

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**  
**Citation: Gordon v. Mevold, 2012 NSSC 17**

**Date:** 20120110  
**Docket:** 1201-49933; SFHD 024564  
**Registry:** Halifax

Between:

Ian Robert Gordon

Petitioner

v.

Barbara Anne Mevold

Respondent

**Judge:** The Honourable Justice Elizabeth Jollimore

**Date:** January 10, 2012

**Counsel:** Ian Gordon, not appearing  
Barbara Mevold, representing herself

**By the Court:****Introduction**

[1] Ian Gordon applied to vary the terms of a consent order relating to child support and parenting. The order he sought to vary is dated September 4, 2007. Pursuant to that order, Ms. Mevold paid Mr. Gordon monthly child support of \$288.00 for their son, John. In response, Ms. Mevold asked that the access and child support terms of the consent order be varied as of August 2010.

[2] The applications are pursuant to the *Divorce Act*, R.S.C. 1985 (2<sup>nd</sup> Supp.), c. 3.

**Conciliation**

[3] The parties participated in conciliation in 2008 and 2010. Conciliation is described in Civil Procedure Rules 59.29 to 59.32. As I've said elsewhere (*MacDonald v. Seguin*, 2011 NSSC 337 at paragraph 5), the conciliation process can be beneficial because it identifies the issues in their dispute and the documents and the information needed to address those issues. Conciliation can also identify areas of agreement and ensure the parties are ready for trial.

[4] At conciliation in 2008, Mr. Gordon said he no longer wanted to vary the parenting terms of the consent order. In 2010, Ms. Mevold confirmed that she wished only to address child support and arrears. As a result, I need not consider John's parenting: he'll stay in his father's primary care, having contact with his mother as outlined in earlier court order.

[5] Also at conciliation, the parties reached an agreement with regard to one of the child support claims: they agreed that Ms. Mevold's monthly child support payment would increase from \$288.00 to \$333.00 starting on December 1, 2007.

[6] The parties weren't able to resolve Mr. Gordon's claim for arrears of child support at conciliation. The court officer asked Ms. Mevold to provide information about her payment of child support during the period when Mr. Gordon said she hadn't paid support to him. When Ms. Mevold provided this information, it was sent to Mr. Gordon and he was asked whether this resolved his concerns. Mr. Gordon didn't respond, so this issue remains unresolved after conciliation.

[7] Ms. Mevold's application to vary the amount of her child support payments as of August 2010 wasn't resolved in conciliation.

[8] In the absence of any response from Mr. Gordon, the court officer scheduled a conference and mailed notice of the conference to the parties at their designated addresses. Civil Procedure

Rule 31.16(1)(a) allows parties to designate an address for the delivery of documents. This is to be an address at which the party is assured of receiving a document when delivered. Documents delivered to the designated address are taken to be received by the party three days after the date of mailing according to Civil Procedure 31.16(3).

[9] Ms. Mevold appeared at the September 9, 2010 conference, while Mr. Gordon did not. A conference memorandum, outlining filing requirements, deadlines and the hearing date, was sent to each party at its designated address.

### **The hearing**

[10] Mr. Gordon did not attend the hearing, though he was notified of it by the conference memorandum mailed to his designated address. Correspondence to Mr. Gordon was not returned to the court and Mr. Gordon did not contact the court to request an adjournment or to explain that he was unable to attend. Ms. Mevold has confirmed that Mr. Gordon's designated address remains a valid address. Since he was notified of the hearing and in light of the relief being claimed, I proceeded with the hearing in his absence.

[11] The issues before me are, first, whether Ms. Mevold owes arrears of child support for the period of October, November and December 2007 and, second, the amount of child support Ms. Mevold should pay since August 2010 when she lost her job.

[12] Civil Procedure Rule 59.35(7) states that a conciliation record "constitutes evidence at the hearing, except any part that is the subject of a written objection, and that part may be considered by a judge who rules against the objection." The conciliation record was prepared on July 27, 2011 and mailed to both parties. Parties are permitted to object to any part of the conciliation record according to Civil Procedure Rule 59.37(6). Neither party has done so.

[13] According to the conciliation record, the parties agreed that Ms. Mevold's monthly payment for John's support would increase from \$288.00 to \$333.00 on December 1, 2007. This amount was based on her projected annual income of \$38,243.00. At the hearing, Ms. Mevold asked that her payments not be increased because Mr. Gordon did not respond to the court officer's efforts to determine the parties' positions about the arrears claim. Since Mr. Gordon didn't respond to this, the court officer didn't prepare the order stating the increased amount of child support payments on which the parties had agreed.

[14] I am not willing to ignore the parties' agreement to increase John's child support. When child support is determined on a prospective basis, the amount of child support a parent pays is determined by the paying parent's income, according to the *Federal Child Support Guidelines*, SOR/97-175, section 3. The Supreme Court of Canada's decisions in *Richardson*, [1987 CanLII 58 \(SCC\)](#), and *Willick*, [1994 CanLII 28 \(SCC\)](#), articulate four core principles relating to child support:

- a. child support is the child's right;
- b. the right to support survives the breakdown of the relationship between a child's parents;
- c. as much as possible, child support should provide the child with the same standard of living the child enjoyed when the parents were together; and
- d. the specific amount of child support owed will vary based upon the income of the payor parent.

[15] In determining John's support, these principles cause me to reject Ms. Mevold's argument that their agreement should be ignored because Mr. Gordon failed to act. Mr. Gordon was seeking "the table amount of child support" of \$333.00 starting in December 2007. This amount was based on Ms. Mevold's projected annual income of \$38,243.00. Ms. Mevold agreed to pay this. Child support is to be based on a parent's income. Mr. Gordon's failure to address the issue of arrears does not disentitle John to the benefit of child support payments based on his mother's income.

#### **Claim for arrears**

[16] Mr. Gordon said that Ms. Mevold owed child support for the months of October, November and December 2007 and he advanced a claim for these arrears which was discussed at conciliation. In response to the claim, Ms. Mevold reviewed her web-based banking records for the period from August 2007 to December 2007. In the materials she filed with the court officer (which were relayed to Mr. Gordon), Ms. Mevold said that the records show that Mr. Gordon cashed two support cheques in October and none in either November or December.

[17] Ms. Mevold says she stopped payment on the November and December 2007 cheques and issued new cheques for those months to Mr. Gordon in February 2008. She provided copies of the replacement cheques to Mr. Gordon. These were dated February 1, 2008, February 2, 2008 and February 15, 2008. These cheques in the amounts shown were sufficient to pay the arrears that Mr. Gordon says accumulated.

[18] The materials that Ms. Mevold provided persuade me that her child support payments in the fall months of 2007 may have been in arrears for the period when Mr. Gordon did not cash the cheques that were sent to him, and that she remedied the problem once she became aware of it. I find there are no arrears owed to Mr. Gordon for October, November and December 2007.

#### **Prospective child support**

[19] Ms. Mevold applied to vary her child support payments since losing her employment in August 2010.

[20] The variation of child support payments is governed by section 17(4) of the *Divorce Act* which says that before I may make a variation in respect of a child support order, I shall satisfy myself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order.

[21] The parties' agreement to vary Ms. Mevold's child support payments in December, 2007 based the new amount of child support on Ms. Mevold's projected annual income of \$38,243.00. The monthly payment of \$333.00 was dictated by section 3 of the *Federal Child Support Guidelines*, SOR/97-175.

[22] Ms. Mevold lost her job in August, 2010. Her Employment Insurance benefits were \$451.00 each week. This weekly payment equates to annual income of \$23,452.00 which is \$14,791.00 less than the annual income she earned while working. This was a significant and unforeseen decrease in her income. It was not a temporary change to her income. It is, I find, a change circumstances as provided for in the applicable guidelines which occurred since the parties agreed to change her child support payments.

[23] Based on an annual income of \$23,452.00 from Employment Insurance benefits, I order that Ms. Mevold's monthly child support payment decrease to \$198.00, commencing with her payment on August 1, 2010 and continuing with payments due on first of each month.

[24] At the conference on September 9, 2011, Ms. Mevold was ordered to file her affidavit and Statement of Income on November 29, 2011 and to file her brief on December 21, 2011. She did this, thereby letting Mr. Gordon know of her financial circumstances: her Employment Insurance benefits were exhausted in September 2011. She has not found employment. She has left her home and moved into her mother's home. She cannot afford necessary dental care and, as a result, has not only an infected tooth but a bacterial infection in her face.

[25] Ms. Mevold attempts to earn an income through online sales. She is paid a commission. Her Statement of Financial Information indicates a monthly income of \$300.00. On an annual basis, this equates to an income of \$3,600.00 – an amount well below the threshold level where a parent is required to pay child support.

[26] Based on an annual income of \$3,600.00, I order that Ms. Mevold's monthly child support payment decrease from \$198.00 to zero, commencing on October 1, 2011.

[27] I have noted the core principles of child support at paragraph 13 of my reasons. Parents are obliged to support their children. To ensure this obligation is met, I order that if Ms. Mevold secures employment providing her with an annual income of \$10,800.00 or more, she notify Mr. Gordon in writing within two weeks of commencing to earn this income. If she receives an annual income, from any source, in excess of that amount, she is to notify Mr. Gordon of this within two weeks of commencing to receive that level of income.

[28] Regardless of her annual income level, I order that Ms. Mevold provide a copy of her income tax return (whether filed with the Canada Revenue Agency or not) with Mr. Gordon and Notice of Assessment from the Canada Revenue Agency be sent to Mr. Gordon. She must do this each year. Her tax return must be provided to Mr. Gordon no later than June 1 of each year, while her Notice of Assessment must be provided to him within two weeks of her receipt of it.

[29] I order that Ms. Mevold file a true copy of the Maintenance Enforcement Program record of payments relating to her support within two weeks from the date of the order I am issuing. If there is any future application to deal with John's support, the record of payments will provide information about her payment record.

[30] It is not clear whether there are any arrears of support. I have addressed Mr. Gordon's claim for arrears and dismissed this claim. I have not been provided with a current record of payments from the Maintenance Enforcement Program. In light of Ms. Mevold's financial circumstances, I suspend the enforcement and collection of any child support arrears she currently owes.

### **Conclusion**

[31] I find that Ms. Mevold owes no arrears of child support for the period of October, November and December, 2007. I order that, starting on December 1, 2007 and continuing on the first day of each month thereafter until July 1, 2010, Ms. Mevold pay monthly child support of \$333.00 for John. Starting on August 1, 2010 and continuing on the first day of each month thereafter until September 1, 2011, Ms. Mevold is to pay monthly child support of \$198.00 for John. Starting on October 1, 2011 and continuing until there is a court order or agreement of the parties which varies my order, Ms. Mevold shall pay no child support for John.

[32] Within two weeks of my order, Ms. Mevold will file a copy of the Maintenance Enforcement Program's record of her payments with the court. Within two weeks of securing employment which earns her an annual income in excess of \$10,800.00 or obtaining a source of annual income which exceeds \$10,800.00, Ms. Mevold must notify Mr. Gordon of this in writing. In any event, Ms. Mevold shall provide Mr. Gordon with a copy of her personal income tax return (whether filed or not) by June 1 of each year, starting on June 1, 2012. Where she files a tax return, she must provide Mr. Gordon with a copy of her Notice of Assessment within two weeks of receiving it from the Canada Revenue Agency. Lastly, I suspend the enforcement and collection of any arrears of child support which exist as a result of this or any other court order.

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

Halifax, Nova Scotia