

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

AND IN THE MATTER OF  
The *Children's Law Act* of the Northwest Territories;

AND IN THE MATTER OF  
The *Family Law Act* of the Northwest Territories

BETWEEN:

NANCY LAMB

Applicant

- and -

DAVID WALCER

Respondent

MEMORANDUM OF JUDGMENT

[1] On September 29, 2008, I issued a Memorandum of Judgment (2008 NWTSC 72) in this action in which, *inter alia*, I directed that funds be disbursed from the trust account of Denroche and Associates from the principal sum of \$253,489.13 being held by them for the benefit of the parties. These funds were derived from the sale of the former marital home and each party was, until the court ordered otherwise, entitled to an equal share, each share being \$126,744.56.

[2] On October 8, 2008, the Applicant filed a motion asking that the Judgment be varied to correct some of the directions which, by inadvertence, did not reflect my intention as disclosed therein. The Respondent was duly served with the Notice of Motion but did not appear.

[3] The Applicant relies on Rule 399(1) which allows the judge who granted an order to vary it. Since the relief sought is an amendment to the Judgment to have the clauses addressing the disbursement of funds accord with the substance of my decision, I deem the application to be properly before me, despite the fact that the formal Judgment was taken out on October 10, 2008.

[4] Specifically, the effect of my direction to the Denroche firm, left uncorrected, would have resulted in the Applicant contributing to half of the equalization payment I had awarded to her, as well as half of the arrears of child support, retroactive child support and retroactive special expenses.

[5] My clear intention was that these payments were to be deducted from the Respondent, David Walcer's, one half share of the funds held in trust but due to inadvertence, my order directed they be paid from the full amount of the principal sum and then the balance evenly divided between the parties, subject to sum of \$20,000.00 which I ordered be held in trust pending the determination of the Applicant's intended motion for costs.

[6] Accordingly, paragraph [27] 9 of my Memorandum of Judgment of September 29, 2008 is amended by deleting subparagraphs (a), (b), (c) and (d) and substituting the following:

(a) From David Walcer's one half interest in the proceeds, being \$126,744.56, the sum of \$8,990.00 shall be remitted forthwith to the Maintenance Enforcement Officer of the Department of Justice, Government of the Northwest Territories in satisfaction of outstanding arrears for child support owed to the Applicant;

(b) From David Walcer's one half interest shall be paid the sum of \$16,208.00 to Nancy Lamb representing a matrimonial property equalization payment of \$15,011.00 together with retroactive child support and special expenses of \$558.00 and \$639.00 respectively;

(c) From David Walcer's one half interest there shall be held in trust the sum of \$20,000.00 together with any accumulated interest until further order of this Court;

(d) The sum of \$81,546.00 less one half of any reasonable legal fees and disbursements shall be paid to David Walcer forthwith and, in addition to the funds payable to the Applicant pursuant to

subparagraph (b), the sum of \$126,744,56 less one half of any reasonable legal fees and disbursements shall be paid to Nancy Lamb forthwith by separate cheques or deposits to their respective accounts.

[7] I note that the Applicant took out the formal order arising from the Memorandum of Judgment on October 10, 2008, without obtaining the Respondent's consent as to form and content or without my judicial fiat. In this instance, the Applicant shall take out a formal amended Judgment and the consent of the Respondent is dispensed with but the Judgment shall be approved by me before being entered.

[8] The Applicant is to serve a copy of this Memorandum of Judgment dated October 21, 2008, along with the formal amended Judgment on the firm of Denroche and Associates and on the Respondent upon whom service can be effected in the same manner as prescribed in paragraph [27] 9 (f) of the Memorandum of Judgment of September 29, 2008.

D.M. Cooper  
J.S.C.

Dated this 22<sup>nd</sup> day of October, 2008.

Counsel for the Applicant: Margo Nightingale  
The Respondent was self represented but did not appear.

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