

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RONALD DOUGLAS TECSY

Applicant

and

BERNADETTE SIBVIAK SAMOK

Respondent

MEMORANDUM OF JUDGMENT

[1] This matter was heard in Civil Chambers on June 1, 2007. Ms. Samok had been ordered to appear personally on that date, to show cause why she should not be found in contempt of an Order of this Court granting Mr. Tecsy telephone access to their three younger children, now aged 12, 11 and 8.

A) Procedural History

[2] There is considerable history to this matter, and I need not refer to it in detail for the purposes of dealing with the contempt issue. I simply note, as is apparent from the Court's file, that access, by telephone or otherwise, has been the subject of a number of applications. Several affidavits touching on that issue have been filed over the course of the last few years.

[3] Mr. Tecsy was granted telephone access on February 17, 2006. The terms of the Order were that commencing on Sunday February 19, 2006, he would have telephone access to the children every Sunday, Tuesday and Friday between 7:00 P.M. and 8:00 P.M. The Order also included a clause directing Ms. Samok to ensure that the access occurred.

[4] This Court had occasion to revisit the issue of access generally, and the telephone access in particular, in an application heard in July 2006. In an Affidavit sworn June 9, 2006, Mr. Tecszy deposed that there was very limited compliance with the telephone access provision of the February 2006 Order. In an Affidavit sworn July 12, 2006, Ms. Samok deposed that there had been problems with the telephone access and asked that the frequency of the access be changed to one call per week. On July 18, 2006, Justice J.Z. Vertes filed a Memorandum of Judgment dealing with the various issues raised on that application, including telephone access. He ordered that starting July 23, 2006, the telephone access take place on Sundays and Wednesdays between 6:00 P.M. and 7:00 P.M.

[5] On December 1, 2006, Mr. Tecszy filed a Notice of Motion seeking various reliefs, including Christmas and summer access, a variation of the telephone access provision, and a finding of contempt against Ms. Samok for her failure to abide by the July 2006 Order. In his Affidavit sworn November 30, 2006, he deposed that there were numerous occasions between July 2006 and November 2006 where the telephone access condition was not complied with.

[6] The application for Christmas access was dismissed on December 15, 2006. The balance of the application was adjourned to February 2, 2007.

[7] On January 29, 2007, Mr. Tecszy swore another Affidavit where he deposed that there continued to be minimal compliance with the telephone access Order during the months of December 2006 and January 2007.

[8] Ms. Samok swore an Affidavit on February 1, 2007, where she deposed that there had been issues with the telephone access because Mr. Tecszy would refuse to accept collect calls from the children. She acknowledged that calls had not consistently been made in accordance with the Court order, but deposed that other calls had been made at other periods of time. She reiterated some of the other concerns she had expressed in her July 2006 Affidavit.

[9] On February 2, 2007, all remaining aspects of the November 30, 2006 Notice of Motion were dealt with except the contempt issue. The Court ordered that Ms. Samok appear personally, on a date to be set by the Court, to show why she should not be

found in contempt, and directed that she file an affidavit setting out the details of the telephone access provided between February 2, 2007 and April 2, 2007.

[10] Ms. Samok swore an Affidavit on April 16, 2007. She deposed that some of the difficulties she had mentioned in other affidavits had continued. She set out the dates and times on which the children had calls with Mr. Tecszy. Mr. Tecszy swore an Affidavit in Response on May 9, 2007. He deposed that contrary to Ms. Samok's assertion, all his calls with the children since February 2, 2007 have been collect calls. He further deposed as to the dates and times where he had calls with the children in the time frame between February 2, 2007 and April 2, 2007.

[11] There are inconsistencies between the parties' affidavits on a number of issues, but their evidence is consistent at least to the extent of showing substantial compliance with the July 2006 Order between February 2, 2007 and April 2, 2007. When the issue of Ms. Samok's contempt was spoken to on June 1st, 2007, counsel for Mr. Tecszy fairly conceded that there had been significant improvement on this issue. He argued that there remained some concerns, in light of the materials filed, including the concern that the recent compliance with the Order was the result of the pending contempt proceedings. He suggested that further monitoring of this Court might be necessary to ensure ongoing compliance.

1. Finding of Contempt

[12] Section 704 of the *Rules of the Supreme Court of the Northwest Territories* provides, in part, that:

704. A person is in civil contempt who

(a) fails, without adequate excuse, to obey an order of the Court, other than an order for the payment of money;

(...)

[13] There are three basic elements to civil contempt: (1) presence of a court order (2) knowledge of that court order and (3) breach of that court order. All three elements must be proved beyond a reasonable doubt. *Baton v. Kenny* [2005] N.W.T.J. No.43; *Buggins v. Simpson* [2006] N.W.T.J. No. 41.

[14] In an ideal world, courts would never have to micro-manage things like telephone access. Even in our non ideal world, many court orders dealing with access are relatively broad and open ended. For a number of reasons, this is not one of those cases. The materials filed over the course of the last several years disclose a difficult history between the parties, and various complicating factors. It is likely that the Court will, for some time to come, have to deal with issues related to access. As long as that is the case, parties can expect that the Court will enforce the Orders it is called upon to make.

[15] The evidence adduced about the lack of compliance with the Court's Order over a number of months, even taken in the context of some of the explanations and issues raised by Ms. Samok in her affidavits, is of great concern to the Court. Court Orders must be complied with. I am mindful that the difficult history between the parties presents many challenges, but the fact remains that once a Court makes an order, that Order must be obeyed unless it is varied. It is not optional.

[16] That being said, what transpired with respect to telephone access between the months of July 2006 and January 2007 cannot be changed. In the time frame between the February appearance and the June appearance, on the basis of the evidence adduced, I am satisfied that there has been substantial compliance with this Court's Order. I decline, therefore, to make a finding of contempt.

2. Whether further reporting should be ordered

[17] The next issue is whether I ought to make any further Orders with a view of monitoring ongoing compliance with the July 2006 Order. I have carefully considered that issue and I have decided not to make any further orders in that regard. I trust that Ms. Samok knows in no uncertain terms what her obligations are under the existing Order, and that she understands the serious consequences that could flow from her failure to comply with those obligations.

[18] Ms. Samok has the responsibility to ensure that the children are available at the designated times, to ensure that Mr. Tecsy is able to exercise the telephone access that this Court has granted him. Other activities have to be scheduled around those designated times. If that proves to be unworkable, application should be made to have the Order varied.

[19] At Paragraph 16 of the July 18th, 2006 Memorandum of Judgment, Justice Vertes made the following observation:

On the question of telephone access, it is apparent that there have been problems. I think both parties have to recognize that a certain degree of flexibility is required. For example, although the current order provides for telephone access for a period of one hour, between 7:00 P.M. until 8:00 P.M. each time, it may be that the children do not want to talk for a whole hour. They may not have that much to say. The father should take a practical approach and not insist, in such circumstances, that the children stay on the phone for the entire hour. The mother, however, also has to remember that she should make the children available at the designated times.

[20] These comments, which I completely agree with, are as relevant today as they were a year ago.

3. Costs

[21] Mr. Tecszy seeks costs for the June 1st appearance. Representations were made on behalf of Ms. Samok that no such order should be made. Costs were ordered against Ms. Samok in relation to the February 2007 Court appearance. In addition, as she resides in Fort Fitzgerald, Alberta, her personal attendance in Yellowknife on June 1st has resulted in travel and accommodations costs. It is argued on her behalf that as she is of limited means, a further costs order will create some hardship for her, and consequently for her children.

[22] I am not insensitive to the reality that a costs order has consequences that affect not only the person it is made against, but that person's family, especially where that person is of modest means. At the same time, the June 1st proceedings were made necessary because the evidence before the Court as of February 2007 raised serious questions about Ms. Samok's compliance with the July 2006 Order. Mr. Tecszy was granted telephone access by this Court. He adduced evidence showing he was unable to benefit from that access for a significant period of time. He should not have had to bring contempt proceedings to be able to exercise a right conferred to him by the Court. Mr. Tecszy's application for costs of the June 1st appearance is therefore allowed.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
7th day of June 2007

Counsel for the Applicant: Kenneth Allison
Counsel for the Respondent: Jane Olsen

CV 08254

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