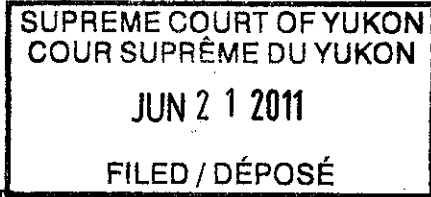


SUPREME COURT OF YUKON

Citation: *Town of Faro v. Knapp, Dufresne et al*,
2011 YKSC 52

Date: 20110418
S.C. No. 10-A0109
Registry: Whitehorse

BETWEEN:



TOWN OF FARO

Petitioner

AND:

**ANGELIKA KNAPP dba A. KNAPP ACCOUNTING SERVICES
and NORTH STAR ADVENTURES, a partnership between
ANGELIKA KNAPP and ERIC DUFRESNE,
ANGELIKA KNAPP and ERIC DUFRESNE**

Respondents

Before: Mr. Justice L.F. Gower

Appearances:
Debbie Hoffman
Angelika Knapp
Eric Dufresne

Counsel for the Petitioner
Appearing on her own behalf
Appearing on his own behalf

**RULING ON APPLICATION
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): This is an application by the respondents, principally Angelika Knapp, for an adjournment of the hearing of the Town's petition, and a cross-application by the respondents to dismiss the petition and to vary an earlier order of Justice Veale made at a case management conference on November 30, 2010. The two grounds for the adjournment application are alleged non-compliance by the Town with the *Rules of Court*, and medical reasons pertaining to Ms. Knapp.

[2] I will deal with the alleged non-compliance first. The respondents say that the Town did not file a response Form 11, as required by Rule 47(6). They also say that the requirement to file a response was something that the Town insisted on in response to its own petition. In other words, the respondents submit that they were required under the *Rules of Court* to file a response in that context, but that the Town now says that it was not required to file a response to the respondents' application. The Town submits that it made it clear verbally, on the record, that they intended to oppose the respondents' application, but would not be filling any affidavits, and therefore, there was no need to file a response. This confused Ms. Knapp and, to some extent, understandably so, because she is not a lawyer and both respondents are representing themselves. I have some sympathy for her confusion in that context. But, at the end of the day, it seems clear to me, in the context of all of the various case management conferences which were held following the filing of the petition, (These were on November 2, and 30, 2010, and on January 13 and 24, 2011, and I presided at all but one of them) that the respondents would be filing responsive affidavit material to contest the petition. So, in those circumstances, it made sense that they file a response, because their failure to file a response would create a technical reason for the Town to object to the filing of any affidavit material by the respondents in response to the petition, which would not have been fair to the respondents.

[3] In all of the circumstances and in the context of all of the case management conferences that have been held, it seems to me that the Town's non-compliance with Rule 47(6) is a technicality; it is an irregularity, and by reliance on Rule 1(14), 1(6) and Rule 2(1), I give it no force and effect.

[4] The second alleged non-compliance is that the Town failed to file an outline as required by Rule 48(10). Again, Ms. Knapp makes a good point in saying that, under subrule (10), if the application will be opposed and the applicant or any respondent, including these respondents, have estimated that the time required for the hearing will be more than 30 minutes, then the applicant and each respondent must prepare an outline in Form 104, et cetera.

[5] The Town's initial position in response to this point was that they have always presumed, put on the record, and noted in the petition itself, that the matter was straightforward and would not take more than 30 minutes; therefore, they were not required to file an outline. But, having had Rule 48(10) brought to my attention this morning, it is clear that if either party feels that the matter will be in excess of 30 minutes, then it raises the issue of whether outlines are required. So, that is a fair point for Ms. Knapp to have raised.

[6] What is less understandable is why this point is only being raised now, virtually at the 11th hour, before the potential hearing of the petition. There have been several case management conferences which have addressed the filing of various materials and responsive materials and materials in reply to responsive materials, and so on. At no time before now am I aware that the issue of an outline was raised. Counsel for the Town informs me that all of the material which they intend to rely on, on the hearing of the petition, is before the Court. Noting that this matter has been case managed all along, the Town takes the position that there can be no prejudice to the respondents from the failure of the Town to file an outline, and that there is no ambush by the Town against the respondents, as was argued by Ms. Knapp this morning.

[7] I agree with that argument. If anything, this is being raised as a tactical point by Ms. Knapp at the very 11th hour, and I cannot see that she is significantly prejudiced by the absence of outlines in this case.

[8] From what I am aware of the nature of the issues, having read the previous decisions of Justice Groberman and the Court of Appeal, the issues are fairly straightforward and are not such that I feel that the Court would be disadvantaged, or the respondents will be significantly prejudiced, by the absence of outlines. So again, relying on Rules 1(6), 1(14) and Rule 2(1), I dismiss this point as a reason for an adjournment.

[9] I next turn to the more difficult ground put forward for the adjournment, and that deals with Ms. Knapp's personal medical reasons. Here, she relies on certain medical reports or psychological reports that were filed when this application was initially made before Justice Veale last Wednesday. Those include two letters to Richard Buchan, dated April 12, 2011 and September 10, 2010, as well as a note or a memo from Dr. Quong, dated April 6, 2011. Ms. Knapp also spoke about the stress of a potential eviction from their property in Faro, depending upon the outcome of the petition. She spoke about the stress from multiple legal matters and specific mention was made of the motor vehicle action. This was the topic of the application for an adjournment made by Ms. Knapp on January 24, 2011, at a case management conference before me, which application was dismissed. She also spoke of the stress of self-representation and indicated in somewhat vague terms that a period of four to six weeks would be probably adequate for an adjournment. Essentially, what she was asking for was a sufficient length of time so that her health is stabilized. Her next medical appointment is

set for the 27th of April.

[10] Once again, I am sympathetic to the situation that Ms. Knapp finds herself in for the reasons that she stated. However, I also have to have regard to the entire context of this litigation: the history of the litigation since the filing of the petition on October 29, 2010; the original decision of Justice Groberman from 2009; the Court of Appeal decision in August of 2010; as well as the entire history of the legal dispute between the respondents and the Town, which goes back to 2002. This is a matter that is clearly long in the tooth and needs to be resolved in the public interest. While Ms. Knapp and Mr. Dufresne clearly have interests that need to be addressed, so do the taxpayers of the Town of Faro, as I have indicated in a previous ruling. Those statements regarding the nature of the public interest in this case have been clear and on the record, and Ms. Knapp has known about them since they were made in my ruling of November 2, 2010. It should come as no surprise to her that the Court would still favour giving priority to this matter going ahead for that reason alone.

[11] The other thing that concerns me is that the reasons that Ms. Knapp has stated today in support of the adjournment for medical purposes include the stress from a potential eviction, the multiple other legal matters that she is involved in, and the stress of self-representation. Yet, all of those stressors have been present since the filing of the petition last October. They have been present during every one of the case management conferences that have been held. With the exception of the January 24th case management conference where Ms. Knapp sought an adjournment to deal with the motor vehicle action, there was no mention of these stressors or medical reasons having an adverse impact upon her or making her unable to deal with any of the case

management appearances, or the potential hearing coming up in April. The fact that the stress of the legal proceedings and her self-representation was alluded to on January 24th is also significant in that it was a live issue for her then, but there was no reference made to there being additional medical or psychological reasons underlying the request.

[12] The reason I say that is significant is because of the report filed by Ms. Knapp from Marilyn Smith, dated April 12, 2011. That report indicates that Ms. Knapp has been seen by Ms. Smith in 2007, and again, it looks like on September 1, 2010, and then, more recently, on March 24, 2011, and April 5, 2011. The problems that Ms. Smith identifies in that letter have been alive and known to Ms. Knapp for some time. She was initially assessed as having depression on September 1, 2010. That history has been known to her and been a factor for some time. Yet, this has not been raised as a reason for her inability to proceed until this morning.

[13] The report from Dr. Quong says that Ms. Knapp has been given new medication as of April 6, 2011, and will be under his supervision for the next three months, and then he states:

"I would recommend that she minimize her life stressors over the next few months until she is stabilized on the new medication."

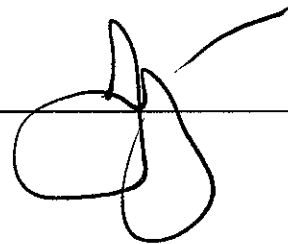
While Dr. Quong says that, and Ms. Smith makes similar comments in her letter, neither of the professionals has said this woman is unable to proceed with the legal matters which are now before me. It is not a perfect world, and legal matters are stressful, but there has to be a level playing field. Both parties are entitled to their day in court and to have the matter dealt with as expeditiously and fairly as possible.

[14] This matter was adjourned for a lengthy period from January 13th to today to accommodate the respondents, and, in particular, Mr. Dufresne and his work schedule, and Ms. Knapp's need to have his assistance in responding to the Town's application. A further adjournment would certainly delay the matter. My fear is, given the vagueness of Ms. Knapp's position as stated to me this morning, that if it is adjourned for a period of four to six weeks, until she sees her doctor again on April 27th, we will be met with yet another application for an adjournment for continuing medical issues. That lack of certainty as to her prognosis, if you will, is also a factor.

[15] The final point that I would make is that Ms. Knapp's appearance this morning with her binders of documents and her eloquent and thoughtful submissions on the alleged non-compliance with the *Rules* indicates to me that she is capable of speaking on her own behalf and on behalf of Mr. Dufresne, and that she is not incapacitated by these medical issues.

[16] For all of those reasons, I am denying the application for an adjournment for the grounds stated.

GOWER J.

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