

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: McQuaker v. Crawford, 2011 NSSC 286

Date: 20110516

Docket: SFHMCA-074806

Registry: Halifax

Between:

Annalee Rose McQuaker

Applicant

v.

Ronald Dale Crawford

Respondent

Judge: The Honourable Justice Deborah Gass

Heard: May 3, 2011, in Halifax, Nova Scotia

Written Decision: July 11, 2011

Counsel: Terrance Sheppard, for the applicant
Erinn Moore, for the respondent

By the Court:

[1] This decision is with respect to an application for interim spousal support and I will at the outset indicate that this will constitute a summary of my decision. I anticipate committing it to writing, so it would be perhaps a little more thoroughly fleshed out in writing.

[2] It is an application by Annalee Rose McQuaker for interim spousal support from her common law husband Ronald Dale Crawford. It arose as a result of the parties being involved in a lengthy common law relationship. The actual length of the relationship is in dispute. If one accepts the submission of the respondent, Mr. Crawford, it would be about 16 years in duration; and about 21 years if one accepts the suggestion of Ms. McQuaker. But, nevertheless, whether it is 16 years or 21 years, it is a lengthy relationship. There is some disagreement about when it began and also about when it ended, but according to the evidence there is no dispute that Mr. Crawford actually moved out in January of 2007.

[3] While this is an application for interim spousal support where entitlement, the issue which is the foundation of the granting of spousal support, is not given as much consideration as in a full hearing because the considerations on an interim hearing are generally the issue of need and an interim measure to meet an immediate need, in my view it still bears some consideration.

[4] First of all, it is a lengthy relationship, whether it's 16 or 21 years, and I will deal with this at the outset. Ms. McQuaker believed the relationship began in October of 1986, and the respondent, Mr. Crawford, said it was April of 1987. He said he was about 19 years old when he moved in with Ms. McQuaker. He did turn 20 in February of 1987. But Ms. McQuaker says the relationship began in October of 1986 and they moved in together several months later. So, in putting those pieces of evidence together, it would appear that the actual common law relationship, that is the actual living together did not begin in October of 1986. That does not seem to be in dispute, and the actual month that it did begin is several months later, whatever that means. In Mr. Crawford's view it was April of 1987. Suffice it to say it was in the early part of 1987 that the parties began living together.

[5] Mr. Crawford did move out in January of 2007, although in November of 2006 he expressed his intention to move out and the reality was that he actually

couldn't move out at that time because he was moving into an apartment at his mother's house that his brother was occupying, so he had to remain in the home purely out of necessity. In Mr. Crawford's view the common law relationship was over in 2003 and they took separate bedrooms, and from that point on the conjugal relationship was sporadic. The difficulty with the suggestion that it ended in 2003 is that the clear intention to separate was really not articulated until November of 2006. While Ms. McQuaker does not dispute that the relationship was rocky during those latter years, as they did move into separate bedrooms and had infrequent conjugal relations, nevertheless they were still living together as a family unit. They took occasional vacations and bought groceries together, doing the normal things that a family or a couple does. So, it seems to me that the relationship did actually continue in the form of a common law union until the very end of 2006. I would therefore conclude that the relationship falls just short of 20 years.

[6] Following the breakdown of the relationship, there continued to be some financial inter-dependence and support in that Mr. Crawford did continue to assist financially. At one point in around 2008 he began actually paying her a fixed amount of \$200 every two weeks up until August of 2010. She was also provided with a motor vehicle, and he also paid on the line of credit in the amount of \$650 a month over the years. That line of credit was secured by the applicant, Ms. McQuaker's, house. He was paying on that while they were together and after they separated up until August of 2010.

[7] If one calculates what he was contributing following the breakdown of the marriage, it was approximately \$1,100 a month up to August of 2010. That is a very rough calculation, based on the figures that Ms. McQuaker provided. She showed that his contributions were about \$20,000 in actual payments during that period of time, plus the payments he was making on the line of credit. During that time, she was in turn paying for Mr. Crawford's cell phone, his car insurance and his boat insurance, and that worked out to about \$4,000 in total.

[8] Thus, there was some financial mingling of their circumstances right up until August of 2010. Over that seven year period he paid about \$56,400, it would appear, on the line of credit, although it is hard to imagine that that would have been the case considering the line of credit started at only \$7,000 when they first took it out. Then it was increased to \$35,000, but if he was just paying interest

only at one point – well it costs a lot of money to borrow money, I guess that's the bottom line.

[9] During the course of the relationship, each contributed, it would appear, as they were able. In the initial stages of the relationship, Ms. McQuaker was the primary income earner because Mr. Crawford was working sporadically, approximately 20 hours a week and she had a full-time secretarial position. She had two small younger children with whom Mr. Crawford was very much involved in a parental role. He contributed to their care and upbringing financially and emotionally, and they enjoy a good relationship. Both parties view this as very important and wish to maintain the positive relationship he has with the children. The strain of these kinds of proceedings does take its toll but the importance of that relationship that these now grown children have with Mr. Crawford cannot be underestimated and hopefully that will continue.

[10] While during the early part of the relationship it appears that Ms. McQuaker was the primary income earner, she then became seriously ill in 1996, right in the middle years of this couple's relationship. For a period of time there was a considerable financial struggle because of her ill health and the impact that had on her employability and the general employment situation for the family. But then in the latter years of the relationship, the respondent obtained a good job at Portland Street Honda and became the primary income earner with medical benefits. So the tables turned, to some extent, and Mr. Crawford then became the primary income earner, while Ms. McQuaker struggled with her health issues.

[11] There is no dispute from the evidence that Ms. McQuaker's present ability to work has been impaired, but Mr. Crawford contends that she is not totally unemployable. He believes she could be earning some income, although he recognizes that she might not be able to sustain the kind of demanding employment that perhaps she had had before. However his evidence was that she did some work sewing for her daughter's business and that she has contributed to her poor health, to some extent, by not taking as good care of herself physically as she might. In any event, the health of Ms. McQuaker is a factor that the court considers in determining whether or not to award spousal support. She has established a need and she has been relying and continues to rely on his medical plan to help purchase the medications that she requires because of her health issues. Her income now is \$24,750 a year, which is a significant increase from

what it was over the last three years, but still she shows a significant shortfall each month in terms of her expenses of about \$2,000 a month.

[12] Mr. Crawford's income, on the other hand, is about two and a half times that of Ms. McQuaker's and he has the ability to share expenses, and he does have some ability to pay, demonstrated by the fact that he did pay up until August of 2010 somewhere in the vicinity of \$1,100 a month, being the payments on the line of credit and the \$200 every two weeks that he was giving her.

[13] Ms. McQuaker's illness half-way through the relationship significantly impaired her income earning ability and the family finances. They struggled financially as a family and took out a joint line of credit which started at \$7,000, and substantially increased to \$35,000 in 2003. In 2003, when Mr. Crawford obtained employment at Portland Street Honda his circumstances and those of his family improved.

[14] The provisions governing spousal support in this common-law relationship are found in s. 3 & 4 of the *Maintenance and Custody Act*:

3 (1) The court may, on application by either or both spouses or common-law partners, make an order requiring a spouse or common-law partner to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the maintenance of the other spouse or common-law partner.

(2) Where an application is made pursuant to subsection (1), the court may, on application by either or both spouses or common-law partners, make an interim order requiring a spouse or common-law partner to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the maintenance of the other spouse or common-law partner, pending the determination of the application under subsection (1).

(3) The court may make an order pursuant to subsection (1) or an interim order pursuant to subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just.

4. In determining whether to order a person to pay maintenance to that person's spouse or common-law partner and the amount of any maintenance to be paid, the court shall consider

- (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 towards 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 obtain 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 spousal 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 obliged 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.

[15] The principles set out in the Supreme Court of Canada decisions of *Moge v. Moge* [1992] 35 S.C.R. 813 and *Bracklow v. Bracklow* [1999] S.C.J. 14 offer guidance to the court. In particular, *Bracklow* speaks of the models of support, being contractual, compensatory, and non-compensatory. These models have prompted considerable analysis by lawyers, judges and academics, trying to figure out what they actually mean.

[16] The *Bracklow* decision, in addressing the fourth objective of spousal support, the promotion of self-sufficiency, states at paragraph 42:

[42] Similarly, the fourth objective of s. 15.2(6) of the Divorce Act – to promote economic self-sufficiency – may or may not be tied to compensation for disadvantages caused by the marriage or its breakup. A spouse’s lack of self-sufficiency may be related to foregoing career and educational opportunities because of the marriage. But it may also arise from completely different sources, like the disappearance of the kind of work the spouse was trained to do (a career shift having nothing to do with the marriage or its breakdown) or, as in this case, ill-health.

[17] The circumstances of this case demonstrate that Ms. McQuaker has a need for spousal support. That is not to say that there is not an ongoing obligation to strive towards self-sufficiency and that is a burden that she has and will have going forward. There continues to be a positive obligation on her part to move towards self-sufficiency or to present good, hard, concrete evidence as to why she cannot. This is an interim hearing today, but certainly when the matter comes back for a full hearing the expectation would be that either she has moved forward towards or into self-sufficiency, or she has concrete evidence as to why she cannot.

[18] Mr. Crawford submits that his contributions over the years have not only assisted the family but they have also preserved Ms. McQuaker’s asset, that being the matrimonial home. He has indicated that he will be pursuing a claim with respect to the home, but that is something for another day.

[19] At the present time, the applicant’s current income, which is based on CPP and disability benefits, is \$24,750, and her expenses exceed her income by about \$2,500. Those expenses certainly can be and must be modified to reflect the reality of her situation. There is absolutely no way that the respondent, Mr. Crawford, has the ability to meet her shortfall on his income. However, he did pay, for a significant period of time, directly to her and indirectly by paying on the line of

credit, about \$1,100 a month without any court order or agreement and therefore no tax benefits. His income for 2010 is \$62,934 according to his tax return. His sworn financial statement showed income of \$62,374, and his expense statement shows that his expenses exceed his income by about \$1,000. So, for the purposes of looking at the parties respective circumstances, her income is \$24,750 and her shortfall is about \$2,500; his income is \$62,900 and his shortfall is about \$1,000.

[20] The applicant was seeking \$1,500 a month based on her need and what would appear to be his ability to pay. The court is mindful, however, that this position was based on a somewhat higher income because his 2009 income was closer to \$69,000. It was \$68,750, and his 2010 income is \$62,900, so there is a significant difference there. Also, between 2009 and 2010 it appears that the applicant received some additional disability benefits or CPP benefits that did increase her income.

[21] I do conclude that there is entitlement. There is certainly need based on the facts. This is a lengthy relationship and illness occurred during the course of that relationship. There was a mutual contribution by both of them to the support of each other and the family during the relationship and that continued after the relationship came to an end. The respondent continued to contribute financially and the applicant continued to pay some of his bills.

[22] I certainly appreciate that payment of any spousal support is a hardship in these circumstances, but I recognize as well that given the length of this relationship, the circumstances of Ms. McQuaker, and their respective financial circumstances, it would be my view that a spousal support order of \$1,000 a month is appropriate. That will be taxable, so it will cost the respondent, Mr. Crawford, about \$629 a month. He is only paying in real dollars less than what he was paying on the line of credit and giving her the \$400 a month approximately. It is not as much as she needs, but it certainly is in my view within the realm of what he should be considered to be able to pay. The court does appreciate that in his view it is more than he can pay based on his financial circumstances. When one looks at the respective incomes of the parties, the way their relationship worked over the course of 19 years and what the expectations were from that, it would be my conclusion that this interim order goes some way towards meeting her immediate needs. It will be also necessary for him to keep her on his medical plan for as long as he is legally able to do so. I do not know the details of his medical plan, but certainly her medical expenses are significant and it is in both of their interests to

maintain that plan because it helps to some extent reduce her need and it is a lot less costly to keep her on the plan. However there will come a point when it may not be legally possible.

[23] Duration of support is not in issue here because this is an interim order. However as I've indicated, in keeping with the principles and objectives of spousal support, Ms. McQuaker will have to demonstrate that she has been working towards economic self-sufficiency and certainly produce more medical evidence if she is to support an enduring claim and an ongoing need at a full hearing of the matter. This interim order will be effective on the first day of May, 2011. I am not making it retroactive. I realize that there has been a gap in support since August of 2010, but I am not satisfied that the respondent would have the ability to satisfy an order retroactive to August, 2010 at this time.

J.