Wilson v Larocque, 2016 NWTSC 26

Date: 2016 04 25
Docket: S-1-FM-2015-000124

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JONATHAN JAMIE WILSON

Applicant

-and-

MICHELLE HARRIET TONI LAROCQUE

Respondent

MEMORANDUM OF JUDGMENT

A) INTRODUCTION AND BACKGROUND

[1] This is an application pursuant to the *Interjurisdictional Support Orders Act*, S.N.W.T. 2002, c. 19. (the *Act*)

[2] On July 4, 2012, the Supreme Court of the Yukon made an Order with respect to the child I.L., born in 2001 (the 2012 Order). Among other things, in that Order, the Court:

a) declared Mr. Wilson to be I.L.'s father;
b) found Mr. Wilson's annual income to be $90,000.00;
c) ordered Mr. Wilson to pay Ms. Larocque $822.00 per month in child support for I.L.;

d) found that Mr. Wilson owed $29,592.00 in retroactive child support for I.L., and ordered that he pay $400.00 per month to Ms. Larocque towards that debt, in addition to ongoing child support, until the retroactive child support was paid in full.

[3] Mr. Wilson lives in the Yukon. Sometime after the 2012 Order was made, his employment situation changed. He initiated the process, contemplated in the *Act*, to have the 2012 Order varied. He swore the documents in support of this variation application on June 19, 2015.

[4] Mr. Wilson's application is based on a drastic reduction in his income. The Financial Statement he attached to his application shows his annual income being $20,000.00, consisting exclusively of Employment Insurance benefits. At the time he swore the application, Mr. Wilson was asking for two things: a reduction of his child support obligations to $164.00 per month, and a cancellation of all arrears.

[5] In accordance with the provisions of the *Act*, the Designated Authority for the Northwest Territories arranged to have Ms. Larocque served with Mr. Wilson's application. Ms. Larocque filed materials in response.

[6] The matter was first before the Court on November 12, 2015 and was adjourned to December 3, 2015 to give Mr. Wilson an opportunity to file additional evidence in support of his application.

[7] Between the two Court appearances, Mr. Wilson sent additional documents to the Designated Authority, including photocopies of letters he had sent to various prospective employers. These documents were not sworn. Counsel for the Designated Authority filed them with the Court.

B) THE DECEMBER 3, 2015 APPEARANCE

[8] On December 3, 2015, the matter was spoken to again. Mr. Wilson appeared by phone. Ms. Larocque appeared in person. Neither of them had counsel. Counsel for the Designated Authority also appeared.

[9] It is important to note that the Designated Authority does not take a position on these matters. That is not its role. But the practice in this jurisdiction is that counsel for the Designated Authority reviews the materials filed by the parties and identifies issues that arise on the face of those materials. This helps the parties, especially self-represented parties, understand the shortcomings in their materials. It flags for them the areas where they may need to provide additional evidence to advance their case. It is also of considerable assistance to the Court.

[10] In this case, counsel for the Designated Authority identified a number of questions arising from the materials which had, at that point, been provided by Mr. Wilson.

[11] For example, counsel noted that his materials referred to two jobs that he had recently held (with PM Recycle from July 2015 to September 2015, and with Knotty Note Construction from September 2015 to present - which I take it refers to the time the resume was prepared), but did not indicate what his income was during those periods of employment.

[12] Counsel also noted that, as far as the documents tending to confirm Mr. Wilson's attempts to secure employment, the materials provided related to attempts he made to secure employment after his variation application was filed, but not before.

[13] When he addressed the Court, Mr. Wilson advised that he now has employment. He provided information about his current income. He said that he was not asking that his child support obligations be based on an annual income of $20,000.00. He was asking, rather, that they be adjusted to reflect his current income.

[14] Ms. Larocque, very fairly, took no issue with Mr. Wilson's request to have the ongoing child support obligations adjusted to reflect his current income. She did not argue that a higher level of income should be imputed to him.

[15] Given the positions of the parties, I issued an Order varying Mr. Wilson's ongoing child support obligations, and dealing with a few other non-contentious issues.

[16] The issue of arrears, however, remained outstanding. I understood from what Mr. Wilson said on December 3, 2015 that he was still asking that the arrears be cancelled. Ms. Larocque opposed that request.

[17] The law that governs applications to rescind arrears is well established: the person seeking to have arrears cancelled must establish that he or she cannot now pay the arrears, and will never be in the position to pay them in the future:

> A present inability to pay arrears of child support does not by itself justify a variation order. It may justify a suspension of enforcement in relation to the arrears for a limited time, or an order providing for periodic payments on the arrears. However, in the absence of some special circumstance, a variation order should only be considered where the former spouse has established on a balance of probabilities that he or she cannot pay and will not in the future be able to pay the arrears.
>
> 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.

Haisman v. Haisman [1994] A.J. No. 553 (Alta C.A.), Paragraphs 26-27, (leave to appeal refused [1995] S.C.C.A. No.86).

[18] These principles have been consistently followed by this Court for many years. See for example *Kogiak v. Kogiak* 2016 NWTSC 13; *Drygeese v. Nitah* 2014 NWTSC 70; *Zoe v. Fish* 2013 NWTSC 51; *Mingo v. Faulkne*r 2013 NWTSC 83; *Menzies v. Simon* 2011 NWTSC 26; *Ettagiak v. Jonvonic* 2002 NWTSC 46;

[19] The materials that were before the Court on December 3, 2015 were insufficient for Mr. Wilson to meet the stringent *Haisman* test. In addition to the issues raised by counsel for the Designated Authority about additional details that would be needed to supplement the information provided about the present situation, those materials did not include any information establishing Mr. Wilson's future inability to pay arrears. In addition, the additional documents submitted by Mr. Wilson before the December 3, 2015 hearing were not sworn. In deciding applications like this one, the Court can only take into account information that is presented in the form of properly adduced evidence.

[20] I explained this to Mr. Wilson and, bearing in mind that he is representing himself and is not familiar with what was required in an application like this one, I granted him a further adjournment to file additional evidence in support of his application to rescind arrears. I gave him until January 29, 2016 to do so. Rather than have everyone appear in Court again, the parties agreed I could review any additional materials filed by Mr. Wilson and issue a written decision disposing of the balance of his application.

C) THE MATERIALS FILED SINCE THE DECEMBER 3 HEARING

[21] Mr. Wilson forwarded additional information to counsel for the Designated Authority on January 29, 2016. Those materials were filed on February 1, 2016. I have now had an opportunity to review them.

[22] As I already noted, Mr. Wilson's application, initially, was framed as an application to have all existing arrears cancelled. The evidence now before the Court continues to be insufficient to meet the *Haisman* test. It does not establish on a balance of probabilities Mr. Wilson's past and future inability to pay the arrears.

[23] That being said, based on the materials filed by Mr. Wilson most recently, it appears that he is not asking that the arrears be cancelled. Exhibit "A" to his affidavit is a letter that he has prepared, which he deposes is true. The opening sentence of that letter reads as follows:

> I am writing in regards to requesting to reduce my arrears. Currently I am court ordered to pay the amount of $400.00 monthly. I am requesting to reduce this amount to $200.00 a month for the following reasons
> (...)

Exhibit "A" to Affidavit of Johnathan Wilson affirmed January 29, 2016.

[24] Although he uses the phrase "reduce the arrears", Mr. Wilson is actually referring to a reduction in the amount that he has to pay each month towards the retroactive child support order that was made in 2012. He is not asking that the total amount that he owes in retroactive child support be reduced; rather, he is asking to pay that debt at a slower rate, to take into account that his income is lower now than it was when he was ordered to repay that debt at a rate of $400.00

per month. This would mean, obviously, that it would take him longer to pay off the debt. But it would not reduce the total amount that he owes Ms. Larocque.

[25] As it is now framed, Mr. Wilson's request does not engage the principles outlined in *Haisman*. The issue is whether the reduction of his income, and the other information set out in Exhibit "A" about his current financial constraints, justify a reduction in the rate at which he should be required to pay the retroactive child support that he owes.

[26] In my view, Mr. Wilson's request to reduce the retroactive child support installments is not unreasonable. An adjustment to the amount of those payments is justified given the significant reduction in his income since the 2012 Order was made, especially since there is no suggestion or evidence that Mr. Wilson is underemployed. Mr. Wilson should still, however, be required to make regular payments towards the retroactive child support debt every month, in addition to his ongoing child support payments, until all the retroactive child support, and any arrears, have been paid in full.

[27] The parties should be commended for having approached this variation application in a fair and reasonable manner that took into account the changes in Mr. Wilson's employment situation, while also recognizing his obligation to support to his child. This matter has taken some time to complete, for a number of reasons: the process set out in the *Act* is somewhat cumbersome; it took some time for Mr. Wilson to put adequate information before the Court; the nature of his application changed somewhat from what he initially sought; and there were additional delays that arose because of the Court's own schedule. Hopefully, both parties can move forward from this point, without the need for further intervention by the Court.

[28] The Application is granted. In addition to the variation I granted on December 3, 2015, Paragraph 2 of the Order issued by the Supreme Court of the Yukon on July 4, 2012, is further varied to read as follows:

> 2. The Respondent shall make retroactive child support payments totaling $29,592.00. Effective February 1, 2016, the Respondent shall make payments of $200.00 per month, until the sum of $29,592.00 in retroactive child support, and any other child support arrears, have been paid in full.

[29] I direct that the Designated Authority prepare a draft Order to this effect. Once filed, I direct that a copy of the Order, and of this Memorandum of Judgment, be forwarded to the Designated Authority in the Yukon counterpart, in accordance with the requirements set out in the *Act*.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
25th day of April, 2016

Counsel for Applicant:	Self Represented
Counsel for Respondent:	Self Represented
Counsel for Designated Authority:	Laura Jeffrey

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