

6101-02766

## IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**SHALIZA WARNER**

Petitioner

- and -

**KENNETH WARNER**

Respondent

MEMORANDUM OF JUDGMENT

1           The only issue I am called upon to determine on this application is the quantum of interim child support, the remaining issues having been adjourned or dealt with by agreement of counsel.

2           The parties have been married for approximately eleven years and separated in June of 1996. There are two daughters of the marriage, one eight and the other six years old. They are in the custody of the Petitioner and reside with her in Alberta. The Respondent remains in Yellowknife, which is where the parties resided prior to the separation.

3           The Petitioner seeks an interim order of \$600.00 per month per child. She earns gross monthly income of \$1386.66 as a waitress. Her affidavit sworn November 15, 1996 indicates that her basic monthly expenses for the support of herself and the two children, reflecting only the bare necessities, amount to \$1595.19. Her estimate of the amount it would reasonably cost to support the

children at the level to which they were accustomed prior to the separation is \$2056.19 monthly.

4           The Respondent is self-employed as a mail delivery contractor for Canada Post. According to his affidavit sworn December 2, 1996, he earns \$2932.50 per month from that contract.

5           The Petitioner states that the Respondent had an additional contract with Canada Post for approximately \$45,000.00 per year but that he let it lapse.

6           The Petitioner further states that the Respondent had an arrangement with a local computer store whereby he would receive expensive computer equipment in exchange for work done there. She deposes that she is not aware whether he still works there, but believes that the computer equipment in the Respondent's possession has a value in excess of \$5000.00.

7           The Respondent makes no reference to his work for the computer store in his affidavit. He states that his contract with Canada Post pays him \$2932.50 per month, out of which he pays the expenses associated with the vehicle he uses to deliver the mail. These expenses total \$450.00 per month. He says that he gave up the second contract with Canada Post because the cost of hiring someone to help him with it negated any profit from it. The Petitioner had worked on it without pay prior to the parties' separation.

8           Counsel for the Respondent submits that child support of \$300.00 to \$350.00 per month is reasonable in the circumstances.

9           The Respondent disputes the reasonableness of the expenses for the children as proposed by the Petitioner. His objections are outlined in an affidavit sworn December 5, 1996. They are based on the fact that, he says, during the time the parties were together, they spent little or no money on clothing, entertainment and recreation for the children. His counsel argues that to accept the expenses proposed by the Petitioner would raise the children's standard of living beyond that of the parents.

10           Clearly the parties are not in agreement as to what was spent on the children when they lived together, as the Petitioner's affidavit refers to the expenses claimed as being the cost of supporting the children "at the level to which they were accustomed prior to our separation".

11           The lifestyle of the former family unit is a good first test of what is appropriate in terms of lifestyle for the children after the break-up of that unit, but it is not the only test: *Levesque v. Levesque*, [1994] 8 W.W.R. 589 (Alta. C.A.), at 596. In *Levesque*, it was said that a judge should also seek guidance from expenditure levels generally of parents in the income bracket of the parties in question. And the Court also said that:

Unless parties are impoverished, the minimalist approach is not appropriate. The goal for the children should be a standard of living commensurate with the incomes of their parents. For this reason, the combined gross incomes of the parents is the single most important factor for the judge in the assessment of the cost of the child's upbringing. The minimal expenditure level is appropriate only for cases where the parents are poor.

12 I bear in mind that this is an interim application. A judge at trial will be in a better position to assess the expenses claimed based on evidence. I do take into account that the expenses attributable to the children will increase as they get older, that the interests and activities of the children will change. It is not reasonable, in my view, to expect that because (assuming it to be the case) the parents spent almost no money on entertainment and recreation for the children when they were very young, the same will or should apply for the future.

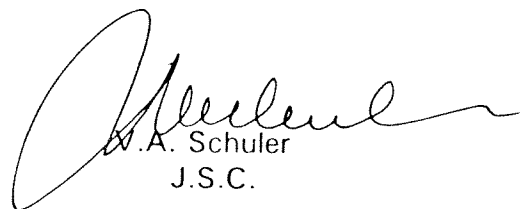
13 *Levesque* sets out the formula used for calculation of child support in this jurisdiction. The first step is to calculate the combined gross income of the parents. This requires an assessment of the income earning capacities of each spouse. In this case, the only certain information is what the parties say about their own current incomes. The Petitioner's gross income (\$16,640.00) is 32% of the total; the Respondent's (\$35,190.00) is 68%.

14 The next step is to determine the childcare costs. Both counsel agree that the proposed entertainment and recreation costs to which the Respondent objects amount to approximately \$270.00 per month. Even if I deduct that amount from the \$2056.19 in costs claimed by the Petitioner, it leaves \$1786.19 for childcare costs. The Respondent's 68% share of that is just over \$1200.00. That is without any gross up to offset the amount of tax payable by the Petitioner.

15 The next question is whether the Respondent can pay the figure calculated and whether there are any special circumstances which might require a further adjustment. The Respondent's own expenses are set out in his affidavit material. Apart

from the vehicle expenses related to his Canada Post contract, the only necessities appear to be \$400.00 monthly for food and a total of \$1210.00 monthly for the mortgage, utilities and heating for the former matrimonial home in which he continues to reside. An expenditure of \$87.00 per month for cable television is not a necessity and no explanation is provided for his telephone expenses of \$200.00 per month. Child support must come before the latter expenses and before any debt payments. At the same time, I note that the Respondent has claimed very few expenses for himself.

16                    Bearing in mind that this is an interim order intended to address the current situation on a temporary basis, and having considered the circumstances of both parties, in my view a sum of \$500.00 per month per child is reasonable. An order will accordingly issue that the Respondent pay that amount commencing January 1, 1997 and on the first day of each month thereafter until further order of the Court. Counsel have agreed that an order may issue prohibiting the Respondent from disposing of any assets without the written permission of the Petitioner or order of the Court and requiring the Respondent to forward to the Petitioner collect by bus personal items belonging to her and the children; these terms may also be incorporated in the formal order with respect to child support.

  
W.A. Schuler  
J.S.C.

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

Counsel for the Petitioner: Elaine Keenan Bengts  
Counsel for the Respondent: Catherine Stark for the Respondent

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MEMORANDUM OF JUDGMENT  
HONOURABLE JUSTICE V.A. SCHULER

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