

SFPAD-009738

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

JAMES RONALD LeJEUNE

APPLICANT

- and -

CLARA MAE LeJEUNE

RESPONDENT

DECISION

Cite as: LeJeune v. LeJeune, 2002, NSSF8

HEARD BEFORE: Justice M. Clare MacLellan
A Justice of the Supreme Court of Nova Scotia
(Family Division)

HEARD ON: November 27, 2001

DECISION RENDERED: November 27, 2001

HEARD AT: Arichat, Nova Scotia

COUNSEL: Murray Hannem, Counsel for the Applicant
Wayne MacMillan, Counsel for the Respondent

M.C. MacLellan, J:

The matter before the Court is an application by Mr. LeJeune in which he asked the Court to relieve him from his responsibilities resulting from a hearing before Justice Edwards. The Corollary Relief Judgement is dated October 26, 2000.

Shortly afterwards, October 2000, Mr. LeJeune's admirable work history began to suffer. As of January, 2001, he had some difficulty securing full-time employment. I note, from his own curriculum vitae, that he had been basically employed throughout his whole entire adulthood at what appear to be, solid positions. As a point of clarification, I should indicate that on page two (2) of my written Decision of July 31, 2001, I did not say that he was terminated. I went through the chronology of his employment history as was given to the Court in June and July, 2001. On one occasion his employer terminated him. He grieved, found employment with another company, and then eventually went back to the original employer. I was chronicling his work history, not indicating he was terminated from a position. The letter of clarification is helpful but the Court did not have the impression of termination during the initial hearing.

He told the Court last day that he had mechanical skills, that he could do body work, and that he had a good chance of future work if he took one course that was one week long

and one course that was four days long. He was asked the question a number of times as to whether there was a very good chance of employment once he secured the two courses. He indicated he would have a very good chance of employment. I had no confusion between compulsory courses for him to maintain his certification as it existed at the time of the Corollary Relief versus new courses that would enable him to be more attractive to the off-shore employer.

I incorporate the Decision of July 31, 2001, attached hereto as Schedule "A", in which Mr. LeJeune was granted temporary relief in the form of reduced spousal support for the time period required for him to complete the new courses.

I do not require Mr. LeJeune to sell property, although that may be the prudent thing to do in order to finance the necessary courses so that he can be employed, but I found him to be an unpersuasive witness. He asked for an opportunity last July and the opportunity was granted.

I asked for a breakdown of his spousal payments. I have not received it. I note the figure of net dollars that he provided indicates his sole source of net dollars is not accurate because he receives a substantial return on spousal maintenance paid monthly.

I will not consider the submissions of Mr. MacMillan in relation to Mrs. LeJeune or Ms. Boudreau's physical health because I have not heard the evidence. What I was looking at the last time was Mr. LeJeune's application for relief because of a change of circumstance.

I wrote in my Decision that I was not convinced the change of circumstance was caused by other sources that were unforeseen and material within the meaning of *B.G. v. G.L. (1995)*, *15 R.F.L. 200 (S.C.C.)*:

“In deciding whether the conditions for variation exist it is common ground that the change must be a material change of circumstances. This means a change, such that, if known at the time, would likely have resulted in different terms. The corollary to this is that if the matter which is relied on as constituting a change was known at the relevant time it cannot be relied on as the basis for variation.”

Today, I am less convinced than I was in July. I am satisfied that there were courses available, and that Mr. LeJeune has assets that he could turn to if he wished. These courses would, by his own evidence, make him employable. He has only recently asked Manpower for help. He has not even approached his bank to seek financing. He has a home and property where the bank may be willing, with a person with his employment record, to assist him to acquire the necessary certification.

Mr. LeJeune has not discharged the onus. If a change of circumstances exist, causing him employment difficulties, these difficulties are of his own making. Therefore, I dismiss his application.

I re-activate the maintenance back to the \$1,500.00 mark, retroactive to July, 2001.

He can make arrangements for the retroactive to the Director of Maintenance Enforcement.

M.C. MacLellan
J.

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SCHEDULE "A"

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HEARD ON: July 31, 2001

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HEARD AT: Arichat, Nova Scotia

COUNSEL: Murray Hannem, Counsel for the Applicant
Wayne MacMillan, Counsel for the Respondent

MACLELLAN: J.

The matter before the Court is matter of an application by Mr. LeJeune in which he asked the Court to relieve him from his responsibilities that were as a result of a hearing before Justice Edwards and the Corollary Relief is dated October 26, 2000.

Shortly afterwards, Mr. LeJeune's admirable work history began to suffer difficulties and he's had some difficulty securing full time employment commencing January, 2001. I note, from his own curriculum vitae, that he had been basically employed throughout his whole entire adulthood at what we call solid positions. As a point of clarification, I should indicate that on page 2 of my written decision, I did not say that he was terminated. I went through that as one of his, the chronology of his employment history as was given to me in June and July that on one occasion his employer terminated him, he grieved, he got employment with another company and then eventually went back to that employer, so I was chronicling his work history, not saying that he was terminated from the position before Court. The letter of clarification is helpful but the Court did not have that impression so I'd like to make it clear.

He told me last day that he had mechanical skills, that he could do body

work, that he had a good chance of future work if he took one course that was a week long and one course that was 4 days long and he could take those and there was a very good chance of work and when that he was asked the question a couple of times and he said 'yes', he would have a very good chance of work. I had no confusion between compulsory courses for him to maintain his certification as it existed at the time of the Corollary Relief vs new courses that would enable him to be more attracted to the offshore employer. He made that very clear and he's made it clear again today. I am not requiring Mr. LeJeune to sell property, although that may be the prudent thing to do, to take a course so that he can be employed but I found him to be a very unpersuasive witness. He asked for an opportunity last July and I gave it to him even though he was earning attractive money around that time.

I asked for a breakdown of his spousal payments. I have not received it. I note the figure of net dollars that he gives us as indicating his...um the sole source of money that he receives is not accurate because he would receive a substantial return on his spousal maintenance paid.

I will not consider the submissions of Mr. MacMillan in relation to Mrs. LeJeune or Ms. Boudreau's physical health because I have not heard the evidence.

What I was looking at, the last time, was Mr. LeJeune's application for relief because of change of circumstance. I wrote in my decision that I was not convinced the change of circumstance was caused by other sources that was unforeseen and material within the meaning of the BG decision of the Supreme Court of Canada. Today, I am less convinced than I was in July. I'm satisfied that there were courses there, that he has assets that he could turn to if he wishes. He has only recently asked Manpower for help. He hasn't even approached his bank and he has a home and property where they may be well willing, with a man with his employment record, to assist him through a rough patch. So, he is not discharged the onus. If a change of circumstances given that I believe that a portion, if not all, of his employment difficulties are of his own making and therefore I dismiss his application.

I re-activate the maintenance back to the \$1,500.00 mark and he can make arrangements for the retroactive to the Director of Maintenance Enforcement.

M. Clare MacLellan
J.