

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ANITA BATON

Applicant

-and-

GREG KENNY

Respondent

MEMORANDUM OF JUDGMENT

[1] This is an application to have the Respondent, Greg Kenny, found in civil contempt and sanctioned.

[2] In November 2003, the Applicant filed an application for custody of the parties' children and for child support. The Respondent was personally served with the court documents but did not appear or respond. On February 6, 2004 an order was made in his absence by Richard J. in favour of the Applicant. That order inputed income to the Respondent and required that he pay child support of \$460.00 per month. It also required that he provide financial disclosure pursuant to the *Child Support Guidelines* to counsel for the Applicant within 45 days from the date of the order.

[3] The February 6, 2004 order was personally served on the Respondent on March 2, 2004.

[4] The Applicant filed a motion for April 8, 2005 for an order directing the Respondent to appear before this Court in Yellowknife to show cause why he should not be held in civil contempt for failure to obey the February 6, 2004 order. Personal service of that application was effected on April 3, 2005. The basis for the application was the Respondent's failure to make any payments for child support and to make the financial disclosure ordered.

[5] On April 8, 2005, the Respondent did not appear in Court and Richard J. ordered that he attend in person or by counsel before this Court on Friday, May 6, 2005 to show cause why he should not be held in contempt of court.

[6] On May 6, 2005 the Respondent did not appear in person or by counsel.

[7] Rule 704(a) says that a person is in civil contempt who fails, without adequate excuse, to obey an order of the Court, other than an order for the payment of money. There are three basic elements to civil contempt: (1) presence of a court order (2) knowledge of that court order, and (3) breach of that court order: *Bains Engineering Corp. v. 734560 Alberta Ltd.* [2004] A.J. No. 1237 (Q.B.). The *Bains* case also confirms that all three elements must be proved beyond a reasonable doubt.

[8] I am satisfied beyond a reasonable doubt that there is a court order: the order of February 6, 2004. The clause requiring that the Respondent make financial disclosure is not an order for the payment of money. I am also satisfied beyond a reasonable doubt that the Respondent knew of the court order; the affidavit of service shows that he was personally served with a copy of the order. I am also satisfied beyond a reasonable doubt on the affidavit material that the Respondent has breached that order by failing to make the required financial disclosure.

[9] I therefore find the Respondent in civil contempt of the February 6, 2004 order.

[10] The next issue is what sanction I should impose.

[11] Counsel for the Applicant submitted that I should order that the Respondent be committed to jail for a period of not less than 45 days but suspend or stay the execution of a warrant for his committal until June 15, 2005 so that he has the opportunity to purge his contempt.

[12] Rule 705(1) provides that a person in civil contempt is liable to a variety of sanctions, including a fine, imprisonment and the striking of his pleadings if he is a party to an action. The latter is not available in this case, as the Respondent has filed no pleadings.

[13] In my view a fine is not appropriate in the circumstances. The Respondent has ignored the Court's orders and there is no reason to think that a fine would make him act differently.

[14] Usually, imprisonment should be reserved for cases of repeated instances of contempt. And by long tradition, the Court exercises restraint in dealing with contempt in family law cases: *Ewanchuk v. Ewanchuk*, 2002 NWTSC 67. However, it may be appropriate to use a significant sanction in cases like this, where a party completely ignores a court order and makes no effort at all to fulfill his family responsibilities.

[15] The sanctions of imprisonment available under Rule 705(1) are (a) an indefinite term of imprisonment until the Respondent has purged the contempt or (b) a fixed term of imprisonment for not more than one year. Subrule (3) also provides that the Court may waive the imposition of any sanction or suspend any punishment where a person held in civil contempt has purged his or her contempt.

[16] I have decided to impose a sentence of 30 days on the Respondent. This order is, however, stayed until June 30, 2005. Counsel for the Applicant may submit a warrant of committal in Form 66 pursuant to Rule 707 for my approval. The warrant must be endorsed with reference to the stay and say that the warrant is not to be executed until June 30, 2005.

[17] Prior to June 30, 2005, should the Respondent wish to purge his contempt, he may apply to me pursuant to Rule 705(4) on two days' notice to counsel for the Applicant.

[18] A copy of the order shall be personally served on the Respondent forthwith.

V.A. Schuler  
J.S.C.

Dated at Yellowknife, NT  
this 10th day of May, 2005.

Heard at Yellowknife, NT  
May 6<sup>th</sup>, 2005.

Counsel for the Applicant: Katherine R. Peterson, Q.C.  
No one appearing for the Respondent