

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *El Khourani v. Rouani*, 2020 NSSC 71

Date: 2020 - 02 - 24

Docket: 1201-70307; SFHD-105191

Registry: Halifax

Between:

Mouani El Khourani

Petitioner

v.

Mohammed Rouani

Respondent

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Judge: The Honourable Justice Elizabeth Jollimore

Heard: February 19, 2020.

Counsel: Andrew I. Kirk, counsel for Mouani El Khourani
Mohammed Rouani, self-represented

Summary: Application to vary child support retroactively and prospectively.
Child support calculated under section 3 and 7 of *Guidelines*.

Key words: Family, Child support, Variation application

Legislation: *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, section 3, section 7
Federal Child Support Guidelines, SOR/97-175

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ENDORSEMENT

February 24, 2020

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Mouani El Khourani v. Mohammed Rouani
1201-70307; SFH-D 105191

Andrew I. Kirk for Mouani El Khourani
Mohammed Rouani, self-represented

Mr. Rouani applied to vary child support under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3.

Decision:

Mr. Rouani's claim for repayment of 2017 child support is dismissed.

Reasons:

1. Mr. Rouani wants to vary child support for 2017, 2018 and 2019. Child support for 2020 is also addressed.
2. When the parties divorced in January 2018, Mr. Rouani's income was agreed to be \$69,354 and Ms. El Khourani's was agreed to be \$35,280. Mr. Rouani was ordered to pay child support of \$981 for the couple's two children under s. 3 of the *Federal Child Support Guidelines*, SOR/97-175 and to contribute \$239.40 each month to the children's childcare and other extraordinary expenses under s. 7 of the *Guidelines*.

2017

3. Mr. Rouani says that he was ordered to pay the wrong amount for childcare in 2017 in the Corollary Relief Order. He did not appeal the Corollary Relief Order.
4. The Corollary Relief Order doesn't require Mr. Rouani to pay a specific amount for childcare in 2017. The specific amount ordered for childcare was prospective, for 2018 and beyond.

5. The Corollary Relief Order requires Mr. Rouani to pay arrears of child support for some period before 2018.
6. Prospective child support and arrears of child support were not litigated at the divorce and corollary relief hearing. Those issues were resolved by the parties at a settlement conference with Justice Legere-Sers and the terms of their agreement were contained in an Order labelled Partial Minutes of Settlement, which was granted on August 8, 2017.
7. The terms of the August 8, 2017 Order were incorporated into the Corollary Relief Order.
8. Neither the Order/Partial Minutes of Settlement nor the Corollary Relief Order outline the calculations of Mr. Rouani's child support arrears. It is not possible to determine what portion of the arrears may have related to unpaid child support under section 3 of the *Guidelines*, unpaid childcare costs or other unpaid special or extraordinary expenses under section 7 of the *Guidelines*.
9. If it is possible to re-open the parties' negotiated resolution of child support issues (and I am not persuaded this is possible), there is no evidence that lets me conclude he overpaid for childcare in 2017 because there was no breakdown of the global arrears amount Mr. Rouani agreed to pay.
10. I dismiss Mr. Rouani's claim for repayment of 2017 child support.

2018

11. In 2018, Mr. Rouani's income was \$78,858. Based on this, his child support payment under the simplified tables for s. 3 is \$1,109.
12. In 2018, Ms. El Khourani's income was \$41,811. There were childcare expenses of \$4,843. At a marginal tax rate of 30% based on Ms. El Khourani's income, the after-tax cost of childcare was \$3,390.10.
13. Based on their incomes, Mr. Rouani's proportionate share of childcare would be 65%, so he would contribute \$2,203.50.

2019

14. In 2019, Mr. Rouani's income was \$72,108. Based on this, his child support payment under the simplified tables for s. 3 is \$1,017.

15. In 2019, Ms. El Khourani's income was \$42,872. There were childcare expenses of \$3,484.30. At a marginal tax rate of 30%, the after-tax cost of childcare was \$2,439.01.
16. Based on their incomes, Mr. Rouani's proportionate share of childcare would be 63%, so he would contribute \$1,536.57.
17. The children had additional costs for sports and, for Muizz, glasses. These costs total \$1,509 and are both reasonable and necessary. There are no tax deductions for these costs.
18. Mr. Rouani suggested that Ms. El Khourani received money from the government for the children's activity costs. The Children's Fitness Tax Credit ended in 2017. There was no evidence that the children or their mother are eligible for funding from Sport Nova Scotia that might pay for the children's activities.
19. Mr. Rouani's proportionate share of the children's activity and glasses costs for 2019 is \$950.67.

2020

20. In 2020, it's anticipated Mr. Rouani's income will remain at \$72,108. Based on this, his child support payment under the simplified tables for s. 3 continues to be \$1,017.
21. Based on her Statement of Income, Ms. El Khourani's anticipated income for 2020 is \$40,551.84. The children's anticipated childcare expense is \$3,484.30. After deducting her tax saving, estimated at 30%, the childcare expense is \$2,439.01.
22. Based on their incomes, Mr. Rouani's proportionate share of childcare would be 63%, so he should pay \$1,536.57, or \$128.04 each month.
23. Similarly, he must pay 63% of the children's \$1,509 expense for activities and glasses. This amounts to \$79.22 each month.

Childcare payment to Mr. Rouani

24. In 2019, Ms. El Khourani was required to travel for her work. Mr. Rouani agreed to care for the children while she was away. The parties disagree on whether this was 1 or 2 weeks. Ms. El Khourani gave Mr. Rouani a cheque for \$500 for doing this then, later, stopped payment on the cheque. Mr. Rouani says he is entitled to the payment. Ms. El

Khourani says she shouldn't have to pay Mr. Rouani for caring for the children.

25. There was no evidence that the additional time the children spent with Mr. Rouani placed him into a shared parenting arrangement where he would be entitled to child support.
26. Ms. El Khourani is correct, a parent exercising extended parenting time with children is not entitled to child support where that additional time does not place them in a shared parenting arrangement.
27. Amounts Mr. Rouani owes for child support may be offset against any amounts he has overpaid under the Corollary Relief Order.
28. Mr. Kirk will prepare the Order and forward it to Mr. Rouani. Mr. Rouani must identify any errors in the draft Order to Mr. Kirk within 10 days of the Order being sent to him. If he identifies no errors, the Order may be sent to me.

Elizabeth Jollimore, J.S.C.(F.D.)