

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

PAULETTE LAROQUE

Applicant

- and -

ROLAND MISLING

Respondent

MEMORANDUM OF JUDGMENT

[1] The matter involves two applications. One is the application of the mother (Ms. Laroque) to have child support ordered under a Decree Nisi issued in 1985 varied to bring the support in line with the federal *Child Support Guidelines*. The other application is that of the father (Mr. Misling), who seeks a declaration that the child in question is not a “child of the marriage” within the meaning of the *Divorce Act*. Alternatively, the father seeks to have child support remain at the level ordered at the time of the Decree Nisi and pleads undue hardship pursuant to the *Guidelines*.

[2] I will comment only briefly on the facts of this matter as I have decided that the issue as to whether the child is a “child of the marriage” should be tried.

[3] The *Divorce Act* defines a “child of the marriage” as a child of two spouses or former spouses who is under the age of majority and who has not withdrawn from their charge. The issue in this case is whether the parties’ only child, Kera, who will be sixteen years old later this month, has withdrawn from the charge of her mother, who has legal custody of her.

[4] In her affidavit, the mother says that Kera resides with her and that she has always supported Kera. She refers to a five month period in 1997 when she says that Kera moved to New Brunswick to take a French course. She says that she sent money for Kera’s support and that Kera resided with members of the mother’s family. She also says that Kera (as at January 1998) is not attending school because she is working to help with the family’s financial situation, but is having some difficulty finding a job. It is not clear from this whether Kera is actually working or just intends to work.

[5] The father alleges that Kera has withdrawn from her mother's charge. He says that Kera went to New Brunswick to live with her boyfriend and attaches to his affidavit a letter from Kera which confirms that and in which Kera asserts her independence. He also alleges that the mother convinced Kera to return home when he, as a result of Kera's move, ceased child support payments. He says that Kera and her boyfriend are now living in a basement apartment in the mother's home.

[6] No affidavit was filed on behalf of the mother in response to what is alleged by the father. Obvious contradictions arise with respect to the New Brunswick trip. Also, the material filed does not address in a satisfactory way whether Kera is working and supporting herself, whether her boyfriend is working and supporting her, or whether her mother is supporting her. In my view there is a live issue, raised by the father, as to whether Kera has withdrawn from her mother's charge and is living under her roof simply as a matter of convenience or economy [see *Janzen v. Janzen* (1980), 18 R.F.L. (2d) 152 (B.C.S.C.)]. I am not satisfied that the issue can or should be resolved on the basis of the affidavit material before me.

[7] Accordingly, I direct a trial of the issue as to whether Kera is a "child of the marriage" and I adjourn both applications *sine die* for that purpose.

V.A. Schuler,
J.S.C.

Dated at Yellowknife, NT, this
2nd day of March 1998

Counsel for the Applicant: Catherine Stark
Counsel for the Respondent: Charles Thompson

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MEMORANDUM OF JUDGMENT OF THE
HONOURABLE V.A. SCHULER
