

26 Nfld. & P.E.I.R. 89

Simms v. Simms

Newfoundland Supreme Court, Trial Division

Mahoney

Judgment: April 30, 1980

Simms v. Simms

Max Weston Simms, Petitioner v. Marjorie Isla Simms, Defendant

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Docket: Doc. 1001

Counsel: Mr. Eric Facey, for the Petitioner.

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

Mahoney, J.:

1 A divorce decree Nisi was granted by me in this matter on March 20, 1979 at which time leave was granted to the respondent, inter alia, to apply for custody of Susan Andrea Simms, a child of the marriage, and for maintenance for the respondent and the said child. On June 26, 1979, a divorce decree absolute was issued.

2 This is an application by the respondent for maintenance for two children of the marriage, Susan Andrea Simms and Kenneth Simms. Susan was born on June 17, 1968 and will be thirteen years old on her next birthday. Kenneth was born on June 21, 1961, and thus will be nineteen years old on his next birthday. Both these children live with their mother in the province of British Columbia where she has resided for nearly two years now.

3 The child Susan Andrea is in full time attendance at school and Kenneth attends technical school. He has no source of income and relies on his mother for support. Since May, 1977, the only maintenance received from the petitioner was five or six hundred dollars. In addition, the respondent says that their father did purchase some clothes for the children.

4 The respondent is employed as a bank teller, earning \$779.16 per month gross, in addition to which she receives \$20.00 per month family allowance, for an overall monthly gross income of \$799.16.

5 The respondent entered into evidence a statement showing her monthly income and

expenses. This indicates that she requires \$675.16 extra in order to meet her expenses; she asks \$575.00 as maintenance for the two children mentioned above. The respondent owns her own home in British Columbia, but this is subject to a mortgage. She stated that her former husband paid \$500.00 per month as school fees for two years while Kenneth attended a private school, Rothesay, in New Brunswick. She suggests that he can well afford to pay this amount as maintenance now.

6 The petitioner gave evidence and at the very outset stated that he had no objection to paying maintenance for the child Susan Andrea in the amount of \$200.00 per month. He also confirmed that he had purchased clothing for her from time to time.

7 He now lives in Gander with his lady friend and both contribute to the cost of the house in which they live. The monthly mortgage payment on that amounts to \$339.00. He stated that six to eight thousand dollars were his maximum gross yearly earnings for the years 1966, 1967 and 1968. Part of this is interest earned on an inheritance which he received some time after he and his wife separated in 1972. The balance of his income comes from operating a concession in the Terra Nova National Park. In 1978 he won \$3500 from a contest and from Atlantic Loto combined. At the time of this hearing he was hoping to get another job, but this was not certain. He confirmed that he gets free board and lodging for about five months of the year while operating the concession, and that he operates a company owned van. The company was incorporated to operate the concession. He is the principal shareholder, but the company itself is worth virtually nothing.

8 At the conclusion of the evidence counsel agreed that the matter be adjourned pending submission by the petitioner of a copy of his income tax return for each of the three previous years and an audited statement of the worth of the petitioner's company. This was later submitted, and confirms the figures given in evidence by the petitioner.

9 Pending the conclusion of the hearing I ordered the petitioner to pay to the respondent the sum of \$300.00 per month as interim maintenance for the two named children.

10 This is a typical case of two families now attempting to live on a sum of money which is not sufficient for one family. The respondent is working and earning a modest income. It is easy to understand that she is having great difficulty supporting herself and two children, one of whom is nearly nineteen years old. The petitioner, on the other hand, is getting along mainly with the support of his girl friend's earnings and the modest income he earns together with considerable free board and lodging. He offers \$200.00 per month maintenance for his daughter Susan, but nothing for Kenneth. He cannot afford much more, as the evidence clearly indicates.

11 Considering all the evidence I order that the petitioner, Max Weston Simms pay to the respondent Marjorie Isla Simms the sum of two hundred dollars per month as maintenance for the child Susan Andrea Simms and the sum of one hundred dollars per month as maintenance for their son Kenneth; such payments to continue as long as each child comes within the definition of "children of the marriage" as defined in the Divorce Act. The difference in the amount allowed to each child may be explained by stating that the younger of the two requires full

support as she is not yet old enough to work whereas the son Kenneth should be able to work part time and contribute to his support. The petitioner is not in a financial position to pay more than the total \$300 per month.

12 The respondent is to have custody of the child Susan Andrea with reasonable access to the petitioner.

13 I allow the respondent her costs of this application.

14 Let judgment be entered accordingly.

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