

Court of Queen's Bench of Alberta

Citation: K.F. v. A.F., 2008 ABQB 496

Date: 20080813
Docket: FL03 14576
Registry: Edmonton

Between:

K.F.

Claimant

- and -

A.F.

Respondent

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

[1] This is a review of an Emergency Protection Order that was granted in the Provincial Court on July 17, 2008. The Claimant seeks to have the Emergency Protection Order confirmed for a period of another year. The Respondent seeks to have the Emergency Protection Order vacated because there is no basis in fact or in law for its existence.

[2] Before the Justice of the Peace on July 17, 2008 the Claimant described how he had been married to the Respondent for approximately 6 years, but they had been separated since January 17, 2008.

[3] The Claimant testified to the history of violence by the Respondent, and the history of her psychosis as well. Before the Justice of the Peace, the Claimant described recent events in which Children Services were involved in an attempt to protect their 6 year old child from

certain threats and threatening behaviour alleged on the part of the Respondent. No criminal charges have been laid in this matter.

[4] The Justice of the Peace concluded that this was a situation that fell within the parameters of the *Protection Against Family Violence Act*, R.S.A. 2000, c.P-27, and issued an Emergency Protection Order based on the alleged threats, and the alleged unpredictable and unstable behaviour of the Respondent.

[5] The Respondent prepared her own Affidavit on July 29, 2008 in this matter. She disputed that there was any basis upon which to offer the Claimant protection under the *Act*, and that she posed no threat to the safety and security of the Claimant or any other family member.

[6] The Respondent went on to depose amongst other things that it was the Claimant who had been diagnosed with post-traumatic stress disorder in March 1992, following an industrial accident in 1989, and a family murder in 1991. The Respondent asserts that the Claimant displayed symptoms throughout the time of their relationship and marriage of memory loss, blackouts, avoidance of responsibility, inability to focus and respond, flashbacks, emotional withdrawal, sexual dysfunction, somatic illness and inability to sleep unmedicated. Furthermore the Claimant according the Respondent had a recent motor vehicle accident in which he sustained a concussion on April 14, 2008.

[7] In this Affidavit dated July 29, 2008, she also describes how she acts in defence of herself and their child, and how the Claimant is engaged in a vexatious and false complaint. The Respondent further describes how she will make an additional access application to the Provincial Court with respect to the child on August 8, 2008.

[8] In the responding Affidavit the Claimant swears on July 30, 2008 that the Respondent does pose a continuing threat to his safety and security. He describes how the Respondent had a key cut for his residence, and then broke into his home, on the date that the Emergency Protection Order was first granted on July 17, 2008.

[9] On that evening at around 11:00 p.m., the Claimant deposes that the Respondent returned to his residence with her sister, and began pounding on the door. When she was refused entry, it is alleged that the Respondent tried to use her key to enter the residence. When police were called, and arrived, they did not arrest the Respondent and her sister because the Emergency Protection Order had not yet been registered and their system. The Respondent and her sister however did eventually leave.

[10] The Claimant further deposes that he has suffered from years of emotional abuse and some physical abuse from the Respondent. He refers to nine recent audio recordings between 30 to 120 minutes each in which the Respondent emotionally abuses him with their 6 year old daughter present. The Claimant alleges that there is a great deal of name calling, belittling, false accusations, and yelling and screaming on the lengthy multiple recordings which are currently being used in the ongoing Child Welfare proceedings. There is apparently a full hearing

scheduled in Provincial Court with respect to Child Services application for a temporary guardianship order in late September 2008.

[11] The Claimant also alleges that the Respondent has physically hurt him by punching him in the chin, pushing him into a telephone table, and using a chopping motion on his arm. It appears however that none of these incidents were reported to a doctor, or to the police.

[12] The Claimant recently also deposes that the Respondent is mentally unstable, having been diagnosed with possible adult onset schizophrenia in December 2006. He alleges that she has refused to participate in treatment, and that the Respondent's younger brother is also schizophrenic.

[13] The Claimant denies that he has any further symptoms of post-traumatic stress disorder.

[14] The Claimant points out that Children Services has been involved in this matter since January 2008, and they confirm that the Respondent is "aggressive, threatening, and emotionally unstable".

[15] I note that Children Services has reduced these allegations to writing in a letter dated July 17, 2008 addressed "To whom it may concern". The case worker and the case worker's manager expressed the opinion in that letter that the Claimant "may be at risk for physical and emotional harm" by the Respondent and "is in need of protection".

[16] The Respondent produced for the Court an unfiled further Affidavit in response sworn before counsel on August 5, 2008 in which she denies any "break in" into the residences alleged. She also denies that the tapes contain yelling or screaming, but deposes that the Claimant is 'leading her on unsuccessfully'.

[17] The Respondent does however acknowledge that on one occasion she did slap the Claimant when provoked during a long an unnecessary tiring car drive, however this gesture resulted in no pain or injury to the Claimant.

[18] Although the Respondent acknowledges being confined in a psychiatric ward for five days, she takes the position that the present Emergency Protection Order proceedings and the Children Services actions are instances of the Claimant trying to use the legal system to attack her.

[19] The Respondent objects to the involvement of Children Services as representing an unfair intervention by them in what otherwise is a matter that should not be of concern to them. The Respondent intends to fully answer and defend the Children Services temporary guardianship application to be heard in September.

Conclusion

[20] There is extensive Affidavit evidence in this matter, much of it directly contradictory. The allegations on both sides however are very serious.

[21] The intervention by Children Services in providing a letter in which they clearly take a position against the Respondent while unusual, is not necessarily inappropriate or unfair to the Respondent. To suggest that Children Services Officials who honestly believe based on their professional experience and personal knowledge in this matter should somehow simply remain silent and not advise this Court of their view, in my respectful opinion would be even more inappropriate.

[22] Having said that however, much of the evidence that relates to Children Services conclusions in this matter such as the lengthy and multiple apparent audio tapes are not before this Court, and there is no basis set out as to why the Children Services officials reach their conclusion.

[23] In any event, a full hearing on Children Services temporary guardianship application has still not taken place, and it would be premature to judge the extent and quality of the opinions being offered by Children Services until that hearing is completed in Provincial Court.

[24] For purposes of the confirmation hearing on the existing Emergency Protection Order, I conclude that it is impossible to come to a definitive conclusion one way or the other with respect to the present evidence before me without having *viva voce* evidence from the parties themselves, and their witnesses.

[25] As such I am directing that this matter go to a full hearing. The existing Emergency Protection Order will remain in place until a decision is made in this Court after the hearing of this matter.

Heard on the 6th day of August, 2008.

Dated at the City of Edmonton, Alberta this 13th day of August, 2008.

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

Appearances:

Lucy Mussieux
Jerry D. Kiriak Professional Corporation
for the Applicant

Gregory O'Laughlin
for the Respondent