

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *E.E.M.B. v. J.M.B.*, 2006 YKSC 38

Date: 20060605
Docket No.: S.C. No. 05-D3763
Registry: Whitehorse

Between:

E.E.M.B.

Petitioner

And

J.M.B.

Respondent

Before: Mr. Justice R.S. Veale

Appearances:

Emily Hill
Lynn MacDiarmid

Counsel for the Petitioner
Counsel for the Respondent

REASONS FOR JUDGMENT

[1] This is an application by Mr. B. to vary an interim child support order. On January 27, 2006, this court ordered that he pay \$323 to Ms. B. commencing February 1, 2006 for their two children. It is not in dispute that the eldest child is no longer in the care of Ms. B. as of May 1, 2006. It is also agreed that there has been a change in Mr. B's employment circumstances.

[2] On January 27, 2006, Mr. B. was employed with a company providing maintenance services at a salary of \$22,008.16, resulting in the child support order for two children in the amount of \$323.

[3] On February 6, 2006, he was convicted of assaulting Ms. B. and given a suspended sentence and put on probation for one year with conditions that include domestic violence treatment. He was dismissed from his employment on February 10, 2006, as he no longer had security clearance. However, he had an excellent work record since the commencement of employment on March 7, 2004. It is anticipated that he will take at least a year to obtain security clearance.

[4] He is presently receiving employment assistance in the amount of \$558 every two weeks and submits that he should have his annual income reduced to \$14,508. He seeks a reduction in outstanding arrears of \$3,362 to \$1,292. Based on this reduced income he would be required to pay child support for the one child remaining in Ms. B.'s custody in the amount of \$102 commencing May 1, 2006.

[5] Mr. B. has managed to pay \$750 to a trustee in bankruptcy in May 2006. He is also employable at alternative employment.

[6] In my view, there is no reason preventing Mr. B. from obtaining new employment. He is qualified to earn an annual income of \$22,008.16 and I so impute.

[7] There is an additional and perhaps overriding public policy principle for not reducing the arrears applied for in this case. The change in circumstance in this case arose directly from Mr. B.'s assault of Ms. B.. It would be unjust and contrary to public policy to allow Mr. B. to use his own criminal act upon his spouse as the basis for not paying support for his child. See *G.K.H. v. H.S.H.*, [1996] B.C.J. No. 2501 (S.C.), where Master Joyce denied a variation based on the imprisonment of the respondent who sexually assaulted his spouse.

[8] The application to vary by cancelling arrears is dismissed. Commencing May 1, 2006, Mr. B. will support the one child remaining with his spouse in the amount of \$198 based upon an imputed annual income of \$22,008.16.

VEALE J.