

Date of Release: September 16, 1994

No. A933952

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)

)

MYRNA LENNORE FORD)

)

REASONS FOR JUDGMENT

PLAINTIFF)

)

AND:) OF THE HONOURABLE

)

MAXWELL ROBERT FORD)

aka LOUIS EMMANUAL)

MR. JUSTICE JOSEPHSON

aka JAMES FRANCK)

aka MAX DINGLE)

)

DEFENDANT)

Counsel for the Plaintiff: F.G. Potts

Counsel for the Defendant: Fil Apolinario

DATE AND PLACE OF HEARING: August 23 and 29, 1994

Vancouver, B.C.

A marriage of some 13 years came to a tumultuous end. The defendant was incarcerated for one year as a result, and remains so.

The plaintiff seeks a declaration that the defendant is in contempt of this court. By way of Rule 18A, the plaintiff seeks summary judgment on issues of custody, access, guardianship, maintenance and apportionment of family assets. The plaintiff also seeks a restraining order.

The defendant submits that certain evidentiary matters have not been proven and that issues of credibility preclude application of Rule 18A.

BACKGROUND

The defendant was born, he claims, in Haiti and entered the United states with a falsified passport. In 1978, he fled to Canada while awaiting trial in Florida on charges of bribery and racketeering. Until recently, he was successful in avoiding detection, partly through the use of assumed names and false documents. His status in Canada upon release from incarceration is

uncertain, although United States authorities have declined to deport him.

The plaintiff and the defendant married in 1980 and have three children of the marriage, born in the years 1981, 1984, and 1987.

THE MARRIAGE BREAKUP

On September 8, 1993 the defendant assaulted the plaintiff while she was a passenger in another vehicle. The defendant suspected the plaintiff of adultery. The defendant was arrested and subsequently released by court order, on conditions precluding contact with the plaintiff.

Contrary to that order, the defendant frequently attempted telephone contact with the plaintiff. On October 27, 1993, Warren J. granted the following *ex parte* relief:

1. Sole interim custody of the children granted to the plaintiff.
2. Access to the children by the defendant denied.
3. The defendant to refrain from contacting the children.
4. Exclusive use of the family home granted to the plaintiff.
5. The defendant to deliver up possession of a Ford Explorer motor vehicle.
6. The defendant to refrain from any contact or interference of any kind with the plaintiff or the children.

Contrary to provisions of this order and the earlier release order, the defendant committed the criminal acts that led to his present incarceration. While the defendant acknowledges the incident took place, he minimizes his culpability.

The defendant was charged with attempted murder of the plaintiff and other charges. The Crown stayed these charges upon the defendant pleading guilty to break, enter and assault. This occurred after a preliminary hearing. The defendant has been in custody since the offence date of November 15, 1993.

On that date, the plaintiff returned home. She and the children had been with friends in hiding from the defendant for about six weeks. She found signs that the home had been broken into. Upon entering, the defendant grabbed her and pushed her against the wall, cutting her head so six stitches were required.

In the presence of two of the three children (the third had gone to summon police), the defendant stated that he was going to kill the plaintiff. The defendant had knives, a flare gun and a gas can with matches. Ropes were found by the bed in the master bedroom. The defendant had cut the telephone line.

The defendant led the plaintiff through the house to have her view the extensive damage he caused to almost all the chattels present. The estimated damage approaches \$40,000.00. The plaintiff escaped by leaping through a window, resulting in further injuries. The police arrived and the incident ended. Within the home, the police found notes written by the defendant revealing an intention on his part to commit suicide after taking the life of the plaintiff.

The defendant wrote:

"I told Myrna before I will hunt her for the rest of my life" and "I have offered my wife all I could, but she wants my life. I didn't want to go alone, I want my kids to live."

Understandably, the plaintiff and the children were extremely traumatized by the incident and now fear the defendant.

This evidence is not denied by the defendant, except to the extent that he claims he made no threats and did not plan to kill the plaintiff. He states he "only wanted to ask her why she was destroying my whole family". He also claims he did not enter the home "for the purpose of wilfully and intentionally disobeying the court order". No further explanation was offered.

I conclude that it was the intention of the defendant to take the plaintiff's life and then his own. That is the only reasonable inference to be drawn from the evidence. The defendant's simple assertion otherwise is inconsistent with that evidence and is not believable.

ACCESS

In view of the evidence, it would be surprising if the conclusions of family therapist, Ted Kuntz, were otherwise. He found the children feared their father, feared that he will injure their mother and feared he will take them out of the country. He adds that the children "show no signs of missing" or wanting to see the defendant.

The defendant expresses great love and affection for the children. It may be that, with time and changing circumstances, a relationship between the defendant and the children will be possible. However, I conclude that any relationship in the present circumstances is contrary to the best interests of the children, for these reasons:

1. the defendant has the capacity for great violence;
2. the defendant, in the presence of the children, both threatened and carried out acts of violence against the plaintiff;
3. the children, with good reason, fear any contact with the defendant.

I award custody and guardianship of the children to the plaintiff. The defendant's claim for access is dismissed.

RESTRAINING ORDER

The relief sought in paragraphs 7) and 8) of the Notice of Motion is granted. That motion was amended at hearing to include a claim that the defendant refrain from contacting family and friends of the plaintiff for the purpose of attempting to locate the plaintiff or the children. That order is granted.

FAMILY ASSETS, SPOUSAL AND CHILD MAINTENANCE

Through the joint efforts of the plaintiff and the defendant, the family unit prospered. The plaintiff seeks reapportionment pursuant to s. 51(e) and (f) of *The Family Relations Act* to account for expenses and income losses arising from the defendant's actions on November 15, 1993.

There is little disagreement regarding the value of family assets at separation. They are as follows:

1.	Savings and Pension	\$100,000.00
2.	Boat	\$30,000.00
3.	Vehicles a) Voyageur	\$10,000.00
	b) Ford Explorer	\$25,000.00
4.	Tools	\$10,000.00
5.	Chattels (prior to destruction by defendant)	<u>\$40,000.00</u>
	SUB TOTAL:	\$215,000.00
	LESS family debt	<u>\$2,000.00</u>
	TOTAL:	<u>\$213,000.00</u>

Thus, equal division would entitle each party to \$106,500. However, the defendant has yet to render sufficient disclosure of possible family assets in the United States. The plaintiff's claim in that regard is adjourned generally. The relief sought in paragraph 10) of the Notice of Motion is granted.

The value of family assets in the hands of, or to be ascribed to, the defendant are as follows:

1)	Cash taken by husband	\$3,800.00
2)	Tools (to be delivered upon request)	\$10,000.00
3)	Ford Explorer	\$25,000.00
4)	Chattels destroyed by defendant	<u>\$38,000.00</u>
	TOTAL:	\$76,800.00
	BALANCE:	\$29,700

REAPPORTIONMENT

The actions of the defendant on November 15, 1993 caused the plaintiff to lose employment income of \$12,000.00. The plaintiff had to move the family at a cost of some \$2,000.00. Now that the release of the defendant is imminent, the plaintiff is moving with the children to a location unknown to the defendant, at a cost which I fix at \$3,000.00.

The losses and expenses flowing reasonably from the defendant's acts of November 15, 1993, should be reflected in a reapportionment under Section 51(e) and (f) of the **Family Relations Act** R.S.B.C. 1979. I reapportion the sum of \$17,000.00 from the defendant to the plaintiff. This reduces the amount due to the defendant from the plaintiff for his interest in the family assets to \$12,600.00.

CHILD MAINTENANCE

The plaintiff expects to be earning employment income consistent with that earned in the past, \$45,000.00 per annum. Her property and financial statement reveals that she expects a monthly shortfall approaching \$1,000.00.

The defendant's future and status in this country are uncertain. In the past, he demonstrated an ability to earn a good income. His release from incarceration could occur any day.

It is appropriate that the cost of maintaining the children be shared equally. Allowing for income tax, I order that the defendant pay to the plaintiff \$400.00 per month for each of the three children, payable on the 1st day of each month, commencing September 1, 1994.

The defendant has paid nothing for the maintenance of the children since separation in September of 1993. His loss of income, beginning November 15, 1993, flows from his actions on that day in violation of court orders and the **Criminal Code**. In those circumstances, the children should not go without maintenance from the defendant when he has the ability to meet that obligation. It is appropriate that there be a lump sum award for child maintenance for the past year in the amount of \$14,400.00 in addition to the periodic payments.

In the circumstances, it is appropriate that the defendant's interest in family assets be utilized to comply with this order. After reapportionment, \$12,600.00 remains for this purpose, leaving a shortfall of \$1,800.00 on the lump sum award.

Because of the defendant's uncertain future, this shortfall and periodic child maintenance payment will be secured and paid by the transfer to the plaintiff of the Ford Explorer motor vehicle, valued at \$25,000. The defendant has yet to comply with the order of Warren J. requiring him to deliver up possession of that vehicle.

SPOUSAL MAINTENANCE

The motion before me was amended at hearing to advance this claim. The plaintiff seeks \$1.00 per month as she expects to be earning sufficient employment income that spousal maintenance will not be required. There is no issue as to entitlement. This claim is granted.

CONTEMPT

The acts of the defendant on November 15, 1993 were in contempt of the order of Warren J. As noted earlier, criminal convictions flowing from those acts resulted in his incarceration for one year. As well, he remains in contempt of the provision in that order requiring him to deliver up possession of the Ford Explorer. No adequate explanation is offered.

Pursuant to Rule 56, I find the defendant in contempt of the order of Warren J. The issue of punishment is adjourned generally.

COSTS

Costs are awarded to the plaintiff.

September 15th, 1994

New Westminster, B.C.

"Josephson J."