

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: **Turple v. Turple, 2011 NSSC 150**

Date: 20110418
Docket: 1201-059200
Registry: Halifax

Between:

Michael Austen Turple

Petitioner

v.

Tina Louise Turple

Respondent

Judge:

The Honourable Justice Elizabeth Jollimore

Heard:

April 8, 2011

Counsel:

Tina Turple on her own behalf
Michael Turple on his own behalf

By the Court:

Introduction

[1] Tina Turple and Michael Turple divorced in 2006. They are the parents of Jordan and Rylie. The terms of their Corollary Relief Judgment have been varied in the past to reflect changes in their incomes and their children's circumstances. Ms. Turple has applied to vary child support again, seeking to have it varied to reflect the parents' current incomes, the needs of their daughter Rylie, and the independence of their son Jordan. Ms. Turple filed her application in May 2010. She wants variations to the current order to be effective as of July 1, 2010.

Preliminary issue: a change of circumstances

[2] Before I may vary a child support order, I must be satisfied that there is a change of circumstances as provided for in the applicable *Federal Child Support Guidelines*, SOR/97-175, that has occurred since the making of the child support order sought to be varied. This is required by section 17(4) of the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3.

[3] The last variation order was granted by Justice Lynch in November 2009 when Jordan was living with his father and Rylie was living with her mother. Tina Turple's 2009 income was determined to be \$23,764.00 and Michael Turple's 2009 income was determined to be \$46,129.00. Since the order was granted before the end of 2009, these determinations were the best possible estimates of the parents' incomes.

[4] Only when the parents completed their tax returns were their actual 2009 incomes known: Ms. Turple's income was \$27,431.21 and Mr. Turple's income was \$35,151.14.

[5] In 2010, Ms. Turple's annual income was \$28,121.62 and Mr. Turple's income was \$32,480.98. In fixing each parent's annual income, I have adjusted earnings for the payment of union dues as required by section 16 of the *Guidelines* and section 1(g) of Schedule III of the *Guidelines*.

[6] Ms. Turple claims that Jordan ceased to be entitled to child support as of July 2010.

[7] The 2009 order didn't identify any particular special or extraordinary expenses for either of the children, though it did specify the proportions in which such expenses would be shared between the parents.

[8] The changes in the parents' incomes are changes of circumstances provided for in the applicable *Guidelines*. These changes have occurred since the making of the order Ms. Turple seeks to vary. As well, both parents agree that Jordan has become independent since Justice Lynch's order was granted, though they disagree about when this happened. I am satisfied that

changes have occurred since November 2009 which make it appropriate for me to vary the current order.

Jordan

[9] Ms. Turple says that Jordan ceased to be entitled to child support in July 2010. The legal context for her application is section 2(1)(b) of the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3: Ms. Turple says that Jordan ceased to be a child of the marriage by July 2010. By that date Jordan was nineteen years old. He had completed a one year mechanic course at the Nova Scotia Community College in May 2010. While he was a student, Jordan worked at a fish plant. After graduation from the Community College, Jordan increased his hours at the fish plant, working between eight and ten hours each day, an average of four days each week. His typical work week was between 32 and 40 hours long.

[10] After he completed his NSCC program, Jordan travelled to British Columbia. A friend who had earlier moved to British Columbia encouraged Jordan to join him. Jordan found his first job in British Columbia very quickly. He left it equally quickly and moved to another job. Jordan didn't stay in British Columbia and returned to Nova Scotia a few days before Christmas 2010.

[11] Ms. Turple says that Jordan went to British Columbia in July 2010. She provided the money for his ticket.

[12] According to Mr. Turple, Jordan stayed in British Columbia for three months and he returned to Nova Scotia on December 23, 2010. Mr. Turple says that Jordan went to British Columbia in October 2010, though this is not consistent with his testimony that Jordan was in British Columbia for three months before returning home.

[13] Both parents agree that in July 2010, Jordan had reached the age of majority. He turned nineteen in February 2010. He had completed his education and was working on a full-time basis in July 2010. He worked in British Columbia and he found full-time work in Nova Scotia within weeks of his return to the province in December 2010.

[14] I prefer Ms. Turple's evidence about Jordan's date of departure from Nova Scotia. She has a particular reason to recall the timing of his departure because she paid for his ticket. Mr. Turple's evidence was inconsistent.

[15] Mr. Turple says that Jordan "might" want to return to school at some point. He admits that Jordan has not made any application to any school and that Jordan doesn't know what he might study if he returned to school.

[16] Jordan ceased to be a child of the marriage by July 2010 and he was no longer entitled to receive child support as of July 1, 2010. Ms. Turple's child support payments for him should have terminated with her payment in May 2010. (To be exact, Ms. Turple didn't pay child

support to Mr. Turple. Since Jordan lived with his father and Rylie lived with her mother, Mr. Turple paid child support to Ms. Turple based on the split custody provisions of section 8 of the *Guidelines*.)

Rylie

[17] There are a number of issues relating to Rylie's support. There are claims for child support pursuant to section 3 and section 7 of the *Guidelines* for both 2010 and 2011. The claims for a contribution to special or extraordinary expenses relate to costs for health expenses and driver education. As well, Ms. Turple asks that Mr. Turple finance her purchase of a health insurance plan for Rylie.

Child support pursuant to section 3 from July 1, 2010 to June 30, 2011

[18] The Turples adjust child support payments each June based on the information contained in the prior year's income tax returns and new payments start on July first. Until July 2010, this involved a split parenting situation, so Mr. Turple's payments for Rylie were offset against Ms. Turple's payments for Jordan. As a result of my decision, there is no split parenting arrangement to consider in fixing child support after June 2010.

[19] Mr. Turple's 2009 total income was \$36,279.31. According to his tax return, he paid union dues of \$1,128.17. Adjusting Mr. Turple's total income by deducting his payment of union dues as required by section 16 of the *Guidelines* and section 1(g) of Schedule III of the *Guidelines*, results in fixing his 2009 income, for the purposes of child support, at \$35,151.14.

[20] At an annual income of \$35,151.14, Mr. Turple's monthly child support payments for Rylie are \$310.00 for the period from July 1, 2010 to June 30, 2011.

Child support pursuant to section 3 from July 1, 2011 to June 30, 2012

[21] Ms. Turple asked that I fix the amount of Mr. Turple's child support obligation for the coming year. Since his payments are adjusted at the beginning of July each year based on the prior year's income and Mr. Turple has provided his 2010 tax return, I am able to do this.

[22] Mr. Turple's 2010 total income was \$33,058.61. According to his tax return, he paid union dues of \$577.63. Adjusting Mr. Turple's total income by deducting his union dues results in fixing his 2010 income, for the purposes of child support, at \$32,480.98.

[23] At an annual income of \$32,480.98, Mr. Turple's monthly child support payments for Rylie are \$288.00 for the period from July 1, 2011 to June 30, 2012.

Contribution to special or extraordinary expenses, generally

[24] In addition to the basic amount of child support that I have ordered pursuant to section 3

of the *Guidelines*, Ms. Turple asks that I order Mr. Turple to make a contribution to certain specified expenses that are not contained within the section 3 amount. In particular, Ms. Turple asks me to order Mr. Turple to contribute to Rylie's 2010 driver education costs, to her health costs (prescriptions, vision exams and glasses) in 2010 and in 2011, and to the cost of purchasing a health insurance plan for Rylie, beginning in 2011.

[25] Before I consider these claims, it's useful to review how section 7 of the *Guidelines* is applied to claims like this. Once I have determined that an expense falls within the categories listed in section 7(1) of the *Guidelines*, I have discretion to order a contribution to that expense. I am not required to order a contribution to the expense. Section 7(1) says that I may order a parent to provide an amount "to cover all or any portion" of the expenses listed in section 7. The *Guidelines* state a "guiding principle" in section 7(2) that a special or extraordinary expense should be shared in proportion to the incomes of the parents, but I need not make a proportionate division.

[26] Section 7 lists the expenses that might create this claim for additional child support, beyond that provided for by section 3 of the *Guidelines*. Medical and dental insurance premiums attributable to the child are listed in section 7(1)(b). Health-related expenses are listed in section 7(1)(c). Driver education isn't specifically listed, so I will need to determine whether it falls into one of the listed categories.

[27] In determining the amount that might be shared, I am to consider the effect of any available subsidies, benefits, income tax deductions or credits. For example, an expense may be deductible from income when filing a tax return. Reducing the amount of a person's taxable income has the effect of reducing the taxes that must be paid. Alternately, there may be an associated tax credit which is deducted from the amount of tax a person must pay. Where this happens, I can consider the tax reduction in determining the actual cost of the expense that may be shared.

[28] The opening phrases of section 7(1) state the primary test for special or extraordinary expenses: I may order an amount to cover all or any portion of the expense, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the parents and those of the child and to the family's spending pattern prior to the separation. I don't need to know the actual amount of the expense: the amount may be estimated.

[29] This general information applies to all expenses claimed under section 7. However, not all expenses are treated the same. For example, medical and dental insurance premiums and health-related expenses need only be necessary and reasonable. This is in contrast to expenses for secondary school expenses, for other educational programs and for extracurricular activities: these expenses must be extraordinary, as well as necessary and reasonable.

[30] Subsection 7(1.1) contains a two part test to determine if an expense is extraordinary. The first question, in section 7(1.1)(a), is subjective: is the expense too great for the parent to

“reasonably cover”, considering the parent’s income (including the child support the parent receives)? If the expense is too great for a parent to reasonably cover, then it is “extraordinary”. If the expense isn’t so great that it’s extraordinary in the context of section 7(1.1)(a), the expense may still be extraordinary if it meets the criteria in section 7(1.1)(b). These criteria are more objective, but not completely so. There is a five-part analysis in section 7(1.1)(b) which requires me to consider:

- (i) the relationship of the expense to the parent’s income and child support;
- (ii) the nature and number of the child’s educational programs and extracurricular activities;
- (iii) any special needs and talents of the child;
- (iv) the overall cost of the programs and activities; and
- (v) any other similar factor that I consider relevant.

[31] The statute does not prioritize these considerations. I must think about each of them.

Child support pursuant to section 7 from July 1, 2010 to June 30, 2011

[32] Ms. Turple seeks a contribution from Mr. Turple to the cost of Rylie’s prescription drugs, her vision exam, her glasses and her driver education in the period from July 1, 2010 to June 30, 2011.

[33] Rylie has been diagnosed as having Attention Deficit Disorder. Her doctor has prescribed two drugs to treat this condition. One prescription costs \$777.00 each year. Most of this cost is reimbursed by the health insurance provider, which pays \$732.00 of the cost. This leaves \$45.00 uninsured. The second prescription costs \$311.15 each year. Ms. Turple says that health insurance covers \$236.39 of this cost, leaving \$74.76 uninsured. A total of \$119.76 is not covered by insurance and Ms. Turple asks that Mr. Turple be ordered to contribute to this amount in proportion to his income.

[34] Section 7(1)(c) of the *Guidelines* addresses health expenses. It provides that a parent may be ordered to contribute to “health-related expenses that exceed insurance reimbursement by at least \$100 annually”. It specifically mentions prescription drugs as one sort of health expense that might be the subject of such an order. The uninsured prescription drug cost is \$119.76 each year.

[35] While Mr. Turple suggested that he wasn’t told Rylie had been prescribed these drugs, he didn’t object to their necessity or reasonableness. These drugs have been prescribed by a doctor for a medically diagnosed condition. I find that there is a necessity for this expense for Rylie and

the expense itself is reasonable, considering the parents' means. I cannot consider this expense in the context of the family's spending pattern prior to the separation because the Turples separated in April 2003 and Rylie was diagnosed four years ago.

[36] Rylie wears glasses and Ms. Turple seeks a contribution to the expense of Rylie's vision exam and her glasses. I was told that Rylie has a vision exam every year and her prescription changes annually. According to Ms. Turple, the vision exam costs \$60.00 and \$50.00 of this is reimbursed by insurance. Rylie's glasses cost \$379.00 and I was told that insurance covers \$240.00 annually. This leaves \$139.00 uninsured. In total, Rylie has \$149.00 in uninsured expenses for eye care.

[37] Mr. Turple didn't object to the necessity or reasonableness of this expense. I find that there is a necessity for this expense for Rylie and the expense itself is reasonable, considering the parents' means. I cannot consider this expense in the context of the family's spending pattern prior to the separation because I have no information about that issue.

[38] Rylie's uninsured health expenses total \$268.76.

[39] Section 7(3) requires me to consider subsidies, benefits or income tax deductions or credits relating to an expense when I calculate the amount of the expense. Rylie's health expenses are too low to qualify for the non-refundable medical expense tax credit.

[40] In 2010, the non-refundable medical expense tax credit relates to health-related expenses in excess of the lesser of \$2,204.00 or three percent of Ms. Turple's 2010 net income.

[41] Ms. Turple didn't provide a copy of her complete tax return for 2010. It's important to file a complete tax return in court proceedings, providing all schedules and attachments: anything less means it is difficult to apply the *Guidelines* as they are intended. In some cases, the incomplete return may make it impossible to apply the *Guidelines*.

[42] Ms. Turple provided copies of only the first two pages of her tax return. This gives me some ability to estimate her 2010 net income. Net income equals total income (shown on line 150 of the tax return) less various deductions, such as pension plan contributions, child care expenses and support payments. These deductions are outlined at lines 206 to 232 of the tax return. Ms. Turple's 2008 and 2009 Notices of Assessment show her typical deductions were \$1,338.00 and \$1,532.00, respectively. Assuming Ms. Turple's 2010 deductions equal those she claimed in 2009, then Ms. Turple's 2010 net income was \$25,899.21. If this is correct, then the threshold for her to receive a non-refundable medical expense tax credit is \$776.98. Rylie's medical expenses do not meet this threshold and I have no evidence that there are additional medical expenses in Ms. Turple's household that would enable her to take advantage of this non-refundable credit.

[43] Rylie's uninsured prescription drug cost is \$119.76 each year and her uninsured cost for vision exams and glasses is \$149.00 each year. Again, section 7(1)(c) says it is only the portion

of this expense “that exceed[s] insurance reimbursement by at least \$100 annually” that may be divided between the parents, so the divisible amount is \$168.76 ($119.76 + 149.00 = 268.76 - 100.00 = 168.76$). The uninsured health expenses for 2010 – 2011 shall be shared between the parents in proportion to their incomes. Child support for 2010 – 2011 is calculated based on the parents’ 2009 incomes. I’ve calculated the proportionate shares in the table below.

	2009 income	Proportion
Tina Turple	27,431.21	44%
Mike Turple	35,151.14	56%
Total	62,582.35	100%

[44] Based on these calculations, in 2010 Mr. Turple should have contributed fifty-six percent of the uninsured health expenses. His fifty-six percent of the \$168.76 expense is \$94.50 and he shall pay this immediately.

Rylie’s driver education

[45] Ms. Turple arranged for Rylie to take driving lessons from the Dartmouth Driving School in April and May 2010. This cost \$500.00. There was an additional expense of \$46.85 for Rylie to take the test to upgrade her driver’s license from a learner’s license to a class 5 license.

[46] On her Statement of Special or Extraordinary Expenses, Ms. Turple claims this expense is an extra-curricular activity.

[47] Driver education is, I find, an extra-curricular activity. It falls outside the scope of a child’s typical education or regular activities.

[48] In November 2005 amendments (SOR/2005-400) were made to the *Federal Child Support Guidelines*. These came into force in May 2006. These amendments added section 7(1.1) to the *Guidelines*. Section 7(1.1) defines “extraordinary expenses”. As I explained in paragraph 30, section 7(1.1) dictates two approaches to determining whether an educational or extra-curricular activity is extraordinary.

[49] Rylie’s driver education cost \$546.85. When this cost was incurred, Ms. Turple’s income was \$28,121.62 and she was receiving child support payments of approximately \$200.00 each month pursuant to section 8 of the *Guidelines*. The expense was less than two percent of her total income. On this basis, the expense is not extraordinary.

[50] Since the expense is not extraordinary in the context of section 7(1.1)(a) of the

Guidelines, I must analyse the expense with regard to sections 7(1.1)(ii) to (v), summarized below:

- (i) the relationship of the expense to the parent's income and child support;
- (ii) the nature and number of the child's educational programs and extracurricular activities;
- (iii) any special needs and talents of the child;
- (iv) the overall cost of the programs and activities; and
- (v) any other similar factor that I consider relevant.

[51] I have considered the relationship of the driver training expense to Ms. Turple's income and her child support in paragraph 49 and noted this expense is less than two percent of Ms. Turple's income (including her child support). I note that section 7(1.1)(a) of the *Guidelines* and section 7(1.1)(b)(i) both tell me to consider this issue.

[52] I have no evidence that Rylie had any other educational programs or extra-curricular activities. None were mentioned in either parent's testimony and none was disclosed on Ms. Turple's Statement of Special or Extraordinary Expenses.

[53] Neither parent offered me any evidence that Rylie has any special need or talent.

[54] I understand that because driver training was Rylie's only activity or educational program \$546.85 is the total cost of such programs.

[55] Finally, I have considered Mr. Turple's evidence that, neither Jordan nor Mr. Turple's step-children had participated in such a program. Mr. Turple says the expense wasn't necessary. Mr. Turple says he was asked about splitting the cost of Rylie's driver education, but he was not asked about whether she should have the training. He says that when Ms. Turple asked him about driver education, he said he couldn't afford the cost. It is his evidence that the expense wasn't necessary or reasonable. I agree that the expense wasn't necessary.

[58] Driving training is not an extraordinary extra-curricular activity by virtue of its cost, either parent's income or a special need or talent that Rylie has. I conclude this is not an extraordinary expense so it will not be shared between the parents.

Child support pursuant to section 7 from July 1, 2011 to June 30, 2012

[59] Ms. Turple has told me that Rylie's expenses for medication and for her vision exam and glasses will continue in the coming year. I have not been told that the amounts will change, so I

base my decision on the premise that Rylie's annual uninsured prescription cost will be \$119.76 and her annual uninsured vision care cost will be \$149.00. The total uninsured costs are \$168.76.

[60] Beginning on July 1, 2011, Mr. Turple's proportionate contribution to these expenses will be based on his 2010 income and Ms. Turple's 2010 income. I've calculated the proportionate shares in the table below.

	2010 income	Proportion
Tina Turple	28,121.62	46%
Mike Turple	32,480.98	54%
Total	60,602.60	100%

[61] Based on these calculations, in 2011 Mr. Turple should contribute fifty-four percent to the cost of Rylie's uninsured health-related expenses. His fifty-four percent of the \$168.76 is \$91.13. Divided into monthly payments, this adds \$7.59 to Mr. Turple's support payment beginning on July 1, 2011.

Health insurance costs

[62] Ms. Turple asks that I order Mr. Turple to contribute to the expense of purchasing a private health insurance plan for Rylie. Section 6 of the *Guidelines* allows me to make such an order. She estimates such a plan would cost \$132.18 each month.

[63] Mr. Turple is seasonally employed as a carpenter. When he is employed, his membership in his union requires him to purchase a health insurance plan. He has no choice: the purchase is mandatory. His health insurance plan costs \$230.00 each month. Since Mr. Turple is not employed throughout the year, since 2009 his wife has maintained health insurance through her employment which covers Rylie at all times. Ms. Turple does not have direct access to this plan: she does not, for example, have a password which would enable her to have full access to the plan. However, she can take receipts for Rylie's prescriptions and other insured expenses to a "Quick Pay" office where she will be given a reimbursement cheque the same day.

[64] Ms. Turple did not explain why this arrangement for Rylie's insurance was unacceptable. She is unwilling to give receipts to Mr. Turple for processing because she does not trust him to give the reimbursement cheque to her. On one occasion in the past a reimbursement cheque was not given to her and Mr. Turple has not made any effort to re-pay Ms. Turple. I accept her unwillingness to rely on Mr. Turple. However, the Quick Pay office is an option that means she is not forced to rely on Mr. Turple.

[65] Mr. Turple pays for insurance that covers Rylie while he is working. His wife maintains health insurance for Rylie at all times. I am not persuaded that Rylie needs to be covered by a third insurance policy. The annual insurance expense in Mr. Turple's home is already \$5,280.00. Mr. Turple's annual income is \$32,480.98 and his wife's is approximately \$40,000.00, so they already spend more than seven percent of the household's gross income on insurance coverage.

Payment of support by post-dated cheques

[66] Ms. Turple asks me to order that all support payments be made by way of post-dated

cheques. Justice Lynch has already ordered that Mr. Turple provide a dozen post-dated cheques for his support payments to the Maintenance Enforcement Program on July 1 of each year.

[67] Mr. Turple has arranged to pay his child support payments by way of direct debit from his bank account to the Maintenance Enforcement Program. For so long as he has done this, Ms. Turple says she has experienced no difficulties in her receipt of support payments. In questioning, she said she hasn't received late support payment this year and the last time it happened was "maybe two years ago".

[68] It seems the current payment method has resulted in Ms. Turple receiving child support payments on a timely basis, so I order that Mr. Turple continue to pay his child support payments by way of direct debit from his bank account to the Maintenance Enforcement Program.

Missing prescription reimbursement

[69] Ms. Turple asks me to order Mr. Turple to reimburse her for an insurance payment which was mis-directed to his wife when it should have been sent to her. Mr. Turple admits that his wife received this cheque. He gave no reason for his ongoing failure to pay Ms. Turple.

[70] Mr. Turple shall forthwith pay Ms. Turple \$33.77 to reimburse her for the mis-directed insurance cheque.

Conclusion

[71] As of June 1, 2010, Ms. Turple's obligation to pay child support for Jordan has terminated.

[72] Mr. Turple's monthly child support payments for Rylie are \$310.00 for the period from July 1, 2010 to June 30, 2011. From July 1, 2011 to June 30, 2012, his monthly payment of child support is \$295.59, which is comprised of \$288.00, calculated pursuant to section 3 of the *Guidelines*, and \$7.59, calculated pursuant to section 7 of the *Guidelines*. These amounts are modified, in paragraphs 74 and 75 below to recognize the impact of Jordan's independence on the determination of Mr. Turple's past payments.

[73] Mr. Turple shall forthwith pay Ms. Turple \$94.50 in satisfaction of his obligation to contribute to Rylie's section 7 expenses for prescriptions and vision care for the period from July 1, 2010 to June 30, 2011. He shall also forthwith pay her \$33.77 to compensate her for the insurance reimbursement which was not paid over to her. The total to be paid immediately is \$128.27.

[74] Under the November 2009 order, Mr. Turple's monthly child support obligation was \$199.00 for the period from July 1, 2010 to June 30, 2011. He has diligently made these payments to date. As a result of my decision, as of May 1, 2011, Mr. Turple will owe Ms. Turple \$1,110.00. This is the difference between the payments he made pursuant to the

November 2009 order and the payments I have ordered which reflect his actual 2009 income and Jordan's independence. I have ordered that Mr. Turple pay \$128.27 immediately. To accommodate Mr. Turple's financial circumstances, I order that he pay this additional child support of \$1,110.00 starting in July 2011 and continuing in equal monthly instalments of \$138.75 until the amount is finally and fully repaid with his payment in December 2011.

[75] On May 1, 2011 and June 1, 2011, Mr. Turple's child support payment will be \$448.75. From July 1, 2011 until and including December 1, 2011 Mr. Turple's monthly child support payment will be \$434.34. Beginning on January 1, 2012, his monthly payment will be \$295.59. Payments at that rate will continue until child support is adjusted in the spring, with his new amount to start on July 1, 2012.

[75] Mr. Turple shall continue to pay his child support payments by direct debit from his bank account to the Maintenance Enforcement Program.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia