

SUPREME COURT OF YUKON

Citation: *SEP v RDP*, 2016 YKSC 30

Date: 20160629
S.C. No.: 10-D4258
Registry: Whitehorse

Between:

SEP

Plaintiff

And

RDP

Defendant

Before Mr. Justice RS Veale

Appearances:

H. Shayne Fairman

Kelly McGill

RDP by telephone

Counsel for SEP

Counsel for the Director of Maintenance Enforcement Program

Appearing on his own behalf

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): This is an application by the mother of two children aged 14 and 12 that are residing with her in the Yukon. The parties, in the past, have obtained their court orders under the *Divorce Act* in the Yukon. However, there are two orders that were filed in the Court of Queen's Bench in Alberta, both by consent between the parties and relating to various aspects of child support and special and extraordinary expenses.

[2] As I indicated earlier in the proceeding, and I will say it for the purpose of these reasons, the father made an application under the *Interjurisdictional Support Orders Act*,

SY 2001, c. 19 (“ISO”), regarding a hardship application and an application to reduce his child support obligation. I ruled that it was not appropriate to deal with the ISO application based on the fact that this is a *Divorce Act* proceeding, and the *Divorce Act* provides for provisional orders, which would be the appropriate way to proceed. But it is not necessary to deal with provisional orders simply because the mother has made the application to this Court, and this Court has jurisdiction.

[3] However, I allowed RDP’s affidavit material that he had filed yesterday, June 28, under his ISO application to be heard under the application today under the *Divorce Act*. So in other words, we have the material that he has filed in response to the application of the mother at this time.

[4] The application of the mother is for two things. She is seeking interim child support for the period of August 2015 through to January 2016 based on the income of RDP, which is a support obligation of \$812.50.

[5] She also applies for special and extraordinary expenses mainly for a Girl Guide payment which the father had clearly agreed to pay on the record. She also seeks the orthodontic expenses that have been incurred since the children have been in her custody. And I should indicate that the parents have basically been having joint custody of the children and sharing that care and control every two years, and we are now partway through the two-year period that the mother has the children under her care and control.

[6] I do not think there is any doubt that RDP has had some difficulties based on the difficult employment situation in Alberta as a result of the — well, I guess there has been the Fort McMurray fire and there has been the reduction in the price of a barrel of

oil, and those have been rather severe, so there is no doubt that there is some basis for him putting forward that case.

[7] The question, though, is what the actual numbers are, and that is where I think RDP's application runs into some difficulty.

[8] I do not have any information before me indicating the actual amounts that he was paid prior to his being laid off in August of 2015, nor do I have any paystubs indicating his receipts subsequent to that date when he was rehired. He has now been hired by Paul North Construction and appears to have a lower hourly rate, I think \$18 an hour rather than the \$22 an hour that he would expect to receive under normal circumstances.

[9] The difficulty I have, though, as I have indicated, is I have no information about the reality of those receipts on a monthly basis. The information simply has not been provided.

[10] And I want to say this. I do want to say that, one, RDP is self-represented, and that certainly creates difficulties for him; and secondly, I want to indicate that I think that he has been a responsible father in terms of making the payments that he feels are appropriate. This is not a case of a deadbeat dad who is simply trying to avoid payments altogether. There are obvious reasons behind his financial difficulties at this time.

[11] But in that regard, the issue of the child support payments not being paid for the two children of his present relationship, those are difficult to deal with because those are obligations that are involving a parent of those children. And I can appreciate that they present financial difficulties, but I have no information in front of me. And I have allowed

RDP, certainly, to state his case because I think it is only fair, as a self-represented litigant, that he put his case forward. But there is simply a complete lack of information in that regard.

[12] The other thing I would say, too, is that all of this will come out, at the end of the day, in terms of the gross amount of pay received by RDP at the end of this year, in other words, at the end of 2016, and that gets calculated into the payments that he makes going forward.

[13] The normal case is that, at the end of each year, the issues about whether someone has been overpaying or underpaying come out and are dealt with in the subsequent year. And in that regard, you know, RDP has been very frank and candid that he hopes to be in a better position in the near future, and he has two job prospects that appear to be reasonable.

[14] So going back to the two applications, I am going to deal firstly with the base child support application from August 2015 to January 1, 2016. And I am going to order that the base amount payable is \$812.50.

[DISCUSSIONS]

[15] And I am not prepared to grant the deductions that RDP has arbitrarily made. I do not say that the father may not have had some real financial anxiety about that, but I do not think it is appropriate to make those arbitrarily without coming back to the court.

[16] The calculation for the arrears, then, that are outstanding is \$2,384.85. And I am going to order that that is the amount of arrears. I am not going to speak when that is paid because I want both the father and Mr. Fairman to speak to that issue.

[DISCUSSIONS]

[17] The second part of this order relates to going forward from July 1, 2016. I am going to make that order on the basis of an income for 2015 of \$58,668, requiring a monthly payment of \$830, and I will hear from the father and Mr. Fairman with respect to that amount.

[18] The issue of the orthodontic expenses. The father is making a claim for orthodontic expenses from 2013 and the mother is making an application for the orthodontic expenses for a different child from 2015.

[19] I am not prepared to revisit the issue of 2013 orthodontic expenses because it appears to me that those were resolved satisfactorily, that each party was making payments, and there has not been a claim for that until this matter arose.

[20] With respect to the payments from 2015 claimed by the mother, she is claiming a payment of \$903.65, and I am basing that on the calculation that has been made in the correspondence from Mr. Fairman to the father on March 7, 2016. That is based on a contribution of 44 percent.

[21] The father legitimately says that he did not consent, and I think it is fair to say that the mother did not seek his consent to that expense. However, I also think it is clear that one daughter received orthodontic expenses and both parties agreed to pay it, and I think, regardless of whether consent was sought at this time — and I acknowledge that there is a lack of communication between the parties — so I am making an order for the best interests of the child. I appreciate that that does not always come down to be in the best interests of the parent, particularly one in the financial situation that the father finds himself. But nevertheless, I think it is a very

legitimate expense and I am going to order that the \$903.65 be paid, but I am going to take submissions at the end of this with respect to the time of that payment.

[22] I am also going to order that the future orthodontic expenses be paid as well, and I will receive submissions on the timing of that.

[23] I am not going to order the baggage charge for the children that has been claimed from the recent Colorado trip.

[24] Now, I also want to say that the father has made an undue hardship application and has not filed all the information that is required. I want to say that undue hardship applications are extremely difficult to succeed on, but I do not want to prevent the father from making that undue hardship application if he wishes in providing all the information. But I also have to say my inclination is, from hearing the information that he has provided, without the written documentation, I do not think he will succeed.

[25] I am not foreclosing that he may make that application and may provide the documentation, but it has to be very complete in terms of all the information regarding the two children that he has, all the information regarding the income of each one of them and all that kind of information because, ultimately, it has to be compared to the income available to the household, income available to the mother.

[26] At the end of the day, I think that is going to be a difficult case to make, but I indicate that the father is entitled to pursue that at a later date if he wishes to do so.

[DISCUSSIONS]

[27] I am going to order, then, that the arrears of \$3,288.80 (\$2,384.85 + \$903.65) be paid in a monthly amount of \$274, commencing August 1, 2016. And my calculation

would be that that would be paid off, then, by the time the children — the two girls are returned to you in August 2017.

[28] And I am going to order costs of \$500 to be paid by December 31, 2016. Costs to be paid by RDP to the mother.

[DISCUSSIONS]

[29] So RDP, I am not going to change the order I made for payments of \$274 commencing August 1, 2016, to pay the arrears, but the costs of \$500 shall be paid no later than March 31, 2017.

VEALE J.