

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:

BRYAN LESLIE MINGO

Applicant

-and-

KAREN LYNN FAULKNER

Respondent

**MEMORANDUM OF JUDGMENT**

[1] Mr. Mingo applied to vary child support using the *Interjurisdictional Support Orders Act*, S.N.W.T. 2002, c. 19. I heard the application in Chambers on October 24, 2013.

[2] The application was presented to the Court by counsel for the Designated Authority. The role of the Designated Authority is, among other things, to facilitate filing, scheduling and service of the application, but it takes no position on the merits.

[3] The Respondent, Karen Faulkner, was served with notice of the application and supporting materials. She appeared in person.

[4] I dismissed Mr. Mingo's application and indicated that written reasons would follow.

## FACTS

[5] Mr. Mingo resides in Nova Scotia. He and Ms. Faulkner are the parents of a seven-year old child who lives with Ms. Faulkner in Yellowknife. On December 9, 2008, the Family Court for the Province of Nova Scotia issued an Interim Consent Order that requires Mr. Mingo to pay \$371.00 a month in support and a proportionate share of child care expenses which, at that time, amounted to \$185.00 a month.

[6] The order was effective retroactively from July of 2008, so there were arrears of \$3,336.00 when the order was made. Arrears continued to accumulate throughout 2009, there being no payments made until September of that year. There are arrears of \$5,690.07 as of March 1, 2013.

[7] Mr. Mingo seeks to reduce, retroactively to 2010, the amount of monthly child support to \$350.00, which is less than the amount specified in the *Child Support Guidelines* made pursuant to s. 85 of the *Children's Law Act*, S.N.W.T. 1997, c. 14. Doing so would leave an outstanding arrears balance, which he proposes to pay at the rate of \$100.00 a month.

[8] The grounds for the application are a claim of undue hardship and a change in circumstances. In particular, he states that he has a new baby born on March 31, 2013. He also states that to his knowledge, the child who is the subject of the order he wishes to vary is no longer in daycare and he points to Ms. Faulkner's increased income.

[9] Copies of the Notices of Assessment from the Canada Revenue Agency included with Mr. Mingo's materials show that in 2012 his income was \$61,067.00; in 2011 it was \$53,021.00; and in 2010 it was \$47,121.00. He indicates that he expects his income this year to be \$52,771.00. This is somewhat surprising, as he has worked for the same employer for fourteen years and there is nothing that explains why the income will be reduced from the previous year by more than \$8000.00.

[10] Mr. Mingo included a statement of monthly expenses with his materials. Among these are \$240.00 for alcohol and tobacco and \$200.00 for Canada Savings Bonds. He also listed as an expense support payments of \$658.00 per month. Presumably, this includes some payment towards outstanding arrears, as it is greater than the amount ordered by the Family Court.

[11] Ms. Faulkner filed material in response to the application. She expects her annual income for 2013 to be \$40,375.00. Copies of the Notices of Assessment

that she provided show income amounts of \$35,617.00, \$30,346.00 and \$21,197.00 for the years 2012, 2011 and 2010 respectively. Her monthly expenses include a regular childcare expense of \$295.00 and occasional babysitting costs of \$60.00.

[12] Mr. Mingo indicated that he relies on the law of the Northwest Territories in this application.

## ISSUES

[13] There are three issues: first, whether there has been a change in circumstances to justify a reduction in ongoing support; second, whether continuing pay support in the amount set out in the *Child Support Guidelines* would result in undue hardship for Mr. Mingo; and third, whether the accumulated arrears should be reduced.

## CHANGE IN CIRCUMSTANCES

[14] Section 61(2) of the *Children's Law Act, supra*, allows the Court to vary child support where there has been a change of circumstances. Those things that can be considered a "change in circumstances" are set out in s. 14 the *Child Support Guidelines* and include "any change in the condition, means, needs or other circumstances of a parent or of any child who is entitled to support".

[15] From the materials it appears that Mr. Mingo relies on the increased means of Ms. Faulkner since the time the original order was made and his belief that the child is no longer in need of daycare as a result of starting school. In the circumstances, neither of these are a change in circumstances that would justify a reduction in child support.

[16] Save for certain circumstances (such as undue hardship, discussed below) support under the *Child Support Guidelines* is determined solely on the basis of the paying parent's income. Thus, Ms. Faulkner's income and the modest increase in it since the original order was made is not a relevant factor, and it follows that it is not a change in circumstances upon which a variation can be founded.

[17] The evidence from Ms. Faulkner shows that the child still requires daycare. The regular cost of this is \$295.00 per month. Of the parties' combined incomes, Mr. Mingo earns approximately 60%. His proportionate share of the regular daycare cost would, therefore, be approximately \$177.00, or \$8.00 less than what he was ordered to pay in 2008. This is insignificant and as such it is not a change in circumstances.

## UNDUE HARDSHIP

[18] The *Children's Law Act, supra*, and the *Child Support Guidelines*, set out the legislative framework within which a claim of undue hardship can be advanced. Where undue hardship is established, a court may award an amount of child support that is different than what is required by the *Child Support Guidelines*.

[19] Claiming undue hardship is a two-step process. First, Mr. Mingo must prove specific facts that are at the core of the undue hardship. There is a non-exhaustive list of things that *may* constitute undue hardship in s. 12(2) of the *Child Support Guidelines*, and this includes a legal obligation to support another child. Mr. Mingo has an obligation to support another child and so he has satisfied the first step.

[20] The second step of the analysis requires that Mr. Mingo prove that his household will have a lower standard of living than Ms. Faulkner's unless the amount of support he is required to pay is reduced. This is determined based on a formula found in Schedule B of the *Child Support Guidelines*. The formula starts with a determination of the net household income of each parent. From this certain things are deducted, such as the amount of child support that would have to be paid under the *Child Support Guidelines* or the cost of supporting a person, other than a child, who cannot support themselves and whom the paying parent has a legal duty to support. This results in an adjusted annual income for each parent's household that is then divided by a low income measure amount based on the number of people in each household. This, in turn, leads to a household income ratio for each household, which are then compared. If the paying parent establishes that he or she has a lower household income ratio, then undue hardship has been made out.

[21] It is important to note that even where an applicant shows undue hardship in accordance with the legislative framework, a court may still require that the Guideline amount be paid. (*Hanmore v. Hanmore*, 2000 ABCA 57 at paragraph 9).

[22] The net household income is based on income from every member of each parent's household. Ms. Faulkner has indicated that she does not share expenses with any other person. Mr. Mingo's application is not clear with respect to whether he lives with and/or shares expenses with the mother of his second child and, if so, what her income is. Even assuming that he is the only source of income in the family and that he does not share expenses with anyone else, however, undue hardship has not been made out.

[23] The *Child Support Guidelines* require that income be determined based on the information found on the “T1 General” form issued by the Canada Revenue Agency in respect to each parent. This is subject to certain exceptions, none of which are applicable here. Thus, the calculations of household income, taking into account the assumption that Mr. Mingo is the sole source of income in his home, are as follows:

<b>Mr. Mingo</b>	<b>Ms. Faulkner</b>
Annual Net Income (based on 2012 Income Tax Return): \$57,921.00	Annual Net Income (based on 2012 Income Tax Return): \$33,737.00
Minus Support Payments Ordered (including proportionate share of childcare expenses): (\$6,672.00)	Plus Support Payments due (including proportionate share of childcare expenses): \$6,672.00
Annual Income – Support: \$51,249.00	Annual Income + Support: \$40,409.00
Low Income Ratio: (Based on 2 adults + 1 child) \$17,649.00	Low Income Ratio: (Based on 1 adult + 1 child) \$14,535.00
<b>Household Income Ratio:</b> \$51,249.00 ÷ \$17,649.00 = <b>2.9</b>	<b>Household Income Ratio:</b> \$40,409.00 ÷ \$14,535.00 = <b>2.7</b>

[24] Mr. Mingo has the higher household income ratio and thus has not demonstrated that continuing to pay support in the amount ordered will result in him having a lower standard of living than Ms. Faulkner. Accordingly, the claim for undue hardship has not been made out.

## **ARREARS**

[25] The principles that guide the Court in determining if arrears should be reduced were set out in *Haisman v. Haisman*, 1994 CarswellAlta 179: 7 R.F.L. (4<sup>th</sup>) 1 (Alta. C.A.):

32 In short, in the absence of some special circumstance, a judge should not vary or rescind an order for the payment of child support so as to reduce or eliminate arrears unless he or she is satisfied on a balance of probabilities that the former spouse or judgment debtor cannot then pay, and will not at any time in the future be able to pay, the arrears.

[26] Mr. Mingo has been steadily employed since the time the order was made and his income has actually increased. There is nothing to suggest that he is going to lose his job or will for any other reason be unable to pay the arrears in the future. He is making payments towards the arrears as well as paying the current obligation each month. Finally, Mr. Mingo has not shown special circumstances that have kept him from paying support in the past. No explanation is offered at all. In light of this, his application for retroactive variation to reduce arrears cannot succeed.

## **ORDER**

[27] For these reasons, I confirm that Mr. Mingo's application to vary ongoing support prospectively and retroactively is dismissed.

K. Shaner  
J.S.C.

Dated at Yellowknife, NT  
this 5th day of November, 2013.

Counsel for the Designated Authority: Christopher Buchanan  
Karen Lynn Faulkner was self-represented

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