Date: 1999 04 27
Docket: CV 08117

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

GERALD BLANCHARD

Applicant

-and-

CONNIE BLANCHARD

Respondent

MEMORANDUM OF JUDGMENT

[1] This matter came on in regular chambers as a confirmation hearing respecting provisional orders issued by the Court of Queen's Bench of Alberta, pursuant to s.19 of the *Divorce Act* (Canada). The matter is hereby returned to the Attorney General of the Northwest Territories (pursuant to s.19(3) of the Act) for transmittal back to the Attorney General of Alberta (pursuant to s.19(4) of the Act) for the reasons that follow.

[2] The Clerk of this court received two orders from Alberta, both issued on September 25, 1998. One is labelled "Provisional Order" and cancels arrears of child support. The other is labelled simply as "Order" and that also cancels arrears of child support and eliminates ongoing child support obligations. Child support had been ordered in a Corollary Relief Order issued out of this court in 1996. There is no evidence to suggest that the respondent received any notice of the Alberta proceedings. It seems to me that, notwithstanding the difference in labels, both orders are provisional in nature.

[3] There is nothing in the evidence from the Alberta proceedings that indicates an address for the respondent other than "Yellowknife". The materials forwarded to the Clerk from Alberta gave no information on service. I was informed by the Clerk that when the materials arrived here the Sheriff conducted a motor vehicle registry search and came up with the address of "652 Williams Avenue". The Clerk issued a "Notice of Confirmation Hearing", to be held on March 26, 1999, and the Sheriff attempted to serve the respondent. The Affidavit of Attempted Service reveals that, despite several attempts, the Sheriff was unsuccessful. When the matter came on in chambers on March 26th, the presiding judge instructed that further attempts be made to serve the respondent.

[4] The Clerk next issued a new "Notice of Confirmation Hearing" returnable on April 23, 1999. I was told that a Deputy Clerk looked in the local telephone book and saw a listing for the respondent at "19 Melville Drive". The Sheriff attempted service there but was unsuccessful. The Affidavit of Attempted Service states that the owner of the dwelling informed the Sheriff that the respondent no longer lived there and he did not know her whereabouts. When this matter was called in chambers on April 23rd, no one responded (not the respondent nor anyone on behalf of the applicant or the Attorney General).

[5] The *Divorce Act* contains very little on the procedure to be followed on a confirmation hearing. It envisages a hearing, without the attendance of the applicant but on notice to the respondent. It clearly envisages personal service of that notice. If the respondent is no longer in the jurisdiction, the documents are returned to the jurisdiction of the originating court. This is set out in subsections 19(2) and (3) of the Act:

> (2) Subject to subsection (3), where documents have been sent to a court pursuant to subsection (1), the court shall serve on the respondent a copy of the documents and a notice of a hearing respecting confirmation of the provisional order and shall proceed with the hearing, in the absence of the applicant, taking into consideration the certified or sworn document setting out or summarizing the evidence given to the court that made the provisional order.
>
> (3) Where documents have been sent to a court pursuant to subsection (1) and the respondent apparently is outside the province and is not likely to return, the court shall send the documents to the Attorney General for that province, together with any available information respecting the location and circumstances of the respondent.

[6] I am sure that the phrase "apparently is outside the province", in subsection (3), was not intended to include the situation where the respondent simply cannot be located. But it seems to me that the result is the same so there is no reason not to apply the same procedure. Hence my decision to return the documents to the originating court.

[7] I do not think that it should be the responsibility of the receiving court's clerical staff to try to locate a respondent. There should be information from the originating jurisdiction (probably from the applicant) as to where the respondent can be located.

[8] In addition, I do not think it is the proper role of the receiving court to arbitrarily waive the notice requirement or to direct some method of substitutional service. Such a request would have to come, it seems to me, from the originating jurisdiction (more likely from the applicant).

[9] In the absence of service there is nothing for this court to do. Perhaps this is merely one more example of the procedural difficulties inherent in this process.

[10] Dated this 27th day of April, 1999.

J. Z. Vertes
J.S.C.