FAMILY COURT OF NOVA SCOTIA
Citation: S.H. v. G.G., 2014 NSFC 3

Date: Date 2014 03 12
Docket: SFHMCA 054342
Registry: Halifax

Between:

S. H.

Applicant/Respondent herein

v.

G. G.

Respondent/Applicant herein

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Judge William J. Dyer
Heard:	March 12, 2014, Bridgewater, Nova Scotia
Written Release:	March 18, 2014
Counsel:	S. H., Applicant/Respondent herein on her own behalf G. G., Respondent/Applicant herein - not appearing

By the Court :

[1] S. H. ("H.") and G. G. ("G.") are the parents of an almost seventeen year old son.

[2] In June, 2009 the parties took out a Consent Order in the Supreme Court of Nova Scotia (Family Division) which vested primary residence of the child with the mother and granted reasonable parenting times to the father, with some specifics. The teenager still lives with his mother and attends school; and he has contact with his father. However, there is little contact and communications between the parents.

[3] According to the 2009 order, G. was a member of the Canadian Armed Forces with an annual income of $57,000. (He still is.) The order makes no reference to H.'s income. He was ordered to pay H. $495 monthly as child support by equal installments for half the amount on the 15th and 30th day of each month. Additionally, he was to pay to H. the sum of $5,000 as "retro-active child support". [I will refer to it as the "retroactive award".] That amount was to be paid at the rate of $25 - on top of regular or current child support payments. There was a term that if G. sells or disposes of his interest in any real property before paying off the arrears award, the arrears would be immediately due and payable from the disposition proceeds.

[4] G. was ordered to annually provide H. with copies of his personal Income Tax Returns [whether filed or not], his Notices of Assessment or Reassessment, and his T4 Slips for the stated purpose of reviewing and adjusting child support, as need be. Disclosure was to be accomplished by G. before June 1st each year.

[5] The parties were to adjust the amount of child support to be "effective on July 1st of the year in which the income information was provided". I took that clause to mean, and H. confirmed in court, that there would be an opportunity for annual review and adjustment, to be effective July 1st - using the father's Line 150 income for the immediately preceding tax year - and that the adjusted amount would be in place for the next 12 months.

[6] In early May, 2012 the parties agreed in Family Court to a Variation Order which stipulated that G.'s 2011 total income was about $64,600 for **Child Maintenance Guidelines'** (**CMG**) purposes. He agreed to pay more than the Nova Scotia Table amount. The amount was set at $603 monthly, starting effective July 1st , 2012, to be due and payable by installments of $301.50 on the 15th and the last day of each month. The agreed total reflected the Table for the Province of Alberta. Payments were expected to continue through the Maintenance Enforcement Program (MEP) and would be accomplished by assignment or allotment with G.'s employer (National Defence, Canadian Forces).

[7] The 2012 order did not alter the parenting arrangements. Nor did it alter G.'s income tax return, etcetera disclosure requirements or other reporting obligations. Nor did it change the review and adjustment process.

[8] In early April, 2013 G. started a variation application. He did not discuss this with H. beforehand. By then, he had relocated to and was living in the Province of Alberta. His application is under the **Interjurisdictional Support Orders Act** (Alberta) and the companion statute in Nova Scotia.

[9] There is no evidence of full and timely financial disclosure to H. as had been previously ordered or that G. tried to accomplish review and adjustment (if warranted) by simple discussion and agreement. Indeed, on G.'s own evidence he did not file a 2012 income tax return.

[10] In any case, the application package included information predating the last order. This prompted H. to respond in kind. The last order is presumed to be valid and proper. With respect, there was no need to go behind it to address current support under the **Guidelines** and Tables. My consideration of the outstanding retroactive award (below) was triggered by evidence of a breach of the 2009 order. In the child's best interests, it has renewed relevance.

[11] Form K is a Financial Statement completed by G. in April, 2013. In the first paragraph on the first page he declared that his total annual income (before taxes and other deductions) for "this year" [ie., 2013] would be approximately $68,436.

[12] However, by my calculations, using his sample pay statements and related material, his 2013 employment income may actually be higher - closer to $73,132.

[13] On another page, he disclosed "total income in most recent personal income tax return year "2012" to be $72,341. I will come back to this.

[14] I hasten to add that on the available evidence there is no way to determine whether G.'s monthly employment income has remained the same throughout 2013 and no way to establish with any confidence his 2014 income.

[15] G. did not provide his 2012 personal Income Tax Return, Notice of Assessment, etcetera as previously ordered. However, he did include copies of what appear to be his T4 slips for 2012. Based on those documents, I determine his 2012 income to have been not less than $72,340.94 as *per* his handwritten note previously mentioned.

[16] With the benefit of hindsight, I observe that (to his credit) G.'s 2011 income was as estimated in the last order, i.e., $64,600. Also, in fairness to G., he wrote that he does receive increases in his salary periodically and that he wants to change his support payments to reflect his income.

[17] G. also asked that the amount he owes ("arrears") be recalculated as *per* a Schedule he submitted. For her part, H. submitted her own set of calculations. Their calculations are not dissimilar. (Their submissions did not address the status of the retroactive award.)

[18] With respect, our courts are no longer in the "collection business" and generally do not do the calculations apparently sought by the parties in the present case. This is the responsibility of the MEP which tracks payments received against payments due and payable under registered orders.

[19] G. wrote that he continues to pay $25 on top of his regular support payments as ordered in the Supreme Court some time ago. H. confirmed this is so.

[20] Based on the evidence before me, I find the Nova Scotia Tables would apply from January, 2012 through to and including July, 2012 when G. relocated. Thereafter, the Alberta Tables would pertain. This is not in dispute.

[21] In a supplementary affidavit, G. reconfirmed he had not filed his 2012 income tax return. He provided no explanation, but reiterated that he had provided his T4s and said that it is his intention to file once a court decision is received.

[22] I frankly do not know what the connection might be between his tax filing responsibilities to the Canada Revenue Agency and his support obligations or the current application. G. is under a court order to provide his returns "whether filed or not". For our purposes, income is not confined to employment income. Sometimes parties do not produce all their T-4's or they have other income from sources which do not generate T-4's. Hence the need for full disclosure. Assessment may result in adjustment to Line 150 income.

[23] At the hearing, H.'s evidence was that in 2009 G. owned real property in or near Sackville, Nova Scotia which he sold when he moved to Alberta in 2012. She discovered this from an online real estate service. Her evidence was that when she raised the subject with him, he did not deny a sale had taken place but simply claimed he did receive much money. The evidence is that he did not disclose to her the full financial particulars of the sale (which would demonstrate the net proceeds, among other things) or pay anything to her to be credited against his child support arrears - contrary to paragraph 7 of the 2009 Supreme Court order. H.'s evidence was that she informed MEP of these developments but, as far as she knows, no remedial action was taken. His sale and relocation expenses may have been paid or reimbursed by his employer - but that information has also been withheld. Moreover, I judicially notice that if his expenses were not covered by his employer, he would be eligible for some income tax relief.

[24] Not surprisingly, H. now thinks that G. has balked at filing his 2012 tax Return for fear that any potential refund will be attached by MEP to reduce or payout the arrears. In the circumstances, I find there may be some foundation to her speculation.

[25] On the available evidence, the result is that I determine G.'s 2012 income to have been not less than $72,341. It remains to be seen whether his 2013 income will be somewhat less at $68,436 or closer to $73,132 as suggested by the pay records. I caution that the $72,341 figure would not include income (if any) from other sources and which will only be known when his 2012 Return and Assessments are disclosed.

[26] Therefore, in my opinion, any order I now make will have to be conditional.

[27] In 2009 the parties agreed that child support adjustments (if any) would be made effective July 1st each year. That, of course, presupposed full income disclosure by G. each year, no later than June 1st.

[28] H. has not made a formal cross-application - presumably because she knows that if G.'s income went up, so too should child support. And since he put the "arrears" issue before the court for determination, the corollary is the court may look at the larger picture, including the retroactive arrears award.

[29] It is now known that G.'s income for 2011 was as previously estimated. The last support adjustment was effective July 1st, 2012 utilizing the 2011 tax return information. The agreed $603 monthly figure was intended to prevail until July, 2013 when G.'s 2012 income would be looked at.

[30] The Alberta relocation brings into play the Alberta Tables. Utilizing his income figures (ie., minimum $72,341), payments shall be at the (minimum) rate of $617 monthly, starting retroactively effective July 1, 2013. Payments for the child's benefit are due and payable to H., by equal installments of $308.50 on the 15th and last day of each month, payable through MEP, until otherwise ordered by a court of competent jurisdiction. (This is what was sought by G. in his application.)

[31] Suffice it to say, should G.'s 2012 income later prove to have been higher than the amount represented by him, H. shall be entitled to further review and retroactive upward adjustment. This qualification could have been avoided if G. had simply filed his tax returns on time and given a true copy to H..

[32] It is premature to consider further adjustment at this time. G. has until June 1, 2014 to disclose his 2013 Return. The next adjustment (if needed) will be effective July 1st 2014, using his 2013 Line 150 income to carry the parties into 2015. It is important that he meet that deadline. (He is already overdue on his 2012 disclosure,)

[33] Given the outcome, and what I am sure are significant systemic costs (not to mention the inconvenience and expense to the parties), I strongly encourage the parties to seek a simpler way to review and adjust support. This could be done by way of a consent order after independent legal advice, or by way of an agreement to be registered under section 52 of the **Maintenance and Custody Act**. There is some indication that Nova Scotia will be extending a government program for support recalculation to include cases such as the present one. The parties should keep an eye out for announcements.

[34] As stated previously, it is up to MEP to recalculate the amounts owing by G. once a certified copy of the new court order is presented.

[35] Before closing, on the evidence, I reiterate my finding that G. breached paragraph 7 of the June 2009 order. Accordingly, I find the outstanding balance of the retroactive child support award is immediately due and owing.

[36] There is insufficient evidence about the current balance of the (original) $5,000 award, still attracting payments of $25 monthly. MEP can make that calculation.

[37] However, for clarity, I specifically order that the retroactive award balance shall be paid immediately and that it shall be collected by garnishee(s) of employment and/or federal sources such as, but not limited to, any income tax refunds to which G. may be entitled.

[38] Court staff will prepare an appropriate order which incorporates the outcome. My decision should accompany the order when it is sent to the reciprocating jurisdiction.

[39] Given the potential income tax refund implications, I also authorize release of this decision to MEP.

Dyer, J.F.C.