

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MARGARET McSTRAVICK

Applicant

- and -

DANIEL FREDERICK McSTRAVICK

Respondent

MEMORANDUM OF JUDGMENT

[1] This matter comes before the court for confirmation of a provisional support order issued by the Ontario Superior Court of Justice. For the reasons that follow, the matter is remitted to Ontario since this court lacks jurisdiction to address it in its current form.

[2] The parties were married in 1977 and separated in 2000. It does not appear from the record that divorce proceedings have been commenced. There are two children of the marriage. They are now 20 and 18 years old respectively. It is quite evident from the material provided that the applicant is in need of support.

[3] The provisional order, issued on February 10, 2003, imputed income to the respondent of \$65,000 per year, ordered child support of \$879 per month, and spousal support of \$1,200 per month. The support is payable as of January 1, 2003. The court also ordered the respondent to pay costs.

[4] Material was forwarded to the Department of Justice in this jurisdiction and in turn forwarded to the court registry on October 9, 2003. Steps were then taken to set the matter for hearing and to serve the respondent.

[5] The proceedings in Ontario appear to be an original support application brought pursuant to that province's *Family Law Act*. Ontario has apparently adopted an "Interjurisdictional Support Orders Act", a statute created as model uniform legislation to be adopted by all Canadian jurisdictions so as to replace the cumbersome reciprocal enforcement

legislation in existence for many years. The Northwest Territories Legislative Assembly passed the *Interjurisdictional Support Orders Act* in 2002, but, it has not yet been proclaimed in force. Thus this confirmation proceeding is governed by the *Maintenance Orders (Facilities for Enforcement) Act*, R.S.N.W.T. 1998, c.M-3 (as amended), a statute dating back to at least 1956.

[6] Section 5(1) of the Act stipulates what must be received in this jurisdiction so as to commence confirmation proceedings:

5. (1) Where
  - (a) a certified copy of a provisional order,
  - (b) the depositions of witnesses, and
  - (c) a statement of the grounds on which the order might have been opposed,are received by the Commissioner and it appears to the Commissioner that the person against whom the order was made is resident in the Territories, the Commissioner may send the documents to the court designated by order of the Commissioner pursuant to subsection 2(2).

[7] In this case there is no “statement of the grounds on which the order might have been opposed” in the materials received from Ontario. That is likely due to the fact that there is no requirement to furnish such a statement under the *Interjurisdictional Support Orders Act*.

[8] The “statement” referred to in the *Maintenance Orders (Facilities for Enforcement) Act* was a standard requirement of all maintenance reciprocal enforcement statutes. There were several reasons for this: (a) the substantive law governing the rights and liabilities of payor and payee is that of the jurisdiction where the provisional order was made; (b) the person against whom the order was made could raise any defence that he or she might have raised in the original proceeding but no other; and, (c) the statement, provided by the court that issued the provisional order, was conclusive evidence of “foreign” law to the effect that those grounds are grounds on which objection may be taken. For references, one may examine *Bailey v. Bailey* (1968), 68 D.L.R. (2d) 537 (S.C.C.), and C. Davies, *Power on Divorce and Other Matrimonial Causes* (3<sup>rd</sup> ed., 1980), Vol.2, at 292.

[9] The provision of such a statement has been held to be a jurisdictional prerequisite to proceeding with a confirmation hearing under this type of legislation: *Herridge v. Herridge*, [1981] N.S.J. No. 82 (Fam. Ct.). An exception may be where the requirement of s.5(1)(c) is waived by the respondent: *Paul v. Gaffney*, [2003] N.W.T.J. No. 7 (S.C.).

[10] In the present case, the respondent refused to waive the requirement for a statement of the grounds on which the order might have been opposed. Therefore this court is unable to proceed with the confirmation hearing.

[11] The Clerk is hereby directed to forward a filed copy of this Memorandum to the appropriate court office in Ontario.

[12] No doubt this proceeding will make its way back to this jurisdiction. There is evident need and these delays are unfortunate. The problem could have been avoided if the Ontario authorities had realized the necessity of providing such a statement. But perhaps they can be forgiven for thinking that the Northwest Territories, like most jurisdictions, already enacted the new uniform legislation. Or, perhaps the problem could have been at least minimized if the Justice Department officials here who receive these types of documents review them for compliance with the legislation in force in this jurisdiction before forwarding them to the court. My colleague, Justice Schuler, highlighted this concern in the aforementioned *Paul* case. Or, perhaps the government should finally proclaim the new Act in force and avoid these problems altogether.

J.Z. Vertes  
J.S.C.

Dated this 27th day of February, 2004.

Counsel for the Respondent: John R. Rhynes

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