

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

CITATION: *Bexson v. Slawter*, 2014 NSSC 357

Date: 2014-10-07

Docket: SFHISOS 086673

Registry: Halifax

Between:

Amanda Rea Bexson

Applicant

v.

John Vincent Slawter (Brooks)

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: September 22, 2014, in Halifax, Nova Scotia

Counsel: John Slawter on his own behalf
Amanda Bexson, not appearing

By the Court:

Introduction

[1] Amanda Bexson has applied for child support for her son, Latrell who is six years old. Ms. Bexson lives in Alberta and has applied pursuant to the *Interjurisdictional Support Orders Act* procedure. In making her application, she has stated that she relies on the law of the jurisdiction hearing this case.

Background

[2] Proceeding under the *Interjurisdictional Support Orders Act*, Ms. Bexson has filed a number of forms. These include an "Evidence of Parentage" form and, because she states her belief that Mr. Slawter may dispute parentage on that form, a "Statements to Support a Declaration of Biological Parentage" form.

[3] As evidence of parentage, Ms. Bexson says that she and Mr. Slawter lived together as a couple when Latrell was born and that they had lived together for approximately two years. She also says that she did not have sexual intercourse with any other man during the time thirty days before to thirty days after the date when Latrell was conceived.

[4] In support of a declaration of biological parentage, Ms. Bexson says that: she and Mr. Slawter lived together from 2005 to 2008; she has told social assistance officials that he is Latrell's father; she told him he was Latrell's father; and he admitted to being Latrell's father.

[5] Ms. Bexson says that Mr. Slawter is not named as Latrell's father on the birth registration, and he has not signed the acknowledgment of paternity. Ms. Bexson says that Mr. Slawter has not sent any written communication about her pregnancy or Latrell's birth. He wasn't present at the birth and didn't visit the baby at the hospital. Mr. Slawter didn't offer to pay for any expenses relating to her pregnancy or the baby's birth. She says he hasn't claimed Latrell on his tax return or provided any support, financial or otherwise, for the child. He has not lived with or visited Latrell. Ms. Bexson says that Latrell does not look like Mr. Slawter. According to the form she completed, she and Mr. Slawter lived together until she was five months pregnant and then he left. She says he was aware of the pregnancy when he left.

[6] In completing the forms, Ms. Bexson indicated her agreement to cooperate with the request for genetic testing and to make Latrell available for this testing.

[7] Ms. Bexson's application first came before me on July 18, 2014. Due to difficulties at his lawyer's office, Mr. Slawter appeared with a lawyer and without his income information. He told me he was contesting paternity and was taking steps to arrange paternity testing, though this would need to wait until he received his next pay cheque and could afford to pay for testing. I adjourned the hearing for one week so he could make some progress with this. He was provided with information so the paternity testing center could contact Ms. Bexson and arrange for her participation, and Latrell's, in the testing. This information was Ms. Bexson's full name and

date of birth, Latrell's first name and date of birth, along with notification that he had a passport which could be used as identification. Ms. Bexson's support application originated with the Child Support Services section of Alberta Human Services. A contact name and address at Child Support Services were also provided.

[8] When Mr. Slawter returned to court on July 25, 2014 he provided an email from the paternity testing center confirming the arrangements he was making. I adjourned the application for two months to await test results.

[9] When Mr. Slawter appeared in court on September 22, 2014 he testified that he did the test but that he has been waiting for Ms. Bexson to have hers done.

Paternity

[10] According to subsection 12(1) of the *Interjurisdictional Support Orders Act*, where a child's parentage is in issue and has not been previously determined, I may determine this issue.

[11] Section 13 of the *Interjurisdictional Support Orders Act* provides rules for determining the entitlement to support and the quantum of support. In determining a child's entitlement, I'm first to apply Nova Scotia law, but where the child isn't entitled to support under Nova Scotia law, I am to apply the law of the jurisdiction where Latrell is habitually resident.

[12] In Nova Scotia, the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160 provides for the determination of a child's entitlement to support from a parent. It provides that support can be ordered from a "possible father". A "possible father" is defined in subsection 2(j) of the *Act* as a person who has "had sexual intercourse with a single woman who is the mother of a child and by whom it is possible that she was pregnant".

[13] Section 27 of the *Maintenance and Custody Act* permits me to order testing to determine paternity and, in subsection (2), it provides that if the mother refuses to submit to testing or to permit for child to be tested, I may infer from her refusal "that the test would have established that the possible father could not be the father of the child."

[14] This application proceeds on an interjurisdictional basis, rather than one where both parents are present in the same jurisdiction and the same court at the same time. To recognize the possibility that Ms. Bexson was unaware of the requirement to participate in DNA paternity testing with the consequences of her failure to participate, I am issuing this decision.

[15] Amanda Bexson and Latrell Bexson are required to provide samples to Paternity Testing Centres of Canada on or before December 31, 2014 and to provide a written confirmation of having done so to this court by January 31, 2015. Failure to do so will result in an order declaring that John Slawter is not the father of Latrell Bexson.

[16] The application will return before me on February 17, 2015 at 9:45 a.m. for review and, if there is no material from Ms. Bexson, an order will be granted declaring that John Slawter is not the father of Latrell Bexson and dismissing Ms. Bexson's application.

Elizabeth Jollimore, J.S.C.(F.D.)

Halifax, Nova Scotia