

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF the
Domestic Relations Act;**

**AND IN THE MATTER OF the
Judicature Act;**

BETWEEN:

MARGARET NEWMAN

Applicant

- and -

MARK BOGAN

Respondent

REASONS FOR JUDGMENT

Two motions are before the Court for determination. On behalf of the mother of the two-and-a-half-year-old child of the parties, the Court is asked to vary an existing interlocutory order so as to deny access to the child by the father pending the trial. On behalf of the father, the Court is asked to require the mother to comply with the provisions for access in the existing order and to declare her to be in civil contempt for failure to abide by those provisions. Each party also asks for costs.

2

The affidavit material contains various conflicting allegations. However, certain uncontroverted facts are clear. For whatever reason, and I refrain from making any finding in that respect, the child has not seen or heard from the father since February 1994. The father ceased to exercise his rights of access to the child, pursuant to the above mentioned order, in October 1993. He says that this is because of the lack of co-

operation of the mother in arranging for him to do so under the terms of the order. She says that he himself did not adhere to those terms with respect to due supervision of his access by a mutually agreed third party.

3 It is also all too apparent that the parties have such antipathy for one another that they are not able to come to any mutual agreement, either directly or through counsel.

4 The mother has had sole day to day care and control of the child since birth, subject only to the father's exercise of access to the child. The father was granted supervised access four times weekly for up to two hours at a time by order of the Chambers judge made on May 22nd 1992, when the mother was granted interim sole custody of the child.

5 On May 22nd 1993, and again on June 21st 1993, a Chambers judge ordered the parties to have no contact or communication with one another except through counsel. The Chambers judge on June 21st 1993 also directed that there be a trial of the issue of access by the father. And he took steps to ensure that an assessment was done, for purposes of that trial, by a qualified court-appointed expert.

6 In addition to the present proceedings in this Court between the parties, the father has been before the Territorial Court on criminal charges arising from events involving his differences with the mother over the child and his access to the child. I shall refrain from attempting to detail this aspect of matters since in my view it is unnecessary to do so.

The psychological assessment report prepared by Sandi G. Ruddy, M.Sc., Chartered Psychologist, of Calgary, as the court-appointed expert abovementioned, is dated May 11th 1994. It is based on a visit to Yellowknife by Ms. Ruddy in February 1994, at which time she was able to observe the child on separate occasions with each of his parents, both of whom underwent psychological testing.

8 No attachment or bond was found to exist between the child and his father during the observations made by Ms. Ruddy in February 1994. They got along well together, but that was all. Ms. Ruddy concluded that the only "psychological" parent of the child at present is the mother. However, she did not rule out the possibility that the child could come to regard the father as his "psychological" father. As yet that is not the case. Ms. Ruddy also mentioned the risks inherent in the child being prevented from knowing his father as such. These risks are not of immediate concern but are of concern in the long term.

9 Ms. Ruddy recommends that the father be denied access to the child, or alternatively, that he be limited to structured access until the child reaches his eighth birthday. In this alternative event, access would be restricted to two visits a week. And, in any event, the access should be closely supervised by an independent third party prepared to hold him or herself responsible to the Court for the child's safety and security.

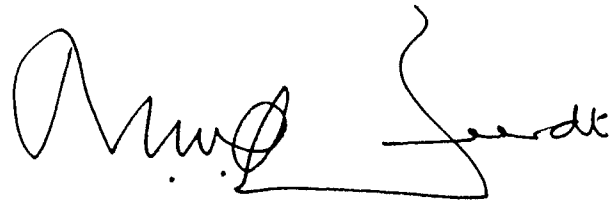
10 In all the circumstances I find that the child's best interests, pending trial of the issue of the father's access rights, will be most effectively secured by denying the father access until the trial.

11 Given the circumstances, I decline to make a finding of contempt against

the mother. And I make no order requiring her to comply with the access provisions of the existing order. Instead, that order is varied by deleting those provisions and, in lieu of those provisions, an interim order shall issue denying the father access to the child until further order.

12 In disposing of the contempt motion as I do, I note that the order whose provisions the mother is alleged to have breached is couched in ambiguous terms which render it difficult to conclude that she contumaciously did breach it.

13 The father's application is dismissed; and the mother's application is allowed. The issue of costs on this application is reserved to the judge presiding on the trial of the issue of the father's access rights.



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

Yellowknife, Northwest Territories
June 17th 1994

Counsel for the Applicant: Ms. Elaine Keenan-Bengts

Counsel for the Respondent: Ms. Lucy K. Austin

CV 03853

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

