

2001

SFH F 006736

IN THE SUPREME COURT OF NOVA SCOTIA  
FAMILY DIVISION  
[Cite as: Slaunwhite v. Arsenault, 2001 NSSF4]

BETWEEN: DONNA SLAUNWHITE - APPLICANT

-AND-

RONALD ARSENAULT - RESPONDENT

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DECISION

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HEARD: BY THE HONOURABLE JUSTICE MOIRA C. LEGERE ON NOVEMBER 23, 2000

DECISION: JANUARY 24, 2001

COUNSEL: TERRANCE SHEPPARD - APPLICANT

UNREPRESENTED - RESPONDENT

LEGERE, J.

The Applicant by application dated May 18, 2000, seeks to obtain disclosure from the Respondent to determine his past income and to obtain an order for retroactive maintenance to March 12, 1985. Further, she seeks to review the current financial circumstances to set maintenance in accordance with the guidelines.

The Order of March 12, 1985 requires a \$1.00 a month payment. Mr. Arsenault was ordered to report to the Court when employed. He admits he never reported to the Court. He offers no reasonable excuse.

In spite of the \$1.00 a month order, Mr. Arsenault maintains in his evidence that over the last fifteen years he has paid some support, usually late. He has no receipts or verification. He calculates that he may have paid \$8,000. - 10,000.

There are two children, Ryan, born September 27, 1983 and Rhonda, born January 21, 1977. The Applicant admits Rhonda was independent as of February 1, 1995. Ryan remains a dependent. He took a break from school to try to work in December, 1999. He was unable to find work and returned to grade ten in September, 2000 year. He remains a dependent while he continues to attend school full time.

Getting disclosure from Mr. Arsenault's past Income Tax returns was very difficult. After the application commenced in May, 2000, the Conciliator provided him with a Notice to Disclose his Financial Information to be filed by July 11, 2000.

He provided a pay stub at the January 27<sup>th</sup> meeting. Another written notice was mailed to Mr. Arsenault on June 19, 2000 for the September 15, 2000 pretrial. On September 15, 2000 Mr. Arsenault did not appear. An Order for Disclosure was granted, and the matter was adjourned to November 23, 2000. An Amended Order to Disclose was filed September 22,

2000. On October 16, 2000 neither party appeared. An Interim Order for \$128.00 per month was granted. The hearing scheduled for November 23<sup>rd</sup> proceeded. Still, at that time Mr. Arsenault did not complete the filing of Income Tax returns from 1985 forward.

At this hearing, the Court directed Mr. Arsenault to contact Revenue Canada and to file his 1985 Income Tax returns forward. These documents were filed November 29, 2000.

These documents disclosed the following.

In 1987 to 1994, Mr. Arsenault did not have sufficient declared income to pay maintenance. I am aware that he testified that he had cash jobs between 1987 and 1992. These cash jobs included dry walling. However, I have insufficient evidence to consider an award during that period of time. In July, 1992 he started to work for Maritime Moving and Storage. His evidence based on his recollections did not accurately reflect the actual earnings as disclosed on his Revenue Canada Income Tax returns. On some occasions, he guessed his annual income was less than that to which he testified and with respect to some returns, he earned less than his evidence disclosed. Relying on his memory of earnings for the purposes of this decision was not an option.

From 1994 forward, his income is as follows.

1994	\$14,312.
1995	17,789.
1996	23,657.
1997	19,096.
1998	15,530.
1999	20,809.

Mr. Arsenault's work is seasonal in nature, and there are periods of Workers' Compensation, employment insurance and regular employment included in the total amounts noted above.

If I were to apply the Guidelines retroactively, even back to 1997, he would have a base payment as follows:

1994 at an annual income of \$14,313. x 2 children @ \$222. x 12 months = \$2,664.  
 1995 at an annual income of \$17,789. x 1 child @ \$138. x 12 months = \$1,656.  
 1996 at an annual income of \$23,657. x 1 child @ \$197. x 12 months = \$2,364.  
 1997 at an annual income of \$19,096. x 1 child @ \$150. x 12 months = \$1,800.  
 1998 at an annual income of \$15,530. x 1 child @ \$129. x 12 months = \$1,548.  
 1999 at an annual income of \$20,809. x 1 child @ \$166. x 12 months = \$1,992.  
 \*2000 assume \$20,809. x 1 child @ \$166. x 4 months = \$ 664.

TOTAL ARREARS = \$12,688.

\* Ryan was out of school from January 1, 2000 - August 31, 2000.

Ms. Slaunwhite indicates that she received four payments of \$50.00 each and one of \$40.00 for a total of \$240.00. Mr. Arsenault will be given credit for any payment made after his appearance in Court.

I have reviewed Mr. Arsenault's budget. He indicates he buys groceries but he does not pay rent on a regular basis. He has no proof of any payments. The last time he paid was in March, 2000 and for the 2000 year, he indicates his total payment has been \$120.00.

He clearly has had the ability to contribute towards the support of the children in a more formal way in accordance with his obligations in the order of the Court. In reviewing the total circumstances, I recognize the difficulty a Court has in ordering retroactive maintenance where there are no records of payment. The Court must rely on the accuracy of the recollections of the Applicant and the Respondent. The income tax returns are the best evidence of income. I am reluctant to go beyond the 1996 year when the Child Support Guidelines were in force.

Unfortunately, this means that the retroactive maintenance attributable to the oldest child who is now independent will not be included in an assessment of the arrears. I do note that he is in contact with his daughter and says he tries to help her out.

For the purposes of calculating arrears I include from 1996 forward and I will make the assumption that Mr. Arsenault will make at least as much in the year 2000 as he did in the year, 1999. Arrears will be set and fixed at \$8,368.00. This will give Mr. Arsenault some credit for the odd payments he may have made over the years. Clearly, I am not convinced that he has made a substantial contribution by way of paying maintenance to Ms. Slaunwhite for the children. I am satisfied that he has paid a maximum of \$120.00 this year, and he will be credited with that for the year 2000. In addition, I have not included payments for January 1, 1999 to August 31, 1999.

The current order will change to reflect a payment of \$166.00 per month on the assumption that he continues to earn in the years 2000 and 2001 that which he earned in the year 1999.

Mr. Arsenault will provide a full and complete copy of his Income Tax return on or before May 15<sup>th</sup> of each and every year in order that an adjustment may be made to the maintenance award.

Mr. Arsenault will make an immediate proposal to Maintenance Enforcement to address the outstanding arrears. If the parties are unable to arrive at a payment schedule for the outstanding arrears, the matter may be set down before the Court before me, and I will determine the manner in which the outstanding arrears shall be paid in addition to the current monthly payment. If the parties wish to have the Court determine the manner of payment, each party will file with the Court prior to their appearance, a statement outlining their proposal with respect to payment.

To begin, Mr. Arsenault will pay any and all tax refunds for the tax year 2000 towards the outstanding arrears.

Ms. Slaunwhite will provide to Mr. Arsenault on a regular basis, including December and June, Ryan's report card . She will confirm by September 1<sup>st</sup> of each year whether he continues to be in full-time attendance at school. She will advise him within one week should Ryan remove himself from school permanently.

Mr. Arsenault shall have the right to contact the school directly in order to obtain information about his son's progress, enrolment and attendance.

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Moira C. Legere, J.