Date: 2013 11 25
Docket: S-1-FM-2008-000010

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF THE
INTERJURISDICTIONAL SUPPORT ORDERS ACT
S.N.W.T. 2002, c.19

BETWEEN:

KEITH PATRICK SQUIRES

Applicant

- and -

VIRGINIA JORDAN-PAUL

Respondent

MEMORANDUM OF JUDGMENT

[1] This matter appeared before me in regular Family Chambers on October 3, 2013.

[2] The Applicant Keith Patrick Squires ("Squires") and Respondent Virginia Jordan-Paul ("Jordan-Paul") have three children together: N.J., born in March 1992; T.J., born in October 1988; and K.J., born in February 1987. Pursuant to an Order made on April 30, 1999, Jordan-Paul was granted permanent custody of the children and Squires was required to pay child support of $629.00 per month commencing May 1, 1999.

[3] Squires, though properly served, did not appear at the April 30, 1999 hearing and the child support was based upon the *Child Support Guidelines* and a finding

that his annual income was $31,481.97. After the Order was made, Squires soon fell into arrears which have gradually accumulated to $21,270.38 as of May 12, 2011.

[4] Mr. Squires has now brought an application pursuant to the *Interjurisdictional Support Orders Act*, S.N.W.T. 2002, c. 19, to have child support retroactively varied, for any child support arrears to be forgiven and for Jordan-Paul to reimburse him for overpayment of child support.

[5] In his application, Squires advances three grounds for varying the 1999 Order: that there has been a change in his annual income since 1999; that the children have resided with him for various periods of time; and that the children are all over the age of majority.

[6] At the hearing, counsel on behalf of the Designated Authority, Ms. Paradis, and Ms. Jordan-Paul appeared. Jordan-Paul is opposed to any variation based upon Squires' income but agreed that the children had lived with Squires for various periods of time since 1999.

ANALYSIS

[7] A child support order may be varied pursuant to section 61(2) of the *Children's Law Act,* S.N.W.T. 1997, c. 14, (the "*Act"*) where the Court is satisfied either that evidence has become available since the previous hearing or that a change in circumstances as contemplated in section 14 of the *Guidelines* has occurred since the order was made. Section 14(a) of the *Guidelines* states that a change in circumstances is any change in circumstances that would result in a different child support order.

[8] In order for the Court to consider varying child support, Squires must establish that there has been a change in circumstances since the Order was made in 1999. All of the children are now over the age of majority and that is a change in circumstances which permits the Court to consider varying the child support order.

Age of the Children

[9] Section 57 of the *Act* defines a child as either a minor who has not withdrawn from the charge of his or her parents or one who is the age of majority

or older but is unable to withdraw from his or her parent's charge because of illness, disability, pursuit of education or another cause.

[10] The children are now all over the age of majority in the Northwest Territories, they each turned 19 as follows: K.J. in February 2006, T.J. in October 2007, and N.J. in March 2011. In this case, no evidence has been presented that any of the children were unable, for any reason, to withdraw from their parent's charge once they turned 19.

[11] Therefore, I find that each of the children ceased to be a child, pursuant to the *Act*, on their 19th birthday. Accordingly, Squires' child support obligations should be as follows: child support payable for three children until February 2006; child support payable for two children from March 2006 until October 2007; and child support payable for one child from November 2007 until March 2011.

Periods Where Child(ren) In Applicant's Care

[12] Squires claims that the one or more of the children resided with him for extended periods of time and that child support should be adjusted as a result. He claims that the children lived with him as follows:

K.J. Summer 2003 to mid-June 2005
T.J. Summer 2004 to mid-June 2005
N.J. August 2009 to Summer 2011

[13] Jordan-Paul acknowledges that the children lived with Squires at certain times. However, she states those periods as follows:

K.J. July 2003 to end-June 2005
T.J. August 2004 to end-June 2005
N.J. August 2009 to July 2010

[14] In addition, Jordan-Paul states that she and Squires verbally agreed that: when K.J. went to live with Squires in 2003, that Squires would continue to pay the full amount of child support; and when T.J. went to live with Squires as well in 2004, Squires did not have to pay any child support. Child support obligations then resumed when K.J. and T.J. returned to Jordan-Paul's care in 2005. When N.J. went to live with Squires, the parties again agreed to suspend child support. When N.J. returned, Jordan-Paul decided not to contact maintenance enforcement to resume child support as she felt Squires was so far in arrears that it would not make any difference.

[15] This matter was adjourned to permit Squires to provide further information on this and other issues raised in Jordan-Paul's Affidavit. In his response, he addressed many of the issues but did not specifically address the discrepancy in the dates or the verbal agreement that Jordan-Paul alleged was made between the parties regarding child support when K.J. was residing with Squires.

[16] While it is always difficult to assess contradictions in Affidavit evidence between two opposing parties, the Debtor Statement of Account provides some support for Jordan-Paul's claims that the parties made verbal agreements regarding child support and consequently, the dates when K.J. and T.J. would have resided with Squires.

[17] The Debtor Statement of Account indicates that $629 continued to be charged every month against Squires' account from July 2003 to July 2004. No charges are recorded again until August 2005 when the $629 per month charge was re-instituted. It also indicates that the charges ceased again in August 2009 and were never re-instituted. These dates coincide with the dates that Jordan-Paul claims the children resided with Squires.

[18] Jordan-Paul has also provided more specific dates than Squires regarding when K.J. and T.J. resided with Squires. Squires' references to summer 2003 and summer 2004 are vague and could refer to several different months.

[19] In addition, in Squires' Affidavit in Response, he appears to accept some of what Jordan-Paul has claimed. Exhibit I appended to his Affidavit contains a Calculation of Child Support Arrears/Overpayments Using Annual Workers Compensation Benefits that Squires has provided. In it, he acknowledged Jordan-Paul's Affidavit and has revised some of the calculations based upon the information in her Affidavit. For example, for the years 2004 and 2005, his calculations state:

> No Child Support payable from August – December, as per Paragraphs 5 and 6 of the Respondent's Affidavit of June 17, 2013

Later, he notes that N.J. lived with him from August 2009 to August 2010 which is an adjustment of his original claim that she lived with him until summer 2011.

[20] In the circumstances, I find that the children resided with Squires as Jordan-Paul has claimed: K.J. from July 2003 to end-June 2005; T.J. from August 2004 to end-June 2005; and N.J. from August 2009 to July 2010. I also find that there was a verbal agreement between Squires and Jordan-Paul with respect to the child

support which would be payable during those periods. I accept that the agreement was that the $629 per month child support ordered on April 30, 1999 would continue to be payable while K.J. resided with Squires. When T.J. went to live with Squires as well, the parties agreed that no child support would be paid. Child support obligations resumed when both K.J. and T.J. returned to Jordan-Paul's care in June 2005. The parties also agreed that child support would not be payable when N.J. went to live with Squires in August 2009.

[21] The verbal agreement was different from what was contained in the 1999 Order; however, the living arrangements of the children had changed over the years. It was open to either party, at the relevant time, to apply to the Court to vary the child support payments based upon the living situation of the children. Instead, the parties came to an agreement and it may be, at the time, neither party saw the necessity of varying the 1999 Order when they had worked out a satisfactory arrangement between them.

[22] In the circumstances, the agreement seems to have been a reasonable one that was fair to both parties. Jordan-Paul adhered to the agreement and communicated with maintenance enforcement to ensure that they administered Squires' account to reflect the agreement, despite the arrears that Squires had accumulated to that point. Jordan-Paul also did not ask maintenance enforcement to reinstate child support once N.J. returned to her care in August 2010, although she could have. Squires is now asking the Court to disregard the verbal agreement. While the child support order could be retroactively varied to reflect when the children lived with Squires, I believe that, in the circumstances, it would be unfair to Jordan-Paul to do so. Therefore, I decline to vary the child support order based upon the changes in residence of the children.

Changes in Applicant's Income Since 1999

[23] Squires is also seeking to retroactively vary child support based on his actual income for each year since 1999. When the Order was made in 1999, child support was based upon the Court finding that Squires had an income of $31,481.97. As Squires did not appear at the hearing, it is not clear how his income was determined. In his application, Squires states that his income was imputed. In *Squires* v. *Jordan,* 2001 NWTSC 69 at para. 2, the Court noted that it "appears to have been his 1998 income."

[24] Squires has provided his Notices of Assessment from the Canada Revenue Agency for the years 2000 through 2011 (see Table 1). Squires states that he was

in receipt of Workers Compensation benefits in the years 2000, 2001, 2002, and 2003 which should be grossed up for child support purposes as they are a tax free benefit. He has provided the grossed up calculations.

[25] Squires also received a one-time lump sum payout of his Worker's Compensation benefits in 2004 which was used to complete the construction of his home. He says that this amount should not be considered income as the money was provided to his lawyer in trust and not him; and was required to be used for the purchase or construction of a home. Squires has provided the Workers' Compensation Board (now called the Workers' Safety and Compensation Commission ("WSCC")) Policy on Lump Sum Payments and Advances on Pensions which indicates that a lump sum payment must be applied to a specific purpose "which will enhance the income position of the applicant." One of the acceptable purposes is to purchase a home or pay down a mortgage.

[26] Squires has also provided information from the WSCC which indicates that, had Squires not received a lump sum payout, he would have continued to receive monthly payments from 2004 to present in amounts starting at $388.60 per month and gradually increasing to $468.90 per month. Included in Table 1 under Adjusted Income are the calculations that Squires has provided for what his grossed up income would have been if he had continued to receive WSCC benefits.

[27] Squires claims that his income for the years 2000 to 2011 was as follows:

Table 1

Year	Total Income ($)	Grossed up Income	Adjusted Income
2000	24,602	25,592	
2001	29,791	32,720	
2002	36,166	39,876	
2003	33,581	36,291	
2004	121,001		22,649
2005	5,782		11,392
2006	6,433		12,135
2007	23,192		29,016
2008	22,170		28,138
2009	15,028		21,149
2010	23,722		29,969
2011	7,514		13,859

[28] With respect to his current income, Squires claims that he receives a total annual income of approximately $11,360, of which $8000 is from his employment income from fishing and $3360 is from employment insurance benefits. He has not provided any documentation that would confirm these amounts. However, this amount is similar in amount to his income in 2011.

[29] Squires' income has also varied over the years. Following the lump sum payout in 2004, Squires' WSCC benefits would have ceased which likely accounts for the drop in income in 2005. Beyond that, Squires has not provided an explanation for the fluctuations in his income. For example, why his income dropped in 2011 to $7514 from $23,722 in 2010.

[30] Aside from a change in income, Squires is required to provide evidence to demonstrate that he was unable to meet his child support obligations: *Rasmussen* v. *Rasmussen,* 2009 NWTSC 46 at para. 16. He has not demonstrated that he was unable to earn an income which would allow him to meet his child support obligations. There is no evidence regarding Squires' ability to obtain employment, his employment skills, the efforts he made to secure suitable employment, the extent that his injury which resulted in him receiving WSCC benefits has impaired his ability to work, or the availability of employment in the general area in which he lives.

[31] Another factor to consider is the delay in seeking variation of the 1999 Order. Squires did not participate in the 1999 hearing and the Order was made upon the information that was available to the Court at the time. If the information was inaccurate, then the onus was on Squires to rectify the situation. Over the years, Squires has made two unsuccessful attempts to address the arrears through the courts.

[32] In 2001, Squires, who had relocated to Newfoundland, obtained a Provisional Order in the Supreme Court of Newfoundland which varied his child support to $230 per month based upon an annual income of $14,248. In addition, his child support arrears were reduced by $4,788. When the matter was brought in this Court for confirmation, Jordan-Paul opposed the variation. On September 20, 2001, this Court remitted the matter back to the Newfoundland Supreme Court in order to obtain further evidence from Squires: *Squires* v. *Jordan*, 2001 NWTSC 69.

[33] Squires did not provide further evidence as requested and there is no explanation for why he did not continue to pursue the variation application in 2001. In Squires' Affidavit in support of this application, he states:

> I appeared again in the Supreme Court of NL on the 3rd of December, 2001 and was advised by the Court that I should retain counsel to assist me in this matter. The matter was adjourned and there was no new date scheduled at that time.

[34] In 2007, Squires submitted an application requesting that child support be varied from $629 per month to the *Guideline* amount based on his income, that child support terminate for K.J. as of October 2005 and T.J. as of June 2006; and for an adjustment of child support based upon K.J. and T.J. living with him for a period of time. On April 3, 2008, the matter was heard in this Court. Jordan-Paul appeared at the hearing and opposed the variation. The Court determined that further information was required from Squires and the matter was adjourned *sine die* so that this could occur. In addition, the Court ordered that a copy of the transcript of the hearing be prepared and forwarded to Squires.

[35] Squires did not provide further information as requested and did not pursue the application in 2008. In his Affidavit, Squires states:

> When I received the documents back from the Support Enforcement Agency here, the reason why it was returned was not explained to me in a manner that I could understand, and I was under the mistaken assumption that my application was simply dismissed and that I was not successful in my Application.

[36] It is unfortunate that Squires, at the time, did not continue to pursue his variation applications. His explanations for failing to do so are not compelling; it was his responsibility to pursue these applications in a diligent manner, and not the responsibility of the courts or the Support Enforcement Agency. The transcript from 2008 was clear that further information was required from Squires. He is now, some 14 years later, asking the Court to vary an Order made in 1999.

[37] This Court has followed the test set out in *Haisman* v. *Haisman* ([1994] A.J. No. 553 (C.A.) in applications to vary an order for the payment of child support which will reduce or eliminate arrears. See *Rasmussen, supra; Zoe* v. *Fish* 2013 NWTSC 51. The test requires that in the absence of special circumstances, a Court should decline to reduce or rescind arrears unless the payor establishes on a balance of probabilities that he cannot pay them now and will be unable to pay them in the future.

[38] In explaining this test, Charbonneau J. stated in *Zoe* v. *Fish, supra* at paras. 34-35 [citations omitted]:

> There are a number of policy reasons that underlie the requirement for caution when dealing with applications to rescind or reduce child support arrears. A parent who obtains a support order is entitled to rely on that order and plan accordingly. Courts should uphold their orders and be seen to do so. Because arrears accumulate when a court order is not complied with, there is always a risk that the rescission of arrears will be seen, in effect as rewarding non-compliance.
>
> A second consideration, as noted in *Haisman*, is that where one parent does not provide support for his or her child, someone else has to make up for the shortfall, or, in the alternative, the child's needs may not be met and his or her quality of life may be diminished. The strict enforcement of arrears is a way to compensate those who have been impacted by a payor's failure to comply with the child support order.

[39] Both of these factors arise in this situation. Jordan-Paul stated in submissions that because Squires did not pay child support, her children went without some things and were unable to participate in some activities. While she presented no evidence on this point, it is a matter of common sense that if you are raising three children without receiving the child support that has been ordered by the Court, the quality of life of the children will likely be diminished.

[40] In my view, to vary the child support order now, based on the information provided, the lack of explanation for the fluctuations in income, the delay in pursuing the variation application, and the lack of a satisfactory explanation for failing to pursue the variation applications in a timely manner, would have the effect of rewarding non-compliance.

[41] Squires has not shown special circumstances that might have prevented him from paying support in the past. Additionally, there is no evidence that Squires cannot pay the arrears now or in the future. Therefore, I decline to vary the child support order other than as stated above to reflect the dates when the children would have reached the age of majority.

[42] Squires' child support obligations will be adjusted so that child support was payable for two children from March 2006 until October 2007 and payable for one child from November 2007 until July 2009. The calculations, utilizing the *Guidelines* that were applicable at the time, are detailed in Table 2 below. As child support should have been payable from September 2010 when N.J. returned to Jordan-Pauls' care until March 2011 when N.J. turned 19, I will deduct that amount from the reduction in arrears.

Table 2

Date	Child Support Payable	Reduction in Arrears
March 2006 – October 2007	2 children - $456/month	$629 x 20 months = $12580 $456 x 20 months = $9120 **$12580 - $9120 = $3460**
November 2007 – July 2009	1 child - $267/month	$629 x 21 months = $13209 $267 x 21 months = $5607 **$13209 - $5607 = $7602**
September 2010 – March 2011	1 child - $267/month	**$267 x 8 months = $2136**
Total Reduction in Arrears: $3460 + $7602 - $2136 = $8926		

[43] In conclusion, there will be an Order reducing the Applicant's arrears by $8926. I direct that the Designated Authority prepare the formal order and forward it to the Applicant in accordance with the *Interjurisdictional Support Orders Act.*

S.H. Smallwood
J.S.C.

Dated at Yellowknife, NT, this
25th day of November 2013

Counsel for the Designated Authority: Trisha Paradis
Respondent, self-represented: Virginia Jordan-Paul

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