

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Bray v. Watson-Bray*, 2021 NSSC 314

Date: 20211112

Docket: *Sydney* No. 1206-007366

Registry: Sydney

Between:

Stephen Bray

Applicant

v.

Jennifer Watson-Bray

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: September 15, 2021, in Sydney, Nova Scotia

Written Release: November 12, 2021

Counsel: Gordon Gear for the Applicant
Jennifer Watson-Bray, Self-Represented

By the Court:

FACTS:

[1] The parties were married on May 2, 1987 and had three children together before separating on May 2, 2014. Ms. Watson-Bray is a registered nurse, while Mr. Bray is collecting CPP disability benefits.

[2] After separation, Mr. Bray remained in the family home, which was unencumbered. Ms. Watson-Bray moved to Halifax after separation, where she continues to work as an RN.

[3] A divorce trial was held on September 15, 2021. Before the trial, the parties agreed that matrimonial assets should be divided equally under s.12 of the *Matrimonial Property Act*, R.S.N.S. 1989, c.275. The manner of division and spousal support were unresolved.

ISSUES:

1. Division of matrimonial assets
2. Spousal support

ISSUE #1: DIVISION OF MATRIMONIAL ASSETS

[4] Mr. Bray wishes to retain the matrimonial home. Ms. Watson-Bray agrees with that. However, she wishes to off-set her interest in the home against Mr. Bray's interest in her pension.

[5] Neither party obtained an appraisal of the home. Mr. Bray relies on the current assessed value of \$114,500.00. After notional disposition costs are deducted, the net value would be \$106,599.50. Ms. Watson-Bray's share would therefore be \$53,299.75.

[6] In asking the court to off-set her interest in the home against Mr. Bray's interest in her pension, Ms. Watson-Bray relies on a statement from her pension administrator issued for "relationship breakdown purposes". It shows her estimated contributions (with interest) to the date of separation as totaling \$112,088.44. The statement does not provide a commuted value.

[7] I cannot be sure that an off-set is appropriate without relevant valuation information. Mr. Bray seeks an order splitting the pension benefits accumulated during the marriage, rather than a set-off. In the circumstances, I direct that half of the pension credits earned by Ms. Watson-Bray during the marriage be transferred to Mr. Bray through the governing pension legislation.

[8] That leaves Mr. Bray owing an equalization payment of \$53,299.75 to Ms. Watson-Bray for the home. I will deal with payment of that sum below.

[9] All other assets were divided at the time of separation, with Mr. Bray keeping the contents of the home.

ISSUE #2: SPOUSAL SUPPORT

[10] Section 15.2 of the *Divorce Act*, R.S.C. 1985, c.3 deals with claims for spousal support. It states:

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

...

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making 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 spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

...

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage;

and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[11] I must look at the “condition, means, and circumstances” of the parties in assessing a claim for support, including the factors at s.15.2(4) and (6) of the *Divorce Act*.

[12] The parties were married for 27 years. Initially, Ms. Watson-Bray worked on a casual basis because the parties had young children. However, she eventually accepted full-time work, leaving Mr. Bray to stay at home with the children. Whereas Mr. Bray only ever worked part-time, Ms. Watson-Bray could earn more as a full-time registered nurse.

[13] Currently, Mr. Bray only has income from Canada Pension Disability benefits. Ms. Watson-Bray is earning significantly more income as an RN.

[14] Mr. Bray was diagnosed with Asperger’s (a neurodevelopmental disorder on the Autism Spectrum) at age 18. He was working when the parties met, but he’s had difficulty holding down a job all of his adult life. He worked as an autobody painter and a fisherman’s helper, and then trained and worked as a cook. He also ran his own business, making and selling clay pipes.

[15] In 2010, Mr. Bray had a mental health crisis which left him unemployed. He applied for Canada Pension Disability benefits in 2014. That’s been his sole source of income since.

[16] Both parties presented conservative budgets. Ms. Watson-Bray can afford to pay support, and Mr. Bray needs it. He will have a substantial asset in the home, but if he’s forced to sell it and move to rented accommodations, his living expenses will increase. That would, in turn, increase his need for support.

[17] I find that Mr. Bray was economically disadvantaged by the breakdown of the marriage, because for the majority of their marriage, Ms. Watson-Bray supported him.

[18] There are no financial consequences of childcare to consider, as the parties' children are now adults. However, when the parties first separated, their youngest child was only 17 years of age, and Ms. Watson-Bray supported him without contribution from Mr. Bray.

[19] I must also consider Mr. Bray's ability to achieve self-sufficiency. He is 59 years of age, and he has only worked part-time throughout his adult life. It's unlikely that he'll ever achieve financial independence with limited skills and having been out of the workforce for many years.

[20] However, there is no medical evidence before the court to suggest that he cannot work in **any** capacity. For example, he still makes clay pipes as a hobby. Ms. Watson-Bray suggests that he could sell these to supplement his income, which is a reasonable suggestion.

[21] Ms. Watson-Bray says that Mr. Bray is not entitled to support, due to his conduct. The evidence is unrefuted that during the marriage, Mr. Bray was verbally, emotionally, and physically abusive to her, and that after separation, he stalked her and threatened to kill her. She says that he violated multiple protection orders, and harassed her at her place of work, to the point where she quit her union job and relocated to Halifax.

[22] In her submissions, she states:

Mr. Bray has a place to live, rent free and an income, be it small. ... I find it a bitter pill to swallow that the justice system that I depended on could not keep me safe and is now asking me to support an abusive ex partner. ...

I would like to ask you to take into account the history surrounding this divorce and to help break the cycle of abuse and not allow it to continue by making the victim continue to suffer.

[23] Section 15.2(5) of the *Divorce Act* states:

Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

[24] In **Leskun v Leskun**, 2006 SCC 25, the Supreme Court confirmed that in the *Divorce Act* as amended in 1985, Parliament removed the concept of blame-based support. The court noted, however, that although conduct in relation to the marriage cannot be considered, the *consequences* of that conduct may be relevant. The example was given of a spouse who suffers abuse leading to depression, who is left unemployable and needs support.

[25] This case differs in that it's the *payor* spouse who seeks to have the *recipient* spouse's conduct considered. Ms. Watson-Bray moved to Halifax to avoid Mr. Bray, leaving her community and a job she loved. She had to make a new life for herself in a new city without the support of family or friends. She continues to be fearful of Mr. Bray, and says that as recently as January, 2021 he called her a number of times to leave harassing messages.

[26] It's to Ms. Watson-Bray's credit that she has continued to work, despite the emotional consequences of Mr. Bray's misconduct. However, it is not the emotional consequences on a *payor* spouse that the Supreme Court identified as an exception to s.15.2(5) of the *Divorce Act*.

[27] In **Wang v. Song**, 2013 ONSC 42, the Ontario Superior Court of Justice held that a husband, who had been convicted of assault against the payor wife, was still entitled to support on the basis of need. The husband suffered from mental illness and was unable to work. The court's objective in assessing quantum was

“to ascertain an amount sufficient to allow him to achieve the modest lifestyle reflected in his proposed budget filed in this proceeding...”

[28] In **M.S. v G.M.**, 2016 ONSC 5381, the Ontario Superior Court of Justice held that spousal support was still payable to a wife who assaulted the husband's mother and the parties' children, although her conduct was considered in assessing quantum.

[29] Other courts have determined that conduct *after separation* does not constitute conduct “in relation to the marriage” under s15.2(5). However, that seems inconsistent with **Leskun**, which established only one narrow exception to s.15.2(5). I must therefore disregard Mr. Bray's misconduct, as it clearly arises “in relation to the marriage”.

[30] I find that Mr. Bray is entitled to spousal support on the basis of compensatory and non-compensatory principles. I have considered the calculations presented by Mr. Bray's counsel under the *Spousal Support Advisory Guidelines*, Mr. Bray's

statement of expenses, and Ms. Watson-Bray's budget. I am not obliged to follow the *SSAG*, but I must consider them (**Strecko v Strecko**, 2014 NSCA 66).

[31] The *SSAG* calculations in this case presents a higher payment than I consider appropriate, given the means, need, and circumstances of the parties. Like the court in **Wang**, my objective is to ensure that Mr. Bray has sufficient funds to allow him to enjoy a modest lifestyle, much akin to when the parties were together and raising three children on one salary.

[32] I therefore direct that Ms. Watson-Bray pay monthly spousal support of \$1,250.00 to Mr. Bray, commencing November 1, 2021 and continuing monthly until Mr. Bray is eligible to collect pension benefits under the pension split. At that time, either party may request a review of spousal support by the court.

[33] Mr. Bray also seeks spousal support retroactive to the date he filed the petition for divorce on August 8, 2018. I don't consider that a true retroactive claim, where he doesn't seek support predating the petition filing date. In any event, he calculates his claim at the mid-range of the *SSAG* over 37 months, for a total of \$108,188.00.

[34] Even if I accepted that the *SSAG* should be applied, I would not place Mr. Bray's claim in the mid-range. Viewing his claim through a compensatory lens, he's probably in the same place financially as if the parties hadn't married. He didn't give up a career when the parties married, nor did he give up a career to raise their children or to allow Ms. Watson-Bray to develop her career. His evidence is clear that he's been unable to pursue a career or hold down a regular job all of his adult life. His neurodevelopmental challenges pre-date the marriage.

[35] Further, his claim does not reflect the fact that Mr. Bray lived in the matrimonial home rent and mortgage-free, while Ms. Watson-Bray incurred the costs of a move and paid rent in Halifax. Or that Ms. Watson-Bray supported their son after separation. Or that she left a furnished home and started over, earning less after the move than when she worked in Cape Breton.

[36] With all of that in mind, I am prepared to allow a retroactive claim of \$750.00 per month over 39 months (to November, 2021) in the amount of \$29,250.00.

[37] This retroactive support figure will be reduced by 25% to reflect the fact that Ms. Watson-Bray will get no tax deduction with a lump sum payment, and the fact that Mr. Bray will likely require time to pay off that debt on an interest-free basis. This brings the amount of retroactive spousal support down to \$21,937.50.

[38] I am prepared to off-set the amount Ms. Watson-Bray owes to Mr. Bray against the amount Mr. Bray owes to her for the equalization payment on the home. That brings the equalization payment down to \$31,362.25.

[39] I direct that Mr. Bray pay the equalization of \$31,362.25 in monthly installments of \$600.00 until the debt is paid in full, commencing November 1, 2021. This payment may be deducted from the monthly support payable by Ms. Watson-Bray until the debt is paid. Should Mr. Bray sell or mortgage the home in the meantime, the balance of this debt must be paid in full at the time of closing.

[40] Ms. Watson-Bray must execute a Quit Claim deed to the home upon receipt, and return it (duly sworn and witnessed at her expense) to Mr. Bray's counsel. Mr. Bray will pay the recording fee. Ms. Watson-Bray may record a collateral mortgage (at her expense) against title to secure the debt owed for equalization.

CONCLUSION

[41] The evidence confirms that the parties' marriage has permanently broken down, and that there's no prospect of reconciliation. All requirements have been met, so I grant the divorce.

[42] Ms. Watson-Bray did not request a name change, but if she legally changed her name after marriage and now wishes to revert to her maiden name, I will sign an order to that effect.

[43] The home and pension will be divided equally, with a division of the pension at source and Mr. Bray owing an equalization payment to Ms. Watson-Bray for the home.

[44] Submissions on costs will be received within 30 days if the parties are unable to agree on same.

[45] Mr. Gear will prepare the orders.

MacLeod-Archer, J.