

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

LESLIE JANE SHANNON

Applicant

- and -

JOSEPH DANIEL O'ROURKE

Respondent

Transcript of the oral Judgment delivered by His
Honour Judge T.B. Davis, sitting at Yellowknife, in the
Northwest Territories, Monday, February 3rd, A.D. 1986.

APPEARANCES:

MS. C. WALKER

On behalf of the Commissioner of
the Northwest Territories

MR. J.D. O'ROURKE

Appeared on his own behalf

1 THE COURT: I have heard evidence today from Joseph Daniel
2 O'Rourke on an application by Leslie Shannon for confirmation
3 of a provisional order issued by the Court in Ontario requiring
4 that he contribute the sum of One hundred and seventy-five
5 dollars per month to the support of the child, Matthew Shannon,
6 which order was made after Judge Guzzo of Ottawa had a hearing
7 in Ontario where the mother of the child gave evidence. An
8 order was issued on the 2nd day of October, 1985, and after
9 proper service of notice of this hearing was made on the
10 Respondent and a direction to file an affidavit showing his
11 position, he has come before the Court today in answer to the
12 summons to show cause why he should not obey the order.

13 In 1982 a consent order was issued by this Court
14 in which Mr. O'Rourke was required to pay a lump sum contribu-
15 tion in the amount of Twelve hundred dollars within six months,
16 along with a requirement to pay costs of One hundred and sixty
17 dollars, the order being dated the 27th day of September, 1982,
18 and signed by myself. On that occasion counsel appeared on
19 behalf of Leslie Jane Shannon, and the order indicates that:

20 Upon the admission of Joseph Daniel O'Rourke that
21 the paternity of Matthew Geoffrey Shannon is not
in issue

22 and upon the Respondent consenting the order was granted.
23 There appears to have been substantial difference in the opinion
24 of what the law and the Courts usually interpret that wording
25 to mean from that which Mr. O'Rourke thought it to mean, because
26 his opinion has been that by the paternity not being in issue
27 at the hearing he thought that there would be no discussion

1 as to the paternity of the child and that he, therefore, was
2 not, in fact, admitting paternity, although the admission by
3 that wording is usually the understanding of the Court.

4 In 1985 the Ontario Court, as a result of that
5 original order, felt that paternity was acknowledged and issued
6 a maintenance order which is the subject of the hearing today.
7 Since there has been dispute as to the meaning of the original
8 order in that Mr. O'Rourke believes the original order was a
9 final order since it was a lump sum contribution or payment,
10 the Court today must determine to some extent the effect of
11 the original order and the jurisdiction of the Courts to make
12 the two orders that are in effect. Mr. O'Rourke says that upon
13 his research he was of the opinion that a lump sum order was a
14 final payment and that it meant final settlement and that at
15 the time of making the payment he did so with the intention
16 that it would finalize his full responsibility under the order.
17 It, therefore, has to be determined by the Court on whether or not
18 such an order was intended that it would be a permanent or a
19 temporary order, because the Applicant in her evidence before
20 the Court in Ontario indicated that she was advised and under-
21 stood that the Twelve hundred dollars was a temporary require-
22 ment and that if circumstances changed she would be entitled to
23 make further demands upon the Respondent for maintenance of
24 her child.

25 I am satisfied that the order made on September
26 the 27th, 1982 by this Court would be classified as an
27 affiliation order. I am also satisfied that on the face of it

1 the term "lump sum payment" would mean that it was intended
2 by the Court and by the parties who signed it and appeared ^{before the court} to
3 have been a final payment required by the Respondent, because
4 the statute in the Northwest Territories authorizes the Court
5 to make a finding and issue a direction that maintenance be
6 paid either in a lump sum payment or by periodic payments.
7 I am satisfied, therefore, that on the face of it, the Court
8 must read the order as being a final requirement for payment
9 and not one that would allow a Court to again review the
10 circumstances and issue periodic payments thereafter unless
11 the matter was found to be improper by an Appeal Court and
12 would be dealt with only then, by an Appeal Court overruling
13 the order that was issued on the 27th day of September, 1982.

14 I have also heard evidence today on the ability
15 of the Respondent to make payment of maintenance, and although
16 at this time I do not feel that it is necessary to review the
17 same, I do find that the net income from employment of Mr.
18 O'Rourke is Two thousand, four hundred and ninety dollars, as
19 shown by Exhibit 4 to an affidavit which he filed as part of
20 his evidence before the Court. If it were not for the fact
21 that he is living with a Vicky Brown and used her income and
22 the family allowance benefits as part of his financial monthly
23 budget statement, he does not appear to be in a position where
24 he would have any excess in the form of cash, because he has
25 some basic expenses and a number of loans and personal debts
26 which along with his ordinary personal expenses would come
27 very close to the amount of money that he, in fact, has available

1 for use. I do, however, have to acknowledge that personal
2 debts and other obligations do not preclude legal responsibility
3 and liability for maintenance of children. Therefore, if I
4 were to make a finding on the evidence that has been before
5 me, I would expect that with some adjustment in the payments
6 that the Respondent is making on other personal debts that he
7 probably is in a position and could pay up to One hundred
8 dollars per month and still be able to exist, for the maintenance
9 of the child, if the Court found that he had that legal respon-
10 sibility. I do not, however, find that there is any legal
11 responsibility for such payment, since I am of the opinion
12 that on the face of the original order granted in 1982 it
13 was a final order.

14 I am also finding, therefore, that since evidence
15 before me has indicated that the Twelve hundred dollar and
16 the One hundred and sixty dollar costs had, in fact, been made
17 by the Respondent, that he has complied with the order of the
18 Court and, therefore, is not in violation of any of his
19 responsibilities, and on that basis find that the provisional
20 order of the Ontario Court has no enforceability at the present
21 time in the Northwest Territories.

22 I have reviewed the situation and indicated my
23 general position on these matters so that either of the parties
24 can use this order as a basis for an appeal to the Appeal Court
25 *from* ~~for~~ this Court in the Northwest Territories, because I think
26 the Northwest Territories is the proper place to make any
27 further inquiries as to the ability of the Respondent and as

1 to the responsibility of the Respondent under the maintenance
2 requirements of the Northwest Territories where the original
3 order was granted.

4 On that basis, at this time an order will issue
5 that there is no confirmation of the requirement for payment
6 of the One hundred and seventy-five dollars by the Respondent.
7 I would also ask the Reporter to prepare a copy of the decision
8 of this matter, because I believe it should be sent to the
9 Court in Ontario as well as being made available to both
10 parties here.

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14 Certified a correct transcript,
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19 Jill MacDonald, Court Reporter,
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