

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

Citation: *Dilnot-Reid v. Dilnot*, 2015 NSSC 396

Endorsement

Starr Dilnot-Reid v. Shaun Dilnot
2015: 1201-068721; SFH-D 096332

August 8, 2015

Appearances: Joyce Ruck De Peza on behalf of Starr Dilnot-Reid
Thomas Dulong on behalf of Shaun Dilnot

Motion:

Ms. Dilnot-Reid filed a motion interim relief, seeking orders for custody, access, child and spousal support and exclusive possession of the matrimonial home. Various other claims were advanced by the parties in their briefs.

Decision:

1. The children shall have their primary residence with their father.
2. There shall be no specified routine for access between Cody and his mother.
3. Haylea shall have a regular access routine with her mother: Until school begins, Haylea will be with her mother from Friday at noon until Monday at noon during the first week (starting on August 14, 2015) and from Monday at noon until Tuesday at noon (starting on August 24, 2015) on the following week. Transfer times will change so that during the school year Haylea will be with her mother from Friday after school until Monday morning when school resumes commencing the first week of school and from Monday after school until Tuesday morning before school the next week. This two week cycle will repeat.
4. Commencing on August 15, 2015 and continuing on the fifteenth day of every subsequent month, Mr. Dilnot shall pay interim spousal support of \$950.00. He shall maintain payments on Ms. Dilnot-Reid's car, her car insurance and her cellular telephone, which third party payments shall all be treated as spousal support, deductible by Mr. Dilnot and taxable to Ms. Dilnot-Reid, when determining their income taxes.
5. Until August 21, 2015, Ms. Dilnot-Reid may investigate realtors with whom to list the matrimonial home for sale. By August 21, 2015 she shall provide the names of her three preferred realtors to Mr. Dilnot. By August 31, 2015, Mr. Dilnot shall choose from these three, the agent with whom the matrimonial home shall be listed for sale. The listing shall occur before September 11, 2015.
6. I remain seised of issues arising with regard to the sale of the matrimonial home.
7. Mr. Dilnot shall maintain health insurance coverage for the children and Ms. Dilnot-Reid and shall disclose to Ms. Dilnot-Reid the terms under which her health insurance coverage may continue and when it must be terminated.
8. Both Mr. Dilnot's pension and Ms. Dilnot-Reid's Registered Retirement Savings Plan contributions be maintained with no withdrawals by either party.

9. The Registered Education Savings Plan may not be accessed without the written consent of both parties.

Reasons:

1. Cody Dilnot-Reid is eighteen years old. He has completed high school and will attend Saint Mary's University in September 2015. Haylea Dilnot-Reid is fifteen years old. She will be entering Grade Ten in September 2015. Both children have been identified as having conditions affecting their mental health. The extent of these conditions and their appropriate treatment is not agreed.
2. Mr. Dilnot has worked from home for over a decade, to accommodate Ms. Dilnot-Reid's ill health. She was injured in 1998 and has various chronic health conditions which disable her from unemployment and affect her daily living.
3. The children have been trapped in the conflict between their parents. Ending the impact of the parents' conflict on the children is my primary concern in determining the children's custodial arrangements.
4. Financially, the parties are overextended and bankruptcy may be their only solution. Because they have some assets, this would be unfortunate.
5. Of the parents, Mr. Dilnot is more capable of meeting the children's needs. He lacks the physical limitations Ms. Dilnot-Reid has. He has been at home with the children for more than a decade providing for their care. Both children have a good relationship with their father. Cody does not have a good relationship with his mother.
6. During the separation, both parents have placed their children in the middle of the conflict between them. Of the parents, Mr. Dilnot has done marginally less to exacerbate the children's circumstances to advance his parenting claim. I place the children in his primary care.
7. The children will have access with their mother. For Cody, there will be no specific access routine. At his age and with his commitments (university and competitive soccer), I cannot predict a schedule that will work for him. For Haylea, there will be a regular routine of access. Until school begins, Haylea will be with her mother from Friday at noon until Monday at noon during the first week (starting on August 14, 2015) and from Monday at noon until Tuesday at noon (starting on August 24, 2015) on the following week. Transfer times will change so that during the school year Haylea will be with her mother from Friday after school until Monday morning when school resumes commencing the first week of school and from Monday after school until Tuesday morning before school the next week. Providing a regular routine, with specific start and end times and, during the school year, the ability to make transfers at the school will reduce the opportunity for conflict between the parents.

8. Ms. Dilnot-Reid's income is too low to require her to pay child support, so none is owed by her for Cody and Haylea.
9. Ms. Dilnot-Reid seeks exclusive occupation of the matrimonial home on an interim basis.
10. Ms. Dilnot-Reid's motion for interim exclusive possession of the matrimonial home is governed by subsection 11(4) of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275 which says that I may only make an order for possession where I conclude that other provision for shelter is not adequate in the circumstances or it is in the child's best interests to make the order. The *Act* limits when I can make an order for exclusive possession to those two situations.
11. Given my decision about the children's residence, Ms. Dilnot-Reid cannot sustain the position that she needs the home to serve the children's best interests. By her own evidence, alternate accommodations are available to her. She will need to ensure that they don't involve too many stairs, but she can manage stairs, so this is not prohibitive.
12. Both parties have referred to having the matrimonial home sold and I do order that it be sold. It is too costly to be maintained and its sale may alleviate their debt problems.
13. By August 21, 2015 Ms. Dilnot-Reid shall provide her husband with the names of three realtors she is willing to see list the house for sale. He must pick one by August 31, 2015 so that the house can be listed for sale no later than September 11, 2015. If there are problems, I remain seised of the matter and I will deal with the disputes.
14. Ms. Dilnot-Reid has claimed spousal support. I find she is entitled. Her income will drop as result of children moving to their father's primary care. His income will be approximately \$7,000.00 each month considering income supports available to him as a primary care parent. He will remain responsible for all costs associated with the home pending its sale and, until there is a further order or agreement, he will maintain minimum payments on the two credit lines and the two credit cards. He must maintain payment of Ms. Dilnot-Reid's car loan or lease, her car insurance and her cellphone. These bills and a further payment of \$950.00 month will comprise her spousal support.
15. Mr. Dilnot has agreed to maintain health insurance coverage for the children and Ms. Dilnot-Reid. I order he do this. I also order that he disclose to Ms. Dilnot-Reid the terms under which her health insurance coverage may continue and when it must be terminated. The availability of health insurance for her will be a significant consideration in the long term.
16. The parties have consented to "freezing" Mr. Dilnot's employment pension. I order that both Mr. Dilnot's pension and Ms. Dilnot-Reid's Registered Retirement Savings

Plan contributions be maintained with no withdrawals by either party.

17. I order that the Registered Education Savings Plan not be accessed without the written consent of both parties.

Direction:

Mr. Dulong shall prepare the order.

Costs:

Success has been divided. There shall be no costs.

Elizabeth Jollimore, J.S.C.(F.D.)