

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

TANYA DOHERTY

Applicant

-and-

ADRIEN SAULIS

Respondent

MEMORANDUM OF JUDGMENT

[1] The Applicant's claims for custody, child support and property division arising from the breakdown of her common law relationship with the Respondent were set for trial on April 28, 2008. On that date, the Respondent did not appear, despite having been served with notice of the trial. The Applicant testified and through her several documents were presented, which I have now reviewed.

[2] Although the Respondent filed several affidavits during the course of the proceedings leading up to the trial date, he did not file the financial documentation required under the *Child Support Guidelines* under the *Children's Law Act*, S.N.W.T. 1997, c. 14, despite orders made on December 15, 2006 and January 10, 2008, requiring him to do so. And since he did not appear at the trial, I have only the Applicant's testimony on which to decide this matter.

Custody

[3] The Applicant seeks sole custody of the children, ages 11, 6 and 4. The eldest is not the biological child of the Respondent but the younger two are. The children have lived with the Applicant since the separation at the end of December 2005. The Applicant's evidence is that despite efforts made on her behalf to encourage the Respondent to see the children, he had little contact with them after the separation and eventually refused to see them. He last saw them for a few hours on Christmas Day 2006 and has had no communication at all with them since then. He has not advised

the Applicant of his whereabouts and her inquiries lead her to believe that he left the Northwest Territories in the summer of 2007.

[4] In these circumstances, it is in the children's best interests that the Applicant have sole custody of them. The Respondent will, if he wishes, have reasonable access as may be agreed upon between the parties.

Child Support

[5] The Applicant takes the position that the Respondent stood *in loco parentis* to the eldest child and should therefore pay support for that child.

[6] The Applicant testified that she began living with the Respondent in February or March of 2000 when her eldest child was 3 or 4 years old. The Respondent acted as a father to the child; he spent time with her, played with her, took her on outings such as fishing, provided for her support and disciplined her. The child asked if she could call him "Dad" and he agreed; she referred to her biological father as her "other Dad". The Respondent's termination of contact with the children has applied equally to all three children; in that regard, he has treated the eldest child the same as his biological children.

[7] The test for whether someone stands *in loco parentis* is an objective one; the Court must look at the nature of the relationship between the person and the child as of the time the family functioned as a unit: *Chartier v. Chartier*, [1999] 1 S.C.R. 242. The evidence is sufficient for me to find, based on the factors set out in *Chartier*, that the Respondent did stand *in loco parentis* to the eldest child in that he treated her as he did the other children, supported her, disciplined her, and, implicitly if not explicitly, represented to the child, the family and others that he was responsible as a parent to her by allowing her to call him "Dad".

[8] Accordingly, I find that the Respondent is responsible for child support for all three children.

[9] The Applicant testified that during the relationship, the Respondent worked as the general manager of a business selling recreational vehicles. At the time of

separation, his annual income was \$60,000.00 with annual bonuses worth \$15,000.00 to \$25,000.00, which were provided in or towards trips, free gas, vehicles and vehicle rental. He had obtained a journeyman partsman certificate prior to the parties living together. He appears to have lost that job in or around October 2006 and then worked briefly in construction.

[10] The Applicant submits that the Respondent should be attributed annual income of \$75,000.00 based on his base plus bonus income when he worked as a general manager. In the absence of the financial information he was required to, but did not, file, and there being no reason to think he could not obtain similar employment for similar remuneration, I will attribute to him annual income of \$75,000.00.

[11] The Applicant testified that the Respondent refused to pay child support to her but agreed to pay the children's day care expenses. He paid some of those expenses but not all. So as to ensure the children could continue at their day care, the Applicant paid arrears to the day care of \$9419.00, covering part of July 2006 through the month of March 2007.

[12] A consent order was made on March 30, 2007 (the "interim order") imputing notional annual income of \$30,000.00 to the Respondent and requiring him to pay interim child support of \$468.00 per month along with \$351.00 per month as his proportionate share of day care costs. Paragraph 3 of the interim order states that the order is without prejudice to the right of either of the parties to challenge the appropriate quantum of support and section 7 expenses payable or to seek a retroactive variation of these amounts.

[13] The Respondent has not made payments pursuant to the order and the Statement of Arrears from the Office of Maintenance Enforcement indicates that as at April 1, 2008, the sum of \$10,647.00 is owing.

[14] The Applicant's current day care costs are \$670.00 per month per child. All three children are in day care during the summer months, one is full time during the school year and one half time (\$350.00) during the school year. The Applicant's current annual income is \$49,500.00.

[15] The Applicant seeks retroactive child support for the post-separation period January 2006 to March 30, 2007, the date of the interim order. She is content that the

day care costs that the Respondent agreed to pay but did not (the \$9419.00 she eventually had to pay) be set as the amount of retroactive child support. This is substantially less than what the Respondent would have had to pay based on income of \$75,000.00 and in my view is fair. The Applicant also seeks to have that amount set off against the property value equalization payment that she would otherwise owe the Respondent as set out below. In my view this is appropriate.

[16] As for child support for the period from April 1, 2007 and ongoing, it will be based on imputed income of \$75,000.00, thus varying the provisions of the interim order. The calculations for the proportionate share of day care costs, based on the Respondent's imputed income and the Applicant's income of \$49,500.00, as per the *Child View* calculations provided by counsel, are set out below.

Property division

[17] The Applicant's evidence is that she came into the relationship with little in the way of property and the Respondent with nothing. Their main acquisition during the relationship was their home.

[18] In her Statement of Property sworn November 9, 2007, the Applicant stated the value of the home as \$180,000.00 as at the date of separation. In her evidence, she stated that in her view that figure was and is high; she has obtained a letter from a real estate agent, filed as an exhibit, indicating that in his view the home would have been worth \$168,000.00 to \$170,000.00 in 2005. She proposes that the latter figure be used as the value of the home.

[19] For the vehicles listed in her Statement of Property the Applicant testified she obtained written or verbal opinions from people at her former employer which is in the business of vehicle sales. I accept the evidence of what she was told as the basis for the Applicant's opinion as to the value of the various items, in other words the information she used to arrive at her valuations. Similarly, she testified that she came to the figure of \$11,000.00 for the Respondent's tools based on what she saw of the bills the Respondent received for their purchase. Based on the Applicant's evidence, and in the absence of any other evidence, the values she has attributed to the property appear reasonable and I accept them.

[20] The way the parties divided the property on separation and the values assigned by the Applicant are as follows:

Assets Retained by Applicant

Family Home	\$170,000.00	
Household Items	5,000.00	
1997 Expedition	5,000.00	
Value of Assets Retained by Applicant		\$180,000.00

Debts Assumed by the Applicant

Mortgage to CIBC	\$114,268.54	
Value of Debts Assumed by Applicant		\$114,268.54

NET ASSETS RETAINED BY APPLICANT \$65,731.46

Assets Retained by Respondent

Household Items	\$ 5,000.00	
1998 Expedition Vehicle	6,000.00	
Snow Machine	2,500.00	
Boat and Accessories	15,500.00	
amper	3,000.00	
Tools	11,000.00	
Dirt Bike	2,500.00	
Mountain Bike	300.00	
Snow Machine (sold and applied to Respondent's day care debt, not included in \$9,419.00 paid by Applicant).	1,900.00	
Value of Assets Retained by Respondent		\$47,700.00

Debts Assumed by the Respondent

Vehicle Loan	\$ 7,100.00	
Value of Debts Assumed by the Respondent		\$ 7,100.00
NET ASSETS RETAINED BY THE RESPONDENT		\$40,600.00

TOTAL NET ASSETS	\$106,331.46
Equal Division	\$ 53,165.73
Equalization payment necessary	\$ 12,565.73

PROPOSED SET OFF

Equalization Payment Necessary	\$ 12,565.73
Retroactive Child Support Arrears	-9,419.00
Arrears since April 1, 2007	-3,146.73

[21] Based on the Applicant's evidence at trial I accept the above division and valuation of property, with the result that the Applicant owes to the Respondent an equalization payment in the amount of \$12,565.73.

[22] In the result, the following orders will issue:

1. The Applicant will have sole custody of the three children. The Respondent will have reasonable access as agreed on by the parties.
2. The Respondent is declared to stand *in loco parentis* to the eldest child.
3. Child support for the time period January 2006 to March 31, 2007 is payable by the Respondent in the amount of \$9419.00. This amount will be set off against the equalization payment referred to in paragraph 8 below.
4. An annual income of \$75,000.00 is imputed to the Respondent, based on which he is ordered to pay monthly child support of \$1464.00 pursuant to the *Child Support Guidelines* under the *Children's Law Act*. Pursuant to paragraph 3 of the interim order, support is payable in that amount retroactive to April 1, 2007 on the first day of each month and paragraph 1 of the order is accordingly varied. Support will be payable for each child so long as the child remains a child within the definition in s. 57 of the *Children's Law Act*.

5. The Respondent will also pay his proportionate share of daycare costs in the amount of \$386.00 per month based on his imputed income of \$75,000.00 and the Applicant's income of \$49,500.00. That amount is payable on the first of each month retroactive to April 1, 2007. Paragraph 2 of the interim order is accordingly varied.

6. The Registrar of Motor Vehicles is directed to cancel the existing registration of the 1997 Ford Expedition vehicle, serial number 1FMFU18L1VLC39545 and issue a new certificate of registration in the name of the Applicant only.

7. The Director of Land Titles is directed to cancel the existing Certificate of Title to Lot 19, Block 543, Plan 1420, Yellowknife and issue a new Certificate of Title in the name of the Applicant alone, subject to the existing encumbrances on title.

8. The equalization payment of \$ 12,565.73 owing from the Applicant to the Respondent shall be set off against the arrears of child support with the result that the Respondent's arrears of child support are reduced to zero for the time period up to March 31, 2007 and are reduced by the sum of \$3146.73 from April 1, 2007.

9. Counsel may make written submissions and file affidavit material, if applicable, as to costs, to be filed within 30 days of the date this decision is filed.

V.A. Schuler
J.S.C.

Dated at Yellowknife NT
this 30th day of April, 2008.

Counsel for the Applicant: Elaine Keenan Bengts
No one appeared for the Respondent

S-1-FM2006000147

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THE HONOURABLE JUSTICE
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