

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Gordon v. Gudal, 2011 NSSC 139

Date: 20110407

Docket: SFHISOS-72442

Registry: Halifax

Between:

Victoria Deborah Gordon

Applicant

v.

Mohamed Ali Gudal

Respondent

Judge: The Honourable Justice Beryl A. MacDonald

Heard: March 1 & April 4, 2011, in Halifax, Nova Scotia

Counsel: Victoria Gordon, applicant, not present, nor represented
Mohamed Gudal, self-represented, respondent

By the Court:

[1] On September 3, 2010, Ms. Gordon signed a support application under the provisions of the *Interjurisdictional Support Orders Act*, S.B.C. 2002, c.29. She requested that the laws of the province of Nova Scotia apply to her application; therefore, the *Maintenance and Custody Act* R.S.N.S. 1989, c. 160 is the applicable legislation.

Child Maintenance

[2] Ms. Gordon requests a table amount of child maintenance pursuant to the *Provincial Child Maintenance Guidelines* commencing July 1, 2010 for the one child of the parties' relationship, born February 5, 2010, and spousal maintenance commencing March 1, 2010.

[3] Mr. Gudal has responded to this application and has provided this court with the required financial information from which it has been determined his total annual income for the years 2010 and 2011 is \$80,000 per year. The *Provincial*

Child Maintenance Table Guideline amount for one child on this annual income is \$687.00 per month.

[4] Mr. Gudal recognizes his responsibility to pay maintenance for the child born of his relationship with Ms. Gordon. He has provided banking accounts and satisfied me that he has paid, for the financial support of this child, a total amount of \$6,489.00 for the period from July 1, 2010 until March 7, 2011. Child maintenance in the amount of \$687.00 per month for nine months (July to March) would require a total payment of \$6,183.00. As a result, Mr. Gudal has a credit for child support in the amount of \$306.00. He has informed me he began paying \$687.00 per month since his previous appearance before me on March 1, 2011. If he has done so there should be no arrears on his account as a result of my decision. I will leave the final calculation to the Maintenance Enforcement Program. The Order I will issue will require him to pay child maintenance in the amount of \$687.00 beginning April 1, 2011.

Spousal Support

[5] Ms. Gordon and Mr. Gudal began living together November 7, 2007. They separated November 26, 2009. They were in a conjugal relationship for a period of 25 months less a few days. A common-law partner is entitled to spousal maintenance under The *Maintenance and Custody Act* [section 4] if that person has cohabited in a conjugal relationship for a period of at least two years. Ms. Gordon meets this definition, although just barely.

[6] Section 4 of the *Maintenance and Custody Act* also directs the Court, in determining whether to order a person to pay maintenance to a common-law partner and in determining the amount to be paid, to consider a number of factors. Those factors are:

- (a) the division of function in their relationship;
- (b) the express or tacit agreement of the spouses or common-law partners that one will maintain the other;
- (c) the terms of a marriage contract or separation agreement between the spouses or common-law partners;
- (d) custodial arrangements made with respect to the children of the relationship;
- (e) the obligations of each spouse or common-law partner toward any children;
- (f) the physical or mental disability of either spouse or common-law partner;
- (g) the inability of a spouse or common-law partner to attain gainful employment;
- (h) the contribution of a spouse or common-law partner to the education or career potential of the other;
- (I) the reasonable needs of the spouse or common-law partner with a right to maintenance;
- (j) the reasonable needs of the spouse or common-law partner obliged to pay maintenance;

(k) the separate property of each spouse or common-law partner;

(l) the ability to pay of the spouse or common-law partner who is obligated to pay maintenance having regard to that spouse's or common-law partner's obligation to pay child maintenance in accordance with the Guidelines;

(m) the ability of the spouse or common-law partner with the right to maintenance to contribute to his own maintenance.

[7] Section 5 states that:

A maintained spouse or common-law partner has an obligation to assume responsibility for his own maintenance unless, considering the ages of the spouses or common-law partners, the duration of the relationship, the nature of the needs of the maintained spouse or common-law partner and the origin of those needs, it would be unreasonable to require the maintained spouse or common-law partner to assume responsibility for his maintenance, and it would be reasonable to require the other spouse or common-law partner to continue to bear this responsibility.

[8] Courts in Nova Scotia, when examining applications made under the *Maintenance and Custody Act*, have also applied the principles of spousal support articulated by the Supreme Court of Canada in *Moge v. Moge* [1992] 3 S.C.R. 813 and *Bracklow v. Bracklow* [1999] 1 S.C.R. 420, and in particular the analysis about compensable and non-compensable claims.

[9] Mr. Gudal and Ms. Gordon had a very short relationship. But for a few days in excess of the 24 month period of co-habitation, Ms. Gordon would have no claim for spousal maintenance.

[10] Ms. Gordon and Mr. Gudal met in British Columbia where, at the time, Ms. Gordon was employed. She made the decision to follow Mr. Gudal to Nova Scotia so that they might cohabit together. Mr. Gudal did support her for five months in Nova Scotia while she pursued employment opportunities. She obtained employment and remained employed until she left the province for British Columbia at the time the parties separated. Since returning to British Columbia Ms. Gordon has not been employed due to her pregnancy and then due to the birth of the child. She was on maternity leave and was receiving employment insurance maternity benefits in the amount of \$1,100 per month.

[11] During the parties relationship there was no particular division of function between Mr. Gudal and Ms. Gordon similar to what is found when there is a partner who is not in the workforce and who preforms most if not all of the household tasks.

[12] There was no express or tacit agreement between these parties that one would maintain the other.

[13] There is no contract or separation agreement between these parties.

[14] At the time the parties lived together there was no child born of their relationship. Their child was born after their separation and is in the custodial care of Ms. Gordon in British Columbia.

[15] Mr. Gudal is required by this order to provide table guideline maintenance for the child but given his income, and after reviewing his personal expenses, I find he does have the ability to pay spousal maintenance if Ms. Gordon is entitled to receive that financial support . Mr. Gudal has no other dependents for whom he is required to pay financial support.

[16] Neither party suffers from any physical or mental disability.

[17] Ms. Gordon can be considered to have been unable to obtain gainful employment due to her pregnancy and the birth of the child. However, the fact that she now has an infant child should not prevent her from becoming employed in the future. Her own evidence is that she intends to return to work. Certainly, given her work history, I find it likely that she will be able to obtain employment providing her with incomes similar to those she has earned in the past.

[18] Neither party contributed to the education or career potential of the other.

[19] Because maternity benefits did not provide Ms. Gordon with an annual income similar to the income she had earned while she was working, she did have difficulty meeting her reasonable needs.

[20] I have already commented upon my finding that Mr. Gudal does have the ability to pay spousal maintenance and I made this determination after reviewing his reasonable needs. I have also considered the tax deduction he will receive because of his obligation to pay spousal maintenance.

[21] Neither party has income producing property.

[22] Using the *Moge* analysis I find that Ms. Gordon does have a compensatory claim to spousal maintenance because she did give up her employment in British Columbia to cohabit with Mr. Gudal in Nova Scotia . She also now has a child of their relationship and this did and will keep her out of the workforce for a period of time.

[23] Ms. Gordon also has a non-compensatory claim because her reasonable expenses did exceed her income while she was on maternity leave.

[24] Considering all of the circumstances, I have decided Mr. Gudal is to pay spousal maintenance to Ms. Gordon in the amount of \$1,000.00 per month for one year only. I will not back date these payments but I do order they are to begin April 1, 2011 and are to end with the payment to be made March 1, 2012.

[25] On April 5, 2011, after Mr. Gudal appeared before me, I received further information from Ms. Gordon. Mr. Gudal may not yet have this information; however, it does not change the factual circumstances from those I had before me on April 4. On that date I had calculated that Ms. Gordon's maternity benefits, available through the Employment Insurance program, would either be at an end or would soon be at an end. I had no information about her employment and so could only consider, given her past employment history, the likelihood of her eventual employment.

[26] The recent information provided by Ms. Gordon is that her maternity benefits have ended and she is not presently employed. This information does not change my analysis about her entitlement to spousal support nor the quantum she is to receive.

