

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** E.O. v .M.M., 2010 NSFC 17

**Date:** 2010 06 23

**Docket:** FLPIOS-068060

**Registry:** Bridgewater

**Between:**

E. O.

Applicant

v.

M. M.

Respondent

**Judge:**

The Honourable Judge William J. Dyer

**Heard:**

June 23, 2010, in Bridgewater, Nova Scotia

**Written Reasons:**

July 20, 2010

**Revised Decision:**

The text of the decision has been revised to protect the identity of certain parties. This revised version is released on November 3, 2010.

**Counsel:**

Robert D. Chipman, for the Respondent, M.M.  
E.O., not present (unrepresented)

**By the Court:**

[1] E.O. brought an application against M.M. under the **Interjurisdictional Support Orders Act (ISO)** in which she claimed maintenance for the benefit of the child, A.M., who is under E.O.'S care and custody in Ontario by virtue of a series of (Ontario) court orders. M.M. and E.O. are sisters; A.M. is M.M.'s ten year old daughter.

[2] E.O. appears to have been self-represented when she started her application in or about May, 2009. *Pro forma* documents were completed by her and were supplemented by handwritten narratives about the past and present circumstances of the parties and the child. E.O.'s wish to make negative comments about her sister's lifestyle choices and the impact on the child may be understandable but, with respect, I have necessarily disregarded those portions of her materials which are clearly personal opinion, speculative, argumentative, or otherwise inadmissible.

[3] To set the stage for my decision, I am mindful that every parent is under a duty to provide for the reasonable financial needs of their children. When determining the amount of maintenance to be paid for a dependent child, the court must do so in accordance with the **Child Maintenance Guidelines (CMG)**. And, under the **CMG**, the amount of basic child support is generally the amount set out in the applicable Table as it relates to the income of the party against whom the order is sought. The Nova Scotia Table applies because of M.M.'s residence here.

[4] Only a small patchwork of information about the past litigation between the sisters was provided; but I find there is a legal history going back to 2003 or early 2004. In looking at an interim order made in late January, 2004, an Ontario colleague was obviously alert to the child support obligations not only of M.M. - but also the child's father. A child support order was made against him based on income information provided by the father pursuant to the Ontario Guidelines.

[5] By December, 2004, it appears that the court still had the parents' support obligations in mind because ongoing support by the father was imposed again and, on the same occasion, M.M. was ordered to keep E.O. and the father advised of

any change in her employment status and to provide financial disclosure about such employment.

[6] There was a contested hearing in October, 2007 before a Justice of the Ontario Superior Court of Justice, Family Court, at Oshawa which resulted in an order that E.O. would have custody of A.M. and that M.M. would have access on specified occasions. However, this order was silent on the issue of child support, if any, to be paid by M.M. to E.O. M.M. stated the parties will be back before a Justice this Fall to review the parenting arrangements. A hearing date has apparently been set; and M.M. plans to attend and participate.

[7] No transcripts of the past hearings were provided. And, I do not have the benefit of any written decision(s). As a result, I have resorted to what appear to be the handwritten endorsements of one or more judges and copies of court orders sent along by E.O.

[8] M.M.'s evidence before me was to the effect that while living in Alberta, during 2006 until 2007, she worked at an Edmonton hotel for a brief period and had minimal income. She said she worked at a department store in 2008 and she provided a record of employment from that source indicating total income was less than \$1,000.

[9] M.M. denied a written allegation by E.O. that she owns "rental property", including but not limited to one or more hunting camps. Indeed, M.M. flatly denied that she owns any real estate.

[10] E.O.'s application also touched on M.M.'s entitlement to a share in the capital and income from their late father's estate. The father died December 25, 2007. An uncertified photocopy of his Last Will and Testament is appended to E.O.'s application. The estate Executors are the deceased's brother, nephew and cousin.

[11] Apparently the Will has been admitted to Probate, but there is no evidence that the estate has been settled. After payment of expenses, the Will establishes several trusts. One trust is for M.M. She is entitled to 20 percent of the estate. However, her share of the capital and accumulated income is not to be released to her until she reaches the age of 50. M.M. is now 38.

[12] There is authority in the Executors to encroach on the income and capital of this share and to advance money to M.M. There was no evidence about the estate's value. More to the point, the evidence before me was that there have been no advances whatsoever. Indeed, M.M. said she has been provided with next-to-no information regarding the administration of the estate and that she has no knowledge about its current status.

[13] I observe in passing that should M.M. die before attaining the age of 50 years, that her share of the residue of the estate will be transferred to A.M. for whom it appears a separate trust was also established. The child's share is the same as her mother's – 20 per cent. There is no evidence as to whether or not E.O. has asked the Executors to advance income and/or capital for A.M.'s benefit.

[14] M.M. is currently unemployed. She lives in a common-law relationship. Her common-law spouse is also unemployed. M.M. provided financial documents to support her assertions regarding her total current family income. Department of Community Services records show that current household income [derived entirely from public assistance] is about \$1,260 monthly. In 2009, her partner's 2009 total income from all sources was less than \$14,000. From that income he contributes to M.M.'s support and that of two sons by another relationship who live with them. (M.M.'s partner, of course, has no legal duty to contribute to A.M.'s support.)

[15] Based on the uncontradicted evidence before me, I am satisfied that M.M.'s current income from all sources is below the \$8,000 annual income threshold for payment under the Nova Scotia Tables. Therefore, no support is ordered at this time.

[16] M.M. informed the court that she is prepared to advise E.O. of any change in her circumstances and to provide her with a copy of her personal income tax returns and Notices of Assessment annually. I will so order.

[17] In reaching my decision, I find that M.M. is not deriving any income from her late father's estate and that she has yet to receive any capital from that estate which, if invested, might earn income if properly invested. M.M. stated an intention to clarify the status of the estate administration. If this results in any

material change in her financial circumstances, M.M. must provide further disclosure.

[18] Mr. Chipman shall prepare an order incorporating the outcome. A copy of the order once approved shall be forwarded to the reciprocating jurisdiction, along with a copy of this decision.

**Dyer, J. F. C.**