

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Cottreau v. Cottreau, 2004 NSSC 217

Date: (20040715)
Docket: 1201-52776
Registry: Halifax

Between:

Shirley Cottreau (Pothier)

Applicant

v.

Kenneth Cottreau

Respondent

Judge: The Honourable Justice Allan P. Boudreau

Heard: July 15, 2004, in Yarmouth, Nova Scotia

Oral Decision: July 15, 2004

Counsel: Laurie C. Laviolette, for the Applicant
Hugh E. Robichaud, for the Respondent

By the Court:

[1] This is an application by Mr. Cottreau to terminate spousal support on the basis that he has now lost his long term employment with Comeau Seafood's as an offshore scallop boat captain. There is no question that he has lost that employment as is confirmed by the affidavit of Mr. Cottreau dated June 21, 2004 with the attached letter from his former employer, Comeau Seafood's Limited. The letter of termination of employment confirms the reasons why this took place and sites poor judgment on the part of Mr. Cottreau for not paying closer attention to the boundary lines in the scallop fishery. That may be a calculated risk that some fishermen take but in this case it certainly did not pay off for Mr. Cottreau. But in the circumstances one has to accept that the employment is terminated and the income stream that was there to pay the spousal support has also been terminated. In my view, that alone would meet the threshold test for a review of the spousal support obligation of Mr. Cottreau and the ongoing payments.

[2] Ms. Pothier argues that because the employment was terminated due to actions of Mr. Cottreau, somehow that doesn't qualify for the threshold test

or the fact that it only has been some two and a half months, does not meet the threshold test. In my view I find that it does meet the threshold test.

[3] Moreover, in reviewing Justice Smith's decision dated April 12, 2002, a matter which was heard January 28, 2002, it is clear that in the final full paragraph of her decision she is making her ruling on the basis of uncertain employment and that either party would be free to apply at a future date for a review of spousal support. But in doing so, of course, she declined to place a termination date or an automatic review date because of the uncertainty of the future. I find that in these circumstances Ms. Pothier's continued and increased employment benefits with the RCMP, continued employment for two and a half years, steady employment now earning thirty-four thousand (\$34,000.00) dollars a year would also be a material change since Justice Smith's decision and that would meet the threshold test for a review. Therefore, I am going to review the obligation for spousal support and the entitlement for spousal support.

[4] Mr. Cottreau presents a budget which has no income at the moment, and according to his testimony he has met his ongoing needs by cashing some twenty thousand (\$20,000.00) dollars in RRSP's. We do not have the details what the net after tax would be for Mr. Cottreau but, obviously, it

would be substantial. His budget is a fairly high standard budget. There can be no question about that. He has been living a life style of a person earning one hundred thirty-five thousand (\$135,000.00) dollars a year.

And, also, he is now married to a spouse who earns approximately thirty six thousand (\$36,000.00) dollars a year, therefore, they have been living a good lifestyle, there can be no question about that, but, that will not continue very long on the present income.

- [5] I am urged to look at the fact that Mr. Cottreau has been employed for 34 years and only unemployed for two months and, therefore, that I should not see that as a material change in circumstance because he may be able to find employment in the near future. He has testified to his efforts to obtain another job as a scallop boat captain, however, he has indicated that there is very little opportunity right at the present moment for offshore scallop boat captains. That there is actually a surplus because of various things that have happened on the south shore in Liverpool and Lunenburg, which I understand relate to purchases and acquisitions and combining of various scallop operations. He presently has no employment insurance income because he did not work sufficiently long since closing his claim from last

year. He has not worked enough in 2004 to qualify for employment insurance and it does not appear to be related to his termination.

[6] In these circumstances I find that Mr. Cottreau has no present ability to pay spousal support from his income. It is suggested that he should liquidate his assets, his RRSP's and perhaps his home, in order to pay spousal support. When one looks at his statement of property he shows a net worth of some sixty five thousand (\$65,000.00) dollars and I'm sure that can be increased because the value of his home appears to be only the assessed value on his statement of property. It is probably somewhat higher and his net worth may be anywhere between one hundred thousand (\$100,000.00) dollars and one hundred and twenty five thousand (\$125,000.00) dollars. That is not a large net worth from which to pay spousal support even if one were to follow the practice that some courts have done on occasion in capitalizing assets which can be used to earn an income. In this case it is the matrimonial home and there is not a great deal of net worth taking into account all the assets from which to make a capitalization award for paying spousal support.

[7] With regard to the other assets that he has besides the matrimonial home, the Corvette and the land, I'm not satisfied that there is a very significant

variation between the amounts listed on Mr. Cottreau's statement of property and their actual market value. In fact the evidence tendered regarding the Corvette seems to be quite consistent with the market value indicated by Mr. Cottreau and the fact that the '94's on that statement were between ten and fourteen thousand (\$14,000.00) dollars. His car is not the special model indicated on the other valuation sheet shown.

- [8] Therefore, I'm going to terminate spousal support effective April 30th, 2004. With regard to whether there's an ongoing need and whether this should be a final termination I can say that looking at Ms. Pothier's financial statements, she's now earning thirty four thousand (\$34,000.00) dollars a year, as a result of training and upgrading she has done since the breakdown of the marriage. I believe, she had started some training beforehand. Mr. Cottreau has paid almost one hundred and forty thousand (\$140,000.00) dollars in spousal support since the breakdown of the marriage which has permitted her to be in a position where she is today working for the RCMP earning thirty four thousand (\$34,000.00) dollars a year and she has been doing so for two and a half years. There is no indication this is in serious jeopardy.

- [9] When one looks at her budget and her statement of financial information, if one takes out the income tax portion of the expenses regarding the spousal support and takes into account her monthly income of over twenty eight hundred (\$2,800.00) dollars she appears to be in a break even position, at the very least. Her monthly budget includes things for car repairs and birthdays and events and entertainment. Therefore, in my view it is certainly questionable whether any obligations arising from the breakdown of the marriage continue at this time, but in any event, I found that there is no ability to pay and therefore, spousal support has been terminated, as indicated.
- [10] With regard to costs, I have had several telephone discussions with counsel regarding these proceedings. When this matter first started it was not anticipated that Mr. Cottreau was going to lose his employment effective the 1st of May. This required changes. I cannot fault the parties for that. With regard to the demands made for information, I cannot fault Ms. Pothier for demanding all the information that she demanded either. However, in view of the result of this hearing and the bona fide issues which were to be litigated I find this is not a proper case for awarding costs to either party and I'm going to order that each party bear their own costs in these proceedings.

[11] If you would prepare the order, Mr. Robichaud, Have it consented as to form by yourself and submit it to Ms. Laviolette, consenting as to form, I will grant the order.

Boudreau J.