

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Sprague v. Stewart*, 2023 NSSC 205

Date: 20230626

Docket: 1210-000957

Registry: Halifax

Between:

Christopher Troy Sprague

Petitioner

v.

Karen Elaine Stewart

Respondent

Judge: The Honourable Justice Cindy G. Cormier

Heard: March 9, 2023, in Halifax, Nova Scotia

Counsel: Christopher Troy Sprague, self-represented
Karen Elaine Stewart, self-represented

By the Court:

1 Introduction

[1] On December 6, 2022, Mr. Sprague (the father) filed a Notice of Variation Application pursuant to section 17 of the *Divorce Act* and section 46(4) of the *Maintenance Enforcement Act*. In his Application, Mr. Sprague did not specify which order he was seeking to vary. He was seeking:

1. Termination of child support paid for Hannah, the parties' daughter as of January 1, 2023;
2. Under child support, "other" to address "arrear" to be credited for child support paid for Hannah in June, July and August of 2022; and
3. Under general "other" to be reimbursed for payments he had made to Ms. Stewart (the mother) toward Hannah's school trip, which was cancelled due to covid lockdowns;

[2] On January 30, 2023, Ms. Stewart filed a Response requesting a change to the Corollary Relief Judgement, No. 1210-000957, 2007 pursuant to section 17 of the *Divorce Act* and the *Federal Child Support Guidelines*. Specifically, Ms. Stewart sought an order for Mr. Sprague to contribute to Hannah's special post-secondary education expenses from September 2022 through December 2022 and

from January 2023 through April 2023. Ms. Stewart claimed relief pursuant to section 7(d) of the *Guidelines*, however, the claim is more properly brought pursuant to section 7 (e) of the *Guidelines*: special expenses for post-secondary education.

[3] Ms. Stewart proposed sharing Hannah's special expenses for post secondary education with Hannah paying 50% and both parents, Ms. Stewart and Mr. Sprague, each paying 25% of the following:

1. Expenses related to Hannah's attendance at the Hair Design Centre Ltd (HDC) Eyelash Enhancement Technician Program, between September 2022 and December 2022, totalling \$5455; and
2. Expenses related to Hannah's enrollment at the Eastern Esthetics Career College Nail Technology Program between January 18, 2013 and April 21, 2023, totalling \$5500.

2 Hair Design Centre Eyelash Enhancement Technician Program

[4] The fees payable to attend the Hair Design Centre (HDC), Eyelash Enhancement Technician program, between September 6, 2022 and December 23, 2022, were outlined in correspondence from HDC dated September 12, 2022 and attached to Ms. Stewart's Statement of Special or Extraordinary Expenses, they

included: registration \$140; CANS fees \$235.75; tuition \$3,329.25; books and manual fees \$173.59; and equipment fees \$1,576.41, for a total of \$5,455.00.

[5] On February 23, 2023, along with Hannah's Income Tax and Benefit Return for 2022 specifying earnings of \$12,457.49, Ms. Stewart filed correspondence sent to Hannah from HDC including: receipts dated August 26, 2022 and August 30, 2022; and a statement from HDC dated January 11, 2023 confirming receipt of \$5,455.00 as fees paid to Hair Design Centre (HDC) for the Eyelash Enhancement Technician program for the period between September 6, 2022 and December 23, 2022.

3 Eastern Esthetics Nail Technology Program January 18, 2023 to April 21, 2023

[6] On February 23, 2023, Ms. Stewart filed correspondence from Eastern Esthetics including: correspondence dated January 6, 2023 confirming the total cost of the full-time Nail Technology program beginning January 18, 2023 "running until" April 21, 2023 as \$5,500.00 including: tuition of \$3,600; books and manuals \$400; and equipment fees \$1,500.00; correspondence dated February 9, 2023 confirming Hannah was enrolled in the program; and further correspondence dated February 16, 2023, confirming payments made on January 6, 2023 for a \$100.00 application fee; January 9, 2023 for a \$300 registration fee; January 16,

2023 for a \$1,500 tuition payment; January 19, 2023 for a \$2,730 student loan; January 24, 2023 for a \$1,380 student loan; and confirming an overpayment of \$510.00 was returned to Hannah.

4 Operative Order

[7] A Variation Order was granted by the Honourable Justice Carole E. Beaton (as she was then) following a variation hearing held on July 20, 2016. Mr. Sprague was found to have an “annual income of \$53,187” in 2015. Mr. Sprague was ordered to pay child support for two children. One of the children was Hannah.

[8] Per Variation Order granted in 2016, the matter of adjusting Mr. Sprague’s annual income for child support was referred to the Administrative Recalculation of Child Maintenance Program. Recalculated Orders were issued August 31, 2017; August 7, 2018 (\$53,228.20 for 2017); August 12, 2019 (\$53,228.20 + 10% for \$58,551.02 for 2018); August 10, 2020 (\$54,062.00 for 2019) and August 3, 2021 (\$61,075.00 for 2020). No further Recalculated Orders were available on the Court file but the Recalculated Order from August 2022 has been requested and will be added to the Court file. Mr. Sprague’s Tax Assessment for 2021 filed with this Court indicates he earned \$51,330.00.

5 Change of circumstances

[9] The issue of Mr. Sprague's annual income for child support was not an issue before me in March 2023. The parties confirmed they were "not disputing the numbers." I was not asked to vary and I have not varied the Administrative Recalculation of Child Maintenance clause included in the Variation Order granted on July 20, 2016 and issued on August 5, 2016.

[10] Mr. Sprague bore the burden of proving a material change. He argued that Hannah ceased to be a dependent child (child of the marriage) in June, July and August 2022 following on her 19th birthday in May 2022. Ms. Stewart did not agree.

[11] The parties did not dispute that there was a subsequent change in Hannah's "condition, means, needs and circumstances" when Hannah started her post-secondary education in September 2022. Mr. Sprague agreed to pay the table amount of child support for Hannah September 2022 through December 2022. Ms. Stewart requested and Mr. Sprague refused to contribute to Hannah's special post-secondary expenses September through December 2022 and he argued that Hannah ceased to be a dependent child as of January 1, 2023.

[12] Ms. Stewart argued that Hannah continued to be a dependent child January 1, 2023 through the end of April 2023, as Hannah was enrolled in a further program relating to her career of choice. Ms. Stewart requested Mr. Sprague be ordered to continue to pay the table amount of child support for Hannah and contribute to Hannah's special post secondary expenses between January 2023 and the end of April 2023. Ms. Stewart acknowledged Hannah would be finished school at the end of April 2023 and no longer a dependent child of the marriage.

6 Recent litigation background

[13] On February 6, 2023, both parties appeared before me. Mr. Sprague clarified he was seeking termination of child support as of December 23, 2022 (effectively January 1, 2023) and he was seeking to be reimbursed by Ms. Stewart for child support paid to Ms. Stewart for their daughter Hannah as follows:

1. Return of his share of the money he paid to Ms. Stewart (the mother) for their daughter, Hannah, to attend a school trip to New York city which was subsequently cancelled. The trip cost approximately \$1,215. Ms. Stewart acknowledged Mr. Sprague contributed "about \$825.00.";

2. Return of child support paid by him to Ms. Stewart for Hannah in June 2022, July 2022, and August 2022, before Hannah began her post-secondary education program and after her 19th birthday in May 2022. No Maintenance Enforcement Record was filed by the parties, but it has been requested and will be added to the Court file upon receipt.
3. Return of any child support paid to Ms. Stewart for Hannah while Hannah completed a further four-month Nail Technology Program, from January 2023 through April 2023.

[14] Mr. Sprague clarified that despite Ms. Stewart confirming Hannah had not attended a post-secondary education program and that Hannah had worked part-time then full-time, earning \$8,223 in 2021 and \$12,457.49 in 2022, he was not seeking a return of the full table amount of child support he paid to Ms. Stewart for Hannah between July 2021 (high school graduation) and Hannah's 19th birthday in May 2022.

[15] Mr. Sprague also clarified that he had agreed to pay the full table amount of child support for the period between September 2022 to December 2022, while Hannah was enrolled in her first four month program with Hair Design Centre

(HDC) school; however, he was not prepared to contribute 25% toward Hannah's special post-secondary expenses of \$5,455 (**\$1,363.75**) for that same period.

[16] Mr. Sprague sought to terminate the table amount of child support effective January 1, 2023.

[17] Mr. Sprague stated that he had understood that after Hannah completed the HDC program during September through December 2022, she had worked for "Crissy's Lashes" in her field of study, and she was no longer in school. Mr. Sprague indicated that he had known nothing about Hannah's plans to complete another post-secondary education program with Eastern Esthetics between January 2023 and April 2023.

[18] Mr. Sprague was not prepared to pay the table amount of child support to Ms. Stewart for Hannah for the period between **January 2023 and April 2023** and he was not prepared to contribute 25% toward Hannah's special post-secondary education expenses of \$5,500 (**\$1,375**) between January 2023 and April 2023.

[19] Ms. Stewart has stated:

1. She allowed Hannah to keep the money “gifted” to Hannah to go on a trip to New York. Ms. Stewart claimed she was reimbursed only a partial amount of the funds and she gave \$1000 to Hannah.
2. Hannah graduated from high school in June 2021 and took “a year off school” June 2021 through September 2022. Hannah worked at a hotel in Dartmouth Crossing, initially working part-time and then full-time. Hannah earned \$8,223 in 2021 and \$12,457.49 in 2022.

[20] Ms. Stewart is asking:

1. That Mr. Sprague be ordered to continue to pay the table amount of child support for Hannah between May 2022 (when Hannah turned 19) until the end of April 2023 (when Hannah finishes her post secondary education).
2. That after Hannah contributes 50% toward her total post-secondary education expenses ($\$5,455 + \$5,500 = \$10,955 @ 50\% = \5477.50), that both she and Mr. Sprague be ordered to each contribute 25% **\$2,738.75** toward Hannah’s total special post-secondary education expenses of \$10,955 for September through December 2022 and January through April 2023.

7 Issues:

[21] Issues:

1. Should Mr. Sprague be refunded the child support he paid in **June 2022, July 2022, and August 2022?**
2. Should Mr. Sprague and Ms. Stewart be ordered to contribute 25% (**\$1,363.75 each**) toward Hannah's **\$5,455** in special post-secondary education expenses paid to **HDC** for her program **September 2022 through December 2022?**
3. Should Mr. Sprague be ordered to pay the table amount of child support for Hannah between **January 2023 and April 2023?**
4. Should Mr. Sprague and Ms. Stewart be ordered to contribute 25% (**\$1,375 each**) toward Hannah's **\$5,500** in special post-secondary expenses paid to Eastern Esthetics her program **January 2023 and April 2023?**

[22] Should Mr. Sprague be ordered to pay the table amount of child support for Hannah in June 2022, July 2022, and in August 2022?

1. I accept Mr. Sprague's testimony when he claimed that in May 2022 both he and Ms. Stewart were unsure whether Hannah would be attending a post-secondary education program in September 2022.
2. I find it is more likely than not that Hannah was working full-time in June, July, and August 2022, or I find that she ought to have been working full-time between July 2021 and August 2022. She started her post-secondary program in September 2022. Due to the extended period of time away from school and working, I find that Hannah ceased to be a dependent child between June 2022 and August 2022, until she returned to school in September 2022. The period between July 2021 (high school graduation) – May 2022 (Hannah's birthday) is not in dispute per Mr. Sprague's representations.
3. **Mr. Sprague shall be reimbursed for child support he paid in June 2022, July 2022, and August 2022.**

[23] Should Mr. Sprague and Ms. Stewart be ordered to contribute 25% (**\$1,363.75 each**) toward Hannah's \$5,455 in special post-secondary education expenses for the period of September 2022 through December 2022?

1. Hannah's choice to pursue a program in Nail Technology with HDC (\$5455) is a valid post-secondary educational plan. Hannah

subsequently worked in the field for a period and then sought further qualifications in her field of choice through Eastern Esthetics (\$5500).

Her choices have been reasonable.

2. Hannah earned \$12,457.49 in 2022. I expected Hannah to save for upcoming post-secondary school expenses. Often the expectation is that prospective students living with a parent save approximately 70% (\$8,720.24 in Hannah's case) of their income (compare 50% \$6,228.74) to pay toward their post secondary expenses.
3. In this case, I have adjusted my expectation for Hannah based on my decision to credit Mr. Sprague with any child support payments he made to Ms. Stewart in June, July, and August 2022.
4. Notionally, Hannah would have had to cover the expenses no longer covered by Mr. Sprague in June, July, and August 2022. As such I am satisfied that a 50% (\$2,727.50) contribution by Hannah to her post-secondary expenses (\$5455 for September through December 2022) is reasonable in the circumstances.
5. **Both Ms. Stewart and Mr. Sprague are ordered to pay to Hannah a total of \$1,363.75 each toward Hannah's special post-secondary education expenses incurred between September 2022 and**

December 2022. They may pay \$75 per month to Hannah until the debt is satisfied in full. Payments begin May 1, 2023.

[24] Should Mr. Sprague be required to pay the table amount of child support for Hannah between January 2023 and April 2023?

1. As noted previously, Hannah's choice to pursue a program in Nail Technology following her program in Eyelash Enhancement is in keeping with her career choice and appears to be a reasonable and valid educational plan.
2. Considering the following: Mr. Sprague's historical income; Hannah's income of \$12,457.49 in 2022; Mr. Sprague being credited back child support he paid in June, July, and August 2022; Hannah covering 50% of her post-secondary education expenses (\$2,727.50) for September through December 2022; Hannah covering 50% of her post-secondary education expenses (\$2750) for January through April 2023, I do not consider Hannah to be independently able to support herself on her 2022 income of \$12,457.49.
3. Notionally, \$12,457.49 (Hannah's income in 2022) - \$2727.50 (Hannah's share of special expenses 1st program) - \$2750 (Hannah's share of special expenses 2nd program) - (30% of \$12,457.49

allowable incidentals) - \$3,737.25 = leaves Hannah with \$3,242.74 / 8 month = \$405 per month between September 2022 and April 2023. I find that Hannah lived with her mother and she could not live independently on \$405 per month. Ms. Stewart maintained a home for Hannah and Mr. Sprague must pay the table amount of child support for Hannah between January 2023 and April 2023.

- 4. Mr. Sprague is ordered to pay the table amount of child support for Hannah between January 1, 2023 and the end of April 2023 based on the applicable recalculated income per recalculated Order.**

[25] Should Mr. Sprague and Ms. Stewart be required to contribute 25% toward the \$5,500 (**\$1,375 each**) in special post secondary expenses for Hannah for the period between January 2023 and April 2023?

1. As noted previously, I find Hannah's choice to pursue a program in Nail Technology (January through April 2023) following her program in Eyelash Enhancement (September through December 2022) to be in keeping with her career choice and to be a valid educational plan.
2. However, I do have a concern about the lack of information related to the student loan taken out by Hannah. Ms. Stewart failed to file

documentary evidence related to Hannah's bursaries and/or loans which are not repayable. The documents filed reflect that Hannah did obtain a loan(s) in the amount of \$2,730 and \$1,380 and that she overpaid her expenses to Eastern Esthetics by \$510.00 and she was reimbursed that amount.

3. **Only after accounting equally for both Mr. Sprague and Ms. Stewart for any grant money/loan money not having to be repaid by Hannah** (loan documents must be provided to the Court and to Mr. Sprague), will both Mr. Sprague and Ms. Stewart be ordered to pay up to \$1,375.00 each toward Hannah's special post-secondary education expenses incurred between January 2023 and April 2023. Once there is an accounting of any additional funds which may have been available to Hannah (nor repayable) Mr. Sprague and Ms. Stewart shall pay \$75 per month toward the adjusted debt until it is satisfied in full.

[26] Should Ms. Stewart reimburse Mr. Sprague for the contributions he made for the cancelled trip to New York (2018/2019 - 2019/2020 school year)?

1. Mr. Sprague stated that he made interact payments of \$55 and a few \$100 payments to Ms. Stewart, intended to be applied toward

expenses for Hannah's school trip to New York which was later cancelled.

2. Ms. Stewart argued that Hannah was entitled to keep the refunded money. Ms. Stewart stated she gave Hannah \$1000.00 of the refunded money, keeping \$103.50 of the refund from contributions made by Ms. Stewart and Mr. Sprague (and possibly others) toward Hannah's school trip to New York, which was cancelled.
3. Based on the Statement filed by Ms. Stewart from EF Educational Tours dated April 30, 2020, which Mr. Sprague did not have sufficient time to review prior to the hearing, the trip expenses were estimated at \$2804.00. The Statement indicated Ms. Stewart made payments as follows:
 - i. April 25, 2019 - \$199.00 payment.
 - ii. May 20, 2019 - \$218.00 payment
 - iii. June 20, 2019 - \$218.00 payment
 - iv. July 22, 2019 - \$218.00 payment
 - v. August 20, 2019 - \$218.00 payment
 - vi. September 11, 2019 - \$1,733.00

4. The statement from EF Educational Tours dated April 30, 2020, indicates Ms. Stewart received a refund of \$1,103.50. The non-refundable amounts were listed by EF Education Tours as follows: \$139.00 paid toward travel insurance on April 25, 2019; the \$199 non-refundable deposit; and the \$1,362.50 cancellation fee = \$1,700.50.
5. Ms. Stewart has stated that some of the e-transfers Mr. Sprague claims he sent her for Hannah's trip were intended for other expenses such as Hannah's driver training which Mr. Sprague had also agreed to contribute to; however, Ms. Stewart acknowledged receiving about fifteen (15) payments from Mr. Sprague totalling approximately \$835.00.
6. Ms. Stewart further suggested that because she "purchased" the insurance for the trip, she should keep the full refund. I do not accept her argument. Mr. Sprague e-transferred money for the trip to Ms. Stewart and she paid EF Educational Tours with both Mr. Sprague's and her own money. Ms. Stewart cannot claim that when she purchased trip insurance for Hannah's trip, that it could not apply to the funds Mr. Sprague was contributing to that same trip.

7. Although Mr. Sprague's documentary evidence was not completely clear, I accept that Mr. Sprague most likely contributed at least \$551.75 to Hannah's trip, and most likely closer to \$835.00.
8. The money was for a school trip to New York. The trip was cancelled. Any refunds should have been redistributed fairly to Ms. Stewart and Mr. Sprague.
9. Ms. Stewart could have provided her own documentary evidence regarding e-transfers received from Mr. Sprague for the trip but instead appeared to argue that it was Mr. Sprague's responsibility to make his case. I don't necessarily agree.
10. I find Ms. Stewart had access to the documentary evidence to establish how much each party paid and she should have filed it. Both parties are expected to come to Court prepared to provide an accurate accounting as necessary. I have chosen to divide the refund equally between Ms. Stewart and Mr. Sprague, $\$1,103.50 / 2 = \551.75 should be credited to Mr. Sprague.
11. **Ms. Stewart should not have made a unilateral decision regarding the refund and I am prepared to credit Mr. Sprague \$551.75**

toward any child support due, whether table amount or special expense.

8 Disposition

[27] Mr. Sprague shall receive a credit or be reimbursed for child support he paid to Ms. Stewart for the benefit of Hannah in June 2022, July 2022 and August 2022.

[28] Both Ms. Stewart and Mr. Sprague are ordered to pay to Hannah a total of **\$1,363.75** each toward Hannah's special post-secondary education expenses incurred between September 2022 and December 2022. Beginning May 1, 2023 both parties may pay \$75 per month to Hannah toward the debt of \$1,363.75 until it is satisfied in full.

[29] Mr. Sprague is ordered to pay the table amount of child support to Ms. Stewart for Hannah based on his applicable recalculated income, for the period between January 1, 2023 and the end of April 2023.

[30] **Only after accounting equally for any grant money / loan money not having to be repaid by Hannah, documents must be provided by Ms. Stewart to this Court and to Mr. Sprague,** will both Ms. Stewart and Mr. Sprague be ordered to pay up to **\$1,375.00** each (subtracting any amount received by Hannah

and not repayable) toward Hannah's special post secondary expenses incurred between January 2023 and April 2023.

[31] **Beginning the month after Ms. Stewart has filed the necessary proof of any bursaries/loans not repayable by Hannah**, both parties may pay \$75 per month to Hannah toward the debt of up to \$1,375.00 (subtracting any grants/loans not repayable) until the debt is satisfied in full.

[32] With a maximum payment of \$150 each of court ordered payments to Hannah from Ms. Stewart and Mr. Sprague for special expenses incurred during September through December 2022 and January through April 2023, starting May 1, 2023.

1. For special expenses between January 2023 and April 2023, the 1st of the month after the required documents have been filed with the court and provided to Mr. Sprague / and an accounting completed to determine the final amount of special expenses which may be owed by Ms. Stewart and Mr. Sprague to Hannah for expenses incurred between January 2023 and April 2023. The parties may seek a date to appear before me to address the issue if they are unable to come to an agreement. The agreement must be in writing.

[33] Mr. Sprague is entitled to a credit of **\$551.75** (school trip) toward any child support due, whether table amount or special expenses.

[34] Mr. Sprague's continuing obligation to pay prospective child support for Hannah is terminated effective the end of April 2023.

Cindy G. Cormier, J.