

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

L.H.

Applicant

- and -

A.H.

Respondent

MEMORANDUM OF JUDGMENT ON EX PARTE APPLICATION

[1] This is an *ex parte* Application seeking an Order for the immediate return of a 4 year old child, V., to Yellowknife. The father asks that she child be delivered into his care. He also seeks interim sole custody. He asks that the Order include a clause directing peace officers to assist with the enforcement of the Order, including powers to take the child's mother into custody, if necessary.

[2] According to the evidence adduced in support of the Application, the parties have been separated since November 2011 and have been sharing the parenting of the child. The mother left Yellowknife with V. during the holiday season. The Applicant had refused to give his consent to this. Since she has left the Respondent has contacted the Applicant but has refused to disclose her whereabouts. He believes she may have left the Northwest Territories.

[3] The Exhibits to the Applicant's Affidavit include a letter from a friend of the Respondent's who expresses concerns about her mental health and behaviour in the weeks leading up to her departure from Yellowknife. The letter raises matters of concern, although many aspects of it are not admissible through the father's Affidavit, as they are hearsay.

[4] It is only in exceptional circumstances that the Court entertains *ex parte* applications. As a matter of fairness, both parties should be given an opportunity to be heard before orders are made. But in situations where it appears that one parent has taken unilateral action with respect to a child without the consent of the other, the Court will intervene, particularly where that unilateral action is the removal of the child to another jurisdiction. Matters of custody and access are governed by what is in the best interest of the child. Where parents are unable to agree about these matters, they cannot make unilateral decisions. They must reach agreement, or obtain the Court's permission before they take action.

[5] Based on the evidence adduced in support of the Application, I am satisfied that an Order for the immediate return of the child to Yellowknife is appropriate. But I am not prepared to issue it in the terms set out the draft Order provided by the Applicant.

[6] In my view, when this type of relief is granted *ex parte*, it is imperative that issues of custody, access, and day to day care be reviewed by this Court in short order, once both parties have had an opportunity to be heard. This matter should be spoken to in Court as soon as possible.

[7] As for the types of enforcement measures set out at Paragraph 2 of the Draft Order submitted, they have the potential of being extremely traumatic for the child if resorted to. The Applicant can seek those measures if they prove to be necessary, but at this point, I am not prepared to include such terms in the Order.

[8] An Order will issue as follows:

1. The Respondent shall return the child, V.L.H., to Yellowknife, Northwest Territories, immediately;
2. The Respondent shall be served with a copy of this Order, and may apply to vary it or set it aside on five clear days' notice to the Applicant;
3. The matter will be spoken to in Family Chambers in Yellowknife on January 19, 2012 at 10:00, to address issues of interim custody, access and day to day care.

[9] If the Applicant is unable to locate the Respondent and have the Order served, he may bring the matter forward to seek further relief. In that event, evidence detailing the efforts made to locate and serve the Respondent should be adduced.

[10] Finally, I note from the email exchange attached as an Exhibit to the Applicant's Affidavit that the Respondent appears to have a lawyer. If the Applicant is able to determine who that lawyer is, he or she should be served with a copy of the Order and of this Memorandum.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
6th day of January, 2012

Counsel for the Applicant:

James R. Scott

S-1-DV-2012-104160

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- and -

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Defendant

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APPLICATION OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU
