

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: McIntyre v. McIntyre, 2006 NSSC 380

Date: 20061218

Docket: 1204-004420

Registry: Kentville

Between:

Natasha Lynn McIntyre

Petitioner

v.

Roy St.Clair McIntyre

Respondent

Judge:

The Honourable Justice Gregory M. Warner

Heard:

December 3, 2006, at Windsor, N.S.

Counsel:

Michael MacKenzie, counsel for the Applicant/Petitioner

David Greener, counsel for the Respondent

By the Court:

Background

[1] The petitioner applied for interim exclusive possession of the matrimonial home, interim custody of the parties three young children, interim child support (including s. 7 expenses) and interim spousal support.

[2] At the end of a full day hearing on December 6, the Court made an interim joint custody order, maintaining the status quo with primary care to the petitioner and frequent specified times to the respondent, granted interim exclusive possession of the matrimonial home to the petitioner, and determined the respondent's and petitioner's incomes for the purposes of child and spousal support.

[3] It was acknowledged by the parties that Mr. McIntyre's basic or table child support obligation is \$1,371.00 per month.

[4] Because of the lateness of the hour, and the absence of any method to properly calculate s. 7 expenses, or spousal support in accordance with the Spousal

Support Advisory Guidelines, I reserved these determinations to this supplementary decision.

Incomes

[5] On December 6th I determined that the Respondent's income for child and spousal support purposes was \$75,500.00, consisting of salary and earned bonuses. The Petitioner is a self-employed chiropractor working out of the matrimonial home. She proposed to cut back on her work hours because of the marriage breakdown and needs of the three young children (ages 5, 3 and 1, the oldest of whom is autistic). The Court imputed to her \$30,000.00 in annual self-employed earned income.

[6] During the hearing no evidence was tendered with respect to the child tax benefits, child care entitlements, "respite" allowance, or tax deductions, credits, and their consequences when received by the Petitioner. A guess was made of some of the inputs and credits. With the benefit of the ChildView and DIVORCEmate computer-based programs available to the Court, into which the data tendered at the hearing and accepted by me has now been entered, I replace the "guesses" made at the end of the hearing with the program results. This results in a more accurate and fairer determination of the net (after-tax) value/costs of the child

benefits and special expenses pursuant to section 7, and assists in completing the spousal support analysis.

[7] For the purposes of allocation of section 7 expenses, the **Childview For Judges - 2006.2.1** program shows the Petitioner to have 29.64% of the household income, and the Respondent to have 70.36%. The Petitioner's income includes \$1,800.00 in non-earned imputed income arising from her status as primary caregiver for the children, and is detailed in the calculations that are being provided to Counsel with this decision.

Special Expenses

[8] In court I accepted, as a s. 7 expense, the sum of \$200.00 per week paid by the Respondent to her mother to provide in-home child care. This totals \$10,400.00 per year. In addition, I accepted, as special health-related expenses, for the autistic child, \$362.00 per month (\$4,344.00 per year), for special foods and other supplements.

[9] The Court has imputed the income and s. 7 expenses into **ChildView For Judges** version 2006.2.1. No amount was entered with respect to the "respite"

allowance, the quantum of which is presently unknown. This calculation appears to have calculated all of the GST credits, child tax benefits, and income tax consequences of child care and medical expenses. It shows the following:

- gross annual section 7 expenses - \$14,744.00
- less tax benefits - \$7,076.00
- or net shared expenses - \$7,668.00
- Respondent's share (70.36%) - \$5,395.00 per year or \$450.00 per month.
- Petitioner's share (29.64%) - \$2,273.00 per year or \$189.00 per month.

[10] The Court therefore orders Mr. McIntyre to pay \$450.00 per month towards the enumerated s. 7 expenses.

Interim Spousal Support

[11] Spousal support is determined in accordance with s. 15.2 of the **Divorce Act**. The compensatory and non-compensatory principles contained in the Supreme Court's decisions in **Moge** and **Bracklow** are primary guides to implementation of s. 15.2. As noted in the Spousal Support Advisory Guidelines, they have three dimensions: entitlement, duration, and amount. Interim support applications are, like interim custody applications, summary in nature. On an interim application, the issue of duration is irrelevant, and the issue of entitlement

most often involves a budgetary, or needs/ability-to-pay, or non-compensatory analysis, rather than a compensatory analysis. The most pressing dimension is amount.

[12] I have often applied the Spousal Support Advisory Guidelines as an analytical tool or “check”, along with the more traditional “Paras” analysis, to determine spousal support since February, 2005 (**Skipton v. Skipton** 2005 NSSC 43), even when certain cases give rise to concerns about the rigidity of the guidelines or whether they balance all four objectives of s. 15.2. The Guidelines are particularly appropriate, however, for interim, that is, summary applications, where a full assessment of the compensatory and non-compensatory grounds is not possible; the existence of the above noted computer-based programs for quick calculation of the net consequence of the tax and child care benefits, which are based on the Guidelines, and of spousal support, are particularly appropriate in interim applications. For that reason I have relied on the latest **ChildView** program to calculate the Guideline scenarios, and crosschecked them with the **DIVORCEmate** program.

[13] The net monthly cash flow projection for the parties’ respective households after the payment of child support and income taxes (actual and/or imputed), and

after GST and other rebates and child tax benefits (Schedule D of the **ChildView** calculations), shows the Petitioner at \$3,959.00 per month (61.56% of total cash flow and 44.2% of INDI) and the Respondent at \$2,472.00 per month (38.44% of the total). Applying the low range for spousal support set out in the Guidelines to the respective financial positions of the Petitioner and Respondent shows that no spousal support would be payable. At the mid-range, \$192.00 per month would be payable, and at the high end, \$ 384.00 would be payable. These calculations do not take into account the “respite” allowance which the Petitioner will receive.

[14] My version of the **DIVORCEmate** program is the 2005 version. As a result, the child support table incorporated in the program shows child support which is lower than the current basic child support table amounts and therefore calculates spousal support scenarios higher than if current child support tables were used. The parties will be provided with the printout of the **DIVORCEmate** (called **Chequemate**) calculations. The results of the calculations are that at the lower limit (40% of total INDI), Ms. McIntyre would receive no spousal support, but have 59.9% of the family NDI (net disposable income). At the mid point (43%), Ms. McIntyre would receive no spousal support and have the same share of the family NDI. At the upper limit (46%), she would receive \$404.00 per month in spousal

support and have 62.1% of the family NDI. This calculation does not consider the “respite” allowance that Ms. McIntyre will receive.

Parties’ Budgets

[15] The Court has reviewed the parties’ budgets, and in particular the petitioner’s budget, to determine what surplus or deficit would result from payment of spousal support.

[16] In assessing Ms. McIntyre’s budgeted expenses, the Court has made the following adjustments, based on the affidavits and cross-examination. Her earned income is increased from \$2347.00 to \$2500.00 per month. Her share of childcare expenses (item 16(a) and health related expenses 16(c)) will be reduced from the stated amount to the calculated amount of \$2,273.00 per year or \$189.00 per month, to credit benefits received, and the Respondent’s share. Life insurance (item 21) and line of credit payments (item 37) are deleted, on the basis that the Respondent actually pays them. These adjustments would result in Ms. McIntyre’s before-tax expenses totalling approximately \$3,600.00 monthly. Her imputed employment income (before income tax) of \$2,500.00 per month, and basic child

support (tax free to her) of \$1,371.00 would produce income of \$3,871.00 per month - approximately \$250.00 per month more than her listed expenses. This does not include the “respite” allowance. The ChildView program calculates her total annual income tax obligation as \$1,689.00 per year or about \$140.00 per month.

[17] I calculate that Ms. McIntyre will not be in a deficit position if she does not receive interim spousal support at this time.

Conclusion

[18] I imputed a lower before-tax earned income by Ms. McIntyre, a self-employed chiropractor who works out of her home, than she earned in the first nine months of 2005. This was based on her decision to cut back on her present part-time work schedule to devote more time to their children during this period of disruption in their lives. This should not be viewed as approval of a longer term cutback in her professional worktime. Despite this intended cutback, her budget shows no deficit. Calculating spousal support in accordance with both the ChildView program and the DIVORCEmate program, and considering that she will

be receive a “respite” allowance, there is no demonstrated present need for spousal support. She receives about 62% of the parties’ net cash flow, and has the interim benefit of exclusive use of the family residence. At the same time, the Respondent’s budget, which appears to be reasonable, shows a deficit without payment of spousal support.

[19] In summary, no interim spousal support is ordered.

J.