

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Godard v. Godard, 2008 NSSC 247

Date: 200080822

Docket: SFHMCA-047436

Registry: Halifax

Between:

Lisa Marie Godard

Applicant

v.

Tren Aaron Godard

Respondent

Judge: The Honourable Assoc. Chief Justice Robert F. Ferguson

Heard: July 25, 2008, in Halifax, Nova Scotia

Written Decision: August 22, 2008

Counsel: Lisa Marie Godard, self-represented
Tren Aaron Godard, self-represented

By the Court:

[1] Lisa and Tren Godard were married on September 15, 1998. They separated in mid-September of 2007. They are the parents of Kelly Godard, born March 31, 2000.

[2] On August 2, 2007, Ms. Godard made two applications. She filed an interim application pursuant to the *Maintenance and Custody Act* requesting that she be granted custody of Kelly and receive child support. She also sought, pursuant to the *Matrimonial Property Act*, exclusive possession of the matrimonial home. In her other application she sought the same relief as requested in the interim application plus a division of pension benefits.

[3] On August 30, 2007, the interim application came before me and an Interim Order was issued which stated:

IT IS HEREBY ORDERED THAT:

1. The removal of the Respondent, Tren Aaron Godard, from the matrimonial home located at 63 Sugar Maple Drive, is not required at this time;
2. The parties shall have joint custody of the child, Kelly Christina Godard, who was born on March 31, 2000;
3. That the child, Kelly Christina Godard, shall continue to reside in the matrimonial home located at 63 Maple Drive in Timberlea, Nova Scotia;
4. That no alcohol shall be consumed in the matrimonial home located at 63 Sugar Maple Drive;
5. That neither party is permitted to enter into the matrimonial home at 63 Sugar Maple Drive if they have consumed alcohol in the preceding five hours;
6. This hearing is hereby adjourned to October 1, 2007, at 11:30 a.m.;
7. All sheriffs, deputy sheriffs, constables and peace officers shall do all such acts as may be necessary to enforce this order and for such purposes they

and each of them, are hereby given full power and authority to enter upon any lands and premises whatsoever to enforce the terms of this order.

[4] On October 1, 2008, the hearing resumed before Justice Williams as I was unavailable due to illness. A further Interim Order was issued which stated:

IT IS HEREBY ORDERED THAT:

1. The Applicant, Lis Marie Godard, shall have exclusive possession of the matrimonial home located 63 Sugar Maple Drive in Timberlea, Nova Scotia;
2. The Applicant, Lisa Marie Godard, shall have primary care of the child, Kelly Christina Godard, until further order of this Court;
3. The Respondent, Tren Aaron Godard, shall have no access to the child, Kelly Christina Godard, until further order of this Court;
4. The Applicant, Lisa Marie Godard, shall file with the Court a specific access proposal outlining the time and place along with the identity of the individual who will supervise access for Tren Aaron Godard to the child, Kelly Christina Godard;
5. The Applicant, Lisa Marie Godard, shall provide at least two appraisals of the matrimonial home by a real estate agent to Tren Aaron Godard by Friday, October 5, 2007;
6. The Respondent, Tren Aaron Godard, shall file a completed Statement of Guidelines Income accompanied by his Income Tax Returns and Notices of Assessment for 2006, 200 (sic), and 2004, as well as a current pay stub from his employer by Friday, September 7, 2007;
7. This hearing is hereby adjourned to October 11, 2007, at 2:15 PM;
8. All sheriffs, deputy sheriffs, constables and peace officers shall do all such acts as may be necessary to enforce this order and for such purposes they, and each of them, are hereby given full power and authority to enter upon any lands and premises whatsoever to enforce the terms of this order.

[5] On October 11, 2007, the hearing again resumed before Justice Campbell who concluded that I was seized with the applications (having heard evidence on

August 30, 2007). He adjourned the hearing to March 28, 2008, when I would be available.

[6] On March 25, 2008, a hearing was held – it should be noted pertaining only to the interim application. Both parties were self-represented. As a result of this hearing, an order was issued on April 7, 2008, dealing with the custody of and access to Kelly. It also spoke to retroactive and ongoing child maintenance.

[7] It is important to re-emphasize that the foregoing order was and continues to be an Interim Order. Both parties were advised as to the nature of this order. Both parties were made aware that, although there would be further proceedings, such proceedings would not deal with the issues of custody, access and child maintenance.

[8] On March 25, 2008, the parties were made aware that the primary ongoing issue would be the division of the couple's matrimonial property and debt. They were also informed that any order related to this issue would not be of a temporary nature. Ms. Godard was also informed that her current application made reference to the *Matrimonial Property Act* but only as it pertained to exclusive possession of the matrimonial home. She was advised to amend her application. The matter was adjourned for a pre-trial appearance on May 12, 2008, and a hearing on May 28, 2008.

[9] At the pre-trial appearance, it was noted that Ms. Godard had not amended her application as requested. I concluded that both parties were aware of the outstanding issue (note the following Pre-Trial Conference Memorandum) and that the hearing could proceed. The following Pre-Trial Conference Memorandum was issued:

The matter of Ms. Godard's application pursuant to the *Matrimonial Property Act* is further adjourned until **July 25, 2008, from 10:00 a.m. to 12:30 p.m.**

Both parties are self-represented and will be the only witnesses.

The following has been agreed by the parties and is ordered by the Court:

1. The matrimonial home will be conveyed to Lisa Godard;

2. The value of the matrimonial home is \$145,000.00 and this amount will be lessened by the usual disposition costs, i.e. 5% real estate commission, 13% HST and legal fees of \$1,000.00;
3. The parties separated in mid-September of 2007;
4. The parties agree with the following distribution of assets and, further, that such distribution will have no affect on the Court's decision as to the issues that remain in dispute:
 - a) The parties will each retain their automobile;
 - b) The parties will each retain their RRSPs;
 - c) The parties will each retain their pensions;
 - d) The parties will apportion their household items as outlined in Ms. Godard's Statement of Property sworn May 22, 2008, with the exception that included in items "Tren to Take" will be a card table and a pool cue;
 - e) The debts to be submitted to the Court for consideration are as outlined in Ms. Godard's Statement of Property sworn May 22, 2008.
5. Five days before trial, Ms. Godard will file with the Court and provide to Mr. Godard information relating to the listed debts (with the exception of Mr. Godard's ScotiaBank Visa) that establishes the amount of such debt at the approximate time of separation;
6. Five days before the trial, Mr. Godard will file with the Court and provide Ms. Godard with the amount of his Visa debt at the approximate time of separation;
7. It is acknowledged that Ms. Godard will seek compensation for a portion of the funds she has expended on the family debts, exclusive of the mortgage, from the date of separation to date. She will also file with the Court information that will establish that amount;
8. It is acknowledged that Ms. Godard, on becoming the owner of the family home, will secure a mortgage in her own name and that the funds received

from such mortgage will, in some manner, be applied to the existing family debt.

Pursuant to Civil Procedure Rule 26.01(2) this Memorandum has the force and effect of an Order.

[10] At trial, the parties agreed with what items should be considered matrimonial debt, the amount of such debt and the assumption of such debt. The following chart reflects this agreement:

Matrimonial Debt Assumed by Ms. Godard	
Property Tax	\$ 1,605.30
Visa - ScotiaBank	\$ 7,970.12
MasterCard - Bank of Montreal	\$ 5,376.16
Sears Credit Card	\$ 659.04
Chequing Account - ScotiaBank	\$ 1,122.46
Irving Oil	\$ 411.96
Aliant	\$ 520.02
HRM Water	\$ 123.21
Home/Auto Insurance	\$ 406.44
Loan to Josephine Kelly	\$ 2,600.00
TOTAL	\$ 20,794.71
Matrimonial Debt Assumed by Mr. Godard	
Visa - ScotiaBank	\$ 10,463.41
Nova Scotia Power	\$ 1,410.89
TOTAL	\$ 11,874.30

[11] Ms. Godard also sought recognition, as a matrimonial debt, of the interest she had paid on the accepted matrimonial debts since separation. Mr. Godard was not in agreement with this request. I accept Ms. Godard's evidence on this point

and conclude such payments should be included as a matrimonial debt. The following chart reflects these payments:

Interest Paid by Ms. Godard on Matrimonial Debt Since Separation	
MasterCard - Bank of Montreal	\$ 727.39
Visa - ScotiaBank	\$ 1,496.70
Sears Credit Card	\$ 160.74
Irving Oil	\$ 29.26
Aliant	\$ 19.46
HRM Water	\$ 3.76
TOTAL	\$ 2,437.31

[12] At the conclusion of the hearing, I informed the parties – both being self-represented – of how I would come to a conclusion. I did so in stages. Although it is somewhat unusual, I propose to follow the same process in my decision.

[13] Stage 1: Ms. Godard retains the matrimonial home at a value calculated as set out in the Pre-Trial Conference Memorandum of May 28, 2008.

Home Value	\$ 145,000.00
Less Mortgage	- \$ 116,250.00
Less 5% Real Estate Commission	- \$ 7,250.00
Less HST	- \$ 942.00
Less Legal Fees	- \$ 1,000.00
NET VALUE	\$ 19,558.00

As a result of retaining the home, Ms. Godard owes Mr. Godard one-half of its net value or \$9,779.00.

[14] Stage 2: Ms. Godard retains matrimonial debt of \$20,974.00. As a result, Mr. Godard owes her one-half of this debt or \$10,487.00.

[15] Stage 3: Mr. Godard retains matrimonial debt of \$11,874.00. As a result, Ms. Godard owes him one-half of this debt or \$5,937.00.

[16] Stage 4: Ms. Godard assumes additional matrimonial debt (interest payments) of \$2,437.00. As a result, Mr. Godard owes Ms. Godard one-half of this debt or \$1,218.00.

[17] At Stage 1, Ms. Godard owes Mr. Godard \$9,779.00. At Stage 2, Mr. Godard owes Ms. Godard \$708.00. At Stage 3, Ms. Godard owes Mr. Godard \$5,229.00. At the fourth and final stage, Ms. Godard owes Mr. Godard \$4,011.00. I suggest that Ms. Godard provide Mr. Godard with a release from any responsibility with regard to the mortgage pertaining to the matrimonial home, a cheque for \$4,011.00 and a deed requiring his signature relinquishing his interest to the matrimonial home. On Mr. Godard signing the deed, he shall retain the cheque.

[18] In the event such arrangements cannot be made, other options will have to be considered. I will retain my jurisdiction in this matter should further intervention be required.

[19] At the conclusion of the trial, Ms. Godard mentioned her belief that Mr. Godard was in arrears of his child support payments established by the court order issued April 7, 2008. Mr. Godard did not acknowledge any such arrears.

[20] Ms. Godard concluded from my final remarks she would be required, on retaining the matrimonial home, to make a payment to Mr. Godard. She inquired if it would be appropriate to deduct any outstanding child support arrears from this payment. If any such arrears do exist and Mr. Godard has not made application to have such arrears forgiven, it would be appropriate to have such amount deducted from Ms. Godard's payment to Mr. Godard. However, the support payments have been paid through the Office of the Director of Maintenance Enforcement. This office's involvement would be required.