

Supreme Court of Nova Scotia (Family Division)
Citation: *Wells v. MacLean*, 2020 NSSC 359

ENDORSEMENT

Karlee Wells v. Daniel MacLean
December 9, 2020

Court File No. 88098

- Karlee Wells, Self-represented
- Daniel MacLean, Self-represented

Decision:

1. The parties are the parents of one child.
2. There is a 2014 order requiring Mr. MacLean to pay \$129.00 monthly for the table amount of child support, based on an income of \$19,500.00. In addition, he was ordered to pay \$187.00 per month as his 50% share of childcare. There is also a clause requiring ongoing income disclosure by both parties.
3. Ms. Wells filed a Notice of Variation Application on October 1, 2019. Mr. MacLean did not file a response, but he did eventually file some income information.
4. A hearing by phone was held on December 7, 2020.
5. Ms. Wells seeks a retroactive adjustment to the child support paid by Mr. MacLean. She alleges that after 2014, his income increased, and he should have paid more child support.
6. She also seeks a recalculation clause, so that she need not bring this matter back to court every time Mr. MacLean's income fluctuates.
7. The parties participated in conciliation, at which time a consent order for prospective child support was reached. That order was issued by the court on January 31, 2020. It directed Mr. MacLean to pay the table amount of child support in the amount \$549.00 per month based on an income of \$64,287.53. In addition, he agreed to pay \$100.00 per month towards childcare (which is less than 50%). This order was effective January 1, 2020. The issue of a retroactive variation was left to be determined separately.

8. On August 6, 2020 I subsequently granted a without prejudice order reducing Mr. MacLean's child support obligation to \$200.00 per month, as he'd been laid off from the mine and was unemployed. I also directed that collection of arrears be suspended, pending further order of the court.
9. Neither party provided a printout from the Maintenance Enforcement Program (MEP) to show what arrears are owing.
10. Mr. MacLean has worked a number of jobs since 2014. It's clear that he is motivated to work. His income disclosure (as best I can calculate it from the incomplete information filed) shows the following:

2019	\$68,641.00
2018	\$16,455.00 plus EI and 2 months employment
2017	\$35,385.00 plus EI
2016	\$4,659.00 plus EI
2015	\$14,297.00 plus EI
2014	\$19,500.00
11. Mr. MacLean acknowledges that he collected Employment Insurance (EI) benefits between jobs from 2015 to 2018. He did not supply confirmation of that income to the court.
12. I have to analyze this case according to the Supreme Court of Canada's direction in the case of **DBS**. I have to consider the reasons for the delay in filing the variation application, any blameworthy conduct on the part of Mr. MacLean, and any hardship that might result to him with an order to pay a retroactive adjustment.
13. Ms. Wells testified that although she never received updated income information from Mr. MacLean over the years, she did not initiate a variation until urged to do so by MEP.
14. Mr. MacLean concedes that he didn't send updated income information to Ms. Wells after the 2014 order was issued.
15. I'm satisfied that there was a delay in filing the variation application on the part of Ms. Wells. She only filed in 2019 because she was told by MEP that she wouldn't have to go to court. She says as a single mother, she couldn't find the time. I don't doubt that she

was busy with work and her son, but that's not a satisfactory reason for a delay in filing the necessary court documents sooner.

16. I'm not prepared to vary the order retroactive to 2014 as Ms. Wells requests. However, I am prepared to adjust child support for the three years prior to her application, because Mr. MacLean exhibited blameworthy conduct in not disclosing his income information, particularly when it increased significantly with his job at Kameron Coal in late 2018.
17. Mr. MacLean provided no evidence to show that he would suffer hardship with a retroactive adjustment. He is currently unemployed and collecting EI benefits. That would suggest that his income has decreased significantly from when he was working at Kameron Coal, where he earned over \$1,000.00 weekly. However, the onus is on Mr. MacLean to demonstrate hardship, which has not been proven.
18. In accordance with **DBS** and based on the evidence, I find that it's appropriate to adjust Mr. MacLean's child support obligations retroactively to 2016. In that year, his reported income was only \$4,659.00 plus EI. Although I don't have confirmation of what EI he collected that year, it's unlikely it brought him above the threshold for payment of child support in Nova Scotia. Therefore, for the year 2016, his child support will be reduced to \$0.00 per month under the NS table. His obligation to contribute towards childcare under the 2014 order is not varied.
19. Mr. MacLean earned \$35,385.00 (plus EI) in 2017. I estimate his EI that year at \$5,000.00, so his total income was \$40,385.00. His obligation to pay child support under the Nova Scotia table in 2017 was \$340.00 per month for the first 10 months and \$344.00 for the last 2 months. The arrears will therefore be adjusted to reflect his increased income in 2017. His obligation to contribute to childcare remains unchanged.
20. In 2018, Mr. MacLean earned \$16,455.00 (plus EI which I estimate at \$2,500.00) before starting work at the mine in November, 2018. At his rate of \$1,000.00 per week, he would have earned about \$8,000.00 in the last 2 months of 2018. His total income was therefore \$26,955.00, so he should have paid child support under the Nova Scotia table of \$220.00 per month, plus childcare of \$187.00 per month.
21. The parties reached a consent order on prospective child support in January, 2020. Mr. MacLean earned slightly more in 2019 than the income figure used in that order, but I am not prepared to revisit it. The difference is nominal, and the order was reached by consent.

22. However, this means that Mr. MacLean will be left paying child support on a higher income than he's currently earning from EI (and CERB when his EI runs out), at least until the Recalculation Clerk reviews and revises his child support obligation.

23. Therefore, I direct that Mr. MacLean's child support obligation be reduced to reflect his 2020 income, which I calculate as follows: 60% of his 2019 gross income = \$41,185.00/annum. Mr. MacLean will pay the table amount of child support based on that annual income in the amount of \$352.00 per month, effective March 1, 2020 and continuing until it's recalculated by the Recalculation Clerk. A recalculation clause will be included in the order.

24. MEP will make these adjustments to its records. Mr. MacLean will pay any arrears at the rate of \$150.00 monthly until the balance is paid in full.

25. Mr. MacLean will also pay Ms. Wells court costs of \$250.00 within 30 days, for the hearing held on December 7, 2020. This amount will do justice between the parties, by way of off-setting any loss of income Ms. Wells incurred due to her pursuit of the variation application.

Lee Anne MacLeod-Archer, J.S.C.(F.D.)