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CV 06343

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BRENDA MICHEL

Applicant

- and -

ROY DESJARLAIS

Respondent

MEMORANDUM OF JUDGMENT

Counsel advised at the hearing of this application that they are agreed that the issues of (i) whether the Respondent stands *in loco parentis* to the child Gary and whether he should pay child support for him and (ii) custody and day to day care of the children Keith and Kineta, should go to trial.

The only issue I am asked to decide at this time is the amount of interim child support, if any, that the Respondent should pay to the Applicant for Keith and Kineta.

An interim interim order was made on June 17, 1996 requiring that the Respondent make a payment of \$500.00 for each child forthwith. I am advised by counsel that that money has not been paid.

The Applicant seeks an interim order in the amount of \$500.00 per month per child. Her gross monthly income inclusive of the child tax credit is \$1,880.00. Her affidavit indicates that her monthly expenses for herself and the two children (ages 7 and 5) living with her total \$1615.00. She says that these are for basic expenses and do not include any extras. The most notable thing is that nothing is included for rent because the Applicant is living with her sister-in-law who is not charging her anything. It is not intended that the situation continue indefinitely and indeed it would not be appropriate as it appears that due to a lack of beds she and the children take turns sleeping on the floor.

The Applicant says in her affidavit, sworn March 15, 1996, that the Respondent works for BHP, earning \$17.00 per hour and working a rotation of two weeks in and two weeks out of the bush. Counsel for the Applicant argues that that fact, combined with his work history and education, means that he is capable of making approximately \$60,000.00 yearly.

Other than what I have noted above, the only information relevant to the Respondent's ability to pay is contained in his affidavit sworn June 22, 1996. He states that he has a diploma in environmental studies through Aurora College. He has worked for five weeks in 1996 for BHP Diamonds Inc. at the Lac de Gras diamond field. That work ended April 18. He is presently not working and says he relies on others to provide subsistence until he is working.

The Respondent had gross income of \$22,063.00 from employment

combined with unemployment insurance benefits in 1995. In 1996 up until April 18, he had earned approximately \$9,517.00 from his work with BHP and from unemployment insurance benefits. He was sentenced to two months in jail in April for assaulting the Applicant and it appears that this was ordered to be served on an intermittent basis and he has still ten days left to serve in September. The material I was provided with appears to indicate that the sentence was varied at the end of April to provide that the intermittent time be served from then until May 20 and then not again until September 1. While it is tempting to speculate that that was done for purposes of employment, there is no evidence before me that the Respondent is employed or did have access to employment and he was not cross-examined on his affidavit. Therefore I will not speculate.

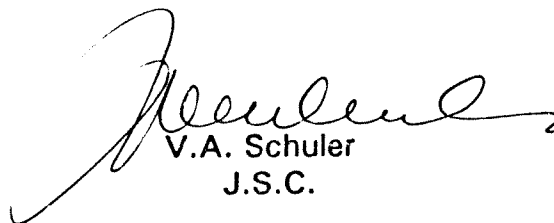
On his own affidavit evidence, the Respondent is capable of making approximately \$22,000.00 per year. He made that amount in 1995. In 1996 up to the end of May he had made just under half that amount. In both years he had unemployment insurance benefits. Since the jail time he was ordered to serve was intermittent, I conclude that it would not have interfered significantly with his ability to work. In any event, having made over \$9000.00 in the first five months of this year, it would seem that the Respondent has the capability of making something close to that amount in the last four months of this year, even with the ten days he has yet to serve in jail.

Although counsel for the Applicant urged me to find that the Respondent could make much more than that, the evidence simply is not before me to enable me

to come to that conclusion.

Using the *Levesque* formula, the Respondent is to be attributed approximately 49% of the parties' combined income and therefore of the expenses for the care of the children. The Applicant's expenses as I have said are \$1615.00 exclusive of rent. But that sum includes her own expenses. If I consider the sum of \$1000.00 as a minimum reasonable amount for rent and then divide the total expenses by three, that results in approximately \$1800.00 attributable to the two children. The Respondent's 49% share is almost \$900.00. With the tax gross-up, the \$500.00 per month per child sought by the Applicant is not unreasonable.

An order will therefore go that the Respondent pay to the Applicant the sum of \$500.00 per month per child for the two children Keith and Kineta. This will commence in August, with the first payment to be made by August 31, 1996 and payments to be made on the last day of each month thereafter. The suspension of the order of June 17 with respect to the interim interim payment for Keith and Kineta is lifted. It will remain in place with respect to the child Gary until dealt with at trial.


V.A. Schuler
J.S.C.

Counsel for the Applicant: Elaine Keenan Bengts

Counsel for the Respondent: Thomas H. Boyd

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HONOURABLE JUSTICE V.A. SCHÜLER

