

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOHN ROLAND LAVOIE

Petitioner

- and -

BARBARA ANN (LAVOIE) TISSERAND

Respondent

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Application to confirm a Provisional Order rescinding child support arrears.

Heard at Yellowknife, NT:      October 28, 2004

Reasons filed:      January 11, 2005

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REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Petitioner:      Sheila M. MacPherson  
Respondent was Not represented.

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REASONS FOR JUDGMENT

[1] This is a proceeding under the *Divorce Act*. The parties were divorced in 1987. The Respondent mother was ordered to pay to the Petitioner father child support in the amount of \$200/month. The father lives in Yellowknife; the mother presently lives in Saskatchewan. The child support payments are in arrears in the amount of \$30,400, the mother not having made any payments. In June 2004, the mother obtained a Provisional Order from the Court of Queen's Bench of Saskatchewan. By the Provisional Order the entire child support arrears are rescinded. The Provisional Order has come before this Court for confirmation. For the reasons which follow I refuse confirmation of the Provisional Order.

[2] In support of her application for a Provisional Order in Saskatchewan, the mother filed her sworn affidavit. Significant portions of that affidavit were disputed by the father at the confirmation hearing. Also in support of the application for a Provisional Order in Saskatchewan was filed a Brief containing not only submissions on behalf of the mother but unsworn and inadmissible evidence.

[3] Upon a review of the mother's affidavit, I note in particular the following:

- (1) She is presently employed yet provides no information regarding her current income, or her income in 2001, 2002 or 2003.
- (2) She provides income information for the 13 year period 1988-2000, showing no income for two of those years, and incomes between \$9,758 - \$39,145 for the remaining years.
- (3) She says that notwithstanding the 1987 Court order, the father has always told her that she does not have to make child support payments.
- (4) She says that the father denied her access to her daughter until the daughter was 15 years of age.
- (5) She says that she expended \$8,000 on access costs since her daughter became 15 years of age.

[4] On the confirmation hearing the father specifically refutes (3), (4) and (5) above. Accordingly, I place no reliance on those assertions.

[5] On her application to the Saskatchewan Court to retroactively vary the amount of child support payable and thereby to rescind the arrears, the mother cites as a “change in circumstances” the fact that, at times, her actual income was such that she did not have the ability to pay \$200/month in child support. This submission, of course, ignores the reality that at other times she had the ability to pay more than \$200/month in child support or, more to the point, to make up for any missed payments during a period of lower income.

[6] Another “change in circumstances” cited by the mother in support of a variation of the amount of child support payable and thereby a rescission of arrears is the coming into force of the *Federal Child Support Guidelines* on May 1, 1997. The law recognizes that this is indeed a change in circumstances. However, in this case, the coming into force of the *Guidelines* would result in the mother being required to pay more, not less, child support, based on her disclosed income for 1997 and subsequent years. This is hardly a reason to support rescission of child support arrears.

[1] The Provisional Order that this Court is asked to confirm would rescind the child support arrears. In cases dealing with arrears of child support, this Court has for many years applied the *Haisman* test. That test states that in the absence of special circumstances, arrears should not be rescinded unless the payor establishes that he/she could not pay the support in the past, cannot pay them now, and will not be able to pay them at any time in the future. See *Haisman v. Haisman* (1994) 7 R.F.L. (4<sup>th</sup>) 1 (Alta C.A.); *Schick v. Schick* 2000 NWTSC 18; *Roberts v. Roberts* 2000 NWTSC 11. The evidence of the applicant mother in this case falls far short of satisfying that test.

[2] According to the mother's own affidavit evidence, it was she who asked the Court in 1987 to set the child support at the nominal amount of \$200/month. On this application she has failed to satisfactorily explain why she has not had the ability to meet that minimal obligation to her child.

[3] For these reasons, this Court refuses to confirm the Provisional Order of June 16, 2004.

[4] I ask that the father's counsel take out a formal Order, and I direct Mr. Holden of Legal Division to send copies of the Order and these reasons to the Attorney General and to the Saskatchewan Court in compliance with s.19 for the *Divorce Act*.

J.E. Richard,  
J.S.C.

Dated at Yellowknife, NT  
this 11 day of January 2005

Counsel for the Petitioner: Sheila M. MacPherson  
The Respondent was not represented

S-0001-CV-2004000286

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