SUPREME COURT OF NOVA SCOTIA
Citation: Rehill v. Cheverie, 2013 NSSC 202

Date: 20130626
Docket: SFHD 069617
Registry: Halifax

Between:

Janice Marie Rehill

Applicant

and

David Joseph Cheverie

Respondent

Judge: Associate Chief Justice Lawrence I. O'Neil

Date of Hearing: April 15, 2013

Counsel: Janice M. Rehill, Self Represented
David J. Cheverie, Self Represented

By the Court:

History of Relationship and Litigation

[1] The parties were married June 30, 1979; separated in the eighties and were divorced by an order of the Ontario Court (General Division) in November 1990. They have three children born February 1980 (age 33); January 1984 (age 29) and June 1987 (age 26). The children shall hereafter be referred to as the oldest, the youngest and the middle child.

[2] Mr. Cheverie worked as a teacher in Korea in the nineties. He was arrested in 1996 and returned to Canada to appear in New Glasgow Family Court. He was eventually permitted to return to Korea. In 2004 he was once again arrested while vacationing in the Phillippines and returned to Canada because of enforcement initiatives relating to his non payment of child support. He has remained in Canada. He is currently recovering from a double lung transplant performed in Alberta in 2011. He was living in Alberta but lived for a period of time in Nova Scotia in 2012. He is in receipt of disability income.

1990

[3] The 1990 Ontario order required Mr. Cheverie to pay child support of $675 per month, calculated on the basis of $225 per child of the marriage. On October 4, 1996, Judge Robert White of the Nova Scotia Family Court set arrears of child support to October 4, 1996 at $46,176.

[4] The order reserved the right of Mr. Cheverie to vary this amount upon completion of an application requesting the same.

[5] Exhibit 'P' to Ms. Rehill's affidavit re: exhibits herein, filed March 31, 2011, is a letter dated 1996 from a New Glasgow lawyer to the local Family Court on behalf of Mr. Cheverie. (Note that Ms. Rehill filed two affidavits on March 31, 2011. The second affidavit is titled "Affidavit re: exhibits" and contains documents dated 1996.) The subject letter accompanied Mr. Cheverie's 1996 application "to vary the Divorce Judgment with a view to assessing the arrears and forgiving any appropriate amounts".

1996

[6] Coincidental with the 1996 arrest of Mr. Cheverie and proceedings in the Family Court of Nova Scotia referenced above, an application was made to the Nova Scotia Supreme Court in September 1996 by Ms. Rehill to have maintenance "varied effective in 1997 commensurate with the proposed changes wherein child support payments shall not be included in income and will not be a reduction for the paying spouse". (see Exhibit 'J' to the affidavit of Ms. Rehill filed March 31, 2011).

[7] It appears that neither Ms. Rehill's application nor the application of Mr. Cheverie were ever concluded by the Courts in the nineties.

1996 - 2010

[8] As stated, Mr. Cheverie was arrested in 1996 and compelled to appear in New Glasgow's Family Court to address his then outstanding arrears of child support. He was released and permitted to return to Korea to teach. He did so. As stated, the child support arrears to that date were set at $46,175.00. In addition, the 1996 order provided as follows.

> 1. THAT a warrant be issued to secure the appearance of the Respondent respecting the hearing of the Application to determine the outstanding arrears of child maintenance. This Application has been adjourned without date pending exchange of information between the parties and following such exchange a hearing date shall be fixed. Accordingly, at this point the warrant shall be stayed.
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> 3. THAT the Respondent shall be entitled to possession of his Canadian passport and his return air ticket to Seoul, South Korea, pursuant to the following terms and conditions:
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> > a) the Respondent immediately place for sale with an agent the 1986 Dodge Aries motor vehicle, Serial No. 1B3BD46DZGC196564. The Respondent shall file verification with the Family Court that the motor vehicle has been placed for sale. Any offers for sale shall be approved by the Director of Maintenance Enforcement and the proceeds of sale shall be payable to the said Director and credited against the outstanding maintenance arrears of the Respondent.
> >
> > b) the Respondent shall prior to his departure for South Korea, advise his son, Justin, in the presence of Janice Marie Rehill, that the purchase of the said motor vehicle was an error on the Respondent's behalf. The Respondent must further advise Justin that the funds used to purchase the motor vehicle should have been paid to Janice Marie Rehill as maintenance, and the forced sale of the motor vehicle is of no fault of Janice Marie Rehill.
> >
> > c) The Respondent shall, within twenty-four hours of his arrival in Seoul, South Korea, file his Canadian passport with the Canadian Embassy in Seoul, South Korea. The Respondent's passport shall be maintained at the Canadian Embassy with the exception of any bona fide use of his passport for employment and travel purposes. The Respondent shall forthwith request the Embassy to confirm in writing to the Enforcement Officer (via telefax no. 902-755-3099) that the said passport is on file. In the event that the Canadian Embassy will not permit the Respondent to file and

maintain his passport at the Embassy, the Respondent shall forthwith request the Embassy to advise the Family Court in writing of its inability to file and maintain the said passport.

d) while residing in Seoul, South Korea, the Respondent shall report on a monthly basis, the following particulars to the Canadian Embassy in Seoul, South Korea:

i) current status of his employment including current address and telephone number of employer;

ii) his current address and phone number;

iii) the current particulars of his income, including bonuses and allowances;

iv) expected return date to Canada; and

e) the Respondent shall provide forthwith to the Director of Maintenance Enforcement the particulars of his past employers in Seoul, South Korea, including their addresses and telephone numbers.

4. THAT the Respondent shall provide to the Director of Maintenance Enforcement twelve (12) post-dated cheques each in the amount of $1,000.00. Each cheque shall be made payable to Janice Marie Rehill and, the first cheque shall be dated November 6, 1996, and the balance of the eleven (11) cheques shall be dated on the 6th day of each month thereafter. The first Six Hundred and Seventy-Five Dollars ($675.00) respecting this payment shall be applied to the current maintenance Order and the balance shall be applied to the outstanding arrears. Delivery of the aforesaid cheques to the Maintenance Enforcement Office at Family Court, New Glasgow, Nova Scotia, shall be sufficient.

5. THAT a Judgment shall be issued forthwith against the Respondent in the amount of Forty-Six Thousand One Hundred and Seventy-Five Dollars ($46,175.00) respecting the alleged arrears of child maintenance. This Judgment may be varied and reduced accordingly upon completion of the Respondent's Application regarding the assessment of the outstanding arrears.

6. THAT the Applicant acknowledges that the Respondent has paid to the Director of Maintenance Enforcement the sum of Four Hundred Dollars ($400.00) on September 17, 1996, and the sum of One Thousand Dollars ($1,000.00) on October 3, 1996, respecting the outstanding maintenance arrears. No further lump sum payment is required to be made by the Respondent against the arrears prior to his departure from Canada.

7. THAT the issue of costs shall be stayed until all pending Applications before the Court are resolved.

[9] Mr. Cheverie was arrested in the Philippines in 2004 and returned to Canada to deal with his arrears of child support. His Canadian passport was seized and he was required to remain in Canada. He began to work in Canada and in September 2005, Ms. Rehill began to receive child support. She believes the arrears of child support in September 2005 totalled $110,000.

2010

[10] The next Court activity came in 2010, approximately thirteen (13) years later. Mr. Cheverie filed a variation application in the Supreme Court (Family Division) at Halifax seeking to terminate his obligation to pay child support.

[11] One year later on March 31, 2011, Ms. Rehill filed a response in the form of a variation application. She sought a recalculation of Mr. Cheverie's child support application to reflect the 1997 changes associated with adoption of the Federal Child Support Guidelines and the Child Support Tables. She also filed an application seeking a contribution from Mr. Cheverie to meeting the extraordinary expenses for the children.

[12] Over the intervening years (1996 forward), Mr. Cheverie paid child support or had monies garnished for that purpose. A record of the Maintenance Enforcement Program for the Province of Nova Scotia for the period June 25, 1996 to April 29, 2010 records the regular due amount for child support as $112,050.00 and it records the received amount as $122,097.54. A later record to May 9, 2011 shows a reduced regular due amount ($92,700); the received amount as $131,590.99 and the balance owing as $5,659.01 after arrears are considered. The difference in the amount due reflects a recalculation of child support in 2010 as a consequence of Ms. Rehill advising the Maintenance Enforcement Office that the children were no longer of the marriage for child support purposes and advising when their status changed.

[13] Ms. Rehill lives in Pictou County, Nova Scotia.

- Ms. Rehill's position

[14] At paragraphs18-33 inclusive of her affidavit filed March 31, 2011, Ms. Rehill explains her contact and knowledge of Mr. Cheverie's circumstances:

> 18. THAT in January, 2005, the Respondent's brother, Wayne Cheverie, called me to tell me that the Respondent was back in Canada and was staying with his sister in Vancouver, British Columbia. Wayne told me the Respondent had been in the Phillippines for about 8 months when MEP found out he was there. Because the Phillippines were a reciprocal state, MEP was able to arrest him in the Phillippines and have him brought back to Canada. Wayne told me that the Respondent's passport had been seized and he had no choice but to stay in Canada. The Respondent did call my home in Mississauga on June 16th, 2005 to wish Kori Happy Birthday.
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> 19. THAT by September, 2005, the Respondent apparently had employment because I started to receive payments from MEP for the regular child support of $675.00 plus additional amount toward arrears, which I understand totalled about $110,000 at that time.
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> 20. THAT I did not know where the Respondent was living, or where he worked or what his income was after he left his sister's home in Vancouver. I had no way to contact him to request his financial information or to seek a review and adjustment of child support. Other than when he called Kori in June, 2005 to wish her Happy Birthday, the Respondent did not initiate any contact with me or the children after he returned to Canada in 2005, until 2009.
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> 21. THAT attached as Exhibit "D" is a true [sic] the Maintenance Enforcement Program of Nova Scotia Record of payments for the period June 25, 1996 to April 29, 2010.
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> 22. THAT by the time the Respondent finally started paying child support in September, 2005, Kori was 18 years old and starting first year university, Leah was 21 years of age and still attending university and Justin was 25 years of age and had just completed community college and obtained employment.
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> 23. THAT the Child Support Guidelines came into effect in May, 1997 and had I known where the Respondent was and his income, I could have made an application to vary to apply the Guidelines in terms of eliminating tax consequences and setting the monthly sum based on the Respondent's income. I also incurred extraordinary expenses [sic] Kori's elite hockey and soccer and educational expenses for all three children's post-secondary education. Because the Respondent was in Korea and untouchable in terms of enforcing or varying child support, I did not consult a lawyer or learn more about the Guidelines after they came into effect in 1997.

24. THAT when the Respondent returned to Canada in 2005 and started paying child support and arrears in September, 2005, I considered myself and the children to be fortunate to be receiving that money after all the years we went without. I had no information about the Respondent, I had no money to hire a lawyer and I had no option but to accept the sum enforced by MEP.

25. THAT when child support started in 2005, I divided the amount I received equally among all three children and gave them their share to contribute to their educational and living expenses. All three children have incurred student loans for post-secondary education. Leah and Kori are still pursuing their university education and are unable to withdraw from parental support. Justin is employed and married with children.

26. THAT in September, 2009, the Respondent showed up unexpectedly at my place of work, which I found extremely intimidating and unnerving. He told me he was going to be in Halifax and he asked questions about the kids, which I answered. It was the first civil conversation we had since we separated. I think he went back to Alberta after this visit.

27. THAT in early, 2010, the Respondent drove to Halifax, Nova Scotia, and he initiated contact with me and our children. Justin refused to have any contact with the Respondent. Leah and Kori were living in Halifax and they spent some time with the Respondent in 2010. My daughters informed me and I do verily believe the Respondent told them he had a serious health issue and he was off work on a disability leave. The Respondent took oxygen tanks with him wherever he went. The Respondent refused to tell our daughters what was wrong with him or give any more information about his health or plans. The Respondent told our daughters he would tell them what was wrong once he had both daughters with him at the same time, but that did not happen.

28. THAT in April, 2010, I received a without prejudice letter from Dartmouth solicitor, Peter Kidston, on behalf of the Respondent. Mr. Kidston advised Mr. Cheverie wished to terminate support for all three children and was initiating an application to vary. Mr. Kidston stated the arrears were then $34,502.46 and he asked me to agree to reduce the arrears payment to $150.00 a month. He also stated the Respondent "...is currently experiencing some serious medical difficulties which have resulted in him having to take a leave of absence from his employment."

29. THAT I consulted lawyer, Dena Bryan, and she responded to Mr. Kidston on my behalf. Attached as Exhibit "E" is a true copy of Ms. Bryan's letter. Mr. Kidston did not respond, nor did the Respondent and nor did any other lawyer on his behalf.

30. THAT I am informed by Dena Bryan and I do verily believe that she reviewed the Supreme Court Family Division file and noted the Respondent initially met

> with an intake worker on March 31, 2010. The Respondent was told on April 7, 1990 [?] that he must file a certified copy of the Divorce Judgment and complete a new Affidavit. On September 30, 2010, Dartmouth lawyer Nicole Figueira wrote to the court officer advising that she was not retained by the Respondent but was requesting an extension of time for the Respondent to provide the documents necessary to proceed with his application. Ms. Figueira stated she was not retained and the response was to be forwarded to the Respondent's address on file with the Family Division.
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> 31. THAT in August, 2010, Kori and Leah told me that the Respondent moved to Alberta. My daughter Kori, moved to Edmonton, Alberta in September, 2010 to play hockey. The Respondent called her while she was in Edmonton so they had at least one visit. During one visit, the Respondent took Kori to see a man from Pictou County, John Duncan MacKenzie, because Kori knew his children. Mr. MacKenzie told Kori that he and the Respondent were involved in the same type of lawsuit for medical problems caused by a drug they took.
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> 32. THAT in February, 2010, the support payments I received from MEP reduced from $1,359.91 to $875.00. I called MEP to inquire why and they told me they had reduced the arrears component because the Respondent's income had reduced and he told them he had applied to terminate support for at least two of our children. Last fall, I told MEP the Respondent had moved to Alberta and I questioned whether he still planned to apply to vary. MEP told me they had the Respondent's financial information and knew where he was but she refused to tell me, or provide the Respondent's financial information. The woman was abrupt to the point of rudeness.
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> 33. THAT by the fall of 2010, it became apparent to me that the Respondent did not intend to pursue the application to vary because he would have to disclose his income and health and other circumstances and he knew I was pursuing a review of child support and section 7 expenses retroactive to May, 1997. In light of the Respondent's serious health issues, my children and I have discussed and agreed to pursue the application to vary to ensure the Respondent contributes through his income or estate to the children's support in the amount he was able up to their independence.

[15] Ms. Rehill summarizes her current claim at paragraphs 45-46 of her affidavit filed March 31, 2011:

> 45. THAT I seek production of the Respondent's gross annual income for the years 1996 to 2010 and a retroactive increase of the Table amount for all three children effective May, 1997 to June, 2005. I agree, the Table amount would be for two children after June, 2005. I assert the Table amount ought to continue for Leah and Kori for at least another two years while they complete their education. I seek an adjustment to the Respondent's income if he did not pay income tax on his income earned while residing outside of Canada. I seek an adjustment to the Respondent's disability income to take into account it is non-taxable to him.

> 46. THAT I seek a determination retroactively for the section 7 expenses incurred by me and the children by way of their student loans and Kori's hockey expenses. I have estimated these to the best of my ability in my Statement of Section 7 Expenses. I have provided my annual income for the years 1996 to 2010. If the Respondent has no ability to pay his share of such expenses in a lump sum and his health prognosis is poor, then I seek to have the three children irrevocably named as beneficiaries to the Respondent's life insurance, survivorship pension benefits and estate, if any, so that eventually the children will receive the financial assistance from the Respondent that they ought to have received when they were young.

- Mr. Cheverie's position 2010

[16] As stated, Mr. Cheverie, through his then Nova Scotia counsel, contacted Ms. Rehill in April 2010. He sought her agreement to fix arrears at the level then recorded by the Maintenance Enforcement Office; he sought agreement on a payment schedule and finally, he sought to terminate child support.

[17] In May 2010, Ms. Rehill provided information on the state of dependency of the children to the Maintenance Enforcement Office following a request of that office to do so (see her affidavit sworn September 20, 2011 in support of her *ex parte* motion). She described their status as follows:

> **Status of Children**
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> - the oldest child: left home in 2005 to work
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> - the middle child: left home to work and will not be returning home; currently working full time but will be returning to school in 2011 for a Bachelor of Education
>
> - the youngest child: working full time but will be returning to school in 2011 with an anticipated completion date of 2013

[18] Under separate cover, Ms. Rehill was asked by the Maintenance Enforcement Program officers to update the recipient's status. She was asked to check from among a number of statements that applied to her.

[19] She declared the following on May 16, 2010:

> I no longer require support payments as of June 2010.

Reason: youngest child completing university (arrears still owing)

[20] A letter to her solicitor dated December 16, 2010 from the Maintenance Enforcement Program office, provided a record of payments to Ms. Rehill with arrears shown as $9,784.01. The letter explained that support for the oldest child ended with the May 2005 payment; for the middle child it ended with the December 2007 payment and support for the youngest child ended with the May 2010 payment (see Exhibit 'B' to Ms. Rehill's affidavit sworn September 20, 2011).

[21] Forming part of Exhibit 'B' is a record of child support payments for the period July 1, 1996 to December 7, 2010.

[22] The record shows an opening balance as arrears of $45,225 as ordered by Judge White in 1996. The record shows the regular due amount over this period as $92,700; the received amount as $127,465.99, leaving arrears of $9,784.01.

2011

[23] The parties did not reach agreement on a resolution of their differences. As stated, on March 31, 2011, Ms. Rehill filed a variation application in response to Mr. Cheverie's 2010 application to terminate child support.

Most recent file activity

[24] The Court held a pre-trial telephone conference with the parties on March 12, 2012.

[25] In April 2012, Mr. Cheverie was living in Alberta.

[26] On April 5, 2012, it was impractical to proceed to a hearing. Mr. Cheverie was in Alberta and was recovering from a double lung transplant.

[27] The matter came before the Court on April 5, 2012 for the scheduled hearing. Mr. Cheverie appeared by telephone and Ms. Rehill was present. The sole issue is and was the recalculation/reassessment of the child support

obligation, including Mr. Cheverie's contribution to the university expenses of the children.

[28] On April 5, 2012, the Court advised the parties it was retaining jurisdiction. The Court initiated settlement discussions with the parties given that the hearing could not proceed.

[29] A tentative settlement was reached. However, the next day Mr. Cheverie advised that he did not accept the proposed settlement.

[30] The Court later learned from Ms. Rehill's lawyer that in June and July of 2012 Mr. Cheverie faxed letters to Ms. Rehill proposing other settlement possibilities. No Alberta address for Mr. Cheverie has been disclosed by Mr. Cheverie. He uses retail locations to receive mail. By October 2012 Ms. Rehill's communication with Mr. Cheverie ended. In November 2012 she learned he was once again in Nova Scotia. Mr. Cheverie attended Ms. Rehill's lawyer's office (Ms. Bryan) in Pictou on December 4, 2012. This was an encouraging sign that matters might be concluded.

[31] The week of December 10, 2012 Mr. Cheverie called Ms. Rehill's attorney, Ms. Bryan and asked to meet Ms. Bryan on December 21, 2012 at the Family Division Courthouse in Halifax.

[32] On December 19, 2012, Ms. Bryan wrote the Court to advise that Mr. Cheverie would not be attending the December 21, 2012 meeting after all. This she learned from his Alberta counsel, who wrote to her on Mr. Cheverie's behalf.

[33] The Court was also informed that by further letter dated December 21, 2012, from Ms. Bryan that Ms. Bryan received a letter from his Alberta counsel confirming that Mr. Cheverie would now be retaining counsel in Halifax.

[34] Ms. Rehill is now, once again, self represented. She appeared before me on April 15, 2013 for an order for substituted service on Mr. Cheverie. Mr. Cheverie's contact information is not available.

[35] On April 15, 2013 that order was authorized.

[36] The foregoing history is to put the order for substituted service in historical context and meant to assist Judges who may be called upon to further adjudicate this matter. This case is unusual given the passage of time and decisions of the parties with respect to prosecuting their cases. It gives rise to many of the issues discussed in *D.B.S. v. S.R.G.* [2006] S.C.J. No. 37.

[37] I am satisfied that Mr. Cheverie is avoiding service and has systematically misrepresented his good faith when it comes to concluding this proceeding. He has concealed his location, changed lawyers and run from his child support obligation for more than twenty years. I am satisfied that this behaviour will continue and personal service on him is impossible given his elusiveness.

Order for Substituted Service

[38] On April 15, 2013 an ex-parte order for substituted service of notice of the next stage in this proceeding was authorized as provided by R.31.10. The order provides for service on Ms. Lee Cheverie, 7354 Weaver's Mountain Road, Kenzieville, Pictou County and Mr. Roland Babinec of Pictou, Pictou County, Nova Scotia. A Notice to Appear directed to Mr. Cheverie will be an appendix to the Order for Substituted Service. They shall be served substitutionally with a copy of this decision on Mr. Cheverie.

[39] Service may be by registered mail.

[40] The matter is scheduled to return for a one-half hour pre-hearing conference on August 9, 2013 at 11:00 a.m. at the Family Division Courthouse at 3380 Devonshire Avenue, Halifax, Nova Scotia.

ACJ