

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

JANET HURST,

Applicant,

- and -

VERNON KOMARNICKI

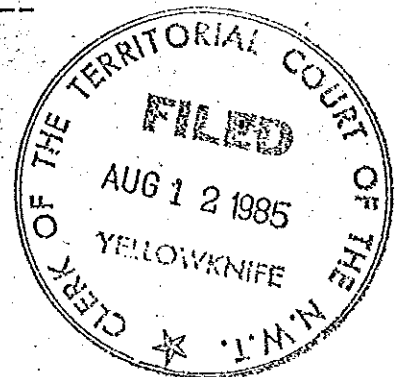
Respondent.

Transcript of the Oral Judgment delivered by His Honour
Judge T.B. Davis, sitting at Inuvik in the Northwest
Territories, on Tuesday, July 9th, A.D. 1985.

APPEARANCES:

MR. R. REID: On behalf of the Applicant

MR. V. KOMARNICKI: On his own behalf.



1 THE COURT: Mr. Reid is present on behalf of the
2 Applicant and Mr. Komarnicki is present in person today, and
3 I believe we were to assemble just for the purpose of having
4 a decision made on the matter. Originally the application
5 had been made under the Child Welfare Ordinance, and the
6 Order at that time was dismissed because the application had
7 not been made within the two-year period as required under
8 that Ordinance. Because the original application had been
9 made jointly, or made under both the Child Welfare Ordinance
10 and the Maintenance Ordinance, the Applicant asked for an
11 Order under the Maintenance Act.

12 At that time, I had asked for written submissions,
13 because I had not been familiar with the effect of maintenance
14 orders in the Northwest Territories where the definitions were
15 somewhat different than in other provinces. Since that time,
16 I had received the submissions by both parties, and now must
17 determine whether or not under the maintenance ordinance Mr.
18 Komarnicki is required to pay any maintenance to the child.

19 The question, therefore, to be determined by the court
20 in the application of Janet Hurst against the Respondent
21 Vernon Komarnicki, is whether or not the Respondent is
22 responsible for the maintenance of the illegitimate child of
23 the Applicant, and who the Applicant says is the natural
24 child of the Respondent as a result of a continuing but now
25 cancelled relationship between the two parties.

26 The respondent admits the possibility of his
27 paternal relationship but denies such paternity without



1 proof that he is the father of the child. Under an earlier
2 application under the Child Welfare Ordinance I found that
3 there was not sufficient proof of paternity to cause the
4 Respondent to be liable, because he has not acknowledged the
5 paternity of this child, and there has not been any act which
6 could be regarded as an acknowledgement, which is required
7 under that Act. Since the action under the Child Welfare
8 Ordinance, now the Child Welfare Act, had not been commenced
9 within the two-year time limit set out in the Section 64 of
10 that Child Welfare Act, the Respondent would not be liable
11 to pay maintenance unless there was some acknowledgement as
12 required.

13 I am therefore today to determine if the court can order
14 maintenance for an illegitimate child under the Maintenance
15 Act of the Northwest Territories. Section 2 of the
16 Maintenance Act says that a child includes in its definition
17 an illegitimate child. Section 5 of that Maintenance Act
18 says an order may be made against a person who is liable
19 under the ordinance to maintain a child. That order being
20 an order for maintenance.

21 I interpret this to mean that if the father of an illegitimate
22 child is found to be liable under some law, or specifically
23 under the Child Welfare Ordinance, that a maintenance order may
24 then be made against that father. However, I interpret the
25 Maintenance Act in a restricted manner, and find that before the
26 Maintenance Act applies to an illegitimate child, the
27 paternity and legal liability must have been determined



1 before the court can order a maintenance to be paid.

2 Since I did not find that the Respondent was liable
3 under the Child Welfare Act, and since I can not find him
4 liable under the Common Law as such, I today find that the
5 court has no jurisdiction to find him liable to make any
6 maintenance payments by order of the court for the
7 illegitimate child, and therefore the application is
8 dismissed at this time.

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10 Certified correct transcript.

11 *Loretta Mott*
12 _____
13 Loretta Mott, C.S.R. (A),
14 Court Reporter.

15 LM/mjp

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18 His Honour, Judge T.B. Davis.
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