

SC CIV 78 001

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

REBECCA INNUYAQ QITSUALIK

Petitioner

- and -

GIDEON QITSUALIK

Respondent

ORAL REASONS FOR JUDGEMENT OF THE
HONOURABLE MR. JUSTICE C.F. TALLIS
IN SUPREME COURT, AT THE HAMLET OF
GJOA HAVEN, NORTHWEST TERRITORIES
ON JANUARY 23, 1978

---UPON COMMENCING AT 2:15 P.M.

THE COURT: First of all, in this case, I would like to thank Ms. Green and Mr. Johnson for appearing here as counsel and putting forward every position that could be properly put forward.

On the evidence, I have decided that I ought not to reserve judgement in this case, because it is my view that it is in the interest of all people concerned that judgement be

delivered orally and promptly if possible. In some cases I reserve judgement but it seems to me that this matter has been pending for quite some time through no fault of any particular person or persons. The Court, I think, has a responsibility to do what it can in expediting matters once they have been brought to trial.

As I indicated during the course of the arguments, this is indeed a very difficult case for a judge because both parties are basically good people and responsible people.

I am inclined to feel that after hearing both the petitioner and the respondent that they are not the type of people who have looked upon this case as a bitter fight between two of them. I think that both of them genuinely feel very badly that the case ever had to come to court.

When you look at the age of these children it is quite obvious that the father and the mother are going to have to work together in a friendly way for many years, if they are sincere in their desire to do what is right by the children. Having heard both of them, I have no doubt that they sincerely desire to do what is best for the children.

Turning therefore to the case itself, I would point out that this is Petition for Divorce based on the adultery of the Respondent, Gideon Qitsualik.

I can deal with this aspect of the case very quickly, because there is no doubt that the Respondent, Gideon, is living with another lady in a common-law relationship. This is not in

any way denied and under the circumstances, the evidence satisfies me that the Petitioner has established a case for divorce on the grounds of the adultery of the Respondent.

I need not belabour this matter because this is a clear case for a divorce. The marriage cannot be redeemed. In other words, the people cannot get back together again. There is no point in them being unkind to one another any more or fighting over any matters that they probably fought over some years ago.

In this particular case, the grounds for divorce having been proven, a Decree Nisi for dissolution of the marriage will Issue with the same to be made absolute upon the expiration of three months unless sufficient cause be shown to the contrary.

In this particular case the question of custody of the children named in Paragraph 6 (a) of the Divorce Petition is really the basic issue.

It is common ground between the parties and their respective counsel that each parent is basically a good parent. This, as I said earlier, makes it even more difficult for the Court to deal with a case involving the custody and welfare of children.

I know that both counsel are quite familiar with the Authorities dealing with custody of children. I did have occasion to review those Authorities some time ago in *Kupeuna versus Kupeuna* in the Supreme Court of the Northwest Territories, and more recently, in the case of *Krenn versus Krenn*, which was another Supreme Court case in this jurisdiction dealing with the

custody of the children.

I do, however, want to reiterate what I have said on earlier occasions: That is that it is the law of the Northwest Territories that the welfare and happiness of the children is the paramount consideration in questions of custody. To this paramount consideration all others must yield.

This means that I must endeavor to look not only at today but also at the future of these children. I must decide as best I can what should be done in this connection.

In addition to the oral evidence that I have heard here, I have carefully considered the affidavit evidence that was filed, and the home-study report which was tendered in evidence by agreement between counsel.

I have already said that the main thing that I must concern myself with is the welfare of the children. In determining the answer to this question I am entitled to look at the conduct of the respective parents: the wishes of the mother as well as the father; the ages and sexes of the children; the proposal of each parent for the maintenance and education of these children; their station and aptitudes and prospects in life; the pecuniary circumstances of the father and of the mother, and not for the purposes of giving the custody to the parent in the better financial position to maintain and educate the children when but for the purpose of fixing the amount to be paid, if any, by one or both parents for the maintenance of the children. The religion in which the children are to be brought up is also a matter for consideration.

I mention those principles very briefly so that the parties involved will realize that the Court must take into account

quite a number of factors in arriving at a decision.

Counsel, of course, are familiar with the cases that I have referred to, and in particular to the Krenn versus Krenn case. In it I reviewed at some length a number of leading cases which have been guidelines for this court and any other court.

In this particular case I have had the benefit of observing both parents. I have endeavored to weigh the attitude of each one of them towards their children. I have no doubt that each one of them dearly loves the children.

I am sure that the father, when he said that the children would miss him, generally meant that. I am sure that when the mother told me how much she loved the children, she genuinely meant that.

I like to think that each one of these parents still has a great deal to offer to their children. Both of them show a deep affection and love for the children and I hope that continues. I hope the children have love and affection for their children.

As I said earlier I was somewhat saddened to hear the older boy say that he did not particularly want to visit his mother even if he was living with his father under the terms of the custody order. I think that as he grows older he will probably think a little differently about it, and no doubt will be happy to visit with her as the years go by.

Now, in this particular case, I have taken into account all the factors that I have mentioned here, and all the matters

that I have discussed in the Krenn versus Krenn case which Counsel are familiar with.

I have carefully weighed the question of possible disruption of the family by granting custody of some of the children to Mrs. Qitsualik. But as against that possible disruption, I have considered what has happened with respect to the youngster, Terry, who really was separated or parted from the family roots in this particular case.

I have given very anxious consideration to all the children and particularly the youngest, Susanna and Sean.

The question of Susanna, who is a young girl, has given me a great deal of concern. In my opinion it is highly desirable for children of tender age and, particularly a girl, to be under the wing of their mother at this particular time in life.

Naturally, I am very concerned about the other children and in particular the oldest two. But it does seem to me that Daniel, who is thirteen years of age, is entitled to have his wishes taken into account. I am inclined to the view that the two oldest youngsters will probably be happier with their father, because they have grown up with a background of hunting and sealing. I am sure that both of them genuinely enjoy this life. There is certainly nothing wrong with it. They all appear to be bright, adaptable youngsters who, I think, will do well where ever they go.

Mrs. Qitsualik has demonstrated the ability to accommodate

both cultures, if I may use that term. During the course of argument I pointed out that it was my assessment that she had bridged the gap (if I may use that term), but at the same time had not turned her back on her own people or her culture, but rather was endeavoring to help them, not only in her capacity as an interpreter and translator but also in other fields of endeavor.

Now, without going into detail and distractive discussions of the evidence or any aspect of it, I am satisfied on the balance of probabilities in this particular case that the welfare of the children would be best served by the father having custody of the two oldest children, Daniel and James and the mother having custody of the three children, Susanna, Sean and Terry, who is already with her and over which there is no dispute.

In making this order I want to emphasize that I hope that Mr. & Mrs. Qitsualik will not view this hearing as a fight or conflict between the two of them. This would be a tragic mistake. I hope that they will work together in the interest of all concerned to come up with a satisfactory arrangement on access.

I am going to make a general provision for access and of course, a Custody or Access Order is never final. They can always come back to the Court with a further application. But if the Court has to make an Order that spells everything out minutely as to the very day and hour, they may find that with the cost of travel and the weather, in this climate of ours, it doesn't make

good sense to have the Court do that if they can work out an arrangement that is satisfactory.

I will, however, say that in my opinion this is a case that calls for access that will perhaps not be very frequent because of the cost but which will be for a longer period. You have the months of June, July and August which are school holiday months, and I have in mind that the parent who does not have custody of the children should, perhaps, have access for a period of six weeks or two months. In this ^{way} the money that has been spent is not thrown away for a very short journey in point of time. Indeed, it seems to me that the parties might even work it out so that the visiting period may be two or three months.

Now, having said that, I want to point out that this is not a case where they can afford to have the luxury of weekend visits, but if one of them happens to be in town then it seems to me that the other one should have the courtesy to work it out pretty quickly and on short notice so that at least they could see the youngster. Having said that I will conclude this matter by delivering the judgement in oral terms as follows - there will be judgement as follows:

- 1) There will be a Decree Nisi for dissolution of the marriage between the Petitioner and the Respondent, such to be made absolute at the expiration of three months unless sufficient cause be shown why it should not be made absolute.

- 2) It is further ordered and adjudged that until further order of this Court, the custody of the persons of the infants Daniel Qitsualik and James Qitsualik and each of them be and the same is hereby committed to the Respondent, father.
- 3) It is hereby further ordered and adjudged that the Petitioner do have access to the said infants, Daniel Qitsualik and James Qitsualik and each of them at reasonable times and upon such conditions and terms as may from time to time be agreed upon by the Petitioner and the Respondent or in the absence of such an agreement, at such times and upon such terms and conditions that this Honourable Court may, from time to time, direct and order upon the application of either the Petitioner or the Respondent with respect thereto.
- 4) And it is further ordered and adjudged that until further Order of this Honourable Court, the custody of the persons of the infants Susanna Qitsualik, Sean Qitsualik and Terry Qitsualik and each of them be and the same is hereby committed to the Petitioner.
- 5) It is hereby further ordered and adjudged that the Respondent Father do have access to the said infants, Susanna Qitsualik, Sean Qitsualik and Terry Qitsualik and each of them at reasonable times and upon such terms and conditions as may from time to time be

agreed upon by the Petitioner and the Respondent or, in the absence of such agreement, at such times and upon such terms and conditions as this Honourable Court may from time to time direct and order upon the application of either the Petitioner or the Respondent with respect thereto.

- 6) It is further ordered and adjudged that each party will be responsible for payment of their own costs.

That concludes the summary of my judgement and I would add that I have not made any Order for Maintenance because I think in this particular case it is only fair, having regards to the joint responsibilities that the parents have, in the sense that Mrs. Qitsualik has the custody of the children I have named and Mr. Qitsualik has the custody of the two older boys, that the burden has been equally distributed in those terms. Accordingly, I make no order against Mr. Qitsualik for the maintenance of the children that are living with Mrs. Qitsualik and vice versa.

Is that clear?

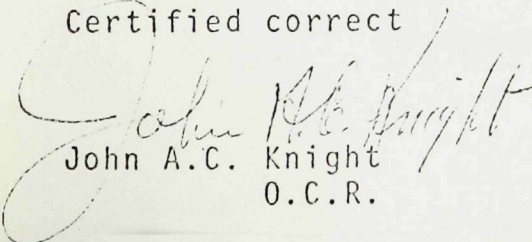
MR. JOHNSON: Yes, my lord.

MS. GREEN: Yes, sir.

THE COURT: Thank you.

---COURT HEARING CONCLUDED AT 2:55 P.M.

Certified correct


John A.C. Knight
O.C.R.

C.F. Tallis, J.S.C.

Yellowknife, N.W.T.
January 23, 1978