

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

BRENDA DAWN ANDRE

PETITIONER

AND:

LEONARD CLIFFORD ANDRE

RESPONDENT

**REASONS FOR JUDGMENT OF
MR. JUSTICE HUDSON**

[1] This is an application by the petitioner to vary a corollary relief order. The order provided for the payment of no child support by reason of split custody of the two children of the marriage.

BACKGROUND

[2] There were four children of this marriage, namely Jennifer Lee, born September 2, 1982, Krista Nicole, born September 2, 1982, Heidi Dawn, born September 2, 1982 (collectively hereinafter called the “triplets”), and Katelynn Marie, born February 19, 1993.

[3] Only Jennifer Lee and Katelynn Marie remained children of the marriage by definition, Heidi Dawn and Krista Nicole having withdrawn from their parents care or charge.

[4] In August 2001, in response to a request from the petitioner, the respondent indicated agreement to the payment of \$250.00 per month child support with respect to Katelynn, who was residing with the petitioner. This did not answer all of the concerns of the petitioner and a meeting was held on September 3, 2001. In that month, oral agreement was reached on all issues and a written agreement was to be drafted. This occurred but the respondent sought some changes before the agreement was signed.

[5] Differences have arisen with respect to the appropriate quantum of child support and the payment for extraordinary expenses.

[6] The respondent's agreement to pay \$250.00 per month was in response to the petitioner's request for \$450.00 per month.

[7] There is only a skeleton of information provided regarding the finances in question, notwithstanding that financial statements have been filed. There is no doubt that there has been a change of circumstance, and this is not argued, the change being the fact that Jennifer is over 19 years of age and may not be a child of the marriage.

[8] The issues, therefore, are:

1. What is the appropriate amount to be paid to the petitioner with respect to Katelynn as child support?

2. With respect to Jennifer, does she continue to be a child of the marriage? If so, what is the appropriate amount of support to be paid by the parents for her benefit?
3. What order should be made with respect to extraordinary expenses under s. 7 of the Guidelines?

KATELYNN

[9] There is no issue here that Katelynn is a child of the marriage. The only remaining issue with respect to the support to be paid for Katelynn is the income of the respondent.

[10] For reasons that are not clear, the respondent's income tax return for 1998 has not been disclosed. 1998 is different from 1999 and 2000 because at that time the parties were together and the petitioner would have some knowledge of the income stream of the respondent.

[11] The income tax returns for 1999 and 2000 show an income of the respondent as \$8,639.80 and \$7,993.00, respectfully. This results from his business, which had sales in 1999 of \$70,342.00 and in 2000 of \$60,007.00. At the time of the divorce, the respondent swore his income to be \$46,000.00. He explains this by saying that it was academic at the time because it was simply equalizing the income of he and his wife since they were to have split custody. This is not accurate because if he had shown his income to be \$7,000.00, on the sharing of the costs of maintenance, he would have profited by having a less than 50 percent obligation for the child in question.

[12] The absence of the 1998 income tax return would not be a total solution to this dilemma, but it would help. The only other explanation for the great divergence and the question as to how he could live on \$6,000 - \$7,000 per year is to suggest that there is income which does not appear on his income tax returns or that certain of the expenses shown as corporate expenses are actually expenses of his living and should be shown as personal income.

[13] In any event, due to the lack of information and the nature of the information I have, it is my finding that the income of the respondent at this time should be imputed. I place great strength on what it was said to have been two years ago and impute the income at \$46,000.00.

[14] With respect to Katelynn, there is no reason to apply other than the table amount provided for in the Child Support Guidelines. This results in a necessary payment of \$394.00 per month.

JENNIFER

[15] With respect to Jennifer, she is living at the respondent's home. She is eating at home and is in the process, although inactive at the moment, of securing a post-secondary education. She is contributing to her own living expenses. Considering all the issues and factors noted in the case of *Farden v. Farden*, [1993] B.C.J. No. 1315, a judgment of Master Joyce, I am satisfied on a balance of probabilities that I should consider and declare Jennifer to still be a child of the marriage.

[16] With respect to the amount of support to be paid, s. 3(2)(b) provides that with respect to the amount of support, if I consider the table in the Guidelines to be inappropriate, that I may have regard to the condition, means and needs and other circumstances of the child, and the financial ability of each spouse to contribute to the support of the child in reaching an amount of support that is appropriate. The information I have is minimal, but doing the best I can with what I have, taking into account the ability of the child Jennifer to contribute to her own support, taking into account the fact that she has indicated to her mother that she is prepared herself to pay the cost of this coming year's education, and taking into account the income of the mother and father, I am satisfied that the sum of \$200.00 per month is appropriate, which should be split between the mother and the father, or \$100.00 each commencing as of October 1, 2001.

[17] This being split custody, in the result, there should be a monthly payment of \$294.00 per month from the respondent to the petitioner.

EXTRAORDINARY EXPENSES

[18] With respect to s. 7 and extraordinary expenses, the respondent indicates that he does not see it as being appropriate that there be niggling done in front of the child with respect to the cost of her extracurricular activities and needs. It is my order that each month there be a listing of the extraordinary expenses incurred and that the respondent pay to the petitioner one-half of those expenses.

[19] As a suggestion, it might be better if the respondent refrained for the time being from the payment of such expenditures and rather request of the petitioner that she pay

them so that there is only one calculation that need to be done at the end of each month. However, if the respondent makes payments for extraordinary items, then they can be deducted for by those paid for by the petitioner and half of the balance will get paid for by the husband.

[20] Extraordinary expenses include daycare for the purpose of this order.

[21] As success appears to be split, there is no order as to costs. Each party to bear their own costs of these proceedings.

[22] I further declare that the sums to be paid are not subject to reduction with respect to random visits with the respondent, even though they may last weeks. The major expenses still carry on and unless there is an allegation of a material change in circumstances they should be paid as ordered. A material change of circumstances will (unless an agreement is reached) cause a return to court.

Hudson J.

Kathleen Kinchen

Counsel for the Petitioner

John R. Laluk

Counsel for the Respondent