

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *John v. Power*, 2004 YKSC 8

Date: 20031211
Docket: S.C. No. 03-B0035
Registry: Whitehorse

BETWEEN:

MELISSA CARON JOHN

Plaintiff

AND:

JOSEPH POWER

Defendant

Before: Mr. Justice Veale

Appearances:

No one appearing
Debbie Hoffman

For the Plaintiff
For the Defendant

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] Veale J. (Oral): This matter was initially brought on by notice of motion by Ms. John on July 25, 2003, seeking interim custody of the child, K., who is presently one year old.

[2] Then the file took a strange twist. Mr. Power began to file affidavits and affidavits of independent people supporting his position and he was seeking interim custody of K. as well.

[3] Ms. John, despite the valiant attempts of Mr. Christie, has not been able to file a further affidavit since her affidavit filed in support of her original application on July 25, 2003.

[4] I accept the allegations, in all of the affidavits, that Ms. John has a serious drug and alcohol problem at the present time, although she may get that under control someday and wish to come back to court to contest the child custody provisions at a trial. However, I am satisfied at the present time that she is not capable of having interim custody.

[5] I would also like to refer to the allegation that Ms. John made, that Mr. Power had drug and alcohol problems and was violent and emotionally abusive. The only affidavit that contained that allegation was the affidavit of Ms. John, and I am satisfied, from reading the affidavit of Mr. Power as well as the affidavits of Kathy McKay, Evelyn Torgerson and Eileen Owen, all who have a substantial connection with the community of Ross River, that Mr. Power has not been violent towards Ms. John and perhaps, indeed, it may be the other way around.

[6] So I am prepared at this time to make an interim custody order to Mr. Power for the care and control of K.

[7] The plaintiff shall have reasonable access to K. so long as she does not consume any drugs or alcohol before or during the time she has care and control of K. I further order that neither the plaintiff nor the defendant shall consume any drugs or alcohol before or during any time they are spending with the child K.

[8] Is there anything further, Ms. Hoffman?

[9] MS. HOFFMAN: No, My Lord, thank you.

[10] THE COURT: Thank you for coming today.

VEALE J.