

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Stewart v. Stewart, 2013 NSSC 66

Date: 20130222

Docket: 1201-066470
(SFHD082753)

Registry: Halifax

Between:

Roderick Stewart

Petitioner

v.

Carol Stewart

Respondent

Judge:

The Honourable Justice Moira C. Legere Sers

Heard:

January 28, 2013 in Halifax, Nova Scotia

Counsel:

Patrick Eagan, counsel for the petitioner
Joyce Ruck de Peza, counsel for the respondent

By the Court:

[1] By motion for interim relief dated January 28, 2013, the respondent seeks interim spousal support and medical coverage under the respondent's medical and dental plan through his employer.

[2] The parties were married June 24, 1994 in Brampton, Ontario. They separated on January 3, 2011. They were married for 16 ½ years.

[3] There are no children of the marriage.

[4] The respondent was 35 years old when she married the petitioner. The respondent was 52 at separation .

[5] The petitioner is now 53 years old and the respondent is 54.

[6] This was the petitioner's first marriage and the respondent's second.

[7] The petitioner has been paying the respondent \$500 per month since the separation in January 3, 2011.

History

[8] **The respondent** had been married previously for a two to three-year period.

[9] Before these parties married, the respondent lived with her parents and attended university part time.

[10] Prior to that, she held a full time job at Birks Jewelry in Halifax.

[11] She was unemployed when the couple began dating.

[12] Both the petitioner and the respondent were unemployed when they married.

[13] After her second marriage in 1994, the respondent attended university part time.

[14] She had commenced her university studies in the late 1980s but did not attend continually or full time. She wanted to work part time and did not want to incur large student loans.

[15] For the first three years of marriage she did not work. She attended Dalhousie University taking part time courses toward her statistics degree. She obtained her Bachelor of Science (Statistics) in May of 1997.

[16] The respondent entered the marriage with a student loan of about \$15,000, half of which was paid off by the petitioner from an inheritance he received in or about 2000.

[17] The petitioner continually spoke to the respondent about obtaining employment in order to assist him in supporting themselves as a couple. His evidence is clear that he pushed this topic as much as he could.

[18] While attending university part time, the respondent felt that she did not have the time required to work part time while pursuing her studies.

[19] In 2000 the petitioner was left an inheritance of approximately \$240,000.

[20] The petitioner wanted to save this inheritance for his retirement. However, with the respondent unwilling to work, he drew on this inheritance to cover monthly expenses.

[21] Out of this he paid approximately one-half of her student loan. The loan he testified was between \$15,000 and \$20,000. He bought a new car, a 2000 Camry. She has this vehicle in her possession.

[22] The respondent suggests that they lived extravagantly.

[23] Her evidence on this point is not sustainable. If one deducts even a minimal amount of \$7,000 (an estimate) for her loan and the cost of the car and divides the remaining over the period of their marriage, one could not conclude this was anything above the norm.

[24] Unable to support themselves fully on the petitioner's income, the parties used his inheritance until such time as the entire inheritance was expended (\$240,000).

[25] The petitioner alleges that when the respondent looked for work she was not diligent in attempting to obtain work and was and is not motivated to obtain work.

[26] The respondent acknowledges that she has not worked as a statistician and has found it difficult to obtain a job in this field.

[27] She has applied for jobs requiring training in science over the years and sought several positions at the QEII.

[28] During the marriage she only worked in 1998 for a summer position for the Department of Community Services and did not work further until the separation.

[29] Since September 10, 2012, she has been employed as a caregiver for seniors earning \$10.50 an hour, approximately \$890 per month. She is supplemented minimally by social assistance which benefits will end in mid-December 2012. She works approximately 16 ½ hours per week.

[30] Initially when she started employment she had full time hours.

[31] She advises that she has some medical issues, none of which appear to be significantly connected to her employment or lack thereof. Certainly there would have to be far more medical evidence to sustain her contention that she was limited in her capacity to find work over the course of her marriage.

[32] I have no independent medical information to confirm that the respondent is disabled or unable to find work.

[33] **The petitioner** earned a Bachelor of Science Degree in Marine Biology in 1982.

[34] Immediately after his graduation and well prior to his marriage he was the caretaker for his grandparents until his grandmother was placed in a senior's residence in 1992.

[35] While unemployed when they married, shortly after marriage the petitioner began working at a Pet's Unlimited store for \$8 per hour where he worked for the first two years of marriage.

[36] For the next four years thereafter, he worked at another retail operation for \$10 per hour.

[37] The couple struggled financially and could not survive without using and encroaching on his inheritance.

[38] In 2002 he started working as a part time research assistant and by June 2003 he became permanently employed. His current income is \$36,000 gross a year.

[39] The petitioner does not have a car, a computer, microwave, tv or the internet.

[40] He paints in his spare time, although I am satisfied that this does not result in a net income.

[41] At separation he voluntarily commenced paying the respondent \$500 per month to assist her re-establish herself in 2011 and 2012.

[42] In 2011 he made \$36,585; in 2010 \$35,178; and in 2009 he earned \$34,666.

The Law

[43] In making an interim order for spousal support pursuant to section 15.2(4) of the *Divorce Act*, the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[44] And in so doing, pursuant to 15.2(6):

An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should:

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[45] I am aware that this is an interim hearing and thus refer to **Bennett v. Bennett**, 2005 ABQB 984; **Labelle v. Labelle** (1993), 46 R.F.L. (3d) 341 (Man.Ct. Q.B.) Carr J. and **Lila v. Lila** (1986) 3 R.F.L. (3d) 226 (Ont.C.A.). as discussed in **Breed v. Breed**, [2012] N.S.J. No. 114, a decision of Beaton, J.

[46] I have noted the following:

These parties have cohabited and been married for 16 ½ years.

The petitioner believes he did 75% of the work at home.

[47] Clearly the functions performed by each spouse during cohabitation did not create a dependence or a disadvantage to the respondent.

[48] There are no children of the marriage and the evidence does not disclose any economic disadvantage to the respondent arising from the marriage.

[49] The agreement to pay support subsequent to the separation was one entered into by the petitioner for a short period of time to help sustain the respondent and move her toward obtaining employment.

[50] The disadvantage of the marriage breakdown now is that the respondent is now required to make diligent efforts to become as self sufficient as possible.

[51] On the evidence before me the history of her employment indicates that she has not pursued employment diligently nor put herself in a position to be employed or to support herself either before or after the marriage.

[52] The marriage appeared to economically advantage her and perhaps allowed her to continue to suspend her move to self-sufficiency although the petitioner clearly encouraged her to find work to help sustain them as a couple.

[53] The lack of employment does not arise out of any obligations during the marriage.

[54] On an interim basis, I am considering need arising from the dissolution of the marriage. Part of her need arises from her own tardiness in putting herself in a position to be gainfully employed .

[55] A final order will have to consider the issue of duration in light of the above evidence.

[56] To sustain her dependence, having exhausted the petitioner's inheritance and to require the petitioner to continue to support her on a long-term basis would only continue to promote her dependence.

[57] In order to promote her economic self-sufficiency, the respondent **must be aware** that she is **obliged to diligently and continually look for employment**.

[58] She has suggested she might need to retrain.

[59] To indicate in these circumstances that the petitioner might be responsible for her retraining when she has had ample time to retrain during the course of the marriage would be to disadvantage the petitioner.

[60] This is an interim order and one what will require the petitioner, given the length of the marriage, to continue to support her in a supplementary manner. The message to her however must promote the self-sufficiency of the respondent.

[61] This is not the marriage that has created her dependency, rather circumstances within her own life, her decision making, and her approach to finding employment that appeared to have created a dependency were continued by this marriage.

[62] The respondent has an ability to earn income.

[63] In 2010 her line 150 income was \$25,865; in 2011 she earned total income of \$3,120; in 2010 she earned income of \$25,864.

[64] Neither party has real property.

[65] In September 2011 the petitioner signed over the only car that he had, a 2000 Camry. This was bought with his inheritance.

[66] He is the only one of the couple to also have a pension. That is likely to be divided upon separation.

Conclusion

[67] The petitioner shall make efforts to maintain the respondent, if he is able, on his medical plan up until the time that he is no longer able (for example, at divorce).

[68] The respondent provides spousal support guidelines to suggest a duration of indefinite support subject to variation and/or review using her income of \$11,367 and his of \$40,000. His income however for this year is \$35,721.84.

[69] The need which arises in this circumstance is a need to adjust for the circumstances of the separation and to find employment.

[70] It is not in my view a situation which on the facts would justify long-term spousal support.

[71] The respondent must be aware that she has an obligation immediately to become employed and strive toward a self-sufficiency which she is capable of doing and which will likely put her in the same salary range as the petitioner.

[72] To adjust for the immediate transition, given this is an interim order, I order \$700 per month, taxable in her hands and tax deductible in his , payable commencing February 1, 2013 with a recognition that the matter would be resolved within one year and that spousal support ought to be reviewed together with the respondent's efforts to obtain full-time employment.

[73] Counsel for the respondent shall draft the order.

Legere Sers, Moira C.