

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Ward v. Lawrence, 2012 NSSC 362

Date: 20121009

Docket: SFSNF 13889

Registry: Sydney

Between:

Starlene Marie Ward

Applicant

v.

Gary Everett Lawrence

Respondent

Judge: The Honourable Justice Theresa M. Forgeron

Heard: July 9, 2012 and October 9, 2012, in Sydney, Nova Scotia

Oral Decision: October 9, 2012

Written Decision: October 22, 2012

Counsel: David Raniseth, for Starlene Marie Ward
Gary Everett Lawrence, on his own behalf

By the Court:

[1] **Introduction**

[2] This is the oral decision in the matter involving Starlene Ward and Gary Lawrence, who are the parents of 13 year old Hannah. Ms. Ward seeks to retroactively increase child support. Mr. Lawrence agrees to the increase, but disputes the retroactive claim.

[3] **Issues**

[4] During the course of the hearing, it became apparent that there were few legal disputes. Both parties agreed that a material change in circumstances occurred when Mr. Lawrence's income increased substantially from \$16,000 a year, which was the basis for the 2008 child support order. Both parties also agreed that maintenance should be automatically recalculated on June 1st of each year, and based upon the income which Mr. Lawrence had earned in the previous year.

[5] Therefore, the issues which I am left to determine in this decision are as follows:

- a. Should a retroactive order issue?
- b. What provisions will apply to the ongoing support obligation?

[6] **Analysis**

[7] **Should a retroactive order issue?**

[8] In **D.B.S. v. S.R.G.** 2006 SCC 37, the Supreme Court of Canada reviewed the principles to be balanced when a court is faced with a claim

for a retroactive increase in child support. I will now apply these four factors to the claim before me as follows:

a. *Was there a reasonable excuse for failing to file the variation application in a more expeditious fashion?* Ms. Ward was aware that Mr. Lawrence was working out west. She knew, or ought to have known, that his income had increased. She did not take action because she and her common law partner were meeting all of Hannah's needs until 2011 when they began to experience financial difficulties due to unemployment. Ms. Ward ought to have a filed a variation application earlier than August 2011.

b. *Did Mr. Lawrence engage in blameworthy conduct?* Mr. Lawrence did not provide annual financial information because he was not required to do so in the last consent order, an order drafted by counsel for Ms. Ward. As soon as disclosure was requested, Mr. Lawrence supplied his income information. Mr. Lawrence also used a portion of his salary increase for Hannah. He built a bedroom for Hannah, and bought her furniture, electronics, and clothing. Hannah spends substantial time with her father by virtue of the liberal parenting schedule. Although these factors mitigate, to some extent the retroactive claim, they do not absolve Mr. Lawrence of his obligation to pay child support according to the *Guidelines*. Mr. Lawrence knew that child support was based on the income of the payor, yet he did not voluntarily increase the monthly quantum, even after receiving notice of the variation application in late August 2011.

c. *What are Hannah's circumstances and will a retroactive order benefit her?* All of Hannah's needs were met until 2011. In 2011 Ms. Ward began to experience financial difficulties because her partner lost his job. This impacted negatively on Hannah. Hannah

will benefit from a retroactive order in the circumstances of her life.

d. *Will Mr. Lawrence experience hardship if a retroactive award is granted?* Mr. Lawrence has four children to support. Hannah lives primarily with Ms. Ward; Mr. Lawrence's other three children live primarily with him and his partner. Mr. Lawrence's partner works with the CBRH. She is on maternity leave. Mr. Lawrence did not supply the court with details of his personal or household finances. However, I do accept that Mr. Lawrence will be negatively impacted by a retroactive order. Mr. Lawrence must assume some responsibility for this hardship because he failed to voluntarily increase support once he received notice of the variation application. Hardship concerns can be resolved by way of a repayment schedule.

[9] After balancing these factors, I have determined that I will exercise my discretion and grant a retroactive variation in the child support obligation, effective January 1, 2011. For 2011, child support is based on Mr. Lawrence's income of \$53,033, less union dues of \$521, for a total income of \$52,512. I note that Mr. Lawrence did not supply proof of his 2011 union dues. I therefore applied the 2010 figure. For 2011, Mr. Lawrence's obligation is based on \$457 per month for 12 months, less credit for all payments made.

[10] For 2012, Mr. Lawrence's payments continue to be based on an annual income of \$52,512. However, the monthly obligation changed with the adoption of the updated *Guidelines*. For 2012, Mr. Lawrence's child support obligation is based on \$442 per month, less credit for all payments made.

[11] All retroactive payments are to be paid through the Maintenance Enforcement Program. The award will be paid at a rate of \$160 per

month, in two equal monthly installments of \$80 on the 15th day and last day of each month, until the retroactive award is paid in full. The retroactive payment is in addition to the regular monthly obligation.

[12] What provisions should apply to the ongoing support obligation?

[13] The following clauses will replace the maintenance provisions of the previous court order:

a. Gary Lawrence is required to pay Starlene Ward retroactive monthly child support of \$457, payable on the 15th of each month commencing January 15th, 2011, and continuing until December 31, 2011. Gary Lawrence will receive credit for all maintenance already paid to the Maintenance Enforcement Program.

b. Gary Lawrence is required to pay Starlene Ward retroactive and ongoing monthly child support of \$442, payable in two equal monthly instalments of \$221 on the 15th day and last day of each month commencing January 15th, 2012 until further court order. This payment will be adjusted annually according to the process described in this order.

c. Gary Lawrence will pay Starlene Ward retroactive child support for the period commencing January 1st, 2011 as stated in paragraph 13(a) and (b), and less credit for all payments received from Gary Lawrence through the Maintenance Enforcement Program. The retroactive award will be paid at a rate of \$160 per month, in two equal monthly installments of \$80 on the 15th day and last day of each month, until the retroactive award is paid in full. The retroactive payment is in addition to the regular monthly obligation.

d. On June 1st of each year, the recalculation clerk must review and, if a payor's annual income has changed from the income disclosed in the child maintenance order, recalculate the table guideline amount of child maintenance payable pursuant to the *Child Maintenance Guidelines* by applying the following process:

i) No later than May 1st of each year, Gary Lawrence must provide to the recalculation clerk at Sydney Justice Centre, 136 Charlotte Street, Sydney, NS and to Starlene Ward at her designated address a copy of his completed Income Tax Return for the most recent taxation year with all attachments and a copy of the Notice of Assessment or Reassessment received for that return.

ii) If Gary Lawrence does not provide the financial information, his income will be deemed to be 10% more than the annual income attributed to him in the most recent of the previous child maintenance orders and recalculated orders.

iii) Subject to paragraph (v), and upon review of the Income Tax return(s) and assessment(s) sent by Gary Lawrence, the recalculation clerk must recalculate the table amount payable under the *Child Maintenance Guidelines*, based upon the total income of Gary Lawrence as disclosed on line 150 of the prior year's income tax return, less union dues. The recalculation clerk must issue a recalculated order, and send a copy of the recalculated order to Gary Lawrence and to Starlene Ward at their designated addresses. The recalculated order will be effective on June 1st of each year.

(iv) If the recalculation clerk has not recalculated the child maintenance to be paid, the clerk must send a statement to the parties explaining why no recalculation has been made.

- (v) Either or both of the parties may apply to vary the recalculated order no later than 30 days after the date it is sent to them if either or both disagree with the recalculated child maintenance table amount.
- e)
- (i) All maintenance payments must be made payable to Starlene Ward.
 - (ii) The payments must be sent by Gary Lawrence to the Office of the Director of Maintenance Enforcement, P.O. Box 803, Halifax, Nova Scotia B3J 2V2, while the order is filed for enforcement with the Director.
 - (iii) A court officer must send the current designated addresses of the parties, and a copy of this order, to the Office of the Director of Maintenance Enforcement in accordance with section 9 of the *Maintenance Enforcement Act*.
 - (iv) Both parties must advise the Office of the Director of Maintenance Enforcement of any change to their address, within ten (10) days of the date of the change, under section 42(1) of the *Maintenance Enforcement Act*.
 - (v) Gary Lawrence must advise the Office of the Director of Maintenance Enforcement of a change in location, address and place of employment, including the commencement or cessation of employment, within ten (10) days of the date of the change, under section 42(2) of the *Maintenance Enforcement Act*.

f. Gary Lawrence shall provide Starlene Ward and Maintenance Enforcement with a copy of his Income Tax Return, completed and with all attachments, along with all Notices of Assessment and Re-Assessment received from Canada Customs and Revenue Agency on an annual basis on or before May 1st of each year commencing on May 1st, 2012, in relation to his 2011 tax return.

[14] If there are questions about retroactive calculations, after the Maintenance Enforcement Program records are secured, I reserve the right to determine any such issues.

[15] **Conclusion**

[16] The child maintenance provisions of the current court order are varied retroactively to January 1, 2011. Child support is based upon the income of Mr. Lawrence and the *Guideline* table amount. The child support obligation is subject to an automatic recalculation on June 1st of each year.

[17] Mr. Raniseth is to prepare the order. My assistant is to be contacted to arrange for a brief chamber's appearance should drafting issues arise.

Forgeron, J.