

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BRADLEY MICHAEL PITURA

Petitioner

- and -

WENDY SUZANNE MICHELLE PITURA

Respondent

MEMORANDUM OF JUDGMENT

[1] In this divorce proceeding the petitioner father makes application in chambers for an interim order reducing the amount of child support that the parties themselves had agreed he should pay.

[2] The petitioner resides in Yellowknife, the respondent mother in Minnedosa, Manitoba. The petitioner filed his sworn affidavit in support of the chambers application. The respondent was served personally with copies of the motion and affidavit. She did not appear personally or by counsel on the return of the chambers motion; however, she did send correspondence to the Clerk in which she disputes some of the allegations in the petitioner's affidavit.

[3] The parties married in 1988, separated in 1995. There are two children of the marriage, a son born in 1987 and a daughter born in 1989. After the separation both children resided with the respondent. Although no copy of the written separation agreement was produced at the chambers application, it is apparent that the parties agreed at the time of separation that the petitioner would pay to the respondent the monthly sum of \$1,200.00 as child support for the two children (\$600.00 per child). This, of course, was prior to the introduction of the Federal Child Support Guidelines, and a new tax regime related thereto, in May 1997.

[4] In 1998 two significant events occurred which pertain to the within application. Firstly, the petitioner lost his regular employment at a local gold mine when his union went on strike. At the time, his annual income had been approximately \$80,000. In late 1998, he was successful in obtaining regular employment at another mine; however, his annual income is now approximately \$48,500.

[5] The second change in circumstances is that the petitioner's son came to live with him in Yellowknife and continues to live with him to this day. The petitioner in his affidavit says this change occurred in June 1998. The respondent in filed, but unsworn, correspondence says it occurred in September 1998. It is thus uncontested that the older child has been in his father's custody since September 1998.

[6] Because of the strike and his reduced income, the petitioner says he paid the respondent \$350.00 per month instead of \$600.00 per month, commencing in October 1998.

[7] In his notice of motion the petitioner seeks an interim order:

- a) reducing his child support obligation to \$350.00 per month from \$1,200.00 per month, and
- b) rescinding any arrears which have occurred since June of 1998 pursuant to the existing Order.

[8] With respect to this interim relief requested in the notice of motion, two points should be noted. Firstly, during oral argument by the petitioner's counsel, the request for rescission of arrears was withdrawn. Secondly, there is no "existing order". Indeed, the within application cannot be considered an application for a variation order under s.17 of the *Divorce Act*, as that section refers to a previously existing support order.

[9] In any event the petitioner's proposal is that he be required to pay the sum of \$350.00 to the respondent as child support for his 9-year-old daughter who resides with the respondent in Manitoba. It is urged on his behalf that this sum is greater than what he would be required to pay pursuant to the Guidelines.

[10] In making this submission the petitioner refers to the “split custody” provisions in s.8 of the Guidelines:

8. Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

[11] The petitioner’s admitted Northwest Territories income of \$48,460.00 results in a child support amount of \$430.00 per month for one child under the Guidelines. The respondent’s alleged Manitoba income of \$20,000.00 results in a child support amount of \$153.00 per month for one child under the Guidelines, the difference being \$277.00 per month payable by the petitioner. These are the calculations provided by the petitioner’s counsel.

[12] The difficulty is the allegation that the respondent has an income of \$20,000.00. The only evidence of this is contained in paragraph 12 of the petitioner’s affidavit:

12. That I verily believe that the respondent is employed full time and earns approximately \$10.00 per hour. This would give her an income of between \$20,000 and \$25,000 per year. She recently told me that she intends to move to Brandon, Manitoba and go to school some time in the next year.

[13] The respondent, in a written communication to the Clerk of the Court explaining that she is unable to afford the services of a lawyer nor to travel to the Northwest Territories to attend Court, states that she is a single mother, unemployed and attending school. She opposes the reduction in child support to \$350.00.

[14] In the result there is no uncontested evidence on this chambers application that the respondent has an income of \$20,000.00, and in the circumstances I am not prepared to impute such income to the respondent.

[15] Accordingly, an Order will issue as follows:

- a) declaring the petitioner to have a guideline income of \$48,460.00;
- b) declaring that the respondent’s guideline income is unknown;

- c) requiring the petitioner to pay \$430.00 per month to the respondent for the support of the child Lynsey Elizabeth Pitura born December 13, 1989, on the first day of each month, effective October 1, 1998;
- d) lifting the stay of enforcement granted in paragraph 2 of the Court's order of May 21, 1999.

J.E. Richard,
J.S.C.

Dated at Yellowknife, NT, this
25th day of June 1999

Counsel for the Petitioner: Elaine Keenan Bengts
No one appearing for the Respondent

6101-03087

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HONOURABLE JUSTICE J.E. RICHARD
