

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Rondeau v. Rondeau, 2009 NSSC 298

Date: 20090817

Docket: 1207-001754(016941)

Registry: Amherst

Between:

Ronald Rondeau

Applicant

v.

Judith Rondeau

Respondent

DECISION

Judge: The Honourable Justice J. E. Scanlan

Heard: May 4, 2009 and August 17, 2009, in Amherst, Nova Scotia

Written Decision: October 13, 2009

Counsel:

Mr. David McNairn, Solicitor for the Applicant
Ms. Tanya Nicholson, Solicitor for the Respondent

By the Court:

[1] It is not necessary for me to recite into the record the history of the relationship as between the parties. Clearly it was a long term marriage; what has come to be known as a traditional marriage, a marriage where the wife stays at home and the husband goes to work and earns a fairly substantial income. When I say that, I do not forget about the fact that during the early part of the marriage when Dr. Rondeau was taking his pharmacology degree, his Masters degree, and eventually medical degree, Ms. Rondeau worked for a substantial period of time as a teacher. Clearly she is, or was I should say, qualified as a teacher. It would appear that time has eroded her ability to re-enter the classroom on a full time basis. She says that after a number of days of substitute teaching, it was clear to her she really did not belong in the classroom again. I am not satisfied she has really made any other efforts to get in any classroom other than junior high. In other words, it is not clear what efforts she made to substitute at other school levels where she might find it less stressful and something she might be more equipped to do.

[2] At the time of the separation Ms. Rondeau was only 52 years old. Her skills at that point in time would not have been nearly as outdated as she now feels they

are. She referred to tutoring she had to give her daughter because her daughter has dyslexia. Ms. Rondeau made herself available each evening to tutor her daughter. That is a credit to her in terms of assisting her daughter through high school. It does not fully explain why she did not make a greater effort to get work through that period immediately following the separation. I am also not fully satisfied that she could not have found some other work. She referred to a number of applications she made and places she applied to. She repeatedly found that younger people kept getting the jobs. I am not satisfied that her age, job skills, or health, would have prevented her from re-entering the work force if she were truly motivated. As regards her health, even today she refers to some problems she has, but when I compare the health issues that I understand her to have as compared to that of Dr. Rondeau, there is no comparison. Dr. Rondeau would appear to have more serious health problems, yet he continues to work.

[3] Dr. Rondeau from time to time is sent home by his fellow practitioners because of the way that he is acting at work. He is told to take a couple of days off and he has to. I assume his colleagues understand the responsibility he bears in treating patients on a regular basis. They simply have to observe him and say, look you must go home, you have to go home now. That is confirmed by Dr.

Maguire and his correspondence. Most recently he was told to take four weeks off. Dr. Rondeau took two weeks off. He did not tell Dr. Maguire that he was going to travel to Florida for the two weeks, but he did. When he comes home he has a procedure only described in evidence as electronic procedure. He said Doctors inserted something through his arteries. I am assuming it was to do with a pacemaker or his heart rhythm or something, I am not sure. Dr. Rondeau did not give much detail on it. He said after that procedure, he had to take another week off. He did not plan on taking another week off because he did not want to use his vacation. Dr. Rondeau does not have sick leave or anything like that but he took another week off. He said he could not afford the fourth week off as his treating psychiatrist prescribed. I say psychiatrist because he referred to a psychiatrist in the evidence.

[4] I indicated to Applicant's counsel that he did not have to address the issue of change in circumstances. That is because I am satisfied the threshold test has been met. I suppose in many ways one could say the mere passage of time in some cases can, in and of itself, fulfill the requirements to show there is a change in circumstances sufficient to give the court jurisdiction to vary a Corollary Relief Judgment. It is not just the passage of time in this case. There is something much

bigger which has transpired in this case. Yes circumstances are different and the court has the jurisdiction to review the issue of the Corollary Relief Judgment as it relates to spousal support. In this case, I referred already to Dr. Rondeau's health. It is clear to me that he has very substantial health problems. He as a doctor, recognizes there are times when he was in fact working when he should not have been working.

[5] In addition, I consider Dr. Rondeau's age. When counsel was referring to the **Malone** case, my recollection was, and it was verified by counsel, that the doctor in that case was much younger. He was 55 years old when he applied to vary spousal support. He was asking the court to consider planning for retirement. In this case Dr. Rondeau is now 61 years old and his evidence is that many of his fellow practitioners, at that age, are already retired. No doubt that is reflective of the stress and strains of working as practitioners, especially a practitioner in a small community. Dr. Rondeau says, yes he would like to be retired, but cannot afford it. In this case it is more than just a matter of whether or not he would simply "like" to be retired. It is not clear to the court that he can continue to work indefinitely. The position of Respondent's counsel is well look, let's keep the maintenance where it is and let him work, and if and when he cannot work let's

address the issue of spousal support at that time. Dr. Rondeau is not saying that he cannot work right now. In fact he is still working, but he says, look I have paid maintenance for a very lengthy period of time. I have supported both Ms. Rondeau and my family for many, many years and I want to be able to plan for my retirement.

[6] Counsel for the Respondent has referred, I think three times at least in passing, to what one could describe as the flippant remark of Dr. Rondeau when he said, "I'll do what I want with my money." It was a flippant remark. On the other hand, it is true. He can do what he wants with the money he earns. Having said that, the court will simply not allow him to transpose his use or even abuse of what money he has left over after he pays the spousal support and say, Ms. Rondeau, I am going to impose upon you alone the burden of my mismanagement of the money.

[7] With the exception of perhaps an expensive trip or two which Dr. Rondeau has taken in the past, I do not see him as having mismanaged money to the extent that it now prevents him from retiring. He now finds himself in a very difficult

situation with a possible imminent retirement for health reasons and because of his age.

[8] I note for example that in 1998 when the parties separated he started out with a bankruptcy. That was the result of what the parties had done in terms of income taxes. To a certain extent you have to say the parties both put themselves in that situation. There was no money left over to pay the income taxes at the end of the year and he was in a position where he could not pay it. At the same time his family was breaking down, he had children to put through university, and he had a substantial spousal support obligation. At that time he still had a good income, but he could not pay what they accumulated in debts during the marriage. That was only 11 years ago.

[9] Essentially Dr. Rondeau was starting over at that point in time because his family lost what they had accumulated, in terms of bankruptcy. Since that time he has paid very substantial expenses in relation to his spouse and children. Although he has earned some fairly substantial amounts in terms of income, one can understand how he is still in a difficult position in terms of funding a retirement.

[10] Medicine is not like a government job, where as you work you acquire a pension. In terms of asset position Dr. Rondeau was not fortunate enough in 1998 to have a big RRSP. He talks about trying to accumulate RRSP's now, but it is very late in the game. One can envisage where Dr. Rondeau might have to work for some time yet to enjoy a comfortable retirement. The fact of the matter is that Ms. Rondeau would be in virtually the same position today if she had stayed married to Dr. Rondeau as she finds herself in now. Even if they were together they would not be guaranteed that comfortable retirement where he could have been, and should have been, retiring now or in the foreseeable future because they did not have the money saved. The only difference is they have split up, they have had two households to support since 1998. I should not say "they". Dr. Rondeau had two households to support because Ms. Rondeau really did not contribute financially after the marriage breakdown.

[11] I refer again to the fact that I am satisfied that although Ms. Rondeau may have been required to take some entry level position, it is reasonable to assume she could have obtained some employment to help better prepare for retirement as well. In saying that, I recognize how long she was out of the workforce. I

recognize that she perhaps did not want to go back into the workforce, especially when you consider she started each year with about \$48,000.00 in spousal support. Nevertheless, the fact of the matter is she is now 62 years of age and things are about to change, for both Ms. Rondeau and Dr. Rondeau. That is because as human beings they both cannot work forever. It is even more difficult now, I assume, for her to enter the workforce and support herself. I am not saying that I would expect she would go out and get a year or two training now and try to get into the workforce as a teacher. I note, for example, the fact she is suggesting she is going to look after her grandson for \$500.00 per month. I suppose it is possible she could have made that type of decision three years ago, five years ago, eight years ago, 11 years ago. Had she taken on some child care responsibilities in her home then at \$500.00 per month or whatever the appropriate rate of pay was may have helped. She was clearly qualified for that type of work and she would have an extra \$6,000.00 per year. She did not do it. Am I to punish her now for not having done that? The answer is "no". I simply say that is the circumstance. The fact of the matter is she did not go out and get work. One of the consequences is she has less now than she could have.

[12] The question to be asked is whether I should allow Dr. Rondeau a reduction in spousal support so he can plan a more imminent retirement. In other words, he says he wants to pay down some of the bills he has even faster than what he is now doing. He talked when he was here in court the last time about having an amortization schedule for his mortgage. I am not even sure it was an amortization schedule, I think he was just making the payments in such a way that he could be mortgage free in three years. That assumes he will be able to keep working for another three years. He would then be in position where he would be mortgage free and possibly retire. I do not know how he can live on the RRSP's he has because he does not have much in terms of RRSP's now. It would certainly be a drastic lifestyle change for him if he was to stop work at the end of that three year period. Nevertheless he is saying please reduce the spousal support so that I can retire.

[13] The Court is in a very difficult position. Dr. Rondeau is asking Ms. Rondeau, through a reduction in spousal support, to finance Dr. Rondeau's earlier retirement so then he can say, I have no income and I cannot pay anything.

[14] I am convinced the parties are at a stage in their lives where Dr. Rondeau is entitled to a reduction in spousal maintenance obligations so that he can reasonably plan for his retirement and have reasonable assets available to him so as to allow him to enjoy a reasonable retirement. In saying that, I take into account the fact that Ms. Rondeau is clearly not able to completely support herself at this time. Some of it, as I said, is a result of her own actions or inactions. Clearly she has an ongoing need. She has an ability to support herself more than she has in the past by doing things like looking after her grandson or other children.

[15] As I look at her budget and listen to her evidence, I am not sure how, when you look at her budget, she can on the one hand say she is going behind \$1100.00, but at the same time be ahead in terms of her RRSP contributions and savings etcetera. I am only assuming it was a budgeted statement only and that some of the discretionary things she was referring to, for example the Christmas gifts, the birthdays, and the vacations, etcetera, were perhaps not there. I am assuming she was making it work outside of the budget statement itself. She was being responsible and she was continuing to maximize her RRSP contributions. For example, she would do that by getting a loan from the bank and then repaying the loan. At the end of day whether you borrow the money or you put it in advance

from what you have in savings it still ends up being the same thing. She still had money to contribute to RRSP's.

[16] I look as well at Dr. Rondeau's budget. With the income he had there was still substantial room to manoeuver. I again refer to the starting point where he found himself in 1998 with the bankruptcy. I consider the family obligations he has had since then and conclude it is not unreasonable that he finds himself in the position that he is in now. There was no more money. A few trips that were more expensive than he should have taken, but not excessive.

[17] I refer again to the flippant remark that he made by saying, "I'll do what I want with my money". When I say flippant remark to Dr. Rondeau, I am not being overly critical. I am simply saying that is the way it came out and that is the way it sounded. Part of what he is doing with the money he has is he is supporting a new partner. She is paying her own debts but he is not requiring her to pay for her food. He is paying the house expenses etcetera and she is basically paying down her lines of credit. If he chooses to do that, that is fine; that is his problem. He simply has less money when he retires. I want to make it clear to Ms. Rondeau I am not transposing the burden of Dr. Rondeau's new partner on

her. In other words, I am not saying, he cannot pay Ms. Rondeau spousal support because he is paying for his new partner. I am simply looking at this from both of their perspectives and asking what is reasonable on a go forward basis in terms of spousal support. I assess that issue by looking not just at his ability to pay but also his ability to continue to work. In other words, I cannot help but look at his health situation and say the court should take into account the fact that he may not be able to continue to work at the level that he is working now. He has an employment contract and I assume if he cannot meet the contract obligations, then something happens. I ask what if he finds himself in a situation where he cannot work as of tomorrow because of heart problems or because of nerves. If he is still alive, what does he do in terms of supporting himself? He is entitled to prepare for that.

[18] I am satisfied there should be a reduction in spousal support. It will be immediate. This application was made in 2008 and Ms. Bourgeois' brief suggested a reduction starting in January of 2009. She asked for much more of a reduction than what I am about to allow. She suggested a reduction of \$2,000.00 in 2009. There has been a fairly substantial period of time elapse even since that

date. It would not be reasonable to suggest that Ms. Rondeau absorb a change retroactively. The change I make will be from this date forward.

[19] I am prepared to order that effective September 1, 2009 the spousal support will be reduced by \$750.00 per month. September 1, 2010, spousal support will be reduced by an additional \$750.00 per month. September 1, 2011, it will be reduced by an additional \$500.00 per month. So that as of September 1, 2011 it is then \$2,000.00 per month. I am not going to reduce it below that at this time because I am not sure what Dr. Rondeau will decide to do or what his health will permit him to do in terms of continuing to work. One would hope that if Dr. Rondeau decides to continue to work and earn a substantial income, he would be able to continue to afford the \$2,000.00 per month. The Court will then continue to balance his desire and need to prepare for retirement as against what Ms. Rondeau's needs are. Clearly Ms. Rondeau needs more money to retire as well.

[20] If Dr. Rondeau finds himself in a situation where he cannot continue to work even beyond today, I am not saying that would not amount to a change in circumstances. I would not want counsel to think that I am ruling on that in

advance. If that type of situation was to occur then this case could clearly be opened up earlier than the dates I have set.

[21] The maintenance amounts I have ordered, however, will allow Ms. Rondeau to continue to live a reasonable life. There will be some old age pension kicking in within that time frame. She will be supporting herself to a greater degree than she has been in the past. Dr. Rondeau will be able to prepare earlier. In saying that I did not discount, in other words I did not fail to take into account the tax consequences of the change as well. I do note that it does not save Dr. Rondeau an awful lot of money out of his pocket. The reduction has an even more substantial impact on Ms. Rondeau in terms of her out of pocket loss.

[22] I would move on to a number of other issues that are before the court. I do not want to go on to another issue without saying to both parties, I would expect that these children are old enough to know they should not in any way try to interfere with this case. They should not be saying they are not talking to dad because of the changes he made and because dad took mom to court. I hope that does not happen. It will not help these children. It will not help Dr. Rondeau and it will not help Ms. Rondeau. This case stands and falls on its own merits.

[23] On the issue of life insurance, I am not going to require Dr. Rondeau to designate any portion of his life insurance for the children. If he decides to do that it is his decision. If he decides not to, that is his decision as well.

[24] As suggested by counsel for Ms. Rondeau, I am prepared to allow the face amount to reduce to \$200,000.00 effective immediately. Ms. Rondeau will be the named beneficiary for six-ninths of that face amount. In other words \$133,333.00. In fact, I will not actually require Dr. Rondeau to carry \$200,000.00 in life insurance. Simply the six-ninths \$133,333.00. It will reduce on the anniversary date each year by 20%. In other words, the whole idea of the life insurance is to give Ms. Rondeau some protection should something happen. Should Dr. Rondeau have an early death, she is not going to find herself totally without money. It is not intended to be a windfall or a lottery either where she is guaranteed to get some money when he dies no matter what. It is going to reduce by 20% each year and that is not 20% of the reducing balance. It is 20% of the starting face amount each year. After five years there will be no life insurance in place.

[25] If Dr. Rondeau finds himself without income prior to the expiry of the five year period and if there is no spousal maintenance paid, I am not anticipating that he would be required to continue with the life insurance either. In other words, it will be in every way tied to his obligation to pay spousal support. If that ends, then so does the life insurance. That is especially important because as he gets older the premiums go up. That is something the court has to keep in mind.

[26] In terms of the medical insurance, it is unfortunate that Dr. Rondeau terminated the medical insurance in the way he did. Ms. Rondeau was at the dentist and thought she was covered and found out she was not. Having said that, however, it has been of no financial consequences to Ms. Rondeau because, as I understand it, Dr. Rondeau has paid the bills as they were submitted to him. This was a payment out of his pocket over and above the spousal support. The amounts, as I understand it, were not all that significant but he did pay. The question then for me is whether I am going to require him to either provide medical insurance or payment in lieu of the medical insurance on a go forward basis. I am satisfied it is not unreasonable that he put his current spouse on his medical insurance plan. He referred in his evidence, and even Ms. Rondeau referred in her evidence, to the fact that Dr. Rondeau's new partner was seriously injured. She

has some fairly major medical expenses that are fortunately covered in all or in part through Dr. Rondeau's medical insurance plan.

[27] I ask, did the court intend back in 2003 at the time of Corollary Relief Judgment, that Ms. Rondeau get medical insurance coverage indefinitely. I cannot tell from looking at the Corollary Relief Judgment. If I was doing it today I ask, would I require Dr. Rondeau to undertake to provide medical coverage indefinitely, in terms of medical and dental insurance? No I would not. In the vast majority of cases, if there is a medical insurance plan in place where the ex-spouse can continue to be covered without any additional cost to somebody like Dr. Rondeau, I would have no hesitation in saying continue the coverage. In the vast majority of cases those plans also recognize that if there is either a new wife or common-law partner who qualifies for the insurance plan, you cannot have two spouses on the same plan. The fact of the matter is it is reasonable for Dr. Rondeau to move on in terms of a new partner. From this point forward I would not require Dr. Rondeau to pay additional amounts to Ms. Rondeau to compensate her for the lost medical coverage. In saying that, I take into account that I am satisfied the amounts I have ordered in terms of spousal support properly balance as between the parties, their respective needs and obligations on a go forward

basis. They are both going to find themselves at retirement with really not enough money. In setting the spousal support amounts that I have set, I have determined there is no additional money payable to Ms. Rondeau for the medical insurance plan.

[28] As I have said, this is a difficult case because it is a matter of sharing the pain. For Dr. Rondeau he is in the twilight years of his career. Both parties are going to suffer. Ms. Rondeau is going to suffer even more when Dr. Rondeau finally retires for good because I do not know how he could ever expect to pay even \$2,000.00 per month then. I do not know how Ms. Rondeau is going to survive. Dr. Rondeau cannot give her anymore right now and reasonably plan for his own retirement.

[29] On the issue of costs, both parties met with a certain degree of success. It was not one side's fault or the other that this went to trial. There was no agreement on this in terms of resolving it short of the courtroom. The most regretful part of it is that, as I said, it probably costs these parties more to have this determined in court than what they are going to gain or lose in terms of the spousal support. That

is unfortunate. I do not think one side or the other should necessarily bear the expense of having to come to court. Each party will pay their own costs.

J.