

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Sampson v. Marchand, 2013 NSSC 208

Date: 20130709

Docket: SFPAMCA-019481

Registry: Port Hawkesbury

Between:

Nadine Sampson

Applicant

v.

Jean Guy Marchand

Respondent

Judge: The Honourable Justice Moira C. Legere Sers

Heard: June 4, 2013, in Port Hawkesbury, Nova Scotia

Counsel: Nadine Sampson, applicant - self represented
Noah Landry, for the respondent

By the Court:

[1] This is Ms. Sampson's application for a review of child support for the parties dependant child, Michel J. Sampson, born May 31st, 2002.

[2] The applicant seeks to have the table amount adjusted and to claim contribution from Mr. Marchand for medical and dental trips and other extra ordinary expenses.

[3] The parties have operated under an Order dated December 12th, 2005, in which the respondent was required to pay child support in the amount of \$282 per month, commencing October 1st, 2005.

[4] The respondent was ordered to supply the applicant with a complete copy of his Income Tax Return with all attachments, even if the return was not filed.

[5] He was to provide her with his Notices of Assessment on an annual basis, on or before June 1st of each year.

[6] The applicant asked the respondent on an annual basis to supply his Income Tax Returns. Notwithstanding the court order; he has not done so.

[7] It is only as a result of this Application for review dated November 7th, 2012, that she has received some of the information required by the 2005 court order.

[8] It has not been easy obtaining full disclosure from the respondent.

[9] In preparation for this hearing there were the ordinary Notices to Disclose and further Orders to Disclose as well as court directions to disclose.

[10] Despite the court Order to provide verification of his current financial situation by Monday, December 3rd, 2012, the respondent only verified his 2012 income when he filed his 2012 Income Tax Return in April 2013 and his Affidavit on the date of the hearing.

[11] According to the *Child Support Guidelines* the original court Order of 2005 was based on an income of \$31,100.

[12] Subsequent disclosure for this hearing in 2013 revealed that Mr. Marchand's actual income for 2005 was \$39,044.

[13] In 2008, his income was \$38,526; in 2009 it was \$34,489; in 2010 his income was \$34,970 and in 2011 he shows an income of \$23,146.

[14] The 2011 income was reduced because of a loss in one of his rental properties.

[15] His 2012 income reflects what he is able to earn when he is working full time as an electrician. His line 150 income is \$69,097.55.

[16] On April 15th, 2013, Mr. MacMillan, respondent's counsel, appeared with the respondent and after an exchange of information and on instructions from his client, consented to a number of retro active expenses that include the following:

- Retro active child care in the amount of \$1,291.
- Retro active medical in the amount of \$1,770.
- Retro active dental in the amount of \$269.65.
- Retro active expenses for medical trips necessitated by the child's special needs and his attendance at a pediatrician in Antigonish in the amount of \$1,055.

[17] He is also responsible for and agreed to pay his portion of the co-pay prescription costs in the amount of \$170.55 .

[18] His counsel on his behalf also agreed to contribute to each trip undertaken by the mother to bring the child to the pediatrician.

[19] Each trip currently costs \$45.87 representing a combination of mileage costs (the parties agreed on the prevailing provincial government rate) and his contribution towards the child's meals.

[20] There is a further contribution towards eye glasses in the amount of \$248. The total charge for the glasses was \$448. The respondent shall pay \$248, the current balance.

[21] These promises bring him up to date on his responsibility for special and extra ordinary expenses.

[22] Ms. Sampson is now only seeking retro active child support for the 2012 year based upon the respondent's actual income and prospective child care costs.

[23] Based on his line 150 income for 2012 (i.e. \$69,097.55) less union dues payable to Newfoundland and Nova Scotia (\$2370.43) the child support payment would be based on net income of \$66,727.12 for a child support award of \$564.

[24] This award shall be retro active to January 1st, 2012, to and inclusive of January 1st, 2013. I have included January 2013 as there is evidence to support the fact that while Mr. Marchand is on Employment Insurance in the 2013 year, he has undertaken work for at least one week.

[25] During this time he performed electrical service for one of his relatives. He charged \$25 per hour, contrary to his going rate of \$35 to \$40 per hour.

[26] Mr. Marchand was and is clearly able to earn more money to support his child and chose to earn less money.

[27] For the remainder of the 2013 year, while he continues to be on E.I., he receives a weekly rate of \$485 resulting in an annual income of \$25,220. This yields a child support award of \$200 per month commencing February 1st, 2013, and continuing until further order of the court.

[28] Mr. Marchand **continues to be obligated to** notify Ms. Sampson in writing, within **48 hours** of finding employment and advise her of any benefits or income as a result of that employment.

[29] Without the necessity of a request from the applicant, Mr. Marchand **shall** provide to Ms. Sampson by May 15th of each year, full and complete copies of his Income Tax Return as filed, together with all schedules and income slips whether filed or not with Revenue Canada. He shall also provide her with his Notices of Assessment immediately upon receipt.

[30] In the event that Mr. Marchand does not provide his Income Tax Returns on a timely basis in accordance with the order of the court, any reasonable legal costs associated with obtaining this disclosure shall be recoverable by Ms. Sampson.

Child Care Expenses

[31] Mr. Marchand has historically refused to contribute toward child care expenses while these services were provided by Ms. Sampson's mother.

[32] Ms. Sampson works two jobs requiring shift work and night work in order to support herself and her children. Her mother provides child care.

[33] She is unable to obtain evening and night time child care within the local area for an affordable rate.

[34] She has provided confirmation that were she to employ an ordinary daycare during day time, it would cost her \$26 per day; after school would cost \$11 per hour. She also submitted a further quote for someone who would be prepared to provide for shift work and weekends and would charge her \$60 per day.

[35] Mr. Marchand has suggested that he is available to take care of their child because he is now unemployed. His child is currently 11 years old. The respondent has not provided details as to how this would be a workable arrangement.

[36] Mr. Marchand admits that he has not exercised regular contact with his child and does not exercise his weekly access. He sees his child only when this child is visiting with his paternal grandmother.

[37] This child has a clear pattern of child care as arranged solely by the mother.

[38] Before I would interrupt that pattern, I would have to have sufficient evidence that there was a relationship between the father and the child such that the father could and should provide consistent and ongoing child care for his child and that his provision of child care would be in the best interest of the child.

[39] Mr. Marchand suffers from alcoholism. This has interfered with his ability to earn income in the current tax year. He is recovering and hopeful of maintaining sobriety in the future.

[40] He also is looking for work and is capable of finding work and supporting his child.

[41] That would make the provision of child care by him, unreliable and time limited.

[42] The only remaining matter to decide is the cost of child care. This kind of child care is unusual in that it requires the mother to obtain her mother's services on short notice, sometimes in the evening or early hours of the morning. Finding a suitable day care that could provide this service would be difficult in the area in which the mother resides.

[43] Given her two jobs and shift work, there are extra requirements placed on her mother.

[44] Ms. Sampson's mother is required to drive to the child's home in order to avoid disturbing him at night or early morning and to ensure that he is taken to local activities.

[45] The mother is essentially the sole parent of this child and does not have the ordinary relief that one would have with a parent who is exercising access or parenting time on a regular access.

[46] The mother is asking for an equal contribution to child care expenses and asks that the court impose upon Mr. Marchand a responsibility to pay one half the costs, setting the full amount at \$60 per day, four days a week. She asks that Mr. Marchand pay \$30 per day.

[47] Considering the quotes I have before me, I will set the amount at \$50 per day and will require Mr. Marchand to pay \$25 per day, for four days a week, which adds \$433 per month in child care costs to his monthly costs, in addition to the base amount.

[48] There is evidence that Mr. Marchand lives in his own home, rents another home to a third party and has ownership in a cottage property. While he may be cash poor, he does have assets and the ability to make a more significant contribution towards his child's financial needs.

[49] With respect to hockey expenses, the father had indicated that he is prepared to continue that on a voluntary basis without benefit of court order. Therefore, I decline to include that in the court order given his assertions.

[50] With respect to the request for a contribution for school supplies; those are part and parcel of the base amount already awarded.

Legere Sers, J.