

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

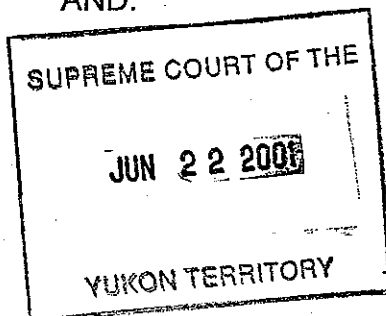
COLLEEN ANNE KELLY

PETITIONER

AND:

KERRY ELWOOD LYLE

RESPONDENT  
(APPLICANT)



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**REASONS FOR JUDGMENT OF  
MR. JUSTICE R. HAINES**

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[1] The parties were divorced in August 1997. They have two children – Krysta Marie Lyle born June 12, 1983 and Shane Andrew Lyle born September 27, 1986. At the time of the divorce Mr. Lyle was not employed but agreed to an attributed annual income of \$45,000 for the purpose of determining the amount of child support. Mr. Lyle has since been engaged in a business known as Great Northern Sportswear.

[2] In the fall of 1998, Mr. Lyle applied to the court for a reduction of his support obligation. It was his position that there had been a material change in circumstances as a result of his reduced level of income. The application was heard in January 1999. In his reasons for dismissing the application, Maddison J. stated:

Mr. Lyle's income has been decidedly less than \$45,000 in the period since the consent order was entered into, and he seeks an amount based on his expected income of \$20,000-odd from Great Northern Sportswear.

The difficulty with making a reduction at this time is that it would be unreasonable and unjust to the children to reduce the amount in light of Mr. Lyle's utilizing funds to purchase a house with his new partner when he knew that the time was coming when his unemployment insurance would run out and he would be requiring those funds to continue maintaining his payments for the children. Therefore, Mr. Lyle's application to vary the support payments is disallowed ...

[3] Mr. Lyle is now back before the court seeking, essentially, the same relief. He has produced his income tax returns for the years 1998, 1999 and 2000, which disclose an average income over that period of \$23,080. His income in 2000 was reported at \$24,399.

[4] Although Mr. Lyle has a reduced income, a comparison of his financial statements filed on this and the earlier application to vary disclose that his assets have increased while his debt load has remained essentially constant, notwithstanding a reported monthly deficit of some \$600.00. There is also evidence that Mr. Lyle enjoys a lifestyle that is not consistent with him experiencing the financial hardship he is claiming.

[5] I am satisfied that Mr. Lyle has established a material change in circumstances by demonstrating that his income is substantially reduced from \$45,000, but I have also concluded that there are direct benefits he is receiving from the operation of his sole proprietorship which do not appear as taxable income on his income tax returns.

[6] On the basis of Mr. Lyle's financial circumstances, as disclosed in the material filed, and his apparent lifestyle, I find his annual income for the purpose of calculating

child support pursuant to the *Guidelines* to be \$35,000. He is, therefore, required to pay child support commencing July 1, 2001 of \$506.00 per month.

[7] I find on the basis of the estimates made by Ms. Kelly that the annual extra-curricular costs of Krysta are \$1,700, and for Shane are \$1,000. Since Ms. Kelly's gross annual income is \$36,982.56, I conclude that the extra-curricular expenses should be shared equally between the parties, making Mr. Lyle's contribution \$112.00 per month.

[8] Mr. Lyle is seeking credit for certain grants either received by Ms. Kelly or available to her to subsidize the cost of the children's extra-curricular activities. Ms. Kelly did receive \$600.00 from the Kids Recreation Fund in 1999, but did not apply for or receive any grant in 2000. In her affidavit, Ms. Kelly explains that she believed the fund to be limited and did not want to diminish the amount available to others when she believed she was able to afford the expenses for her children. In the circumstances, I am not prepared to make any order either granting Mr. Lyle credit on account of past payments or reducing his on-going level of contribution to the cost of the extra-curricular activities of the children beyond that already ordered.

[9] Mr. Lyle has requested certain personal property that he claims Ms. Kelly has failed to deliver to him, as provided for in the resolution of the divorce proceedings. Ms. Kelly has stated that she does not have any of the items requested, and I accept the explanations she has provided in her affidavit.

[10] Mr. Lyle also raised an issue with respect to Shane's use of the surname Kelly at school, but in argument he withdrew his request for the court to address this issue.

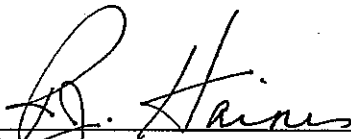
[11] There will, therefore, be an order varying the order of Maddison J. dated January 14, 1999 by:

1. Imputing a gross income to Mr. Lyle of \$35,000.
2. Providing for child support pursuant to the *Guidelines* of \$506.00 per month.
3. Determining the annual extra-curricular costs for Krysta to be \$1,700 and for Shane to be \$1,000.
4. Requiring Mr. Lyle to pay one-half of the extra-curricular costs, being \$112.00 per month.
5. Dismissing the balance of the application.

[12] Mr. Fairman shall prepare the necessary order in accordance with these reasons and have the trial coordinator forward the draft order to me for my review and approval.

[13] If the parties wish to address the issue of costs, I may be spoken to.

Haines J



Shayne Fairman

Counsel for the Petitioner

Kerry Elwood Lyle

Unrepresented