

6101-02628

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LYNN SHIRLEY ELKIN-HALL

Petitioner

- and -

THOMAS WAYNE HALL

Respondent



MEMORANDUM OF JUDGMENT

The petitioner's application for interim corollary relief is granted.

The evidence presented in the various affidavits, untested by cross-examination as it may be, convinces me that there is a serious difference between the parties in fact as well as perception. The welfare of the children must be placed first until all of the relevant evidence can be collected and reviewed. There is no doubt that friction between the parties will have a damaging effect on the children. And there is no doubt that, for whatever reason, there will be ongoing friction if the parties remain in the same residence.

The petitioner is prepared to try joint custody. That is what she seeks in her Petition for Divorce. There will therefore be an order for interim joint custody of the three children of the marriage. The children will reside with the petitioner as the primary caregiver. The respondent will have reasonable but generous access on such terms and conditions as the parties may agree from time to time. Failing agreement, they may apply for directions.

The petitioner will also have exclusive interim possession of the matrimonial home. The interests of the children, including their need for continued stability, their familiarity with the neighbourhood, and access to school, warrant exclusive possession. The parties are both well-educated professionals with incomes sufficient to meet their needs. There is no request for interim support so none will be ordered. The petitioner says she is able to meet all household expenses if given exclusive possession. The respondent will therefore vacate the matrimonial home within 5 days (or such further time as the parties may agree) from the date of this memorandum.

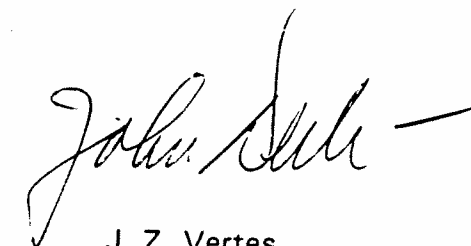
The respondent suggests some rotational system whereby the children remain in the home while the parents alternate every few days living there. In my opinion this would lead to greater instability at this time. There is no evidence to show that the parties can work together to the extent that they can agree to and implement a joint parenting plan. In the absence of such evidence I am not prepared to impose such a regime as an interim measure.

The respondent's cross-application seeks relief this court cannot give: directing the parties to counselling or maintaining the status quo "until counselling has run its course". The cross-application is dismissed.

I note that the parties may be engaged in ongoing mediation to resolve their dispute. I encourage them to do so. This interim order is made in recognition of two criteria: (1) tension should be minimized; and, (2) the children's contact with both parents should be maximized for their current and future well-being. I hope the parties will conduct themselves bearing these criteria in mind.

Costs will be left to the discretion of the trial judge.

Dated this 20th day of October, 1995.



J. Z. Vertes
J.S.C.

To: Elaine Keenan-Bengts,
Counsel for the Petitioner

R. Clark Rehn,
Counsel for the Respondent

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Honourable Mr. Justice J. Z. Vertes

