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IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA
Cite as: C.R.D.G. v. D.R.G. 2006 NSFC 37

BETWEEN:

C. D. R. G.
-APPLICANT

AND

D. R. G.
-RESPONDENT

BEFORE THE HONOURABLE JUDGE BOB LEVY

HEARD AT: KENTVILLE

DATE HEARD: OCTOBER 4, 2006

DECISION DATE: OCTOBER 19, 2006

APPEARANCES: DAVID THOMAS FOR THE APPLICANT
THE RESPONDENT D. R. G. FOR HIMSELF

DECISION

Facts: Nineteen year old student seeking maintenance from his father from whom he is estranged.

Issues: -is he a "dependent child"?
-what is the effect, if any, of the estrangement?,
-is the 'table amount', or some other amount "appropriate"?

Held: Maintenance awarded at $100 per month. Evidence was sketchy about the ability of the Applicant to meet his own needs, and the court took into account the father's obligations to his new family

By the Court:

1. C.D.R.G. is nineteen years old, having been born May 19, 1987. He is in full-time attendance in the first year of a two year business course at the Community College in Kentville with plans for a further two years at U.N.B. which would then give him a Bachelor of Business Administration. Since this past summer he lives near Kentville with his stepbrother and his stepbrother's girlfriend and travels with the girlfriend to school every day.

2. In August or October of 2005, (the evidence is in conflict), he moved out of his father's home where he had been living and went to live with his stepmother from whom is father is divorced. (He states that he never knew his biological mother.) He stayed with the stepmother for a time and then with another couple during which time he finished his grade 12. He advises that he no longer has the option of living with his stepmother as she now has newer and smaller accommodations.

3. As to how his relationship with his father went astray, the Applicant says that problems started when his father's new partner and her three children moved into the home, which, if my math is right, was about three years ago. The Applicant spoke of "ongoing problems" as a result of which he moved out. The Respondent attributed the moving out to any number of character failings on the part of the Applicant and spoke of several specific events that led to the rupture of the relationship, in particular an assault by the Applicant on the 12 year old son of the Respondent's partner.

4. There is evidence that in November of 2005 the Applicant and his stepbrother went to the Respondent's house, he says with a view to apologizing. The Respondent says that he was just there to get his things, and that the Applicant was "ignorant, arrogant, and a smart aleck" and that he used swear words. Whatever version one prefers, the day did not go well. Both agree that his father told ("invited") him to leave. There is also evidence that the stepbrother and the Applicant graduated grade 12 together in June of 2006 but that the Respondent only spoke to and congratulated the stepbrother. Specific accounts of who was responsible for the lack of contact are at odds.

5. In December of 2005 the Applicant brought this Maintenance and Custody Act proceeding against his father for support. On February 6, 2006 I made an interim order requiring the Respondent to pay $300 monthly to the caregivers on several conditions. The conditions included that the Applicant was to remain in school, exert his best efforts, and provide copies of his report cards to his father, he had to comply with the household rules of the caregivers, he was to attend such counselling as the parties agreed upon, and notify the Respondent should he fail in any condition. The matter was set over for a review in July, after the end of the school year. I expressed the hope that the father might also seek counselling and that as may be agreed by the respective counsellors there could be joint efforts at mending the relationship.

6. The father has attended the counselling. The Applicant attended once or twice and didn't go again although he testified that he has another appointment. Apart from court appearances there has been no other contact between father and

son since the graduation incident. The Applicant maintains that he wants to re-establish his relationship with his father. The Respondent indicates that he too would welcome a resumption of the relationship but that this can only happen if his son first admits that he has been totally in the wrong and unreservedly apologizes. If he does that and if there are no further problems the Respondent says that his son could reside at home rent-free and go to school. (The father lives in the Lawrencetown area so it would be quite a distance to travel.)

7. In July, in the absence of further agreement the matter was set for hearing and this occurred on October 4. The parties were the only witnesses.

8. The case raises several questions:

(a) **Is the Applicant a "dependent child"?**

The Maintenance and Custody Act, s. 2 (c), defines a "dependent child" as follows:

> "2 (c) "dependent child" means a child under the age of majority or, although over the age of majority, unable, by reason of illness, disability or other cause, to withdraw from the charge of the parents or provide himself with reasonable needs but does not include a child twenty-four years of age or older who is attending a post-secondary educational institution;"

(b) **What effect, if any, does the estrangement between father and son have on any obligation on the Respondent to pay maintenance for the Applicant?**

Sections 8 and 9 of the Maintenance and Custody Act read:

> "8 Every one
> (a) who is the parent of a child that is under the age of majority; or
> (b) ...
> is under a legal duty to provide reasonable needs for the child except where there is a lawful excuse for not providing the same."

> "9 Upon application, a court may make an order, including an interim order, requiring a parent or a guardian to pay maintenance for a dependent child."

(Note that the Act makes a distinction, as far as a legal duty is concerned, between a child under and a child over the age of majority.)

(c) **Given that the Applicant is now of the age of majority, if maintenance is to be payable, what amount is 'appropriate'?**

The Maintenance and Custody Act, section 2 (k) provides:

> "2 (k) "reasonable needs" means whatever is reasonably suitable for the maintenance of the person in question, having regard to the ability, means, needs and circumstances of that person and of any person obliged to contribute to such reasonable needs;"

Section 3 (2) of the Child Maintenance Guidelines provides:

> "3 (2) Unless otherwise provided under these Guidelines, where a child to whom a maintenance order relates is the age of majority or over, the amount of child support is
> (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
> (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each parent to contribute to the maintenance of the child."

(a) IS THE APPLICANT A DEPENDENT CHILD?

9. The statute provides no specific guidance. Neither does the Divorce Act which contains the definition of "child of the marriage" which for our purposes on this occasion is interchangeable with the phrase "dependent child". Case law across the country does not readily admit of an easy distillation and may be in a state of flux. I am not aware of any Nova Scotia Court of Appeal decisions on point.

10. The most accepted statement of the law seems to be Farden v. Farden (1993), 48 R.F.L. (3d) 60, paragraph 15, where Master Joyce of the B.C. Supreme Court wrote:

> In my view the relevant circumstances include:
> (1) whether the child is in fact enrolled in a course of studies and whether it is a full time or part time course of studies;
> (2) whether or not the child has applied for, or is eligible for, student loans or other financial assistance;
> (3) the career plans of the child, i.e., whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
> (4) the ability of the child to contribute to his own support through part-time employment;
> (5) the age of the child;
> (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
> (7) what plans the parents made for the education of their children, particularly whether those plans were made during cohabitation;
> (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

11. These criteria are very similar to what was said by the Ontario High Court of Justice in Law v. Law (1989), 21 R.F.L. (3d) 261, at page 462.

12. There is no issue taken with the evidence that the Applicant is in full-time attendance at a post-secondary education institution, that his decision to attend is reasonable and that he is applying himself appropriately. As of the date of the hearing the Applicant had not received word back as to his application for a student loan. I don't know how much he applied for, might be eligible for, how much he may receive or when. There is no evidence that he is either working part-time or looking for work. He stated that he was nearing the end of his summer's savings. I do not know the amount of those savings. His evidence is that his school-related

expenses, including tuition of $2,600, books and a number of fees would total $3,864 per year, ($386.46 per month over the ten month term). I don't know how much of these expenses, if any, have already been paid. He pays a third of the accommodation costs ($232 per month), internet and telephone totalling $71.39, food and lunches of $207.50, and a further $121.50 for transportation, laundry, hair grooming, clothes and entertainment. These expenses total $624.39 per month for an overall total including the school-related costs of $1,010.85 per month, $10,108.50 in all over the ten months.

13. In brief, while it is clear that he is pursuing post-secondary education ("other cause"), and would of course have needs, it is not clear whether and to what extent he can "provide himself with (those) reasonable needs". I can only surmise that he may not be able to obtain sufficient student aid or employment income to reach the $10,100 figure, and thus not be able to pay for his reasonable needs, but I don't know by how much he will fall short, or would fall short if, as he should, in addition to the student loan he sought and obtained part-time work.

(b) THE EFFECT OF THE ESTRANGEMENT

14. This is the nub of the case, certainly from the Respondent's perspective. Point (8) in the Farden case quoted above addresses this issue. A comparable sentiment is found in the Law v. Law decision at page 463:

> "It seems reasonable to demand that a child who expects to receive support entertain some type of relationship with his or her father in the absence of any conduct which might justify the child's neglect of his or her filial duties."

In the Law decision, the above quote notwithstanding, and in the decision of the Saskatchewan Court of Appeal decision of Hamel v. Hamel, 2001 CarswellSask 730, the courts were evidently reluctant to too quickly determine that a unilateral rejection by the child had occurred. Maintenance was ordered. This general reluctance recently found an echo in Green v. Green (2005), 14 R.F.L. (6th) 256 (Newfoundland and Labrador Court of Appeal), where, interestingly, the facts were somewhat analogous to this situation in that the child's conflict with her father stemmed from her dislike of or discomfort with of her father's new partner. In Wahl v. Wahl (2000), 2 R.F.L. (5th) 307 (Alta. Q.B.) the case law on this issue and related issues were extensively canvassed by Johnstone, J. who concluded at paragraph 67:

> "It is clear from these cases that the quality of the parent/child relationship rarely determines the matter. It is but one of the "failing" factors; that is, there must be others in relation to it, unless the circumstances are exceptionally grave."

Justice Johnstone determined, paragraph 69, that the breakdown in the relationship would be of "utmost importance" however in the matter of conditions that would be attached to any maintenance ordered, conditions that are to be found in the final paragraph of her decision.

15. There is a fairly comprehensive analysis of the case law with respect to parent and child estrangement in a paper for the 2006 Federation of Law Societies National Family Law Program. The paper, cited by counsel for the Applicant in his submission, "Making the Break": Support for Adult Children in 2006 by Marie L. Gordon, Q.C., and Gordon Zwaenepoel, notes the cases I have identified as well as others. That said, the authors do point out at page 17-1-19 that "(t)he pendulum on parental rejection swings back and forth" and proceed to identify cases holding to

the contrary, among them Web v. Strople, 2006 CarswellBC 443.

16. It is fair to say that there is not unanimity on exact role of parental rejection in the minds of judges across the country. It is obviously a question of fact in each case, "...a consideration of all the surrounding circumstances..." (Green decision, at page 268). There seems to be a reluctance on the part of the courts to too quickly lay the blame solely at the feet of the child, and an inclination on the part of many but not all judges to hold that even a finding of unilateral rejection without cause by the child will not, by itself, necessarily result in the immediate or total denial or termination of child support.

17. In the present case there is conflicting evidence as to which of the Applicant or the Respondent torpedoed the relationship and who, if either of them, is the more responsible for the breach continuing. It is likely that it is neither and that it is both. The Applicant attributes the difficulty to the presence of the Respondent's partner and her children and 'ongoing problems". The Respondent, in turn, responds with a torrent of unflattering adjectives for the Applicant.

18. I cannot conclude that the Applicant "unilaterally terminated" or unilaterally sustains the termination. Maybe the father and son are more alike in their stubbornness than either of them would wish to acknowledge. I'm not sure that the father has any idea of how domineering he comes across as being or that he has taken the time to put himself in his son's shoes when he brought the new family into the home. None of this is to endorse what the Applicant himself may have done or may still be doing to contribute to the problem, but it is to say that I cannot

honestly ascribe total blame, or even necessarily the preponderance of blame, to the Applicant for the bad blood between himself and his father.

19. In short I don't see the Applicant as having "unilaterally terminated" the relationship. That being the case I do not accept that the Applicant's conduct disentitles him to maintenance.

(c) WHAT AMOUNT OF MAINTENANCE, IF ANY, IS 'APPROPRIATE'?

20. As indicated determining an amount is difficult because I don't know for certain the status of the Applicant's student loan application, as in what might be expected and when, and I don't know how much he could be expected to earn, although it is legitimate, within limits, to assume than he can work some hours weekly at or somewhat above the minimum wage. I can only surmise that some amount of maintenance will be necessary to help the Applicant meet his "reasonable needs".

21. Exhibit #3 is a copy of the Respondent's paycheque from his employer, Michelin, to pay date September 9, 2006. It shows a year-to-date gross income of $37,416.40. Dividing that by the approximately eight and one-third month period covered from January 1 and multiplying that figure by twelve would lead one to predict a line 150 income of $53,901.00 per year. On the basis of that income the 'table amount' under the Guidelines would be approximately $469 per month.

22. The Respondent's exhibit #4 shows a monthly net income of $2,206.26. It is evident that he is taking the net amount from his bi-weekly paycheque and doubling it whereas it would be more reliable to take his net income year-to-date ($21,431.59), and divide that figure by the roughly 8.3 months from January 1 to September 9. If he had done that he would show a monthly net income of $2,572.82 after deductions, deductions which include $115.00 every two weeks for Canada Savings Bonds and further modest sums for several insurance policies among the other standard deductions. He puts his partner's net income at $720 per month. Assuming that he made the same error in calculating her monthly income, it perhaps ought to be $779.40 for a total monthly net household income of $3,352.22, not the $2,926.26 he shows on exhibit #4.

23. On that income they support two adults and her three children. He claims monthly expenses of $2,829.57, (also exhibit #4). While he may have under-estimated the household monthly income, it is also evident that this is one of those all-too-rare times when a party seems to have under-estimated his monthly expenses. The expenses claimed are in fact very modest. There is, for example only, no amount is claimed for electricity, only $40.00 per month for haircuts, an optimistic estimate of only $50.00 monthly for auto repairs and only $20.00 monthly for entertainment. It is likely that his real monthly expenses would likely be some three hundred dollars or so more than he has shown. (Counsel for the Applicant made no effort to question his claim of expenses, or, for that matter, his income.)

24. While strictly speaking he may not be under any <u>legal</u> obligation to support

his partner's three children it is not 'appropriate' in the circumstances to ignore or to seriously compromise their needs. It would appear that the three children are dependent upon him. In my opinion obliging the Respondent to pay the 'table amount' would not be "appropriate" as it would compromise the ability of this family to meet its needs.

DECISION

25. Having regard to the statute and case law referred to and to the "condition, means, needs and other circumstances of the child and the financial ability of (the) parent to contribute to the maintenance of the child...", I will order that the Respondent pay to the Applicant the sum of $100.00 per month for his support so long as he remains a dependent child within the meaning of the legislation. This support will be payable for this school year retroactive to September 1 to June 1, and the same next school year, and, in the following two school years when the Applicant is expected to be at U.N.B., from September 1 to May 1. These payments will be made through the Maintenance Enforcement Program who shall be advised of any changes that may be agreed to by the parties. The Applicant in turn will be obliged to apply himself diligently to his studies, keep the Respondent apprized of his marks and academic status, and report to the Respondent any funds applied for or received form student loans or employment.

26. I would ask Mr. Thomas to prepare the order.

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Bob Levy, J.F.C.