FAMILY COURT OF NOVA SCOTIA
Citation: D.O. v. S.D., 2015 NSFC 9

Date: 2015/08/05
Docket: FNGMCA027827
Registry: Pictou

Between:

D.O.

Applicant

v.

S.D.

Respondent

Judge:	The Honourable Judge Timothy G. Daley
Heard	July 2, 2015, in Pictou, Nova Scotia
Final	August 5, 2015
Counsel	D.O., Applicant, Self Represented Shawn MacLaughlin, for the Respondent

Introduction

[1] This case is about the children A.D. and A.R.D. A.D. is 12 years old having been born November 7th, 2002, and his sister A.R.D. is nine years old, having been born June 14, 2005.

[2] Their father, D.O., who is the applicant in this matter, is seeking to reduce the child maintenance he is paying for the children because, he says, he has lost his employment through no fault of his own and only receives employment insurance benefits.

[3] The children's mother, S.D., who is the respondent in this matter, says that the father abandoned his employment and thereby became intentionally unemployed. She says that he should continue to pay an appropriate amount of child maintenance based on his income prior to his job loss.

[4] The mother says that the father should have additional child maintenance ordered retroactively because he has failed to provide her with his income information and tax returns for the last three years. Had they been provided, she says child maintenance could have been increased to benefit the children.

The Evidence

[5] The father provides evidence in two brief affidavits and in his oral evidence at the hearing. He says that he had been working at the local Atlantic Superstore on a full-time basis but his hours were reduced and eventually he was laid off from that employment. As a result, he is in receipt of employment insurance benefits only.

[6] The mother provided her evidence in three affidavits and oral evidence at the hearing. She says that the father is intentionally unemployed. It is her evidence that the father informed her that, while he was employed with Atlantic Superstore, he frequently called into work claiming to be sick.

[7] As a result of interrogatories served on the Atlantic Superstore manager, her counsel obtained responses that indicated that the father had been employed with Atlantic Superstore since February 12, 2014 until February 13, 2015. The answer to the interrogatory respecting the reason for his employment termination was "job abandonment".

[8] In a subsequent correspondence from legal counsel for Loblaws, the owner of Atlantic Superstore, "job abandonment" was explained. The letter reads in part

> Please be advised that job abandonment means that D.O. failed to return to work for subsequent scheduled shifts. No notice was provided to Loblaws. Failure to return to work is considered "job abandonment" by D.O. and resulted in termination of his employment.

[9] Both the answers to the interrogatories and the correspondence from Loblaws were admitted into evidence without objection. The father provides no substantive response to the information provided by Loblaws that he abandoned his employment.

[10] It was the mother's further evidence that the father appeared to have opened a business for boarding horses under the business name " D & K Boarding". To her first affidavit she attached several Facebook postings which appeared to advertise this prospective business along with photographs of the horses and the facility where the business was proposed to operate. The postings make clear on their face that the business was not currently operational but it was a hope that the owners could open and operate the business if funding was found.

[11] It was the father's evidence that this business was one that he and his current partner, K.B.B., hoped to get off the ground if they could obtain financing. Unfortunately, he was unable to do so through any means to date and the business plan was more aspirational than operational.

[12] Under cross-examination, the father indicated that he and K.B.B. owned five horses, two of which they had purchased for $1,000 and three of which they had obtained at no cost. He further provided evidence that the monthly cost for boarding and feeding the horses was in the range of $500.

[13] His evidence was that his only source of income currently is employment insurance benefits and that K.B.B.'s employment insurance benefits had recently expired.

[14] The father did indicate that he was making efforts to find employment. He had checked the online job bank and another website for possible positions. His evidence with respect to his efforts to find employment was lacking. He did provide a copy of his resume but did not provide any other information on what efforts he was making to obtain employment. He did note that he and K.B.B. had recently purchased a vehicle for $350 which would allow him to get into town from his home, some distance away, which should assist with the job search efforts.

[15] The mother says that it is her belief that even if the horse boarding business is not currently operational, it has distracted the father from his obligation to maintain employment and seek employment. She says that the cost of boarding

and maintaining the horses could be better used in maintenance of the children or in support of his efforts to find employment.

[16] The mother testified that the father was under an obligation, arising from the most recent court order, to provide her with a copy of his full Income Tax Returns each year and to inform her of any change of employment or income. That requirement is contained in the order issued on January 25, 2011. The father admits that he was under the obligation to both provide the tax return information and any information regarding any change of employment or income to the mother but that she was aware of his changes to employment. She says she only found out that he was working at Atlantic Superstore through third parties who saw him there, not directly from the father.

[17] The mother also says that because she did not receive the tax returns since 2011, she was unable to determine if an appropriate increase in child maintenance was called for. In October of 2011 when the last child maintenance order was issued, the father was deemed to have imputed income of $22,000 and was required to pay child maintenance of $321 per month.

[18] The mother seeks from this court an order that the father pay to her child maintenance for two children based on a deemed income representing a three year

average of his employment income from 2012, 2013, and 2014 and further seeks a retroactive increase in child maintenance from 2012 forward, reflecting his increases in income that were undisclosed by him for those years.

[19] Finally, the mother, in a second supplementary affidavit, alleges that the father's partner, K.B.B., had posted derogatory comments respecting her on Facebook and asks for an order that there be a prohibition on any such negative comments by either parent about the other and that best efforts be made by each parent to prevent such postings being made in the future.

[20] The father provides evidence that this posting was not about the mother but about someone else but he did agree that a prohibition on such postings would be appropriate and best efforts could be made by the parties to prevent others from making similar postings about either parent in the future.

The Law

[21] The application by the father is made pursuant section 37 of the ***Maintenance and Custody Act***, 1989 RSNS c 160 as amended which reads as follows:

> **37 (1)** The court, on application, may make an order varying, rescinding or suspending, prospectively or retroactively, a maintenance order or an order respecting custody and access where there has been a change in circumstances since the making of the order or the last variation order.
>
> (2) When making a variation order with respect to child maintenance, the court shall apply Section 10.

[22] Section 10 deals with child maintenance as directed by section 37 as follows:

> **10 (1)** When determining the amount of maintenance to be paid for a dependent child, or a child of unmarried parents pursuant to Section 11, the court shall do so in accordance with the Guidelines.
>
> **(2)** The court may make an order pursuant to subsection (1), including an interim order, for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as the court thinks fit and just.

[23] The relevant sections of the ***Child Maintenance Guidelines,*** O.I.C. 1998-386 as amended are as follows:

> **3 (1)** Unless otherwise provided under these Guidelines, the amount of a child maintenance order for children under the age of majority is
>
> (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the parent against whom the order is sought; and
>
> (b) the amount, if any, determined under Section 7.

[24] The ***Child Maintenance Guidelines*** permit a variation of the amount of child maintenance pursuant to section 14 as follows:

> **14** For the purposes of Section 37 of the Act, any one of the following constitutes a change in circumstances that gives rise to the making of a variation order in respect of a child maintenance order:
>
> (a) in the case where the amount of child maintenance includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child maintenance order or any provision thereof;

[25] In order to determine the income on which child maintenance is based, the ***Guidelines*** require consideration of sections 15 through 20. Below are the relevant sections:

> **15 (1)** Subject to subsection (2), a parent's annual income is determined by the court in accordance with Sections 16 to 20.
>
> …
>
> **Calculation of annual income**
>
> **16** Subject to Sections 17 to 20, a parent's annual income is determined using the sources of income set out under the heading "(Total Income)" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.
>
> **Pattern of income**
>
> **17 (1)** If the court is of the opinion that the determination of a parent's annual income under Section 16 would not be the fairest determination of that income, the court may have regard to the parent's income over the last 3 years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.
>
> **…**

> **Imputing income**
> **19 (1)** The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:
>
> > (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child to whom the order relates or any child under the age of majority or by the reasonable educational or health needs of the parent; …
> >
> > (f) the parent has failed to provide income information when under a legal obligation to do so;
>
> …

Analysis

[26] The central argument in this case revolves around section 19 of the ***Child Maintenance Guidelines***. The issues in this case can be summarized as follows:

(1) Has the father suffered a reduction in income such that he is entitled to request a reduction in his child maintenance obligation?

(2) If the father is entitled to request a reduction in his child maintenance obligation, should the court exercise its discretion to impute income to him based on him being intentionally unemployed or under employed?

(3) If the court exercises its discretion to impute income to the father, what should that income be imputed to be, what should be the resulting child maintenance obligation and when should it be effective?

(4) Should the court also retroactively impute income to the father and adjust the amount of child maintenance owed retroactively and if so, to what amount?

(5) If such retroactive adjustment is made, what should the court order respecting terms of payment by the father for such retroactive arrears?

(6) Should the court order a prohibition on online derogatory postings respecting the parties?

Has the father suffered a reduction in income such that he is entitled to request a reduction in his child maintenance obligation?

[27] The evidence is clear and uncontroverted that the father has lost his full-time employment with Atlantic Superstore. He had previously worked at Wal-Mart and with other employers and had been gainfully employed more or less on a full-time basis for many years.

[28] Currently he is in receipt of employment insurance benefits as a result of the loss of that employment. His sworn statement of income indicates that he receives monthly benefit from employment insurance of $1,111.04 and therefore has an annualized income of $13,332.48.

[29] Prior to the loss of employment, the father had earnings in 2014 of $24,886.00 as indicated in his 2014 Notice of Assessment from Canada Revenue Agency. None of these income figures were challenged by the mother.

[30] Based on this reduction in income, the father would otherwise qualify for a reduction in his child maintenance obligation pursuant to section 14(a) of the ***Guidelines***, unless there was some indication that his period of unemployment would be short lived. The evidence before me is that the father has been unemployed and in receipt of employment insurance benefits for some time and his evidence is that he has not been able to obtain employment despite his efforts to do so. As a result, the father would normally be entitled to a reduction in child maintenance in those circumstances.

If the father is entitled to request a reduction in his child maintenance obligation, should the court exercise its discretion to impute income to him based on him being intentionally unemployed or under employed?

[31] In this circumstance, the mother has asked me to impute income to the father pursuant to Section 19 of the ***Guidelines***. In order to do so, I must find that the father is intentionally under employed or unemployed. Such a circumstance might be justified if such under employment or unemployment were required by the needs of one of the children or if it related to his own reasonable educational or health needs. The evidence is clear that the circumstances of the father's unemployment are not related in any way to the needs of the children or to his own educational or health needs.

[32] A very helpful analysis of section 19 is provided in the decision of ***MacDonald v Pink*** [2011] NSJN 0618; [2011] NSCC 421, a decision of Justice Forgeron of the Nova Scotia Supreme Court Family Division. Justice Forgeron said at paragraph 24:

> **24** Section 19 of the *Guidelines* provides the court with the discretion to impute income in specified circumstances. The following principles are distilled from case law:
>
> a. The discretionary authority found in sec. 19 must be exercised judicially, and in accordance with rules of reasons and justice, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: **Coadic v. Coadic** 2005 NSSC 291.
>
> b. The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: **Staples v. Callender**, 2010 NSCA 49.
>
> c. The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor asserts that his/her income has been reduced or his/her income earning capacity is compromised by ill health: **MacDonald v. MacDonald**, 2010 NSCA 34; **MacGillivary v. Ross**, 2008 NSSC 339.
>
> d. The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances: **Smith v. Helppi** 2011 NSCA 65; **Van Gool v. Van Gool**, (1998), 113 B.C.A.C. 200; **Hanson v. Hanson**, [1999] B.C.J. No. 2532 (S.C.); **Saunders-Roberts v. Roberts**, 2002 NWTSC 11; and **Duffy v. Duffy**, 2009 NLCA 48.
>
> e. A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity. A party cannot avoid support obligations by a self-induced reduction in income: **Duffy v. Duffy**, ***supra***; and **Marshall v. Marshall**, 2008 NSSC 11.

25 In **Smith v. Helppi** 2011 NSCA 65, Oland J.A. confirmed the factors to be balanced when assessing income earning capacity at para. 16, wherein she quotes from the decision of Wilson J. in **Gould v. Julian** 2010 NSSC 123. Oland J.A. states as follows:

> 16 Mr. Smith argues that the judge erred in imputing income as he did. What a judge is to consider in doing so was summarized in Gould v. Julian, 2010 NSSC 123 (N.S.S.C.), where Justice Darryl W. Wilson stated:
>
> > Factors which should be considered when assessing a parent's capacity to earn an income were succinctly stated by Madam Justice Martinson of the British Columbia Supreme Court, in Hanson v. Hanson, [1999] B.C.J. No. 2532, as follows:
> >
> > 1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor". ...
> >
> > 2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.
> >
> > 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
> >
> > 4. Persistence in unremunerative employment may entitle the court to impute income.
> >
> > 5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
> >
> > 6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[33] In the present circumstance, it is clear on the evidence that the father suffered a self-induced reduction in his employment income when he failed to attend at work repeatedly to the point that Atlantic Superstore terminated his employment. He offered no answer as to why this occurred and did not challenge in any meaningful way that this is the circumstance under which he lost his employment. As a result, I find that this was a clear case of self-induced reduction of income.

[34] A related issue is one of intent. While not specifically argued, it might be suggested that the father should not be deemed to have a higher income than his employment insurance earnings because he had no intent to evade his child maintenance obligations and he did not act in bad faith. A finding of bad faith or an intent to evade child maintenance obligations is not required for section 19 to be engaged. As noted in the decision of ***Donovan v Donovan*** [2000] M.J. No. 407; 2000 MBCA 80, The Manitoba Court of Appeal, in commenting on the identical section in the ***Federal Child Support Guidelines*** said the following:

> The husband argues that there was no finding that he intentionally attempted to evade his child support obligations or acted in bad faith. A specific intent to evade child support obligations is not required nor is the finding of bad faith. The word "intentional" is used to differentiate s. 19 (1) (a) from factors beyond the control of the parent, such as being laid

> off, and implies a deliberate course of conduct on the part of the parent. …The parent required to pay is intentionally under-employed if that parent chooses to earn less than he or she is capable of earning. The parent required to pay is intentionally unemployed if he or she chooses not to work when capable of earning an income…

[35] The Nova Scotia Court of Appeal made a similar determination in the decision of ***Smith v. Helppi*** (supra) at paragraph 33 as follows:

> In Nova Scotia, the test to be applied in determining whether a person is intentionally under-employed or unemployed is reasonableness, which does not require proof of a specific intention to undermine or avoid child maintenance obligations.

[36] I therefore conclude that I do not have to make a finding that the father acted in bad faith or caused the termination of his employment to avoid his child maintenance obligations in order to find that he is intentionally under employed in this circumstance.

[37] I therefore find, in light of all of the evidence on the matter, that the father is intentionally unemployed as a direct result of his failure to attend for his shifts with Atlantic Superstore to the point that Atlantic Superstore terminated his employment in 2015. This decision by the father was unreasonable. I further find that it is reasonable to impute income to him in excess of his employment insurance benefits for the purpose of determining an appropriate amount of child maintenance.

If the court exercises its discretion to impute income to the father, what should that income be imputed to be, what should be the resulting child maintenance obligation and when should it be effective?

[38] The mother raised the issue of possible income from the proposed or potential horse boarding business the father and his partner advertised. The evidence respecting this potential venture is clear. The father has not been able to obtain any financing. The barns and lands are leased to a third party, not to him or his partner. He has some horses but has no reasonable prospects of generating income from this potential business. At the most it is aspirational at this stage.

[39] As noted in several decisions including ***Hanson v. Hanson*** 1999 CanLII 6307 (BCSC) at paragraph 14:

> A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.

[40] I find that the father's attempt to found this business, though it may be of personal interest to him, was not a reasonable substitute for his employment earnings with Atlantic Superstore. If there were any connection between his loss of employment and his belief that he could open this horse boarding business and thereby replace his employment income, it is wholly unrealistic to do so and does

not relieve him of his obligation to provide child maintenance based on a reasonable imputed income.

[41] In determining what income to impute to the father, I must take into account the factors enumerated by the courts. For example, the decision of ***Smith v. Helppi*** **(**supra) indicates in part:

> When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.

[42] In the present circumstance, there is clear evidence of the earnings of the father over a number of years prior to the loss of his employment. His earnings since 2012 are as follows:

2012 - $24,666.00

2013 - $24,979.00

2014 - $24,886.00

[43] There is no evidence before me to suggest that the father cannot work. In fact, he is clear that if he could, he would be self-employed in the horse boarding

business. The evidence confirms that he has a long work history and was working full time at his last job. He has no obligations that would prevent him from working. Taking into account that the discretion to impute income should not be punitive to the father, and considering the relative consistency of the father's income over three years, I find a reasonable income to impute to him for child maintenance is his 2014 income of $24,886.00.

[44] The father's child maintenance obligation pursuant to the ***Child Maintenance Guidelines*** and the Nova Scotia Table is therefore $360.88 per month. The father's evidence is that he was working at the Atlantic Superstore in 2015 until his employment was terminated. Therefore he will pay child maintenance at this amount effective January 1, 2015.

[45] A related issue arises respecting so-called section 7 expenses. The 2011 order required the father to pay a contribution to section 7 expenses of $75.00 per month. It is the mother's evidence that she continues to incur activity and other expenses for the children pursuant to section 7. The father did not challenge this evidence and I therefore find that he continues to have an obligation of an additional $75.00 per month for section 7 expenses commencing January 1, 2015. The total of section 7 expense contribution and child maintenance will therefore be

$435.88 per month commencing on January 1, 2105 and continuing on the first of each month thereafter.

Should the court also retroactively impute income to the father and adjust the amount of child maintenance owed retroactively and if so, to what amount?

[46] The mother asks me to exercise my discretion in adjusting the child maintenance obligations of the father retroactively for the years that he did not provide income information as required under the 2011 order.

[47] The leading Supreme Court of Canada decision respecting the potential of retroactive child maintenance awards is that of ***D.B.S. v. S.R.G.,*** 2006 SCC 37. In that decision at paragraphs 94 through 135 the court sets out the analysis to be entered into and the considerations to be taken into account in determining whether retroactive child maintenance should be awarded and under what circumstances. In particular at paragraph 97 Justice McLauchlin wrote:

> Lest I be interpreted as discouraging retroactive awards, I also want to emphasize that they need not be seen as exceptional. It cannot only be exceptional that children are returned the support they were rightly due. Retroactive awards may result in unpredictability, but this unpredictability is often justified by the fact that the payor parent chose to bring that unpredictability upon him/herself. A retroactive award can always be avoided by appropriate action at the time the obligation to pay the increased amounts of support first arose.

[48] The analysis requires that I consider whether the mother has a reasonable excuse for why maintenance was not sought earlier. Her evidence is straight forward. She says that she was often unaware of changes in the father's employment. For example, her evidence was she only knew he was working at the Atlantic Superstore when third parties told her of that circumstance, not the father. She says this was the result of poor to no communications between the parties.

[49] It is also the mother's evidence that she was unware of any changes in his income because he did not provide her with the information regarding change in income as required under the order of 2011.

[50] In reviewing this evidence the court is mindful of the Supreme Court's comments in ***D.B.S*** (supra) at paragraph 104 as follows:

> In deciding that unreasonable delay militates against a retroactive child support award, I am keeping in mind this Court's jurisprudence that child support is the right of the child and cannot be waived by the recipient parent: *Richardson*, at p. 869. In fact, I am not suggesting that unreasonable delay by the recipient parent has the effect of eliminating the payor parent's obligation. Rather, unreasonable delay by the recipient parent is merely a factor to consider in deciding whether a court should exercise its discretion in ordering a retroactive award. This factor gives judges the opportunity to examine the balance between the payor parent's interest in certainty and fairness to his/her children, and to determine the most appropriate course of action on the facts.

[51] I must also consider the conduct of the payor parent. The father acknowledges the existing obligation to provide financial disclosure to the mother but also acknowledges, in his cross-examination, that he did not provide the required disclosure either to the mother or to the court. It was only when he made this application that his change in income became apparent. As the Supreme Court of Canada found in ***D. B. S.*** (supra) paragraph 106:

> Courts should not hesitate to take into account a payor parent's blameworthy conduct in considering the propriety of a retroactive award. Further, I believe courts should take an expansive view of what constitutes blameworthy conduct in this context. I would characterize as blameworthy conduct anything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support. …

[52] I must also take into account the circumstances of the children. The Supreme Court of Canada in ***D.B.S.*** (supra) noted that in the case of children living in circumstances of relatively lower income, any change in a payor parent's income which would result in even a modest increase in child maintenance could and would have a significant impact on the children's lives. While in this circumstance any retroactive adjustment would not be large, it would certainly be proportionately larger or of greater significance to these children given the low

income of both parties and the impact that would invariably have on the children's lives on a day-to-day basis.

[53] I am also required to take into account the hardship that might be occasioned by a retroactive award. The Supreme Court of Canada has directed that if I exercise my discretion to retroactively award adjustment of child maintenance I should take into account an order that minimizes any hardship on the payor parent such as the use of periodic payments.

[54] Taking into account all of the relevant factors necessary in the analysis of whether a retroactive award of child maintenance should be made in this case, I am satisfied that it should be made. The father knew of his obligation to disclose his changes in income over the years and did nothing to satisfy that obligation. The mother has provided a reasonable explanation as to why she did not seek an increase in maintenance at an earlier stage. She is currently in receipt of very low income and any award would certainly benefit the children. Such a retroactive amount would represent what the children should have been receiving from their father during the years that he had somewhat higher employment income than that deemed in the original 2011. This would no doubt directly benefit the children.

[55] Finally, although it is inevitable that any retroactive child maintenance award will have a negative impact on the current financial circumstance of any payor parent, in this circumstance an order can be crafted to permit the father to meet his retroactive obligation over a period of time in a way that should permit him to do so without unreasonable hardship. This will be particularly so if he obtains gainful employment again soon.

[56] In assessing the date of retroactive awards, I have taken into account the direction of the Supreme Court of Canada in ***D.B.S.*** (supra) on that point and will limit the retroactive period to three years.

[57] The income of the father and resulting child maintenance for each of the three proceeding years shall be as follows:

2012 Income $24,666.00

Child maintenance $357.19 per month x 12 months = $4,286.28

Section 7 contribution $75.00 per month x 12 months - $900.00

2012 Total = 5,186.28

2013 income $27,979.00

Child maintenance $362.45 per month x 12 months = $4,349.40

Section 7 contribution $75.00 X 12 months = $900.00

2013 total = $5,249.40

2014 income $24,886.00

Child maintenance $360.88 x 12 months = $$4,330.56

Section 7 contribution $75.00 x 12 - $900.00

2014 total = $5,230.56

Total 2012 through 2014 - $15,666.24

[58] From 2012 through 2014 the father did pay child maintenance. The Record of Payment from the Maintenance Enforcement Program, which was attached to the affidavit of the mother sworn May 1st, 2015, confirms that, between January 1, 2012 and December 31, 2014, the father paid a total of $14,253.44 in child maintenance. Thus his arrears based on the retroactive award total $1,412.80 ($15,666.24 - $14,253.44) and this will be the amount of arrears set in this matter for the years 2012 through to and including 2014.

If such retroactive adjustment is made, what should the court order respecting terms of payment by the father for such retroactive arrears?

[59] As to payment of arrears, the father shall be required to pay $75 .00 per month in satisfaction of arrears owing pursuant to this order. The father shall pay this amount commencing on August 1, 2015 and continue this payment on the first day of each month thereafter until all arrears are paid in full.

[60] His ongoing child maintenance obligation totals $435.88 as determined earlier. With the additional payment for arrears, his total monthly payment will be $510.88 until the arrears are paid in full or another order is made.

Should the court order a prohibition on online derogatory postings respecting the parties?

[61] The mother seeks a prohibition on the posting of derogatory remarks on Facebook. After review of the evidence and in particular the printed copy of the posting itself and the father's explanation, I am is satisfied that such a prohibition should be granted. This is also consistent with the wishes of both parties.

[62] Both parties shall be prohibited from posting any derogatory comments about the other party online, whether on Facebook or any other online website or service, and if either party becomes aware of another person posting such comments, that party shall make best efforts to have such postings removed.

[63] In consideration of the nature of the claims made and the evidence adduced as well as the relative circumstances to the parties, I will not award costs to either party in this matter. I will require Mr. MacLaughlin, counsel for the mother, to prepare the order as the father is unrepresented.

Conclusion

[64] I began this decision by noting that this case is about the children A.D. and A.R.D. They are entitled to the support of both of their parents. They will now have an appropriate amount of financial support from their father notwithstanding his loss of employment.

Judge Timothy G. Daley