

Chaisson v. Chaisson

Jane Elizabeth Marie Chaisson, Petitioner and David Allan Joseph Chaisson,
Respondent

Newfoundland Unified Family Court

Cameron J.

Judgment: January 19, 1984

Docket: 83/1532

Counsel: Mr. **David C. Day**, Q.C., for Petitioner

David Allan Joseph Chaisson, not represented

Cameron, J.:

1 The Petitioner (wife) sought a divorce on the grounds of the Respondent (husband) having committed adultery. The grounds were established by the evidence and following the second day of trial, January 19, 1984, a Decree Nisi was granted. At that time the Petitioner was also granted custody of the children of the marriage with reasonable access to the Respondent, and she was awarded costs. The only outstanding issue is maintenance. The Petitioner filed written argument on maintenance. She seeks periodic maintenance for herself and the three children of the marriage and leave to apply for a lump sum maintenance for herself.

2 The parties were married on November 3, 1974, at Churchill Falls, Labrador. With the exception of one period of separation of seven months the parties lived together at Churchill Falls until August 9, 1982, when the Petitioner moved to St. John's taking the three children of the marriage with her. The three children presently range in age from six to nine years. The Respondent continues to reside at Churchill Falls.

3 The Petitioner is a young woman who worked part-time during most of her married life and worked for a short period of time following her move to St. John's. Under normal conditions she would be expected to find employment to contribute to her own support and the support of her children. However, in this case there are extenuating circumstances. The youngest child of the marriage suffers from epilepsy. She regularly experiences both petit and grand mal seizures. She has had brain damage and attends school at a special class for the trainable mentally retarded. Following the move to St. John's while the Petitioner was working the child was cared for by babysitters. However, this arrangement proved unsatisfactory and the child's physician

recommended to the Petitioner that she personally care for this child. The Petitioner then resigned her position. In the circumstances of this case and for the present I think it would be unreasonable to expect the Petitioner to seek employment until she is assured that such employment will not adversely affect the health or quality of care of the youngest child.

4 The Respondent, by his own evidence, estimated his gross income for the previous year to be \$34,000.00. Since only a small portion of that related to overtime, it is reasonable to assume he will earn at least an equivalent amount in the foreseeable future. Because he resides in Churchill Falls the Respondent has been able to take advantage of a number of opportunities to reduce his cost of living. His monthly rental is abnormally low as is the cost of utilities.

5 Following separation of the parties the Respondent purchased a house in St. John's in which the Petitioner and the children reside. There is an apartment in the house and the Petitioner receives the rent from the apartment of \$300.00 per month. However, she makes the mortgage payment of \$491.00 per month. In addition the Respondent has been voluntarily paying the Petitioner an average of \$800.00 per month for the maintenance of the Petitioner and the children of the marriage. This voluntary payment has not been taxable in the hands of the Petitioner.

6 The Petitioner submitted a Financial Statement and gave evidence regarding her expenses including some not specified in the Financial Statement. For example, she estimated the cost of the four admissions to hospital each year of the youngest child at about \$139.00 per visit. With some exceptions the Financial Statement shows reasonable expenses on the part of the Petitioner. The amount of \$700.00 per month for the cost of groceries and household supplies for the Petitioner and the three children of the marriage is excessive. The amount for the operation and maintenance of the car is high but I note that the Petitioner's automobile is a 1977 model. I have concluded that monthly payments by the Respondent to the Petitioner of \$1,350.00 are in order. In calculating the amount payable I have considered the income tax implications for each of the parties.

7 The division of matrimonial assets pursuant to The Matrimonial Property Act has not yet been settled by the parties. The Petitioner seeks leave to apply for lump sum maintenance for herself as a hedge against an unsatisfactory resolution of the differences between them. In [*Carter v. Carter* \(1978\) 3 R.F.L. \(2d\) 355](#) at p. 361, Goodridge, J. lists some of the circumstances in which lump sum maintenance has been awarded in Canadian cases. It is clear, however, that it would be improper for me to attempt to accomplish a property settlement by a lump sum payment under the Divorce Act. The Petitioner has not satisfied me that this is a proper case for a lump sum award in addition to periodic payments.

8 It is ordered:

(a) The Respondent pay to the Petitioner for her maintenance and for the maintenance of the children of the marriage the periodic sum of \$1,350.00 per month, to be due and to be paid on the last day of each month commencing on the last day of February, 1984. This order is conditional upon the Petitioner continuing to receive the rental payment for the apartment in the house which she occupies and continuing to make the monthly mortgage

payment on that house.

(b) The Petitioner shall have her taxed costs of the argument filed in this matter.

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