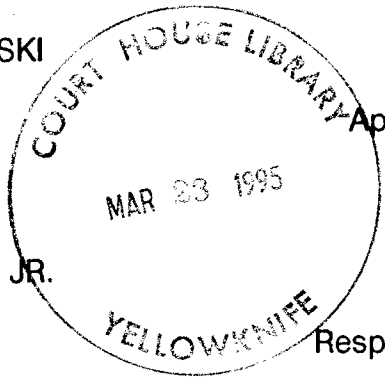


Action No. CV 05191

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CARLA SHUPARSKI



Applicant

- and -

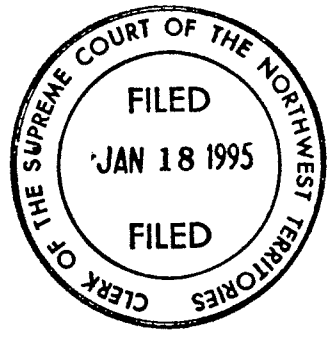
NORMAN MAIR, JR.

Respondent

**REASONS FOR JUDGMENT
OF THE HONOURABLE MADAM JUSTICE HETHERINGTON**

Carla Shuparski has applied for an order directing Norman Mair, Jr. to pay her \$750.00 each month for the maintenance of their daughter, Meagan Shuparski.

Mr. Mair does not dispute that he is Meagan's father. The circumstances under which this child was conceived are therefore irrelevant. She was born on the 15th of November, 1993.



Ms. Shuparski has applied for child support under s. 28(4) of the **Domestic Relations Act**, R.S.N.W.T. 1988, c. D-8. That sub-section reads as follows:

"(4) The Court may make an order for the maintenance of a child by payment from time to time
(a) by the father or by the mother, or
(b) out of an estate to which the child is entitled, of a sum that the Court considers reasonable, having regard to the pecuniary circumstances of the father or the mother or to the value of the estate."

(Emphasis added)

Counsel agree that in determining the amount of child support that is reasonable in this case, I should apply the same principles as if this were an application under s. 15 of the **Divorce Act**, R.S., 1985, c. 3 (2nd Supp.). The relevant parts of that section read as follows:

". . . .

(2) A court of competent jurisdiction may . . . make an order requiring one spouse to . . . pay . . . such . . . periodic sums . . . as the court thinks reasonable for the support of

. . .
(b) any or all of the children of the marriage; or

. . . .

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought

(8) An order made under this section that provides for the support of a child of the marriage should

- not subject to
proposed
necessary
- (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."

(Emphasis added)

October

In the case of *Levesque v. Levesque; Birmingham v. Birmingham* (1994), 20 Alta L.R. (3d) 429, the Alberta Court of Appeal set out guidelines for child support awards under s. 15 of the **Divorce Act** in two-income families. In accordance with those guidelines, I must determine the following:

- (1) The income of Ms. Shuparski and Mr. Mair, on the understanding that the word income means the income which each "can generate by personal effort and the prudent investment or sale of existing assets" (at p. 31).
- (2) The cost of bringing up Meagan.
- (3) How that cost should be apportioned between Ms. Shuparski and Mr. Mair.
- (4) What adjustment of the apportionment is necessary because of the effect of income tax.
- (5) Whether any adjustment of that apportionment is necessary because of circumstances other than the effect of income tax.

Further to (5) above, the court said (at p. 38) that a judge should first determine the financial obligation of each parent for child support, and then consider whether each parent could meet his or her obligation. If a parent could

not subsist on the money which would be left to him or her after payment of the proposed child support, then the court said that an adjustment might be necessary, subject always to the conditions described in the judgment.

Counsel for Ms. Shuparski pointed out that in *Willick v. Willick* (27 October 1994), (S.C.C.) [unreported] Madam Justice L'Heureux Dube disagreed with the Alberta Court of Appeal in this regard. She said at p. 20 that in every case a judge ". . . should deduct from each party's total income a sum needed to achieve subsistence . . .", before apportioning child care costs between them.

However, in *Willick* Madam Justice L'Heureux Dube wrote for the minority. As a result, her decision does not overrule anything in *Levesque*. I will therefore follow the guidelines set out in that decision.

(1) Income

Leaving aside the question of assets, Ms. Shuparski and Mr. Mair have the following annual incomes:

MS. SHUPARSKI	
Employment	\$27,175.00
Total -- Ms. Shuparski	\$27,175.00

MR. MAIR		
Employment	50,436.00	
Vacation travel assistance	<u>1,400.00</u>	
Total -- Mr. Mair		\$51,836.00
TOTAL		<u>\$79,011.00</u>

Ms. Shuparski has custody of a child from another relationship. The father of the child pays her \$400.00 a month, or \$4,800.00 a year, for the support of this child. Since these payments are made for the support of another child, I do not think that they can be considered as income available for Meagan's support.

Similarly, Ms. Shuparski receives a child tax credit of \$1,982.00 per year. One half, or \$991.00, is attributable to her first child. I do not think, that any part of that can be regarded as income available for Meagan's support. Further the balance of \$991.00, which is attributable to Meagan, should be treated as a direct contribution to her support, rather than as income which Ms. Shuparski may or may not use for that purpose.

Mr. Mair also has custody of his son from another relationship. He is entitled to receive \$300.00 each month from the child's mother for the support

of the child. However, the mother has not made these payments on a regular basis. Mr. Mair is currently attempting a reconciliation with this woman.

Mr. Mair receives a child tax credit of \$540.00 per year for his son.

While support payments and child tax credits for other children should not be included in any calculation of income available for the support of Meagan, they are, of course, relevant to any consideration of the ability of the recipients to meet their financial obligations to Meagan.

It should be noted that Mr. Mair owns a mobile home and has an insurance RRSP valued at \$2,000.00. Both Ms. Shuparski and Mr. Mair own motor vehicles.

(2) Cost of Bringing up Meagan

Ms. Shuparski estimated the monthly cost of caring for Meagan as

follows:

Daycare	\$515.00
Clothing	75.00
Food	100.00
Diapers, medication, misc.	<u>75.00</u>
	\$765.00

It is necessary to add to this sum a portion of the housing cost for the family in which Meagan lives. Ms. Shuparski suggested a figure of \$300.00, which included rent and other expenses related to housing.

Ms. Shuparski currently lives in subsidized housing, for which she pays 25% of her gross income. This comes to \$530.00 per month. If Mr. Mair were to pay her \$750.00 each month, her rent would increase by 25% of that sum, or \$187.50. She would then have to pay \$717.50 per month as rent. In my view an appropriate share of that sum to attribute to Meagan would be 1/3 or approximately \$240.00.

Taking into consideration the cost to Ms. Shuparski of electricity, telephone and insurance, the figure of \$300.00 which she suggested as Meagan's share of housing costs each month, seems reasonable.

Ms. Shuparski does not seek any contribution to her transportation costs, which are approximately \$300.00 a month. However, Meagan must be transported to and from daycare. In my view, the sum of \$100.00 should be attributed to this transportation.

Adding \$400.00 (\$300.00 for housing costs and \$100.00 for transportation) to Ms. Shuparski's estimated monthly expenses for Meagan brings the cost of her care to \$1,165.00 a month, or \$13,980.00 a year. I note that this sum will cover only the child's basic needs. It will not provide for things like babysitting and toys.

To the extent of \$990.00 a year the cost of caring for Meagan is covered by the child tax credit.

Neither Ms. Shuparski nor Mr. Mair provided me with any evidence of the effect of income tax on the calculation of child support for Meagan. I have therefore relied on a software program called Support.Works 1.0 to assist me in assessing that effect. I am attaching as Appendix A to these reasons a copy of the work sheet produced by that program.

I have assumed that Ms. Shuparski claims an equivalent to married credit in relation to her first child, and cannot do so in relation to Meagan. However, Ms. Shuparski can deduct from her taxable income whatever she pays for daycare for Meagan to a maximum of \$5,000.00. She will in this way receive a tax benefit of \$1,924.00 a year.

The part of the cost of caring for Meagan which Ms. Shuparski and Mr. Mair must share is therefore arrived at as follows:

Expenses	\$13,980.00
Minus child tax credit	<u>990.00</u>
	\$12,990.00
Minus tax benefit from daycare deduction	<u>1,924.00</u>
	\$11,066.00

After deducting the child tax credit and the tax benefit which Ms. Shuparski will receive from the daycare deduction, the sum of \$11,066.00 a year, or \$922.00 a month, remains to be apportioned between Ms. Shuparski and Mr. Mair.

(3) Apportionment of Cost of Bringing up Meagan.

Ms. Shuparski and Mr. Mair ". . . should contribute that proportion of the calculated child care costs that his or her income bears to the total gross income of the parents." (*Levesque, supra* at p. 443.) Mr. Mair's income is 65.61% of their total gross income. Ms. Shuparski's income is 34.39%. Mr. Mair should therefore pay 65.61% of the cost of caring for Meagan, and Ms. Shuparski should pay 34.39%. Without the assistance of the computer program referred to above, I would not attempt to be so precise.

In the end result Mr. Mair should pay to Ms. Shuparski a sufficient sum of money so that she will net after tax \$7,259.97 a year, or \$605.00 a month.

(4) Adjustment for Income Tax

Three things must be kept in mind in adjusting for income tax:

- Ms. Shuparski must pay income tax on any money that she receives from Mr. Mair as child support.
- Mr. Mair can deduct from his taxable income any money that he pays to Ms. Shuparski as child support.
- Ms. Shuparski and Mr. Mair are not required to pay income tax on the money which they receive as child tax credits.

Using the figures referred to above and 1993 income tax tables for the Northwest Territories, the computer program to which I have referred produces the results shown in Appendix B to these reasons. Those results indicate the following.

Mr. Mair would have to pay Ms. Shuparski \$849.46 every month, in order for her to have available for Meagan's care, after payment of income tax, the sum of \$605.00.

If Mr. Mair paid Ms. Shuparski \$849.46 every month, his after tax income would be reduced by \$522.59 per month.

(5) Whether any adjustment of that apportionment is necessary because of circumstances other than the effect of income tax.

I need not consider whether, if Mr. Mair paid Ms. Shuparski \$849.46 each month as his contribution to the support of Meagan, Mr. Mair could subsist and support his son on the money left to him. Ms. Shuparski asks only that he pay \$750.00 each month, although she knows that she could ask for more. Mr. Mair says that he cannot afford to pay her \$750.00 each month. I do not agree. If Mr. Mair paid Ms. Shuparski \$750.00 each month, his after tax income would be reduced by \$461.40 to \$2,659.91 per month. I am attaching as Appendix C to these reasons a copy of a summary of results produced by Support.Works 1.0 from which these figures are derived.

Mr. Mair's estimated monthly expenses are as follows:

Mortgage	740.00
Home maintenance	75.00
Home insurance	45.00
Fuel (oil)	150.00
Electricity	110.00
Water	50.00
Telephone	60.00
Groceries	450.00
Clothing and personal	155.00
Allowance for Lance	20.00
Fuel for truck	200.00
Vehicle maintenance	40.00
Insurance and registration	30.00
Life insurance RRSP	55.00
Health costs	75.00
(glasses, prescriptions, etc.)	
Entertainment	125.00

Subscriptions	25.00
Tuition fees (correspondence courses)	30.00
Lance's recreation	50.00
Cable t.v.	40.00
Gifts	35.00
Daycare	450.00
Babysitting	50.00
Visa payment	60.00
TOTAL:	\$3,120.00

As I indicated above, Mr. Mair's insurance RRSP is valued at \$2,000.00. He pays \$55.00 on it each month. If he were to cash it in, his monthly expenses would be reduced by \$55.00. With the proceeds he could at least reduce his indebtedness to VISA, thereby reducing his monthly payments on that indebtedness, which are now \$60.00.

In an affidavit sworn to on the 26th of May, 1994, Mr. Mair said

"7. My vehicle fuel expenses are high because I incur expenses in taking my son to Rae and Snare Lakes to visit with his mother and her family on a regular basis. We also go camping, fishing and trapping and I hunt to provide for meat for myself and my son. My son's mother is a Dogrib woman and I try to expose my son as much as possible to her culture and its traditional activities."

While it is certainly commendable that Mr. Mair encourages contact between his son and the family of the boy's mother, in my view the basic needs of his daughter must take precedence over this contact.

Similarly the needs of his daughter take precedence over Mr. Mair's entertainment, subscriptions, tuition fees.

Many of the expenses listed by Mr. Mair are expenses incurred for the benefit of his son. Although she does not do so on a regular basis, his son's mother does contribute to those expenses.

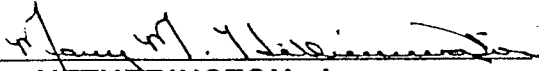
For all of these reasons, I am sure that Mr. Mair can afford to pay Ms. Shuparski \$750.00 each month for the support of their child.

I therefore direct that Mr. Mair pay Ms. Shuparski each month for the support of their daughter, Meagan, the sum of \$750.00. The first of these payments is to be made immediately and subsequent payments are to be made on the 1st day of every month. The order providing for interim support payments which I made on the 28th of November, 1994, shall cease to have any effect as of the 31st of December, 1994.

I direct Ms. Shuparski to pay to Mr. Mair his taxable costs in relation to his successful application for an order directing Ms. Shuparski to re-attend for cross-examination on her affidavit, and to answer certain questions. Otherwise

I direct Mr. Mair to pay to Ms. Shuparski her taxable costs of this application for child support. All costs are to be taxed at double Column 4.

DATED AT YELLOWKNIFE,
N.W.T. THIS 4TH DAY OF
JANUARY, A.D. 1995



HETHERINGTON, J.

Counsel:

Elaine Keenan Bengts
for the Applicant

Pay

Lucy K. Austin
for the Respondent

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ANALYSIS OF CHILD SUPPORT REQUIREMENTS

Mair.4 VS Shuparski

WORKSHEET

Payor's Gross Income	A	51836.
Recipient's Gross Income	B	27175.
Total Family Income	C = A+B	79011.
Deductible Portion of Day Care	D	5000.
Projected Annual Child Care Expense	E	13980.
Less Child Tax Benefit	F	990.
Tax Benefit of Day Care Deduction	G	1924.
Equivalent to Married Tax Credit	H	0.
Net Annual Child Care Expense	I = E-F-G-H	11066.
Payor's Portion of Annual Child Care	J = (A/C)*I	7259.
Less Child Care Expense Paid Directly By Payor	K	0.
Payor's Portion to be Paid to Recipient	L = J-K	7259.
Recipient's After Tax Income Before Support	M = TABLE 1	23220.
Recipient's After Tax Income Required	N = M+L	30480.
Recipient's Gross Income Required	O = TABLE 1	37368.
Annual Support Required to Have Recipient Receive \$ 7259.97 in After Tax Dollars	P = O-B	10193.
Monthly Support Payments Required	Q = P/12	849.

ANALYSIS OF CHILD SUPPORT REQUIREMENTS

Mair.4 VS Shuparski

SUMMARY OF RESULTS

Surname Province	PAYOR		RECIPIENT	
	Mair.4		Shuparski	
	NT		NT	
	MONTHLY	ANNUAL	MONTHLY	ANNUAL
Gross Subsistence	4319.67 0.00	51836.00 0.00	2264.58 0.00	27175.0 0.0
Gross Support	849.46	10193.52	849.46	10193.5
After Tax Value Of Support	522.59	6271.05	605.00	7259.9
Net After Tax Dollars Available (Before Support)	3121.31	37455.67	1935.01	23220.1
Net After Tax Dollars Available (After Support)	2598.72	31184.61	2539.94	30479.2

Number of Children	1
Projected Monthly Child Care Expense	1165.00
Deductible Portion of Day Care	5000.00
Monthly Child Tax Benefit Received	82.50
Is Recipient Entitled to Equivalent to Married Tax Credit	NO

APPENDIX C

ANALYSIS OF CHILD SUPPORT REQUIREMENTS

Mair.4 VS Shuparski

SUMMARY OF RESULTS

Surname Province	PAYOR		RECIPIENT	
	Mair.4		Shuparski	
	NT		NT	
	MONTHLY	ANNUAL	MONTHLY	ANNUAL
Gross Subsistence	4319.67	51836.00	2264.58	27175.00
	0.00	0.00	0.00	0.00
Gross Support	750.00	9000.00	900.00	9000.00
After Tax Value Of Support	461.40	5536.80	543.74	6524.92
Net After Tax Dollars Available (Before Support)	3121.31	37455.67	1935.01	23220.10
Net After Tax Dollars Available (After Support)	2659.91	31918.87	2478.75	29745.02

Number of Children	1
Projected Monthly Child Care Expense	1165.00
Deductible Portion of Day Care	5000.00
Monthly Child Tax Benefit Received	82.50
Is Recipient Entitled to Equivalent to Married Tax Credit	NO