

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

GRACE MEZENSKI

Applicant

- and -

KENNETH ROSEBRUGH

Respondent

Heard at Yellowknife, N.W.T.

Judgment Filed: November 30, 1987

REASONS FOR JUDGMENT

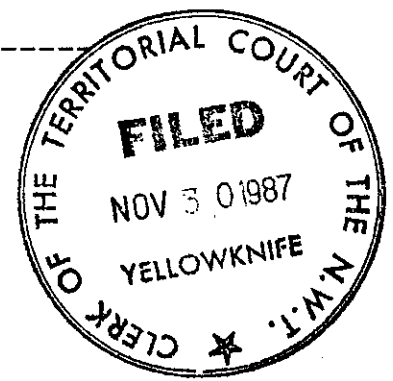
of

His Honour Judge R. M. Bourassa

APPEARANCES:

MS. C. WALKER On behalf of the Applicant

MS. C. KENWOOD On behalf of the Respondent



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This is a summons to show cause instituted by the Commissioner on behalf of the three children of the Respondent, Kenneth Richard Rosebrugh. They are three young children, born in 1973, 1976 and 1979, and currently in the custody of his former wife, and resident in Alberta. There is a Decree Nisi, in accordance with Minutes of Settlement, directing that the Respondent pay Seven Hundred and Fifty Dollars a month on behalf of the three children; that is to say, Two Hundred and Fifty Dollars for each of the three children. It is obvious, and I don't think it is necessary for the purposes of this matter but I will simply confirm, that very little has, in fact, been paid over the years since the Minutes of Settlement and Decree Nisi in 1981.

The obligation is upon the Respondent to satisfy this Court that his failure to comply with the Order was not willful. Of course, in dealing with money matters, we must examine Mr. Rosebrugh's complete financial situation: He is an employee of a limited company, one owned wholly by him. In the financial statement, Appendix 'A' to an application in Supreme Court and filed as Exhibit 2 in this case, gross income from salary of Twenty-Five Hundred Dollars and rent from property of Seven Hundred and Fifty Dollars per month is indicated. As well, it shows some debts and some assets. I think it is incumbent upon anyone in a matter such as this -- particularly where someone is

attempting to persuade the Court or advance the proposition that there is not enough money to go around, which is an answer to the summons -- to come to Court with clean and open hands, i.e. to make complete disclosure with respect to his financial dealings and his current financial position. I do not believe that in a case such as this where the Respondent is the "owner" of a limited company, and is also indirectly through that company the owner of other enterprises, to come before the Court and simply say, "Well, my draws are around Two Thousand or Twenty-Five Hundred Dollars a month over a year." That is not enough. It's not satisfactory. It's a different situation, of course, if a Respondent is an employee of a limited company and perhaps, a shareholder with a number of others or, going to the far end of the spectrum, any limited company as a regular employee, but that is not the case here.

It would seem before me that Mr. Rosebrugh is a hard working and reasonably successful businessman. He is attempting to make his way in life. He is attempting to provide for himself and his new family obligations. I don't fault that in any way. But I don't have before me a complete disclosure of what his financial situation is. I do not have before me the full details of his current financial position. On the contrary; I have selected figures, omissions, figures that on his evidence are perhaps in error, or inaccurate. In other words, not only do I

not have the disclosure behind the corporate veil, but what disclosures I do have are far from satisfactory. The exhibit is unreliable, incomplete, and misleading. By way of example: the ten per cent tithe is not shown anywhere on his monthly expenses, and that is a significant amount of money; The motor vehicles are not shown on his assets, in fact, I have no listing of his assets. The affidavit indicates support payments for other relatives. I recognize that was explained away in his evidence in that it was meant to be for his wife, but that's misleading. Anyone reading that affidavit, would immediately come to the conclusion that that Four Hundred Dollars is something that is a regular demand upon his income, and which, in fact, is not the case. The actual monthly expenses, so-called, is a mish-mash of projected expenses, some real expenses, some hypothetical expenses and a lot of expenses that simply are not incurred.

The Respondent refers to an agreement with his spouse with respect to reducing the support. I find that regardless of whether that agreement was valid at the time it was signed, it certainly has no effect today. He has never lived up to it. The Respondent has remarried. His new wife has income -- she apparently received unemployment insurance for a period of time. She apparently receives money from the Respondent's business operation, although he can't recall how much. Her income is relevant to his financial position as much as his former wife's

financial situation is relevant to his obligation to pay support for the children, at least with respect to quantum. I only have suggestions and hints that there is other money there, but it has not been disclosed to the Court. All in all, I am totally dissatisfied with the evidence with respect to the financial situation of the Respondent, both on the statements that were filed and in his evidence on the stand. I found him evasive. His demeanour was not one that was conducive to acceptance of some of his evidence. I found that he gave less than the whole truth.

I want to point out and make it abundantly clear that whatever other obligations Mr. Rosebrugh has, in law, his primary obligation is to his three children, and this Court will apply that law. Those three children were fathered by him, brought into this world by him, and regardless of his differences with his former wife, his obligation to assist in their support continues.

The Respondent has since 1981 virtually ignored that obligation. In the **Barnes** decision filed by the Applicant, the Supreme Court indicates the Court should look at the Respondent's conduct. In a financial sense the Respondent has prospered, expanded, accumulated money to buy investment property. He has accumulated money to buy another business known as M & B. He

is, as I said earlier, striving to be a successful businessman, and that is all to his credit, but that cannot be on the backs of his children. His children cannot be expected to pay for that.

In my view, he has had a realistic ability to pay throughout. With respect to arranging his affairs, clearly the responsibility, the legal and moral responsibility to provide for the support of his children has taken a secondary role to his own ambitions and desires with respect to business. That is an untenable position. The Supreme Court as recently as last month found no justification for a change in circumstance, and before me, on the evidence, I can find no indication of an inability to pay, even if we take Mr. Rosebrugh's affidavit at face value. On that affidavit, sworn by him, prepared on his instructions, there is Seven Hundred and Thirty-Four Dollars a month available if we add up support payments for "other relatives" at Four Hundred and the balance that is left over of Three Hundred and Thirty-Four.

In my view, his refusal to pay is willful. Mr. Rosebrugh has allocated a certain priority for the support of his children, and that rank is down on the scale vis a vis other matters. I want to reiterate to Mr. Rosebrugh that in the eyes of the law across this country, and in every Court, the obligation to provide support for children is a primary one, and that is something Mr. Rosebrugh is going to have to come to grips

with and make the necessary accommodations for. It has been suggested that he see an accountant and put his financial affairs in order; it has been suggested that he restructure his affairs. Those are all positive suggestions. His counsel can take that up with him and he can take the necessary steps. Really, what steps he takes matters not to this Court in terms of application of the law today. This Court is concerned that the law be upheld, that his children receive the benefit to which they are entitled, that Mr. Rosebrugh comply with the Order of the Court in the Decree Nisi, as well as the Minutes of Settlement.

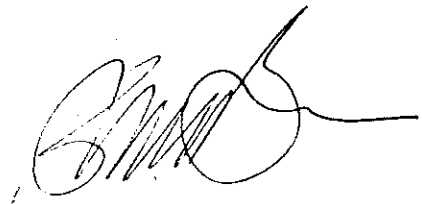
-As I have already indicated, in my view the failure to pay has been deliberate and willful. That brings the Court to the position of having to make an Order. What Order can be made that will vindicate the law and enforce the responsibility this man has for his children? In my view, there is only one thing that we can do and that is to enforce this Order. To simply urge Mr. Rosebrugh to meet his responsibilities I think would be a waste of breath. It has not worked in the past. He has been before this Court on previous occasions, and that has not resulted in discharge of his responsibilities. He has had the matter adjudicated in Supreme Court, and even after that there is no indication to this Court that he is prepared to meet his responsibilities. His response to his obligation in law is that

Three Hundred Dollars a month seems reasonable. It may very well seem reasonable to Mr. Rosebrugh, but in the eyes of the law it is inadequate. In the eyes of the law, Mr. Rosebrugh, you owe Seven Hundred and Fifty Dollars a month, and you shall pay it.

The Order of this Court will be to confirm the original amount payable, Seven Hundred and Fifty Dollars a month. The Order of this Court is that it shall be payable on the 15th of January and the 15th of each month thereafter. Secondly, I want to reinforce the seriousness of this as well as Mr. Rosebrugh's obligation. I am going to commit Mr. Rosebrugh to a term of imprisonment for three days. That term of imprisonment may be avoided by the payment of Two Thousand Dollars, which shall be applied to the arrears. The Commissioner, on behalf of the children, can take the appropriate steps to enforce the arrears of Ten Thousand, Seven Hundred and Fifty Dollars by way of seizure, garnishee or otherwise. I don't think on a review of the **Maintenance Orders Enforcement Act** that I can specifically order or attach specific amounts with respect to the arrears. However, the examination of the Respondent was quite comprehensive, and I think that the Commissioner has enough information to enforce payment of the arrears. It would seem obvious to me, and I would hope to Mr. Rosebrugh, that he might be well advised to make arrangements with the Commissioner for payment of the arrears if he wants to conduct his affairs with

any degree of certainty and keeping a budget in mind.

If he wants to avoid going to jail, he can pay Two Thousand Dollars. If he is prepared to go, well, he can go to jail. If the payments are not made as I have directed, then I would fully expect the Commissioner to bring this matter back before the Court, and if the payments are not going to be made, then I would suggest that there is a hazard that Mr. Rosebrugh may very well end up with a further term of imprisonment and of a significant length. I indicated quite clearly that the only thing that has kept me from imposing a far longer term of imprisonment is the season, but I trust Mr. Rosebrugh now has an appreciation of his legal obligations and that steps will be taken to respond. If those steps are not taken, Mr. Rosebrugh, then you will be back before the Court. This matter is not going to go away. It's not going to disappear. You had better come to grips with it in your own self-interest.

A handwritten signature in black ink, appearing to be 'R. M. Bourassa', written in a cursive style with a long horizontal line extending to the right.

Judge R. M. Bourassa