

FAMILY COURT OF NOVA SCOTIA

Citation: *Veinot v. Veinot*, 2019 NSFC 11

Date: 2019-10-15

Docket: FKMCA-061555

Registry: Kentville, NS

Between:

Douglas Veinot

Applicant

v.

Julie Veinot

Respondent

Judge: The Honourable Judge Jean Dewolfé

Heard August 28, 2019 and September 11, 2019, in Kentville, Nova Scotia

Written Decision: October 15, 2019

Final Submissions: September 20, 2019 and September 27, 2019

Counsel: Maggie Shackleton, for the Applicant, Douglas Veinot
Sinead Russell, for the Respondent, Julie Veinot
May Knox, watching brief for Director of Maintenance Enforcement

By the Court:

INTRODUCTION:

[1] This is an application by Douglas Veinot to vary an order of the Family Court (Yarmouth) dated November 24, 2016 so as to retroactively adjust the amount of child support and thereby reduce child support arrears. Julie Veinot is unwilling to retroactively adjust child support or forgive arrears. She has applied to vary the custody and parenting arrangement for the children.

BACKGROUND:

[2] The parties have 3 children ages 11, almost 10, and 8, who have resided with their mother since separation.

[3] The parties initially separated in 2007, but reconciled and separated several times between 2007-2012. The first child support order was put in place in October 2013 with Mr. Veinot paying the amount of \$225.00 biweekly. The 2013 order noted that Mr. Veinot had failed to provide financial disclosure, and identified that he was at that time \$1,800.00 “in arrears” of child support.

[4] In 2016 Mr. Veinot applied to vary the 2013 order. In October 2016, he agreed to an imputed income of \$27,900.00, and child support payments of \$550.00 per month. Arrears were set at \$6,803.50.

[5] Mr. Veinot indicates that his income in 2015 and 2016 was below the level requiring payment of child support. His income in 2017 was \$17,435.00 and in 2018 it was \$14,227.00. He claims he made payments directly to Ms. Veinot in 2013-2015. His arrears totalled over \$21,000.00 by December 2018.

[6] In effect, Mr. Veinot is seeking a readjustment of child support/arrears going back 6 years, including 3 years prior to the last Court order.

[7] Ms. Veinot argues that Mr. Veinot works for cash, and as such his reported income is not accurate. She also argues that there has been no change in circumstances since the 2016 Order.

[8] In December 2018, the Director of Maintenance Enforcement applied to enforce child support arrears, but agreed to adjourn that application while Ms. Veinot's application to vary is ongoing. Counsel for the Director has attended as a "watching brief" during the proceedings.

EVIDENCE:

[9] Mr. Veinot provided two affidavits and attached his tax returns for 2015, 2016, 2017 and 2018. He also attached deposit slips for January to November 2013, January to December 2014, and several months in 2015, showing deposits

to Ms. Veinot's bank account. He testified that he is a trained carpenter (although he does not have his "red seal") and has worked for himself for over 20 years.

[10] Mr. Veinot also provided a copy of a Statement of Financial Information filed in the Maintenance Enforcement proceeding and a Statement of Income. His Statement of Financial Information shows that he has received a \$3,000.00 "inheritance" in the 6 months prior to April 10, 2019. Mr. Veinot indicated this was actually an advance on his inheritance from his mother. He also owns a piece of land (\$1,100.00) , a van (\$1,500.00), and a Harley Davidson (\$5,500.00).

[11] Mr. Veinot lists his income at \$1,124.00 per month and his expenses at \$749.00 per month. He testified that he has lived rent free in a home owned by his sister for the past 9-10 years, but he pays the taxes, upkeep, and utilities.

[12] Mr. Veinot admitted working for cash but testified that he reports all cash received. He appears to list work for which he gives a receipt as "employment" income on his tax returns, although he is self-employed. He claims no self-employment deductions. He typically earns \$20-\$25 per hour or is paid by the job.

[13] Mr. Veinot makes no effort to seek out work – he waits for work to come to him . He has not applied for regular employment. He described himself as "slack" in seeking work and indicated that because he has not held a driver's license since

2017, this has also hindered his ability to obtain work. He testified that he isn't willing to travel for work, and would have a hard time holding down a full time job due to his "slackness".

[14] **Ms. S.** testified under subpoena. She testified that Mr. Veinot has been building a house with her husband for the past 1-2 months, on and off. She had no idea as to his hourly rate and was not aware how her husband paid Mr. Veinot.

[15] **Mr. B.** was also subpoenaed. He testified that Mr. Veinot shingled a roof for him in June/July 2019 for \$700.00 labour and that he paid Mr. Veinot in cash. He confirmed that Mr. Veinot is a skilled labourer, and that the job took approximately two days.

[16] Julie Veinot testified that Mr. Veinot and his mother frequently had told her that Mr. Veinot was "working" over the years (despite alleging in 2016 that he was not working), and that Mr. Veinot had told her in October 2015 that she would not get "any money" if she enrolled in the Maintenance Enforcement Program. Ms. Veinot indicated that she works full time but lost a home she was renting, had to limit activities and has struggled to buy groceries due to Mr. Veinot's refusal to pay child support.

[17] Ms. Veinot also alleged an extensive history of family violence which was denied by Mr. Veinot. She sought a set schedule for access and sole custody. Mr. Veinot agreed that he cannot communicate “with her (Ms. Veinot) at all”.

ISSUES:

1. Retroactive adjustment on account of payments 2013-2015.
2. Retroactive adjustment on account of income 2013 to October 2016.
3. Retroactive adjustment November 2016 to present/imputing income.
4. Sole custody/Access.

1. 2013-2015 Payments

[18] Mr. Veinot made payments to Ms. Veinot prior to enrollment in the Maintenance Enforcement Program. There were no arrears at the time of enrollment with MEP (October 2015). The latest receipt provided by Mr. Veinot was dated September 2015. Therefore, the Court finds that Mr. Veinot received appropriate credit for his payments pre-October 2015, and his arrears should not be reduced due to these payments.

2. 2013-2016 Income

[19] Mr. Veinot did not provide financial disclosure in 2016. Mr. Veinot consented to the October 2016 Variation Order and did not appeal its provisions. The fact that he prepared his 2015 and 2016 tax returns after he agreed to the 2016 Order and that they show a lower income than the imputed income is not determinative, given that Mr. Veinot works for cash, has expressed his refusal to pay any child support, and was underemployed during those years.

[20] The Court is not prepared to go behind that Order.

3. Retroactive Adjustment, November 2016 to Present

[21] Mr. Veinot's application to vary so as to remit support payments for the period November 2016 to present was made in April 2019.

[22] Section 37 of the *Parenting and Support Act*, RSNS 1989, as amended, provides that the Court may make an order to vary, "proactively or retroactively", a support order, "where there has been a change in circumstances since the making of the order or the last variation order".

[23] Section 14(a) of the *Nova Scotia Child Maintenance Guidelines* provides for variation in the case of “any change in circumstances that would result in a different child support order or any provision thereof.”

[24] In *Smith v. Helppi*, 2011 NSCA 65, the Nova Scotia Court of Appeal adopted the approach of the New Brunswick Court of Appeal with respect to remission of support arrears, and summarized this approach as follows:

21. In summary, the jurisdiction to order a partial or full remission of support arrears is dependent on the answer of two discrete questions: Was there a material change of circumstances during the period of retroactivity and, having regard to all other relevant circumstances during this period, would the applicant have been granted a reduction in his or her support obligation but for his or her untimely application? ...

[25] Mr. Veinot gives no reason for his delay in making this application. Mr. Veinot failed to make application to vary his support even after the loss of his driver’s license in 2017. He appears to have made the application in response to the December 2018 application of the Director of Maintenance Enforcement to enforce arrears.

[26] Mr. Veinot relies on his tax returns as proof of income. However, I find that this is not an accurate or appropriate measure of Mr. Veinot’s ability to pay child support. These returns would not have been sufficient to support a reduction in child support, even if the application had been made at an earlier date.

[27] Section 19 of the *Nova Scotia Child Maintenance Guidelines*, provides as follows:

19(1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:

the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child to whom the order relates or any child under the age of majority or by the reasonable educational or health needs of the parent;

[28] Mr. Veinot is paid regularly in cash. He is a skilled carpenter. He is underemployed by his own admission. Even at reduced hours of work (20 hours a week) at his lowest estimated pay rate (\$20/hr) he would earn \$20,800.00 a year. I have no doubt he could earn and probably does earn much more.

[29] In addition, Mr. Veinot denies an ownership interest in the home in which he lives but lives rent free in return for upkeep and payment of expenses. This is a benefit which Ms. Veinot does not enjoy.

[30] I find that on the balance of probabilities that Mr. Veinot does not disclose the full extent of his cash earnings. His taxes were not prepared for several years, he provided no bank deposits or expense calculations. He is resistant to paying any amount of child support.

[31] Therefore, in all the circumstances, the Court finds that it is appropriate to impute income to Mr. Veinot.

[32] Ms. Veinot suggests that the Court should impute an annual income of \$49,900.00 to Mr. Veinot (\$26/hr x 40 hours/week). However, there is no evidence that Mr. Veinot is earning more than he did in October 2016, so as to justify an increase in support. Ms. Veinot accepted a \$27,900.00 imputed income in 2016, and there has been no material change since that time.

[33] This is an application to vary. Mr. Veinot bears the burden of proving on a balance of probabilities that there has been a material change in circumstance. He has not met this burden. His income and circumstances appear to be virtually unchanged since 2016. Therefore, the 2016 imputed income of \$27,900.00 will not be varied.

[34] The table amount of child support must be adjusted to reflect the 2017 changes. The payment as of November 1, 2019 will be \$566.00 per month.

4. Sole Custody

[35] Mr. Veinot acknowledged that he and Ms. Veinot cannot and do not talk to each other. The Court observed pervasive animosity between these two parties which is longstanding. I find that joint custody is not in the children's best interests given that any communication between these parties would undoubtedly lead to conflict. Ms. Veinot has primary care of the children, and should have the ability to

make decisions without consulting Mr. Veinot. Therefore, she will have sole custody of the children.

[36] Ms. Veinot proposes specific access times (proposes alternate weekends from 6:00 pm Friday to 6:00 pm Sunday, and 5:00 pm to 8:00 pm Wednesday), and that Mr. Veinot be responsible for arranging transportation of the children. Mr. Veinot agrees with the parenting times but argues that he cannot provide transportation. Ms. Veinot has agreed that Mr. Veinot may have his license reinstated, but MEP has not yet done so. Ms. Veinot should not be further penalized for Mr. Veinot's choice not to pay child support. Therefore, Mr. Veinot shall be responsible for arranging to pick up the children at the beginning of access, and Ms. Veinot will be responsible for picking the children up at the end of access.

CONCLUSION:

[37] Mr. Veinot's application is denied. Ms. Veinot's application is successful in almost its entirety. The Court will hear representations as to costs.

Jean DeWolfe, J.F.C.