

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Maintenance Orders (Facilities for Enforcement) Act*; R.S.N.W.T. 1988, c.M-3;

BETWEEN:

KEITH SQUIRES

Applicant

- and -

VIRGINIA JORDAN

Respondent

MEMORANDUM OF JUDGMENT

[1] This matter came before me as a confirmation hearing under the *Maintenance Orders (Facilities for Enforcement) Act*, R.S.N.W.T. 1988, c. M-3. The provisional order for which confirmation is sought was made in the Supreme Court of Newfoundland.

[2] The background of this matter is as follows. On April 30, 1999, a child support order was made by Vertes J. of this Court under territorial legislation. The order was that Mr. Squires pay the sum of \$629.00 per month in child support to Ms. Jordan. Mr. Squires was found at that time to have an income for *Guidelines* purposes of \$31,481.97, which from the material provided appears to have been his 1998 income.

[3] In May 2001, Mr. Squires, who had moved to Newfoundland, applied to the Supreme Court of that province for variation of the child support order. On July 4, 2001, Noonan J. granted the variation by way of a provisional order, which provided

that, effective July 1, 2000, based on annual income of \$14,248.00, child support was reduced to \$230.00 per month. There was also information before Noonan J. that Mr. Squires' payments were in arrears in the amount of \$5,054.00 and she forgave \$4788.00 of those arrears. The transcript of the proceedings before her indicates that the amount forgiven was based on the difference of \$399.00 per month between what was originally ordered (\$629.00) and the varied amount (\$230.00) over a twelve month period from July 1, 2000 up to July 1, 2001.

[4] At the confirmation hearing before me, Ms. Jordan was represented by counsel, who relied on Ms. Jordan's affidavit filed September 12, 2001, the affidavit of Theresa Chamberlain, filed September 13, 2001 and a sheet of calculations submitted in Chambers on September 14, 2001. Counsel's position was that although there should be some reduction in Mr. Squires' obligations, it should not be to the extent ordered by Noonan J.

[5] On the issue of the arrears, counsel for Ms. Jordan submitted that Noonan J. incorrectly used Mr. Squires' projected income for 2001 of \$14,248.00 to reduce arrears for the period July 1, 2000 to December 31, 2000. He pointed out that there was information before the Court as to Mr. Squires' income for both 1999 and 2000. The 1999 income was \$29,005.00, on the basis of which the monthly child support payable would have been \$552.00 per month instead of \$629.00 per month, for a monthly difference of \$77.00. For the period May to December 1999, that results in a total difference of \$616.00, which counsel submitted effectively cancels out the \$429.00 which was owing in arrears prior to January 1, 2000.

[6] For the year 2000, counsel referred to the income tax information before Noonan J. that Mr. Squires' income was \$24,603.00 from a combination of workers' compensation benefits and employment. On that basis, the *Guidelines* amount of support would have been \$475.00 per month. The difference (\$629.00 - \$475.00) is \$154.00 per month, which would result in a reduction in arrears for the period January 1, 2000 to December 1, 2000 of \$1848.00.

[7] Any reduction in arrears for the year 2001 should, of course, be based on the amount found payable by Mr. Squires for that year. Counsel for Ms. Jordan submitted that Mr. Squires should be imputed income of \$24,600.00 for 2001 rather than the \$14,248.00 found by Noonan J., which was based on Mr. Squires' projected employment insurance benefits.

[8] Counsel submitted that there are three reasons why income of \$24,600.00 should be imputed. First, he pointed out that Mr. Squires has been able to obtain employment in the past; approximately \$7000.00 of his income for the year 2000 was from employment and Ms. Jordan's affidavit refers to his background in construction and as a heavy equipment operator. Second, he relied on Ms. Jordan's affidavit evidence that Mr. Squires recently told her he has been working on a fishing boat, so his situation has changed since the provisional order was made by Justice Noonan. Third, he submitted that I should rely on a document attached to the affidavit of Theresa Chamberlain and which appears to be based on the 1996 census and shows average income of persons reporting income for males in Newfoundland as \$24,602.00. This figure is virtually identical to Mr. Squires' 2000 income (\$24,603.00).

[9] In considering these submissions, I note that the majority (approximately \$17,000.00) of Mr. Squires's income for 2000 was made up of workers' compensation benefits, which, according to his evidence before Noonan J., were based on the salary he was earning when he worked in the Northwest Territories. Whether \$24,600.00 is a reasonably attainable income from employment in Newfoundland is another question. Whether the 1996 census information can be relied upon as an indicator of the income Mr. Squires can earn now, some five years later, is also unknown. It seems to me that the Court in Newfoundland is better placed than am I to know whether it would be reasonable to impute income in that amount. And in my view the possibility that Mr. Squires has been able to obtain employment since the provisional order was made is also something best assessed by way of further evidence to be taken by the Court in Newfoundland. For all these reasons, rather than impute income as suggested by counsel, I think it is appropriate, under s. 5(5) of the *Act*, to remit the case to the Supreme Court of Newfoundland for the taking of further evidence from Mr. Squires.

[10] As I read the *Act*, I have jurisdiction only to confirm the provisional order, confirm it with modification, refuse confirmation or remit the case to the Court that made the provisional order for further evidence and adjourn the proceedings in this Court for that purpose. The *Act* does not seem to give jurisdiction to confirm with modification part only of the provisional order and remit the rest. Accordingly, I will not deal with the arrears at this time. I note that sections 8(7) and 4 of Newfoundland's *Reciprocal Enforcement of Support Orders Act*, a copy of which

was provided to this Court with the other materials in this case, appear to apply in this case and that pursuant to s. 4(6), the Court in Newfoundland may consider it appropriate to make recommendations after it takes the further evidence. So the proceedings before this Court will simply be adjourned *sine die* pending the return from the Newfoundland Court.

[11] I therefore direct that Ms. Jordan's counsel prepare a formal order providing that this matter is remitted to the Supreme Court of Newfoundland for the taking of further evidence and that the proceedings in this Court are adjourned *sine die* for that purpose. Upon the formal order being filed, I direct that the Clerk transmit certified copies of the order, this Memorandum, the affidavits of Ms. Jordan and Ms. Chamberlain and the calculation sheet with its attachment submitted by counsel in Chambers on September 14 to the originating court.

V.A. Schuler,  
J.S.C.

Dated at Yellowknife, NT  
this 20th day of September 2001

Counsel for the Respondent, Virginia Jordan: Mark Seebaran

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