

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

In the matter between:

MINERVA HAZEL DARLING

Petitioner

- and -

RONALD LYLE DARLING

Respondent

REASONS FOR JUDGMENT of The Honourable
Mr. Justice W.G. Morrow given at
Yellowknife N.W.T. on the 4th day of
March AD 1969.

The matrimonial problems of the parties to the present action first came before this Court early in 1968 in a previous action brought by the Petitioner. The decree nisi granted in the earlier action was ultimately set aside and the Respondent husband permitted to file a defence in that action.

Numerous applications and counter-applications took place, but eventually on February 18th, 1969 leave was given to discontinue the old action and the present action for divorce, custody and maintenance was brought on for

hearing under the new Divorce Act.

On February 24, 1969, the hearing in the new action commenced. Petitioner had counsel but the Respondent appeared in person. It should be observed that the Respondent is very keen and intelligent and conducted his case with energy and ability, assisted I would think by his experience as a newspaper reporter who has probably observed many court cases in his career.

Both parties agreed that the case should be tried in two stages. The first was the divorce part, the second the question of custody of the two children, Lindsay Curtis and Christan Leah, of the marriage.

In the first phase the Respondent himself admitted that since his marriage breakdown, as he described it, he has been living with Jean Springer, a married woman at Calgary, Alberta, and that when her divorce is completed and his completed, he proposes to marry this woman. Accordingly I had no difficulty in reaching my decision on this part and a decree nisi to be made absolute in three months was pronounced in favour of the Petitioner on February 24th. Costs were also awarded the Petitioner.

It is the second phase of the action that has caused the difficulty and which has taken the time. Most of February 24th was devoted to hearing evidence including testimony by both the Petitioner and the Respondent. At the conclusion of the proceedings on the 24th I made an arrange-

with the agreement and concurrence of both parties whereby I in their presence examined the home where the Petitioner lives and then accompanied only by my Clerk (with the two parties sitting outside) I called on the baby-sitter and looked at the children.

At the request of the Respondent the case was adjourned to today to permit him to introduce additional evidence through witnesses who were not available on the 24th. On this date Jean Springer gave evidence. The Respondent also called the Petitioner.

I do not propose to review the evidence in any detail. Suffice to say that the general picture is a sad portrayal of a marriage that seemed to be almost doomed from the beginning but with interludes of happiness and contentment all too infrequent in the last few months.

The Respondent appears throughout as the dominating personality. As he himself says he is ambitious and intends to get somewhere. The Petitioner on the other hand seems to have been pretty much under his domination, does not emerge as too strong a personality, but does show enough spunk and determination to be able to obtain employment which nets her an income comparable to that of the Respondent. How much this may have contributed to the marriage breakdown will never be known.

In the sad and sorry and I should say bitter confrontations that transpired in the Courtroom it makes one almost wonder if the intense battle over the children

is so much motivated over concern for their ultimate welfare as it is motivated by an intense desire to hurt the other spouse.

I propose however approaching the problem on the basis of giving both spouses the benefit of the doubt and go on the assumption they are both motivated by the highest ideals in respect to the children.

The wife admits to certain infidelity and certainly has shown indiscretion. The husband charges her as being unfit to raise the children because of her lack of moral values.

On the other hand he explains how well the children will be raised if given to him, because his new relationship with the new woman will in effect give them a much better mother than their natural mother could be. No matter how sincere he may be in this belief and in the rosy picture of new married bliss he paints for himself I find it difficult to see how this new relationship, adulterous at the moment, can be related to the high moral uplifting of the children.

The children themselves on my personal observations were clean-looking and seemed to be happily adjusted to the baby-sitter environment. It is apparent to me that whatever decision as to custody is made now it will have to be reconsidered in all likelihood at some later date, as the children grow older, and as each of the parents adjusts to whatever new life they may each cut out for themselves.

Forced to make a choice now, it seems clear to me that at the moment the children are more likely to have a happy and good upbringing with their natural mother than with a foster mother who is presently in the throes of her own matrimonial breakup.

Accordingly there will be an Order giving custody of both children to the Petitioner.

The Respondent will be given reasonable access to the children.

It is quite conceivable that when the Respondent reaches the point in time, whereas he proposes and hopes, he is happily married to the new woman, extended periods of access may be worked out with the concurrence of the Court. Until this time however I direct that access shall be limited to one weekly period of five hours duration, the times and dates to be worked out between the parties, failing agreement, the Court will direct. I am going to just add to my judgement that on the assumption an agreement can't be arrived at, and because I am going to be away for a two-week period, I am going to direct now that failing agreement my direction will be for the next three weeks that the period of access would be Friday afternoon and evening at any time between one o'clock and nine o'clock. The period of access can be worked in there. Now I will carry on with my judgement.

In operating under this arrangement the children are not to be removed from Yellowknife or environs by the Respondent and the Respondent must refrain from in any way harriving the Petitioner. If there is any difficulty of this sort there will be a removal of access privilège. Now this is devoted for the moment to the period of re-consideration if it takes place of what access will be in the event of the marriage of the Respondent to Mrs. Springer.

Either party may on two day's notice apply to alter the above.

The Petitioner shall be given costs of these proceedings in column two.

It now remains for me to fix support and maintenance.

I order the Respondent to pay to the Petitioner the sum of \$40.00 per month for the support and maintenance of each child, the first payments to commence the first of April and thereafter each first.

I further direct that the Respondent pay to the Petitioner the sum of \$80.00 per month for her support and maintenance, first of said payments to be made on May first and thereafter on the first. This time lag is made in the hope that the Respondent will be enabled to get his employment regularized so as to not start out in default.

Mr. Frazer: My Lord, there are two things. With regard to maintenance to the Petitioner you will recall that she

removed that from her prayer, from the petition.

The Court: Oh, then that is deleted from the judgement.

Mr. Frazer: The second thing, My Lord, is in with regard to the children remaining within the jurisdiction of the Court.

The Court: I have set that until Mr. Darling has his position regularized. At that time, however, I would consider, and I am not giving it yet because it may be they can work something out better, but if you can't, instead of the weekly access, if he is employed in Edmonton, some form of long weekend or something of that kind can be arranged, as long as he provides the proper ticketing.

Mr. Frazer: Well, what concerns me most is you may recall this whole application with regard to custody was stirred from the original application because the Petitioner wanted to take the children on a vacation.

The Court: I haven't restricted her from taking anyone anywhere within the jurisdiction.

Mr. Frazer: The jurisdiction being Canada.

The Court: Yes, but I would expect if she planned a vacation on, say, Vancouver Island, or in Penticton, or wherever it is, that she will make it up to the Respondent, and give him two days in the following week or something like that, to even up the access.

Mr. Frazer: There is of course such a holiday planned.

The Court: Yes, I would expect that, and I will direct that in the event that she goes to B.C. for a holiday that immediately upon her return she will make the access more

considerate, that is, double it up or whatever is necessary.

Mr. Frazer: That is to be arranged between the parties.

The Court: Yes.

Mr. Frazer: Thank you, My Lord.

The Court: And if you can't agree on it, then I will hear you.

Mr. Frazer: Thank you, that's all.

The Court: Mr. Darling, is that clear enough for you?

Mr. Darling: Everything's quite, too clear, My Lord.

W.G. Morrow

W.G. Morrow
J.T.C.

Malcom Frazer, Esq., for the Petitioner

The Respondent appeared without counsel