

**FAMILY COURT OF NOVA SCOTIA**  
**Citation:** *Reeves v. Davidson*, 2019 NSFC 9

**Date:** 20190620  
**Docket:** FKMCA-078886  
**Registry:** Kentville, N.S.

**Between:**

Allan David Reeves

Applicant

v.

Dianne Elizabeth Davidson

Respondent

**Judge:** The Honourable Judge Jean Dewolfe

**Heard:** June 5, 2019, in Kentville, Nova Scotia

**Written Decision:** June 20, 2019

**Counsel:** Rachel Taylor, for the Applicant D.D.  
Allan Reeves Respondent, appearing on his own behalf

**By the Court:**

[1] The Applicant, Allan Reeves (“A.R.”) seeks to terminate a 2012 Order for indefinite spousal support payable to Dianne (Reeves) Davidson (“D.D.”), in the amount of \$253 per month. D.D. seeks to have the current order (“the 2012 Order”) continue.

[2] Both parties were represented at the time of the 2012 Order, which recites that A.R.’s income was approximately \$24,672 and D.D.’s was \$16,224. The Order also recites “... it is appropriate to apply the Spousal Support Advisory Guidelines”.

[3] A.R. indicated that at some point someone told him he had to pay \$273 per mo. instead of \$253 per mo., but there was no explanation for this increase. A.R. has not made support payments since December 2018, after commencing the within application to vary in October 2018. In his initial affidavit, A.R. identified the fact that D.D. had been living with a partner “for 2 years” as a material change in circumstances.

**Evidence**

[4] A.R. was unrepresented. He filed a Statement of Financial Information dated March 12, 2012, a Statement of Property, a Statement of Income and Statement of Expenses dated March 2019, and an affidavit dated June 5, 2019. He also provided *viva voce* evidence and was cross examined.

[5] His evidence was that the parties were married in 1989 and had been together for 24 years when they separated in 2011. He is currently 57 years old.

[6] A.R. was a self employed siding installer in 2012. He continues to work in this area, although he “shouldn’t be climbing” after an incident a couple of years ago, and he cannot work like he used to. He works seasonally, and has had no work other than odd jobs since October 2018. In 2015, A.R.’s net income after expenses was \$7472, in 2016 it was \$8071 and in 2017 it was \$23,391. A.R.’s 2018 taxes had not been prepared but he thought his income for 2018 was about the same as 2017.

[7] A.R. lives with a woman who works at a market, and her grandson whom she supports. He purchased a “fixer upper” on a rent-to-own basis which needs extensive repairs, to the extent that he is unable to insure the home, and it is very expensive to heat.

[8] He indicated that in 2012, D.D. was living in the matrimonial home and A.R. was attempting to sell another home which he owned. The matrimonial home was subsequently repossessed as D.D. did not pay the mortgage. The other property was sold to pay off associated debts. Neither party received any funds from either sale.

[9] Both parties left the relationship with almost no assets. D.D. declared bankruptcy in 2017.

[10] A.R.'s expenses are currently approximately \$2000 a month (not including his truck or cell expenses which are paid by his business). His income does not meet his expenses.

[11] A.R. admits D.D. stayed home with their two children, but also indicated she worked part time. He noted that she has lived with D.M. for approximately 2 years, that they have travelled down south for two weeks in both 2018 and 2019, have purchased a \$30,000 trailer, and go camping and to dances. He questioned her statements that she has fibromyalgia and celiac disease.

[12] D.D. filed an affidavit dated March 22, 2019 and her tax returns for 2018, 2017 and 2016 as well as the 2018 Notice of Assessment for her partner, D.M. She also filed her Statement of Financial Information dated May 1, 2012.

[13] D.D. indicated in her affidavit that she has been living in D.M.'s home with him since August 2017, although she testified that she had been living with D.M. "2 to 3 years". She said D.M. had bought her a car 3 years ago for \$1200, and she had paid him back.

[14] She testified that she had worked for 2 years as a personal care worker prior to injuring herself on the job. She has worked for the past year and a half as a house keeper for an elderly woman one day a week, 4-5 hours. She does not claim this income and did not disclose how much she earns. She has trouble lifting and standing for long periods of time due to fibromyalgia. She was diagnosed 6 months ago with celiac disease, and her mother, whom she helps, often pays for her gluten free food when they go grocery shopping. No medical reports were submitted to substantiate D.D.'s medical conditions.

[15] D.D. admitted that D.M. does not charge her rent and pays for all of her expenses, except for her dog, her insurance and her cell phone. D.M. pays for all vacations and camping expenses. No information was provided as to D.M.'s finances beyond his 2018 Notice of Assessment which indicated total income of \$6066. No explanation was provided for how D.M. is able to support himself and D.D. and afford "extras" such as annual vacations.

**Law**

[16] The parties are still married and no divorce has been commenced. S. 3 of the *Parenting and Support Act* (“the Act”) provides this Court with the authority to address spousal support.

[17] S. 4 of the *Act* lists factors for the Court to consider in addressing a claim for spousal support including:

- The division of function during a relationship (a)
- Physical disability of a spouse (f)
- Reasonable needs of a spouse (i)

[18] S. 5 provides an obligation of a supported spouse to assume responsibility for his or her support to the best of his/her ability in the circumstances.

[19] This is a variation application. Therefore the onus is on the Applicant, A.R. to prove on a balance of probabilities that a material change in circumstances has occurred.

[20] The fact that D.D. has re-partnered does not automatically terminate her support.

[21] In **Gates v. Gates** [2016] N.S.J.92, Justice Jesudason summarized the law with respect to spousal support and re-partnering, albeit in a *Divorce Act* context.

[22] Spousal support can be compensatory, to compensate a spouse for his or her contribution to the marriage or hardships suffered as a result of the marriage, as is often the case when one spouse leaves the workforce to care for children for an extended period of time. (eg. **Sheerson v. Sheerson** 2008 NSSC 264).

[23] Non compensatory support is support based on need and focusses on the needs and means of the parties (**Bracklow**).

### Analysis

[24] The 2012 Order does not specify the rationale or basis for spousal support. There is no evidence that D.D. suffered economic disadvantage by her absence from employment during the marriage. However, the length of the marriage, and her absence from the workforce would tend to suggest this. D.D. and A.R. were married young and raised two children in their 24 year relationship. A.R. primarily supported the family during those years. D.D. was only 45 years old when the parties separated. After separation, D.D. trained as a PCW and worked full time for two years. She testified that she left this employment due to an injury. This appears to have been at approximately the same time as she moved in with D.M.

No Workers Compensation payments or E.I. payments appear to have been made as a result. She provided no medical reports.

[25] The 2012 Order states that D.D.'s income was \$16,224 per year. She earned \$24,784 in 2016 and \$12,276 in 2017, the same year in which she indicates she and D.M. began to cohabit. In 2018 she reports no income other than spousal support.

[26] D.D.'s expenses were approximately \$2000 per month in 2012 and she showed a \$742 per month deficit. These expenses have been reduced on account of her cohabitation with D.M. Her testimony was that all her expenses are being met by D.M. with the exception of her dog (unknown amount), telephone (unknown amount, \$40 per mo. in 2012) and her car insurance (\$105 per mo. in 2012). These expenses appear to have been covered by her earnings since December 2018, when A.R. suspended spousal support payments.

[27] D.D. appears to earn approximately \$225 per month housekeeping for an elderly woman (estimate \$11. per hr. x 5 hrs. week x 49 weeks). She also assists her mother who pays for some of her gluten free food.

[28] While I accept that D.D.'s health limits her ability to work full time, I am not satisfied, based on the limited evidence before me that D.D. is working to her full capacity. She is 53 years old, and has been receiving spousal support for 7



years. Her current living circumstances have reduced her need significantly compared to 2012.

[29] A.R.'s circumstances have also changed. While his income for 2017 is similar to 2012, his income for 2015 and 2016 was significantly lower. He too is fortunate, given his fluctuating self employment income, to have re-partnered.

[30] The 2012 Order recites that the Spousal Support Advisory Guidelines (“SSAG”) were used. However, those calculations were not filed with the Court at that time.

[31] A.R.'s income is very close to the SSAG “floor” of \$20,000 for gross payor income per year, especially when his 2015 and 2016 incomes are considered.

[32] The fundamental principles in spousal support cases are balance and fairness, having regard to all the relevant circumstances: **Fisher v. Fisher**, 2001 NSCA 18.

[33] Variation applications must consider changes in living circumstances, not just changes in income.

[34] In **Gates**, the Court concluded that Mrs. Gates, had both a compensatory and non compensatory support claim, and that while her non compensatory claim was reduced to “dormant” on account of her re-partnering, her entitlement should not be “extinguished”. Therefore, the Court ordered a lower quantum of support.

[35] In this case both parties have re-partnered. This has impacted both parties' (and D.D.'s in particular) means, needs and circumstances.

[36] In determining the quantum of D.D.'s ongoing spousal support, I have not followed the SSAG. Although advisory, and often helpful, they are not binding on the Court: **Strecko v. Strecko**, 2014 NSCA 66.

[37] I note that this approach was taken in similar circumstances in **Gates**.

[38] In the circumstances, and based on the evidence before me, the current order will be varied to cease payment of spousal support effective December 1, 2018.

Should a material change in circumstances occur in the future, a further application to vary could occur. However, the Court is satisfied that AR. has no ability to pay and D.D. has no need of spousal support at this time.

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Jean Dewolfe, JFC