

Court of Queen's Bench of Alberta

Citation: M.E.B. v. C.W.M., 2008 ABQB 484

Date: 20080807
Docket: FL03 14796
Registry: Edmonton

Between:

M.E.B.

Claimant

- and -

C.W.M.

Respondent

**Reasons for Judgment
of the
Honourable Mr. Justice Donald Lee**

[1] This matter deals with alleged breach(es) of an Emergency Protection Order for which the Respondent was arrested by Edmonton City Police on August 1, 2007. The Respondent currently remains in custody.

[2] The Emergency Protection Order in this matter was granted in the Provincial Court on August 1, 2008 at 10:30 a.m. The Emergency Protection Order amongst other things required that the Respondent not attend at, enter, or be within 200 metres of the Claimant's residence, which the Emergency Protection Order granted exclusive possession of to the Claimant. The Respondent was also not to communicate or contact the Claimant. A Peace Officer was to accompany the Respondent to the residence within 48 hours to supervise the removal of his personal belongings as the Claimant and the Respondent had been living together.

[3] It appears that before the Emergency Protection Order could be served on the Respondent, the Respondent attended at the Claimant's residence in an attempt to talk to the Claimant about reconciliation. It appears that the Claimant however was not at the residence when the Respondent first arrived there on August 1, 2008, after the Emergency Protection Order had been granted. It appears that the Respondent was not aware at the time that he first attended at the residence, of the existence of the Emergency Protection Order.

[4] The Claimant is employed as a safety supervisor, and apparently returned to her residence later on August 1, 2008, to discover the Respondent in the residence. She advised him of the Emergency Protection Order, and police were called. Police apparently served the Emergency Protection Order on the Respondent, but the Respondent continued in his attempts to try to speak with the Claimant and to try to reconcile with her, as well as to attempt to remove his personal belongings.

[5] A series of arguments then apparently ensued between the Claimant and the Respondent, and police eventually arrested the Respondent.

[6] In addition to the arrest pursuant to the terms of the Emergency Protection Order, police apparently have also charged the Respondent under Section 127 of the *Criminal Code of Canada* for breaching an Emergency Protection Order. That matter is being dealt with in Provincial Court currently.

[7] The Respondent's version of the facts with respect to the events in question are that he visited the premises of his residence in an attempt to reconcile with the Claimant and/or to retrieve his personal belongings, without realizing that there was an Emergency Protection Order in place. When he was personally served by the police officer with a copy of the Emergency Protection Order, the Respondent did not realize the full significance of that Order, and in any event felt that he could reconcile with the Claimant.

[8] The Respondent also has acknowledged that he has a serious drinking problem. Apparently he had been drinking fairly heavily while at the residence with his male friend, and the male friend's female companion prior to the Claimant's arrival on the date in question. The Respondent believes that he was intoxicated, and not thinking clearly when the Claimant finally arrived home.

[9] The Claimant's version of events is significantly different in a number of material particulars. Even though this was only a breach hearing, she testified before me. The Claimant stated that she had been systematically abused by the Respondent over the course of their relationship on several occasions, which abuse included verbal and physical violence. The Claimant believes that every time the Respondent is intoxicated, which is often, that he is not able to control his emotions.

[10] With respect to the events in question, the Claimant alleges that the Respondent again verbally and physically abused and assaulted her upon her return to the residence, and again after the Respondent had been personally served with the Emergency Protection Order. The Claimant

actually felt somewhat threatened by the Respondent, and his actions. The Claimant acknowledges that the Respondent is quite good to her when he is not intoxicated, but that she has no faith in the Respondent's current assertions that he will stop drinking. She states that she has heard these promises before, only to be disappointed time after time.

[11] The Claimant advises that as a result of the Respondent's actions at the time in question, she has been evicted from her premises by the Landlord. The Claimant also advises that Court that she is pursuing assault charges against the Respondent with the police, and has produced doctor's notes indicating that she suffered certain injuries as a result of the alleged assault(s) at the time in question. Police however have not charged the Respondent, notwithstanding having taken other steps and having received statements from both the Respondent and the Claimant.

Conclusion

[12] This is a rather unusual situation in that the Emergency Protection Order was essentially breached almost at the same time that the Order was served on the Respondent. It is also unusual that the review date for the Emergency Protection Order has not even taken place, and is still scheduled for August 14, 2008, yet the Respondent has been in custody virtually from the time that the Emergency Protection Order was granted for the alleged breach(es). This matter is further complicated by virtue of the fact that both the Claimant and the Respondent have given the Court significantly different versions of what took place during the course of the alleged breach(es).

[13] What is known is that the Claimant remains quite concerned about her safety and well being whenever the Respondent is drinking. It also appears that the Respondent definitely has a chronic drinking problem. What is also known is that the Respondent has not been charged as of yet with any assault against the Claimant by police notwithstanding the serious allegations of the Claimant, and that the Respondent's criminal record does not include any convictions for physical violence.

[14] The Respondent is adamant that he innocently attempted to reconcile with the Claimant, basically in ignorance of the existence of the Emergency Protection Order. The Respondent is also adamant that he simply wants to now retrieve his belongings from his former residence, and that he has a job to go to in a dry camp far away from Edmonton. He wants to be released as soon as possible so that he can begin his employment, and he now understands that his relationship with the Claimant is effectively finished.

[15] I conclude that the Respondent has breached the Emergency Protection Order by his actions in returning to the residence and continuing to harass the Claimant after he was served with the Emergency Protection Order. I further conclude that even though the Emergency Protection Order has never been confirmed formally in this Court, that there is more than enough evidence supporting the Emergency Protection Order that was issued in Provincial Court on August 1, 2008. I further direct that the Emergency Protection Order should continue for a

period of one year, and that the August 14 confirmation hearing be cancelled as it is unnecessary.

[16] As for the Respondent's release, he has been in custody since August 1, 2008, and there is no purpose in continuing to keep him custody. He has already served approximately 6 days in custody, and he should be released notwithstanding his breach(es) of the Emergency Protection Order, based on the time that he has already served in custody.

[17] Accordingly I direct the Respondent's immediate release from custody, and given the unique position that I have had to be able to hear both parties in Court on August 5, 2008, I confirm the Emergency Protection Order for a period of one year. It will not be necessary for the parties to appear on August 14, 2008 at 9:30 a.m., the original review date scheduled.

Heard on the 5th day of August, 2008.

Dated at the City of Edmonton, Alberta this 7th day of August, 2008.

Donald Lee
J.C.Q.B.A.

Appearances:

M.E.B.

Appeared on Her Own Behalf

C.W.M.

Appeared on His Own Behalf

Douglas McLachlan

Family Law Centre

As a Friend of the Court/Duty Counsel