

M-378-88

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF Part III of the
Child Welfare Act, R.S.N.W.T.,
 1974, C. C-30 as amended.

AND IN THE MATTER OF an application
 for an order of contribution
 pursuant to Section 53 of the said
Child Welfare Act.

B E T W E E N :

BRENDA ANNE KOLSON

Applicant

- and -

JAMES BENJAMIN FIRTH

Respondent

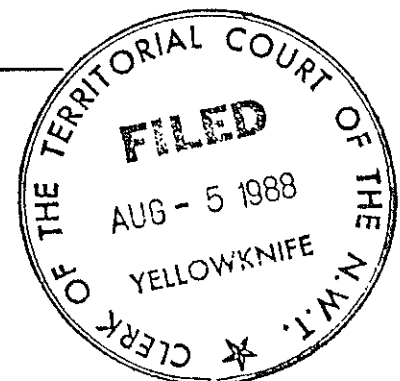
 Heard at Yellowknife, N.W.T.

Reasons Filed: August 5, 1988

 ORDER ON AMOUNT OF MAINTENANCE

of

His Honour Judge Thomas B. Davis

APPEARANCES:

A. MARSHALL Counsel for the Respondent

G. MALAKOE Counsel for the Applicant

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On May 16, 1988, the Respondent was found to be liable for contribution to the maintenance of Kiera-Dawn Kolson, a child born to Brenda Anne Kolson on February 1, 1986, pursuant to Section 60 of the Child Welfare Act of the Northwest Territories.

Evidence has now been heard on the financial circumstances of the Respondent, after similar evidence was provided by the Applicant on April 18, 1988.

Both parties have had good steady employment during the past number of years, with the Plaintiff supporting herself and the child from her net monthly income of over \$3,000.00, from her gross salary of about \$55,000.00 per year. Because she has employment, she incurs baby-sitting expenses in excess of \$400.00 monthly.

The Respondent, who has a net salary of \$2,800.00 monthly, contributes along with his wife, who also earns a yearly gross salary of \$28,000.00, to the support of their two children, aged 9 and 11 years, with whom they live in Inuvik, N.W.T. The Respondent's gross salary is in excess of \$45,000.00 annually.

Since the birth of the child, the Applicant has had the full financial responsibility for the care of the child. Section 60(c) authorizes the Court to order the Respondent to pay reasonable expenses involving the birth of the child and to order, by Section 60(d), financial contribution toward the maintenance and education of the child, taking into account the

financial abilities of the parents and the standard of life the child would be expected to enjoy had the child been born in lawful wedlock.

Obviously from the care and concern the Applicant has expressed, she wishes to continue in sole custody of the child. The Respondent has made no application for custody and the Court is to only determine the amount of monthly maintenance to be contributed, if any, and the amount, if any, to be paid by the Respondent toward the expenses involving the birth of the child.

CONTRIBUTION FOR EXPENSES INVOLVING BIRTH

No evidence, other than the fact that the Respondent did have, and continues to have, a good job was introduced as to his ability to contribute in the year 1986, but the Court can presume from the evidence of his income, that he would have been able to contribute had the application for financial assistance been filed around the time of the birth. The application before the Court has been filed almost two years after the birth.

It would be inappropriate for the Court at this time to make an assessment in more than general terms when ordering contribution to the expenses involving the birth even though the

Applicant has provided the Court with details and specifics of the expenses incurred at the time of birth. From the delay that occurred, it is obvious that the Applicant had, in fact, been able to manage financially without the help of the Respondent up until the date of the application.

Although there are no details on the Respondent's ability in the year 1986, there is nothing that would cause me to find that he would not have been able to contribute something to such expenses at birth. The list of expenses filed by the Applicant shows that she had made payment of a substantial amount relating specifically to the newborn infant in the provision of clothing, furnishings, transportation and food.

I assess the Respondent's minimal share for these expenses under Section 60(c) in the total amount of \$500.00, which if not paid in a lump sum, is to be paid by no less than \$50.00 per month for ten months, beginning on and no later than the 1st day of September, 1988.

CURRENT EXPENSES FOR CHILD'S MAINTENANCE

The Applicant has listed the monthly costs of her household, being for herself and her daughter, and has attributed

a share in housing, utilities, food, furnishings, and other family expenses to the child. She has also listed direct and actual costs related to the child in such expenses as baby-sitting fees, birthday and special occasion gifts, children's toys and furniture, medicines, clothing, diapers, eat-outs, books, milk and miscellaneous items. Undoubtedly these direct expenses will increase as the child gets older and becomes more independent, but at the present time such direct costs are not substantial, except for the baby-sitting costs of \$400.00 per month.

The Applicant, whether with or without child, would incur the expenses related to the purchase or rental of accommodation, and the ancillary expenses for utilities and furnishings, so I can not accept the Applicant's proposed one-third share of these expenses as being related to the child. The Applicant, through her evidence at the hearing, did explain that the accommodation was larger than she would need for herself and was actually purchased at a higher price because she felt the child needed the additional space, but acknowledged that she could have remained in the somewhat smaller residence.

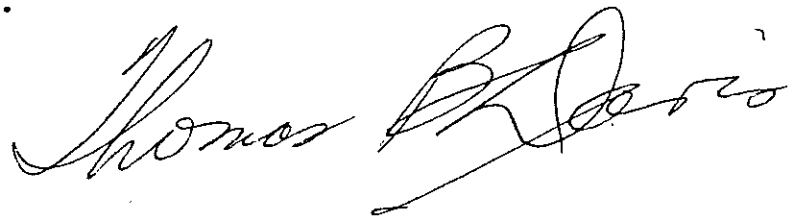
The Applicant intends to take additional training on educational leave at a reduced salary, but at the present time has the ability to fully maintain herself and her child.

The Respondent presently contributes to and remains liable for the maintenance of his family. At the present time he has the ability to contribute to the maintenance of Kiera-Dawn Kolson. I expect he will continue to have such ability unless his wife were to no longer have employment. His ability could then be substantially decreased as he then would be supporting his wife and two children on less income than the Applicant receives. His present business assets should be sufficient to extinguish his business financial obligations.

The assessment of his contribution must be made on the present relative abilities of the two parties.

Giving substantially more weight to the direct expenses than to the indirect costs incurred by the Applicant for the care of the child, I assess the Respondent's liability to contribute to be \$250.00 per month. I direct that the Respondent shall pay the sum of \$250.00 per month to the Clerk of the Territorial Court for the partial maintenance of Kiera-Dawn Kolson, the said

payments to commence on the 1st day of September, 1988, and to continue on the 1st day of each and every month thereafter until further order of a Court of competent jurisdiction or until the Respondent is no longer responsible under the **Child Welfare Act** of the Northwest Territories.

A handwritten signature in cursive script, reading "Thomas B. Davis". The signature is written in black ink and is positioned above the printed name.

Judge Thomas B. Davis