IN THE FAMILY COURT OF NOVA SCOTIA
Citation: Black v. Ryan, 2012 NSFC 15

Date: 20120814
Docket: FLBMCA-069309
Registry: Bridgewater

Between:

Brittany Pamela Black

Applicant

v.

Sheldon Matthew Ryan

Respondent

Judge:	The Honourable Judge William J. Dyer
Heard:	August 14, 2012, at Bridgewater, Nova Scotia
Supplemental Written Decision:	August 28, 2012
Counsel:	Rubin Dexter, for the Applicant Sheldon Ryan, the Respondent, not represented and not present

By the Court:

[1] At the conclusion of a hearing on August 14th, 2012, I gave an oral decision which included my fact-findings and reasons for granting the Applicant's request for retrospective variation of the Respondent's obligation to pay basic child support for his son's benefit under the **Child Maintenance Guidelines**, plus a contribution to childcare expenses under section 7 of the **Guidelines**.

[2] Although aware of the pending hearing and the issues to be decided, the Respondent left the area and has refused to disclose his whereabouts. Indeed, the evidence was that he had quit his job and left the Province - ostensibly to find employment elsewhere. I decided that the Respondent was intentionally underemployed, or unemployed, and imputed income to him based on the available evidence.

[3] I found the "shared parenting" regime contemplated by the parties in early 2010 had not been adhered to and that the Applicant was the primary caregiver throughout most of 2010 and thereafter. However, at her request, I set the effective date for child support changes to January 1, 2011.

[4] Based on the Respondent's 2011 Line 150 income of about $52,300, I increased the basic support quantum to $440 monthly, effective January 1st, 2011. Absent any substantive reply or defence on behalf of the Respondent, and given his failure to provide full disclosure of his 2012 income, I imputed the same income to him for 2012.

[5] Counsel for the Applicant wanted a chance to complete his calculations geared toward the section 7 claim for help with daycare expenses. An effective date of May 1st, 2012 was postulated. Expenses had increased. The parties' respective incomes had changed since 2010. There was uncertainty as to the net cost for **Guidelines'** purposes. (This was important because it is the net cost that is to be divided in proportion to the respective incomes of the parties.)

[6] Counsel later submitted that his calculations revealed the net cost to the Applicant is actually nil. Accordingly, the draft order submitted to the court proposes to suspend the Respondent's contribution to child care expenses effective May 1st, 2012. I will respect that submission.

[7] The Applicant also seeks an award of court costs.

[8] Under the **Family Court Rules**, court costs are in the discretion of the court.

[9] I am inclined to apply the principles in **Arab v. Izsak**, *2009 NSSC 275* in which it was held that in appropriate cases one may achieve a fair award by considering the court time consumed at the hearing. (The **Arab** case principles were adopted in **V. (M.) v. V. (S.)** *(2009), 286 N.S.R (2d) 111*.)

[10] There are many cases on the costs subject authored by Supreme Court, Family Division Justices. Division Justices have the advantage of Costs and Fees tariffs which strictly speaking do not apply in Family Court, unless "imported" by a presiding judge. A non-exhaustive sampling of cases includes:

> ***Niles v. Munroe,*** *2011 NSSC 57*
> ***Marchand v. Marchand,*** *2011 NSSC 224*
> ***Lilly v. Lilly,*** *2011 NSSC 162*
> ***Wile v. Barkhouse,*** *2010 NSSC 400*
> ***Provost v. Marsden,*** *2010 NSSC 423*

[11] Party-and-party costs are not intended to provide full indemnification of solicitor/client fees and disbursements. Not surprisingly, Mr Dexter seeks an award that will not fully indemnify the Applicant but will assist with her actual expenses.

[12] May I add that [for enforcement purposes] the definition of "maintenance order" under section 2 (e) (viii) of the **Maintenance Enforcement Act** includes the payment of "legal fees or other expenses arising in relation to support or maintenance". In my opinion, the definition is broad enough to capture court costs (intended to help defray fees) in circumstances where a party must commence and prosecute legal action to potentially increase child support and, in this case, succeeds. Therefore, the costs which I intend to award shall be paid through the Maintenance Enforcement Program - as is currently the case with support.

[13] In the present case, I note there were three chambers appearances preceding the hearing, that the hearing itself consumed less than one half day, and that the

Respondent had been on notice of an outstanding contempt application (among other things). The latter required extra preparation by the Applicant's counsel (although the remedy was not pursued at the final hearing).

[14] Because of the Respondent's refusal to disclose his 2012 income, the Applicant was put in the position of having to subpoena a representative of the Respondent's former employer to establish (at the very least) the circumstances under which the Respondent left the company and to provide some evidence of his employment situation before he quit at the end of June, 2012. This needlessly added to the Applicant's expenses.

[15] Although no formal brief was submitted, the issues of retrospective variation, shared parenting, and the implication of the changed circumstances on basic support and section 7 expenses had to be addressed. Post-hearing research and calculations were necessary. Not without some irony, those calculations proved advantageous to the Respondent's position.

[16] Against this background, I exercise my discretion and order that the Respondent pay to the Applicant forthwith $500 as court costs. That is the amount which will be inserted in the draft order, previously submitted by counsel.

Dyer, J.F.C.