

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: C.D.D. v. E.K.M., 2008 NSFC 25

Date: 20080716

Docket: 08SB057168

Registry: Yarmouth

Between:

C.D.D.

Applicant

v.

E.K.M.

Respondent

Judge:

The Honourable Chief Judge John D. Comeau

Heard:

June 16, 2008, in Shelburne, Nova Scotia

Counsel:

Alexander L. Pink, for the Applicant

Terrance G. Sheppard, for the Respondent

The Application:

[1] This is an application for spousal support under the Maintenance and Custody Act.

The Issues:

[2] 1 - Entitlement

[3] 2 - Quantum

[4] 3 - Duration

The Facts:

[5] The Applicant is 36 years old and resided in a common law relationship with the Respondent from August 2001 to June 2007 (6 years). Before they met, she was employed at a gym. After, she worked at a fish plant owned by a company in which the Respondent was the only shareholder. Her duties consisted of many things including handling the finances of the company. It is her evidence that she

did it all for him including running errands for the business and for him personally which consisted of cutting his toe nails and nose hair.

[6] At home she cooked, cleaned, painted, designed and decorated, mowed the lawn, grocery shopped and did it all. He did nothing and he owns the house.

[7] When she decided she was going to further her education and she told him, “he had a fit.”

[8] Her four children, from another father, also resided with them in the house. The Respondent’s three children, who are all older, did not reside there.

The Applicant’s dealings with the Respondent’s company’s money:

[9] The Respondent is the owner of Scotland & Matthew Fisheries Limited and he is the sole shareholder of this incorporated company. He agreed to pay the Applicant \$500 a month to look after the books of the company. It appears that he gave her signing authority on the company bank account. Her other duties were to pick up things the business needed.

[10] The Applicant indicates that she was paid (she issued the cheques), a total of \$16,000 per annum but paid back \$10,000 as a loan, although she is not asking for this back. She is not a shareholder of the company and counsel for the Respondent suggests this was an employment insurance scam so the Applicant could obtain higher benefits from E.I.

[11] On June 24, 2007, the Respondent ended the relationship with the Applicant. On June 26, 2007, she wrote a cheque in the amount of \$4000 to herself from the company account before he could have her signing authority dispensed with.

[12] The Respondent refers to another company cheque in the amount of \$9000 signed by the Applicant payable to herself on June 27, 2007. The Applicant says this cheque and the \$4000 was for wages owed to her which total \$22,070. The Respondent denies there were any wages owed to her. A record of employment dated 04/04/2007 has been produced in evidence from the Respondent's company concerning the Applicant. It shows 794 insurable hours worked and purports to have the Respondent's signature on it. He says it is not his signature as he never

provided such a document to the Applicant. The total income on the document is \$14,870.

[13] With respect to the Applicant's returning \$10,000 to the company from wages, he knew nothing about this.

[14] After having reviewed the books of the company, the Respondent found a number of bills and accounts that had not been paid by the Applicant.

- Shelburne Diesel \$21,000
- Government remittance \$20,000
- Vernon d'Eon Lobster Plugs \$8,000

[15] There were also other bills with IMP and for welding. He had to refinance his boat for \$50,000 to pay some monies on the bills.

[16] The \$50,000 was not enough to pay all the corporate accounts so he sold his whole rig (boat) to pay the rest. Some of these funds were to buy another rig (boat) and start over, with just the fishing licence costing \$40,000.

The Applicant's dealings with household finances and assets:

[17] The Respondent allowed the Applicant to pay all the household bills and the household consisted of six persons including herself and the Respondent and her four children. She says she paid some of the expenses including groceries and bought curtains and appliances. The Respondent says all these items were bought with his money and that the house is in his name and she contributed nothing to the home. He paid the bills for the home, although it was actually done by her.

[18] The Applicant had no permission to use his Sears card and she was not given a supplementary card for this or Home Hardware.

[19] The Sears account is debited up to \$9600 and Home Hardware amounts to \$3000. There are also three Visa cards totalling \$30,000 in his name. As a consequence of the Applicant's use of the Sears card, she has a criminal charge pending in Provincial Court. With one of the Visas, the Applicant bought her own engagement ring.

[20] The Respondent was unaware that he had a third Visa and believes she used this for her personal purchases.

[21] When she left the Respondent's home, he says she took the fridge, stove, dishwasher, microwave, living room and dining room sets and the big screen T.V. She only left him his bed, bureau, chair and den table. She left him a T.V. with no buttons on it. The cupboards in the bathroom were also missing. All the things she took were, he says, "bought with his money!"

[22] The Applicant explains that she took 50% out of the house and most of what she has was bought with her money or were Christmas presents.

The Applicant's Income:

[23] On the date of hearing, the Applicant was receiving \$824 social assistance and the child tax credit for four children. She plans to take a two year course in business administration so she will be losing her assistance and will have to get a student loan. She also is supposed to receive \$1000 a month from her ex-husband (\$900 child support and \$100 spousal). This is in arrears.

The Respondent's Income:

[24] The Respondent has entered into another common law relationship with a woman who has one son. She also has been hired by him to do the books (accounts) of his company (less the sole cheque signing authority). His monthly income is \$5686.66. His expenses, which include gifts and school supplies for his own children, are \$11,469.35. Some of these expenses include company costs for vehicles and boat and licence payments.

The Law:

[25] The Maintenance and Custody Act provides for a common law spouse to apply for support. The Applicant is a common law spouse within the meaning of the Act.

- 3(1) The court may, on application by either or both spouses or common law partners, make an order requiring a spouse or common law partner to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the maintenance of the other spouse or common law partner.**

- 4 In determining whether to order a person to pay maintenance to that person's spouse or common law partner and the amount of any maintenance to be paid, the court shall consider**
- (a) the division of function in their relationship**
 - (b) the express or tacit agreement of the spouses or common law partners that one will maintain the other;**
 - (c) the terms of a marriage contract or separation agreement between the spouses or common law partners;**
 - (d) custodial arrangements made with respect to the children of the relationship;**
 - (e) the obligations of each spouse or common law partner towards any children;**
 - (f) the physical or mental disability of either spouse or common law partner;**
 - (g) the inability of a spouse or common law partner to obtain gainful employment;**
 - (h) the contribution of a spouse or common law partner to the education or career potential of the other;**
 - (i) the reasonable needs of the spouse or common law partner with a right to maintenance;**

- (j) **the reasonable needs of the spouse or common law partner obliged to pay maintenance;**
- (k) **the separate property of each spouse or common law partner;**
- (l) **the ability to pay of the spouse or common law partner who is obliged to pay maintenance having regard to that spouse's or common law partner's obligation to pay child maintenance in accordance with the Guidelines;**
- (m) **the ability of the spouse or common law partner with the right to maintenance to contribute to his own maintenance. R.S., c. 160, s.4; 1997 (2nd Sess.), c. 3, s. 3; 2000, c. 29, ss. 5, 8.**

Obligation of maintained spouse or partner

- 5 A maintained spouse or common law partner has an obligation to assume responsibility for his own maintenance unless, considering the ages of the spouses or common law partners, the duration of the relationship, the nature of the needs of the maintained spouse or common law partner and the origin of those needs, it would be unreasonable to require the maintained spouse or common law partner to assume responsibility for his maintenance, and it would be reasonable to require the other spouse or common law partner to continue to bear this responsibility. R.S., c. 160, s. 5; 2000, c. 29, s.8.**

Entitlement:

[26] In *Bracklow v. Bracklow*, 44 R.F.L. (4th) 1, [1999] 1 S.C.R. 420 McLachlin, J. stated that based on statutory support objectives, there are three types of support: compensatory support, non-compensatory support and contractual support. A person may have to pay support on a needs and means basis, even if his spouse was not economically disadvantaged by the roles adopted in marriage. Where a pattern of economic dependence had developed between the spouses during cohabitation, spousal support could be ordered by agreement or implied agreement.

Non-Entitlement:

[27] Since *Bracklow* supra, entitlement to support is usually not an issue because proof is necessary that the spouse suffered no economic disadvantage from the marriage and no pattern of economic dependency developed during the parties' relationship.

Conclusion/Decision:

[28] The Applicant entered into the relationship with the Respondent following a failed marriage. She brought with her four children of her former spouse, along with a requirement that he pay child support of \$900 and spousal support of \$100. This income, it appears from the evidence, was not regularly forthcoming and the Applicant had little else except the child tax credit. When she met the Respondent, she left her job at a gym and took a job with him. Although he had indicated he paid her \$500 a month, she had control of the company's bank account and his personal credit cards. (No evidence she stole them from him. He must have given them to her.) It appears she spent more than she should have and neglected some of the company bills but it was her who kept attention to the company's finances and not him.

[29] The evidence indicates that much of the Respondent's personal finances are tied up with the company's and, as they say, "one robs Peter to pay Paul."

[30] In her evidence, the Applicant says she used some of her money to pay household accounts. There is no evidence that he gave her an allowance to run the household but because of the evidence linking personal finances with corporate

finances, it appears some company funds were used to run the house and so were the Respondent's personal credit cards, balances of which he never paid attention to.

[31] When considering what the Applicant took (in assets) from the home when she left and her attempts to get cash out of the Respondent's company, she suffered no economic disadvantage from the common law marriage. In a way, it was a "gold mine" for her where she was able to have access to personal and corporate funds.

[32] The Applicant's pattern of economic dependence developed during the relationship and consequently, she is entitled to spousal support. (See *Bracklaw supra*)

[33] This is one of those cases where quantum and duration is determined by use of the advisory guidelines. For the purpose of the Guidelines, the court assigned \$70,000 a year to the Respondent and \$12,000 to the Applicant. The court is assigning about \$2900 more income (gross up) to the Respondent, because investment income in his financial statement is only an estimate. It appears the

Applicant took more assets than she was entitled to (see s. 4(k) of the M.C.Act); that is to say, some items were not her separate property and as a result the court will use the lower N.D.I. of 7.5% which translates into monthly spousal support of \$363. The duration ranges from 2.5 to 5 years and the evidence of the Applicant is she is taking a two year business administration course and the court determines that it will take 3 years to comply with the provision of section 5 of the Maintenance and Custody Act.

[34] Counsel for the Applicant shall prepare an order for spousal support in the amount of \$363 a month for a period of three years starting July 1, 2008 and thereafter on the 1st day of each month. Payments are to be made through the Maintenance Enforcement Program.

Judge John D. Comeau
Chief Judge of the Family Court
for the Province of Nova Scotia