

**PUBLICATION OF IDENTIFYING INFORMATION
IS PROHIBITED BY SECTION 172 OF
THE CHILDREN'S ACT**

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

S.M.J.K.

Plaintiff

AND:

G.A.F.

Defendant

Christina Sutherland

Appearing for the Plaintiff

No one appearing for the Defendant

**MEMORANDUM FOR JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is an *ex parte* application to terminate the access of the father to his child. This has been a very troubling case about the access to a young child named R. who is almost two years old. His mother had a brief common law relationship with his father from the fall of 1999 to an undetermined date in 2001, but certainly no later than October of 2001, when this proceeding was commenced by the mother.

[2] There has been no question that the mother is the primary care giver for the child and the issue to be addressed is the access, if any, to be granted to the father.

[3] Following June 2001, the father exercised access on a weekly basis supervised by the mother. The child, of course, at that time, was very young. However, the access was always taken as an opportunity by the father to pressure the mother into continuing the relationship with him, which she clearly wanted to terminate. The mother says that sexual intercourse occurred after June 2001, more from fear than any desire to continue a relationship or reconcile with him. She describes the relationship as one of the father making constant sexual demands and questioning her faithfulness. He has an explosive temper, according to the mother. As the judge who has been seized on most of the interim applications, I am well aware of that temper. On one recent occasion, the husband was self represented at the time, he stormed out of the courtroom as I was ordering his first overnight access to the child. The mother also describes the father's brutality to animals as does another guide at the father's outfitting business.

[4] However, I have great concern about the father's continued harassment of the mother, who clearly wants to terminate their relationship. Her intention to end the relationship was clearly spelled out in a letter dated October 23, 2001, to the father. There is no doubt that the father wishes to continue the relationship and continues to press unwanted attention on the mother. However, recent events are far more serious and troubling.

[5] It is well accepted and I take judicial notice of the fact that unwanted advances and contact by a spouse long after separation indicate a serious escalation of the conduct of the father that should not be ignored. The sequence of events is as

follows:

1. On June 11, 2002, the father was angry when R. was delivered to him by the mother, to the extent that she reported this to the R.C.M.P.
2. On June 12, 2002, the father appeared at a store where the mother was buying gas and attempted to speak with her. She formed the opinion that the father was following her and reported it to the R.C.M.P.
3. The father reported this incident to the R.C.M.P. alleging that the mother shouted accusations at him, which appears to be untrue.
4. Following the mother giving a statement to the R.C.M.P. on June 13, 2002, the father was following the mother in his vehicle and attempted to stop her.
5. The mother reported this incident to the R.C.M.P., who intervened to pick up R. from a babysitter and the mother and R. stayed away from home for safety reasons for several days.
6. On the instructions of the R.C.M.P., the scheduled weekend access did not take place in June 15 and 16, or on June 18, 2002.
7. The mother has expressed the fear that the father may harm her or R. in retaliation against her.
8. As further background, the parties had apparently recently negotiated a Consent Order by way of a judicial settlement conference. The order has not been entered.
9. The father has also sent three letters to the lawyer for the mother seeking to negotiate an agreement not to have criminal charges laid by the mother. A three page letter received June 12, 2002, states the following:

I do not believe putting me in jail will solve anything and I am not a criminal, just a father that misses his son and has a hard time dealing with his past and emotions. Time will tell on my part if I am capable of being a good father to [R.]. I am sure you have some good advice for [S.] from a lawyers view and I do not blame either of you for your position. I absolutely cannot believe the position I put myself in and I realize I did this. Please do not ask me to walk away from [R.] we both need each other and trust each other. I will seek the proper help I need to deal with my loss and my problems for me and [R.].

10. The final letter was faxed on June 13, 2002, advising the mother's lawyer not to fax any more Notices of Motion, but to serve him in person. I indicate for the record that the solicitor for the mother did serve the father the Notice of Motion in person in Lloydminster, Saskatchewan.

- [6] For the record, the relevant Court Orders in this matter are as follows:
1. An *ex parte* order dated October 30, 2001, giving the mother interim interim custody of R. and restraining the father from contacting the mother or molesting, annoying or harassing the mother.
 2. An order dated March 13, 2002, requiring a Custody and Access Report, which is expected shortly and providing the father limited access to the child and telephone access by the father to the child, R. That order included an R.C.M.P. enabling provision to enforce the order, if necessary, including the Restraining Order of October 30, 2001.
 3. An order dated March 26, 2002, permitting the mother to make a family visit with R. outside of the Territory, as well as providing

for phone access by the father during that trip.

4. An order dated May 14, 2002, expanding the father's access from Tuesdays and Sundays, involving no overnight access, to three overnight access visits. It is during the delivery of this order from the Bench that the father stormed out in anger.

[7] I am guided in this matter by the principles set out in *Dhillon V. Dhillon*, [2001] Y.J. No. 128 (S.C.) (QL), as follows:

1. A child should have as much contact with each parent as is consistent with the best interests of the child.
2. The access of the child to the parent is the right of the child.
3. The best interests of the child requires consideration of the condition, means, needs and other circumstances of the child.
4. Access may be denied to a parent if it is not in the best interests of the child.
5. Past conduct of a parent may be taken into consideration, if it is relevant to the ability of that person to act as a parent of a child.
6. The onus is on the parent seeking access to establish on a balance of probabilities that access is in the best interests of the child.

[8] That was a non-exhaustive list of principles as a guide in these matters and I only wish to add at this time, the following principle: the Court should give particular attention to harassing or threatening conduct, particularly when it is post-separation.

[9] In this case the father's behavior has taken a bizarre and frightening turn. It is a continuation of a pattern of harassment that, quite frankly, the Court had hoped had been resolved, but it is clear that it is not and it is the kind of harassment and

pattern of events that simply cannot be condoned. I am satisfied that it is not in the best interests of R. to continue access with his father.

[10] This is an interim order made on an *ex parte* basis to terminate the father's access, and can be reviewed upon application of the father, which should address the treatment he has received, and is receiving, as well as hearing from the author of the Custody and Access Report.

[11] With respect to the Custody and Access Report of Ms. Tessier, I am informed that the report is presently in draft form awaiting a discussion of it with each of the mother and father, in turn. Because of the recent events, I am going to order that Ms. Tessier file the order in its draft form so that it will at least provide a benchmark that will assist the Court in any further applications that might be made. I am aware that the report will not be dealing with recent events, and to that extent the report is simply a guide to the date that it was prepared by Ms. Tessier.

[12] Anything further, Ms. Sutherland?

[13] MS. SUTHERLAND: No, I don't believe so. I think when you discuss the Custody and Access Report you refer to the order that Mr. Tessier filed, the order. I believe you meant the report.

[14] THE COURT: Yes. Thank you for that correction.

[15] MS. SUTHERLAND: That was the only thing, I think.

[16] THE COURT: If there is any difficulty that is encountered with Ms.

Tessier with that order, please just make an arrangement to speak to me about it, if necessary, in court. But, hopefully, there will not be any problems.

[17] MS. SUTHERLAND: Actually, there was just -- sorry, one other detail, the matter of costs, which I would really like dealt with today.

[18] THE COURT: Costs in any event of the cause to the mother. And I think that should be on a Scale 4, as well, just to make it clear.

[19] MS. SUTHERLAND: Thank you. With, I guess, getting the order to G.A.F., was there any order about that; order giving reasons?

[20] THE COURT: I think I should direct the clerk to have the tape delivered to the court reporters, so a transcript will be prepared. Do you have an address for him in Lloydminster, Saskatchewan?

[21] MS. SUTHERLAND: Yes, I do. I have his mother's address.

VEALE J.