SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Eisnor v. Eisnor, 2011 NSSC 482

Date: 20111223
Docket: 43398
Registry: Halifax

Between:

Trina Eisnor

Applicant

v.

Gregory Eisnor

Respondent

Judge:	The Honourable Justice Theresa M. Forgeron
Heard:	December 13, 2011, in Halifax, Nova Scotia
Written Decision:	December 23, 2011
Counsel:	Trina Eisnor, applicant, self-represented Gregory Eisnor, respondent, self-represented

By the Court:

[1] **Introduction**

[2] Trina and Gregory Eisnor are the separated parents of 11 year old Emma and 9 year old Rebecca. They are seeking to vary a 2005 court order as it relates to child and spousal support. After the variation application was filed, the parties reached agreement on two issues. First, they agreed that spousal support was no longer payable. Second, they agreed that child support will be readjusted annually based upon the prior year's income.

[3] Both parties testified during the hearing held on the afternoon of December 13, 2011. Outstanding issues concern the date that spousal support payments stopped, and the percentage of Mr. Eisnor's contribution to sec. 7 expenses.

[4] **Issues**

[5] The following two issues will be determined in this decision:

a. When did the spousal support payments end?

b. What parental contribution should be assigned to the payment of the sec. 7 expenses?

[6] **Background Information**

[7] The parties separated in June 2005, after an eight year marriage. A consent order issued on December 13, 2005 which contained a detailed agreement on parenting and maintenance issues. The children were placed in the primary care of Ms. Eisnor, and access was provided to Mr. Eisnor. Mr. Eisnor was ordered to pay child support of $717 per month based on an annual income of $53,000. Spousal support of $533 per month was awarded given the circumstances of the parties, including the fact that Ms. Eisnor's annual income was only $9,100.

[8] Since the issuance of the 2005 consent order, the parties circumstances have changed. Ms. Eisnor re-entered the work force in April 2007. Further, Mr. Eisnor's income increased substantially. He now earns in excess of $90,000 per

year. Also, sec. 7 expenses, such as child care and activity expenses are now also incurred on behalf of the children.

[9] In addition, a dispute has arisen about the nature of the maintenance payments made by Mr. Eisnor to Ms. Eisnor after Ms. Eisnor re-entered the work force in April, 2007. At that time, Ms. Eisnor stopped claiming spousal support as income for taxation purposes. Ms. Eisnor stated that the maintenance she received represented the increased table amount of child support due to her, together with contribution for sec. 7 add-ons. Mr. Eisnor, on the other hand, continued to deduct the maintenance payments of $533 per month for taxation purposes, up to and including, December 2010.

[10] On June 13, 2011, Ms. Eisnor made application to retroactively terminate spousal support as of April 2007. In addition, she sought an increase in the table amount of child support and a pro rata sharing of sec. 7 expenses.

[11] In response, Mr. Eisnor states that spousal support should terminate on January 1, 2011. Further, he agreed to increase the table amount of child support, but only wants to pay 50% of the child care and extra curricular activity expenses.

[12] The parties filed a number of exhibits, including their affidavits, which were subject to cross examination. The decision was reserved to enable the court to review the evidence, the exhibits, and the submissions of the parties.

[13] **Analysis**

[14] **When did the spousal support payments end?**

[15] *Position of the Parties*

[16] Ms. Eisnor stated that the spousal support payments ended in April 2007 because of the oral agreement reached between the parties as is evidenced in the note signed by Mr. Eisnor. The note said as follows: “I have not paid Trina Eisnor spousal support since she returned to work in April 2007.” Ms. Eisnor asserted that the maintenance she received after April 2007 solely related to child support, and not spousal support.

[17] Ms. Eisnor also confirmed that she became quite upset when she learned that Mr. Eisnor continued to claim a deduction for spousal support payments. Ms. Eisnor stated that she has never misrepresented herself or misled the government on any of her tax forms. Ms. Eisnor wants this matter clarified because she does not want to be penalized for income tax arrears, interest, and penalties.

[18] At one point, Ms. Eisnor told Mr. Eisnor that she received a letter from Revenue Canada demanding payment because of her failure to claim the maintenance as income. Ms. Eisnor later confirmed to Mr. Eisnor that she made up the story in an effort to bring home the seriousness of the situation to Mr. Eisnor.

[19] For his part, although Mr. Eisnor did not dispute that he signed the hand written letter, he said that he had no recollection of the events. Mr. Eisnor stated that he continued to claim the spousal support because nothing had been finalized with the court. Mr. Eisnor also agreed that he told Ms. Eisnor that he would help pay Ms. Eisnor's alleged Revenue Canada debt because he had always tried to help out with his children.

[20] *Decision*

[21] Section 37(1) of the *Maintenance and Custody Act* provides the court with the jurisdiction to vary a maintenance order prospectively, or retroactively, provided a change in circumstances has been proven. I find that a change in circumstances has occurred since the making of the last order. Since that time, Ms. Eisnor returned to the work force and Mr. Eisnor's income has increased substantially.

[22] In light of these changes in circumstances, I will retroactively vary the maintenance provisions of the 2005 court order. I find that all maintenance paid to Ms. Eisnor after April 1, 2007 is properly classified as child support, and not spousal support. The spousal support obligation thus terminated as of April 1, 2007, subject to this court retaining jurisdiction to determine the appropriateness of a further lump sum payment should Ms. Eisnor be subject to a reassessment by Canada Customs and Revenue Agency. I make this finding for the following reasons:

a. Both parties verbally agreed in April 2007 that the maintenance which Mr. Eisnor was paying to Ms. Eisnor was child support and not

spousal support. I accept the evidence of Ms. Eisnor, and where Mr. Eisnor's evidence is in conflict with the evidence of Ms. Eisnor, I reject his evidence. Ms. Eisnor was truthful and credible. In contrast, Mr. Eisnor was evasive when responding to questions regarding the 2007 oral agreement. While acknowledging his signature on the handwritten note, he, at times, failed to recall particulars of the conversation, while at other times, suggested that the agreement was not binding because the letter had not been filed with the court.

b. Ms. Eisnor did not initially proceed with a court application because Mr. Eisnor repeatedly asked that she not do so. Mr. Eisnor told Ms. Eisnor that he did not want to have his employer disrupted any further by a court application. Ms. Eisnor agreed to the request because Mr. Eisnor was convincing, and because the maintenance was usually paid in a timely fashion.

c. Ms. Eisnor was deeply troubled when she learned that Mr. Eisnor continued to claim a portion of the maintenance as a deduction for tax purposes. Ms. Eisnor's concern was genuine. In contrast, when confronted with the fact that Ms. Eisnor had been allegedly reassessed by Revenue Canada, Mr. Eisnor wasn't disturbed, rather he offered to help out with the bill. I find that he did so because Mr. Eisnor knew that the maintenance he was paying was child support, and not spousal support.

d. Mr. Eisnor did not request a source adjustment [reduction] for income tax payable in January, 2010 as was his practice since the issuance of the 2005 order. He did not do so because he had been "caught" by Ms. Eisnor when she had feigned a reassessment.

e. Mr. Eisnor's child support obligation changed from that set out in the 2005 order because his income increased substantially and because he agreed to contribute to the sec. 7 expenses that were incurred. At the time of the last order, Mr. Eisnor earned $53,000. I do not have details of his 2007 income, however, in 2008 Mr. Eisnor earned $83,202; in 2009, $86,577; and in 2010, $90,566.07. Child support under the current order is $717 per month. The table amount alone increased to $1,146 in 2008; $1,185 in 2009; and $1,234 in 2010. In

> addition, Mr. Eisnor was also contributing to the extracurricular activities of the children. Therefore, I find that the maintenance of $1,250 per month, which was being paid to Ms. Eisnor, was in fact child support, and no portion of that amount was spousal support.

[23] For these reasons, I find that Mr. Eisnor stopped paying spousal support in April 2007 because Ms. Eisnor returned to work and because the parties verbally agreed that spousal support payments had ended.

[24] **What parental contribution should be assigned to the payment of the sec. 7 expenses?**

[25] *Position of the Parties*

[26] The parties agree that expenses for child care, health, and extracurricular activities are appropriate sec. 7 expenses. The parties further agree that such expenses cannot be quantified on a monthly basis for three reasons. First, Ms. Eisnor's work schedule varies, and thus child care expenses are only incurred on an *ad hoc* basis. Second, the children are involved in activities that involve competitions and irregular expenses. Finally, health expenses are also incurred irregularly.

[27] Both parties agree, however, that despite their differences, they are able to communicate appropriately and effectively in relation to their children. As a result, both parties requested that the court simply assign the appropriate percentage of the parental contribution. Once the contribution rate is established, Ms. Eisnor will advise Mr. Eisnor of the amounts claimed, on a monthly basis, and Mr. Eisnor will pay Ms. Eisnor his share. Mr. Eisnor has been faithful in meeting his maintenance obligations in the past, and neither party expects any problems in the future.

[28] Mr. Eisnor wants the parties to equally share the sec. 7 expenses. In contrast, Ms. Eisnor seeks an order requiring the parties to share the sec. 7 expenses on a pro rata basis in keeping with their incomes.

[29] *Decision*

[30] Section 7(2) of the *Provincial Child Support Guidelines* states as follows:

> (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the parents in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

[31] There was nothing in the evidence that suggests that the guiding principle should be displaced. I, therefore, have determined that all sec. 7 expenses will be shared proportionally based upon the parties' income as follows:

Income of Mr. Eisnor	$90,617	79%
Income of Ms. Eisnor	$24,000	21%
Total Parental Income	$114,617	100%

[32] Therefore, for 2011and until the readjustment date on July 1, 2012, Mr. Eisnor will pay Ms. Eisnor 79% of all sec. 7 expenses incurred on behalf of the children, including those unpaid child care expenses for 2011. Mr. Eisnor will pay Ms. Eisnor his proportionate share within 15 days of receiving written notification from Ms. Eisnor. Ms. Eisnor will provide receipts for the extra curricular activities and health related expenses. Ms. Eisnor will advise Mr. Eisnor of the child care expenses and Mr. Eisnor has the right to contact the babysitter to confirm the child care amounts if he so wishes. Both parties agreed that there are no tax deductions related to the child care expense.

[33] **Conclusion**

[34] The application to vary the consent order dated December 13, 2005 is granted based upon the following provisions:

a. Mr. Eisnor will continue to pay Ms. Eisnor child support in the amount of $1,234 per month, together with 79% of all sec. 7 expenses until the July 1 recalculation date.

b. Each year, on July 1, the parties will readjust the table amount of child support payable based on Mr. Eisnor's income as disclosed in his income tax return for the prior year.

c. Each year, on July 1, the parties will readjust their proportionate sharing of the sec. 7 expenses based upon their respective incomes as disclosed in their income tax returns for the prior year.

d. The spousal support obligation is retroactively terminated as of April 1, 2007, subject to the court retaining jurisdiction to determine the appropriateness of a further lump sum payment should Ms. Eisnor be subject to a reassessment by Canada Customs and Revenue Agency.

e. Costs were not requested and none are thus provided.

[35] As the parties are self-represented, the court will draft the variation order.

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Forgeron, J.