

2004 CarswellAlta 1883, 2005 ABCA 9, [2005] W.D.F.L. 1252, [2005] A.W.L.D. 1051

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M. (L.) v. T. (J.)

L.M. (Appellant) and J.T. (Respondent)

Alberta Court of Appeal

McIntyre J. (ad hoc), Ritter J.A., and Slatter J. (ad hoc)

Heard: November 24, 2004

Judgment: November 24, 2004

Docket: Calgary Appeal 0301-0208-AC

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Counsel: D.P. **Castle** for Appellant

J.T. for Respondent

Subject: Family

Family law --- Support — Child support under federal and provincial guidelines — Determination of spouse's annual income — General principles.

Regulations considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

Federal Child Support Guidelines, SOR/97-175

Generally

Slatter J. (ad hoc):

1 This is an appeal from a judge sitting in domestic special chambers. The respondent is self-employed and the biggest challenge was to set his guideline income. The parties were self represented at that level and the judge was confronted with a confusing, incomplete and inconsistent record about the respondent's financial affairs. The respondent advises us that he has now implemented a better accounting system.

2 The respondent had reported net income on his 2002 tax return for the fiscal year ending April 2002 of \$10,422.00. The appellant made arguments to the chambers judge that the respondent was under-reporting his income and deducting what were really personal expenses. The chambers judge added \$16,000.00 to the repor-

ted income and found a guideline income of \$26,000.00.

3 The parties today have taken us through the accounting again and provided competing analyses of the numbers, some of which analyses were not put to the chambers judge. On this record, we are unable to precisely reconcile the numbers. While the amounts involved are obviously significant to the parties, they are not large enough to send the matter back to special chambers for a new hearing.

4 While re-weighing the evidence is not the usual function of this court, in order to give some finality to the parties, we have re-examined the numbers and considered the competing arguments. We have concluded that a fair guideline income for the respondent for 2002 is \$34,000.00. Child support under the guidelines is \$298.00. That amount will be payable from the birth of the child in October 2002 until April 2003. It will be payable on the 15th day of each month.

5 The amounts payable after April 2003 will depend upon the respondent's income for the years ending April 2003 and April 2004. The amount of \$298.00 will be provisionally set as the child support from May 2003 until the present and into the future, but either party may apply to vary it after April 2003 if it is felt that the respondent's income was different in those years. We hope that the respondent's new accounting will make those calculations easier. We also encourage the parties to attend at the dispute resolution office if they cannot reach agreement on the numbers themselves.

6 This decision will trigger some arrears. There will be a stay of enforcement of the arrears amount so long as the respondent pays the current amounts after December 15, 2004, plus pays \$75.00 per month on the arrears.

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