

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KERRY CLUETT

Petitioner

- and -

DIANE CLUETT

Respondent

MEMORANDUM OF JUDGMENT

[1] This application for interim spousal support was heard on November 28, 1997. After argument, I requested that counsel file further material on certain aspects of this matter by December 5, 1997. After meeting with both counsel in my chambers subsequent to that, counsel for the Petitioner was given until January 15, 1998 to file her material because of problems she was having in contacting her client. Since then, on January 16, 1998, an order was granted by Vertes J. that Ms. Stark be removed as counsel of record for the Petitioner.

[2] Accordingly, and in the absence of the information which I directed on November 28, 1997 be filed by the Petitioner as to his financial circumstances, I will rule on the Respondent's application for interim spousal support.

[3] The parties have been married for a little more than three years and have a two year old child who resides at present with the Respondent. Permanent custody of the child is a disputed issue.

[4] It appears from the materials filed that the parties had a fairly modest lifestyle during the time they lived together. When they met, the Respondent was working as a tourism counsellor with the local Visitors' Centre. She has a diploma from the Tourism Management Program at Arctic College.

[5] Shortly after their marriage in June of 1994, the parties moved to Ontario. The Respondent did not find employment there and planned to go to school. The parties returned to Yellowknife before she was able to enrol in a program. After they returned to Yellowknife, the Respondent did not work, apparently because of problems related to her pregnancy. There is a dispute in the affidavit material as to whether the Petitioner wanted the Respondent to work but she was not interested in doing so or whether she was simply unable to find work. There is a dispute also as to whether the parties agreed that the Respondent would remain at home to care for their daughter after her birth in November of 1995. Obviously I cannot resolve these disputes on the basis of affidavit material. In any event, the material indicates that the Respondent did remain at home and cared for the child.

[6] The parties separated in September of 1997. The Respondent briefly took a course in office skills but did not complete it because of childcare problems. She now plans to take an accounting course from January of 1998 until sometime in the spring and then a business administration course in the spring of 1998. Pursuant to an order made in this court, the Petitioner is obliged to pay child support for the child of the marriage and the Respondent also receives child support for another child from that child's father as well as social assistance. The Respondent's total income is slightly in excess of her expenses; that is in part explained by the fact that her housing is subsidized.

[7] The Respondent's affidavit material does not reveal what, if any, efforts she has made to obtain employment in the field of tourism. She says only that her skills are very specific and limited.

[8] The Petitioner's material indicates that he has worked on construction in the past. He worked for some time in what he describes in his affidavit as a "low paying construction/labourer position" from which he was laid off in December of 1995. He then received unemployment insurance benefits until June of 1996. According to the Respondent's affidavit sworn November 20, 1997, the Petitioner was (at that time) working full time, approximately 40 hours per week, as a carpenter earning \$14.00 an hour. The Petitioner does not dispute that in his affidavit sworn November 27, 1997, but says that as of the latter date, he has been laid off.

[9] The affidavit filed by Ms. Stark in support of her application to be removed as counsel of record indicates that the Petitioner has moved to Ontario and has not kept in touch with her.

[10] The factors and objectives to be considered on an application for interim spousal support are set out in s. 15.2 of the *Divorce Act*. At this stage of these divorce proceedings, and on the affidavit material before me, I consider the primary factors in this case to be the needs of the Respondent and the means of the Petitioner.

[11] The expenses claimed by the Respondent are minimal. There are no amounts claimed for books, recreation or babysitting, items which are not unusual in a parent's budget. Clearly she is in need of some support while she puts herself in a position to be able to compete in the job market from which she has been absent for the last two years as a consequence of the birth of the parties' daughter. It is this fact which in my view is determinative since this was a marriage of short duration.

[12] Any amounts received as spousal support will have the result of reducing the social assistance received by the Respondent according to the information provided by her counsel. However, where, as in this case, the wife is presently at an economic disadvantage as a result of the birth of the parties' child, the primary obligation for her support should rest on her husband rather than the state: *Harrington v. Harrington* (1981), 22 R.F.L. (2d) 40 (Ont. C.A.); *Kent v. Kent* (1985), 44 R.F.L. (2d) 263 (Man. C.A.).

[13] The next question is whether the Petitioner has the ability to pay. He has not provided any financial information. From the information provided by the Respondent as set out above, it appears that he is at least capable of earning approximately \$29,000.00 per year. The child support order in the amount of \$268.00 per month would appear to have been made on the basis of that income amount in accordance with the *Federal Child Support Guidelines*. I have taken into account a marginal tax rate of approximately 25 per cent and the child support which the Petitioner has been ordered to pay, and have used the rule of thumb that one third of the remaining income should go to the payee and two thirds remain with the payor: *Barnes v. Barnes* (1986), 50 R.F.L. (2d) 163 (Man. C.A.). Based on the foregoing, I order that the Petitioner pay to the Respondent as interim spousal support the sum of \$500.00 per month commencing December 1, 1997. As Ms. Stark is no longer acting for the Petitioner, counsel for the Respondent may take out the order resulting from this judgment without having it approved by Ms. Stark and may serve it on the Petitioner by ordinary mail addressed to him at his last known address as provided by Ms. Stark in accordance with the order made by Vertes J. on January 16, 1998.

[14] Counsel should include as part of the formal order the order that I made in Chambers on November 28, 1997, that action no. CV 07335, an action between the parties under the *Domestic Relations Act*, be joined with the within action.

[15] Dated at Yellowknife, this 23rd day of January, 1998.

V. A. Schuler
J.S.C.

To: Catherine Stark,
Counsel for the Petitioner

Angela Davies,
Counsel for the Respondent

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HONOURABLE JUSTICE V. A. SCHULER
