

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Sidney v. Sidney*, 2017 NSSC 252

Date: 2017-09-20
Docket: *Sydney* No. 100188
Registry: Sydney

Between:

Darrell Sidney

Applicant

v.

Heather Sidney

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Theresa Forgeron
Heard:	September 11, 2017, in Sydney, Nova Scotia
Oral Decision:	September 20, 2017
Written Release:	September 20, 2017
Subject:	Family Law
Issues:	Interim Exclusive Possession of Home
Factors Considered	Whether there are dependent children. Whether other shelter is inadequate. Whether there is a business associated with the home. Whether there is violence. Whether the status quo will be disrupted.
Results	Husband granted interim exclusive possession because 17 year old daughter living with him. Parties were unable to share the home given conflict. Other shelter was inadequate. It was in the best interests of the daughter to live in the matrimonial home during the interim.

<p style="text-align:center"><i>S INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.</i></p>
--

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Sidney v. Sidney*, 2017 NSSC 252

Date: 2017-09-20

Docket: *Sydney* No. 100188

Registry: Sydney

Between:

Darrell Sidney

Applicant

v.

Heather Sidney

Respondent

Judge: The Honourable Justice Theresa Forgeron

Heard: September 11, 2017, in Sydney, Nova Scotia

Oral Decision: September 20, 2017

Written Release: September 20, 2017

Counsel: Carolyn MacAulay, for the Applicant
Heather Sidney, on her own behalf

By the Court:

Introduction

[1] We are here today for the decision involving Darrell Sidney and Heather Sidney, specifically, in relation to the motion which Darrell Sidney filed for interim exclusive possession of the matrimonial home. Heather Sidney disputes Mr. Sidney's claim. Ms. Sidney wants to continue to live in the home.

Issue

[2] Therefore, the sole issue that I must decide is who should have interim exclusive possession of the home until the divorce is finalized.

[3] Before giving my decision, I will provide brief background facts to provide context. I will then review the position of each of the parties. Next, I will provide an overview of the law, and then I will give my decision by applying the facts to the law.

Background Facts

[4] The parties married on May 8, 1997 in Jamaica. They have a daughter, B, who is 17 years old having been born on *, 2000. During the marriage, Mr. Sidney was employed in the construction industry while Ms. Sidney was employed in the health field. She is a nurse.

[5] The Sidney family lived in the matrimonial home situate at * MacKenzie Drive, Coxheath. Title is held jointly. The home was financed through a mortgage with a current balance of approximately \$184,000.

[6] The parties separated in October 2015. Mr. Sidney remained living in the home while Ms. Sidney and B moved to PEI. Ms. Sidney and B eventually returned home to the MacKenzie Drive property. As the parties could not live peacefully under the same roof, Mr. Sidney moved out in January 2017. B soon joined him.

[7] B and Mr. Sidney have lived in three separate residences since January 2017. First, they lived in a local hotel for about two weeks, then Mr. Sidney

rented a condo until it was sold, and finally he rented a home. The home is currently being listed for sale.

[8] It should likewise be noted that the separation has been highly conflictual, punctuated with anger, bitterness and allegations of physical and substance abuse. The police were involved on more than one occasion.

[9] Mr. Sidney filed a motion for interim relief on July 11, 2017. Ms. Sidney strenuously objects to the motion. I heard evidence and submissions from both parties on September 11. We adjourned the decision until today's date.

[10] I now will turn to the analysis portion of my decision.

Analysis

[11] **Who should be granted interim exclusive possession of the home?**

Position of the Parties

[12] Mr. Sidney states that he wants interim exclusive possession of the matrimonial home for a number of reasons, including the following:

- B is living with him and she needs a stable home.
- B is attending school and the home is very near the high school that B attends.
- He can no longer afford to pay rent and the mortgage.
- Ms. Sidney was behind in the mortgage payments.
- Ms. Sidney is destroying the home and is devaluing the home.
- Mr. Sidney is able to buy out Ms. Sidney's interest in the home.

[13] In contrast, Ms. Sidney states that she wants interim exclusive possession of the matrimonial home for a number of reasons, including the following:

- She has lived in the home since she returned with B from PEI.
- Mr. Sidney can neither care for B nor the home properly.
- Mr. Sidney does not know how to house clean or how to properly maintain a home.
- Mr. Sidney uses drugs and leaves drugs and drug paraphernalia around the home.
- Mr. Sidney gambles, abuses substances and does not pay his bills.
- At some point B is going to need a stable and safe environment in which to live. If Ms. Sidney is permitted to stay in the home, she will maintain it properly and will be able to provide B with a safe home life. Ms. Sidney states she arranged for two women, an exchange student and a teacher, to live in the house and help pay expenses. She states that these females will also be excellent role models for B.
- Ms. Sidney denies destroying or devaluing the house. Ms. Sidney states that she is making necessary repairs.
- She gets along with the neighbours, while Mr. Sidney does not.

Legislation and Law

[14] Now the court has jurisdiction to grant an order for interim exclusive possession of the matrimonial home by ss. 11 (1) (a) and 19 of the **Matrimonial Property Act**, which state as follows:

11 (1) Notwithstanding the ownership of a matrimonial home and its contents, the court may by order, on the application of a spouse,

(a) direct that one spouse be given exclusive possession of a matrimonial home, or part thereof, for life or for such lesser

period as the court directs and release any other property that is a matrimonial home from the application of this Act;

19 The court may make such interim order as it considers necessary for the proper application of this Act, pending the bringing or disposition of an application under this Act. R.S., c. 275, s. 19.

[15] The case law relied upon notes that the factors relevant to the inquiry include the following:

- Whether there are dependent children.
- Whether other shelter is inadequate.
- Whether there is a business associated with the home.

[16] To these factors, I will add the issues of violence and abuse, especially if there is a dependent child. The presence of violence and abuse negatively impacts on children. Finally, I note that the *status quo* is always relevant on an interim inquiry.

Decision

[17] In determining the issue, I have placed the burden of proof on Mr. Sidney because it is his motion and he is trying to displace the *status quo*. Mr. Sidney must prove, on a balance of probabilities, that he should be granted interim exclusive possession of the matrimonial home. I find that Mr. Sidney met the burden upon him for the following six reasons.

[18] First, I find that B is a dependent child, that she is living with Mr. Sidney, and that she has done so since January 2017. There is no convincing evidence that B, who is 17 years old, will return to live with her mother.

[19] Second, and not unexpectedly given the high parental conflict, B is a vulnerable child who is in need of a stable home. The matrimonial home is also near the high school that B attends.

[20] Third, Mr. Sidney has not been able to secure adequate housing for B. He had to vacate the condo because it was being sold. He is now vacating the second rental because it too is being listed for sale. It is not in B's best interests to be moving so frequently, especially given her vulnerabilities.

[21] Fourth, although Ms. Sidney operates a small business out of the home, Ms. Sidney stated that many clients are afraid to attend the home. Therefore, Ms. Sidney does not need the home to succeed. Further, Ms. Sidney worked as a nurse in several other capacities. She is not restricted to self-employment income from the matrimonial home.

[22] Fifth, the parties cannot occupy the home together. There is too much conflict and abuse. B should not be exposed to violence. If the parties lived in the home together, there would be more violence and allegations of abuse. B's emotional health would be compromised more than it already is.

[23] Sixth, even though the *status quo* favours Ms. Sidney, *status quo* is not determinative, it is but one factor. Where *status quo* competes with a child's best interests, best interests trumps.

Conclusion

[24] In conclusion, I grant Mr. Sidney's motion for interim exclusive possession of the home as of Friday, September 22 at 9:00 a.m. Ms. Sidney will have until Friday morning at 8:30 a.m. to vacate the home. Ms. Sidney is not to make any further repairs or changes to the home. Finally, as this order is an interim order, it will operate until the divorce is determined either by settlement or trial, or unless varied because B's living arrangements change or for some other significant reason.

THE COURT: Ms. Campbell you are to have the order to me no later than tomorrow morning.

MS. CAMPBELL: Yes, My Lady.

MS. SIDNEY: Excuse me, Your Honour, am I allowed to speak?

THE COURT: I've just given my decision so I'm not...

MS. SIDNEY: I'm going to appeal though.

THE COURT: Oh, oh then, what you should do, there are certain time frames that you have available to appeal and there are certain forms that have to be completed, but because this is an interim decision and order, the time period is less than what you might ordinarily expect.

MS. SIDNEY: So are you saying...

THE COURT: I want you to listen, I am not a lawyer...

MS. SIDNEY: No, no.

THE COURT: ...I am not giving you legal advice...

MS. SIDNEY: No.

THE COURT: ...but if you want to appeal, I'm telling you, you should go about that quickly...

MS. SIDNEY: Yeah.

THE COURT: ...and if you don't have a lawyer, there is a legal clinic available downstairs who can help you complete, I believe, the necessary papers, but what I'm telling you is, that there's a smaller window of opportunity to appeal an interim decision than a final decision. So if you are intending to appeal, and that is your right and your prerogative...

MS. SIDNEY: Hmm mmm.

THE COURT: ...you must immediately take steps to do so...

MS. SIDNEY: Right.

THE COURT: ...so that you're within the right time.

MS. SIDNEY: Right.

THE COURT: Okay. Thank you.

MS. SIDNEY: Excuse me, um, do I get a copy of that?

THE COURT: Yes. This will be typed and circulated.

MS. SIDNEY: Okay, thank you.

MS. CAMPBELL: Also, My Lady, I just wanted to offer my apologies for Ms. MacAulay not being present. She is sick, so that's why I'm attending today.

THE COURT: That's no problem. Thank you.

MS. CAMPBELL: Thank you, My Lady.

Forgeron, J.