

SUPREME COURT OF YUKON

Citation: *ACR v DRM*, 2021 YKSC 25

Date: 20210504
S.C. No. 20-B0020
Registry: Whitehorse

BETWEEN:

ACR

PLAINTIFF

AND

DRM

DEFENDANT

Before Chief Justice S.M. Duncan

Appearances:

Shayne Fairman

Counsel for the Plaintiff

Shaunagh Stikeman

Counsel for the Defendant

REASONS FOR DECISION (Retroactive child support payments)

Introduction

[1] This is an addendum to the reasons for decision dated April 8, 2021, to address the mother's request for retroactive adjustments to amounts of child support paid by the defendant father to the plaintiff mother. These arguments were made in oral submissions and the issue was not included specifically in the notice of application or the outlines. There was however some affidavit evidence provided on the issue, principally by the father. A list of monthly support payments was handed up at the hearing by counsel for the mother, without objection. At the request of counsel for the mother I will address this issue here.

Issue

[2] The matter to be determined is the amount of child support payments made by the father to the mother between April 2020 and February 2021. The mother says the monthly amount is too low based on the father's 2020 income, and the reductions the father made in three of those months were unjustified. The father says he made these child support payments voluntarily and retroactive adjustments should not be made. In any event, the amounts paid are justified based on his income and other reasons, explained below.

Background

[3] The father began to make child support payment without a court order, after the couple separated in early April 2020. At the request of the mother's lawyer in May 2020, the father began making payments of \$2,104.49 each month. This amount was calculated on the basis of the letter from his employer setting out his 2020 income. The mother says the amount is too low as it does not include overtime, Yukon bonus, statutory holidays and other pay.

[4] In April, September and December 2020, the father paid lesser monthly amounts. He paid \$1,000 in April. The father says this was in addition to the deposit of \$3,100 for expenses in the joint account. The mother does not dispute this deposit, but says this amount was for the mortgage and other expenses, part of the usual payment arrangement they had.

[5] In September, the father paid \$864.97. He says the amount was properly reduced because he bought clothing, books, toys, and games for the children, totalling

\$1,239.52. He was required to purchase these items in order to care for them during his parenting time.

[6] In December, the father paid \$366 on the basis of increased time he spent with the children over the Christmas break, as well as the imputed income he said is attributable to the mother.

Analysis

[7] The fact that child support payments were made regularly by the father, beginning shortly after their separation in April 2020 with the \$1,000 payment, and increased to \$2,104.49 after a request from the mother's lawyer, demonstrates his acknowledgement and acceptance of his financial responsibilities for his children. Child support payments in this context are a legal obligation under s. 32 of the *Family Property and Support Act*, RSY 2002, c 83. The parties relied on the child support guidelines to calculate the monthly child support amounts paid to the mother.

[8] There is often real time uncertainty about an individual's precise annual income. The actual annual income is often not known until the T-4 is provided for Canada Revenue Agency purposes. The fact that the father calculated his child support payments on a letter provided by his employer setting out his income is a responsible, objective, and fair approach. A retroactive adjustment based on a difference in year-end income is not justified or necessary.

[9] For the April amount, it is relevant that the mother obtained an Emergency Intervention Order on April 9, 2020, including a no contact order, and the father did not return to the family home after that date. The mother does not dispute that the father paid a total of \$4,100 to her that month, \$3,100 of which was for regularly scheduled

household expenses. Given the facts that the separation was not technically in effect until the first 10 days in April had passed; the father did not return to the house after April 6, 2020; the situation in that first month was uncertain, including the fact that the father was unable to obtain legal advice until late in April; and no request for child support was made by the mother until May, I decline to order any retroactive adjustment for the month of April 2020.

[10] The father's decision to reduce his September monthly payment because of significant purchases he made for the children is appropriate. There was a no contact order between the parents. It is expected that a non-custodial parent in a new home will provide an environment for the children similar to what they have been accustomed to. The monies were spent by the father in the children's best interests. There shall be no retroactive adjustment for September 2020.

[11] The December 2020 payment should not have been reduced by the father. First, while he argues that he spent close to or more than 40% of the time with the children during that month, there is no evidence before the Court of this. Even if there were evidence of more than 40% time, the child support guidelines do not provide for adjustment on a month-by-month assessment. Second, the decision not to impute income to the mother has been made. This does not provide a basis for reduction of the December support payment. As a result, the father shall pay the difference between the \$366 paid and the \$2,104.49.

DUNCAN C.J.