

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: d'Entremont v. d'Entremont, 2005 NSSC 107

Date: 20040913

Docket: 1201-55200

SFHD-008071

Registry: Halifax

Between:

Wayne Robert d'Entremont

Applicant

v.

Donna Marie d'Entremont

Respondent

Judge: The Honourable Assoc. Chief Justice Robert F. Ferguson

Heard: September 13, 2004, in Halifax, Nova Scotia

Written Decision: May 24, 2005

Counsel: Terrance G. Sheppard, for the Applicant
Donna Marie d'Entremont, self-represented

By the Court:

[1] Mr. d'Entremont has applied to vary his obligation to pay spousal and child support as outlined in the Corollary Relief Judgment dated November 1, 2001, and subsequent variations. Specifically, he submits his obligation to pay spousal support of \$200.00 a month cease; further, that his obligation to pay child support, both regarding what is sometimes called the Guideline amount and his obligation towards s. 7 or special expenses, be varied. He bases this request on (a) his belief that the current amount he is paying toward special expenses is beyond the amount that is currently being spent and (b) his income has been reduced.

[2] Ms. d'Entremont in her reply affidavit seeks an increase in spousal support. She further requests that the current provision as to life insurance coverage (paragraph 10 of the Corollary Relief Judgment) be varied to provide coverage for the children regardless of their status or age. I have informed Ms. d'Entremont that I am not in a position to entertain her request to vary the current life insurance clause in the Corollary Relief Judgment. I have informed Mr. d'Entremont and his counsel, in the presence of Ms. d'Entremont, that Ms. d'Entremont is entitled to receive documentation from the current insurer acknowledging her position as trustee as outlined in the order.

INCOMES OF THE APPLICANT AND THE RESPONDENT

[3] Mr. d'Entremont has provided evidence as to an income change resulting from his working with Air Canada that would indicate, starting this September, his income will be \$1,765.18 every pay. I have rounded this out to be \$45,900.00 per year. Further evidence indicates that this change of income is ongoing and for the foreseeable future. I conclude, for the purposes of considering the question of child and spousal support, that Mr. d'Entremont's income is \$45,890.00 per year.

[4] I further conclude that Ms. d'Entremont's income is \$24,000.00 per year.

CHILD SUPPORT
Guideline Amount

[5] Because of his reduction in income beginning September, Mr. d'Entremont's income will be reduced by approximately \$1,400.00 in the year 2004. That would create an annual income for him, in the year 2004, of \$50,174.00 requiring a Guideline monthly child support payment of him of \$681.00 a month. Beginning in January of 2005, his income will be, as previously indicated, \$45,900.00 which will require a monthly payment by him of \$627.00 per month. I order his requirement to pay a table amount of support as and when previously indicated.

Section 7 / Special Expenses

[6] As previously indicated, for the purpose of calculating the proportionality of paying s. 7 expenses, Mr. d'Entremont's income will be \$45,900.00 per annum and Ms. d'Entremont's income will be \$24,000.00 per annum which would require Mr. d'Entremont to pay 65 % of any ordered child care expenses. The previous calculation as to the child care cost was \$4,530.00. It has been suggested that Ms. d'Entremont, not working and being at home when that child care payment was provided, received amounts in excess of her actual cost of child care. Ms. d'Entremont testified as to why, in her opinion, the child care expense remained basically the same during the time when she was not working. I will not reduce retroactively the amount of child support paid by Mr. d'Entremont to Ms. d'Entremont. I will acknowledge later in this decision that she did, in my opinion, benefit by the receipt of over \$1,000.00 of non-taxable income as a result of what he paid during that period of time.

[7] Now to a consideration of ongoing s. 7 child care expenses. Mr. d'Entremont submits that the current child care expense being proposed by Ms. d'Entremont for their twelve-year-old daughter is not required basically because of her age and his belief in her ability to not require such child care. Ms. d'Entremont submits that their twelve-year-old daughter, given the circumstances, still requires such child care and the court should order Mr. d'Entremont to contribute to its cost. I conclude it would be appropriate to continue that child care cost until the end of the school year and I am ordering that this child care continues to be an expense until July 1, 2005, and that Mr. d'Entremont would be required to pay 65 % of such expense. I am further ordering that, after that time, the order should be varied to read that Mr. d'Entremont is responsible to pay 65 % of any legitimate s. 7 expenses

incurred by Ms. d'Entremont on behalf of the children that have been agreed between the parties. In the event Mr. d'Entremont did not agree, it would be free to Ms. d'Entremont to seek court approval.

SPOUSAL SUPPORT

[8] Mr. d'Entremont, as previously mentioned, seeks a termination in his current spousal support order of \$200.00 per month. He submits the following for consideration: (1) at separation, Ms. d'Entremont came away from the marriage with a larger proportion of matrimonial property than did he; (2) Ms. d'Entremont, as a result of that matrimonial property split, has been able to purchase herself a new home and car; (3) Ms. d'Entremont's current income is five to six thousand dollars more than it was when the court order for \$200.00 was made; and (4) the payment has been going on since October of 2001.

[9] Ms. d'Entremont submits she should be allowed to continue with spousal support to enable her to further her course of study and to compensate for the fact that she does not have medical coverage at this time and, further, that it would be inappropriate to punish her financially for having personally improved her annual income.

[10] Section 17 of the *Divorce Act* sets forth the factors one should consider in considering a variation in an order for spousal support. Section 17.(4.1) states:

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

[11] Prior to my consideration of the request of Mr. d'Entremont that his payment of spousal support cease or Ms. d'Entremont's request that it be increased, I am required to conclude there has been a change of circumstances outlined in the previously mentioned section of the *Divorce Act*. I conclude that Mr. d'Entremont's substantial decrease in income is sufficient to allow the court to proceed with the request to vary the current spousal support requirement.

Ms. d'Entremont's Request for an Increase of Spousal Support

[12] Ms. d'Entremont requests an increase in her current spousal support to allow her to continue her studies. I conclude there is not evidence available that would indicate an increase from the current \$200.00 a month to \$400.00 a month would be required to allow her to participate in her intended course of study. Ms. d'Entremont further suggests the fact that she is without personal medical coverage is a reason to consider an increase in her support. A lack of medical coverage in and of itself is not a reason to provide an increase in spousal support. It is merely an indication of her need for additional funding to gain such medical coverage. Since the issuance of the current order for spousal support, Mr. d'Entremont's income has decreased and Ms. d'Entremont's income has increased. I conclude this is not an appropriate situation to increase the current spousal support requirement. It is acknowledged that Mr. d'Entremont has a partner living with him earning in the vicinity of \$50,000.00 and, accordingly, sharing some of the living expenses. This must ease his financial situation somewhat but it is not a reason, in my opinion, to order an increase in spousal support to Ms. d'Entremont.

Mr. d'Entremont's Request the Spousal Support be Termination

[13] Ms. d'Entremont has improved her financial situation. Is she well off? No. Is she without the need of financial support? No. She is in a marginal financial situation at this time. She does have her own home which she seems able to manage, an automobile, is working and seems to be getting on her feet. Mr. d'Entremont has suffered a financial reversal. I am satisfied that the time has come to consider a bringing to the end of his responsibility to provide spousal support to Ms. d'Entremont. I am also satisfied, at this time, to end the spousal support, without giving Ms. d'Entremont some advance notice that it would take place, would cause unusual hardship to her and not give her an opportunity to adjust her financial situation. Accordingly, I am ordering that the spousal support continue to be paid by Mr. d'Entremont to Ms. d'Entremont in the current amount of \$200.00 a month until the period of time when the child care ends, i.e. July 1, 2005.

[14] I am asking Mr. d'Entremont's counsel to prepare the order in this regard.

[15] I am further ordering that the order contain what is sometimes referred to as a reverse onus clause. In other words, that Mr. d'Entremont's obligation to pay support will end July 1, 2005, unless Ms. d'Entremont has made application before the court and obtained an order requiring a spousal support payment.

[16] I have decided there will be no order as to retroactivity of any of the financial obligations considered. I earlier mentioned that I have concluded that Ms. d'Entremont received payments pursuant to child care in excess of what she may have spent for a period of time when she was not employed outside the home. I have considered that as one of the factors in coming to the conclusion that the child support would end in July 1, 2005. Regarding providing Mr. d'Entremont with receipts as to child care costs, I believe it would be appropriate if they are provided to him on a three-month basis and provided to him directly from the person who is providing such child care.

[17] There will be no order as to costs.

J.