Baskin v. *Rogers,* 2010 NWTSC 73.cor1

Date: 2010 09 01
Docket: S-0001-DV 2009-103-994

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DONNA-LYNN BASKIN

Petitioner

- and -

JAMES WALLACE ROGERS

Respondent

Corrected judgment: A corrigendum was issued on September 1, 2010; the corrections have been made to the text and the corrigendum is appended to this judgment.

MEMORANDUM OF JUDGMENT

[1] This is an action in divorce. The mother seeks custody of two children, B.-M. M., and M.-I. M., as well as child support for them. The Respondent is not the children's father but the mother's position is that he stood as a parent to them and has a responsibility to support them. The Respondent contests the claim that he stood as a parent to the children.

[2] The Respondent seeks to have the children's biological father, Mark McNulty, added as a party to these proceedings. He argues that his addition as a party is necessary to enable this Court to adjudicate and settle all questions related to child support, as any assessment of the Respondent's financial obligations to the

children will require a consideration, among other factors, of Mr. McNulty's legal duty to support them. The mother takes no position on this application.

[3] There is no question that Mr. McNulty's legal duty to support these children will be relevant in assessing the Respondent's obligations if he is found to have stood in the place of a parent for them. Section 7 of the *Child Support Guidelines* expressly
says so:

> 7. Where a person from whom support is sought stands in the place of a parent for a child, the amount of support for a child is, in respect of that parent, such amount as the court considers appropriate, having regard to these guidelines and any other parent's legal duty to support the child.
>
> *Child Support Guidelines*, R-138-98.

[4] The question is not whether Mr. McNulty's duty to support the children is relevant to the issues to be decided in this case, but whether he needs to be added as a party in order for those issues to be appropriately addressed. The Respondent argues that he should be, and relies on the decision of this Court in *McBride* v. *McBride* 2001 NWTSC 59 in support for that position.

[5] In *McBride*, the Court added a child's natural father as a party in divorce proceedings involving the child's mother and step-father. The Court then assessed the step-father's and natural father's respective obligations to support the child and made orders accordingly.

[6] But there are several important differences between the situation that the Court faced in *McBride* and the situation that exists here. The natural father and the mother had never been married so there had been no divorce proceedings, nor any legal proceedings at all, between them. The natural father resided in the Northwest Territories and separate proceedings could have been instituted, naming his as a Respondent, to have his support obligations determined.

[7] The circumstances here are very different. The mother and Mr. McNulty were previously married, and were involved in divorce proceedings in New Brunswick. A Corollary Relief Order was made by the Court of the Queen's Bench in that Province on June 10, 1998, whereby Mr. McNulty was ordered to pay $452.00 per month in child support.

[8] Mr. McNulty now resides in Alberta. He apparently does not contest his obligation to pay some ongoing support for the children, but has recently initiated proceedings to have arrears rescinded. The information provided to this Court by the Respondent's counsel is that there was an appearance in those proceedings on August 6, 2010, in the Court of the Queen's Bench of Alberta. On that date, an Order issued with a number of clauses, including a stay of the enforcement of arrears, and a provision that Mr. McNulty make ongoing child support payments of $378.00 per month. The hearing on the application to vacate the arrears is to be scheduled to proceed in that Court. It would appear that although the Corollary Relief Order was made in New Brunswick, the mother and Mr. McNulty have attorned to the jurisdiction of the Alberta Court of the Queen's bench to deal with the issues of his ongoing child support obligations, and the recision of the arrears.

[9] Under those circumstances, I think it would be ill advised to add Mr. McNulty as a party in this divorce action in the Northwest Territories. His child support obligations have already been the subject of proceedings in two other jurisdictions, and are currently being addressed in Alberta.

[10] The Respondent's counsel advised at the hearing of this application that at the time the application was filed, he had very limited information about Mr. McNulty and the status of proceedings with respect to his child support obligations. Since the application was filed, he has been able to contact Mr. McNulty, who has so far been very cooperative in providing information about his situation and the proceedings that he has undertaken.

[11] The Respondent concedes that this places his application in a different light than when it was first filed, but he nonetheless argues that it would still be helpful to his case to have Mr. McNulty added as a party in these proceedings. As I understand the argument, the Respondent says that if that were to happen, he could compel disclosure of Mr. McNulty's financial information. If this information showed that Mr. McNulty's child support obligations should be assessed at a higher rate than what he has been ordered to pay by another Court, the Respondent could adduce that evidence and ask this Court to make its own findings about how much child support Mr. McNulty ought to be paying. This could, in turn, impact on any child support order eventually made against the Respondent.

[12] I have some difficulty with this line of reasoning because I do not think that it would be appropriate for this Court to second guess the findings of another court

as to what amount of child support Mr. McNulty ought to be paying for these children. Doing this would amount to having Mr. McNulty's child support obligations litigated simultaneously in two different jurisdictions at the same time, which is undesirable.

[13] In the *McBride* case, this Court added the biological father as a party to avoid the need for the parties to initiate separate proceedings before the same Court in order to get the issue of child support fully resolved. That was a sensible and practical course of action in the specific circumstances of that case, which were quite unique. I do not think that a similar approach is appropriate in the circumstances of this case, which are very different.

[14] The Application is dismissed.

"L.A. Charbonneau"
L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this 1st day of September 2010.
Counsel for the Petitioner: James Scott
Counsel for the Respondent: Ken Allison

Corrigendum of the Memorandum of Judgment
of
The Honourable Justice L.A. Charbonneau

On page 1, paragraph 1, fifth sentence reads, “The mother takes no position on the application.”

Has been corrected by removal of this sentence. The corrected paragraph reads:

[1] This is an action in divorce. The mother seeks custody of two children, B.-M. M., and M.-I. M., as well as child support for them. The Respondent is not the children’s father but the mother’s position is that he stood as a parent to them and has a responsibility to support them. The Respondent contests the claim that he stood as a parent to the children.

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MEMORANDUM JUDGMENT OF THE HONOURABLE JUSTICE L.A. CHARBONNEAU