

Reddy v. Reddy

Josephine Mary Reddy, Petitioner and Reginald Joseph Reddy, Respondent

Newfoundland Supreme Court (Trial Division)

Barry J.

Judgment: March 8, 1993

Docket: Doc. St. John 1001/92

Counsel: *David Day, Q.C.*, solicitor for the Petitioner.

***Kevin Barry, J.:***

1 The Petitioner has applied for a decree granting her a divorce from the Respondent upon grounds of mental cruelty. She requests custody of their three children, namely, Andrea Reddy and Allison Reddy a twin aged 10 years and Ashley Reddy aged 8 years, and an order requiring the Respondent to contribute to the maintenance of herself and their children.

2 The Respondent did not respond to the Petitioner's application, nor did he appear at the hearing of the application in person or by legal counsel.

3 The Petitioner testified that practically every weekend during their marriage the Respondent would arrive home from work on Friday evening and commence drinking beer. In the following two days he would spend the mornings and afternoons with friends at his home or theirs drinking and playing cards or darts. In the evenings he would go to a local club and continue drinking until the early hours of the following morning, when he would arrive home under the influence of alcohol. The Petitioner tried on many occasions to dissuade him from such excessive drinking and to persuade him to spend more time with his family, but all to no avail. On such occasions he would become abusive toward her calling her obscene names often in the presence of their children. The Respondent's ill behaviour caused the Petitioner great anxiety and stress, to the point where she was obliged to seek medical treatment. Her physician prescribed medication to help her cope with the stressful home environment which was causing her ailment. This situation came to a head when the Petitioner discovered that the Respondent had been keeping company with another woman. He finally admitted this to her after she confronted him with her suspicions of it. As a consequence of this, and the many indignities and abuses she suffered at the Respondent's hands, she decided that she could no longer remain in the matrimonial home with him. On March 13, 1992 she left with the children and went to a hotel where she remained for a few days, until she could obtain other accommodation.

4 I am satisfied that the stress inflicted upon the Petitioner by the Respondent in the circumstances

which I have described above amounts to mental cruelty so severe as to render living with him intolerable and to justify her leaving the matrimonial home and to live separate and apart from him. It is a sufficient ground to entitle her to a divorce from him. See the Divorce Act R.S.C. 1985) c.3 (2nd. Supp) S. 8(2) (b) (ii); *Knoll v. Knoll*, (1970) [1 R.F.L. 141](#) (Ont. C.A.); and *Barbour v. Barbour*, 18 R.F.L. (2nd) 80 (Nfld. T.D.).

5 As to custody of the children, the Petitioner has taken care of them since their respective births, and has shown herself to be a good mother in all respects. She has a good education and is qualified to pursue a career in the clerical field in which she now works. She is strongly supported by her parents who have helped her considerably in caring for the children after her separation, and stand ready to give further assistance as may be needed from time to time. The Respondent has not shouldered his share of responsibility for the welfare of the children either prior to or since the separation. I have no doubt that he does love them and is concerned about their well being. However, as between the two parties, there is no doubt in my mind that the Petitioner is best suited to care for them. Accordingly, I award the Petitioner custody of their children. She requests that the Respondent be given reasonable access to the children and I accede to her request. However, I order that such access be exercised as follows:

1. After school, on such weekdays (that is, Monday through Friday) at such places and times that are verbally agreed upon by the parties;
2. On other occasions at such places and times that are verbally agreed upon by the parties;
3. Such access may be exercised only on occasions when the Respondent is sober and not in possession of alcohol.

6 The Petitioner is presently employed as a casual full time employee with Revenue Canada. This means that she works only when called upon by her employer, but that her employment is full time until the work assigned has been completed. Without permanent status of employment every lay-off notice she receives is a termination with no assurance of being rehired. She is not entitled to a pension, but is given a lump sum superannuation payment applicable to time worked for every period of employment. She receives a salary of \$2,063.63 per month while employed. In addition, she has been receiving \$175.00 per month for family allowance, now supplemented by a Child Tax Benefit under a recent amendment of the Income Tax Act. Her take-home pay after deductions amounts to \$1,699.25, which, for convenience, I have rounded to \$1,700.00. She has managed to support herself and the three children on that income, but finds that she can accomplish this only by doing without some necessities. The following are the additional items of necessities which she requires each month:

Food	\$110.00
Clothing	110.00
Poll tax	5.00
Insurance (house)	36.12
Cable Television	30.00
Transportation	226.66
School	7.50
Piano	130.00
Entertainment	35.00
Childrens' gifts and allowances	83.33

Total	\$773.75
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7 The additional sum the Petitioner requests for clothing, i.e \$110.00, over and above the \$40.00 which she now spends for it, does not appear to be unreasonable. This proposed expenditure must be viewed in the light of her obligation to see them properly clothed at this stage in their lives as their clothing must be constantly replaced when it is worn out or becomes too small as they grow.

8 The sum proposed as an additional expense for fire insurance on the matrimonial home is requested in anticipation of the court's grant of her request in other proceedings before this court to be given an option of purchasing the matrimonial home. Since I have granted that request in a judgment of even date in a application for a division of their matrimonial assets, this expenditure will surely be required of her. The amount is not unreasonable, and it will be an extra cost for her in addition to moneys she will have to find to buy out the Respondents' share in the home. The sum which the Petitioner requests for Cable Television, while useful in many respects is not a necessity and, in my opinion, should not be considered as such in the circumstances of this case.

9 The item of school fees is a necessary expense and, in view of the fact that the children have already started to take piano lessons, I consider this a part of their education. The item of entertainment expense, although desirable, is not a necessity and should not be included in the children's cost of living.

10 The Respondent earns a salary of approximately \$29,945.00 per year in his employment as an official with Newfoundland and Labrador Housing Corporation. His take-home pay every two weeks is \$628.00. He has the usual deductions such as pension, unemployment insurance and income tax. In addition, there are deductions for purchase of a Savings Bond (\$42.78 every two weeks), extra pension benefits \$18.15 and group health insurance \$36.19. The Petitioner has asked that the additional pension and health insurance deductions be allowed to stand, because they will bring a pension benefit for her when he retires and, in the meantime, their children will obtain benefits from his health insurance. The savings bond deduction is for his personal savings and should be added to his net income. Accordingly, I have included this sum in his net income in my calculation of his take-home pay, bringing his net take-home pay to \$671.68 every two weeks, or approximately \$1,462.06 per month.

11 If the parties were living together, and the Petitioner was continuously employed, they would gross about \$56,800.00 per year and net approximately \$38,550.00 per year. This sum would, no doubt, allow them sufficient funds to provide for themselves and their children in reasonable comfort. Now that they have separated, there are two households to maintain and their respective costs of living have increased with the result that the standards of living each formerly enjoyed by them is no longer available. At present the Petitioner is spending all of her income to support herself and their three children and finds that she is unable to meet all of the children's needs. At this stage it is difficult if not impossible to accurately ascertain the respective costs of living of each of the children and for the Petitioner. Suffice to say, it is obvious that her income alone is insufficient to provide a reasonable standard of living for the children and herself. While I am satisfied that the Petitioner's claim for maintenance for herself and the children is not unreasonable yet I do not believe the net income to the Respondent is sufficient to pay the amount she requests, i.e. \$1,100.00 per month. It appears to me that if her request were granted the Respondent would be left with insufficient moneys to provide a reasonable living for himself, even a minimum standard. Thus, I consider it would be counterproductive and unhelpful to the Petitioner if I

were to accede to her request.

12 With respect to the maintenance of the children and the means of the parties to support them, the circumstances of the case make it appropriate for the adoption of a formula for division of financial responsibility of the parties which has been found useful in other cases. See inter alia - *Allen v. Allen*, (1983) N.J. No. 1358 (Nfld. S.C.T.D.) per Goodridge J. as he then was, unreported, and *Blanchard v. Blanchard*, [64 Nfld. & P.E.I.R. 15](#) (1987 Nfld. S.C.T.D.) per Woolridge J. This formula is a rule of thumb proposed as a method to determine the amount of money parents should contribute for maintenance of children in a broken home. It assesses the cost of their maintenance to be one-third of the total household expenses of parents and children. It takes into account the joint responsibility of the parents to provide for and maintain their children in accordance with their respective means. This formula is not applicable in all cases where maintenance costs of children are to be determined because of the many and varied factors involved from case to case. However, in a case such as this, it provides a good measure of the monetary support which should be contributed by each parent to the maintenance of the children. The court has no evidence of the household costs of the family prior to separation, nor does it have a breakdown of the present maintenance costs of the children, or the present living costs of the Respondent. However, from the evidence at hand, I am satisfied that the cost of maintaining the three children of the parties in the Petitioner's residence should be approximately one-third of their net income. The household expenses of the Petitioner for herself and the children at her present residence indicates as much. Accordingly, it is appropriate to accord to each parent approximately two-thirds of their respective incomes as a reasonable estimate of their own living expenses, and to designate the remaining one-third of each to the children. The net incomes of the Petitioner and the Respondent total the sum of \$38,550.00. If it is divided into three equal parts, then one equal share of that income should be allocated for the support of the children. Utilizing that formula in this case the children's share will be \$12,850.00 a year or \$1,070.00 per month. As to the proportion each parent should contribute, I must consider what would be appropriate in the context of their respective means.

13 Section 15(2) of the Divorce Act empowers me to make an order requiring one spouse to pay to the other such periodic sums as I think reasonable for the support of the other spouse and the children of a marriage. Section 15(7) of that Act sets out the objectives by which the court is to be guided in considering the quantum to be paid by one spouse for support of the other and for children in the custody of that spouse. I quote it as follows:

15.(7) An order made under this section that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the former spouses pursuant to sub-section (8);
- (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

14 Having regard to the net incomes of both parties, the probable cost of maintenance of their three children, and the above objectives, I have determined that, in the circumstances of this case, a reasonable contribution to that cost from each party would be \$535.00 per month while the Petitioner is employed and earning the same monthly income as in the past year. However, if I make an order that the Respondent pay that sum every month to the Petitioner, it will be subject to payment of income tax by her, thus reducing the actual funds received. He in turn will obtain income tax relief in the approximate amount of his payment. To reduce further the sum I have determined to be necessary as his contribution to the maintenance of the children would render it insufficient to meet his share of the cost of maintaining the children. For this reason, I have fixed a sum for his contribution which will achieve that end. The following calculation explains how I attained that result.

Petitioner's gross monthly salary.....	\$2,238.00	
Her monthly net pay after deductions.....	1,699.00	
Respondent's gross annual salary.....	29,945.00	(for 1992)
His annual net pay .....	17,544.00	
His net pay, received every 2 weeks.....	671.68	
His average net pay per month.....	1,462.06	

15 A monthly contribution by the Respondent for the support of their children in the amount of \$753.00 will give him income tax relief of approximately \$218.00 calculated at the rate of 29%, which is the estimated rate of tax applicable to the incomes of both parties. This will give a net-of-income-tax payment to the Petitioner in the amount of \$535.00 a month, i.e. after she has paid income tax on the \$753.00 which she will receive from the Respondent. The above income tax calculations are subject to adjustment when taxes are assessed. However, any such variations in tax calculations will not affect the amount of net-of-income-tax payments which I have determined to be necessary as the Respondent's contribution to the support of the children of their marriage. The contribution of the Petitioner to which I have given a money value equal to that of the Respondent appears to be less when their net incomes are compared. However, this is more apparent than real since the Respondent's gross income is substantially greater than that of the Petitioner and is subject to larger deductions at source such as, for items of additional pension benefits and health insurance - which represent programs primarily for his own welfare, even though they may also benefit the children.

16 The circumstances in which the Petitioner lived with the Respondent and which compelled her to leave the matrimonial home clearly entitle her to spousal support according to her need. However, while the Petitioner is gainfully employed, as she has been in the past year, she will not need support for herself from the Respondent. Nevertheless, she will require additional financial assistance for maintenance of their children while she is employed and for periods when she is laid-off from work.

17 As I have stated above, the Petitioner and the Respondent should contribute approximately equal sums of money for the support of their children of \$535.00 per month she is employed with Revenue Canada. While laid-off from that work, and receiving unemployment insurance benefits of 60% of her regular salary, her ability to maintain herself and make monetary contribution to the support of the children will be severely curtailed. To compensate for her reduced revenues the Respondent will have to

increase his contribution to enable her to maintain the same standard of living for the children as they enjoyed previous to her lay-off. It is unreasonable to expect her to lower the standard of living for their children every time she is laid-off from work and in receipt of unemployment insurance benefits. While unemployed she will receive 60% of the salary paid her by Revenue Canada, or approximately \$1,020.00 after standard tax deductions. This will leave the Petitioner with less means to meet the cost of maintaining their children during such period. The reduction of her net income by 40% would be approximately \$214.00. This short fall should be equally shared by both parties, i.e. \$107.00 each. This means that during such periods her share of the cost of their children's maintenance should be decreased to \$428.00 and his share of the cost should be increased to a net income tax payment of \$642.00 or a tax-inclusive monthly payment of \$905.00.

18 The Petitioner was laid-off from work by Revenue Canada in the first week of January of this year, and is now receiving unemployment insurance benefits of 60% of her regular salary. As I have mentioned above she will need additional money to maintain a reasonable standard of living as close, as they can afford, to that which she and the Respondent were providing for the children at the time of their separation. In these circumstances and for the foregoing reasons I make the following order for maintenance of their children:

1. That the parties share equally in the cost of maintaining their children which I have estimated to be \$1,070.00 per month, i.e. \$535.00 for each of them.
2. Since the Petitioner will have custody of the children, this means that while she is employed with Revenue Canada, or earning equivalent income elsewhere, the Respondent shall pay her for their maintenance a net-of-income-tax sum of \$535.25 per month or a gross sum including the amount of her income tax in respect of it which I have estimated to be \$753.00, in two equal instalments of \$376.50 on the 1st and 15th days of each month commencing on the 15th day of March, A.D., 1993.
3. While the Petitioner is unemployed and receiving unemployment insurance benefits of 60% of the salary paid her by Revenue Canada, the Respondent shall pay her the monthly sum of \$642.00 net-of-income-tax or a gross payment including the amount of her income tax liability in respect of it which I estimate to be \$904.00. Such maintenance payments shall be made by the Respondent in two equal payments of \$452.00 each on the 1st and 15th days of each month during the applicable period or periods.
4. Should the Petitioner become unemployed and not eligible for unemployment insurance benefits, or be unemployed after her unemployment benefits have been used up, she may apply to this court for an order requiring the Respondent to increase his maintenance payments for the support of the children.
5. The Petitioner is entitled to receive support and maintenance from the Respondent whenever the need should arise. Although the Petitioner is now receiving 60% of her regular salary with Revenue Canada, an amount not sufficient to support herself and make a contribution to the

maintenance of their children, I do not believe it would serve a useful purpose to order the Respondent to pay additional moneys for support for her at this time. However, it is open to her to apply to the court for such an order at any time in the future should her circumstances worsen.

6. In the event the Petitioner shall become unemployed without entitlement to unemployment insurance benefits at least equivalent to those she now receives, she will need financial support from the Respondent and she should then apply to this court for an order requiring him to pay her reasonable monthly or semi-monthly sums of money for her maintenance as long as may be necessary.

7. To partly compensate the Petitioner for having made expenditures in which the Respondent should have shared for the support of their children since their separation, I order that he pay her a lump sum of \$3,600 on or before the 30th day of June 1993.

8. The Respondent shall make all payments required to be made by him to the Petitioner under this order for the support of their children, or of the Petitioner, to Support Enforcement Agency at the following address:

Support Enforcement Agency

P.O. Box 2005

Corner Brook, Nfld.

A2H 6J8

9. That all support payments ordered herein to be paid by the Respondent shall be enforced by the Director of Support Enforcement.

10. The Petitioner's costs of this proceeding shall be paid by the Respondent.

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