

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DALE HARVEY PROPP

Petitioner

- and -

CECILIA MARIA PROPP

Respondent

REASONS FOR JUDGMENT

1 The parties to this divorce action are the parents of a 15-month-old boy, namely Forrest Shadrach Michael Propp. The present application is made by the petitioner father requesting an order:

- (a) granting him sole interim custody of the child subject only to the respondent mother having reasonable access to the child upon reasonable notice to the father; or
- (b) alternatively, declaring that the parties have joint custody of the child; but granting sole interim day-to-day care and control of the child to the father, subject only to access by the mother as above mentioned; and
- (c) in any event, requiring the mother to forthwith return the child to the father at Yellowknife.

2 The mother and child are in England. They left the father, who remains in the matrimonial home at Yellowknife, some ten months ago. He visited them in England late in 1994, obtaining temporary care and control of the child there then for a number of days with the mother's consent; but apart from that he has not had personal contact with the child since April 1994.

3 At the time of the departure of the mother and child for England, the parties entered into a written separation agreement in which they agreed, among other things, that the mother is to have day-to-day care and control of the child subject to access by the father on reasonable notice, including temporary day-to-day care and control of the child by the father for holiday purposes not affecting the child's schooling.

4 Although the father's affidavit in support of this application refers to the agreement as an exhibit annexed to that affidavit, no such exhibit is in fact so annexed. Reference was made instead, at the hearing of the application, to the copy of that agreement annexed to the mother's affidavit, which was evidently delivered to the Clerk of the Court by mail under cover of a letter from solicitors in England acting on behalf of the mother.

5 I take it that the father's solicitor's reference to this copy of the agreement indicates that it may be regarded as authentic and complete for the purposes of his application here, notwithstanding his disavowal of the agreement today as having been made without legal advice and for other than the purposes of a permanent separation between the parties. I do not

accept that disavowal on the latter point since it is plain, on the face of the agreement, that it was entered into for the purposes of a permanent separation.

6 The child has been with his mother since birth. Apart from their brief contacts in England late last year, the child and his father have been apart since April 1994. At the age of 15 months, it will be abundantly apparent that the mother having been the child's sole care giver during most of his young lifetime, his natural parental bonds are at present primarily with her. There is nothing in evidence before me to suggest that this situation ought to be discontinued or disturbed. That being so, I assume the contrary to be the case and I thus infer that it is in the best interests of the child that he remain for the time being with the mother in England, where she has apparently established another spousal relationship and where the child appears to be adequately cared for.

7 Under our law, both parents in this case have joint child custodial rights and responsibilities unless a court having jurisdiction otherwise orders. This is not a case, on the evidence before me, in which that *status quo* should be altered for the time being. Nor is it a case, given the limited available evidence, in which to disturb the *status quo* regarding the mother's day-to-day care of the child, whether by requiring the child to be returned to the father at Yellowknife or otherwise.

8 The application is therefore dismissed, but without costs to either party.

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

Yellowknife, Northwest Territories
February 22nd 1995

Counsel for the Applicant: Ms. E. Keenan Bengts

Amicus curiae: Ms. J. Murray