IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Bjork* v. *Bjork*, 2005 YKSC 12 Date: 20050208
Docket: S.C. No.: 04-AP012
Registry: Whitehorse

BETWEEN:

CALLI BJORK

Victim

AND:

HOWARD BJORK

Respondent

Before: Mr. Justice L.F. Gower

Appearances:
Debbie P. Hoffman For the Victim
Kathy M. Kinchen For the Respondent

MEMORANDUM OF RULING
DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is an application by Mr. Bjork under s. 8 of the *Family Violence Prevention Act*, R.S.Y. 2002, c. 84 (the "Act"), for a review of an Emergency Intervention Order made January 31, 2005, on the application of Calli Bjork. The notice of Mr. Bjork's application was only served on Ms. Bjork this past Saturday, February 5, 2005, and she, through her counsel, has said that she has not had sufficient opportunity to provide an affidavit in response. However, she is also saying that she is

not seeking an adjournment of Mr. Bjork's application and is prepared to agree to some terms.

[2] The significant outstanding matters that are in dispute are the extent of the access sought by Mr. Bjork to the two children, aged three and 17 months, respectively, as well as seeking some financial information and interim child support.

[3] The original application for the Emergency Intervention Order was completed by Ms. Bjork on January 31, 2005, in which she makes a number of allegations of physical abuse and verbal abuse by Mr. Bjork starting in 2000 and then again in 2001, 2002, 2003, 2004, and, most recently, on January 30, 2005.

[4] The order was granted by a justice of the peace on January 31, 2005, the same day the application was made.The *Act* allows such an application to be made without notice to the respondent. It was, in due course, confirmed by a Territorial Court judge on February 1, 2005, as required by the *Act*.

[5] The *Act* further allows the respondent to apply to vary such an order under s. 8, but does not specify any notice period for that type of application.The *Act* also allows for Emergency Intervention Orders of relatively short duration. In this case, the order is to last for a period of 45 days, which means it will be in force until March 15, 2005. Orders can be made for shorter or longer periods than that, but it is my observation and impression that the legislative scheme generally contemplates relatively short orders. Therefore, applications to vary would necessarily have to be made on relatively short notice to the original applicant.

[6] In this case, there is a complication in that Mr. Bjork's counsel is scheduled to leave the jurisdiction starting tomorrow and will not be returning until the end of February. Although she has indicated she has instructions to, in due course, file an application under the *Divorce Act,* R.S. 1985, c. 3*,* such an application will not be possible until she returns and probably would not be in court for about a month. In the interim, Mr. Bjork seeks a greater period of access to his children, as well as a couple of other conditions that are agreed to and I will speak about later. Currently, the access under the Order says that he is allowed "visitation with children, [B.] and [P.], to be arranged through third party, Tawnya Griffiths, and visits limited to three hours." And both parties are prevented from removing the children from the Yukon Territory.

[7] Mr. Bjork seeks to extend that so that he has access to the children from Thursday morning through to Sunday morning each week, with the exchange of the children to be accomplished at his parents' home; and for his parents to be the third parties to arrange for the children to be taken back to Ms. Bjork, if necessary.

[8] The original application made by Ms. Bjork, as I said, was made without notice as contemplated by the *Act*. The standard of proof on such an application is on a balance of probabilities, and I have already mentioned that Ms. Bjork has alleged a number of incidents of physical abuse and some verbal abuse by Mr. Bjork against her. Ms. Bjork's counsel submits that it is implicit in her evidence, as recorded in the application for the Emergency Intervention Order, which is on file in the Territorial Court and is before this Court, that some of that violence could have taken place in the presence of the children. Therefore, says Ms. Bjork's counsel, it would not be in the best interests of the children

to have significantly increased access at this point because of the risk that Mr. Bjork is not a suitable parent.

[9] Mr. Bjork, on the other hand, has made allegations of abuse inflicted upon him by Ms. Bjork. His affidavit refers to having been punched, screamed at, scratched and belittled by her. He alleges that she may suffer some type of an emotional problem and refers to her state becoming worse after she stopped taking medication. He alleges that she physically abused the family dog in front of the children, to the point where he had to move the dog to his parents' home to protect it.

[10] Ms. Hoffman, on Ms. Bjork's behalf, just today filed an affidavit attaching a letter from one Alan Kidd, which is undated but refers to an incident involving Mr. Bjork on or about December 21, 2003. It is an internal memorandum with, what I assume was Mr. Bjork's then employer, North 60 Petro Ltd. It refers to a written complaint from another employee alleging threats and abusive behaviour on Mr. Bjork's part. Ms. Hoffman submits that this is some corroborative evidence of Mr. Bjork exhibiting controlling and abusive behaviour, not only in the home, but also in his workplace.

[11] On the other hand, as Mr. Bjork's counsel submits, we do not know the context of this letter. It appears to be somewhat dated. Also, it is difficult to transfer, if you like, allegations of conduct or attitude in a workplace context to a home front context. In the former there may be specific triggers and situations which are very different from the latter. Accordingly, I give that letter little weight on this application.

[12] Really, the issue on the access is the extent and duration of it. Ms. Bjork is not taking the position that Mr. Bjork is not entitled to an increase in the access. However,

she would like the access to take place on Tuesdays and Thursdays between 4:00 and 7:30 p.m. Also, for the older child, every second Saturday from 10:00 a.m. to 10:00 p.m. and for the younger child, in the intervening Saturdays from 10:00 a.m. to 7:30 p.m. The problem with that proposal is that I am told it will interfere significantly with Mr. Bjork's ability to earn an income. He is a self-employed truck driver and, as I understand it, he is generally on the road for three to four days at a time, or longer, and anticipates arranging his schedule so that he can leave on Sundays and return on Thursdays. So, access on Tuesdays and Thursdays would significantly interrupt his work schedule.

[13] He also submits through his counsel that he should not be denied, on the basis of the allegations in support of the Emergency Intervention Order, the maximum possible contact with his children since there is no specific reference to him being a risk to his children. And, insofar that an inference can be made that some of this alleged violence may have taken place in the presence of the children, that must be balanced with Mr. Bjork's allegations of violence by Ms. Bjork, some of which, for example the incident with the pet, may also have occurred in front of the children. So I am not sure how much I can make of these mutual allegations.

[14] I appreciate that Mr. Bjork has the onus in this application, but given the legislative scheme that is in play and given that we are talking about varying what is originally an order made without notice, it is my view that the burden of proof on Mr. Bjork here is relatively low. I also note that the particular type of variation he is seeking, in principle, is not opposed by Ms. Bjork. It is only the specific times and dates that are at issue.

[15] So, on the question of access, I am going to order that the Emergency Intervention Order be varied to allow Mr. Bjork access to both children from Friday morning to Sunday morning each week. The exchange of the children will take place either at his parents' home or with his parents' assistance so that there is no need for any direct contact between the parties in exchanging the children. I was not provided with the precise time that access is to commence and cease on the respective mornings, but I will leave it to counsel to include that in the order which will follow.

[16] The next issue which is in dispute relates to financial matters and child support. Ms. Bjork intends to make an application for child support when this matter comes back in about a month's time. In the interim, she is seeking financial disclosure pursuant to s. 21 of the *Child Support Guidelines*.

[17] Upon a review of the *Act*, s. 8 authorizes this Court to do one of four things:

a) make changes in, additions to or deletions from the provisions contained in the order;

b) decrease or extend the period for which any provision in an order is to remain in force;

c) terminate any provision in an order; or

d) revoke the order.

In paragraph a), the reference to "additions to . . . the order" seems to tie back to the originating Court's jurisdiction when an order is granted as set out in s. 4(3) of the *Act* in paragraphs (a) through (f).

[18] There is a general provision at s. 4(3)(f):

> any other provision that the designated justice of the peace considers necessary to provide for the immediate protection of the victim.

And then subsection 4 continues,

> An emergency intervention order may be subject to any terms that the designated justice of the peace considers appropriate,

Reading ss. 8 and 4 together, particularly s. 4(4), I am satisfied that I have the jurisdiction to add any terms that I consider appropriate, including an order for the disclosure of the financial information required by s. 21 of the *Child Support Guidelines.* I do so order and direct that the information be provided to Ms. Bjork before this matter is returned to court.

[19] That leaves the last question, which is the question of interim child support. Ms. Bjork, through her counsel, asked for $1,000 in interim child support based on an estimated or imputed income of $80,000 gross for Mr. Bjork. That is based upon Ms. Bjork's application for the Emergency Intervention Order, where she alleged that Mr. Bjork, as a trucker, nets between $60,000 to $100,000 per year.

[20] In response to that application, Mr. Bjork's counsel says that he did not take issue with that allegation about the amount of his income because he was not expecting to deal with the issue of interim child support on this application. She also says he has been self-employed since last fall, which apparently is supported by the affidavit. There has also been some interruption in his self-employment as a result of these proceedings, which means that if he does not work, he does not earn income. His counsel says I

should take that into account as well as the facts that Ms. Bjork already has exclusive possession of the family home, that Mr. Bjork is paying the mortgage and is paying the motor vehicle payments, and that all household expenses, with the exception of groceries, are being covered by Mr. Bjork, apparently on a voluntary basis.

[21] On the other hand, on this application I must also take into account what is in the best interests of the children. I therefore conclude that it would be appropriate to order Mr. Bjork to make an interim child support payment. I will limit that to the amount of $500, to be paid to Ms. Bjork by February 28, 2005.

[22] Now, counsel, just help me out. Are we adjourning this application then to be heard at the same time as your anticipated application under the *Divorce Act*?

[23] MS. KINCHEN: Yes, that's what I would like to do.

[24] THE COURT: All right, so the balance of this application, then, is to be adjourned. Is that what we are effectively doing? To a date to be determined?

[25] MS. KINCHEN: With the trial coordinator. My Lord, I think we still need something said about the access to the family home, although we have --

[26] THE COURT: Oh, I am sorry, yes. The two terms that I alluded to earlier, which are essentially agreed to are that Mr. Bjork will have access to the family home. That access will take place today as soon as the order is prepared and filed. The purpose of the access is to retrieve his outstanding personal property which, I understand, involves clothing and other belongings. He is to attend in the presence of an

RCMP member, and provide Ms. Bjork or her family prior notice of his attendance and when he will attend.

[27] The last item which is agreed to is that there is to be a condition restraining both parties from disposing of any communal or matrimonial assets on an interim basis. Does that cover it?

[28] Thank you.

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GOWER J.