
CANADA / JUDGMENT

Gluska v. Gluska

2011 BCSC 1562

COURT

Supreme Court of British Columbia

DECIDED

17 November 2011

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2011 BCSC 1562 Gluska v. Gluska

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gluska v. Gluska,

2011 BCSC 1562

Date: 20111117

Docket: D26749

Registry: Kamloops

Between:

Paul Dominic Gluska

Claimant

And

Christine Anne Gluska

Respondent

Before: The Honourable Mr. Justice Powers

Reasons for Judgment

Paul Dominic Gluska appeared on his own behalf.

Counsel for the Respondent and the Ministry of Housing and Social Development:

N. Johnson

Place and Date of Hearing:

Kamloops, B.C.

October 5, 2011

Place and Date of Judgment:

Kamloops, B.C.

November 17, 2011

- [1] Mr. Gluska has brought an application to vary orders of February 7, 2000 and September 7, 2001, dealing with child maintenance. He seeks to have the arrears of maintenance cancelled or reduced.
- [2] Mr. Johnson appeared for the Ministry of Housing and Social Development (the "Ministry") and Christine Anne Rae ("Ms. Rae") formerly known as Christine Anne Gluska. Ms. Rae is presently on social assistance and has assigned her entitlement under the orders to the Ministry. The Ministry has taken steps to enforce arrears under these orders.
- [3] The parties were married on February 18, 1989, and separated in October of 1998 after approximately nine and half years. They have four children,
 - 1. M., born in 1990, is now 21 years of age and was 19 in February of 1999;
 - 2. T., born in 1991, is now 20 years of age and turned 19 in April of 2010;
 - 3. N., born in 1992 turned 19 in March of 2011;
 - 4. Q., born in 1994 will be 17 in December of 2011.
- [4] In 1999 Mr. Gluska was ordered to pay spousal support to Ms. Rae in the amount of \$1,000.00 per month and child support in the amount of \$1,367.00 per month. The spousal support was suspended February 7, 2000, when Mr. Gluska was unemployed and income was attributed to him in the amount of \$17,800.00. Mr. Gluska was to advise of any changes of his employment circumstances and to provide information about any income he earned whatsoever. He was also to advise Ms. Rae of his efforts to find employment on a monthly basis.
- [5] The order of September 7, 2001, granted the parties a divorce and found that according to the Federal Child Support Guidelines (the "Guidelines"), Mr. Gluska had Guideline income of \$17,800.00. He was ordered to pay Ms. Rae the sum of \$412.00 per month as child support for four children commencing September 1, 2000.
- [6] The parties had entered into minutes of settlement with regard to their property division.

- [7] Since the original order, the residence of some of the children has changed from time to time. The parties' financial circumstances have also changed from time to time. Sometime in the spring of 2009, Ms. Rae began receiving social assistance and the Ministry became involved in the enforcement of the maintenance orders. The Family Maintenance Enforcement Program ("FMEP") became involved in the enforcement of these orders in 2009.
- [8] Mr. Gluska received communications and demands from FMEP with regard to arrears and an accounting of the arrears. He takes issue with the accounting.
- [9] He argues that there was an exchange of assets between the parties which included an agreement to reduce all arrears that existed prior to or on September, 2004 to zero. He also argues that an accounting must be made for the times some of the children resided with him and when Ms. Rae should have been paying child support for the children in his care. He also argues that there is maintenance being claimed for periods of time when at least some of the children were independent or no longer children of the marriage.
- [10] Ms. Rae filed her own application seeking ongoing support for two of the children T. and Q. commencing January 1, 2011, and to vary, by increasing the level of arrears with respect to the children M. and T. for the period of January 1, 2008, to December 31, 2010. Ms. Rae was also seeking an order for reinstatement of spousal support.
- [11] The application for reinstatement of spousal support was simply adjourned generally. The application with regard to the increase of child support for M. and T. from January 1, 2008 to December 31, 2010 was also not pursued before me. However, both parties referred to what they say would have been the appropriate or correct amount of support for those children during the time arrears accumulated.
- [12] The FMEP has prepared an account statement, calculating arrears from September 1, 2000, up to and including October 3, 2011. The statement does not include any interest up to October 20, 2009. Thereafter, interest was calculated on the amount outstanding.
- [13] The FMEP account claims arrears at October 3, 2011 in the amount of \$43,589.84. This includes interest of \$1,889.28 and gives credit for payments from October 20, 2009 to October 3, 2011 in the amount of \$5,272.00. The total support obligation calculated before the addition of interest and the credit for payments made was:

Amount claimed October 3, 2011:

\$43,589.84

Minus interest:

\$ 1,889.28

Balance:

\$41,700.56

Plus payments made:

\$ 5,272.00

Total:

\$46,972.56

- [14] These amounts do not take into account \$8,999.34, that the FMEP is currently holding for distribution.
- [15] Mr. Gluska does not accept those calculations and has provided his own. He has gone through a detailed analysis of what he believes is owing or should be considered owing excluding any interest and states that the figure should be \$16,488.00.
- [16] Mr. Johnson on behalf of the Ministry and Ms. Rae has done his own calculation. He originally calculated the arrears to be \$53,978.00. However, during submissions he acknowledged that a correction had to be made for 2010 because the amount Mr. Gluska should have paid from January to August was \$733.00 per month as calculated by Mr. Gluska, not \$594.00. The amount from September to December should have been \$449.00 per month, not the \$359.00 as calculated by Mr. Gluska. This results in a new balance of \$54,450.00.
- [17] Mr. Johnson however, made it clear that there was no application to increase the amount of support. He agreed that the amount being sought was the balance according to FMEP. This is the amount that I calculated in para. 13; \$43,589.84 including the interest of \$1,889.28. This is the amount after credit for payments of \$5,272.00.
- [18] Mr. Johnson says that the calculations that he has done are simply provided to demonstrate that it would not be grossly unfair to Mr. Gluska if the arrears were not reduced, because the actual amount of arrears even after adjustments is significantly more than the amount being claimed.
- [19] Both parties used today's Guideline table rates. Mr. Gluska said that he could not find the Guideline amounts that were in force prior to May 1, 2006. The current Guideline amounts have been in force since May 1, 2006.
- [20] The existing orders were made pursuant to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) and this application to vary is pursuant to s. 17 of that Act. Section 17 allows the court to vary, rescind or suspend prospectively or retroactively in order for support. Section 17(4) provides:

- (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

...

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

Court may take agreement, etc., into account

(6.2) Notwithstanding subsection (6.1), in making a variation order in respect of a child support order, a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied

- (a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
- (b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

[21] Our Court of Appeal has recognized that there is a heavy onus on an applicant who seeks to reduce or cancel arrears for child support. (*Reid v. Reid*, 68 B.C.L.R. (2d) 258). *Reid* was a decision dealing with the Divorce Act. The Court of Appeal made it clear that the onus lies on the person applying to reduce or cancel arrears. Justice Taylor said at para. 15:

To obtain variance or reduction or cancellation of arrears an applicant must make a full disclosure of his or her means and satisfy the court that the change in means is real and not one of choice and is such as to warrant the exercise of the court's jurisdiction to grant relief.

[22] Our Court of Appeal has also dealt with applications to vary or reduce child support under the Family Relations Act, particularly in the case *Longstaff v. Longstaff*, 49 RFL (3d) 1 and *Luney v. Luney*, 2007 BCCA 567. In *Luney*, the court referred to the provisions of the Family Relations Act, R.S.B.C. 1996, c. 128, s. 96 which provides that the court may reduce or cancel arrears "only if it is satisfied that it would be grossly unfair not to do so". The Divorce Act does not contain those words, but the onus does lie on the applicant, in this case Mr. Gluska, to show that the requirements of the Divorce Act have been met and that the court should exercise its jurisdiction in his favour.

[23] In the present case, Ms. Rae agrees that in looking at the arrears the court should take into consideration the times the children spent with either parent and any necessary set-offs. She agrees that the court should consider the parties respective incomes at various times in calculating the child support.

[24] The parties calculations differ significantly as follows: Mr. Gluska argues that there should be no arrears prior to September 1, 2004. He calculates that those payments would have been:

46 months x \$412.00 =

\$18,952.00

Plus two months at \$356.84 =

\$713.68

Total:

\$19,665.68

(This is a 48 month period, not 46 months.)

[25] The monthly amounts are the amounts used by FMEP in their calculations.

[26] Mr. Gluska argues that it is unfair for the arrears to be calculated prior to that date. He says that he has no records to prove the payments that he actually did make because those records were lost when his home in Edmonton was flooded. He also argues that he is not now able to prove that the child, N. did in fact move in with him in August, 2004. I note that FMEP did reduce the amounts that should have been paid in July, presumably because one of the children moved in with him and then again in September because a second child moved in with him.

[27] He also argues that there was some arrangement with Ms. Rae dealing with property. He does not have any documentation to support that arrangement. Ms. Rae argues that there was no money paid pursuant to the order and that arrears were outstanding. She refers to emails that she sent between herself and Mr. Gluska in December of 2004 and January of 2005, discussing the sale of a piece of recreational property and Mr. Gluska's one-quarter interest in that property. She makes reference to arrears of child support, but it is difficult to know whether she was claiming no support had been paid or that more support should have been paid than was actually paid. She was under the impression that she could not offset the arrears of child support, if any, against the money owed to Mr. Gluska from the property. Her email indicates that she would have to go to court and have the orders varied or the amounts set.

[28] The minutes of settlement, dated January 7, 2000, paragraph 21 provided that Mr. Gluska would pay maintenance for the children pursuant to the Guidelines. The order of September 7, 2001, was based on the Guidelines and Mr. Gluska's income at the time.

[29] Ms. Rae's email dated January 1, 2005, states that she was informed by her lawyer that she could not just subtract all of the money that Mr. Gluska owed her from his share of the proceeds of sale, "like child support". She also said:

My lawyer's say that I have to take one case, (child support) to family court, and get it all back dated, because your child support payment amount was \$412.00 a month and was ordered when you were out of work. He pointed out that you were supposed to report to the lawyer once a month about any changes in your employment and household income but thats O.K. don't worry, it can all be back dated and recalculated with your proper amount of household income and tips, then a new child support payment amount will be set up, and the new payment and all back payments will be set by the judge. (five years, thats alot of back payments, If you wish to pay in one lump sum I suggest a private loan.) Don't forget, you can get your child support payment from me ordered while your there.

- [30] It is not clear what payments were made during that time. Mr. Gluska said that he did make payments and that some of the children stayed with him from time to time.
- [31] Ms. Rae did not pursue Mr. Gluska for child support. She said that she only had a vague idea where he was. However, the children were living with him from time to time and it is difficult to accept that she did not know where he was or was unable to locate him with minimal effort.
- [32] Ms. Rae did seek the assistance of the FMEP to collect the support. There is a note attached to their documents indicating "RC not claiming arrears prior to Sep 1, 2004".
- [33] There is no clear documentation supporting any claim to a property settlement and Ms. Rae denies one.
- [34] Mr. Gluska's affidavit dated April 15, 2010, in paragraph 3 is equivocal as to what payments were made "I made some payments...and we had an agreement concerning a trade of assets for child maintenance payments." No details as to what the agreement was are included.
- [35] Mr. Gluska argues that the Guidelines changed on May 1, 2006, and he is unable to determine what the Guideline amounts were before that date. Therefore he says that all of the arrears prior to that, being \$26,056.56, should be cancelled. This is no basis for cancelling or reducing arrears.
- [36] Mr. Gluska then provides his calculations of what he said should be the amount owing, if those first two objections are not successful.

2003

- [37] He argues that the child T. resided with him from September to December, a total of five (actually four) months during 2003. He argues that Ms. Rae's income was \$39,732.00 and therefore she should have paid him \$365.00 per month for one child for a total of \$1,460.00. He argues that the arrears should be reduced by this amount. Mr. Johnson made no adjustment for this claim, although Ms. Rae agrees that the child was with him for a brief period.

2004

- [38] Mr. Gluska says that his income during the year 2004 was \$23,350.00. His payment should have been \$590.00 per month, for four children, from January to May, five months, for a total of \$2,950.00.
- [39] He argues that the child M. moved in with him in June of 2004, and that he should have paid child support for three children at \$490.00 per month for June and July for a total of \$980.00 and that Ms. Rae should have paid child support for M. to him based on her income of \$43,750.00 or \$405.00 per month for a total of \$810.00 owed to him for two months.
- [40] He argues that the child N. moved into his home in August of 2004 and that from August to December he should have paid child support for two children or \$367.00 per month for a total of \$1,835.00 for five months. He argues that Ms. Rae should have paid child support for that five month period for the two children in his care at \$665.00 per month, for a total of \$3,325.00.
- [41] He calculates that he should have paid \$5,765.00 to Ms. Rae and she should have paid him \$4,135.00 for a net owing to her of \$1,630.00 for the entire year. He argues that the FMEP calculated arrears should therefore be reduced by \$2,610.08 for 2004. They have calculated the arrears at \$4,240.00.
- [42] Ms. Rae in her calculations argues that all four children remained with her up to and including August of 2004. She agrees that two children resided with Mr. Gluska from September to December. She uses a slightly different monthly amount for Mr. Gluska, from January to August, \$514.00 and from September to December, \$386.00. Based on her calculations, the net amount owing by Mr. Gluska for the year 2004 would be \$2,996.00. This is less than the \$4,240.08 calculated by FMEP.

2005

- [43] In his calculations for 2005, Mr. Gluska uses the figure of \$31,057.00 for his Guideline income. However, the tax documents show that amount should be \$32,161.00. He calculates that he should have paid \$486.00 per month from January to July, that is seven months; for a total of \$3,402.00. He seeks an offset based on the support for two children based on Ms. Rae's income of \$38,500.00 or \$589.00 per month for a total of \$4,123.00. Ms. Rae calculates that he should have paid \$504.00 per month for two children and she should have paid \$589.00 per month for two children, but this was for the period from January up to and including August. Therefore, he should have paid \$4,032.00 and she should have paid him \$4,712.00.
- [44] For the balance of the year (four months), he acknowledges that the child M. moved back with Ms. Rae, that he should pay support for three children. He argues that amount should be \$624.00 per month. Ms. Rae argues that it should be \$663.00 per month. He argues that Ms. Rae should have paid him support for one child N., who continued to reside with him at \$356.00 per month based on income of \$38,500.00 for a total of \$1,780.00. He argues he should have paid is \$6,036.00 and she should have paid was \$5,314.00 for a net amount of

\$722.00. FMEP has calculated the amount of arrears at \$3,909.12. He asks that it be reduced by \$3,187.12.

- [45] Ms. Rae calculates that he should have paid \$6,684.00 and she should have paid \$6,136.00 for a net amount of \$548.00.

2006

- [46] Mr. Gluska performs his calculations based on his income of \$17,400.00. However, it should be \$20,470.00 as used by Ms. Rae. He argues that he should have paid for three children at \$372.00 per month for a total of \$4,464.00 for the year. He argues Ms. Rae had income of \$42,000.00 and she should have paid support for one child at \$388.00 per month for a total of \$4,656.00; therefore owing him \$192.00. She argues that he should have paid \$434.00 per month for three children, for a total of \$5,208.00 and she should have paid \$388.00 per month for one child for a total of \$4,656.00. Therefore, he owes her \$552.00.

- [47] FMEP calculated arrears at \$4,282.00.

2007

- [48] Mr. Gluska has not done a precise calculation for 2007. He simply says that he does not have Ms. Rae's income tax returns for that year, and therefore cannot calculate the offset. He seeks to have any arrears accrued during that period suspended until he has received her income tax returns. Therefore he asks that \$4,282.08 be removed from the arrears calculation. He argues that the child N. resided with him for one year and the amount that Ms. Rae should have paid for that child, must be offset against any amount he should have paid for three children. Ms. Rae calculates that he should have paid \$852.00 per month for three children for a total of \$10,224.00. She agrees that the child N. resided with him for two months and she should have paid \$388.00 per month for the amount of \$776.00. She argues the arrears therefore are \$9,448.00. During submissions there was some argument from Mr. Gluska that perhaps N. resided with him until May of 2007. The additional three months support for N. would be \$1,164.00.

- [49] Ms. Rae did her calculations based on her income for 2006 which was \$42,000.00. For some reason she did not provide her income tax returns for 2007. Her approach appears reasonable in the circumstances.

2008

- [50] Mr. Gluska's income was \$40,611.00. He was required to pay support for three children at \$814.00 per month, for a total of \$9,768.00. Ms. Rae accepts that amount. Mr. Gluska argues that during a certain amount of time in 2008, Ms. Rae was incarcerated. He argues that the children were on their own and it was not clear who was looking after the finances. He therefore argues that a portion of the arrears should be cancelled in the amount of \$4,242.02. Ms. Rae argues that she did pay somebody to take care of the children so that she was still financially responsible for them, even though she was incarcerated. FMEP used the

figure of \$356.84 per month for 12 months for arrears of \$4,282.08. Obviously that figure is less than it should have been, based on Mr. Gluska's income.

2009

- [51] The child M. turned 19 in 2009. Mr. Gluska has calculated child support based on his income of \$40,532.00. Ms. Rae accepts that income. He argues that he should have paid child support for three children for January and February, and two children thereafter. He calculates \$812.00 per month for January and February, for a total of \$1,624.00 per month, plus \$618.00 per month for the additional 10 months for \$6,180.00 for a total of \$7,804.00.
- [52] Ms. Rae calculated \$812.00 per month for three children for three months and then \$618.00 per month for two children for nine months. Her figure results in arrears of \$7,998.00. The difference between them is \$194.00.

2010

- [53] Mr. Gluska calculates the support based on his income of \$48,315.14. Ms. Rae accepts that. The child T. became 19 on April 9, 2010. Mr. Gluska agrees that he should have paid for two children from January to and including April at \$733.00 per month for four months for a total of \$2,932.00. He argues that for the balance of the eight months of the year, he should have paid for one child at \$449.00 per month for a total of \$3,592.00 and a yearly total of \$6,524.00.
- [54] Ms. Rae in her calculations used the wrong figure for the monthly amounts, but recalculated. She claims for two children from January to August at \$733.00 per month times eight months equals \$5,864.00 and for one child from September to December at \$449.00 per month times four months equals \$1,796.00 for a total of \$7,660.00. This is \$1,472.00 more than she originally claimed and increases the total she calculated of arrears to \$54,450.00.
- [55] The child T. had completed high school before she was 19. She then was sponsored by a rotary club program and went to Thailand for the school year until August of 2010. Her plan was to continue in post secondary education when she returned to Canada. Her involvement in the rotary club program was optional, but part of improving her resume for applications for university and ultimately medical school. Ms. Rae continued to provide support for her during that time. I am satisfied that although she was not registered in a post secondary education program, she was registered in a school program in Thailand. I am satisfied that it was a reasonable thing for her to do and that she was unable to remove herself from the charge of her parents because of advancing her education. I find that she was a child of the marriage, up to September of 2010.

2011

- [56] Mr. Gluska argues that his obligations for child support in 2011 should be based on his income of 2009 that is \$40,532.00. Ms. Rae accepts that. He is obliged to pay for one child during 2011. He calculates the support for one child at \$352.00 per month. The Guideline amount for one child based on an income of \$40,532.00 is \$374.95. I find that Mr. Gluska should be paying \$374.95 per month for one child for the year 2011.
- [57] If the child T. does return to post secondary school in 2012 as she plans, then she would become a child of the marriage again, and the parties would have to revisit the issue of child support for her.
- [58] The various calculations of Mr. Gluska, Mr. Johnson and FMEP are difficult to reconcile. They use different income amounts, different numbers of children and different time periods. However, I agree with Mr. Johnson that a practical approach is to try to determine what the actual income of the parties was, the numbers of children with them at various times and apply the correct Guideline amounts. This will allow a calculation of what the arrears could properly have been to compare to the actual amount of arrears being claimed. At the risk of creating more confusion, I have done my own calculations using the Guidelines in effect prior to May, 2006 and then the Guidelines subsequent to May, 2006.

2000 - 2003

September to December (40 months)

Mr. Gluska's Income: \$17,800.00

Guideline amount for 4 children: \$412.00 x 40 months =

\$16,480.00

- [59] Mr. Gluska says that the child T. was with him from September to December of 2003, that being a period of four months. He argues that the support should be adjusted, so that he is paying for three children and to offset the amount that Ms. Rae should have paid for one child (\$1,460.00). Ms. Rae agrees that the child did live with him for a brief period of time, but there is no specific agreement as to what that was.

2004

January to August (8 months)

Mr. Gluska's income: \$23,500.00

Guideline amount for 4 children: \$551.00 plus 2.28% of the amount in excess of \$23,000.00 or \$500.00 = \$551.00 plus \$7.98 = \$558.98 x 8 months =

\$4,471.84

[60] Mr. Gluska says that the child. M. was with him in June and July and that the child N. was with him from August on. Ms. Rae agrees that M. and N. were with him from September on. Based on that, the child support calculation is as follows:

September to December (4 months)

Mr. Gluska's income: \$23,350.00

Guideline amount for two children: \$343.00 plus 1.56% of the amount in excess of \$23,000.00 that is \$350.00 = \$343.00 plus \$5.46 = \$348.56 x 4 = \$348.56

\$1,394.24

Ms. Rae's income: \$43,750.00

Guideline amount for two children: \$605.00 plus 1.30% of the amount in excess of \$43,000.00 or \$750.00 = \$605.00 plus \$9.75 = \$614.75 x 4 months =

(\$2,459.00)

Difference of:

(\$1,064.76)

2005

January to July (6 months)

Mr. Gluska's income: \$32,161.00

Guideline amount for two children: \$468.00 plus 1.20% of the amount in excess of \$32,000.00 or \$161.00 = \$468.00 plus \$1.93 = \$469.90 x 6 months =

\$2,819.40

Ms. Rae's income: \$38,500.00

Guideline amount for two children: \$541.00 plus 1.25% of the amount in excess of \$38,000.00 or \$500.00 = \$541.00 plus \$6.25 = \$547.26 x 6 months =

(\$3,283.50)

Difference of:

(\$464.10)

August to December (6 months)

Mr. Gluska's income: \$32,161.00

Guideline amount for three children: \$618.00 plus 1.60% of the amount in excess of \$32,000 or \$161.00 = \$618.00 plus \$2.58 = \$620.58 x 6 months =

\$3,723.48

Ms. Rae's income: \$38,500.00

Guideline amount for one child: \$327.00 plus .8% of the amount in excess of \$38,000.00 or \$500.00 = \$327.00 plus \$4.00 = \$331.00 x 6 months =

(\$1,986.00)

Difference of:

\$1,737.48

2006

January to April (4 months)

Mr. Gluska's income: \$20,470.00

Guideline amount for three children: \$399.00 plus 1.93% of the amount in excess of \$20,000.00 or \$470.00 = \$399.00 plus \$9.07 = \$408.07 x 4 months =

\$1,632.28

Ms. Rae's income: \$42,000.00

Guideline amount for one child: \$360.00 x 4 months =

(\$1,440.00)

Difference of:

\$192.28

New Guideline table amounts are now in place:

May to December (8 months)

Mr. Gluska's income: \$20,470.00

Guideline amount for three children: \$424.00 plus 2.02% of amount in excess of \$20,000.00 or \$470.00 = \$424.00 plus \$9.49 = \$433.49 x 8 months =

\$3,471.20

Ms. Rae's income: \$42,000.00

Guideline amount for one child: $\$388.00 \times 8 \text{ months} =$

(\$3,104.00)

Difference of:

\$367.20

2007

[61] There is a dispute between the parties about how long the child N. resided with Mr. Gluska. In Mr. Gluska's affidavit of April 15, 2010 paragraph 11, he said that N. stayed with him until August, 2008. In paragraph 16 he says June of 2009. In his submissions he said that in 2008 the child N. was on his own.

[62] Ms. Rae said that the child N. moved out of Mr. Gluska's home of February of 2007 and moved to Edmonton. I based my calculations on the child moving out in February of 2007.

January to December (12 months)

Mr. Gluska's income: \$42,558.00

Guideline amount for three children: $\$841.00$ plus 1.91% of the amount in excess of $\$42,000.00$ or $\$558.00 = \$841.00$ plus $\$10.66 = 851.66 \times 12 \text{ months}$

\$10,219.92

Ms. Rae's income: 42,000.00

Guideline amount for one child: $\$388.00 \times 2 \text{ months} =$

(\$776.00)

Difference of :

\$9,443.92

[63] If the child N. had stayed with Mr. Gluska throughout the year, there would be an additional 10 months at $\$388.00$ per month which equals $\$3,880.00$ which should be deducted from the arrears. However, even Mr. Gluska only suggests that the child N. might have been with him as late as May, for an additional amount of $\$1,164.00$.

2008

January to February (12 months)

Mr. Gluska's income: \$40,611.00

Guideline amount for three children: $\$803.00$ plus 1.86% of the amount in excess of $\$40,000.00$ or $\$611.00 = \$803.00$ plus $\$11.36 = \$814.36 \times 12 \text{ months}$:

\$9,772.32

[64] Mr. Gluska argues that during a period of time, for approximately four months of that year, Ms. Rae was in prison and the children were living in the home by themselves. Ms. Rae says that although she was in prison, she continued to provide a home and financial support for the children. She says she paid another adult to help provide supervision for the children. I find that no deduction should be made from the arrears during this time.

2009

January to February (2 months)

Mr. Gluska's income: \$40,532.00

Guideline amount for three children: \$803.00 plus 1.86% of the amount in excess of \$40,000.00 or \$532.00 = \$803 plus \$9.90 = \$839.90 x 2 months =

\$1,625.80

March to December (10 months)

Mr. Gluska's income: \$40,532.00

Guideline amount for two children: \$610.00 plus 1.45% of the amount in excess of \$40,000.00 or \$532.00 = \$610.00 plus \$7.71 = \$617.71 x 10 months =

\$6,177.10

Total for the year:

\$7,802.88

2010

January to August (8 months)

Mr. Gluska's income: \$48,315.14

Guideline amount for two children: \$729.00 plus 1.49% of the amount in excess of \$48,000.00 or \$315.00 = \$729.00 plus \$4.70 = \$733.70 x 8 months =

\$5,869.60

[65] I am satisfied that the child T. continued to be a child of the marriage while she was in the Rotary exchange program in Thailand, up until she returned home sometime during August of 2010.

September to December (4 months)

Mr. Gluska's income: \$48,315.14

Guideline amount for one child: \$446.00 plus .96% of the amount in excess of \$48,000.00 or
\$315.00 = 446.00 plus \$3.03 = \$449.03 x 4 months =

\$1,796.12

Total for the year:

\$7,665.72

2011

[66] The parties agree that for 2011, the child support should be based on Mr. Gluska's income for the year 2009. The bonus he received in 2010 is not expected to be received in 2011. Ms. Rae wished to add the proviso that if in fact his income was greater than they agreed upon, that the support should be recalculated.

January to October (10 months)

Mr. Gluska's income: \$40,532.00

Guideline support for one child: \$370.00 plus .93% of the amount in excess of \$40,000.00 or
\$532.00 = \$370.00 plus \$4.95 = \$374.95 x 10 months =

\$3,749.50

TOTAL OF ARREARS (for all years):

\$55,682.44

[67] This is a calculation to and including October 1, 2011, this amount would continue into the future.

[68] This does not include any interest. If the payments made from October 20, 2009 to October 3, 2011 are deducted (\$5,272.00) that leaves a balance of \$50,410.44. If the disputed amount, based on my calculations, up to September of 2004 is deducted (\$20,954.84), the balance would be \$29,455.60.

[69] Mr. Johnson says that Ms. Rae and the Ministry are only claiming the amount specified by the FMEP which is \$43,589.84; this includes \$1,889.28 in interest. Without the interest it would be \$41,700.56. If no credit is given for the period up to September, 2004, there is no reason to reduce the arrears claimed by the Ministry. Clearly, on my calculations, the actual amount, even excluding interest would have exceeded the amount claimed. However, if credit is given for the amounts before September, 2004, the amount of arrears should be reduced.

- [70] Neither party has any records to assist them in determining what amounts were actually paid and the documentation is equivocal about whether there was ever any agreement to offset arrears as a result of a property settlement. The emails are not of much help. Ms. Rae made no effort to pursue the issue and Mr. Gluska may well have been left in a position where he believed no future claim would be made for those arrears.
- [71] I am satisfied that Ms. Rae did know where Mr. Gluska was throughout this long history, or certainly would have had no difficulty locating him, if she was inclined to make the effort. Given that this is a period of seven to ten years ago, and the fact that Mr. Gluska's records, if he had any, were lost and the extreme delay, I am satisfied that the arrears for that period should be cancelled.
- [72] However, there should have been some interest paid on the actual arrears. I have not done a precise calculation, but FMEP began calculating interest in 2009 on a higher amount of arrears. Their total interest was \$1,889.28. If the parties wish to do a precise calculation of the interest based on my figures, they can do so and include that in the order. Failing that, I suggest that they simply round the interest off to \$1,000.00 and add that to the arrears as I have calculated them for a balance of \$30,455.60
- [73] There is no reason why the monies being presently being held by FMEP (\$8,999.34) should not be applied to the outstanding arrears.
- [74] Mr. Gluska's income is estimated to be \$40,532.00. His child support for one child is \$374.95. In addition to that, he should be making payments on the arrears of \$375.00 per month. Those payments are to commence on December 1, 2011, and continue on the first of each and every month thereafter. His obligation to pay child support may increase from one child to two children if T. returns to full time post secondary education. If that occurs, and the parties are unable to agree on a monthly payment on arrears, Mr. Gluska has liberty to apply to have that amount fixed by the court. This would be a change of circumstances and may justify a reduction in the payment on arrears. However, that issue would have to be addressed on Mr. Gluska's application.
- [75] The parties have not made submissions with regard to costs, largely because they did not know the outcome of this application. If they are unable to agree on the issue of costs, they have liberty to address that.

"R.E. Powers J."

POWERS J.

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