

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BOBBI JOE CATER

Petitioner

-and-

ROGER GEORGE CATER

Respondent

MEMORANDUM OF JUDGMENT

- [1] This is an application by the petitioner for an order granting her interim custody of her two children, Riley (age 8) and Hunter (age 3). The respondent is the father of Hunter. He is not the father of Riley but it is accepted, for purpose of these interim proceedings, that he stands in the place of a parent to Riley (as that term is used in the Divorce Act). The parties' respective Petition and Counter-Petition put forth competing claims to custody of both children.
- [2] The parties were married in July, 1995, and separated in or about January, 1999. Those two facts are just about the only facts that are not contentious. There were a total of 17 affidavits filed on this application (6 on behalf of the petitioner and 11 on behalf of the respondent). Much of the contents consist of a litany of complaints from the past, allegations of bad conduct, self-serving protestations, assumptions and expressions of opinion, most of which are of very little help on a custody determination. There have been no cross-examinations on these affidavits so I am left by and large with untested assertions and many disputed points of fact. This is an interim proceeding so I have to do the best with what I have (and it is not unusual to encounter these problems on interim applications). No doubt the facts will become far clearer by the time this issue goes to trial for a final determination.

- [3] The sole criterion to apply on an interim custody application, as on all custody issues, is the best interests of the children. The test on an application for interim custody is: What temporary living arrangements are the least disruptive, most supportive, and most protective for the children? The focus is on trying to maintain as much stability as possible for the children. That is why, generally speaking, the status quo will be maintained in the absence of compelling reasons indicative of the necessity of a change. This is not a pre-determination of the eventual outcome of a custody trial but merely a short-term response. In the words of the Ontario Court of Appeal in *Sypher v. Sypher* (1986), 2 R.F.L. (3d) 413 (at p. 414) : "... the purpose of the interim order is simply to provide a reasonably acceptable solution to a difficult problem until trial."
- [4] In this case there is a significant disagreement as to the nature of the custodial arrangements since the separation.
- [5] The petitioner claims that there was a system of "shared" parenting whereby the children alternated every two weeks staying with her and staying with the respondent. I gather that this was prompted in part by the fact that the petitioner used to work out of the city on a two-week rotation. She says that the respondent unilaterally changed this arrangement when she filed her Petition for Divorce. Since then the children have been residing with the respondent (although apparently she has been able to see the children whenever she wanted). Therefore, in her counsel's submission, any argument about maintaining the "status quo" must take into account that the current arrangement was "manufactured" by the respondent.
- [6] The respondent, on the other hand, says that he was always the primary care-giver for the children. He denies that there was ever a shared parenting arrangement. The only arrangement was that the children stayed with him and the petitioner would have frequent and extended access.
- [7] I have no doubt that both parties love these children and are capable of being good parents to them. It is unfortunate that past problems as between the parents have intruded to the point where they are unable to work out some arrangement that they feel would be most conducive to the children's welfare.

- [8] It is apparent to me that, from the children's perspective, the respondent's home has been the primary source of stability and constancy since the separation. The respondent has established a routine with the children taking into account their day-care (in the case of Hunter) and school (in the case of Riley) needs. There is nothing to suggest that the children are at any risk in the respondent's home (nor in the petitioner's home for that matter). The short-term needs of the children can be adequately met by having them continue to reside in the respondent's home until the trial of this action.
- [9] In deciding this I am not in any way drawing any conclusion about the purported "status quo". It just seems to me that there is not enough good reason to change the primary residence of the children at this time. The result at a trial, after a full examination of all of the evidence, may well be different.
- [10] An order for interim custody of these children will issue in favour of the respondent.
- [11] Having said all this I want to emphasize that the petitioner should have generous access to the children pending trial. Therefore I further order that the petitioner shall have reasonable access, upon such terms and conditions as the parties may agree upon from time to time, but, at a minimum those terms shall include:
- (a) access on two evenings during the work-week (not overnight);
 - (b) access on every alternate week-end (overnight from Friday evening to Sunday evening); and,
 - (c) during the months of July and August, at least one continuous period of no less than 30 days.
- [12] In addition, neither party is to remove the children from the jurisdiction of this court without the prior written consent of the other party or an order of this court.

[13] Since the issue of interim child support was not raised at the hearing, I will not touch on it. Costs of this application will be reserved to the trial judge.

J. Z. Vertes
J.S.C.

Dated at Yellowknife, Northwest Territories
this 23rd. day of May, 2000.

Counsel for the Petitioner:
Thomas H. Boyd
Counsel for the Respondent: James
D. Brydon