

1988 CarswellNfld 289

Chapman v. Strickland

Newfoundland Unified Family Court

Noonan J.

Judgment: July 29, 1988

Chapman v. Strickland

Joan Chapman, Applicant and Cecil Strickland, Respondent

Newfoundland Unified Family Court

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Docket: No. 86/2768

Counsel: Mr. James Vavasour for the Applicant.

Mr. **David C. Day**, Q.C. for the Respondent.

Noonan, J:

1 This is an application for variation in the support which Mr. Strickland is paying for Jennifer Strickland.

**Background**

2 A divorce judgment was granted by Mr. Justice Russell on February 20, 1987. A corollary relief judgment provided that Ms. Strickland (Chapman) have custody of Jennifer, that Mr. Strickland have reasonable access, and that he contribute the sum of \$200 per month for Jennifer's support. The amount of support had been agreed upon by Mr. and Mrs. Strickland.

3 Ms. Chapman says that Jennifer's monthly expenses are \$804.79 and that a contribution of \$200 from her father is inadequate.

4 She says that she has increased expenses for mortgage and utilities since the order was made. She also has expenses associated with music and dancing for Jennifer, babysitting costs, and an increase in household expenses generally because of inflation. She says Mr. Strickland's household expenses have decreased and that he is able to contribute more for Jennifer's support.

5 Ms. Chapman had been previously widowed and has three children from that marriage. Her late husband's trust supports her children with her contributions from part-time teaching. She also receives the child tax credit and family allowance. Ms. Chapman's employment situation has

not changed significantly from the time the order was granted. Her financial statement shows a deficit of income to meet expenses which is greater than it was when the order was originally made.

6 Mr. Strickland resists the application. He says he has received only a minor increase in salary since the order was made and that while his housing costs are less, he has additional expenses with respect to his son from an earlier marriage who began attending university in September, 1987. He is presently living with a person who contributes to household expenses. He says he is prepared to pay for Jennifer's dancing lessons and he also contributes \$30 per month to an educational fund for her. He says that he has also bought items for Jennifer when requested and would like to be able to continue to buy gifts for her. Mr. Strickland says on receiving notice, he would be prepared to provide care for Jennifer if Ms. Chapman wishes to visit out of town. In this way, her babysitting costs could be reduced. He says his budget is very tight, and he is unable to contribute more. He has significant medical expenses because of his heart condition. His financial statement discloses a deficit of income to meet expenses. This deficit is less than it was when the order was originally made.

### **Legal Issues**

7 This application is governed by Section 17 of the *Divorce Act, 1985*. The relevant subsections are reproduced below:

#### **17**

(1) A court of competent jurisdiction may make an order varying, recinding or suspending, prospectively or retroactively,

(a) a support order or any provision thereof on application by either or both former spouses;

(3) The court may include in a variation order any provisions that under this Act could have been included in the order in respect of which the variation order is sought.

(4) Before the court makes a variation order in respect of a support order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either former spouse or of any child of the marriage for whom support is or was sought occurring since the making of the support order or the last variation order made in respect of that order, as the case may be, and, in making the variation order the court shall take into consideration that change.

(6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

(8) A variation order varying a support order that provides for the support of a child

of the marriage should

(a) recognize that the former spouses have a joint obligation to maintain the child; and

(b) apportion that obligation between the former spouses according to their relative abilities to contribute to the performance of the obligation.

8 Before moving to a consideration of the objectives set out in Section 17(8), the person seeking the variation must pass the threshold test set out in Section 17(4). The court starts with the presumption that the original order was correct. The burden is on Ms. Chapman to show, on the balance of probabilities, that there is a change in the condition, means, or other circumstances of either her, her former spouse, or Jennifer, which would justify a variation of the order. The change must be substantial and significant in order to justify a variation.

9 On the evidence before me, I am not satisfied that Ms. Chapman has shown that there has been such a material change in either her, Mr. Strickland's, or Jennifer's circumstances which would lead to a variation in the periodic sum being presently paid. However, I believe it is appropriate to order that Mr. Strickland pay Jennifer's dancing expenses and contribute \$30 monthly to an educational fund for Jennifer's benefit. The application for variation is allowed to that extent. There is no order for costs.

10 Order accordingly.

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