

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Goyette v. Metzler, 2010 NSSC 344

Date: 20100909

Docket: SFHMCA 022009

Registry: Halifax

Between:

Roger Goyette

Applicant

and

Charlene Metzler

Respondent

Judge: Justice Lawrence I. O’Neil

Heard: June 2, 2010, in Halifax, Nova Scotia

Oral Decision: June 15, 2010

Counsel: Alex Embree , counsel for the Applicant
Timothy Gabriel, Q.C., counsel for the Respondent

By the Court:

Introduction/Issues

[1] The parties have one child, D.O.B. December 7, 2001. She resides with her mother.

[2] Mr. Goyette filed a variation application on March 31, 2010, as permitted by s.37 of the *Maintenance and Custody Act*. He seeks to vary the terms of the order of Justice Williams, dated March 19, 2009. In particular, he seeks (1) a determination of his prospective child support, including his contribution to s.7 expenses; (2) a recalculation of his assessed child support, shown as arrears and he

seeks a ruling on a related issue, i.e. (3) whether income should be imputed to him as provided by s.16 of the Provincial Child Support Guidelines. The Respondent, Ms. Metzler, argues that income should continue to be imputed to Mr. Goyette and the current order should be continued.

Evidence of Mr. Goyette

[3] Mr. Goyette filed affidavits on March 31, 2010 and May 31, 2010. He testified on June 2, 2010. He explained that the current child support order flowed from a settlement conference in December 2008 (the order issued March 19, 2009). He is required to pay \$531/month as child support and \$200/month for special expenses. These amounts reflect line 150 income of \$61,000 in 2007.

[4] Mr. Goyette qualified as a geologist in 1999 and established a consulting company "ROJA" in the mid-2000s. This company is solely owned by him and had been his only source of income until early 2009. For more than a year, the company has been unable to secure new contracts and Mr. Goyette has worked on an intermittent basis as a program assistant at the Nova Scotia Community College. He is currently in receipt of Employment Insurance benefits, grossing \$497/week, which equals \$23,764/year.

[5] By way of an additional comment, the court was provided today with Mr. Goyette's notice of assessment for 2009, which shows a line 150 income of \$31,937. In addition, the court was informed this morning by Mr. Embree that ROJA obtained a three (3) week contract in Alberta.

[6] Mr. Goyette had testified that he was hopeful that he would get some additional work.

[7] Mr. Goyette lives in a basement apartment in a home owned by his consulting company. He is under an obligation to pay rent of \$750/month, or approximately that amount. The upstairs portion of the house is rented by ROJA to another tenant for approximately \$1,100/month.

Evidence of Ms. Metzler

[8] Ms. Metzler filed an affidavit on May 21, 2010 and gave oral evidence on June 2, 2010.

[9] She argues that (1) Mr. Goyette knew of his income decreases when he agreed to the terms of the current order; (2) that the order provides for the child support/s.7 obligations to April 1, 2010 to be based on line 150 of his 2008 income. Thereafter, the obligation is to be based upon line 150 income for the previous year and to be effective June 1st, 2010 for twelve (12) months. I believe that June 1st, 2010 should either say April or May 1st, 2010, whatever the established pattern is. His 2009 line 150 income was \$31,937.18. So that is in fact what is confirmed by the notice of assessment today.

[10] Ms. Metzler points out that Mr. Goyette's 2008 line 150 income was \$48,000 and argues that an additional \$12,289.85 should be added to this because ROJA funds were used to purchase a home in which Mr. Goyette resides.

[11] In addition, she argues in her affidavit that income should be imputed to Mr. Goyette, to reflect his living in a home owned by his consulting company.

[12] Ms. Metzler is a hairdresser and reports income from this endeavour of approximately \$24,000. She has losses from a start up direct sale business. I don't believe it is strictly speaking, a direct sale business, but a home based business, that significantly reduces her income below that level. Her lawyer agrees that for purposes of this application, her income should be set at \$24,000.

Decision

[13] Paragraphs 10, 11 and 14 of the current order provides:

10. Based on the Respondent's 2007 Income (line 150) the Respondent shall pay (pursuant to the Child Support Guidelines) the table amount of \$531.00 per month commencing on the 1st day of January, 2009, and thereafter on or by the first day of each succeeding month, subject to paragraph 3 thereof.

11. The Respondent shall also pay, pursuant to Section 7 of the Child Support Guidelines, the sum of \$200.00 per month, commencing January 1st, 2009, and thereafter on or by the 1st day of each succeeding month. This shall be deemed to be his contribution to all such expenses incurred on behalf of the child by the Applicant, including, but not limited to, childcare expense, health related expense, and the like.

.....

14. The Respondent shall continue to pay table child support as specified in paragraph [10], on the basis of his 2007 income until April 30th, 2009. He is to provide to the Applicant, or by April 30th, 2009, his 2008 return together with all attachments. The table amount of child support to be paid by the Respondent for the period from May 1st, 2009 up to and inclusive of April 1, 2010, shall be adjusted automatically and paid by the Respondent based on either line [1000] 150 of his income tax return, or, upon application to Court by either party in the event of a disagreement with respect to same. Each subsequent year shall be automatically adjusted on May 1st, in this fashion, with respect to the table amount of maintenance to be paid by the Respondent.

[14] I will observe that paragraph 14 references, in the second line, paragraph 9. I believe that should be paragraph 10. In addition, line 7 has a typo and 1008 is in the text and should probably be deleted. Essentially paragraph 14 outlines how payments in a particular time period should be calculated, to date and on a go forward basis. In fact it does say inclusive of April 1, 2010, so perhaps the adjustment date would be May 1, 2010.

[15] I am satisfied that the Respondent's child support obligation until April 30, 2009 was \$531/month and his s.7 expense contribution was \$200/month. I see no reason to change these amounts. They were agreed upon in December 2008.

[16] For the period May 1, 2009 to April 1, 2010, it was agreed that the child support obligation would be based on Mr. Goyette's 2008 line 150 income. Again, I see no reason to change this amount, nor am I persuaded that the s.7 contribution should be changed. Given the clear meaning of the order that the parties agreed to.

Arrears

[17] On the issue of arrears that have accumulated to date, I rule that given the financial pressures Mr. Goyette currently faces arrears now assessed, will be collected at a rate of \$200 each month until satisfied.

[18] There was evidence that Mr. Goyette is currently subject to substantial garnishment of his income, which leaves small sums of money for him to live on.

[19] The Respondent agrees that effective April 1, 2010, Mr. Goyette's 2009 income should be used. This is the presumed method of determining income for purposes of calculating the table amount of child support as provided by s.16 of the Child Support Guidelines. The parties disagree, however, on whether additional income should be imputed to Mr. Goyette, as provided for by s.19 of the Child Support Guidelines.

- Imputing Income

[20] On the issue of imputing income to Mr. Goyette, I am not prepared to impute income to Mr. Goyette. The property was purchased by ROJA Geological Services Ltd. in June 2008; more than six (6) months before the settlement conference that gave rise to the current order. I am not prepared to revisit whether that purchase was an appropriate corporate decision.

[21] At first blush, I don't take great issue on the face of it, with this company acquiring real estate.

[22] In addition, Mr. Goyette pays rent. I acknowledge that there is evidence that on occasion he misses monthly payments. However, there is no evidence that the rent he pays is below market value. He is in a basement apartment.

[23] He is clearly under significant financial pressure. ROJA has been unable to conclude consulting contracts in Western Canada, subject to what I have heard today. I am satisfied that Mr. Goyette is pursuing higher paying employment opportunities. He is ROJA's main asset and is living modestly in a basement apartment owned by ROJA and he is under an obligation to pay rent.

Conclusion

[24] In conclusion, effective May 1, 2010, Mr. Goyette's child support obligation and s.7 expense contribution will be based on his 2009 line 150 income of \$31,937.18. Ms. Metzler's contribution to s.7 expenses will be based on an income of \$24,000, effective May 1, 2010.

[25] Given that Mr. Goyette's income is approximately one half of that which he enjoyed when the parties concluded the existing order, I place his proportionate monthly contribution to s.7 expenses at a maximum \$100/month, also effective May 1, 2010. A claim for the s.7 contribution from Mr. Goyette shall be supported by a detailed explanation of the expense he is cost sharing and how his share of that expense was arrived at.

[26] I add that the current order does not identify the expense. As counsel are aware, it is a global contribution and essentially, the purpose of this direction is to more clearly formalize the contribution to s.7 expenses.

[27] In the event that Ms. Metzler feels that the ceiling on the s.7 contribution is too modest, I rule that she shall be entitled to bring forward evidence without the need to show a change of circumstances, wherein she can establish a more formalized claim to a contribution to s.7 expenses. It is without prejudice, as counsel are aware, the parties had agreed to ball park it. That is the s.7 expenses.

[28] Finally, as a result of discussions with the parties, the court expressed concern with the limited parenting time Mr. Goyette is having with his daughter, given his availability to care for her, apparently until recently. The court is hopeful that the parties will be able to achieve a parenting arrangement that maximizes time their child will have with both parents.

J.