

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DUANE ROBERT RAMSAY

Petitioner

-and-

IVY ANN RAMSAY

Respondent

MEMORANDUM OF JUDGMENT

[1] This is an application brought by Mr. Ramsay for interim custody of the parties' sons, Ryan, age 6 and Aaron, age 3. The parties also have a daughter, Julianna, who was born two months ago, of whom he does not seek custody.

[2] Mr. and Mrs. Ramsay met in 1992 and were married in September 1993. Their relationship, by all accounts, was marked by heated arguments. In December 2000 there was an argument about Mr. Ramsay's failure to clean a kitty litter box, as a result of which Mrs. Ramsay either threw, or smeared on the wall, feces from a diaper she was changing. This was followed by a physical altercation and the police were called. Mr. Ramsay was charged with, but subsequently acquitted of, assault. The incident also resulted in the parties' separation. Since then, Mrs. Ramsay has resided in the former matrimonial home with the children. She has, for some time now, operated a licensed day home at that residence but at the time of this application was on maternity leave after Julianna's birth.

[3] The incident in December 2000 also led to Mr. Ramsay being placed on a peace bond or undertaking not to contact Mrs. Ramsay. Although the evidence was not

detailed on this point, I take it that there have been more than one such peace bonds or undertakings or restraining orders since the separation, including a restraining order made in this court in June 2001.

[4] Mr. Ramsay commenced divorce proceedings in May of this year, just prior to Julianna's birth, seeking custody of Ryan and Aaron. On June 19, 2001, an order was made by Vertes J. of this Court granting Mrs. Ramsay interim interim custody of the three children with Mr. Ramsay to have access to the boys on weekends and to Julianna on Friday evenings for two hours. The order also provides that pick up and drop off for access visits be done by a third party. Mr. Ramsay's mother has filled this role.

[5] The interim interim order was made on the basis of affidavit evidence. At the hearing on interim custody, I heard testimony from both parties and four other witnesses.

[6] The governing factor on any child custody application, whether interim or permanent, is the best interests of the child. On an application for interim custody, the goal should be to attempt to provide as much stability as possible for the children while the family is going through the difficult and disruptive process of divorce. The concept of stability includes such things as safety, support and a positive and encouraging environment.

[7] Mr. Ramsay takes the position that Mrs. Ramsay is unstable and that her behaviour is a negative influence on the boys. He points to certain behaviour on their part that suggests they have poor self-esteem and are afraid of being hit. He also says that there are problems with Mrs. Ramsay's care of the children in her day home. He submits that the boys would be better off with him. He works at a local transport company during the day and proposes that he and the boys would live with his parents for the time being until he can obtain his own residence. At that point, he would arrange for day care as needed when they are not in school.

[8] Mrs. Ramsay takes the position that the children should remain with her. She says that Mr. Ramsay is violent. Her counsel, in submissions, while conceding that some of Mrs. Ramsay's behaviour is unusual, described this as a classic case of an abusive man and a battered spouse. Mrs. Ramsay also submits that she has always

been the primary care giver for the children and that Mr. Ramsay was not very involved with them before the separation.

[9] Both counsel argued that credibility is a significant issue so I will deal with it first.

[10] Mr. Ramsay gave his evidence in a fairly straightforward manner. He admitted to things that do not reflect well on him. I accept that he is genuinely concerned about the children, particularly with respect to their behaviour since the separation. On occasion, however, during his testimony, he exhibited some impatience, particularly when confronted by his own past behaviour. In describing occasions when he went to the matrimonial home after the separation and damaged a fax machine and assaulted a visitor, he focused very much on what he viewed as his right to the property and his right to be at the home and seemed oblivious to the effect his actions would have on Mrs. Ramsay and the children.

[11] Mrs. Ramsay's demeanour on the witness stand was extremely dramatic. At times she was so absorbed in her recitation and demonstration of events that she ignored or did not notice that her counsel was trying to ask her questions. Based on her manner of testifying alone, I have no doubt that she exaggerated and embellished her evidence, but this was also clear from the evidence itself, for example the affidavit she had sworn stating that after the December 2000 incident, she was "hospitalized for observation", when in fact she was not hospitalized, although she was reluctant to acknowledge that fact.

[12] One example from the evidence sheds light both on Mrs. Ramsay's credibility and her way of dealing with a difficult situation. In direct examination, she graphically and emotionally described an incident when the family cat had kittens and the dead bodies of some of them were found by the children at various places in the home. She left the distinct impression that Mr. Ramsay had not looked after the animals properly and had not disposed of the dead bodies. In cross-examination, she admitted that Mr. Ramsay was in Edmonton at the relevant time and that he had left her with instructions about the birth of the kittens. Her explanation for not revealing that he was not even in town in her direct examination was that she "forgot". From the way she reacted on cross-examination, I conclude that although she may not have deliberately tried to mislead the Court, her focus on how traumatic the event was for her has affected both

her memory and description of the event with the result that they are not completely reliable.

[13] As to the substance of her evidence about that incident, Mrs. Ramsay testified that her reaction was to lock herself and the children in the bedroom and refuse to come out until Mr. Ramsay's brother came over and did something about the kittens. I accept that the situation was an unhappy and upsetting experience. But her reaction shows, in my view, along with other testimony she herself gave and the manner in which she gave it, a flair for the dramatic.

[14] On the issue of credibility, for the above reasons, I treat the evidence of both parties with some scepticism. However, in terms of their description of events, I note that often they gave similar versions and there was consistency in much of their evidence.

[15] Mrs. Ramsay's lawyer characterized this, without referring to any particular definition, as a classic case of the battered woman syndrome. On behalf of Mr. Ramsay, it was argued that this is a case of an emotionally disturbed woman who has had to be restrained by her husband from hurting herself or doing damage on many occasions.

[16] In my view, the truth probably lies somewhere in between those two characterizations. From my observation of these two parties and my assessment of the evidence, I conclude that both have hot tempers and low tolerance for frustration and that neither is likely to back down in an argument. I accept that Mrs. Ramsay has made dramatic gestures, such as grabbing bottles of pills and on at least one occasion a knife, accompanied by threats of suicide. I accept that Mr. Ramsay has reacted to that by trying to restrain her physically. I also conclude that these incidents have escalated into physical violence, probably on both sides and that there have been occasions where Mr. Ramsay has gone too far, out of anger or frustration, and has hit Mrs. Ramsay or treated her roughly enough to cause injury, such as the incident where her finger was broken.

[17] As to the evidence itself, it is clear that the Ramsay children have had continuing exposure to the following behaviour as between their parents: arguing, screaming, swearing, throwing and breaking things, insults, doors slammed so hard as to break the frame or come off the hinges, walls damaged from being hit by fists or heads or

thrown objects. Both parents, by their own admission, have engaged in all or most of this behaviour.

[18] It is also clear to me that, unfortunately, neither parent has much insight into how their actions are likely to affect the children, although both do acknowledge that the boys, especially Ryan, are upset by the separation.

[19] I also note from the evidence that some of these incidents, such as the one in December 2000, took place when the day home children were there, which also indicates a lack of control and lack of appreciation as to how such behaviour may affect the children.

[20] I am aware that the evidence included hearsay evidence of statements made by the children and that I have to treat such evidence with caution. I accept that statements made by the children may be used as substantive evidence of their emotional state. However, where there was evidence of a statement by one of the children about a specific event, such as what Aaron said about his mother cutting up a pillowcase, which she denied, I am not going to rely on it as proof that the event happened without corroboration.

[21] I turn now to the concerns raised by Mr. Ramsay about Mrs. Ramsay. Mr. Ramsay, his mother and his brother all testified that Ryan and Aaron lack confidence and that one or both, when they become upset, hit themselves and call themselves “stupid”. Aaron has called himself “little asshole” and when asked about it, has said his mother calls him that. When told they should not hit themselves in the face, they have said that their mother does it. Mr. Ramsay’s brother also testified that the children seem to be afraid of their mother, that they cower.

[22] In contrast, there was the testimony of the two witnesses called by Mrs. Ramsay. One has a child who has attended Mrs. Ramsay’s day home and the other is a day home operator who often engages in joint activities with Mrs. Ramsay and the day home children. Both of these witnesses spoke highly of Mrs. Ramsay and her interactions with her own children and the other children in her care. I give their testimony some weight, although it is clear from Mrs. Ramsay’s evidence alone that there is a side of her that they have not seen.

[23] Mr. Ramsay also testified about two specific incidents involving Ryan which suggest to him that the children are scared that if they do something wrong, someone will hit them. One was an incident where Ryan damaged an inukshuk that a neighbour had built. When Mr. Ramsay spoke to Ryan about apologizing to the neighbour, Ryan expressed fear that the neighbour would hit him. On another occasion, when Mr. Ramsay was about to speak to Ryan about some misdeed, Ryan fell on the floor screaming, "Don't hit me".

[24] Mr. Ramsay testified that he used to spank the children but no longer does so. He denied swearing at them or calling them names, while admitting to swearing in their presence. He was contradicted in this regard by his mother and brother who both testified that he swears at the children, although not by use of the names they call themselves.

[25] Mrs. Ramsay testified that she spanks the children hard enough to make them cry. She denied hitting them in the face and calling them names. She said that she sometimes tells them their behaviour is stupid or that she hates their behaviour. She agreed that Ryan sometimes hits himself on the head and refers to himself as stupid but she attributes this to the influence of one of his classmates who exhibits this behaviour.

[26] Common sense tells me that the behaviour the children are exhibiting may arise from a number of sources. As both parents acknowledge, the children are upset by the divorce and the accompanying tension. As I have described above, they have seen similar behaviour between their parents. As a result, I find it difficult to attribute their behaviour solely to Mrs. Ramsay. The only real indication that she may be going farther than spanking the children and may also be calling them names comes from what the children have said to their father, grandmother and uncle. This evidence does raise concerns, but considering that it comes from what the children have said, it is difficult to assess it both in terms of its reliability and the frequency of such actions by Mrs. Ramsay, if they have taken place.

[27] On the other hand, I must also take into account that since the separation Mr. Ramsay has acted in an aggressive and inappropriate manner in the children's presence. The evidence of his mother and brother was that he is a good father and interacts well with the children. Nevertheless, the following incidents indicate that he has used poor judgment and not had his children's best interests in mind on occasion.

[28] Although there were some differences between the testimony of Mr. and Mrs. Ramsay about these events, the basic facts are not in dispute. In March, Mr. Ramsay was at the matrimonial home to visit the children. There was an argument. He threw a fax machine on the floor, breaking it, and she called the police. There was a verbal confrontation between Mr. Ramsay and the police, which upset the boys, who were present throughout.

[29] In June, Mr. Ramsay had the boys with him and without any advance notice, took them to the matrimonial home to get their bicycle helmets. When no one answered at the front door he went to the back of the house, climbed up to the balcony and entered an unlocked door. He was upset that the godfather of one of the children was there visiting with Mrs. Ramsay, there was an argument and he hit the godfather. Although Mr. Ramsay did not describe what happened after that, according to Mrs. Ramsay's evidence, she was screaming, the neighbours called the police, and she took the boys to a neighbour's house, with Mr. Ramsay following after them.

[30] In light of what these children have experienced both before and since the separation, it should not come as a surprise that they are troubled, that they are afraid of angry people or afraid of getting hit if they do something wrong. I am not sure that their behaviour can be attributed solely to one parent or the other.

[31] Mrs. Ramsay referred to another occasion, three days after the June incident, when Mr. Ramsay again appeared on the balcony and she was afraid and called the police. Mr. Ramsay did not say anything about this incident in his testimony. According to Mrs. Ramsay, it happened during the week, thus at a time when he could expect that at the very least the baby and possibly also Aaron would be in the house.

[32] Mr. Ramsay's actions in the March and June incidents seem to me to be somewhat at odds with his assertion that Mrs. Ramsay is unstable and may be a danger to the children. It is not surprising that Mrs. Ramsay would become upset at these incidents and from Mr. Ramsay's experience of her, he must have known how she would likely react and that the police would become involved and the children would also be upset. It is difficult to understand why Mr. Ramsay would take these actions, which would likely provoke the very behaviour he says he is concerned about on her part, and cause distress for the children. In my view, these actions are more

significant in the context of this case than the past incidents which were brought out in the evidence where he assaulted his brother and a fellow hockey player.

[33] I do not have the benefit of a psychological assessment of either Mrs. Ramsay or the children. The evidence that is before me suggests that Mrs. Ramsay is a person given to dramatic and extravagant, overwrought reactions but not necessarily that she is unstable or unable to care for her children appropriately. She may be quicker to discipline the children physically and may be somewhat harsh in her criticism of them, but their father has also demonstrated inappropriate behaviour as I have outlined above.

[34] As to the concerns Mr. Ramsay raised about Mrs. Ramsay's care of the children in her day home, these centered mainly on the type of food she gave them for lunch and times she would leave them alone in the playroom while she was upstairs doing other things. There was also an incident where she did not tell a parent about a child's fall and subsequent condition. Having considered this evidence, I am not satisfied that the incidents were either so frequent or so serious as to cause significant concern. There is no evidence that Mrs. Ramsay's supervision or feeding or physical care of her own children is inadequate and Mr. Ramsay did not indicate any real concerns about that.

[35] I am satisfied that both of these parties want to do what is best for their children. As I said at the beginning of this decision, both recognize that the current situation is difficult for the children. Mr. Ramsay has involved his family to provide support and encouragement for himself and the children, which is to his credit. Mrs. Ramsay has undertaken counseling for both herself and Ryan, which is to her credit.

[36] That Mr. Ramsay is not seeking custody of Julianna is understandable in light of her age and the fact that Mrs. Ramsay is breast-feeding her. However, I question the advisability of splitting up the children and causing more disruption and uncertainty to them. Neither Julianna nor her brothers should be deprived of the company of their siblings.

[37] I also take into account that Mrs. Ramsay has been the primary care giver for the children both before and since the separation and that Mr. Ramsay has not had the care of them on his own.



[38] In my view, what would serve the best interests of these children is for both parents to have more awareness of how their actions (and by that I mean both how they act when the children are around and how they treat, and speak to, the children) affect their children and to do everything they can to keep their communications with each other respectful and non-confrontational. If the Parent Education Pilot Program that has, in the past, been offered by the Court Services Division of the Department of Justice in conjunction with the Legal Services Board is available, it may benefit both Mr. and Mrs. Ramsay to participate in it.

[39] In all the circumstances, I have decided that, on an interim basis, the children should remain in the care of Mrs. Ramsay and I make the following order:

1. Mrs. Ramsay will have interim custody of the three children;
2. Mrs. Ramsay will continue both Ryan's and her own counseling, subject to the direction of the counselor; and
3. Mrs. Ramsay will arrange to make the results of Ryan's counseling available to Mr. Ramsay, subject to the counselor's usual practice with respect to disclosure of information.

[40] With respect to numbers 2 and 3 above, it would likely be helpful if Mr. Ramsay were to make the counselor aware of his concerns about the boys' behaviour. The evidence I heard did not indicate whether he has done that or whether he has received any input from the counselor. If there is any problem with this aspect of my order, counsel may arrange to speak to this matter before me in Chambers.

[41] As access was not addressed at the hearing, I will assume counsel and their clients can come to some arrangement but if not, they may bring it back on before me or any other Judge of this Court.

V.A. Schuler  
J.S.C.

Dated at Yellowknife, Northwest Territories  
this 7th day of August, 2001.

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Margot L. Engley  
Counsel for the Respondent: Elaine Keenan-Bengts