

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

ANNIE INUKSAK WASHIE

Applicant

- and -

ROBERT WASHIE

Respondent

RULING ON *EX PARTE* APPLICATION

[1] This matter involves an application for custody, access and child support for the children of the marriage. It was before me in regular Family Chambers on June 14, 2012.

[2] The Applicant is seeking an *ex parte* Order requiring the Respondent to pay into Court the sum of \$40,000 pursuant to section 60(1)(d) of the *Children's Law Act*, S.N.W.T. 1997, c. 14. In addition, the Applicant is seeking an Order granting leave to require the Clerk of the Court to issue a garnishee summons before judgment pursuant to Rule 523 of the *Rules of the Supreme Court of the Northwest Territories*.

[3] According to the Applicant, the parties were married in 1995 and separated in 2010. There are 5 children of the marriage who reside with the Applicant. Since the separation, the Respondent has allegedly received an award under the Indian Residential School Settlement, of an amount in the range of \$100,000.

[4] The Applicant claims that the Respondent has not paid child support since the separation. She claims that the Respondent promised to place \$30,000 in one of the children's bank account but has not done so. The Applicant claims that the Respondent has been rapidly depleting the funds, buying a vehicle in his nephew's name, buying a snow machine for his girlfriend's son and spending the money on alcohol and drugs.

[5] The Applicant has filed an Originating Notice, Affidavit and Memorandum, none of which have been served upon the Respondent. The Applicant's contention is that the Respondent's profligate spending is dissipating the funds that he should be using to support his children and, that to provide notice to him, risks him further depleting the funds.

[6] Section 60(1)(d) of the *Children's Law Act* states:

60(1) In an application under section 59, the court may, in accordance with any guidelines that may be made under subsection 85(1) or (2), make an order

(d) requiring that some of or all the money payable under the order be paid into court or to another appropriate person or agency for the child's benefit.

[7] An application under section 59 permits a court, on application to order a parent to provide support for his children and to establish an amount and duration of the child support.

[8] Applications for child support are typically brought on notice to the other party. This permits them to, among other things, respond and provide financial information regarding their income so that the appropriate quantum of child support can be ordered. In this way, the Court hears from both parties and hopefully gets a clearer picture of the situation.

[9] *Ex parte* applications usually arise in situations of urgency or where the other party cannot be readily located. Their use in cases of child support are rare. This is not a case where the Respondent cannot be easily located as the Applicant deposes that he is residing in a local hotel. However, there is some urgency arising from the Applicant's allegations that he is rapidly spending his money while not providing for his children. The risk is that the Respondent will spend all of his

money prior to this issue being resolved before the Court or that, if he received prior notice of the application, he would perhaps accelerate his spending.

[10] There are many issues to be resolved and this matter is at a preliminary stage but the Respondent does have an obligation to support his children in accordance with his means. In the circumstances, some steps should be taken to ensure that the Respondent retains sufficient funds to meet his obligations to his children, pending determination of the issues.

[11] For these reasons, I am prepared to order that the Respondent pay money into court but will give him an opportunity to appear and to request, if he chooses to do so, that the order be set aside. The Applicant has requested that \$40,000 be paid into court. Her Affidavit, which requests that the Court impute income to the Respondent, claims arrears for \$24,695.00. On this basis, I am prepared to order that the Respondent pay \$25,000.00 into court within 3 days of being served with the Order. The issue of whether an additional \$15,000.00 should be paid into court can be addressed by both parties on the next court date.

[12] I am prepared to make this order on an interim interim basis because of the unique situation. However, it is important that the Respondent receive notice of the application and the Court's Order so that he can respond. I am not prepared to grant the application with respect to the garnishee summons without the Respondent having notice and without giving the Respondent an opportunity to comply with the court's order. The application regarding the garnishee summons will be adjourned until the next court date. Because of the unique situation, this matter should be brought back before the Court when I am next available in Chambers.

[13] There will be an Interim Interim Order that will issue as follows:

- 1) Robert Washie, the Respondent, is to pay the sum of \$25,000 into court within 3 days of being served with this Order, the sum to be held by the court pending determination of the issues of child support;
- 2) The Respondent is directed to appear before the presiding Justice in Chambers at the Court House in Yellowknife on July 5, 2012 at 10:00 a.m.;

- 3) The Respondent is to be personally served this Ruling on *ex parte* Application, Order, Originating Notice, and Affidavit of Annie Inuksak Washie no later than July 2, 2012.
- 4) The application for leave to require the Clerk of the Court to issue a garnishee summons is adjourned until July 5, 2012.

S.H. Smallwood
J.S.C.

Dated at Yellowknife, NT, this
20th day of June 2012

Counsel for the Applicant: Karen L. Wilford
No one appearing for the Respondent

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- and -

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RULING ON EX PARTE APPLICATION OF
THE HONOURABLE JUSTICE S.H. SMALLWOOD
