SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: McInnis v. McInnis, 2009 NSSC 396

Date: 20091231
Docket: 1201-56408
Registry: Antigonish

Between:

Wendy Marilyn McInnis

Applicant

v.

Michael Gerard McInnis

Respondent

Judge:	The Honourable Justice Arthur J. LeBlanc.
Heard:	November 10, 2009, in Antigonish, Nova Scotia
Counsel:	Applicant, Wendy M. McInnis, Self-Represented Respondent, Michael G. McInnis, Self-Represented

By the Court:

[1] This is an application to terminate the payment of child support to the Respondent.

[2] The applicant and respondent were divorced on January 24, 2007. Two children were born to the parties, Chad Harley McInnis December 13, 1991 and Michael Scott McInnis August 27, 1989.

[3] At the date of the divorce, Michael Scott McInnis was no longer a child of the marriage.

[4] Pursuant to the terms of the Corollary Relief Judgment, the respondent had primary-care of Chad Harley McInnis until June 2009 and the applicant was required to pay monthly child support of $541, based on her annual income of $62,722 from the Canadian Armed Forces.

[5] Since June 2009, Chad Harley McInnis has not lived with the respondent. During that period he first lived with the applicant, but now is living with his brother, Michael.

[6] On December 13, 2009, Chad became 18 years of age. He is attending high school in Oromocto, New Brunswick. Once he completes high school, he intends to attend a community college to obtain a refrigeration trade. Depending on whether he is registered as an apprentice, there may be a cost associated with his attendance and participation in such a program.

[7] The applicant has applied to terminate the child support order, claiming that Chad, the subject of the Order is no longer living with the respondent.

[8] Both the applicant and the respondent testified at the hearing. The respondent agrees that the Child is no longer in his primary-care. The Respondent stated that the child is now living with his brother Michael and both parties testified that this living arrangement is completely acceptable.

[9] Both the Applicant and the Respondent claimed that they wish to share in the expenses associated with the costs incurred by Chad, either while he is living with his brother Michael or while he is attending the Community College, including costs associated with his education, such as tuition, materials,

transportation, lodging and meals. The cost to attend this program will increase should he fail to become an apprentice in his chosen field.

[10] The Applicant testified that Chad will be graduating with his high school degree in January 2010.

[11] Both the Applicant and the Respondent have impressed me with their commitment to their son Chad and their support for his efforts to succeed in obtaining a trade. They both have agreed to share in the costs, depending on their incomes. Since the date that Chad moved out of his father's residence, the Applicant has paid for all of his expenses, such as clothing, school fees, etc.

[12] Chad plans to continue living with his brother Michael.

[13] Mrs. McInnis is not seeking primary-care of Chad, as he will be 18 years of age on December 13, 2009.

[14] Mr. McInnis receives $120 per month in his disability payment, which is earmarked for his son Chad. He indicated that he previously sent Chad $200 in the month previous to the hearing.

[15] Mr. McInnis receives a pension from the Canadian Armed Forces and the Applicant receives a salary from the Canadian Armed Forces. Her salary has increased marginally from the amount reflected in the earlier Corollary Relief Judgment.

[16] I am satisfied that it is appropriate to terminate the monthly child support being paid by Mrs. McInnis, effective June 30, 2009. In doing so, I rely on s. 15.1(5) of the *Divorce Act* which provides as follows:

> 15.1(5) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied
>
> > (*a*) that special provisions in an order, judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and

> (*b*) that the application of the applicable government would result in an an amount of child support that is inequitable given those special provisions.

[17] Both parties are mature, responsible and have the best interests of the child, Chad McInnis. I accept their commitment and that both of them have agreed to share in any costs associated with the maintenance of the child or any costs associated with his education or training. They have agreed to meet together the costs outlined above.

[18] Obviously, if either party believes the other party has failed to live by their commitment, the other party may seek the assistance of the Court in establishing a child support amount pursuant to the provisions of the *Divorce Act* and the *Federal Child Support Guidelines*.