

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TWYLA MICHELE WOUTERS

Petitioner/Respondent

-and-

DALE RAYMOND WOUTERS

Respondent/Applicant

MEMORANDUM OF JUDGMENT

FACTS

[1] The parties were divorced in 2009. They have two teenaged children, J., who is 17 and K., who is almost 16. Until recently, these children lived with their mother, Ms. Mailloux (formerly, Ms. Wouters). They now live independently from both of their parents and have been since the fall of 2012.

[2] On November 30, 2012 Mr. Wouters filed this application seeking termination of his child support obligation, sole custody of the two children, an order that the children be permitted to speak with a judge to express their views, reimbursement for child support paid to Ms. Mailloux for the children after each of them left her home and, finally, reimbursement of hockey fees he paid on behalf of K.

[3] Ms. Karen Wilford was appointed as counsel for J. and K. by a consent order dated December 6, 2012. She was able to obtain instructions from them and articulate their views to the court when the matter came forward on January 24, 2013.

[4] The children receive no financial support from their parents, nor are they seeking any. They both have jobs that allow them to be self-supporting. Neither intends to return to the care of either parent.

[5] The parties have different positions on when each of the children moved out of Ms. Mailloux's home. Ms. Mailloux deposes that K. left on September 26, but Mr. Wouters says the date was September 28. With respect to J., Ms. Mailloux says he moved out on October 24 and Mr. Wouters says it was October 14.

[6] Although the affidavits are in conflict on the exact dates that each child moved out, I find as a fact that K. moved out at the end of September and J. at the end of October. The discrepancy in the affidavits about when K. left is only two days and, in the circumstances, of no consequence. With respect to J., he was living with Ms. Mailloux and as such, she is less likely than Mr. Wouters to be mistaken about the date that J. left. I accept her evidence as to when J. left.

[7] Mr. Wouters made bi-weekly support payments through the Maintenance Enforcement Program. Unfortunately, neither party presented evidence as to the exact amount of support Mr. Wouters paid in October. From the affidavit evidence from this and previous applications, however, it appears that the bi-weekly payments were \$520.00 each. Presumably, there were two payments in October. There is no suggestion that there are any arrears.

[8] Ms. Mailloux advised the Maintenance Enforcement office at the end of October that the children were no longer in her care and she understood that enforcement would be suspended. Mr. Wouters made one additional payment of \$520.00 on November 27, 2012. Ms. Mailloux refunded this to him. The parties consented to an order suspending enforcement on December 6, 2012.

[9] The parties shared certain expenses on a proportional basis. One of these expenses was hockey fees for K. On August 27, 2012, Mr. Wouters paid his share of these fees, being \$332.00, directly to the City of Yellowknife. This included his share of a development team fee in the amount of \$59.15, for which Ms. Mailloux has reimbursed him.

[10] K. did not play hockey in the fall. Ms. Mailloux says he wanted to play, but that she wanted to take him to games herself, even after he had moved out. He did not want her to do this. When he attempted to retrieve his hockey equipment from her home in late November, she refused to allow him to take it unless he agreed to let her pick him up and take him to games and practices.

[11] In the affidavit she swore on January 7, 2013, Ms. Mailloux says that K. has now agreed that she can take him to hockey.

[12] On October 8, 2012, Ms. Mailloux was advised by the City of Yellowknife that K. tried to get a refund of the registration money that his parents had paid.

[13] Mr. Wouters also attempted to get a refund of the amount he paid directly from the City of Yellowknife, but the account is in Ms. Mailloux's name and so any refund would have to be authorized by her. She advised the City that no monies were to be released to anyone but her.

[14] Ms. Mailloux says that at this point in the season only part of the fee is refundable.

ISSUES

[15] Given the age of each child, their living and work arrangements and their views, it would be inappropriate to make an order for custody and accordingly, Mr. Wouters' application for sole custody is dismissed.

[16] Similarly, the appointment of Ms. Wilford to represent the children and present their views to the court obviates the need to consider whether either or both children should have an opportunity to meet in private with a judge.

[17] The three remaining issues are as follows: (1) when should support terminate for each child?; (2) should Ms. Mailloux reimburse Mr. Wouters for child support he paid after the children moved out?; and (3) should Ms. Mailloux reimburse Mr. Wouters for hockey fees he paid on behalf of K.?

When Should Support Terminate?

[18] I find that Mr. Wouters' obligation to support K. terminated at the end of September, 2012 and his obligation to support J. terminated at the end of October, 2012.

[19] The obligation to pay support to Ms. Mailloux for these children is premised on each of them being a "child of the marriage. That term is defined in s. 2(1) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) as

2(1) . . . a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or

- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

[20] Both J. and K. are under the age of majority, but the facts leave little doubt that they have chosen to withdraw from their parents' support for food, shelter and other necessities. They have been self-supporting since leaving their mother's home. They have indicated that they have no intention to return to the care of either parent. Thus, neither child is a "child of the marriage" as that term is used in the *Divorce Act, supra*, and child support should no longer be payable to Ms. Mailloux. *Thompson v. Ducharme*, [2004] M.J. No. 129, 2004 MBCA 42.

Should Mr. Wouters be Reimbursed for Child Support Paid after the Children Moved Out?

[21] Since Mr. Wouters was not required to pay support for K. for October, he is entitled to be reimbursed for half of the child support he paid that month.

[22] In her argument before me, Ms. Mailloux indicated that she used the child support money in October to pay expenses, including utility and heating bills, incurred in September. She did, however, receive money for K.'s support for the month of September. Taken to its logical conclusion, this argument would penalize Mr. Wouters for the method that Ms. Mailloux uses to budget household expenses.

[23] Ms. Mailloux also says that she has made efforts to have the children return home and suggested that she had to maintain her home for a time in case this happened. The problem with this argument is that it is speculative. It requires the court to make assumptions, without evidence, about how long Ms. Mailloux might have continued to live in and maintain the residence she shared with the children while making attempts to have them return home. The court must decide this issue on the facts before it.

[24] It is quite understandable that things may have seemed somewhat uncertain to Ms. Mailloux at the time, but it is now undisputed that only one child was in Ms. Mailloux's care during the month of October and the child's absence was not a temporary one. In light of that, it would be unfair to Mr. Wouters for the court to deny him reimbursement for the overpayment.

[25] Finally, Ms. Mailloux states in her affidavit that Mr. Wouters never requested reimbursement for support payments made in October. This does not bar Mr. Wouters from seeking reimbursement now, through an application to the court.

Should Mr. Wouters be Reimbursed for Hockey Fees?

[26] Ms. Mailloux is required to reimburse Mr. Wouters for his share of the hockey fees in the amount of \$272.85, representing Mr. Wouters' \$332.00 payment, less the previous reimbursement of \$59.15.

[27] These fees were paid as part of Mr. Wouters' obligation to share in special expenses while K. was still living with his mother and was a child of the marriage. K. moved out a month after the fees were paid. Neither parent had control over K.'s decision to do so.

[28] Had the hockey fees been entirely non-refundable, there would be no question that the money would be lost to both parents. But, that was not the case.

[29] When K. moved out, the hockey fee was still fully refundable. Ms. Mailloux controlled the account. She made a choice to keep K. registered in hockey, even though he had left. She refused to allow K. to take his hockey equipment from her home and insisted that if he wanted to play hockey, she would pick him up and drive him to games and practices. Finally, she refused to allow the money Mr. Wouters paid to be refunded to him directly. Only part of the fee is refundable at this point.

[30] Doubtless, Ms. Mailloux had reasons for taking the position that she did on the hockey fees, but these were her choices and not those of Mr. Wouters. He should not bear the financial consequences of those choices. There may be all kinds of moral reasons for both parents to continue to support extracurricular activities for both children. The fact is, however, that K. withdrew from parental support at the end of September and his parents had no legal obligation to pay for extracurricular activities after that point.

ORDER

[31] I make the following order:

1. Mr. Wouters' obligation to pay child support and a proportionate share of s. 7 expenses for K.'s support is terminated, retroactively, as of September 30, 2012.
2. Mr. Wouters' obligation to pay child support and a proportionate share of s. 7 expenses for J's support is terminated, retroactively, as of October 31, 2012.

3. Ms. Mailloux shall pay Mr. Wouters the amount of \$792.85, representing overpayment of child support for the month of October, 2012 and reimbursement for hockey fees incurred for K. in August of 2012.
4. The balance of the relief sought in the Notice of Motion dated November 30, 2012 is dismissed.

[32] As Ms. Mailloux and Mr. Wouters are unrepresented, the court will arrange for preparation and distribution of the formal order.

K.Shaner
J.S.C.

Dated at Yellowknife, NT, this
6th day of February, 2013.

Mr. Wouters:	Self-represented
Ms. Mailloux:	Self-represented
Counsel for Children:	Ms. Karen Wilford

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