

SUPREME COURT OF YUKON

Citation: *Vachon v. Hartland*, 2018 YKSC 23

Date: 20180502
S.C. No. 17-AP016
Registry: Whitehorse

BETWEEN

YOLANDE DENISE VACHON

APPELLANT

AND

SAMSON HARTLAND

RESPONDENT

Before Mr. Justice R.S. Veale

Appearances:

Yolande Denise Vachon

Joni Ellerton

Appearing on her own behalf
Counsel for the respondent

REASONS FOR JUDGMENT

INTRODUCTION

[1] Ms. Vachon appeals an order of the Territorial Court of Yukon dated January 26, 2018 that added two conditions to the peace bond she entered into in July 2017.

Ms. Vachon, who is self-represented, seeks to have these two conditions removed from her peace bond.

[2] Ms. Vachon also applies to have fresh evidence adduced on appeal, namely a sworn affidavit dated March 29, 2018.

[3] This appeal was argued in writing. Both parties filed written submissions with the court. The Court also reviewed the affidavit filed by Mr. Hartland on December 11, 2017,

in support of his application to the Territorial Court, as well as the audio tape of the hearing on January 26, 2018.

BACKGROUND

[4] On July 20, 2017, Ms. Vachon, who was represented by counsel, agreed to enter into a peace bond in the amount of \$500 no deposit on the following terms:

1. Have no contact directly or indirectly or communication with Samson Hartland or any member of his immediate family.
2. Not attend any known place of residence or any other private address you know Samson Hartland to be at.
3. Do not take photos of Samson Hartland or his immediate family.

[5] Ms. Vachon appealed that order on a number of grounds. Her appeal was dismissed by this Court on November 14, 2017.

[6] In December 2017, Mr. Hartland applied to have Ms. Vachon's peace bond varied pursuant to s. 810(4.1) of the *Criminal Code* (the "Code"). Mr. Hartland filed an affidavit in support of his application. That affidavit was disclosed to Ms. Vachon prior to the application being heard.

[7] The application proceeded before the Territorial Court on January 26, 2018.

Mr. Hartland testified about the events mentioned in his affidavit and was cross-examined by Ms. Vachon, who represented herself. Ms. Vachon also testified at the hearing. She was not cross-examined by counsel for Mr. Hartland.

[8] The following is based on Mr. Hartland's testimony and the content of his affidavit. Mr. Hartland is the Executive Director of the Yukon Chamber of Mines as well as a city councillor. He has known Ms. Vachon for approximately fifteen years, through

work and community events. While their relationship was friendly for most of this time, Ms. Vachon recently started making threats against him and his family, and this led him to seek the peace bond that was ultimately granted in July 2017. Despite the peace bond being in place, Ms. Vachon has continued to attend places at which she knows Mr. Hartland will also be present. During the third week of November 2017, Ms. Vachon attended the Geoscience Forum that is hosted by the Yukon Chamber of Mines where she knew Mr. Hartland would be. Mr. Hartland's family also attended parts of the event. Mr. Hartland found himself in close proximity to Ms. Vachon on one or two occasions during the event. Mr. Hartland also indicated that he arrived at the trade show one day to learn from staff that Ms. Vachon had become upset and caused a scene upon being refused a membership renewal and entrance to the delegate talks Mr. Hartland was moderating. The following week, she attended his workplace at the Yukon Chamber of Mines, despite having previously been barred from the premises, and asked to be reinstated as a member. Mr. Hartland further testified that Ms. Vachon made a scene when his assistant refused to renew her membership and that the situation escalated to the point where he had to call the RCMP. The RCMP attended but indicated to Mr. Hartland that they would not lay a charge against Ms. Vachon because she had contacted the RCMP prior to attending the Yukon Chamber of Mines and, based on her explanation, had obtained their "blessing" to attend the office. Mr. Hartland, who is a city councillor, also testified that Ms. Vachon continues to attend city council meetings and has approached other members of city council about him. Mr. Hartland was also told by a member of city council that Ms. Vachon only attends council meetings when he is in attendance. Mr. Hartland testified that his family still does not feel safe. He further

indicated that unless the situation changes he will not take his wife and children to public events he is involved with as he continues to fear for their safety.

[9] In her testimony, Ms. Vachon acknowledged attending the Geoscience Forum, which she attends every year, and the Chamber of Mines' office. She indicated that she was told by the court that she could attend the Geoscience Forum as long as she did not speak to Mr. Hartland. She also indicated that the court personnel told her that she could attend the Yukon Chamber of Mines to renew her membership and confirmed same with the RCMP before she went to the Chamber of Mines' office to renew her membership. However, she testified that she has known for a certain time that she is no longer welcome at the Chamber of Mines' office. She indicated that she did not raise her voice, only asked that they explain why they would not renew her membership. She said that she does not know where Mr. Hartland lives and does not, nor has she ever attempted to, follow him around. Ms. Vachon indicated that she is not tempted to go talk to Mr. Hartland's wife because it makes her stomach turn. Ms. Vachon also declared that she does not deserve to be bound by a peace bond. She further stated that she is fine with not speaking to Mr. Hartland and not attending his office. She indicated that she does however have an interest in going to city council and legislative assembly meetings.

[10] At the end of the hearing, the presiding judge concluded: "... that the preponderance of evidence demonstrates that the applicant and his family continue to have reasons to seek some space between themselves and Ms. Vachon.", and that further conditions are required to delineate what Ms. Vachon's "responsibilities are in abiding by that bond". The hearing judge granted the application and added to

Ms. Vachon's peace bond the two conditions that had been requested by the applicant, namely:

1. Do not attend within 10 metres of Samson Hartland or any member of his immediate family;
2. Do not attend any known place of residence, place of employment or any other address you know Samson Hartland to be at. (my emphasis)

[11] It is these two conditions that Ms. Vachon seeks to have removed from her peace bond.

ISSUES

Issue 1: Should Ms. Vachon's affidavit dated March 29, 2018 be allowed in as fresh evidence on appeal?

Issue 2: Did the Territorial Court judge err in determining that Ms. Vachon's peace bond should be varied?

Issue 1: Should Ms. Vachon's affidavit dated March 29, 2018 be allowed in as fresh evidence on appeal?

[12] The test for allowing fresh evidence on appeal is set out in *R. v. Palmer*, [1980] 1 S.C.R. 759 ("*Palmer*"), at page 775:

1. The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial;
2. The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
3. The evidence must be credible in the sense that it is reasonably capable of belief; and

4. It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[13] After reviewing Ms. Vachon's affidavit, I find that it does not meet the test set out in *Palmer*. The content of her affidavit as well as exhibits A, B, C, E and F to her affidavit are not relevant to the question at issue in this proceeding. As for the letter of one of the assistant clerks of the city of Whitehorse indicating that Ms. Vachon attends city council meetings even when Mr. Hartland is absent; (1) it is not in the form of an affidavit, and (2) it could have been adduced at the hearing, as Ms. Vachon's attendance at city council meetings was noted in Mr. Hartland's affidavit that was disclosed to Ms. Vachon prior to the hearing.

[14] Ms. Vachon's application to adduce fresh evidence on appeal is therefore denied.

Issue 2: Did the Territorial Court judge err in determining that Ms. Vachon's peace bond should be varied?

Standard of review

[15] This is a summary conviction appeal pursuant to s. 813 of the *Code*, as s. 810(5) of the *Code* provides that the rules under Part XXVII ("summary convictions") of the *Code* also apply to peace bond proceedings.

[16] Errors of fact and errors of mixed fact and law are subject to the standard of palpable and overriding error. As the Supreme Court of Canada stated in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, at para. 36.

... The general rule, as stated in *Jaegli Enterprises*, *supra*, is that, where the issue on appeal involves the trial judge's interpretation of the evidence as a whole, it should not be overturned absent palpable and overriding error.

ANALYSIS

[17] I must determine whether the hearing judge erred when he ordered the following two conditions be added to Ms. Vachon's peace bond:

1. Do not attend within 10 metres of Samson Hartland or any member of his immediate family;
2. Do not attend any known place of residence, place of employment or any other address you know Samson Hartland to be at. (my emphasis)

[18] A peace bond is a preventive measure aimed at preventing harm. The restrictions that can be imposed pursuant to s. 810 are therefore "tailored to prevent contact" between the applicant and the person subject to the order. See *R. et al. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.), at paras. 31 and 32.

[19] The standard of proof for an order pursuant to s. 810 is on a balance of probabilities. *R. v. Budreo*, supra, at para. 22, *R. v. Soungie*, 2003 ABPC 121, at paras. 34 & 40

[20] Pursuant to s 810 (4.1) of the *Code*:

(4.1)The justice or the summary conviction court may, on application of the informant or the defendant, vary the conditions fixed in the recognizance.

[21] Pursuant to s. 810 (3.2) of the *Code*, a justice or a summary conviction court shall consider whether it is desirable, in the interests of the safety of the informant, the person on whose behalf the information was laid or that person's spouse, common-law partner or child, as the case may be, to add to the recognizance a condition prohibiting the defendant from being at or within a certain distance of a place where the informant, the person on whose behalf the information was laid or that person's spouse, common-

law partner or child is regularly found; and/or prohibiting the defendant from communicating, in whole or in part, directly or indirectly with any of them.

[22] Ms. Vachon contends that the judge failed to take into account her testimony that she did not breach her peace bond; that she was allowed to go to the Geoscience Forum; and that she was allowed to renew her membership at the Chamber of Mines. Accordingly, there was no reason to add further restrictions upon her.

[23] Counsel for Mr. Hartland submits the issue before the Court is one of mixed fact and law and the judge's decision is therefore entitled to significant deference. Counsel relies on the decision of the Supreme Court of British Columbia in *R. v. Louis*, 2014 BCSC 1029 (leave ref'd 2015 BCCA 225), to argue that a condition will be reasonable if there is an adequate nexus between it and the circumstances surrounding the issuance of the order. Counsel further submits that there was ample evidence of ongoing contact following the issuance of the peace bond adduced at the hearing to support the imposition of stricter conditions on Ms. Vachon.

[24] I agree with the Respondent. I find that the evidence as a whole demonstrates that, despite being placed on a peace bond that prevented her from having contact directly or indirectly with Mr. Hartland and his immediate family, Ms. Vachon chose on a number of occasions to attend places and events where she knew Mr. Hartland would be. It matters not that she did not attempt to speak directly to him, or contacted court and RCMP officials prior to attending the Geoscience Forum and the Yukon Chamber of Mines. She did not try to avoid contact with Mr. Hartland. Instead, she put herself in situations where contact was likely to occur and, in fact, did occur.

[25] I also agree that the evidence shows that because of these ongoing events, Mr. Hartland continues to reasonably fear for the safety of his immediate family (his wife and children) and that they have reasons to seek some space between themselves and Ms. Vachon.

[26] The evidence supports the conclusion of the hearing judge that on a balance of probabilities the imposition of the further two conditions was warranted to better clarify and delineate Ms. Vachon's responsibilities under the peace bond and for the peace bond to have effect. These two conditions are reasonable in that they are linked to the circumstances that were put before the Court and are aimed at preventing further contact between Ms. Vachon and Mr. Hartland and his immediate family for the duration of the order. Overall, I agree that these two conditions are desirable in the interests of the safety of the Respondent, his wife and his children.

[27] Finally, I shall note that the judge took the time at the end of the hearing to answer Ms. Vachon's questions regarding the scope of her new peace bond conditions. He explained the distance she should leave between herself and Mr. Hartland and his family should she inadvertently encounter them on the street. He reiterated that she could go about living her life and was only precluded from attending any address where she knew Mr. Hartland would be at, including his place of employment. Nothing less but nothing more.

[28] I would therefore dismiss the appeal