SUPREME COURT OF NOVA SCOTIA
Citation: *Tucesku v Tucesku*, 2015 NSSC 281

Date: 2015-10-07
Docket: 1204-006235
Registry: Kentville

Between:

Ashleigh Tucesku

Applicant

v.

Tomasz Tucesku

Respondent

Judge:	The Honourable Justice Gregory M. Warner
Heard:	August 10 and 14, 2015, in Kentville, Nova Scotia
Final Written Submissions:	September 14, 2015
Counsel:	**Daleen van Dyk**, for the Applicant Ashleigh Tucesku **Cathy Logan**, for the Respondent Tomasz Tucesku

By the Court:

Background

[1] In an oral decision given on August 14, 2015, this court denied Ashleigh Tucesku's ("Ms. Tucesku") mobility application to move the parties' two children, aged 7 and 5, with her from Greenwood, Nova Scotia to Borden, Ontario. The children had been in a shared parenting arrangement since the parties' separation in 2012.

[2] Effectively, Tomasz Tucesku ("Mr. Tucesku") became the primary care parent and Ms. Tucesku the access parent. In addition to any times that the parents might agree to, the court set out access times and allocated responsibility for the cost of travel, based on the evidence as follows:

a) up to six weeks each summer, with the parents to share the travel expenses;

b) every March break, with Ms. Tucesku to pay the travel expenses;

c) every second Christmas break, with Ms. Tucesku to pay the travel expenses;

d) three other weekends per year, with Mr. Tucesku paying the travel expenses.

[3] The court invited counsel to make written submissions if they were unable to resolve the issue of child support. In written submissions received on September 4, 2015 and September 14, 2015, counsel set out four unresolved issues related to child support.

Issue #1: Incomes

[4] First is in respect of the parent's incomes. Both are in the military. They agree that Mr. Tucesku's gross income for child support purposes is $72,852.00. Ms. Tucesku's gross income is $62,232.00; she claims a deduction from her line 150 income of compulsory mess dues, reducing her income to $62,064.00. Mr. Tucesku has not quantified his compulsory mess dues, and the amount is not apparent in his income information. Mr. Tucesku says that compulsory mess dues are not a deduction permitted by s. 1 of Schedule III to the *Federal Child Support Guidelines* ("*Guidelines*").

[5] The disputed difference in the basic (s. 3) child support obligation of Ms. Tucesku is $2.48 per month.

[6] Section 1 of Schedule III to the *Guidelines* reads in part: "Where the spouse is an employee, the spouse's applicable employment expenses described in the following provisions of the *Income Tax Act ("ITA")* are deducted: [of 13 subsections] . . . 1.(*g*) paragraph 8(1)(*i*) concerning dues and other expenses of performing duties." Neither Section 8(1)(i) nor any interpretation bulletins nor decisions respecting the seven categories of "dues or other expenses" enumerated in s. 8(1)(*i*) of the *ITA* have been provided to the court or argued by counsel.

[7] Section 8(1)(*i*)(iv) of the *ITA* permits deduction from a tax payor's income:

> "annual dues to maintain membership in a trade union as defined … or to maintain membership in an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work".

[8] Based on the sparse evidence and argument, I conclude that "compulsory mess fees" constitute 'annual dues to maintain membership in an association of public servants, the primary object of which is the promote the improvement of the members' conditions of employment or work'. I determine Ms. Tucesku's income to be $62,064.00. As of September 9, 2015, the commencement of Mr. Tucesku's primary care, Ms. Tucesku ordinarily resided in Ontario. The s. 3 table amount of child support payable by her is therefore $922.00 per month.

Issue #2: Child Care Expenses

[9] The second issue in dispute is the calculation of child care expenses payable by Ms. Tucesku on a pro-rated basis, pursuant to s. 7 of the *Guidelines*.

[10] Ms. Tucesku calculates that Mr. Tucesku's gross child care expenses, based on daily rates of the current child care provider, for 41 weeks of school (before and after school) at the rate of $21.00 per day plus 2 weeks in the summer (full time) at $57.00 per day for a gross total of $4,876.00 and a net total, after tax credits and deductions, as $2,795.00. Her pro-rated share (45.52%) is calculated by her as $106.00 per month.

[11] Mr. Tucesku's calculation totals $6,522.00, before tax credits and deductions. It includes 40 school weeks; 3 vacation weeks other than summer; 12 in-service days; 5 summer vacation weeks plus $570.00 related to the summer period.

[12] I have trouble with Mr. Tucesku's calculation. I assume he and his partner are available more often than weekends and do not need, or need to pay for, work-related child care for almost 52 weeks annually. Besides the children are with Ms. Tucesku for about 8 full weeks per year (and three weekends). I conclude that the reasonable work-related annual child care expense for Mr. Tucesku will most likely total:

40 school weeks at $105.00 per week		$4,200.00
12 in-service days at $36.00 (the difference between $57.00 and $21.00 per day)		$432.00
10 full days between July 1 and August 31 each year		$570.00
	Total:	$5,202.00

[13] When I input these figures in the Child View calculator, they show Mr. Tucesku's child care costs, net of subsidies benefits and credits, would be $2,982.00. Ms. Tucesku's share of this is 45.52%, or $113.00 per month.

Issue #3: Extracurricular Activities

[14] The third issue relates to Mr. Tucesku's claim for a contribution towards extracurricular activity expenses of the two children. When the parties shared parenting of the children, they shared all extracurricular expenses, whether special, extraordinary or just ordinary. Now Mr. Tucesku seeks to continue this sharing of extracurricular activities, even though he has primary care and Ms. Tucesku is paying s. 3 child support, which amount includes ordinary extracurricular expenses.

[15] Too often parents wrongly claim a contribution towards all extracurricular activities from the non-custodial parent pursuant to s. 7 of the *Guidelines*. Ordering a contribution to s. 7 expenses involves answering two questions. First, whether as a matter of law the expense is a s. 7 expense. Second, if so, whether as a matter of discretion, and "… taking into account the necessity of the expense in relation to the children's best interests and the reasonableness of the expense in relation to the means of the spouse and those of the child and to the family's spending pattern prior to the separation …"

[16] In this case, the expenses claimed include $399.00 for dance, $556.00 for recreational soccer for both children and $400.00 for hockey. They total $1,355.00 per year or $113.00 per month. Mr. Tucesku has not provided a calculation of the net cost after available child fitness tax credits, deductions and subsidies. Ms. Tucesku's share, if these expenses were extraordinary, before deduction of credits and subsidies, would be about $60.00 per month.

[17] The court's determination requires an assessment of whether the expense exceeds that which Mr. Tucesku can reasonably cover, taking into account his income and the s. 3 child support he receives from Ms. Tucesku.

[18] I am also satisfied that the table amount of child support includes an amount for extracurricular activities, which should include Ms. Tucesku's share of the net after-tax cost to Mr. Tucesku of these ordinary activities. I find these expenses are not special or extraordinary. The second question need not be answered.

Issue #4: Travel expenses

[19] Ms. Tucesku seeks to deduct from her child support obligation the travel costs that she estimates she will spend to exercise access with the children.

[20] I am surprised by this request because: I allocated responsibility for travel costs between the parents, as noted in para. 2 of this decision, and Ms. Tucesku makes no reference to s. 10(2)(b) of the *Guidelines* nor the required undue hardship analysis. Both parties made

submissions as to what these travel costs for access will be, and, in Ms. Tucesku's case, why Mr. Tucesku should bear all these costs.

[21] The parties' calculation of costs assumes that all trips will be by air between Halifax and Toronto. Because of the current age of the children, they must be accompanied by an adult. They both say that this effectively means one round trip by an adult with two children and a second round trip by an adult alone for each of the five and a half (Christmas is every second year) annual access visits.

[22] Ms. Tucesku's evidence is that Christmas air travel would cost for one adult and two children return trip $2,214.00 and for the second adult return trip $554.00 for a total of $2,968.00 per access visit. The rates quoted by her appear to relate to Christmas travel. She uses the same rate to calculate the Christmas, March break and the summer access visits. She shows her total travel costs as $5,936.00 (Christmas every second year, every March break and one-half of every summer access).

[23] Using her cost estimate, Mr. Tucesku's share of travel costs for the three-and-one-half annual access visits are over $10,000.00 per year.

[24] Mr. Tucesku submits evidence that each return trip for each person between Halifax and Toronto on Air Canada costs about $450.00, or $1,800.00 per access visit in contrast to Ms. Tucesku's calculation of $2,900.00 per access visit. On this basis, he calculates his annual expense at $6,300.00, and Ms. Tucesku's expense at $3,600.00.

[25] I have trouble with the reliability of each parent's cost estimate and whether every access visit would be by air travel. The price of air tickets varies considerably, depending on when flights are taken – not just the season, but the day of the week and the hour of the day, as well as how far in advance tickets are booked. Whatever the variables, it is common sense that Christmas travel, the basis of Ms. Tucesku's calculation, is the most expensive time of the year to travel.

[26] Whatever the travel costs are, I am satisfied that the travel expense allotted to Mr. Tucesku for the children to have access visits with Ms. Tucesku is likely twice as much as Ms. Tucesku's expense. Based on their respective incomes, it is not reasonable for Ms. Tucesku to expect that Mr. Tucesku should pay all the travel expenses for the children to exercise access with her.

[27] Neither party referred the court to s. 10 of the *Guidelines* regarding undue hardship. My own calculation of their respective household income ratios, only one part of the s. 10 analysis, shows that their ratios are very close. Ms. Tucesku has not satisfied the court that her access expenses are unusually high or create an undue hardship that merits deduction of her share of travel expenses for access visits from her basic child support obligation.

[28] In *Annual Review of Family Law 2014* (Toronto: Carswell, 2015), at pp. 494 to 496, the author suggests that courts sometimes do an end-run around the hardship analysis in s. 10 of the *Guidelines* by ordering the parties to share access transportation as a condition of the parenting

decision. The sharing of access transportation was part of this court's parenting decision of August 15, 2015.

Warner, J.