

6101-02683

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MARGARET AULATJUT

Petitioner

- and -

PETER PANIGONIAK AULATJUT

Respondent

MEMORANDUM OF JUDGMENT

At the time this application for interim relief in a divorce action was heard by me, the issue of exclusive possession of the matrimonial home was adjourned *sine die* by agreement of counsel.

The matters I am asked to rule on are interim child support and interim spousal support.

Interim Child Support

The parties had seven children during their 23 year marriage. Of those, four are alleged to remain dependant. The parties agree on joint custody. They also agree that Jennifer, age 16 and Peter, age 8, are in the care of the Petitioner.

There is a dispute as to the status of the children Micah and Ann Rose.

Micah is almost 13 years old. In her affidavit sworn November 27, 1996, the Petitioner states that Micah lives with the Respondent. In her affidavit sworn in April, 1997, she states that Micah lives with her during the week and spends weekends with the Respondent, but eats almost all meals with her.

In his affidavit sworn May 1, 1997, the Respondent deposes that Micah has lived with him on a full time basis since the parties' separation in 1993; he acknowledges that Micah visits with the Petitioner on a regular basis and usually eats lunch at her home.

Ann Rose is 4 years old. She is the natural grandchild of the parties, who adopted her. The Petitioner deposes that Ann Rose lives with her natural mother, who is 24 years old, but that both the mother and Ann Rose spend most of their time at the Petitioner's home, although they sleep at their own home. The mother wants to have Ann Rose back and so efforts are being made to "reverse" the adoption.

The Respondent deposes that Ann Rose lives with her natural mother on a full time basis and that the mother receives financial assistance from the government for her care. The Respondent also says that Ann Rose has been custom adopted back to her mother.

I am asked to decide the matters in issue on the affidavit evidence only. As such, I am unable to make findings of credibility or to resolve contradictions in the affidavit material.

In order to determine whether the Respondent should pay child support to the Petitioner for Micah and Ann Rose, I start by considering who has the day to day care of those children; on whom are they dependant?

In the case of Micah, I am unable to say from the material provided that it is the Petitioner who has his day to day care. Rather, it appears to me that Micah is primarily dependant on the Respondent.

In the case of Ann Rose, the *de facto* situation appears to be that of a grandmother who welcomes her daughter and granddaughter to spend substantial amounts of time in her home. Although the Petitioner and the Respondent have an obligation to support Ann Rose, at least until such time as they are no longer her parents by reason of an adoption back to her natural mother, I am not satisfied on the evidence before me that Ann Rose is dependant on her grandmother, the Petitioner. Rather, it appears that Ann Rose is now in the primary care of her natural mother.

Accordingly, interim child support will be payable by the Respondent to the Petitioner for Peter and Jennifer only.

The next issue is quantum of child support. This is a divorce action and so the *Federal Child Support Guidelines* are binding, subject to any adjustments allowable pursuant to their terms: *Divorce Act*, s. 15.1(3) as amended. Counsel agree that the Respondent's yearly income is \$51,083. The *Guideline* amount for two children at that income is \$735.00 per month.

No special or extraordinary expenses were claimed under s. 7 of the *Guidelines*. The Respondent claims undue hardship under s. 10(2)(a) by reason of debts. That there is evidence of undue hardship is conceded by counsel on behalf of the Petitioner, but he takes the position that it is short-lived and therefore any adjustment to the *Guideline* amount should take that into account.

The debts in question require payments of \$1469.02 per month until after June of 1997, decreasing to \$1085.75 per month until after November of 1997 when the debts will be satisfied. When one takes into account these debt payments and a reasonable amount for the Respondent's own living expenses and considering that he supports Micah, the Respondent has little or no income available for other payments.

At the same time, I bear in mind that child support comes before debt payments. It may be that the Respondent should seek an adjustment to the monthly payments he is making on the debt load in order to free up money for child support purposes.

Counsel for the Petitioner suggested that graduated child support payments be ordered to take into account the Respondent's debt load. I agree that there is merit in that suggestion and order that interim child support be payable by the Respondent to the Petitioner as follows:

1. \$300.00 per month for the months of May and June, 1997;
2. \$500.00 per month for the months of July to November, 1997, inclusive;
3. \$735.00 per month commencing December 1, 1997.

Interim Spousal Support

The parties lived together for 23 years. The Petitioner is unilingual, 44 years of age and is unemployed. She receives Social Assistance. Her role during the marriage was to look after the children and household, while the Respondent worked outside the home.

Section 15 of the *Divorce Act* requires that I consider the condition, means, needs and other circumstances of the parties.

The Petitioner clearly needs support. There is no evidence of a past history of employment on her part, nor is there evidence that she has any skills that could reasonably be expected to make her employable. Whether she can ever be self-sufficient is unknown at this time.

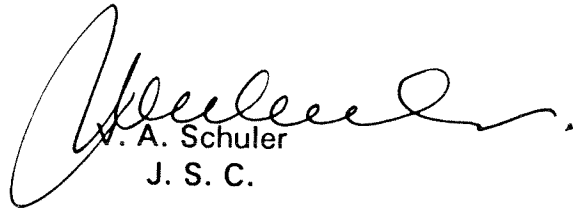
Taking into account all the circumstances, including the Respondent's means and his responsibility for the debt load, I order that interim spousal support be payable in the amount of \$200.00 per month from May until November, 1997, inclusive. Commencing December 1, 1997, it will increase to \$300.00 per month.

I emphasize that the orders I have made are interim orders. I urge counsel to finalize this case at an early date, whether by way of trial or otherwise.

The child and spousal support payments are to be made on the first day of each month.

Finally, I draw the attention of counsel to the requirements of s. 13 of the *Guidelines* regarding the mandatory contents of a child support order.

Dated this 12th day of May, 1997.


W. A. Schuler
J. S. C.

Counsel for the Petitioner: Noel Sinclair

Counsel for the Respondent: Heather Potter

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**Memorandum of Judgment of the
Honourable Justice V. A. Schuler**

