

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Casey v. Casey, 2008 NSSC 56

Date: 20080228

Docket: SATD 05963

1210-000900

Registry: Antigonish

Between:

Wade Peter Casey

Petitioner

and

Carolyn Darlene Casey

Respondent

DECISION

Judge: Justice Glen G. McDougall

Heard: January 30, 2008, in Antigonish, Nova Scotia

Counsel: M. Louise Campbell, Q.C.
Cindy Murray, Ll. B.

By the Court:

[1] On November 22, 1989 Wade Peter Casey (hereinafter referred to as the “petitioner”) and Carolyn Darlene Crouse (hereinafter referred to as the “respondent”) were married. He was 29 years of age and she was 36.

[2] They lived together until approximately January 28, 2005. They have since lived separate and apart.

[3] On April 25, 2006 the petitioner filed a petition in which he sought a divorce under the *Divorce Act*, R.S.C. 1985, c. 3 (as amended). He also requested a division of assets under the *Matrimonial Property Act*, R.S.N.S., 1989, c. 275 (as amended).

[4] The petitioner and the respondent have no children. At the time of separation the petitioner worked full-time. In the year immediately preceding separation he had earned \$29,421.00. The respondent worked part-time as a seasonal employee and supplemented her income with Employment Insurance benefits. In the year preceding separation she had total taxable income of \$10,333.00.

[5] In the years after separation the parties earned income as follows:

YEAR	PETITIONER	RESPONDENT
2005	\$31,113.00	\$14,012.00
2006	\$31,685.05	\$16,046.00
2007	\$34,729.63	\$13,769.05*
*This is an estimate calculated by grossing-up net EI benefits for the period from January to August, 2007 by 3.1% and adding gross EI benefits for the period from September to December 2007 and then adding income from employment during 2007 as follows: EI gross earnings from January 1, 2007 – \$5,482.97 to August 12, 2007; EI gross earnings from September 8, 2007 – \$3,136.00 to December 31, 2007; Earnings from employment (Pine View Farm Inc.) – \$5,150.08 = \$13,769.05		

[6] The petitioner remains employed on a full-time basis earning a gross monthly income of \$2,647.53. On occasion he is able to earn additional income when called in to do extra work or to cover for a co-worker.

[7] The respondent currently survives on Employment Insurance benefits of \$196.00 per week, which equates to approximately \$849.33 per month before deductions. She hopes to get called back to work before her Employment Insurance benefits run out on February 17, 2008. If she is fortunate enough to be called back she hopes to remain employed continuously until August. Should this occur, her total income will likely exceed her 2007 total, however, she will still earn less than 50 percent of what the petitioner will earn in 2008.

[8] The petitioner has some health issues which could affect his future income earning capacity. Should he suffer a temporary or permanent disability at some time in the future he will then have to decide if he should seek a variation of any spousal support this Court might order. I am not prepared to speculate on what might happen. I can only base my decision on the facts as I find them while leaving it to the parties to apply for future variation based on any material change in circumstances that might occur.

[9] At the time the parties separated the petitioner retained sole use of the family vehicle, a 2002 Pontiac Sunfire. He remained solely responsible for the repayment of the outstanding loan used to purchase the vehicle. At the time of separation the loan balance stood at \$16,627.10. He subsequently traded in this vehicle towards the purchase of a 2006 model Pontiac Grand Prix. The \$8,204.69 loan balance had to be paid out at that time. It exceeded the trade-in value received by approximately \$1,000.00. I find that the value of the Sunfire automobile was roughly equivalent to the outstanding loan which existed at the time of separation and therefore there was little, if any, equity in the vehicle at the time of separation.

[10] In addition to the motor vehicle, the petitioner also retained sole use and ownership of his clothing and other personal effects, a recreational boat and outboard motor, a barbecue, a camera, a DVD player, a computer and all his tools and other equipment. He took a small television set but later returned it to the respondent after commencing co-habitation with another woman who is a co-worker of his at the local hospital. She, too, had just recently separated from her spouse. Her annual income is roughly equivalent to that of the petitioner. She no longer has any dependent children from her first marriage.

[11] All other household furnishings and appliances and other contents of the mini-home where the parties resided remained in the possession of the respondent. The respondent testified that she also gave the petitioner some pots and pans, cutlery, linen and other such items to set up an apartment when he first departed. The petitioner claims to have had nothing of the kind and had to use his credit card to purchase what he needed. I accept the respondent's testimony over that of the petitioner and find that he was provided with certain household items that are matrimonial assets. There was no evidence to establish the value of these items. At most they were probably only worth \$200.00 to \$300.00.

[12] There was conflicting testimony over who assumed responsibility for the repayment of the matrimonial debts that existed at the time of separation. The petitioner, as indicated earlier, retained the family car and sole responsibility for the outstanding loan against it.

[13] The respondent was left to repay the balance of a loan that the parties had arranged on April 20, 2004 for \$12,000.00. This loan was with the Bank of Montreal. The monthly payments of \$338.03 were made by the respondent after separation. The loan was paid out in October, 2007. In all, the respondent made 33 payments totalling \$11,154.99.

[14] The respondent was also left with sole responsibility for the repayment of the balance owing to Schwarty Furniture for a washer and dryer purchased just five or six months prior to separation. These appliances remained in the matrimonial home for the respondent's use. She still has them. Despite the petitioner's undertaking to pay for this debt (an undertaking which he gave in writing), he failed to live up to his commitment. In his testimony the petitioner stated that he did not make the payments because the respondent told him not to worry about it. He also indicated that she did not provide him with any further information regarding the debt. The respondent testified that she forwarded information so he could make the payments but it was re-addressed by someone and returned to her in a different envelope. She did not recognize the handwriting. In order to make the required payments the respondent was forced to re-finance the balance owing with Wells Fargo Financial. She eventually paid off the debt in August, 2007. In all, she paid a total of \$1,902.00.

[15] I accept the respondent's testimony over that of the petitioner with respect to the repayment of this matrimonial debt. The petitioner failed to live up to the commitment he had made to the respondent. He showed a lack of genuine concern for her precarious financial situation. She was forced to honour these joint debts which were incurred by the parties prior to separation. In the meantime the petitioner's fortunes were improving. He moved from an apartment to a room in a boarding house but in a short span of time he began co-habiting with his current common law wife. Their combined incomes enabled them to purchase a new motor vehicle and a new house. In the process they incurred their own debts which they are still responsible for.

[16] I find that the respondent requested financial help from the petitioner on several occasions. I further find that she was refused any help from the petitioner other than continued coverage under a family health plan paid for by the petitioner.

[17] The respondent is seeking retroactive spousal support back to the date of separation. The petitioner is resisting retroactive support but is prepared to now begin paying \$200.00 per month. He initially denied any knowledge of the respondent's desire to obtain spousal support until being served with her answer and counter-petition which was filed on October 16, 2006. An interlocutory application seeking interim spousal support was filed on November 27, 2006. Three days before the respondent's answer and counter-petition was filed, the petitioner entered into the agreement to purchase a new house. He and his common law wife went through with the purchase. They incurred still more debt purchasing some new furniture and other items for their new home. The petitioner asks the court to take his post-separation financial obligations into consideration when deciding how much future spousal support should be paid. He also asks the Court to consider this and the respondent's delay in making her application for spousal support when deciding whether to grant retroactive support.

[18] The petitioner is at liberty to develop a relationship with a new partner but he is not entitled to ignore his financial obligations to his previous wife. They were married for fifteen years. Given her age and modest education as well as her lack of employment skills, the respondent is limited in her ability to provide for her own current and future needs. The petitioner certainly does not have unlimited resources but his current and future financial prospects are much better than that of the respondent. He also has the benefit of sharing living expenses with his new partner.

[19] I find that the petitioner was aware or at least should have been aware of the respondent's precarious financial situation resulting from the separation. I further find that she asked him for financial help and he rebuffed her requests stating that he had given her most of the matrimonial assets and was paying for the added costs of maintaining coverage for her under his health plan. While I am sure this is appreciated by the respondent, it is a far cry from the relatively modest standard of living they shared during the fifteen years they co-habited with one another

[20] In order to apply the factors found at sub-section 15.2(4) of the *Divorce Act* and in an effort to achieve the objectives listed in sub-section 15.2(6), the petitioner shall

pay monthly spousal support to the respondent in the amount of \$450.00 per month commencing on March 1, 2008.

[21] The respondent is also entitled to retroactive spousal support commencing December 1, 2006 up to and including February 1, 2008 at the rate of \$200.00 per month. This amounts in total to \$3,000.00 (15 months x \$200.00 = \$3,000.00). This amount is to be paid at the additional rate of \$50.00 per month commencing March 1, 2008 which will increase the monthly payment to \$500.00 until such time as the arrears of \$3,000.00 have been paid in full.

[22] I further order the petitioner to reimburse the respondent the \$1,902.00 paid to Wells Fargo Financial for the washer and dryer. This payment shall be made on or before June 30, 2008. I have taken this into consideration in setting retroactive spousal support at an amount that is less than what I would have normally ordered. I am also taking into consideration that the mini-home belonged to the respondent prior to her marriage to the petitioner. There remained only a few payments to be made on the mini-home when the parties were married. The mini-home is only assessed at \$9,200.00. The roof is in need of repair. The respondent received an estimate of \$1,400.00 to carry out the needed work. If the repair work is not done it will, doubtlessly, reduce the mini-home's potential selling price.

[23] The petitioner shall also be required to maintain coverage for the respondent under his health and dental plan and to pay for any and all costs associated therewith. Based on correspondence provided by the petitioner's counsel, coverage for the respondent can be maintained provided the petitioner does not seek to add coverage for a new spouse. There can only be one spouse designated on the employer health and dental plans. The petitioner's new partner is also employed at the Guysborough Memorial Hospital and presumably she maintains her own health and dental coverage under the plans provided by the Guysborough Antigonish Strait Health Authority. If the petitioner and his new partner decide to get married thus denying the respondent on-going coverage, the petitioner shall be required to increase his monthly spousal support at that time to compensate the respondent for the cost of providing herself with comparable health and dental coverage under a private plan.

[24] I choose not to set a termination date for spousal support. It shall continue as provided for herein unless varied by further order of this Court based on the agreement of the parties or after a full hearing by a Court having jurisdiction in such matters.

[25] In the meantime, the parties shall keep each other fully informed of any changes in their respective financial situations. No later than June 1st each year, beginning in 2009, the parties shall exchange copies of their own individual income tax returns along with all attachments, whether filed or not, as well as a copy of the Notice of Assessment sent to them by Canada Revenue Agency. Each of the parties shall bear his or her own costs of this proceeding.

[26] I would ask counsel to prepare the necessary orders to reflect this decision.

McDougall, J.