

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Colpitts v. Fraser, 2008 NSSC 263

Date: 20080822

Docket: 1207-001300(028736)

Registry: Truro

Between:

Andy Bruce Colpitts

Plaintiff

v.

Gladys Elaine Fraser

Defendant

DECISION

Judge: The Honourable Justice J. E. Scanlan

Heard: August 22, 2008, in Truro, Nova Scotia

Written Decision: September 10, 2008

Counsel: Ms. Peggy Power, Solicitor or the Applicant
Mrs. Gladys Fraser, Respondent, self-represented

By the Court:

[1] First of all the parties agree that Mallory Janelle Colpitts is now in the primary care of Mr. Colpitts. That is effective immediately. The parties agree that in late March, Mallory went to live with Mr. Colpitts and he has had her and maintained her since that time.

[2] The evidence is the eldest daughter, Paige Lynn Colpitts, born November 23, 1988, has been living in a common law relationship with an individual for about 14 months. Paige continues to attend post-secondary education. Ms. Fraser put before the Court a very detailed budget which included both income and expenses in relation to Paige. Her evidence was that Paige cannot get a student loan because of a trust fund that was established for her and which she had included in her income as exhibit two before the Court. Ms. Fraser indicated that some of the monies that Paige relied upon in 2007 are no longer available. She specifically referred to the Nova Scotia Agricultural College entrance scholarship and the 4-H scholarship which she said was a one time thing.

[3] On a go forward basis she assumed that Paige would be able to continue to work and would continue to get a Nova Scotia Government scholarship. She allowed an amount of \$761.00 per month. Those are assumptions.

[4] I suggest that Paige seems to be a very motivated child, to say the least. She is hard working, sometimes holding two jobs and going to school. I have no idea what her marks are. If it comes to the point where she cannot work to the extent that she is now working and maintain decent academic standards that are acceptable to her, there may come a point in time when she is going to have to cut back in her work. If she does the losses that she might incur in that regard will have to be picked up by the parents.

[5] I say that because I am satisfied Paige continues to be a child of the marriage, even though she is living in a common law relationship. As noted by Ms. Fraser there is no long term commitment in that relationship. There is no legal requirement on the person she is living with, who I understand is about 26 years old, to provide Paige with a post-secondary education. There is an obligation on the parents which continues at this point in time. Both Ms. Fraser and Mr. Colpitts are obligated to continue to support Paige to a reasonable degree taking into

account their income and their circumstances as Paige cannot by reason of her current circumstances support herself.

[6] I would add that I am satisfied in terms of the evidence, that Ms. Fraser has more than carried her share. She was holding two jobs, going to school and helping her children, all three of them including Paige, well beyond that which was being contributed to by Mr. Colpitts.

[7] Mr. Colpitts is no hero in my mind, in terms of the actions he has taken in relation to his children. I refer to events of some time ago. On the night that he gets notice of an application coming before the Court he calls his children and tells them, and I accept that it was one sentence, not necessarily from Mr. Colpitts but from somebody else at his instruction, "the regular access is done, no more scheduled access." Why? Because of the almighty dollar. Because Ms. Fraser dared to ask what the table amounts require him to pay; what the laws of this country say he is obliged to pay. That is why he did not see these children. That is why he was reduced to maybe running into them at the Exhibition. He no longer made them welcome in his home. That is why they were estranged from him. That is why to a certain extent two of them still are estranged from him. For a parent to

put money ahead of children I will never understand. I see it in this Court, I hear about it, but I will never understand it. They will always be Mr. Colpitts children. To put the almighty dollar ahead of them, I never have and never will understand it. It has happened in this case.

[8] The same can be said of his generous offer to give his 16 year old daughter, Paige, an apartment. I accept Ms. Fraser's interpretation of that. It was nothing more than an attempt for Mr. Colpitts to cut back in terms of what he was giving to Ms. Fraser. He would rather set his 16 year old daughter loose on her own than to pay the money to Ms. Fraser. The shame of it all is the money Mr. Colpitts was giving, \$1,277.00 a month, not only was it not as much as he was suppose to be giving but it did not raise his children. \$1,277.00 a month does not raise three children. It does not even come close.

[9] Ms. Fraser said she was making \$12,000.00 a year. She could hardly support herself with \$12,000.00 a year. So who was raising Mr. Colpitts children? The other man, I assume, in Ms. Fraser's life. I am sure it must make Mr. Colpitts proud that he was doing just about everything he could to make sure he did not

give Ms. Fraser enough money to raise his children. I do not know whether it was because he hated her or because he hated the children. None of it adds up.

[10] The Court ordered clearly that Mr. Colpitts was to give his tax information over to Ms. Fraser. It gave him a date each year when he was to do so. Ms. Fraser could then assess whether Mr. Colpitts was paying the proper amount of maintenance. Mr. Fraser comes to this Court today with some lame brained excuse, talking about privacy and identity theft, offering that up as a reason for not handing over the information the court had ordered he provide. I have to say that is about the lamest excuse I have ever heard. Mr. Colpitts would be better off to come and say he just refused to give it. He would look better. At least he would be more believable. He did not give it and he was suppose to. He underpaid so that Ms. Fraser's new partner could raise his children and so he did not have to. Mr. Colpitts has nothing going for him here, nothing.

[11] For 2005 post August he underpaid \$244.00 a month. For 2006 he underpaid for the entire year \$244.00 a month. For 2007 he underpaid \$202.00 a month. For 2008 he underpaid for January, February and March, about \$606.00. Mr. Colpitts is no hero.

[12] The problem that I have is how do I fix all this mess. It is more complex because now one daughter is living with Mr. Colpitts. Yes he deserves a credit for that based on the amount of time she has lived with him.

[13] There is also the issue of Paige and whether or not Ms. Fraser should have been entitled to continue receiving the \$1,277.00 a month or, in this case, the adjusted amount. I have already said Mr. Colpitts has short changed Ms Fraser when she had three children. Even though Paige was living with somebody else for the last fourteen months I am quite satisfied, on the evidence, that Ms. Fraser continued to support Paige well beyond the amounts that she should have been receiving from Mr. Colpitts. She talked about computers, she talked about covering any shortfall. Even the budget that she has is almost to the penny in many aspects. Certainly the income is to the penny. She said that was the best they could come up with in terms of how much Paige was spending. It is the most they could account for. I am satisfied it was a very careful accounting. It does not take much in terms of an extra few dollars here, or an extra few dollars there, to exceed that monthly budget, Exhibit #2.

[14] The \$1,277.00 plus the adjustments, I am satisfied should have been paid including March of this year when Mallory went to live with Mr. Colpitts. I am satisfied as well that the reality is, when Mr. Colpitts cut himself off from the children, Ms. Fraser's expenses did go up. It was not just the food for twenty-five percent of the time when Mr. Colpitts used to take them. Ms. Fraser said there was no extra contribution from Mr. Colpitts in terms of extra-curricular activities or even a few dollars here or there that Mr. Colpitts might give the children when he would see them, or take them to McDonald's, or whatever it was he would do with his children. They were just cut off.

[15] To quantify those amounts would be almost impossible. In order to fit into an appropriate category under the **Divorce Act** I would have to define those extra amounts as extraordinary expenses under section 7. I am satisfied, on a go forward basis, there are definitely section 7 expenses for Paige. As I indicated, just because she is living with somebody in a common law relationship, does not mean Paige does not continue to be a child of the marriage. Paige is not able to remove herself from Mr. Colpitts and Ms. Fraser's charge. She still is dependant upon them even though Mr. Colpitts does not want to admit she is dependant on him. I am not going to say Ms. Fraser is the only one left in terms of responsibility

to assist Paige when Paige just does not have enough. Paige continues to be a child of the marriage. She is in a deficit position of at least \$253.00 per month. I think that is really cutting it to the bone. It is probably more than that in terms of her deficit because it only takes a few dollars here and a few dollars there to exceed the budget.

[16] I recognize that Mr. Colpitts has a higher income than Ms. Fraser. I am going to order on a go forward basis that Mr. Colpitts continue to pay \$200.00 per month for Paige. That will continue to be paid to Ms. Fraser and she can assist her daughter Paige in terms of her post-secondary education.

[17] I warn Mr. Colpitts again that if Paige is not able to continue working at the level that she is working because she either cannot find work or has to cut back on the work, this should be reviewed immediately. It may well be that Paige will have to devote more time to her studies so as to ensure she is not wasting all of this money by not getting a decent academic achievement. If that happens then Mr. Colpitts and Ms. Fraser can expect to pay more based on their respective incomes.

[18] When I did a re-calculation of the arrears, I am satisfied there should be an adjustment to the maintenance effective when Mallory started living with Mr. Colpitts, on April 1, 2008. Based on the relative incomes, the guidelines would suggest that for one child, based on Mr. Colpitts income, he should be paying \$706.00 per month. Based on Ms. Fraser's income she should be paying \$463.00 per month. I am satisfied the adjustment should take place as of April 1, 2008. That would be a difference of \$243.00 per month that Ms. Fraser should have been receiving plus \$200.00 per month for Paige which would be \$443.00 per month.

[19] I am not going to change the \$1,277.00. It is not that I am forgetting about it. I am saying that he should have been paying for all three children up to that point in time based on the table amounts. I am not forgetting about the \$1,277.00 amount. I am saying it should have been increased on the effective times when he should have been revealing his income.

[20] If you take \$443.00 per month when he was actually paying \$1,277.00, the difference is \$834.00 a month for five months. That is \$4,170.00. However, if the adjustments are done based on his income for the respective years earlier, starting in August of 2005 and that is when I am going to start it because that is when they

were last in Court. Even then the information was not current and Mr. Colpitts should have made it current. Mr. Colpitts was \$244.00 per month short from August, 2005 through to December, 2006. He was \$202.00 short for the entire year of 2007 and he was \$202.00 short for the first three months of 2008. For August, 2005 to December, 2006 it would be a total of \$4,148.00. For 2007 through to and including three months in 2008 he was \$202.00 per month short. That would be a total of \$7,178.00. That would be \$606.00 for the first three months of 2008 plus \$2,024.00 for 2007. The total that Mr. Colpitts is in arrears would be \$7,178.00. I gave him credit for this year of \$4,170.00. The end result is that he is short \$3,000.00. I am satisfied that is the amount he should be paying in arrears.

[21] He can pay it on a go forward basis as opposed to having to pay it lump sum. He is presently obliged to pay \$443.00 per month. If he pays \$943.00 a month on a go forward basis then in six months he will have it cleared up. The maintenance will then reduce to the \$443.00 per month.

[22] I want to point out to Ms. Fraser that section 7 expenses are pretty broad. If there are any special expenses in relation to the children, braces or major extra-

curricular activities. The same can be said for Mr. Colpitts. If there is orthodontic work to be done for Mallory. Those really should be worked out between the parents. If they agree that each one pays the expenses of the child that is in their care make sure it is clear. It is by agreement as opposed to something that is being forced.

[23] Ms. Fraser should understand that on a go forward basis if there are extraordinary expenses and she has to bring them back to the Court, I would suggest that she not leave it too long. For Paige, I simply stuck with the table amounts up to April of 2008 and that is when I made the adjustment because of Mallory. I am looking at it on a go forward basis from April 1, 2008. I simply looked at Paige's budget on a go forward basis.

[24] I say to Mr. Colpitts on a go forward basis, as soon as Paige is finished with her post secondary education I would hope that Mr. Colpitts and Ms. Fraser could simply agree that the maintenance for her would be at an end then. If it is not in formal agreement, I suggest you come back to Court and not leave it too long. The longer you leave it the harder it might be to recoup in terms of adjustments.

[25] I would hope that my comments have sent a message to Mr. Colpitts. I am satisfied that he put money ahead of his children and I hope he never does that again. I hope he starts talking to all his daughters whether they need money or not, or whether he is giving the money to Ms. Fraser or not. His life is wasting away and his children are not necessarily part of it. If it is Mr. Colpitts partner that is telling him not to talk to them or she is putting money ahead of his children, that is not good enough. He had better make that decision himself.

[26] Thank you very much. I wish you luck. I certainly wish the children luck. They are going to need the help of both parents in understanding mistakes have been made in the past. Fix it before it is too late.

[27] Thank you.

J.