

Court of Queen's Bench of Alberta

Citation: N.L.B. v. K.G.C., 2008 ABQB 485

Date: 20080808
Docket: FL03 00899
Registry: Edmonton

Between:

N.L.B.

Applicant/Claimant

- and -

K.G.C.

Respondent

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

[1] This is a Breach hearing in which the Respondent has been arrested as a result of alleged breaches of an Emergency Protection Order.

[2] The Respondent and Claimant were interdependent partners for approximately 4-1/2 years, and are the parents of three children of tender years ages 5, 9, and 12. Based on a July 10, 2008 application for an Emergency Protection Order in which the Claimant alleged a history of physical and verbal abuse, as well as property damage, an Emergency Protection Order was issued in the Provincial Court of Alberta on July 10, 2008.

[3] The Emergency Protection Order was confirmed in this Court on July 23, 2008 for a period of one year, based only on representations by the Applicant, and upon hearing from the Emergency Protection Order Duty Counsel for the Applicant. The Respondent did not appear in

this Court at the time that the Order was confirmed, although it does appear that he was served with notice of the hearing.

[4] I also note from the file that an Emergency Protection Order was granted to the Applicant on November 22, 2005, but that this Emergency Protection Order was terminated on November 30, 2005 when the Applicant (and the Respondent notwithstanding having been apparently properly served) both failed to appear.

[5] The Respondent was arrested by Edmonton City Police at a residence other than his former residence that he had occupied while he was an adult interdependent partner with the Claimant, which the Emergency Protection Order prohibited him from attending.

[6] The Respondent's story is that while he was aware generally of the existence of some type of prohibition preventing him from attending at the former residence, he was alerted by family members to the fact that the Claimant had essentially abandoned the three young children at the residence for several days, and that is why he attended at that residence to retrieve the children so he could look after them in the mother's absence.

[7] Furthermore it appears that the parties reconciled for a period of time between the granting of the Emergency Protection Order, and that this reconciliation continued after the date of the confirmation, which the Respondent was never served a copy of.

[8] The Court and counsel do not have the arrest report from Edmonton City Police at the time that this hearing is taking place. It appears however that the Respondent was arrested at when the Claimant was high on drugs, and was demanding money from the Respondent at his residence.

[9] According to the Respondent, he was not even aware that the Claimant was in his residence until she awoke everyone in the residence demanding money and/or drugs. When the Respondent attempted either to ignore the Claimant or to have the Claimant leave, the Claimant threatened the Respondent with the existence of the Emergency Protection Order, and then called police.

[10] When police arrived, notwithstanding the explanation given by the Respondent that it was the Claimant that was harassing him by contacting him, police arrested the Respondent for having contact with the Claimant.

[11] Emergency Protection Order Duty Counsel was given an opportunity to contact the Claimant during the Court recess, because his previous attempts to contact the Claimant in advance of this hearing with respect to the alleged breach had been unsuccessful. Emergency Protection Order Duty Counsel was also given the opportunity to contact the Respondent's brother, who the Respondent said could confirm his story or version of events as he was also in the residence on the night in question.

[12] During the recess break, Emergency Protection Order Duty Counsel was able to contact the Respondent's brother, who appears to have essentially confirmed the Respondent's version of events.

Conclusion

[13] The Emergency Protection Order in this matter was granted on July 10, 2008, and an Affidavit of Service exists from a police officer indicating that the Respondent was served with a copy of the Order on that same day. It is also clear however that the Confirming Order with respect to the Emergency Protection Order issued out of this Court specifically stated that the Confirming Order did not have to be served on the Respondent, for reasons that are not clear on the face of the Confirming Order. Neither counsel nor I have had the opportunity to review the transcript of the July 23, 2008 Confirming Order hearing to ascertain why the Order did not have to be served on the Respondent.

[14] In any event the Respondent was never served with the Confirming Order, although he does appear to have been served with the Notice of Hearing for July 23, 2008. The Respondent says that he did not appear at the confirmation hearing because the Claimant told him that she was not pursuing the matter given their then ongoing reconciliation, and based on her advice to him that he should simply "forget" about the matter.

[15] While the Respondent acknowledges some knowledge as to the prohibitions placed on him not to attend at the former residence, or to contact the Claimant, he submits that out of necessity he had to enter the former residence to take care of his children of tender years, because the Applicant had abandoned them in the former residence. According to the Respondent, the Applicant is addicted to substances and often disappears for days abandoning the children.

[16] The Respondent also states that it was the Applicant who attended at his residence demanding money and/or drugs, and it appeared that the Applicant was under the influence of illicit substances at the time. This appears to also have been part of a pattern of contact initiated by the Applicant according to the Respondent after the Applicant herself obtained the Emergency Protection Order. Often the contact would be by way of telephone calls initiated by the Applicant.

[17] The Respondent's position is that he could simply not avoid contact with the Applicant given the circumstances, and it was the Applicant who was in fact harassing him, and using the Emergency Protection Order as a threat or leverage against the Respondent.

[18] The Respondent's position, which has been essentially confirmed by his brother, is that police acted unreasonably in arresting him under these circumstances, and that he has not breached the Emergency Protection Order.

[19] I conclude that by the Respondent's own acknowledgment he was generally aware of both the prohibition on his attendance at the former matrimonial residence, and his contact with the Claimant and the children. While it is asking a great deal in a relative short period of time, technically the Respondent should have come to Court and sought an amendment to the terms of the Emergency Protection Order; or even perhaps sought a vacating of the Emergency Protection Order. The Respondent in relying on the goodwill and good judgment of the City of Edmonton Police put himself in a vicarious position.

[20] However I am not unsympathetic to the Respondent's apparent plight, given the requirement and necessity he reasonably felt to look after his children of tender years in the circumstances where they were abandoned by the Applicant for several days.

[21] I also believe his story based on the present evidence before me that it was the Applicant who initiated contact, and may have used the existence of the Emergency Protection Order to exert pressure to obtain cash or other support from the Respondent.

[22] The Respondent was released immediately after the hearing of this matter. These Reasons are issued to clarify whether the Respondent was released for time served in custody, or was released because he had not committed any breach. I now conclude that the Respondent committed no breach of the Emergency Protection Order.

[23] I do strongly advise the Respondent however that he must seek either to have the Emergency Protection Order vacated, or to seek an amendment of the terms of the Emergency Protection Order such as would allow him to attend at the former matrimonial residence for example to care for his children in certain specific circumstances.

Heard on the 5th day of August, 2008.

Dated at the City of Edmonton, Alberta this 8th day of August, 2008.

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

Appearances:

Douglas McLachlan
Family Law Centre
As a Friend of the Court/Duty Counsel

K.G.M.C.
Appeared on His Own Behalf