

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HONEYLET SAYONG

Applicant

-and-

CAMERON JON AINDOW

Respondent

MEMORANDUM OF JUDGMENT

[1] This memorandum addresses the question of interim child support.

[2] The applicant commenced these proceedings almost two years ago. She sought an order for custody and support of three children: Andrea, Jelissa, and Joshua. The respondent is the natural father of Andrea and Jelissa and he stood in the place of a parent to Joshua while the parties lived together in a common-law relationship for approximately 10 years.

[3] The two girls, Andrea and Jelissa, now live with the respondent. The boy, Joshua, lives with the applicant. On February 12, 1999, a judge issued an order granting interim custody of the two girls to the respondent. The permanent custody of these children may still be an issue. There is no contest respecting custody of Joshua.

[4] I have now reviewed the financial information provided by the parties. Neither party is represented by counsel so I made my own analysis and calculations based on the information provided.

[5] First, the Child Support Guidelines, enacted pursuant to the Children's Law Act, S.N.W.T. 1997, c.14, require that the amount of child support payable by the non-custodial parent to the custodial parent is based on the gross income of the non-custodial

parent. Where there are children in the custody of both parents, then there is a set-off of the amounts that are payable by one parent to the other.

[6] Second, if a parent wishes to plead undue hardship by reason of an inability to pay the amount required by the Guidelines, then there is a complicated calculation that must be done to compare the household standard of living of one parent to the other. No variation for undue hardship can be made if the parent claiming hardship has a higher standard of living than the other one.

[7] Third, the applicant said that she is not seeking support for Joshua (even though in her Originating Notice she does). The right to support is the right of the child. There is at least a prima facie case that the respondent stood *in loco parentis* to Joshua during the relationship. Whether he still does is a matter for future argument and evidence. As an interim measure there is a basis to order support for Joshua.

[8] Applying these basic points, I come to the following conclusions.

[9] The applicant is required to pay \$315.85 per month for the support of the two children with the respondent (based on an annual income of \$20,315.04). The respondent is required to pay for the support of the one child with the applicant the sum of \$295.67 per month (based on an annual income of \$32,700.24). Setting one off against the other results in a monthly payment by the applicant to the respondent of \$20.18.

[10] In calculating the respondent's income I have not included the amounts he receives as C.P.P. child disability benefits for Andrea. I have also not included any such benefits received by the applicant for Jelissa. Those payments are for the direct benefit of those children paid by the federal public pension programme. They are the child's so if the applicant is in receipt of a benefit for Jelissa then that should be turned over to the respondent since he is caring for that child.

[11] The respondent will incur expenses for orthodontist services for Jelissa. The estimated cost will be \$805.00. This should be shared by the parties in relation to their proportionate incomes (38% by the applicant and 62% by the respondent).

[12] I have decided not to make any variation from the figures stipulated by the Guidelines. The household standard of living comparison based on the figures I have

yields very little difference. Perhaps if there is further litigation a more detailed analysis can be done. In any event, the applicant should be able to manage the amount I am ordering her to pay.

[13] There will be an order as follows:

1. The applicant will pay to the respondent, as interim child support, the sum of \$20.18 per month starting on May 15, 1999, and continuing on the 15th day of each month thereafter.
2. The applicant is either to (a) turn over to the respondent any monthly disability payment she receives on behalf of Jelissa or (b) direct the Canada Pension Plan to make any such payments directly to the respondent.
3. The applicant will reimburse the respondent for 38% of the cost of Jelissa's orthodontic treatment. Reimbursement is to be made within 30 days of receiving a copy of the orthodontist's invoice from the respondent.

[14] I have not made the support payments retroactive as requested by the respondent. There were several orders made providing for support payments for the past three months. Those orders remain in full force and effect and must be obeyed.

[15] If there is to be further litigation in this matter, I strongly urge both parties to seek the assistance of legal counsel.

[16] Dated this 5th day of May, 1999.

J. Z. Vertes
J.S.C.

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