

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: MacArthur v. MacArthur, 2004 NSSF 57

Date: 20040603

Docket: 1201-58675 (SFHD-31995)

Registry: Halifax

Between:

Karin Louise MacArthur

Applicant

v.

Roderick Kenneth MacArthur

Respondent

Judge: The Honourable Assoc. Chief Justice Robert F. Ferguson

Heard: May 28, 2004, in Halifax, Nova Scotia

Counsel: Yvonne R. LaHaye, for the Petitioner
B. Lynn Reiersen, for the Respondent

By the Court:

[1] Karin and Rod MacArthur were married in 1972 and separated in January of 2004. There is currently one “child of the marriage,” Edward, who is twenty-one years of age and entering his graduation year at university this September. He resides with his mother in the matrimonial home when not in residence at university.

[2] Mrs. MacArthur has issued a Petition for Divorce. On April 30, 2004, she further made an interim application seeking the following relief:

- “(1) Interim spousal support;
- (2) Interim child support for the child of the marriage Edward;
- (3) Interim Exclusive Possession of the matrimonial home;
- (4) Suit Costs”

[3] The affidavits of the parties disclose Mrs. MacArthur is also seeking Mr. MacArthur continue to provide medical coverage for she and their son. Mr. MacArthur is seeking an acknowledgement as to spousal support made since separation affording him income tax relief for such payments.

EXCLUSIVE POSSESSIVE OF THE MATRIMONIAL HOME

[4] There is agreement that Mrs. MacArthur have interim exclusive possession of the matrimonial home.

MEDICAL COVERAGE

[5] There is agreement that Mr. MacArthur will continue to provide medical coverage for Mrs. MacArthur and their son, Edward.

PRIOR SPOUSAL SUPPORT PAYMENTS

[6] It is acknowledged Mr. MacArthur has provided \$8,000.00 to Mrs. MacArthur beginning in January and including May of 2004. However, there is no agreement as to if this payment should be categorized as spousal or child support. From the evidence presented, submissions made and noting this is an interim order, I find that \$5,525.00 of that amount be considered as spousal support.

ONGOING SUPPORT

[7] There is agreement that Mrs. MacArthur and Edward are entitled to seek support from Mr. MacArthur. I find (and there would appear to be an agreement) that Mr. MacArthur's income is \$96,500.00 per annum and Mrs. MacArthur's income is \$19,500.00 per annum. Mr. MacArthur shares accommodation with a companion who has an income of \$29,500.00 per year.

[8] Mrs. MacArthur seeks an order that would require Mr. MacArthur to pay the following:

- a) \$6,000.00 towards Edward's educational expenses;
- b) Child support to her in the amount of \$750.00 per month when Edward is residing with her and \$325.00 per month when he is in residence at university;
- c) \$3,000.00 per month spousal support.

[9] Mr. MacArthur submits his current financial position prevents him from providing anything in addition to \$1,500.00 per month in spousal support.

RELEVANT LEGISLATION

[10] The *Divorce Act*, in particular s. 15.1(1), (2), (3), (4) and (6); 15.2 (1), (2), (3), (4), (5) and (6); and 15.3(1) and (2).

[11] Federal *Child Support Guidelines*, in particular, s. 3.(1) and (2) and s. 15.

[12] While the mentioned legislation is applicable, it must be noted this is an interim application. Speaking of interim support, Justice Dellapinna, in *Luke v. Luke* [2003] N.S.J. No. 143, 2003 NSSF 12, at paragraphs 18 and 19 states:

“¶ 18 . . . Upon application the Court may make an order requiring a spouse to pay lump sum or periodic support payments. The Court may also make interim

orders requiring a spouse to pay lump sum or periodic support. Such an order may be under such terms, conditions or restrictions as the Court thinks fit and just. Subsection 15.2(4) provides that when the Court makes an order under subsection (1) or an interim order under subsection (2), the Court shall take into consideration the condition, means, needs and other circumstances of each party including the length of time the parties cohabited, the functions performed by each spouse during cohabitation and any order, agreement or arrangement relating to the support of either spouse. A number of objectives are listed in subsection (6). Those objectives apply to interim orders as well as orders under subsection (1).

¶ 19 Interim orders are effectively holding orders intended to maintain, as far as possible, the status quo. It is a matter of balancing the needs of Ms. Luke against Mr. Luke's ability to pay. The needs of the children must also be factored into the equation."

[13] As required by the *Divorce Act*, the request for child support shall be given priority to the request for spousal support.

[14] Edward is twenty-one years old and has just completed his third year in university. He will be returning this fall to complete his degree. He is a young man who has overcome some academic difficulties.

[15] Last year, approximately \$14,800.00 was spent on Edward's educational pursuit. His father provided approximately \$5,100.00 towards that expense. He had a student loan of \$2,000.00. In 2002 he had an income of \$6,158.00 comprised of a scholarship trust in the amount of \$3,361.00 and earnings of \$2,731.00.

[16] Mr. MacArthur has an income of \$96,500.00 which would normally require a child support payment, pursuant to the *Guidelines*, in the amount of \$750.00 per month. The *Guidelines* provide, in a case of a child over the age of majority, "unless otherwise provided," the court order the same amount it would if the child were under the age of majority. The *Guidelines* also allow, if the court considers that approach "inappropriate," that it may provide an amount "having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child." I intend to follow this approach in this instance.

[17] Mr. MacArthur provided the court with a monthly financial statement setting forth the incomes and expenses of he and his companion. It indicated, with a spousal payment of \$2,000.00 per month, a deficit of \$416.00.

[18] Mrs. MacArthur provided the court with her monthly financial statement indicating a deficit of \$4,327.00. She also provided a financial statement outlining her belief as to Mr. MacArthur's financial situation as a single person. In this statement she portrays Mr. MacArthur, after providing her with \$2,000.00 in spousal support, as having a surplus of \$928.00.

[19] Mr. MacArthur has recently declared bankruptcy. He also has recently acquired his current position.

[20] The parties are obviously in great financial difficulty. However, between now and next May I conclude every effort should be made to provide Edward with an opportunity to complete his degree. Mr. MacArthur is, at the moment, unable to contribute to Edward's educational costs other than on a monthly basis. I assume Edward's educational costs and sources of payment will remain as portrayed in the previous year.

[21] It is ordered that Mr. MacArthur pay as child support directly to Edward the sum of \$600.00 per month beginning June 15, 2004, and ending with the payment of March 15, 2005. It is further ordered that Mr. MacArthur pay to Mrs. MacArthur as child support for Edward the sum of \$100.00 per month beginning June 15, 2004, and ending with the payment of March 15, 2005.

[22] Mr. MacArthur's ability to provide spousal support is lessened by this ten-month obligation to provide child support to Edward.

[23] Considering the factors listed in the *Divorce Act* as to the provision of spousal support, the child support payment for Edward and the interim nature of this application, I order Mr. MacArthur to pay to Mrs. MacArthur spousal support in the amount of \$1,600.00 per month beginning June 15, 2004, and ending with the payment of March 15, 2005. Beginning April 15, 2005, and thereafter until otherwise ordered by the court that payment shall be increased to the amount of \$2,650.00 per month.

SUIT COSTS

[24] Mrs. MacArthur seeks suit costs in the amount of \$3,000.00. Mr. MacArthur submits this is not an appropriate situation to order such costs and, in any event, he is not in a financial position to provide funds for that purpose. Justice Goodfellow, in *O'Brien v. O'Brien* (1997), 28 R.F.L. (4th) 384, speaking on the issue of suit costs, stated:

“The historical changes in the suit costs rule and the introduction of the *Matrimonial Property Act* have seen the court move steadily in the direction of suit costs only being available for disbursements so that a party without financial capacity may need assistance by way of appraisers, accountants, bookkeepers, etc., otherwise that party could be at a real disadvantage as against a party with access to resources.”

[25] There is no indication Mrs. MacArthur must undertake such disbursements. Further, Mr. MacArthur does not appear to be a party with access to such resources at this time.

[26] I would ask counsel for the applicant to the prepare the order.

J.