

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nauffts v. Forsey, 2010 NSSC 103

Date: 20100413

Docket: 1201-061544

Registry: Halifax

Between:

James Gerald Nauffts

Applicant

v.

Tonia Paula Forsey

Respondent

Judge:

The Honourable Justice Moira C. Legere Sers

Heard:

March 10, 2010

Counsel:

James Nauffts, self-represented
Tonia Forsey, self-represented

By the Court:

[1] This variation application dated August 5, 2009 is pursuant to Section 17 of the *Divorce Act*. The applicant seeks to address the arrears and to reduce the monthly child support given the change in his financial circumstances. The respondent contests the application.

[2] The applicant is being garnished at a rate according to him that puts him without adequate income to support himself or to address the needs of his child when his child is with him. He testified he has to travel three times per day to present himself at the Union Hall. This increases his gas costs. There is no guarantee when he appears at the Union Hall that he will have the seniority to make a successful bid for work.

[3] The parties were married at Dartmouth, Nova Scotia, November 3, 2001 and were divorced on April 3, 2009. There was one child of this union, born October 1, 2002 who primarily lives with the mother but has significant access with the father.

[4] Mr. Nauffts sought emergency access to the courts and was unsuccessful in effecting service. I was ultimately satisfied after hearing the applicant that the respondent was evading service. She had actual notice of the proceedings. Ultimately, after an order of substituted service, the hearing was set down for March 10, 2010. Arrears as of March 8, 2010 were \$5,093.00.

[5] The history of Mr. Nauffts' income is as follows:

2006	\$46,240.17
2007	\$55,158.25
2008	\$62,538.75
2009	\$35,818.29 (receipts for EI total \$8,438.00)

[6] Mr. Naufft's 2009 T4 slip does not include his Employment Insurance ("EI") income at \$8,438.00. His union dues for 2009 are \$1,200.00 per year, yielding an income for the purposes of child support of \$43,056.29 resulting in a monthly payment of \$374.00 for one child.

[7] Given the documentation, it is difficult to project what Mr. Nauffts' 2010 income will be based on his week ending earnings in December 2009 through to February 27, 2010.

[8] Mr. Johnston, his Paymaster at Maritime Data Centre Inc., advises that as of February 27, 2010 Mr. Nauffts gross earnings for the calendar year 2010 was \$6,608.82, which roughly equals an annual income of \$39,622.92. However, this all rests on whether Mr. Nauffts is successful in his bids. That is not something that can be determined at this time.

[9] Mr. Nauffts will have to report in writing on a regular basis (quarterly) to the respondent and to Maintenance Enforcement while there are arrears in order to get a better sense of his actual earnings and to determine whether an application to vary should be made to adjust his child support payment.

[10] In the original Divorce Order dated April 3, 2009 the court anticipated a gross annual income of \$62,600.00 for the 2009 year. This was apparently based on Mr. Nauffts 2008 income.

[11] Mr. Nauffts provided a letter from Mr. Cranston, President/Business Agent for the Halifax Longshoremen's Association, Local 269 I.L.A., in which it is said:

The Port of Halifax experienced a serious decline of the amount of cargo handled over the last two years which resulted in substantially less work for members of ILA Local 269 . . . In both cases Mr. Nauffts seniority puts him in a position where many other union members are ahead of him. Although we hire three times a day, there is no guarantee that he will obtain work for these periods.

[12] I have been unable to determine how the Logistec Stevedoring (Atlantic) Inc. income relates to his total income, other than possibly that it is his T4 income which is topped up by EI earnings for the years 2006 to 2009. Mr. Nauffts did not fully explain this in his in-court testimony. I presume the Logistec income is topped up by EI. The total income from Logistec in 2008 was \$33,160.62, whereas his total employment income was \$62,538.75. I presume there were a number of income slips, not all of which have been not included in his income tax return filed with the court.

[13] Again from Logistec, Mr. Nauffts shows earnings in 2007 of \$24,291.15 and a T4 for Maritime Data Centre which shows total income of \$55,158.25.

[14] The documentation is difficult to assimilate because in the year 2009 Mr. Nauffts' T4 from Maritime Data Centre shows \$35,818.29, his EI shows earnings of

\$8,438.00 and his 2009 Statement from Logistec is \$23,434.66 for a total of \$32,872.66. Therefore, his T4 shows that he is receiving income from another source other than Logistec and EI.

[15] As can be seen, there may be a difference between the total of these two slips and what he files by way of income tax return to account for all income. This may be adjusted once he files his income tax return.

[16] Currently, he should have paid \$374.00 retroactively from April 1, 2009 forward.

[17] It appears that under the "Regular Due Amount" in the Maintenance Enforcement Program Statement dated March 8, 2010 he should have paid \$6,055.00. They show him owing \$1,567.00 more that he should have paid in accordance with his current income. During that period of time he actually paid \$6,681.53. **The Maintenance Enforcement Program shall recalculate the arrears, based on what would be an overpayment from April 1, 2009 to the current date.**

[18] From April forward based on \$374.00 per month, Mr. Nauffts ought to have paid \$4,488.00 under the adjusted child support of \$374.00 per month. That which he paid in excess of \$374.00 from April 1, 2009 forward would be considered an overpayment and ought to go against reducing his arrears.

[19] There were two other issues raised.

[20] Firstly, Mr. Nauffts wished the court to review retroactively beyond the last order the decision made respecting the arrears that accumulated out of the final order dated September 30, 2005. This order addressed his arrears of base payment and daycare commencing in March 2005 to September. The retroactive child support and child care expenses are dealt with in the Corollary Relief Judgment issued April 3, 2009 incorporated by Lynch, J. in the Divorce Judgment and Corollary Relief Judgement.

[21] I have reviewed the file materials and the numerous pre-trial memorandums predating the divorce proceedings and the previous appearances before the court. There were ample opportunities for Mr. Nauffts to provide accurate information. He had the opportunity to consult with counsel. He was given sufficient directions from

a number of different Justices requiring him to file his financial information in order to give the court an opportunity to properly assess his income. These decisions have not been appealed.

[22] Mr. Nauffts has consistently failed to put his full financial picture, as difficult as that is, before the court. I have informed the applicant I will not consider anything previous to the divorce petition date.

[23] Secondly, there was a request by Mr. Nauffts for the court to review the payments made to determine whether he has in fact overpaid Maintenance Enforcement.

[24] As a result of my decision, Maintenance Enforcement shall recalculate to ensure that there have been no overpayments. I direct Maintenance Enforcement Officer for Mr. Nauffts to review their documentation to ensure Mr. Nauffts is given credit as is his due for any payments made to them.

[25] That is a matter that should be reviewed by Maintenance Enforcement as they are in possession of the knowledge as to which payments went toward arrears and

which payments went to ongoing support. I have heard no evidence from Maintenance Enforcement. I refer the matter back to them.

[26] I note that there has been an overpayment in the 2006 year and it appears that the applicant was, by order of the court, given credit for that in the calculation of the arrears.

[27] Finally, Mr. Nauffts is reminded that this process will proceed more accurately and smoothly if his documentation is up to date and if he provides to Ms. Forsey, as he is required to do, his full Income Tax Return, together with Notices of Assessment and Re-Assessment as required by the order.

[28] Should Ms. Forsey decide to pursue a contribution toward any section 7 child care expenses, she shall also file in the same manner on or before May 1st of each year full particulars of her Income Tax Return together with all attachments, Notices of Assessment and Re-Assessment if any, with Mr. Nauffts.

[29] I have declined to review a contribution toward child care expenses because there is a long history between the parties regarding this subject. Mr. Nauffts has

offered himself as a guardian to reduce child care. It is clearly a historical argument and the pursuit of child care costs at this time was not argued.

[30] Finally, it is unclear to me whether it is this current financial stress that is impairing Mr. Nauffts' ability to thoroughly present his evidence to the court or whether the emotional undertones and stress of the relationship continue to cause distress to the parties. I cannot determine if his stress is situational or historic.

[31] Mr. Nauffts did advise he had not gone to Orderly Payment of Debts given the vast list of indebtedness about which he gave oral evidence (not included in any written statement to the court). He did indicate that he was not under medical care or on medication. He did express his concern about entering into bankruptcy. He advised that he has grade nine education and is not able to find employment other than his current employment. He advised orally without proof of verification that he has significant balances on his credit cards and lines of credit.

[32] Ms. Forsey was unable to challenge the evidence with respect to his income. She did recognize his difficult financial circumstances although indicated that he ought to be seeking employment from another source.

[33] Once again, Mr. Nauffts should read his order. He should carefully set out his total income picture, ensuring that if there is a reduction in his income caused by something outside of his control and that he is making every effort to find employment to supplement his income. This will place the court in a far better position to properly analyse his information.

[34] That information must be filed in accordance with the order on a timely basis or in accordance with notice and any notices or orders to produce.

Arrears

[35] There shall be a suspension on enforcement of the remaining arrears as recalculated by the Maintenance Enforcement Program for a six-month period up to October 1, 2010.

[36] At that time the applicant should present himself to Maintenance Enforcement to make arrangements that are reasonable in accordance with his income to repay the arrears.

[37] The applicant and respondent shall attempt to come to some suitable arrangements for repayment. Failing agreement, the matter may have to come before the court for resolution. In that case, the applicant shall serve notice on the respondent in accordance with the Rules.

[38] That will give the parties one last opportunity to take advantage of the conciliation services through the Supreme Court of Nova Scotia Family Division.

Legere Sers, J.

April 13, 2010
Halifax, Nova Scotia