

SUPREME COURT OF YUKON

Citation: YG v VG, 2025 YKSC 11

Date: 20250217
S.C. No. 22-B0062
Registry: Whitehorse

BETWEEN:

Y.G.

PLAINTIFF

AND

V.G.

DEFENDANT

Before Chief Justice S.M. Duncan

Appearing on her own behalf

Y.G.

Counsel for the Defendant

Joselynn Fember

ENDORSEMENT

Introduction

[1] On Tuesday, February 11, 2025, I ordered that the Court of King's Bench of Alberta has jurisdiction in this matter, not the Supreme Court of Yukon. I advised the parties that I would provide my reasons in writing. Those reasons are as follows.

Background

[2] The plaintiff, Y.G. lives in the Yukon, and the defendant V.G. lives in Alberta. Shortly after they met online and began dating in August 2018, the plaintiff moved to Alberta to live with the defendant. They were married on August 11, 2019, in Edmonton, Alberta, and there is one child of the marriage, L.A.G., who is four years old. The plaintiff sold her house in Whitehorse, and the two bought their matrimonial home in

Carstairs, Alberta. The plaintiff worked at various jobs in Alberta, until she returned to Whitehorse in 2022, with their daughter, and advised the defendant that she would be staying in the Yukon.

[3] The plaintiff says in an affidavit sworn December 13, 2024, that she was forced to relocate to the Yukon to due the defendant's aggressive and violent behaviour between 2020 and February 2022. However, in an affidavit dated March 3, 2023, she said that the defendant drove her and their child to the airport and told them he would drive to the Yukon with their belongings in the summer but never showed up. She wrote "It was my understanding that the Defendant would be coming to the Yukon with us, and we would move here as a family. We separated while I was in the Yukon, and he was in Alberta as he never came up to the Yukon."

[4] The defendant says in his affidavit the plaintiff complained about living in Alberta after their daughter was born in part because of her struggle to find suitable work. Her complaints had increased by early 2022, and in January 2022 the plaintiff, while visiting family in the Yukon, called the defendant to say she planned to relocate to the Yukon with L.A.G. She would be assuming her previous employment with the Yukon government. According to the defendant, he objected to no avail and in March 2022, the plaintiff returned to the Yukon permanently over his objections. The defendant says the plaintiff sent him notice to leave the matrimonial home in Carstairs, blocked their bank cards belonging to jointly held accounts and told the defendant she wanted a divorce.

[5] In December 2022, the plaintiff filed a statement of claim in the Supreme Court of Yukon, seeking custody of L.A.G. and child support based on the *Children's Law Act*, RSY 2002, c 31 ("*Children's Law Act*"), in the Yukon. It was not a divorce proceeding;

this was not possible because she had not been resident in the Yukon for one year. The parties had also not yet been separated for one year, making that ground for divorce not yet available. The defendant did not respond to this statement of claim.

[6] Instead, the defendant filed a statement of claim in the Court of King's Bench of Alberta on February 14, 2023, seeking a divorce, a parenting order for L.A.G., an order for the return of L.A.G. to Alberta, child support, spousal support, and orders related to family property. The plaintiff filed a statement of defence through legal counsel in Alberta. She agreed to the divorce judgment and child support payments by the father. She contested the other relief. She also, through her lawyers, filed a response to the notice to disclose, including supporting financial documents. She did not object to the jurisdiction of the Alberta Court during these filings.

[7] Around the same time, the plaintiff brought an application in the Yukon file dated February 27, 2023, for child support. The defendant responded to this application by way of an affidavit prepared by a lawyer from Alberta representing him, but neither he nor his lawyer filed an appearance, and it was unclear whether the Alberta lawyer representing him was authorized to practice in the Yukon. In any event, the plaintiff did not pursue this application; instead, she travelled to Alberta in March 2023, and attempted unsuccessfully to reconcile with the defendant. This was evident by text messages between them from that time period filed by the defendant. The plaintiff returned to the Yukon in April 2023. The defendant deposed that she blocked attempted communication between the defendant and his family and L.A.G.

[8] In or around September 2023, the plaintiff complained to the RCMP who charged the defendant with assault, criminal harassment, sexual assault, and uttering threats

against the plaintiff between February or April 2021 and March 2022. A no contact order was put in place as part of the defendant's release conditions. On January 31, 2025, the Crown withdrew all charges in court on the basis of no reasonable likelihood of conviction. The Crown advised the defence counsel by email that her review of the text messages between the plaintiff and the defendant in January, March, April, and August 2023 caused her to withdraw the charges.

[9] The family matter came before the Supreme Court of Yukon in December 2024, through a new application brought by the plaintiff for decision-making responsibility, parenting time, child support, s. 7 expenses, and permission to travel with the child.

[10] The defendant filed a notice of appearance in the Yukon family file through his new counsel who is called to the Yukon bar. He contested the jurisdiction of this Court to hear the application. The only materials he filed are in support of his jurisdiction argument. He says the Alberta court has exclusive jurisdiction based on the divorce proceedings, including claims for corollary relief, filed in Alberta on February 14, 2023, and s. 4(2) of the *Divorce Act*, RSC 1985, c 3 ("*Divorce Act*"). He also says the claim brought by the plaintiff in the Yukon is not compliant with the *Divorce Act* and there were no applications for parenting orders at the time the Alberta claim was filed. Further, he says s. 41 of the *Children's Law Act* may apply, resulting in a stay of any application for custody of or access to a child because a *Divorce Act* action has been commenced, unless leave of the Court is granted. Finally, in the alternative, applying the *forum conveniens* factors results in the Alberta court being better placed to effectively and fairly deal with this case. In support of this, the defendant says, among other things, that L.A.G.'s habitual residence is Alberta; she was removed unilaterally without consent or

a court order by the plaintiff; and the plaintiff attorned to the jurisdiction of the Alberta court by filing a statement of defence and other materials without objection to its jurisdiction.

[11] The plaintiff made arguments on technical grounds. She requested an adjournment of the hearing scheduled for February 11, 2025, to decide jurisdiction, as ordered on January 21, 2025. Her adjournment request was based on her receipt of an unfiled copy of the affidavit materials from the defendant's counsel, and her receipt of the stamped filed copy only in the late evening of February 10, 2025. She said she did not know whether the two versions were the same. She wanted more time to respond to the affidavit of the defendant.

Analysis and Conclusion

i) Adjournment Request Denied

[12] The plaintiff's adjournment request is denied. The two affidavits of service filed by the defendant show the same documents as were filed in court were sent to the plaintiff. The plaintiff had six full days to file any response and chose not to do so. There have been two previous adjournments of this matter due to the jurisdictional issues. At the last court appearance on January 21, 2025, the February 11, 2025 hearing date was set and filing deadlines imposed.

ii) Jurisdiction of Alberta Court of King's Bench

[13] The only proceeding under the *Divorce Act* is the defendant's claim of February 14, 2023, which includes claims for corollary relief. The plaintiff's claim of December 9, 2022, is brought under territorial statutes and is not corollary relief under the *Divorce Act*, but it claims some of the same corollary relief as is claimed by the

defendant in the divorce proceeding. Although the Yukon claim was the first proceeding to be initiated, it does not properly or accurately reflect the relationship of the parties, who are married, and were not in a common law relationship. At the time of filing, the plaintiff could not initiate a claim in the Yukon under the *Divorce Act* because she had not yet been habitually resident in the Yukon – that is, for one year before commencing proceedings. The two applications brought by the plaintiff in February 2023 and December 2024 arise from the common law statement of claim, although by February 2023, the plaintiff was habitually resident in the Yukon and could have brought her claim under the *Divorce Act*. The failure of the plaintiff to amend her claim to bring it under the *Divorce Act* means that her applications are not properly constituted. Further, the defendant's action in Alberta, seeking the same corollary relief, properly constituted under the *Divorce Act* is the appropriate place for these matters to be adjudicated.

[14] This conclusion is reinforced by the intentions of the legislature made clear by the *Children's Law Act* and the *Family Property and Support Act*, RSY 2002, c 83. They both provide for stays of applications brought under the respective legislation once a divorce action is commenced. Section 41 of the *Children's Law Act* states that an application for custody and access to a child is stayed by the commencement of a divorce action, which includes an application for custody of or access to that child, unless the court grants leave for the application to be continued separately from the divorce action. Section 40 of the *Family Property and Support Act* provides that if an action for divorce is commenced under the *Divorce Act*, any application for support or custody under the territorial statute is stayed except by leave of the Supreme Court.

[15] Even if the applications for support and custody were properly constituted, this would not be an appropriate case for the Court to grant leave to lift the stays required by the territorial statutes because:

- The plaintiff's affidavits are contradictory and the first affidavit closer to the time of separation provides no indication of domestic violence as a reason for leaving Alberta for the Yukon – instead, it suggests that the plan was to move as a family and the defendant chose not to do so. Only after the failed reconciliation attempt in March 2023 and over the following months until August 2023 through texts did the plaintiff allege she was forced to leave Alberta because of violence. It was not until early September 2023 that she laid a complaint with the RCMP leading to the criminal charges against the defendant, which were ultimately withdrawn because of no reasonable likelihood of conviction. The defendant is consistent in his evidence and the relief sought in his statement of claim that the plaintiff wrongfully removed the child from Alberta to the Yukon without his consent or a court order. The consideration of fair and proper administration of justice means that a party should not be “rewarded” for wrongfully removing the child from the family home without consent or an order and seemingly without justification, by adjudicating the dispute in the place where she has established a new life.
- The plaintiff attorned to the jurisdiction of Alberta in 2023 by filing a statement of defence to the claim for divorce, agreeing to the divorce, and filing a response to disclosure. She did not object to the proceedings. By

contrast, the defendant did not attend to the Yukon – his affidavit in 2023 was attempted to be filed without an appearance and his lawyer at the time may not have been authorized to practice in the Yukon. His appearance and that of his new lawyer when filed recently was only to contest jurisdiction;

- Alberta was the only place where the family resided together and evidence of their relationship from others is available there. It was and is the habitual residence of the defendant: he has lived there since 2012 and continues to live there. There are strongly disputed family violence allegations. Resolving these, including the credibility issues around these allegations, is more appropriately done in Alberta, where there are witnesses to their relationship and where the relationship began and ended.
- The Court of King's Bench of Alberta allows for remote court appearances. The pleadings in Alberta are further advanced than those in the Yukon and do not require amendment as they are procedurally compliant with the *Divorce Act*.

[16] For these reasons, the Court of King's Bench of Alberta has jurisdiction over this matter.

DUNCAN C.J.