

**Supreme Court of Nova Scotia (Family Division)**

**Citation: *MacDonald v. Turner*, 2018 NSSC 315**

**ENDORSEMENT**

December 12, 2018

MacDonald v. Turner, SFSNMCA 76247

Elaine Gibney on behalf of the Applicant

Self-represented Respondent

By the Court:

[1] The parties separated on May 1, 2010 after a 20 years common law relationship. They have one child, who still lives at home with Ms. MacDonald and is pursuing his undergraduate degree at Cape Breton University. An interim order for child support was issued on January 9, 2012 with periodic child payments starting on February 1, 2012.

[2] Mr. Turner filed a variation application on September 25, 2017. He subsequently filed a notice of discontinuance on May 3, 2018. However, in the meantime, Ms. MacDonald filed a Response.

[3] A date assignment conference held on May 16, 2018, at which time Mr. Turner advised that he did not intend to proceed with his variation application.

[4] Ms. MacDonald's counsel advised that Ms. MacDonald would be proceeding with her claim in any event, and she filed a notice of intention to proceed on May 18, 2018. Although it was filed 11 business days after the notice of discontinuance was filed, I find it complies with Civil Procedure Rule 9.03 because Mr. Turner did not serve his notice or notify Ms. MacDonald or her counsel of his intentions. Ms. Gibney learned of it at the date assignment conference.

[5] Hearing dates and a pre-trial conference dates were set on May 16, 2018. Mr. Turner was advised to seek legal advise about Ms. MacDonald's claims. He was directed to make financial disclosure and he was provided with information about proceeding as a self represented litigant. He was also given contact information for summary advice counsel.

[6] Mr. Turner did not appear at the pre-trial conference on September 18, 2018. Counsel for Ms. MacDonald advised that he returned mail she'd sent to him. He had not made disclosure of his Veteran's Affairs and income tax information as directed.

[7] Mr. Turner did not attend court for the hearing. I heard Ms. MacDonald's evidence in his absence. I was satisfied that Mr. Turner had notice. He'd been present when dates were set, and a memo setting out the hearing dates had been

mailed to him after the date assignment conference. He'd also been cautioned that Ms. MacDonald's claim would proceed, even if he opted not to pursue his variation application.

[8] Ms. MacDonald advanced the following claims:

- retroactive child support for the period between May 1, 2010 – February 1, 2012;
- an order for the payment of arrears owing under the interim order, where Mr. Turner had ceased paying child support in February, 2017;
- payment of the ongoing table amount of child support based on Mr. Turner's grossed up income from pension benefits and Veteran's Affairs;
- an order for payment of section 7 expenses;
- an order requiring Mr. Turner to compensate Ms. MacDonald for child benefits received from Veteran's Affairs and not paid to her; and
- division of Mr. Turner's pension.

[9] Ms. MacDonald filed an affidavit, as well as an exhibit book containing a number of documents in support of her claims. In addition, she provided copies of Mr. Turner's disability work sheet from Veteran's Affairs and a record of payments. In her post-trial submissions, she provided calculations for the amount of child benefits paid to Mr. Turner from Veteran's Affairs, for which she seeks compensation.

[10] I make the following findings and orders with respect to child support:

1. Mr. Turner paid no child support for the dependent child between the date of separation and the interim order. I am satisfied that he had the ability to pay, and was aware the Ms. MacDonald was seeking support. It's appropriate that a retroactive order be granted in the amount of \$12,940.00 for the 20 month period when support was not paid.
2. Mr. Turner stopped paying child support in February, 2017. The maintenance enforcement program issued a garnishee order through which a small amount has been collected and paid to Ms. MacDonald.
3. The interim order required a monthly payment of \$647.00 to Ms. MacDonald. According to the most recent statement from MEP, Mr. Turner's arrears amount to \$11,637.57. I direct that Mr. Turner pay all outstanding arrears forthwith.
4. Mr. Turner receives annual pension benefits of \$25,165.00 and non-taxable Veteran's Affairs benefits of \$26,232.00 annually. I accept that his income should be grossed up to \$64,400.00 for purposes of child support.
5. Ms. MacDonald seeks an order for the payment of child support under the Nova Scotia table for Mr. Turner's grossed up income. I order that child support of \$545.00 based on an income of \$64,400.00 commence December 1, 2018, and continue monthly until further order of the court.
6. The dependent child is 20 years old. He's a full-time student in his third year of an undergraduate program at Cape Breton University. Mr. Turner has not contributed to his university expenses. Ms. MacDonald seeks a contribution proportionate to Mr. Turner's level of income. She calculates the child's overall university costs and the amount to be contributed by Mr. Turner as follows:

Year	University Costs	Bursaries/Rebates Received	Total Balance	Proportionate Share	Total
2016	\$9,497.94	\$3,825.10	\$5,672.34	72.6%	\$4,118.00
2017	\$8,399.19	\$2,864.00	\$5,535.19	72.6%	\$3,985.34
2018	\$6,303.81	\$898.10	\$5,405.71	72.6%	\$3,892.11
					\$11,995.45

7. The above costs do not include incidentals such as books, transportation, parking, school supplies, computer, and other education expenses for which the child and Ms. MacDonald are responsible.
8. As Ms. MacDonald will be receiving the table amount of child support plus Veteran's Affairs benefits for the child, I reject her claim for a proportionate contribution of the child's university costs as outlined above. Instead, Mr. Turner will contribute \$1,000.00 per term (\$2,000.00 for each full academic year) commencing in September, 2016.
9. Arrears for university expenses are set at \$5,000.00, with a further payment of \$1,000.00 due in January, 2019. Mr. Turner will then pay \$1,000.00 each September and January until the child's graduation.
10. Ms. MacDonald also claims a contribution to the child's grade 12 European trip. She testified that Mr. Turner initially agreed to assist with the trip, but he didn't. She and her son raised funds for him to go. School trips do not routinely fall within the definition of special or extraordinary expenses as defined by the *Child Support Guidelines*. However, I accept her evidence that Mr. Turner was supportive of the child taking the trip, and that he offered to share the cost. I therefore order him to pay his proportionate share of \$2,368.08.
11. Mr. Turner applied for and received Veteran's Affairs benefits for the dependent child. However, he didn't pass that money along to Ms.

MacDonald. She calculates the amounts Veteran's Affairs paid to him as follows:

<b>Year</b>	<b>Monthly Amount</b>	<b>Total Claimed</b>
2010 (May to December)	\$148.06	\$1,884.48
2011	\$153.02	\$1,836.24
2012	\$157.31	\$1,887.72
2013	\$218.84	\$2,626.08
2014	\$218.84	\$2,626.08
2015	\$280.36	\$3,364.32
2016	\$280.36	\$3,364.32
2017	\$280.36	\$3,364.32
2018	\$280.36	\$3,364.32
		\$18,365.72

12. Her figures are based on estimates, because Mr. Turner did not provide the necessary disclosure, and he failed to comply with a notice to produce for inspection. I accept her estimates as reasonable based on all of the available evidence. I order Mr. Turner to reimburse Ms. MacDonald the full sum of \$18,365.72.
13. Should Veteran's Affairs decline to pay these benefits to Ms. MacDonald directly in future, all monies paid on the child's behalf

shall be held by Mr. Turner in trust for the child, and paid to him monthly.

## **Pension**

[11] Ms. MacDonald seeks an equal division of the pension benefits earned by Mr. Turner during the period of cohabitation from August 1, 1990 through to May 1, 2010. She relies on common-law principles and the *Pension Benefits Division Act*, S.C. 1992.

[12] I am satisfied that a division of Mr. Turner's pension benefits under the *PBDA* is appropriate. I direct that the pension benefits earned by Mr. Turner during the period of the parties' cohabitation be divided at source.

[13] This division is based on the legislation as well as common-law principles and the case law cited by Ms. MacDonald in her brief. It would be unfair for Mr. Turner to retain the full pension where he was unjustly enriched by Ms. MacDonald's contributions to the family unit during the relationship. She operated at times like a single parent while he was away on training or deployment. She suffered a deprivation, in the sense that she was unable to pursue her own career and accumulate a valuable pension for herself. There is no reason in law or equity to allow the enrichment, particularly after a 20 year relationship. For example, there's no evidence of a cohabitation agreement which would preclude a division.

[14] Mr. Turner has advanced no claim against Ms. MacDonald's pension, so I make no order in that respect.

## **Costs**

[15] I award costs of \$1,500 payable by Mr. Turner to Ms. MacDonald. He was aware of the hearing dates and chose not to participate, but Ms. MacDonald was still required to advance evidence to satisfy the court that the orders sought are appropriate. She also had to pursue disclosure herself, as Mr. Turner failed to comply with a notice to produce. She is the successful party and she is entitled to an award of costs to help defray her legal expenses. Payment is due within thirty days.

**Conclusion**

[16] Ms. Gibney will prepare the orders. All support amounts, including the repayment of VA benefits, as well as costs payable are enforceable through the Director of MEP.

MacLeod-Archer, J.