

SC CIV 78 022
judgment

~~NWTSC 92~~

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

JEAN MARIE SHEWFELT,

PETITIONER,

AND:

JOHN GORDON SHEWFELT,

RESPONDENT.

Application by the Petitioner and a cross-application by the Respondent to settle the terms of access and other incidental matters.

Heard at Yellowknife, Northwest Territories on August 7th, 1978.

Judgment filed: August 11th, 1978.

Reasons for Judgment by: The Honourable Mr. Justice C.F. Tallis

Counsel on the Hearing: Susan Green for the Respondent John Gordon Shewfelt

Bruce Willis for the Petitioner
Jean Marie Shewfelt



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B E T W E E N :

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RESPONDENT.

REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE C. F. TALLIS

In this action the wife petitioned for divorce on the ground of cruelty on the part of the husband. The action was tried before me at Fort Smith in the Northwest Territories on June 19th and 20th, 1978.

At the conclusion of the action I delivered an oral judgment in which the decree nisi was granted and custody of the two children of the marriage was awarded to the petitioner. However, other matters were left open because at that time counsel anticipated that they would be able to reach an agreement.

In this connection I quote from my oral reasons for judgment which have now been transcribed and which provide as follows:

"At this particular point the order I make is as follows:

- (a) There will be a decree nisi for dissolution of the marriage between the petitioner and the respondent, such to be made absolute at the expiration of three months unless sufficient cause be shown why it should not be made absolute.
- (b) It is further ordered and adjudged that until further order of this court the custody of the persons of the infants Heather Shewfelt and John Reilly Shewfelt and each of them be and the same is hereby committed to the petitioner.
- (c) It is further ordered and adjudged that with respect to the issue of maintenance or the right of access, these matters can be settled by further application to me if agreement cannot be reached.

Counsel have indicated that they anticipate being able to agree, but quite properly have asked the court to leave it open.

With respect to the question of maintenance for the wife, the only request at the outset was to reserve the position, was it not? What I was thinking is that I would put it at a dollar a year if that is satisfactory at this time, because if she gets a job -

MR. WILLIS: Yes, it is.

THE COURT: And

- (d) It is further ordered and adjudged that the respondent do pay to the petitioner the sum of one dollar per year by way of maintenance; that the first of such payments be made on the 1st day of January, A.D. 1979.

What do you have to say about the issue of costs, or is that something you want to reserve?

MR. WILLIS: Perhaps that could also be discussed between -

THE COURT: Do you agree with that?

MISS GREEN: Yes.

THE COURT: With respect to the issue of costs counsel have also suggested to me that this should be reserved pending the possibility of an amicable settlement in this area. The matter of costs is hereby reserved with the

understanding that this issue, like the issue of access, can be brought back before me on application."

Unfortunately, counsel have not been able to persuade their clients to reach an agreement on the outstanding matters and the respondent John Gordon Shewfelt brought an application before me in Yellowknife to settle the terms of access and various related matters. The petitioner also brought a cross-application in which similar relief was sought.

These applications were heard before me at Yellowknife on the 7th day of August, A.D. 1978 and at the conclusion of the argument of counsel I reserved judgment.

At the hearing of these applications in Yellowknife I was advised by counsel for the parties that they had been able to reach agreement on the question of maintenance for each of the children. The parties have agreed that a fair and reasonable sum to be paid at this time is \$100.00 per month for each child.

In this particular case, the petitioner has extended visiting privileges to the respondent with respect to the infant John Reilly Shewfelt and under the circumstances it is not necessary for me to make any order dealing with access during the summer holiday period of 1978 because I understand from counsel that John Reilly Shewfelt has been staying with his father at Fort Smith since the latter part of June until the present time. As I stated in chambers, the petitioner is well within her rights to now take the infant John Reilly Shewfelt with her to Saskatchewan

and in the case of Heather Shewfelt it should be pointed out that she is already living in Saskatchewan where she was attending school.

After hearing the submissions of counsel and considering the evidence given at trial and also the affidavit evidence filed on these applications I make the following orders in addition to those already made at the end of the trial of the petition for divorce:

1. IT IS FURTHER ORDERED AND ADJUDGED that the respondent John Gordon Shewfelt do pay to the petitioner Jean Marie Shewfelt the sum of \$100.00 on the first day of September, A.D. 1978 and thereafter a like sum of \$100.00 on the first day of each and every consecutive calendar month for the maintenance of the infant Heather Shewfelt so long as she remains a child of the marriage within the meaning of the Divorce Act or until further order of this court.

2. IT IS FURTHER ORDERED AND ADJUDGED that the respondent John Gordon Shewfelt do pay to the petitioner Jean Marie Shewfelt the sum of \$100.00 on the first day of September, A.D. 1978 and thereafter a like sum of \$100.00 on the first day of each and every consecutive calendar month for the maintenance of the infant John Reilly Shewfelt so long as he remains a child of the marriage within the meaning of the Divorce Act or until further order of this court.

3. IT IS FURTHER ORDERED AND ADJUDGED that the respondent John Gordon Shewfelt shall have access to and may take and keep the said infants Heather Shewfelt and John Reilly Shewfelt or either of them with him during the period commencing on the first day of July, A.D. 1979 and ending the 28th day of July, A.D. 1979; and thereafter for a like period each successive year.

IT IS FURTHER ORDERED AND ADJUDGED that from twelve o'clock in the forenoon on the 30th day of December, A.D. 1978 until seven o'clock in the afternoon of the 7th day of January, A.D. 1979, and thereafter during the said hours in every alternate year, the respondent may during the said hours take and keep the said infants, or either of them, with him.

IT IS FURTHER ORDERED AND ADJUDGED that from twelve o'clock in the forenoon on the 22nd day of December, A.D. 1979, until seven o'clock in the afternoon on the 31st day of December, A.D. 1979, and thereafter during the said hours in every alternate year, the respondent may during the said hours take and keep the said infants, or either of them, with him.

IT IS FURTHER ORDERED AND ADJUDGED that the respondent shall have access to and may keep the said infants, or either of them, with him, for a period of one-half the Easter school holiday, and the respondent shall notify the petitioner in writing at least twenty-one days in advance of the time that he elects to take them for the said period during the said holiday.

IT IS FURTHER ORDERED AND ADJUDGED that the respondent may take and keep the said infants, or either of them, with him for a period of three days in May during what is commonly called the Victoria Day Weekend commencing at seven o'clock in the afternoon on Friday of the said weekend and terminating at seven o'clock in the afternoon on Monday of the said weekend.

IT IS FURTHER ORDERED AND ADJUDGED that the respondent may take and keep the said infants, or either of them, with him for a period of three days during what is commonly called the Thanksgiving Weekend commencing at seven o'clock in the afternoon on Friday of the said weekend and terminating at seven o'clock in the afternoon on Monday of the said weekend.

IT IS FURTHER ORDERED AND ADJUDGED that in all of the above cases the respondent shall pay any and all expenses incurred in taking and returning the said infants or either of them, from and to the residence of the petitioner.

IT IS FURTHER ORDERED AND ADJUDGED that if and whenever the said infants, or either of them become ill, immediate notice thereof shall be given by the petitioner to the respondent, and the respondent shall have full access at all reasonable times to the said infants, or infant, during the continuation of the said illness.

4. Leave is hereby reserved to either party to apply further as they may be advised.


5. IT IS FURTHER ORDERED AND ADJUDGED that the

petitioner recover from the said respondent costs in the amount of \$600.00 and she shall have judgment therefore.

I want to make it quite clear that my order in this matter does not preclude the parties from making additional arrangements for visiting privileges over and above those set out in the terms of my order. It is always unfortunate when the relationship between parents become so acrimonious that they cannot agree on matters that should not be the subject of litigation. I do, however, want to commend both counsel appearing on this matter for their sincere efforts in trying to bring about a reasonable settlement of the matter and hopefully both the petitioner and the respondent will learn to deal with matters of this kind in a fair and reasonable manner in the future.

I have not included the terms with respect to custody and maintenance for the wife in this order because they were dealt with quite fully in the judgment at trial. However, in any formal order that is issued out of this court the provisions that were set forth should be incorporated into the decree nisi if it has not been issued at this time.

DATED at the City of Yellowknife, in the Northwest Territories, this 11th day of August, A.D. 1978.



C.F. TALLIS,
J.S.C.

NO. 6101-00492

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NORTHWEST TERRITORIES

B E T W E E N :

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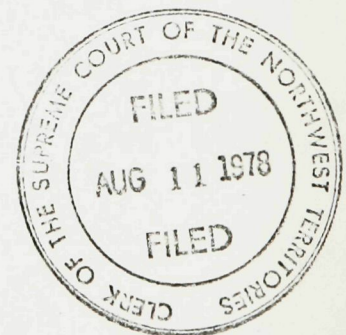
PETITIONER,

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REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE C.F. TAL



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