

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Cochran v. McBean-Cochran 2012 NSSC 165

Date: 20120426
Docket: 1201-55649
Registry: Halifax

Between:

Andrew Cochran

Applicant

v.

Brenda McBean-Cochran

Respondent

DECISION ON COSTS

Judge: The Honourable Justice Moira C. Legere Sers

Heard: December 1 and 2, 2011 in Halifax, Nova Scotia

Written

Submissions: Deborah I. Conrad for Andrew Cochran on
March 7 and 14 ,2012

Kenzie MacKinnon for Brenda McBean-Cochran on April 11, 2012

Counsel: Deborah I. Conrad for Andrew Cochran
Kenzie MacKinnon for Brenda McBean-Cochran

By the Court:

[1] The parties' Agreement and Minutes of Settlement dated December 28, 2000 was incorporated into their Corollary Relief Judgment. The Agreement called for a payment of \$7,200 per month combined child and spousal support.

[2] In 2002 there was a material change of circumstances.

[3] Subsequent to May 2002, the applicant reduced the total of his combined payment to \$2,000 per month after discussions between himself and the respondent.

[4] Neither party applied to formally change the Agreement.

[5] The applicant's income level improved in 2007 such that his earnings (although not his real and personal property holdings) more closely reflected his earnings at the time of the original agreement.

The Applicant's Late Disclosure

[6] On February 5, 2009 the respondent's counsel requested financial disclosure from 2002 forward.

[7] The applicant informed the respondent's counsel that he had not filed 2006 to 2009 Income Tax Returns in part because he could not obtain receipts from the respondent for spousal support actually paid.

[8] On May 14, 2010 the respondent's counsel again requested disclosure.

[9] Absent disclosure, on July 2, 2010 the respondent asked the Maintenance Enforcement Program to enforce the order.

[10] Maintenance Enforcement commenced enforcement of the original order, assessed arrears in excess of \$500,000 and commenced enforcement of the original monthly amount of \$7,200.

[11] On July 22, 2010 the applicant filed his application to vary. This was not perfected until he was able to file his financial disclosure. The respondent was only notified of the application January 12, 2011.

The Respondent's Late Disclosure

[12] The respondent habitually refused to supply the applicant with proof of receipt of spousal support, impairing his ability to claim a tax deduction.

[13] She finally confirmed her willing to do so in a pretrial conference on the application to vary.

[14] Both parties were aware the child was no longer dependent at least by September 2006. This was only formally agreed to in a pretrial conference.

[15] The respondent failed to disclose in accordance with the February 2, 2011 deadline in the Notice to Disclose nor by the time allowed by the extension of time granted by the Court to March 15, 2011 and not again by date provided by the Order to Disclose dated April 8, 2011.

[16] Two days prior to the April 29, 2011 date assigned for hearing of the application, the respondent filed a lengthy affidavit. The hearing was postponed. Pursuant to a motion to strike the affidavit, on August 3, 2011 the Court ordered the affidavit struck and fixed a time for filing of the revised affidavit to September 14, 2011.

[17] This was further extended to October 3, 2011. This deadline was missed. The respondent's affidavit was finally filed October 17, 2011.

[18] Both parties were aware of the material change of circumstances at the time of the material change in 2002. Both parties were aware of the fact that the child was no longer a dependent in 2006.

[19] Both parties were aware of the increase in the applicant's income in 2007 although the respondent did not know of the details of the applicant's income.

[20] Both parties failed to disclose in a timely basis.

[21] The push to enforce the original agreement was not balanced by the fact that the child was no longer dependent. Failure to agree on this much earlier led to enforcement of child support order at a time when the child was no longer dependent.

[22] The payments made in the intervening years between 2002 and 2007 likely exceeded guideline payments for both child and spousal support.

[23] The agreement to give receipts came very late in the proceedings, impairing tax relief.

Relief Sought and Obtained

[24] The applicant asked for an order vacating the arrears and terminating child and spousal support. He received the termination of spousal support evident since 2006 and a recalculation of arrears based on a recalculation of spousal support. In the end, with the reduction and the garnishment he ended up with an overpayment.

[25] The respondent wanted a retroactive recalculation to 2007. She received a recalculation to 2009, less than she had hoped for.

[26] In retrospective, both were partly successful.

[27] The prospective request for spousal support was granted as requested by the respondent, again not at the hoped for level.

[28] The applicant was not successful in obtaining a termination. However, the applicant did obtain a review which places an onus on the respondent to disclose and provide evidence of income, property, disability and efforts to obtain other income sources. The tenor of the order does not reflect an indefinite award.

[29] The respondent claimed she was totally disabled. No finding was made in accordance with her assertions.

[30] The length of the marriage was in dispute. The applicant was successful in that proposition.

[31] A review was scheduled for two years.

[32] The applicant made several offers, some of which came close to the order but did not match it in one essential aspect: that of termination date. The review was offered by the applicant but the spousal support award offered was a reduced monthly award.

[33] I have no offers made by the respondent.

[34] All in all there was mixed success. Each party were responsible for lack of timely disclosure.

[35] The issue of variation was a legitimate issue for each party and absent consent required court intervention.

[36] Each party shall bear their own costs.

Legere Sers, J.