

Date: September 12, 1997  
Docket: 6101-02876 / 6101-02877

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LYNN LOUISE McNEELY

Petitioner

- and -

DONALD ARTHUR McNEELY

Respondent

MEMORANDUM OF JUDGMENT

[1] On August 28, 1997, proceedings (file no. 02876) were commenced by Lynn Louise McNeely (the “wife”) for divorce, child custody, child and spousal support, and division of matrimonial property. On August 29, 1997, similar proceedings (file no. 02877) were commenced by Donald Arthur McNeely (the “husband”) seeking the same relief. This Memorandum addresses the issues raised at the Chambers hearing of September 11, 1997, dealing with the cross-motions for interim relief.

[2] The affidavit material, untested as it is by cross-examination, contains many allegations levelled by one party against the other. But none of it reveals a cogent reason for automatically disqualifying either parent from having custody of the children. Counsel informed me that the parties will be able to work cooperatively with respect to child care so as to warrant an interim joint custody arrangement. Having regard to the young ages of the children, and the relative circumstances of the parties with respect to their job obligations, I have concluded that the children should be in the wife’s day-to-day care.

[3] Counsel have agreed that whichever parent has the day-to-day care of the children should also have exclusive possession of the matrimonial home. I think this is a reasonable and responsible concession.

[4] I have by and large ignored the affidavits filed by the wife's counsel just before the hearing. The Rules of Court make provisions for the timely filing of affidavits and, if they are filed late, one of the possible repercussions is that they would be given no weight. In my opinion, those affidavits contain nothing of substance material to the interim issues.

[5] With respect to the wife's request for a restraining order, I was told that this is prompted by the wife's concern over the husband absconding with the children. I do not find evidence to support that concern. Nevertheless, if there is an interim order in place, then any breach of that order, especially the custodial provisions, could give rise to criminal prosecution. It seems to me that a restraining order is unnecessary in the circumstances of this case.

[6] With respect to interim child support, I can find no basis on which to deviate from the amount specified in the Federal Child Support Guidelines. I was not urged to do so by either counsel.

[7] With respect to interim spousal support, this is, at the interim level, essentially a question of need and ability to pay. The question of ultimate entitlement is something to be left to the trial judge. The various objectives of spousal support are not to be ignored but any order now is really a short-term measure. It is, in this case, certainly arguable as to whether the wife is entitled to spousal support at all (not to mention the extent of any such support) considering the short duration of the marriage and the relative youth of the parties. Having regard to present circumstances, however, and the limited income available, I think a prudent course would be to direct, instead of a modest cash support payment, the sharing of certain essential expenses. This would also benefit the children.

[8] In actual dollar terms, my suggested arrangement (a child support payment and directions for sharing certain expenses) may prove slightly more advantageous to the wife than what was proposed by her counsel (a combined child and spousal support payment of \$1,000.00 per month with the wife paying all expenses respecting the matrimonial home). It may also provide some flexibility enabling the parties to come to some agreement with respect to the actual payments, how and when they are to be made. It would also provide some assurance that the few matrimonial assets that the parties have will be preserved pending trial.

[9] I therefore order as follows:

1. The parties will have interim joint custody of the children of the marriage with:

- (a) the wife having day-to-day care and control of the children; and,
- (b) the husband having liberal and generous access, including overnight access, at such times as the parties may agree upon from time to time.

2. The children will not be removed from the Northwest Territories by either parent without their prior written agreement or an order of this court.

3. The wife will have exclusive interim possession of the matrimonial home. The husband will have until 12 noon on September 17, 1997, to vacate the family home failing which any peace officer, upon presentation of a certified copy of a formal Order, may aid and assist to effect his removal.

4. The husband will have exclusive interim possession of the Ford Aerostar motor vehicle.

5. The husband will pay as interim child support the sum of \$533.00 per month commencing on October 1, 1997, and continuing on the first day of each month thereafter until further order of this court.

6. In each month on an interim basis the parties will share equally the costs of the mortgage, lot rent, insurance, and taxes with respect to the matrimonial home (the "mortgage" payment being the consolidated payment for the home and the motor vehicle).

7. The parties may apply for further directions with respect to the support obligation and the directions contained in paragraph 6 if necessary. Such application may be made to any judge of this court.

8. The wife has leave to amend the style of cause in file no. 02876 and to file the Amended Petition for Divorce (as presented at the hearing in unfiled form).

9. These two actions will be consolidated as one proceeding under file no. 02876. The wife's Amended Petition for Divorce will serve as the "petition" and the husband's Petition for Divorce in file no. 02877 will serve as a "counter-petition". The husband will have 20 days from the date of this Memorandum to file

and serve, if he wishes, an “Amended Counter-Petition and Answer”. The wife will then have 20 days from the date of service to file and serve her “Answer to Counter-Petition”.

10. There will be no costs of these motions.

[10] Dated this 12th day of September, 1997.

J. Z. Vertes  
J.S.C.

To: Glennis M. Munro Brydon,  
Counsel for the Petitioner

Michael E. Hansen,  
Counsel for the Respondent

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MEMORANDUM OF JUDGMENT FOR THE  
HONOURABLE J. Z. VERTES

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