

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

ROBERT JOACHIM VOUDRACH

Applicant
(Respondent on Original Motion)

- and -

TERRI AMBER LENNIE GRUBEN

Respondent
(Applicant on Original Motion)

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

Heard at: Yellowknife, Northwest Territories
September 14, 2015

Reasons filed: November 10, 2015

Counsel for the Applicant: Self-Represented

Counsel for the Respondent: No one attending on behalf of the Respondent

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

ROBERT JOACHIM VOUDRACH

Applicant
(Respondent on Original Motion)

- and -

TERRI AMBER LENNIE GRUBEN

Respondent
(Applicant on Original Motion)

I. INTRODUCTION

[1] Robert Voudrach has brought this Application to vary the amount of child support he was ordered to pay on July 18, 2011. Mr. Voudrach has filed an Affidavit in support of this Application, and made submissions on his own behalf. Terri Gruben did not appear on this Application.

[2] On July 18, 2011, Mr. Voudrach was ordered to pay Child Support of \$640.00 per month, commencing August 1, 2011. At that time arrears were fixed at \$5,760.00, and Mr. Voudrach was ordered to pay a further \$150.00 per month towards the arrears until the arrears were paid in full.

[3] Though Mr. Voudrach had been served with notice of the Application for Child Support, and had attended earlier court appearances, he did not attend Court on July 18, 2011, nor did anyone attend on his behalf. Consequently, the Order made on July 18, 2011, was made in his absence and without Mr. Voudrach having filed complete financial information.

[4] Mr. Voudrach has now filed more complete financial information and through affidavit and submissions, set out his current position and past circumstances. Mr. Voudrach asks that the amount of child support he is required to pay be reduced to \$500.00 per month, and asks that the arrears that have built up be discharged as he does not believe that he will ever be able to pay the arrears. In essence Mr. Voudrach claims that an order requiring him to pay child support in accordance with the *Federal Child Support Tables* would result in an undue hardship on him.

[5] I have reviewed the information provided by Mr. Voudrach, and considered the information relating to his circumstances over the last four years.

II. **FACTS**

[6] Mr. Voudrach and Ms. Gruben were in a relationship from August 2009 until July 2010. Their son was born on October 7, 2010. Ms. Gruben has sole custody of the child.

[7] On July 18, 2011, when the support Order was made, annual income of \$68,950.00 was imputed to Mr. Voudrach, and monthly child support of \$640.00 plus monthly payments of \$150.00 towards arrears was ordered.

[8] Mr. Voudrach commenced paying child support in August 2011, and though he fairly consistently made payments, the payments were not always the required amount and arrears began to accrue. At March 1, 2015, the balance owing was \$16,768.03¹.

[9] Mr. Voudrach sets out in his Affidavit his circumstances since he was ordered to pay child support. Since September 2012 he has not had the same employment he had when the initial support order was made.

¹¹ Child Support Ordered from August 1, 2011 to March 1, 2015: \$33,995.00 less payments made between August 1, 2011 and March 1, 2015: \$17,226.97.

[10] Ms. Gruben's Affidavit sworn February 16, 2011, was filed on the original Application and is the only information before the Court regarding Ms. Gruben's situation. Ms. Gruben lived with her and Mr. Voudrach's son in Tuktoyaktuk. At the time Ms. Gruben was a stay-at-home mom, and relied on income support. Mr. Voudrach is not involved in his son's life.

[11] Mr. Voudrach returned to school in September 2013. In September 2014, after one year of upgrading, Mr. Voudrach began the Business Administration Program at Aurora College in Yellowknife. In May 2015, Mr. Voudrach obtained employment as a summer student with the Northwest Territories Housing Corporation, and in July 2015, was offered full time employment, which he accepted. Mr. Voudrach's annual salary now is \$60,138.00.

[12] On March 12, 2010, in an unrelated matter before the Supreme Court, Mr. Voudrach was ordered to pay child support of \$1,104.00 per month for three of his children born between 1998 and 2002.

[13] On April 16, 2015, in an unrelated matter before the Supreme Court, Mr. Voudrach was ordered to pay child support of \$750.00 per month for two children (born in 2008 and 2012), as well as \$428.75 per month, towards childcare expenses for these children.

[14] In September 2012, Mr. Voudrach's partner returned to school in Southern Canada. Mr. Voudrach and his partner had a 2 month old son at the time and Mr. Voudrach went with his partner to provide support. The couple's son contracted meningitis causing considerable upset in their lives, and the family returned to the Northwest Territories.

[15] Mr. Voudrach's affidavit filed on this Application sets out difficulties he faced including the breakup of his relationship and declaring bankruptcy. In the summer of 2013, Mr. Voudrach was accepted at Aurora College in Yellowknife.

[16] Mr. Voudrach has attached Canada Revenue Agency information to his Affidavit establishing that his income for 2012 was \$65,771; his income for 2013 was \$25,459; and his income for 2014 was \$21,363.²

III. CLAIM OF UNDUE HARDSHIP

[17] Pursuant to s. 12 of the *Children's Law Act Child Support Guidelines*, R-138-98, (the *Guidelines*) the Court may award an amount of support that is different from the amount determined pursuant to the *Guidelines*, where it is determined that a parent would otherwise suffer undue hardship. The hardship factor that is applicable in this case is Mr. Voudrach's legal duty to support five other children pursuant to two existing Court Orders.

[18] Section 12 of the *Guidelines* states:

12(1) A court may, on application, award an amount of support that is different from the amount determined under any of sections 4 to 7, 10 or 11 where the court finds that a parent of the child in respect of whom the application is made, or the child in respect of whom the application is made, would otherwise suffer undue hardship.

(2) Circumstances that may cause a parent or child to suffer undue hardship include the following:

...
(c) the parent has a legal duty under a judgment, an order or a parental or separation agreement to support any person;

[19] Mr. Voudrach is under a legal duty to support five other children in accordance with two other Court Orders.

[20] In order to find that Mr. Voudrach would suffer undue hardship if he were ordered to pay support in accordance with the *Guidelines*, Mr. Voudrach must prove specific facts to establish the undue hardship. If undue hardship is established, then Mr.

² Exhibits B, C, and D, Mr. Voudrach's Affidavit

Voudrach must show that his household would enjoy a lower standard of living than Ms. Gruben's household if the child support were not reduced.

[21] Undue hardship does not mean some hardship or any hardship. As the Alberta Court of Appeal said in *Hanmore v. Hanmore*, [2000] A.J. 171 (C.A.):

The objectives of the Guidelines are set out in s. 1. The primary objectives are “to establish a fair standard of support for children that will ensure that they continue to benefit from the financial means of both spouses after separation”, and “to ensure consistent treatment of spouses and children who are in similar circumstances”. Such objectives will be defeated if the Courts adopt a broad definition of “undue hardship” or if such applications become the norm rather than applying to exceptional circumstances. That has been the consistent message of the Courts since the Guidelines came into force.

...

... [T]he burden of establishing a claim of undue hardship is a heavy one... The hardship must be more than awkward or inconvenient. It must be exceptional, excessive, or disproportionate in the circumstances. ... [I]t is not sufficient that the payor spouse has obligations to a new family or has a lower household standard of living than the payee spouse. The applicant must specifically identify the hardship which is said to be undue. A general claim regarding an inability to pay or a generic reference to the overall expense of a new household will not suffice. (at paras. 10 & 17)

The Court in *Hanmore* referred to several cases that had considered the issue of undue hardship. In *Sampson v. Sampson*, [1998] A.J. No. 1214 (Q.B.), Veit, J. stated:

The guidelines anticipate that a person who asks to be relieved from paying the table amount must first identify the hardship and the court must accept that, in that case there was an undue hardship. A general claim – of the type “I can't afford to pay this amount” – will not usually qualify as a hardship event because the guidelines set their own standard about when parents must provide financial support for their children; ...

In *Jackson v. Holloway*, [1997] S.J. No. 691 (Q.B.), McIntyre, J. in referring to a claim of hardship arising from a payor's obligation to a second family, stated:

Insofar as the respondent argues he cannot afford to pay the table amount of support given his new family unit this cannot constitute undue hardship without identifying and establishing a specific basis for a claim of undue hardship. ... A separated spouse with a child support obligation enters into a new family unit knowing he or she has an obligation and is expected to organize his or her affairs with due regard to that obligation. A general or generic reference to the overall expense of a new household will not give rise to a claim of undue hardship. To permit such a claim would in many instances mean that if the claimant could

establish a lower standard of living than a claim of undue hardship must succeed. This is not the test.

[22] The threshold for establishing “undue hardship” is a high one. The term means hardship that is *exceptional, excessive, or disproportionate* in the circumstances. Again, the threshold is not met by Mr. Voudrach showing some hardship; the question is whether it is undue. (see: *Campbell v. Chappel*, [2002] N.W.T.J. No. 96, at para. 18)

[23] From reviewing the information provided by Mr. Voudrach, and considering his submissions in this case, whereas Mr. Voudrach may suffer some hardship if he were required to pay child support in accordance with the guidelines, I find that now that Mr. Voudrach is gainfully employed, he would not suffer undue hardship if he were ordered to pay child support in accordance with the *Guidelines*.

[24] That being said, the significant arrears that have built up in this case may be overwhelming for Mr. Voudrach. In considering whether the arrears that have built up on this matter should be reduced, I find in the circumstances, it is appropriate to consider what Mr. Voudrach’s actual income was over the period that arrears have accrued.

[25] Mr. Voudrach relocating with his partner and their infant son in 2012 when his partner wanted to return to school was not unreasonable. Further, the difficulties encountered when his very young son became ill and then his relationship with his partner ended explain why Mr. Voudrach returned to Inuvik. At that time he took steps to improve his own situation by returning to school, and he should not be penalized for that. I do not find the steps taken by Mr. Voudrach were such as to find that he was deliberately unemployed in order to avoid his obligations to support his son, and therefore his child support obligations should be based on his actual income rather than imputing income to him.

[26] Taking into account the further information now provided, Mr. Voudrach is responsible for child support as follows:

Nov. 2010 – Aug. 2012: \$611.00/month ³	\$	13,442.00
Sep. 2012 – Dec. 2013: \$219.00/month ⁴		3,504.00
Jan. 2014 – Apr. 2015: \$183.00 /month ⁵		2,928.00
May 2015 – Aug. 2015: \$556.00/month ⁶		<u>2,224.00</u>
	\$	22,098.00
Less: Payments made to August 31, 2015 ⁷		<u>21,630.59</u>
Arrears owing at August 31, 2015	\$	467.41

IV. CONCLUSION

[27] Mr. Voudrach's application is allowed in part. The application to vary the amount of child support payable due to undue hardship is dismissed. However the monthly amount will be adjusted in accordance with Mr. Voudrach's current income. Mr. Voudrach is ordered to pay child support for the child, C.G. born October 7, 2010, in the amount of \$556.00 per month commencing December 1, 2015, and on or before the first day of every month thereafter until further order of the court.

[28] The application to vary the amount of arrears owing on this matter is allowed. As of September 1, 2015 the arrears on this matter are set at \$467.41 as per Paragraph 26 above. This amount shall be adjusted to November 30, 2015, by adding an amount

³ Exhibit B, Mr. Voudrach's Affidavit: Actual Income for 2012: \$65,771.00. Support as per the *Guidelines*: \$611.00/month

⁴ Paragraph 8 and Exhibit C, Mr. Voudrach's Affidavit; Actual Income for 2013 \$25,459.00. Support as per the *Guidelines*: \$219.00/month

⁵ Exhibit D, Mr. Voudrach's Affidavit; Actual Income for 2014 \$21,363.19. Support as per the *Guidelines*: \$183.00/month

⁶ Exhibit #2 at the Hearing "Casual Job Offer" – annual income of \$60,138.00 (\$30.84/hour x 37.5 hours/week x 52 weeks/year)

⁷ Exhibit G, Mr. Voudrach's Affidavit; Exhibit #3 and #4 at the Hearing

equal to: \$1,668.00⁸ less any payments received on this matter after September 1, 2015. Mr. Voudrach shall make an additional payment of \$50.00 per month commencing December 1, 2015, and on or before the first day of every month thereafter until the arrears are paid in full.

[29] Mr. Voudrach shall provide to the Ms. Gruben on or before June 1, 2016, and June 1 of every year thereafter, a copy of his Notice of Assessment from Revenue Canada.

[30] In the circumstances each party shall bear their own costs.

B.E. Schmaltz
Territorial Court Judge

Dated this 10 day of November, 2015, at
the City of Yellowknife, Northwest Territories

⁸ Child Support due for September, October and November 2015 (3 x \$556.00)

Robert Joachim VOUDRACH v. Terri Amber Lennie GRUBEN 2015 NWTTC 20
Date: 2015 11 13
File: T3 FM 2011 000003

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

ROBERT JOACHIM VOUDRACH

Applicant
(Respondent on Original Motion)

- and -

TERRI AMBER LENNIE GRUBEN

Respondent
(Applicant on Original Motion)

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