V. Morin-Jones v. G. Jones, 2001 NWTTC 03

File: T-0002-ME-0106
Date: 2001 12 21

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application pursuant to the *Domestic Relations Act*, R.S.N.W.T. 1998, c. D-8, s. 27 and s. 28, as amended

IN THE MATTER OF an application pursuant to the *Child Welfare Act*, R.S.N.W.T. 1988, c. C-6, s. 61, as amended

BETWEEN:

Vitaline Morin-Jones — Applicant

AND:

Gary Thorne Jones — Respondent

REASONS FOR JUDGEMENT
of the
HONOURABLE JUDGE R.M. BOURASSA

Heard at: Yellowknife, Northwest Territories
October 1, 2001

Reasons Filed: December 21, 2001

Counsel for the Applicant: E. Keenan Bengts

Counsel for the Respondent: J. Brydon

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[1] This is an application by Gary Thorne Jones, Respondent in the original action, apparently heavily indebted for arrears child support payments, to determine his liability for child support and to rescind all or part of the accumulated arrears.

[2] The respondent was made subject to an order dated December 1, 1992 which as I have previously determined, required him to pay support for each of the two children of his marriage with the applicant in the amount of $100 per month continuing until the child(ren) became self supporting; ceased full time attendance in school, married or attained the age of 19 years. The original order also included a direction for the applicant to reapply for an increase in payments should the respondent's income change.

[3] The order has not been modified in any way since then.

[4] The onus to persuade the court to grant the relief requested lies wholly upon the respondent.

[5] After hearing and carefully considering the evidence, reading the affidavits and exhibits filed and reviewing the applicable law, I come to the following conclusions:

[6] With respect to the witnesses: I am persuaded that each has come to court and related what they recalled as best they could. Both parties were in obvious error here and there and there were a number of conflicts in terms of dates, times, events and payments made. However, I am persuaded that each witness did his/her best to relate what they recalled as best they could. I could find no mala fides in anyone's testimony.

[7] For many years both parties lived, in terms of financial resources, modestly if not marginally. Times were tough for both of them. The situation of each party was, to a substantial degree, known to the other. They maintained contact. The children, by and large, lived with the applicant. The respondent paid irregular sums of money first to her, then directly to the children when and as he could afford it. This situation was suffered or acquiesced to by the applicant. As time went by, first the applicant and then the respondent was able to better themselves financially. Today, for the first time in many years, the respondent holds a well paying position.

[8] Today, a mathematical progression has caught up to the respondent; Arrears, according to the Maintenance Enforcement Office, stand at $16200. The respondent now has money to discharge the arrears.

[9] This figure is arrived at by multiplying the months from the date of the order – December 1992 - until the time each child attained the age of 19 years, less the only payments made to the Maintenance Enforcement Office by the respondent – the sum of $400.

[10] When a maintenance or support order is filed with the Maintenance Enforcement Office, the respondent is required to pay what is due directly to them. Every month a debit is entered onto the respondents' account in the amount of the support order – and credits entered for payments. The Maintenance Enforcement Office keeps an accounting and disburses to the applicant appropriately. This relieves the applicant from the stress and trouble of having to bear the burden of the accounting and enforcement of the order on her own. By the terms of the order, the respondent was required to make payments direct to Maintenance Enforcement.

[11] In theory this is admirable and desirable. In practice, as evident in this case, the Maintenance Enforcement Office may be essentially ignored by both parties, and it often is. Circumstances may change, incomes vary, and informal agreements may be struck between the parties and all occurring without reference to the calculator ticking away at the Maintenance Enforcement Office.

[12] This makes the calculation of payments made and remaining liability increasingly difficult. As time goes by memories fade, receipts and cancelled cheques disappear and mutual understandings get confused.

[13] On the evidence I am persuaded that the respondent paid such amounts as he was able from time to time. While the respondent may be open to criticism for not discharging his obligation according to the letter of the law, nor as a first priority in his life, he did pay monies as he could.

[14] Payments were first made to the applicant. Over time for reasons advanced in court, money was transferred/paid directly to the children. While this is not in accordance with his legal obligations I cannot ignore the fact that money was paid. The parties discussed these matters and some agreement may well have been reached in this regard.

[15] These payments have been characterized variously as “support,” “allowance” and “gifts” with each party arguing that its character attracts different conclusions in law vis a vis the calculation of the respondent’s support liability. I am of the view from what I heard in evidence that those payments had both a support and a gift aspect.

[16] The Liability:

Garret: b. January 1978.
Period Dec 1992 – January 1997 (19 Years) 62 months.

Joshua: b. March 1982
Period Dec 1992 – March 2001 (19 years) 100 months.

Total calculated liability @ $100 per month per child = $16200.

[17] Over the years the respondent paid the applicant various amounts on an irregular basis. Verifiable figures supported by documents or receipts total $3535 which includes $400 paid to the Maintenance Enforcement Office.

[18] I accept the respondent’s evidence that additional amounts were paid, receipts for which have been lost. After considering all the evidence, the pattern of payment disclosed therein, I fix the additional, but unsupported payments at $2000.

[19] Thus total payments in discharge of the respondent’s obligation are calculated to be $5535.

[20] The family was not a cohesive unit in the period under consideration. There were many times when the children were not living with the applicant and were absent from the applicant’s home under circumstances where financial responsibility for the children was not born by her, nor was she liable.

[21] I am further persuaded that the liability for support should be suspended for some of these periods when the children were not in the care of the applicant. In this regard, I discount short minor periods, which would have had no impact on the applicant’s continuing responsibility to provide for the children.

[22] For Garret these periods include:

6 months custody 1994
9 months custody 1995
2 months with father 1994

[23] There was a period from December 1995 to February 1997 when Garrett was in and out of school, trying to live on his own, but was back and forth with the applicant. I calculate the period that support should be suspended at 8 months.

[24] For Joshua these periods include:

13 months with father In Valleyview 1994-1995
6 months Ranch Ehrlo 1996

[25] Additionally Joshua left school in September 1999 and did not return. The order for support terminated by virtue of it's terms. 20 months must be reduced from the liability period based on age.

[26] In total, the mathematical calculation for the period of support liability must be reduced by 64 months or $6400.

Mathematical Liability (based on age):	$16200
Support period adjustment	$ 6400
Less payments and deemed payments:	$ 5535
Balance:	$ 4265

[27] I conclude that today the accumulated arrears of child support payments for which the respondent is liable stands at $4265.

[28] I am asked to rescind all or part of these arrears.

[29] On the one hand an applicant ought not to be, in effect, penalized and a respondent debtor rewarded by delay and stalling. Nor ought an applicant be penalized for failing to take up the sword and to do daily battle with a defaulting evasive spouse. Should circumstances change the obligation lies wholly upon the respondent debtor to bring the matter to the courts and have existing orders varied to reflect the new reality.

[30] However, the lack of enforcement action over a period of nine years, with respect to a spouse who is geographically nearby and obviously not evading; with private arrangements agreed to in while or part, suffered or acquiesced to, may all combine, over time, to the prejudice a respondent when called upon to prove every payment and discharge mountainous arrears.

[31] What begins as an automatic mathematical calculation kept by an office that has no contact with the applicant swiftly becomes a Gordian Knot around the respondent's future as a result of the actions or inaction's of both parties.

[32] I can find nothing in the evidence to indicate that the respondent was deliberately trying to evade his responsibilities to actively deprive the applicant of what she was entitled to. The delay in enforcement has prejudiced him in this action. He has made efforts to meet his obligations in accordance with his ability to pay albeit clumsily, inappropriately and not in accordance with the law.

[33] In the circumstances I am prepared to rescind a potion of the arrears, which I set at 20%.

[34] In the end result, the respondent's liability to the applicant is $3412.

[35] If counsel are unable to agree, costs may be spoken to.

R. M. Bourassa
Judge, T.C.

Dated at: Yellowknife, Northwest Territories
December 21, 2001

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