

Date: 1999 01 27  
Docket: 6101-03054

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**BRADFORD JOHN PELLERIN**

Petitioner

- and -

**KRYSTAL LYN PELLERIN**

Respondent

**MEMORANDUM OF JUDGMENT**

[1] The parties to this interim application were married in 1992 and separated in December of 1997. They have two children: Colton, age 6, and Brandon, age 3. There are no previous Court orders for custody or care of the children.

[2] The issue is the day-to-day care of the children, who presently reside in Yellowknife. This issue has arisen because Ms. Pellerin has been offered a position with the Royal Bank in Hay River. This position would commence on February 1, a few days hence. She would like to accept the position and take the children with her. Mr. Pellerin is opposed to her request.

[3] Counsel advised me at yesterday's hearing that the parties agree that an interim order for joint custody should issue. Both parties have also indicated that if Ms. Pellerin is not granted day-to-day care of the children and the children's residence

changed to Hay River, they are content with the existing arrangements, which I will describe further on.

[4] I heard evidence from both parents as well as Mary Wilson, a representative of Ms. Pellerin's employer. There were no major factual contradictions in the evidence and no issues of credibility arise.

[5] The evidence indicates to me that both parents are mature, thoughtful individuals who have an amicable, cooperative relationship which centres on doing what they think is best for their children. Neither parent raised any concerns about the quality of care given by the other parent and nothing in the evidence suggested to me that there is any cause for concern.

[6] This is an interim application. The test therefore is what is in the best interests of the children until there is a trial when the issues can be more thoroughly canvassed. The best interests of the children have to be assessed from the perspective of the children, not from the perspective of either parent. Nor should a parent feel that an order relating to children is a reward or a punishment. It is simply an assessment of what is best for the children based on the evidence presented.

[7] In this case, since the separation in December of 1997, the parents have maintained arrangements whereby the children spend time with both of them. Initially, the children resided with Mr. Pellerin on Monday, Wednesday and Saturday and with their mother for the rest of the week. Later this changed so that they resided with Mr. Pellerin on Monday, Wednesday (later changed to Thursday) and every alternate weekend.

[8] In early November 1998, in an effort to have the children move back and forth less frequently, the arrangement was changed so that they spend alternate weeks with each parent. That has continued to date.

[9] During the weeks that the children are with Ms. Pellerin, Mr. Pellerin drives Brandon to daycare each weekday morning. He then returns to Ms. Pellerin's and he or Ms. Pellerin see Colton off to his school bus and then he drives Ms. Pellerin, who does not drive, to work. At the end of the day, Mr. Pellerin brings the children back to their mother's. Colton spends the time after school until the return home at his father's workplace.

[10] When the children are with their father on his alternating weeks, Ms. Pellerin sees Colton at his bus stop on her way to work with Mr. Pellerin. She also sees the children if there is a special occasion.

[11] Much of the evidence centred on the parties' work schedules. Ms. Pellerin presently works from 8:30 a.m. to 4:30 p.m. weekdays (9:00 a.m. to 5:30 p.m. on Fridays) as a senior customer service representative at the Royal Bank in Yellowknife. She does not work on weekends. Although she is on call during the evenings in the event of problems with the bank machines, she is not required to go out for such calls and there was no evidence that she receives calls on a regular basis. She testified that only on a very few occasions has she required a babysitter during evenings when she has the children with her.

[12] Mr. Pellerin manages Arctic Alarms and works there weekdays from 8:00 a.m. to 4:00 p.m. He may be called out after hours but on the evidence this does not appear to have happened often. He can be reached by telephone at all times.

[13] Mr. Pellerin also works part-time unloading planes at the airport. This work is from 9:00 a.m. to 5:00 p.m. on Sundays and again 9:00 p.m. to 11:00 p.m. on Sunday, Monday, Thursday and Friday. He testified that the children are usually in bed by the time he leaves for work in the evenings. On Sundays, he returns home for lunch and dinner.

[14] On Sundays and during his evening work, Mr. Pellerin's sister, who lives with him, or his girlfriend, whom he has been with since May of 1998, look after the children. He has another sister living in Yellowknife who sometimes cares for the children as well.

[15] Both parents have taken time off work when the children are sick and both appear to have cooperative employers in that regard.

[16] Although Mr. Pellerin does rely quite heavily on his sister and girlfriend for child care because of his part-time work, I do not think the time he is not with them, which is mainly on Sunday during the day, detracts to any great degree from the relatively equal time split between the parents.

[17] Although Mr. Pellerin seems to have been more involved with Colton's school in terms of meeting the teacher and attending concerts, Ms. Pellerin spends time with Colton on his homework. Both parents spend time doing various activities with the children.

[18] These parents have cooperated in an admirable fashion. It is difficult to say that one is substantially more involved with the children than the other. While Ms. Pellerin may spend somewhat more time with them in actual hours, the almost daily contact with Mr. Pellerin means that he is also a significant figure in their lives. Although the alternating weeks arrangement has been in place only since November, the schedule prior to that was also one where both parents spent a lot of time with the children. All in all, the situation is about as close to equally shared parenting as one can imagine. In my view, the consistency of contact and the role played by a parent is more important than whether one parent spends seven days with the children and one only six, or six hours in the evening compared to four.

[19] Ms. Pellerin has been offered a job with the Royal Bank in Hay River as Manager of Customer Services. The position would commence February 1 of this year. The position is essentially a promotion; it pays better and involves more responsibility than her current position. There are benefits, including a subsidized house (she lives in an apartment in Yellowknife) and family flights twice a year, which she testified she would use to have the children visit their father in Yellowknife.

[20] Ms. Pellerin has made inquiries about schools, daycare and transportation and does not anticipate any problems in that regard.

[21] The evidence of Mary Wilson, who is a Manager of the Royal Bank for this geographic area, was about what will happen if Ms. Pellerin does not accept the position in Hay River. Because of changes being made generally within the Royal Bank branch system, it is virtually certain that Ms. Pellerin's current position in Yellowknife will be eliminated.

[22] The position she held prior to the current one in Yellowknife is also eliminated or unavailable and so she would be offered a teller's position at less pay and responsibility. It may also be part-time only. This is likely to happen in April of this year.

[23] On the other hand, if Ms. Pellerin takes the Hay River position, that is likely to be secure.

[24] What this really comes down to is a promotion if Ms. Pellerin goes to Hay River but a demotion if she stays in Yellowknife. Ms. Pellerin says she will not go to Hay River without the children.

[25] From the perspective of the best interests of the children, the benefits of a move to Hay River would be mainly financial -- a better job for their mother. I think it can be inferred as well that there is likely to be a long-term benefit because her career would be advanced. The children would also have their own bedrooms (they share one now) and a yard.

[26] There are clearly some disadvantages to a move to Hay River. The parents have been separated for a little more than a year. Mr. Pellerin's involvement during that time has been consistent and significant. A move to Hay River would disrupt that relationship. These still very young children, used to seeing their father almost every day and living with him every other week, would have to adjust to his absence for long periods of time. Although Ms. Pellerin is willing to accommodate very generous access, the reality of the situation because of Hay River's distance from Yellowknife is that the move would be a major disruption to the relationship with their father.

[27] Section 16(10) of the *Divorce Act* directs me to give effect to the principle that children should have as much contact with each spouse as is consistent with the best interests of the children. For that purpose, I must consider Ms. Pellerin's willingness to facilitate that contact. While I have no doubt that she would continue to ensure that the children see their father as often as possible, the move to Hay River would mean diminished contact and a long distance access relationship.

[28] A move to Hay River would also mean disruption to the children because their neighbourhood, daycare, school and friends would no longer be the same. It would mean moving Colton in the middle of the school year.

[29] Counsel for Ms. Pellerin referred me to *Trueman v. Nicholson* (1995), 15 R.F.L. (4th) 320 (Alta.C.A.), where the type of disruption referred to in the paragraph above was held to be a consideration secondary to maintaining the child's relationship with his primary caregiver. In this case, however, neither parent can really be said to be the primary caregiver because the care of the children is almost equally shared.

[30] I have considered the fact that Ms. Pellerin would be giving up a promotion if she and the children do not go to Hay River. That would be a considerable sacrifice. It is not desirable that a parent be restricted in normal life decisions such as where to work or live. Unfortunately, that is often the effect of decisions relating to the care or custody of children and it makes such decisions even more difficult.

[31] I have also considered, as argued by counsel for Ms. Pellerin, that Mr. Pellerin has not offered to make up financially what will be lost if Ms. Pellerin does not take the Hay River position. That, however, is an issue that might yet be dealt with by way of a child support order. In any event, I do not consider it determinative on the question of what is in the best interests of the children.

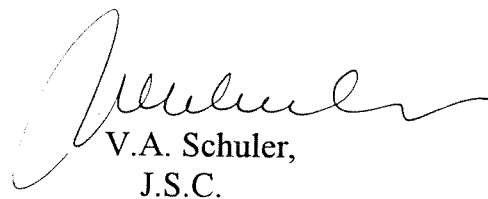
[32] In all the circumstances, what I have to consider is whether the benefits to the children of a move to Hay River outweigh the disruption that would ensue to their relationship with their father and the life they are used to. I cannot say that the benefits outweigh the disruption or the disadvantages. I am not persuaded that a move to Hay River would be in their best interests at this time.

[33] I do recognize that this decision will be disappointing to Ms. Pellerin. I hope that she and Mr. Pellerin will continue in the same spirit of cooperation they have shown to date for the sake of their children.

[34] This may be one of those cases where the interim order effectively becomes permanent. I say that only because Ms. Pellerin testified that she would not go to Hay River without the children, which means she would have to decline the promotion. However, as her counsel pointed out, the issue of relocation may arise again as it has in the past. Should the parties proceed to trial (which may involve other evidence, such as home study reports or assessments of the children), I am sure that the Court would endeavour to accommodate them with as early a trial date as possible.

[35] There will be an interim order for joint custody. Day-to-day care of the children will be shared by the parties in Yellowknife as per the present arrangement or as they may otherwise agree upon.

[36] I thank counsel for their handling of this difficult case. In coming to this decision, I have reviewed the cases they filed as well as *Gordon v. Goertz*, [1996] 5 W.W.R. 457 (S.C.C.).



V.A. Schuler,  
J.S.C.

Dated at Yellowknife, NT, this  
27th day of January 1999

Counsel for the Petitioner: Elizabeth Hellinga  
Counsel for the Respondent: Mark Seebaran

6101-03054

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MEMORANDUM OF JUDGMENT OF THE  
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