

DOCKET: SFHMCA-048645

IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA
[Cite as: C. P. v. W. R., 2007 NSFC 6]

BETWEEN:

C. P.

-APPLICANT AND RESPONDENT BY CROSS-APPLICATION

AND

W. R.

-RESPONDENT AND APPLICANT BY CROSS-APPLICATION

BEFORE THE HONOURABLE JUDGE BOB LEVY

HEARD AT: KENTVILLE

DATE HEARD: JANUARY, 18, 2007

DECISION DATE: JANUARY 25, 2007

APPEARANCES: DAVID THOMAS FOR THE APPLICANT
KENNETH ARMOUR FOR THE RESPONDENT

DECISION
(INTERIM MAINTENANCE)

By the Court:

1. The parties had an eleven year common law relationship and separated in April of 2006. They have three children, aged 11 (almost 12), 10 and 9. The mother also has custody of her grandson, aged 4, and the parties agreed when she obtained custody, and still do, that the Respondent would, along with the Applicant, be responsible for his care and maintenance. Pending the completion of a custody assessment the parties have agreed on a without prejudice basis that the children will be in the care of their mother, (C. P., the 'Applicant'), in the 'matrimonial' home in Elmsdale, Hants County, (and subject to access every second weekend). W. R., the children's father ('Respondent'), resides in rented quarters in Greenwood, N.S..

2. The issues for this interim decision, pending a final resolution of the custody issue, are child maintenance for the four children and spousal maintenance applications by C.P.. The Applicant has Bachelor of Child Studies but was a 'stay-at-home' parent during the relationship and is currently not employed. In addition to the children in her care already mentioned, her 19 year old son from a previous relationship is staying with her until he finds employment. I don't know if he is contributing anything financially. She reports income from social assistance of \$305 per month, child tax credit of \$18.26 per month, (low, apparently, because of an over payment and I do not know for certain when the overpayment will be fully collected), and the \$100 monthly universal child care payment from Ottawa. Mr. R. had been paying the mortgage on the house, (which is in both their names), and the current amount of that mortgage, taxes included, is \$926 per month. She claims

monthly expenses, including the mortgage and some debts, of \$2,711.79. Counsel for Mr. R. indicated that they take no issue with the Applicant's budget figures.

3. The Respondent, is in the Canadian armed force stationed at Greenwood. His gross annual income, which includes a disability pension, is \$72,893, (\$6,074 per month). At that pay the 'table amount' for four children, per the Child Maintenance Guidelines, is \$1,584 per month. The details of his 'Statement of Expenses' was the focus of considerable questioning and discussion. The statement did not include any statutory deductions such as income tax, C.P.P. and E.I. contributions and this may have thrown the inquiry off track somewhat.

4. The Statement of Expenses, (items #1 to #34), details his personal expenses, before taking into account debts and the statutory deductions. Those items totaled \$4,558 per month. Mr. Thomas, counsel for the Applicant, was able to show that a number of items were higher than they need be. Thus, if the Applicant, not the Respondent, were to pay the mortgage he would "save" \$926 per month. I won't deal with them individually but Mr. Thomas summarized this and other "savings" succinctly in his rebuttal submission. I have looked at these items and have done some of my own calculations and I think that these items in his budget may be able to be pared down to about \$2,525 per month:

rent	\$540
electricity and heat	200
phone	100
food	400
toiletries	25
laundry	20
car gas, repairs, etc.	800 (?)
expenses with children	100

hair	20
life insurance	50
gifts	100
entertainment	20
cigarettes	100 (?)
miscellaneous	<u>50</u>
	\$2,525

5. It is hard to see how it can be cut much more than that, given that he needs a place to live and to have the children when they are with him.

6. I have the current figures for his deductions at source for his employment income. Income tax, superannuation, and E.I. deductions total \$1,569.87 per month. C.P.P. would, over the course of a year, by my rough calculations, be somewhere around \$166 per month, for a total monthly statutory deductions of \$1,735.87 per month. (I assume the deductions at source are appropriate.) There would be, (assuming an approximate 40% marginal tax rate), a further annual tax burden of about \$4,000 per year, (\$333.33 per month), on the pension income of \$10,601.16. Thus, his total 'take home pay' would be roughly \$4,000 per month.

7. He is also carrying has considerable debt on which he says his monthly payments total \$1,689. There are four relatively smallish debts, which he says are his alone, with balances totaling \$11,120, and with monthly payments totaling \$628. There are two loans with larger balances, \$28,000 and \$8,000, and with monthly payments respectively of \$643 and \$418, that he says are 'matrimonial debts' incurred by the parties during the course of their cohabitation.

8. Taking these things into consideration, these are the Respondent's monthly obligations:

taxes, etc.	\$2,069.20 (\$1,735.87 +\$333.33)
debts	1,689.00
personal	2,525.00
child maintenance	<u>1,584.00</u>
	\$7,867.20
obligations	\$7,867.20
income	<u>-6,074.00</u>
deficit	\$1,793.20

9. Keeping in mind that this decision concerns interim maintenance and that there is simply is not enough money to go around, at least not for any length of time, my job as I see it, is to keep everyone afloat for now and to make no one happy. My particular concern, my "priority", (section 3A of the Maintenance and Custody Act), of course is the children and their support.

10. I have in mind that if, in the short run, one could shave a further \$300 monthly off Mr. R.'s expenditures, (the cigarette expense is not a priority in the scheme of things I should think), and expect, again for the short run, that he could somehow cut his debt payments by half, there would be \$ 1,144.50 in monthly 'savings', and his deficit each month would then be about \$648.70. If, instead of a maintenance obligation of \$1,584, his maintenance 'cost' was \$648.70 less per month, (\$935.30), he could, theoretically, break even. Given his current heavy indebtedness I cannot imagine that any lender would be anxious to lend him more to cover a shortfall and so it is simply not realistic to envision him borrowing to

make ends meet. Additionally and importantly, if one were to extract more from him he would be utterly unable to have any meaningful access with his children at all.

11. The Respondent will be ordered to pay \$1,600 per month per month in spousal support. If he changed his deductions at source, his maintenance 'cost' would be about \$960, (I'm working with the rough figure of 40% as his marginal tax rate). I can't see the Applicant and the four children getting by with a penny less, and I can't imagine how the Respondent could pay a penny more. I believe that for as long as this interim order will be in place that it should not attract any tax liability on the Applicant. Of course it would be understood that the Applicant would be responsible for the payment of the mortgage and household expenses.

12. This payment would be in addition to an interim order, pending further consideration and further developments, of \$1.00 per month, in child maintenance. I will adjourn a the issue of child maintenance pending further developments and further consideration.

13. Given that this would be, as I see it, the only possible way to come close, and even then not meet, the needs of the children I hold that in doing this, I am, as the legislation requires, giving "priority" to the maintenance of the children. I am similarly satisfied that with this amount of spousal support ordered, an order that I am certain will benefit the children, that the \$1.00 in child maintenance awarded, is a justified "amount that is different" from the 'table' amount, as it is a "special provision in an order" that will "indirectly benefit (the children)",(section 10 (3) of

the Maintenance and Custody Act).

14. I would ask Mr. Thomas to prepare the interim order.

Bob Levy, J.F.C.