

CV 04451

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application, pursuant to s.19 of the Divorce Act, R.S.C. 1985, c.D-3.4 (as amended), to confirm a provisional variation order;



BETWEEN:

IVA JULIETTE HENWOOD,

Petitioner

- and -

ERIC CLAYTON HENWOOD,

Respondent

Application for confirmation of a provisional order varying child support obligations.
Confirmed with variation.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES

Heard at Yellowknife Northwest Territories
on October 1, 1993
Judgment filed October 8, 1993

Counsel for the Attorney General
of the Northwest Territories: Ms. R. Veinott

The Petitioner, Iva Juliette Henwood,
appearing in person

1981

1981

THE FEDERAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application under
s. 10 of the Child Act, R.S.C. 1985
No. 1 of 1981, to appoint a guardian
of the person of a child

John
Robert
Henderson

vs
JULIA HENDERSON

FILE NO. 1981-10-001

THE COURT

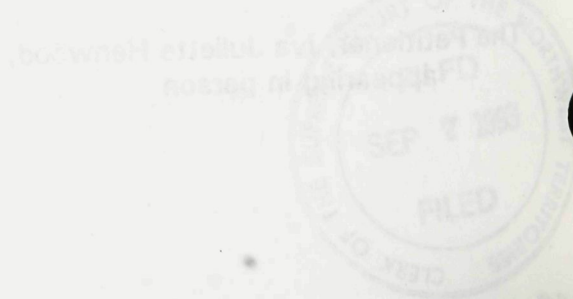
do hereby
order

JULIA HENDERSON, Plaintiff,
vs
JOHN ROBERT HENDERSON, Defendant.

Application for variation of a guardianship order made by the court on October 8, 1981.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE WATSON

Head of Northwest Territories
on October 7, 1981
Judgment filed October 8, 1981
THE FEDERAL COURT OF THE NORTHWEST TERRITORIES
Counsel for the Plaintiff - Mrs. R. Henderson
of the Northwest Territories - Mrs. R. Henderson



IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application, pursuant to s.19 of the Divorce Act, R.S.C. 1985, c.D-3.4 (as amended), to confirm a provisional variation order;

BETWEEN:

IVA JULIETTE HENWOOD,

Petitioner

- and -

ERIC CLAYTON HENWOOD,

Respondent

REASONS FOR JUDGMENT

This is an application to confirm a provisional order varying the support obligations imposed by a divorce judgment and corollary relief order.

On April 10, 1992, the Court of Queen's Bench of Alberta granted to Mrs. Henwood a judgment of divorce. As part of the corollary relief awarded, Mrs. Henwood was granted custody of the two children of the marriage, Diana, who is now 18 years old, and Vincent, now 14 years old. The corollary relief order also provided that Mr. Henwood pay child support of \$200.00 per month per child so long as the children remain children of the marriage within the meaning of the Divorce Act (the "Act"). This order was issued with the consent of Mr. Henwood.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application pursuant
to s. 19 of the Divorce Act, R.S.C. 1985,
c. D-8.4 (as amended), to confirm a provisional
valuation order

BETWEEN:

IVA ALUETTE HEWWOOD,

Petitioner

- and -

ERIC CLAYTON HEWWOOD

Respondent

REASONS FOR JUDGMENT

This is an application to confirm a provisional order varying the support obligations

imposed by a divorce judgment and custody relief order.

On April 10, 1992, the Court of Queen's Bench at Alberta granted to Mr.

Hewwood a judgment of divorce. As part of the custody relief awarded, Mr. Hewwood

was granted custody of the two children of the marriage, Dora, who is now 18 years old,

and Vincent, now 14 years old. The custody relief was also provided to Mr. Hewwood

pay child support of \$2000 per month per child so long as the children remain children

of the marriage within the meaning of the Divorce Act. This order was issued

with the consent of Mr. Hewwood.

Prior to the divorce judgment, an order for interim support was issued by the Alberta court on October 28, 1991. This order provided for interim support of \$200.00 per month per child payable by Mr. Henwood to Mrs. Henwood.

The two former spouses now reside in different jurisdictions. Mr. Henwood resides in New Brunswick while Mrs. Henwood resides in the Northwest Territories.

Over time Mr. Henwood fell into arrears on his support obligations. Also circumstances changed. The daughter, Diana, moved to New Brunswick in April of 1992.

On December 17, 1992, Mr. Henwood appeared in the Court of Queen's Bench of New Brunswick (Family Division) in answer to enforcement proceedings undertaken pursuant to that province's Reciprocal Enforcement of Maintenance Orders Act. The New Brunswick court, after hearing evidence from Mr. Henwood on the changed circumstances noted above, directed that the hearing be converted into a variation proceeding under s.17 of the Act. In the result the court issued two orders:

- (1) An order, presumably under the maintenance enforcement legislation, fixing the arrears of support in the sum of \$1,700.00 as of December 17, 1992, and directing a payment plan for those arrears; and
- (2) A provisional order, under s.18 of the Act, deleting the

Prior to the divorce judgment, the wife's support was based by the
Alberta court on October 28, 1981. This was provided for interest of \$270.00
per month for child payable by Mr. Hanwood to Mrs. Hanwood.

The two former spouses now reside in different jurisdictions. Mr. Hanwood resides
in New Brunswick while Mrs. Hanwood resides in the Province of Ontario.

Over time Mr. Hanwood has been unable to pay his child support. Also
circumstances changed. The daughter, Dana, moved to New Brunswick in April of 1982.

On December 15, 1982, Mr. Hanwood applied in the Court of Queen's Bench of
New Brunswick Family Division to order to enforcement proceedings undertaken
pursuant to his province's Reciprocal Enforcement of Maintenance Orders Act. The New
Brunswick court, after hearing evidence from Mr. Hanwood on the alleged financial resources
noted above, directed that the money be converted into a writ of process under
s. 17 of the Act. In the result the court issued two orders:

- (i) An order, previously under the maintenance enforcement
legislation, fixing the amount of support to be paid at
\$1,700.00 as of December 17, 1982, and directing a
payment plan for those arrears.
- (ii) A provisional order, under s. 17 of the Act, directing the

support provisions of both the corollary relief order and the interim support order made by the Alberta court. In both cases the variation was to be retroactive to April of 1992.

The provisional order has now come before this court for confirmation. My duty, pursuant to s.19(7) of the Act, is to make an order either confirming the variation order with or without variation or refusing confirmation. Further, if I do anything other than simply confirming the order, I must give written reasons for my decision.

At the hearing before me I had the benefit of a transcript of the proceedings in New Brunswick. Also, Mrs. Henwood appeared in person and gave evidence. In addition, I had the helpful assistance of counsel for the Attorney General of the Northwest Territories who, while not taking any position on the application, provided guidance to me on the applicable procedures.

Obviously my only concern is with the provisional variation order. I have no jurisdiction to deal with the arrears that were fixed as of December. I think it is also fair to say that Mrs. Henwood has no dispute with those arrears.

In considering the variation order, I am satisfied, as was the New Brunswick court, that there has been a change in the circumstances respecting the children for whom support was ordered. A change in circumstances is a precondition to consideration of a

support provisions of both the primary and secondary contracts.
The support order made by the arbitrator in the
case of the variation was as follows:

The provisional order has now come before the court for confirmation. It is
submitted that the order is in accordance with the provisions of the
contract and that it is just and equitable to confirm it. It is submitted
that the order is in accordance with the provisions of the contract and
that it is just and equitable to confirm it.

At the hearing before me, I had the benefit of a statement of the proceedings
made by the arbitrator. I also had the benefit of a statement of the
proceedings made by the arbitrator. I also had the benefit of a
statement of the proceedings made by the arbitrator. I also had the
benefit of a statement of the proceedings made by the arbitrator.

Obviously my only concern is that the arbitrator's order is in
accordance with the provisions of the contract. I have no
objection to deal with the order as it stands. I think it is in the
interests of justice to confirm the order.

In considering the variation order, I am satisfied that there has been a
change in the circumstances of the contract. It is submitted that
there has been a change in the circumstances of the contract. It is
submitted that there has been a change in the circumstances of the
contract.

variation: see s.17(4) of the Act. I had the benefit of evidence giving me the situation as it currently exists.

1 The daughter, Diana, as previously noted went to New Brunswick in April of 1992. She is now apparently self-supporting. The son, Vincent, was with Mrs. Henwood up until June of 1993 when he moved to New Brunswick to live with Mr. Henwood. It seems to me that the appropriate thing to do would be to delete the support requirement for Diana as of April, 1992, and for Vincent as of June, 1993. The provisional order, however, deletes both support obligations retroactive to April, 1992. By also making a retroactive variation to the interim order, all support obligations from the time that Diana moved to New Brunswick would be eradicated.

12 It seems to me that the learned judge in New Brunswick was of the view that since each parent had responsibility for one child then that should be it as far as any additional support is concerned. I think, with respect, this ignores the fact that the original support order was quite specific in ordering a set sum for each child. Based on all of the evidence presented to me, and considering the significantly higher cost of living in the Northwest Territories, I do not agree that the support obligations should be deleted entirely. Instead, the provisional order should be varied so as to maintain the support obligation with respect to Vincent so long as he resided with his mother.

13 The arrears up to December, 1992, were fixed at \$1,700.00. In addition to this

variation: see a file of the Act. I had the benefit of evidence giving me information

as a currently state

The daughter, Diane, as previously noted went to New Brunswick in April of 1982.

She is now apparently self-supporting. The son, Vincent, was with her through to

until June of 1982 when he moved to New Brunswick to live with Mr. Hedwood. It

seems to me that the appropriate thing to do would be to allow the subject responsibility

for Diane as of April, 1982, and for Vincent as of June, 1982. The provisional order

now ever, deletes both support obligations retroactive to April, 1982. My suggestion

retroactive variation to the better order, all support obligations from the time that Diane

moved to New Brunswick would be rescinded.

It seems to me that the learned judge in New Brunswick was of the view that since

each parent had responsibility for the child then that should be as far as any additional

support is concerned. I think with respect, this ignores the fact that the original support

order was quite specific in ordering a set sum for each child. Based on all of the evidence

presented to me, and considering the significantly higher cost of living in the Northwest

Territories, I do not agree that the subject obligation should be deleted entirely. Instead,

the provisional order should be varied so as to maintain the support obligation with

respect to Vincent so long as he resided with the mother.

The arrears up to December, 1982, were fixed at \$1,700.00. In addition to this

amount, Mr. Henwood should also pay the required support for Vincent of \$200 per month for the months of January, February, March, April and May of 1993. Since Diana was not living with Mrs. Henwood during those 5 months, Mr. Henwood does not have to pay any support on her behalf.

There is a further item to take into account. The learned judge in New Brunswick took into account the fact that Mr. Henwood paid the cost of transporting Diana to New Brunswick and divided this expense between the two parents. Similarly, I should take into account the fact that Mrs. Henwood paid the cost of transporting Vincent to New Brunswick. This amounted to \$1,267.00 so she should be reimbursed by Mr. Henwood for one-half of this sum (which I will set for sake of convenience at \$600.00). It seems to me that the most straightforward way to achieve this reimbursement would be by maintaining the \$200 support payments for a further 3 months (June, July and August of 1993).

Therefore, as of now, the total amount owing by Mr. Henwood to Mrs. Henwood for past support would be:

(a)	arrears as of December 17, 1992 -	\$1,700.00
(b)	support for Vincent (5 months) -	\$1,000.00
(c)	additional support of 3 months -	<u>\$ 600.00</u>
(d)	total owing -	<u>\$3,300.00</u>

less any amounts paid by Mr. Henwood since December, 1992.

amount. Mr. Henwood should also pay the amount due for the month of January, February, March, April, May, June, July, August, September, October, November, and December, 1983. Since Mr. Henwood was not living with Mrs. Henwood during these 12 months, Mr. Henwood does not need to pay any support on his behalf.

There is a further item to take into account. The house, 1234 Main Street, New Brunswick, was sold to Mr. Henwood in 1981. The house was sold for \$100,000.00. Mr. Henwood paid the cost of transferring the house to his name. Mr. Henwood and Mrs. Henwood divided the expenses between the two parties. Mr. Henwood paid the cost of the house, and Mrs. Henwood paid the cost of the furniture. The amount of the house was \$100,000.00. It seems to me that the most equitable way to achieve this reimbursement would be by maintaining the \$100,000.00 amount for 12 months (January, July, and August of 1983).

Therefore, as of now, the total amount owing to Mr. Henwood is \$100,000.00.

- (a) \$1,000.00
- (b) \$1,000.00
- (c) \$1,000.00
- (d) \$1,000.00

less any amounts paid by Mr. Henwood since December 1982

6 With respect to the variation of the interim support order of October 28, 1991, I conclude that there is no jurisdiction or reason to vary it. First, I would think that the interim order was superseded by the corollary relief order issued with the divorce judgment. Second, the arrears have been fixed up to December, 1992, so there is no purpose in varying the interim order. Finally, I question whether this procedure applies to interim orders. Section 17(1) of the Act allows a court to make an order varying a "support order". By s.2(1) a "support order" means an order made under s.15(2) of the Act. Subsection 15(2) refers to support orders but it is s.15(3) that deals specifically with interim orders. I do not think this variation procedure was contemplated to include interim orders after final orders are made.

7 For the foregoing reasons, I hereby issue an order confirming the provisional order issued by the Court of Queen's Bench of New Brunswick but with variation. Paragraph 1 of the provisional order is varied so that it reads:

"Paragraph 7 of the Corollary Relief Order made by the Court of Queen's Bench of Alberta, Judicial District of Red Deer, on April 10, 1992, be deleted retroactive to September 1, 1993."

Paragraph 2 of the provisional order, dealing with the interim order, is deleted entirely.

18 Mrs. Henwood quite rightly raised the question of costs. She spent over \$730.00

With respect to the variation of the interim support order of October 28, 1991, I conclude that there is no substantial change in the amount of support. The interim order was supported by the court in the divorce proceedings. Second, the court has been clear in its decision, so there is no purpose in varying the interim order. Finally, I consider the procedural steps to implementation. Section 7(1) of the Act states that an order varying a support order, by a 50% or "support order" must be made under a 10% of the Act. Subsection 1(2) refers to support orders that are not "support orders" and will interim orders. I do not think the variation procedure is intended to provide interim orders after that order is made.

For the foregoing reasons, I hereby vary the interim order of October 28, 1991, as varied by the court on Queen's Bench, but with a 10% variation. Paragraph 2 of the provisional order is varied so that it reads:

"Paragraph 2 of the Provisional Order of Queen's Bench, Alberta, dated October 28, 1991, as varied by the court on April 16, 2002, be varied in accordance with Article 1.1.1992."

Paragraph 2 of the provisional order, dealing with child support, is varied to read: "The husband shall pay to the wife the sum of \$330.00 per month for child support, to be paid on the first day of each month, starting on the date of this order, until the child reaches the age of 18 years."

to travel to Yellowknife from her home for this confirmation hearing. It seems to me that when a court proceeding is instigated by someone then that person should be liable for costs (as in the usual course). But there is nothing in the Act that speaks of costs. Also, many of these types of cases are not instigated by individuals but by government agencies such as maintenance enforcement departments. In any event I doubt that I could issue an order as to costs that would be enforceable in another jurisdiction within the confines of a confirmation hearing. So I have concluded that I cannot make an order as to costs.

9 A copy of these reasons will be sent directly to Mrs. Henwood and to counsel for the Attorney General who has kindly offered to prepare and file a formal order giving effect to these reasons. Once that order is filed, I direct the Clerk of the Court to transmit copies of the formal order and these reasons to the Court of Queen's Bench of New Brunswick (Family Division) and to the Court of Queen's Bench of Alberta (Judicial District of Red Deer), in accordance with the requirements of s.19(12) of the Act.



John Z. Vertes
J.S.C.

Counsel for the Attorney General
of the Northwest Territories: Ms. R. Veinott

The Petitioner, Iva Juliette Henwood,
appearing in person

to travel to Yellowstone from the time the contract was made to the time
when a court proceeding is instituted by and some of the parties to the contract
costs (as in the usual contract) but there is nothing in the contract to require that
many of those items of costs are not included in the costs that by Government
agencies such as the Attorney General and the Department of the Interior are
paid out of the Treasury. It is a well established principle that the Government
should bear an order as to those items which are not included in the contract
the contract is a contract for the purchase of land and the Government is not
to be bound by the contract.

A copy of these records will be sent to the Attorney General, the
the Attorney General, the Department of the Interior, the Department of Justice
and the Department of the Treasury. It is the duty of the Attorney General
to see that the records are kept in the Department of the Interior and
copies of the records are sent to the Department of Justice and the
Department of the Treasury. It is the duty of the Attorney General
to see that the records are kept in the Department of the Interior and
copies of the records are sent to the Department of Justice and the
Department of the Treasury.

Very truly yours,
[Signature]

Counsel for the Attorney General
of the Department of Justice
The Petitioner, the United States
appearing in person

IN THE SUPREME COURT

OF THE TERRITORIES

IN RE: [Illegible Name]

[Illegible Name]

[Illegible Name]

[Illegible Name]

[Illegible Name]

BY APPOINTMENT OF THE



IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

IN THE MATTER OF an application, pursuant to
s.19 of the Divorce Act, R.S.C. 1985, C.d-3.4
(as amended), to confirm a provisional variation
order;

BETWEEN:

IVA JULIETTE HENWOOD

Petitioner

- and -

ERIC CLAYTON HENWOOD

Respondent

REASON FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE J.Z. VERTES

