

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Hubley v. Hubley, 2005 NSSF 19

Date: 20050303

Docket: SFHMCA 032128

Registry: Halifax

Between:

Crystle Irene Hubley

Applicant

v.

Kenneth Brian Hubley

Respondent

Judge:

The Honourable Justice Kevin Coady

Heard:

February 18, 2005, in Halifax, Nova Scotia

Counsel:

Samira Zayid, for the Applicant

Kenneth Hubley, self-represented

Coady, J.:

[1] The parties separated in 2003 after a 25 year marriage. There are two (2) sons; one is 23 years old and living independent of both parents. The second son is 19 years old and living with Mr. Hubley. He is not attending school and is unemployed.

[2] Mr. Hubley has been continually employed for the past 25 years. His 2004 income was \$38,646. He left the marriage with very little as this couple went into bankruptcy in 2001 which resulted in the loss of their home. Mr. Hubley and his son live in an apartment that is rented for \$675. per month. Mr. Hubley does not receive any child support from Ms. Hubley. The son does not financially contribute to the household and has been described by Mr. Hubley as a “couch potato”.

[3] Ms. Hubley is presently in receipt of Social Assistance in the amount of \$670. per month. She has no other source of income and lives alone. Ms. Hubley was employed for most of the marriage at low paying jobs. She has been

unemployed since separation due to emotional problems associated with the marriage breakdown. She does not know when she will be able to return to work.

[4] The evidence establishes that any spousal support awarded to Ms. Hubley will be deducted “dollar for dollar” from her Social Assistance. If the court awards less than her level of assistance, then her benefits will top up her income to its present level. Once her over-payment is returned that will amount to \$731. per month.

[5] Mr. Hubley takes the position that Ms. Hubley has no entitlement to spousal support. He alleges that for the past 10 years of the marriage Ms. Hubley failed the family. He testified that she was alcoholic, addicted to gambling devices and spent most of her time on the computer. He argues that these factors led to the marriage break-up and that he would “take her back” if she resolved these issues.

[6] Ms. Hubley refutes these allegations in degree. She testified that she rarely consumes alcohol and occasionally gambles. She says she just does not have the income to be involved in these activities. I accept Ms. Hubley’s evidence on these points. I am not concerned that Ms. Hubley would funnel any support into these

activities. Beyond these considerations, I need not be concerned with how this families modest resources are spent.

[7] This is an Application pursuant to the **Maintenance and Custody Act**. The evidence clearly establishes that Ms. Hubley is entitled to spousal support paid on a periodic basis. I have carefully reviewed the factors set forth in Section Four (4) of the **Act**. The following factors support entitlement:

- the division of function in their relationship
- the physical or mental disability of either spouse
- the inability of a spouse to obtain gainful employment
- the contribution of a spouse to the career potential of the other
- the reasonable needs of the spouse with a right to maintenance
- the inability of a spouse to contribute to their own maintenance

[8] The only factors that support Mr. Hubley's position are:

- custodial arrangements made with respect to the children of the relationship
- the obligations of each spouse towards any children

- the reasonable needs of the spouse obliged to pay maintenance

[9] I accept the argument advanced by Ms. Hubley in relation to the son who is living with Mr. Hubley. This couple, either individually or collectively, cannot afford to support a “couch potato”. This young man does not have the benefit of parents who can afford to support him at this time in his life. It would be different if he was unwell, in school or unable to contribute to his own well being. It’s time for this young man to strike out on his own.

[10] This means that the only factor left in favour of Mr. Hubley’s position is “the reasonable needs of the spouse obliged to pay maintenance”. Mr. Hubley earns \$38,646. annually.

[11] The record will indicate the court’s concern with the possibility that a Spousal Support Order will impoverish Mr. Hubley and do little to advance Ms. Hubley’s standard of living. Ms. Hubley’s assistance income is \$731. per month. Mr. Hubley’s monthly income is \$3,220. I have considered the evidence and reviewed the principle that it is not the state’s obligation to support Ms. Hubley

when her spouse has the ability to pay support. I have reconciled these concerns and I will order \$750. in spousal support effective March 1, 2005.

J.