

Ngo v Ngo, 2015 NWTSC 52  
Date: 2015 10 27  
Docket: S-1-DV-2014-104331

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES  
BETWEEN:

MNOEL CHENG NGO  
Petitioner  
-and-

LUCKIE RHIA GALLO NGO  
Respondent

MEMORANDUM OF JUDGMENT

[1] This is an Application to amend a Divorce Petition and a Divorce Judgment. The circumstances leading to it are highly unusual.

A) BACKGROUND AND CHRONOLOGY

[2] The Petitioner filed a Petition for Divorce on July 15, 2014. In it, he applied for a Divorce Judgment and an Order for equal division of property pursuant to the Family Law Act. The Petition does not make any reference to there being children of the marriage.

[3] The Petitioner obtained, in accordance with the Divorce Rules, an Order for service ex-juris, as the Respondent resides in the Philippines. That Order was issued September 5, 2014, and provided that the Respondent would have 90 days from service to respond to the Petition.

[4] On March 19, 2015, the Petitioner submitted an Application to the Court for an Order deeming service to be valid and for leave to note the Respondent in default. That Application was dismissed because the materials served on the Respondent did not include the Order for service ex-juris, and did not otherwise advise her of how much time she had to respond. By Order issued on March 30, 2015, the Petitioner was given directions as to how to remedy this deficiency.

[5] On August 12, 2015, the Petitioner filed the necessary materials to establish that service was in order. He applied to note the Respondent in default, and for a Divorce Judgment as well as an Order for equal division of property pursuant to the Family Law Act. Both Orders issued on August 14, 2015.

[6] On September 12, 2015, the Petitioner applied for a Certificate of Divorce. That Certificate was issued on September 18, 2015.

B) THE PRESENT APPLICATION

[7] The present Application was filed October 16, 2015. In the materials now filed, the Petitioner discloses, for the first time, that there are in fact two children of the marriage, born in 2003 and 2005, who have been in the day to day care of the Respondent for some time. The Petitioner provides information about his financial situation and about the child support he has been paying.

[8] In the Affidavit that he filed in support of the present Application, the Petitioner says that he was representing himself throughout these proceedings and that his English skills are limited. He says he did not understand Canadian divorce laws. He provides the following explanation for not having included reference to the children in the Petition:

I mistakenly thought that because the Respondent and I had an agreement as to custody and child support that worked I could just ask for the divorce.

Supplementary Affidavit of Mnoel Cheng Ngo sworn October 15, 2015, Paragraph 6.

[9] The Petitioner says that having obtained legal advice, he now seeks to correct his mistake. He provides information about his income and financial situation: he started working at his current job in June 2013; his annual income was \$36,367.00 in 2014 and \$16,077.68 in 2013; he has been sending child support to the Respondent in amounts varying between \$200.00 and \$300.00 per month since he has been in Canada. He has also filed a Financial Statement.

[10] The Petitioner says that he is prepared to pay child support in accordance with the Federal Child Support Guidelines. It is worth noting that the amount payable under the Guidelines, in light of his present income, is nearly twice what he has been paying for the last several months.

[11] The Petitioner has not served the Respondent with any of the new materials he has filed. He asks the Court to issue the following Orders:

- 1) an Order amending the Petition for Divorce to reflect the fact that there are two children of the marriage;
- 2) an Order amending the Divorce Judgment to give the parties leave to apply for Corollary Relief pursuant to the Divorce Act;
- 3) a Corollary Relief Order providing that:
  - a) the parties have joint custody of the children;
  - b) the children are in the day to day care of the Respondent;
  - c) he will have reasonable access to the children, as can be agreed between the parties, and;
  - d) he will pay child support in the amount of \$562.43 per month, commencing November 1, 2015.

[12] Suffice it to say that what happened on this matter is disturbing. Some of the information and evidence provided in the materials that led to the issuance of the Divorce Judgment was very misleading. Even bearing in mind that the Petitioner was representing himself, and making allowance for his difficulties with English and lack of familiarity with Canadian divorce laws, what happened is puzzling. The standard form prescribed by the Divorce Rules, which the Petitioner completed, includes questions that relate specifically to the children of the marriage. These portions of the Petition were not merely left blank: inaccurate information was set out under those headings:

7. The particulars regarding the children of the marriage are as follows: no minor children

8. The particulars of all written and oral agreements between the Petitioner and the Respondent regarding the support of the Petitioner or the Respondent, the children of the marriage and custody of or access to the children are as follows: none.

Petition for Divorce filed July 15, 2014, (my emphasis).

[13] I accept that the Petitioner may not have fully understood every aspect of the process, but he understood enough, or got enough assistance, to include a request for an order pursuant to the Family Law Act in the relief sought in the Petition; he was able to put materials together to apply for various orders, including an order for service ex-juris and an order deeming service sufficient.

[14] All that being said, clearly, further orders need to be issued to correct the errors arising from the misleading information that was provided initially. The Petitioner seeks to do that now, which is the right thing to do, but he proposes to have it done without notice to the Respondent. In my view, that is not the way this can be dealt with at this point, given the issues that now need to be addressed. The Court will be dealing with the issues of custody and child support. The Petitioner's most recent Affidavit includes information about his income, about how much child support he has been paying, and how much child support he proposes to pay from this point on. The Respondent should be aware of this evidence and be given an opportunity to respond if she disagrees with any of his assertions, or with his position.

[15] One matter that will have to be addressed is whether there should be an order for retroactive child support. As it now stands, the Petitioner is agreeing that the amount payable should be increased to be in line with the Guidelines, but he suggests that this be effective November 1, 2015. This may well address his obligations under the law on a prospective basis, but it does not address the fact that he appears to have paid less than what he should have, given his income, for more than a year. Had he disclosed the existence of his children from the start, no Divorce Judgment would have issued without child support being addressed, and the Petitioner's child support obligations would likely have been set in accordance with the Guidelines.

[16] Under the circumstances, I am not prepared to deal with these issues on the basis of a written application, and without notice to the Respondent. This matter should be spoken to in Court, in regular Family Chambers. The Petitioner will have to prepare the necessary materials to have this heard in Court, and arrange to have the Respondent served with notice of the hearing and all relevant materials. The Court date will have to be chosen bearing in mind that there will need to be a reasonable amount of time between the Court date and the date of service to ensure that the Respondent has a meaningful opportunity to respond if she wishes to.

[17] In the meantime, the Petitioner's ongoing child support payments should be adjusted immediately to be in accordance with the Guidelines, as this is clearly in the children's best interests.

[18] Accordingly, an Interim Order will issue with the following terms:

1. The Petitioner's Application will be spoken to on a regular Family Chambers date in Yellowknife, to be determined by the Petitioner. The Notice of Motion setting the date shall be filed no later than November 20, 2015;
2. The Petitioner shall serve the Respondent with:
  - the Notice of Motion referred to at Paragraph 1 of this Order;
  - all the materials filed in support of the Application that have not already been served on her;
  - a copy of this Memorandum of Judgment; and
  - a copy of the Formal Order arising from this Memorandum of Judgment.
3. The Respondent shall be served with the materials referred to in Paragraph 2 of this Order at least 60 days before the date scheduled for the hearing;
4. The Petitioner shall pay the Respondent child support in the amount of \$563.00 per month, commencing November 1, 2015, and on the 1st of the month each month thereafter, until further order of the Court.

I direct the Clerk of the Court to prepare the Formal Order.

L.A. Charbonneau

J.S.C.

Dated at Yellowknife, NT, this  
27th day of October, 2015

The Petitioner is Self-Represented

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MEMORANDUM OF JUDGMENT OF  
THE HONOURABLE JUSTICE L.A. CHARBONNEAU