

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Maintenance Enforcement) v. Hill*, 2017 NSSC 112

Date: 2017-03-13

Docket: *SFSNMEA* No. 098947

Registry: Sydney

Between:

Director Maintenance Enforcement Program

Applicant

v.

Michael Hill

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: March 13, 2017, in Sydney, Nova Scotia

Oral Decision: March 13, 2017

Written Release: April 27, 2017

Counsel: Nicholas Dorrance for the Applicant
Michael Hill, Self-represented Respondent

By the Court [orally]:

[1] This decision arises from registration of a child maintenance order with the Director of Maintenance Enforcement in Nova Scotia. Mr. Hill is significantly in arrears under that order. The Director filed a notice of application on December 17, 2015 in which it set out the relief it was seeking:

- an order requiring Mr. Hill to report to the court his compliance with the maintenance order issued;
 - an order requiring him to pay the outstanding arrears immediately;
 - an order for judgement against him for the arrears and costs ordered in the application;
 - an order requiring him to pay the Director's costs; and
- any other relief the Director may request under the **Maintenance Enforcement Act**, S.N.S. 1994-95 c.6, including an order for imprisonment.

[2] The Director filed an affidavit with the application, and an updated affidavit was filed by the maintenance enforcement officer who testified at hearing.

[3] There have been several delays on the file. The Application was served on February 26, 2016, which was over a year ago. The documents were served along

with a notice to appear on April 19, 2016 for a date assignment conference. Mr. Hill appeared on that date, but advised he was seeking counsel and he asked for an extension of two months in order to respond to the Application. The Director agreed and the court granted him that extension. Mr. Hill was told he must disclose his tax information, and that if he was not working, that he should file a variation application to address the arrears.

[4] The matter was scheduled to return on May 9, 2016, but Mr. Hill phoned to say he was sick. The matter was adjourned again with the consent of the Director. The matter returned again on May 20, 2016, at which time Mr. Hill advised that he didn't qualify for Legal Aid. The court advised him to get his documents filed as a self-represented litigant, and set a deadline for filing in advance of the hearing scheduled for June 3, 2016.

[5] Before that hearing, Mr. Hill requested another adjournment. He advised that he had an appointment scheduled with legal counsel. The adjournment was granted with the Director's consent to allow him time to retain counsel to respond to the application. Another date assignment hearing was scheduled for December 13, 2016 at which time Mr. Hill was present, but without counsel. He was still opposed to the Director's application and was advised by the court (again) to get

legal advice. A further deadline was set for him to file all required documents by December 31, 2016, for a hearing scheduled on March 13, 2017.

[6] Mr. Hill was told that he would not be heard if he didn't file any documents in advance of the hearing. He never filed any disclosure, a response or a variation application.

[7] Under the 2011 maintenance order from Ontario, Mr. Hill is required to pay child support in the amount of \$519.00 per month for his child K.D.A.G., born January 14, 2011. The consent order references Mr. Hill's income of \$56,000.00. Arrears were fixed at \$2,500.00, to be repaid at the rate of \$100.00 per month in addition to the table amount of child maintenance. The order also includes a requirement that Mr. Hill pay interest on any outstanding amounts.

[8] The order was enrolled with the Nova Scotia Maintenance Enforcement Program in March, 2014. As of that date, arrears stood at over \$15,000.00. As of March 13, 2017, the arrears now stand at \$34,221.54, which is a significant amount of child maintenance arrears.

[9] No payments have been made by Mr. Hill since enrollment, other than \$45.46 paid under a federal garnishee.

[10] I am satisfied that the amount of arrears has been proven, and I am satisfied that Mr. Hill is aware of his legal obligations under the Ontario order.

[11] Maintenance Enforcement has attempted to enforce the maintenance order through every option available to it under the legislation, including notices of default, federal interceptions, a demand for financial information, revocation of Mr. Hill's driver's licence, suspension of his passport, and a demand that he appear for examination by the Director. Indeed, the Director provided him with a reminder about the examination a day before he was scheduled to appear, but he still failed to appear.

[12] Since the order has been enrolled with Maintenance Enforcement, Mr. Hill has failed to provide any explanation for his default. He has failed to disclose his finances. He has failed to respond to the many enforcement actions taken by the Director.

[13] Section 37 of the **Maintenance Enforcement Act** provides for a default hearing where a payor fails to comply with a maintenance order. That hearing was held on March 13, 2017.

[14] The Director must lead evidence of default and prove the amount of arrears in default. It has done so. The onus then shifts to the Respondent to discharge the

burden of proving that he was, and continues to be, unable for valid reasons to pay the arrears or to make subsequent payments under the maintenance order. This type of hearing is the last opportunity for Mr. Hill to convince a court that he has not been able to comply with the maintenance order, failing which I am entitled to order remedies, including imprisonment, to address the non-compliance.

[15] Mr. Hill had over a year to file documents to explain why he is in default or to take action to change the order through a variation, which he has not done.

[16] The onus on Mr. Hill is to prove on a balance of probabilities that he was, and is, unable to meet the order. He presented no evidence, so he has not met that onus. Section 37 of the **Maintenance Enforcement Act** contains a presumption that a payor has the ability to pay, unless the contrary is shown [s. 37(2)(a)].

[17] A payor is expected to pay the arrears owing and to continue making payments under an order, based on that presumption. In this case, the Director has exhausted all available enforcement options, and has worked very cooperatively with Mr. Hill to see the arrears addressed. However, Mr. Hill has not cooperated with the Director in any way. He has failed to discharge the burden upon him, and failed to provide evidence to rebut the presumption that he is able to pay.

CONCLUSION:

[18] I am satisfied that it is appropriate to exercise my discretion in these circumstances, to allow the relief sought by the Director. I grant an order requiring Mr. Hill to report to the court under section 37(3)(h) of the **Maintenance Enforcement Act** his compliance with the order issued in this application. A date will be set for him to come back and provide that report in three months' time.

[19] I direct that within 45 days Mr. Hill must pay half of the outstanding arrears under section 37(3)(a) of the **Maintenance Enforcement Act**. He must also present a reasonable plan to pay the balance.

[20] I am satisfied that it is appropriate to issue a warrant for Mr. Hill's arrest and imprisonment, for a period not exceeding 90 days, to be issued and held pending his compliance with the order that I am issuing today, pursuant to s. 37(3)(k).

[21] I am satisfied that it is appropriate to order Mr. Hill to pay costs in this matter. The Director has been most reasonable in asking for only \$550.00, which I am prepared to grant pursuant to s. 37(3)(p).

[22] I grant judgement against Mr. Hill under section 37(3)(n) and s. 38 of the **Maintenance Enforcement Act** for the amount of the arrears proven today which is \$34,221.54, plus the costs of \$550.00.

[23] In granting and holding the warrant for imprisonment, I want Mr. Hill to understand that the court has discretion to allow him the opportunity to address the arrears. Short of that, the warrant will be released for execution and Mr. Hill will be arrested and imprisoned. The sanction of imprisonment is a serious one, and a resort of last measure. However, it is called for in this case, because it is the only way to ensure Mr. Hill's compliance.

[24] It is appropriate to order imprisonment because:

- Mr. Hill has failed to make any payments under the order;
- he has refused to explain why he has not made payments under the order;
- the Director has taken every step possible to enforce the order;
- the Director has provided him with many opportunities to answer to the order;
- he has failed to make financial disclosure; and
- the default is long standing and chronic.

[25] A warrant for incarceration is the only way to impress upon Mr. Hill the importance of paying child maintenance, and the seriousness of wilful non-compliance with a court order.

[26] I am guided in this decision by other court decisions dealing with similar defaults. Several have been referenced by the Director in its brief. The first one is the **Director of Maintenance Enforcement v. Charles Patrick MacDonald**, [2002] N.S.J. No. 346 in which Justice Gass ordered that a warrant be issued for a period of two months incarceration and held, pending determination of whether the amount outstanding would be paid. The amount outstanding was \$7,000.00.

[27] In **Baker v. MacDonald**, 2003 NSSC 203 Justice Stewart ordered imprisonment for a period of six months, unless the child and spousal support arrears in the amount of \$70,000.00 were paid sooner.

[28] Justice Stewart in **Baker v. MacDonald** said:

In making an order for incarceration, I am mindful we do not send people to prison for non-payment of debts. We can however, punish for wilful disobedience of a Court Order when it is within their capacity to comply.

[29] In the **Director of Maintenance Enforcement v. R.M.** 2016 (Digby FDMEA-094938 unreported decision) the Respondent payor was in arrears of child support in the amount of \$7,000.00, but he had made a payment of \$3,000.00

approximately 3 weeks before the hearing, so there was some compliance. He had also filed an application for retroactive variation, although that was mostly unsuccessful. In any event, there had been an effort to address the order.

[30] In that case, Judge Christenson ordered the Respondent to pay the arrears in full. She also ordered a period of imprisonment of 60 days, but held the warrant for a period of four months. She directed that the warrant was to be executed if the arrears were not paid in full within the four months. Judge Christenson said:

Our entire judicial system is premised on the basis that Orders issued by Courts are to be followed. There must be consequences for individuals who fail to comply. Although I do acknowledge that R.M. did take some steps in the last six weeks to reduce the quantum owed, it is too little too late...

[31] Mr. Hill has taken no steps to address the order, so there are no mitigating considerations in this case.

[32] Judge Christenson went on to say:

A message needs to be sent to both R.M. and to the public as a whole that there are consequences for non-compliance with court orders. It is clear from the case law that child support is a priority. It is time for payors to align their actions with this principle.

[33] And:

...Regrettably, in some instances, only imprisonment will be a sufficient incentive for a select group of payors to comply and honour support obligations.

[34] Again, I am satisfied that it is appropriate in this case to exercise my discretion to order incarceration. A message must be sent to Mr. Hill and others who flaunt court orders. I am satisfied that Mr. Hill will not take any steps to address the order unless strongly compelled to do so.

[35] The order will be issued as requested by the Director. The matter will return in three months on a date to be set. During the interim, Mr. Hill will have time to pay half of the amount owing and come up with a reasonable payment plan for the balance. I will hold the warrant without executing it, until the matter returns in June. The warrant will be released for execution and Mr. Hill will be arrested and imprisoned if he has not complied with this order. If he has complied, and for so long as he continues to pay the arrears as directed, the warrant will be held for execution. Counsel for the Director will prepare the orders.

MacLeod-Archer, J.