

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

CHERYL LISA STEWART

- v -

GARRY ERNEST VITTEKWA

Transcript of the Emergency Protection Order Review held
by The Honourable Justice L.A. Charbonneau, sitting in
Yellowknife, in the Northwest Territories, on the 8th day
of November, A.D. 2007.

APPEARANCES:

(No representation):	For the Applicant
(No representation):	For the Respondent

1 THE COURT: Madam Clerk, may I have the
2 file, please.

3 Mr. Sheriff, would you call Cheryl Lisa
4 Stewart and Garry Ernest Vittrekwa.

5 THE SHERIFF: No response, Your Honour.

6 THE COURT: No response. Thank you,
7 Mr. Sheriff.

8 This matter was scheduled this afternoon for
9 a review hearing under the Protection Against
10 Family Violence Act. An Emergency Protection
11 Order was issued on September 8th, 2007. It was
12 reviewed by this court as a matter of course, as
13 all Emergency Protection Orders have to be
14 reviewed, and that review took place on the 14th
15 of September, 2007. At that time I directed that
16 there be a hearing on this matter because I was
17 not satisfied that there was evidence before the
18 designated Justice of the Peace to support the
19 granting of the order, and the hearing was
20 scheduled for October 11th, 2007.

21 On October 11th, neither the Applicant nor
22 the Respondent had been served, and, under the
23 act, they have to be served when a review hearing
24 is ordered. So on that date, I rescheduled the
25 review hearing for today's date and again
26 directed that every effort be made to serve the
27 parties.

1 I have reviewed the file and it shows that
2 the Applicant, Ms. Stewart, was served with a
3 notice of today's review hearing. She is not
4 here today and there is nothing on the court file
5 that shows that she has made any attempt to
6 contact the Court. It did come out during the
7 Emergency Protection Order hearing that she was
8 eight months pregnant, and she may well have had
9 -- in fact, I would expect she would have had her
10 baby by now. But she was served and it does not
11 appear that she, or anyone on her behalf, made
12 any attempt to seek an adjournment of this
13 hearing or seek leave to appear by phone or
14 communicate with the Court in any other way.

15 There is a photocopy on file of an Affidavit
16 of Attempted Service on the Respondent,
17 Mr. Vittrekwa. It appears to show that attempts
18 were made to serve him in Fort McPherson and that
19 information was received that he might be in
20 Yellowknife; but the attempts to serve him in
21 Yellowknife have failed.

22 The order was made on September 8th. It was
23 made for 90 days. It is going to expire a month
24 from now. I am uncertain that adjourning this
25 hearing further would achieve much because it is
26 far from clear that the parties could be served;
27 and, in any event, if I were to adjourn this

1 hearing for three weeks, which would probably be
2 the minimum, which would provide a reasonable
3 opportunity for service, then it would
4 essentially be moot because by the time we would
5 have the hearing, the order would almost be
6 expired.

7 I have decided that I will proceed with the
8 review today because the Applicant has been
9 served. The Respondent has not. But in light of
10 the materials that I have and what I have to base
11 my decision on, I do not think the Respondent can
12 suffer any prejudice from not being here today
13 because I have concluded that the order should be
14 revoked. So the fact that he has not been served
15 is not going to affect his rights because the net
16 result is that he will no longer be bound by this
17 order. So, for the record, I will just go over
18 briefly my reasons for reaching the conclusion I
19 have.

20 As I said, there was a hearing before a
21 Justice of the Peace which led to the issuance of
22 this Emergency Protection Order. The Applicant
23 testified under oath at that hearing, and she
24 described an incident that happened in September
25 where the Respondent, she says, struck her on the
26 arm, leaving a small bruise. This occurred,
27 apparently, as the two of them -- and they are

1 common-law spouses. The two of them were having
2 an argument about the use of the vehicle. And
3 she testified that there was a small child who
4 was present when this happened. She also
5 testified about certain earlier incidents of
6 violence during the course of the relationship.
7 So I am satisfied there was, on a balance of
8 probabilities, sufficient evidence before the
9 Justice of the Peace to conclude that family
10 violence had occurred. But in order to grant an
11 application for an Emergency Protection Order,
12 the Justice of the Peace has to be satisfied of
13 more than that. The Justice of the Peace also
14 has to be satisfied on a balance of probabilities
15 that by reason of seriousness or urgency, the
16 order should be made without delay to ensure the
17 protection of the Applicant.

18 The Applicant testified that after the
19 incident where the Respondent hit her, she was
20 afraid he might come back to her house and
21 possibly kick in the door. She was worried that
22 because they had had an argument, he might go out
23 drinking and cause her further problems. But her
24 evidence also was that at the time of these
25 events he had been living at another residence;
26 he was not living with her. She also said he was
27 not intoxicated on the day the incident happened.

1 There was no evidence before the Justice of the
2 Peace that there was any kind of a recent pattern
3 of the Respondent consuming alcohol after
4 arguments or returning to the residence of the
5 Applicant to cause problems or to cause damages.
6 There was no evidence that he made any threats to
7 her. She testified that he said he would take
8 the house and the truck, but he did not make any
9 other threats. Nor had he made threats to her in
10 the past.

11 I have no doubt that as a result of what
12 happened that day, the Applicant was fearful.
13 This is evidenced by the fact that she went to
14 sleep at a friend's house that night. But the
15 question that the Justice of the Peace had to
16 answer was not simply whether the Applicant was
17 afraid but whether there was evidence showing on
18 a balance of probabilities that the situation was
19 sufficiently serious or urgent to warrant the
20 issuing of this ex parte Emergency Protection
21 Order.

22 Any instance of family violence obviously is
23 serious, and any family violence that takes place
24 in front of a child is even more serious.
25 Nothing I say as part of this matter is intended
26 to minimize the seriousness of family violence in
27 general or the legitimacy of what the Applicant

1 felt after what happened that day in September.
2 But the transcript of the hearing shows that even
3 the Justice of the Peace who heard the
4 application struggled with whether the order
5 should be issued or not. She asked many
6 questions to probe the Applicant on the question
7 of urgency and the reasons why the Applicant
8 thought the Respondent would carry on and cause
9 her more problems. In the end, she did issue the
10 order, but she did not articulate any reasons for
11 finding that the situation was of such an urgency
12 that the order was required. I have reviewed the
13 transcript of the hearing carefully, and on the
14 basis of the evidence that was before the Justice
15 of the Peace, I cannot say that there was
16 sufficient evidence to establish on a balance of
17 probabilities that there was the kind of urgency
18 or seriousness that is required to warrant the
19 granting of one of these orders.

20 I also note that one of the reasons why the
21 Applicant sought the order for the maximum period
22 of 90 days was that she believed that by then the
23 Respondent would probably have moved away from
24 her community because he had applied for a job in
25 Yellowknife. And as I have already said, from
26 the materials on the Court file, it appears as
27 though this may be what happened. It was not

1 possible to serve the Respondent in
2 Fort McPherson, and those attempting to serve him
3 there were apparently told he was now living in
4 Yellowknife. And, of course, the order has now
5 been in force for two months. So the possibility
6 of a continuation of problems stemming from that
7 September incident is more removed now than it
8 may have been when the order was made. But in
9 any event, given my finding that there was not
10 sufficient evidence before the Justice of the
11 Peace to justify making this Emergency Protection
12 Order, it is my duty, pursuant to Section 9(d) of
13 the act, to revoke the order that was made and
14 this is what I am doing now. I hereby revoke
15 that Emergency Protection Order. I am going to
16 ask the clerk to prepare the necessary documents
17 to show that. The Applicant and the Respondent
18 should both be served with today's order.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A), RPR
Court Reporter