

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Richard v. Salloum, 2004 NSSC 4

Date: 20040109

Docket: 1201-54120

Registry: Halifax

Between:

Ronald Peter Richard

Applicant/Respondent

- and -

Christine Salloum

Respondent/Applicant

Judge: The Honourable Chief Justice Kennedy

Heard: July 22, 2003, in Halifax, Nova Scotia

Written Decision: January 9, 2004

Counsel: Christine Salloum self-represented
Kathleen Hall for Ronald Richard

By the Court:

[1] This is an application brought by Christine Salloum, self-represented, asking that the court “impute income” to her former husband, the respondent, Ronald Richard, pursuant to s. 19 of the Federal Child Support Guidelines. The respondent is also self-represented.

[2] The respondent has specialized training in the field of computer technology and the internet.

[3] The applicant has primary custody of two children of the marriage, Nicole Diane age 18, attending university and Katherine Elizabeth age 15, and in high school.

[4] The divorce was granted November 4, 1999, at which time the respondent was ordered to pay a total of \$850.00 per month in child support to the applicant (\$800.00 pursuant to the Child Support Table and an additional \$50.00 per month as his share of the extraordinary expenses created by the children’s participation in sports).

[5] At the time, the respondent was found to have an annual income of \$58,285.00 from employment at the Queen Elizabeth II Hospital in Halifax. The respondent lost this job, proximate to the order being issued.

[6] He has been in and out of work at various jobs and locations since that time.

[7] He provided a history of his subsequent employment as follows:

[8] Between December 1999 and September 2000, he was employed with “Planet Intra” in Ontario, where he earned \$75,000.00 per annum and made maintenance payments based on that amount.

[9] During October and November of 2000, he was unemployed, but made payments of \$850.00 a month, the original amount ordered.

[10] From January through March of 2001, the respondent was employed in California with ANTS.com at a salary of \$75,000.00 per annum (U.S.) and made appropriate maintenance payments.

[11] When that job ended, he found another job in June of 2001, with BONDDESK.com at the rate of \$85,000.00 per annum (U.S.); however, that job ended in September of 2001.

[12] Between October 1st, 2001 and June 26, 2002, he was again unemployed, returned to Nova Scotia and did not make maintenance payments.

[13] On that June date he got a job with EDS Canada at \$32,000.00 per annum and by agreement, he paid maintenance of \$506.00 per month. That job ended April 3, 2003.

[14] He made maintenance payments for the months of April and May 2003, using severance money from the last mentioned job.

[15] As of the date of the hearing, the respondent remained unemployed, in receipt of Employment Insurance of \$1,775.00 per month and paying the corresponding Guidelines amount of \$300.00 per month.

[16] The applicant questions the respondent's inability to obtain and maintain steady, long-term employment. She testified and argues that he is irresponsible in his moving from job to job, and as the father of two teenage children, he cannot afford the luxury of employment instability.

[17] She asks this Court to impute income to him based on an average of his income over the last three years at roughly \$56,000.00 which would provide child support at \$750.00 per month.

[18] The applicant has expressed her frustration with the circumstances, trying to provide for teenaged daughters without consistent, reliable assistance from the respondent. Her dilemma is obvious and her concern is understandable.

[19] The ability that this Court has to impute income to the respondent for purposes of determining the child maintenance payable, is based on s. 19 of the Guidelines, a portion of which reads:

Imputing Income

19.(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of the child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

[20] A finding as to intent is central to the issue.

[21] Ronald Richard testified that he is one of “thousands of people in my field constantly looking for long-term work.”

[22] He made reference to the dramatic downward trend in the computer internet sector, starting at the end of the 1990's and continuing to date.

[23] He explained that, whenever a job ended, he would seek and take other employment as soon as he could find it, and that he consistently disclosed his income and paid maintenance accordingly.

[24] The respondent gave evidence as to the effort he has made since his most recent job loss to obtain employment. I have no reason to question his determination in this respect, or to doubt his sincerity.

[25] I do not find on this evidence that the respondent has been intentionally under employed or unemployed.

[26] While it is troubling, given his obligations, that he has had the employment problems that are detailed in evidence, it is not shown, nor can it be inferred, that he has intended to be underemployed, or out of work, in an effort to avoid maintenance obligations, or for any reason.

[27] I do not find, on the totality of the evidence, that this is a case in which I can properly “impute income” to the respondent, pursuant to s. 19 of the Guidelines.

Chief Justice Kennedy

Halifax, Nova Scotia