

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOHN-MICHAEL PETER PRAETZEL

Applicant

- and -

RAYLENE SUSAN PORTER

Respondent

MEMORANDUM OF JUDGMENT

[1] This is a decision on the issues of child support, undue hardship and the future cost of access. The parties have a child, M, who was born in 2005. Their relationship ended in 2007. Since the end of the relationship, they have been engaged in ongoing litigation regarding custody, access, child support and other issues.

[2] It is not necessary to set out the entire history of what has occurred since the parties' separation for the purposes of this decision; therefore, I will only refer to the relevant facts.

[3] There have been several custody and access arrangements over the years. In November 2020, the parties agreed to a Consent Order in which they agreed to joint custody of M and M's residence in Alberta was confirmed. Provisions were made for Ms. Porter's access to M by telephone, video conferencing, text, email or other digital means.

[4] An order for child support was made on February 12, 2021 in which Ms. Porter was ordered to pay child support to Mr. Praetzel in the amount of \$600.00 per month for the period of April to December 2020. This amount was to be applied to

any arrears of child support that Mr. Praetzel had accrued. From January 2021 on, Ms. Porter was order to pay child support in the amount of \$750.00 per month which was less than the *Child Support Guidelines* amount for her income.

[5] An order was made for access on June 16, 2021 in which the terms of Ms. Porter's access to M was addressed. A further order was made on July 28, 2021 in which it was ordered that the costs of travel for M or Ms. Porter to exercise access to M would be shared equally between the parties. On September 27, 2021, another order with respect to access was made and the order continued the provisions with respect to the parties sharing some costs of access.

[6] This matter was before me again on June 8, 2022 and at that time, an order was made for summer access and for future access. The terms of that order required the parties to share equally the cost of travel for summer access. On that date, I heard submissions on the issue of child support and the future cost of access as well as Ms. Porter's application for undue hardship. I reserved decision on those issues.

[7] Ms. Porter has filed a Notice of Motion seeking to have ongoing child support stayed on the basis of undue hardship and for the cost of access to be shared equally by the parties. Mr. Praetzel is seeking an adjustment of child support on the basis that the order that I made in 2021 indicated that child support would be reviewed in one year.

[8] A claim of undue hardship can be made and where it is established, a court may award child support in an amount that is different than what is required by the *Child Support Guidelines*. The *Children's Law Act* and the *Child Support Guidelines* set out the legislative framework for considering undue hardship claims.

[9] Claiming undue hardship is a two-step process. The applicant must prove the specific facts that are at the core of undue hardship. There is a non-exhaustive list of things that may constitute undue hardship listed in s. 12(2) of the *Child Support Guidelines*. The second step requires the applicant to prove that their household will have a lower standard of living than the other parent unless the amount of support the applicant is required to pay is reduced. Schedule B of the *Child Support Guidelines* establishes a formula to determine this. Even if undue hardship is shown according to the legislative framework, a court may still require that the *Guideline* amount be paid. *Mingo v Faulkner*, 2013 NWTSC 83 at paras 19-21.

[10] As stated in *K(JW) v K(KC)*, 2019 NWTSC 54 at para 24, establishing undue hardship is not an easy claim to substantiate:

The threshold to establish undue hardship is high. Mere economic difficulty in meeting the burden is insufficient to meet the threshold. “[A] claimant [...] must satisfy the court that the difficulty, suffering or pain is excessive or disproportionate”. *Barrie v Barrie*, [1998] ABQB 291 (CanLII) at para. 23.

[11] In her Affidavit, Ms. Porter claims that she has unusually high access costs to exercise access to M. Unusually high access costs are a circumstance under s. 12(2) of the *Child Support Guidelines* which may cause a parent to suffer undue hardship. If Ms. Porter establishes that she has unusually high access costs, then she will have met the first step of the undue hardship analysis.

[12] Ms. Porter says that she has unusually high expenses to access M as a result of his relocation to Alberta. She points to the cost for herself and M’s brother, J (who is not a child of the relationship with Mr. Praetzel) to see M. Travelling to Alberta to exercise access has usually involved Ms. Porter flying from Yellowknife to Edmonton and renting a car to travel to the community where M lives.

[13] Ms. Porter has travelled to Alberta to exercise access with M five times between July 30, 2021 and March 27, 2022. On two occasions, M’s brother accompanied her. She says that she has paid \$7,809.86 in basic access costs for which she has been reimbursed \$1,385.53 by Mr. Praetzel. She says that this unusually high cost is an obstacle to exercising access and to the frequency of access for her and J to see M.

[14] Ms. Porter says that if she were to see M monthly, the cost of access could total over \$18,000.00 per year in travel and accommodation. Taking into account the income of both parties, I do not think that it is realistic or reasonable to expect to exercise access to M on a monthly basis or to incur that amount of expense for access on an annual basis. If that is something that Ms. Porter expects to occur, then it is not something that Mr. Praetzel should be expected to fund.

[15] Considering the \$7,809.86 that Ms. Porter has claimed she has incurred for what amounts to 7 trips (5 for her, 2 for J) between July 2021 and March 2022, the average cost per trip is \$1,115.69. The expenses for Ms. Porter to exercise access during that period would average out to \$5,578.47 ($\$1,115.69 \times 5$) for which Mr. Praetzel was required to pay half of the airfare or gas if Ms. Porter drove to Alberta. It is not reasonable to expect Mr. Praetzel, who has no legal obligation in relation to J, to contribute to the expenses of J’s travel.

[16] The amount of \$1,115.69 is not an unusually high cost for access on a per trip basis. While expenses of \$5,578.47 for 5 trips over a 10 month period is a more significant cost of access, I note that Mr. Praetzel has been responsible for reimbursing Ms. Porter for some of those expenses.

[17] I am also doubtful that unusually high costs for access pursuant to s. 12(2) of the *Child Support Guidelines* can be established simply by a parent repeatedly exercising access over the course of the year and incurring significant travel expenses. Parents are expected to live within their means and that includes planning for access to a child. While Ms. Porter exercised access with M on multiple occasions in the past year, part of that was due to the need to re-establish a relationship with M. Maintaining that sort of access schedule in the future does not appear to be financially feasible in this situation.

[18] In the circumstances, I am not satisfied that Ms. Porter has established that she has unusually high expenses in relation to exercising access to M. Therefore, Ms. Porter's claim for undue hardship is dismissed.

[19] Support for a child is determined pursuant to the *Child Support Guidelines* and is determined on the basis of the paying parent's income. Ms. Porter has provided her Notice of Assessment for 2021 which indicates that her Total Income on Line 150 was \$147,941 which, according to the *Child Support Guidelines*, would result in a monthly child support payment of \$1,346.96. In the circumstances, Ms. Porter will be required to pay child support on this basis until M reaches the age of majority in Alberta in April 2023. This adjustment will be effective as of June 1, 2022.

[20] With respect to the costs of access, on July 9, 2018, the parties had agreed to a Consent Order which required that the cost of travel for M be shared 50% between the parties if one parent relocated out of the Northwest Territories. Mr. Praetzel relocated to Alberta from the Northwest Territories the following year in June 2019.

[21] I see no reason why those agreed upon provisions should not continue. The cost of travel where M has to travel to the Northwest Territories to see Ms. Porter will be shared 50% between the parties according to the terms of the July 9, 2018 Consent Order.

[22] The main issue in the past has been that Ms. Porter has travelled on several occasions to Alberta in order to exercise access to M. This was due to several

reasons including travel and other public health restrictions imposed as a result of the Covid-19 pandemic, M's refusal to travel to the Northwest Territories and Ms. Porter's desire to begin to see M after not exercising access to him for an extended period of time. The costs of travel for several of those trips were ordered by the court to be shared equally by the parties.

[23] At the time that I ordered that the parties shared the costs of access, I stated:

Ms. Porter is not responsible for M leaving the jurisdiction or that she now has to incur costs to see M. The circumstances and fairness require that the costs of exercising access not be borne solely by Ms. Porter.

[24] An ongoing concern has been whether M would return to the Northwest Territories for access. Recently, M has expressed a willingness to travel to the Northwest Territories for access. There is no guarantee that he will continue to want to travel to the Northwest Territories. This is a potential impediment to Ms. Porter exercising access with M regularly.

[25] In the circumstances, the terms of the Parenting Agreement will be extended to include costs of travel for access, whether it is M travelling or Ms. Porter, subject to the limitation set out below. The parties will share the cost of travel for M or Ms. Porter equally, on a 50/50 basis. The parent booking travel for M or Ms. Porter will provide receipts for all flights and the other parent will reimburse them within 30 days of receiving the receipt. If Ms. Porter has to travel to Alberta to exercise agreed upon access to M, Mr. Praetzel will only be responsible for sharing the cost of travel on two occasions between September 1, 2022 and April 2023, when M turns 18.

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

1. Raylene Susan Porter's application for undue hardship is dismissed;
2. Effective June 1, 2022 and continuing on the 1st of each month until April 1, 2023, Raylene Susan Porter will pay child support, pursuant to the *Child Support Guidelines*, to John-Michael Peter Praetzel in the amount of \$1346.96;
3. The cost of travel to the Northwest Territories for M for agreed upon access with Raylene Susan Porter will be shared equally by Raylene Susan Porter and John-Michael Peter Praetzel, according to the terms of the Consent Order of July 9, 2018;

4. If agreed upon access requires Raylene Susan Porter to travel to Alberta to exercise access, the parties will share equally the cost of airfare for Raylene Susan Porter or gas if Raylene Susan Porter drives to Alberta;
5. The parent booking travel will provide receipts for all flights and/or gas if travel is by motor vehicle and the other parent will reimburse them within 30 days of receiving the receipt;
6. If Raylene Susan Porter has to travel to Alberta to exercise agreed upon access to M, John-Michael Peter Praetzel will share equally in the cost of airfare or gas for up to two trips between September 1, 2022 and April 2023, when M turns 18.
7. There will be no order as to costs.

S.H. Smallwood
J.S.C.

Dated at Yellowknife, NT, this
12th day of August, 2022

Self-Represented Applicant:

John-Michael Peter Praetzel

Self-Represented Respondent:

Raylene Susan Porter

Counsel for the Child:

Paul Parker

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