

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *MacKenzie v. MacKenzie*, 2006 YKSC 14

Date: 20060207

Docket: S.C. No. 05-B0006

Registry: Whitehorse

IN THE MATTER OF THE *INTERJURISDICTIONAL SUPPORT ORDERS ACT*

BETWEEN:

KATHRYN LEE MACKENZIE

Applicant

AND:

RODERICK DANIEL MACKENZIE

Respondent

Before: Mr. Justice L.F. Gower

Appearances:
Lenore Morris

For the Director of
Maintenance Enforcement
Appearing on his own behalf

Roderick MacKenzie

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): Recognizing that the law in this jurisdiction is somewhat in a state of flux as a result of the decision in *Vowk v. Brame* [2004] Y.J. No. 135 by Mr. Justice Veale, and the other case that was handed up by the counsel for the Director, *Ivanic v. Ivanic* [2005] BCJ No. 1113, I am of the view that I still have a good deal of discretion here. I note that although the applicant made her application in Nova

Scotia on March 17, 2005, the application was not served upon Mr. MacKenzie until May 3, 2005. At that time, he informs me the garnishment was already in place with respect to the existing amount of the child support, which was \$200 a month. So the payment from May 1st would already have been taken out by the garnishment from the previous month, which he informed me usually takes place between the middle and the end of the month, in anticipation of the first of the following month.

[2] Also, given that Mr. MacKenzie has responded to the current notice of hearing, which was served on him January 17th of this year, by promptly filing with the Court an answer to the application, he has made no bones about the fact that his current gross annual income is \$60,000 and he is not disputing his obligation to pay the table amount under the child support guidelines for that income, which I am told would be \$511 per month. He obviously recognizes his obligations to pay child support and the legal reasons behind that.

[3] I am going to make the child support retroactive, but I am only going to make it retroactive as of June 1, 2005, being the first day of the month following the month on which he received notice of the application. There will be a retroactive lump sum from June 1st to February 1, 2006, inclusive, assuming that the next garnishment is for March 1st. That is going to be a significant amount of money and it is unlikely that Mr. MacKenzie will have the ability to pay that amount unless he is allowed to pay it in instalments. By my calculations, that is going to be approximately \$4,599 in retroactive child support from June 1, 2005, to February 1, 2006, inclusive.

[4] MS. MORRIS: If I could interrupt, that is not adjusting for the \$200 per month that he has paid.

[5] THE COURT: Right.

[6] MS. MORRIS: I have \$311 times nine, which would be \$2,799.

[7] THE COURT: Thank you. Mr. MacKenzie, I am going to give you another chance to have some input here. What do you think is reasonable in terms of paying that down; \$100 a month?

[8] THE RESPONDENT: I have no idea. I don't know, I really don't know.

[9] THE COURT: Is \$100 a month feasible for you?

[10] THE RESPONDENT: Probably, yes.

[11] THE COURT: If it is less than that, it is going to take forever to pay it down.

[12] THE RESPONDENT: I realize this.

[13] THE COURT: All right. I am going to make that part of the order and direct that it be payable by instalments of \$100 per month. Anything more, Ms. Morris?

[14] MS. MORRIS: Nothing further.

[15] THE COURT: Do you require an order that Mr. MacKenzie's signature be dispensed with, given that he has appeared?

[16] MS. MORRIS: I don't think that that should be a difficulty getting Mr. MacKenzie's signature.

[17] THE COURT: All right. Okay. Well, we are done.

GOWER J.