

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CARMEN GWEN PUECH

Petitioner

-and-

MARK RICHARD SCHAUERTE

Respondent

MEMORANDUM OF JUDGMENT

- [1] The Petitioner commenced these divorce proceedings in April of this year. The Respondent was served with the Petition and related documents on May 17, 1999 in Hay River and was noted in default on June 15.
- [2] On this application, commonly known as a “desk divorce” application, the Petitioner claims a divorce, sole custody of the four children of the marriage, child support, spousal support and division of matrimonial property.
- [3] The parties have lived separate and apart since November 19, 1996 and a divorce judgment will issue.
- [4] I have decided that the issue of custody should be adjourned for hearing. Although the Respondent is on notice of the Petitioner’s claim for custody, that claim having been set out in the Petition for Divorce, and has not responded in any way to it, this case is made unusual by the fact that the children live with the Respondent and have done so since the separation.
- [5] The children are now ages 16, 14, 11 and 8. They reside with the Respondent in Hay River. The Petitioner resides in Stony Plain, Alberta and has had regular access to the children. The Petitioner’s affidavit material raises a number of concerns about the Respondent’s care of the children. Since I have decided that a hearing should be held, I will not comment on these concerns except to say that although they are significant, there is no suggestion that there is an urgent need to remove the children from the Respondent’s care.
- [6] Considering the length of time that the children have lived with the Respondent in Hay River, and that a move to Alberta would be a major change in their day to day lives and the fact that they are in the middle of a school year, it would not be

appropriate, in my view, to order a change in custody without further inquiry. I am also reluctant to make such an order about the older children. Considering their age, there should be some evidence about their wishes, which will be relevant, even if not determinative.

- [7] The issue is the best interests of the children, not what is best for or fair to the parents. I do not know why the Respondent has chosen not to respond to this action, but that is a secondary issue. The main issue, and my main concern, is the disruption to, and possible confusion for, the children if an order were to be made and enforced at this time.
- [8] For the foregoing reasons, I decline to make the custody order sought and order instead that the issue of custody be adjourned for a hearing to be set. I do not consider that I am seized of this matter; it can be heard by any Judge of this Court. Counsel should contact the Supervisor, Courtroom Services for purposes of setting a date.
- [9] In light of the order made, the issue of child support is also adjourned and can be dealt with at the same hearing. In the circumstances, I am satisfied as required by s. 11(1)(b) of the *Divorce Act* that reasonable arrangements are in place for the support of the children, considering the Petitioner's evidence that the Respondent is employed and makes approximately \$50,000.00 per year.
- [10] The Petitioner also seeks an order for a lump sum payment of spousal support in the amount of \$18,000.00, being \$500.00 per month for the 36 month period between December 1, 1996 (just after the date of separation) and November 30, 1999. This claim is based on the fact that the Petitioner was, throughout the 15 years the parties lived together, a stay-at-home wife and mother. At the time of the separation, the Petitioner lacked skills to enter the workforce. She received no financial support from the Respondent. She was on welfare for a couple of months, then worked for approximately six months, and then enrolled in a course at NAIT in Edmonton, from which she has since withdrawn. Since the separation, she has relied for financial assistance on her parents and has borrowed \$15,000.00 from a friend. That debt is still unpaid. She also owes \$3600.00 in student loans. Her Financial Statement shows her 1998 income as \$3606.70 and current gross monthly income of \$1810.00.
- [11] I have reviewed the cases cited in the Petitioner's Memorandum filed December 3, 1999 as well as *Ross v. Ross* (1993), 12 O.R. (3d) 705 ( Ont. C.A.). In my view, the \$18,000.00 sought is justified because the Petitioner had to incur substantial debt to support herself after the separation, when the Respondent should have been contributing to her support. The Respondent has not filed any financial information despite having been served with the usual notice to do so under the *Child Support Guidelines*. I take into account that he has been

supporting the children. However, he has an onus to put financial information before the Court and has not done so.

- [12] Accordingly, an order for lump sum spousal support of \$18,000.00 will issue.
- [13] The final issue is matrimonial property. The Petitioner has restricted her claim to payment for a half interest in the net equity in the matrimonial home and a half interest in the Respondent's pension from employment. Having considered the relevant provisions of the *Family Law Act*, S.N.W.T. 1997, c. 18, I grant the order submitted with this application.
- [14] Counsel will have to submit a new Divorce Judgment and Corollary Relief Order in light of my ruling with respect to custody and child support.

V. A. Schuler  
J.S.C.

Dated this 20th day of December, 1999  
in Yellowknife, Northwest Territories.

Counsel for the Petitioner: Al Zariwny