of alcohol and drugs is primarily over the risk posed to the children's lives and safety if she should be affected by ingestion of alcohol or other drugs when driving a vehicle containing either or both of the children. The wife's repeated denials that she has any problem in connection with her alcohol and other drug use are also a cause for concern. Her evidence is that she has never driven under any such influence with the children. The problem with that evidence is that she seems oblivious to the risks to herself, quite apart from the children. Her conviction in the past and the charge now pending against her suggest that she may well be so constantly under the influence of mind and mood-altering drugs of one kind or another that she is simply unable to tell when she is at risk while driving a vehicle. If that is so, there is obviously a serious danger to the lives and safety of the children, at least while she is driving a vehicle with them in it. There is also a risk to the children if the wife is intoxicated or otherwise under the influence of psychotropic substances while the children are alone with her at home or elsewhere.

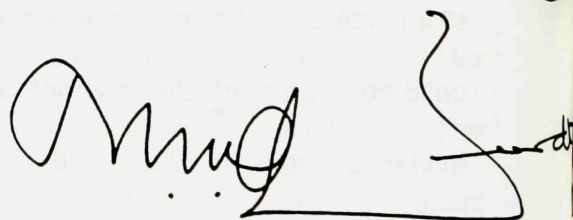


Having carefully observed the wife as she gave her testimony, I conclude that she is not a credible witness in respect of her use and abuse of alcohol and other drugs. And while the husband's evidence as to her driving with the children while she was under the influence of alcohol is not specific as to any particular instances, I note that he was not cross-examined on that evidence at the hearing when there was a full opportunity to do so. Making all due allowance for the lack of specificity in the husband's evidence on this point, and noting the warily qualified denials of the wife regarding her experiences of being intoxicated in the past, I am left with the strong impression that she still has a serious problem with alcohol and drugs, in spite of her denials on that score.

One way to minimise the risk to the children from the mother's driving under the influence of mind and mood-altering substances, whether alcoholic or otherwise, is to include a condition in any order in her favour restricting her from carrying either of the children in any vehicle of which she is the operator. This may be inconvenient; but the evidence suggests that others in the extended family are available to transport the children when the husband is out-of-town or committed to work, so that it should not be an unduly onerous condition. Another condition which suggests itself, to minimise any risk of danger to the children while they are at home alone with the mother, is to require her to call her sister or some other designated member of the extended family between certain hours in the evening to report on the well-being of the children. On occasions when the mother is to be out for the evening, she would be obliged to arrange for the children to be with their grandparents, so that any resulting risk to the children is eliminated.

11 If a suitable regime can be worked out by agreement between the parties through their respective counsel for submission to me, along those lines, I shall consider incorporating it in an order recognizing that the parties continue to have joint custody of both children but that the children shall, pending trial, be in the sole interim care and control of the wife in the matrimonial home subject to the terms of that regime. If that can be done, it should not be necessary to invoke the intervention of third parties, whether in the persons of the grandparents (or other extended family members) or the child welfare authorities.

12 This matter therefore stands adjourned subject to the further submissions of counsel as above indicated or as they may otherwise be instructed.



M.M. de Weerd  
J.S.C.

Yellowknife, Northwest Territories  
April 5th 1993

Counsel for the Petitioner: Katherine R. Peterson, Q.C.  
James T. Floyd, Esq.

Counsel for the Respondent: Ms. Lucy K. Austin



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