

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: MacDonald v. Lavandier, 2010 NSSC 272

Date: 20100409

Docket: 1202-000900

Registry: Amherst

Between:

John MacDonald

v.

Suzette Lavandier

Judge: The Honourable Justice Gerald Moir

Heard: 9 April 2010, in Amherst, Nova Scotia

Written Decision: 6 July 2010

Counsel: Mr. John MacDonald, self represented
Mr. Jerome Langille, on behalf of Ms. Lavandier

By the Court:

[1] Mr. MacDonald and Ms. Lavandier were divorced in 2000. They had two children; Sonya, who was then turning ten, and Nicholas, who was seven. The parents obtained joint custody with equal time.

[2] Mr. MacDonald made substantially less than Ms. Lavandier. Child support was set at \$500 a month, payable to Mr. MacDonald.

[3] In 2006, Mr. MacDonald took primary care of Nicholas, and Ms. Lavandier took primary care of Sonya. The court ordered the guideline amounts, netting at \$249 to Mr. MacDonald.

[4] Last fall, Sonya registered at Mount Allison University. Ms. Lavandier applies for new levels of child support, based on the special expenses of university. Mr. MacDonald applies for a reduction in support payable by him, on the basis of hardship. Mr. MacDonald bases his claim, in part, on provincial legislation. However, it is inapplicable. The governing law is the *Divorce Act* and the child support guidelines made under the *Divorce Act*.

[5] Mr. MacDonald made \$39,396 in 2009. This was a good year, and he expects to make less this year. Nevertheless, the guidelines require that I set income based on the most recent figures, and in this case 2009 reported income is the appropriate figure. Subject to section 3(2) and section 10 of the guidelines, his obligation would be \$343 plus a proportionate share of Sonya's university expenses, net of funding that is in place. That net figure is \$5711.35. Mr. MacDonald's share is 36 percent, or \$2081. That will be \$173 a month.

[6] Ms. Lavandier made \$68,716 in 2009. Her obligation for Nicholas is \$597. The net amount would be \$81, with the university expenses subsidized by Mr. MacDonald, \$254 without the subsidization, and \$597 if all support obligations of Mr. MacDonald were hardship.

[7] In my assessment, Mr. MacDonald has not established hardship under section 10 of the guidelines. The household budget for him and Nicholas is very tight, even if one ignores his commute expenses for work in Debert, which are alarmingly high. However, he is not experiencing escalating debt, and he and his son are living in the home they have had for years. There is no sign of any of the kinds of hardship described in subsection 10(2) of the guidelines.

[8] However, Sonya is a young adult, and Nicholas remains a 17 year old child. This brings subsection 3(2)(a) of the guidelines into play. To require Mr. MacDonald to contribute to Sonya's college expenses is to reduce support paid for Nicholas. In the circumstances of this case, that is wholly inappropriate. I say that for two reasons. Firstly, the budget in the MacDonald household is such that a reduction in support for Nicholas means reducing the amount available for necessities required by a minor. The converse is not true for the household in which Sonya lives. Secondly, Sonya's contribution to her university expenses, above her scholarships and bursaries, is described by her mother as follows: Sonya has paid some of her personal and recreational expenses. That may be a sufficient contribution for a young person who comes from a household, as Sonya does, where the combined income is over \$150,000. It would not work for a young adult coming from a household with \$40,000 in income. I think it unjust to Nicholas to reduce his support, as though his adult sister would not have to do as he would have to do to go to university, or as planned, community college. That is, get a loan, work for a year, work and save on weekends and vacations, or some other means common among young people today.

[9] In the circumstances of this case, I would exclude college expenses from Mr. MacDonald's obligations, at least until Nicholas turns 19. I would not, however, vary the guideline amount for Sonya's basic needs. This would result in some minor changes in the amounts payable for child support. Mr. Langille, could I impose on you to prepare an order for me?

MR. LANGILLE: Sure.

[10] All right. And my determination is that there will be no costs payable by either side.

J.