

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *MacDonald v. MacDonald*, 2016 NSSC 10

**Date:** 2016-01-07

**Docket:** Antigonish No. 1210-001242

**Registry:** Antigonish

**Between:**

Cheryl Lynn MacDonald

*Applicant/Petitioner*

*And*

Lawrence Bernard MacDonald

*Respondent*

**Judge:** The Honourable Justice N. M. (Nick) Scaravelli

**Heard:** December 21<sup>st</sup>, 2015, in Antigonish, Nova Scotia

**Counsel:** Wayne MacMillan for Cheryl MacDonald

James MacIntosh for Lawrence Bernard MacDonald

**By the Court:**

[1] The petitioner Cheryl Lynn MacDonald filed a Petition for Divorce on July 2<sup>nd</sup>, 2014 seeking division of property pursuant to the *Matrimonial Property Act*, a division of pension under the enabling legislation and change of name from Cheryl Lynn MacDonald to Cheryl Lynn MacNeil. The petitioner filed an amended Petition for Divorce in December 2014 amending a claim for spousal support. The respondent Lawrence MacDonald filed an answer.

[2] The parties have settled all issues with the exception of spousal support. The issues are entitlement and quantum both retroactive and prospective.

[3] I am satisfied the petitioner has established jurisdiction and grounds for divorce based on separation for a period in excess of one year. There is no possibility of reconciliation. Accordingly a divorce order will be granted. The petitioner's name to be changed from Cheryl Lynn MacDonald to Cheryl Lynn MacNeil.

## **Background**

[4] The parties were married August 6<sup>th</sup>, 1988. They had two children born September 5<sup>th</sup>, 1987 and November 4<sup>th</sup>, 1993. Both children are now of the age of majority and are financially independent.

[5] The parties separated on September 16<sup>th</sup>, 2013 following 25 years of marriage. The petitioner was 45 years of age at the time of separation. The respondent was 49 years of age.

[6] During the marriage the respondent worked in the mining industry which caused him to be away from home for periods of time. This work also required the family to relocate on occasion, before finally building and settling in their own home at Cribbons Point, Antigonish County.

[7] During the marriage the petitioner was mainly responsible for the care of the home and children. She worked sporadically over the years, mainly as a waitress. She did manage to take courses in bookkeeping and computer. In 2004 the petitioner started a pet retreat business for a period of time. The respondent was the main bread winner of the family.

## **Spousal Support**

[8] The factors and objectives to be considered in a spousal support claim are set out in section 15.2(4) and (6) of the *Divorce Act*. In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, the court set out 3 conceptual grounds for entitlement for spousal support:

1. Compensatory which is intended to compensate a spouse upon the breakdown of the marriage for contributions made to the marriage, such as sacrifices made for a spouse's career and loss of economic opportunity as a result of maintaining the home and raising children.
2. Non-compensatory dependency based support to address the disparity between the parties' means and needs as a result of the marriage breakdown.
3. Contractual support reflecting agreements between the parties.

## **Analysis**

[9] Following separation the petitioner received \$18,300 as her one half share of the net proceeds of sale of the matrimonial home. The respondent has a pension investment valued at \$140,000. The parties agree the petitioner will receive a one half division. The petitioner also removed one half of the respondent's vacation and severance pay from their joint account following his termination of

employment in 2013. This amounted to approximately \$6,000. She has not received periodic spousal support payments from the respondent since separation.

[10] The petitioner has taken reasonable steps to obtain self-sufficiency.

Following separation she worked odd jobs house cleaning, painting and mowing lawns in Cape Breton. She relocated to Fort McMurray and worked general labour before returning to Cape Breton in March 2014 where she worked at waitressing jobs before returning to Fort McMurray in November 2014. Her total income for 2014 was approximately \$57,500.

[11] In 2015 she worked for an employer in Fort McMurray as a general labourer throughout the year. She was laid off in December 2015 and hopes to be recalled by her employer in the spring of 2016. She is also on the union recall list. The petitioner earned approximately \$72,000 in 2015. She will receive \$928 every two weeks while on EI.

[12] In February 2014 the petitioner commenced a relationship with Keith Sutherland. They have been residing together in Fort McMurray since October 2015. Mr. Sutherland is employed and earned \$160,000 in 2015, including overtime. His evidence is that he typically earns approximately \$110,000 per year. Mr. Sutherland is separated and has two children, 19 and 17 years of age who

reside with their mother in Port Hawkesbury, Nova Scotia. He pays the monthly mortgage on their home in the amount of \$480 per month plus expenses related to the house. He is also responsible for access costs.

[13] The petitioner's statement of expenses prepared in May 2014 showed a deficit of \$320 per month. Her June 2015 statement of expenses showed a deficit of \$867 per month. The petitioner's December 2015 statement of expenses shows a surplus of \$2,250 which takes into account Mr. Sutherland's contribution of one half of the monthly rent only.

[14] The respondent was employed for a number of years in the mining industry earning an average annual income of \$150,000. He was employed at the time of separation. According to his evidence, his employer terminated his employment following separation due to his poor performance at work relating to his family situation. He was able to obtain EI benefits in the amount of \$900 every two weeks "on compassionate grounds".

[15] In May 2014 the respondent filed for bankruptcy. His debts included matrimonial debts as well as debts incurred post-separation which he estimated at \$20,000. Matrimonial debts included mortgage payments, Visa and line of credit.

The respondent's equalization from the sale of the matrimonial home in the amount of \$18,300 was paid to the Trustee for the benefit of creditors.

[16] The respondent returned to work in November 2014. As a result he was required to pay \$4,000 per month to the trustee. According to the Trustee's ledger report the respondent has paid a total of \$47,616 as of November 2015. The respondent continues to pay \$4,000 per month and expects to be discharged from bankruptcy in February 2015. If this happens the respondent would have paid the Trustee \$59,000 of which \$39,000 paid towards matrimonial debts. The mortgage would have been paid off at the time of the sale of the property.

[17] I should mention at this time that as the petitioner did not file for bankruptcy, she would notionally be responsible for any outstanding matrimonial debts. There is no evidence before me that this would be the case following the respondent's discharge from bankruptcy. Although the petitioner's credit report shows these debts, the notations indicated they are not collectible and are written off. The petitioner is not making payments on these debts nor are the creditors pursuing her.

[18] The respondent was laid off in November 2015 and receives EI benefits in the amount of \$900 every two weeks. His employer has indicated he should expect a call back in the new year.

[19] The respondent's annual income for the year 2014 following separation was \$21,000. His 2014 statement of expenses showed a surplus of \$455 per month but did not factor in income tax on his EI payments. The respondent's 2015 statement of expenses adjusted monthly based on \$150,000 income for the year would leave him with a surplus of approximately \$3300 per month, factoring in income tax calculation at 46%.

[20] I find the petitioner was entitled to spousal support at the time of separation both on a compensatory and non-compensatory ground.

[21] I have considered the means, needs and circumstance of each spouse. Following separation until October 2014, the petitioner was in need of spousal support. However, the respondent had no ability to pay. From November 2014 to and including September 2015, the petitioner was in need of spousal support and the respondent had the ability to pay. As a result, I would order spousal support payable for this period at the rate of \$1,000 per month for a total of \$11,000.



[22] The petitioner has demonstrated an ability to be self-sufficient over the past two years by earning sustainable income. She has entered into a relationship that enables her partner to contribute to her expenses. However, at the present time the petitioner is laid off and in receipt of EI benefits. Although she is hopeful of a recall to work, this is not guaranteed.

[23] Regardless of the petitioner's entitlement to support, the respondent is not in a position to pay support at this time. The respondent is also presently in receipt of EI benefits. His prospects for recall by his employer appear to be favourable.

[24] In order to preserve the petitioner's right to support in the future, regarding any material change in circumstance, I order the respondent to pay the petitioner \$1.00 per annum spousal support effective January 1<sup>st</sup>, 2016. The parties will be required to exchange financial disclosure annually as long as spousal support is payable.

[25] In terms of costs, this divorce was not a complex matter. The only issue was spousal support. The petitioner was successful in obtaining retroactive spousal support. The respondent was successful in his position that no real amount of spousal support should be payable on a prospective basis at this time. There were no pre-hearing motions and the trial lasted one half day.

[26] Under the circumstances, I order each party bear their own costs.

[27] Petitioner's counsel to draft Divorce Order and Corollary Relief Judgment for approval as to form.

Scaravelli, J.