Date: 2017 07 10
Docket: S-1-FM-2012-000084

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LORETTA RANSOM

Applicant

-and-

ROBERT DOUGLAS COULTER

Respondent

-and-

DAVID DOWE

Third Party

MEMORANDUM OF JUDGMENT

[1] This is an application by Loretta Ransom for variation of child support payable by her to Robert Coulter. The two are parents of a child, Isaac, who is now 9 years old. The third party, David Dowe, is the former husband of Ransom. He is considered to be a step-parent to Isaac but he is not a party to this application.

[2] On August 14, 2014, I issued a judgment, *Ransom v Coulter*, 2014 NWTSC 55, whereby I ordered that Ransom pay to Coulter, for the support of Isaac, the sum of $1,112.00 per month. This was after a failed claim by Ransom that the custodial arrangement for Isaac, as between her and Coulter, was a "shared custody" arrangement pursuant to s.11 of the *Child Support Guidelines* of the *Children's Law Act*, S.N.W.T. 1997, c.14. At that time, I said that, while I thought the spirit of the agreement between Ransom and Coulter was for an equal joint parenting arrangement, the reality was that the way Ransom chose to structure her time with Isaac did not meet the 40% threshold required for a "shared parenting" designation.

[3] Ransom now seeks to reduce the amount of child support on the basis of "undue hardship".

[4] Undue hardship claims are governed by s.12 of the *Guidelines*:

> 12. (1) A court may, on application, award an amount of support that is different from the amount determined under any of sections 4 to 7, 10 or 11 where the court finds that a parent of the child in respect of whom the application is made, or the child in respect of whom the application is made, would otherwise suffer undue hardship.
>
> (2) Circumstances that may cause a parent or child to suffer undue hardship include the following:
>
> (a) the parent has responsibility for an unusually high level of debts reasonably incurred
>
> (i) to support the parents and their children before the separation, if the parents lived together with the child, or
>
> (ii) to earn a living;
>
> (b) the parent has unusually high expenses in relation to exercising access to a child for whom the parents are both legally responsible;
>
> (c) the parent has a legal duty under a judgment, an order or a parental or separation agreement to support any person;
>
> (d) the parent has a legal duty to support a child, other than a child for whom the parents are both legally responsible, who is
>
> (i) a minor, or
>
> (ii) the age of majority or over, but who is unable, by reason of illness, disability, pursuit of reasonable education or other cause, to withdraw from a parent's charge;
>
> (e) the parent has a legal duty to support any person who is unable to obtain the necessaries of life due to an illness or disability.
>
> (3) Notwithstanding a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of opinion that the household of the parent or child in respect of whom undue hardship is claimed would, after determining the amount of support under any of sections 4 to 7, 10 or 11, have a higher standard of living than the household of the other person with whom the standard of living is compared.

> (4) In comparing standards of living for the purpose of subsection (3), the court may use the comparison of household standards of living test set out in Schedule B.
>
> (5) Where the court awards a different amount of support under subsection (1), it may specify, in the child support order, a reasonable time for the satisfaction of any obligation arising from circumstances that have caused or are causing undue hardship and the amount of support payable at the end of that time
>
> (6) A court shall provide written reasons for its decision where the court makes a child support order in a different amount under subsection (1).

[5] Courts across Canada have taken a very restrictive approach to undue hardship claims. The rationale for doing so is so as not to dilute or undermine the primary objectives of the *Guidelines*, those being to establish certainty and consistency in child support.

[6] There are three parts to a claim of undue hardship:

1. The person making the claim must show that there are circumstances that will create undue hardship if the table amount is ordered to be paid;
2. If this is the case, the person making the claim must show that his or her standard of living is lower than that of the respondent;
3. If the first two parts of the test are made out, the court has the discretion to make a support order different than the table amount, based on the means, needs and circumstances of the parties. But the court also retains the discretion to refuse a reduction in the table amount even if the first two parts are made out.

[7] As stated by the Alberta Court of Appeal, in *Hanmore v Hanmore*, 2000 ABCA 57, at para. 17, the "burden of establishing a claim of undue hardship is a heavy one":

> The hardship must be more than awkward or inconvenient. It must be exceptional, excessive, or disproportionate in the circumstances. Further, it is not sufficient that the payor spouse has obligations to a new family or has a lower household standard of living than the payee spouse. The applicant must specifically identify the hardship which is said to be undue. A general claim regarding an inability to pay or a generic reference to the overall expense of a new household will not suffice.

[8] And, as noted by many commentators, separation and divided custodial arrangements always cause some degree of economic hardship. That is why the authorities are consistent in saying that the hardship must be exceptional or excessive, rather than the inevitable consequence of dividing economic resources between two households.

[9] In this case, Ransom bases her undue hardship claim on sub-sections 12(2)(c) and (d) of the *Guidelines*. Specifically, she has responsibility, under her separation agreements with both Coulter and Dowe, to support not just Isaac but also her children from her marriage to Dowe. There are three children from that marriage, ages 14, 17 and 19. The basic arrangements are as follows:

a) Ransom and Coulter have joint custody of Isaac;
b) Ransom and Dowe share equal time with their three children who rotate between homes;
c) Ransom has been covering child care costs for Isaac while he is in her care but a Memorandum of Understanding between her and Dowe contemplates the sharing of those costs;
d) Dowe does not and will not be contributing towards Ransom's child support payments to Coulter;
e) Ransom will be assuming $40,000.00 worth of debt accumulated by her and Dowe as well as transferring an RRSP and a portion of her pension to Dowe;
f) The eldest child of Ransom and Dowe, now over the age of majority, will soon be going out on his own and is now independent;

[10] The child support order of $1,112.00 per month was based on Ransom's 2014 annual gross income of $122,674.00. Her current gross income is $119,097.00. This would result in monthly child support of $1,083.00 pursuant to the *Guidelines*. Based on her most recent financial statements, Ransom claims a monthly surplus of only $53.00 after payment of expenses and debts.

[11] Coulter has an annual gross income of $94,968.00 (without the inclusion of child support). When the monthly child support payments are included, his annual income amounts to $108,312.00. After deductions his claimed expenses and debts, Coulter says he has a monthly surplus of $763.00.

[12] Coulter's counsel concedes that Ransom is bearing the expense of caring for other children but, he submits, those costs are shared with Dowe. Also, he says, her debts, while high, were not incurred with respect to this child (Isaac) and with respect to this relationship (with Coulter). Thus, Coulter should not bear the burden of the breakdown of her relationship with Dowe.

[13] Coulter's counsel also takes issue with Ransom's calculation of some of her expenses. He says that her surplus should more accurately be in the area of $1,600.00 per month. Ransom, while acknowledging that some of her calculations could be subject to adjustment, says that at most her monthly surplus might reach $860.00.

[14] No matter how one quibbles about expense claims, I think it is undeniable, having gone through the comparison of household standards of living test, as stipulated by subsections 12(3) and (4) of the *Guidelines*, that Ransom has a lower standard of living than does Coulter. But that is not really the issue.

[15] The issue, as put by Coulter's counsel, is not whether Ransom has a lower household standard of living than Coulter, or whether Ransom is suffering hardship. The issue is whether that hardship is "undue" as that term has been defined in the case law.

[16] Ransom's primary argument is that her situation is unique. She did not manipulate her time with Isaac so as to meet the 40% threshold for shared custody. The only reason she failed to reach that mark was because she wanted to give time for Isaac to be with Dowe and the other three children. This continues to be the case and I think it is commendable (and I said as much in 2014). But the point that Ransom makes is that, if she had managed to satisfy the 40% mark, her child support obligations, based on comparing the *Guidelines* amounts based on respective incomes, would have been $600.00 to $900.00 lower per month.

[17] I recognize that, had Ransom met the 40% threshold in 2014, the amount of monthly child support may be, and most likely would have been, different from the *Guidelines* amount. But the fact is that she did not meet that threshold and as a result the law was quite specific in determining the amount payable.

[18] I also recognize that, ultimately, undue hardship is a discretionary decision. It can be understood as being remedial. But the remedy, to off-set what is a financial burden, cannot be applied in an arbitrary fashion. Just because I may sympathize with Ransom's situation, and no matter how commendable I may

think her custodial arrangements may be, I cannot exercise my discretion without a foundation in law.

[19] When I consider how the term "undue" has been interpreted by the appellate courts: "exceptional, excessive or disproportionate in the circumstances" (as per *Hanmore*, *supra*); excessive, extreme, improper, unreasonable, unjustified … more than awkward or inconvenient" (as per *Van Good v Van Good* (1998), 44 R.F.L. (4th) 314 (B.C.C.A.), and *Green v Green*, 2005, NLCA 29); "excessively hard living conditions" (as per *Ellis v Ellis* (1999), 45 R.F.L. (4th) 234 (N.S.C.A.)); I cannot say that the applicant has met this test. She certainly suffers hardship, but in my conclusion it does not satisfy the burden of being "undue" as that term is known is law.

[20] The application for variation on the basis of undue hardship is therefore dismissed.

[21] Coulter's counsel conceded that the child support order can be varied to reflect the applicable *Guidelines* amount for the applicant's current income. There will therefore be an order varying the monthly child support payable by Ransom to Coulter for the support of Isaac to $1,083.00. That order will be retroactive to December 1st, 2016 (this application for variation having been filed in November 2016).

[22] Under the circumstances, there will be no order as to costs.

J.Z. Vertes
J.S.C.

Dated at Yellowknife, NT, this
th day of July, 2017

Ms. Loretta Ransom, Applicant:	Self-represented
Counsel for the Respondent:	Mr. Paul Parker
Counsel for the Third Party:	Mrs. Betty-Lou McIlmoyle

S-1-FM-2012-000084

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LORETTA RANSOM

Applicant

-and-

ROBERT DOUGLAS COULTER

Respondent

-and-

DAVID DOWE

Third Party

MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE J.Z. VERTES