

# Court of Queen's Bench of Alberta

**Citation: Petropoulos v. Petropoulos, 2010 ABQB 296**

**Date:** 20100504  
**Docket:** FL03 04139  
**Registry:** Edmonton

Between:

**Georgina Petropoulos**

Applicant

- and -

**George Petropoulos**

Respondent

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**Memorandum of Decision  
of the  
Honourable Madam Justice J.B. Veit**

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## **Summary**

[1] The issuance of an emergency protection order is discretionary. However, before the judicial officer's discretion is applied, the applicant must first establish the mandatory statutory pre-requisites for such an order: that "family violence" has occurred, that it may continue or resume, and, that an order is urgently needed. "Family violence" is defined in the legislation as either actual injury or damages which also intimidates or, a threat of family violence which reasonably intimidates; in other words, there is an objective component to each category of family violence. It is only when each of the three pre-requisites has been established that a judge determines, after consideration of all the circumstances including the statutory factors, whether an order should issue. In other words, even where each of the pre-requisites has been proved, the applicant is not entitled to an emergency protection order.

[2] Here, Ms. Petropoulos had not established that family violence had occurred: she had neither suffered any injury or damage as a result of her former husband's actions in April 2010, nor established any objective fear of property damage or injury.

[3] Therefore, this court does not confirm the Emergency Protection Order issued on April 23, 2010.

## 1. Background

[4] The parties were previously married; they are the parents of children who are now adults.

[5] On April 23, 2010, Ms. Petropoulos applied for an Emergency Protection Order pursuant to the provisions of the *Protection Against Family Violence Act*. Ms. Petropoulos was assisted on that occasion by duty counsel.

[6] There is a somewhat tangled history of emergency protection orders and restraining orders between these parties. In 2006, Ms. Petropoulos had obtained an EPO against her former husband; that order was not confirmed in this court. Rather, on the date set for confirmation, it appears that a restraining order, perhaps a mutual restraining order, was issued; the actual order is not on this file. One of the major differences between an EPO and a restraining order is, of course, that family violence is a mandatory element of the former, but not of the latter. The restraining order obtained in 2006 is possibly the *ex parte* restraining order issued on July 17, 2006, discussed further below.

[7] On January 17, 2009, Ms. Petropoulos obtained an EPO against her former husband. That order was confirmed by this court on January 28, 2009; that order was to remain in force until January 28, 2010.

[8] On January 19, 2009, this court considered an application by Ms. Petropoulos to extend an *ex parte* restraining order previously granted on July 17, 2006. This court extended that order until July 20, 2009.

[9] In the result, as of April 23, 2010, there was no existing order restricting Mr. Petropoulos' movements.

[10] At the April 23, 2010 hearing, Ms. Petropoulos swore that her former husband had attended at her work place on the previous day and demanded the money which the Provincial Court had ordered Ms. Petropoulos to pay to him; Ms. Petropoulos asserted that she had paid him, "I have my receipts in my purse." She did not produce a receipt for the April 20<sup>th</sup> payment, nor was she asked to do so. However, she also said:

And because he didn't get it yet [\$375.00 a month payment to him pursuant to court order], I think this week, he came around to my work saying that, I don't know, I owe him \$25,000.00. I don't even know that he has a court order. I have no idea.

[11] The file indicates that, on December 8, 2009 in the Provincial Court, Mr. Petropoulos obtained a judgment against Ms. Petropoulos; the amount of the judgment itself is not disclosed

in these proceedings. It appears that, on January 12, 2010, Ms. Petropoulos still owed \$4,625.00 on the judgment; she requested a payment hearing in the Provincial Court. After hearing from both Ms. Petropoulos and Mr. Petropoulos, the Provincial Court made the following order which was entered on January 19, 2010:

IT IS ORDERED THAT:

1. Any collection proceedings on the judgment dated December 8, 2009, as against [Ms. Petropoulos], are stayed on the following conditions:
  - (i) [Ms. Petropoulos] is to make monthly payments of \$375.00 to [Mr. Petropoulos] commencing February 20, 2010 and continuing up to and including January 20, 2011. The final payment, due February 20, 2011 will be in the sum of \$500.00.
  - (ii) If [Ms. Petropoulos] fails to make a payment as specified above, [Mr. Petropoulos] is instructed to write [Ms. Petropoulos] a letter indicating she has 10 days to make up the missed payment.
  - (iii) If [Ms. Petropoulos] does not make the required payment, [Mr. Petropoulos] is entitled to judgment for the remaining balance owed by filing an affidavit with the Clerk of the Court.

[12] The January 19 order clearly contemplates that Ms. Petropoulos was required to make a payment to her former husband on April 20, 2010.

[13] Ms. Petropoulos did not provide the January 19, 2010 order to the presiding judge when she made her application for an EPO on April 23, 2010. Nevertheless, the judge asked:

Is this really a protection concern or maybe legitimately he wants to know where his money is.

[14] In granting the EPO, the court did not specifically address the statutory framework.

**2. Family violence is a mandatory pre-requisite to the issuance of a discretionary EPO; Ms. Petropoulos did not establish that mandatory pre-requisite**

[15] Section 2 of the *Protection Against Family Violence Act* requires that an applicant must first establish that “family violence”, as defined by the Act, has occurred. That definition requires either injury or damage which intimidates or harms a family member, or, a threat of violence which intimidates a family member by creating a “reasonable fear” of property damage or injury.

[16] It is clear that, on April 22, 2010 when he attended at Ms. Petropoulos’ workplace, Mr. Petropoulos neither injured her nor damaged her property. Ms. Petropoulos does not, therefore come within the first category of family violence as defined by the statute.

[17] As to second category, it is not clear from her evidence that even Ms. Petropoulos suggested that the respondent threatened her: she swore that “he came around to my work saying

that, I don't know, I owe him \$25,000.00". That is not a threat - that is Mr. Petropoulos' interpretation of the court order.

[18] In any event, even if Ms. Petropoulos' evidence could be interpreted as asserting that Mr. Petropoulos threatened her on April 22, she would also have to establish that she had a "reasonable fear" of property damage or injury. She failed to do so. In her testimony, Ms. Petropoulos made it clear that she tried to keep both her residence and her workplace secret from her former husband. This is extremely puzzling since one of the conditions imposed by the court when Ms. Petropoulos applied in January 2010 for relief from a judgment against her was that Mr. Petropoulos was to send her a letter if she missed a payment. How could he send her a letter if she refused to let him know where she lived and where she worked? What alternative did he have but to attend at her workplace?

[19] Moreover, Ms. Petropoulos swore that when her former husband got angry he broke things; yet, there is no evidence of his breaking anything in connection with the events of April 22.

[20] The file discloses that, in May 2009, Mr. Petropoulos was briefly jailed for going to Ms. Petropoulos' residence when there was an order that he not attend at that residence. That order, issued on January 28, 2009, indicates that Mr. Petropoulos was not represented by a lawyer at the hearing. When he appeared before this court on May 12, 2009 for a breach of the order, Mr. Petropoulos told the court that he didn't know that his wife was at her residence when he went there. He was released from jail by the presiding judge on Mr. Petropoulos' assertion that he now understood the meaning of the order: he was not to attend at Ms. Petropoulos' residence for any reason. The issue relating to Mr. Petropoulos' contact with his son appears to have resolved itself since the son now lives with his father. The issue of Ms. Petropoulos owing her former husband a money judgment is, of course, still outstanding.

[21] In summary, because Ms. Petropoulos failed to establish, on April 23, 2010, that there had been family violence, the court did not have the requisite statutory basis for the issuance of an emergency protection order. That order can therefore not be confirmed.

**3. In the circumstances here, even if family violence had been established, the court would not confirm the EPO because, after having invoked judicial assistance to relieve her from the obligation to pay a judgment in full, Ms. Petropoulos cannot now make it impossible for her former husband, the judgment creditor, to execute on the judgment**

[22] Even if I were wrong in asserting that Ms. Petropoulos has not established the required "family violence", I would not confirm the EPO.

[23] In addition to proving that "family violence" occurred, Ms. Petropoulos is also required to establish that the violence which grounds the current application will resume or recur. The file indicates that, after his appearance in this court in May, 2009, there has been no improper contact by Mr. Petropoulos with his former wife. His attempt to deal with Ms. Petropoulos as a

creditor would presumably end if Ms. Petropoulos were to pay him the money required in the judgment and in the subsequent order. There is nothing in the material presented to suggest that, if the court order had been respected, Mr. Petropoulos would have approached the applicant.

[24] Moreover, the Act requires urgency: the iconic representation of justice shows a balance between two submissions. It is only in extraordinary circumstances that a court will make a serious decision against someone without hearing from that person; the issuance of EPOs are serious matters, because they can result in imprisonment for the person who fails to obey the court order. That is precisely the kind of order which is usually granted only after having given the respondent the opportunity of speaking to the proposed order. Here, it is obvious from her application for a payment hearing that Ms. Petropoulos knew where she could find Mr. Petropoulos; it is therefore not clear why she did not bring an application on notice to him rather than one without notice.

[25] Finally, the issuance of EPOs is a matter of judicial discretion: a court “may” issue, but is not required to issue, an order after the mandatory pre-requisites have been established.

[26] The objective of the *Protection Against Family Violence Act* is clearly to assist family members who require protection from violence. Understandably, the legislation establishes serious potential consequences, including jail prior to a hearing on notice, for family members who breach court orders. Given those important objectives and grave potential consequences, courts must respect the statutory limits of the legislation; the Legislature obviously did not intend to protect family members from debt actions within the family.

[27] Here, Ms. Petropoulos has failed to bring herself within the ambit of protection aimed at in the legislation.

Heard on the 3<sup>rd</sup> day of May, 2010.

**Dated** at the City of Edmonton, Alberta this 3<sup>rd</sup> day of May, 2010.

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**J.B. Veit**  
**J.C.Q.B.A.**

**Appearances:**

Christina E. Riddoch, Duty Counsel  
for Ms. Petropoulos

Louise Syme, Duty Counsel  
for Mr. Petropoulos