

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

PAMELA RICHARDSON

Applicant

- and -

HARRY GOLCHERT

Respondent

MEMORANDUM OF JUDGMENT

A) INTRODUCTION

[1] On September 30, 2013, Pamela Richardson made application to a justice of the peace for an Emergency Protection Order (EPO) pursuant to the *Protection Against Family Violence Act*, S.N.W.T. 2003, c.24 (the *Act*), against her former spouse, Harry Golchert. Her Application was granted.

[2] On October 21, 2013, Mr. Golchert filed an application to this Court seeking to have the EPO reviewed. The hearing into that application proceeded on October 31, 2013. Mr. Golchert and Ms. Richardson represented themselves at the hearing. They both gave evidence. After having heard that evidence and their submissions, I reserved my decision.

[3] For the reasons that follow, I have concluded that the EPO should be vacated.

B) ANALYSIS

1. Legal framework

[4] To begin with, it is useful to summarize the legal framework that applies to this matter.

[5] Ordinarily, when a person seeks to obtain relief from a court against another person, notice has to be given to that other person. This is to ensure that both sides in a dispute have an opportunity to present their position and version of events to the court before a decision is made.

[6] But in order to deal with emergencies that may arise in the context of family violence, the *Act* permits a procedure that is different from this usual regime, and allows a person, in certain situations and if certain requirements are met, to obtain an EPO against another person without giving that person notice.

[7] The parameters for issuing an EPO are set out at section Subsections 4(1) and (2) of the *Act*:

4. (1) On an application that can be made *ex parte*, a designated justice may make an emergency protection order if he or she is satisfied on a balance of probabilities that
 - (a) family violence has occurred; and
 - (b) by reason of seriousness or urgency, the order should be made without delay to ensure the protection of the person who is at risk of harm or the property that is at risk of damage.
 - (2) In determining whether an emergency protection order should be made, the designated justice shall consider, but is not limited to considering, the following factors:
 - (a) the nature of the family violence;
 - (b) the history of family violence by the respondent towards the applicant or other person at risk of harm;
 - (c) the existence of immediate danger to persons or property;
 - (d) the best interests of the applicant and any child of the applicant or any child who is in the care of the applicant
- (...)

Protection Against Family Violence Act, S.N.W.T. 2003, c.24, subs. 4(1) and (2).

[8] Every time an EPO is issued, it is reviewed by a judge of this Court, pursuant to section 5 of the *Act*. At that stage, the role of the Court is to review the record of the application (primarily the transcript of the EPO hearing), and decide whether there was evidence before the justice of the peace to support the making of the EPO. If so, the EPO is confirmed. The Court also has the power to confirm the substance of the Order but vary it to correct minor defects and discrepancies that are apparent on the face of the Order. If the judge is not satisfied that there was evidence before the justice to support the making of the EPO, the judge sets the matter down for a hearing and notice of that hearing is given to both parties.

[9] Reviews pursuant to section 5 are done on the record of the EPO hearing. As a result, at that stage, the position of the respondent does not enter into the analysis. Indeed, at that stage, the position and version of events of the respondent are usually not known.

[10] But the respondent does have access to a review mechanism. So does the applicant, if intervening events cause him or her to want to have the EPO varied or revoked. Pursuant to section 9 of the *Act*, the person against whom an EPO was made, or the person who has obtained it, can apply for a review, present evidence, and ask the Court to vary or revoke the EPO. Mr. Golchert's application was brought pursuant to that provision.

[11] At a review held pursuant to section 9, the Court is entitled to consider any evidence presented at the review hearing as well as the evidence presented to the justice of the peace at the EPO hearing. The powers of the Court are broadly defined:

- 9 (1) (...) the court, on application by the respondent or the applicant named in the order, may
 - (a) vary the order, or any provision of the order, including the duration of the order or provision;
 - (b) add provisions to the order;
 - (c) revoke any provision of the order; or
 - (d) revoke the order
- (...)

Protection Against Family Violence Act. supra, subs. 9(1).

[12] Section 9 does not specify what criteria should be used when deciding whether to confirm, vary or revoke an EPO at a review hearing. But it makes sense to infer that the criteria that apply at that stage are the same as those that

apply at the initial EPO hearing: the Court must assess, on the basis of the whole of the evidence adduced, whether the requirements set out at section 4 are established on a balance of probabilities.

2. The evidence

[13] In considering my decision on this matter, I have reviewed the transcript of the EPO hearing, the affidavit that Mr. Golchert filed in support of his review application, and the testimonies of Mr. Golchert and Ms. Richardson at the review hearing.

a) Ms. Richardson's version of events

[14] In her testimony at the hearing, Ms. Richardson adopted her testimony at the EPO hearing, and provided additional details about certain aspects, in response to Mr. Golchert's version of events.

[15] She alleges that Mr. Golchert was, throughout their relationship, verbally abusive to her. She alleges he was emotionally abusive as well, talking down to her and speaking negatively about members of her family. In addition, she alleges that he emotionally abused her in that he asked that they be sexually intimate at times when she was having her period. I did not understand her to say, at the review hearing, that she refused and that he forced her. Rather, I understood her to say that she considered it abusive for him to even be asking her to be sexually intimate in those circumstances.

[16] She also alleges that he was very controlling with money. She does not allege any physical abuse, or that he caused any damage to property.

[17] At the EPO hearing and again at the review hearing, she said that what triggered her EPO application was that the children were afraid of their father. She says that the day she made the application, she picked them up from school and they told her that they did not want to go back to his house. She believes that they are afraid of him because of how he talks to her and behaves towards her.

[18] She said that she had been more afraid of him lately. She refers to a number of specific incidents that are of concern to her.

[19] She alleges that Mr. Golchert has stalked her. She says that when she has been in Behchoko at her mother's house she has seen him drive by there. She

alleges instances where he has phoned her and told her what she has been doing over the previous days or hours.

[20] She alleges that he has threatened to take the insurance off the vehicle that she has been using since their separation. The vehicle is in both their names but the insurance is in his name; without insurance she would not be able to use it, and she needs it as it is her sole mode of transportation.

[21] She also alleges that he threatened to kill her. This, she says, happened on a night when she, Mr. Golchert and the children all met to have supper at Boston Pizza. Ms. Richardson's other son from a previous relationship was also there. A disagreement erupted and Ms. Richardson decided to leave. She alleges that as she was leaving Mr. Golchert whispered to her "you better leave before I kill you". She says she laughed this off at the time, but became concerned about it later on.

[22] There was some confusion about the date when this happened in relation to when the EPO application was made. At the EPO hearing Ms. Richardson said it was early in September 2013. At the review hearing she said that the incident happened on September 21, 2013.

[23] With respect to the children, she alleges that on one occasion when their son was playing hockey, they were all in the change room and Mr. Golchert was telling his son to do his best. His son replied to him that he would do his best and Mr. Golchert, because he did not like the fact his son talked back to him, pinched him, which made the son cry. She also alleges that Mr. Golchert uses demeaning and abusive language towards her in front of the children. She says her daughter has recently told her that she saw Mr. Golchert give Ms. Richardson "the finger".

[24] At the EPO hearing Ms. Richardson asked that Mr. Golchert be prohibited from having any contact with her and with the children. She asked the justice of the peace to create an exception for Mr. Golchert to be able to attend their son's hockey games and practices because, she said, her son wanted Mr. Golchert to be there at hockey.

[25] At the review hearing, while she asked that the EPO remain in place, she suggested that it be amended to allow Mr. Golchert to have visits with the children twice a week.

[26] At the conclusion of the hearing, when I said I would reserve my decision, Mr. Golchert said that his father had recently passed away and that he would be travelling to British Columbia for the funeral. He asked whether the EPO could be

amended to allow him to take the children with him so they could, among other things, spend time with their grandmother. Ms. Richardson agreed that the no-contact order with respect to the children could be lifted from November 6 to November 13.

b) Mr. Golchert's version of events

[27] In his testimony at the hearing, Mr. Golchert adopted the content of the affidavit he filed in support of his review application. Generally speaking, he denies being abusive, physically, mentally or otherwise, towards Ms. Richardson or the children. He denies some of the specific allegations that she makes. For other allegations, he provides nuances or explanations.

[28] He categorically denies threatening Ms. Richardson at Boston Pizza. He also categorically denies pinching his son in the locker room at hockey. He asks the Court to find that these events are unlikely to have happened because in both cases, they would have occurred in the presence of many people: the Boston Pizza incident would have occurred in a restaurant full of people, whereas the hockey incident would have happened in a locker room full of children and parents. Ms. Richardson's claim at the review hearing was that the hockey incident happened in a change room where they were alone, not the room where the other parents and children were. Mr. Golchert says he has no recollection of ever being in a change room other than the one where the rest of the children and parents were.

[29] Mr. Golchert acknowledges that he and Ms. Richardson have argued and that there has been verbal abuse, but he says this has gone in both directions, and that it has never occurred in front of the children.

[30] With respect to the allegation that he threatened to take the insurance off the vehicle, he admits he was concerned about other people driving the vehicle and says that he has asked Ms. Richardson to put the insurance in her own name. He says that he is concerned about his potential liability because she lets people drive who are not included as drivers on the policy. But he also said that he knows that she needs the vehicle and will not cancel the insurance on it unilaterally.

[31] He admits that he has been to Behchoko for work reasons. He said he would have driven by the house of Ms. Richardson's mother's, given where that house is located in the community, but he denies stalking Ms. Richardson.

[32] Mr. Golchert says that until recently he thought they were getting along quite well. The children had been staying with him in what used to be the family

home. Ms. Richardson's residence is now in Behchoko but she is in Yellowknife during the week because she has employment here. Mr. Golchert explained that he and Ms. Richardson had a routine whereby she would regularly pick the children up in the morning and take them to school, and pick them up from school to take them home at the end of the day. As a result, Mr. Golchert says that he and Ms. Richardson saw each other regularly. Ms. Richardson agreed that this routine was in place for a time after separation, but said it had been less and less so in the weeks leading up to the EPO application.

[33] Mr. Golchert testified that on the whole, despite some arguments and some tense moments, he was under the impression that things were going reasonably well between them, and that it came as a complete surprise when he was served with the EPO.

3. Whether the EPO should continue to be in effect

[34] Each of the parties had an opportunity to cross-examine the other at the hearing. Cross-examination is often a very helpful tool to assess and weigh the reliability and credibility of witnesses. In this case neither cross-examination was particularly effective. This is not unusual for self-represented litigants, who, understandably, often do not have a good understanding of litigation procedures and are not trained in cross-examination techniques. The net result, however, is that neither version was particularly well tested in the way the cross-examination process usually does. And although I did ask some questions and attempted to clarify some things during the hearing, it is not the Court's role to engage in a full cross-examination of the litigants who appear before it.

[35] Given this, I am left with very little to resolve the inconsistencies between the versions of these two individuals. They both appeared sincere and credible as they testified and there is little basis to reject either of their testimony.

[36] To some extent, I can attribute some of the differences in their testimonies to misunderstandings resulting from emotions running high at the time of some of these events, or honest mistakes due to differences in perception. For example, it is possible that Ms. Richardson misinterpreted Mr. Golchert's driving by her mother's home in Behchoko. It is also possible that the parties miscommunicated about the question of the insurance on the vehicle.

[37] But not every difference between their versions of events can be accounted for in this way. For example, either Mr. Golchert pinched his son and made him

cry in a change room at hockey or he didn't; either he swore at Ms. Richardson and "gave her the finger" in front of the children or he didn't; either he threatened her at Boston Pizza or he didn't.

[38] The determination of where the truth lies in these matters may well have an impact in other proceedings involving these parties. If they are not able to resolve matters arising from their separation, their conduct towards the children, and their conduct towards one another in the presence of the children, it could well have an impact on issues of custody and access.

[39] But for the purposes of deciding whether this EPO should be continued or not, the test is whether the conditions set out at section 4 of the *Act* are met. As I stated above, the continuation of the EPO can only be ordered if the evidence before the Court establishes on a balance of probabilities that family violence has occurred, *and* that by reason of seriousness or urgency of the situation, the EPO is needed for the protection of Ms. Richardson or the protection of her children. Based on the whole of the record now before me, whatever the case was at the time the EPO was made, I am not satisfied that the requirements for its continuation are met.

[40] In this respect, certain things that transpired at the review hearing are significant, particularly as far as the no-contact order regarding the two children is concerned. Initially, Ms. Richardson asked that there be an exception to that term to allow Mr. Golchert to attend his son's hockey practices and games, because that is what his son wanted. At the review hearing, she was proposing that this term of the EPO be amended to allow Mr. Golchert to visit the children twice a week. And in response to his request to have the children travel with him to British Columbia, she agreed he could take them out of the jurisdiction for a period of 6 days.

[41] These positions are not consistent with a belief that these children are at risk of harm when they are with their father. I understand that Ms. Richardson has concerns about Mr. Golchert's conduct towards the children, and towards her, but those concerns are similar to concerns that are often expressed in the aftermath of a separation.

[42] The EPO process is not intended to deal with issues of custody and access. It is intended to address serious and urgent situations where a no-contact order is needed for the protection of the children or of the applicant.

[43] The only evidence before the Court about what the children want or how they feel is hearsay from both parents. Ms. Richardson says the children told her that they did not want to go home. Mr. Golchert says that when he sees his son at hockey his son keeps asking him when he can come home. He also says that his daughter runs to him when she sees him at her brother's hockey practices or games. The children's views are being portrayed in very different ways by these two parents. Again, this is not unusual at all in the context of a marital breakdown when children are involved.

[44] On the whole, I am not satisfied that it has been established on a balance of probabilities that the no-contact order with respect to the children is urgently necessary to protect them from their father.

[45] Ms. Richardson does ask that the no-contact order with respect to her be maintained, even though her primary reason for seeking the EPO was to protect her children. As I have already explained, to justify maintaining a no-contact order through an EPO, the Court has to be satisfied on a balance of probabilities that family violence has occurred *and* that the seriousness and urgency is such that an EPO is necessary to protect her from him.

[46] The definition of what constitutes "family violence" under the *Act* is quite broad, and includes emotional and financial abuse. *Protection Against Family Violence Act, supra*, s.1. As such, the absence of physical violence is not determinative.

[47] But even assuming that the existence of family violence has been established, seriousness or urgency must also be established on a balance of probabilities. On the whole, while the evidence satisfies me that there has been some conflict and tension, and an escalation in conflict since Ms. Richardson has commenced a relationship with another man, it does not disclose, in my view, the existence of an urgent situation that justifies maintaining the EPO.

[48] If, because of some of the things that have transpired during the relationship or since separation, Ms. Richardson wants to prevent Mr. Golchert from having contact with her, it is open to her to apply for a restraining order pursuant to the *Family Law Act*. She can do that as part of family law proceedings, on notice, in the usual course. But the EPO process cannot serve as a substitute for those types of proceedings. It is reserved, as I have mentioned a number of times already, for emergency situations.

[49] All that being said, the evidence shows that the relationship was getting increasingly strained in the weeks leading up to the EPO application. The EPO was granted on September 30. A month and a half has now passed. Both parties have indicated that they are retaining counsel to assist them in dealing with issues arising from their separation. Hopefully, this will facilitate their contact and reduce the risk of further problems.

[50] Irrespective of the outcome of this hearing, these parties have issues that will have to be resolved. Those are issues that all parents who separate have to deal with. Ms. Richardson and Mr. Golchert will no doubt benefit from the assistance and advice that counsel will provide them as to how to best approach all of these issues. The sooner the issues of custody and access can be addressed in the proper forum, either by consent, or through a court order if they are unable to agree, the better, because they will then have a clear framework to work with. And it is likely that clarity and predictability will minimize the stress and disruption for the children.

[51] I have concluded that I can dispose of this matter without make findings of fact with respect to the disputed evidence about the events that took place before the EPO application was made. For that reason, I have deliberately refrained from making such findings. As I have already alluded to, those events may be relevant to other proceedings, and it is best to leave the facts to be determined in the context of those other proceedings, on the basis of the evidence adduced in those proceedings.

[52] The application for review is granted and the Emergency Protection Order issued on September 30, 2013, is hereby vacated.

L.A. Charbonneau
J.S.C.

Dated this 14th day of November 2013.

Applicant: Self-Represented
Respondent: Self-Represented

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