CV 05669

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BETHANY TURNER

Applicant

- and -

RONALD NEAR

Respondent

MEMORANDUM OF JUDGMENT

The Provisional Order made by the Honourable Chief Justice MacDonald of the Supreme Court of Prince Edward Island on October 18, 1994, is hereby varied so as to require the Respondent to pay to the Applicant, for the support of the two children of the marriage, the sum of $700.00 per month per child commencing on the 1st day of July, 1996.

Counsel recognize the evidentiary limitations inherent in these types of confirmation hearings. The only advantage enjoyed by me was that the Respondent was cross-examined by counsel for the Applicant and I had the benefit of submissions on behalf of both parties. While there are still some factual issues in dispute, they are not decisive ones and both counsel acknowledge the desire of the parties to resolve this issue without remitting the matter back for a further hearing in Prince Edward Island.

I was told that the learned Chief Justice, in making his Provisional Order, used a modified "Delaware formula". No evidence as to this formula was presented to me. In this jurisdiction, the governing principles are those set out in *Levesque* v. *Levesque*, [1994] 8 W.W.R. 589 (Alta. C.A.). That case has received widespread approval throughout Canada. The approach to calculation of child support set out in that case posits five steps (at page 592):

> 1. Calculate the combined gross income, of the parents, as that term is defined in these Reasons.
>
> 2. Calculate a reasonable cost for the upbringing of the child, as that term is herein defined.
>
> 3. Apportion that cost between parents, in accord with the principles herein stated.
>
> 4. Re-calculate the adjusted assigned share for tax consequences, and make an award.
>
> 5. Make adjustments to the assigned share for the special circumstances of any parent.

The combined gross income is approximately $100,000: $70,000 for the Respondent (70%) and $30,000 for the Applicant (30%).

The reasonable child care expenses have to be calculated on the basis of the Applicant's financial statement submitted to the Prince Edward Island court. The expense figures given there do not isolate expense items specifically for the children. They are global figures for the family unit. I have gone through the specific items and applying a varying calculation of either one-half or two-thirds to the items I conclude that child care

expenses for these two children are in the range of $1,600 to $1,800 per month. Using a median figure of $1,700, the Respondent's allocation at 70% is $1,190.

I did not receive evidence as to the tax implications of any specific award but I will address this momentarily.

Respondent's counsel submits that I should take into consideration two factors which amount to "special circumstances": (1) the Respondent's financial obligations to his present family; and (2) the significantly higher cost of living in the Northwest Territories. In my opinion, these are both factors that can be taken into account so as to adjust the strict mathematical calculations.

The Respondent has been in a new family relationship for over 10 years. He and his wife are supporting her adult daughter and a grandchild. Certainly the Respondent cannot "prefer" one set of family obligations over another but there has to be some accounting for the fact that he has both obligations to satisfy. Applicant's counsel submits that the Respondent has no "legal" obligation to his wife's child and grandchild. Strictly speaking that may be true but he certainly has a "moral" obligation — one he acknowledges and undertakes.

The Respondent's family expenses, leaving aside his support obligations, are approximately $4,630 per month. With his wife's income covering 40% of that, his load

is approximately $2,780. Deducting that amount from his net income leaves approximately $1,200. This is the figure proposed by the Respondent.

In my conclusion some upward adjustment is required to offset some of the tax consequences to the Applicant. I have not taken into account, however, any child tax benefits receivable by the Applicant so the tax consequences are no doubt ameliorated somewhat. I have also not taken into account access costs or gratuitous amounts spent by the Respondent on behalf of the children.

Taking all of these factors into account, I have concluded that $1,400 per month is a reasonable global figure for child support.

I recognize that this order may be temporary. The Applicant will within a year be able to bring these support requirements within the proposed federal programme. I note that the proposed federal guidelines suggest support payments of $932 to $997 (for both children) in this situation.

The Applicant also seeks a cost of living clause in the order. I decline to insert such a clause since there was no evidence led with respect to its form or necessity either in the Prince Edward Island court or in this court. It arose simply as an afterthought in a brief comment between counsel and the Chief Justice in the previous proceeding. This too is something that will likely be addressed under the new federal guidelines in due course.

In accordance with the requirements of s.19(12)(c) of the *Divorce Act*, I direct the Clerk of this court to transmit a copy of this Memorandum to the Registrar of the Supreme Court of Prince Edward Island and to the office of the Attorney General of Prince Edward Island.

Dated this 14th day of June, 1996.

J. Z. Vertes

J.S.C.

To: Karan Shaner
Counsel for the Applicant

Katherine R. Peterson, Q.C.
Counsel for the Respondent

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Memorandum of Judgment of the Honourable Mr. Justice J. Z. Vertes