

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Huston v. LeClerc*, 2004 YKSC 39

Date: 20040518
Docket: S.C. No. 96-B0039
Registry: Whitehorse

IN THE MATTER OF THE *RECIPROCAL ENFORCEMENT
OF MAINTENANCE ORDERS ACT*, R.S.Y. 2002, c.191

IN THE MATTER OF THE *FAMILY PROPERTY AND
SUPPORT ACT*, R.S.Y. 2002, c.83

Between:

**THE DIRECTOR OF SOCIAL SERVICES BRANCH,
on behalf of CHERYL ANN HUSTON**

Petitioner

And:

DWAYNE ERNEST LECLERC

Respondent

Before: Mr. Justice L.F. Gower

Appearances:

Lenore Morris

No One

For the Director of Social Services

For the Respondent

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): I am prepared to make a ruling. The evidence before me includes the Affidavit of Cheryl Huston, filed and sworn on May 11th, 2004, as well as the in-person testimony that I heard today and the exhibit that was filed. I also heard the submissions of Ms. Morris, on behalf of the Director, who has brought this application on Ms. Huston's behalf. I am prepared to find, pursuant to s.12 of the *Family Property and Support Act Guidelines*, otherwise referred to

as the *Yukon Child Support Guidelines*, that since 1997 there has been a change in Ms. Huston's condition, means and needs or other circumstances and that there have been similar changes with respect to at least one of the children. I am referring now to the child, Melinda, who, according to the Affidavit material, has had some 27 surgeries to date and requires at least three more. There was an exhibit attached to that Affidavit from one Dr. Anne Williams, which is dated June 23rd, 1999, and thus, postdates the 1997 hearing, which details Melinda's chronic health problems and gives some indication of her probable future care and prognosis.

[2] It is, I think, reasonable to assume that not all of that information was available or made known to the judge in Alberta in 1997. Consequently, it can support the finding that there has been a change in Melinda's circumstances.

[3] It is also clear that Ms. Huston herself suffers from significant health problems. It is reasonable to infer that those health problems (in terms of stress, she referred to both physical and mental health problems) have been made worse by having to support and cope with Melinda's problems. Ms. Huston's condition, therefore, has in all likelihood deteriorated somewhat since 1997 and that supports, to that extent, a finding of a change in Ms. Huston's circumstances.

[4] I am lastly inclined to say that it is probably reasonable to infer that there has been a change in the condition, means, needs or other circumstances of the father, who is the respondent. The sex change operation, which he was either

planning or about to go through in 1997, during the last hearing, has now been completed. That conclusion is supported by the oral evidence from Ms. Huston of her conversation with Mr. LeClerc's father, who told her: "He is now a she." That indicates the operation is complete and suggests that Mr. LeClerc has gone on to make a new life for himself with a new sexual orientation.

[5] We do not have any information with respect to Mr. LeClerc's financial circumstances and we do not know whether they are better or, indeed, worse than they were in 1997. But, s.12 (b) of the *Yukon Child Support Guidelines* does not specifically limit the Court to changes in financial circumstances. Rather, it refers generically to "any change in the condition, means, needs or other circumstances of either parent or of any child who is entitled to child support."

[6] So, for those reasons, I am satisfied that the Order that was made in 1997 by Judge Fowler, which reduced the child support payable by the father to a zero sum, should be varied, pursuant to the terms suggested by counsel. I understand the terms would be worded in the Order not to specify a quantum, but more generically, such as "in an amount to be determined appropriate upon the Provisional Order being returned to Alberta for confirmation." I will leave the wording of the Order to counsel to draft.

GOWER J.

