

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KATHERINE ANN BOYD

Petitioner
(Respondent by Counter Petition)

- and -

GARY JOSEPH ROBERT BOYD

Respondent
(Petitioner by Counter Petition)

MEMORANDUM OF JUDGMENT

1 On January 4, 1994, Irving J. delivered reasons for judgment in this action. In those reasons he concluded that custody of the children of the marriage should remain with the Petitioner but that the Respondent should have "generous" rights of access. He further directed that, unless the parties can agree on the terms of such access, further submissions may be made.

2 The trial judgment, in various respects, has been appealed. The Court of Appeal has directed that any directions regarding access or child support, prior to the hearing of the appeal, be sought from a judge of this court. On November 10, 1994, I heard submissions on what specific terms of access should be set.

3 It is obvious to me, as it was to Irving J., that both parents are deeply interested in the

well-being of their children. They agree that there should be extensive contact between the children and the non-custodial parent. They just cannot, for one reason or another, agree on specific terms of access without outside intervention (in this case the court).

4 On November 10th I gave a lengthy and detailed set of directions regarding access and maintenance. Apparently they were not detailed enough since the parties were back before me on December 23, 1994, seeking clarification and arguing over particular details. After considering their submissions, the following embodies the order I made on November 10th which should now be incorporated into a formal order:

(1)The Respondent shall have access to the children, Morgan Robert Boyd and Ryan Joseph Boyd, between 1 p.m. and 8 p.m. on Sunday, November 14, 1994, and thereafter on every Sunday between 1 p.m. and 8 p.m. until December 18, 1994.

(2)The Respondent shall have unlimited weekday telephone access to the children prior to 7:30 p.m., such access to be exercised in a reasonable manner.

(3)The Respondent shall have continuous access to the children commencing 12:00 noon December 18, 1994, and continuing throughout until 12:00 noon December 26, 1994.

(4)The Respondent shall have access to the children on alternating weekends commencing Friday, January 6, 1995 from 6:00 p.m. on the Friday until 7:00 p.m. on the Sunday, and in the event the Respondent's weekend access shall fall on a long weekend, the Respondent shall have the benefit of the extra day's access to the children and the time for pick up and/or

return of the children shall be altered accordingly.

(5) During the Christmas holidays in 1995, and in alternate years thereafter, the Respondent shall have continuous access to the children for a five (5) day period commencing on December 26th at 12:00 noon, and concluding on December 31st at 12:00 noon.

(6) During the Christmas holidays in 1996, and in alternate years thereafter, the Respondent shall have continuous access to the children for a period of five (5) days commencing December 21st at 12:00 noon, and concluding on December 26th at 12:00 noon.

(7) Commencing in 1995, and in alternate years thereafter, the Respondent shall have continuous access to the children for a period of five (5) days during the Easter school holidays, such access not including the Easter weekend. In 1996, and in alternate years thereafter, the Respondent's Easter access to the children shall include the Easter weekend.

(8)The Respondent shall have one month's continuous overnight access to the children during the months of July or August, commencing summer 1995 and continuing thereafter during each consecutive calendar year, provided always that the Respondent shall provide the Petitioner with notice of which month he intends to exercise such access prior to May 1st of the year in which such access is to be exercised.

(9)If the parties cannot agree on the specific dates for the exercise of weekend or holiday access each of them may apply to a judge of this court for further directions.

(10)The Petitioner is to have Ryan Joseph Boyd for his birthday on April 9th, 1995 and the Respondent is to have Morgan Robert Boyd for his birthday on November 6, 1995, it being understood that both children may be present with the custodial parent for the celebration of the other's birthday if the children desire to do so. When the Respondent is to have access to a child for their birthday such access shall commence after school on the date of that child's birthday and shall continue overnight and the Respondent shall deliver the children to school or to the Petitioner on the following morning, unless such morning falls on a day that the Respondent would ordinarily have access to the children. When the Respondent does not have overnight access for the child's birthday he shall have two consecutive hours of access to both children on each of their birthdays provided such access is exercised between 4:00 p.m. and 8:00 p.m. on the date of the birthday. In the event that either of the children's birthdays shall fall on a weekend in which the Respondent would ordinarily have access to the children, this provision shall override the

other general provisions of the Order.

(11)Any of the terms of access outlined herein may be varied by the parties provided such variation is by agreement in writing.

(12)In the event the Respondent is unable for any reason to exercise his access as defined herein he shall give to the Petitioner no less than twenty-four (24) hours notice of his inability to exercise such access. Any access missed by the Respondent shall not entitle him to any additional access in lieu.

(13)Each parent shall keep the other parent informed as to the health, education and welfare of each of the children on an ongoing basis.

(14)Each parent shall keep the other parent informed on a continuing basis as to the location of the children and how to contact them should the children be out of the jurisdiction for any length of time with either of them.

(15)The Order of Mr. Justice Irving requiring monthly support payments in the amount of \$1320.00 is temporarily suspended. As of October, 1994, child support payments from the Respondent to the Petitioner are fixed, on a temporary basis, at \$1000.00 per month until further Order. This amount shall be paid to the Petitioner on or before the last day of the month for which the child support payment is due. In the event that the Respondent defaults on any support payment, or any portion of any support payment, as defined herein, this Order may be enforced notwithstanding any Stay of Enforcement if effect in respect of any earlier

arrears of child support payments.

(16)The Petitioner shall have until December 9, 1994 to accept or reject the Respondent's appraisals relating to the Norman Wells properties. Should the Petitioner reject such appraisals she shall provide to the Respondent notice in writing of such rejection and shall provide the Respondent with any appraisals or evaluations upon which she is relying. Should the parties not agree to a valuation for the Norman Wells properties on or before December 9, 1994, either party may, upon five (5) days notice to the other, bring this matter on before Mr. Justice Vertes for the purpose of have a valuation determined.

(17)There will be no costs to either party in this matter.

5 At the hearing before me on December 23rd, the Respondent also sought an order (i) fixing the valuation of the properties referred to in paragraph 16 above, and (ii) awarding costs to him of the application. The Petitioner conceded the validity of the Respondent's appraisals at the hearing. Because the Petitioner failed to follow the directions set out in paragraph 16 the Respondent seeks costs.

6 The Respondent appears in these proceedings personally (although he is a qualified barrister and solicitor). The traditional rule, albeit a curious one, is that a solicitor who appears on his or her own behalf is entitled to usual party-and-party costs (although not a counsel fee at trial). A litigant who is not a solicitor, however, who appears in person is not entitled to tax costs other than disbursements. I suspect this traditional rule — a somewhat

discriminatory one at first blush — will change soon. I note there is already some authority for an award of costs to a party appearing in person whether a solicitor or not. See, generally, Orkin, The Law of Costs (2nd ed., 1994), paragraph 209.15.

7 In this matter, even if I assume that the Respondent is entitled to collect costs, I have decided not to award any. It is true that the Petitioner should have followed my earlier directions. Be that as it may very little time was expended on the valuation issue at the December 23rd hearing. The bulk of the time and argument at that hearing was spent on the access issues. Even if the parties had agreed on the valuation prior to that date, I have no doubt they would have still been in front of me arguing over the access terms. In that argument there is no winner or loser. It is only to be hoped that in the long run the children will be the winners by having a stable relationship with both of their parents.

8 Accordingly, with respect specifically to the hearing of December 23rd, I order as follows:

(1)The value of the Norman Wells properties is hereby fixed at \$85,000 per unit.

(2)There will be no costs to either party.

9 Dated this 13th day of January, 1995.

John Z. Vertes
J.S.C.

TO: Gary J. Boyd (Respondent)
AND TO: Adrian C. Wright (Solicitor for the Petitioner)

6101-02015

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HONOURABLE MR. JUSTICE J.Z. VERTES
