

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *White v. White*, 2015 NSSC 366

**Date:** 2015-12-22

**Docket:** *SPD-086840* No. 1205-003255

**Registry:** Pictou

**Between:**

Karen Nadine White

Petitioner

v.

Glenn Parker White

Respondent

**Judge:** The Honourable Justice Margaret Stewart

**Heard:** November 13 and 19, 2015, in Pictou, Nova Scotia

**Written Release:** December 22, 2015

**Counsel:** Peggy Power for the Petitioner  
Lloyd Berliner for the Respondent

## **BY THE COURT:**

[1] On June 23, 2013, Karen White petitioned for divorce. She and Glenn White had separated one month earlier, on May 21, 2013. An answer was filed in April 2014. By way of settlement conferences in August and September 2015 all matrimonial and property issues were resolved.

## **ISSUES**

[2] The issues are threefold:

1. What is Glenn White's ability to pay spousal support?
2. What is the quantum of spousal support?
3. Should security be granted?

## **DIVORCE**

[3] It is two-and-one-half years post-separation, and I am satisfied on the evidence that there is no prospect of reconciliation. All jurisdictional requirements have been met and the divorce is granted.

## **LAW**

[4] An entitlement to compensatory support may be established where a spouse's ability to achieve self-sufficiency has been compromised by family commitments or where one spouse conferred a substantial career advantage on the other. Non-compensatory support considers a spouse's "actual ability to fend for herself or himself and the effort that was made to do so" (*Bracklow v Bracklow*, [1999] 1 S.C.R. 420, at para 40).

[5] Spousal support is governed by s. 15.2 of the *Divorce Act*, R.S.C. 1985, c. 3 (2d Supp). In order to determine entitlement and quantum of support, it is necessary to consider the objectives set out in s. 15.2(4) and (6), while acknowledging no one objective to be paramount.

[6] It is clear from *Bracklow*, supra, as well as *Moge v Moge*, [1992] 3 S.C.R. 813, and the 2005 *Spousal Support Advisory Guidelines*, that the longer the

relationship and the closer the economic union, the stronger the presumptive claim becomes for an equal sharing of the income stream.

[7] The case law is clear that the term “means” in section 15.2(4) of the *Divorce Act* is not restricted to income earned but requires examination of capital and income earning capacity. The Supreme Court of Canada in *Leskun v. Leskun*, [2006] 1 S.C.R. 920, at para. 29 stated the following:

There is no support in the case law or in logic for the proposition that the chambers judge was wrong to take into account the appellant's capital assets acquired after the marital break-up. In *Strang v. Strang*, [1992] 2 S.C.R. 112, the Court stated that the traditional understanding of the word "means" includes, "all pecuniary resources, capital assets, income from employment or earning capacity, and other sources from which the person receives gains or benefits" (p. 119). J. D. Payne and M. A. Payne elaborate as follows:

The word means includes all pecuniary resources, capital assets, income from employment or earning capacity, and any other source from which gains or benefits are received, together with, in certain circumstances, money that a person does not have in possession but that is available to such person. (*Canadian Family Law* (2001), at p. 195)

[8] The Nova Scotia Court of Appeal in *Richards v. Richards*, 2012 NSCA 7, confirmed that “means” is a broad term that should be generously interpreted to give effect to the statutory purposes of spousal support, and stated that it “would include all financial resources, capital and income, as well as earning capacity” (para. 49).

## **POSITIONS**

[9] Mr. White submits he is not in a position to pay spousal support, having lost his job as of August 31, 2015. He became redundant when his company reduced its three operation managers to two. He requests that no support be ordered payable to Mrs. White, with the provision that support be reviewed upon his securing employment. He states that he is willing to pay spousal support wherever he is located, as he has done since separation, and will advise Karen White directly by e-mail, through the children, or through her counsel on obtaining work. Entitlement is not in dispute.

[10] Given his experience, the state of the oil industry and recent discussions he has had, Mr. White feels his best work opportunities lie in Asia and Middle East where work continues despite a depressed market. It is his intention to live and work out of the Philippines. It is also where the family of his girlfriend resides.

[11] Glenn White testified that before he went on vacation to the Philippines for 12 days in July, he knew the company was going to keep reducing employees and had some idea that it had reached his level. This was confirmed to him a day or so before he received written notice dated July 29, 2015, under company seal and signed by the ME, HR and GR Manager. It set the termination date as August 31, 2015, and last working date as July 29, 2015, to allow for the 30 days' notice requirement with pay as per the October 1, 2013, contract. He advised Karen White of this by e-mail on July 30.

[12] Concerned for his own job given the cuts by his company to its labour force in 2014 and learning from discussions with others that managers were being cut, in February 2015, some six months prior to receiving his letter of termination, Mr. White registered with a head-hunting company out of Australia, with which he remains in contact. In the first week of October he mailed out his resume with contact e-mail particulars to 4 international oil companies. His timing was such that there was no opportunity to provide an acknowledgment from any of them by trial date. In October, after taking his son to a hockey game in New Jersey and concert in Nashville for his birthday, he attended at the offices of his former employer, Rowan, in Houston, Texas, to discuss any work prospects that they might be aware of and to reiterate his availability and willingness to work anywhere in the world. This same message through phone calls was provided to other people in the industry.

[13] Karen White submits that Mr. White orchestrated his redundancy and effectively left his employment voluntarily on the eve of their upcoming settlement conference. In e-mail exchanges between them in June 2013, he threatened that he would stop working and retire. She seeks indefinite spousal support.

[14] Mr. White acknowledges the June e-mails reflect a response that should not have been made. At that time, he had just been released from hospital in Bahrain and had learned through his daughter of the need to discuss the state of his marriage with his wife, he testified that he was quite upset, disgruntled and disappointed. This state of mind was heightened by a lawyer's letter asking for support of \$17,000 per month. Karen White confirms that he was "probably"

surprised that they were separating. Comments allegedly made to others about his work situation and his intentions that were raised in cross-examination were unsupported, as only the parties testified. Mr. White acknowledges saying “something” to a friend of his wife that he probably should not have said on the second day he was home this past summer. He commented on an interview he gave to the local paper by pointing out the various factual errors in it and stood by his intentions to work and make spousal support payments upon obtaining employment. At least twice in his evidence, he indicated his optimism about finding work within the next few months.

## **FAMILY HISTORY**

[15] Both born in New Glasgow, Nova Scotia, the parties Karen White (April 25, 1959) and Glenn White (July 2, 1956) are now 56 and 59 years of age, respectively. They married after an eight-month cohabitation, at ages 24 and 27, on December 30, 1983, and separated some thirty years later on May 21, 2013. They have two independent adult children: Richard, born October 22, 1986, and Kaela, born June 28, 1988.

[16] Glenn White was employed, throughout the marriage and until August 31, 2015, by the same international oil company, Rowan, or its subsidiaries for a total of 35 years. Their lifestyle was more than comfortable, with such amenities as access at times to the company jet.

[17] Glenn White left school in grade 10, joined the army, and later, in July 1980, became a labourer on Rowan’s off shore oil rigs. A very successful career unfolded. By 1990, he had become offshore installation manager, doing 21- or 28-day on and off rotations offshore in Nova Scotia, the Gulf of Mexico, the North Sea and Indonesia. By 1997, he became a shore-based rig manager living in New Glasgow while working and staying in the Dartmouth during part of the week and being on-call on the weekends. By 2000, he moved to Rowan’s office in Houston, where he and his family lived for four years. He worked from home. The company paid for their housing and their daughter’s private school.

[18] Mr. White was then transferred to Rowan’s European subsidiary, Rowan Drilling UK, and worked out of Aberdeen, Scotland. In order for his daughter to graduate high school, she and her mother remained in Texas in 2005 while their son went to school, played hockey and resided in the home they purchased in New Glasgow. For three summers, he worked for his father in the oil industry.

[19] In 2006, Mr. White was promoted to Operations Manager, and in 2008 to General Manager of the company for Europe and Africa. By 2011, he was earning \$408,377 a year. In 2011, he was asked to relocate to Saudi Arabia as Operations Manager in the Middle East region. As time was needed to acquire the necessary visa and credentials, he commenced this new position on May 1, 2012, and held it until August 31, 2015. Although he referenced it as a demotion, he earned \$559,267 in 2012 as Operations Manager of the Middle East. He lived in the Kingdom of Bahrain and drove three or four hours a day to work.

[20] By way of letter with attachments dated August 31, 2013, some three months after the parties' separation, Mr. White was advised that Rowan Canada Limited, which had always been his designated employer, was closing as an entity of Rowans on October 31, 2013, but he was asked to continue as part of Rowan's international team, employed now by its new company RD International Services Pte. Ltd ("RDIS") out of Singapore. There would be no break in his employment and he was able to continue to use his start-up date with Rowan Canada Ltd. For 16 months, until December 31, 2014, he continued to receive Canadian bonus payments for holiday, vacation and sick days. Rather than end his career, he submitted his paperwork and accepted the offer of a position with RDIS and the \$500 USD consideration pay.

[21] As per his Statement of Income, Mr. White began working for RDIS on October 1, 2013. In 2013, he earned \$501,422, through his old company and \$82,550 USD thru RDIS. In 2014, he earned \$594,482 USD. Per his March 23, 2014 expense statement, besides accounting for payments of \$7,000 per month spousal support, some \$11,000 surplus per month was allotted to retirement savings, savings and extra cash flow while the company continued to deduct pension payments. In 2015, he worked until August 31 and earned \$295,232.42 USD; basically, monthly earnings of \$23,150 (\$185, 201.12) with incentive payment, home leave, statutory holidays and stock dividends making up the rest. The Canadian bonus payments ended December 31, 2014. His August 2015 pay statement also reflects that he was in receipt of restricted stock valued at \$86,836 USD. Company pension deductions for 2014 and 2015 total \$16,660 USD.

[22] Since returning home in August until his departure just prior to counsel's submissions, he resided with his son putting gas in his truck, paying for some groceries, meals out and giving him a couple thousand dollars. His time awaiting trial was spent golfing most of the local courses, visiting his daughter on Prince Edward Island, chasing the ace in Cape Breton, going to the Casino in Halifax,

attending local bars with his son as well as going on the aforementioned trip to the United States.

[23] Karen White has been out of the workforce since December 1988. She obtained her grade twelve equivalency by finishing grade 10 and taking two years of secretarial college, prior to the widespread use of computers. Throughout the cohabitation and marriage, except for a brief time prior to December 1988 when she worked at a law office and then did a short period of bookwork at home, she was entirely dependent on her husband as the income earner, which was a result of the parties' mutual agreement following an incident with one of the rigs. She is now 56 years of age with a lengthy absence from the labour force and no significant work experience or marketable skills as well as functioning with acknowledged pain issues. During the marriage, she raised the children and focused on family responsibilities, and accommodated Mr. White's career obligations and needs. She functioned as his Power of Attorney, was involved in major decisions and purchases, and maintained their home and finances. During the fifteen years when he was located outside of Canada, she looked after the home front and family, allowing him to focus on work wherever it took him. I am satisfied that she is not able to achieve economic independence.

[24] Both parties acknowledge that their children lacked for nothing during their marriage. They both continue to contribute to their adult children financially. Their daughter has not worked for seven months. Mrs. White provided her with a \$25,000 down payment on a trailer and paid the mortgage a couple of times as well as supplying food and paying some bills for her. While home, Mr. White paid off a \$9,000 recreational vehicle debt for her.

[25] Each party acknowledges that the other has health problems. Glen White has issues with a painful knee and back as well as high blood pressure that resulted in his hospitalization in May 2013, and presently needs medication. Karen White has fibromyalgia which causes her to experience extreme pain. Cold damp weather is problematic for her. She exercises, attends physiotherapy once a month, and takes ibuprofen.

## **AGREEMENTS**

[26] In the fall of 2013 the parties reached an informal agreement whereby Karen White received tax-free support of \$7,000 per month from the separation date by way of a lump sum of \$28,000 for June-September 2013 and \$7,000 monthly

thereafter. Following settlement in September 2015, this was modified to \$4,000 per month tax-free pending this hearing, with the last of the three payments made on November 1, 2015. There are no stated conditions concerning either amount. No order was issued.

[27] As a result of the August and September 2015 settlement conferences, the matrimonial property was divided equally. Karen White received an equalization payment of \$95,000 and retained the matrimonial home valued at \$263,000 (net); monies in the joint saving account, safety deposit box and home safe totalling \$140,000; a burial plot valued at \$525; a 2009 Tahoe valued at \$15,000; a 2011 BMW valued at \$21,000; a BMO RRSP valued at \$42,561.21; a Wood Gundy RRSP valued at \$52,470.17; and a \$7,000 U.S. Dollar account. The cash in the bank account, safety deposit box and safe has been spent. \$10,000 was used to install a kitchen in the basement in order to rent out two downstairs bedrooms. The two vehicles were traded in for \$25,000 and a new Honda CRV purchased with the proceeds, along with a \$14,000 loan with a monthly payment of \$416.

[28] With respect to pecuniary assets, it appears that much of the \$363,029.99 Glenn White received for cashing in stock on June 17, 2013, as per his Charles Schwab statement, has actually been spent on such things as bad investments, his children, vacations, and flights for visits. The sale of these shares occurred a month after separation. Specific examples that he provided of his spending all occurred during the period of his employment. Although his 2014 property statement and Charles Schwab statement show a restricted stock amount of \$302,158.86 (excluding taxes and tax implications of share sale) as of October 23, 2013, some four months later, Glenn White testified to selling all of his stocks earlier and provided no further explanation except that he presently holds \$103,000 worth of shares. The \$302,158.86 amount was calculated in the division of property retained by Mr. White along with Nova Scotia land valued at \$125,700 (net); a Sunlife RRSP valued at \$200,425.07; a BMO RRSP valued at \$37,150.56; Investa valued at \$47,002.25; and a pension amount of \$18,354.69 invested in Bermuda Ltd.

## **POST-SEPARATION RESOURCES AND ASSETS**

[29] As for post-separation pecuniary resources and assets, Mr. White testified to acquiring some \$21,746 in pension benefits (\$40,000 less a divided and equalized amount of \$18,354); to his son holding some \$80,000 in cash savings for him; to recently sending \$35,000 to the Philippines for rental accommodations; to having approximately \$103,000 worth of shares; and, prior to closing out his HSBD



account in Bahrain, to having funds worth approximately \$27,000 CDN in his saving account as well as \$5,260 CDN in a term deposit. None of the above were part of the equalization or division of matrimonial assets.

[30] With the installation of a basement kitchen, Mrs. White had income for the past two summers of \$1,000 from renting out two bedrooms downstairs on a weekly basis for two months.

[31] In contrast to her October 2013 monthly expenses of \$13,025, Mrs. White's November 2015 statement of expenses indicates a significant lifestyle change with expenses of \$6,667.29 with no provision for savings.

### **SPOUSAL SUPPORT**

[32] I have found that Mrs. White is not able to achieve economic independence. There is no doubt Karen White has an entitlement to both compensatory support and non-compensatory support, as per *Bracklow, supra*, and *Moge, supra*.

[33] Although fortuitously occurring on the eve of returning home to address the divorce issues, I am satisfied that Mr. White's employment termination on August 30, 2015, was not voluntary for the following reasons: (1) his subsequent actions after the May 2013 e-mails of making regular agreed-upon spousal support payments for two-and-one-half years prior to trial; (2) not seizing the moment three months later in late August 2013 to leave his thirty-plus-year employment; rather, he contracted with Rowan in Singapore; (3) his efforts through a head-hunting company to investigate work prospects when Rowan was in the process of downsizing various positions that he was overseeing; (4) his stated acknowledgement that circumstances of the marriage require support and his expressed intention to pay it; (5) his not testifying to an absence of work prospects, or the impossibility of finding work beyond his own physical limitations of working on the rigs, but rather, projecting a return to the workforce within months and referencing locations of possible work, while being receptive to any location with particular interest in pursuing potential work in Nova Scotia; (6) Mrs. White's own acknowledgment that downsizing in the oil industry was occurring.

[34] As such, I accept Mr. White's evidence. His present employment circumstances were not brought about for the purpose of frustrating the existing spousal support arrangement. The termination and thirty days' notification of July 29, 2015, complied with the conditions of no-cause termination set out in the

August 2013 letter that Mr. White accepted and functioned under for some two years.

[35] I am not prepared to find Mr. White has no ability to pay spousal support. Although his income is presently compromised, Mr. White has significant earning capacity and except for physical rig work, has an ability to work in the industry. He is knowledgeable and experienced. He wants and intends to work, is optimistic that work is available and, in describing possibilities, he did not suggest that in all likelihood his Rowan income would not be feasible. He has skill-sets inclusive of extensive budgeting and managerial abilities that are transposable to other areas in the workforce.

[36] In addition since separation, Mr. White has acquired resources in the form of shares and I find that he he has significant cash savings. I say this because, when I consider a 19-month post-separation period of earning well in excess of \$500,000, eight months earning \$295,232, and Mr. White's access to and use of \$363,000 since June 2013, I cannot accept that he only saved approximately \$147,000. By his own March 2014 expense statement, he was budgeting some \$11,000 in savings and surplus per month, and \$2,000 for entertainment, while having sole access to and use of \$363,000 of cashed-in shares for that very purpose. Certainly, since receiving his last pay in August 2015 and returning home, his living expenses were nominal, even if this cannot be said for his entertainment. Mr. White was not forthright in accounting for all of his savings. Even acknowledging \$12,000 for the last three months of support, and what is now prepaid rent of \$35,000, I would estimate his savings to be at least between \$250,000 and \$304,000, more likely close to the higher amount. These are savings that could be said to flow from Mrs. White not receiving an equal sharing of the income stream in circumstances where this could be contemplated: no children, no debt, and a 25-year agreement to remain out of the work force, all within a 30 year relationship. Any spousal support payable will now be taxable to Mrs. White.

[37] Mr. White has the means by virtue of his "pecuniary resources, capital assets, and earning capacity" (*Leskun*, supra) to pay spousal support based on an income of at least \$350,000, although his means are likely considerably greater. Thus, indefinite periodic spousal support is set at \$11,000 per month payable on the 1<sup>st</sup> day of each month commencing December 1<sup>st</sup>, 2015. Although Mrs. White's compensatory claim is not adequately addressed by this monthly amount, this periodic quantum is nonetheless appropriate at this time given the circumstances and the statutory provisions governing the hearing.

## SECURITY

[38] Under S.15.2 (1) of the *Divorce Act* a court may make an order requiring a spouse to secure and pay periodic support. Same has been requested. Maintenance shall be secured against all of Mr. White's personal and real property in Nova Scotia inclusive of the \$80,000 held by Richard White for his father. I also order that Karen White remain as beneficiary on the life insurance held by Mr. White while she is in receipt of support and that Mr. White's consent allowing Mrs. White to confirm her status as beneficiary on a yearly basis be provided by this order being consented to as to form by his counsel.

## CONCLUSION

[39] I grant the following relief:

- (a) A divorce;
- (b) A division of matrimonial assets as agreed;
- (c) An award of indefinite periodic spousal support, that is subject to s. 17 of the *Divorce Act* in the monthly amount of \$11,000 commencing on December 1, 2015 and first of the month thereafter;
- (d) Security for support against real and personal property held by Mr. White in Nova Scotia inclusive of his \$80,000 held by Richard White and while in receipt of support, Karen White is to remain as beneficiary on Mr. White's life insurance.

[40] If the parties cannot agree on costs, any submissions should be in writing and forwarded on or before January 14, 2016. Ms. Power is to draft the orders.

Stewart, J.