

6101-02459

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

PETER JAMES FERGUSON

- and -

SUSAN ANNE FERGUSON



Petitioner

Respondent

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Application for continuation of interim spousal and child support granted.

Heard at Yellowknife on April 3rd 1995

Judgment filed: April 7th 1995

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Petitioner: Katherine R. Peterson, Q.C.

Counsel for the Respondent: Ms. Karan M. Shaner

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**REASONS FOR JUDGMENT**

1

The wife in these divorce proceedings asks for an order requiring the husband to continue to pay her \$1,500 a month for her interim support, together with a further \$1,500 a month for the interim support of the two children of the marriage now aged respectively 18 and 20 years.

2

By order of a judge in Chambers on December 1st 1994, this level of interim support was to be provided for that month and also in January and February 1995. The wife asks, in effect, that the order be continued so as to provide this level of support until the trial.

3

The husband consents to an order continuing this level of interim support for the children only. He opposes any requirement of further interim support for the wife on the ground that he does not have the means to maintain it whereas, he says, she has the means, in the sense of capacity, to support herself.

4 The petition for divorce issued in May 1994. It was not served, however, until quite late in September that year. In it, and in the financial statement filed with it on behalf of the husband in ostensible compliance with the *Rules of Court*, the husband's gross income from all sources is declared to be \$6,250 a month. The statement, though replete with formulaic categories of income and expense, is however otherwise blank as to particulars save only for an amount said to be owing to the Department of National Revenue and a final declaration reading "Total Net Income: \$6,250.00". It is apparent that this "financial statement" conceals more than it reveals.

5 The petition states that the wife's address, at the time the petition issued, was at Edmonton, Alberta. This is further confirmed and particularised in the wife's answer and counter-petition, which was issued by Yellowknife solicitor-agents on behalf of the wife's Edmonton solicitor. The affidavit of service of the petition shows that it was served on her at an Edmonton address, though not that given in the answer and counter-petition. And the affidavit material shows that she moved to Edmonton from Yellowknife, to be near the children and enter on a 3-year course of studies towards a B.Sc. degree in Nursing, in August 1993. It is the wife's position that this occurred with the husband's concurrence and encouragement, before the parties separated. The husband has adopted a contrary position, claiming that this was when the separation took place.

6 In her answer and counter-petition, filed in January 1995, the wife declares her disagreement with any of the relief sought by the petitioner, contesting the divorce and the husband's claim to an award of joint custody of the children. She there claims

spousal support in the amount of \$3,100 a month, net of tax, or as the Court may otherwise order; and she likewise claims a total of \$2,900 a month, net of tax, in addition as support for the children, or such amount as the Court may otherwise order. The total support claimed in the counter-petition by her from the husband is therefore \$6,000 a month, net of tax, or as may be otherwise ordered.

7 According to the wife's counter-petition, the husband had deposited \$1,938.50 every two weeks in a joint bank account of the parties until October 31st 1994. The wife has deposed that she was informed in November 1994, by the husband's Yellowknife counsel, that the husband intended to reduce the amount of his support for her and the children to no more than \$2,000 a month. She thereupon brought an application to have the amount fixed at the level described subsequently in her counter-petition. And that application was then temporarily resolved by the Chambers order of December 1st 1994 mentioned above.

8 According to the wife's affidavit material, the husband's annual income in the years 1990 through 1993 was in excess of \$100,000. He is an engineer and partner in a Yellowknife firm of architects and engineers, employed on the firm's behalf in Russia for several years, where all his living expenses are paid by the firm. As a partner, it is the firm's practice, according to the wife, to pay the husband bonuses and dividends in addition to his regular monthly partnership drawings or income. This description of the husband's financial position is not inconsistent with the blanks in his "financial statement" annexed to the divorce petition. And it is confirmed as to its main outlines by the tax documentation exhibited to the wife's affidavit sworn on November 14th 1994.

9           Whereas the wife has deposed that she and the children were obliged to  
 subsist on the amounts deposited in the joint bank account up to October 31st 1994, it  
 appears that she was also able to draw on a credit card issued to the husband. The wife  
 deposes that the amounts (totalling some \$10,000) thus withdrawn were duly authorised  
 by the husband who, for his part, deposes to the contrary. It is the wife's position that  
 this was a joint family expenditure incurred mostly in connection with the older child's  
 college graduation in 1994.

10           The husband does not expect to go back to Russia to work there as before.  
 Instead, it seems, he may be relocating to Toronto to look after the interests of his firm  
 there. The younger daughter has recently moved in to share accommodation with her  
 sister, having left the residential college in which she was enrolled without graduating  
 there. And it appears that both children now plan to move soon into the mother's  
 accommodation at Edmonton, which is sufficient for them all. These moves will certainly  
 help to reduce the joint living expenses of the mother and children. At the same time, the  
 father deposes that he will soon be no longer able to continue living at the expense of his  
 firm.

11           The husband deposes that his firm is now struggling to keep its head above  
 water financially, and that this has been so for some time. He deposes that he does not  
 now expect any bonus or dividend for 1994 or, unless the situation changes, 1995. He  
 is, he says, still paying off a loan, on a monthly basis, which he obtained to pay his  
 assessed 1993 income tax.

12           The parties have yet to settle, or to have adjudicated, their respective  
 matrimonial property claims. Their various assets amount in total to somewhat in excess  
 of \$100,000, excluding the value of the husband's interest in his firm. Of this amount,  
 I understand that the proceeds of sale of the matrimonial home at Yellowknife (being \$92,  
 398.71) are held in trust for the parties by the husband's solicitors.

13           Given the conflicts evidently existing between the parties as to the facts of  
 their separation and of their respective needs and means, it is not difficult to understand  
 that there should be a lack of agreement leading to this somewhat vigorously contested  
 application. Furthermore, as counsel recognize, the circumstances of the youngest  
 daughter have been radically altered in recent months, with the result that she has  
 withdrawn from college and is not expected to return there for some time, if at all. And  
 the circumstances of the parents are no longer as clear and stable as they were as late  
 as six months ago. Counsel are not optimistic as to the divorce proceedings being  
 concluded much before the end of this year.

14           Against this background, it is necessary to examine the wife's application  
 for spousal support within the context of the *Divorce Act*, R.S.C. 1985, c.3 (2nd Supp.).  
 Section 15 of the Act contains the following, among other, provisions:

15. (2) 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
- (a) the other spouse;
  - (b) any or all children of the marriage; or
  - (c) the other spouse and any or all children of the  
 marriage.

(3) Where 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

- (a) the other spouse,
- (b) any or all children of the marriage, or
- (c) the other spouse and any or all children of the marriage,

pending determination of the application under subsection (2).

(4) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

(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, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by the spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of the spouse or child.

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(7) An order made under this section that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

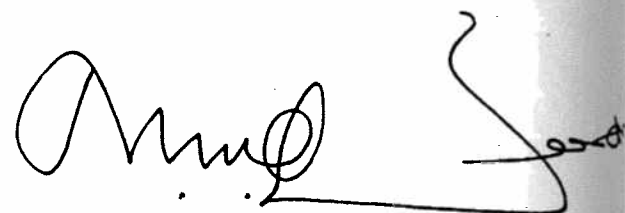
In reciting these provisions of the Act at length, I have not overlooked s.17, which deals with orders varying previous support orders. The order made on December 1st 1994 has expired; and although the wife, through her counsel, has indicated that she is now prepared to accept merely a continuation of the spousal support then ordered, in lieu of the much larger quantum of such support initially sought by her, I take it that I am, in effect, required to consider her application pursuant to s.15 since the order of December 1st 1994 was made only for three months, to allow for a fuller development of the relevant evidence now with reference to s.15. In any event, there has been a material change in the circumstances of the parties since the previous order was made on December 1st 1994.

The marriage between the parties is of some 25 years duration. During that time the wife was employed in her profession as a nurse, more or less continuously and up until her departure to take up her studies at the University of Alberta at Edmonton in August 1993. Apart from the order made on December 1st 1994, no other order has been made in reference to her support by the husband; and apart from the arrangement made orally between them in August 1993, no other agreement or arrangement has existed in that connection between them.

Without being able to determine the facts other than provisionally, given the conflicting evidence, I conclude that the wife's means and needs are such as to make necessary the continuation of the interim spousal support ordered on December 1st 1994. An order shall issue accordingly, with effect for the month of March 1995 as well as April 1995 and continuing until further order up until the trial.

18 In addition, the order shall continue the child support ordered on December  
1st 1994 on the same basis.

19 The costs of this application shall be in the cause.



M.M. de Weerd  
J.S.C.

Yellowknife, Northwest Territories  
April 7th 1995

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Counsel for the Respondent: Ms. Karan M. Shaner

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