

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

NORMA JEAN MICHELIN

Applicant

-and-

JOHN DAVID HUBERT PHILLIP MCLEAN
AKA DAVID MCLEAN

Respondent

MEMORANDUM OF JUDGMENT

[1] This is an application for interim spousal support. The Respondent does not dispute the Applicant's entitlement to interim support. The only issue is quantum.

Background

[2] The parties are in their fifties. They began a common-law relationship in March of 1986, which ceased in April of 2012. The Respondent says that they were separated for 14 months in 2001 - 2002. Based on certain comments the Applicant made verbally at the hearing of this application, it is not clear whether she agrees with that version of events; her counsel was given the opportunity to file further affidavit material if he felt it necessary, but that has not been done. In my view, however, for purposes of this application, the separation is not significant. For present purposes, I accept that the relationship was one of at least 25 years standing, even if interrupted by a separation of 14 months.

[3] There are no children of the relationship, although the Applicant's children from a previous relationship, who are now adults, lived with the parties.

[4] In April of 2012, the parties separated when the Applicant was charged with assaulting the Respondent. Because of the conditions of her release, the Applicant was not able to reside in the home she had shared with the Respondent in Yellowknife. In her affidavit she indicates that she moved to Hay River because she could not handle the stress of being in Yellowknife and seeing the Respondent. In Hay River, she rents a room from a friend.

[5] Although the Applicant was a stay at home mother when the parties began their relationship, within a short time she obtained a secretarial position with the territorial government and held that employment for ten years. She then worked as a labour market analyst for the federal government for eight years, and then for an airline for five years, until 2010. She says that she was fired for missing too much time from work to deal with illness, which includes chronic depression, anxiety and borderline personality disorder. She continues to suffer from the illness, which she attributes in part to problems in her relationship with the Respondent. Attached to the Applicant's affidavit is a letter from her doctor, dated November 19, 2012, stating that she has been unable to work since 2010.

[6] In the year 2010, during part of which she worked at the airline, the Applicant's total income was \$20,330.00. Her total income in 2011 was \$643.27; she was dependant on the Respondent. In 2012, she began to receive income assistance, to a total of \$9,814.00 that year, projected to be \$19,812.00 for a full year.

[7] The Applicant says that the Respondent was not working when they began their relationship and that in 1987 she assisted him financially to obtain training as an electrician. She says that since then he has always had his own business, which she has assisted in, for example, helping with the books and, when he had no one else to do so, in the field. She says that his current business, in which he has a partner, employs between 60 and 100 employees depending on their workload and that he pays himself \$80,000.00 per year and receives dividends on his 51% share of the business. She believes the value of the company to be approximately \$20 million.

[8] The Applicant's financial statement indicates monthly income of \$1651.00 in social assistance and monthly expenses of \$1985.00. These include \$900.00 for rent, \$200.00 each for utilities and heat and \$300.00 for gas and oil. Her additional expenses are very modest. She claims nothing for food except for \$50.00 a month for meals outside the home. She is left with a monthly deficit of \$334.00.

[9] Although the total amount for rent, utilities and heat seems somewhat high for rental of a room in a house, it was not challenged by the Respondent. Nor did he challenge any of the other monthly expenses claimed by the Applicant.

[10] The Respondent denies that the Applicant ever assisted him with bookkeeping in his businesses and says that she assisted him on a work assignment no more than three times. He refers to having gone through bankruptcy in 2001. He is currently a 51% shareholder and an employee in a company that commenced business in 2006, which he says has between 30 and 50 employees and has never paid a dividend. His income tax returns, however, show dividends declared in 2010 and 2011, albeit in amounts less than \$400.00.

[11] According to the income tax information he has provided, the Respondent's total income in 2010 was \$80,340.00, in 2011 it was \$80,350.00 and in 2012 his employment income was \$79,999.00. Based on those figures and his pay stubs for 2013, I will accept that he has annual income of \$80,000.00.

[12] Since the beginning of April 2012 the Respondent has paid monthly expenses of \$784.96 (including a loan payment) for the family vehicle that the Applicant has in her possession. The Respondent also pays the mortgage on the home in which the parties lived, which is in his name. In addition to those payments, the Respondent makes other debt payments; it is not stated whether these are debts that were incurred during the relationship or since its breakdown.

[13] The Respondent's expenses are not extravagant, although he does claim amounts for cable television, entertainment and recreation (totaling \$195.00), items for which the Applicant makes no provision in her financial statement. The Applicant's financial statement also does not indicate monthly payments on the sole debt she shows, which is a bank overdraft of \$768.17.

[14] Property issues have not been resolved. There is a home, purchased during the relationship, two or three vehicles and a camper trailer at issue, as well as the Respondent's shares in the company. The Respondent's Statement of Property has not been filed. The Applicant's Statement of Property shows an RRSP worth \$50,000.00 at the date of separation.

Positions of the parties

[15] The Applicant seeks monthly spousal support in the amount of \$2685.00 to cover her current monthly expenses (\$1985.00) and the monthly expenses that the Respondent is paying on the vehicle in her possession (\$784.96 less \$80.00 that the Respondent attributes to maintenance, which the Applicant says she cannot confirm). The Applicant points out that under the *Income Assistance Regulations*, R.R.N.W.T. 1990, c. S-16, the income support disability payments she receives will be reduced by any spousal support.

[16] The Respondent submits that monthly spousal support should not exceed \$1386.00, which is the equivalent of his monthly surplus of \$600.00 plus the vehicle expenses he is paying. Since his lifestyle is not lavish, he says that even that figure is too much and he seeks an order in the amount of \$1000.00 per month, inclusive of the vehicle expenses.

[17] Both parties have provided case law, not so much for the legal principles referred to therein, but to compare the incomes and circumstances of the parties with those in this case. Most of the cases provided do not deal with interim orders.

Analysis

[18] This was a common-law relationship and so the applicable legislation is the *Family Law Act*, S.N.W.T. 1997, c. 18. Just like the *Divorce Act*, the *Family Law Act* recognizes certain objectives of a support order on the breakdown of the spousal relationship: the economic advantages and disadvantages arising from the relationship should be equitably shared between the spouses; economic self-sufficiency should be encouraged and economic hardship should be relieved: s. 16(4) *Family Law Act*. The ultimate goal of a spousal support order is to equitably

alleviate the adverse consequences of a marriage breakdown: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420.

[19] Under s. 16(8) of the *Family Law Act*, the Court, in determining the amount and duration of support, is to consider all the circumstances of the parties, including the amount required by the spouse seeking support to achieve subsistence, the current assets and means of each spouse, the capacity of the spouse seeking support to contribute to his or her own support, the capacity of the spouse from whom support is sought to provide support, the age and physical and mental health of each spouse, the length of time that the spouses cohabited, and others.

[20] The circumstances referred to above apply to both interim and permanent spousal support. However, on an interim application where, as here, there is a triable issue as to entitlement to permanent spousal support, the inquiry the Court must make is focused on the needs of the applicant and the means of the payor. The goal of an interim order is to provide for the spouse claiming support until a trial can be held, at which the issues of entitlement and quantum can be examined in more depth.

[21] The Applicant has submitted some calculations under the *Spousal Support Advisory Guidelines* (SSAGs). The SSAG are not law and not binding, as has been recognized in earlier decisions of this Court: *Gross v. Gross*, 2006 NWTSC 66; *Rakhra v. Rakhra*, 2012 NWTSC 33. However, assuming that entitlement to support is established, they can be a useful tool for comparison with a proposed amount of support. Since particular circumstances such as, in this case, the Applicant's disability, as well as property division, may affect whether the SSAG amounts are appropriate in the case of long term support, they may be more helpful when interim support is being considered, as I indicated in *Clark v. Owens-Clark*, 2012 NWTSC 65; see also *Keyowski v. Keyowski*, 2011 BCSC 1711.

[22] In *Keyowski*, reference is made to *M.(D.R.) V. M. (R.B.)*, 2006 BCSC 1921, wherein Martinson J., at paragraph 21, states that the SSAG amounts may be more helpful when the financial situation of the spouses has stabilized at the interim stage, as opposed to where the financial situation is in transition and one spouse is paying disproportionately more or fewer of the ongoing financial obligations of the parties. In this case, at this stage, the evidence is not altogether clear on that point in respect of a number of debts, as I have indicated above. And although the

Respondent is paying the mortgage on the home in which the parties resided, he is also living in that home and there is no indication that he pays occupation rent.

[23] There is no information before me as to whether or when the Applicant will be able to work in the future. She should not have to use her RRSP for her short term support. There is no dispute that she is unable to work now and has no source of income except for social assistance, which, as I have noted, will be reduced by any spousal support. For the latter reason, I think it is appropriate to consider her as having no income, and therefore the SSAG calculations that she has submitted that are based on annual income of \$643.00 in her hands and \$80,350.00 in his come the closest to her situation. The SSAG figures based on that amount range from \$3,183.00 to \$2,837.00 to \$2,491.00 per month.

[24] Of the cases submitted by the Respondent only one, *McJannet v. McJannet*, 2005 ABQB 477, deals with interim support. The husband in that case was ordered to pay \$1000.00 per month. His income was \$80,000.00 per year, while the recipient wife's was \$24,700.00. There was no indication that her income would decrease as a result of the spousal support, which in my view is a significant difference from the case before me.

[25] In comparison with the amounts under the SSAG, and the Applicant's actual need, the amount of spousal support proposed by the Respondent is clearly inadequate. The calculations under the SSAG are more in line with the Applicant's needs.

[26] Despite the fact that property issues have not been dealt with, in light of the Applicant's inability to work for at least the immediate future, I have decided not to deviate very much from the SSAG. I consider this to be a case where support for the Applicant should be given priority over debt payments, at least on an interim basis. Since the Respondent's monthly living expenses are for the most part reasonable, the spousal support will likely affect his ability to pay debts.

[27] Accordingly, I order that the Respondent pay the Applicant \$2,400.00 per month in spousal support. The Applicant will be responsible for all expenses, including loan payments, on the vehicle in her possession, should she choose to retain it. If the Applicant agrees, the Respondent may make the vehicle loan and insurance payments and deduct those amounts from the spousal support. In the

absence of the Applicant's agreement, however, the full \$2400.00 per month is to be paid directly to her.

V.A. Schuler
J.S.C.

Dated in Yellowknife, NT this
27th day of March, 2013

Counsel for the Applicant: Jeremy Walsh
Counsel for the Respondent: Kenneth Allison

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**MEMORANDUM OF JUDGMENT OF
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