

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Pullin v. Ryan*, 2017 NSSC 20

Date: 20170124
Docket: 1201-51460
Registry: Halifax

Between:

Joanne Helen Pullin

Applicant

v.

Theodore Augustine Ryan

Respondent

Judge:

The Honourable Justice Beryl A. MacDonald

Heard:

November 18, 2016

Counsel:

Joanne Pullin, self-represented;
Pavel Boubnov, counsel with Theodore Ryan

By the Court:

[1] On October 20, 2015 Ms. Pullin filed a Divorce Act Notice of Variation Application requesting a change to the child support provisions contained in a Consent Variation Corollary Relief Order issued December 27, 2013. At the hearing on November 18, 2016 I was informed the only issue before me was the amount of the contribution Mr. Ryan is to provide as child support for the parties' daughter who is 20 years old and pursuing postsecondary education at Dalhousie University. Her studies commenced September 2014. Her relationship with her father is fractured. He has never accepted her wish to live primarily with her mother. That was the subject of a Child Wishes Assessment completed September 15, 2013. That Assessment clearly indicated a child who was caught in the middle of unresolved conflict between her parents. Unfortunately, that conflict has continued and this young lady now has little contact with her father. Much of this has occurred because the conflict between Ms. Pullin and Mr. Ryan continues. The driver of that conflict is, and has always been, primarily financial.

[2] The Consent Variation Corollary Relief Order contained the following provisions about how child support for their daughter was to be paid when she attended university:

2 (d) the parties agree that the Child Tax Credit will continue to be received by Mr. Ryan. He shall place the funds in a separate account which he shall open after (November 1, 2013 and which will be in (the child's) name with the expectation that it is to be saved for her university education.

(e) Mr. Ryan shall set aside, from December 1, 2013, forward, the component of his Canada Pension Plan disability benefits identified for (the child) as a contribution to her university education.

(f) the parties agree that they will equally share the cost of (the child's) attendance at university, being such cost that is not covered by scholarships, existing sources of funding, including the Child Tax Credit funds, CPP benefits that are set aside, and (the child's) earnings.

[3] The Order did not state the total annual income of either party. The order did not define what would be included in the "... cost of (the child's) attendance at university...". The Order did not define what were "existing sources of funding" other than to state the Child Tax Credit and CPP benefits were included.

[4] Ms. Pullin alleges Mr. Ryan has not contributed to their daughter's university expenses as required by the terms of the Order. This is because he objects to Ms. Pullin's calculation of those expenses. He objects to the inclusion of

their daughter's residential expenses and the exclusion of the Canada Student Loan funds their daughter has received.

[5] Ms. Pullin considers their daughter's choice not to live with either of her parents is a reasonable choice. She does not consider Canada Student Loan funds to be "existing sources of funding". She also objects to those funds being included because their daughter was forced to borrow that money due to Mr. Ryan's failure to pay the amount he was required to pay.

[6] Both parties approach this issue believing that the terms of the Order were terms that could be enforced by the court. Neither specifically asked for a variation. However, the matter is before me as a result of the Notice of Variation filed by Ms. Pullin. This is not an application requesting an execution order or a contempt order. Execution orders and Contempt orders can only be issued when there are specific amounts that can easily be determined upon default. In typical family court orders calculations are required. When parties disagree about what those calculations should be there is no formalized procedure for the interpretation to be applied to previous orders except by way of Variation Applications. In this case because the parties did not define the costs that were to be included and because there is a real interpretive challenge about the meaning of "existing

sources of funding” a court may decide the Order, or part of the Order cannot be enforced because the terms of the Order lack specificity.

[7] Enforcement of a Family Court Order that does contain a specified amount of money to be paid requires an application for Contempt. However, an order cannot be enforced by way of an application for contempt unless it contains clear, certain and unambiguous language. (*Gaudet v Soper* 2011 NSCA 11)

[8] The provisions of the previous Order, to which I have referred, are not clear, certain and unambiguous. As a result, the Order must be changed to provide for the daughter’s financial support pursuant to the *Federal Child Support Guidelines*.

[9] The relevant provisions of the *Federal Child Support Guidelines* are:

3 (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is:

(a) the amount determined by applying these Guidelines as if the child were under the age of majority; or

(b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and

other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[10] Courts across the country have often considered it inappropriate to merely apply the table guideline to determine the child support to be paid for a child who is over 19 and who is not residing with a parent while attending university. Most resort to an analysis under section 3(2)(b) and/or section 3(2)(a) and section 7 of the Guidelines:

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:

(e) expenses for post-secondary education;

[11] Reference to section 3(2)(a) and section 7 generally occurs when a child may return to live with a parent for some months in a year. During that time the parent will generally receive the table guideline amount. The child's expenses for the remainder of the year will be shared in some proportion by both parents.

[12] Reference to section 3(2) (b) occurs when a child does not reside with a parent for any significant period of time.

[13] The analysis under these sections is very similar. The court's primary focus will be the reasonableness of the child's educational and living expenses while attending to his or her post-secondary education in relation to the means of the parents and those of the child.

[14] An adult child is expected to contribute to his or her own expenses but is not required in all circumstances to acquire a student loan. Even parents of modest means may be ordered to contribute. As Justice Rogers said in *R.J.C. v. R.J.J.* (2006) B.C.S.C. 1422 (S.C.) at para 20:

Middle class parents are obligated to make some sacrifice to put their children through school and through university if that is the children's wish. This is not an obligation that requires the parents to risk foreclosure by taking on more debt than they could ever possibly repay or to sell capital assets if their estates are modest but it is an obligation that requires them to make some reasonable adjustments in their lifestyle. So, for example, if it means that they can contribute to their child's post-secondary tuition by not taking a vacation, or by not buying an expensive recreational vehicle, or by simply making some reasonable reduction in their luxury consumption, then those are sacrifices they could and should make. It is wholly unreasonable for a separated spouse to assert that her or she should be allowed to pander to a personal lifestyle preference at the cost of their child's university education. That said, there are, of course, circumstances in which it is patent that parents of modest means simply cannot afford to underwrite a bachelor's degree. In those cases it would be unreasonable for one to require the other to contribute to university expenses.

[15] A child is not required to use all his or her earned income to pay for educational expenses and necessary living expenses. Some can be retained for discretionary expenses.

[16] The court has discretion to order a parent to contribute in an amount that is not proportional to income.

[17] Generally, a child is entitled to decide where he or she goes to school and the program in which he or she is enrolled if that choice is reasonable given the child's abilities and ambitions. Reasonableness is also to be considered when a child resides independently instead of with a parent.

Parent's Circumstances

[18] These parents earn modest incomes. Neither has filed a statement of expenses but given their incomes neither can be considered wealthy. Mr. Ryan argues that he cannot afford to pay any significant amount toward her university expenses and that, with student loans, she can finance most of that expense on her own.

[19] Based upon the information I have received from these parents it appears Ms. Pullin's gross annual income varies from year but not significantly. Her gross annual income for this decision is \$30,000.00. Mr. Ryan's gross annual income is \$55,000.00.

[20] While the accounting is somewhat unclear Ms. Pullin appears to have contributed \$9,500.00 toward her daughter's expenses.

[21] Prior to January 2016, Mr. Ryan had only provided an occasional meal and pocket money to his daughter. He made other purchases but those were gifts and should not be included in a calculation involving university expenses. In January, 2016 he did give her \$1,000.00. He later provided \$815.14. In the summer of 2016 he gave her \$300.00 towards a trip she made to New Brunswick.

[22] By Ms. Pullin's calculations Mr. Ryan owes their daughter \$17,000.00 to cover his portion of her expenses to November 2, 2016. In her expense calculation she included items I did not include. She also wants him to contribute \$500.00 per month directly to their daughter commencing December 1, 2016 until she completes her undergraduate degree. She also will contribute \$500.00 per month.

[23] Interestingly if each parent contributed according to the guideline amount, Mr. Ryan would pay \$463.00 per month and Ms. Pullin would pay \$252.00 per month. Although the guidelines are not use in this manner they do suggest what a parent would pay to the other parent to assist in a child's financial support. This would have provided their daughter a yearly amount of \$8,580.00 to offset her expenses. If a parent would be ordered to pay this amount to another parent regardless of his or her personal "expenses" why would a court order a parent to pay less towards a child's deficit when the child is in University? Unfortunately, this is not the analysis used to determine an appropriate financial contribution to be

made when a child is no longer living with a parent. Courts must make discretionary decisions, on a case by case basis, about what is to be paid.

Child's Circumstances

[24] The parties' daughter chose to file an affidavit in this proceeding. Mr. Ryan chose not to cross-examine her about the information she provided. In 2014 she decided to attend Dalhousie University and enroll in its Bachelor of Music program. Attached as Schedule "A" to this decision are the reasonable expenses I have accepted as appropriate for her 2014/15 terms of study. Her circumstances were similar in 2015/2016. In the summer of 2016 she moved into an apartment. I have examined those expenses and they are only slightly less than when she was in university housing.

[25] The expenses I have accepted provide nothing for replacement clothing, trips away from the city related to her intended career, shelter cost and food expenditures over the summer, entertainment, personal supplies, or cell phone.

[26] Unless there is some material change her expenses will not vary significantly in 2016/2017. I have applied the scholarships and bursaries she received in 2014/15. Her contributions in other terms will be reduced because the Child Tax Credit is no longer available and the scholarship and bursaries may also no longer

apply. I have not applied any of her earnings to her university expenses because those must be used to pay for the expenses that do not appear in Schedule "A" to which I have made reference above. The result is that the parties' daughter had a deficit of approximately \$10,000.00 in her first year in university. She will continue to have a deficit in that amount and likely in a greater amount as she continues her university enrollment.

[27] Prior to August 2016 the parties' daughter lived in university housing. After that date she moved into an apartment near the University. She lived near the University because she requires ready access to studios, instruments and practice areas. To gain access her schedule runs from 10:00 am until as late as 10:00 pm. Mr. Ryan lives in Eastern Passage. Ms. Pullin lives in Fletcher's Lake. It would be extremely inconvenient for their daughter to travel from either of their homes into the city. There have been bridge closures at night, public transportation is often unavailable. If she had a vehicle she would need to access parking and that could add an additional expense. She often would be travelling late at night.

Conclusion

[28] Ms. Pullin, with less income than Mr. Ryan, has made financial sacrifices to assist their daughter pursue her university education. He has been very

unreasonable in his approach. He expected all the money she earned working to be applied to her university expenses. He did not agree with her living elsewhere than at home. He did not take into account her changing work availability nor the practical transportation issues arising from the type of degree she is seeking to complete.

[29] Ms. Pullin has also been unrealistic in believing their daughter can complete her university education without resorting to student loans. They were necessary and they will be necessary.

[30] Notwithstanding the differences in the parties' incomes, they originally agreed to share the deficit cost of their daughter's university expenses. Given the extent of their daughter's deficit, and the parties' modest incomes, I will not require them to share the entire cost of that deficit. They must each pay \$3,500.00 yearly toward that deficit. I will leave the accounting about Ms. Pullin's share between she and their daughter because I am uncertain if she has paid more or less than \$9,500.00 to date.

[31] Mr. Ryan now owes his share for September to June in each of these term years 2014/2015; 2015/2016; 2016/2017. The total he must pay for these years is \$10,500.00 less \$2,115.00. The balance to be paid is \$8,385.00. This is due immediately and is to be collected by the Maintenance Enforcement Program. On

or before September 1, 2017, and on every subsequent September as long their daughter is enrolled in an undergraduate university program he must pay \$3,500.00 for her financial support.

[32] The payments are to be made to Ms. Pullin because this order must be enforceable and their daughter is not a party to this proceeding.

Beryl A. MacDonald, J.

Schedule "A"

CALCULATION OF UNIVERSITY EXPENSES and DEFICIT**Fall Term 2014**

Tuition	\$ 3,393.00
Auxiliary Music fee	\$ 498.48
Application fee	\$ 50.00
<i><u>Incidental Fees:</u></i>	
Arts Society	\$ 8.00
Facilities Renewal fee	\$ 81.90
Health and Dental Insurance	\$ 253.00
Student Service fee	\$ 144.38
Student Union fee	\$ 72.93
Bus Pass	\$ 147.00
<i><u>Residence & Meals:</u></i>	
La Marchant	\$ 3,850.00
La Marchant RC	\$ 25.00
Food Bucks	\$ 200.00
155 Meals	\$ 1,920.00
Sub Total	\$10,643.69

Winter Term 2015

Tuition	\$3,393.00
Auxiliary Music fee	\$ 498.48
<i><u>Incidental Fees:</u></i>	
Arts Society	\$ 8.00
Facilities Renewal fee	\$ 81.90

CALCULATION OF UNIVERSITY EXPENSES and DEFICIT

Student Service fee	\$ 144.38
Student Union fee	\$ 72.93
<i><u>Residence & Meals:</u></i>	
La Marchant	\$ 4,175.00
La Marchant RC	\$ 25.00

Sub Total	\$ 8,398.69
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Books & Supplies Both Terms

Total Books	\$ 1,177.19
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Total Supplies	\$ 1,183.71
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Sub Total	\$ 2,360.90
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Total	\$21,403.28
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CONTRIBUTION TOWARD EXPENSES

Scholarships and Bursaires	\$ 9,283.12
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Child Tax Credit	\$ 2,043.00
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Balance Required	\$10,077.16
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