Ashford v Snow, 2001 NWTSC 32

Date: 2001 04 11
Docket: S-001-CV08770

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROSS ASHFORD

Applicant

-and-

VIOLA SNOW

Respondent

MEMORANDUM OF JUDGMENT

[1] This is another example of the unsatisfactory state of confirmation procedures for provisional maintenance orders.

[2] On January 11, 2000, a provisional order was made in the Supreme Court of Nova Scotia (Family Division) varying the terms of an earlier child support order made in Nova Scotia. That earlier order, dated April 20, 1994, required the applicant to pay child support to the respondent of $300.00 per month for three children if he is employed or in receipt of unemployment insurance benefits; if he had no source of income then his payments were reduced to $1.00 per month. The provisional order (the proceedings in January of 2000 were provisional only because the respondent had by then moved to this jurisdiction) varied the monthly support payments to $92.00 per month for only one child (based upon an income of $10,000.00 fixed for this purpose). The presiding judge held that two of the children "may" no longer be "dependent children" within the meaning of the Nova Scotia legislation. The provisional order also reduced arrears accumulated under the earlier order.

[3] The provisional order was received in this jurisdiction on February 2, 2000. A notice of a confirmation hearing was served personally on the respondent on April 15, 2000, stating that the hearing will take place in this court on May 19 (a "regular"

chambers date). On that date the respondent appeared and asked for an adjournment to obtain the advice of counsel. The matter was adjourned to June 16 . On that date counsel for the respondent appeared and advised that he wished to call evidence at the hearing. The matter was adjourned to June 30 to speak to a date for the hearing. On June 30 counsel again appeared and July 30 was fixed as the date for the hearing. In the meantime counsel filed some material questioning the evidence adduced in Nova Scotia (but indicating that the respondent's evidence will be presented at the hearing). On July 20 counsel appeared and requested an adjournment due to the fact that the respondent was unexpectedly out of town. The hearing was adjourned *sine die* with a direction to counsel to obtain a new date from the clerk. At that point things appear to have stopped. Apparently no steps were taken to fix a new date.

[4] Not surprisingly, inquiries were received from Nova Scotia in November asking about the progress of this matter. The clerk contacted respondent's counsel who eventually replied in January that he had lost contact with his client but was continuing his efforts to locate her. Somehow, the office administrator of the territorial government's Department of Justice obtained the respondent's address, provided it to the clerk, and then the clerk set this matter down once again for the chambers date of April 6, 2001. Personal service was effected on the respondent on March 13, 2001. When the matter was called on April 6, the respondent was not present but her counsel of record was. He promptly asked to be removed as counsel of record as he had had no contact with the respondent. His request was granted and he withdrew.

[5] The fact that this matter has been delayed is unfortunate. But, as I noted above, this is merely another example of the problems inherent in this procedure. I will repeat what I said in a recent similar situation (*Bosgra v. Squires*, 2001 NWTSC 24):

> The legislation provides for provisional hearings in one jurisdiction and confirmation hearings in another jurisdiction. Both hearings are usually, indeed they are meant to be, *ex parte*. Documentation is transmitted from one government office to another government office. But, no person in the confirming jurisdiction is actually charged with the responsibility of making sure that the matter progresses in an orderly fashion... The court, and by extension the court's staff, cannot be expected to supervise (or babysit) litigation on behalf of one of the parties. In my opinion, if government feels it is a public need and its public duty to provide these reciprocal arrangements, then government should assign some legally trained personnel to make sure that the objectives of the legislation are met. I do not think court clerks should be expected to ride herd on lawyers.

These comments were made in the context of a confirmation hearing under the Divorce Act but they are equally applicable to proceedings such as the present one under the territorial Maintenance Orders (Facilities for Enforcement) Act.

[6] In this case, I have no doubt that the immediate cause of the delay was the failure of respondent's counsel to obtain a new hearing date in a timely manner or to advise the clerk that he was no longer acting for the respondent (for whatever reason). But, as I also stated on previous occasions, in my respectful opinion the root of the problem is this haphazard procedure. Governments legislate the procedure but do nothing to assist the courts to make sure it works as it is supposed to.

[7] Once respondent's counsel withdrew from these proceedings, I was left to my own devices to review the material on file. I have done so.

[8] The provisional order is confirmed. I direct the clerk of the court to (a) prepare and file a formal confirmation order (since there is no one else to do it); and (b) forward a certified copy of the order and a copy of this memorandum to the appropriate officials in the territorial Department of Justice for transmittal to the appropriate officials in Nova Scotia.

J. Z. Vertes
J.S.C.

Dated at Yellowknife, Northwest Territories
this 11th day of April, 2001