

2007 CarswellOnt 2557  
Ontario Superior Court of Justice

Powell v. Powell

2007 CarswellOnt 2557, [2007] W.D.F.L. 2205, 157 A.C.W.S. (3d) 385

**DAVID POWELL v. CHERYL RICKETTS POWELL**

Miller J.

Judgment: April 27, 2007  
Docket: FS-06-056506-00

Counsel: **Andrea L. Di Battista** for Applicant  
Michael H. Rhude for Respondent

Subject: Family

**Related Abridgment Classifications**

Family law

IV Support

IV.1 Spousal support under Divorce Act and provincial statutes

IV.1.e Interim support

IV.1.e.iv Entitlement

**Headnote**

Family law --- Support — Spousal support under Divorce Act and provincial statutes — Interim support — General principles

**Table of Authorities**

**Statutes considered:**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)

s. 15.2(4) [en. 1997, c. 1, s. 2] — considered

s. 15.3 [en. 1997, c. 1, s. 2] — considered

**Miller J.:**

1 The Respondent Cheryl Ricketts Powell seeks interim spousal support from the Applicant David Powell. The Respondent seeks \$625 monthly in spousal support on compensatory grounds. The Applicant takes the position that the Respondent is not entitled to any spousal support, and further that given the Applicant's responsibility to pay child support and extraordinary expenses for the child of the marriage he is unable to afford to pay spousal support.

2 Section 15.2 (4) of the *Divorce Act* requires the Court to consider the condition, means, needs and other circumstances of each spouse. In doing so, I note that the parties were married January 1, 1998 and co-habited until August 2002. They resumed co-habitation in August 2005 until March 7, 2006. The Respondent worked throughout the marriage although there was a disparity in their respective incomes similar to the one that exists today. There has been no order, agreement or arrangement to date with respect to spousal support.

3 During the initial three year separation, Daniel, the child of the marriage, resided with the Applicant. During this period the Respondent made no formal contribution toward Daniel's support although she did exercise access. The Respondent alleges that during this period the Applicant accessed approximately \$10,000 that she had borrowed from her parents, and that the matrimonial home had to be sold to satisfy mortgage arrears. There were no proceeds of the sale paid to either party as the Respondent's parents held legal title to the home.

4 As a result of Minutes of Settlement filed April 26, 2007, the Respondent has custody of Daniel and the Applicant is required to pay \$435 monthly child support and \$124 monthly toward the cost of Daniel's daycare. The Applicant is also responsible for paying 64% of the cost of counselling for Daniel at \$90.00 per session once insurance coverage runs out.

5 Having heard submissions on behalf of both parties and read the supporting affidavits and financial statements I find on an interim basis I am not satisfied that the Respondent has established an entitlement to spousal support. On the material before me there is no evidence of economic advantage or disadvantage to either party arising from the marriage or its current breakdown apart from the parties having now to maintain separate residences. There is no evidence of economic hardship suffered by the Respondent as a result of the current breakdown of the marriage. There is also no evidence that there are any financial consequences to the Respondent arising from care of Daniel over and above what is provided for in the April 26, 2007 Minutes of Settlement.

6 On the evidence before me, and considering the requirement in s. 15.3 of the *Divorce Act* that the court give priority to the payment of child support, I am satisfied that the Applicant has established that he does not currently have the ability to pay spousal support.

7 This Court makes no order for spousal support at this time.