

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Goodine v. Goodine, 2013 NSSC 98

Date: 20130312

Docket: 1201-065449 (SFHD-076214)

Registry: Halifax

Between:

Tara Heather Goodine

Petitioner

v.

Marcus Evan Goodine

Respondent

Judge:

The Honourable Justice R. James Williams

Heard:

January 14 and 15, 2013, in Halifax, Nova Scotia

Counsel:

Marion Hill, for the Petitioner

Bryen Hebert, for the Respondent

By the Court:

[1] Tara Heather Cormier and Marcus Evan Goodine married March 22, 1997, and separated June 6, 2011. Ms. Cormier was born September 13, 1968; Mr. Goodine was born February 1, 1973. She is 45, he is 40. They have no children. They have limited assets and significant debt. They are now divorcing. The issues between them relate to the division of their assets and debt, and Ms. Cormier's claim for spousal support.

[2] Before addressing the issue of spousal support, the Court should determine the property/debt issues (*Harwood v. Thomas* (1981), 45 N.S.R. (2d) 414 (N.S.C.A.)). Property/asset/debt division impacts upon a number of the considerations the Court must have regard to in addressing spousal support, including:

1. "The condition, means, needs and other circumstances of each spouse" (s. 15(4), Divorce Act);
2. "Any order, agreement or arrangement relating to support..." (s. 15(4)(c), Divorce Act);
3. The direction in s. 15(6) that the Court should, in addressing spousal support:
 - A. Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown (s. 15(6)(a));
 - B. Relieve any economic hardship of the spouses relating to the marriage or its breakdown (s. 15(6)(c));
 - C. In so far as practicable, promote the economic self-sufficiency of the spouses (s. 15(6)(d)).

[3] To the degree that these factors apply, the determination of spousal support is informed by the division of assets/debts. There are other factors that impact upon spousal support, including, as one example, the length of the marriage.

DIVISION OF ASSETS/DEBT

[4] The division of assets and debts is made pursuant to the Matrimonial Property Act. That Act provides, in part:

13 Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:

- (a) the unreasonable impoverishment by either spouse of the matrimonial assets;
- (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;
- (d) the length of time that the spouses have cohabited with each other during their marriage;
- (e) the date and manner of acquisition of the assets;
- (f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;
- (g) the contribution by one spouse to the education or career potential of the other spouse;
- (i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
- (j) whether the value of the assets substantially appreciated during the marriage;
- (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;

[5] I have been guided by and have considered these provisions.

[6] The parties have significant debt. An order under the Matrimonial Property Act that divided assets, but not debt, would be both unfair and unconscionable. There is no reason not to divide their assets and debt equally.

[7] The parties' assets/debts include the following:

A. Assets:

I. *Matrimonial Home*

The parties agree the value of the home is \$183,000.00; that the amount of their mortgage is \$46,888.56. I conclude that it would be appropriate in valuing the home to offset disposition costs (which would apply on the sale of the home) as follows:

Legal Fees:	\$1,000.00
Real Estate Fees: 5%	9,150.00
HST: (15% of \$9,150.00)	<u>1,372.50</u>
TOTAL DISPOSITION COSTS:	\$11,522.50

I conclude the value of the home is \$183,000.00, minus (the mortgage (\$46,888.56) plus the disposition costs (\$11,522.50)) \$58,411.06 = \$124,588.94.

The home will be transferred to Mr. Goodine. He shall be its sole owner.

II. *Household Items*

The evidence is limited and contradictory. Ms. Cormier removed a significant portion of the household items from the home unilaterally

after obtaining a (temporary) Emergency Protection Order under the Domestic Violence Protection Act, giving her exclusive possession. That Order was revoked by consent shortly thereafter. The circumstances under which it was obtained are unclear. The evidence of a neighbour, Marie Day, indicates that Ms. Cormier said (shortly after getting the Emergency Protection Order) that “what I did to Mark was wrong”, that Ms. Cormier admitted “Mark would not hurt me.” Ms. Cormier moved from Nova Scotia to New Brunswick. It appears that Ms. Cormier “took what she wanted” when she left.

I have reviewed the limited evidence that is available and conclude, on balance, that Ms. Cormier has household items of a value of \$2,000.00 more than Mr. Goodine. (Ms. Cormier submitted an equalization chart saying “no equalization” of home contents, Mr. Goodine suggesting a \$13,700.00 differential in Ms. Cormier’s favour). Ms. Cormier valued the household contents at \$5,000.00 in her Statement of Property of June 17, 2011. I conclude that this is the better evidence on this issue.

III. *Sheds*

There are “shed(s)”, the evidence concerning their value is limited; they will be valued at \$500.00.

IV. *Income Tax Refund*

Mr. Goodine received an income tax refund for the 2011 tax year. It is a matrimonial asset, valued at \$9,207.00.

V. *Vehicles*

There is a 2010 GMC Crew Cab that is leased. It was leased at Ms. Cormier’s instance, in Mr. Goodine’s name. The lease is high - \$895.00 per month. The amount outstanding on the lease (\$36,000.00 +/-) that exceeds the value of the truck, appears significant. I accept Mr. Goodine’s evidence that the truck was returned to him by Ms. Cormier damaged. Mr. Goodine was left with

the repairs, is left with that debt; the truck will be valued at -\$3,000.00. The liability is likely more.

The 2004 Aerio, in Ms. Cormier's possession, is valued at \$1,000.00.

The 2008 Honda motorcycle is valued at \$5,500.00 (the midpoint of their respective figures of \$6,000.00 and \$5,000.00).

The 2008 lawn tractor will be valued at \$1,200.00, his figure.

The 2005 Suzuki 4-Wheeler will be valued at \$2,500.00, his figure.

There is limited evidence concerning these vehicles. I have fixed their value considering their age, and the evidence of the parties.

VI. *Accounts*

Ms. Cormier removed \$1,000.00 from the parties' accounts post-separation. It should be valued. There was a CIBC chequing account of \$1,774.24 and RBC account of \$269.61, retained by Mr. Goodine.

VII. *The "Trucking" Business*

The parties had a trucking business. They agree it should be treated as "matrimonial". It was operated by Ms. Cormier. Mr. Goodine offered it to Ms. Cormier post-separation. She declined or did not respond. The "business" had debt that needed to be attended to. Mr. Goodine sold it (two trucks were the only assets of substance) to his father for \$12,500.00. Mr. Goodine's evidence was that this was their approximated value. Both trucks had more than one million miles on them. I accept this as an appropriate value.

From the monies received from his father, he paid or assumed responsibility for payments, the "trucking business" debts as follows:

Workers Compensation	\$ 2,114.13
CRA	3,171.18
CRA Penalty	267.11
Accountant	<u>6,417.00</u>
	\$11,969.42

There is an additional debt with a Burnside supplier. Mr. Goodine is responsible for that.

From the evidence available to me, I conclude:

- A. The trucking business was commenced in 2007 and largely operated by Ms. Cormier.
- B. On separation, Mr. Goodine had difficulty securing disclosure of the financial circumstances of the business from Ms. Cormier, some, not all of this was eventually remedied.
- C. Ms. Cormier was offered the business and declined it. She, for all intents, walked away from it. Its operation ceased. Its debt remained.
- D. The parties were fortunate that Mr. Goodine's father intervened.
- E. The business is/was of no value - for the purpose of this proceeding. If anything, there remains some debt that appears to be in Mr. Goodine's name.

The assets of the parties are summarized below. The assets will be owned as indicated:

ASSETS		
Asset	Mr. Goodine	Ms. Cormier
Matrimonial home (net after mortgage and adjustments)	\$124,588.94	
Household items		\$ 2,000.00
Sheds	500.00	
Income tax refund 2011	9,207.00	
Vehicles		
2010 GMC	-3,000.00	
2004 Aerio		1,000.00
2008 Honda motorcycle	5,500.00	
lawn tractor	1,200.00	
4-wheeler	2,500.00	
Accounts		
Removed		1,000.00
CIBC Chequing		1,774.24
RBC		269.61
Trucking business	-	-
TOTAL:	\$140,495.94	\$6,043.84

B. Debt:

The parties' debt includes:

- | | |
|---|-------------|
| 1. Joint Line of Credit (July 20, 2011) | \$18,816.17 |
| 2. Joint Line of Credit (July 20, 2011) | 95,927.99 |
| 3. Visa (Mr. Goodine) | 5,317.88 |
| 4. MasterCard (in Ms. Cormier's name) | 17,000.00 |
| 5. Motorcycle loan | 6,147.24 |

[8] I conclude that \$17,000.00 is the “matrimonial” portion of the MasterCard in Ms. Cormier’s name, considering its use and unreceipted expenses incurred by her (referred to in Mr. Goodine’s Affidavit, paragraph 33). The balance on the card at/around separation approximated \$18,000.00. Payments were made on it from the joint account post-separation. Ms. Cormier used it herself, or appears to have. The balance on the card is much more but MasterCard has said they would settle the account for \$18,000.00.

[9] The debt shall be allocated between the parties as follows:

DEBT		
Debt	Mr. Goodine	Ms. Cormier
Joint Line of Credit	\$ 18,816.17	
Joint Line of Credit	95,927.99	
Visa	5,317.88	
MasterCard		\$17,000.00
Motorcycle loan	6,147.24	
TOTAL:	\$126,209.28	\$17,000.00

C. Asset and Debt Summary

Mr. Goodine:	Assets	\$ 140,495.94
	Debt	<u>-126,209.28</u>
		\$ 14,286.66
Ms. Cormier:	Assets	\$ 6,043.84
	Debt	<u>-17,000.00</u>
		-\$ 10,956.16

Equalization: $\$14,286.66 + \$10,956.16 = \$23,810.82 / 2 = \$12,956.41$

[10] This sum will be paid to Ms. Cormier at the earlier date of one (1) year from today, or on the sale of the matrimonial home, should Mr. Goodine sell it.

SPOUSAL SUPPORT

[11] The parties have significant debt. Mr. Goodine's efforts to manage the debt (and Mr. Goodine's response) are summarized in his January 7, 2013 Affidavit as follows:

Home

58. Immediately upon my return to the matrimonial home on or about July 15, 2011, an appraisal of the matrimonial home was obtained. This appraisal valued the property at \$181,000....
59. In October 2011, the mortgage had a balance of \$45,241.95 and an interest rate of 6.05%. I was having difficulty in providing for the matrimonial debt and spousal support so requests were made to the Petitioner that the home be listed for sale pursuant to the appraisal noted above. I hoped to apply the proceeds received from the sale of the matrimonial home directly to the matrimonial debt.
60. Although the Petitioner consented to the matrimonial home being sold, she did not agree to the appraisal that I had obtained. On October 20, 2012 she advised through her counsel that she would be agreeable to the home being listed, so long as it was listed for \$250,000, as she believed that this reflected the fair market value of the home even though the appraisal had been provided to her. Attached hereto and marked as Exhibit "M" is a true copy of the correspondence provided by opposing counsel dated October 20, 2011.
61. I knew that the home would never sell, as this was way above the market value. I was copied on correspondence to opposing counsel dated November 16, 2011 which again attached the appraisal that I had obtained that summer. It was again requested that a listing agent being obtained and an asking price determined so we could obtain the \$180,000 appraised value.
62. A response to the request was received on December 6, 2011, a copy of which I received. The Petitioner continued to insist that

the home was valued at \$250,000 and requested that she engage several realtors to determine the appropriate listing price of the home.

63. I was copied on correspondence to opposing counsel dated January 6, 2012, wherein my solicitor relayed the indication that I was more than agreeable to allowing entry to an assessor of her choice into the matrimonial home. It was further requested that the Petitioner advise of the realtor she wishes to utilize so the process could be commenced in listing the home. A response was never received from this request.
64. Although I had clearly consented to the appraisal, there was no further mention or request for same from the Petitioner until June 2012.

Debt

68. At the time of separation, I also became solely responsible for the mortgage associated with the matrimonial home. This was at an amount of \$46,888.56 at the time of separation.
69. As finances became tight and I was going in the red every month, I attempted to attend the bank to have the debt consolidated. I had hoped this would decrease the necessary payment and perhaps provide me with a lower interest rate. Unfortunately, as the debt was in the Petitioner's name, or jointly held, I was not permitted to consolidate this debt without her signature.
70. I asked that a request be made to opposing counsel to consolidate the debt while we were awaiting the sale of the matrimonial home. The correspondence noted in paragraph 60, dated November 16, 2011, made this request indicating that it would hopefully allow me to have lower payments and better be able to provide for such debt.
71. A response to this request was provided by way of correspondence from opposing counsel dated December 6, 2011. It was indicated that the Petitioner would not sign any such documents.

[12] Mr. Goodine's gross income (including employment income, post-living differential, disability pension), approximates \$6,800.00 per month.

[13] An Interim Order was made September 22, 2011. That Order provided:

1. Marcus Evan Goodine shall pay to Tara Heather Goodine periodic monthly support in the amount of \$1,500.00 per month starting the 1st day of October, 2011....
2. Marcus Evan Goodine shall make all reasonable efforts to pay the monthly payments due and payable related to the parties matrimonial debts and business debts/expenses associated with Marcus Goodine’s Trucking Business, including but not limited to mortgage, CIBC lines of credit personal and business) and MasterCard in Tara Heather Goodine’s name....
3. Tara Heather Goodine shall transfer the 2010 GMC Crew Cab SLT to Marcus Evan Goodine...(who) shall make all reasonable efforts to be responsible for the monthly lease payment and other debts and liabilities associated with this vehicle. In exchange...the 2004 Suzuki to Tara Heather Goodine.

[14] Mr. Goodine’s compulsory monthly deductions are:

Pension	\$ 429.62
Income Tax (subject to adjustment)	1,813.00
CPP	192.23
EI	70.00
Mess dues	15.00
Life insurance	12.50
Death benefits	14.75
Disability	10.50
Medical	<u>4.00</u>
TOTAL DEDUCTIONS:	\$2,561.60
\$6,800.00 minus \$2,561.60 = \$4,238.40	

[15] His obligations under the Order, including his obligation to make “his all reasonable efforts” were:

Mortgage	\$ 774.00
Home and auto insurance	280.00
CIBC Visa	225.00
\$97,000.00 Line of Credit (min.)	475.00
\$20,000.00 Line of Credit (min.)	475.00
Truck lease	<u>895.00</u>
TOTAL OBLIGATIONS:	\$3,124.00

[16] He could reasonably be expected to heat the home, pay electricity, adding per his evidence: \$250.00 per month for heat + \$225.00 per month for electricity = \$475.00 per month.

[17] His basic expenses were then: $\$3,124.00 + \$475.00 = \$3,599.00$.

[18] His income after deductions is approximately \$4,238.40: $\$4,238.40 - \$3,599.00 = \$639.40$.

[19] The MasterCard minimum payment (per the July 2011 statement) was \$528.00: $\$639.40 - \$528.00 = \$111.00$.

[20] From this he would pay food, clothing, gas, car maintenance, all personal expenses.

[21] He is not in arrears on the support payment - using assets (e.g. the 2011 tax refund, funds from the ATV sale) to pay it. Not surprisingly, he has not been able to pay all of the other debts. His reasonable efforts fell short. The Interim Order left him with the task of making reasonable efforts to do what could not be done. The math does not work. The debts he is left with after this decision are as a result almost certainly more than what I have valued them at.

[22] The income tax deduction used in noting his monthly compulsory deductions would be adjusted down from \$1,813.00 were he paying spousal support. Even halving it, to \$900.00 ± would leave Mr. Goodine with \$1,011.00 ($\$900.00 + \111.00) per month to pay \$1,500.00 spousal support and look after his own expenses.

[23] I conclude Mr. Goodine does not have the ability to pay spousal support and maintain the matrimonial debts for which he is responsible.

[24] Ms. Cormier has worked as a book-keeper for a number of years.

[25] They have no children. Ms. Cormier took the parties' dogs when she left the marriage.

[26] Ms. Cormier moved to St. Stephen, New Brunswick in July 2011 after a temporary stay in an apartment after the separation. She is now living in a remote property purchased by her parents twenty miles north of St. Stephen, New Brunswick. She has described the area as "economically depressed". She has considered some retraining. She has one book-keeping client, who pays her \$300.00 per month.

[27] She has made limited or no payments on the MasterCard that is in her name since August 2011. It is in collection. Its payout would be some \$18,000.00 (the balance is significantly more). She is considering bankruptcy. Mr. Goodine was to make "reasonable efforts" to pay this account. I conclude he did so. He did pay the spousal support.

[28] She testified that she wanted to sell the matrimonial home. Her position on price, however, effectively frustrated that. She states the GMC Truck was not damaged when she transferred it. I accept Mr. Goodine's evidence on this.

[29] She has the Aerio vehicle. Her parents bought her an additional vehicle - a truck. It plows. She says it's a "yard truck". She owes them considerable monies.

[30] Ms. Cormier's evidence is at time inconsistent, at times vague. Evidence, apart from hers, suggests the Emergency Protection Order was obtained in questionable circumstances. Her evidence concerning an apartment in July 2011 is confusing.

[31] There is little evidence from Ms. Cormier of any commitment to self-sufficiency or efforts to contribute to the matrimonial debt.

[32] She seeks spousal support of between \$1,467.00 per month and \$1,956.00 per month, based, in part, on DivorceMate calculations that assume \$300.00 per month as her income. The calculations are based on the Spousal Support Advisory Guidelines (SSAG). The DivorceMate calculation states on its face:

The results of the SSAG formula must be interpreted with regard to: Entitlement, Location within ranges, Restructuring, Ceilings and Floors, and Exceptions.

[33] The SSAG exceptions include debt - its allocation, burden, relationship to assets, etc. Debt here is significant.

[34] Ms. Cormier's position on spousal support does not appear to have considered the parties' debt, or the burden of attending to it on a monthly basis in an appropriate fashion. The submissions based on the SSAG are incomplete as they do not consider the "Exceptions" portion of the SSAG. The compelling financial circumstances that existed immediately upon the parties' separation and debt are two significant "exceptions" that are relevant.

[35] Here I conclude the family debt payments Mr. Goodine has been left with are excessive and unusually high. His attempt to restructure and manage that debt was frustrated by Ms. Cormier.

[36] Here, Mr. Goodine will be responsible for the following debt:

- the joint lines of credit;
- his Visa;
- the motorcycle loan;

totalling \$126,209.28.

[37] In addition, he will have an equalization payment of \$12,956.41.

[38] His total matrimonial debt (including the equalization payment) approximates \$139,165.69, virtually off-setting the assets he is left with of \$140,495.94.

[39] He has limited cash flow. The truck lease exacerbates this. He cannot service the matrimonial debt and pay support in the current circumstances. I conclude that Ms. Cormier, herself, frustrated his attempts to sell the house and/or restructure debt in a timely way.

[40] Finally, Mr. Goodine has repartnered and is expecting a child.

[41] A spousal support order should:

- A. Consider the conditions, means and other circumstances of each spouse (s. 15(4)):
 - Ms. Cormier has need;
 - Mr. Goodine is left with the significant matrimonial debt and can barely service it; he has no ability to pay spousal support in the current circumstances;
 - his efforts to address those circumstances were frustrated by Ms. Cormier's position on restructuring debt, selling the house.
- B. Consider any order, agreement or arrangement relating to support (s. 15(4)(c)):
 - Mr. Goodine paid sixteen (16) months of spousal support (\$1,500.00 per month) pursuant to an Interim Order (to the trial date);
 - the Order under the Matrimonial Property Act will create an equalization payment of \$11,905.41 to Ms. Cormier.
- C. Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown:
 - the marriage and its breakdown has left both parties in debt (s. 15(6)(a));
 - they will share Mr. Goodine's pension.

- D. Relieve any economic hardship of the spouses relating to the marriage or its breakdown:
- there are no identifiable resources that allow the Court to do so (s. 15(6)(c)).
- E. Insofar as practicable, promote the economic self-sufficiency of the spouses (s. 15(6)(d)).
- Ms. Cormier has relocated to a very rural setting. It is twenty-plus months since the parties separated. She has received spousal support (to the date of trial) of \$1,500.00 per month for sixteen (16) months. She has put forward little evidence to demonstrate a commitment to self-sufficiency.

CONCLUSION

[42] I conclude as follows:

1. Mr. Goodine does not have the ability to pay spousal support and service the matrimonial debt for which he is responsible.
2. There will be a spousal support order of *nil* dollars effective February 1, 2013. The Interim Spousal Support Order is terminated effective January 31, 2013.

The Court expressly reserves jurisdiction to vary this amount, provided a variation application is filed by June 6, 2015 (four (4) years after separation). This limit is imposed to promote self-sufficiency, finality. If such an application is made, it is expected that Ms. Cormier would provide detailed information concerning her efforts to secure employment, self-sufficiency. Another consideration may be the circumstances around and her cooperation (or lack thereof) should Mr. Goodine request her signature in aid of a restructuring of the family debt he has responsibility for (as between them).

- Mr. Goodine shall give Ms. Cormier immediate notice should he:
 - A. enter an agreement to sell the matrimonial home;
 - B. enter bankruptcy.
 - Ms. Cormier will provide immediate notice to Mr. Goodine should she enter bankruptcy.
 - I make no finding with respect to Ms. Cormier's entitlement to support in the future.
3. Both parties will sign documentation necessary to transfer assets to the other as contemplated by this decision.
 4. Mr. Goodine will pay the equalization payment of \$12,956.41 on or before March 12, 2014, unless the former matrimonial home is sold prior to that date, in which case the sum will be payable upon the sale of the home.
 5. Mr. Goodine's Canadian Armed Forces Pension will be divided in half for the period of cohabitation, he having entered the Forces after the marriage.

[43] The parties' divorce will be granted upon the filing of a Corollary Relief Order and Divorce Order.

[44] Should either party wish to be heard on the matter of costs, a date will be set to receive their submissions.

J. S. C. (F. D.)

Halifax, Nova Scotia