

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Tofflemire vs LePage, 2011 NSSC 262

Date: 20110629

Docket: SFHD-075066

Registry: Halifax

Between:

Scott Frederick Tofflemire

Applicant

v.

Andree Marie LePage

Respondent

Judge:

The Honourable Justice Beryl A. MacDonald

Heard:

June 21, 2011, in Halifax, Nova Scotia

Counsel:

Scott Frederick Tofflemire, applicant, self-represented
Andree Marie LePage, respondent, not present

By the Court:

[1] This is an application for termination a child support order made pursuant to the *Divorce Act*, R.S. 1985, c.3. The application also requests a retroactive recalculation of the support paid as a result of that order based on varies changes in the children's circumstances .

[2] On April 2 and April 7, 2004, the parties signed an "Agreement on Relief Corollary to the Divorce". In paragraph (11) the parties agreed the Father would have custody of Natasha and Genevieve, both of whom were expected to live with him in Nova Scotia. The Mother would have custody of Dominique and Nicole, both of whom would live with her in Quebec.

[3] In 2004 the Father's income was \$85,000 and the Mother's income was \$32,000. The Father was to pay child support for the children in the Mother's care and the Mother was to pay child support for the children in the Father's care. These sums were set off in respect to the table guideline child support amount, leaving the Father with a requirement to pay \$686.00 per month to the Mother.

[4] The parties then went into a rather complicated analysis of the special expenses required for each of the children and determined a set off for those as well resulting in a requirement for the Father to pay the Mother \$977.25 monthly beginning January 1, 2004. The agreement also had a clause indicating "that amount will be indexed on January 1 of each year". The child support guidelines say nothing about indexing the table guideline amount of child support. They say nothing about indexing any payments proportional or otherwise made in respect to special expenses. However, the parties agreed to this and their agreement was later incorporated into their Corollary Relief Judgment, dated April 28, 2004, and issued in their divorce proceeding.

[5] Sometime in early 2006, the Mother filed an application to vary the Corollary Relief Judgment. A judgment dated May 16, 2006 was issued in respect to her motion. In paragraph [17] on page 5 the following appears:

[17] The agreement on corollary relief provided that the applicant (Mother) was to pay, according to the Québec support determination table, support of \$393 a month for Natasha and Genevieve, but the situation has changed, since Natasha, who, at the time, was in the defendant's custody, left him, is now full age

and has a job that gives her an income I believe is sufficient to meet her needs, with the result that, although the applicant (Mother) asked that the girl be her dependent retroactively to October 1, 2005, I do not believe that it is appropriate for the defendant (Father) to pay support.

[6] The court determined that the Father's income was \$92,085.00 and the Mother's income was \$35,000.00. If Natasha returned to school the court ordered that the Mother would contribute 27% toward her expenses and the defendant contribute 73%. The context of the order indicates these monies would be payable directly to Natasha.

[7] In paragraphs [25] and [26] the court said as follows:

[25] As for Genevieve, who still lives with the defendant, she worked in the summer of 2005 for Via Rail and earned \$12,377, plus \$4,000 she earned in part-time job at a boutique.

[26] Despite the fact that the applicant (Mother) offered to contribute to Genevieve's needs, I leave it up to her to decide whether she wants to help Genevieve out, since the motion says nothing in that regard, except for a conclusion requesting confirmation that the defendant (Father) has custody of the oldest child, although, given her age, she is, in fact, the dependent of the defendant (Father).

[8] The court determined that support for the two children who remained in the custody of and living with the Mother, Dominique and Nicole, based on the Nova Scotia table amount of the child-support guidelines, would be \$1,155.93 per month.

[9] The court continued the requirement for an index to be applied to the table guideline support and said at paragraph [45]:

[45] ORDERS the defendant to pay the applicant, as of December 21, 2005, indexed support of \$1155.82. a month for the benefit of the children Dominique and Nicole;

[10] The Quebec equivalent of the Nova Scotia maintenance enforcement program has commenced a collection of child support payable by the Father. The statement of account shows an opening debit at November 1, 2006, in the amount of \$1,182.52. Possibly this is the amount required in the order (\$1,155.93), with an

indexed amount included. The report then shows the amount owing, as at January 1, 2007, to be \$1,207.35. On January 1, 2008, this changes to \$1,231.50. On January 1, 2009, the amount changes to \$1,262.29. On January 1, 2010, it changes to \$1,267.34.

[11] In May 2006, the amount to be paid, pursuant to the table of the child support guidelines in Nova Scotia, on an income of \$92,085, changed from \$1,155.82 to \$1,252.00. I do not propose to take indexing into account in my decision because I do not have before me the indexes that would be appropriately used in such a case. In Nova Scotia no indexes are applied to the table guideline amount of child support.

[12] The Father's motion before me is to terminate the child support obligations of both parents, with a declaration that nothing is owed by one parent to the other, including the amounts calculated pursuant to the previous orders. In order to evaluate his request I will first conduct a traditional analysis of these obligations.

[13] The Statement of Account begins with an opening balance owing of \$1,182.52 on November 1, 2006.

[14] Using the basic figures, without the indexing, the Father would owe for the balance of 2006, $2 \times \$1,555.82 = \$3,111.64$.

[15] In 2007, the Father's income was \$102,897, based on line 150 of his Notice of Assessment from the Canadian Revenue Agency. This does not include his nontaxable benefits which would otherwise be included for child support purposes. However, those may not substantially increase his income amounts and for the purpose of my decision I have not made any attempt to include them. For the month of January 2007, support for two children based upon the Nova Scotia table is \$1,380.00.

[16] The Father has testified that on February 9, 2007, Dominique moved to Nova Scotia to live with him. He testified that at the time Dominique moved in with him the Mother agreed to pay child support to the Father, for one child, in the amount of \$167.00 per month, which he then subtracted from the amount of child support he was paying through his allotment for the one child in her care. In doing so he calculated his payment to the Mother for the remaining child in her care was to be \$838.00 per month. As a result, the Mother was not entitled to receive child

support for Dominique beginning February 1, 2007, and the Father was entitled to receive child support from the Mother beginning that date. The Mother's income information is not available to me by way of confirmation from the Canadian Revenue Agency so I will use her figure of \$167.00 per month as the appropriate amount for my analysis of the support entitlement for Dominique.

[17] On an income of \$102,897.00, the table guideline child support amount for two children is \$1,380.00 and for one child it is \$862.00 per month. The Father would owe \$1,380.00 for the month of January. When the Mother's child support is set off, the Father would owe \$695.00 per month child support to the Mother beginning February 1, 2007, $\$695 \times 11 = \$7,645.00$.

[18] By October 1, 2008, Dominique's status had once again changed and the Father is prepared to acknowledge that for a period of time she could be considered able to meet her own financial needs, in a situation where she could no longer be declared to be a dependent of the parties as is required by the *Divorce Act*, for the payment of child support from one parent to another or to a child. Accepting this proposition, the Father would then owe the Mother for the support of one child.

[19] In 2008, the Father's income was \$110,949.00. The Nova Scotia table amount to be paid for one child on this income is \$923.00. Subtracting the Mother's child support payable to the Father his child support would be \$756.00 for nine (9) months = \$6,804.00. For three (3) months he would pay the Mother $\$923.00 \times 3 = \$2,769.00$.

[20] In 2009, the Father's income was \$112,734.00. The Nova Scotia table amount to be paid for one child on this income is $\$936.00 \times 12 = \$11,232.00$.

[21] By August 2010, Dominique had decided she did need to complete further education. She moved back to live with her Father and she began attending the Nova Scotia Community College program in architectural design. She is doing well in that program. Dominique is still living with her Father and will complete her diploma the summer of 2012. She has some income from work on the weekend, but this is being used toward her tuition and other expenses. Often with children in this situation who are still financially dependent, the parents will pay toward the child's expenses proportional to his and her income. However, to do that analysis would require more information than is before me. The most practical

and efficient way to deal with this issue is to require payment based upon the child support table.

[22] To calculate the Mother's table guideline support for Dominique, I have used the last income available for her which was \$35,000.00. The Quebec table would appear to require her to pay the amount of \$260.00 per month. Her requirement to pay this support began at August 1, 2010, and should terminate December 30, 2012, or earlier, if Dominique obtains full time employment prior to that date. If Dominique lives elsewhere than in her Father's residence, he should pay this amount directly to her to assist with her rent or other living expenses.

[23] By June 30, 2010, the youngest child, Nichole, graduated from Community College as a fully qualified Fire Fighter Level II. However, she has not found employment in this field and may have returned to community college enrolled in a different program of studies. She works part time and has lived with her mother but she may move in with her boyfriend in July 2011. Support for her could continue until December 2011, or until she obtains employment, whichever is the first to occur.

[24] The Father's income in 2010 was \$114,312.00. The Nova Scotia table for one child is \$948.00. The Father would pay the Mother for January 1, 2010 until July 31, 2010 $\$948.00 \times 7 = \$6,636$. From August 1, 2010 until December 31, 2010, subtracting the Mother's contribution for Dominique he would pay $\$688.00 \times 5 = \$3,440.00$

[25] In 2011 the Father expects to earn \$114,708.00. The Nova Scotia table for one child is \$951.00. Subtracting the Mother's contribution for Dominique, the Father would pay the Mother \$691.00 per month. To July 1, 2011, the total amount owing would be, $\$691.00 \times 7 = \$4,837.00$. He would then continue to pay \$691.00 per month beginning August 1, 2011.

[26] From November 1, 2006 until August 28, 2010, the Father has paid \$43,843.16.

[27] His obligation to pay, according to my calculations, to July 1, 2011, are a total of \$47,854.64. Therefore, he would still owe \$4,011.48. By the time this matter is resolved Maintenance Enforcement likely will have received this from him because they are enforcing an order requiring a payment greater than the

\$691.00 I have calculated he would be required to pay if, as I suggested in my analysis, Nichole and Dominique are dependent children.

[28] The Father's motion is to terminate the child support obligations of both parents, with a declaration that nothing is owed by one parent to the other, including the amounts calculated pursuant to the previous orders. Both Dominique and Nichole are over 19 years of age. One is living in Quebec and the other in Nova Scotia. Each has a parent who likely will provide financial assistance if it is required. I am satisfied under these circumstances that both Nichole and Dominique should not be considered to be dependent children for the purpose of child support as at January 1, 2011. As a result of this finding and adding his required payments under my analysis to December 31, 2010, the Father would owe \$43,017.64. He has paid more than this amount to that date. He is not requesting reimbursement for this amount (\$825.52) nor is he seeking reimbursement for money paid that has been given to the Mother up to June 30, 2011 but he is seeking reimbursement for money paid after that date if this decision is confirmed.

J.