

SUPREME COURT OF YUKON

Citation: *DJB (Re Presumption of Death)*,
2025 YKSC 2

Date: 20250120
S.C. No. 24-A0067
Registry: Whitehorse

Presumption of Death of D.J.B.

Before Chief Justice S.M. Duncan

Counsel for the Petitioner

Lenore Morris

REASONS FOR DECISION

Introduction

[1] This is an application for a declaration that D.J.B., born May 18, 1976, is presumed dead for all purposes, and that she is presumed to have died on January 20, 2022. The petition is brought by her common law spouse, R.P., on notice to both of her biological parents, her brother and her sister, and is unopposed. Affidavit evidence in support was provided by R.P., as well as by three other close friends.

[2] The hearing of this application was heartbreaking. R.P. attended in person, as did the three close friends of D.J.B. in Whitehorse who provided affidavits. J.H., D.J.B.'s mother, and C.B., D.J.B.'s stepmother, appeared by videoconference. At the end of the hearing, I granted the order requested and advised that I would provide written reasons to follow, because of the absence of Yukon jurisprudence on this topic. The helpful evidentiary organization and submissions of counsel for R.P., including the case law references from other jurisdictions, provided a strong foundation for my analysis and decision in this very sad case.

Background

[3] D.J.B. was born on May 18, 1976, in Alberta. Her father is B.M.R.B. and her mother is J.H. Her brother is J.M.B. and her sister is H.P.

[4] D.J.B. lived with her common law spouse, R.P., in Whitehorse, Yukon, from the fall of 2012 to January 20, 2022. She was a talented freelance artist and a bookkeeper, employed most recently in that capacity on a part-time basis by the Yukon Teachers' Association. She was last seen on January 20, 2022, shortly after she and R.P. celebrated their 10th anniversary as a couple.

[5] R.P. was born on December 10, 1976. In January 2022, he was working two week on/two week off rotations for Minto Metals at the Minto Mine near Pelly Crossing, Yukon. He began a working rotation at the mine on January 13, 2022. While at the mine, he and D.J.B. would talk by telephone or text every night unless something in their schedules prevented it. They spoke on January 14, 15, and 16, and texted on January 17, 2022. On January 18 and 19, R.P. called and sent several texts to D.J.B. that were not answered. The last day he heard from or spoke to her was January 17. On January 19, R.P. texted a friend to say he was worried because D.J.B. was not answering her phone or returning text messages. The friend checked their Whitehorse home on January 19 and 20 and told R.P. that D.J.B.'s car was not there. The friend entered the home at R.P.'s request on January 20 with the emergency key and found D.J.B.'s phone on the counter and a message from the Gold Rush Inn, thanking her for her stay. D.J.B. was not at home.

[6] R.P. phoned the Gold Rush Inn around 8:30 a.m. on January 20 and was advised that D.J.B. had just checked out. Her car was not at home by 10:30 a.m. At that point R.P. decided to leave camp and fly back to Whitehorse.

[7] On his arrival in Whitehorse, R.P. immediately began searching for D.J.B. in all the places where he thought she might be. On his way to checking their favourite walking trails, he found her car in the parking lot on Nisutlin Drive near the Millenium Trail and the Yukon River. While R.P. waited by her car, two friends walked and biked the Millenium Trail loop around the Yukon River but saw no trace of her. R.P. reported her disappearance to the Whitehorse RCMP at 6:38 p.m. on January 20, 2022. The police began a search of the area with the assistance of the police dog that evening, to no avail.

[8] On January 21, 2022, the RCMP conducted an unsuccessful aerial search for D.J.B. of the Yukon River near to her parked car. In the following days and weeks, her disappearance was widely publicized in Whitehorse and the Yukon, through the RCMP website and press releases, local print and radio media, including social media, and posters. The RCMP contacted D.J.B.'s family members who lived outside of the Yukon immediately. They seized her phone that had been left at her home.

[9] After D.J.B.'s disappearance, R.P. found several notes in their home written by her. She left a handwritten will dated October 3, 2020, a note with her email passwords, a sheet listing her other passwords, a personal note about her feelings for R.P., and a note dated January 2022 expressing her love of water and swimming, and saying she felt more stable in water than anything else. In that note, she also wrote "I love those of you who knew and understood me. Thank you", signed with a heart symbol.

[10] R.P. also found masking tape with names on a number of D.J.B.'s art pieces in their home, including one that said, "This was the last one Jan/22 [R.P.] decides [R.P.] owns everything, thank you [R.P.]." R.P. had not seen any of these notes before D.J.B.'s disappearance.

[11] He also found D.J.B.'s journals on the counter near the kitchen, not in their usual place in their shared home office. Entries in January 2022, just before her disappearance, contained personal expressions of gratitude about her life; her love, respect and appreciation for R.P.; and her love for some named friends and family members. In her daytimer, R.P. found further personal notes that were not part of her daily schedule, expressing thanks to R.P. and other friends, and stating that everything goes to R.P.

[12] In early November 2021, D.J.B. had been prescribed anti-depressant medication. R.P. said she had periodically suffered from depression during their relationship. From his counting of the remaining pills in the prescription bottle, he believed she may have stopped taking the medication around January 15, 2022.

[13] D.J.B. was experiencing ongoing stress at her part-time work. Her father had recently been diagnosed with cancer, which also was causing her some stress, as she expressed to R.P. in one of their calls in January. Other than this, her relationships with her family members were not stress-inducing.

[14] Along with her phone, R.P. found D.J.B.'s passport, identification, wallet, and computer in their home.

[15] There were no new charges on D.J.B.'s credit cards after January 2022. There has been no new activity in her bank accounts since January 2022. She and R.P. did not have financial or legal problems.

[16] None of D.J.B.'s close friends who provided affidavit evidence in support of this application, or her family members, including her common law spouse, has heard from her since January 20, 2022. All of them say that it is very much out of character for her

to have not contacted them in response to their texts and calls in January 2022, and since that time, if she were alive.

[17] In January 2023, the RCMP re-categorized her missing person case as historical.

[18] D.J.B. has never been found.

Issues

[19] Does the evidence support a presumption of death on a balance of probabilities?

[20] If so, what is the date on which death should be presumed?

Law and Analysis

[21] Section 2 of the *Presumption of Death Act*, RSY 2002, c. 174 (“the Act”)

provides:

(1) If, on the application of an interested person, the Supreme Court is satisfied that

- (a) a person has been absent and not heard of or from by the applicant, or to the knowledge of the applicant, by any other person since a day named;
- (b) the applicant has no reason to believe that the person is living; and
- (c) reasonable grounds exist for supposing that the person is dead,

the Supreme Court may make an order declaring that the person shall be presumed to be dead for all purposes, or for only those purposes specified in the order.

(2) An order made under subsection (1) shall state the date on which the person is presumed to have died.

(3) Any interested person may, with leave of the Supreme Court, apply to the Supreme Court for an order to vary, amend, confirm, or revoke an order made under subsection (1).

(4) An order, or a certified copy thereof, declaring that a person shall be presumed to be dead for all purposes or for

the purposes specified in the order is proof of death in all matters requiring proof of death for those purposes.

[22] In the absence of any reported Yukon case law interpreting this provision, counsel for R.P. submitted cases from Saskatchewan, British Columbia, and Alberta, interpreting similar provisions in their legislation, and in the case of British Columbia, the identical statutory provision.

[23] The policy concerns underlying an application for a declaration of presumption of death stem from the risk that an unscrupulous applicant with ulterior motives may be subject to unjust enrichment, including from insurance policy payouts; the risk that an order may compromise, prejudice, or result in a cessation of a police investigation in a context where foul play is suspected; the risk that a person has deliberately fabricated their own death because they are fleeing from justice or evading some liability; and the risk of irreversibility if a mistake is made, the person re-appears, and their property is already distributed.

[24] The court in *Medzech (Re)*, 2012 SKQB 216 (“*Medzech*”), set out a suggested comprehensive list of materials to be filed and questions to be answered in support of such an application as this. The relevant excerpt from that decision (para. 9) is attached as appendix A to these reasons. They include: possible explanations and reasons for the person’s disappearance; the timing and details of any investigation into the disappearance – police, media, private, family and friends – including inquiries made of government agencies with respect to official documents, and investigations into financial records, phones, electronic media, health care providers, and transportation providers; and details about the person’s assets, debts, will, beneficiaries, and family circumstances.

[25] In effect an order of presumption of death is based on an inference from all of the evidence provided. It is necessarily circumstantial evidence. The court must be satisfied after considering all of the evidence on a balance of probabilities that the person may be presumed dead.

[26] In this case, there is no concern about any suspicious motives of the petitioner, R.P. His actions in asking his friend to check the home for D.J.B. and her car, flying home early from camp because of her unexplained lack of communication with him, searching for her immediately on his return, notifying the police of her disappearance shortly after his unsuccessful searches, complete transparency about her financial situation, and waiting for almost three years (in hope) before bringing this application, all show his honest caring about and love for D.J.B.. Further, there is much evidence from the many notes left in the home by D.J.B. of her love, gratitude, and respect for R.P. and their relationship.

[27] There is also no reason to suspect foul play. The RCMP investigation did not progress beyond a missing person's file and is now deemed an historical case.

[28] Applying the test set out in s. 2 of the *Act*, first, it is clear from the evidence before the Court that D.J.B. has been absent and not heard from by any other person, since January 20, 2022. It is necessary to consider whether there is evidence leading to the reasonable possibility that D.J.B. intended to disappear only and should not be presumed dead – i.e. whether there is any reason to believe she is living and whether reasonable grounds exist for supposing she is dead.

[29] There was no suicide note left specifically by D.J.B. and she has never been found. However, there are many indications of her intention never to return, and no

evidence of any motivation to disappear in order to evade consequences of any of her actions or because of any financial or legal problems. For example:

- she left her passport, phone, computer, wallet, identification at home;
- there was no credit card activity, no bank account activity other than pre-authorized payments after January 20, 2022;
- she left her car by the river and there was no evidence of her use of any other transportation out of Whitehorse;
- she left notes at home in places where R.P. would see them, stating she was leaving everything to him, thanking him, expressing gratitude for many aspects of her life in the past tense, and stating her affinity with and comfort with water and swimming;
- she put names of friends on her art pieces at home;
- she left a holograph will;
- she had no legal or financial problems; and
- her friends all stated it would be out of character for her not to contact them if she were still alive.

[30] Further, the circumstances leading up to January 20, 2022, provided some partial explanations for why she may have decided never to return:

- she had been prescribed medication for depression, from which she suffered periodically, but appeared to have stopped taking it several days before her disappearance;
- she was feeling stress from work and from her father's recent diagnosis of cancer; and

- she suffered from seasonal affective disorder, and it was January in Whitehorse.

[31] From all of these circumstances as well as the other facts set out in the affidavit evidence, I find on a balance of probabilities that D.J.B. must be presumed dead.

[32] The date of death is a question of fact to be established by the evidence or an inference from the evidence (*Medzech* at para. 18). In this case, D.J.B. checked out of the Gold Rush Inn the morning of January 20, 2022, and that same day her car was found parked by the Yukon River. She did not speak to anyone by phone, or text, from a review of her phone records, after January 17, 2022. Indeed, her phone was found at her home on January 20, 2022. There was no financial activity or use of her identification after January 20, 2022. It is most likely that her death occurred on January 20, 2022.

[33] To conclude, D.J.B. is presumed to be dead for all purposes. She is presumed to have died on January 20, 2022.

[34] My sincere condolences to R.P., the family of D.J.B., and the friends and admirers of D.J.B.

DUNCAN C.J.

APPENDIX A

Excerpt from *Medzech (Re)*, 2012 SKQB 216

[9] On all applications of this type, certain materials should be filed as a matter of course. While the following list is not intended to be exhaustive, it may be of some assistance to counsel in drafting future applications of this type:

A. The Disappearance

- (i) Are there any indications at all as to what happened to the missing person?
- (ii) Is there evidence as to possible explanations, such as accident, suicide, homicide or misadventure?
- (iii) What was the health status (physical and mental) of the person? In some cases, medical evidence may be required.
- (iv) What was the personal and legal status of the person? That is, was he or she facing family strife, relationship issues, financial trouble, employment issues, or legal problems?
- (iv) Within the time prior to disappearance did anything out of the ordinary occur that involved or affected the person?
- (v) Had the person previously disappeared, for any time and any reason? Full particulars should be provided, to show whether this was in or out of character for the person.
- (vi) Was a suicide note, or any other indicator of a reason to disappear, left by the person?
- (vii) Apart from the above, were there any other signs or indicators that the person had a plan to have or disappear, or any possible reasons for doing so?

- (ix) Prior to the disappearance, did the person take, remove, sell, gift or otherwise deal with or dispose of any assets, including: money, investments, debts, credit facilities, clothing, personal items, sentimental items, pets, vehicles? Did they access a safety deposit box?
- (x) Did the person do or say anything in the nature of a "goodbye" or indicate they would be gone forever or for an extended period?
- (xi) Were any recent changes made to a last will and testament, power of attorney, or health care directive?
- (xii) What type(s) of relationships did the person have with family, friends, colleagues and co-workers? Where were all such people located?
- (xiii) Did the person have acrimonious or bad relationships with anyone?
- (xiv) How abrupt was the disappearance?
- (xv) Did the person have relationships with others where regular contact was maintained? If so, what happened to this contact?
- (xvi) Do any of these people have any theories as to what happened to the missing person?

B. The Investigation

- (i) Was the person's disappearance reported to the police? If not, why not? If so, when? Account for any delay.
- (ii) Did the police investigate and, if so, what were the steps taken and results obtained?
- (iii) If possible, file copies of the police reports and/or evidence from the investigating officer(s).
- (iv) Did any family or friends take steps to try to trace or locate the person and, if so, what was done?

- (iv) Was the media involved in efforts to locate the person? Provide particulars.
- (v) Was a private investigator retained to attempt to locate the person?
- (vi) Were any inquiries made at and near the last known location the missing person was known to have been?
- (vii) If there are any places the person might go to, were inquiries made in such location(s)?
- (ix) Were financial records investigated regarding activity before and after the disappearance? Was anything out of the ordinary? Were credit checks conducted?
- (x) Were inquiries made of government agencies to determine recent activities? This would include passports, pensions, licences and registrations, taxes and benefits, other official documents.
- (xi) Were inquiries made of the person's health care providers to determine if they have any helpful information?
- (xii) Were electronic media checked (computers, flash drives, email accounts, social networking sites) for activity or information?
- (xiii) Were transporters (airlines, rail, vehicle rental, travel agents) checked for recent involvement with the missing person?
- (xiv) Were cellphone accounts investigated?

C. The Financial Situation

- (i) Did the person have a will? If possible, file a copy.
- (ii) Provide an inventory of the person's assets and debts, both at the time of disappearance and the time of application.
- (iii) If there have been any changes in family, dependant or beneficiary structure since disappearance, provide full details including

how the person's property would pass to beneficiaries.

- (iv) Provide a full description of the family both at date of disappearance and date of application, including whether such family members had spouses or issue, and if any have died, particulars as to their estates.