

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CL

Applicant

-and-

TA

Respondent

Application to Revoke Emergency Protection Order
Protection Against Family Violence Act, S.N.W.T. 2003

Heard at Yellowknife: May 2, 2024

Written Reasons filed: June 7, 2024

**REASONS FOR DECISION ON REVOCATION OF EMERGENCY
PROTECTION ORDER OF
THE HONOURABLE JUSTICE S.M. MACPHERSON**

Self-Represented Applicant

Self-Represented Respondent

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CL

Applicant

- and -

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RULING ON REVOCATION OF EMERGENCY PROTECTION ORDER

Overview

[1] CL was granted an emergency protection order against TA on April 10, 2024. As is common in these cases, the order was sought on an emergency basis without giving notice to TA. The order was granted by the Justice of the Peace, prohibiting TA from having contact with CL and limiting his access to the parties' child, KL, now 11 months old. On April 18, 2024, TA applied to have the order revoked. TA's application was first in court on April 25, 2024. Both TA and CL were present in court and both indicated that they had considerable text messages and photographs to present in support of their respective positions. Because of this, the matter was adjourned to May 2, 2024 so as to allow both parties to file further affidavit evidence. On May 2, 2024, both parties had filed additional affidavit material and the matter proceeded to a hearing. Both parties gave evidence and had the chance to ask questions of the other. I adjourned the proceedings to May 10, 2024 for decision. On that date, I provided oral reasons for decision revoking the emergency protection order and indicated written reasons would follow. These are those written reasons.

Legal Framework

[2] Ordinarily, when a person seeks a court order against another person, notice must be given to them. This is to ensure that both sides in a dispute have an opportunity to present their side to the court before a decision is made.

[3] Situations involving family violence are different. To deal with time sensitive emergencies, the *Protection Against Family Violence Act*, SNWT 2003, c 24 (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 emergency protection order against another person without giving that person notice.

[4] The parameters for issuing an emergency protection order are set out at subsections 4(1) and (2) of the *Act*:

4. (1) On an application that may 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
- (...)

[5] “Family violence” is defined broadly as including:

- 1(2)(a) an intentional or reckless act or omission that causes bodily harm or damage to property;
- (b) an intentional, reckless or threatened act or omission that
 - (i) causes the applicant to fear for his or her safety,

- (ii) causes the applicant to fear for the safety of any child of the applicant or any child who is in the care of the applicant, or
- (iii) causes any child of the applicant or any child who is in the care of the applicant to fear for his or her safety;
- (c) sexual abuse;
- (d) forcible confinement;
- (e) psychological abuse, emotional abuse or financial abuse that causes harm or the fear of harm to the applicant, any child of the applicant or any child who is in the care of the applicant.

[6] Once an emergency protection order is made, the order is reviewed by a Supreme Court Justice in chambers. Even at this stage, the Justice is only receiving one side of the story, being the applicant's version of events. To ensure procedural fairness, emergency protection orders may also be reviewed in Court, on notice to all parties. This review hearing can occur on the initiative of a Justice or at the request of either the applicant or the respondent.

[7] Here, the review is taking place at the initiative of the respondent, TA.

[8] At a review hearing pursuant to section 9 of the *Act*, the Court is entitled to consider any evidence presented at the review hearing and to the Justice of the Peace at the emergency protection order 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
- (...)

[9] Section 9 does not establish the criteria to be used by the Court at a review hearing. This Court, however, has held that the criteria are the same as at the original hearing; that is, 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: *Richardson v Golchert*, 2013 NWTSC 86 at paragraph 12.

[10] Therefore, the issue before me is firstly, whether family violence has occurred. If so, I must determine whether an order is necessary to ensure the protection of the person who is at risk of harm.

Analysis

Has family violence occurred?

[11] As noted above, “family violence” may include actual physical harm or damage to property as well as any act or omission that causes the applicant to fear for their safety or the safety of a child in their care.

[12] CL testified before the Justice of the Peace. She stated that she and TA had been in a common law relationship for four years. The parties had one child, KL, who is now 11 months old. The parties separated in June of 2023, when the child was four days old. CL has been the primary caregiver of the child since then. CL alleged the relationship with TA was one that had been characterized by violence. She gave evidence about several instances of violence while together, including being kicked in the stomach when pregnant, resulting in a miscarriage and another violent incident in August of 2022. In addition to physical violence, she alleged that TA broke a window and, on another occasion, deliberately damaged a television set.

[13] At the review hearing, CL testified in detail about one incident, being an incident occurring on August 15, 2022. On that day, she alleged that the parties were arguing and TA grabbed her and pinned her down, causing bruises on her arm and chest, as well as scratches. She also alleged TA hit her in the face, giving her a black eye and bloodying her nose ring. She submitted pictures which illustrated some moderate bruises and scratches and well as what appeared to be a red and somewhat swollen eye.

[14] CL also submitted pictures of what appeared to be tea on the floor, alleging this was thrown by TA and a picture of her at the hospital after suffering the above noted miscarriage. which she alleges was caused by TA kicking her.

[15] Additionally, CL provided pictures of the broken window and television.

[16] TA denied he ever hit CL. With respect to the incident of August 15, 2022, TA admitted to holding CL's arms tightly to "calm her down" and agreed that that might have resulted in the bruises on her arm but denied pinning CL down. He also denied hitting CL on that or on other occasions. He stated that the scratches might have been due to the family dog scratching CL and that the red and swollen eye might have been due to CL crying.

[17] With respect to the property damage, he explained that the window had broken when he was locked out of the apartment in the early morning hours and threw small rocks at the window, trying to get CL's attention. He also indicated that the television screen was broken when he was trying to move it as part of his move out of the apartment. He also noted that he did not realize that CL would be moving into the apartment.

[18] CL called one witness, TG, a friend of hers. TG testified that she was often called to come and get CL after CL and TA were fighting. TG testified that CL would be upset and emotional when TG would pick her up. She stated she did see marks that were consistent with a physical fight, although the focus of her evidence was largely on how upset CL would be on these occasions after she and TA would fight.

[19] I am satisfied that family violence occurred during the relationship. The pictures submitted by CL depict moderate bruising and small scratches in relation to the incident alleged to have occurred on August 15, 2022. TA admits to holding CL to calm her down when she was angry and upset. Both parties gave evidence as to a volatile relationship marked by conflict. The location of the scratches next to some bruising in several places on CL's body is consistent with a physical conflict between the parties. TG's evidence supports CL's contention that her relationship with TA was marked by considerable conflict and some physical violence. TG noted that she had seen a "few" bruises every once in a while. When pushed on what she observed, TG's evidence largely focused on CL's demeanor and emotional state although she did note that at one point she did observe a bruise consistent with someone grabbing CL's arm. There is no question in my mind that the relationship between the parties was a challenging one and that, on occasion, it was physical.

[20] TA also admitted to breaking a window although he deposed that it was an accident. Similarly, he advised that the television in the shared apartment was

broken when he tried to remove it as he was moving out. Throwing rocks at a window, while not overtly destructive, was reckless but appears to be an isolated incident. It is also not an uncommon way to get attention if one is locked outside. Similarly, I am unable to conclude that TA deliberately destroyed the television set. He was moving out, did not realize that CL would be assigned to the apartment and TA provided a reasonable explanation for the damage.

Is an order necessary to protect the applicant?

[21] Although I have found that family violence existed during the relationship, that is not the end of the inquiry. I must be satisfied that an emergency protection order is now necessary to ensure the protection of the person who is at risk of harm or the property that is at risk of damage.

[22] In this regard, the parties testified that they separated shortly after their child was born. CL has not alleged that there has been any further physical violence or property damage since their separation. Before the Justice of the Peace, she alleged an emergency protection order was necessary for several reasons. She indicated that she was concerned that the child would be placed in danger because TA was allegedly selling drugs, and someone was looking for him to collect money. Even with this fear, she testified before the Justice of the Peace that “she let it go” because TA was her only source of childcare. CL painted a picture before the Justice of the Peace of an erratic and irresponsible parent, who infrequently cared for the child. She also alleged that when TA had the child, he was not caring for her properly and would have other people in his home whom she felt posed a danger to the child. Lastly, she alleged that TA had threatened to take the child away from her. In her evidence before the Justice of the Peace when asked whether anything specific had occurred in the past few days which caused her to seek an emergency order, she stated that she was “scared that he’s going to take her and not give her back to me”. She also testified to an escalation of the verbal conflict between the two of them and stated “I need to prioritize her safety now and not my studies”.

[23] In his evidence, TA candidly admitted to having used drugs in the past but indicated that he had been clean and sober since September 2023. His admission and his very specific evidence about his sobriety date persuades me that he is maintaining a life of sobriety. He maintains that the child is well cared for while in his care and denies that anyone in his household poses a danger to the child. He

presented a calendar which depicted the days, including times, in which he provided care for the child, demonstrating almost daily care for the child from January to April 10, 2024, including 17 overnights, ending on the day CL obtained the emergency protection order.

[24] Most significantly, both parties submitted text messages illustrating exchanges between themselves post separation. It is clear that the parties struggled with their new role as parents and that CL was angry at TA for what she perceived as his being irresponsible in his care of the child and his lack of ability to provide financially for the child. However, the text messages also make it abundantly clear that CL's motivation for the emergency protection order was not because she was afraid for herself or the child. Rather, on several occasions she used the threat of an emergency protection order when issues would arise around TA's access to the child.

[25] The text exchange on April 10, 2024 is telling. At the review hearing, CL included only a portion of that text exchange in her affidavit. TA included the entire exchange in his affidavit. On that day, TA had refused to take the child because CL had previously denied him the opportunity to take the child for a 3-day weekend with his new girlfriend. TA indicated to CL that "if your not going to be letting me take her, I'm not going to be watching her" and "we can take this to court". In a series of exchanges that followed, CL repeatedly urges TA to come and get his daughter, noting the consequences to her of missing school, and using very strong language denigrating TA as a parent and as a person. In comparison, TA's response is muted. He did not respond to the highly provocative language used by CL. In one message on that day, CL states "if you don't come and get her like you are supposed to, then I will go and get an Emergency Protection Order on you for us and you won't even have the chance to see her again, let alone your trip". Ultimately, after repeatedly urging TA to pick up the child, CL stated at 11:31 a.m., "I have the epo in progress so you will be served as soon as it is approved". The emergency protection order was granted later that same day.

[26] It is abundantly clear that the emergency protection order was sought for reasons other than CL's fear of TA or concern with respect to the safety of her child. CL's text messages urging TA to come and care for the child are inconsistent with her evidence to the Justice of the Peace. Before the Justice of the Peace, she painted a picture of a growing concern with respect to her and the child's safety, prompted by increasing volatility on the part of TA, accompanied by his threats to take their

daughter. She failed to mention the fact that TA had been caring for the child on an almost daily basis since January 2024. Her evidence before the Justice of the Peace is inconsistent with the text messages in which she is repeatedly asking TA to come and care for the child, failing which, she would obtain an emergency protection order.

[27] Furthermore, I see no evidence that TA threatened to take the child as CL had alleged to the Justice of the Peace. To the contrary, TA took the position in their text exchange that he would not take the child unless he was given further access. On at least one occasion, he made reference to resolving issues through the court process. Additionally, the tenor of the text exchanges suggests that CL was the more aggressive party, repeatedly swearing at TA, calling him names, and threatening to cut off his relationship with his daughter. TA's responses are largely confined to information about his care for the child and he does not "rise to the bait" of CL's insults. Instead, he refers to the importance of keeping their communication focused on the needs of the child and their respective roles as parent.

[28] Therefore, while I find that there was family violence during the relationship, I am satisfied that there is no longer family violence occurring and that an emergency protection order is not required for the safety of the applicant or the child. As such, I vacate the emergency protection order, effectively immediately.

[29] Before I conclude, I want to highlight that emergency protection orders are not to be used as a weapon or a tool in custody battles. The ability to obtain an emergency protection order, without any notice to the other party, is an extraordinary remedy. These orders can have a profound impact on the person against whom an order is made without hearing their side of the story. In this case, TA had not seen the child from April 10th to May 2nd, despite having provided almost daily childcare for the first 3 months of the year. Access made after May 2nd needed to be coordinated through a third party until I had the opportunity to consider the material filed by the parties and to give my decision on May 10th. The lack of access and subsequent requirement for third party communications are significant impairments on a parent's ability to spend time with a child. While it is clear that CL and TA were struggling in their relationship with each other, the more appropriate course of action would have been to try to resolve custody and access issues, either through mediation, which is a free service offered by the Government of the Northwest Territories ("GNWT"), or by going to court. Additionally, the GNWT offers a free

program called “parenting after separation”. I recommend that program to CL and TA and hope they will both put aside their differences and act reasonably for their child's benefit.

[30] Lastly, I should indicate that it is obvious to me that these parties need to resolve issues around parenting time and that getting matters into court may take some time. In law, parents are equally entitled to custody and the law presumes that maximum contact with each parent is in the best interests of a child, unless there is evidence to the contrary. As I have set aside the emergency protection order , there is now no order setting out how TA is to spend time with the child. It is my hope that the parties will be able to agree on this issue, perhaps with the assistance of some of the extended family members and friends who have come out to support each party. If they are not able to agree, it will be necessary for the parties to apply to court for an order under family law legislation dealing with these issues.

S.M. MacPherson
J.S.C.

Dated at Yellowknife, NT, this
7th day of June, 2024

Self-Represented Applicant
Self-Represented Respondent

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