

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

NICOLE RAE MERCREDI

Applicant

-and-

JAMES ANDREW HAWKINS

Respondent

MEMORANDUM OF JUDGMENT

[1] By Notice of Motion filed October 24, 2007, the Respondent in these proceedings seeks a variation of an Order granted by this Court on November 15, 2004. The Respondent asks that the primary day to day care of a child, R.H., be transferred from the Applicant (the child's mother) to him, from Sunday nights to Friday mornings.

[2] The Respondent bases his Application on significant concerns about the child's poor school attendance record. He argues that the matter is of such an urgency that the day to day care arrangements should be varied immediately, until the merits of his Application can be dealt with. He wants day to day care of R.H. to be transferred to him during the week so that he can ensure that R.H. attends school regularly. He has produced a letter dated October 15, 2007, sent by the school principal to the child's mother. In that letter, the principal expresses serious concerns about R.H.'s attendance and provides some details about the extent of the problem. The letter also shows that these problems are not new, something that is also apparent from some of the affidavit materials filed previously in these proceedings.

[3] R.H.'s mother opposes this application. She argues that changing day to day care arrangements is not in the best interests of R.H., because he has stayed with her almost continuously for the past several years. She acknowledges that the attendance

problem is a serious one and says she is relying on support from her family to ensure that it is addressed. She also says there have been improvements with R.H.'s attendance. She seeks an adjournment of three weeks so that she can instruct her new counsel, Jane Olson. Ms. Olson is not yet counsel of record but it seems clear from the representations I heard today that she soon will be.

[4] Some of the mother's submissions are not actually submissions. They are factual matters that may or may not be disputed. If those facts are to be relied upon to any extent on this application, they will have to be presented in the appropriate way. I bear in mind that the mother was not represented by counsel today, and has not had counsel for the last few weeks. She advised that she only yesterday received confirmation that Ms. Olson was her new counsel. They have not yet had an opportunity to speak about this matter. I also note that the mother was only served with this Application on October 28<sup>th</sup>, 2007, and has had a very limited opportunity to file any materials in response to it.

[5] There is no doubt that there are serious concerns about R.H.'s school attendance. The mother acknowledges that. It is also abundantly clear from a review of the affidavit materials filed to date that this has been an area of concern for some time.

[6] In dealing with any matter that relates to the custody or day to day care of a child, the overarching principle is that decisions must be based on what is in the best interests of that child. Clearly, it is in the best interests of R.H. that whoever has day to day care of him during the week ensures that he attends school regularly. It will likely require some effort on his part and on the part of those who care for him to make up for some of the difficulties that will stem from his attendance problems so far in this school year. I agree with the Respondent's counsel that there will be cumulative and increasingly serious consequences to R.H. if the issue is not addressed expeditiously. At the same time, the variation that is sought constitutes a significant change from the present situation, which also raises some potential concerns.

[7] In all the circumstances, the urgency of ensuring that the school attendance problems are addressed promptly must be balanced with the need to ensure that any decision made about R.H.'s day to day care is based on his best interests, and not made on the basis of only one aspect of those interests at the exclusion of other considerations that might also be relevant. I realize that an adjournment may lead to a risk of a further instances of poor school attendance for R.H., which would add to

some of the difficulties he already faces as a result of his poor attendance to date. On the other hand, it will ensure that the Court has a more complete picture of the situation, including what success if any his mother has achieved in getting the situation to improve after she received the October 15<sup>th</sup> correspondence from the school.

[8] For these reasons, and based on the representations made by the Respondent's counsel about Ms. Olson's availabilities, this matter is adjourned to November 15, 2007, at 10:00AM. Assuming Ms. Olson becomes counsel of record for the mother, she has the Court's leave to appear by telephone on that date. I also direct that R.H.'s mother obtain and file, no later than November 13<sup>th</sup> at 4:00PM, a school attendance report for R.H. for the period between October 15, 2007 and November 12, 2007. I assume that school officials, given their concerns about R.H.'s attendance, will cooperate in providing this information in written form to his mother, so that it can be presented to the Court.

[9] Under the circumstances, and even though she is not yet counsel of record, I direct that a copy of this Memorandum of Judgment be sent to Ms. Olson.

L.A. Charbonneau  
J.S.C.

Dated at Yellowknife, NT  
this 1<sup>st</sup> day of November, 2007

Counsel for the Respondent: Brian Asmundson  
Applicant appeared on her own behalf.  
Copy to Ms. Jane Olsen