

Jon Albert FISHER v. Ruth NATAWAY

2005
NWTTTC 12
File: T-0001-CV-2005000033

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF THE *INTERJURISDICTIONAL SUPPORT ORDERS ACT*,
S.N.W.T.2004, c. 19**

JON ALBERT FISHER

Applicant

- and -

RUTH NATAWAY

Respondent

**REASONS FOR DECISION
of the
HONOURABLE JUDGE BERNADETTE SCHMALTZ**

Heard at: Lutsel K'e, Northwest Territories
Date: September 1, 2005
Judgment Filed: September 9, 2005
Counsel for the Applicant: No one attending on behalf of the Applicant
Counsel for the Respondent: James Brydon

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I. INTRODUCTION

[1] Jon Albert Fisher, the Applicant, has brought an Application to vary the amount of child support payable to Ruth Nataway, the Respondent. The Applicant seeks to have the amount of child support he is to pay reduced to nil, and requests that all arrears be rescinded.

[2] On September 28, 1992, a Provisional Order was made by the Territorial Court of the Northwest Territories ordering the Applicant to pay child support in the amount of \$350.00 per month; this Order was confirmed by the Ontario Court (Provincial Division) on October 18, 1996, to be effective as of November 1, 1996.

[3] The Respondent was served with notice of this Application, and through Counsel, has indicated that she will not be filing any material, and takes no position on the Application.

[4] The Provisional Order and the confirmation thereof, were in relation to a child born October 9, 1990. In the materials filed in this Court on April 18, 2005,

(sworn September 23, 2004), the Applicant indicates that he disputes that he is the father of the child, who is now 14 years old.

II. THE APPLICANT'S SITUATION

[5] In his materials, the Applicant indicates that his annual income for 2004 will be approximately "\$ 0". He indicates that his spouse earns approximately \$13,500.00, and he borrows money from family members. He indicates that the monthly expenses for himself and his spouse are \$1,880.60. He has a 1983 truck valued at \$200.00, and total debts of \$50,000.00 consisting of a \$30,000.00 owed to his parents, and \$20,000.00 owed to his daughter.

[6] The Applicant has provided copies of his Income Tax Information for the following years indicating the following net incomes:

1992 -	\$ 20,014.00
1993 -	4,170.00
1994 -	200.00
1995 -	1,900.00
1996 -	---
1997 -	---
1998 -	3,325.00
1999 -	23,111.00
2000 -	20,486.00
2001 -	1,863.00
2002 -	1.00

No Income Tax Information has been provided for the years 2003 or 2004.

[7] The Applicant filed for bankruptcy on November 27, 1998. This was the second time the Applicant filed for bankruptcy, the first time being in 1993.

[8] Due to a job related injury, the Applicant has not worked since January 1999. Sometime in 1999, the Applicant received a "non-economic loss award" from the Workplace Safety & Insurance Board in the amount of \$18,000.00.

[9] The Applicant is not eligible for social assistance as his spouse works.

[10] Under the Provisional Order, confirmed October 18, 1996, the Applicant was to pay \$350.00 per month child support commencing November 1, 1996. Under that Order, the Applicant should have paid \$37,100.00 up to August 31, 2005 (106 months @ \$350.00 per month). The Applicant states he has paid child support in the amount of \$15,083.56 since the Provisional Order was confirmed. As of August 31, 2005, the Applicant therefore would owe \$22,016.44 in arrears (plus interest as provided for in the Order). The Applicant states in his materials that he owes \$15,716.44 in arrears as of February 1, 2004¹.

[11] Based on the stated net income of the Applicant, and according to the *Child Support Guidelines, N.W.T. Reg. 138-98* (the *Guidelines*), the Applicant should have paid the following annual amounts of child support:

1992	\$ 180.00
1993	---
1994	---
1995	---
1996 -	---
1997 -	---
1998 -	---
1999 -	2,532.00
2000 -	2,220.00
2001 -	---
2002 -	---
2003 -	---
2004 -	---

III. CONCLUSION ON SUPPORT VARIATION

[12] The Applicant has indicated that his current income is nil, as it has been since 2001 based on the Income Tax Information provided. From the information provided, it does not appear that this situation is likely to change in the

¹ The figure in the Applicant's materials, \$15,716.44, plus the amount of arrears that would have accumulated since the information was provided, \$6,650.00, [19 x \$350.00 (February 2004 to August, 2005)], is \$22,366.44

foreseeable future. Taking into account the only information before this court, which is only that provided by the Applicant, the Respondent having chosen to provide no information and taking no position on the Application, the amount of child support that the Applicant is to pay commencing October 1, 2004, is nil.

[13] Since the confirmation of the Provisional Order ordering child support payments to be made commencing November 1, 1996, the Applicant states he has paid \$15,083.56 in child support. According to the Guidelines, and based on the Applicant's income since November 1996, the actual child support the Applicant should have paid since 1996 is \$4,752.00, or since December 1992, when the Provisional Order ordered payments to commence, was \$4,932.00. In the circumstances, taking into account the Applicant's *actual* income, the amount of arrears based on the Provisional Order which had been confirmed, are hereby reduced to nil as of the date of this judgment.

[14] I also note that the Applicant appears to be disputing the parentage of the child in the materials that have been filed. It is trite to say that if the Applicant is not the father of the child, then the Applicant has no obligation to pay support for the child. However, being that the Application was to *vary* child support and not specifically to determine parentage of the child, and taking into account that the Applicant has paid child support in the past, and in light of the order I have made, I decline to make any ruling on this issue without a clear application to do so, and notice to the Respondent of such application.

Bernadette Schmaltz

J.T.C.

Dated this 9th day of September, 2005, at
the City of Yellowknife, Northwest Territories

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