

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RUTH CAISSIE

Applicant

- and -

MARK SORENSEN

Respondent

MEMORANDUM OF JUDGMENT

- [1] This matter is before this Court for confirmation of a Provisional Order pursuant to section 19 of the *Divorce Act*, R.S.C. 1985, c.3 (2nd Supp.), (~~the Act~~)
- [2] By Notice of Motion, the Applicant applied to the Court of Queen's Bench in New Brunswick for a Provisional Order pursuant to section 18 of the *Act*. The Order sought was a variation of a Consent Order obtained in 2001. A hearing proceeded on this matter on August 11, 2006, in Moncton. The Provisional Order was granted.
- [3] The Respondent is a resident of Inuvik, Northwest Territories. The Order and related materials were forwarded to the Attorney General for the Northwest Territories, in accordance with Subsections 18(3) and (6) of the *Act*. They were then sent to this Court pursuant to Subsection 19(1) of the *Act*. The materials forwarded to this Court included the Provisional Order dated August 22, 2006, the Notice of Motion dated July 11, 2006, an Affidavit sworn by the Applicant on June 15, 2006, a Financial Statement sworn by the Applicant on June 15, 2006, a Divorce Judgment and Corollary Order dated July 2, 1996, a Consent Order to Amend Order for Corollary Relief dated October 19th, 2001, the

Respondent's 2004 income tax return, and a transcript of the hearing of August 11th, 2006.

- [4] Subsection 19(2) of the *Act* sets out the procedure that this Court must follow in a confirmation hearing:

19(2) Subject to subsection (3), where documents have been sent to a court pursuant to subsection (1), the court shall serve on the respondent a copy of the documents and a notice of a hearing respecting confirmation of the provisional order and shall proceed with the hearing, in the absence of the applicant, taking into consideration the certified or sworn documents setting out or summarizing the evidence given to the court that made the provisional order.

- [5] On November 9th, 2006, the Respondent was served personally with a Notice of Hearing advising him that a confirmation hearing was scheduled for December 15th, 2006 in Yellowknife. He was also served with a copy of the Provisional Order, the Notice of Motion, the Divorce Judgment, and the transcript of the New Brunswick proceedings of August 11th, 2006.
- [6] On December 15th, 2006, when this matter was called, the Respondent did not appear, nor did anyone appear on his behalf. As a result, the only information before this Court is the information presented to the New Brunswick Court. I have reviewed this information carefully.
- [7] At the provisional hearing, the Applicant sought an increase in child support. She asked that the amount of support be increased, based on the Respondent having an annual income of \$23,100.00. That was the amount of the Respondent's income in 2004, according to the income tax information presented to the Court. The 2004 information was the most current information available to the Applicant at the time of the hearing. The Applicant also asked that the Respondent be ordered to contribute to expenses associated with orthodontic treatment required for one of the children. Documents were produced to confirm the requirement for the treatment as well as its anticipated cost.
- [8] The Applicant testified at the hearing and essentially confirmed the facts set out in her Affidavit.

- [9] Subsection 19(7) of the *Act* provides that this Court may, at the conclusion of a hearing held pursuant to Subsection 19(2), confirm the Provisional Order without variation, confirm the Order with some variations, or refuse to confirm the Order. The evidence presented at the hearing offered ample justification for the Provisional Order that was made. I am satisfied that the Provisional Order should be confirmed. Based on the record, I am also satisfied that it should be varied in two respects.
- [10] First, it is apparent from the transcript of the proceedings that counsel and the Court used the Child Support Tables applicable to the Nunavut Territory to determine the amount of child support that would correspond to an income of \$23,100.00. As the Respondent resides in Inuvik, the Northwest Territories Tables are the ones that must be used. The amount of child support needs to be adjusted accordingly.
- [11] Secondly, at the conclusion of the hearing, counsel for the Applicant requested that the Order include a disclosure clause requiring the Respondent to provide the Applicant a copy of his income tax return every year. The exchange between counsel and the Court on this topic is found in the transcript of the hearing, from page 20, line 17 to page 21, line 4.
- [12] The Order for Corollary Relief dated July 2, 1996, includes a clause whereby no child support is due until January 1, 1998. The clause goes on to stipulate that the issue of support will be revisited after the parties have exchanged financial information.
- [13] In the Consent Order to Amend Order for Corollary Relief dated October 19, 2004, clause 4 reads as follows:
- The Respondent shall file with the Court of the Queen's Bench of New Brunswick, Family Division, aforesaid, a copy of his income tax returns file [sic] with Canada Customs and Revenue Agency on the 1st day of May of each and every year for the preceding taxation year, commencing in May 2002.
- [14] At the August 11th hearing, the Applicant asked that the Respondent's obligation to provide ongoing information about his income be included in the Provisional

Order. The Court agreed with this request. There is nothing on the record that explains why such a clause was not included in the Provisional Order dated August 22, 2006. In my view, the Provisional order should be varied to include it. It will ensure that the Respondent's obligations to his children are assessed in an ongoing way and on the basis of current and accurate information about his income. That is clearly in the best interests of the children.

[15] For these reasons, my Order is as follows:

1. The Provisional Order made by the Honourable Justice Richard Bell of the Court of Queen's Bench of New Brunswick, dated August 22 2006, is hereby confirmed, pursuant to subsection 19(7) of the *Divorce Act*, subject to the following variations:

- a) The amount of child support payable monthly, referred to in Paragraph 1 of the Provisional Order, is varied from \$381.00 to \$363.00, in accordance with the Northwest Territories Tables of the *Federal Child Support Guidelines*.
- b) The Provisional Order is further varied by adding the following Paragraph:

5. No later than May 1st, 2007, the Respondent shall file with the Court of the Queen's Bench of New Brunswick, Family Division, a copy of his income tax returns filed with Canada Customs and Revenue Agency for the years 2005 and 2006. In subsequent years, the Respondent will file, by May 1st of each year, his income tax return for the previous year.

2. The Attorney General of the Northwest Territories shall prepare a Formal Order and file it with this Court.

3. Pursuant to Subsection 19(12) of the *Divorce Act*, I direct that

- a) a certified copy of the filed Confirmation Order be forwarded to the Court of the Queens Bench of New Brunswick, along with a copy of this Memorandum of Judgment.
- b) a certified copy of the filed Confirmation Order be served on the Respondent.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
1st day of February 2007

No one appeared for the Applicant
No one appeared for the Respondent

S-1-FM2006000142

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