SFHMEA 009527

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: N*ova Scotia (Maintenance Enforcement) v. Murrant*, 2002 NSSF 25

BETWEEN:

DIRECTOR OF MAINTENANCE ENFORCEMENT FOR THE PROVINCE OF NOVA SCOTIA

APPLICANT

- and -

ROBERT C. MURRANT

RESPONDENT

DECISION

CITE AS: Director of Maintenance Enforcement v. Murrant 2002 NSSF 25

HEARD: Before the Honourable Associate Chief Justice Robert F. Ferguson, at Halifax, Nova Scotia on April 26, 2002

DECISION: May 1, 2002

COUNSEL: Megan Farquhar, counsel for the Applicant

Robert C. Murrant, representing himself

FERGUSON, A.C.J.

On June 6, 1994, the Respondent and his former wife, Lexine (Murrant) Jewer were parties to a Corollary Relief Judgment which incorporated a Separation Agreement dated May 16, 1994. The Judgment required the Respondent to pay child support for his children, Chimene Aimee Murrant, born [...], 1980, and Charlotte Acadie Murrant, born April 15[...], 1982, in the amount of $1,750.00 per month. The payments were to begin on May 1, 1994, and payable to Ms. Jewer, the children's mother.

In January of 1996, the Corollary Relief Judgment was varied to require the Respondent to make his payments through the Family Court which, subsequently, led to the requirement that the payments would be made through the Applicant.

The Separation Agreement was just that - an agreement - entered into by the parties, not imposed upon them by a court. The child support portion (paragraph 19) set out the amount of the monthly payment, the beginning date, and indicated it would be "continuing until further order of a court of competent jurisdiction."

Mr. Murrant's obligation to pay child support has resulted in a history of protracted litigation and legal proceedings. In July of 1993, a Justice of the Supreme Court of Nova Scotia issued a Contempt Order which stated, in part:

> "AND UPON IT APPEARING to the satisfaction of the Court that Robert C. Murrant has been found in Contempt of Court in that he failed to abide by the Order of this Court issued on or about June 1st, 1993 with respect, inter alia, to interim support for the care and support of the children of the marriage and for failure to pay to Lexine Caroline Murrant the sum of $329.33 per month as ordered. In particular, there is a finding that Robert C. Murrant defaulted in paying $5,729.07 as of the end of June, 1993.
>
> NOW UPON MOTION
>
> It Is Ordered that Robert C. Murrant shall pay to the Respondent, Lexine Caroline Murrant, the sum of $5,729.07 on or before 4:30 o'clock in the afternoon on July 14th, 1993;
>
> It Is Further Ordered that if the said Robert C. Murrant fails to pay the said $5,729.07 on or before 4:30 o'clock in the afternoon of July 14th, 1993, he is to appear before this Court at 9:30 o'clock in the forenoon on July 15th, 1993 to be dealt with as the Court sees fit at that time."

In September of 1995, a Judge of the Family Court of Nova Scotia, again dealing with Mr. Murrant's responsibility to pay child support, stated in part:

> "IT IS ORDERED: THAT arrears shall be and are hereby fixed at $3,325.00 as of September 6, 1995;
>
> IT IS FURTHER ORDERED: THAT the Respondent, Robert C. Murrant, has not shown cause for non payment of the arrears;
>
> IT IS FURTHER ORDERED: THAT a warrant of committal to custody for a period not to exceed 30 days shall issue unless the arrears of $3,325.00 are paid on or before September 30, 1995."

In February of 1999, the Director of Maintenance Enforcement for the Province of Nova Scotia made an application seeking an order finding the Respondent, Robert C. Murrant, "in default of maintenance payments and an order requiring the Respondent to pay the arrears in full by a specified date and any other order the Court deems appropriate pursuant to Section 37 of the *Maintenance Enforcement Act*."

Section 37 of the *Maintenance Enforcement Act* states, in part:

> "**37(1)** Where a payor defaults in the payment of maintenance under a maintenance order or fails to comply with a requirement of the Director pursuant to clause 36(1)(k), the Director, in the case of a maintenance order being enforced by the Director, or the recipient may apply to the court for a hearing of the matter.
>
> **(2)** At a hearing pursuant to this Section, unless the contrary is shown,
>
> (a) the payor is presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order; and
>
> (b) a statement of arrears prepared by the Director is presumed to be correct as to the arrears owing."

This section further provides the Court with 18 options to be placed in an order, if it concludes (as it did in this case) the Respondent has not provided the Court with valid reasons why he/she is unable to pay the arrears or make subsequent payments.

It should be emphasized none of these 18 options provide the Court with an opportunity to vary the order or reduce or forgive existing arrears.

There are, however, sections of this *Act*, particularly Sections 15(4) and 39(1), that make it possible for a payee to seek a determination of arrears or a variation of an order.

In the course of the hearing pursuant to Section 37, Mr. Murrant submitted that his income has reduced dramatically since the existing Separation Agreement was signed and, further, he had provided considerable sums directly to his children, especially with regard to their present university education. He further stated he had made substantial efforts to negotiate a settlement with the payor that would acknowledge his reduced income, the current Child Support Guidelines and previous direct contributions to his children.

At the date of the Separation Agreement, the children were ages 12 and 14. At the hearing, they were 18 and 20 years of age.

This Court, by decision dated January 23, 2001, concluded that Mr. Murrant had not satisfied the onus placed on him by Section 37 of the *Act*. The Court, however, declined to issue an order giving the following reasons:

> I will delay making an order in this application for a period of five weeks or, more specifically, until February 28, 2001, for the following reasons: A delay would provide Mr. Murrant and Ms. Jewer with one last opportunity to resolve these issues by agreement. Admittedly, there is a small chance of such an agreement occurring, however, I am sure the children who are now young adults and aware of this matter, would appreciate this effort by their parents. Secondly, there was evidence presented at this hearing that would indicate the Respondent could seek, by way of application, a decision of this court pursuant to Sections 15(4) and/or 39 of the ***Maintenance Enforcement Act***. This direction is not made as an indication of success but rather merely that there is evidence for consideration.
>
> I further conclude this delay will not prejudice the payee (Ms. Jewer) or the ultimate recipients (the children) as to a successful resolution of the outstanding issues. The Respondent has laterally, at least, provided funds for the children's education. The order continues and the Applicant is not prevented from pursuing any remedies that were available to them prior to this hearing."

In February and June of 2001, the Respondent commenced applications pursuant to this *Act* that would have provided him with an opportunity to seek a variance of the existing order and a determination of outstanding arrears.

In December of 2001, Notices of Discontinuance were filed with respect to these applications.

The Director of Maintenance Enforcement now seeks an order pursuant to my decision of January 23, 2001.

Also, in June of 2001, the Director made a further application pursuant to Section 50 of the *Act* to set aside an assignment of mortgage by the Respondent. In November of 2001, the Court granted the Director's application. The Director seeks further orders with regard to this decision.

The Applicant has submitted to the Court a draft order (attached hereto as Schedule "A") which contains the requests of the Director.

In his submission, Mr. Murrant continued to focus on the following issues:

1. That his current child support obligation is, and has been for years, beyond what should be legally required of him;
2. That his income for the past number of years has been considerably less than was available to him when he entered into the support agreement and that the reduced income, coupled with the Child Support Guidelines, would lead to a substantial reduction in his monthly payments;
3. That he has provided funds directly to his children in an amount that would exceed any amount required of him based on his actual income over the years the arrears accrued with the application of the Child Support Guidelines;
4. That he has, by means other than complying with the Corollary Relief Judgment child support stipulation, provided for his daughters and placed them in a

financial position that guarantees payment of their future university education with funds to spare. The main method of such accomplishment, insists Mr. Murrant, is the incorporating of a company and placing the shares of that company in the hands of his children which, today, are valued in excess of $200,000.00 per child;

5. That he has made a considerable effort to negotiate settlements to the child support issues with both his former wife and the Director of Maintenance Enforcement which met with failure due to the lack of good faith of the other parties. It should be noted that Ms. Jewer and the Director take issue with this assertion.

When faced with an inability to effect a negotiated settlement, Mr. Murrant has refused to pursue, or continue to pursue, a Court hearing that would entertain a request to lessen or forgive existing arrears and lessen or cease any ongoing payments. Mr. Murrant informed the Court he discontinued his application in Halifax on the belief such a hearing would be held in Bridgewater. His application to transfer the hearing was, apparently, denied. He also stated his reluctance to pursue such a process as he felt it would convey to his children a view he was attempting to lessen his financial commitment to them.

Mr. Murrant, apparently, invites the Court to exercise its *parens patria*e jurisdiction in a manner that would conclude he has provided for his children in the past

and will do so in the future in a manner exceeding what would have been required from him if he had honored his Court-ordered child support commitment. He is, in effect, asking the Court to tell both the children's mother and the Director of Maintenance Enforcement to go home and allow him to continue capably providing financially for his children as he suggests he has done in the past.

Mr. Murrant is a lawyer with considerable experience. He entered into an agreement to provide child support of a certain amount, to be paid at certain times, to a certain individual. He allowed that obligation to become part of a Corollary Relief Judgment. From the time he has entered into any commitment to provide child support to the children's mother, he has had to be Court-ordered to comply with the commitments he made. He was aware of an appropriate Court process that would allow for an examination of his request to vary such commitment and he abandoned such process.

In his written submission, Mr. Murrant mentioned those who he has encountered in the process of dealing with his child support obligation. He specifically refers to those employed by the Director of Maintenance Enforcement and the Courts as people who "16 years later couldn't get it."

Mr. Murrant is being asked to comply with a Court order requiring him to provide funds to Ms. Jewer as the custodial parent of their children. He continues to reply to

such requests by berating the children's mother and the Director of Maintenance Enforcement for their legitimate efforts to have the order enforced. He continues to reply to a request to comply with past obligations by speaking primarily of future accommodations.

I grant the order requested by the Director of Maintenance Enforcement with the following modifications:

- Paragraph 8 shall be deleted. I do not conclude that there was sufficient evidence presented to conclude such a request should be granted.
- Paragraph 2(a) of the order shall be varied by deleting the figure "$25,000.00" where found in that paragraph and replacing it with the figure "$15,000.00" and deleting "May 3, 2002" and replacing it with "July 3, 2002."
- Paragraph 2(b) shall be varied by deleting "May 3, 2002" and replacing it with "July 3, 2002" and a period of "90" days shall be deleted and replaced by "7" days.
- Paragraph 2(d) prescribes the manner in which any remaining arrears should be paid. It is ordered that this paragraph would be varied to reflect the following: That the remainder of any arrears would be paid as follows:
  - October 3, 2002: $25,000.00;
  - Beginning December 3, 2002, and on the 3rd day of every month thereafter until the arrears are eliminated, the sum of $5,000.00.

- That paragraph 3 be varied to reflect the changes made in paragraphs 2(a), (b) and (d) of the submitted draft order.

J.