

SUPREME COURT OF NOVA SCOTIA
Citation: Van Dijk v. Van Dijk, 2010 NSSC 176

Date: 20100503
Docket: SAM DVRO 065034
Registry: Amherst

Between:

Bastiaan Van Dijk

Applicant

and

Marlene Van Dijk

Respondent

PROVISIONAL DECISION

Judge: The Honourable Justice Gerald R. P. Moir
Date of Hearing: April 15, 2010
Party: Mr. Bastiaan Van Dijk, acting on his own behalf

Moir, J.:

[1] Mr. Van Dijk applied *ex parte* for a provisional order terminating spousal maintenance retroactively under a 2006 Alberta Queen's Bench divorce judgment and corollary relief order. I advised Mr. Van Dijk that an application for a variation order is not an opportunity to revisit the issues determined on the divorce trial.

[2] Justice Macleod of the Court of Queen's Bench granted the judgment and order on February 1, 2006 in a proceeding brought by Marlene Van Dijk against Bastiaan Van Dijk under registry number 4801-120519 at Calgary. Some of the materials filed by Mr. Van Dijk, and made exhibits during the provisional hearing, suggest that the parties were unable to agree on spousal support. However, the order was made without a hearing and it seems likely that the proceeding was determined on a default basis.

[3] Mr. Van Dijk says that he thought there would be a hearing and that he would have an opportunity to be heard. When he found out about the order, he started an appeal. It appears that he failed to perfect the appeal and, on notice to Mr. Van Dijk, it was deemed to have been abandoned.

[4] Mr. Van Dijk says he took the reference to abandonment to mean that all of the proceedings, not just the appeal, were abandoned. He never paid anything on the order. To his surprise, his wages were garnished after the Alberta order was registered with this court. Also, he owes arrears in the order of \$50,000, which for him is a staggering amount.

[5] Mr. Van Dijk says he cannot afford to pay \$650 a month. He believes that amount was set on his aberrant income for 2003, which included a large settlement with Workers' Compensation on a claim that had been outstanding for some years. His 2003 gross income was \$81,077, but it was much less before and since:

2004	\$30,373
2005	\$46,446
2006	\$55,788
2007	\$46,127
2008	\$47,243
2009	\$48,309.

The evidence suggests that Ms. Van Dijk earned about \$25,000 a year when the divorce proceeding was determined.

[6] The Van Dijks were married for over thirty-five years. They had children. This would suggest a range of 37.5% to 50% of the difference in gross incomes. Going by Mr. Van Dijk's 2003 return, the guidelines would suggest a range of \$1750 to \$2300. Going by the 2006 return, the range would be \$650 to \$825.

[7] It is doubtful that the \$650 was set on Mr. Van Dijk's 2003 income. The court would have been concerned to have the most recent financial information. The 2004 return would have been available. Mr. Van Dijk's theory is also doubtful in light of the spousal support guidelines.

[8] Mr. Van Dijk is in long haul trucking. He has had steady employment and, as can be seen, he achieves consistent earnings. Like many long haul truckers, he has misgivings about his ability to keep work going as the physical limitations that result from his work, and from aging, set in.

[9] I cannot detect a change in circumstances based on Mr. Van Dijk's income. It appears that the award was conventional for spouses in circumstances like the Van Dijks including their incomes.

[10] Mr. Van Dijk suggests that Ms. Van Dijk is remarried. He claims that her 2005 T1 General is of assistance, but it says "Divorced" and it had to have been filed soon after the divorce judgment and corollary relief order.

[11] Repartnering after a divorce hearing would constitute a change in circumstances and a ground for reconsidering spousal support: *Bracklow v. Bracklow*, [1999] S.C.J. 14. However, I have no evidence of either before me and no evidence, if there was a remarriage or repartnering, of the financial circumstances.

[12] I cannot find a change in circumstances on a provisional basis. Rather than dismiss the application, I will adjourn it without day to give Mr. Van Dijk an opportunity to obtain evidence of remarriage or repartnering and of Ms. Van Dijk's current financial circumstances.