SC CIV 97 051 S

CV 06658

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TISHA PLUMMER

Applicant

- and -

PAUL CHRISTOFFERSON

Respondent

MEMORANDUM OF JUDGMENT

1 The issues I am called upon to decide on this application are those of interim custody and child support. The applicant, whom I will refer to as the mother, seeks sole custody of the child Andrew, who is just over three years old. She also asks for child support in the amount of $300.00 per month.

2 The respondent, the father, seeks joint custody on an interim basis, with the mother to have the day to day care of the child. He proposes that he pay child support of $300.00 for the month of December, 1996 and $175.00 per month thereafter.

Custody

3 The parties lived together for approximately two years in a common law relationship. Andrew was born a year before the relationship ended.

4 The relationship ended in October or November of 1994. The father was in jail (for reasons which I gather are unrelated to the family) from October 26, 1995 to July 18, 1996.

5 The parties do not agree about the extent of the father's involvement with Andrew. The mother states in her affidavit sworn September 26, 1996, that since his birth she has been Andrew's primary caregiver, that he has resided exclusively with her, and that there has been little contact or involvement by the father with the child since the separation. Although her affidavit requests that any access granted to the father be supervised, her counsel advised at the hearing of this application that she was not pursuing the supervision aspect.

6 In his affidavit sworn November 25, 1996, the father states that when they lived together, he and the mother shared child rearing duties when they were not working. He says that from November 1994 to October 1995 he visited Andrew every few months for periods ranging from a week to a month. It is not stated where those visits took place and whether Andrew was in the sole care of the father at those times. Since his release from jail in July of 1996, the father says that Andrew visits with him for about two hours every evening during the week and on occasion sleeps over for a night as well as spending one night over the weekend with him. He says that he has an excellent relationship with his son.

7 The mother opposes joint custody. That is but one factor to be taken into account in deciding whether there should be joint custody. In this case, I give it very little weight because the mother gives no real reason for her opposition, other

than to say that she believes it is in the child's best interests that she have sole custody.

8 On the issue of joint custody, the question is whether the evidence shows that the parties have, in the past, been able to put aside their personal differences to make co-operative decisions about the child: *Colwell v. Colwell* (1992), 38 R.F.L. (3d) 345 (Alta. Q.B.). And I must, of course, be guided by what is in the best interests of the child at this time, keeping in mind that this is an interim application.

9 In this case, there is very little evidence about the ability of these parents to work together and make joint decisions about the child. Neither one refers to any difficulties with the access arrangements to date or their communication on issues involving the child. However, the absence of evidence on that point does not necessarily mean that joint custody is the best thing for this child at this time.

10 In this case, the circumstances of the parties will soon change because of the father's plans to attend school in Calgary. The father says in his affidavit that the mother has indicated to him that she will be relocating to Edmonton from Norman Wells. What effect these changes will have on the parties' dealings with each other remains to be seen. How the parties deal with the new circumstances and fulfill their respective obligations to do what is best for the child will have an effect on any permanent custody order.

11 In my view, there is simply too much uncertainty to allow me to assess

at this point whether this is a good case for interim joint custody. Accordingly, I order that the mother have interim custody of the child. Counsel indicated that they were agreed that the father have access to the child from December 19, 1996 to January 12, 1997 inclusive and generous access as the parties may agree on at other times; accordingly, that will be the access ordered.

Child Support

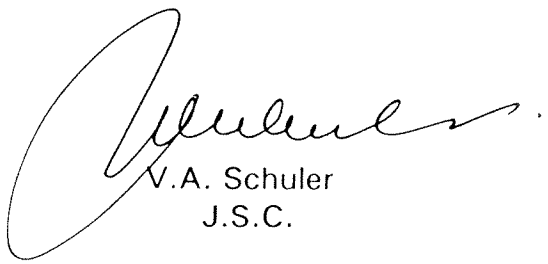
12 The mother has gross income of $1268.00 per month inclusive of the child tax benefit. The father has had gross income of $2262.00 per month working as a labourer, but plans to take a three year civil engineering course, for which he is enroled in a preparatory seminar to commence in January, 1997. His gross income at that time will consist of a subsidy of $400.00 per month. He says in his affidavit that he will also seek part-time employment. No information was provided about what his expenses will be while attending school.

13 The law is very clear that the parents of a child must share the burden of the financial costs of the upbringing of the child and that this burden is the prime obligation of a parent: *Levesque v. Levesque*, [1994] 8 W.W.R. 589 (Alta. C.A.). It is also clear that what must be assessed is the income-earning capacities of the parties, so that a parent who has the ability to earn a particular level of income but chooses not to do so may still have to contribute according to what he could earn.

14 In this case, the father proposes that he pay a reduced amount of child support because of his plans to go to school. While it is to his credit that he is

thinking ahead and wants to be able to provide better support for his child, by furthering his education and training, the reality is that he has an obligation to help support Andrew at a reasonable level now. That may mean taking on one or more part-time jobs while he is at school, going to school part-time so that he can work, living with his parents to save on expenses even though it may be inconvenient, or finding other ways of increasing his income and reducing his expenses. It will be up to the father to determine how best to organize his life so that he can meet his obligation to support his son.

15 A calculation based on the father's proposed gross income and the *Levesque* formula results in the sum of $210.00 monthly as the father's share of the childcare expenses. That is without any gross-up for taxes. In all the circumstances, in my view the sum of $250.00 per month is reasonable. An order will therefore issue that the father pay that amount on the 15th of each month, commencing December 15, 1996, on an interim basis until further order of the Court.



V.A. Schuler
J.S.C.

Dated at Yellowknife, Northwest Territories
this 2nd day of January, 1997

Counsel for the Applicant: Sheila M. MacPherson

Counsel for the Respondent: Olivia Rebeiro

CV 06658

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN:

TISHA PLUMMER

Applicant

- and -

PAUL CHRISTOFFERSON

Respondent

MEMORANDUM OF JUDGMENT
HONOURABLE JUSTICE V.A. SCHULER