SUPREME COURT OF YUKON

Citation: *MFF v KMN*, 2026 YKSC 12

Date: 20260212
S.C. No.: 24-B0057
Registry: Whitehorse

BETWEEN

M.F.F.

PLAINTIFF

AND

K.M.N.

DEFENDANT

Before Justice K. Wenckebach

Counsel for the Plaintiff — Paul Di Libero

Appearing for the Defendant — No one

This decision was delivered in the form of Oral Reasons on February 12, 2026. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): The parties in this family law matter were in a common-law relationship between October 2014 and June 2019. They have one child of the relationship: T.H.M.N., born [redacted].

[2] The plaintiff, M.F.F., has brought an application seeking retroactive and prospective child support, prospective s. 7 expenses, and costs of the application.

Specifically, she seeks that child support be payable back to June 20, 2019. On an ongoing basis, she seeks that the defendant, K.M.N., pay child support on an imputed income of $100,000. The amount of child support payable on that income is $935 per month. M.F.F. also seeks that K.M.N. pay 50% of T.H.M.N.'s extracurricular activities, health care expenses, and other such expenses starting February 1, 2026. There are also incidental orders M.F.F. seeks.

[3] K.M.N. did not take part in the application.

[4] For the reasons that follow, I grant M.F.F.'s application.

[5] At the start of the application, a procedural issue arose. K.M.N. asked for a Zoom link to attend the hearing but did not log on. I decided that the application should proceed despite K.M.N.'s absence. The statement of claim was filed February 5, 2025. On May 9, 2025, a family law case conference ("FLCC") was scheduled, which K.M.N. did not attend. On December 16, 2025, there was another FLCC which K.M.N. also did not attend. K.M.N. has had contact with M.F.F.'s counsel but has not filed anything aside from an appearance. As I will discuss further, he has not filed or provided M.F.F. with most of the financial disclosure he was ordered to provide. I therefore concluded that there was little reason to believe K.M.N. would participate in a meaningful way if the matter were adjourned.

[6] Additionally, K.M.N. has not been paying child support. T.H.M.N. has been living without financial support from his father. I therefore also concluded that M.F.F. would suffer undue prejudice if there was an adjournment.

[7] The facts in this case are straightforward. There is no dispute that M.F.F. has had *de facto* custody and residence of T.H.M.N. since the parties separated.

[8] In June 2020, M.F.F. asked K.M.N. to begin paying child support for T.H.M.N. He did not, however. From then on, M.F.F. periodically brought up the question of support. K.M.N. would either promise to pay and not follow through or would simply ignore M.F.F.'s requests.

[9] M.F.F. also states that K.M.N. does assist with s. 7 expenses.

[10] After the statement of claim was filed, an FLCC was held. K.M.N. did not attend. M.F.F.'s counsel did not seek orders immediately. Instead, he sought to engage K.M.N. On November 25, 2025, the parties entered into a consent order. Under the order, K.M.N. would pay $900 per month on an estimated annual income of $96,075.99 for child support. He was also ordered to provide a number of types of financial documentation. This included bank statements and documentation of efforts made to find a job. K.M.N. provided his bank statements for the last two years and his résumé to M.F.F.'s counsel. He did not provide any of the other documents required under the order.

[11] In an FLCC held on December 16, 2025, which K.M.N. did not attend, he was ordered to deliver to M.F.F. his income tax returns and notices of assessment from 2020 to 2024. Counsel delivered the order to K.M.N. by email. He did not provide his income tax information to M.F.F.

[12] The issues raised in this application are:

1. Should retroactive child support be ordered?
2. How much child support does K.M.N. owe?
3. Should s. 7 expenses be shared, and if so, how?
4. Should costs be awarded?

[13] The first question, then, is whether retroactive child support should be ordered. The question is about the date when K.M.N. should start owing child support. Should he start owing child support the day that I make my decision and order or should he start owing child support earlier than that?

[14] M.F.F. seeks that K.M.N. start paying child support from the date of separation, meaning the day the parties broke up, which was June 2019 or, at the latest, from the date that M.F.F. first asked him for child support, which was January 2020.

[15] I conclude that K.M.N. should pay child support from June 2019.

[16] There are potentially three important dates the court will look at when deciding the date upon which child support should start being paid. The first is the date the parent getting the child support (the "recipient") provides any indication to the paying parent (the "payor") that child support should be paid. That date is called the date of effective notice. In this case, the date of effective notice was January 2020.

[17] The second important date is the date that a recipient starts court proceedings. That date is called the date of formal notice. Here, the date of formal notice was February 2025.

[18] The third date is three years back from the date of formal notice. Here, that date is February 2022.

[19] Generally, the court orders the payor to pay child support starting on the date of effective notice. However, if the recipient provided formal notice more than three years after they provided effective notice, then child support may not be owed as of the date of effective notice. In that case, in general, the court will order that the payor pay child support three years before the recipient started court proceedings.

[20] What does that mean in practice? Here, the effective date is January 2020. The date of formal notice is February 2025. Normally, child support is owed as of the date of effective notice, so, here, that would be June 2020. However, because there are five years between the effective date and the formal date, possibly, K.M.N. would not owe child support starting in June 2020. Instead, he may owe child support from three years before M.F.F. provided formal notice. Three years before February 2025 is February 2022. February 2022 is therefore what we call the presumptive date of retroactivity.

[21] I have talked about general rules and the presumptive date that K.M.N. may owe child support because the rules about when a payor should start paying child support have exceptions. The court can order that child support be paid on a date other than as I just described. The court will do so if it would be unfair to order child support to be paid starting on the presumptive date.

[22] In this case, I have decided that it would be unfair to order that K.M.N. pay child support starting February 2022. Instead, I conclude it would be fair that K.M.N. pay child support from June 2019, which is the date of separation.

[23] I will explain why. In deciding whether it would be unfair to order K.M.N. to pay child support starting on February 2022, the law directs me to consider four factors. First is why M.F.F. did not seek child support earlier. The question is whether there is a reasonable excuse for her delay. Second is K.M.N.'s conduct. Third is T.H.M.N.'s circumstances. T.H.M.N.'s present and past needs are the focus of this analysis. Finally, I will address if ordering child support retroactive past February 2022 would cause K.M.N. hardship.

[24] First, then, I will look at why M.F.F. did not seek child support earlier.

[25] M.F.F. states that she would request regular support from K.M.N. from time to time. She would not raise it every month, though, so as not to put a strain on the parties' co-parenting relationship. She does not state why she did not seek child support through the court system earlier. M.F.F. has not therefore provided a reason for her delay.

[26] I now turn to the issue of the payor's conduct.

[27] Here, the court looks at whether the payor's conduct was blameworthy. Conduct will be blameworthy not just when a payor takes steps to avoid paying child support, such as lying to the other parent about their income or intimidating them into not applying for child support. Rather, a parent who ignores their obligations also engages in blameworthy conduct.

[28] I have no trouble concluding that K.M.N. engaged in blameworthy conduct. Although he has contributed to big purchases for T.H.M.N., he has not paid regular child support in the six and a half years since the parties separated. He cannot reasonably believe that he is fulfilling his financial obligations for T.H.M.N.

[29] K.M.N. has also not provided his full income information. He failed to provide his financial information when M.F.F.'s counsel requested it. He failed again to provide it when he was served with M.F.F.'s notice of application, which by law he was required to do within 30 days. He even failed to provide it after an order required him to provide his financial information to her.

[30] Child support is based on the payor's income. Financial disclosure is therefore central to ensuring that the child receives fair child support. Failure to disclose financial information as required is serious.

[31] Finally, even when K.M.N. agreed to pay child support, he did not pay. On November 25, 2025, he entered into a consent order with M.F.F. A term of the order was that he pay $900 in child support every month to M.F.F. Since the order was made, he has paid only once — and then paid only $500. K.M.N.'s conduct is therefore highly blameworthy.

[32] On the last two factors, which are T.H.M.N.'s circumstances and undue hardship, I have no information. No evidence has been filed about T.H.M.N.'s standard of living and because K.M.N. has not taken part in the proceeding, I have no information about what financial impact retroactive child support would have on him.

[33] Taking the factors together, the factor that is most important here is K.M.N.'s blameworthy conduct. The law states that where there is blameworthy conduct, the date of effective notice is not relevant. This means that blameworthy conduct is enough for the court to make an order dating back before the date of effective notice. Because of K.M.N.'s blameworthy conduct, the date child support starts should be before February 2022 — and even before January 2020. In the circumstances, I conclude he should pay child support from June 2019 onwards.

[34] The second question is: how much child support does K.M.N. owe?

[35] K.M.N. has not provided full financial information. His actual income cannot therefore be used to calculate child support. This does not mean I cannot make an order of child support, however. Where a party has not provided financial information as

ordered, the law allows the court to make a reasonable estimate of the party's income (called "imputing" income).

[36] Here, M.F.F.'s counsel has estimated how much K.M.N. earned between 2019 and the present. There is less evidence about K.M.N.'s income from 2019 and 2020.

[37] For 2019, M.F.F. seeks that K.M.N. be imputed an income of $75,000. This estimate is based on a wage of $36 per hour, full-time work. M.F.F. states that $36 per hour is a rough estimate of what K.M.N. could earn as a labourer/operator, and maintenance/skilled labourer, which was his work at the time. He continued this work until September 2020.

[38] He then began working for Victoria Gold. There is somewhat more evidence about his earnings from Victoria Gold. The evidence from K.M.N.'s bank statements is that in January 2024, he earned $7,669.47 from Victoria Gold. K.M.N. worked at Victoria Gold until January 2024. M.F.F. submits this amount should be used to calculate income from September 2020 to December 2020. Additionally, this amount should be used for the years 2021 to 2023. His yearly income using the figure found in his bank account would then be calculated to be $92,034 per year.

[39] In submissions, counsel also stated that this income is based on his net rather than gross earnings. Moreover, K.M.N. may have earned more in different pay periods because of changes to his work schedule, employment hours, and overtime. It may therefore be a conservative estimate of K.M.N.'s income.

[40] For 2024 and 2025, M.F.F. seeks that K.M.N.'s income be imputed at $115,166 and $99,790, respectively. These estimates are based on two income sources. Some of K.M.N.'s total income is from his work as an employee. He also, however, received

numerous cash deposits and e-transfers. The amounts he received ranged from $70 to $8,000. M.F.F. argues that the number of transactions suggests that K.M.N. has a business. The amounts deposited should therefore be considered income. She proposes repayment of arrears in the amount of $680 per month.

[41] M.F.F. also seeks that K.M.N. be imputed an income of $100,000 for prospective or ongoing child support. This estimate is based on his imputed income from 2025. Child support payable would be $935 per month.

[42] M.F.F.'s counsel has carefully and thoughtfully worked out an estimate of K.M.N.'s income. I accept counsel's submissions. I therefore impute K.M.N.'s income and calculate his arrears as follows:

i. For 2019, his income is imputed at $75,000. Child support owing would be $699 per month. The total payable between June 2019 and December 2019, is $4,893.

ii. For 2020, his income is imputed at $80,678. Child support owing would be $755 per month, with a yearly total of $9,060.

iii. For 2021, K.M.N.'s income is imputed at $92,034. Child support owing would be $864 per month, with a yearly total of $10,368.

iv. For 2022, again, his income is imputed at $92,034. Child support would also be $864 per month, and a yearly total of $10,368.

v. For 2023, the calculation is the same. His income is $92,034; child support: $864 per month; and a yearly total of child support would be $10,368.

vi. For 2024, K.M.N.'s income is imputed at $115,166. The amount of monthly child support payable is $1,061, and the yearly total will be $12,732.

vii. And for 2025, his income is imputed at $99,970. Monthly child support payments are $930 per month, and the yearly total was $11,160[1].

[43] The total outstanding arrears are $68,949[2]. K.M.N. shall pay $650 per month to pay the arrears commencing February 15, 2026, and payable every month thereafter until the arrears are paid in full.

[44] I will also impute K.M.N.'s income for prospective or ongoing child support at $100,000. I do this even though there is some evidence that K.M.N. has taken a lower paying job than he had before. The imputed income takes into account the email transfers and cash deposits into his account. Commencing February 15, 2026, K.M.N. shall pay $935 per month in child support and payable on the 15th day of every month thereafter.

[45] K.M.N. shall also be required to provide his annual income information to M.F.F. on May 1, 2027, and each year thereafter until T.H.M.N. is no longer a child of the relationship.

[46] The next question is whether s. 7 expenses should be divided, and if so, how?

[47] M.F.F. has provided no evidence about s. 7 expenses for T.H.M.N. Moreover, some of the relief she seeks, such as a division of the costs of post-secondary education, is years away from being a possibility. The order M.F.F. seeks is purely hypothetical. The question then is, is there a reason to grant the order?

---

[1] In the oral decision, the total child support payments owing was stated to be $11,172. This was a math error, which has been corrected in the decision for publication.

[2] In the oral decision, this figure was stated to be $68,961. This amount was wrong, and has been corrected in the decision for publication.

[48] In this case, M.F.F.'s counsel submits that it assists the parties to know how much each must pay for s. 7 expenses. Also, an order will set out the kinds of costs that are considered special and extraordinary.

[49] The determination of special and extraordinary expenses is discretionary, however, and fact specific. I am not convinced that an order will provide any certainty about what costs are covered. On the other hand, I do see benefit to identifying the share of the s. 7 expenses each party must cover if they do arise. I will therefore, in this case, make an order for s. 7 expenses.

[50] M.F.F. seeks that the costs be divided equally between the parties. The guiding principle is that s. 7 expenses are to be shared proportionate to the parties' incomes. The court may, however, apportion payment of s. 7 expenses differently. Here, M.F.F. submits that because of the difficulty in determining K.M.N.'s income, it is beneficial to split the expenses equally. This is a sensible approach. I therefore order that s. 7 expenses be split equally between the parties. The phrasing of the order will be as sought in M.F.F.'s outline.

[51] The final question is whether costs should be awarded. As noted above, when an application for child support is made, the other party is required to file their financial disclosure within 30 days of service. Parties should not be required to go to court for an order for financial disclosure. Failure to provide complete financial disclosure, moreover, as I already stated, is a serious matter. Costs should be awarded when parties disregard these court orders.

[52] M.F.F. is seeking $4,000, which she recognizes is higher than average. It is apparent from the materials, however, that additional work from counsel was required

than in many instances where child support is sought. Several court appearances were required because K.M.N. did not file his tax returns. It was not possible to start from his gross earnings, as well. Counsel also had to go through two years of bank statements to make some sense of K.M.N.'s income.

[53] In the circumstances, I will award costs of $4,000.

[DISCUSSIONS]

_____
WENCKEBACH J.