

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Melanson v. Higgins, 2005 NSSC 81

Date: 20050415

Docket: 1202-00883

Registry: Amherst

Between:

Bruce Alexander Melanson

Applicant

v.

Doreen Mae Higgins

Respondent

Judge:

The Honourable Justice Arthur J. LeBlanc

Heard:

December 2 and 20, 2004 and February 18, 2005, in
Amherst, Nova Scotia

Counsel:

Bruce A. Melanson, on his own behalf
Mary Ellen Nurse, for the respondent

By the Court:

[1] This is an application to vary or terminate spousal support. Mr. Melanson, the applicant, claims that he suffers from anxiety, stress and resulting depression brought on by his employment circumstances and his spousal support obligation. He seeks termination of spousal maintenance to Ms. Higgins. She claims that Mr. Melanson has repeatedly filed variation applications while on employment insurance in order to reduce his obligations.

Background

- [2] Mr. Melanson has filed an application to vary the existing spousal support order to terminate his spousal support payments. He claims that he has paid sufficient spousal support since the divorce was granted in 1999 and that Ms. Higgins has had ample time to retrain and obtain full-time employment and thereby attain self-sufficiency.
- [3] Mr. Melanson is a member of the International Brotherhood of Boilermakers. He has worked as a construction worker for many years, at sites in Atlantic Canada, particularly in New Brunswick. He has also worked on projects in Ontario.
- [4] Since the divorce was granted Mr. Melanson has worked mostly in New Brunswick as a heavy equipment operator. In the last three calendar years (2002, 2003 and 2004) he has earned income of about \$43,000.00, \$63,528.00 and \$43,000.00, respectively. In 2003, in the months after the hearing of the previous variation application, he earned in excess of \$30,000.00.

The variation/termination application

[5] In 2004, Mr. Melanson was laid off from work twice. In June he was laid off for lack of work and in September on account of illness. Since his last layoff, he has received employment insurance benefits and he is currently receiving benefits from his Union disability plan. He stated that he receives \$1,789.00 monthly in EI benefits. There is no clear evidence of the amount he receives in disability benefits. There is no evidence to establish the period Mr. Melanson would have been employed but for the illness.

[6] In support of the present application Mr. Melanson filed an original and an amended statement of financial information, setting out his monthly expenses and claiming a deficit of over \$1688.00 per month. Mr. Melanson claims that he meets all of the monthly expenses and that his common-law partner, Susan Mitchell, who works part-time at the River Hebert Co-op, devotes all of her earnings to meet her son's university expenses. Mr. Melanson testified that the son's father pays the *Child Support Guidelines* amount only, and that any attempt to have him contribute to the University expenses would be fruitless. as a result, Ms. Mitchell has not made a claim for such expenses under the *Federal Child Support Guidelines*. Mr. Melanson also stated that the son had received scholarships and student

loans. He added that Ms. Mitchell is unable to locate work whereby she could move from part-time to full-time employment. As a result, Mr. Melanson claims that there is no basis to allocate any of the monthly household expenses to his common-law spouse.

- [7] Ms. Higgins claims that she can only work part-time due to her health. She has been under medical care for some time, and given her lack of education and training and she is unable to improve her income level. She adds that while she and Mr. Melanson were living together, they both decided that she would stay at home and take care of the children due to his frequent absences from home. These absences were required because of the nature and location of the work. Ms. Higgins claims a monthly deficit of \$448.84.
- [8] Mr. Melanson claims he was laid off from work in September 2004 on account of stress and anxiety. He reported to Dr. Carlos Beltran that his financial stress left him unable to work, fearing injury to his co-workers. He told that doctor that when he was laid off and receiving EI benefits, his income does not permit him to meet his monthly obligations.
- [9] Dr. Beltran stated that Mr. Melanson has been his patient since 2003. In September 2004, he diagnosed Mr. Melanson with a severe depressive episode. He reported Mr. Melanson exhibited signs of crying, poor appetite,

lack of sleep, anxiousness and depression. Although he did not do formal testing, he prescribed Paxil and Clonazepam. He recommended that Mr. Melanson not return to work because he was concerned that Mr. Melanson could injure his co-workers. The Clonazepam makes Mr. Melanson drowsy. He agreed that there had been some improvement in Mr. Melanson's symptoms but recommended that he be seen by a psychiatrist. This meeting is scheduled for mid-April 2005. Dr. Beltran agreed in cross-examination that all of these symptoms were self-reported by Mr. Melanson, without objective analysis or testing. He also agreed that these symptoms appear to have been brought about by Mr. Melanson's continued concern about making spousal support payments while receiving EI benefits. He said he has noticed a slight improvement in Mr. Melanson's condition since September 2004.

[10] Mr. Melanson agreed that he still goes hunting, despite being on medication.

[11] Mr. Melanson has been before the court on several occasions seeking to have his payments reduced or terminated. In 2003 he succeeded in having his monthly payments reduced from \$1000.00 to \$750.00 on the basis that he did not believe he would be earning significant income because of a

possible layoff. He referred to a number of co-workers being laid off and suggested that his layoff could come at any time. He told the Court that he expected to make less in 2003 than the \$40,000.00 he earned in 2002. He failed to remind the court that it was equally possible for him to remain at work and earn significant sums over and above the amount he would customarily receive as EI benefits. As it turned out, Mr. Melanson earned more than \$63,000.00 in 2003. Mr. Melanson also said he had paid \$80,000.00 in spousal support since the divorce and said he did not intend to return to work if his support obligation was not cancelled or reduced.

[12] On the evidence, I find that Mr. Melanson is attempting to terminate spousal support payments by any means available. He made it clear that he would not return to work unless the spousal support requirement was terminated or significantly reduced. I am of the opinion that there has been no change in circumstances from the date of the last hearing before Justice MacLellan, where the monthly support payments were reduced from \$1000.00 to \$750.00. Clearly Justice MacLellan considered the fact that Mr. Melanson would **[could?]** be laid off and end up unable to pay \$1000.00 per month. I have also considered that in the last three years Mr. Melanson has earned an average of nearly \$50,000.00 annually.

- [13] I am also satisfied that Ms. Higgins' needs have not changed since the last order was granted.
- [14] Furthermore, I do not accept that Mr. Melanson's common-law partner, Ms. Mitchell, should not be contributing to household expenses. According to Mr. Melanson, her son is particularly intelligent. He has received bursaries, scholarships and student loans. On the strength of the evidence before me, I do not accept that his father should not contribute to the university expenses. Such a finding would transfer the child support obligation from the father to Mr. Melanson.
- [15] As difficult as it may appear to him, Mr. Melanson has an obligation under the *Divorce Act* to support Ms. Higgins, particularly considering the factors and objectives in ss. 17(4.1) and 17(7) of the *Act*. Clearly, Ms. Higgins has suffered a disadvantage from the breakdown of the marriage. During the marriage she opted to remain at home with the children and to be the mainstay of the household while Mr. Melanson was away working, thereby impacting on her financially. Also, as a result of the divorce she suffered economic hardship resulting from the breakdown of the marriage. See *Williams v. Williams* [1997] N.S.J. 540.

[16] Taking into account all of the other factors and objectives set out in the *Divorce Act*, I hereby dismiss the application to vary or terminate spousal support.

J.