

Date: 19971024
Docket: 6101-02794

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JEFF DESILETS

Petitioner

- and -

LORNA DESILETS

Respondent

MEMORANDUM OF JUDGMENT

[1] The Petitioner has applied for a divorce judgment without oral hearing on the basis of affidavit evidence.

[2] The Petition for Divorce, as amended, contains a claim for a Divorce Judgment and custody of the two children of the marriage, born August 21, 1981 and July 12, 1983. The Respondent was served with the Petition and has been noted in default.

[3] In his affidavit, sworn July 31, 1997, the Petitioner stated (in paragraph 6) that he is capable of providing support for the children of the marriage, who are in his custody, without financial assistance from the Respondent. He also stated, however, (paragraph 11) that he claimed a divorce only. No reference was made to the custody claim made in the Petition for Divorce.

[4] In a Memorandum to the Judge filed October 22, 1997, counsel for the Petitioner states that the Petitioner abandons the custody claim and that no Corollary Relief Order is requested. The Memorandum appears to be signed by the Respondent, although there is no affidavit of execution as required by Rule 404(2).

[5] There is no information in the Memorandum about where the children are now living, why a custody order is not sought and what arrangements have been made for the support of the children.

[6] Pursuant to s.11(1)(b) of the *Divorce Act*, the court has the duty in a divorce proceeding:

to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;

[7] In this case, I have no information about what support arrangements have been made, except for the statements made by the Petitioner in his affidavit that the children are in his custody and he can support them without help from the Respondent. No information has been provided about the Respondent's financial situation or why she should not assist in the financial support of the children. Finally, the abandonment of the Petitioner's claim for custody leaves me questioning what the current situation is with respect to the children.

[8] In order that I may be satisfied as required by s.11(1)(b), further affidavit evidence will have to be submitted. Accordingly, until such evidence is received and I can determine whether the proposed arrangements are reasonable, I stay the granting of the divorce. The grounds for divorce have been established; it is solely the custody and child support issues that must be addressed.

[9] Dated at Yellowknife, this 27th day of October 1997.

V. A. Schuler
J.S.C.

To: Stephen Shabala
Counsel for the Petitioner

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MEMORANDUM OF JUDGMENT OF THE
HONOURABLE JUSTICE V. A. SCHULER
