

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Domestic Relations Act*,  
R.S.N.W.T. 1988, c.D-8, as amended

BETWEEN:

**BRENDA QAUQJUAQ**

Applicant

- and -

**NOAH KATALUK**

Respondent

---

Trial of custody action.

---

**REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J. Z. VERTES**

Heard at Rankin Inlet, Northwest Territories  
on September 24, 1996

Reasons filed: October 1, 1996

Counsel for the Applicant: Olivia Rebeiro

Counsel for the Respondent: Hugh R. Latimer

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Domestic Relations Act*,  
R.S.N.W.T. 1988, c.D-8, as amended

BETWEEN:

**BRENDA QAUQJUAQ**

Applicant

- and -

**NOAH KATALUK**

Respondent

**REASONS FOR JUDGMENT**

1           The parties are the parents of three boys, Adrian (age 6), Victor (age 5), and Charlie (age 2). This case concerns the continuing care and custody of these children. The sole criterion to be used in determining this issue is the best interests of the children.

2           The mother is now 25 years old; the father is 28. They lived together for a little over 5 years, from 1989 to 1994. The mother is from Gjoa Haven, a relatively small Inuit community, while the father has lived all his life in Coral Harbour, also a small Inuit community. In 1989, the mother went to live in Coral Harbour because of difficulties with her family. A relationship commenced and the parties soon started living together.

3           The mother testified that the relationship was marked by confrontation, argument, and verbal and physical abuse. She said the father would blame her for problems in the home and with the children. He would unjustly accuse her of infidelity. She testified that she was frightened and did not know who to turn to. She apparently told the father's mother (the children's grandmother) about the abuse but she was told not to say anything about it. She claimed the father used excessive force to discipline the children. Finally, she said, she could go on no longer and left the home in December of 1994 taking the youngest child with her. She returned to Gjoa Haven and has lived there ever since.

4           The father did not deny that the relationship was often marked by arguments. He did not deny striking the mother. He acknowledged spanking the children. But, he testified, the mother was prone to make unfounded accusations due to abuse she suffered earlier in her life. He still loves her however and he wants to resume their relationship.

5           Since December, 1994, the two older children have lived with the father. He has a wide extended family who assist him with their care. Indeed, the evidence revealed that much if not most of the day-to-day care of the children was carried out by their paternal grandmother. She cooks meals for them and they sleep most nights of the week at her home. These two children have not seen their mother since she left; the father has not seen their youngest son since then.

6           The mother is a full-time student now. She wants to upgrade her education so that she can obtain a good job to support herself and the children. She depends on social

assistance. The father also depends on social assistance. He used to work fairly steadily up until sometime in 1994 but only sporadically since then.

7           The mother wants all three children to live with her. Her counsel submitted that she was the primary care-giver while the family was a unit and she is capable of being so now. By contrast, it was submitted, the father is heavily dependent on the assistance of his family, in particular the grandmother, in the care of the children. Counsel argued that what was in the best interests of these children is to be with the parent who is most capable to personally meet their needs and that parent is their mother.

8           The father's position is that the status quo should be maintained for now but with an eventual return of the youngest child to the father when that child starts school. The two older children are now in school, grade one and kindergarten respectively, and it is submitted that they should not be disturbed in their established routine. Counsel argued that maintenance of the status quo is the only way to maintain stability in the children's lives and to disrupt the status quo is to exchange a "known" situation for the "unknown".

9           There was evidence presented by members of the father's family that the children were happy and healthy. I am sure they are but "happiness", at least as perceived by an interested observer, is not necessarily the equivalent of "best interests". There is a constellation of factors that go into any determination of the best interests of children. I have no doubt that both parents and all members of their respective families love these children and want only that they be happy and healthy. But there must also be evidence

of parenting skills — nurture, care, guidance, education — to support a finding that being with a particular parent is in their best interests.

10            In this case there is some evidence that causes me to question the older children's current circumstances. I received a letter from the assistant principal of their school. Commendably this letter was obtained and submitted by the father's counsel. The letter reveals that both children have experienced difficulties in school: delayed development in language, social and motor skills; limited attention span; and a propensity for aggressive behaviour. It is true, as counsel pointed out, that the cause of these problems is not identified. They may be due to any number of factors. But the point is that there are identified problems but no one, not the father or his relatives, seems to recognize them.

11            This is a particularly difficult case because there are positive and negative factors on both sides.

12            The father admits to violent behaviour. This cannot be excused. An atmosphere of anger and violence cannot but have a harmful effect on children in the home. This violence was also taking place in a community where the mother had no support system for herself. She testified that for a long time she could not turn to the officials one would expect to be available since one of the father's sisters was the community social worker. It should not be difficult to understand the mother's evidence when she said that she felt she had no alternative but to get out of the home and return to her own family in Gjoa Haven.

13           The father, however, has a strong network of support from his extended family. This is not to be underestimated. It is important to acknowledge that members of the extended family usually play a much larger and more intimate role in child-rearing in aboriginal societies as opposed to southern urban Canadian society.

14           The mother has had a troubled relationship with her own family. As recently as a few months ago she felt that her natural father was not being supportive. She testified, however, that the situation has now changed. Their relationship has improved and, so she said, her father accepts the youngest boy as his grandson and is generally supportive to her.

15           I agree with the father's counsel that it is important to maintain stability and security in these children's lives. Ordinarily an established status quo should not be disturbed in the absence of a good reason to do so. This factor is more significant on an interim application but it is still relevant on this application for a permanent order. But in this case the status quo is somewhat artificial. It arose solely because of the mother's perceived need to remove herself from the relationship for her own safety. A history of violent behaviour is good reason to disturb the status quo in this situation.

16           There is an additional factor to consider. There are benefits to be gained from uniting the siblings. This factor was well described by Riordan J. in *White v White* (1994), 7 R.F.L. (4th) 414 (N.B.Q.B.). It is generally acknowledged that keeping the children of a family together is desirable so as to allow them to share their childhood and the affection and support of each other. The separation of siblings is rare and only done in

exceptional circumstances. It is often the case that this general principle will not be applied where the siblings have already been living apart for some time. But each case depends on its own circumstances. I note in passing that in the *White* case the court reunited siblings who had been living separate and apart for over a year.

17           In my opinion, the fact that their parents are no longer living together means that the most central facet of these children's lives for years to come may be the unity of their relationship as brothers. The group affinity should strengthen the character and social skills of each child as an individual. This is an ideal of course and only time will tell. But the youngest child should benefit from living together with his brothers just as I expect the two older boys benefit from living together now.

18           I have concluded, considering all of the circumstances, that the mother should have custody of all three children. She has the ability to care for them. Furthermore, she is taking positive steps to improve her situation by upgrading her education. There is no reason to think that the children could not quickly adjust to a new home in Gjoa Haven and thereby develop a sense of security.

19           I do not want, however, to disrupt their lives in the midst of a school term. I also think it would be helpful to both parents to have a length of time to prepare for this change. I expect the father to take every step to make the transition as easy as possible for the sake of the children. I also expect the mother to take all necessary steps so that she will be fully prepared for the care of all three children once they arrive at her home.

20 I therefore direct that the two older children join their mother after Christmas but before the start of the school term in January. The children are to be in Gjoa Haven by no later than December 31, 1996. Considering the fact that both parents are on social assistance, perhaps the Department of Social Services can facilitate the children's travel to Gjoa Haven. Perhaps the father can travel with them and thereby have the opportunity to see the youngest child for a few days.

21 Both parties recognize that the other should have meaningful access. I therefore also direct that all three children spend the school summer holidays with their father in Coral Harbour. Prior to the beginning of the school year they are to be returned to the mother in Gjoa Haven. I am confident that counsel can work out mutually agreeable terms as to additional incidents of what I think should be reasonable and generous access.

22 The mother has also advanced a claim for child support. There is no question that both parents have an obligation to financially support their children. Making a support order now may seem somewhat meaningless since social assistance provides the only source of income for both parents. In my opinion, however, the principle is important and the father should expect to make some support payments, however nominal, even if it comes out of his welfare cheques. If his situation changes and he becomes employed then child support can be reviewed.

23 To summarize I order as follows:

1. The mother will have custody of the three children.



2. The father will have reasonable and generous access on such terms as the parties may agree from time to time but, at a minimum, such access will include the summer school vacations in each year.

3. The two older children will be delivered to the mother by no later than December 31, 1996. If this order is not complied with, the police and the Department of Social Services are authorized to take such steps as necessary to ensure compliance with this order.

4. Starting January 1, 1997, the father will pay child support to the mother in the sum of \$50.00 per month per child.

5. For reasons that should be self-evident, there will be no costs.

24 If further directions are required, counsel may speak to me in chambers.

J. Z. Vertes

J.S.C.

Dated at Yellowknife, Northwest Territories  
this 1st day of October 1996

Counsel for the Applicant: Olivia Rebeiro

Counsel for the Respondent: Hugh R. Latimer

CV 06129

---

**IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES**

---

IN THE MATTER OF the *Domestic  
Relations Act*, R.S.N.W.T. 1988,  
c.D-8, as amended

BETWEEN:

**BRENDA QAUQJUAQ**

Applicant

- and -

**NOAH KATALUK**

Respondent

---

**Reasons for Judgment of the  
Honourable Justice J. Z. Vertes**

---