

NOVA SCOTIA COURT OF APPEAL
Citation: *Westhaver v. Swinemar*, 2017 NSCA 16

Date: 20170209
Docket: CA 452825
Registry: Halifax

Between:

Paul Arthur Westhaver

Appellant

v.

Dawn Marie Swinemar

Respondent

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: January 30, 2017, in Halifax, Nova Scotia

Subject: **Family Law. Material Change in Circumstances. Undue Hardship.**

Summary: The appellant, Paul Westhaver, applied to vary his child maintenance obligations and parenting times arguing a material change in circumstances. He also applied to reduce the child maintenance payments based on undue hardship. His primary argument for a material change in circumstance was a reduction in his income.

The respondent filed her own variation application seeking to vary parenting times and to increase Mr. Westhaver's contribution to child maintenance and child care expenses. The application judge dismissed Mr. Westhaver's application and allowed Ms. Swinemar's application. He increased child care expenses and made some minor changes to the parenting schedule.

Mr. Westhaver appeals saying that the application judge erred

in failing to find that there had been a material change in circumstances. He also argued the application judge should have found that he suffered undue hardship as a result of the amount of his maintenance payment.

In support of his appeal, Mr. Westhaver sought to introduce fresh evidence. Ms. Swinemar also sought to introduce fresh evidence, if the fresh evidence of Mr. Westhaver was accepted.

Issues:

- (1) Should the fresh evidence be admitted?
- (2) Did the application judge err in failing to find a material change in circumstances?
- (3) Did the application judge err in failing to find undue hardship?

Result:

The fresh evidence application was dismissed. All of the information which Mr. Westhaver sought to introduce was either available at the time of the application and not sought to be admitted or evidence relating to situations which arose after the application. Although some of the information may be appropriate for a variation application, it was not properly admissible on appeal.

With respect to the appeal itself, Mr. Westhaver's arguments were nothing more than a request for this Court to review the evidence anew and to come to a different conclusion. That is not our role. The application judge committed no error in finding that there was no material change in circumstances. He also committed no error in finding that Mr. Westhaver did not suffer undue hardship.

Appeal dismissed with costs to the respondent in the amount of \$2,000 payable directly to Nova Scotia Legal Aid.

<p><i>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 11 pages.</i></p>
--