

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

BETWEEN:

NATALIE BOLLETER

Petitioner

-and-

DAVID LIVINGSTONE

Respondent

**Corrected judgment:** A corrigendum was issued on October 1<sup>st</sup>, 2015; the corrections have been made to the text and the corrigendum is appended to this judgment.

**MEMORANDUM OF JUDGMENT**

[1] The Petitioner, Natalie Bolleter, seeks interim spousal and child support. She also seeks payment of \$3,000.00 as her share of the parties' net family assets, and financial disclosure.

**BACKGROUND**

[2] The parties were married August 12, 2000 and separated on December 1, 2014. They have three children, aged 14, 11 and 9.

[3] When they separated, the parties reached agreement on child support, custody and equalization of their assets. They reached this agreement on their own, without either having independent legal advice. It was reduced to writing and included the following terms:

- a. Mr. Livingstone and Ms. Bolleter would share custody of the children equally, working to accommodate Ms. Bolleter's shift work schedule;
- b. Mr. Livingstone would pay child support payments of \$328.00 per month, based on his gross income of \$65,000 per year (at that time) and Ms. Bolleter's estimated gross income, to be confirmed by a T-4 slip, of \$30,000.00 per year;
- c. The parties agreed to contribute equally to the costs of the children's activities; and
- d. Mr. Livingstone would pay Ms. Bolleter the sum of \$3,000.00, being her share of the parties' net assets.

[4] Mr. Livingstone has not paid Ms. Bolleter the \$3,000.00 for her share of the net property, nor has he paid the amount of child support set out in the agreement. He has, however, paid the full cost of the children's extracurricular activities, namely, competitive gymnastics and hockey, which Ms. Bolleter estimates to be approximately \$300.00 per month and which Mr. Livingstone estimates to be \$600.00 per month.

[5] Ms. Bolleter works in the airline industry and earns approximately \$24,800.00 per year. She is also entitled to travel, health and dental benefits for herself and the children.

[6] Mr. Livingstone works as a web designer. Ms. Bolleter appended his 2014 Income Tax Return to her affidavit. It shows a total income of \$66,838.13. The accuracy of this figure is not in dispute.

[7] Ms. Bolleter deposes she was primarily a homemaker, responsible for the children's care, for most of the years the parties were together. She had some part-time work in retail and in running a daycare out of the family home. She also baked bread which she sold at a market and a coffee shop in a community in British Columbia which they were living before moving to Yellowknife.

[8] Mr. Livingstone was the primary breadwinner. He took training on a full-time basis on two occasions while the parties were together. He spent one year earning a diploma as an upholsterer and two years taking web design. During these times Mr. Livingstone collected employment insurance benefits and these, as well as any of Ms. Bolleter's earnings, were what the family used for living expenses.

[9] Ms. Bolleter says her standard of living, and consequently, that of the children when they are with her, has been diminished significantly since the separation. She currently lives in rental accommodation in a housing cooperative. She says she would have to pay \$2,100.00 per month for similar accommodation, but she is able to get a rent subsidy based on her income and so she pays \$840.00 a month. The rent subsidy is subject to being reduced if her income increases. She does not have a vehicle and she relies on her bicycle, public transportation and taxis to meet her transportation needs and those of the children when they are with her. Mr. Livingstone retained the family vehicle after the separation. Ms. Bolleter says she has asked him to share the vehicle with her but that he has refused.

[10] Ms. Bolleter is contemplating attending nursing school in Yellowknife in the fall of 2016.

[11] Mr. Livingstone disagrees with Ms. Bolleter's suggestion her standard of living is reduced. He says she is now in a better financial position than he is due to her rent subsidy and he also says she is able to provide better accommodations. He does not offer any details to illustrate this, however.

[12] With respect to the vehicle, Mr. Livingstone says its value was factored into the property division. The vehicle was subject to a loan and had a net value of \$6,000.00 at the time of separation. He took over the payments and expenses related to the vehicle. He says he offered to share the vehicle with Ms. Bolleter if she was prepared to share in the costs, but she was not.

[13] Mr. Livingstone says he has not paid Ms. Bolleter the \$3,000.00 promised for her share of the net family assets because he feels she deceived him with respect to the amount of debt she accumulated during the marriage. Specifically, some months after they agreed upon asset division, she revealed she had accumulated a total credit card debt of \$15,000.00, which Mr. Livingstone says interfered with the parties' inability to accumulate savings during the marriage.

[14] Mr. Livingstone resists any increase in the child support he is asked to pay, saying it would interfere with his ability to contribute to the cost of extracurricular activities for the children.

[15] With respect to the matter of spousal support, Mr. Livingstone expresses concerns about Ms. Bolleter's ability to handle money. He says she lied about losing money in her earlier business endeavors and that she incurred significant

debts during the marriage. He characterizes her as deceitful. Mr. Livingstone says he would be glad to support Ms. Bolleter in any way he could to attend nursing school but only if there is yearly financial disclosure so he can be assured his contributions would not go only to support further financial mismanagement.

## **ISSUES**

[16] There are three main issues:

- a. How much child support should be paid and should it be retroactive?
- b. Whether Mr. Livingstone should pay interim spousal support to Ms. Bolleter and, if so, how much? ; and
- c. Whether Mr. Livingstone must pay the \$3,000.00 to Ms. Bolleter as agreed.

## **ANALYSIS**

### ***Interim Child Support***

[17] The question here is how much support should be paid.

[18] From the agreement the parties made when they separated it is evident Mr. Livingstone understood he would have to contribute to the children's financial needs, both in child support and with respect to their extracurricular activities. What was envisioned was that he would pay \$328.00 per month, as well as half of the monthly cost of competitive gymnastics and hockey. This is not what has happened, however. Instead, as noted above, he has paid the full cost of these activities, the sum of which is in dispute, and no separate child support.

[19] While there is no question that financial contribution towards extraordinary expenses connected with a child's activities is helpful, it serves a different purpose than child support. Child support is meant to meet the day-to-day needs of the child, such as food, shelter, clothing, school supplies, bus passes, haircuts and the ordinary costs of some activities, in accordance with the paying parent's means. It is not aimed at the cost of a specific activity, service or item the child might require. Those expenses are over and above child support and are frequently shared on a proportionate basis. Accordingly, the two should be treated separately.

[20] Section 9 of the *Federal Child Support Guidelines*, SOR/97-175, specifically addresses how child support is to be determined where parents share physical custody of the children:

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
- (a) the amounts set out in the applicable tables for each of the spouses;
  - (b) the increased costs of shared custody arrangements; and
  - (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[21] This is not a formulaic exercise which takes into account only the paying parent's income. There is a separate system for determining appropriate child support in shared custody situations. The Court must determine a *fair* level of support, taking into account the overall circumstances of the parents. This was set out by the Supreme Court of Canada in *Contino v Leonelli-Contino*, [2005] 3 SCR 217; (2005) SCC 63; 259 DLR (4<sup>th</sup>) 388, as follows:

27 The three factors structure the exercise of the discretion. These criteria are conjunctive: none of them should prevail (see Wensley, at p. 90; Payne and Payne, at p. 254; *Jamieson v. Jamieson*, [2003] N.B.J. No. 67 (QL), 2003 NBQB 74, at para. 24). Consideration should be given to the overall situation of shared custody and the costs related to the arrangement while paying attention to the needs, resources and situation of parents and any child. This will allow sufficient flexibility to ensure that the economic reality and particular circumstances of each family are properly accounted for. It is meant to ensure a fair level of child support.

[22] Turning to the first consideration,<sup>1</sup> Mr. Livingstone's monthly child support obligation, based on an annual income of \$66,838.00, would be \$1,335.75. Ms. Bolleter's obligation would be \$553.52, based on an estimated annual income of \$24,800.00. This is a difference of \$782.23.

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<sup>1</sup> It was conceded in the evidence that the parties share custody equally and as such the threshold to engage this section of the *Federal Child Support Guidelines* is met.

[23] With respect to the second consideration, there is no evidence which sets out exactly how much each party's monthly living costs have increased as a result of the shared custody arrangement. Despite this, it is safe to assume the arrangement requires a greater financial commitment from each parent. They must maintain separate residences with sufficient space to house a parent and three children. They must cover the increased utility and maintenance costs which accompany a larger living space. Each must pay for groceries for half the time and cover transportation costs and incidental expenses.

[24] With respect to "conditions, means, needs and other circumstances" of each of Mr. Livingstone and Ms. Bolleter, there is a striking disparity in their respective means. Mr. Livingstone earns more than twice what Ms. Bolleter does. This is not surprising. While she worked at various positions and enterprises during the marriage, Ms. Bolleter's entry into the labour market as a full-time, committed employee is recent compared to Mr. Livingstone. He has had more time in the workforce to establish a career on an uninterrupted basis.

[25] Mr. Livingstone's current contribution is insufficient to allow Ms. Bolleter to meet the children's needs when they are in her care. While it defrays the cost of activities, it does not give Ms. Bolleter access to regular funds to buy groceries or clothing, nor does not help her to pay utility bills or the rent she needs to pay for a residence suitable for herself and the children. In short, Mr. Livingstone must shoulder a greater share of the financial responsibility for the children.

[26] This is not to say Mr. Livingstone should pay the full "table amount" of child support every month, which is what Ms. Bolleter seeks. That would neither be fair to Mr. Livingstone, nor the children. Such an order would ignore the additional costs he must incur to sustain the shared parenting relationship which would, in turn, negatively impact on his ability to provide for the children when they are with him.

[27] Taking all of this into account, I conclude it is necessary to vary the amount of child support the parties initially agreed Mr. Livingstone would pay to an amount which adequately accounts for the significant disparity in the parties' incomes and the shared parenting arrangement. In my view, an appropriate amount is \$800.00 per month.

[28] Ms. Bolleter wants child support payments to be retroactive to December 1, 2014. I decline to order interim child support be paid retroactively because there is

insufficient information before the Court respecting the payments Mr. Livingstone made or what each parties' understanding was respecting their obligations. This is something which can be addressed by the trial judge, once the parties have had a fair opportunity to put a complete evidentiary picture before the Court. Interim child support payments will commence as of October 1, 2015.

### ***Interim Spousal Support***

[29] A claim for spousal support can be based on contractual, compensatory and non-compensatory (i.e. needs and means) grounds: *Bracklow v Bracklow*, [1999] 1 SCR 420. Ms. Bolleter appears to be seeking support for herself on both the compensatory and non-compensatory grounds, both of which arise out of the more traditional role she played during the marriage.

[30] Interim spousal support is a temporary remedy meant to bridge the gap between when proceedings begin and trial. The framework within which an application for interim spousal support is to be considered was set out by Schuler, J., in *Arrowmaker v Arrowmaker*, 2010 NWTSC 63. The Court must first determine if there is a triable issue on entitlement to support. If so, the focus turns to alleviating economic disparities by addressing needs and means.

[31] The affidavit evidence filed in this application leads me to conclude there is a triable issue respecting Ms. Bolleter's entitlement to spousal support on both the compensatory and "needs and means" grounds. It is undisputed that for most of the marriage, and until quite recently, her primary role was as a parent and homemaker. This has resulted in dependency and an economic disadvantage for Ms. Bolleter. As noted above, she is relatively new to the workforce and her wage is significantly less than that of Mr. Livingstone.

[32] I have considered Mr. Livingstone's argument that Ms. Bolleter should be disentitled because she has been, in his view, irresponsible with money in the past. He says this has led to the situation she is in now, as well as impeding their ability to accumulate wealth during the marriage.

[33] This is not a persuasive argument. Ms. Bolleter is not asking for money because she spends all of her own on frivolities. Nor does she ask for money to pay down debt she has incurred. She is asking for money simply because she does not earn enough to meet her day-to-day living expenses and this is due largely to the role she assumed during the marriage.

[34] With respect to the amount of support, neither Mr. Livingstone, nor Ms. Bolleter have filed financial statements and so the Court has limited information from which it can determine how much Mr. Livingstone can pay and how much Ms. Bolleter needs on a monthly basis. What is before me is limited to the incomes of each and the obvious disparity between those two incomes.

[35] Ms. Bolleter's counsel submitted calculations for spousal support made in accordance with the *Spousal Support Advisory Guidelines (SSAG)*.<sup>2</sup> The SSAG are not binding on the Court, but they have nevertheless been applied in a number of cases, see: *Rakhra v Rakhra*, 2012 NWTSC 33; and *Michelin. v McLean*, 2013 NWTSC 18. They are a useful guide in determining the amount of support on an interim basis: *M(DR) v M(RB)*, 2006 BCSC 1921 at para 19. They are of assistance here, where the Court has such limited information.

[36] Using Mr. Livingstone's 2014 income in the amount of \$66,838.00, and Ms. Bolleter's estimated income of \$24,800.00, and factoring in a monthly child support payment by Mr. Livingstone of \$800.00 a month, spousal support with a midpoint of \$237.00 a month, and an upper limit of \$478.00 a month, is indicated by the SSAG calculation<sup>3</sup>. In my view, spousal support in the amount of \$400.00 per month is appropriate on an interim basis. This will narrow the gap in income somewhat and provide Ms. Bolleter with basic and immediate "means and needs" relief. The first payment will be due as of October 1, 2015.

### ***Payment for Property Settlement***

[37] There is really no issue here. As noted, in December of 2014, Mr. Livingstone agreed to pay Ms. Bolleter \$3,000.00 representing her share of the net family assets. He has not yet done this and Ms. Bolleter seeks to enforce the agreement. Mr. Livingstone filed an Answer and Counter-Petition on September 15, 2015 in which he confirms he agrees to pay this amount. Accordingly, I will order it be paid, failing which Ms. Bolleter may seek leave to take out a judgment for that amount and associated costs, which she may then enforce.

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<sup>2</sup> Ms. Bolleter's lawyer submitted calculations during submissions in which he used a higher amount of income for Mr. Livingstone and a lower amount for Ms. Bolleter than indicated by the parties in the affidavit evidence. His calculations also relied on a different amount for child support. Accordingly, that calculation was not used by the Court.

<sup>3</sup> This calculation was done using software from [www.mysupportcalculator.ca](http://www.mysupportcalculator.ca)



**ORDER**

[38] An order shall issue with the following terms:

- a. Mr. Livingstone shall pay interim child support to Ms. Bolleter in the amount of \$800.00 per month, commencing October 1, 2015 and continuing until further order;
- b. Mr. Livingstone shall pay interim spousal support to Ms. Bolleter in the amount of \$400.00 per month, commencing October 1, 2015 and continuing until further order;
- c. Mr. Livingstone shall pay Ms. Bolleter \$3,000.00 representing her share of the parties' net family property, failing which, Ms. Bolleter may seek leave to take out judgment for that amount and associated costs;
- d. Within 30 days of these reasons being filed, both parties shall file and serve on the other financial statements as required by the *Federal Child Support Guidelines*;
- e. Costs shall be in the cause.

"K. Shaner"

K. Shaner  
J.S.C.

Dated at Yellowknife, NT, this  
29<sup>th</sup> day of September, 2015

Counsel for Natalie Bolleter:

Donald Large, QC

Mr. Livingstone was self represented

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**Corrigendum of the MEMORANDUM OF JUDGMENT**

**of**

**The Honourable Justice K. Shaner**

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1. The petitioner's name was misspelled and it is now corrected to be read as BOLLETER. Errors occurred in Paragraphs 24, 25, 26, 28, 31, 32, 33, 35, 36, 38a), 38b) and 38c).
2. The citation has been amended to read:

Citation : *Bolleter v Livingstone*, 2015 NWTSC 47.cor1

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**Corrected judgment:** A corrigendum was issued on October 1<sup>st</sup>, 2015; the corrections have been made to the text and the corrigendum is appended to this judgment.

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MEMORANDUM OF JUDGMENT OF  
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