

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Deveaux v. Deveaux, 2013 NSSC 246

**Date:** 20130725

**Docket:** 1206-6469

**Registry:** Sydney

**Between:**

Wendy Deveaux

Petitioner

v.

Frederick Deveaux

Respondent

**Judge:** The Honourable Justice Theresa Forgeron;

**Heard:** May 8 and 9, 2013, in Sydney, Nova Scotia;

**Oral Decision:** July 25, 2013

**Written Decision:** July 29, 2013

**Counsel:** Alan Stanwick for Wendy Deveaux;  
Frederick Deveaux, self-represented.

**By the Court:**

[1] Wendy and Frederick Deveaux separated after approximately 11 years of co-habitation. Their separation was not amicable, and the otherwise reasonable, rational, and mature parents engaged in unseemly conduct which compromised their financial security, and more importantly, the well-being of their two children, 15 year old Morgan and 11 year old Jordan. Fortunately, the polarity and rancour which marked the parties' relationship in the early stages of their separation, has, for the most part, resolved. As a result, the number of contentious issues before the court has been reduced considerably.

[2] **Issues**

[3] The following issues will be addressed in this decision:

- What miscellaneous parenting provisions are in the best interests of the children?
- What is the appropriate division of the assets and debts?
- What is the appropriate spousal support order?

[4] **Background**

[5] The parties began to cohabit in approximately April, 2001; married on October 19, 2002; and separated on February 6, 2012. They have two children, Morgan born November 16, 1997, and Jordan born June 10, 2002.

[6] Since separation, the children have been in the primary care of Ms. Deveaux, while Mr. Deveaux exercised liberal and frequent parenting time. After separation, Ms. Deveaux remained in the matrimonial home; Mr. Deveaux found alternate accommodations.

[7] Because of the initial hostilities, several court proceedings were initiated and various court orders were issued. The following summarizes the judicial intervention:

- An ex-parte, interim order issued on February 13, 2012 which provided Ms. Deveaux with interim custody and access to Mr. Deveaux.
- On February 21, 2012, the ex-parte order was replaced with an interim consent order providing for joint custody and specified liberal contact between the children and their father.
- On June 11, 2012, the parties agreed that Ms. Deveaux would forthwith return the van to Mr. Deveaux because Mr. Deveaux required the vehicle for employment purposes and to exercise his parenting time with the children. Ms. Deveaux had purchased another vehicle and did not require the van.
- On June 19, 2012, the interim motion for spousal support was heard. The oral decision was adjourned to July 3, 2012.
- Before the decision could be given on July 3, 2012, Ms. Deveaux requested an adjournment so that she could secure new counsel. Similar requests were made and granted, by consent, in relation to court appearances held on July 18 and September 10, 2012.
- On July 19, 2012, an interim consent variation order issued confirming that Mr. Deveaux was not required to be present when the children were attending social activities and functions that parents do not usually attend, such as birthday parties, movies, recreational activities or any other related activity given the children's ages.
- The date assignment conference was held on September 24, 2012.
- The oral decision on spousal support was rendered on October 17, 2012; the order issued on October 31, 2012. Mr. Deveaux was required to pay interim spousal support to Ms. Deveaux in the amount of \$350 per month.

[8] There were no further court appearances until the divorce trial was held on May 8 and 9, 2013. Each of the parties testified. There were no other witnesses.

[9] By the time of trial, the parties had reached agreement on many of the parenting provisions. In addition, they agreed that Mr. Deveaux would pay the table amount of child support based upon his income and the *Guidelines*. Ms. Deveaux no longer sought section 7 expenses and withdrew that portion of her application. Further, the parties agreed that the matrimonial home would continue to be listed for sale, and that they would cooperate with the listing agent, while the court would retain jurisdiction to resolve any contested issues arising from the listing and sale of the matrimonial home. The parties also agreed that Mr. Deveaux would continue to maintain Ms. Deveaux and the children on his medical plan for so long as the plan permitted; and that Ms. Deveaux would be named beneficiary of his employment life insurance to secure child and spousal support. Likewise, Ms. Deveaux agreed that Mr. Deveaux would be named beneficiary of any life insurance which she had or would obtain in the future, while the children were dependent. Finally, the parties agreed that Ms. Deveaux was entitled to spousal support, although they disagreed on quantum and duration. All agreements formed part of the court record and will be incorporated into the corollary relief order.

[10] **Analysis**

[11] **What miscellaneous parenting provisions are in the best interests of the children?**

[12] *Position of the Parties*

[13] Ms. Deveaux sought the removal of clauses 12 and 19 of the current interim consent order. In its place, Ms. Deveaux sought a provision which would require Mr. Deveaux to obtain her consent before he hired a babysitter to care for the children. Ms. Deveaux also wanted to vacation with the children outside of Nova Scotia. Further, Ms. Deveaux wanted Mr. Deveaux's summer vacation schedule to be set by June 1.

[14] For his part, Mr. Deveaux agreed with the deletion of clauses 12 and 19 of the interim consent order. He further had no difficulty allowing the children to travel provided that both parties cooperated and signed the necessary documentation to effect international travel. In addition, Mr. Deveaux sought

particulars and notice of all travel to be provided in advance, including details about where the children would be vacationing. Finally, Mr. Deveaux objected to Ms. Deveaux's suggestion that he could not hire a babysitter without her consent.

[15] *Decision*

[16] The court's authority to issue a ruling impacting upon children derives from sec. 16 of the *Divorce Act*. Pursuant to sec. 16(8) of the *Act*, the court is directed to consider only the best interests of children by referencing their conditions, means, needs and other circumstances. Sec. 16(10) holds that the court must give effect to the principle that children should have as much contact with each parent as is consistent with their best interests. The court is authorized to impose terms, conditions or restrictions in connection with any parenting order as the court considers fit and just under sec. 16(6) of the *Act*.

[17] I have reviewed the law, the submissions of the parties, and the evidence. My decision is one which is focussed on the best interests of the children, and not on the needs or wishes of the parents. The court is pleased to learn that the parental acrimony has dissipated to a level whereby the children's emotional needs are no longer compromised. Impressionable children require healthy, stable, reasonable and mature role models, especially in the example of their parents. It is important that you, Mr. Deveaux and you, Ms. Deveaux, continue to disengage in any conflictual conduct so that needs of Morgan and Jordan assume priority.

[18] I find that it is in the best interests of Morgan and Jordan that the provision requiring Mr. Deveaux to be present during all access be deleted. Further, there is no obligation upon Mr. Deveaux to obtain the consent of Ms. Deveaux in the selection of a babysitter or child care provider. Mr. Deveaux is a joint custodial parent; he is not an access parent. The court was impressed with Mr. Deveaux's love and concern for his children. Mr. Deveaux is a thoughtful parent, who would not knowingly place his children in the care of an inappropriate third party. There is absolutely no evidence to suggest that Mr. Deveaux is incapable of making correct parenting choices as it relates to third party caregivers. Ms. Deveaux failed to produce any credible evidence that it would be in the best interests of the children to place parenting restrictions upon Mr. Deveaux. Her application to do so is denied.

[19] Further, the current restriction preventing the children from being removed from Nova Scotia is likewise deleted. Each of the parties are free to vacation with the children outside of the province, either interprovincially or internationally, provided each supplies the other with notice and particulars of the vacation, including transportation and accommodation details, and a telephone number where the children can be reached, assuming phone services is available. The long distance telephone expense is the responsibility of the parent who initiates the call. Each party must cooperate with the other to facilitate international travel by signing any passport applications, travel permission letters, or by undertaking any other action required to facilitate travel. International and interprovincial travel particulars must be supplied as early as possible, and no later than 10 days in advance.

[20] Finally, it is in the best interests of the children for their parents to be able to plan their respective summer holidays. Mr. Deveaux is therefore required to provide Ms. Deveaux with written notice of his intended weeks for summer vacation by June 1 of each year.

[21] **What is the appropriate division of the assets and debts?**

[22] After listening to the evidence and reviewing the submissions of the parties, I have determined the value of the assets and the balance of the debt for division purposes. The ability of the court to assign values was compromised because of the quality of the evidence. The court must nonetheless make a decision based upon the limited evidence that was lead in the circumstances of this case. The valuation of the assets is as follows:

Matrimonial home - \$210,000.

*[This value is moot in that the matrimonial home is being sold as per the agreement of the parties.]*

Household appliances, furniture, contents - \$20,000.

*[The court recognizes that the furniture, appliances and household contents were replaced by insurance proceeds about seven months prior to separation because the parties' home had been destroyed. In ascribing the value of \$20,000, the court recognized that the major appliances are likely to be sold with the matrimonial home and that some of the household*

*contents are the property of the children, or will be used solely for the children's benefit. Therefore, the value stated by Mr. Deveaux has been reduced to \$20,000].*

2006 Pontiac Montana - \$5,775.

2001 Coleman Santa Fe and contents - \$6,000.

Pension of Ms. Deveaux - value unknown, and will be subject to an equal source division.

Pension of Mr. Deveaux - value unknown, and will be subject to an equal source division.

HST rebate paid to Ms. Deveaux - \$4,634.

[23] The following represents the debt that will be equally divided between the parties:

Mortgage - \$160,171 as of May 4, 2012.

Consumer Proposal - \$9,000, being paid by Mr. Deveaux.

[Mr. Deveaux negotiated a substantial reduction in the family debt by filing a consumer proposal. The consolidation loan includes approximately \$40,400 of the prior family debt].

Credit Union loan - \$1,020 paid by Mr. Deveaux.

Fitness loan - \$1,442 paid by Mr. Deveaux.

Legal fees (Frank Gillis) - \$3,345.80, unpaid.

Dr. White, braces - \$668.74, unpaid.

Vic Aucoin Alarms - \$834.90, unpaid and to be negotiated by Mr. Deveaux.

Student loan of Ms. Deveaux - \$10,000, unpaid and to be negotiated by Mr. Deveaux.

[24] In addition, I have not included as divisible debt, the mortgage arrears paid by Ms. Deveaux's mother in the amount of \$2,534.23. These arrears accrued after separation and while Ms. Deveaux occupied the family home. Ms. Deveaux should have been paying all household expenses after March 1, 2012.

[25] I have also disallowed Mr. Deveaux's claim for an additional \$2,307.79 in debt payment which he made on various family debt in February, 2012. Mr. Deveaux was not paying support at the time. No credit is therefore provided.

[26] As the matrimonial home is being sold, and as the pensions of the parties will be subject to an equal division at source, and as the debt will be paid from the sale proceeds, the following chart represents the equalization of the balance of the matrimonial assets:

<b>Asset</b>	<b>Value</b>	<b>Husband</b>	<b>Wife</b>
Household Contents	\$20,000		\$20,000
Rebate	\$4,634		\$4,634
2006 Pontiac Montana	\$5,775	\$5,775	
<u>2001 Camper &amp; Contents</u>	<u>\$6,000</u>	<u>\$6,000</u>	
<b>Total</b>	<b>36,409</b>	<b>\$11,775</b>	<b>\$24,634</b>

Equalization Payment:  $\$24,634 - 11,775 = \$12,859 / 2 = \mathbf{\$6,429.50}$ . The lump sum retroactive spousal support that is payable to Ms. Deveaux by Mr. Deveaux, in the amount of **\$2,500**, as will be discussed later in this decision, will be deducted from the equalization payment. Therefore the total equalization payment is **\$3,929.50**.

[27] Once the matrimonial home is sold, the following debt will be paid before the net proceeds are equally divided between the parties:

- Mortgage, but subject to the condition that Ms. Deveaux continues to pay all regular charges. In the event, Ms. Deveaux does not keep the mortgage current, any mortgage arrears, including late payment fees or legal



fees, will be the sole responsibility of Ms. Deveaux and will be paid from her share of the sale proceeds.

- Realtor and legal fees associated with the sale, inclusive of the usual adjustments on closing.
- The outstanding balance of the consumer proposal.
- The outstanding balance of Ms. Deveaux's student loan, to be paid directly to the lending institution.
- Legal fees (Frank Gillis) in the amount of \$3,345.80.
- Dr. White's fees in the amount of \$668.74.
- The outstanding balance of Vic Aucoin Alarms in the amount of \$834.90, or such lesser negotiated amount.
- Seaside Communication cable arrears subject to Ms. Deveaux being solely responsible for any arrears which were incurred after March 2012. This bill is in the approximate amount of \$400.

[28] After this debt is paid, the proceeds will be equally divided between the parties, subject to Ms. Deveaux first transferring to Mr. Deveaux the following amounts from her share of the sale proceeds:

- Reimbursement to Mr. Deveaux of  $\frac{1}{2}$  of the Credit Union loan which he paid in the amount of \$1,020. Mr. Deveaux is therefore entitled to \$510 from Ms. Deveaux's share of the sale proceeds.
- Reimbursement to Mr. Deveaux of  $\frac{1}{2}$  of the fitness loan which he paid in the amount of \$1,442. Mr. Deveaux is therefore entitled to \$721 from Ms. Deveaux's share of the sale proceeds.
- Reimbursement to Mr. Deveaux of  $\frac{1}{2}$  of all payments which he made on the consumer proposal. This amount will be calculated at the time of sale because Mr. Deveaux continues to make these payments.

- Reimbursement to Mr. Deveaux of the equalization payment of \$3,929.50.

**[29] What is the appropriate spousal support order?**

*[30] Position of the Parties*

[31] Ms. Deveaux seeks spousal support of \$500 per month until such time as she becomes re-established in her career, which Ms. Deveaux hopes and anticipates will occur after her completion of a continuing education program. Ms. Deveaux was accepted into a two year program for registered massage therapy at Island Career Academy. Ms. Deveaux states that she will be fully funded through Employment Insurance Skills Development Canada. Ms. Deveaux is confident that she will receive funding. Ms. Deveaux is not seeking a terminal order, but rather, has put forward an education plan whereby she can move towards self-sufficiency.

[32] Ms. Deveaux states that she worked part time during the marriage, and was primarily responsible for the care of the children and the home. Ms. Deveaux notes that she is no longer working with Statistics Canada, a part time position which she had enjoyed for some time, for health reasons.

[33] Ms. Deveaux suggests that a payment of \$500 per month, in addition to the child support payment of \$871 per month, would achieve the various objectives set out in the *Divorce Act*. Ms. Deveaux also seeks retroactive spousal support.

[34] Mr. Deveaux agrees that Ms. Deveaux is entitled to spousal support but, disagrees as to quantum and duration. Mr. Deveaux states entitlement is based on non-compensatory grounds given Ms. Deveaux's outside employment and his role in parenting and household management.

[35] Mr. Deveaux notes that the marriage was not a traditional one. He states that Ms. Deveaux would still be employed with Statistics Canada had she not quit her job. He states that Ms. Deveaux had union security and a pension while employed with Statistics Canada. Mr. Deveaux asks that income be imputed to Ms. Deveaux based upon what she could have earned, as in prior years, through her part time

employment at Statistics Canada, and also taking into account the income which she earns by having foreign students live with her.

[36] *Decision*

[37] Section 15.2(1) of the *Divorce Act* provides this court with the jurisdiction to grant a spousal support order. This section states:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

[38] The factors which a court must consider in its spousal support determination are set out in sec. 15.2(4) which provides as follows:

15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), 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.

[39] The objectives to be considered in respect of a spousal support order are set out in section 15.2(6) which provides as follows.

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.

[40] In **Bracklow v. Bracklow**, [1999] 1 S.C.R. 420, the Supreme Court of

Canada confirmed that entitlement to spousal support is grounded on the following three principles:

- Compensatory support to address economic advantages and disadvantages flowing from the marriage or the roles adopted during the marriage;
- Non-compensatory support to address the disparity between the needs and means of the parties, and arising from the marriage breakdown; and
- Support based upon a contractual obligation, either expressed or implied.

[41] The burden of proving entitlement rests upon Ms. Deveaux. The burden is based on a balance of probabilities as supported by clear, convincing and cogent evidence: **C. (R). v. McDougall** [2008] SCC 53.

[42] Ms. Deveaux has proven entitlement given the legislation, case law and evidence presented. Entitlement is based upon both compensatory and non-compensatory factors including the following:

- Although Ms. Deveaux was employed outside the home on a part time basis, she performed traditional functions within the marriage. She was generally responsible for the care of the children and household management, although she was substantially assisted in these tasks by Mr. Deveaux. It must be remembered, however, that Ms. Deveaux's employment was part time during the marriage while Mr. Deveaux's employment was permanent, full time.
- There is a significant disparity in the incomes of the parties. Ms. Deveaux earned between \$12,000 and \$19,000 annually, through employment and EI earnings. Mr. Deveaux earns in excess of \$60,000. As a result, Ms. Deveaux's ability to become financially independent at this stage is restricted. Despite the child support she receives, Ms. Deveaux requires spousal support.

[43] Before dealing with quantum and duration, it is necessary to determine whether income should be imputed to Ms. Deveaux for the purposes of the spousal

support calculation: **Saunders v. Saunders**, 2011 NSCA 81. Mr. Deveaux met the burden upon him. Income in the amount of \$15,000, together with the sum of \$2,400, which represents the annual net rental income available to Ms. Deveaux, is imputed. Imputation of \$17,400 is appropriate for the following reasons:

- In past years, Ms. Deveaux worked with Statistics Canada and collected EI. In 2011 her income was \$15,585 from both sources; in 2010 her income was \$19,264 from both sources; and 2009 it was \$11,856.
- Ms. Deveaux quit her employment because of stress arising from the separation. She has since been cleared to return to work. Ms. Deveaux has not made any convincing efforts to obtain full time employment, or indeed any employment, since she quit her job.
- No credible medical information was lead establishing that Ms. Deveaux was disabled or that she was diagnosed with any illness that limited or prevented her from working: **MacGillivray v. Ross**, 2008 NSSC 339, paras. 27-33, although in **MacGillivray v. Ross** supra, child support was the outstanding issue, the principle is nonetheless applicable in the spousal support context.
- The medical particulars which were submitted were basically one line, hand written notes placed on a prescription pad. These notes lack details or medical reasons in support of their conclusions. The medical note dated 9/11/2012 stated that “Wendy is capable of working full time in any job situation except at her present job.” There is no explanation as to why Ms. Deveaux was restricted from returning to work at Statistics Canada, and no evidence was lead of a credible nature which would support such an opinion.

[44] In establishing quantum, I have examined the requirements of the *Divorce Act* in keeping with the factual evidence elicited in this case. Further, both parties provided the court with *SSAG* calculations based upon various income scenarios for Ms. Deveaux. The calculations suggest a range between \$28 and \$412 per month with a mid point of \$226 per month, based upon the “with child support formula” and an income of \$17,400 to Ms. Deveaux.

[45] I have also examined the expenses of the parties, which the court acknowledges will likely change in the near future with the sale of the home and the payment of certain debt.

[46] I have determined that spousal support will be payable at a rate of \$300 per month, continuing the monthly payment pattern already in effect. I have chosen this figure given the nature of the compensatory and non-compensatory claims, as well as the length of the marriage and the reasonable expenses of both parties. I have also considered the income tax implications.

[47] Duration of the spousal support order is also in contest. A termination date is not appropriate. Ms. Deveaux will be undertaking a two year course of study and then will require time to settle into an employment environment. The successful completion of the course will likely allow Ms. Deveaux to return to the workforce and earn a salary which will promote financial independence. Ms. Deveaux stated that her extensive research indicated viable employment opportunities in the massage therapy field.

[48] Although I will not set a termination date, Ms. Deveaux must recognize that spousal support will not likely be paid indefinitely. A review date is set for three years hence. This review, however, does not limit the ability of either party to advance an application to vary based upon a material change in circumstances, if one arises.

[49] Ms. Deveaux also sought retroactive support. Spousal support was payable as of October, 2012. The parties' separation occurred in February 2012. Ms. Deveaux did not delay in making a claim and Mr. Deveaux had an ability to pay. Ms. Deveaux requires the retroactive support to meet her legitimate needs. Any lump sum payment is tax neutral so that Ms. Deveaux will not be taxed on the payment and Mr. Deveaux will not receive a deduction. Given the tax neutrality of a lump sum retroactive payment, and the facts of this case, a retroactive spousal support order of \$2,500 is granted on a lump sum basis which will be deducted from the equalization payment as previously stated.

[50] **Conclusion**

[51] The following relief is granted:

- A divorce based upon a breakdown in the marriage as evidenced by the separation which has exceeded one year;
- A change in Ms. Deveaux's surname to her maiden name as requested;
- An adoption of the parenting plan with the terms as read into the court record and subject to the court's ruling in relation to the contested issues;
- An adoption of the child support provisions as per the agreement reached between the parties and read into the court record;
- An order confirming the division of the assets and debts as stated herein and subject to Mr. Deveaux's clothing and personal items being returned to him that remain in the matrimonial home;
- A spousal support payment of \$300 per month continuing to be payable on the 17<sup>th</sup> of each month until further order of a court of competent jurisdiction, inclusive of a retroactive order of \$2,500;
- The insurance designations as agreed upon by the parties; and
- A review hearing to be scheduled in three years. The parties are required to file affidavits and briefs in support of the review hearing according to the time lines set out in the *Civil Procedure Rules*.

[52] Mr. Stanwick will draft the orders and provide a copy to Mr. Deveaux and the court. Any drafting issues are to be brought to the court's attention forthwith. If either party wishes to be heard on the issue of costs, submissions are to be provided within 15 days.

Forgeron, J.