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Cite as: Nova Scotia (Maintenance Enforcement) v. McDonald, 2002 NSSC 414

2001

SFH # 12078

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

**BETWEEN: DIRECTOR OF MAINTENANCE ENFORCEMENT
 FOR THE PROVINCE OF NOVA SCOTIA - APPLICANT**

- and -

CHARLES PATRICK MCDONALD - RESPONDENT

**DECISION
(orally)**

HEARD BEFORE: The Honourable Justice Deborah Gass
 Justice of the Supreme Court (Family Division)

PLACE HEARD: Supreme Court (Family Division)
 P.O.Box 8988, Station "A"
 3380 Devonshire Avenue
 Halifax, NS B3K 5M6

HEARING DATES: February 8 and February 12, 2002

DECISION (orally): March 4, 2002

COUNSEL: Megan Farquhar, counsel for the Director of MEP

GASS, Deborah, J. (orally)

Page 1

This is an application pursuant to Section 37 of the *Maintenance Enforcement Act* for an order finding the Respondent, Charles Patrick McDonald, in default of maintenance and seeking relief under Section 37 of the Act.

There are two presumptions that apply under the Act, both of which are rebuttable presumptions. One presumption is that the Respondent has the ability to pay the support and the other is that the amount being sought pursuant to the maintenance enforcement records is the correct amount.

The parties were divorced on March 22, 2000 and a Corollary Relief Judgment issued on the 22nd of June, 2000. It provided for maintenance for four children in the amount of \$611.00 a month of which \$200.00 a month was to be paid directly to Ms. McDonald. In addition, Section 7 expenses of \$363.99 per month were ordered all commencing April 14, 2000.

Paragraph 10 of that same Corollary Relief Judgment ordered Mr. McDonald to pay arrears of \$7,800.00 forthwith.

The Court heard evidence on behalf of the Applicant in this matter and on behalf of the Respondent and as well received documentary evidence in support of their respective positions.

The Court concludes on the basis of the evidence that as of July 2001 the Respondent was in arrears of \$13,200.84 as a result of the registration of the order and that \$7,800.00 of that were arrears that were in effect as of March 22, 2000 when the Court ordered them to be paid forthwith. An additional \$4,649.94 was due and payable as of September of 2000. Further arrears of \$8,550.00 in accordance with the existing order were due and payable from October of 2000 until July of 2001 amounting to a total arrears

GASS, Deborah, J. (orally)

Page 2

of approximately \$20,999.90 or \$21,000.00. Subsequent arrears of \$5,849.94 accumulated up to the hearing date of February 8, 2002. The Court therefore concludes that the arrears that are outstanding as of the hearing date of February 2002 were \$26,850.00. The evidence further indicated that the Respondent never paid the \$7,800.00 of arrears that were ordered by Justice MacAdam.

The recipient gave evidence on behalf of the Applicant, Director of Maintenance Enforcement in which she testified that she has received nothing by way of support from the Respondent pursuant to the order except for the direct payment of the \$200.00 per month in rent from her aunt, which ended in April of 2001. At the age of 93, the aunt went to live in a nursing home.

Her evidence was and it is unrefuted that the apartment needs work and money put into it in order for it to be able to be rented again. In its present condition, it is not able to be rented.

The matrimonial home, of which she has exclusive possession pursuant to the Corollary Relief Judgment, is listed for sale currently at \$299,000.00. It has been listed more than once and the price has dropped substantially due to problems with the property, which she articulated. I will at this juncture indicate that I am giving an oral decision today which is a summary of the evidence that I have heard. If it is necessary to reduce this decision to writing at any point, I would reserve the right to elaborate on some of the facts that I am summarizing today and particular issues with regard to the property being one of those.

The evidence, which I accept, is that Mr. McDonald has interfered with her efforts to sell the house and that Ms. McDonald is concerned that he is attempting to and will sabotage the sale of the property. There are substantial taxes owing against this property

GASS, Deborah, J. (orally)

Page 3

in the vicinity of \$11,000.00 to \$12,000.00. Her sole income, that is the income of the recipient, Ms. McDonald, is in the vicinity of \$16,000.00 to \$18,000.00 per year. There are four children of this marriage.

The cottage at Sabim Beach cannot be sold at the present time in that the interest that she has which she has exclusive possession and it will be sold at some point but it is subject to Ms. Johnson, the aunt's interest in the property and that cannot be interfered with at this point in time. Mr. McDonald has an interest in half the proceeds of the sale of these properties when they are sold.

His evidence is that he is indebted to Revenue Canada for substantial sums of money and it would appear from the evidence that they have a claim against his interest in any of the proceeds of the sale of these properties. Further, the evidence is that their son, Joey, is 22 years of age. He finished his science degree last year and he is out of school for this year, that is August 2001 to August 2002. He is working at a job with regard to the student union in an effort to earn some money. He intends to return to university and is trying to make some money in the meantime to help him with those expenses. It is important to note however that no application to vary has been made with respect to this Corollary Relief Judgment.

The daughter, Christina, is at home. She is attending school on a full scholarship and she is a dependent child. Steven is in engineering and continues to be dependent and there is a son at home in high school who continues to be a dependent child.

The evidence is that Mr. McDonald did give the children directly some money this year approximately \$1,200.00 to split amongst the four of them. They have enjoyed pleasant meals with their father and he did order a high school hockey jacket for his son.

GASS, Deborah, J. (orally)

Page 4

The Court in considering all of the evidence is satisfied that the arrears that have been stated by Maintenance Enforcement are the arrears that are outstanding and owing. There might be a slight modification in the amount to account for the son who is out of school but as I have indicated, no application to vary has ever been made with respect to this Corollary Relief Judgment. The Corollary Relief Judgment is valid on its face and it has not been changed since it was originally made.

I am also satisfied that Mr. McDonald has completely failed to honour his obligations to his children under this court order and the mother has had to rely on the assistance of extended family members to help the family get by.

Mr. McDonald argues that the maintenance arrears should be reduced by one quarter for the one child who is not a dependent child during this current year but as I have indicated, no application to vary has been made and maintenance is not divisible necessarily in that fashion in any event. He also indicates that his debt to Revenue Canada is under appeal and he disputes the sums that they are claiming and that may well not materialize. His evidence is as well that he now has a real estate license and he is working for Remax Realty. He argues that the matter can be resolved by bestowing his interest in the property for the benefit of the children.

The evidence that the recipient gave was that she listed the home for sale in the spring of 2001. She stated and it was confirmed by the Respondent that he removed a "for sale" sign in the summer of 2001 and that he has had contact with the real estate agent. Her evidence was she felt that his conduct was interfering with the sale of the matrimonial home. She recently listed it again with a different real estate agent and the evidence was, and it was acknowledged by Mr. McDonald, that he contacted that real estate agent in February of 2002 with respect to this matter and he felt that he was justified in doing so. He questions the necessity of the sale of the matrimonial home and questioned whether

she had the right to do so at this time and also that he felt that there may be the need for him to sign the deed for the sale of the matrimonial home.

Some of the expenses that will have to be paid out of the proceeds of the sale of the home were outlined in her evidence. There is the cost of the septic and engineering, the outstanding municipal taxes, the oil tank cost and there are as well the two judgments that are outstanding against Mr. McDonald.

She had given evidence that she had been contacted by Revenue Canada with respect to the taxes owing by the Respondent and that the account balance was approximately \$800,050.00. As a result of that her fear is that all of the proceeds of the sale may well be captured by this debt owing.

The Respondent's evidence with respect to his income was that in 1998 he did not earn any income. In 1999, he had commissions of about \$6,000.00 gross. In 2000, he had about \$10,000.00 gross and that to the date of the hearing he grossed about \$1,000.00. His income statement for the year 2001 was that he had earned a gross income of approximately \$13,282.00 but there was no supporting documentation or statements provided. He further stated that his payments came from Bob McDonald Insurance, which was his father's company. He gave evidence that when he received cheques directly from his clients, he provided those to Bob McDonald Insurance and that he received cheques in return for those from that company, which included money to pay for his expenses, including expenses for his vehicle which is in the corporate name but which he uses for both business and personal expenses. There were no corporate statements provided or statements or copies of cheques submitted. He said he didn't have access to the accountant of the company and that the figures were to the best of his recollection.

GASS, Deborah, J. (orally)

Page 6

His evidence was that he hasn't filed tax returns for 1998, 1999 and 2000. However a Notice of Assessment was attached to his letter to the Court dated December 7 respecting the year 1998, which showed income of \$29,000.00 for that year.

The Respondent's statement as to his income does not agree with the determination made by the Supreme Court in the divorce proceedings, which set his income at \$24,000.00.

He indicated that he paid rent to his parents when he was able to, although he did list his rent as an actual \$600.00 per month expense. He did not keep track as to when he did or did not pay it and indicated that he is basically there out of the goodness of his parents and can stay there whether or pays the rent or not.

There was the evidence with respect to having given the children \$1,200.00 at Christmas.

The Respondent also gave some evidence with respect to and my notes would reflect that at some point he suggested that Ms. McDonald rent the cottage at Sabim Beach so that she could get \$6,000.00 a month for it and there was some reference to the fact that he had done that at some point, although I was not clear on that point.

At any rate, he argues that this issue can be resolved by offering security for the arrears on his interest in the proceeds of the home and cottage but only as security for the children and he did not agree to provide it to the Respondent.

What is very evident in this is that this is an order that is non-negotiable. It is a maintenance order that is payable to the recipient, to the parent who has primary care of the children for the benefit of the children. That is how these orders work and they are not

negotiable. The reality is that there has been no maintenance paid since this order was last made nor was the order to pay \$7,800.00 forthwith ever complied with. There is no evidence before me to object to the payments going to the recipient, and even if there were it is not properly before the Court in this application and there is no authority under the Act to divert payments in any event unless it is agreed upon between the parties. These payments were due and owing to the recipient for the children as far back as at least two years ago and considering there is another judgment out there, the arrears have been due and owing for longer than that and have not been paid.

Further I find, on the basis of all of the evidence that I have heard and having read the Corollary Relief Judgment, there is no basis for Mr. McDonald to be involved or to involve himself in the sale of the property at all.

In assessing the evidence, I found Mr. McDonald to be evasive at times and quite cavalier in his attitude towards the court order and his obligations to his children under that court order. There is nothing before me to suggest that circumstances have changed since that order was made in any event even if an application to vary were before me today. While it was good that he gave the children the money directly and Ms. McDonald certainly acknowledged that was a positive thing and the children were thrilled that they actually received the money from their father at Christmas, things that he does on the side outside the ambit of the court order are all well and good but they do not in any way absolve himself of his obligations to comply with the court order as per the terms of that order.

I conclude that Ms. McDonald's actions with respect to the house are not unreasonable under all the circumstances and they are borne out of necessity because of the dire financial circumstances of the family. Further it was suggested by Mr. McDonald that there were things that she could be doing to meet the needs of the family, the children. There is no evidence of that and certainly I will conclude that she is not obligated to deplete

resources to meet the needs of the children. Certainly while she is able to do that, they do not in any way absolve him of his maintenance obligations so she is not obliged to use the assets to generate funds to discharge his obligations under the court order.

I conclude on all of the evidence that he has not rebutted the presumptions under Section 37 and as I have indicated I found his evidence to be evasive on many issues and I do not find his proposal for resolution of the matter to be made in good faith.

There are judgments outstanding at the present time and any other remedy that is before the Court, the entering of those judgments does not preclude any other remedy from being sought and imposed. The Maintenance Enforcement Office attempted to procure the suspension of his license but was advised that his license is suspended in any event so there is no incentive or motivation there to pay anything towards these substantial arrears that are owing.

I am not satisfied that there is a credible explanation for not paying a penny of these arrears. If there had been some attempt at payments as a show of good faith the Court might conclude otherwise but the Court can only conclude here that there has been a blatant disregard for this court order. Therefore under all the circumstances, I am prepared to grant the order that is being sought by the Maintenance Enforcement Program in its entirety with respect to enforcement of the \$7,800.00 and as well with respect to security for future maintenance. He has paid nothing. I am not satisfied that his explanation has been satisfactory and I do find and fix the arrears as I already have indicated. The alteration that I will make with respect to this order though, and again there is evidence with respect to Mr. McDonald being a loan broker, although I recognize that he does not have any credit himself, it certainly appears that he does have the ability to procure funds for others to establish businesses, et cetera. I am going to order that he pay that sum of \$7,800.00 and I do conclude that by not complying with the order when it was made back

in 2000 when the Corollary Relief Judgment was made, that that amount is due and payable and a warrant shall be issued for a period of two months but it shall be held and I am going to extend the time to April 30, 2002 at which time the warrant shall go forth from the Court and be executed if that sum is not paid in full.

The Court is prepared to order that he provide security for the arrears and future support payments as outlined. In other words his obligations under the maintenance order shall be enforced by securing this obligation against any monies payable to the Respondent out of any proceeds of the sale of real property referred to in the maintenance order in which the Respondent has any interest, being the properties located at Sabim Beach and the matrimonial home and that out of the funds payable to the Respondent out of the proceeds of the real property referred to all arrears of maintenance shall be paid and the remainder of the funds shall be paid to the Applicant and held as long as there is a maintenance order payable by the Respondent under the maintenance order. It certainly does not preclude the Respondent from making an application to vary should there be change in circumstances particularly as it relates to the dependency of the children but under the existing order I find that all of the terms of the proposed order that have been presented to the Court are justified and I will sign this order.



Deborah Gass, J.

DG/ng