

CLARKE, C.J.N.S.:

This is an appeal from the order of Justice Nunn issued March 26, 1997. It arises from his decision which responded to an application by the respondent for a variation in the corollary relief judgment that resulted from the divorce of the parties on March 26, 1990.

In granting the variation, Justice Nunn ordered that,

- (a) the garnishee on the respondent's pension is terminated;
- (b) accumulated arrears of spousal and child support are forgiven;
- (c) effective March 1, 1997, child support payments are suspended while the child of the marriage is under the care and custody of the Minister of Community Services;
- (d) effective April 1, 1997, spousal support is reduced to \$300.00 per month.

The appellant contends on appeal that Justice Nunn erred in law by making findings of fact that were not supported by the evidence. In addition she argues he failed to apply the tests mandated by the **Divorce Act** when considering a variation of spousal and child support.

The evidence revealed that the respondent was receiving a pension of \$1,400.00 per month. He had no other income. The chambers judge accepted his evidence that he was suffering from ill health. By court order, he had been required to pay \$1,100.00 each month for spousal and child support. The appellant voluntarily reduced this to \$715.00 per month which she garnisheed. In his review of the evidence Justice Nunn wrote in part:

Now, on those facts, plus the fact that Mr. Rouleau now has another child, as he has a relationship with another woman who also has a further child that he treats as his own daughter, he is unable to live on the balance that is left on his pension. He is unable to support any part of the second family that he has and this whole situation is obviously one financial mess, which is about the only way to describe it. There is no answer that is going to satisfy anybody as to what can be done. It seems to me that, at this stage, accepting the realities that there is a change in the circumstances, a material change in circumstances, which call for and warrant the forgiveness of arrears, any arrears to date and, since the daughter is in the care and custody of the Minister of Community Services, I would direct that child support shall be suspended during the period of time that the child is under the care and custody of the Minister. When that situation changes, an Application can be made to determine an appropriate level of child support. For the purposes of change of circumstances, that will be a change of circumstances warranting that Application.

We have reviewed the record in detail. We have considered the submissions the parties have made to the Court.

The law provides a judge in the position of Justice Nunn with considerable discretion in deciding when and whether there is a change of circumstance sufficient to warrant a variation. In the circumstances that exist here, we are unable to say that Justice Nunn committed an error in law.

Accordingly, the appeal is dismissed without costs.

C.J.N.S.

Concurred in:

Hart, J.A.

Jones, J.A.