

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**  
IN THE MATTER of the *Maintenance Orders Enforcement Act*, RSNWT 1988, c.M-2 as amended

**BETWEEN:**

MILDRED KANGEGANA

Creditor

- and -

ROGER GRUBEN

Debtor

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**REASONS FOR DECISION**  
**of the**  
**HONOURABLE JUDGE B. E. SCHMALTZ**

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Heard at: Tuktoyaktuk, Northwest Territories  
January 30 & 31, 2013

Reasons Filed: March 20, 2013

Counsel for the  
Creditor/Designated Authority: T. Ralph for Maintenance Enforcement

Counsel for the Debtor: Roger Gruben appearing on his own behalf

*Mildred KANGEGANA v. Roger GRUBEN, 2013 NWTTC 05*

*Date: 2013 03 20*  
*File: T3-ME-1997-000 009*

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**  
**IN THE MATTER OF the *Maintenance Orders Enforcement Act*, RSNWT 1988, c. M-2**

Between:

**MILDRED KANGEGANA**

**Creditor**

**- and -**

**ROGER GRUBEN**

**Debtor**

**I. INTRODUCTION**

[1] On March 9, 2012, a Notice of Garnishment issued by the Maintenance Enforcement Program was filed, and subsequently served on E. Gruben's Transport (Garnishee) and Roger Gruben (Judgment Debtor) in the amount of \$15,250.00. Roger Gruben and E. Gruben Transport filed a defence to the Notice of Garnishment, indicating that maintenance payments had been made, that Roger Gruben's (Judgment Debtor's) obligations had been met, and seeking to have the garnishee summons 'stayed'.

[2] The matter proceeded to hearing on January 30 and 31, 2013, in Tuktoyaktuk. Roger Gruben and Mildred Kangeana both gave viva voce evidence, and filed Affidavit and documentary evidence was also referred to.

**II. FACTS**

[3] Mildred Kangeana and Roger Gruben have a child together, Rebecca Kangeana (the Child), born October 5, 1991. On September 8, 1997, Deputy Judge R.A. Fowler of the Territorial Court of the Northwest Territories made an Order (hereinafter referred to as the Support Order) granting Mildred Kangeana permanent custody and guardianship of the Child and ordering Roger Gruben (the Debtor) to pay

Mildred Kangezana (the Creditor) child support in the amount of \$500.00 per month commencing September 1, 1997.

[4] On January 21, 1998, Mildred Kangezana registered the Support Order requiring Roger Gruben to pay child support with the Maintenance Enforcement Program.

[5] On October 8, 2003, the A/Maintenance Enforcement Officer sent a letter to Roger Gruben informing Roger Gruben that “all support payments must be made through the MEP [Maintenance Enforcement Program] office.” Further, in this letter Mr. Gruben was urged not to make payments directly to the creditor as “this could result in the debtor paying twice for the same period.” Mr. Gruben was also told that unless the creditor acknowledges that a payment was received as maintenance, the amount may not be credited. Mr. Gruben was also given a direct number as well as a toll free number to call if he had any questions regarding, among other things, the Maintenance Enforcement Program in general. (emphasis in original)

[6] On May 26, 2006, at the request of Mildred Kangezana, a withdrawal form was sent to Mildred Kangezana from the Maintenance Officer, Maintenance Enforcement Program. On February 23, 2007, a letter was sent to Mildred Kangezana requesting further documentation, and advising that if such documentation was not received within 30 days, the Maintenance Enforcement Program would “administratively close” the file. On April 7, 2007, the Maintenance Enforcement Program administratively closed the file relating to child support involving Mildred Kangezana and Roger Gruben.

[7] In July 2009, the Maintenance Enforcement Program reopened the file at the request of Mildred Kangezana; the statement of arrears owing on the file was adjusted and arrears owing up to June 2009 were cleared. Beginning July 2009, monthly payments of \$500.00 per month as per the Support Order, were due to the Administrator of Maintenance Enforcement, the Support Order having been again registered by Mildred Kangezana.

[8] On July 7, 2009, Roger Gruben was notified by letter that the Maintenance Enforcement Program had reopened the file. Mr. Gruben was advised that commencing July 1, 2009, monthly payments of \$500.00 pursuant to the Support Order, were again required to be made through the Maintenance Enforcement Program. This letter set out the requirements of s. 8(1) of the *Maintenance Orders Enforcement Act*, how payments could be made; the address where payments were to be sent; the steps that the Maintenance Enforcement Program could take if payments were not received; and provided the name, phone numbers, and address of the Maintenance Enforcement Officer. There were a number of enclosures with this letter including a copy of *Guide for Those Who Pay Support*.

[9] Though the Child turned 18 on October 5, 2010, she continued to reside with Mildred Kangeana and remained enrolled in school until March 31, 2012.

[10] Between July 1, 2009, and March 31, 2012, Roger Gruben should have paid child support of \$16,500.00. Between July 2009 and December 7, 2012, the Maintenance Enforcement Program received \$1,733.68 towards Roger Gruben's child support obligation. The Statement of Arrears, filed on December 7, 2012, shows arrears of \$14,841.32. There is a "Charge Adj" of \$75.00 charged to Roger Gruben on July 16, 2012; it is not clear to me what this adjustment was for.

[11] Roger Gruben filed a copy of a Memo to Mildred Kangeana dated August 10, 2005 (Exhibit 2); the Memo does not indicate who it is from on the face of it, but Roger Gruben testified that he prepared the document. The document is in reference to an airline and hotel reservation for Mildred Kangeana and Rebecca Kangeana.

[12] Roger Gruben filed a Memo to Mildred Kangeana dated April 9, 2006 (Exhibit 3); the Memo does not indicate who it is from on the face of it, but Roger Gruben testified that he prepared the document. The document is in reference to an airline and hotel reservation for Mildred Kangeana and Rebecca Kangeana.

[13] Roger Gruben filed a Memo to Mildred Kangedana and Rebecca Kangedana dated March 27, 2007; the Memo indicates it is from "RTG" who I understand to be Roger Gruben (Exhibit 4). The document is in reference to telephone calls on Roger Gruben's Calling Card, and ends "The telephone calls were made without my permission and must STOP. So from now on.....No More telephone calls without my permission or I change my Telephone Calling Card."

[14] Roger Gruben provided Cherie Gillard, Manager of Maintenance Enforcement Office, documentation prepared by Roger Gruben summarizing payments Roger Gruben says he made "directly to Mildred Kangedana or Rebecca Kangedana" between September 2006 and December 2010 (hereafter referred to as the Summary Sheet). I will only refer to payments between July 1, 2009 and March 31, 2012, as this is the only period relevant to this hearing.

[15] Roger Gruben filed copies of a number of cancelled cheques dated between August 31, 2005 and August 31, 2010 (Exhibit 1). There are no cheques subsequent to July 2009 payable to Mildred Kangedana. There are four cheques payable to Rebecca Kangedana, all four having an endorsement of "RE: PR\_\_\_\_"<sup>1</sup>, and a date.

[16] Between July 1, 2009, and March 31, 2012, the Summary Sheet indicates that Roger Gruben made 'payments', though not always in cash, to Rebecca Kangedana totaling \$9,224.00. Notably this figure includes amounts described, among other things, as 'Christmas Gifts' and 'Payroll'.

[17] Also in the Summary Sheet, and again referring only to payments Roger Gruben says he made between July 1, 2009 and March 31, 2012, Roger Gruben indicates he

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<sup>1</sup> Roger Gruben testified that even though on the Summary Sheet he has indicated that the 'Method of Payment' was 'Payroll', Rebecca Kangedana was not working for him. Roger Gruben testified that it was *his* wages that he was using to pay Rebecca Kangedana child support which is why he referred to the Method of Payment as Payroll; notably though he lists four amounts attributed as 'Payroll', each payment being of \$312.00; the four cancelled cheques corresponding exactly to the dates of these "support payments" are for \$277.34, \$291.58, \$291.58, and \$291.58. It would appear that Roger Gruben was taking some sort of deductions off amounts paid to Rebecca Kangedana as "support payments".

made 'payments', though not always in cash, to Mildred Kangeana totaling \$1,500.00; this figure includes 'cash' payments of \$150.00.

[18] Roger Gruben knew he was to make child support payments through the Maintenance Enforcement Program, and that payments received would then be paid to Mildred Kangeana. Roger Gruben did not approve of Mildred Kangeana's lifestyle, nor did Roger Gruben think that Mildred Kangeana was spending money she received as child support for the benefit of the Child. Roger Gruben has never taken any action to have the Support Order varied or vacated.

## II. ANALYSIS

[19] Section 8 of the *Maintenance Orders Enforcement Act* states:

8(1) All amounts owing pursuant to a filed maintenance order must be paid to the credit of the Government of the Northwest Territories and may be delivered to the Administrator.

(2) The Administrator shall pay all money he or she receives in respect of a filed maintenance order to

...  
(c) the creditor, where the order was filed by the creditor.

[20] Mildred Kangeana registered the Support Order she received; between July 2009 and March 2012, the amount owing pursuant to the Support Order is \$16,500.00; the amount received by the Administrator pursuant to the Support Order was \$1,733.68; the amount outstanding is \$14,766.32.

[21] Roger Gruben submits that he has met his child support obligations, in part by making payments directly to the Child, by buying the Child Christmas gifts, clothing, a hockey stick, giving the Child cash, or allowing the Child to use his grocery account. Roger Gruben may have done some or perhaps all of those things, though I do find some of his evidence and documentation suspect, for example the "child support" payment referred to as "Payroll" and Roger Gruben's explanation that it was referred to as Payroll because it was a payment made from his wages – I do not believe that.

[22] Be that as it may, even if monies were paid or benefits were given directly to the Child, Roger Gruben cannot, and should not be able to, claim that thereby he has met his child support obligations. As Thurnbull, J. stated in *Sareen v. Sareen*, 2010 ONSC 1530 (at para. 21), a case where the father wanted to be credited for payments he made directly to the child:

... [W]e do not want to include children in the dispute between their parents. Children should be kept out of child support arrangements as much as possible. ... The parent who is entitled to child support is to have the discretion of how that money is spent for the benefit of the child. It is neither the payor parent nor the child who is to make that determination. Such a scheme establishes certainty and reduces conflict. For example, if [the child] had to repay the money to her mother, she might be upset with that. If she did pay that money to her mother, that may upset her father. (my emphasis)

Or as Pazaratz, J. said in *Miles v. Swick*, 2008 CanLII 13188 (ON SC), a case where the father made application to pay child support directly to the child:

... It is unrealistic to leave the Applicant with financial responsibility for [the child], but create hurdles to enforcement of the support order. It is offensive to create a situation in which the Applicant would have to go to [the child] to ask him to give her some of the child support to which she is entitled by law.

I agree with the comments made in both of those decisions, and I adopt those comments in this case.

[22] Roger Gruben cannot rely on any monies paid or gifts given prior to July 2009 to fulfill his future child support obligations. To do so would place an unfair burden on the creditor to recall additional monies paid or provisions supplied in the distant past, as was clearly evident in this hearing when Mildred Kangezana was questioned as to whether or not she bought groceries on Roger Gruben's account at Stanton's some two or three or even four years ago. As Mildred Kangezana candidly and reasonably testified, she cannot remember.

[23] What is unquestionably established though is that Roger Gruben did not make child support payments for the Child to the Government of the Northwest Territories for the benefit of Mildred Kangezana, who had the financial responsibility for the Child, as he was by law required to do. Notably no documentation, other than that prepared by

Roger Gruben was submitted or filed to support his position that he had met his obligations. The documentation is self-serving at best.

[24] Clearly Roger Gruben did not approve of what he perceived Mildred Kangezana's use of child support to be. He believed the money was not being used for the Child. If there was a basis for Roger Gruben's perception, there were options available to him: he could have sought to vary or terminate the order made. In an Affidavit of Lou Hall, Maintenance Enforcement Administrator, sworn on May 20, 1999, filed on this matter on an earlier application to enforce the Support Order made, Ms. Hall indicated that a Maintenance Enforcement Officer spoke with Roger Gruben on July 30, 1998, and explained to Roger Gruben that "if he [Roger Gruben] did not like the terms of the order [the Support Order], he could take it back to court" but until the Support Order was changed the Maintenance Enforcement Officer had to enforce the Support Order. Roger Gruben has never made any application to change the Support Order.

### **III. CONCLUSION**

[25] Roger Gruben's obligations to pay child support in compliance with the Support Order have not been met. The Notice of Garnishment issued on the March 9, 2012, and served on E. Gruben's Transport (Garnishee) with respect to Mildred Kangezana (Judgment Creditor) and Roger Gruben (Judgment Debtor) is valid and in full force and effect. For greater clarity, Roger Gruben's Defence (Form 4) filed April 5, 2012, and asking that "the garnishee" [Notice of Garnishment] be stayed is dismissed.

[26] At some point prior to this matter coming before me, Roger Gruben's driver's licence was suspended pursuant to s. 22.2 of the *Maintenance Orders Enforcement Act*. Roger Gruben brought an application to have his driver's licence reinstated pursuant to s. 22.2(7) and I granted that application. The issue with respect to outstanding arrears having now been determined, and having found that Roger Gruben has outstanding



arrears of \$14,841.32 as at January 23, 2013<sup>2</sup>, all of the remedies as set out in the *Maintenance Orders Enforcement Act* are available to the Administrator, including but not limited to, any action that may be taken pursuant to s. 22.2 of the *Act*.

Bernadette E. Schmaltz  
T.C.J.

Dated this 20<sup>th</sup> day of March, 2013  
At Yellowknife, Northwest Territories

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<sup>2</sup> See Affidavit of Cherie Gillard, Manager of Maintenance Enforcement, sworn January 23, 2013.

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