

SUPREME COURT OF YUKON

Citation: *K.B. v. D.J.B.*, 2013 YKSC 6

Date: 20130130
S.C. No. 12-B0013
Registry: Whitehorse

Between:

K.B.

Plaintiff

And

D.J.B.

Defendant

Before: Mr. Justice R.S. Veale

Appearances:

K.B.

Appearing on her own behalf

D.J.B.

Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by D.J.B. for a provisional order pursuant to s. 18(2) of the *Divorce Act*, varying the amount of child support he pays to K.B. pursuant to an Order of the Supreme Court of British Columbia, dated August 17, 2007 (the "Order"), requiring him to pay \$490 per month child support for D.A.J.B., born January 30, 1995.

[2] Although this is an application for a provisional order, K.B. has responded with affidavits and appeared by telephone seeking to dismiss the application. Should the application for a provisional order be granted, the application to vary would be

transmitted to the Supreme Court of British Columbia, pursuant to s. 19 for an order confirming or refusing to confirm the provisional order.

THE FACTS

[3] D.J.B. is applying to vary the Order based upon his income information from the period of 2008 through 2011.

[4] Both parties agree that D.J.B. is in arrears at the time of this application on November 2, 2012, in the amount of \$5,340.

[5] In this application, he seeks a credit of \$8,934 with the result that K.B. would owe D.J.B. the sum of \$3,594.

[6] The application is based upon the fact that the Order to pay \$490 child support was based on an implied income of \$50,000 and the claim that his actual income was as follows with the requested credit:

Year	Income	Monthly Child Support	Credit
2008	42,688	391	1,089
2009	43,944	402	968
2010	19,011	170	3,520
2011	39,859	363	1,397

[7] This credit totals \$6,974 and D.J.B. claims a further credit of \$1,960 based on his support for the one month each summer spent in D.J.B.'s exercise of access.

Disposition

[8] This Court has adopted the principles set out in *Earle .v Earle*, 1999 BCSC 283, wherein Martinson J. stated the following principle regarding arrears of child support, at para. 46:

...

3. Arrears

Basic Principles

- a. There is a heavy duty on the person asking for a reduction or a cancellation of arrears to show that there has been a significant and long lasting change in circumstances. Arrears will not be reduced or cancelled unless it is grossly unfair not to do so.
- b. If arrears are not reduced or cancelled, the court can order a payment plan over time if convinced the arrears cannot be paid right away.

...

[9] I am satisfied that the variations in D.J.B.'s income are neither significant nor long lasting and do not require any reduction or cancellation of arrears. There is no justification for the credit of \$1,960 representing the payment of child support while the father exercised access.

[10] I should also indicate that the documentation provided by D.J.B. is redacted to such an extent, I am reluctant to act on it.

[11] As I have declined to make a provisional order, there is no requirement to transmit this order pursuant to s. 19 of the *Divorce Act*.

VEALE J.