

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MJ

Applicant

-and-

CP

Respondent

**RULING ON APPLICATION TO SET ASIDE EMERGENCY
PROTECTION ORDER**

INTRODUCTION

[1] MJ and CP are spouses and the parents of an infant. On February 25, 2024, following an *ex parte* hearing before a Justice of the Peace, MJ was granted an Emergency Protection Order (“EPO”) against CP under the *Protection Against Family Violence Act*, SNWT 2003 c 24 (the “Act”). As required, the evidence MJ gave in support of the EPO was transcribed, then reviewed by a judge of this Court. The EPO was confirmed.

[2] Family violence is not limited to physical abuse. The definition of “family violence” in s 1(2) of the Act is broad and includes “. . .an intentional, reckless or threatened act or omission that causes the applicant to fear for his or her safety”. It also includes psychological, emotional, and financial abuse.

[3] On March 6, 2024, CP filed an application to revoke the EPO under s 9(1) of the Act. A hearing was held on March 14 and March 21, 2024. Each party gave oral evidence in addition to MJ's evidence before the Justice of the Peace and the affidavit CP swore in support of his application.

MJ'S EVIDENCE

[4] The events precipitating the EPO application occurred on February 24 and 25, 2024. MJ testified before the Justice of the Peace that she had arranged to attend a gala the evening of Saturday, February 24, 2024. She advised CP of her plans sometime the previous week and she asked him to look after the baby while she attended. CP went to work the day of the event and did not return before MJ had to leave. As she did not have childcare, she took the baby to the gala with her. While she was there, at approximately 7:00 p.m., CP sent her a text message asking where she was. She told him she was at the gala discussed earlier. She asked him to come and pick up the baby. He did not reply.

[5] MJ returned to the couple's apartment after the event ended. When she testified before the Justice of the Peace, she said this was around 11:00 p.m. At the hearing on March 21, 2024, she said she arrived home around midnight. CP pointed out this inconsistency, but I find it is minor and is of no consequence.

[6] CP was not home when MJ arrived, but she said there were take-out food containers there, which led her to believe CP had been inside the apartment while she was at the gala. She got the baby settled and then went to bed.

[7] MJ testified that at approximately 2:00 a.m., CP entered the room where she was sleeping and turned on the light. MJ says he accused her of leaving the baby unattended while she went out to a club. She told him she had not left the apartment since returning from the gala. She did not leave the baby unattended at any point. CP then left the room but came back shortly afterwards.

[8] Things escalated. CP started yelling at MJ. MJ tried to use her cell phone to record him. This angered CP and he took the cell phone from her hand. She asked him to give it back, but he refused. He pushed her and she fell to the floor. When she got up, he slapped her. He then went to the front door and tossed MJ's cell phone into the hallway outside the apartment. He told her to go and get it and he also told her he would lock the door after her and not allow her to re-enter the apartment. She left the apartment to retrieve the cell phone. She was wearing only a robe. She had

no shoes or coat. She did not have keys to the apartment, but during the hearing she testified she had keys to a vehicle. CP locked the door behind her. MJ tried for about an hour to convince him to open the door and let her in, but he refused. He also refused to provide her coat and shoes. Finally, MJ called a friend for help. She drove to the friend's home and called the RCMP at about 3:00 or 4:00 a.m.

[9] CP noted that at the hearing before the Justice of the Peace MJ said “And so I decided that I was going to call my friend so she can come get me. So, I ended up going to – I ended up spending the night at my friends [*sic*].” CP said this was an inconsistency in MJ's evidence as it suggests the friend came to pick up MJ, rather than MJ driving herself there. Again, this is a minor discrepancy which does not affect the overall integrity of MJ's evidence.

[10] At about 11:00 a.m. the next day, MJ went to the apartment, accompanied by her friends. Her intention was to retrieve some clothing and pick up the baby. CP refused to open the door. He told them to come back the next day when he was ready. MJ then called the RCMP for assistance. An officer arrived and convinced CP to let MJ enter the apartment to retrieve some belongings. She checked on the baby, who was fine. MJ said she did not feel the baby was unsafe in CP's care. MJ subsequently obtained the EPO.

CP'S EVIDENCE

[11] CP said he was working on February 24, 2024. He left his office around 7:00 p.m. and went home. He then went out with his brother. At about 10:00 or 11:00 p.m. they decided to go to another bar. CP noticed MJ's friends were there and then he saw MJ. He did not approach her or communicate with her. Instead, he went home because he was worried about the baby.

[12] At paragraph 15 of the affidavit CP swore on March 6, 2024, he states definitively MJ left the baby alone while she went out with friends and that she “hastily departed [from the bar] to conceal her actions”. Later, at paragraph 34 he states:

On the night in question, the child was in her crib, sleeping peacefully in the other room. The fact of the matter is the applicant neglected and abandoned the baby by going to the club and leaving the baby unattended for hours.

[13] These statements differ significantly from what CP said on March 14, 2024. At that time, he testified he “assumed” MJ had left the baby unattended when he saw her at the bar. He did not provide any basis for this assumption, other than seeing MJ at the bar. Contrary to what is suggested in the affidavit, CP did not actually find the baby alone in the apartment.

[14] When CP arrived at the apartment, he noticed MJ’s clothing, which he concluded had been hastily removed. From this he assumed MJ had arrived home just before he did and was trying to conceal she had been out. He went into the room where MJ was sleeping and confronted her about leaving their baby unattended. They argued. He says MJ verbally berated him. He left the room in an effort to de-escalate the situation. MJ followed him into the other room and was recording him on her cell phone. She threatened to disseminate the video to family and friends. He took her phone away, but then gave it back to her. She continued to attempt to record him and so he took the cell phone from her again, this time placing it in the hallway outside the apartment. When she went to retrieve it, he locked the door and would not allow her back inside. He says this was a means of preventing further conflict and he knew she would call her friends or family.

THE PARTIES’ POSITIONS

[15] CP argues the evidence MJ gave before the Justice of the Peace was false, misleading, and contained important omissions. Therefore, the EPO ought not to have been granted and should be revoked. MJ disagrees and stands by her evidence.

ISSUE

[16] The issue is whether CP’s evidence is sufficient to convince the Court the EPO should not have been granted and should be set aside.

ANALYSIS

[17] Initially, the question of whether to issue an EPO is determined on an *ex parte* basis. That means the Justice of the Peace hearing the matter has only the applicant’s evidence. Where, as here, a respondent brings an application on notice in this Court to revoke or vary an EPO after it is granted, the Court has the benefit of hearing evidence from both parties. This process provides a more robust evidentiary record and with that, the Court can consider whether there was a sufficient basis for the EPO to have been granted or whether it should be revoked or varied.

[18] Evidence is never perfect. Where two parties with opposing interests give evidence, it will inevitably conflict on at least some points. It is also not unusual to find internal inconsistencies in a witness' evidence and inconsistencies between what they say in the courtroom and what they may have said on a previous occasion, either orally or in writing. The parties will have different views of what conclusions the Court should draw from the evidence and whose version should be believed. Sometimes it is possible for the Court to resolve these kinds of conflicts by finding an explanation for them which arises from the evidence itself. Other times, the Court will resolve conflicts and inconsistencies by rejecting some or all of a party's evidence. As well, there are times when a witness' explanation of why or how something happened lacks an air of reality, with the consequence that the Court cannot rely on it.

[19] Although CP denies using physical violence, he admits locking MJ out of the apartment. In the circumstances, this was an act of family violence within the definition set out in the Act. MJ was in a vulnerable state: she had no coat or footwear, and she was wearing only a robe. Despite her pleas, CP refused to let her back into the apartment and his evidence was he had no intention of doing so. When she asked him to provide her coat and footwear, he refused. CP said he assumed MJ would seek assistance and shelter from family or friends, which she was eventually forced to do. It was wintertime, the end of February, in the early hours of the morning. CP had to have known that even if MJ found assistance and shelter through friends and family, she would have to leave the apartment building and go out into the cold to either walk somewhere or get into a vehicle, without appropriate clothing or footwear. CP did not seem to consider this problematic at the time he did it, nor during the hearing.

[20] CP continued to keep MJ from the apartment, which is the parties' home, for a sustained period of time. When she returned later that morning to retrieve belongings and check on the baby, he refused to allow her into the apartment. He said this was because he was about to leave to go to work. He only relented and allowed her in to gather some belongings after she secured assistance from the RCMP.

[21] CP asserted in both his affidavit and in his oral testimony that his actions were justified by a need to de-escalate the situation. Respectfully, I do not accept CP's explanation. His evidence does not convince me any de-escalation on his part was necessary. Alternatively, if it was necessary, the technique he used – barring MJ from the apartment for a sustained period of time - was completely disproportionate to the circumstances. According to CP, the extent of the conflict was MJ verbally

“berated” him after he accused her of going out to a bar with her friends and leaving their baby alone in the apartment. She also recorded him with her cell phone and he objected to this. CP gave no evidence MJ used physical force against him, that she posed any danger to the baby, or that she destroyed property. From the evidence, including his own, CP was the instigator, and the only escalation of the circumstances came in the form of CP taking MJ’s cell phone from her hand, tossing it into the hallway outside the apartment, and then locking her out. His actions were inappropriate and unnecessary, and his explanation for them has no air of reality.

[22] CP’s evidence about the baby being left unattended is problematic and must be addressed. As noted, he made direct assertions in his affidavit that the baby was left unattended in the couple’s apartment while MJ went out; however, it was revealed when he testified that these assertions were without foundation. At best, they were assumptions. At the heart of the dispute between the parties was CP’s accusation that MJ went out to a bar out and left the baby unattended. It is therefore troubling that CP would assert in such unequivocal terms something he had not actually witnessed and for which there is no reasonable foundation. In my view, the statements in CP’s affidavit are misleading and significantly undermine his credibility with respect to entirety of his evidence.

[23] CP’s evidence about what happened at the bar also lacks credibility. His testimony was he saw MJ’s friends at the bar and then he saw MJ. He did not approach her, nor did he attempt to make any other form of contact with her, such as sending a text message or calling her. He testified he was concerned about who was looking after the baby and that the baby might be alone. In these circumstances, it makes no sense that CP, if indeed he saw MJ at the bar and was worried about the baby, would not initiate contact with MJ to ensure the baby had care. These are not the actions of a concerned parent. I reject his evidence on this point, and I accept MJ’s evidence that had returned home from the gala with the baby and did not go out again.

CONCLUSION

[24] Although MJ’s evidence has some inconsistencies, these are minor and do not affect her credibility, nor the reliability of her evidence. I accept her version of what happened in the early hours of February 25, 2024. CP’s version of the events and his explanation for locking MJ out of the couple’s apartment has no air of reality and overall, his testimony lacks credibility. CP’s actions constituted family violence that term is defined in the Act.

[25] The EPO will remain in force and CP's application is dismissed.

K. M. Shaner
J.S.C.

Dated at Yellowknife, NT, this
28th day of March, 2024

The parties were self-represented

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