

Court of Queen's Bench of Alberta

Citation: R. v. M.S., 2008 ABQB 488

Date: 20080814
Docket: 080303084P1
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

M.S.

Accused

Editorial Notice

On behalf of the Government of Alberta **identifying information** has been removed from this unofficial electronic version of the judgment.

Reasons for Judgment of the Honourable Mr. Justice Donald Lee

[1] This is an application by the Accused to have any restrictions with respect to his contact of his common-law spouse, the Complainant in this matter, completely lifted so that he can have complete contact with her.

[2] The Accused is charged with assaulting his common-law spouse with a weapon on March 9, 2008.

[3] The Crown opposes the Accused's application for complete contact.

[4] On March 9, 2008 the Accused returned to his apartment unexpectedly from his work at a nightclub and hotel. At 1:00 a.m. on the day in question, the Accused found his common-law wife in the presence of another male named R. in their apartment. The Accused had been apparently tipped off that the Complainant was behaving inappropriately with other men. A confrontation began, at which point R. left the apartment.

[5] The Accused then began allegedly hitting the Complainant repeatedly on the face with his closed fist. It is then alleged that the Accused took his shoe and continued to hit the Complainant on the face with the shoe.

[6] The Accused then apparently grabbed the Complainant and pushed her out in the hallway, locking her out of the apartment. The Accused then apparently left the apartment with their 6 month old baby and went to another residence, leaving the Complainant locked out of the apartment.

[7] The Complainant was eventually able to alert other residents of the apartment building to her predicament, and police were called.

[8] The police noted a number of obvious visible injuries on the Complainant including a completely swollen shut right eye, split and swollen lips, and a bruised left hand on the Complainant that had swelled and which had apparently been used by the Complainant to protect herself from the blows and punches. Emergency medical services were called to treat the Complainant.

[9] Given the state of the Complainant's injuries and a perceived language difficulty, no formal witness statement was taken by police at the time.

[10] The Complainant is however reported to have told police that the Accused's actions on the night in question were part of a history of unreported violence against her inflicted by him, and that because this couple is from Sierra Leone, the Complainant believes that the Accused tends towards domestic violence because of his background of cultural beliefs. The Complainant also advised police that she was fearful that the Accused would try to take her baby away from her.

[11] The Complainant testified before me as part of this hearing in support of the Accused's application. While her English is somewhat limited, there was no difficulty in understanding her evidence.

[12] She is currently 21 years of age, and came to Canada in July 2004 with her father as refugees from Sierra Leone. Her mother, two brothers and a sister all died violent deaths as a result of the civil war in that country. The Complainant lived with her father until 2007, at which

point she became estranged from him for personal reasons that are unknown to me. That estrangement continues to this date.

[13] The Complainant then soon met up with the Accused, and apparently within three days of having met him, she was pregnant with his child. Within approximately a month, the Complainant moved in with the Accused, who is about 10 years older than her. The Complainant had been working briefly in the fast food industry, but stopped working upon her becoming pregnant. The Complainant has not finish high school.

[14] The Complainant has been economically dependent on the Accused since shortly after they met in approximately May 2007, which economic dependency continues to this date.

[15] On the day in question March 9, 2008, the Complainant indicates that she was celebrating her 21st birthday and had drank approximately four coolers. It is unusual for her to drink at all. She supports the Accused's application because she believes that the Accused will not harm her again, and that he has dealt with his problem. When asked by me about the problem that the Complainant sees the Accused having, she eventually after much effort described it as an anger management problem.

[16] In response to this issue defence counsel submitted confirmation of the Accused's completion of a Men and Anger course from the Family Centre dated August 2, 2008.

[17] The Complainant also testified that she would call 911 if she were assaulted again by the Accused, and can also call an aunt who lives in north Edmonton for help. Unfortunately the aunt cannot drive, and she lives in the west end. Furthermore the estranged father lives with the aunt.

Conclusion

[18] The Accused faces a fairly serious charge of assaulting his common-law spouse with a weapon, which allegedly resulted in very visible injuries. The Accused has no criminal record, and is approximately 31 years of age. He works two jobs as a cleaner at a nightclub and hotel, working generally late into the evening.

[19] The trial in this matter is scheduled for November 17, 2008, and defence counsel advises the Court that the Accused will be running a full answer and defence to the charge. The nature of the full answer and defence however is rather unclear at this time seemingly even in the mind of defence counsel.

[20] The Accused has completed an anger management course, and the "no contact" provision in this matter was modified on April 14, 2008 in Provincial Court to allow for contact in public, and by telephone. The application to modify and to allow some contact was apparently supported by the Complainant at that time as well. The Crown opposed that application as well apparently.

[21] The Complainant sincerely appears to want to have complete contact with the Accused. However in most of these types of cases, the Court is left in the difficult position of choosing between the expressed wishes of the Complainant, what is in her best interests, and what is in the best interests of the administration of justice.

[22] I also have a number of specific concerns with this application.

[23] The violent nature of the alleged assault, and the actions of the Accused in locking out the Complainant and taking away their 6 month old baby is extreme. While the Accused apparently told the Complainant that he would not tolerate her behaviour in front of their baby, it was the Accused's alleged behaviour in front of the baby that was seemingly much more egregious.

[24] The Complainant is only 21 years of age, ten years younger than the Accused. The Complainant became seriously involved with the Accused shortly after becoming estranged from her father, and she became dependent on the Accused as a result of being pregnant three days after having met him. The Complainant is economically dependent on the Accused, and she is afraid of the Accused in the sense that the Accused may take their baby away from her.

[25] As such I conclude that the Accused continues to represent a significant risk and danger to the Complainant if complete contact is allowed. Completing on recent anger management course likely does not materially reduce this risk and danger, particularly given the apparent additional cultural background issues here.

[26] The Complainant's support of this application by the Accused is primarily motivated out of her economic dependence on him, and her fear of him.

[27] Furthermore I conclude that it is not appropriate to have the Accused return to live with the Complainant given that it is quite possible that the Accused could persuade or influence the Complainant in such a way that the Complainant will never testify fully at the trial of this matter upcoming in November 2008. This would be contrary in my respectful opinion to the proper administration of justice.

[28] Accordingly I conclude that the present limited contact provisions previously allowed are sufficient, and the Accused can continue to have contact with the Complainant in public and by telephone, but will not be allowed to have complete contact as requested. The Accused's application for complete contact is dismissed.

Heard on the 7th 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:

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for the Crown

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for the Accused