

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Horne v. Horne, 2002 NSSC 282

Date: 20021223

Docket: SH 1201-53097

Registry: Halifax

Between:

Joan Leanne Horne

Petitioner

and

Richard John Horne

Respondent

Judge: The Honourable Justice Walter R. E. Goodfellow

Heard: December 23, 2002, in Halifax, Nova Scotia

Written Decision: December 30, 2002

Counsel: Joan Leanne Horne, Petitioner in Person
B. Lynn Reiersen, for the Respondent

By the Court:

BACKGROUND

- [2] This is the matter of Horne and Horne. Joan Leanne Horne, now 40, and Richard John Horne, now 45, were married May 5th, 1989 and separated January 1, 1998. They co-habited prior to marriage commencing March 1987.
- [3] They were blessed with three children: Cassandra Mae Prince, born January 23rd, 1985, now 17; Elizabeth Leigh Horne, born July 8th, 1991, now 11; and Bradley Robert Horne, born May 8th, 1993, now nine.
- [4] The parties were originally represented by counsel and then due to limited resources, represented themselves for some period of time and Mr. Horne re-engaged Ms. Reiersen for the purposes of this hearing. The petition for divorce was issued July 14th, 1998 and there have been several interim applications and this matter first came before me by way of an interim application and I determined that if the matter were not finalized by divorce and corollary relief judgment, that there would likely continue to be a history of interim applications and therefore, I set the matter down before me for Monday, the 23rd of December 2002 when Mrs. Horne, a non-resident, would next be available in Nova Scotia.

DIVORCE

- [5] Having concluded that there is no possibility of reconciliation, I directed that the petition and counter-petition for divorce be proceeded with. I find that all jurisdictional requirements have been met and that there has been a permanent breakdown of this marriage by reason of the parties having lived separate and apart for a period in excess of one year and therefore, a divorce judgment will be granted as of this date.

INTERIM ORDERS

- [6] 1. Interim - Interim Order September 21, 1998: Justice Wright provided for specific shared parenting.
2. Consent Order November 17, 1998: Justice Oland varied September 21, 1998 Order providing joint legal custody and weekly rotation with a formula for support on equalizing incomes of households, sharing of medical, dental, etc. with Mr. Horne to retain coverage at employment for the children.
3. Interim Order October 17th, 2001: Justice Hood provided calculation of retroactive child support payable by Mrs. Horne with Mrs. Horne to

pay child support to Mr. Horne for the children, Elizabeth and Bradley, less child support payable by Mr. Horne for the child, Cassandra.

4. Order August 23rd, 2002: Justice Goodfellow dismissing Mr. Horne's application that the child, Cassandra, be ordered to reside with him and ordering disclosure to set arrears and ongoing child support plus pension and income specifics in order to finalize divorce.
5. Order November 28th, 2002: Justice Goodfellow setting the matter down for divorce and update of income disclosure.

DECISION

- [7] The first matter to address is the income. I fixed Mr. Horne's income for 2002 at \$63,500.00 and Mrs. Horne's income for 2002 at \$56,200.00 which included an after-tax rough calculation of the taxable child support she receives for the child, Cassandra, from her biological father.
- [8] For 2003 I have fixed Mr. Horne's income at \$55,800.00 and Mrs. Horne's income at \$56,200.00. Corollary relief judgment will require each party to exchange annually, on or before the 15th of June in each year commencing the 15th of June 2003, a complete copy of their income tax returns and notices of assessment. This will permit any appropriate adjustment in accordance with the Child Support Guidelines.
- [9] Now, with respect to retroactive child support, as I say, I heard this matter in August and heard a great deal of evidence at that time; and I have heard some additional evidence, particularly in relation to this period of approximately 22 months where Mrs. Horne says that she essentially fully and solely supported Cassandra, but when I heard Mr. Horne's application in August, I did not complete the issue because of some uncertainty of their relative incomes. Neither party abided by the previous direction to exchange income tax returns.
- [10] Today Mrs. Horne raised the issue of non-support for Cassandra for the lengthy period of approximately 22 months. I have heard a great deal of evidence of the arrangements that previously existed, contributions made by each parent, the time Cassandra spent with her father, with Emma, with her grandmother, her boyfriend, major expenditures by the father for extracurricular activities for the children, etc., etc.
- [11] In the end I conclude, the totality of the circumstances and relative contributions made by each parent warrant a conclusion that prior to August

- 2002 any claims by each parent amounts to a 'wash-out' and that a new slate is appropriate commencing the 1st of August 2002.
- [12] Now with respect to 2002, based on his income of \$63,500.00, it seems to me despite the vigorous argument by Ms. Reiersen that the table guideline projects the payment for an additional person within the family, and of course his income is considerably higher than what the previous payments were based upon, and the formula in my view is not accurate, it seems to me that he has to pay at the rate of \$63,500.00 for 2002 which from the 1st of August he's paid \$225.00 and he should have paid \$521.00, a difference of \$296.00 for the period August to and inclusive of December, I make that to be \$1,480.00.
- [13] Since I rendered my oral decision I reflected on Cassandra's circumstances since the 1st of August 2002. She has worked much of this period of time, earned income, pays \$80.00 board, resides almost entirely with her boyfriend although her mother does maintain a room in her Nova Scotia property occupied by Cassandra's maternal grandparents. In the totality of these circumstances, it would be unfair to require Mr. Horne to pay the full guideline rate as very clearly the evidence does not support utilization of those funds to any major degree for the benefit of Cassandra. I therefore discount the \$1,480.00 and reduce it to \$740.00.
- [14] Mrs. Horne paid \$587.00 per month and according to the Quebec table, should have paid \$679.00, a difference of \$92.00 per month, with five months amounting to \$460.00.
- [15] With respect to 2003, as I say, I have projected his income at \$55,800.00 and with respect to Cassandra, it seems to me in the totality of the circumstances that Cassandra is working at the moment. She is not really going to start school until February. It seems to me the fairest way to address it is to suspend the payment of any support for the month of January, but to require Mr. Horne, commencing the 1st of February 2003 to pay in accordance with the Nova Scotia table based upon \$55,800.00 for one child \$469.00 per month. He will pay that amount for the 1st of February and provided evidence is filed with the court that the child is in fact registered and attending school, he will pay that for the month of March on the 1st of March 2003.
- [16] Mrs. Horne is to obtain from the school a report on her attendance and standing from the 1st of February to and inclusive of the 14th of March which is a Friday and she is to provide that to the court as soon as possible thereafter; in any event, no later than the 26th of March 2003. And

- depending upon that, if for example it's very clear the child is not going to school, then the payments will cease. If the child is in fact going to school and there's a debatable area, I will arrange for a telephone conference to address the issue, to save the parties going to greater expense.
- [17] It is time for Cassandra to realize if she wants the support from her father to go to school, she has got to go to school. If she is going to school and I pray that she is and pray she is doing well, I commend him because he has indicated in his material that he is quite prepared to support her going on to university. Cassandra's track record does not make me very optimistic.
- [18] Now with respect to child care, I am satisfied Mr. Horne pays child care expenses and I notice in his 2001 income tax return these amounted to \$4,470.00. I fixed the amount of child care that Mrs. Horne has not contributed to in 2002; that is, from the 1st of August onward, at a net cost to him of \$1,200.00 after tax, and I direct Mrs. Horne to share the cost on the basis of the relative incomes - that is \$63,500.00 to \$56,200.00.
- [19] Now with respect to 2003, I estimate Mr. Horne's after-tax cost of child care at \$2,200.00 and direct Mrs. Horne to pay on the 1st day of each and every month to Mr. Horne her share of \$2,200.00, based upon the prorating of the income which hers will be higher in 2003: hers will be \$56,200.00; and his will be \$55,800.00. I am going to direct that you make it on a monthly payment..I think it is something like \$91.65 a month, but I am not sure. And he is to provide receipts on a quarterly basis. I do not require him to do it on a monthly basis. A quarterly basis, so that for example, January/February/March: on or before the 15th of April..that is the 15 days following the quarter, is to provide you with copies of the receipts for the actual expenditures.
- [20] I am suggesting that you hold off the final child care adjustment, if there is to be one, until after June the 15th when you have received the income tax returns and you see exactly what it is he has declared for the previous year. Now, you may have to wait a whole year for that..I have to think that out a bit. In any event, you have to contribute towards the child care and I think there is a great deal of merit in what Ms. Reiersen says that the person who has the children at home bears so many more expenses, as I said, for book reports and donations and all the rest of it..and dances and so forth.
- [21] All right, onto the dentist - it seems to me that it is reasonable for Mr. Horne to reimburse the \$47.30 outstanding; and also he paid \$250.00 I think it is and he has made these payments from September to December - I would take his total payments to be \$500.00..you can check the math..and Mrs.

- Horne to reimburse a share prorated on the basis of the \$63,500.00 to \$56,200.00.
- [22] In 2003 the payments will be prorated on the basis of \$55,800.00 to \$56,200.00. The prorating will apply for eight months on the payment by Mr. Horne of \$62.50 and then the prorating will be on \$125.00 for a further 12 months.
- [23] The next issue is the R.R.S.P.'s. That essentially is Mrs. Horne's pension while working at the rehab centre. I find it is a matrimonial asset and I direct an equal division of it. I have calculated it not on a scientific basis, but I think in a reasonably fair and reasonably accurate manner, and I do not want anybody to get involved in accounting expenses and that sort of thing..just let me get the math. The bottom line is that Mrs. Horne owes her husband \$6,250.00 and I calculated that, as I indicated during the course of our discussion, on the basis of her evidence that the three payments which were transferred at various stages, but did provide some reasonable update to the date of those transfers, \$19,714.26. I reduced it by tax: \$6,571.42, which is \$13,142.84 and I recognize that the units have gone down, as almost every mutual fund has, and so I simply arbitrarily took it at \$12,500.00 and it means that you owe him \$6,250.00; and you will retain the R.R.S.P.'s. I have used the date of division, being the trial date, for determining the value, **Stoodley v. Stoodley** (1999), 172 N.S.R.(2d) 101.
- [24] In addition to that, I accept the undertaking of Mrs. Horne and appreciate it and I will incorporate it in the Order, ordering you to provide written documentation confirming the actual amounts that were received from the rehab centre and rolled over into R.R.S.P.'s. So I want the actual amount and then I want to know what you have put into R.R.S.P.'s and presumably they will coincide.
- [25] Now with respect to the extracurricular activities, I have to some extent taken that into account in this difficulty of determining the retroactive maintenance is a 'wash-out.' It seems to me that to and inconclusive the end of June 2003 he will continue to bear whatever he wishes. Should he wish thereafter to receive any recovery from Ms. MacDougall (Mrs. Horne), he must give you advance notice. If he is seeking any contribution, he has to give you notice and you can decide what your moral obligation is at that stage, and you may want to take legal advice. I am just leaving it to him. He has built these things in and I would leave it with him and I have given him a reasonable measure of credit. I have not questioned some of the child care things..we have stayed away from the mother business and that..most

- mothers do it for nothing..I don't want to go down that path and others, so I am just saying that if he has gone ahead and done it, he is to get moral credit for it and that is the way it is going to be. If he wants to change the system and look to her for payments and may be or maybe not entitled in law, he will start to do so by giving notice in June, the end of June 2003.
- [26] With respect to his pension, I find his pension a matrimonial asset. Our Act has defined matrimonial asset somewhat differently than anywhere else in Canada. It says, "assets required before or during" the time. The actual contributions for a year or 18 months, whatever it is before, would not have been substantial. It comes into play in the formula. I will direct Ms. Reierison to do an order reciting it is a matrimonial asset and requiring it to be split from its inception which predates the cohabitation, but only to the date of separation.
- [27] So I have dealt with his pension, I have dealt with the activities..I have dealt as best I can, the income, I have dealt with the R.R.S.P.'s, I have dealt with the continuing child support, I have dealt with child care and I have dealt with dental and pension.
- [28] With respect to if Cassandra does continue school satisfactorily starting in April it seems to me that somehow or other I should have a greater assurance, Mrs. Horne, that the money is really going for her benefit, and you have not given me much to put on that. As I said, if she were going to university it would go directly to attendance. Unfortunately I don't think she is going to be going to school and it is not going to be a problem, but it just strikes me that if she is going to school but living with her boyfriend and only paying \$80.00 that somehow or other I need some kind of assurance that the money is being spent on her. I do not have any great suggestions, but because it is a fairly substantial amount based on the child table..well, the payments will go to you until the March deadline. Thereafter, as she is still a child, I think you have to account for what you do with the money. You are going to have to provide a quarterly statement to the father showing that you have in fact expended the child support, from him at least, for the child.
- [29] He continues to pay child care and one of the reasons, he's continuing to pay the dental coverage and that through his work - that condition continues. And you must realize, Mrs. Horne, that that is technically outside the guidelines; it's another contribution that he has made. It's one of the reasons why I have done my best to get you going forward rather than back because if I wanted to fine-tune it, I could give him a credit for that for a few dollars.

[30] So the Court will prepare the corollary relief judgment, the Court has prepared the divorce judgment. Ms. Reiersen, you will prepare the Order declaring his pension a matrimonial asset and dividing it in its entirety from its inception to the date of separation.

Goodfellow, J.

Halifax, Nova Scotia