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CV 06378

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of the *Domestic Relations Act*, R.S.N.W.T. 1988 c.D-8, as amended;

AND IN THE MATTER of the *Judicature Act*, R.S.N.W.T. 1988 c.J-1, as amended.

BETWEEN:

MISTY TRAHAN

Applicant

- and -

SHANE PIERCY

Respondent

MEMORANDUM OF JUDGMENT

This is an application by the Respondent for the following relief:

1. that the Applicant be granted interim custody of the one and a half year old child of the parties;

2. that the Respondent have liberal access to the child, including certain specified access times;

3. that the Respondent pay to the Applicant interim support for the child in an amount less than the $300.00 per month that he has been paying by agreement between the parties.

Status of the Custody and Access Issues:

The only dispute as to custody and access is whether access should be supervised and more restricted than what the Respondent is seeking. The main

argument put forward by counsel for the Applicant as to why access should be supervised is that the child has medical problems.

When this matter was before me in Chambers on March 7, 1997, counsel for the Applicant sought leave to submit medical information in response to my concern about the lack of same. I directed that the information be filed by March 21, 1997. The matter was brought back on before me on March 20, 1997, at which time I expressed concern about the form in which the medical information was submitted. The information provided consists, firstly, of medical charts and files up to August, 1996 of both the Applicant and the child. These documents were submitted to the registry by counsel for the Applicant sometime before March 20, with a verbal request that they be given to me to review.

The second item of information is an unsigned letter dated November 4, 1996 from one doctor to another. This document was faxed to the registry by counsel for the Applicant on March 20, 1997, with a note requesting that it be provided to me.

At the time the information was submitted to the registry, there was no indication as to whether counsel for the Respondent was taking any position as to the form in which it was submitted. Accordingly, I did not review it. In Chambers on March 20, 1997, Mr. Sinclair indicated that he had no objection to it being considered.

For clarification, my concerns are as follows:

1. Rule 382(3) provides that an application be supported by affidavit evidence. If counsel wish to submit evidence that is not in the form of an affidavit or an Agreed Statement of Facts for review by the presiding Judge prior to the matter being heard, that evidence should be accompanied by a letter indicating that opposing counsel agrees that the evidence be considered as submitted;

2. In this case, counsel are each asking me to draw different conclusions from the medical information. In essence, they have asked me to review the various letters, charts, discharge summaries and other medical documents and determine from them what medical problems the child has or has had and whether those problems require supervision of any access to be granted to the Respondent. One problem is that much of the documentation uses medical terminology. As I pointed out to counsel in Chambers, I am not a doctor and I am not prepared to guess at the meaning of the terms used. Another problem is the extent to which I can or should draw conclusions from a medical chart without the assistance of a report or affidavit from a physician addressing facts which are relevant to the issue I am asked to resolve.

In light of the importance of the issue, which involves the best interests of a young child, I adjourned the matter *sine die* to allow counsel for the Applicant more time to obtain further medical information, particularly because I was told that the child has a medical appointment scheduled for April 1, 1997. I therefore directed counsel to contact the registry to schedule this matter on a date during the weeks of

April 14 or 21. I expect counsel to take into account the concerns I have expressed in Chambers and in this Memorandum if information resulting from the April 1 visit is submitted.

Child Support:

The Respondent agrees that he has an obligation to pay child support. The only issue is quantum. Each party has filed affidavit material; there have been no cross-examinations.

In her most recent affidavit, the Applicant deposes that she, her mother and the child have moved to Sudbury, Ontario with the intention that her father join them in a few months when his employment situation is settled. They are being supported by the Applicant's father. They are living in public housing and the Applicant is looking for employment and planning to attend a local college for upgrading. No information was provided about her current expenses for the child.

The parties had an agreement that the Respondent would pay $300.00 per month in child support. Those payments were made from May of 1996 to January of 1997. The Applicant asks the Court to order that they continue in that amount.

The Respondent says he cannot afford to continue payments in that amount. He asks that any amount ordered take into account the increased access costs he will

incur now that the child lives in Sudbury, although he indicates that he is attempting to obtain employment in that city.

At present, the Respondent works as a security guard. His gross income in 1996 as shown on his T-4 slip was $15,211.04.

The Respondent's counsel submits that I should consider the amount which would be payable under the federal Child Support Guidelines, which are to come into effect on May 1, 1997, grossed up for the tax consequences imposed under the current law. The guideline amounts have been considered in other cases, including those to which the *Divorce Act* does not apply, for example, *Delorme v. Speirs* (S.C.N.W.T. No. CV06886; March 17, 1997). In this case, particularly because of the lack of information as to the Applicant's expenses, I think it is appropriate to consider the guideline amount, which would be $151.00 without the tax gross-up, based on gross income of $15,211.04.

I have decided not to make any reduction due to access costs because the Respondent has indicated that he is seeking employment in Sudbury and therefore significant access costs may not arise.

Having considered the above, in my view the sum of $200.00 gross per month is appropriate. I order that the Respondent pay that amount monthly commencing

February, 1997. The payments are to be made on the 17th of each month (the date when his payments were previously made) unless the parties agree on another date. The payments for February and March are to be made by April 30, 1997.

Dated this 25th day of March, 1997

V. A. Schuler
J. S. C.

Counsel for the Applicant: Jill Murray

Counsel for the Respondent: Noel Sinclair

CV 063[illegible]

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MEMORANDUM OF JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER