SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Korem v. Kedmi*, 2017 NSSC 184

Date: 2017/06/29
Docket: *Sydney*, No. 1206-006155
Registry: Sydney

Between:

NAHMAN KOREM

Applicant

v.

IRIS KEDMI

Respondent

Judge:	The Honourable Justice Moira Legere-Sers
Heard:	June 12, 2017 in Sydney, Nova Scotia
Written Release:	June 29, 2017
Editorial Notice:	Paragraph 2 of the electronic version of this decision has been modified in accordance with the attached erratum, dated **July 6, 2017.**
Counsel:	Nahman Korem, Self Represented Alan Stanwick, Counsel for the Respondent

By the Court:

[1] The Applicant and Respondent were married December 16th, 1998 in Grenville, South Carolina. This was not their first marriage. The Applicant has three adult children from a previous marriage and the Respondent one.

[2] There is one child of this union; […] born September […], 2011. She is 15 years and 9 months old as of the date of this decision.

[3] The history of the marriage, and high conflict divorce is well documented in the file and in the Child Wishes Assessment.

[4] I will not repeat the contents in this decision except to say there are multiple interim and variation orders, contempt and amended contempt orders, a preservation of assets order and an execution order for recovery of possessions. There are discontinued appeals of prior orders.

[5] There is an outstanding criminal charge against the Applicant. While awaiting a decision from the court he remains under an undertaking which limits his contact with the child of the marriage.

[6] There is a Divorce Order and a Corollary Relief Order dated at Sydney, N.S. January 25th, 2012, issued July 6th 2012 settling all issues between the parties.

[7] These issues were resolved at a three-day settlement conference. Both parties were represented by counsel.

[8] The execution order, contempt order and child wishes assessment postdates the corollary relief judgment.

[9] There have been several memorandums ordering disclosure and filing flowing from the current application. The filing of documentation for this application was not done on a timely basis.

[10] In this application dated September 13th, 2013 the father is self-represented. He advised me he had had access to legal advice on this matter. The mother is represented by counsel.

[11] The consent corollary relief judgment ordered a shared parenting arrangement. The child was to spend a week about with each parent. No order for child support issued given neither parent had income at the time.

[12] The Applicant seeks to vary his access/ parenting time pursuant to s.17 of the *Divorce Act* to permit the child to spend all school days with him in his residence.

[13] The Respondent filed a response on April 16th, 2014 seeking a variation from shared parenting to sole custody, child support retroactively to November 2013 and prospective child support.

[14] Instructions to file and prepare for hearing were given to both parties by memorandum the 27th May 2014.

[15] The father discontinued his application on May 28th, 2014.

[16] The application continued via the Respondent.

[17] There has been a material change in circumstances since this order.

[18] Among the many changes that have occurred the most significant is the fact that the father has had no further contact with his daughter from November 2013 forward except for a few emails in first quarter of 2017.

[19] An order for a child wishes assessment was ordered on July 39th 2015 and the report was filed on February 17th, 2016.

The Child Wishes Assessment

[20] The assessment detailed the history of the relationship as told by each of the parties. The high conflict and animosity continues between the parents.

[21] The child described her reasons for refusing to have contact with her father and her wish that any future contact be arranged directly through her and her therapist.

[22] The child was 14 at the time of the assessment; she is very close to 16 years old now. She is currently completing Grade 10 and is doing well academically. She has an active social life and volunteers in the community. She likes school.

[23] She has spent a considerable amount of her early childhood living with and between her father and her mother independently and together.

[24] She has suffered the effects of a high conflict marriage and divorce and is currently in therapy on an ongoing basis.

[25] She has decided to stay with her mother and in her community.

[26] She advises that she has permission from her mother to visit her father whenever she wishes.

[27] She advises that if her father decides to invite her for coffee she would consider going. She wants her encounters to be in a place where she feels comfortable. That does not include his home.

[28] She does not want to discuss the past. She wants a peaceable exchange and would be prepared to meet with her father on certain conditions which she would develop with her counsellor and discuss with him.

[29] The mother is prepared to follow the assessor's recommendations.

[30] The assessor recommended there be no contact between the mother and father concerning the child.

[31] The assessor suggests that the father consider whether he is prepared to meet under the conditions imposed and should he agree, that the meetings start with a third person or her counselor as agreed upon by the child.

[32] She recommends that it can be structured to permit a relationship to grow and to avoid further deterioration.

[33] When the child and her therapist consider it is no longer necessary to have a third party present, they may remove that stipulation.

[34] To preserve, as much as possible, the privacy of the parents and child, I am not going to detail the contents of the assessment other than to indicate that I have read the assessment, weighed the contents of the assessment with the

affidavit and viva voce evidence and believe the recommendations are sound in this case.

[35] Further exposing this child to written details of the parental conflict or their evidence about her or hers about them would be contrary to her best interests.

[36] It might expose her to further breaches of privacy, exacerbate the conflict between the parties and make living in the community difficult.

[37] For the benefit of any court hearing in this matter the details in evidence are set out in the affidavits and assessment.

[38] There is little else that can be done here other than to proceed cautiously in accordance with the child's wishes, given her proximity to 16 years old and her clearly stated intention to proceed with, what, if any, visitation she can in circumstances that permit her to feel safe and in control of her life.

[39] My goal is to avoid effecting further damage on already difficult relationships. It is not helpful or necessary to make findings of fact or fault in this long term conflictual relationship.

[40] The relationship between the father and the child has deteriorated to such an extent that the court is unable to enforce the previous order and, equally, unable

to order any contact between the two that is not consented to by the child and recommended by the child's therapist.

[41] The father reluctantly agrees to this finding.

[42] The father wishes it were not so. He admits they cannot go back to a sharing of time on a week on week off basis. He is reluctant to agree to this, yet he accepts his daughter's decision to remain with her mother with visitation on hold until they can graduate to at least intermittent contact.

[43] This then is one of the material changes since the corollary relief judgment. The parents do not have a shared parenting relationship and the child's residence will no longer change on a weekly basis, or at all.

[44] Both parties have also confirmed that neither can talk to the other . There is little to no likelihood they can consult on any issues respecting the child.

[45] This order replaces all clauses in the consent corollary relief judgment from para. 1 on p.2 to and including para. 17 on p.5 of the corollary relief judgment.

[46] This child resides with her mother.

[47] The Respondent mother is responsible for making the day-to-day decisions and assisting the child make long term decisions.

[48] All day-to-day decisions will be and continue to be made by the mother.

[49] There is no communication between the two parents except through court proceedings. There shall be no requirement to consult on major issues as consultation between the parents is not possible or beneficial.

[50] There will be no further discussion between parents other than to oblige the mother to keep the father informed in writing of major decisions regarding the child's health, education choices, mental and physical welfare and changes in address while she remains a dependent child of the marriage.

[51] Finally, on the issue of custody, the father tendered three pages from the daughter's Facebook page to support his concerned about her thoughts. He wonders if she is considering self-harm.

[52] Although these were copied in January he did not bring them to the attention of the mother's lawyer, nor the mother, nor the child's therapist until this hearing in June, 2017.

[53] The mother promises, and is directed, to address these with the therapist immediately to determine what, if any, action should be taken.

[54] The child shall continue to have as free and liberal access to contact her father by any means she chooses in recognition of her age , needs and the assessor's recommendations.

[55] There is no need to identify holiday visitation as no visitation is ongoing. What visitation occurs shall be as agreed upon by the child and as arranged by the father with the child.

[56] The mother shall be notified by the father of these visits in advance to assist her in facilitating the visits if possible and to keep her informed.

[57] The mother shall have final decision making authority on all major issues while the child remains a dependent child of the marriage.

Travel /Mobility

[58] All immigration papers and documentation required for the child shall be kept up-to-date and immediately signed by both parents as directed in court and as required.

[59] Both parents shall ensure that they provide their required signatures expeditiously if and when required within ten days of any such request.

[60] The Mother shall hold all passports and government documentation pertaining to the child, her citizenship etc.

[61] The child shall not be relocated while she continues to live with her mother without 90 days advance notice in writing by the mother to the father, to allow the father to consider what, if any, legal action he wishes to make.

[62] The child is approaching Grade 11 and I am informed that she is intending to stay in the local area to finish her high school. Thereafter there will be no restrictions on her mobility.

[63] The mother shall hold and have the right to apply for passports for or on behalf of the child and shall have the sole right with the child to apply for permanent residence status with the child in Canada and to apply for and obtain both Canadian and Israeli passports as determined by the mother and child in accordance with the Canadian and Israeli laws and regulations.

[64] In the event the mother and child or child is seeking to leave Nova Scotia or Canada, for the purpose of travel or vacation, while the child is a dependant child within the meaning of *the Divorce Act*, the father shall be given reasonable advance notice along with a travel itinerary and contact information

while the child is out of the Province or Country. Reasonable notice shall be one month for trips within Canada and two months for trips outside Canada .

[65] The child's country of primary residence and jurisdiction is Canada.

[66] Either parent may provide a foreign country with a copy of this order and either may register this order in the foreign country. Both parents shall cooperate in the registration of this order and both shall execute any documents required for registration of this order in the foreign country that is proposed to be visited with the child.

Child Support

[67] The father has not paid child support since November, 2013; coincidentally this was when the child refused to return to the shared parenting arrangement.

[68] The Applicant was born on November 25th, 1953. He is currently 63 years of age. The Respondent is 52.

[69] The Applicant finished high school in Israel. His work history started in Israel where in 1980, at the age of 27, he co-founded an industrial high tech company, owning 50% of the shares.

[70] The Israeli company was established in South Carolina and then in Connecticut USA.

[71] By 2001, at 48 years of age the Applicant held 50% of the shares when his employment with the company ended. He advised he could live off the dividends.

[72] While working, he estimated his latest income from this business at $120,000 annually. He did not verify whether this was inclusive or excluding dividend income.

[73] The Respondent worked for this company from 1994 -2003.

[74] The parties commenced their relationship on December 16th 1998; a relationship that lasted until the separation 12 years later in August 17th 2010.

[75] Under the entrepreneurial category in 2002-03 the Applicant and the Respondent immigrated to Nova Scotia to establish a business in which they invested these profits in their enterprise. They advised they also received a $1 million grant from the province.

[76] While the affidavit evidence is sparse as to dates and time, they advise that in 2006 the Applicant sold his shares. They both estimate his profits from the business were in the $6 million range.

[77] In 2010, the parties separated.

[78] At the time of the settlement conference the parties admitted that the debts of the marriage exceeded the assets. Neither had income at the time of the divorce.

[79] The Respondent agreed she would transfer all her interests in the assets and debts to the Applicant. This included the matrimonial home, the assets of Crown Jewel Resort Ranch, INK Real Estate Limited and Crown Jewel Aviation Limited.

[80] Pursuant to the Corollary Relief Judgement the parties agreed that the property should be kept for their child.

[81] The Applicant was to maintain the debts including the debts on the matrimonial home. The Respondent was to have exclusive possession of the home and the 70-acres lot of land. She was responsible for some maintenance and upkeep. He was responsible for the debts.

[82] In 2012, the Applicant met and began a relationship with his current partner/spouse. They live in a common law relationship.

[83] The Applicant became insolvent in 2013. By end of 2013 the main creditors ECBC and ACOA started receivership proceedings for the operating and the real estate company.

[84] A receiver was appointed by the court March 27, 2014. The father was allowed to stay on the property to avoid vandalism.

[85] The bank and credit union started action against the companies and the Respondent personally.

[86] The Applicant's current partner was the successful subsequent bidder in the business and personal receivership proceedings relating to the properties formerly held by the Applicant and Respondent and the companies under which they operated .

[87] The Applicant's partner purchased back all the assets of the receivership including the land and chalets built by the Applicant's and Respondent's original investment and work efforts.

[88] In July 2014, (February 2015) the receiver accepted the Applicant's partners bid on the former matrimonial property.

[89] In August she (Dr. Doyle) signed a purchase and sale agreement for all the company's assets. The court approved the sale over the Respondent's objections.

[90] Among countless other debts the father owed $700,000 of the $1 million loan to the province. The purchase back of these assets at receivership was accomplished by a bid of $402,000 by the Respondent's partner Dr. Doyle.

[91] The father and his partner live together on the property and resort.

[92] When the parties to this action first invested in the companies and the building of a resort, the name of the resort was Crown Jewel Ranch Inc. registered in the Respondent's name. There was a separate legal entity INK Real Estate Limited in the name of the Applicant and a third, Crown Jewel Aviation Limited also registered in the Applicant's name.

[93] *Crown Jewel* was changed when purchased by Dr. Doyle to *Guneden Place Limited* and the website was simply changed to reflect the change in name.

[94] Dr. Doyle is the owner and investor. Her son, his wife and two children live there. Her son travels for work between Alberta and Cape Breton, but when home, he works on the property for no pay. His wife is the housekeeper. Her duties are to keep the home and chalets clean and maintained with the ultimate hope they will one day have a Bed and Breakfast.

[95] The couple (Dr. Doyle and Mr. Korem) operate several business ventures including the sale of beef, bee hives and the sale of honey, microgreens and greens from their greenhouse.

[96] The Applicant advised his daughter that his bees performed very well for him last year. He advised they significantly increased the size of their hives. They have moved from owning and operating 20 hives to 80-90 beehives and sell the honey.

[97] He also advised he is working on building a vineyard and doubling the size with the ultimate hope of producing grapes in a five year period for sale.

[98] Dr. Doyle works from dawn to dusk and more. She works at least four days a week and tries to work three days if possible on the land. This is her dream property.

[99] While the Applicant testified his partner is not always able to escape her practice demands on Friday , she is the investor and puts labor into the farm property when she can. She has five adult children only one of whom is living with her.

[100] The couple have no dependant children. The partner's daughter in law is responsible for housecleaning. All household occupants participate in the household task of cooking.

[101] Both the Applicant and his partner agree he is responsible for the day-to-day operations of the farm.

[102] He is responsible for the care of the bee hives, he organizes meetings with the banks, he is the contact person for all enterprises on the website for each business and essential manages the property.

[103] While he does not do the heavy lifting on the vineyard he is responsible for running the farm.

[104] No medical evidence was tendered to suggest he is unable to continue with his business operations. He suggested he may have a hernia however he is obviously fit and capable of working and does in fact work on the farm as the day to day manager.

[105] He receives no pay, declares little to no income since 2011and holds no property.

[106] Mr. Korem is fed, clothed and sheltered through the personal and business relationship. He has access to all the assets .

[107] He has no responsibility for children other than to occasional drive the youngest child living on the farm to daycare, when necessary. The oldest child travels to school by bus.

[108] The Applicant has applied for one job only since separation. In 2009 he applied for the position of CEO of the Sydney Airport Authority. He has experience as a pilot and a businessman.

[109] He was unsuccessful, in part he argues, due to the unfavorable publicity surrounding his divorce.

[110] He admits he has not subsequently applied for any jobs in the area.

[111] The Applicant indicates his life is in the local area with his partner and on the farm and that is where he intends to stay.

[112] He professes that he is keeping the property for his daughter as agreed in the corollary relief judgment. This property however was lost to his daughter

when he stopped paying the bills and it was sold to another party. He claims no legal title to the property other than what if anything exists because of his relationship with the owner.

[113] Staying on the land is no longer for the daughter; it is a lifestyle choice.

[114] He also indicates he cannot contribute to his daughter's expenses at all, including her therapy. He indicates if she comes to live with him he could help her.

[115] He lists as his reasons for his lack of paid employment that (1) he lacks local recognized credentials; (2) he is 63 years old; (3) he must live in Baddeck and has no resources to relocate; (4) he has no car or access to a car other than his girlfriend's (however he has access to Dr. Doyle's son's car, drives the youngest to daycare, conducts the day-to-day business of running the farm activities, banking and managing activities for the business etc).; and (5) he blames his ex-wife for defaming him in the community and causing the criminal charges to be laid.

[116] Both father and mother continue to blame the other for their current state. I am not able to make findings of fact as to whether one is more responsible for

their behavior than the other. Both have suffered and both appear to have contributed to the dissolution of the relationship in the way it dissolved.

[117] The mother has a business degree earned early in her work history. Other than her work with the Applicant's company her current earnings are minimal. She earned $14,951,in 2016; $15,555.22 in 2015 and $18,195.59 in 2014.

[118] She is awaiting medical treatment for a back problem and is currently on EI. Her counsel has verified that her gross weekly benefits are $ 378. For an annual income of $19,656. The end date of her claim is May 12, 2018 .

[119] She is solely responsible for the emotional and financial needs of her daughter, her medications, her therapy and her extracurricular activities.

[120] The conditions that existed when the corollary relief judgment was signed do not reflect the current situation. The father has landed well. He is in a relationship where he lives in the former matrimonial home. He has found a new investor who is also his partner and he can work from dawn to dusk. All his basic needs are met.

[121] The mother has been in another relationship. The child lives with the mother in reduced circumstances without any financial support from the father.

[122] There is no doubt that the child would benefit from the father's contributions retroactive or otherwise.

[123] The focus of this inquiry rests on the father's lack of income earning employment. He is in fact working in a business. In return his needs are met. He shows no property or income from which one would normally look to produce a child support contributions.

The Law

[124] Their duty as parents must be viewed separately from their unhappy marriage relationship. The focus must be on the child's entitlement to support.

[125] I first reflect on the directions given in *DBS v SRG*, [2005] S.C.C.A. No. 100, and thereafter I will move to the issue of what, if any, income ought to be imputed.

[126] We are told in *DBS v SRG*, para. 6, p.16:

> Courts must be open to ordering retroactive support where fairness to children dictates it, but should also be mindful of the certainty that fairness to payor parents often demands.

[127] The mother put the father on formal notice that she was seeking child support by her response dated April 16th,, 2014. That is the most reliable evidence I have as to timing of a demand and notice to the Applicant.

[128] There have been no significant delay in seeking child support since the material change experienced by the child, which would trigger a review.

[129] The father has not paid child support since November 2013. The material change occurred when the child's residence changed November 2013.

[130] In *DBS v SRG; LJW v TAR; Henry v. Henry: Hiemstra v. Hiemstra* , the court identified that three of the four cases which ultimately found their way to the SCC provide what the SCC calls a thorough examination of the issue of retroactive support . In those cases Paperny J.A. wrote:

> Parents have a mutual obligation to support their children, and this obligation translates into the legal basis for child support. Child support is the right of the child.

And further:

> The obligation to support a child exists independent of any court action taken.

[131] With the introduction of the *Federal Child Support Guidelines* the focus has changed somewhat to consider the means of the payor.

[132] Justice Bastarache noted the basic principles regarding a child's entitlement to support at para. 36 and 37. I include these paragraphs to enlighten the father as to his obligations regarding support:

> **36** It is trite to declare that the mere fact of parentage places great responsibility upon parents. Upon the birth of a child, parents are immediately placed in the roles of guardians and providers. As La Forest J. wrote in *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, at p. 62, it is "[f]or obvious reasons [that] society has imposed upon parents the obligation to care for, protect and rear their children".
>
> **37** The parent-child relationship engages not only moral obligations, but legal ones as well. Canadians will be familiar with these legal obligations as they have come to be refined, quantified and amplified through contemporary legislative enactments. But the notion of child support, as a basic obligation of parents, is in no way a recent concept. In 1896, P.B. Mignault wrote that [TRANSLATION] "[t]he principal effect of the recognition, whether voluntary or forced, of illegitimate children is the claim to maintenance it gives the children against their fathers and mothers" (*Le droit civil canadien*, t. 2, 1896, at p. 138). The obligation of support was thus seen to arise automatically, upon birth; in one 1879 case, this meant that a child support award that included a period pre-dating the institution of the mother's action was confirmed on appeal: see *Poissant v. Barrette* (1879), 3 L.N. 12. And in one Ontario case, where the legal foundation for compensating someone who took care of another person's child was questioned, the moral obligation to support the child was still given legal recognition: *Childs v. Forfar* (1921), 51 O.L.R. 210 (S.C. (A.D.)). Middleton J. explained his reasoning in these terms:

> While it is the law that there is no civil obligation on the part of a parent to maintain his infant child (*Bazeley v. Forder*, L.R. 3 Q.B. 559), his undoubted moral obligation to do so makes it very easy to find an implied promise to remunerate any person who, at his request or with his knowledge, undertakes to discharge this moral obligation for him: *Latimer v. Hill*, 35 O.L.R. 36, 26 D.L.R. 800, 36 O.L.R. 321, 30 D.L.R. 660. [p. 217]

[133] He also summarized the obligation of parents in para. 54 where he said:

> **54** In summary, then, parents have an obligation to support their children in a way that is commensurate with their income. This parental obligation, like the children's concomitant right to support, exists independent of any statute or court order. …this free-standing obligation has come to imply that the total amount of child support owed will generally fluctuate based on the payor parent's income. Thus, under the federal scheme, a payor parent who does not increase his/her child support payments to correspond with his/her income will not have fulfilled his/her obligation to his/her children…

[134] Stated simply at para.68:

> A payor parent always has the obligation to pay … and the dependent child always has the right to receive… child support in an amount that is commensurate to his/her income.

[135] The court order, arising out of the corollary relief judgment, assumed a shared parenting arrangement so that neither parent was obligated to pay support.

[136] In addition, the consent order was entered into at a time when neither parent had income and pre-insolvency and receivership when the mother and child has exclusive possession of the family home.

[137] When living in the home was no longer possible, due to the Applicant's failure to abide by the terms of the Corollary Relief Judgement including paragraph 21and22, the mother and child moved out and ultimately the father moved back in. He remains there today. These significant changes should have triggered a change in the child support scheme.

[138] And further at para.66:

> The presumption that a court order is valid, however, is not absolute. As noted above, the applicable legislation recognizes that a previously ordered award may merit being altered. This power will be triggered by a material change in circumstances.

[139] I have concluded that there was no delay attributable to the Respondent in asking for support. I have concluded the child will most certainly benefit and the hardship to Mr. Korem will be minimal and is self imposed.

[140] The Applicant is investing his time and energy in the farming activities.

[141] Securing the child's entitlement is important given the Respondent's minimal contribution and her needs over the next number of years in her dependency.

Imputing Income

[142] The Applicant's position does not demonstrate a clear understanding of **his** obligations to his child.

[143] Again, I include the references to case law to assist the Applicant understand his obligation.

[144] I refer to a case summary of the law written by Forgeron J. in *Rideout v Woodman,* 2016 Carswell NS 650, wherein she quoted Oland J.A. in *Smith v. Helppi,* 2011 NSCA 65 (N.S.C.A.), para.16: approving the factors outlined by Dr. Julien D. Payne in *Imputing Income, "Determination of Income: Disclosure of Income" Child Support in Canada,* Danrab Inc. August 3, 1999 as quoted by

Martinsin, J. in *Hanson v Hanson*, [1999] B.C.J. no 2532 and by Wilson J. in *Gould v Julian*, 2010 NSSC 123 (N.S.S.C.).

[145] I am setting these factors out so that the Applicant, his partner and the Respondent better understand the law on child support. I have noted that the references related to parental obligations. There is no claim before me that the Applicant's partner is financially responsible for supporting this child even though there is some evidence that the child lived with her.

[146] The factors are as follows:

> There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor." (*V. (J.A.) v. V. (M.C.)* at para 30.)
>
> When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.
>
> A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at the lower end of the wage scale, courts have never sanctioned the refusal of a

> parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
>
> Persistence in unremunerative employment may entitle the court to impute income.
>
> A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

In *Parsons v. Parsons*, 2012 NSSC 239, paras 32 and 33, this court distilled other principles applicable to s. 19 imputation claims as follows:

> The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reason and justice, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: *Coadic v. Coadic*, 2005 NSSC 291 (N.S.S.C.).
>
> The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: *Staples v. Callender*, 2010 NSCA 49 (N.S.C.A.).

The Applicant argued that the burden to prove he received income for his labor rested with the Respondent. However our Court of Appeal identifies that this burden can shift :

> **The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor asserts that his/her income has been reduced or his/**

her income earning capacity is compromised by ill health: *MacDonald v. MacDonald*, 2010 NSCA 34 (N.S.C.A.); *MacGillivary v. Ross*, 2008 NSSC 339 (N.S.S.C.).

The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances: *Smith v. Helppi*, 2011 NSCA 65 (N.S.C.A.); *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200 (B.C.C.A.); *Hanson v. Hanson*, [1999] B.C.J. No. 2532 (B.C.S.C.); *Saunders-Roberts v. Roberts*, 2002 NWTSC 11 (N.W.T.S.C.); and *Duffy v. Duffy*, 2009 NLCA 48 (N.L.C.A.).

A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity. A party cannot avoid support obligations by a self-induced reduction in income: *Duffy v. Duffy*, *supra*; and *Marshall v. Marshall* (2007), 2008 NSSC 11 (N.S.S.C.).

The test to be applied in determining whether a person is intentionally under-employed or unemployed is reasonableness, which does not require proof of a specific intention to undermine or avoid child maintenance obligations.

Decision on Imputing and Retroactive

[147] The Applicant could “retire very early in life”. According to his affidavit at one point he was living on the dividends arising out of his partnership in the Israeli company. After sale of his shares, he brought to Canada some $6,000,000 plus, which was invested in his business. The province of Nova Scotia topped that up with another $1million.

[148] I have no written agreements or loan documents to verify these figures, however, both parties to this action agree to these figures as set out in their sparse affidavits.

[149] The Applicant asks the court to conclude that he lost his entire investment because of the Respondent . I cannot draw that conclusion on the evidence. He has not however lost access to the results of his significant investment.

[150] He is sitting on the property that was lost to the family. He is engaging in several business ventures with hopes of a future vineyard and hopes of converting the chalets they occupy and maintain to a Bed and Breakfast at some point in the future.

[151] His partner benefits from his management in running the day-to-day operations.

[152] He also benefits as he is working fulltime, fed, clothed and able to run the operations while she is at work.

[153] It appears that the Applicant works more than five days a week into the weekend to maintain the business.

[154] The business is showing no profits but they are optimistic for the future .The unaudited balance sheet for the farm activities shows capital assets at $30,000. up from $9,068. in 2014 and retained earnings in a deficit.

[155] All the Applicant’s basic needs are met. None of his efforts are put towards answering his child’s needs.

[156] An undue hardship application was not advanced and no household income was disclosed .

[157] The Applicant is obviously able-bodied and although his age may restrict some of the heavy lifting, he manages and he is not limited in his ability to work with the banks, suppliers, venders etc.

[158] He brings with him the years of experience in his former operation that produced his initial wealth.

[159] The law is clear . A parent cannot escape their child support obligations by working for no pay.

[160] It is unreasonable to expect the Applicant to work for no wages while his daughter goes without his support.

[161] There is an admission that except for one job in 2009, Mr. Korem has not applied for any other employment, will not consider minimum wage jobs (as the mother has had to do) and will not move from the farm to look for work elsewhere in Canada.

[162] While the burden rests on the Respondent to establish an income, the burden shifts if the payor is suggesting his income earning is compromised.

[163] The Applicant's own evidence confirms his ability to work. He has failed to offer evidence that convinces me that his income earning is compromised by other than his life style choices.

How to Impute

[164] Unfortunately, I have no evidence as to what a general manager of a farm would earn. I am left with evidence that he works more than a 40-hour week, more than five days a week with the hope of earning in the future,

[165] I find Mr. Korem ought to be either drawing a salary from the business or diligently looking for any employment for which he is capable of earning an income to support his dependent daughter.

[166] I conclude that working for no pay is a self-induced reduction in income. The wish to stay on the farm is a lifestyle choice as is his wish to work without pay.

[167] While I conclude that the Applicant could look for more lucrative employment considering his business experience, he is 63 years old. He has no other limitations including no other dependent children.

[168] I have no evidence on which I could justify or impute $65,000 as requested by the Respondent.

[169] The imputation must be a fair estimate. It is not intended that this be a method of punishment. I am therefore limited by evidence.

[170] The facts outline his age, health. education, skills, and employment history. The only objective factor I have to find an hourly rate is minimum wage.

[171] I have no trouble finding that the least the Applicant should be making is minimum wage as an experienced laborer.

[172] Considering all factors, including his age, hours of work, abilities, location, to the extent I can, I will attribute a 40-hour week to Mr. Korem at the level of experienced minimum wage of $10.85 for an annual salary of $22,568.

Monthly Child Support

[173] That yields a monthly support payment of $170.00 per month commencing retroactively to May 1st 2014 (the date of the Respondent's response) and continuing thereafter on a month to month basis until further order of the court.

Retroactive Child Support

[174] Retroactive child support shall be calculated by Maintenance Enforcement, set, fixed and enforceable through their program and in any other legal way available to secure and collect both retroactive and prospective child support.

Section 7 Expenses

Counselling

[175] The therapeutic expenses are essential to the dependant child's wellbeing at this point. They are $125.00 a session. Between April 15th, 2015 and December

7th, 2016 the Respondent has been billed $2000.00. The Applicant's percentage of that is 53% .

[176] I order a lump sum payment of $1060.00 payable forthwith.

[177] From 27/09/13 to 26/03/17 the Respondent was billed $114.36 for medications. The Applicant's share of that bill is $61.00 payable forthwith.

Medical and Dental

[178] Mr. Korem shall be responsible to pay 53% of uninsured medical and dental costs as well as ongoing counselling sessions until further order of the court or variation. He shall reimburse the Respondent within 15 days of receipt of a copy of the bill.

[179] Disclosure

[180] Each party shall continue to deliver by ordinary mail immediately after it is filed and in any case no later than on or before June 1st of each year a full and complete copy of their full income tax return together with all schedules and a copy of their Notice of assessment upon receipt for each year that the child remains a dependant child.

[181] The Applicant shall keep the Respondent informed, on a quarterly basis (January, April, July October) in writing of any and all efforts to find employment and shall immediately after obtaining part time or full time work for which he is paid complete particulars of the salary and benefits derived form this employment or change in employment.

[182] Mr. Stanwick shall draft the order. The usual recalculation clauses shall be included.

J. Legere-Sers

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Korem v. Kedmi*, 2017 NSSC 184

Date: 2017/06/29
Docket: *Sydney*, No. 1206-006155
Registry: Sydney

Between:

NAHMAN KOREM

Applicant

v.

IRIS KEDMI

Respondent

Erratum

Judge:	The Honourable Justice Moira Legere-Sers
Heard:	June 12, 2017 in Sydney, Nova Scotia
Written Release:	June 29, 2017
Counsel:	Nahman Korem, Self Represented Alan Stanwick, Counsel for the Respondent
Erratum Date:	July 6, 2017
Erratum:	The electronic version of this decision has been modified to remove identifying information from paragraph 2.