

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Ambrose v. Ambrose*, 2021 NSSC 308

Date: 20211103

Docket: SFHPSA-113933

Registry: Halifax

Between:

Kimberly Dawn Ambrose

Applicant

v.

Tim Allen Michael Joseph Ambrose

Respondent

Judge: The Honourable Justice Cindy G. Cormier

Heard: May 19, 2021, in Halifax, Nova Scotia

Written Release: November 03, 2021

Counsel: Bhreagh MacDonald for the Applicant, Kimberly Ambrose
Tim Ambrose, Respondent, Self-represented

By the Court:

Introduction

[1] A one hour hearing was held on May 19, 2021.

[2] The issues to be decided include: child support, specifically a determination of Tim Ambrose's income for child support. Spousal support: determination of Tim Ambrose's and Kimberly Ambrose's income and/or their means; determination of Ms. Ambrose's entitlement to spousal support, if any entitlement then quantum and duration of spousal support based on Mr. Ambrose's ability to pay/means.

Custody

[3] The parties have two children and at the time of the hearing the parties' eldest child was almost 19 years old and the parties' youngest child was almost 16 years old. The parties agree there will be no custody order in relation to their eldest child and there will be an order for joint custody in relation to the parties' youngest child.

Parenting

[4] Since the parties separated in 2017 the children have resided primarily with their mother, Ms. Ambrose. Mr. Ambrose consented to the children remaining in Ms. Ambrose's primary care.

[5] The parties agreed to the following parenting terms:

1. Primary care and residence of both the parties' children would continue with Ms. Ambrose.
2. Ms. Ambrose would share age appropriate and relevant information about the parties' children with Mr. Ambrose.
3. Ms. Ambrose and Mr. Ambrose would have a right to any relevant and age appropriate third party information regarding the parties' youngest child.
4. The parties agreed to encourage both children's relationship with Mr. Ambrose.
5. Mr. Ambrose is entitled to reasonable and flexible parenting time with the parties' youngest child as arranged between Mr. Ambrose and the youngest child or as arranged by Ms. Ambrose, Mr. Ambrose, and the youngest child.

Child support (table amount)

Number of children

[6] Mr. Ambrose acknowledged that the parties' eldest child remains a dependent child who is living full time with Ms. Ambrose. Mr. Ambrose advised the court he was aware the parties' eldest child was in her first year of a three year nursing degree at Dalhousie University.

[7] Mr. Ambrose consented to continue to pay the table amount of child support for two children, stating he would pay “whatever the Court decides”. He acknowledged he had not filed his taxes in five years.

[8] Ms. Ambrose confirmed she was not asking Mr. Ambrose to contribute to any special or extraordinary expenses for either child.

Mr. Ambrose’s annual income for child support and spousal support

Reliability of financial information filed by Mr. Ambrose

[9] Ms. Ambrose argued that Mr. Ambrose was actively keeping his income information from her and from the Court. In support of her position Ms. Ambrose presented evidence suggesting the parties’ banking institution had concerns regarding Mr. Ambrose’s banking practices.

[10] Ms. Ambrose testified that the parties’ joint account had previously been frozen due to the bank’s concerns about fraudulent behaviour. Ms. Ambrose further testified that Mr. Ambrose had made a number of child support payments from bank accounts which were not in Mr. Ambrose’s name. Mr. Ambrose did not deny the allegations. Allegations of alleged past fraudulent banking behaviour, even if proven does not necessarily prove Mr. Ambrose is actively keeping his income from Ms. Ambrose or the Court but it may impact on Mr. Ambrose’s credibility.

Filing deadline

[11] Ms. Ambrose requested the Court not consider any of the financial documents provided by Mr. Ambrose as they were filed after the final filing deadline provided by the Court. She argued she had no opportunity to verify the information or to respond. I agree that because Mr. Ambrose did not meet his filing deadline Ms. Ambrose was prejudiced.

Sufficiency of financial disclosure

[12] In the alternative, Ms. Ambrose took the position that the T4 documents provided by Mr. Ambrose did not provide a full picture of Mr. Ambrose's annual income for child support. Ms. Ambrose noted that historically Mr. Ambrose received income from multiple sources, that he "worked under the table", and that his income fluctuated over the years. Ms. Ambrose argued that the information Mr. Ambrose provided was not sufficient according to both the *Nova Scotia Child Maintenance Guidelines* and the *Civil Procedure Rules*.

[13] Mr. Ambrose provided the following financial documents: two T4 documents for 2016 showing total employment income of \$149,329.00; two T4 documents for 2017 showing total employment income of \$156,311.24; one T4 document for 2018 showing total employment income of \$59,327.00; and one T4 for 2019 showing

employment income of \$22,000.00. Ms. Ambrose suggested Mr. Ambrose could easily have “cherry picked” T4’s and his disclosure was not adequate.

[14] Mr. Ambrose did not provide the Court with his T1 General tax returns for 2017, 2018, 2019, or 2020. Mr. Ambrose provided no income information for 2020 or 2021. I agree with Ms. Ambrose’s argument. Mr. Ambrose’s disclosure is inadequate and I have drawn an adverse inference.

Imputation of income and Adverse inference

[15] Ms. Ambrose asked me to impute income to Mr. Ambrose pursuant to section 19(1)(f) of the *Nova Scotia Child Maintenance Guidelines*. She also asked me to draw an adverse inference pursuant to section 23 of the *Nova Scotia Child Support Guidelines*.

[16] Specifically, Ms. Ambrose asked me to base Mr. Ambrose’s annual income for child support on his past ability to pay child support in the amount of \$1,200. In addition, due to the lack of financial disclosure provided by Mr. Ambrose, Ms. Ambrose requested I not only impute an income of \$75,000.00 to Mr. Ambrose based on previous child support payments, but I also increase his imputed income of \$75,000 by 10% to an annual income for child support of \$82,500.00, attracting a monthly child support payment of \$1,159.00.

[17] Mr. Ambrose did not file an affidavit. The financial materials Mr. Ambrose filed late suggests his annual income for child support was at least \$149,329.00 in 2016 and \$156,311.24 in 2017. His materials suggest that post separation his annual income decreased to \$59,327.00 in 2018 and \$22,000 in 2019. A significant decrease in income post-separation demands an explanation. Mr. Ambrose did not provide one.

[18] Mr. Ambrose filed incomplete financial information and he filed it late. In addition, Mr. Ambrose failed to provide affidavit evidence explaining his employment situation after separation, and specifically why his income information seemed to suggest his annual income for child support decreased significantly.

[19] Given the above noted findings, Mr. Ambrose's annual income for child support is imputed at \$82,500.00.

Nova Scotia Recalculation Program

[20] Ms. Ambrose had hoped to register with Nova Scotia's recalculation program in order to avoid further applications to court to adjust child support based on Mr. Ambrose's income. Unfortunately for Ms. Ambrose and the parties' children the Nova Scotia Recalculation clerk is not able to recalculate child support when income is imputed to the payor. I find this result to be unfair to Ms. Ambrose and the

children and that the outcome more than likely benefits Mr. Ambrose who I find has underreported his income.

Review of Prospective Child Support

[21] Ms. Ambrose must file a letter with the Court and with Mr. Ambrose prior to April 1 each year if there has been a change to the number of dependent children. For instance, if the parties' eldest child is no longer attending a full-time post secondary program.

[22] The order shall include a clause specifying that Mr. Ambrose must provide sufficient financial disclosure to Ms. Ambrose and to the Court by April 1st, 2022, and each April 1st thereafter, while the parties have dependent children. Full financial disclosure from Mr. Ambrose for April 1, 2022 shall include: a Statement of Income with all attachments, including proof of income from all sources, all contracts, including but not limited to: all T1 General Tax Returns and any Notices of Assessment or Re-Assessment for 2018, 2019, 2020, and 2021.

[23] If Mr. Ambrose fails to disclose sufficient financial information his annual income for child support will be increased presumptively by 10% on June 1st, 2022 and each June 1st thereafter. Either Mr. Ambrose or Ms. Ambrose may apply for a

review of any Order increasing Mr. Ambrose's income by 10%. A Review Hearing has been scheduled on July 22, 2022 from 10:00 – 10:30 a.m.

Prospective spousal support

[24] Ms. Ambrose is seeking a finding that she is entitled to spousal support of \$676.00 per month beginning April 2019. She has claimed entitlement on a compensatory and non-compensatory basis.

Compensatory claim

[25] Ms. Ambrose claims entitlement to spousal support at the high end of the spousal support guideline. In part, Ms. Ambrose makes her claim based on the parties' 18 year relationship which began in 2000 and the role she played in that relationship.

[26] Ms. Ambrose claimed her career did not progress as it would have if the parties had not decided she would stay home for a period to care for the children. Mr. Ambrose agreed that he and Ms. Ambrose had decided it made "financial sense" for her to stay home with the children when they were young.

[27] Mr. Ambrose permitted Ms. Ambrose to give *viva voce* evidence regarding her work history. Ms. Ambrose was out of the workforce for 7 years. She returned to work part-time for a period and then worked full time hours or more for 7 years

beginning in July 2009. Ms. Ambrose took a leave of absence from work and was placed on long term disability until she returned to work in February 2020. Mr. Ambrose confirmed he was not asking me to find Ms. Ambrose was under employed.

Non-compensatory claim

[28] Ms. Ambrose also made a claim for spousal support based on need. Mr. Ambrose is able to pay spousal support and Ms. Ambrose is entitled to a reasonable standard of living following the breakdown of a long term marriage. Ms. Ambrose's Statement of Expenses shows a financial need with a deficit of \$2,850.34 per month. Ms. Ambrose has indicated she relies on spousal support to pay her rent.

Retroactive payment of spousal support

[29] Mr. Ambrose stated that his accountant had asked him to inquire about establishing what amount of spousal support he had paid in order to determine the "tax implications" of any award. Mr. Ambrose was required to file documentation related to payments of spousal support before the trial, not following the trial. I advised Mr. Ambrose that I was not prepared to consider a retroactive recalculation of spousal support paid given the lack of disclosure he had provided.

[30] Ms. Ambrose clarified she was seeking a retroactive spousal support payment of \$13,520.00 from Mr. Ambrose. Given Mr. Ambrose's lack of disclosure of relevant financial information or any evidence to refute Ms. Ambrose's claim for retroactive spousal support, I find Mr. Ambrose owes \$13,520.00 to be paid forthwith.

Disposition

Child support

[31] Both children remain dependent children. Mr. Ambrose's income is imputed at \$82,500.00 for 2021. Mr. Ambrose shall continue to pay child support of \$1,159.00 in 2021 based on an imputed income of \$82,500.00.

[32] Unless Mr. Ambrose provides Ms. Ambrose and the Court with full financial disclosure by April 1, 2022, Mr. Ambrose's imputed annual income for child support of \$82,500 for 2021 will increase presumptively by an additional 10% as of June 1, 2022 and each June 1 thereafter with a possible review after July 1 each year.

[33] If there has been a change to the number of dependent children or if the parties' eldest child is no longer attending a full-time post secondary program Ms. Ambrose must file a letter with the Court prior to April 1, 2022.

[34] Full financial disclosure from Mr. Ambrose is not limited to but shall include:

an updated Statement of Income with all attachments and proof of income from all sources including but not limited to: T1 General Tax Returns and any Notices of Assessment or Re-Assessment for 2018, 2019, 2020, and 2021. A review has been scheduled July 22, 2022 from 10:00 – 10:30 a.m.

[35] The parties shall be registered with the Maintenance Enforcement Program of Nova Scotia.

Spousal support

[36] Ms. Ambrose is found to have both a strong compensatory and a strong non-compensatory claim for spousal support. Ms. Ambrose is entitled to spousal support at the high end of the spousal support guidelines based on Mr. Ambrose's failure to provide full disclosure and based on a finding that Mr. Ambrose has been underreporting his income since the parties' separation. Mr. Ambrose shall continue to pay spousal support to Ms. Ambrose in the amount of \$676.00 for an indefinite period.

[37] Although the payor's ability to pay spousal support places a practical limit on spousal support payments, in this case I find Mr. Ambrose is likely earning much more than the \$82,500 imputed to him. Mr. Ambrose provided no explanation for why his income decreased by approximately \$40,000 or more after the parties

separated. What little information Mr. Ambrose provided suggested he was earning over \$140,000 before the parties separated. Mr. Ambrose's ability to pay has not been established to my satisfaction and I am drawing an adverse inference based on the lack of disclosure provided by Mr. Ambrose.

[38] I have considered the circumstances of this case including but not limited to: the lack of evidence provided by Mr. Ambrose, Mr. Ambrose's historical income in 2016 and 2017, Ms. Ambrose's strong compensatory and non compensatory claims including considering her monthly deficit. I have also considered that Ms. Ambrose is not asking Mr. Ambrose to contribute to any section 7 expenses.

[39] Without full disclosure of Mr. Ambrose's income from 2017, 2018, 2019, 2020, and 2021, there is no real way to determine a fair amount of spousal support. As a result, I am prepared to grant Ms. Ambrose's claim for spousal support of \$676.00 per month for an indefinite period and a lump sum retroactive award of spousal support of \$13,520.00 payable forthwith.

Directions

[40] Bhreagh MacDonald shall draft the Order.

[41] Cost submissions are due from Ms. Ambrose within a month from receipt of this decision.

[42] Cost submissions are due from Mr. Ambrose within six weeks of this decision.

Cindy G. Cormier, J.