

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CAROL BONNETROUGE

Applicant

-and-

HARRY CAREEN

Respondent

MEMORANDUM OF JUDGMENT

[1] This is an application by Harry Careen for rescission of arrears of child support and variation of ongoing support. Mr. Careen's written materials ask the Court to comment on various settlement proposals he has made, and wishes to make, however it was explained to him at the hearing of this matter that the Court will not do that.

Background

[2] Ms. Bonnetrouge commenced proceedings in 2007 for custody of and child support for the parties' child, born May 1, 1999. Although the affidavit evidence is somewhat conflicting, the parties appear to agree that after the birth of the child, they lived together off and on in a common-law relationship for two to three years before finally separating in June of 2006.

[3] On January 24, 2008, an interim order was made providing that Ms. Bonnetrouge has custody of the child and Mr. Careen has access. That order states Mr. Careen's average *Guidelines* income to be \$77,277.00 and requires that he pay monthly child support in the amount of \$802.00, starting December 1, 2007 until further order of the Court. The \$802.00 is stated to be comprised of \$712.00 for child support and \$90.00 for Mr. Careen's share of childcare expenses. From the

record, it appears that nothing further transpired in the court proceedings until 2013, when Mr. Careen filed an application for variation.

[4] The clerk's notes and a document containing *Childview* calculations, both located in the court file, satisfy me that at the time the 2008 order was made, it was based on Mr. Careen having income of \$77,277.00 and Ms. Bonnetrouge having income of \$38,314.00. That document also shows that net childcare expenses of \$134.00 per month were apportioned with Mr. Careen paying 66.85%, therefore \$90.00 per month. Ms. Bonnetrouge's affidavit filed at the time indicates that she had childcare expenses of \$2,755.00 in 2006 and expected the same in 2007.

[5] In early 2013, Mr. Careen, who has represented himself throughout this matter, filed and served an application for a variation of the interim order. The record indicates that the application was adjourned several times for various reasons. Both parties agree that negotiations took place with a view to settlement, however they were not successful. In February 2014, Mr. Careen brought an application asking the Court to rule on his last offer to settle and that he be permitted to make a final child support payment that would release him from any further responsibility for child support. The application came before me on March 20, 2014 and was argued as an application for variation of the 2008 interim order and rescission of the arrears that have accumulated under it.

[6] Mr. Careen's position is that his income has not remained consistent with the income on which the 2008 interim order was based and that an adjustment to the arrears is justified because of that and for other reasons that I will refer to further on.

[7] Ms. Bonnetrouge concedes that some variation of child support is justified on an ongoing basis and also in relation to the arrears. Her counsel indicated that she accepts that Mr. Careen's income figures are correct for the years subsequent to the interim order, at least until the end of 2012. In reviewing her calculations I note, however, that some of the *Guidelines* amounts for child support are not correct. I have set out what I understand to be the correct amounts in the list below.

[8] Ms. Bonnetrouge also agrees that Mr. Careen should not pay childcare expenses starting January 2013 as she has not needed childcare since 2012. That and what I refer to in the foregoing paragraph are the only adjustments that she says should be made. She also points out that for the 6 months from October 2010 to March 2011 inclusive, she agreed, at Mr. Careen's request, to accept child support in the amount of \$500.00 per month rather than \$802.00. This is reflected

in the figures in the Maintenance Enforcement Program Debtor Financial Report and amounts to a total reduction of \$1812.00 from the \$4812.00 (6 x \$802.00) that was otherwise payable under the 2008 interim order for that period of time. In other words, Mr. Careen has already had the benefit of that reduction in the amount of arrears now shown as owing, which, according to the Maintenance Enforcement Program Debtor Financial Report for the period January 23, 2009 to November 13, 2013 is \$14,983.88 as at November 13, 2013. That Report also shows that Mr. Careen quickly went into arrears under the 2008 interim order and that his payments have been inconsistent.

[9] Mr. Careen's yearly income, earned mainly as a plumber and on construction, since the interim order was made and up to the end of 2012, is set out in his affidavit and confirmed by income tax returns and notices of assessment. I have set out beside each income figure below the amount of child support payable pursuant to the *Child Support Guidelines* under the *Children's Law Act*, S.N.W.T. 1997, c. 14, for one child based on that figure. The amount does not include a share of childcare expenses:

2008 - \$38,212.00 ‘ \$347.00  
2009 - \$52,297.00 ‘ \$481.00  
2010 - \$77,832.00 ‘ \$716.00  
2011 - \$94,169.00 ‘ \$857.00  
2012 - \$77,655.00 ‘ \$720.00

[10] Regarding Mr. Careen's income for 2013, the only evidence before me is a letter dated July 5, 2012 from Mr. Careen's employer. Based on the figures in that letter, Mr. Careen's income would be approximately \$65,000.00, which would mean child support of \$604.00. Ms. Bonnetrouge proposes an income figure of \$77,832.00, the same as his 2010 income, however it is not clear to me how she arrived at that figure. I infer from her affidavit sworn March 18, 2013, which was not filed with the Court but a copy of which is attached to one of Mr. Careen's affidavits, that Ms. Bonnetrouge takes the position that Mr. Careen should never have left the job he had when the 2008 interim order was made and should therefore be imputed income in the same range of \$77,000.00. However, Mr. Careen's explanation for leaving the job is not unreasonable. He says he left because his home in the community where he was then working was destroyed in a fire and he had nowhere to live and little support in the community.

[11] The evidence is that Mr. Careen did obtain the salaried position with the employer named in the July 5, 2012 letter, albeit at an income level less than he had had in the past. I will rely on the letter as the best evidence of his income.

[12] It can be seen from the above that Mr. Careen's income has fluctuated over the years, which is not unusual for someone who has sometimes been self-employed.

[13] Mr. Careen has presented evidence that his driver's licence was suspended in 2011 upon direction by the Maintenance Enforcement Administrator due to his child support arrears, which led him to seek employment that did not require a driver's licence. The employment he obtained was outside his home community and offered substantial overtime, thus the increased income of more than \$94,000.00 he earned in 2011.

[14] In his affidavit filed December 11, 2012, Mr. Careen states that the increased income in 2011 actually disadvantaged him because it put him in a higher tax bracket and meant he had a smaller income tax refund to put towards his child support arrears. He says that with that income, he managed to pay down some personal debts and begin making regular child support payments along with a nominal amount towards the arrears. He asks that the Court consider only what he would normally have earned rather than what he actually earned that year.

[15] The first thing to note is the longstanding legal principle that child support takes priority over other debts: *Levesque v. Levesque*, [1994] A.J. No. 452 (C.A.). Therefore, Mr. Careen should have been paying down the child support arrears rather than directing his resources to his other personal debts. Secondly, the high income in 2011 is offset by his low income in 2008, for which he has provided very little explanation and no explanation as to what, if any, efforts he made to earn more income that year or in 2009.

[16] In the circumstances, I see no reason why Mr. Careen's actual earned income for 2011 should not be taken into account at its face value. While it does not accurately reflect the amount he has usually been able to earn, it would be unfair and illogical to take into account any decreases in his income but not any increases.

[17] The amounts that should accordingly be deducted from or added to the arrears are as follows:

2008 - deduction of \$4380.00  
2009 - deduction of \$2772.00  
2010 - difference is minimal, therefore no deduction  
2011 - addition of \$1740.00  
2012 - addition of \$96.00  
2013 - deduction of \$1296.00

[18] This amounts to a total deduction of \$6612.00. However, the amount of \$1812.00 which has already been deducted from the arrears by the request of Ms. Bonnetrouge must be taken into account, thus reducing the total deduction to \$4800.00.

[19] One of Mr. Careen's proposals is that his income be averaged for at least some of the years in question. I note that by averaging all his income, a yearly figure of \$67,528.00 is obtained, resulting in a child support payment based on the current *Guidelines* in the amount of \$628.00 per month, resulting in a reduction for six years of arrears of \$4236.00 (taking into account the \$1812.00 already deducted). So the calculation year by year is actually more favourable to Mr. Careen.

[20] I will turn now to the issue of childcare expenses.

[21] Mr. Careen asserts that childcare expenses should not have been payable once the child turned 11 years of age, based on a general principle that such expenses are not legally required. I am not aware of any legal basis for this assertion, nor could Mr. Careen point to anything other than having been told this by an unidentified government employee. However, in relation to responsibility of a parent to contribute to childcare expenses, the age 11 has no significance.

[22] In one of her affidavits, Ms. Bonnetrouge asserts that the 2008 interim order did not base the childcare expense calculation on income. This is incorrect. As I have indicated above, Mr. Careen's proportionate share was based on his and Ms. Bonnetrouge's incomes.

[23] Ms. Bonnetrouge has not provided any current income information. Her affidavit filed October 22, 2007 that led to the 2008 order states that she is a casual employee of the territorial government and that she works full time in the summer firefighting season and half days September to March. She gives her 2006 income as \$38,313.60.

[24] In her unfiled affidavit sworn March 18, 2013, Ms. Bonnetrouge says that she continues to have seasonal employment with a government department in the months of May to August. She says her average childcare costs have been about \$3000.00 per year, therefore slightly more than what she claimed for 2006 and 2007 (\$2755.00), when she was also working half days from September to March. She does not, however, provide any evidence as to her income.

[25] Despite the fact that Mr. Careen states that he has requested, but not always received, receipts for childcare and has put Ms. Bonnetrouge's claims for childcare

expenses in issue, Ms. Bonnetrouge has provided very little evidence about those expenses. One of the receipts she provided to Mr. Careen, and which he has attached as an exhibit, is a receipt for childcare expenses in January of 2010. The evidence in her affidavits is that January is not a month in which she is employed. Since s. 9(1)(a) of the *Child Support Guidelines* under the *Children's Law Act* refers to childcare expenses incurred as a result of employment, the January expense is not one to which Mr. Careen would have been required to contribute.

[26] The fact that Ms. Bonnetrouge included the January expense raises the question whether she has, perhaps through a misunderstanding, included in her yearly estimate childcare expenses which are not related to her employment. The receipts attached to Mr. Careen's affidavit indicate childcare expenses of between \$700.00 and \$650.00 for the months of May and August each. For a four month period, which is what Ms. Bonnetrouge says she works, this amounts to between \$2800.00 and \$2600.00 per year, less than the \$3000.00 she claims. On the other hand, the \$134.00 monthly figure on which the calculation in the 2008 interim order was based is well within those figures. The real issue is whether \$90.00 still represents Mr. Careen's proportionate share, i.e. whether he should have been paying two-thirds of the monthly expense, and Ms. Bonnetrouge one-third based on their respective incomes. I cannot determine that, however, without evidence of Ms. Bonnetrouge's income.

[27] Rather than have the parties return to court to address that issue, and considering that even though Mr. Careen raised the issue in his affidavit, Ms. Bonnetrouge has not responded to it with any evidence, I will treat the childcare expense as being apportioned equally between the parties. The onus is on the party seeking an unequal sharing of the expense and Ms. Bonnetrouge has not satisfied that onus because she has not provided evidence of her income. While I will accept that it is unlikely that her income changed in the years immediately following the 2008 order, I would not rely on that from 2010 on. This means that Mr. Careen's proportionate share of the \$134.00 will be assessed as \$67.00 rather than \$90.00 per month for the years 2010 forward, resulting in a credit of \$23.00 per month, thus \$276.00 per year. I will allocate the credit for the years 2010 to 2012 inclusive, for a total credit or reduction to arrears of \$828.00.

[28] Mr. Careen raised other issues in support of his contention that his arrears should be reduced even further. He claims hardship based on other debts - both financial hardship and stress as a result of being harassed by creditors. A financial statement attached to Mr. Careen's affidavit sworn October 11, 2012 indicates that he owes money to various financial institutions and individuals.

[29] I have already stated that the law is that child support comes before other debts. It may well be that Mr. Careen is being harassed by creditors, but under the law, they have to take a back seat to his child support obligations.

[30] The concept of undue hardship might be relevant if the debts other than child support were reasonably incurred to support the parties and their child while living together, or to earn a living (s. 12(2)(a) of the *Child Support Guidelines* under the *Children's Law Act*), however there is no evidence before me to that effect. The debts that Mr. Careen owes to individuals as evidenced by letters from those creditors all arose in 2009, after he and Ms. Bonnetrouge ceased living together. Apart from that, there is no evidence as to the date the various debts were incurred.

[31] In the absence of any evidence that would justify the debts having an effect on Mr. Careen's obligation to pay child support, they should not be taken into account.

[32] In one of his affidavits, Mr. Careen raises events and discussions with Ms. Bonnetrouge relating to the birth of the child, but these are of no relevance. Once a child is born, both parents have an obligation to support him.

[33] Mr. Careen also proposes that his obligation for child support is something he can pay out and be done with now. Child support does not work that way. Pursuant to s. 57 of the *Children's Law Act*, child support is payable until the child reaches the age of majority and may be payable after that if the child is unable, by reason of illness, disability, pursuit of reasonable education or other cause, to withdraw from a parent's charge. Therefore, one cannot say at this point whether Mr. Careen's obligation to pay child support will continue after the child has reached the age of majority or whether it will cease at that point. There is no evidence before me that indicates what the child's present circumstances and prospects are.

[34] The final issue is ongoing support. Based on his 2013 income that I have set out above, I find, in the absence of any other evidence, that Mr. Careen's 2014 income is \$65,000.00 and therefore child support as at January 1, 2014 is payable in the amount of \$604.00 per month on an ongoing basis.

[35] Once Mr. Careen's 2013 income tax return is filed and any notice of assessment is available, an adjustment may have to be made for that year and similarly for 2014. I will therefore order that Mr. Careen provide Ms. Bonnetrouge with copies of his income tax returns and any notices of assessment by July 1 each year commencing with the 2013 taxation year.

[36] The application for variation is therefore granted and I make the following orders:

1. The interim order of January 24, 2008 is varied to provide that Mr. Careen pay ongoing child support in the amount of \$604.00 per month commencing January 1, 2014, based on annual income of \$65,000.00.
2. The interim order of January 24, 2008 is varied to delete the requirement that Mr. Careen pay a proportionate share of childcare expenses commencing January 13, 2013 and continuing thereafter.
3. The arrears of child support under the January 24, 2008 order will be reduced in accordance with the above two paragraphs.
4. The arrears of child support under the January 24, 2008 order will be further reduced by  $(\$4800.00 + \$828.00)$  \$5628.00.
5. Mr. Careen will provide Ms. Bonnetrouge with copies of his income tax returns and any notices of assessment by July 1 each year commencing with the 2013 taxation year.

[37] I direct that Mr. Careen draw up an order in the terms set out above and forward it to counsel for Ms. Bonnetrouge for his endorsement as to it being the order made. Following that, it is to be submitted to the registry to be issued if it conforms with these reasons or submitted to me for review if it does not.

V.A. Schuler  
J.S.C.

Dated at Yellowknife, NT, this  
17<sup>th</sup> day of April, 2014.

Counsel for Ms. Bonnetrouge: Andre Duchene  
Mr. Careen was self-represented

**IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES**

---

BETWEEN:

CAROL BONNETROUGE

Applicant

- and -

HARRY CAREEN

Respondent

---

MEMORANDUM OF JUDGMENT OF  
THE HONOURABLE JUSTICE V.A. SCHULER

---