

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

**Citation:** Bodhaine v. Bodhaine, 2013 NSSC 428

**Date:** 20131220

**Docket:** SFSNMCA 078326

**Registry:** Sydney

**Between:**

Monica Bodhaine

Petitioner

v.

Paul Bodhaine

Respondent

**Judge:** The Honourable Justice Darryl W. Wilson

**Heard:** November 7, 2013, in Sydney, Nova Scotia

**Written Decision:** December 20, 2013

**Counsel:** Jill Perry, for the Applicant  
William R. Burke, for the Respondent

**By the Court:**

[1] The Applicant, Monica Bodhaine, filed a Notice of Application seeking spousal support including an amount for prescription drug coverage on November 23, 2011. The Respondent is her husband, Paul Bodhaine. They were married in 1983 and separated in June, 2011. They have two sons, aged 29 and 25, who are independent.

[2] An Interim Consent Order dated March 19, 2012, required the Respondent to pay part of the Applicant's medication costs in the amount of \$55.00 per month. At that time the Applicant did not have disclosure of the Respondent's current income.

[3] The only issue to be determined is the appropriate order for spousal support, both ongoing and retroactive to the date of application. The Respondent questions the Applicant's entitlement to spousal support.

**EVIDENCE:**

[4] The parties have been in a relationship since their teenage years. They did not complete high school. They worked for a short period of time in Ontario but returned to Cape Breton to raise a family. They were employed in low

paying jobs - the Applicant at a fish plant and the Respondent as a driver/machine operator in the woods. The Applicant developed a nervous condition and has been in receipt of Canada Pension Plan Disability Benefits since 1991. The Respondent continued to work in the woods until approximately 2000. He then started his own cleaning company employing relatives including the Applicant for a short period of time. He was able to get the Applicant a cleaning position at a local pub several days a week for 2 - 3 years.

[5] The Respondent took a driver course and began long-haul driving. He would be away from home for periods of time. For the last 4 - 5 years he has been employed in western Canada by Schlumberger as a driver and more recently as a driver trainer. He has a base salary of \$35,400.00. He earns additional income based upon hours and location of employment. His employer pays the cost of his travel home on a regular basis and deducts this expenditure from his pay.

[6] For a period of time before their separation the Applicant provided childcare to relatives of the Respondent and others. The maximum amount she would earn was \$100.00 per week. It has been two years since she last babysat and

none since separation. She is unable to handle the care of children now because of her medical condition. Initially she found it easier to babysit than work in public. She worked for 2 - 3 months after separation at a chip wagon doing preparation work in the back at \$10.00 per hour.

[7] The Respondent earned \$66,354.00 in 2011; \$55,447.00 in 2012 and he projects his 2013 income to be approximately \$65,000.00. For the years 2008 - 2010 he earned \$37,633.00; \$37,162.00 and \$24,591.00. His income has increased since the separation due mainly to his new position as a driver trainer in western Canada.

[8] The Applicant receives Canada Pension Plan Disability Benefits of \$577.00 a month or \$6,924.00 per year. In 2012 her income was \$9,473.00. She received Social Assistance Benefits in addition to the Canada Pension Plan Benefits. In the three years prior to 2011 she was only in receipt of Canada Pension Plan Disability Benefits. The Court does not have information with respect to her 2011 income.

[9] The income the Applicant earned from babysitting was used to pay household expenses.

[10] The parties own the matrimonial home as joint tenants. The Respondent resides in the matrimonial home and is paying the mortgage. The Respondent wishes to purchase the Applicant's interest in the home. The parties wish to deal with the issue of spousal support before finalizing property matters. Usually property matters are determined before fixing spousal support. However, based on information contained in the Statements of Property filed there appears to be little equity in the home after the payout of the mortgage and matrimonial debts. The Applicant's share of such equity would not be significant and would not impact greatly on her ability to generate an income to assist in supporting herself.

[11] The Applicant had a credit card debt of approximately \$3,500.00 in her name at the date of separation. She does not believe the Respondent is paying this debt but has not heard from the credit card company. The Respondent states he has been paying matrimonial debt which are significant including the Applicant's life insurance policy which names him as the beneficiary, water and power bills owing at the time of separation, CIBC loan and the Glace Bay Credit Union overdraft.

[12] The Respondent continues to live in the matrimonial home with most of the contents from the home in his possession. He has entered into a new relationship but the Court did not receive any particulars about his partner and whether she earns an income and is sharing expenses. According to the Applicant, the Respondent owns his mother's home which is in close proximity to the matrimonial residence. Their son and his girlfriend reside in the home and pay rent to the Respondent. The Respondent owns a motor vehicle which he uses when he is in Cape Breton. He recently purchased a truck which he keeps in Alberta and uses when he is working in Alberta.

[13] After separation the Applicant went to an apartment on Mitchell Street. She was in receipt of Canada Pension Plan Benefits of \$535.00 per month at that time. She did earn an income for 2 - 3 months at a chip wagon at minimum wage. She had to rely upon Community Services for assistance to help meet daily living costs. She does not have a medical plan and requires medication for her health. Her sister provided assistance with groceries and loaned her money. She obtained clothing through the Salvation Army. She took no furniture from the home. She met Mr. Myles, age 68, approximately a year ago and they have been in a romantic relationship for the last six months. He owns his own home and she shares

expenses with him. He is retired and has pension income of \$20,000.00 a year. He does not have a medical plan except through the Senior's Pharmacare Program.

[14] During the marriage she provided childcare and looked after the home while the Respondent looked after the yard work and worked. He earned a greater income than her throughout the marriage.

[15] The Applicant acknowledges the Respondent has been paying joint matrimonial debt and will agree to reduce the amount of any retroactive spousal support by her share of that matrimonial debt.

[16] The Applicant says she is not able to work at the present time. No one has asked her to provide childcare and she is not seeking out childcare positions.

[17] The Applicant and Mr. Myles filed a Joint Statement of Expenses indicating a monthly surplus of \$381.00 based on monthly income of \$2,247.00 and monthly expenses of \$1,866.00. Mr. Myles obviously pays approximately 75% of the expenditures based on the ratio of his income to

the Applicant's income. Despite the Statement of Expenses filed, Mr. Myles and Mrs. Bodhaine both indicated that they have no money left at the end of the day and on occasion have used Mr. Myles' savings to meet expenses.

[18] The Respondent filed a Statement of Expenses indicating a monthly deficit of \$726.82 based on monthly income of \$4,620.62 and expenses including income tax of \$5,347.44. These expenditures include debt payments of varying amounts. It is not clear whether they are all matrimonial debts or part matrimonial debts and part personal debts incurred after separation. There was no indication of income of the Respondent's partner or whether she is contributing to his expenditures.

**LAW:**

[19] The Application is taken pursuant to the **Maintenance and Custody Act** R.S.N.S. 1989, c. 160. The Applicant bases her entitlement to support upon (a) the length of the relationship (28 years); (b) the history of financial dependancy during the relationship; (c) the Applicant's inability to attain self sufficiency for medical reasons; (d) the disproportionately negative impact of the relationship breakdown upon the Applicant; (e) the Respondent's ability to pay.



[20] The Respondent claims the Applicant has the capacity to work and the ability to earn an income to support herself. Her need is less because she is in a relationship and sharing expenses with another person. The Respondent is prepared to make a contribution towards the Applicant's prescription drug costs

[21] Pursuant to Section 4 of the **Maintenance and Custody Act** (supra) the factors counsel for the Applicant asked the court to consider in determining whether to pay maintenance and the amount of maintenance include:

- (a) the division of function in their relationship;
- (b) the express or tacit agreement of the spouses or common-law partners that one will maintain the other;
- (c) the terms of a marriage contract or separation agreement between the spouses or common-law partners;
- ...
- (i) the reasonable needs of the spouse or common-law partner with a right to maintenance;
- (j) the reasonable needs of the spouse or common-law partner obliged to pay maintenance;
- ...
- (m) the ability of the spouse or common-law partner with the right to maintenance to contribute to his own maintenance.

Other relevant sections include Section 5 which provides:

Obligation of maintained spouse or partner  
5 A maintained spouse or common-law partner has an obligation to assume responsibility for his own maintenance unless, considering the ages of the spouses

or common-law partners, the duration of the relationship, the nature of the needs of the maintained spouse or common-law partner and the origin of those needs, it would be unreasonable to require the maintained spouse or common-law partner to assume responsibility for his maintenance, and it would be reasonable to require the other spouse or common-law partner to continue to bear this responsibility.

And section 6 which provides;

Reduction or forfeiture of maintenance

6 (1) Maintenance to which a spouse or common-law partner would otherwise be entitled may be reduced where the spouse or common-law partner entitled to maintenance engages in conduct that arbitrarily or unreasonably prolongs the needs upon which maintenance is based or that arbitrarily or unreasonably prolongs the period of time required by the person maintained to prepare himself to assume responsibility for his own maintenance.

(2) Maintenance to which a spouse or common-law partner would otherwise be entitled may be reduced or eliminated where the spouse or common-law partner entitled to maintenance

...

(e) cohabits with another person in a conjugal relationship.

## **CONCLUSION:**

[22] The Applicant has proven on a balance of probabilities that she is entitled to spousal support. This was a 28 year marriage in which the parties pooled their resources. The Applicant raised the children, looked after the home and contributed financially to the family finances. The end of the marriage resulted in a disproportionately negative impact upon the Applicant than the Respondent. She has limited means and significant needs which are not being met. The Respondent has considerably more means and is able to contribute to the Applicant's reasonable needs. The Applicant has

a limited ability to contribute to her own needs over and above her Canada Pension Disability Benefits. However, any income from employment would impact her entitlement to these benefits. The income earned from employment for childcare would not likely exceed \$5,000.00 per year. Therefore, even if she was employed providing childcare she would still have the need for support.

[23] In determining the amount of spousal support I have considered the factors identified above including imputing income to the Applicant of \$5,000.00 per year. I have considered the age of the parties and that the Respondent requires some incentive to continue to work at a good paying job in western Canada. The Respondent's income increased substantially around the time of separation. While the Applicant's need for support is mostly non-compensatory based, she should share in the Respondent's increased income post-separation. This was a long term marriage whereby the parties pooled their resources, the Respondent took skills training during the marriage, which enabled him to obtain his current employment and the Respondent was working in Western Canada at the time of separation.

[24] The Applicant is now sharing expenses with Mr. Myles whose income is limited.

[25] The Respondent has been responsible for paying approximately \$10,400.00 in matrimonial debt attributed to the Applicant since the date of separation.

[26] The Applicant has the need for funding for a vehicle since her vehicle ceased operating after separation.

**THE SPOUSAL SUPPORT ADVISORY GUIDELINE:**

[27] Counsel for the Applicant suggested a monthly amount of \$1,500.00 for the year 2012 and \$1,900.00 for the year 2013. The Applicant was prepared to credit the Respondent with \$10,436.00 for debt payments attributable to the Applicant. Counsel for the Applicant also requests the Respondent include the Applicant on any medical plan he may have through his employment.

[28] In arriving at a monthly amount of \$1,500.00 for 2012, counsel for the Applicant relied upon the Respondent's 2012 income of \$55,457.00 and the Applicant's 2012 income of \$9,473.00. The Spousal Support Advisory

Guidelines suggests a range of support between \$1,437.00 and \$1,771.00 per month. Imputing additional income of \$5,000.00 to the Applicant would reduce the income disparity and suggest a range of support between \$1,280.00 and \$1,575.00 per month.

[29] In arriving at \$1,900.00 per month for 2013, counsel for the Applicant identified the Respondent's income at \$65,000.00 and the Applicant's income at \$6,924.00 which identified a range of monthly spousal support between \$1,815.00 and \$2,274.00. Counsel for the Applicant suggested an amount at the low end of the range in recognition that the Applicant's needs have been reduced by her ability to share living expenses with Mr. Myles. Imputing additional earnings of \$5,000.00 would reduce the range from \$1,660.00 to \$2,080.00.

[30] Spousal support is fixed at \$1,400.00 a month effective December 1, 2011. The Applicant is prepared to reduce any arrears of any outstanding spousal support owing as a result of this Decision by \$10,436.00 which represents her share of matrimonial debt paid by the Respondent after separation. Since these payments are made in after tax dollars and spousal support is tax deductible to the payor, it is necessary to reduce the gross

spousal support amount by the marginal tax rate of the Respondent before providing credit for the matrimonial debt payments.

[31] The total monthly amount of spousal support owing from November 1, 2011 to December 31, 2013 is \$35,000.00 ( $\$1,400.00 \times 25$  months). I have fixed the Respondent's marginal tax rate at approximately 33% (half way between 30% and 37% ) which reduces his after tax spousal support obligation by \$11,550.00 to \$23,450.00 for this period. He is then entitled to a credit of \$10,436.00 reducing the balance further to \$13,014.00. An additional reduction should be made for payments made on the Interim Order. Such calculation can be done by counsel. The resulting balance is a lump sum amount which is not tax deductible to the Respondent or taxable to the Applicant. It is payable immediately. It should also fulfill the Applicant's need for a motor vehicle. The vehicle she retained on separation is not in working condition.

[32] Ongoing spousal support of \$1,400.00 is ordered effective January 1, 2014. The Applicant will be responsible for arranging her own medical coverage.

[33] I am satisfied that \$1,400.00 per month is appropriate for the year 2013 onward, even though the Respondent's income has increased and this amount is below the low end of the range suggested by the Spousal Support Advisory Guidelines. I have taken into account the Applicant's ability to earn additional income to meet her needs. In 2013, the Applicant entered into a new relationship and is able to share expenses with a partner. The Respondent requires an incentive to continue working in western Canada.

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Wilson, J.