

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

Michelle Hawker

Joint Petitioner

-and-

Shelton Hawker

Joint Petitioner

MEMORANDUM OF JUDGMENT

[1] This is an application for a divorce judgment without oral hearing.

[2] The parties are joint petitioners. The petition identifies two children of the marriage, currently aged 8 and 13. In the petition, the parties disclose that the children have lived with the mother since the separation and that a support order was obtained in 2003 requiring the father to pay \$520.00 per month in support. The parties now request jointly that: the mother have sole custody; the father have no access; no child support be paid; and any arrears of child support be expunged. The parties have entered into a written agreement that confirms this arrangement and which includes a provision that Ms. Hawker agrees to “never pursue child support in the future”. There is no indication that either party had legal advice on this agreement.

[3] Subsection 11(1)(b) of the *Divorce Act*, R.S.C. 1985, c.3 (2nd Supp.), as amended, imposes a duty on the court to satisfy itself at the time the application is made that reasonable arrangements have been made for the support of the children, having regard to the child support guidelines. If it is not satisfied that reasonable arrangements are in place, the court is obliged to stay the granting of the divorce judgment until it is shown that they are.

[4] The purpose of subsection 11(1)(b) is to protect the interests of children and

the court must consider the reasonableness of arrangements regardless of any agreement between the parties. *F.(R.D.) v. F. (S.L.)* 1987 CanLII 2708 (B.C.S.C.), (1987), 6 R.F.L. (3d) 413; *MacDonald v. MacDonald*, 2010 N.W.T.S.C. 34. Parents may not bargain away the child's right to support. *Richardson v. Richardson*, [1987] 1 S.C.R. 857, para. 14.

[5] The court must have sufficient evidence before it to make a determination about the reasonableness of the arrangements and thereby discharge the duty imposed on it by subsection 11(1)(b). In this case, the evidence is insufficient. At a minimum, there should be affidavit evidence from each joint petitioner detailing their respective financial situations, including all sources of income, as well as the reason they propose that Mr. Hawker should pay no child support and have his arrears of child support expunged.

[6] Accordingly, these proceedings are stayed until such time as that information is received and it is determined that the arrangements proposed by the parties are reasonable.

K. Shaner
J.S.C.

Dated this 10th day of January, 2012

Petitioner Michelle Hawker, self-represented
Petitioner Shelton Hawker, self-represented

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MEMORANDUM OF JUDGMENT OF
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