

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Pentz v. Cutcliffe, 2006 NSFC 49

Date: December 12, 2006

Docket: FNGMCA 048573

Registry: New Glasgow

Between:

Margaret Catherine Pentz

Applicant

v.

Mark Randolph Cutcliffe

Respondent

DECISION

Judge: The Honourable Judge Jamie S. Campbell

Heard: December 12, 2006, in NewGlasgow, Nova Scotia

Counsel: Doug Lloy, Counsel for the Applicant,
Margaret Catherine Pentz
Nicole Mahoney, Counsel for the Respondent,
Mark Randolph Cutcliffe

By the Court:

[1] Margaret Pentz and Mark Cutcliffe met in the early 1980's. She was then 32 years old. He was only 20. She was working in the office at a local garage. He lived at home with his parents. She would drive to his parents home to pick him up so they could spend time together on weekends.

[2] They began living together as a couple about five years later, when they bought a house.

[3] Their relationship has come to an end. It's conclusion, like many conclusions, appeared sudden only when its finality was made real. The relationship appears to have lingered on for years after Ms. Pentz and Mr. Cutcliffe has lost any sense of emotional commitment to each other, and finally sputtered out in 2006.

[4] The couple had no children. The issues before the court are the amount of maintenance to be paid and the period for which it is to be paid.

[5] Ms. Pentz argues that this was a long term relationship of 18 years. She says that she should receive maintenance of an indefinite duration to reflect the length of the relationship and her own precarious financial position. Mr. Cutcliffe argues that maintenance should terminate as of January 2008, based on what he believes to be the short, 6 year duration of the relationship in any real sense.

[6] The issue of Ms. Pentz's need has been conceded.

Facts:

[7] It is agreed that the parties started living together when they bought a house. Ms. Pentz contends that this happened in 1987. Mr. Cutcliffe believes it was 1989. Not a great deal turns on the matter of those two years.

[8] Like many relationships this one defies simple characterization. It may well have been transformed over time through a number of different stages becoming different relationships at different times.

[9] It was in some respects and at some times, traditional. Ms. Pentz did laundry, cooked and cleaned the house.

[10] Yet, the couple does not appear to have ever become a single financial unit. There was little real sharing in an economic sense though there were arrangements by which Ms. Pentz paid for groceries and Mr. Cutcliffe covered housing related expenses. They never discussed money and kept separate bank accounts.

[11] Ms. Pentz was laid off from her job at the garage a few years after the couple began living together. Her father was sick at that time and Ms. Pentz stayed home from work to look after him. She received some pay from the Department of Veterans' Affairs for doing that until

her father died. Later, when her mother died she remained out of the workforce relying on the money she had from the sale of her parents' home. During this time she did not rely entirely on Mr. Cutcliffe but used her own resources to pay her agreed upon portion of the expenses.

[12] When the money from the house was used up after a number of years, she started looking for work in her current occupation as a personal care worker. That career has not been one that has been particularly financially rewarding.

[13] Mr. Cutcliffe was, and remains a letter carrier with Canada Post. His income is steady and reliable.

[14] Ms. Pentz described the couple's relationship as having had its ups and downs. That may be her way of describing the process of evolution or devolution of the couple's lives together. They each had their own bedroom from the time the house was purchased. There was a conjugal relationship though and they lived life as a couple.

[15] The character of the relationship seems to have deteriorated significantly by the mid 1990's. While the parties disagree as to when they became no longer sexually intimate there is not a great deal of dispute as to the other aspects of what became their somewhat curious lives.

[16] Particularly after 1995, Mr. Cutcliffe would, as a habit, remain away from the home while

Ms. Pentz was there. He would go out or stay out for the evening, often eating meals out and

returning home only after Ms. Pentz had gone to bed. Ms. Pentz would remain at home and very rarely socialized.

[17] Mr. Cutcliffe would in later years buy his own groceries and not share food Ms. Pentz. Within the last few years they stopped exchanging birthday and Christmas gifts.

[18] Ms. Pentz was shocked when Mr. Cutcliffe left the home on June 13, 2006. He had gone and his clothes and personal articles were taken from his bedroom. While she was no doubt shocked that day, the parties had serious discussed separation as early as August of 2005.

[19] They appear to be a couple that was held together no longer by love or even by some other commitment to each other but by inertia or simply habit. Mr. Cutcliffe frankly acknowledged that while it felt like they were roommates after 1995 it is hard to stop feeling like a couple after having been a couple. He sees the real spousal relationship as having lasted from 1989 to 1995.

[20] These are not people who are motivated by a strong dislike for each other. Neither appears to want to hurt the other. They had simply grown very far apart over a period of years, having started in a relationship that was idiosyncratic.

[21] People age and mature differently. Obviously, those processes happen in the chronological way and in that sense Ms. Pentz has remained 12 years Mr. Cutcliffe's senior. Physical and emotional aging take place a different rates. People go through stages of life at

different times. They experience them in different ways. When Mr. Cutcliffe and Ms. Pentz met both were young adults. As Ms. Pentz approached middle age and the physical and emotional changes that accompany that stage of life Mr. Cutcliffe was still a young adult.

[22] She is now 58, dealing with some health issues and contemplating retirement within the next few years. She is considering taking up residence in accommodations for seniors. She has little, if any, interest in socializing. He is still middle aged. He is in good health. The match that may have been a fit for two young adults has not been able to withstand what amounts to a generational gap.

[23] That has implications for them both. Mr. Cutcliffe is still in his prime earning years. Ms. Pentz has had work as a personal care worker but she is looking now toward retirement. Her yearly income is slightly more than \$8000 per year. Her budget deficit is about \$730 each month. Her expenses are modest to say the least.

[24] Mr. Cutcliffe's income is approximately \$48,000 per year. Mr. Cutcliffe maintains that his expenses reflect his current lifestyle, which involves staying out in the evening and eating out regularly. He has an after tax monthly deficit of \$480.

The Law:

[25] The application was made under s. 9 of the Maintenance and Custody Act.

[26] Entitlement to spousal support exists without the requirement for proof that the need is causally related to the roles adopted during the relationship. Ms. Pentz need not prove that her current financial condition was a result of the relationship in order to show that she is entitled to some level of support.

[27] Section 4 of the Maintenance and Custody Act sets out the factors to be considered when determining the issue of spousal support.

[28] In determining whether to order a person to pay maintenance to that person's spouse or common-law partner and the amount of any maintenance to be paid, the court shall consider

(a) the division of function in their relationship;

(b) the express or tacit agreement of the spouses or common-law partners that one will maintain the other;

© the terms of a marriage contract or separation agreement

between the spouses or common-law partners;

(d) custodial arrangements made with respect to the children of the relationship;

(e) the obligations of each spouse or common-law partner towards any children;

(f) the physical or mental disability of either spouse or common-law partner;

(g) the inability of a spouse or common-law partner to obtain gainful employment;

(h) the contribution of a spouse or common-law partner to the education or career potential of the other;

(i) the reasonable needs of the spouse or common-law partner with a right to maintenance;

(j) the reasonable needs of the spouse or common-law partner obliged to pay maintenance;

(k) the separate property of each spouse or common-law partner;

(l) the ability to pay of the spouse or common-law partner who is obliged to pay maintenance having regard to that spouse's or common-law partner's obligation to pay child maintenance in accordance with the Guidelines;

(m) the ability of the spouse or common-law partner with the right to maintenance to contribute to his own maintenance. R.S., c. 160, s. 4; 1997 (2nd Sess.), c.3, s. 3; 2000, c.29, ss.5, 8.

[29] Support should reinforce the pattern of economic dependency established by the roles the parties adopted during the relationship. Where one spouse earns substantially more than the other and assumes responsibility for the other's lifestyle he or she may have some obligation to continue to subsidize that lifestyle at the end of the relationship. Where the only effect of the relationship has been that a spouse has enjoyed a better lifestyle than he or she can afford alone, the issue is the amount of transitional support and the period for which it is to be paid. The purpose of such an award is to ease the transition to economic independence. It does not mean that the dependant spouse will really ever be able to resume the lifestyle that the relationship provided. It's purpose is to ease the transition. The length of that transition period depends on the length and nature of the relationship.

Analysis:

[30] Ms. Pentz did not suffer a career disruption as a result of her relationship with Mr. Cutcliffe. She did not leave a job to raise children, nor did she take on work in order to help to pay for his education and contribute to his career. She voluntarily took time away from work after the death of her mother and sustained herself with the proceeds of sale of her parents' home. She sought work that she wanted and was not encumbered in this respect by her relationship with Mr. Cutcliffe.

[31] The fact that Ms. Pentz's financial hardship following the breakup of the relationship was not caused by the relationship does not in itself disentitle her to maintenance but should affect the form duration and amount of support. A minor difference is standards of living at the

conclusion of the relationship would not trigger a support obligation but a gross disparity is sufficient to create an entitlement to ease the spouse's progress toward self sufficiency.

[32] In this case, Ms. Pentz has a meager income and her realistic prospects of becoming self sufficient are not good. She has some physical limitations but these do not affect her ability to do her job. Through no plan or device she found herself in a situation over the course of the years where her needs could be met by working as and when she could as a personal care worker. The consequences of those decisions are now being felt. The question is to what extent the parties should share in the financial consequences of the series of decisions that helped to form the circumstances that Ms. Pentz now confronts.

[33] The relationship was a long term one. While it may well have gone through a number of different phases and reached a point in 1995 where it could not be said to be characterized by mutual tenderness, the parties were a couple even when there was little if any intimacy in either the physical or emotional sense. While the quality of the relationship had almost become one analogous to that of roommates the parties still saw themselves as a couple. The fact that they discussed separation in 2005 but remained living together as they had for the previous years suggests that they saw themselves as having a level of commitment to each other that went beyond the mere sharing of expenses. That commitment may not have been the product of mutual regard and at that point appears to have been more a product of indecision, fear of the unknown or taking the path of least resistance.

[34] At the conclusion of a long term relationship Ms. Pentz finds herself working in an area where her prospects for financial independence are not at all good. Her choices with regard to her career path were not ones that were thrust upon her by the circumstances of her relationship as much as enabled by it. She was not economically disadvantaged by the relationship. Mr. Cutcliffe was not economically enriched. Both had the advantages of companionship and the combination of shared financial responsibilities and household duties.

[35] Her need however is very real. She is, on her own, not able to maintain the lifestyle that she had over the course of the relationship. She has neither the education, vocational training nor experience necessary to find more remunerative employment.

[36] Ms. Pentz's needs are not causally related to the relationship in the strict logical sense. Yet, one must wonder what life would have brought her had she not, at 32 met the 20 year old Mr. Cutcliffe and commenced a long term relationship with him. She assumed a role that while not compelling her to make any decisions, at least enabled her to make decisions or operate on assumptions that have contributed substantially toward her current position. Had she not been in this relationship she may have been required to make life choices with regard to both employment and education that would have taken her down a path of more self sufficiency.

[37] That is not the same as the spouse who gives up a career to raise children or who sacrifices her own opportunities to provide for a spouse's education. It does not mean that had this relationship never happened Ms. Pentz would not be in a position of economic dependency or disadvantage. It does not absolve her from having personal responsibility for her own choices.

It does however recognize the context within which those choices were made. This relationship has not caused her dependance but has enabled her to make decisions that may have contributed to it.

[38] Ms. Pentz's needs are the result of a combination of factors and a combination of decisions made over the course of an adult life. Those choices were not necessarily imprudent ones based on her circumstances at the time. Similarly, Mr. Cutcliffe is not to blame for the situation. The matter is not about blame.

[39] The reality is that while Ms. Pentz's needs may be indefinite, Mr. Cutcliffe's obligation should not be. This acknowledges the need but also the circumstances that have given rise to it. In light of those circumstances, Mr. Cutcliffe's obligation to provide spousal support should be for the period from 1 February 2007 to and including 1 January 2011, a period of 4 years. At the conclusion of the 4 years it may well be that Ms. Pentz will not be self sufficient but it will not be

Mr. Cutcliffe's legal responsibility to address that. That period balances the need for financial transition out of the relationship, and Mr. Cutcliffe's obligation in a relationship which was long term but nontraditional in nature.

[40] The amount of maintenance must reflect the means, needs and circumstances of both parties. It should be acknowledged that they own a home which will likely be divided in some manner between the two. Ms. Pentz shows a monthly deficit of about \$730. That is without any amount included for rent or mortgage but does include a total of \$350 each month for heat and

home repairs.

[41] Mr. Cutcliffe shows an after tax monthly deficit of \$480. He has included an amount of \$750, properly reflecting the fact that he will not be able to live rent free with family for much longer. Significantly however, he has included \$260 for entertainment, \$200 for gifts and \$550 in alcohol and tobacco. Mr. Cutcliffe maintains that these expenses reflect his current lifestyle, which involves staying out in the evening and eating out regularly.

[42] With some adjustments I am satisfied that he can afford a net cost of \$625 per month which would amount to a gross payment of \$990 each month. Based on the material provided by counsel, including calculations made under the Spousal Support Advisory Guidelines, the net benefit to Ms. Pentz would be \$790. That level of support will be far from providing her with a comfortable lifestyle. It is an amount to assist her in making the financial transition away from the relationship. It recognizes that Mr. Cutcliffe should adjust his budget and his lifestyle but should not be required to pay an amount that will make it impossible for him to reestablish himself.

[43] Mr. Cutcliffe will be ordered to pay support to Ms. Pentz in the amount of \$990, commencing on 1 February 2007 and continuing on the first day of each month to an including the first day of January 2011.

Judge Jamie S. Campbell

