

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BETHAN ROSE WILLIAMS

Petitioner (Respondent)

- and -

ALEXANDER CHRISTOPHER ROBERT STEINWAND

Respondent (Applicant)

MEMORANDUM OF JUDGMENT

INTRODUCTION

[1] This was an application heard in Special Chambers where the Applicant, Alexander Steinwand, is seeking to vary his ongoing child support obligation effective January 1, 2016. The Respondent, Bethan Williams, is opposed to the variation sought by the Applicant and is seeking that child support be retroactively varied to reflect the Applicant's actual income earned during 2014 and 2015.

BACKGROUND

[2] The parties were married in 1999 and have two children. They separated in 2002 and were divorced in 2004. A Corollary Relief Order was issued in 2005 which did not require either party to pay child support, as the parties were sharing custody of the children. Ms. Williams sought a variation of the Corollary Relief Order in 2014 on the basis that the parties were no longer sharing custody of the

children. She sought ongoing and retroactive child support and that Mr. Steinwand pay his proportionate share of the children's expenses. Following a hearing, *Williams v Steinwand* 2014 NWTSC 74, the Order was varied to reflect a number of changes including that Mr. Steinwand had an annual income of \$174,858, child support was payable by Mr. Steinwand in the amount of \$2,432 per month commencing December 1, 2014 and retroactive child support in the amount of \$29,758 was ordered payable for the period between January 1, 2012 and November 30, 2014.

[3] At the time of the hearing which occurred over three dates between March 4, 2014 and July 16, 2014, the most recent information presented to the Court regarding Mr. Steinwand's income was his 2013 Notice of Assessment from the Canada Revenue Agency.

[4] Mr. Steinwand's income information for 2014 and 2015 is now available and both parties now seek an adjustment of the child support payable by Mr. Steinwand. However, they do not agree on the date from which the child support should be adjusted nor the amount of child support which should be payable.

ANALYSIS

Which Tables Should Be Used?

[5] A preliminary issue is which tables should be used to determine Mr. Steinwand's child support obligation: Alberta or Northwest Territories. Mr. Steinwand had been living and working in Alberta for several years. He now claims the Northwest Territories as his residence. Ms. Williams has questioned whether he is residing in the Northwest Territories or continues to be a resident of Alberta.

[6] The applicable table to be used, pursuant to s. 3(a) of the *Federal Child Support Guidelines* SOR/97-165 (the *Guidelines*), is the table for the province in which the payor spouse ordinarily resides at the time of the variation application:

- (3) The applicable table is
 - (a) if the spouse against whom an order is sought resides in Canada,
 - (i) the table for the province in which that spouse ordinarily resides at the time the application for the child support order, or for a

variation order in respect of a child support order, is made or the amount is to be recalculated under section 25.1 of the Act,

- (ii) where the court is satisfied that the province in which that spouse ordinarily resides has changed since the time described in subparagraph (i), the table for the province in which the spouse ordinarily resides at the time of determining the amount of support, or
- (iii) where the court is satisfied that, in the near future after determination of the amount of support, that spouse will ordinarily reside in a given province other than the province in which the spouse ordinarily resides at the time of that determination, the table for the given province;

[7] In the 2014 decision, there was no dispute that Mr. Steinwand lived in Alberta and the child support tables for Alberta were used to determine his child support obligation. In his 2014 Notice of Assessment, Mr. Steinwand claimed Alberta as his province of residence. In his 2015 Tax Return, he claimed the Northwest Territories as his province of residence. In January 2016, both parties filed an application to vary the child support payable by Mr. Steinwand.

[8] Ms. Williams argues that there is significant evidence that Mr. Steinwand is actually a resident of Alberta: his driver's license is issued by the Province of Alberta; he is insured by Alberta Heath; his vehicle in Yellowknife has an Alberta licence plate; correspondence from his employer and bank were sent in November and December 2015 to an address in Alberta; he signed a document in January 2016 identifying himself as being from Edmonton, Alberta; his Record of Employment issued in January 2016 shows his address as being in Alberta; and he does not return regularly to Yellowknife.

[9] Mr. Steinwand claims that he moved out of the Edmonton address in December 2014 and that he moved to the Northwest Territories in January 2015. He says that he shares a residence with his mother and brother, paying rent in cash. He currently works in Ontario, having commenced employment with Northern Palladium in January 2016.

[10] While Mr. Steinwand filed his income tax return for the 2015 tax year claiming the Northwest Territories as his residence, the bulk of the evidence suggests that Mr. Steinwand continues to be ordinarily resident in Alberta. While he claims to live with his mother and pay rent in Yellowknife, he has not presented a lease or proof of rent payments and he returns to Yellowknife infrequently. In the circumstances, I am satisfied that Mr. Steinwand was

ordinarily resident in Alberta at the time this application was commenced and that the tables for that province should be used in this application.

Variation of Child Support

[11] The *Guidelines* are used to determine the payor parent's income and the amount of child support which will be paid. Section 16 of the *Guidelines* sets out that a payor parent's annual income is based upon the sources of income that constitute total income in the parent's T1 General form issued by Revenue Canada.

[12] Where the court's opinion is that the method does not result in the fairest determination of income, the court can consider the parent's income over the last three years and determine an amount that is fair and reasonable considering any pattern of income, fluctuation in income or non-recurring amounts during those years: s. 17, *Guidelines*.

[13] A court may also impute such income as it considers appropriate in certain circumstances including where the payor parent is intentionally under-employed or unemployed: s. 19, *Guidelines*.

[14] In the 2014 decision, the Court reviewed Mr. Steinwand's income from 2009 to 2013 and noted that his income had fluctuated over the years, being anywhere from a low of \$123,181 in 2009 to a high of \$207,415 in 2012. The Court accepted Mr. Steinwand's explanation that the drop in his income from 2011 and 2012 to 2013 was a result of receiving less overtime and bonuses than in previous years. The Court was satisfied that the income for the year 2013 should be used to set his ongoing child support obligations. At the time of the 2014 hearing, it does not appear that there was information about Mr. Steinwand's current income before the Court. The annual income used to determine Mr. Steinwand's child support obligation commencing December 1, 2014 was his 2013 income of \$174,858. In that decision, the Court also rejected Mr. Steinwand's hardship claim.

[15] Mr. Steinwand's Notice of Assessment from the Canada Revenue Agency indicates that his total income for 2014 was \$221,399. The tax return summary for Mr. Steinwand's 2015 income tax return indicates that his total income was \$265,416.24.

[16] Ms. Williams' position is that Mr. Steinwand's child support should be varied to reflect his actual income in 2014 and 2015 and that his child support for

2016 should be based upon an average of his last three years income or that income should be imputed to him based upon the income he could have earned had he remained with Joy Global.

[17] Ms. Williams' cites Mr. Steinwand's failure to provide his income information annually in accordance with the 2005 Order, his reluctance to disclose financial information, his use of assets and employment lump sum payments to pay his debts rather than to pay child support or arrears as factors to consider in determining Mr. Steinwand's income for child support purposes.

[18] When the parties initially separated and when the 2005 Order was made, Mr. Steinwand's income was not an issue. However, over the past few years, it has increasingly become one. Mr. Steinwand has been slow to respond to Ms. Williams requests to provide her with his financial information and has understated his income. His conduct with respect to disclosing his income was in issue during the 2014 hearing where both parties testified.

[19] In the decision, the Court found that "Mr. Steinwand engaged in blameworthy conduct in this case, most notably, because he misled Ms. Williams about his level of income." *Williams v. Steinwand, supra* at para. 119.

[20] Justice Charbonneau went on to state, at para. 122, "To put it bluntly, Mr. Steinwand was playing games, and was hiding his real income from Ms. Williams because he was trying to avoid having to pay her more child support."

[21] Despite this Court's ruling in 2014, Mr. Steinwand continues to be reluctant to disclose his financial information to Ms. Williams. The 2005 Order requires the parties to exchange their Income Tax Return and Notice of Assessment by June 1 of each year. The evidence provided by Ms. Williams indicates that she began asking Mr. Steinwand to provide his 2014 Notice of Assessment on June 17, 2015. Ms. Williams made several requests before Mr. Steinwand provided his 2014 Notice of Assessment on September 8, 2015.

[22] When the Court ruled in 2014, it did so on the basis of Mr. Steinwand's 2013 income and there was no indication that his income for 2014 and subsequent years would be significantly different than what Mr. Steinwand earned in 2013. The reality is that Mr. Steinwand earned \$221,399 in 2014, which is significantly more than the \$174,858 he earned in 2013 and warrants revisiting the child support that he was ordered to pay.

[23] In my view, Mr. Steinwand's child support obligation should be adjusted based on his actual income earned in 2015. I am reluctant to interfere with the

decision made by this Court in November 2014 which, after having heard *viva voce* evidence and hearing submissions from counsel, set child support arrears up to November 2014. Therefore, any change in child support will be effective January 1, 2015 and based upon his income for 2015.

[24] Mr. Steinwand's total income in 2015 was \$265,416.24. The sources of his income were employment income of \$182,750.53, RRSP income of \$33,599.26 and severance pay from Shell of \$49,066.00.

[25] A payor spouse's annual income is based upon the Total Income in their T1 General Form issued by the Canada Revenue Agency and adjusted in accordance with Schedule III.

[26] Schedule III allows the deduction of some expenses pursuant to the *Income Tax Act* (Canada), R.S.C., 1985, c. 1 (5th Supp.) and of some other sources of income. With respect to adjustments for RRSP withdrawals and severance payments, Schedule III does not specifically permit those to be deducted from the calculation of a payor's income.

[27] As I held in *Pitt v Tee* 2016 NWTSC 40 at paras. 18-21, RRSP income is presumptively part of a payor's income for child support purposes; the inclusion of RRSP withdrawals in the determination of a payor's income is not mandatory and the Court retains the discretion to exclude it in appropriate circumstances.

[28] Severance payments are also considered to be part of a recipient's income. As stated in *C.M v S.M.*, 1997 ABCA 409 at para. 18, a severance package is part of an income stream:

These monies are intended to be an ongoing income stream as if the respondent would be working throughout this period. It should be added to any other income he earns during the period to determine his ability to pay.

[29] In this case, Mr. Steinwand withdrew \$33,599.26 in RRSP's and received severance pay of \$49,066.00, using the money to pay down debts. Mr. Steinwand says that he used his severance to pay two VISA cards in the approximate amount of \$10,000.00 each and a line of credit in the approximate amount of \$40,000.00. He also says that he has paid legal expenses, arising from the 2014 hearing, from defending himself in a criminal matter and getting a divorce. He also points to a number of other debts that he is making payments on. Mr. Steinwand also owes child support and is required to make payments for retroactive child support.

[30] Mr. Steinwand carries a high amount of debt and has used any additional income he has received to pay down various debts but not his child support arrears. This also occurred when the previous proceeding was underway. Justice Charbonneau noted in the 2014 decision, at para. 129, that Mr. Steinwand “made a conscious decision to use his funds to clear his own debts rather than have them available to satisfy a child support order.”

[31] While the RRSP withdrawal and severance payment were non-recurring amounts, they were funds received by Mr. Steinwand in 2015 and available to him to do with as he saw fit. The fact that Mr. Steinwand used the funds to pay down debt does not change the nature of the funds. He could have used the funds to pay child support arrears and meet his child support obligations but he chose not to. In my view, it is income as contemplated by the *Guidelines* and there is nothing to suggest that it should not be included as part of the Respondent’s income for 2015.

[32] Therefore, Mr. Steinwand’s income for 2015 was \$265,416 and the Alberta table amount for the support of two children is \$3,646 per month for the period between January 1, 2015 and January 1, 2016.

[33] Mr. Steinwand’s income has dropped significantly in the last couple of years. Mr. Steinwand switched jobs in 2015, first working for Shell before being let go, and then for Joy Global. Effective January 2016, he changed employers again and was working for North American Palladium. Mr. Steinwand’s explanation for leaving Joy Global was that there was a lack of work and that working at Joy Global was not stable or consistent. He accepted a position with North American Palladium at a lower base rate of pay, \$38.50 per hour working a fourteen day on, fourteen day off rotation. Mr. Steinwand believes that this will result in an income in the range of \$80,000 to \$100,000 per year. Mr. Steinwand provided two pay stubs from June 17 and 30, 2016 which appear to demonstrate that Mr. Steinwand would earn somewhere in the range of \$90,000 in 2016.

[34] Mr. Steinwand’s explanations for the significant decrease in his income is the lack of stability of work in the oil industry in Alberta. Mr. Steinwand argues that, in his new position and with the slowdown in the oil industry, he is not able to earn the same income that he had in recent years. His position is that his total income for child support purposes should be based upon his the income that he expects to earn with North American Palladium, effective January 2016. Based upon an expected annual income of \$90,000, that would result in child support payable in the amount of \$1,347 per month.

[35] In my view, using Mr. Steinwand's information from 2016 and his expected income would not be the fairest determination of income. Mr. Steinwand has consistently underestimated his annual income and he has worked overtime hours and received bonuses in the past. Whether he will work as many overtime hours or receive similar bonuses is difficult to say, but I do not believe that it would be a fair determination to use income of \$90,000 per year when Mr. Steinwand has earned significantly more than that from 2010 to 2015.

[36] Mr. Steinwand's income over the previous three years is as follows:

2013:	\$174,858
2014:	\$221,399
2015:	\$265,416

[37] The income from 2015, as mentioned, includes non-recurring payments of \$49,066 in severance pay and \$33,599 in RRSP income. As these are non-recurring amounts and not regular sources of income, they will be deducted from the calculation of Mr. Steinwand's 2015 income. This results in an income of \$182,751.

[38] Using Mr. Steinwand's three year average income would result in a fairer determination of income in the circumstances. Mr. Steinwand's three year average income is \$193,002 and the Alberta table amount for the support of two children is \$2,675 per month for the period commencing February 1, 2016 and payable on the 1st of every month thereafter.

CONCLUSION

[39] For these reasons, there will be an Order as follows:

1. The Corollary Relief Order issued on February 22, 2005, is varied as follows:
 - a) The preamble of the Order is amended to reflect that the Respondent has an annual imputed income of \$193,002

- b) For the period of January 1, 2015 to January 1, 2016, the Respondent shall pay to the Petitioner the amount of \$3,646 per month in child support based upon an actual income of \$265,416;
- c) Commencing February 1, 2016, and every month thereafter, the Respondent shall pay child support to the Petitioner in the amount of \$2,675 per month, payable on the 1st day of each month.

[40] The parties may contact the Registry within 14 days of the filing of this Memorandum if they wish to speak to costs.

S.H. Smallwood
J.S.C.

Dated at Yellowknife, NT, this
14th day of July, 2017

Counsel for Petitioner (Respondent)
Counsel for the Respondent (Applicant):

Mrs. Margo L. Nightingale
Mr. Erik L. Bruveris

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

BETWEEN:

BETHAN ROSE WILLIAMS

Petitioner (Respondent)

- and -

ALEXANDER CHRISTOPHER ROBERT
STEINWAND

Respondent (Applicant)

MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE S.H. SMALLWOOD
