

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Ford v. Hombert*, 2004 YKSC 34

Date: 20040427
Docket: S.C. No. 96-0072
Registry: Whitehorse

Between:

DAVID ROBERT FORD

Plaintiff

And:

PENNY JEAN HOMBERT

Defendant

Before: Mr. Justice R. S. Veale

Appearances:
Fia J. Jampolsky
Elaine B. Cairns

For the Plaintiff
For the Defendant

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This was an application by Mr. Ford to vary downward child support; and secondly, to be relieved from paying the arrears that were outstanding in the amount of \$13,391.71. As a result of the application, I made an Order that there had been a positive change in circumstances for Mr. Ford, rather than a negative change, and I increased the child support from \$312 to \$398 a month; and I ordered that the arrears of \$13,391.71 be paid on the basis of \$100 per month.

[2] I appreciate that the result of this application has probably been some hardship to both parties in the sense that each party filed several large Affidavits. So, it was not a straightforward single Affidavit application.

[3] Counsel for Mr. Ford seeks to have me exercise my discretion, based on *Gold v. Gold*. That decision indicates that the rules governing the award of costs is the same in matrimonial matters as in other litigation, that is that costs follow the event, which is to say if a person succeeds, then they are entitled to costs.

[4] In the case that counsel has cited, described as *C.J.L.W. v. A.M.D.*, I made a decision on September 6, 2000, exercising my discretion not to award costs. That was a custody application where each party was seeking custody of a child; and at the end of the day, I ruled that joint custody was the appropriate Order. I felt, in that circumstance, it was appropriate not to make an award of costs but to have each person pay their own costs. However, in this situation, I do not see the same grounds for exercising my discretion in that way, and I am ordering that Mr. Ford should pay costs in the amount of \$750.

[5] I am aware, of course, that he does have a lot of financial constraints at this time. I am going to make an Order that he pay those costs by way of monthly payments of \$50 a month, commencing on the date of his next collective bargaining increment. I will have to leave it up to counsel to determine when that is.

[6] MS. CAIRNS: Well, my only concern with that is if he's not continuing in that job. He may be at this point, but perhaps when the collective agreement raise occurs, he may no longer be in that position. I don't know. It may be

more appropriate to set a specific date, such as September of this year or something along those lines in case his job changes.

[7] THE COURT: What is the next increment?

[8] MS. CAIRNS: I think it's in the Affidavit.

[9] THE COURT: I have the one of February 19th, 2004.

[10] MS. CAIRNS: Is that the second Affidavit?

[11] THE COURT: It is her Affidavit #4. It is not in 5.

[12] MS. CAIRNS: The master pay grid, with the increases, I believe is in Affidavit #4 at Exhibit D.

[13] THE COURT: You are looking at whose Affidavit?

[14] MS. CAIRNS: Ms. Hombert's, she was the one who filed that.

[15] THE COURT: #3.

[16] MS. CAIRNS: It shows the increases to the salary on January 1 of each year.

[17] MS. JAMPOLSKY: So, the next one will be January 1st, 2005.

[18] THE COURT: So, it will be the 750, commencing January 1, 2005, and at \$50 per month.

VEALE J.