

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** Wentzell v. Wentzell, 2004 NSSC 48

**Date:** 20030604  
**Docket:** 1201-40888  
**Registry:** Halifax

**Between:**

Ralph Borden Wentzell

Applicant

v.

Lorraine Ellen Wentzell

Respondent

**Judge:** The Honourable Justice Arthur J. LeBlanc

**Heard:** June 4, 2003, in Windsor, Nova Scotia

**Written Decision:** February 27, 2004

**Counsel:** Jean DeWolfe, Esq., for the Applicant

**By the Court:**

**Introduction**

[1] This is an application to confirm a provisional order of Holmes J. of the Supreme Court of British Columbia dated August 6, 2002. For the reasons set out below I declined to confirm the order.

## **Background**

[2] The parties were divorced by a divorce and corollary relief judgment dated June 27, 1989, incorporating an agreement and minutes of settlement. Mrs. Wentzell was granted custody of the three children of the marriage. The order required Mr. Wentzell to pay child support for each child, and to pay orthodontic expenses for the three children of a maximum of \$75.00 per month. The agreement contemplated that Mr. Wentzell would pay further support for any child who went on to post-secondary education, but it appears to be undisputed that the initial child support payments who cease for each child when they finished high school.

[3] After the divorce Mrs. Wentzell moved to British Columbia with the children, where she found employment.

[4] It appears that Mr. Wentzell paid support in accordance with the terms of the judgment. With respect to the youngest child, Ryan, Mr. Wentzell ceased making child support payments in January 1996, rather than the scheduled date of June 1996. According to Mr. Wentzell's affidavit this change was brought about because Ryan was no longer attending school after January 1996. According to

Mr. Wentzell's affidavit he was informed by Ryan and his daughter Lisa that Ryan had left school and began to work in January 1996.

[5] In the course of several provisional and confirming orders granted by this Court and by the Supreme Court of British Columbia it became clear that the issue in contention was the effective date of termination of child support for Ryan.

[6] According to a Provisional Order of Boudreau J. of this Court, dated February 14, 2001, the child support payable for Ryan ended with the payment of January 1996. However, in the confirmation hearing before Halfyard J. of the Supreme Court of British Columbia, Mrs. Wentzell swore an affidavit in which she claimed that Ryan had been enrolled in high school "and attended until end of June 1996." She attached a letter from the principal of the high school in which Ryan was enrolled, confirming that "Ryan Wentzell was registered as a full time student ... from September 1993 to June 1996." The issue of when Ryan stopped attending school was not mentioned in the hearing. Halfyard J. accepted Mrs. Wentzell's statement that the child support payments for Ryan should have continued until June 1996 and ordered accordingly.

[7] The Provisional Variation Order of Justice Halfyard was returned for confirmation before Carver J. of this Court. Based on a further affidavit from Mr. Wentzell and argument of counsel, Justice Carver varied the Confirmation Order to make January 1996 the date of termination of child support payments for Ryan. This direction was embodied in a Confirmation Order dated March 6, 2002.

[8] This, however, was not the end of the matter. On August 6, 2002, Mrs. Wentzell appeared before Holmes J. of the Supreme Court of British Columbia. She argued again that Mr. Wentzell owed child support payments until June 1996, not January. Justice Holmes ordered Mrs. Wentzell to provide confirmation of Ryan's school attendance. Specifically, he directed her to file a transcript of Ryan's marks. Mrs. Wentzell informed the Court that she had such a document and that it was sealed. Justice Holmes ordered that Mrs. Wentzell file an affidavit with Ryan's marks appended as an exhibit. This affidavit would then accompany the "variation order" that Justice Holmes made, extending the child support entitlement to June 1996. It appears that Mrs. Wentzell never filed a further affidavit nor did she provide a transcript of Ryan's marks.

### **Arguments**

[9] In the hearing before me, counsel for Mr. Wentzell argued that the Order of Justice Holmes should not be confirmed, on two grounds: firstly, because Mrs. Wentzell was attempting to start an application on a matter that had been finally resolved by Justice Carver; and secondly because Mrs. Wentzell had not provided confirmation of Ryan's school attendance between January and June 1996.

[10] A consideration of sections 17 and 18 of the *Divorce Act* is appropriate. Section 17 permits a court to vary, rescind or suspend, prospectively or retroactively, a support or custody order (s. 17(1)). Before making a variation order in respect of a child support order, the court "shall satisfy itself that a change of circumstances as provided in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order" (s. 17(4)). Section 18 deals with provisional orders. It permits a court to make a provisional variation order when the respondent is ordinarily resident in another province. Such an order has no legal effect until it is confirmed by a court in the province where the respondent resides.

## **Conclusion**

[11] Mrs. Wentzell's application before Justice Holmes amounted to an application in which she attempted to vary the order of Justice Carver where there had been no change in circumstances, or an attempt to obtain a variation of Justice Carver's order without providing the necessary supporting documentation. Mrs. Wentzell provided no confirmation of Ryan's school attendance (as opposed to registration or enrolment). As such I order that the payments for child support for Ryan ordered by Justice Holmes be rescinded.

**J.**