

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ANNA MARIE COLEMAN,

Judgment Creditor

- and -

RONALD ISAAH COLEMAN,

Judgment Debtor

REASONS FOR JUDGMENT OF THE HONOURABLE  
MR. JUSTICE W. G. MORROW

This matter came before me as a result of a request by the Sheriff for instructions. The Judgment Creditor, in enforcing the maintenance provisions of a judgment of this Court under the *Divorce Act*, R.S.C. 1970, c. D-8, issued a garnishee summons. The difficulty arises from an inconsistency in the language of the Rules governing garnishees and the Ordinance which provides for payment out of moneys in the Sheriff's hands.

Section 8(1) of the *Creditors Relief Ordinance*, O.N.W.T. 1972 (2d) c. 3 provides:

"8(1) Except where it is otherwise specifically provided by this Ordinance, or where it is otherwise ordered by a Court or a judge, all moneys paid into court by virtue of a garnishee summons shall without an order be paid by the Clerk to the Sheriff, ..."

By subsection (2) of the same Ordinance the Sheriff is directed as follows:

- "(2) Where the Sheriff receives any money from the Clerk,
  - (a) if there are no subsisting writs of execution against any of the persons entitled to the moneys, the sheriff shall immediately in accordance with the Rules of Court pay out the money or such part thereof for which he has no subsisting writs of execution either to the persons entitled by law to receive it or to their solicitors, or"

The Judgment Creditor is in the position where as a result of garnishee following a judgment moneys have been paid in to Court pursuant to the above legislation and the Sheriff has now received the money from the Clerk, there being none of the impediments referred to in Section 8(1) above.

It is to be observed that subsection (2) provides for immediate payment out by the Sheriff "in accordance with the Rules of Court ..."

By virtue of Section 25 of the *Judicature Ordinance*, O.N.W.T. 1970 (3rd Sess) c. 5 the Rules of Court of the Supreme Court of Alberta apply in the Northwest Territories "subject to this and any other Ordinance."

Rule 480 which applies here states:

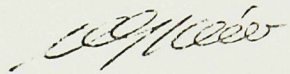
"480. Subject to *The Execution Creditors Act*, money paid into Court under garnishee proceedings may be paid out to the person entitled thereto or to the solicitor or agent of that person by order of the court on application made *ex parte* or on such notice as may be directed."

*The Execution Creditors Act*, R.S.A. 1970, c. 128 above is an Alberta Statute and except to the extent that as the Rule applies in the territories and therefore it might be suggested the statute may apply by implication, it is of no application here. The *Creditors Relief Ordinance* is the applicable legislation here and is intended to have the same function in the territories as the other statute has in Alberta. The Rule however provides for the obtaining of a Court Order for payment out of garnishee moneys. The territorial ordinance on the other hand directs the Sheriff to pay out.

It is interesting to note that the Alberta Statute by Section 10 requires the Sheriff to make the distribution of moneys immediately "except in cases where it is otherwise specifically provided by this Act." The language of the Alberta Statute is generally the same as the territorial ordinance without, however, any reference to the Rules.

It is my opinion that the language of Subsection (2) must be read to require payment out by the sheriff, if all conditions laid down have been met, without the necessity of requiring the authority of a court or judge's order, that the reference to Rules must be taken to mean all other Rules of Court or if Rule 480 is to be included, then read as if it included "*The Creditors Relief Ordinance*" rather than the *Execution Creditors Act*.

The Sheriff is directed to act accordingly.



W. G. Morrow,  
Yellowknife, N.W.T.  
20 March 1974.

Counsel:

J. E. Richard, Esq.,  
for Judgment Creditor

M. Bruce, Sheriff, in person.