SUPREME COURT OF NOVA SCOTIA
(Family Division)
Citation: Cole v. Dixon, 2016 NSSC 26

Date: 20160119
Docket: 1201-064590
Registry: Halifax

Between:

Kimberlie Heather Cole

Applicant

and

William John Dixon

Respondent

Revised Decision:	The text of the original decision has been corrected according to the attached erratum dated February 9, 2016
Judge:	Associate Chief Justice Lawrence I. O'Neil
Submissions Concluded:	November 2015
Counsel:	Robyn L. Elliott, Q.C., counsel for Ms. Cole Terrance Sheppard, counsel for Mr. Dixon

By the Court:

Introduction

[1] The Court issued a written decision in September 2014 and addressed the parenting issue(s) pertaining to the parties' two children. The principal issue being the mother's plan to relocate to Ontario. The decision is reported as *Cole v. Dixon*, 2014 NSSC 348. The Court would not permit the children to be relocated. The Court is advised that Ms. Cole did not relocate.

Issues

[2] The Court ordered shared parenting if both parents remained in Nova Scotia. They have. The parties have been unable to agree on their respective child support obligations as dictated by s.9 of the *Child Support Guidelines*, P.C., 1997-469. The Court must determine the obligations. Determining each party's income is a central aspect of that task.

[3] The parties also ask the Court to now determine costs payable for proceedings that addressed this adjudication. Submissions were concluded in September 2015.

Shared Custody and Child Support

[4] Section 9 of the *Child Support Guidelines*, P.C., 1997-469 provides:

> 9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
>
> (a) the amounts set out in the applicable tables for each of the spouses;
>
> (b) the increased costs of shared custody arrangements; and
>
> (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[5] The leading case on the meaning and effect of this section is *Contino v. Leonelli-Contino*, 2005 SCC 63 (S.C.C.) The following extract from the Carswell text, MacDonald & Wilton *Child Support Guidelines* Law and Practice, 2nd Edition at page 9-3 is a concise summary of the law:

> The wording of s.9 is imperative. Once the 40 per cent threshold is met, the Court "must" determine the amount of child support in accordance with the three listed factors. The regime for determining the amount of support under s.9 is different from the formula approach used in ss.3 (presumptive rule) and 8 (split custody). A new category of custodial arrangements was created under s.9. It is not a variation of the general regime, but is a complete regime or system of its own. The presumption specifically prescribed in ss.3(2) and 4 for determining support - that

> the amount in the *Guidelines* is mandatory unless the Court finds it is inappropriate - is not found in s.9. There are no presumptions in s.9. On the contrary, the amount of child support "must" be determined in accordance with the three listed factors in 9(a), (b) and (c) and this can only be done on the basis of evidence without resorting to artificial multipliers or assumptions about costs.
>
> Some of the realities that should be recognized when addressing the problems created by s.9 are that more time spent with the child may not involve increased spending by the parent or significant savings for the other parent; that a significant disparity of incomes may exacerbate the differences in standard of living in the two households; and that shared custody may entail more costs in the duplication of services and leave less money for support.
>
> The amount of support under s.9 is in the discretion of the Court. The exercise of this discretion is structured by the three factors in s.9. No one factor prevails. The weight given to each factor will vary according to the particular facts of each case. The costs of the overall arrangement of shared custody should be considered, paying attention to the needs, resources and situation of the parents and any child. The emphasis is on flexibility and fairness to ensure that the economic reality and particular circumstances of each family are properly accounted for, and to ensure a fair level of child support. "Parliament, in adopting s.9, deliberately chose to emphasize the objectives of fairness, flexibility and recognition of the actual conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought, even if to the detriment of predictability consistency and efficiency to some degree." There is an automatic deviation from the method in s.3, but not necessarily from the amount. It is possible that after a review of the factors in s.9, the Court will find that the *Guidelines* amount is the proper amount. Thus, not only is there no presumption in favour of awarding at least the *Guidelines* amount under s.3, there is no presumption in favour of reducing the *Guidelines* amount.

[6] Our Court of Appeal has reinforced this interpretation of how a trial court is to determine child support when a shared parenting arrangement exists. In *Boudreau v. Marchand*, 2012 NSCA 79 it stated the trial Judge may find it appropriate to require parties "to provide the required evidence against which the factors can be considered". For this purpose, the task of calculating child support was returned to the trial Judge. The reconsideration is reported as *Marchand v. Boudreau*, 2013 NSSC 93.

[7] Unlike the trial Judge in *Marchand v. Boudreau*, I have a parenting arrangement that is clearly fifty:fifty.

[8] In *Woodford v. MacDonald*, 2014 NSCA 31, our Court of Appeal provided the same direction. Faced with this task, the parties in that case chose to accept the trial decision rather than undertake the s.9 analysis before the trial Judge. They

communicated their preference to the Court by letter signed by both parties. The trial Judge had ordered one parent to pay more than the set off amount of child support.

History of the Parties' Child Support Obligations

[9] The parties Corollary Relief Order issued February 13, 2012 and provided the following with respect to child support and special and extraordinary expenses for the children:

> 27. In 2010, Kimberlie Dixon had an annual income of $83,692.00, and in 2010 William Dixon had an annual income of $30,239.00 and anticipates having an income of $65,000.00 on a go-forward basis. Given the incomes of the parents, and the parenting arrangements set out herein, neither parent shall pay child support to the other. Each parent shall be responsible for providing for the children while the children are in his or her care.
>
> 28. William Dixon shall pay 50% of the gross cost of Special and Extraordinary Expenses incurred for Rachael and Rebecca. The definition of Special and Extraordinary Expenses for the purposes of this Order is as defined pursuant to section 7 of the Federal Child Support Guidelines. This shall include William Dixon paying one half of the cost of the agreed upon extracurricular activities.
>
> 29. The amount of child support to be paid is different from the amount that would be determined in accordance with the Federal Child Support Guidelines, Nova Scotia table, or in accordance with a straight set-off of child support amounts. It is hereby determined that reasonable arrangements have been made for the support of Rachael and Rebecca.
>
> 30. Neither party shall pay the other arrears of child support for the period between November 14, 2009 and September 6, 2011.
>
> 31. William Dixon and Kimberlie Dixon shall provide each other with a copy of his or her income tax return, completed and with all attachments, even if the return is not filed, along with all notices of assessment received from the Canada Revenue Agency, on an annual basis on or before June 1st, commencing June 1, 2012. In the event that either party seeks a variation of the amount of child support, that party shall only be entitled to seek a variation dating to the previous June 1st. For example, if William Dixon seeks to vary the amount of child support by application filed in January 2013, the time period for which he shall be entitled to seek a variation would extend no earlier than June 1, 2012.
>
> . . . . .

> 43. Kimberlie Dixon shall continue any medical, dental and drug plan coverage available for the children through her employment, for as long she is able to do so according to the terms of the plan. Should family medical, dental and drug plan coverage be available free of charge through William Dixon's current or future employment, he shall cover the children for as long as he is able to do so according to the terms of the plan.

[10] On August 30, 2012, Justice Gass considered an emergency application filed to address a conflict between the parents over the school the children would attend.

[11] Ms. Cole next filed a variation application on December 4, 2012 wherein she sought child support. Mr. Dixon then filed a separate variation application to address parenting. Justice Campbell considered these matters.

[12] Justice Campbell found Mr. Dixon's parenting time was less than 40% and declared the children's primary residence to be with Ms. Cole. On November 25, 2013 he directed that, effective December 1, 2013, Mr. Dixon would be required to pay $897 per month as child support, which amount included $200 towards arrears. The order of Justice Campbell at paragraph 39-47 provides:

> 39. William Dixon must pay child support to Kimberlie Cole in the amount of $697 each month, based on the applicable Table amount of the Federal Child Support Guidelines, commencing January 1, 2013 and on the first day of each month thereafter.
>
> 40. Arrears of child support shall be set at $7,667 accounting for eleven (11) months of unpaid child support.
>
> 41. Costs in the amount of $1,500, by order of the Honourable Justice Deborah Gass issued November 7, 2012, shall be offset against arrears leaving a remaining total of child support arrears of $6,167.
>
> 42. William Dixon must pay child support arrears to Kimberlie Cole in the amount of $200 each month, commencing December 1, 2013 and on the first day of each month thereafter for a period of 30 months. A remaining payment towards arrears will be made in the amount of $167 on the 31st month, being June 1, 2016.
>
> 43. In total, William Dixon must pay child support to Kimberlie Cole in the amount of $897 per month accounting for Table amount of child support and payments towards arrears.

Section 7 Expenses

44. William Dixon shall pay 50% of the gross cost of Special and Extraordinary Expenses incurred for Rachael and Rebecca. The definition of Special and Extraordinary Expenses for the purpose of this Order is as defined pursuant to section 7 of the Federal Child Support Guidelines. This shall include William Dixon paying one half of the cost of the agreed upon extracurricular activities.

Income Disclosure and Adjustments to Child Support

45. William Dixon and Kimberlie Cole shall provide each other with a copy of his or her income tax return, completed and with all attachments, even if the return is not filed, along with all notices of assessment received from Canada Revenue Agency, on an annual basis on or before June 1st of each year. In the event that either party seeks a variation of the amount of child support, that party shall only be entitled to seek a variation dating to the previous June 1st. For example, if William Dixon seeks to vary the amount of child support by application filed in January 2013, the time period for which he shall be entitled to seek a variation would extend no earlier than June 1, 2012.

46. Effective June 1, 2014 and each year thereafter, child support (both Table and s.7 expense sharing) shall be adjusted in accordance with the Federal Child Support Guidelines based on the parties' total incomes from the previous year.

Handling of Disagreements

47. Should there be any disagreements regarding the children the parties will take the advice of a third-party professional.

[13] Mr. Dixon sought to appeal this ruling but was found to be out of time for doing so (*Dixon v. Cole*, 2014 NSCA 100).

[14] At paragraph 33-34 of the Court of Appeal decision released November 4, 2014, Justice Bourgeois observed as follows when commenting on the legal status of the child support obligations of the parties:

> [33] From Ms. Cole's evidence, I am aware that the order for child support which would be subject to the proposed appeal, will be re-considered given a recent decision of Associate Chief Justice O'Neil. Therefore, the order under appeal is not a continuing one, but by virtue of subsequent proceedings in the Supreme Court, will be subject to variation.
>
> [34] I am also mindful that the remedy sought by Mr. Dixon on the proposed appeal, if successful, would be a return of child support in excess of $9,000.00. I

> find it very disconcerting that notwithstanding Mr. Dixon and his counsel discussing as early as November of 2013 potentially appealing, no one advised Ms. Cole that the funds she was receiving for the needs of the children may be sought back from her. Some ten months later, she is advised that there has been a longstanding intent to appeal, and is facing a return of a substantial sum of funds presumably already expended for the benefit of the children. Although I recognize the appeal period did not commence running until the order was taken out on July 7, 2014, in my view, and in the particular circumstances of this case, Mr. Dixon did not act in good faith by maintaining his silence.

[15] As stated, the principal issue for my consideration in September 2014 was whether the children should be permitted to move to Ontario.

[16] The child support obligations to flow from this decision will not pre date September 1, 2014.

Principles Governing Income Determination

[17] In *Leet v. Beach*, 2010 NSSC 433 and in *Darlington v. Moore*, 2013 NSSC 103 I was called upon to rule on what monies received by a payor parent were income for child support purposes. I discussed the Provincial *Child Maintenance Guidelines*, N.S. Reg. 53/98 which contain the same language as the Federal *Child Support Guidelines*, SOR/97-175. For ease of reference, I reproduce the relevant text from *Darlington v. Moore* beginning at paragraph 54:

> - determining income
>
> [54] The 'CSG' at s.15-20 outline the principles to be applied to determine a payor's income. Typically parties rely upon a payor's "line 150 income" as shown on a payor's annual tax return. However, there are a range of circumstances where a spouse's annual income can not be determined in that way.
>
> [55] Section 16 of the Guidelines provides:
>
> > Calculation of annual income
> >
> > 16. Subject to sections 17 to 20, a parent's annual income is determined using the sources of income set out under the heading "(Total income)" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.
>
> [56] Section 16 directs that a spouse's income is determined by using the sources of income set out under the heading "Total Income" in the T1 General Form and as

adjusted in accordance with Schedule III. The T1 General Form identifies the sources which make up total income as:

> (a) employment income;
>
> (b) other employment income;
>
> . . . . .
>
> (f) other pensions or superannuation;
>
> . . . . .
>
> (i) interest and other investment income;
>
> . . . . .
>
> (m) registered retirement savings plan income;
>
> (n) other income;
>
> (o) business income;
>
> (p) professional income;
>
> (q) commission income;
>
> . . . . .

[57] Schedule III at s.3.1, 5 and s. 13 provides as follows:

> 3. To calculate income for the purpose of determining an amount under an applicable table, deduct
>
> (a) the spousal support received from the other spouse; and
>
> (b) any universal child care benefit that is included to determine the spouse's total income in the T1 General form issued by the Canada Revenue Agency.
>
> 3.1 Special or extraordinary expenses - To calculate income for the purpose of determining an amount under section 7 of these Guidelines, deduct the spousal support paid to the other spouse and, as applicable, make the following adjustments in respect of universal child care benefits:

> (a) deduct benefits that are included to determine the spouse's total income in the T1 General Form issued by the Canada Revenue Agency and that are for a child for whom special or extraordinary expenses are not being requested; or
>
> (b) include benefits that are not included to determine the spouse's total income in the T1 General form issued by the Canada Revenue Agency and that are received by the spouse for a child for whom special or extraordinary expenses are being requested.

[58] Once a spouse's annual income is determined under s.16, it may be determined that the method:

> "would not be the fairest determination of that income and the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation of income or receipt of a non-recurring amount during those years". (s.17(1) of the Guidelines)

[59] Herein, counsel for Ms. Darlington is arguing that Mr. Moore's income far exceeds that shown on line 150 of his most recent tax returns. She asks that income be imputed to Mr. Moore as provided by s.19 of the 'CSG'. She is relying upon s.19(1)(b) and (h). The provisions provide:

> 19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
>
> (b) the spouse is exempt from paying federal or provincial income tax;
>
> . . . . .
>
> (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax;

[60] The burden of proof is upon Ms. Darlington to establish on a balance of probabilities that income should be imputed to Mr. Moore (Codiac v. Codiac 2005 NSSC 291 (CanLII) and McCarthy v. Workers' Compensation Appeals Tribunal (N.S.) et al 2001 NSCA 79 (CanLII). I am satisfied that she has met that burden.

[18] Ms. Cole is asking the Court to adjust Mr. Dixon's income as required by s.16. This, she proposes, requires the Court to disallow some of his claimed expenses deducted from his gross income and she further argues other income, not claimed as income for child support purposes, should be included as income for child support purposes.

[19] S.19(1)(g) and s.19(2) of the *Child Support Guidelines* also provides as follows:

> 19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
>
> . . . . .
>
> (g) the spouse unreasonably deducts expenses from income;
>
> . . . . .
>
> (2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.

[20] On the subject, s.16 of the Guidelines directs the Court to adjust income in accordance with Schedule III of the Guidelines which provides *inter alia*:

> Employment expenses
>
> 1. Where the spouse is an employee, the spouse's applicable employment expenses described in the following provisions of the Income Tax Act are deducted:
>
> . . . . .
>
> (d) paragraph 8(1)(f) concerning sales expenses;
>
> . . . . .
>
> (f) paragraph 8(1)(h) concerning travel expenses;
>
> (f.1) paragraph 8(1)(h.1) concerning motor vehicle travel expenses;
>
> (g) paragraph 8(1)(i) concerning dues and other expenses of performing duties;

(h) paragraph 8(l)(j) concerning motor vehicle and aircraft costs;

. . . . .

Child support

2. Deduct any child support received that is included to determine total income in the T1 General form issued by the Canada Revenue Agency.

[21] Finally, as referenced earlier, s.17 of the *Child Support Guidelines* provides as follows:

Pattern of income

17. (1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

Non-recurring losses

(2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

Position of the Parties

- Mr. Dixon

[22] Mr. Dixon argues that his line 150 income in 2014, being $107,196, should be reduced by the RSP withdrawal of $533; that the Carquest pension withdrawal of $11,287 should not be added to his income; the manager buyout/advisor signing bonus of $20,240 should not be added to his income and employee expenses of $23,092 should be accepted as appropriate and reduce his income for child support purposes. The result is an income of $52,044, an amount he says is consistent with his 2013 income of $52,907. He says his gross income in 2013 and 2014 was $106,624 and $105,679 respectively.

[23] He says Ms. Cole owes him $608 per month in ongoing child support and arrears to June 2015 amounting to $8,264.

[24] Mr. Dixon asks the Court to now order Ms. Cole to pay the set-off table amount of child support calculated by him to be $474 per month ($1,202-$728) commencing September 1, 2014. He arrives at this number after concluding his income is $52,044 and Ms. Cole's income is $88,000.

[25] Mr. Dixon projects his 2015 income to be approximately the same as in 2014.

[26] He also asks that Ms. Cole be required to contribute to past and ongoing child care costs. He claims $1,700 for the period September 1, 2014 to and including June 2015. He also claims $134 per month commencing July 1, 2015, an amount he says is her proportionate share of the after-tax cost of child care paid by Mr. Dixon.

- Ms. Cole

[27] Ms. Cole says if child support is to be paid by one to the other it could be as much as $1,000 per month paid by Mr. Dixon to her.

[28] Ms. Cole argues that Mr. Dixon's income in 2014 was in fact $117,950 (not $52,044). She submits that many deductions from Mr. Dixon's gross income should not be permitted when income for child support purposes is being determined. Ms. Cole argues against permitting Mr. Dixon to deduct expenses of $39,263 against self employment income, an amount she says, that is $5,500 higher than was permitted by Justice Campbell in November 2013.

[29] She says Mr. Dixon's claim for an additional $23,092 reduction in his income for child support purposes should be rejected.

[30] Secondly, Ms. Cole adds $11,287 which is described as the Carquest Pension - a one time amount received by Mr. Dixon from his former pension plan, is not included by him in his income calculation for 2014. Ms. Cole argues this later amount should be doubled to $22,574 because it is a matching contribution.

[31] Finally, she argues that Mr. Dixon's buy out/advisor signing bonus of $20,240 associated with his change in position with his current employer should be

considered for purposes of child support. This amount was paid to Mr. Dixon when he changed positions in his company from management to that of a commission based salesman.

[32] The Court must therefore determine each parties' annual income in recent years. To reach that conclusion, the Court must determine what deductions are permitted from the respective total incomes and what money received by the parties represents "income" and what does not for child support purposes.

- Carquest income

[33] Mr. Dixon's income in 2014 includes a one time payment of $11,287.20 as the payout of his pension with this former employer (see written submission of his counsel received in June 2015). Mr. Dixon argues this should be viewed as non recurring income and not considered for child support purposes. As permitted by s.17 of the 'CSG' I am satisfied, given the non recurring nature of this payment, it should not be considered when determining Mr. Dixon's income for 2014. The inclusion of this amount would distort Mr. Dixon's financial picture and would not result in a fair determination of his income.

- buy out/advisor signing bonus

[34] Similarly, Mr. Dixon received $9,120 as a one time pay out for resigning as a manager with his current "employer" and for resuming his role as an advisor (see tab I of Mr. Dixon's June 2015 submission). The change meant Mr. Dixon returned to a commission based income model from a salaried position. He testified as to the nature of this change when he moved from an advisor to a manager's position. For the same reason, this non recurring payment should not be considered when Mr. Dixon's income is determined.

- motor vehicle expenses: deduction against employment income - employment expenses

[35] On July 1, 2014, Mr. Cole's status with his employer changed to that of a commission salesperson from that of a manager. As stated, the employer's records of this change are at tab I and J of the written submission from Mr. Dixon received in June 2015.

[36] As observed, Schedule III of the Guidelines permits the deduction of both employment expenses and business expenses, including motor vehicle expenses, when determining the income of a spouse for child support purposes.

[37] Although the Court is not bound to reduce Mr. Dixon's income level for child support purposes on the same basis as the 'CRA', I am satisfied that to do so in this case achieves the fairest outcome. Mr. Dixon's income will be determined after the 'CRA' accepted motor vehicle; business and employment expenses are deducted. The evidence does not persuade the Court that Mr. Dixon has inappropriately claimed motor vehicle expenses or his standard of living is improved because he has claimed these or related expenses.

[38] For similar reasons, I accept Mr. Dixon's other claimed employment expenses as appropriate. I do not have a basis for not accepting the claim by Mr. Dixon, particularly given they have been unchanged by 'CRA'. Mr. Dixon has met the onus of establishing these expenses as incurred to advance his income earning capacity and as not contributing to a higher standard of living for him, other than enhancing his earning capacity.

[39] The 'CRA' policies balance the competing objectives of fair taxation of income with the need to recognize that some expenses incurred to achieve an income should be deducted from one's income. In this way one's personal income available to sustain a standard of living can be more fairly determined. This is the balance the *Child Support Guidelines* also seek to achieve. It is this result that permits a Court to determine resources available in a home. The two analysis will not always yield the same result. I am satisfied that on these facts they do.

- Ms. Cole's income

[40] Turning to Ms. Cole's calculations of child support in recent years, Ms. Cole submits the following:

> In 2013 - her line 150 income was $57,611.89 after deducting RRSP income
>
> In 2014 - her line 150 income was $33,458.00 less RRSP income resulting in an income of $32,382.05
>
> In 2015 - her projected line 150 income is $88,658.97

[41] Ms. Cole was on maternity leave for part of 2013 and 2014. In her last full year of work (2012), her income was $92,649. She returned to full time work in December 2014 with New Pace.

[42] Although Ms. Cole submits set-off is not the appropriate manner to determine child support payable, she offers the following calculations should the Court decide to proceed in that way. In 2014 she presents two income scenarios for each party resulting in four possible conclusions as to the parties' respective child support obligations. She says the Court will either set Mr. Dixon's income at $117,950 or permit certain deductions from his income resulting in an income of $94,858. Similarly she says her income will be set at $88,000 or $32,382 for all or part of 2014:

Mr. Dixon		Ms. Cole	He pays/month
2014	$117,950.00	$32,382.00	$1,097.00
	$94,858.00	$32,382.00	$816.00
	$117,950.00	$88,000.00	$367.00
	$94,858.00	$88,000.00	$86.00
2013	$78,332.00	$57,611.89.00	$274.00
2015	$88,658.97		

[43] The conclusions Ms. Cole reaches are as follows:

2013

Mr. Dixon owes arrears as determined by the 2013 order of Justice Campbell

2014 - June to August 2014

Using 2013 incomes and accepting Ms. Cole had primary care, Mr. Dixon owed $1,079/month, not the $697 he paid, amount owed $1,146.00

2014-2015 - September 2014 to May 2015

Using 2013 incomes and shared parenting - child support of $300/month was owed, none was paid; amount owed $2,700

2015-2016 - June 2015 - May 2016 (12 months)

Using 2014 incomes, $850 per month was owed, therefore she says $3,400 is owed

[44] The first determination for the Court is the income level of the respective parties since the shared parenting arrangement. Ms. Cole's income level is readily ascertainable given her status as an employee. I am prepared to accept her line 150 income as determinative less any RRSP income or other one time payments. This was the approach taken to determine Mr. Dixon's income. As stated, I am also prepared to accept the CRA determination of Mr. Cole's income as explained in the foregoing.

Child Care

- ongoing child care

[45] The child care expense, if any, by the parties during their period of parenting will be met by the parent having care of the child.

- ongoing child support

[46] I am persuaded that the current year's income should be used to assess the child support obligation of the parties, if any. I have come to this conclusion because the parties' incomes and income generating circumstances have been changing. In the case of Ms. Cole, she has been out of the work force on maternity leave. In the case of Mr. Dixon, he has been an employee and self employed with the associated changes in how his income is determined. An assessment of the parties' current income is the better way to determine resources available to support the children on an ongoing basis.

[47] As already observed in my earlier decision in this matter (2014 NSSC 348 at para 72), I ruled that effective September 1, 2014, s.9 of the Child Support Guidelines will govern the child support obligations of the parties. I will therefore not go behind this date to determine the parties respective child support obligations. In his consideration of the matter, on November 25, 2013, Justice Campbell determined the incomes of the parties and their respective child support obligation. Those determinations are the governing conclusions relative to child support to

September 1, 2014. A transcript of Justice Campbell's oral decision appears at tab G of Mr. Dixon's written submission.

[48] As observed, s.9 of the Child Support Guidelines does not require the payment of set off child support when children are subject to a shared parenting arrangement. It requires the Court to consider three factors. I have considered the table amount of child support each might be required to pay; whether there is an increased cost for the parents as a result of the shared custody arrangement and I have considered the condition, means, needs and other circumstances of the parties and their two children.

[49] Applying current income determinations for several months after September 1, 2014 Mr. Dixon would be a payor if set off was applied. In 2015 Ms. Cole would be the payor if set off was applied.

[50] I do not have evidence of increased costs to Mr. Dixon because his parenting has increased to 50:50 from 39:51.

[51] I have also considered the greater responsibility Ms. Cole has in her family to support others as compared to Mr. Dixon. This is an aspect of her condition, means, needs and other circumstances which I must consider and to which I assign great weight on these facts.

[52] I have determined that no child support should be paid by one to the other in these circumstances.

[53] Similarly, as stated, with respect to child care or special expenses, I order each to pay any child care expenses incurred while the children are in his/her care. Any uninsured portion of health related expenses of the children are to be equally shared.

[54] I remind myself of the prophetic observation of Justice Campbell following his November 2013 hearing involving the parties at which time he stated:

> . . . when it comes to this exercise in the future I fear that the parties will engage on this debate again and again, year after year. I urge them not to do that because, in my view, the difference between monthly child support that comes from a reduction in those expenses by a few thousand dollars, is not worth the effort . . .

[55] The parties have a litigious history. Even when decisions by Judges are communicated, one or both parties look to find an advantage when an order must be concluded. The need to win is a factor in this litigation more so then it is in most cases.

[56] The cost of the parties' litigation undoubtedly erases any monetary gain sought to be achieved.

[57] Lessening the opportunity for these parties to continue their conflict must be an objective for the Court.

[58] The parties appeared before me on October 8, 2015 to conclude the terms of the order from my decision dated September 19, 2014. A partial order was confirmed. The Court was left the task of confirming the child support regime. This decision is that conclusion.

[59] While the Court was preparing its decision, Mr. Dixon was required to seek the Court's intervention to assist in arranging passports for a November 2015 trip planned for the children.

Costs

[60] In *Higgins v. Bourgeois Higgins*, 2015 NSSC 293 I reviewed the principles I must apply when called upon to make a costs award. I incorporate that discussion by reference.

[61] I am satisfied success was mixed herein. Each party will therefore pay his/her own costs related to this ruling. However, given Mr. Dixon's success at first instance on the primary issue of Ms. Cole's application to relocate, Mr. Dixon was the successful party. Costs of $5,000 are awarded in favour of Mr. Dixon. These are to be set off against any obligation to pay arrears still outstanding to be satisfied by Mr. Dixon.

[62] The balance is to be paid by Ms. Cole at the rate of $200 each month commencing February 15, 2016 and continuing on the 15th of each month thereafter until paid in full.

[63] In the event that Mr. Dixon has overpaid child support for the period following September 1, 2014, given my ruling; that overpayment shall be returned to Mr. Dixon at the rate of $100 per month, again commencing February 15, 2016 and continuing on the 15th of each month thereafter until paid in full.

ACJ

SUPREME COURT OF NOVA SCOTIA
(Family Division)
Citation: Cole v. Dixon, 2016 NSSC 26_err1

Date: 20160119
Docket: 1201-064590
Registry: Halifax

Between:

Kimberlie Heather Cole

Petitioner

and

William John Dixon

Respondent

Judge: Associate Chief Justice Lawrence I. O'Neil

Submissions Concluded: November 2015

Counsel: Robyn L. Elliott, Q.C., counsel for Ms. Cole
Terrance Sheppard, counsel for Mr. Dixon

Revised Decision: The text of the original decision has been corrected according to the appended Erratum dated February 9, 2016

Erratum:

Decision, page 1, line beginning with Counsel is deleted and replaced by the following:

Counsel: Robyn L. Elliott, Q.C., counsel for Ms. Cole
Terrance Sheppard, counsel for Mr. Dixon

ACJ