

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

CATHERINE L.E. ROSS

Petitioner
(Wife)

- and -

WILLIAM THOMAS ROSS

Respondent
(Husband)

RESPONDENT'S FACTUM

HAMILTON/APPOTIVE/CALLAN
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Solicitors for the Respondent

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PART I - STATEMENT OF FACTS

1. The parties were married December 14, 1985, and separated February 28, 1994. There are two children of the marriage, namely Khierstyn Laurel Emily Ross, born November 16, 1986, and Hilary Lynne Victoria Ross, born January 27, 1989.
2. The family continues to reside in the matrimonial home, although since the breakdown of the marriage, the situation has become increasingly stressful, and it is not in the best interests of the children that they be subjected to the tension between their parents. The husband is seeking custody of the children, and exclusive possession of the matrimonial home.
3. The husband, particularly in the last few years, has assumed a far greater proportion of the childcare duties than has the wife.
4. The wife consumes excessive quantities of alcohol on a daily basis, is unable to control her spending to the extent that she has run up significant debt, and seems unable or unwilling to accept her responsibility toward the children.
5. The husband is employed at Bell Northern Research, and the wife at Mitel. Following their return from work in the evening, the husband provides virtually all childcare, including bathing the children, reading them a bedtime story, and putting them to bed. The wife prepares dinner for the children, which they are forced to eat in front of the TV, following which she prepares another meal for the adults, immediately following which she goes to bed.

6. The wife has little interaction with the children, and as has been observed by numerous members of the extended families and friends, demonstrates no affection towards them, and tends to regard them as troublesome intrusions into her life.
7. The wife's insatiable demand for money from the husband has gone so far that she demanded \$1,000 from him for giving the children their evening bath for approximately one month. The husband regularly engages in activities with the children, including taking them for bike rides, building a treehouse in the backyard, and generally attending to all their needs with the exception of preparing the evening meal.
8. The wife appears incapable of putting the children's interests before her own, and the husband is concerned with what would appear to be attempts recently by the wife to alienate the children from him.
9. In preparation for the hearing of the motion, the husband obtained statements from the wife's former stepfather, her two sisters, members of the husband's family, and various friends and acquaintances, with regard to their observations of the wife's behaviour toward the husband and the children. All persons who provided statements on the issue of custody, even the wife's family, unequivocally state that she should not be granted custody either because of her drinking or apparent lack of affection for the children, she would not be a suitable custodial parent.
10. It would be in the children's best interest to remain in the matrimonial home with the husband, and have regular, reasonable access with the wife.

11. The husband earns \$66,500 per year, and the wife earns approximately \$28,000 per year. As well, the family budget is supplemented by rental income in the approximate amount of \$8,000 per year.
12. The husband had worked out a budget for the household, and the wife had agreed to contribute to the household finances by being responsible for certain costs such as food, telephone, insurance, and the children's clothing, as well as her own personal expenses. The wife has consistently failed to fulfil her obligation, to the extent that the husband is constantly called upon to "help". In addition, the wife has over the last year increased her debt in the amount of approximately \$5,300. The husband has had an accountant prepare an analysis of the wife's spending and increase in debt over the last year, and it is obvious that the wife is expending large sums on herself, as well as incurring debt to the detriment of the family. The husband believes that the wife has spent significant sums on alcohol, as well as for luxury items for herself.
13. The husband has prepared a childcare budget, and the wife's necessary contribution has been calculated to be approximately \$575 net of taxes.
14. The wife's Financial Statement has revealed that she has disposed of family assets allegedly in payment of debts to her mother, and the husband is concerned about the reckless depletion of family assets.

PART II - STATEMENT OF LAW

15. A court of competent jurisdiction may, on application by either or both spouses, or by any other person, make an Order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

The Divorce Act, 1985, S.C. 1986, c. C-47, Section 16(1)

16. When an application is made under subsection (1), the court may, on application by either or both spouses, or by any other person, make an interim Order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage, pending determination of the application under subsection (1).

The Divorce Act, 1985, S.C. 1986, c. C-47, Section 16(2)

17. In making an Order under [Section 16] the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs, and other circumstances of the child.

The Divorce Act, 1985, S.C. 1986, c. C-47, Section 16(8)

18. A court of competent jurisdiction may on application by either or both spouses make an Order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of ... (b) any or all children of the marriage.

The Divorce Act, 1985, S.C. 1986, c. C-47, Section 15(2)

19. When an application is made under subsection (2), the court may, on application by either or both spouses, make an interim Order requiring one spouse to secure or pay, or

to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of ... (b) any or all children of the marriage.

The Divorce Act, 1985, S.C. 1986, c. C-47, Section 15(3)

20. An Order made under [Section 15] provides that the support of a child of the marriage should (a) recognize that the spouses have a joint financial obligation to maintain the child; and (b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

The Divorce Act, 1985, S.C. 1986, c. C-47, Section 15(8)

21. In an application under Section 33, the court may make an interim or final Order, ... (i) requiring that a spouse who has a policy of life insurance as defined in the Insurance Act designate the other spouse or child as the beneficiary irrevocably.

The Family Law Act, R.S.O. 1990, c. F3, Section 34(1)(i)

22. Regardless of the ownership of a matrimonial home and its contents ... the court may on application, by order, ... (b) direct that one spouse be given exclusive possession of the matrimonial home ... (d) direct that the contents of the matrimonial home, or any part of them (i) remain in the home for the use of the spouse given possession.

The Family Law Act, R.S.O. 1990, c. F3, Section 24(1)

23. In determining whether to make an Order for exclusive possession, the court shall consider (a) the best interests of the children affected ... (c) the financial position of both spouses ... (e) the availability of other suitable and affordable accommodation.

The Family Law Act, R.S.O. 1990, c. F3, Section 24(3)

24. In determining the best interests of a child, the court shall consider, (a) the possible disruptive effects on the child of a move to other accommodation; and (b) the child's views and preferences, if they can be reasonably ascertained.

The Family Law Act, R.S.O. 1990, c. F3, Section 24(4)

25. A court may, on application, order a person to provide support for his or her dependants and determine the amount of support.

The Family Law Act, R.S.O. 1990, c. F3, Section 33(1)

26. In an application under Section 33, the court may make an interim or final Order, ... (i) requiring that a spouse who has a policy of life insurance as defined in the Insurance Act designate the other spouse or child as the beneficiary irrevocably.

The Family Law Act, R.S.O. 1990, c. F3, Section 34(1)(i)

27. In an application under Section 7 or 10, if the court considers it necessary for the protection of the other spouses interest under this Part, the court may make an interim or final Order (a) restraining the depletion of the spouse's property; and (b) for the possession, delivering up, safe keeping and preservation of the property.

The Family Law Act, R.S.O. 1990, c. F3, Section 34(12)

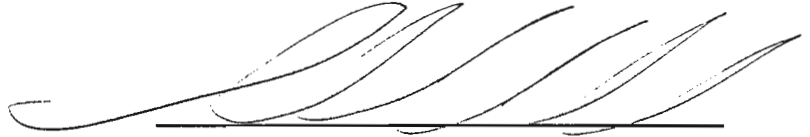
PART III - ORDER SOUGHT

28. Interim custody of the children of the marriage, namely Khierstyn Laurel Emily Ross, born November 16, 1986, and Hilary Lynne Victoria Ross, born January 27, 1989, or in the alternative, interim joint custody of the said children, together with a further Order providing that the primary residence of the children shall be in the home of the Respondent, subject to reasonable access on reasonable notice by the Petitioner;
29. Interim child support in the amount of \$400 per month, per child, for a total of \$800 per month, to be paid to the Respondent, indexed to the cost of living based on increases in the Consumer Price Index as published by Statistics Canada;
30. An interim Order requiring the wife to designate the husband and the children of the marriage as irrevocable beneficiaries of her life insurance policy or policies;
31. Interim exclusive possession of the matrimonial home known municipally as 1077 Thomas A. Dolan Parkway, Dunrobin, Ontario, and the contents thereof;
32. An interim Order restraining the Petitioner from depleting any assets in her possession or under her control until further order of the court;
33. An Order abridging the time for service of the within cross-motion;

33. Costs on a solicitor and client basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: June 21, 1994

A handwritten signature in black ink, consisting of several large, sweeping loops, positioned above a horizontal line.

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CATHERINE L.E. ROSS -and- WILLIAM THOMAS ROSS
Petitioner Respondent

Court file no. 48783/94

ONTARIO COURT (GENERAL DIVISION)

Proceeding commenced at Ottawa

RESPONDENT'S FACTUM

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