IN THE FAMILY COURT OF NOVA SCOTIA
Citation: *A.H. v. B.D.*, 2008 NSFC 36

Date: 20081103
Docket: FBWMCA-034398
Registry: Bridgewater

Between:

A.H.

Applicant/Respondent herein

v.

B.D.

Respondent/Applicant herein

Revised Decision: The text of the decision has been revised to protect the identity of certain parties. This revised version is released on November 7, 2008.

Judge: The Honourable Judge William J. Dyer

Heard: September 24, 2008, at Lunenburg, Nova Scotia

Counsel: A. Franceen Romney, for A.H.
B.D., self-represented

By the Court:

[1] B.D. and A.H., are the parents of twin sons, N.F.D. and N.C.D. who were born in late May of 1988. The parents separated in early June, 1989 and entered into Minutes of Settlement which were registered with the Family Court in January 1990.

[2] After a contested hearing in 2005, I released a written decision [2005 NFC 29] in which I canvassed the prevailing circumstances of the parents and their sons. A

comprehensive order under the **Maintenance and Custody Act (MCA)** followed which included reference to basic monthly child support plus claims under section 7 of the **Child Maintenance Guidelines (CMG)**.

[3] The parties were back before the Court with lawyers in mid-January, 2008 when they addressed the same issues at A.H.'s behest. The parties were able to achieve a consensus which was captured by a consent order. The terms of the order were placed on the Court record in the presence of both parties.

[4] The last order contains several background recitals which underpin the substance of the order. The parties acknowledged that they had received full financial disclosure from each other; and they specifically recognized that their sons had part-time employment which was being directed by them to payment of the sons' personal expenses "including what could be classified as extraordinary expenses for extra-curricular expenses pursuant to section 7 (f)". A.H.'s income at the time was about $66,600 annually; B.D.'s annual income was about $94,600.

[5] The January 2008 order also recognized that there were outstanding child support arrears in an amount close to $6,800 which was to be paid in full on or before

March, 2008.

[6] As far as current child support is concerned, B.D. was directed to pay to A.H. for the support of their sons the total monthly sum of $1,104.08. That amount was broken down into an amount of $500 monthly for basic child support under the **CMG**, plus $438.04 monthly in relation to N.F.D. and $476.04 monthly for N.C.D. for section 7 purposes. As far the latter is concerned, it was stated that the additional amounts represented a contribution towards tuition, books/examination fees, rent, power, cable, internet, as well as phone and food. The payments were ordered to continue "until each child completes his post-secondary education or if there is a change of circumstances as between the parties and the children of the marriage, or unless otherwise varied by a Court of competent jurisdiction".

[7] B.D. admittedly did not pay the lump sum of approximately $6,800 by March 1st when it was due.

[8] In late June 2008 B.D. submitted an application to vary and summons based on his assertion that N.F.D. was by then living independently and no longer a student. He asked the Court to review the financial circumstances of the parties and

to set a revised amount of support just for N.C.D..

A.H.'s Circumstances

[9] A.H. confirmed non-payment of the lump sum of money owing to her for the benefit of her sons and that there has been no significant change in her annual income since the last order taken out earlier this year. She said that N.C.D. continues to be enrolled in a community college in Dartmouth and continues to attract education expenses as previously contemplated. N.C.D. continues to maintain an independent residence and, as expected, he has been able to help defray some of his expenses by obtaining employment. A.H. acknowledged that both boys continue to be covered and derive benefit under B.D.'s group medical coverages through employment.

[10] In testimony, A.H. suggested that the settlement which was achieved earlier this year involved compromises on her part in terms of the net financial benefit for the boys.

N.F.D.'s Circumstances

[11] N.F.D.'s evidence was that he was enrolled at a community college in Dartmouth for the academic year 2006/2007. He said that he was living in rented accommodations with another individual with whom he eventually separated. There was a dispute over finances which resulted in him leaving the premises around mid- April, 2008. I find that he returned to his mother's residence for a brief period of time before establishing an independent residence in the Town of Liverpool. Because of the unexpected change in his circumstances, N.F.D. said it was impossible for him to complete his last academic year. He failed one subject, but was permitted to continue his program when he enrolled at a Lunenburg County community college. Assuming he continues with the program, he should graduate after the academic year concludes in 2009.

[12] N.F.D. provided proof of enrollment and tuition fees along with an estimated monthly budget. As at the hearing, he and another individual were sharing expenses. However, N.F.D. said that his roommate will be leaving and that he will have to assume all of the rental costs (at least until such time as somebody else enters the picture).

[13] N.F.D. stated that his living expenses are approximately the same as those he was incurring in Dartmouth, although there was some indication that they may be slightly higher. N.F.D. also confirmed his success in gaining part-time employment as was contemplated earlier this year. There is no significant difference between tuition costs locally and that which were incurred in the city.

[14] N.F.D. said that there were some limited discussions with his father about the issue of whether support payments could be paid directly to him instead of through his mother. However, according to N.F.D., there was no resolution and there were no substantive discussions about other child support issues.

B.D.'s Circumstances and Position

[15] B.D.'s evidence was that he found out some time in or about June that N.F.D. had left his community college program back in April. He claimed that he learned from his son that he was disinterested in his course, that he had missed classes, that he was failing a variety of subjects, and that he had relocated to the local area and was not living independently. (As noted elsewhere, N.F.D. denied that there were any conversations along these lines.)

[16] B.D. also said that there were some discussions during which he told his son that he was welcome to live with him, as opposed to living independently. However, the prospects of that occurring are no better now than they were in January.

[17] B.D. said that he contacted officials at MEP regarding the perceived change in circumstances and that he was advised to commence an application to vary (which he did) and to continue his current payments pending a Court decision. B.D. claimed that he took this to mean that he also did not have to pay the overdue lump sum until the case was concluded. There is no corroboration of his assertions about directions ostensibly given by MEP officials.

[18] B.D. devoted a lot of time arguing that the last order did not properly reflect the settlement or, if it did, that he did not fully understand or appreciate the implications. But, as mentioned, B.D. was in the courtroom when the terms and conditions of the order were placed on the record. He was represented throughout by a lawyer. He took no steps following the issuance of the order to immediately seek correction, variation or appeal, if there were errors or misunderstandings. Indeed, there was no further activity on the file for approximately six months when the

current application was launched.

[19] B.D. has also held a belief that if he is successful in his current application that the lump sum award will somehow be diminished. However, as was pointed out to him during the hearing, the award was for a fixed amount of past support for which A.H. had been given judgment. If he did not discover until June that N.F.D.'s circumstances may have changed a couple of months before, such is still irrelevant to his obligation to pay the lump sum of arrears. In brief, I find that he did not provide a reasonable explanation for non-payment.

[20] At the conclusion of the hearing, I stated that I would allow a period of two weeks for B.D. to make satisfactory arrangements for payment of the lump sum and to have the same confirmed with the Court, failing which garnishee or other remedies might be imposed by the court (aside from any collection efforts on the part of MEP). There was no confirmation.

[21] During his testimony, B.D. suggested that compliance may be less problematic (regardless of the outcome) if he is permitted to make his support payments directly to his sons. This is clearly linked to one of B.D.'s other firmly

held beliefs ---- namely that child support arrears and current child support only benefit A.H., not his sons. The implication was that she has been keeping his payments for her personal use, to the detriment of the sons. When it was pointed out that all past orders have clearly stated that the support payments are for the benefit of his sons and that there was no evidence before the court to sustain his claims, B.D. continued to baulk at the concept of payment *via* the mother.

[22] Finally, I observe that B.D. professed inability to appreciate the distinction between basic child support and the so-called extraordinary expenses which the parties agreed (a long time ago) to share in proportion to their respective incomes. That he claims not to understand the legal concepts, or the priority which must be given to basic support, certainly tests the limits of belief.

Discussion/Decision

[23] On the evidence, I find that N.F.D., although over the age of majority, is still a dependent child under section 2 (c) of the **MCA** and, for the purposes of section 37 of the Act, I conclude any changes in his circumstances since the last order are insufficient to warrant any change in the quantum of support. I find there was a

temporary, but very brief, interruption in his schooling which was resolved with his relocation to the local area and by prompt resumption of his educational pursuits. Although the minutiae of his program, residence, and expenses have changed, the net result has been to leave him and his parents in essentially the same financial positions they were in at the time of the last order. As is the case with his brother, N.F.D.'s need for basic support continues unabated and his demonstrated section 7 **CMG** needs are the same, if not greater. To his credit, N.F.D. continues to contribute to his expenses in the same way and to the same extent as previously contemplated by the parents. Importantly, the last order was not tethered to, or conditional on, any thought of residency with either parent. Indeed, the order contemplated the independent residency of both sons pending completion of their respective programs.

[24] I recognize that support for "adult children" often involves special considerations. [See, for example, **Annual Review of Family Law**, 2007 edition (McLeod, Manno) at pages 174 - 177.] However, in January, the parties and their lawyers were also well-informed: the Nova Scotia Tables amount of basic support for two children by a payor with an annual income of $94,600 is $1,281 monthly; yet basic support was settled at $500 monthly, plus the section 7

contributions.

[25] On a balance of probabilities, B.D. has not demonstrated changes in the circumstances sufficient to warrant any variation in the quantum at this time. Therefore, his application is dismissed. That said, I find there may be some practical advantage (ie., incentive to pay) if the support payments are not channeled through the mother. I am satisfied that both sons are at the age and stage where the support will be responsibly and productively used. I will vary the last order to provide for payment to each of them, provided that basic support of $500 monthly shall be equally divided and paid (ie., $250 monthly to each). There shall be no change in the amounts ordered in January for the benefit of each son in regard to section 7 expenses. B.D.'s payments shall continue to be made through MEP.

[26] B.D.'s resistance to payment is nothing new. As pointed out by Ms. Romney, this was a subject of concern to the Court in 2005. For reasons best known to him, B.D. has not taken advantage of the extra time afforded him to reach a settlement on payment of the lump sum. I am mindful that the MEP director has wide authority under section 19 and other sections of the **Maintenance Enforcement Act**. However, so there is no doubt about the Court's intentions and to underline the

importance of early enforcement, I authorize garnishee under section 35 of the **MCA**. In the same vein, I have no confidence that current support will be paid when due. Garnishee for that purpose is therefore also authorized. Since B.D. claimed that advice from MEP officials influenced some of his conduct, Ms. Romney may wish to provide a copy of this decision to MEP so there is no misunderstanding of the outcome and reasons for it.

[27] A.H. seeks a hefty award of costs against B.D. who, from her perspective, treats the court like a revolving door through which he may seek frequent passage whenever he is disgruntled or disinclined to honor his court-approved obligations. This time, he has done so with little or no legal expense as compared to her. She was successful in her defence of the application; and she did not make any counter-application(s) despite B.D.'s income and potential responsibility. In exercising my discretion, I am mindful that court costs in most cases are not intended to, and do not, provide full indemnification for actual solicitor/client expenses. Although vigorously conducted, the hearing consumed less than one-half day. There were no unusual or complex legal issues. In the circumstances, I order that B.D. pay forthwith court costs of $800 to A.H.'s solicitor in trust.

[28] Ms. Romney shall submit an order.

Dyer, J.F.C.