

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *K.D.J v. M.O.H.*, 2006 YKSC 3

Date: 20051115
Docket: S.C. No. 05-B0024
Registry: Whitehorse

BETWEEN:

K.D.J.

Applicant

AND:

M.O.H.

Respondent

Before: Mr. Justice L.F. Gower

Appearances:
Lenore Morris

For the Director of Maintenance
Enforcement

Susan Carr

For the Respondent

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): I am granting the respondent leave to obtain a paternity test, pursuant to s. 15 of the *Children's Act*, R.S.Y. 2002, c. 31, as requested in item 5 of the Notice of Motion. I direct that he do so at his own expense initially, but that if he is found not to be the father of the child, H.R.J., born September 13, 2001, that the mother will pay one half of the costs of the paternity test, the mother being the applicant, K.D.J.

[2] I further order that, pursuant to s. 32 of the *Reciprocal Enforcement of Maintenance Orders Act*, R.S.Y. 2002, c. 191, that the Director of Maintenance Enforcement direct the Registrar of Motor Vehicles to cancel the suspension of the respondent's driver's licence, providing that the respondent gives details of his employment to the Director of Maintenance Enforcement, and continues to keep the Director informed of any change in his employment.

[3] I further order that there be a stay of enforcement by the Director of Maintenance Enforcement of all ongoing maintenance and arrears owing under the order of February 6, 2003.

[4] By way of a separate order, I am ordering that the ongoing maintenance payable from the respondent for child support for the child H.R.J. be reduced to the amount of \$222 per month to reflect his current gross annual income of \$24,960, and that will be effective as of December 1, 2005.

[5] I will reserve my decision on the reduction of the child support arrears and I will render that decision in writing in due course.

[6] Now, I am certain that I have forgotten something; I just cannot remember what it is.

[7] MS. CARR: Certainly the second order would be provisional?

[8] THE COURT: Yes.

[9] MS. CARR: And also I am suggesting that whether the Court wants to put in a term that if the respondent is found to be biological father to the child, make that a condition --

[10] THE COURT: Oh yes, with respect to the first clause, yes, that should be included.

[11] MS. CARR: And perhaps not in my client's total best interest but in fairness to the discussions, under the first order, that the stay of enforcement not be a blanket one but that it gives effect to the provisional order, again, if the respondent is the biological father. I think you have a blanket stay of enforcement right now.

[12] THE COURT: I do, and I am also just wondering whether the stay condition should not be grouped in the second order, as opposed to the first. So I think the stay should be with the provisional order, regarding the ongoing child support, and that it should not be a blanket stay but only with respect to --

[13] MS. CARR: In excess of the \$222?

[14] THE COURT: Yes, I can leave the wording to counsel to work out; that is my intent.

[15] MS. CARR: I might also suggest then, and perhaps, because my client is going to attempt to get taxes filed on that information, there was agreement over holding any monies pending the paternity test.

[16] THE COURT: Yes, you can include that as a condition on the second order, as well. I am just wondering whether I should not -- I think it might be of assistance to make a direction in the second order that your client make his best efforts to obtain such further information from Revenue Canada as may be available, to verify his actual income in the years for which he has not filed --

[17] MS. CARR: 2003 and 2004.

[18] THE COURT: Yes, and that that be provided to the Court as soon as practicable.

[19] Sorry to be so choppy about this, counsel, but --

[20] MS. CARR: Not meaning to open up a whole can of worms, could this not be all in one order?

[21] THE COURT: Well, as long as there is not a problem with the first part becoming bogged down by the second part.

[22] MS. MORRIS: I don't think there is a problem. That certainly has happened before, provisional and non-provisional portions. The one thing that I would say about the stay is that it needs to end at some point. Obviously, it's conditional; the stay of the amounts under the February '03 --

[23] THE COURT: How about until such time as I render my reserve decision.

[24] MS. MORRIS: Yes. Thank you.

[25] THE COURT: Okay. Where did we end up with the one order versus two orders debate?

[26] MS. CARR: Well, my suggestion would be always to make one order, My Lord. I just find it confusing, for many people down the road, when there's two orders tracking events on the same day.

[27] MS. MORRIS: I would agree.

[28] THE COURT: Okay. So all of those conditions will be in one order. Perhaps, since we have gone back and forth on this, I will leave it to counsel to draft the order, and I will just ask Madam Clerk to note for the file that it should come up to me for review before it is issued.

[29] THE CLERK: Yes, My Lord.

[30] THE COURT: Is that everything?

[31] MS. MORRIS: I believe so.

[32] THE COURT: Thank you for your patience.

[33] MS. CARR: Thank you, My Lord.

GOWER J.