SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Henneberry v. Duggan*, 2013 NSSC 172

Date: 20130703
Docket: 1201-063305 (SFHD-062789)
Registry: Halifax

Between:

Ryan Joseph Anthony Henneberry

Petitioner

v.

Kathleen Patricia Duggan

Respondent

Judge: The Honourable Justice R. James Williams

Heard: April 10, 2013, in Halifax, Nova Scotia

Written Decision: July 3, 2013

Counsel: Deborah Conrad, for the Petitioner
Leigh Davis, for the Respondent

By the Court:

[1] This is a variation application that arises from the divorce of Ryan Joseph Anthony Henneberry (Dr. Henneberry) and Kathleen Patricia Duggan (Ms. Duggan). It concerns issues of spousal support and child support.

[2] The couple married June 1, 2002. They have three children:

Samantha Kathleen Henneberry (b. July 24, 2001);
Joseph Ryan Henneberry (b. December 20, 2004); and
Michael Philip Henneberry (b. November 27, 2006).

[3] The couple separated in June of 2008. A Divorce Judgment was issued May 10, 2010.

THE APPLICATION

[4] The Variation Application was filed by Dr. Henneberry April 6, 2011. He was self-represented at the time. Ms. Duggan had counsel.

[5] A conciliation meeting took place June 28, 2011 with Court staff. The Conciliation Record indicates that Dr. Henneberry sought shared custody; he was not seeking to vary child support. Ms. Duggan filed an Affidavit on April 7, 2011 in response to his application for shared custody. She opposed the shared custody and indicated there may be child support issues raised in her response. The Affidavit focussed on parenting issues.

[6] Two issues - determination of Dr. Henneberry's income and child support special expenses were raised by Ms. Duggan by or prior to a September 2011 case conference. The parties appear to have then chosen to focus on parenting issues. They met with a counsellor, Martin Whitzman, for a time.

[7] They attended a day long settlement conference before Justice Dellapinna on February 23, 2012. The parenting issue was resolved and read into the record. The parties continued to pursue resolution of the support issues at a later Settlement Conference on April 23, 2012. It was adjourned to May 15, 2012, but removed from the docket by counsel.

[8] Trial (of the support issues) was scheduled for July 11, 2012 before Justice Beaton. On July 11, 2012 the matter was adjourned at the request of both counsel.

[9] On August 20, 2012, Dr. Henneberry filed an Amended Application, now seeking to also terminate spousal support.

[10] On July 27 and August 29, 2012, case conferences were held. Counsel for both parties sought financial information and further disclosure. Directions were given. Trial dates were scheduled for April 10 and 11, 2013. The matter was pre-trialed February 5, 2013 and heard April 10, 2013.

THE PARENTING ARRANGEMENT

[11] As indicated, this variation application originally included parenting/ custody issues. They was resolved through negotiation and a settlement conference. The parenting issues were settled February 23, 2012. A Variation Consent Order issued on July 9, 2012. The new Order provides for a four-week rotating parenting schedule that provides that Dr. Henneberry has the children just under 39.5% of the time.

[12] Section 9 of the *Federal Child Support Guidelines* provides:

> 9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
>
> > (a) the amounts set out in the applicable tables for each of the spouses;
> >
> > (b) the increased costs of shared custody arrangements; and
> >
> > (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[13] I am satisfied that other provisions in the parenting order - dealing with special occasions, holidays, school breaks, family special events, birthdays, etc. -

combine to "push" his parenting time over 40%, making this a "shared" parenting arrangement "over the course of the year" (as contemplated by s. 9 of the *Federal Child Support Guidelines* (CSG)). This parenting arrangement has been in effect since July 9, 2012. Before that, the children were in the primary care of Ms. Duggan.

[14] The parties accept that at this time (this may well change and a s. 9 analysis requested) the Table Amount of Child Support should be payable by Dr. Henneberry. They disagree upon what income amount this Table Amount should be based on.

THE COROLLARY RELIEF JUDGMENT (CRJ) AND SUPPORT

[15] The CRJ incorporated the March 2010 Separation Agreement of the parties. It dealt with issues under the *Matrimonial Property Act*.

[16] With respect to spousal support, the CRJ provided that Dr. Henneberry pay Ms. Duggan $3,600.00 per month. The Order was expressly subject to variation, and provided that Ms. Duggan make reasonable efforts to become economically self-sufficient.

[17] Child support was provided for in clauses 45 and 46:

> 45. Based on the Nova Scotia Child Support Guideline Table effective May 1, 1997 and the Father's anticipated income for 2009 of $250,000.00, the Father shall pay to the Mother the sum of $3,920.00 per month commencing January 1, 2009 and continuing to and including the payment on May 1, 2010 for the three children of the marriage. Should the Father's income exceed $250,000.00 per annum for 2009, the Father shall, with his child support payment on June 1, 2010, pay to the Mother a retroactive top up of child support which is consistent with the Father's child support obligation pursuant to the Nova Scotia Child Support "Guidelines Table on his actual 2009 income, for January 2009 to May 2010.
>
> 46. Commencing on June 1, 2010, and continuing to and including the payment on May 1, 2011, the Father shall pay to the Mother base guideline child support pursuant to the Nova Scotia Child Support Guidelines Table based on his income for 2009. Each subsequent year the Father shall pay base guideline child support on his previous year income.

SPOUSAL SUPPORT

[18] The CRJ provided that Dr. Henneberry pay Ms. Duggan spousal support of $3,600.00. The CRJ is dated May 10, 2010. The payments commenced January 2009 (pursuant to the parties' Separation Agreement). The Agreement and CRJ state this is reviewable after October 5, 2012.

[19] Ms. Duggan, at the hearing, consented to the spousal support terminating permanently after the April 1, 2013 payment. Support has been paid for more than four years pursuant to the Agreement. The parties were married six years before their separation. The parties had three children. Ms. Duggan was a full-time parent at the time of their separation. The evidence suggests Ms. Duggan has been less than aggressive in seeking work, that she has or may shortly re-partner. I would adopt her position and terminate spousal support; the April 1, 2013 payment being the last payment. Spousal support shall be terminated with the April 1, 2013 payment.

CHILD SUPPORT - DR. HENNEBERRY'S INCOME

[20] Dr. Henneberry receives his income through a personal services corporation. Dr. Henneberry asserts that his income for child support purposes should be based on his pre-tax corporate income:

2009	$250,076.00
2010	$243,336.00
2011	$321,525.00
2012	$274,453.00

[21] The 2011 income was "ballooned" as a result of retroactive payments arising from a salary contract settlement with Dr. Henneberry's employer. He is an emergency room doctor.

[22] Ms. Duggan's view is that $19,000.00 should be added to each of these figures - saying this portion of his corporate expenses are reasonably attributed back to Dr. Henneberry in determining his income for child support purposes, i.e. that a portion of the corporate expenses should be added to the pre-tax corporate income.

[23] The corporate expenses include:

Life Insurance	$18,160.00	2012
	17,223.00	2011
	14,413.00	2010
	15,173.00	2009
Vehicle	$2,197.00	2012
	6,815.00	2011
	7,266.00	2010
	6,614.00	2009
Telephone	$3,805.00	2012
	4,621.00	2011
	2,803.00	2010
	2,396.00	2009
Total corporate expenses were:	$45,617.00	2012
	49,879.00	2011
	47,077.00	2010
	45,592.00	2009

[24] The *Federal Child Support Guidelines* state:

s. 16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

s. 18. (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

(a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or

> (b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

> (2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

[25] Martinson, J. commented on the purpose of s. 18 in Baum v. Baum, 1999 CanLII 5387 (B.C.S.C.) at paragraph 28:

> Valid corporate objectives may differ from valid child support objectives. The purpose of s. 18 is to allow the court to 'lift the corporate veil' to ensure that the money received as income by the paying parent fairly reflects all of the money available for the payment of child support. This is particularly important in the case of a sole shareholder as that shareholder has the ability to control the income of the corporation.

[26] Dr. Henneberry's most significant corporate expense is life insurance. Clause 54 of the March 10, 2010 Separation Agreement (incorporated into the CRJ) provides:

> 54. The Husband shall keep in force life insurance in the amount of $1,000,000.00 with the Wife and the children named as beneficiaries (and the Wife as trustee for the children) as insurance for both the spousal and child support provided for in this Agreement. The Wife shall keep in force life insurance in the amount of $400,000.00 for the benefit of the children with the husband named as trustee. The insurances shall remain in full force and effect until the children are no longer defined as children of the marriage as defined by the *Divorce Act*. The intention is to replace the maintenance provided for in this Agreement or any subsequent Agreement with the insurance, should the Husband/Wife die while any support obligations continue. If support is reduced by agreement or court order, the Parties obligation to maintain coverage may be lower to reflect the reduced support obligation.

[27] The life insurance is paid by the corporation on behalf of Dr. Henneberry, and is, accordingly, "to be added to the pre-tax income unless the spouse establishes that the payments were reasonable in the circumstances" (s. 18(2)

CSG). Is it a reasonable expenditure? Would its inclusion fairly reflect money available to Dr. Henneberry to pay child support?

[28] The objectives of the *Federal Child Support Guidelines* are:

> 1. The objectives of these Guidelines are
>
> (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
>
> (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
>
> (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
>
> (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[29] Dr. Henneberry is <u>required</u> to pay the insurance by the CRJ. The insurance is (was) to provide security for the payment of the child/spousal support. The recipient of the support is Ms. Duggan. The insurance is for the benefit of Ms. Duggan (and the children). The monies are spent by the corporation to benefit and comply with the order for security for support. This benefits Dr. Henneberry, Ms. Duggan and their children.

[30] I conclude that including the insurance monies as part of the pre-tax income would <u>not</u> "fairly reflect..." the money available to him to pay support. I have considered s. 16, 18 and 1 of the CSG. I conclude the payment of the insurance is a "reasonable expense" - and that including it in income for child support purposes would be, in a word, unfair. The expended child support insurance money would, if I were to do so, then be "doubled down on" with a portion of this money (spent on insuring child support) being paid a second time to child support. (I note that were the corporate expense disallowed by the Canada Revenue Agency, I would have no such discretion. Fair or unfair, the monies expended on insuring the support would then be part of income for child support purposes.)

[31] There are also corporate expenses for vehicle and telephone expenses. These appear to benefit Dr. Henneberry to a significant degree. These expenses total:

	Motor Vehicle + Telephone	
2012	$2,197.00 + $3,805.00 =	$ 6,002.00
2011	$6,815.00 + $4,621.00 =	$11,436.00
2010	$7,266.00 + $2,803.00 =	$10,069.00
2009	$6,614.00 = $2,396.00 =	$ 9,010.00

[32] It would, I conclude, be consistent with the CSG objectives (fairness, reduction of conflict, efficiency, consistency) and s. 16 and 18 of the CSG to add vehicle and telephone expenses of up to $8,000.00 per year to Dr. Henneberry's pre-tax corporate income in determining his income for child support purposes.

RETROACTIVE VARIATION OF SUPPORT

[33] Ms. Duggan seeks to have Dr. Henneberry's child support retroactively varied to add a portion of corporate expenses to pre-tax corporate income:

1. Based on Dr. Henneberry's 2009 income:

    a. from January of 2009 to May of 2010

    b. June of 2010

    c. July of 2010 to May of 2011

[34] The Separation Agreement was signed in March of 2010. It provided:

a. that child support be paid from January 2, 2009 to May 1 of 2010, $3,920.00 per month but that this amount be "topped up" if his income exceeded $250,000.00 for 2009, based on his "actual income".

b. that child support for the period June 1, 2010 to and through May of 2011 be based on his 2009 income;

c. that he pay support for each subsequent year based on his "previous year's income".

[35] Actual income was not defined. Income was not defined.

[36] The *Divorce Act* applies.

[37] Dr. Henneberry has paid monthly child support:

(A) June 1, 2010 to May 31, 2011 of $3,760.00 per month;

(B) June 1, 2011 to May 31, 2012 of $3,347.00 per month;

(C) June 1, 2012 to May 31, 2013 of $5,133.00 per month.

[38] The change here is in the treatment, determination of Dr. Henneberry's income. There is little or no evidence that the children had needs that were not met prior to the time of Dr. Henneberry's variation application (commenced in May of 2011). I conclude that their needs were met by the support paid. Ms. Duggan raised the support issues shortly thereafter. There is no blameworthy conduct by Dr. Henneberry (nor need there be to make a retroactive order).

[39] In these circumstances, I conclude that Dr. Henneberry's income for child support purposes should be adjusted to include a portion of corporate expenses effective June 1, 2011 (the month these applications commenced). I would not vary the amount of support prior to that date.

[40] For June 1, 2011 to May 31, 2012, Dr. Henneberry's income for child support purposes is, then, his 2010 income:

$243,336.00	pre-tax corporate income
+ 8,000.00	expenses
$251,336.00	

[41] For June 1, 2012 to May 31, 2013, his income for child support purposes is his 2011 income:

$321,525.00	pre-tax income
+ 8,000.00	expenses
$329,525.00	

[42] For June 1, 2013 to May 31, 2014 his income for child support purposes is his 2012 income:

$274,453.00	pre-tax corporate income
+ 8,000.00	expenses
$282,453.00	

[43] These are the income amounts on which his Table Amount of child support should be based.

SECTION 7 EXPENSES

[44] Ms. Duggan says in her Affidavit of April 5, 2013:

> 36. From the time of separation until September 2011, the Applicant did not pay for any Section 7 expenses for any of the children, except for Samantha and Joseph's soccer registration in 2009. I paid the full cost of daycare, figure skating, hockey and soccer. In addition, I also paid for the majority of the costs associated with equipment and supplies for these activities. I could not continue to afford the total cost of their extracurricular activities in the fall of 2011 as outlined in my affidavit dated July 10, 2012.
>
> 37. The Separation Agreement states, and I agree, that we are to pay section 7 expenses in proportion to our incomes. I am requesting that the Applicant and I pay Section 7 expenses in proportion to our incomes as outlined in the Separation Agreement.
>
> 38. I agree that Section 7 expenses shall include uninsured medical and dental expenses, braces, etc. I also state that Michael's daycare and Samantha's competitive level figure skating, and associated costs should also be considered Section 7 expenses, and share in proportion to our income.

[45] The CRJ states at paragraphs 48, 49 and 50:

> 48. The Husband warrants that he is maintaining medical and dental insurance plans through his employment for the benefit of the children. He will continue to do so as long as the insurance is available through his employment.
>
> 49. The parties shall share in proportion to their incomes the cost of any health expenses including medical, dental, orthodontal or optical expenses for the children where those expenses are not covered by insurance. The Wife will consult with the Husband regarding any such uninsured health expenses and obtain his consent to incur the expense, which consent shall not be unreasonably withheld, before commencing any treatment, program or procedure which will incur an uninsured expense.
>
> 50. The parties shall share in proportion to their incomes all other s. 7 expenses for the children.

[46] The *Federal Child Support Guidelines* provide:

> 7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
>
> > (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
> >
> > (b) that portion of the medical and dental insurance premiums attributable to the child;
> >
> > (c) health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
> >
> > (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
> >
> > (e) expenses for post-secondary education; and

(f) extraordinary expenses for extracurricular activities.

(1.1) For the purposes of paragraphs (1)(d) and (f), the term “extraordinary expenses” means

(a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse’s income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

(I) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,

(ii) the nature and number of the educational programs and extracurricular activities,

(iii) any special needs and talents of the child or children,

(iv) the overall cost of the programs and activities, and

(v) any other similar factor that the court considers relevant.

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

> (4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

[47] Ms. Duggan's Statement of Special or Extraordinary Expenses of June 21, 2012, at paragraph 2:

> 2. The child's name that each expense relates to, the details of each type of expense I am claiming and the total amount of each expense is:

Child's Name & Expense	Tab	Year	Details of Each Total Amount of Expense
1. Samantha			
Figure Skating	1	2009	$1,239.82
	2	2010	$1,616.94
	3	2011	$1,737.50
	4	2012 (to date)	$1,262.00 (Ryan paid $422.00)
Soccer	5	2009	$ 150.00
	6	2010	$ 625.00
	7	2011	$ 736.77 (Ryan paid $386.77)
	-	2012 (to date)	$ 560.00
2. Joseph			
Hockey	8	2009	$ 360.00
	9	2010	$ 560.00
	10	2011	$ 430.00 (Ryan paid $430.00)
	-	2012 (to date)	$ 400.00 (Ryan paid $200.00)
Soccer	11	2009	$ 120.00
	12	2010	$ 130.00
	13	2011	$ 165.00
	-	2012 (to date)	$ 165.00
3. Michael			
Daycare	14	2010	$1,156.00
	14	2011	$1,728.00
Hockey	15	2011	$ 430.00 (Ryan paid $430.00)
Soccer	16	2010	$ 130.00
	17	2011	$ 135.00
	-	2012	$ 135.00

[48] Her Statement of Special Expenses of September 12, 2011 stated at para. 2:

2. The child's name that each expense relates to, the details of each type of expense I am claiming, and the total amount of each expense per month are:

Child's Name	Expense	Details of Each Total Amount of Expense
1. Samantha	Figure Skating	$155.00 per month
2. Samantha, Joseph, Michael		
	Soccer	$ 79.00 per month
3. Joseph, Michael	Hockey	$ 72.00 per month
4. Michael	Daycare	$288.00 per month

[49] Paragraph 1(a) of these Statements states:

1. I am claiming an amount to cover special or extraordinary expenses for one or more of the following reasons (indicate which of the following you are claiming):

a) child care expenses incurred as a result of my employment, illness, disability or education or training for employment;

[50] The special expenses Ms. Duggan claims are:

1. 2009	$1,239.82	(Samantha - figure skating)
	150.00	(Samantha - soccer)
	360.00	(Joseph - hockey)
	120.00	(Joseph - soccer)
	$1,869.82	Total

[51] This claim is for the year prior to the Divorce, and Corollary Relief Judgment. I would decline to go behind the date of the CRJ. Both parties had counsel at that time.

[52] I also conclude these amounts could reasonably be covered by Ms. Duggan. Her child support in 2009 was more than $44,000.00. The costs are not extraordinary. I have considered s. 7(1)(a) to (f) and s. 7(1.1) of the *Child Support*

Guidelines. I have considered her income, $3,600.00 in spousal support per month, and the income tax credits, adjustments available to her.

2\. 2010 $1,616.94 (Samantha - figure skating)
625.00 (Samantha - soccer)
560.00 (Joseph - hockey)
130.00 (Joseph - soccer)
1,156.00 (Michael - day care)
130.00 (Michael - soccer)
$4,217.94 Total

[53] A portion of this is for time prior to the issuance of the CRJ. I would not go behind that date.

[54] Again, I conclude that the amount claimed could reasonably be paid by Ms. Duggan, who received more than $44,000.00 in child support.

[55] Child care need not be "extraordinary" to be a s. 7 expense. That said, there is little or no evidence to indicate that the childcare expense was a necessity in relation to the child's best interests. Nor does it appear that the expense was incurred as a result of the custodial parent's employment illness, disability or education. I conclude it has not been shown to be a s. 7 expense here.

[56] I have considered her income (and income tax adjustments available to her for the children), the overall cost and number of the programs (and children), their nature and the amount of child support. I have considered the provisions of the CSG.

[57] The costs are not extraordinary considering s. 7(1)(a) to (f) and s. 7 (1.1) of the *Child Support Guidelines.*

3\. 2011 $1,737.50 (Samantha - figure skating)
350.00 (Samantha - soccer)($736.77 - $386.77 paid by Dr. Henneberry
150.00 (Joseph - soccer)
1,728.00 (Michael - day care)

135.00 (Michael - soccer) (Michael's hockey was paid for
by Dr. Henneberry
$4,100.50 Total

[58] In 2011, Ms. Duggan received more than $42,000.00 in child support. Again I conclude that these amounts could reasonably be paid by Ms. Duggan. I have considered her income (and income tax adjustments/benefits available to her for the children), the overall cost of the programs, their nature and the amount of the child support.

[59] The costs are not extraordinary considering s. 7(1)(a) to (f) and s. 7 (1.1) of the *Child Support Guidelines.*

[60] Again, there is little or no evidence to indicate that the child care expense was a necessity in relation to the child's best interests. Nor does it appear that it was incurred as a result of the custodial parent's employment illness, disability or education.

[61] Ms. Duggan also had the benefit of a $1,500.00 tax credit (children's fitness) for 2011 ($1,130.00 for 2010). She was receiving $3,600.00 per month in spousal support ($43,200.00 annually).

4. 2012 (to June 21, 2012):

$ 840.00 (Samantha - figure skating)($1,262.00 - $422.00
paid by Dr. Henneberry)
560.00 (Samantha - soccer)
200.00 (Joseph - hockey) ($400.00 - $200.00 paid by
Dr. Henneberry)
165.00 (Joseph - soccer)
135.00 (Michael - soccer)
$1,900.00 Total

[62] In 2012, Ms. Duggan received child support of $52,666.00 ((5 x $3,347.00) $16,735.00 + (7 x $5,133.00) $35,931.00). For the reasons given earlier, I conclude these amounts could have reasonably been paid by Ms. Duggan; they are not extraordinary expenses.

[63] Ms. Duggan has stated for a relatively few and modest number of expenses she could not secure receipts. The amounts in question would not change my conclusions.

[64] I note that the child support figures received or receivable by Ms. Duggan go up slightly from June 1, 2011 forward (as a result of the adjustment in Dr. Henneberry's income for child support purposes I have ordered earlier).

[65] My conclusions are consistent with those in Park v. Thompson (2005) 13 R.F.L. (6th) 415 (Ont.C.A.):

> ...There is nothing in the record to support a finding that this was an extraordinary expense. As Prowse, J. A. said in McLaughlin v. McLaughlin (1998) 167 D.L.R. (4th) 39 (B.C.C.A.) at paragraph 64, the use of the word 'extraordinary' in s. 7 implies that ordinary expenses are intended to be covered by the basic Table Amounts... [paragraph 24]

SPECIAL EXPENSES GOING FORWARD

[66] The parties identify recreation and other similar expenses for the children as an area of potential problem between them. Areas of potential dispute include:

- the choosing/enrollment of children in activities;
- the cost/who pays;
- Ms. Duggan's expected contribution;
- how much of that contribution might come from the table amount of child support being paid to her;
- whether an income amount should be imputed to her personally, then used in calculating her "share" of the expense;
- whether a s. 9 shared custody child support analysis should be undertaken.

[67] Other factors of practical concern are:

- the fact that there is no bright line test of what is an extraordinary expense;
- Ms. Duggan's spousal support has terminated; she has at this time little or no income;
- the recreational expenses of these children will increase.

[68] After some courtroom discussion, Ms. Duggan has suggested that she pay the children's recreational expenses to a maximum of $400.00 per month, or $4,800.00 per year. I would suggest that they treat the "year" as a "child support year", i.e. for them from June 1 to May 31. I note this amount exceeds the "claimed" s. 7 amount for any previous year, but note, and know, that as the children get older these expenses will increase, and that Ms. Duggan's claims (as put forward here) do not include a number of expenses paid by Dr. Henneberry.

[69] Given the identified activities, and the costs, it seems reasonable to adopt the approach Ms. Duggan has suggested, it being understood that:

- she would keep receipts, that after she expensed $4,800.00, Dr. Henneberry would assume the activity costs;

- the activities would be limited to the existing identified activities unless both parties agreed to the activity. (I would not conclude that the absence of agreement would necessarily deprive a child of opportunity; these are parents who may choose to fund an activity not agreed to on their own.)

[70] I would recommend, not order, the above arrangement to the parties. I say recommend as I have not been provided evidence that identifies s. 7 expenses that could not be paid for to a significant degree from Table support. I would recommend that the parties attempt this for at least "one child support year". If they then seek a Court Order dealing with s. 7 expenses, they should be documented.

[71] I have not addressed future child care, and I have not considered it in making the recommendation above. If child care (secured for s. 7 purposes) becomes a significant expense, then the parties will presumably attempt to resolve the issue, and failing that seek the assistance of the Court. The evidence before me gives me no way of knowing what may happen with respect to child care expenses going forward.

SUMMARY

[72] 1. Spousal support shall terminate April 1, 2013.

2. For child support purposes, Dr. Henneberry's income is:

(A) for June 1, 2011 to May 31, 2012 - $251,336.00;
(B) for June 1, 2012 to May 31, 2013 - $329,525.00;
(C) for June 1, 2013 to May 31, 2014 - $282,453.00.

3. There will be no s. 7 order (apart from paragraphs 48 and 49 of the Corollary Relief Judgment, dealing with medical/dental insurance and expenses). The children will not be enrolled in "new" extracurricular activities unless:

a. the parents both agree to the activity; or
b. the enrolling parent accepts financial responsibility for the activity.

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

Halifax, Nova Scotia