

# In the Court of Appeal for the Northwest Territories

**Citation:** *Mubili v Northwest Territories (Administrator, Maintenance Enforcement)* 2021 NWTCA 5

**Date:** 2021 04 29  
**Docket:** A1-AP-2020-000-010  
**Registry:** Yellowknife

**Between:**

**Viktor Mubili**

Appellant

- and -

**The Administrator, Maintenance Enforcement  
for the Northwest Territories and  
Agnes Zinyama-Mubili**

Respondents

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**The Court:**

**The Honourable Mr. Justice Frans Slatter  
The Honourable Madam Justice Barbara Lea Veldhuis  
The Honourable Mr. Justice Thomas W. Wakeling**

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## **Memorandum of Judgment**

Appeal from the Order of  
The Honourable Mr. Justice A.M. Mahar  
Dated the 2nd day of September, 2020  
Filed the 11th day of September, 2020  
(Docket: S-1-FM-2020-000-046)

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## Memorandum of Judgment

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### **The Court:**

[1] The parties have been involved in extensive litigation regarding child support, first in Ontario and now in the Northwest Territories where the father currently resides. There have been a number of orders addressing monthly support and arrears. The Maintenance Enforcement Program (MEP) has been involved.

[2] In April 2020 the father filed an originating application in the Northwest Territories to adjust child support arrears arising out of the various Ontario orders. The outstanding child support arrears were allegedly in excess of \$100,000. The father was subject to federal garnishment and MEP threatened to suspend his passport and driver's licence for non-payment. The father asserted that certain amounts paid directly to the mother or the child should have been deducted from the amount outstanding as well as court ordered credits arising from exercising his access to the child in Ontario. He sought a repayment plan for the arrears in the amount of \$100 per month and an injunction against MEP preventing further enforcement.

[3] On June 4, 2020 an order was presented to the court by the father's lawyer. The father did not want the order styled as a "consent order", although he did consent in principle to the terms; he just was not happy about it. The lawyer's submissions indicate that the arrears amount was settled through negotiations with the mother. The order confirmed that \$75,000 was outstanding in child support. The order also set out monthly payments of \$1,400 comprised of \$900 in monthly child support and \$500 towards the payment of arrears. A lawyer from MEP was also in attendance at the hearing.

[4] Not included in the order, although what may have been discussed in the lead up to the application, was the discontinuance of the enforcement proceedings by the Ontario Family Responsibility Office (FRO). It appears that there was some delay with the FRO discontinuing the enforcement after the file transferred from Ontario to the Northwest Territories and after the June 4, 2020 order was granted.

[5] On July 16, 2020 the father brought a further application alleging contempt by the mother for allegedly telling the FRO to continue with the enforcement and for seeking an order "varying the June 4, 2020 Order upon full validation of the alleged child support arrears" or alternatively, an order rescinding the arrears and costs of the June 4, 2020 appearance. He claimed that the arrears amount in the June 4, 2020 order was incorrect and did not include all payments made and credits earned through exercising access. By this time, the father's counsel withdrew and he was self-represented.

[6] The parties appeared before the chambers judge on July 30, 2020 to set dates for the hearing. Further preparation was required, so the matter was set over to August 13, 2020. On August 13,

2020 the parties met again and the relief that the father was seeking was still unclear to the chambers judge and counsel for MEP. On that date, the chambers judge understood that the father was seeking to vary the June 4, 2020 order and granted him leave to do so. The variation application was set for hearing on September 2, 2020.

[7] At the outset of the hearing on September 2, 2020, the chambers judge indicated to the parties that he had reviewed the voluminous materials and now understood that the majority of the relief that the father was seeking was in the nature of an appeal of the June 4, 2020 order, not a variation of it. He advised the father that he would not address matters related to the appeal and given the confusion, the chambers judge extended the time for the father to file his appeal of the June 4, 2020 order should he so choose.

[8] The chambers judge then addressed the FRO enforcement and confirmed with counsel for MEP that it had been discontinued. He also confirmed with the father that there was no “double dipping” because of the overlapping files in the two jurisdictions.

[9] The father alleged that the mother should still be held in contempt because she “authorized” the FRO to continue with enforcement. The chambers judge declined to make a finding of contempt since there was nothing in the June 4, 2020 order related to the termination of that enforcement. Since the father experienced no prejudice or harm from the delay in cancelling the Ontario garnishee, there was nothing further to discuss or order as it related to the FRO enforcement.

[10] During the mother’s submissions, she alleged that the father did not pay child support for August 2020. The chambers judge advised the parties that he would not consider anything related to compliance with the June 4, 2020 order at this hearing.

[11] Finally, the chambers judge considered the father’s concerns with access credits. MEP would not recognize the \$400 per trip credit associated with him exercising access to his son who resided in Ontario without a court order or confirmation from the mother. The chambers judge had the mother undertake to the court to advise MEP when those trips occurred so that the credit could be applied to the father’s account on a go-forward basis.

[12] The father now appeals the September 2, 2020 order, but not the June 4, 2020 order. He raises a variety of complaints related to the mother’s alleged contemptuous behavior going back years. He also states that the court erred in refusing to “validate” his arrears and that it was bound to do so by virtue of promissory estoppel. He also raises a number of arguments regarding the June 4, 2020 order and the legal expenses he incurred.

[13] The vast majority of the father’s complaints regarding the mother’s behavior dating back over a decade are not properly before us. The only allegation of contempt that we can consider is the allegation that the mother was somehow to blame for the delay in terminating the FRO enforcement. We agree with the chambers judge that since the enforcement proceedings were not addressed in the June 4, 2020 order, no finding of contempt for non-compliance could be made.

[14] It is also unnecessary for us to address whether the mother's submissions that the August 2020 payment was outstanding as of September 2, 2020 was contempt. It appears that the father had made the payment to MEP, but the payment had not reached the mother as of that date. Regardless, the chambers judge expressly declined to make a finding or grant any further relief regarding these submissions or any other submissions about compliance with the June 4, 2020 order.

[15] There is no merit to the father's arguments that the court was somehow bound to vary the June 4, 2020 order because it granted him leave to make a variation application. A leave decision merely permits a party to argue the issue. It is in no way a promise by the court to actually vary the order. The father was still required to meet the legal test for a variation of a child support order. He failed to do so.

[16] Finally, this Court will not consider the father's arguments regarding the June 4, 2020 order, what amounts were properly in arrears according to the numerous Ontario orders and whether costs ought to have been ordered. It does not matter whether the June 4, 2020 order was a "consent" order. The important thing is that the June 4, 2020 order was a final order as it relates to all credits, payments and arrears to that date. There was no indication within the order that the \$75,000 was subject to later "validation" by the court or otherwise. The chambers judge set out for the father the difference between an appeal and a variation, extended the time for the father to file his appeal of the June 4, 2020 order and considered only those arguments that would have constituted grounds for variation. This was appropriate. The father did not follow those instructions and file an appeal of the June 4, 2020 order. As a result, this order is not before us and continues to stand as a valid order setting out the arrears and repayment schedule.

[17] The appeal is dismissed.

Appeal heard on April 20, 2021

Memorandum filed at Yellowknife, NWT  
this 29th day of April, 2021

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Authorized to sign for: Slatter J.A.

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Veldhuis J.A.

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Authorized to sign for: Wakeling J.A.

**Appearances:**

The Appellant V. Mubili

T. Bock

for the Respondent The Administrator, Maintenance Enforcement for the Northwest Territories

The Respondent A. Zinyama-Mubili

A-1-AP-2020-000-010

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