

SUPREME COURT OF YUKON

Citation: *R.J.R. v. W.E.R.*, 2013 YKSC 71

Date: 20130430
Docket: S.C. No. 12-D4452
Registry: Whitehorse

BETWEEN:

R.J.R.

Plaintiff

AND:

W.E.R.

Defendant

Before: Mr. Justice R.S. Veale

Appearances:
Shayne Fairman
Malcolm Campbell

Counsel for the Plaintiff
Counsel for the Defendant

RULING ON APPLICATION DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): This is an application by W.R. for interim spousal support from her husband, R.R. She also applies for an order prohibiting the disposing of family assets.

[2] The parties have had a 25 year marriage. Ms. R. had a variety of jobs in the retail world. She was also a successful quilter and ran some small businesses which eventually led to personal bankruptcy in 2005. She has not had a significant income in the last four years, with \$1,342 being reported in 2011.

[3] Mr. R., on the other hand, had a career in the mining business and was able to earn a substantial income of \$106,332 in 2010. However, disaster struck in May 2011 when Ms. R. had a stroke from which she is still recovering. Mr. R. left his camp mining job and remained closer to home to assist Ms. R. Mr. R. took a job with the town of Faro where they have a family home. Mr. R. earned \$59,542 in 2011. They separated in October 2011.

[4] Ms. R. has moved to Ontario, where she lives on a disability income of \$835.46 a month from the province of Ontario. While the medical documentation of her condition may be described as thin, it clearly indicates that she has severe medical problems with her eyes based on a condition of proliferative diabetic retinopathy, and wet and dry age related macular degeneration. She says she is legally blind. I infer from her receipt of a basic Ontario disability support program funding and the medical report that she is disabled, in great need, and living well below the poverty line. Her ability at age 58 to earn income in her condition is, at the very least, compromised as a result of her stroke and eye problems.

[5] Mr. R., who is 55 years old, has not had a similar health disaster. His income has declined as a result of not working in the camp mining sector and he may be having difficulty getting back into the high income earning position that he had in 2010. Mr. R.'s 2011 income was approximately \$60,000, and his 2012 income from a petroleum company in Whitehorse was \$36,906.51, but would be approximately \$40,000 on a full year calculation. He lives quite cheaply in Whitehorse in a new relationship, but maintains the family home in Faro.

[6] The law relating to interim spousal support orders was set out in *E.A.G. v. D.L.G.*, 2010 YKSC 23 at para. 46, and there are four principles that I will repeat here:

1. Interim orders are intended to be short term to bridge the gap between the starting of the action and a decision on the merits;
2. Interim proceedings are summary in nature and provide rough justice at best;
3. The *Spousal Support Advisory Guidelines* (“SSAG”) are designed to apply to interim spousal support as they provide a quick, easily calculated amount, and may be given substantial weight although they are not binding on the court;
4. While it is an error to consider only the means and needs to the exclusion of other factors, the means and needs will often be the most important factor.

[7] I find that Ms. R. is in a great need, and for obvious health reasons, does not have the means to get back on her feet. Mr. R. has the ability to earn a large income in the camp mining business and he has reduced that income not for health reasons or inability, but because of the health difficulties suffered by Ms. R. Mr. R.’s income went from \$106,000 to approximately \$60,000 in one year, but he is now in Whitehorse in a new relationship at the lowest income he has earned in three years. Counsel for Ms. R. seeks \$2,500 interim support. Based on the submission that he is underemployed, counsel for Mr. R. admits that \$500 a month would be an appropriate order.

[8] As I indicated, interim spousal support applications provide very “rough justice” for the parties. The Court is given limited information without cross-examination. In my view, Ms. R.’s in great need because of her severe medical problems. On the other hand, Mr. R. has no medical evidence to support an inability to return to the camp mining sector for employment. Counsel have provided some assistance with DIVORCEmate Software, and I find that \$1,500 a month commencing March 1, 2013, is

an appropriate interim support for Ms. R. This award is based roughly on the income level of Mr. R. while he and Ms. R. were together in Faro, but at the lower end of that range.

[9] I adjourn generally the issue of whether it is appropriate to back date the interim spousal support to an earlier date than March 1, 2013, as the record is insufficient and counsel for Mr. R. had no formal notice of the back dating issue in this application.

[10] Ms. R. also asked for an order to freeze the family assets and prohibit the sale of those assets. I decline to do so, as Mr. R. is paying family debt and looking after the most significant asset, which is the family home in Faro. I am advised that that is in joint names, so there is no danger that anything untoward will happen to that property without the direct involvement of Ms. R.

[11] Is there anything arising, counsel?

[12] MR. CAMPBELL: No, sir.

[13] MR. FAIRMAN: No, My Lord.

[14] THE COURT: All right. Thank you. Thank you, Ms. R.

[15] W.R.: Thank you.

VEALE J.