

S.H. No. 1201-55200 (SFHD-008071)

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

WAYNE ROBERT D'ENTREMONT

PETITIONER

- and -

DONNA MARIE D'ENTREMONT

RESPONDENT

DECISION

CITE AS: D'Entremont v. D'Entremont, 2002 NSSF 20

HEARD: Before the Honourable Associate Chief Justice Robert F. Ferguson, at Halifax, Nova Scotia on September 27 & October 10, 2001

DECISION: October 18, 2001 (Orally)

WRITTEN RELEASE: April 4, 2002

COUNSEL: Helen L. Foote, counsel for the Petitioner

Donna D'Entremont, the Respondent, representing herself

FERGUSON, A.C.J. (Orally)

Wayne and Donna D'Entremont were married on November 8, 1986. They have two children: Heather, born [...], 1988, and Tanya, born [...], 1992. The couple separated in September of 1999. Mr. D'Entremont petitioned for divorce in September of 2000. He has, since the Petition, been represented by his counsel, Mrs. Foote. Mrs. D'Entremont has been, at certain stages of the proceedings, represented by counsel but the last number of hearings was self-represented.

On November 27, 2000, an interim order was issued dealing with custody, access, child maintenance and spousal maintenance. Mrs. D'Entremont was represented by counsel at that time.

On September 27, 2001, this matter came forward for hearing. Mrs. D'Entremont again, was self-represented. Mrs. Foote informed the court that, since the interim order, the parties had attempted to resolve the outstanding issues and that, in fact, a Partial Agreement and Minutes of Settlement was drafted with a view of reflecting such agreement but was never signed.

Mrs. Foote stated, from her perspective, the outstanding issues were spousal support, child support with an agreement that set the Section 7 expense of child care

amounted to \$511.00 per month. The third issue was the retroactive acknowledgment of maintenance payments made by the Petitioner and, fourth, was the matter of the Respondent's request for costs in this matter. Mrs. D'Entremont agreed with Mrs. Foote's statement as to the outstanding issues.

Further discussion revealed that the document entitled "Partial Agreement and Minutes of Settlement" accurately reflected a still-existing agreement on the issues of custody, access, use of the Petitioner's medical plan for the children, property division, including the matrimonial home, life insurance and pensions. It was further agreed that the unsigned agreement could be made available to me for the purposes of incorporating such portions of the agreement in this decision and the resulting Corollary Relief Judgment.

Accordingly, the following paragraphs of the document entitled "Partial Agreement and Minutes of Settlement" are adopted by me as part of this decision to be incorporated in the Corollary Relief Judgment:

"CUSTODY AND ACCESS

6. (a) Each of the husband and wife (the parents) is a fit and proper person to have the responsibility for the care and custody of the children. The parties should be and hereby are awarded the joint legal custody of the children.

(b) The children are residing primarily with the mother and the mother shall have the responsibility for the care of the children with respect to day-to-day care, upbringing and discipline, provided that the father is to be consulted on all major decisions affecting the children, including but not limited to, major decisions relating to serious discipline problems, religion, education, health and guidance.

(c) The day-to-day decisions respecting the children shall be made solely by that parent caring for the children on any given day, except when time and opportunity exist then the parents shall discuss and decide together what is best for the children.

(d) The parents shall make reasonable efforts to share any information regarding the children including information as to health, education, recreational activities and the like.

(e) Neither parent will make major developmental decisions regarding the children without the consent or acquiescence of the other except on an emergency basis.

(f) Should any medical emergency arise, the parent with physical care of the child at the time of the emergency shall have the right to authorize emergency medical care and then shall immediately notify the other parent.

(g) The parents will cooperate with each other as much as is reasonably possible to ensure the most appropriate care, upbringing and education of the children.

(h) The father shall have reasonable telephone access to the children for reasonable periods of time not less than once per day at times to be agreed upon between the parents. During the times the children are with the father, the mother shall have reasonable telephone time, at times to be agreed upon between the parties.

(i) It is the intention of the parents in agreeing to joint legal custody, that each of them shall continue to have a full and active role in providing a sound, moral, social, economic and educational environment for the children and continue that support which the children have received to date. The parents shall consult with one another in substantial question relating to religious upbringings, educational programs, significant changes in social environment, and non-emergency health care of the children. In accepting the broad grant of privileges conferred by this joint custodial arrangement upon each of the parents, they specifically recognize that these powers shall not be exercised for the purpose of frustrating, denying or controlling in any manner the social development of the other parent. The parents shall exert their best efforts to work co-operatively in future plans consistent with the best interests of the children and in amicably resolving such disputes as may arise.

(j) Each of the parents shall exert every effort to maintain free access to and unhampered contact between the children and the other parent; and to foster a feeling of affection between the children and the other parent. Neither parent shall do anything which would estrange the children from the other; which would injure the opinion of the children as to their mother or father; or which would impair the natural development of the children's love and respect for each of the parents.

(k) The husband shall have reasonable access with the children at reasonable times upon reasonable notice to the wife.

(l) Upon the death of one parent, the day to day care and control of the children will revert to the other parent.

(m) Neither parent shall move the permanent residence of the children from the Province of Nova Scotia without the prior consent in writing of the other parent or approval by the Court after proper notification to the other parent of such court hearing.

(n) Neither parent will apply to obtain a passport for any child without the written consent of the other, such consent not to be unreasonably withheld.

(o) Neither parent shall change the name of any child either by common usage or by application under any existing or future legislation in any jurisdiction without the prior written consent of the other parent."

"MEDICAL PLAN

9. The husband shall maintain his medical/dental plan through his employment and any replacement plan for the benefit of the wife and children of the marriage as long as the plan permits coverage.

PROPERTY DIVISION

10. (a) Household furnishings and personal effects have been divided between the spouses to their mutual satisfaction and each party shall retain such items in their respective possession without further claim by the other party.

(b) (i) The parties shall retain any motor vehicle in their respective possession without any claim by the other part;

(ii) The parties shall be responsible for all expenses related to their respective vehicle in future including insurance.

(c) The husband and wife shall retain any balances in bank accounts, Registered Retirement Savings Plans or other investments held in their respective names free from any claim by the other party;

MATRIMONIAL HOME

11. (a) The wife shall have exclusive use and occupation of the matrimonial home located at 2 Pernix Court, Dartmouth, Nova Scotia.

The husband agrees to convey to the wife by Quit Claim Deed all his right, title and interest in or to the matrimonial home.

(b) The wife agrees she shall be solely responsible for the existing mortgage on the home and hereby indemnifies the husband with respect thereto. The wife will be responsible for the mortgage payments commencing with the September payment. The wife agrees she shall negotiate a new mortgage on the matrimonial home and will have the husband's name removed from the mortgage and shall provide to the husband proof of his release from the mortgage.

LIFE INSURANCE

12. The husband shall maintain existing life insurance policies, through his employment, held in his name and shall name the children as beneficiaries with the wife as Trustee as long as the children are children of the marriage within the meaning of the Divorce Act.

PENSIONS

13. (a) The wife hereby releases any right, title or interest she may have in the pension held by the husband through his employment with Air Canada pursuant to the Pension Benefits Act of Nova Scotia or the Pension Benefits Standards Act, the Pension Benefits Division Act, or any successors thereto.

(b) The parties acknowledge that nothing contained in this agreement shall be construed as constituting a waiver of their rights to a division of Canada Pension Plan benefits pursuant to the Canada Pension Act."

I further conclude it is also appropriate to adopt in my decision paragraphs 15, 16 and 19:

RELEASE OF RIGHTS TO AND INTEREST IN PROPERTY

15. Except as provided in this Agreement, each of the husband and the wife hereby releases and discharges all rights and interests that he or she has or may have under the laws of any jurisdiction, in the property which the other has or may have, and in particular under Matrimonial Property Act (NS) or its successor in the Province of Nova Scotia all rights and interests in:

- (a) possession of property including possession of the matrimonial home;
- (b) ownership in property;

- (c) division of property; and
- (d) compensation by payment of any amount of money or by an award of a share of property for contribution of any kind, whether direct or indirect, made to property.

RELEASE OF RIGHTS TO ESTATE

16. Each of the husband and the wife hereby releases and discharges all rights that he or she had or may have under the laws of any jurisdiction in the estate of the other.

EXECUTION OF OTHER DOCUMENTS

19. The husband and the wife will at any time and from time to time execute and deliver to the other any document or documents that the other reasonably requires to give effect to the terms of this Agreement.”

I am satisfied that all the jurisdiction requirements with regard to divorce have been met and that there is no possibility of reconciliation and the divorce is granted and will go forward when it is signed.

The other two issues are the costs requested payable by Mrs. D'Entremont and the credit requested by Mr. D'Entremont for payments made over and above those made per to the interim order, those such payments allegedly made in the year 2000. Mrs. D'Entremont is seeking costs. She testified she expended \$2,000.00 in paying counsel pursuant to this matter. Mr. D'Entremont testified that, between January and December of 2000, he paid to Mrs. D'Entremont support in the amount of \$5,424.96 and, further, that he thought that amount was over and above the approximate amount

of \$1,600.00 that he would have been required to pay from September 13th on pursuant to the interim order.

Mrs. D'Entremont does not provide receipts as to her legal expenses. Mr. D'Entremont does not produce receipts as to the payments he made in 2000 over and above those made pursuant to the order. However, it is on record that Mrs. D'Entremont was represented by a private counsel for a portion of this proceeding and, further, Mrs. D'Entremont, it is noted, did not dispute the testimony of Mr. D'Entremont that he made such payments.

After considering both of these requests, I am denying them as I find that the supportive evidence falls short of establishing the claims.

CHILD SUPPORT:

To decide the amount to be paid by Mr. D'Entremont to Mrs. D'Entremont for the support of the children in her care, I am required to make a determination of Mr. D'Entremont's income. Also there is a question of Section 7 child care expenses which, as I indicated previously, is agreed to be a total amount of \$511.00 a month. I conclude that Mr. D'Entremont's income, for the purposes of calculations in this decision, is \$58,986.00 per year. I have arrived at this figure from his pay stub which he testified was the "norm." I have subtracted his union dues and added \$1,400.00

that he has testified he has already received from his employer in addition to his regular income. The Guideline amount for two children at this income is \$792.00 a month.

Section 7 expenses, as earlier agreed, the total amount is the child care expenditure of \$511.00 per month. Having determined Mr. D'Entremont's income, the court is required to determine the Respondent's income. For this determination, I conclude Mrs. D'Entremont's income is as follows:

Employment	\$15,960.00
Boarder	\$3,600.00
Child Tax Credit	\$5,633.00
TOTAL	\$25,193.00

I acknowledge that, while it may be inappropriate to include the Child Tax Credit for the purposes of determining her income for the purpose of determining Mrs. D'Entremont making child support payments, it is not inappropriate to consider it when dealing with a determination of Section 7 expenses. For that I would refer to Section 16 of the Child Support Guidelines and Section 7(2) which wording refers differently to how incomes are to be calculated. In other words, Section 7(2) refers to

the Courts determining the parties respective incomes and, in that instance, it is appropriate to include the amount of money she does get from the Child Tax Credit.

I conclude, accordingly, that Mr. D'Entremont is required to make 70% of the \$511.00 or \$357.00 per month. This would require a total payment by Mr. D'Entremont of \$792.00 pursuant to the Guidelines and \$357.00 pursuant to the Section 7 expenses, for a total of \$1,149.00 per month.

SPOUSAL SUPPORT:

A consideration of Section 15 of the *Divorce Act* clearly indicates that Mrs. D'Entremont is entitled to seek an order for spousal support. Mr. D'Entremont's requirement to pay child support as per the Guidelines plus the Section 7 expenses, both of which come without any tax relief to him curtails dramatically his means to provide spousal support. What I am, in effect, saying, in the presence of Mr. and Mrs. D'Entremont, is Mrs. D'Entremont could correctly assume in the situation where she is making the amount of money I determined she is making and Mr. D'Entremont is making the amount of money I determined he is making that, if Mr. D'Entremont were not required by law to first turn his attention and his means to paying child support, she would anticipate receiving an amount significantly more than this Court concludes is appropriate in this particular instance.

Mrs. D'Entremont provided a monthly financial statement. She had a deficit of \$912.00 a month pre-tax or \$1,078.00 after tax. Those were her figures. I have taken those figures and adjusted them by deducting her Child Tax payment of \$150.00 per month and adding as a new Child Tax payment the total amount of \$511.00 per month creating a monthly expense for her of \$3,372.00 pre-tax.

Considering all the factors that I have mentioned with regard to Mrs. D'Entremont's entitlement, including her needs at this particular time and Mr. D'Entremont's ability to pay, conclude an appropriate amount of spousal support to be paid at this time would be that of \$200.00 per month. In coming to this conclusion, I have taken into account the proportion of Section 7 expenses I have already attributed to Mr. D'Entremont prior to increasing her income by the amount of \$200.00 per month or decreasing his by that amount.

I would ask that counsel for Mr. D'Entremont prepare the order as per this decision and that the payments begin . . .

MS. FOOTE: We've been doing them bi-weekly, Mr. Lord.

THE COURT: Alright then if . . . when is the next bi-weekly . . . do you wish to continue that bi-weekly?

MS. FOOTE: Next Wednesday would be the next bi-weekly payment.

THE COURT: Do you have any objection to it continuing bi-weekly, Mrs. D'Entremont?

MRS. D'ENTREMONT: No.

THE COURT: Alright.

MS. FOOTE: One other question, My Lord. We did have in our request the provision of receipts for the day care expense on a quarterly basis and that is something that we were still looking to have in and I have . . .

THE COURT: I have no problem with that but his payments continue until they are changed.

MS. FOOTE: Yes.

THE COURT: As a result of those receipts, if he and Mrs. D'Entremont cannot agree to a change, his way of reacting would be to . . . armed with the receipts, if he thinks they support him paying less, to come back to court. So I have no objection to saying to Mrs. D'Entremont to provide them as you indicate on a quarterly basis.

MS. FOOTE: Just one other point for the record, Mr. Lord, because Mrs. D'Entremont is not aware of this as well. We are going to have to launch an immediate application to vary. Mr. D'Entremont has lost his position and 12% of his income.