

Citation: *R. v. Simon*, 2018 YKTC 19

Date: 20180510  
Docket: 18-00066  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before Her Honour Judge Ruddy

REGINA

v.

MIREILLE SIMON

Appearances:  
Susan E. Bogle  
Gary W. Whittle

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] RUDDY J. (Oral): The defendant is before the Court in relation to an allegation of common assault arising in a domestic context with respect to a breakdown in a marital relationship. The defendant was placed on an undertaking to an officer in charge with the following two conditions: that she have no contact, directly or indirectly, with the named complainant; and that she not attend at the residence of the named complainant.

[2] Factually, the information before me establishes that the complainant is currently residing in what would be considered the matrimonial home. There is a great deal of information before me with respect to the fact that that home was purchased by the

defendant and that she is on sole title. However, the information also satisfies me that it would fall within the definition of "matrimonial home".

[3] It is equally clear that this Court has no jurisdiction to determine, in those circumstances, which of the two parties is entitled to possession of the matrimonial home regardless of how strong the evidence might be in favour of one or the other.

[4] The defendant argues that by placing her on a condition that she not attend at the residence of the named complainant, in circumstances where that named complainant is residing in the matrimonial home, the police have violated her right under the *Bill of Rights* to enjoyment of property and not to be deprived thereof, except by due process of law.

[5] With respect to the argument as it relates to the police undertaking, I am satisfied that I do not need to deal with that issue specifically, primarily, because, in my view, s. 503(3) of the *Criminal Code*, which gives the defendant the right to have any order imposed by the RCMP considered at any time between the imposition of that order up to and including the defendant's first appearance, effectively gets us to the same place in terms of being able to consider the appropriateness of any conditions that Ms. Simon may be subjected to. I would decline to make any express findings with respect to the interrelationship between the *Bill of Rights* and an undertaking to an officer in charge.

[6] However, the defendant asserts essentially the same argument with respect to my ability to impose a condition which, while not expressly depriving her of her property rights, would nonetheless have the impact of doing so, at least until such time as the

issue with respect to entitlement to possession of the matrimonial home can be addressed by the Supreme Court of Yukon, which has that jurisdiction.

[7] It should be noted that the Court is required under s. 515 to consider what conditions are appropriate, among other things, “to ensure the safety and security of any victim or witness”. In a domestic violence situation those conditions typically, and for sound reason, include conditions of no contact and not attend at the residence. While they do not specifically decide who gets to reside where, as that falls outside of the Court's jurisdiction when speaking of a matrimonial home, I appreciate, nonetheless, such conditions can have that impact.

[8] Having considered the materials that have been filed, which I reviewed at length yesterday, and the arguments that have been presented before me today, I conclude that s. 1(a) of the *Bill of Rights* does not operate in these circumstances to preclude me from imposing such conditions. In doing so, I am not determining entitlement to possession, which clearly falls outside my jurisdiction.

[9] I am satisfied that the well-established bail scheme as set out in the *Criminal Code* would be considered due process of law with respect to any temporary deprivation of a right to property and would certainly not preclude the defendant from seeking an order from the Supreme Court of Yukon regarding entitlement to the possession of the property that is at issue.

[10] Accordingly, I am satisfied that the undertaking that was given to the Officer in Charge be replaced by an undertaking to a judge. The terms and conditions of that order will be as follows.

[11] It is of benefit to everyone involved in domestic situations to have a condition requiring reporting to a Bail Supervisor. There are a number of conditions we have that allow for permissions to be given that do not require returning to court. There was no initial condition of reporting to a Bail Supervisor, which means some of those exceptions cannot be operationalized. I am of the view that it would be appropriate to add it. As things progress, where it is appropriate to allow for contact or changes with respect to residency clauses, that can be done by permissions without overly burdening the parties.

[12] I am going to add a condition that you, Ms. Simon:

1. Report to a Bail Supervisor within two working days and thereafter when and in the manner directed by the Bail Supervisor;

[13] I am satisfied that the remaining conditions, the no contact and not attend the residence, are appropriate but I am also very mindful of the fact that there have been some clear difficulties that have flowed from the conditions in relation to obtaining your belongings, notwithstanding your entitlement to get some assistance in gathering your things.

[14] I am going to word the replacement conditions as follows:

2. You are to have no contact, directly or indirectly, or communication in any way with Michael Poirier, except with the prior written permission of your Bail Supervisor in consultation with Victim Services or except through a third party

for the purposes of arranging times to retrieve your belongings or except through counsel for the purposes of addressing family law matters;

[15] I should note, for the purposes of this decision, that there was no challenge raised to my ability to impose the no contact condition. It is the matter of residency that was the contentious issue. I am going to impose a condition that:

3. You not go to any known place of residence or employment of Michael Poirier, except with the prior written permission of your Bail Supervisor or except in accordance with an order of a court of competent jurisdiction that is aware of the terms of this order;

That means that the Supreme Court can address the issue of possession with respect to the matrimonial home.

[16] I do want to add an addition to the condition where we can sort out and specify some exact times today, and include those in the order with the understanding, Mr. Poirier, that you are to be out of the house at that time. The Court would not take kindly to you being there at the times that I specify in an effort to put the defendant in breach.

[DISCUSSIONS]

[17] MR. WHITTLE: We'll be taking instructions on going to the Supreme Court. We want 6 p.m. and 8 p.m., please.

[DISCUSSIONS]

[18] MS. MEGAN WHITTLE: Your Honour, if I may, I will be filing an application for exclusive possession of the family home today. That will be the reason. I need something from her for affidavit material.

[19] THE COURT: In those circumstances, then, if they are going to file that application and they need her, she will not be able to go now. It seems reasonable to me, then, to allow her to go in between 6 p.m. and 8 p.m.

[20] I will add to that condition:

or except between the hours of 6 p.m. and 8 p.m. on May 10, 2018.

[21] Between those two hours, Mr. Poirier, you are not going to be in the home or near the home because I do not want any accidental crossing of paths.

[22] Ms. Simon, you are free to go in and get your things between those hours. Follow up with Ms. Whittle, in terms of your options in addressing the bigger question of who is entitled to possession. In addition, I will need you to go to the Court Registry to sign the new order.

[23] Your next appearance will be Monday, May 14 at 2 p.m.

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RUDDY T.C.J.