

2008 CarswellOnt 8080
Ontario Superior Court of Justice

Mudronja v. Mudronja

2008 CarswellOnt 8080, [2009] W.D.F.L. 712, [2009] W.D.F.L. 728, [2009]
W.D.F.L. 762, [2009] W.D.F.L. 799, [2009] W.D.F.L. 803, 173 A.C.W.S. (3d) 871

Eddy Mudronja v. Marijana Mudronja

Lemon J.

Heard: December 22, 2008
Judgment: December 30, 2008
Docket: FS-08-64289-00

Counsel: Kelvin Ford, for Applicant
Shawn M. Philbert, for Respondent

Subject: Family

Table of Authorities

Regulations considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)
Federal Child Support Guidelines, SOR/97-175

s. 7 — referred to

Lemon J.:

- 1 This matter was argued December 22, 2008 and I reserved my decision. The following are my reasons and order.
- 2 In her motion, the respondent (wife) sought orders relating to custody, access, child support, spousal support, life insurance, exclusive possession, non depletion of assets, a business valuation and an interim advance payment.
- 3 The applicant (husband) brought a responding motion requesting orders dealing with restraining order, custody and access, exclusive possession of the matrimonial home, and the appointment of the Office of the Children's Lawyer.
- 4 Many issues could not be dealt with as a result of time available in court and the need for further productions from the parties. Accordingly, the issues of custody, access, exclusive possession or sale of the home, interim advance payments, insurance trustee, non harassment order or retroactive support were put over to another day.

Office of the Children's Lawyer

- 5 At the outset of the motion, I endorsed "Husband wishes OCL appointment. Wife neither consents nor denies but says that it is unnecessary. After hearing submissions by the husband, OCL is ordered in the usual form."

Consent Orders

- 6 During submissions on all other issues, some matters were disposed of by consent.

7 The husband shall have access to the children of the marriage, being Eddy Jr. (born August 27, 1989) and Thomas (born July 31, 1997), December 26, 2008 from 9:00 a.m. until 6:00 p.m. and every other weekend commencing January 2, 2009 from Friday at 6:00 p.m. until Sunday at 7:00 p.m.

8 Both parties shall exchange affidavits of documents as of January 15, 2009.

9 The husband shall commence a valuation of his business assets for both valuation dates for the purposes of net family property and income values commencing on or before January 15, 2009.

Support

10 The end result was that I was asked to determine child and spousal support and the husband's income for the purposes of calculating those values.

11 It is important to note that the wife says that she requires "the assistance of an independent forensic accountant in order to be in a position to fully advise the court as to the extent to which Eddy Sr. has claimed personal expenses as business expenses. I also require the forensic accountant to assist me in determining the amount of add-backs that should be attributed to Eddy Sr. [sic] income for the purposes of support." Given the consent order for productions and an appraisal of the business, I assume that the husband agrees with that statement. With that background, I am attempting to determine a fair income for support purposes without all of the necessary information to do so. That is, of course, often the nature of interim support orders.

12 The wife says that I should determine support based on either the husband's 2007 income as reassessed at \$242,000 or an average of his 2005 through 2007 income of \$201,459.

13 In response, the husband says that although he earned \$242,000 in 2006 the support determination should be made on the basis of what he says is his 2007 income of \$117,000. He further submits that support could be based on perhaps, generously, a \$125,000 income. He also says that he could continue paying the respondent her \$51,000 income from his business.

14 Both parties acknowledge that the wife has taken some \$43,000 out of one of the son's bank accounts. The husband does not know where the money is and the wife says that it is safely deposited and she is not depleting it. She says that it was taken to assist her if support was not paid. Now that support is to be ordered, those funds should obviously be returned to the son's account.

15 Given the significant swing in the husband's 2006 and 2007 income and the substantial forensic accounting still to come, I believe that the wife's submission of an average income of \$201,459 is reasonable and I shall make this interim order based on that income. This order is without prejudice to a further order once all income investigations have been completed.

Child Support

16 Eddy Jr. is 19 years of age and attends George Brown College. His 2007 income was \$21,985. The wife has sought support for Eddy Jr. but has provided no information as to the use to which that money is put nor the expenses that she incurs on his behalf. There is a dispute between the parties as to where Eddy Jr. spends most of time. In all of those circumstances, I decline to make an interim child support order for Eddy Jr. This is without prejudice to such further and other order that a court may make based on a full evidentiary record.

17 Thomas is 11 and resides with his mother. Based on an income of \$201,459, the appropriate child support is \$1,635 per month and I order that the husband shall pay that effective December 1, 2008.

18 Although the wife claims a section 7 contribution there is nothing in the materials to support any such expense. I decline to make an order with respect to section 7 expenses subject to any other order based on a proper evidentiary record.

Spousal Support

19 The wife has shown a need and the husband does not dispute her entitlement to interim support. The father says that he is continuing to pay her salary of \$51,000 and that, of course, can come to an end with this order. Based on the husband's financial statement, he is saving \$1,500 per month and spending \$500 per month on vacation. Given the financial figures that are in this voluminous file, I have no doubt that the husband is able to pay any support that is needed by the respondent on an interim basis. Taking the parties' incomes into consideration (\$201,459 for the husband; \$0 for the wife) and presuming that one child is with the wife and the other is a shared expense, the guideline amounts are \$4,245 to \$5,138 per month. These amounts are very close to the husband's payments to the wife of \$51,000 from his company. Taking all of that into consideration, and pending full financial disclosure from the parties, I order the husband to pay spousal support in the amount of \$5,000 per month commencing December 1, 2008. Any issues of retroactivity to the date of this order are left to the trial judge.

20 In order to avoid any uncertainty, the wife is responsible for paying the housing expenses on the home effective December 1, 2008. If there are any arrears on mortgage, taxes or utilities, those items shall be left to the trial judge or further order of this court.

Costs

21 Should the parties not be able to agree upon costs, counsel can determine who should file written cost submissions within 30 days and who shall respond to those submissions 15 days thereafter. Submissions shall be no more than three pages with offers to settle and bills of costs attached. Submissions should be faxed to my office and a hard copy filed in the court file.

22 Both parties' factums were clear, concise and extremely helpful to me and I am grateful to counsel for their hard work.