

2019 ONSC 3049  
Ontario Superior Court of Justice

Mume v. Yusuf

2019 CarswellOnt 8180, 2019 ONSC 3049, 305 A.C.W.S. (3d) 792

## **Abubeker Ahmed Mume (Applicant) and Meftuha Ousman Yusuf (Respondent)**

E.L. Nakonechny J.

Heard: February 28, 2019; March 1, 2019

Judgment: May 17, 2019

Docket: FS-17-417127

Counsel: Wiri Kapurura, for Applicant

Julie **Stanchieri**, for Respondent

Subject: Family; Property

### **Related Abridgment Classifications**

#### **Family law**

**VII** Division of property

**VII.3** Excluded assets

**VII.3.j** Debts

#### **Family law**

**VIII** Support

**VIII.1** Issues common to child and spousal support

**VIII.1.c** Lump sum award

**VIII.1.c.iii** Miscellaneous

### **Headnote**

#### **Family law --- Division of family property — Assets which may be excluded from property to be divided — Debts and liabilities — Miscellaneous**

Parties were married in 1993 and separated in 2015 — Parties had three children, born in 1996, 1998 and 2003 — Trial regarding property division and child support was held — Husband owed wife equalization payment of \$16,894.89 — Debts and liabilities had to be assessed as at valuation date, and burden of proving value of deduction under definition of net family property was on person claiming it — Husband had not met burden of proof as he had provided no evidence to prove value of debts as at date of separation.

#### **Family law --- Support — Child support under federal and provincial guidelines — Lump sum award**

Parties were married in 1993 and separated in 2015 — Parties had three children, born in 1996, 1998 and 2003 — Trial regarding property division and child support was held — This was not case where lump sum payment was required to secure future child support and special expense payments — Husband began to pay child support voluntarily in November 2018 — Husband also agreed to pay retroactive and future support based on imputed income higher than income he declared on his income tax returns, and had produced documents showing direct financial support to his daughters.

### **Table of Authorities**

**Cases considered by E.L. Nakonechny J.:**

*Groves v. Bourguignon-Groves* (2007), 2007 CarswellOnt 6146, 42 R.F.L. (6th) 345 (Ont. S.C.J.) — referred to

*Valenti v. Valenti* (1996), 21 R.F.L. (4th) 246, 1996 CarswellOnt 514 (Ont. Gen. Div.) — referred to

**Statutes considered:**

*Family Law Act*, R.S.O. 1990, c. F.3  
s. 4(3) — considered

**Regulations considered:**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)  
*Federal Child Support Guidelines*, SOR/97-175  
s. 7 — considered

TRIAL to determine issues related to property division and child support.

**E.L. Nakonechny J.:**

1 This trial was heard on February 28 and March 1, 2019.

2 The parties were married on December 1, 1993 in Ethiopia. In 1994, the Respondent moved to Canada to reside with the Applicant. The parties separated on September 30, 2015.

3 The parties have three children: I. A., born August 30, 1996; I., born January 10, 1998, and N. born May 8, 2003. I.A. is 22 years old and not attending school. I. is in her third year at York University and is 21 years old. She will complete her post-secondary education in the spring of 2020. N. is 15 years old. She is in grade 10 at York Memorial Collegiate Institute. I. and N. reside with the Respondent and are children of the marriage eligible for child support.

4 The parties resolved a significant number of issues on consent prior to trial. They settled most of the property issues and agreed that the Respondent would have sole custody of the child, N., with access to the Applicant in accordance with the child's wishes.

5 By consent Order of Gilmore J. dated September 24, 2018, the parties agreed that the Respondent would purchase the Applicant's interest in the jointly owned matrimonial home, known municipally as 28 Privet Road, Toronto, ON ("the home"), for an agreed-upon amount of \$215,000. Of this amount, \$200,000 was to be paid into trust, less the amount of a lien in the Applicant's name alone registered against title to the home. \$15,000 was a notional credit to the Applicant to be set off against arrears of child support owing to the Respondent. After payment of the lien, the amount of \$187,164.88 remains in trust ("the trust proceeds").

6 The parties resolved all post-separation credits claimed between them and all retroactive child support owing up to and including November 2018. The parties agree that the Applicant owes the Respondent \$39,691.59 for the credits and child support. That amount is to be deducted from the trust proceeds, so that the current amount owing to the Applicant for the purchase of his interest in the house is \$162,473.29.

7 By consent Order of Stevenson J. dated February 15, 2019, the parties agreed that the Respondent's HOOP pension would be divided at source equally, with \$125,454.92 to be transferred to a Locked-In Retirement Account ("LIRA") or a Life Income Fund ("LIF") as directed by the Applicant.

8 The Order of Stevenson J. also provides that the Applicant's income is fixed at \$58,000 and the Respondent's income is fixed at \$100,000 for purposes of calculating go forward child support and that the Applicant will pay a 36.7% proportionate share and the Respondent will pay a 63.3% proportionate share of the go forward s. 7 expenses.

9 As argued at trial, the issues to be determined are:

1. Equalization of net family property. The parties agree to all of the figures in their respective Net Family Property Statements, except for date of separation debts claimed by the Applicant in the amount of \$4,887.77 and \$5,223.35, which the Respondent argues are not proven.
2. The Respondent seeks an order for a lump sum payment from the Applicant for future child support and his 36.7% contribution to s. 7 expenses, including post-secondary education expenses for both I. and N., in the amount of \$53,508.43. The Respondent asks that this amount be paid from the trust proceeds owing from her to the Applicant.
3. The Applicant seeks an order allowing him to pay a lump sum of child support based on his income fixed at \$58,000 for two children, I. and N., for the period from March 2019 to June 2020, and then for one child, N., from July 2020 to May 2021 (when N. will attain the age of 18 years). He seeks a review at that time to determine what ongoing monthly support and contribution to s. 7 expenses for N. are appropriate based on the circumstances of N. and the parties.
4. The Applicant seeks an order that he contribute 36.7% to I.'s current post-secondary education expenses upon production of documents evidencing the expenses and after deducting a reasonable contribution to the expenses from the child and any bursaries, grants and/or scholarships received by her.
5. The Applicant seeks payment of the interest which accumulated on his share of the Respondent's pension from the date of separation to the date of transfer. This amount was not quantified, but the parties agree it is not included in the \$125,454.92 to be transferred to an LIRA or other account as directed by the Applicant pursuant to Stevenson J.'s Order.
6. The Respondent asks that she be paid all amounts owing to her from the trust proceeds but that the Applicant not be paid any funds until the issue of costs is determined.

## Background

10 The Applicant sponsored the Respondent to come to Canada after their marriage in Ethiopia. She arrived in 1994 and began studying to upgrade her existing qualifications as an Advanced Health Assistant. She completed a nursing programme at George Brown College in four years and began working as a nurse thereafter. She is now employed full time as a registered nurse at Sunnybrook Hospital.

11 The Applicant worked as a cab driver while the Respondent was in school and continues to do so. He states that the Respondent received OSAP for one year and that he paid for the balance of her education costs as well as all of the expenses of the home and family with his income.

12 The Respondent worked shifts as a nurse, sometimes at night. The Applicant testified that when the Respondent slept during the day he prepared meals for the family, did household chores such as cleaning and shopping, drove the children to school, helped them with their homework and drove the Respondent to work.

13 The Respondent testified that although she sometimes worked two jobs, she also maintained the home and cooked for the family, leaving food for them in the fridge when she worked in the evenings. She denies that the Applicant cared for the children. She states that the parties employed caregivers and that she paid for day care for the children.

14 The Applicant's evidence is that his income is mostly cash based and that he used his income to pay for the Respondent's education and the family expenses, while the Respondent's regular pay cheque was used for savings to purchase the jointly owned matrimonial home and to pay the mortgage and insurance after the purchase.

15 The Respondent states that she was the saver and ran the family finances properly, while the Applicant mismanaged his finances and squandered money.

16 The Respondent states that the separation came about in September 2015, when the Applicant “abandoned” the family and travelled to Ethiopia without notice to her. She says he did not let her know when he returned to Canada in June 2016, nor did he provide any financial assistance for the home or children while he was away, leaving her to pay all of the expenses.

17 The Applicant’s evidence is that his step mother was seriously ill in September 2015 and the parties’ marriage was troubled. He travelled to Ethiopia in November 2015 to “think through” his marital situation and assist with his step mother’s care. He has entered a copy of his airline ticket showing the travel to Ethiopia on November 14, 2015 and returning May 31, 2016.

18 In mid- 2016, the Respondent’s brother was diagnosed with cancer. She travelled to visit him in the United States and then travelled with him to Ethiopia for him to see their family. While she was travelling, the Applicant returned to live in the home for six to eight weeks to care for the home and children. He travelled to Ethiopia to attend the brother’s funeral and did not return to live in the home when the parties came back to Canada.

19 On June 30, 2017, there was a physical altercation between the parties, which was witnessed by the child, N. The Respondent called the police, who attended at the home. The Respondent was charged with assaulting the Applicant. The Respondent entered into a peace bond on December 18, 2017 containing a 12 month no-contact provision.

20 After the Respondent’s arrest, I. and N. lived solely with the Applicant in the home from June 2017 to October 16, 2018, when the terms of the peace bond ended. The Respondent did not pay any child support for the children during this period. She made the monthly mortgage payments for the home.

21 The Respondent denies that she assaulted the Applicant and states that the Applicant wrongly involved the child, N., in his false accusations against her.

22 In October 2018, after the terms of the peace bond ended, the Respondent returned to live in the home with I. and N. She testified that while she was living away from the children they complained to her that the Applicant did not provided adequate food for them and did not maintain the home. She states that upon her return to the home she found water damage that was not properly dealt with by the Applicant which will require expensive repair.

23 The parties disagree in their testimony about the cost of I.’s post-secondary education and how it has been paid. The Applicant states he paid \$2,200 towards I.’s tuition. The Respondent states that was her money which she asked the Applicant to send to her when she was out of the country. She states he misappropriated these funds.

24 I. has been asked but has declined to produce documents evidencing her post-secondary education expenses from York University and her receipt of OSAP. The Respondent blames the Applicant and says he told I. that she did not have to produce the documents to avoid his obligation to contribute. The Respondent had her lawyer write to I. directly asking her to authorize OSAP and York University to produce her documents but she did not agree. Understandably, I. does not wish to be in the middle of this dispute between her parents.

25 The Applicant says he gives cash to the children directly for their needs, buys them items when they ask him and continues to drive them to school. He says he has a good relationship with his daughters, N. and I.

26 The parties’ son, I.A. has been arrested on criminal charges and has served time in prison. The Respondent says the Applicant would not provide assistance for I.A.’s bail and has not been supportive of him. The Applicant says he did not have the \$5,000 that was required. Both parents are concerned for their son’s well being and future but disagree about the best way to assist him.

27 In November 2018, the Applicant began making voluntary monthly child support payments to the Respondent in the amount of \$665. This amount was not agreed to, nor did the Respondent agree with the income the Applicant used to

calculate the amount of support. There were further payments made in December 2018 and January 2019, also in amounts not agreed to.

28 The Applicant did not pay child support again until February 22, 2019. The amount of that payment was agreed upon, as the parties had resolved the issues of income and proportionate sharing of s. 7 expenses by the Order of Stevenson J.

29 The Respondent is concerned that she will not be able to collect ongoing child support and the Applicant's required contributions to N.'s post-secondary education expenses. She states that the Applicant has not paid child support as required and has refused to produce necessary financial disclosure to determine his income.

30 The Respondent believes the Applicant will leave Canada to avoid his child support obligations. She says that he travelled repeatedly during the marriage and after separation for long periods of time without telling her where he was going or how to contact him. She is estranged from his family. As recently as December 2018, the Applicant went to Ethiopia for about a month without her knowledge.

31 The Applicant states that he has only left Canada for extended periods four times during the 30 year marriage, for family-related reasons. It is his evidence that he has always provided financially for the children while he was not in Canada through direct deposits into their accounts or giving them funds directly. He tells the children where and when he is going and stays in touch with them while he is away.

## Analysis

### *Equalization of Net Family Property*

32 The parties have agreed on all of the items listed in the Net Family Property Statement produced at trial except for two debts the Applicant alleges he owed on the date of separation. The first is a debt to Bell Canada in the amount of \$4,887.77 and the second is to Citi Mastercard in the amount of \$5,223.35.

33 The Applicant has produced letters from Commercial Credit Adjusters dated July 11, 2016 and AffGlo dated March 7, 2017, which demand payment from Bell and Citi Mastercard, respectively, in the amounts claimed.

34 The Applicant has produced no evidence of the amount of the debts owing as at September 30, 2015, the date of separation.

35 The Respondent served a Request to Admit dated December 4, 2018. The relevant paragraphs read as follows:

94. The Applicant's Citi Cards Canada Inc. and Bell Canada accounts were in collections.

95. The Applicant's Citi Credit Card had a balance of \$5,225.35.

96. The Applicant's Citi Credit Cards had a balance of \$4,887.00.

36 In his Response to the Request to Admit, the Applicant answered "Yes" to these three questions. The Applicant takes the position that by asking for the admissions and receiving a "yes" response, the Respondent has agreed that the debts were owing in the amounts listed (save for the typographical error regarding the Bell debt, which is listed as a Citi card). He states that the Respondent has admitted those debts were owing, and they are properly calculated in the Net Family Property Statement.

37 When calculating net family property, debts and liabilities must be assessed as at the valuation date. The burden of proving the value of a deduction under the definition of net family property is on the person claiming it: *Family Law Act*, R.S.O. 1990, c. F.3, s. 4(3).

38 The Respondent disputes the two deductions claimed by the Applicant for debts at the date of separation. The Request to Admit does not specify that the amount of the debts is agreed upon as at the date of separation. The Applicant has provided

no evidence to prove the value of the debts as at September 30, 2015. I find that the Applicant has not met his burden of proof as required under s. 4(3) of the *FLA*.

39 If these two debts are removed from the Net Family Property Statement, the Applicant owes the Respondent an equalization payment of \$16,894.89. This amount shall be deducted from the trust proceeds owing to the Applicant from the Respondent.

### **Lump Sum Child Support and Section 7 Expenses**

40 The Respondent seeks a lump sum payment for future child support and s. 7 expenses for I. and N. in the amount of \$53,508. This figure includes base child support for two children at \$884 per month based on the agreed imputed income of \$58,000 from March 2019 to August 2020 (when I. will complete her post-secondary education) and for one child at \$536 per month based on the same income from September 2020 to August 2024.

41 The figure also includes an amount for the Applicant's 36.7% proportionate share of tuition, books and personal expenses for I. and N., as well as a Presto Card for N. and a tutor for N. for six months at a cost of \$45 per month. The tuition cost includes a deduction for an annual contribution of \$4,000 from each child toward their respective post-secondary expenses.

42 The s. 7 expenses claimed by the Respondent are all based on estimates. The Respondent has provided no back up documentation to support the amounts claimed. N. does not have a tutor now. The Respondent testified that N. may require tutoring in the future, especially in math, to bring up her grades so she is in a better position when applying for university.

43 The Applicant agrees to pay a lump sum of child support for the two children from March 2019 to June 2020, when I. completes her university programme and then for one child from July 2020 to May 2021 when N. will reach age 18. He acknowledges his obligation to pay monthly support for N. beyond age 18, but says there should be a review at that time to determine the circumstances of the child, including whether she is continuing to post-secondary education.

44 The Applicant consents to pay the Respondent lump sum child support for I. and N. from March 1, 2019 to June 1, 2020 in the amount of \$884 per month (\$884 ?? 16 months = \$14,144) and for N. alone from July 1, 2020 to May 1, 2021 in the amount of \$536 per month (\$536 ?? 11 months = \$5,896) for a total of \$20,040. This amount shall be deducted from the trust proceeds owing to the Applicant from the Respondent.

45 The Respondent argues that a lump sum payment of support for future monthly child support and s. 7 expenses is appropriate because of the Applicant's history of non-payment; his failure to provide proper disclosure in this court proceeding; his disappearances from Canada for lengthy periods of time without notice to the Respondent; and the difficulty the Respondent will have collecting future support and s. 7 payments based on the Applicant's cash based income.

46 The Respondent argues that without security for the future support payments, it is unlikely that she will receive any payments from the Applicant. The Family Responsibility Office will not be able to garnish his wages and she will be solely responsible for the children's expenses.

47 The Applicant states that the Respondent's position from the time of separation was that he would "get nothing out of this marriage". He argues that the request for a lump sum payment for future child support and s. 7 expenses beyond May 2021 is speculative and unsubstantiated by evidence. He says it is manipulation by the Respondent to significantly reduce his share in the division of the parties' assets.

48 The Applicant has offered that, in addition to the lump sum child support he has agreed to pay to N.'s age 18, he will pay \$25,000 from the trust proceeds to the Family Responsibility Office ("FRO") as security for his share of N.'s future support and s. 7 expenses. He also says he will pay his share of I.'s post-secondary education expenses when he receives the documents regarding the expenses paid and OSAP received by I.

49 The Respondent's evidence is that all of I.'s tuition and education expenses in the 2018/2019 school year were paid by I. from the OSAP she received. The Respondent did not pay anything towards I.'s post-secondary expenses in this school

year.

50 There is no evidence that I. will not receive OSAP in an amount sufficient to cover her post-secondary expenses for her final year of school in 2019/2020.

51 In the Statement of Agreed Facts, the parties agree that the Applicant has maintained his permanent residence in Canada from 1989, when he first arrived here, through the date of marriage and up to and including December 11, 2018 (the date of the Request to Admit). The parties also agree that the Applicant's employment and work is in Canada.

52 The Applicant testified that he has no plans to move from Canada. He has lived here for 30 years, more than half of his life. All of his travels to Ethiopia, like those of the Respondent, have been for family-related events. He continues to see his daughters regularly, drives them to school and activities, gives them money and speaks to them by phone almost daily. He wants to continue to be close to his children and involved in their lives.

53 Lump sum support should only be awarded in very unusual circumstances and where there is a real risk that periodic payments will not be made: *Groves v. Bourguignon-Groves* (2007), 42 R.F.L. (6th) 345 (Ont. S.C.J.); *Valenti v. Valenti* (1996), 21 R.F.L. (4th) 246 (Ont. Gen. Div.) at para. 65. Here, the Applicant began to pay child support voluntarily in November 2018. He agreed to pay retroactive and future support based on an imputed income higher than the income he declares in his income tax returns. He has produced documents showing direct financial support to his daughters. I find that this is not a case where a lump sum payment is required to secure future child support and s. 7 payments.

54 The Applicant has agreed to pay a lump sum of monthly support until the youngest child attains age 18. I accept the Applicant's evidence that he will honour his obligations to contribute to the children's post-secondary education expenses in his agreed upon proportionate share when the documents evidencing the expenses paid and the OSAP received by the children are provided to him.

55 The Applicant has offered to provide security for his future payments by posting a \$25,000 credit amount with the FRO. Since I do not find that it is appropriate to require him to pay a lump sum of future child support beyond what he has already agreed to pay, I do not require him to post security for future support.

#### **Interest on the Applicant's share of the Respondent's HOOP Pension from the date of separation**

56 On February 15, 2019, the parties signed a Consent to Final Order wherein they agreed as follows:

12. The parties agree that they shall divide the Respondent's HOOP pension at source equally such that an amount of \$125,454.92 shall be transferred to an LIRA or LIF or such other account as the Applicant may advise.

13. Within 14 days the parties shall sign the necessary documentation to ensure the division of pension at source.

14. Property claims with the exception of post separation expenses and the equalization calculation are dismissed. The issue of equalization of net family properties is to be determined at trial.

57 The terms of the Consent to Final Order are clear and unambiguous. There is no provision for a payment of interest in addition to the Applicant's \$125,454.92 share of the pension and no provision that the payment of interest remains to be determined. The issue of interest accruing on the Applicant's share of the Respondent's pension is not an equalization issue and, therefore, not a matter agreed by the parties to be determined at trial.

58 The parties made a valid and enforceable agreement to transfer a lump sum to the Applicant from the Respondent's pension in a specified amount outside of the equalization calculation. I have no jurisdiction or authority to calculate or add interest to that amount.

#### **Holding of the Trust Proceeds Pending Determination of Costs**

59 The trust proceeds are currently being held by SRK Law Professional Corporation. Based on the Order of Stevenson J.

and this Order, there are amounts to be paid to each party from the trust proceeds. I find that it is reasonable that no funds be disbursed to either party from the trust proceeds until there is a final determination on costs of this trial.

### Order

60 This Court Orders as follows:

1. A Divorce Judgment shall issue.
2. The Applicant shall pay the Respondent an equalization payment of \$16,894.89. This amount shall be deducted from the trust proceeds owing to the Applicant from the Respondent being held by SRK Professional Corporation.
3. The Applicant shall pay the Respondent lump sum child support for I. and N. from March 1, 2019 to June 1, 2020 in the amount of \$884 per month ( $\$884 \times 16 = \$14,144$ ) and for N. alone from July 1, 2020 to May 1, 2021 in the amount of \$536 per month ( $\$536 \times 11 = \$5,896$ ) for a total of \$20,040. This amount shall be deducted from the trust proceeds owing to the Applicant from the Respondent being held by SRK Professional Corporation.
4. There shall be a review of the Applicant's obligation to pay the Respondent monthly child support for N. after May 1, 2021 in the amount of \$536 per month based on an imputed income of \$58,000 and contribute his 36.7% share of her s. 7 expenses, including post-secondary education expenses. The review shall take place no later than April 1, 2021. The Applicant shall continue to pay child support for N. and contribute to her s. 7 expenses for so long as she is a child of the marriage.
5. The Applicant shall pay the Respondent his 36.7% proportionate share of the current post-secondary education expenses for I. within 10 days following the production of documents evidencing the expenses and after deducting a reasonable contribution to the expenses from the child and any bursaries, grants and/or scholarships received by her. The Applicant shall pay the Respondent his 36.7% proportionate share of the cost of a tutor for N. within 10 days of receipt by him of documents evidencing the expense and proof of payment by the Respondent.
6. The Applicant's claim for a payment of the interest which accumulated on his share of the Respondent's HOOP pension from the date of separation to the date of transfer of his share of the pension is dismissed.
7. If the parties cannot agree on costs, the Applicant shall serve and file his submissions on costs within seven days from the release date of this decision. The Respondent will have seven days thereafter to serve and file her submissions. The submissions shall be no more than three pages, exclusive of any costs outline, case law and offers to settle. The Applicant may serve and file Reply submissions of two pages seven days thereafter. Submissions may be served between the parties by email: to [info@WKlaw.ca](mailto:info@WKlaw.ca) and to [julie@stanchiereifamilylaw.com](mailto:julie@stanchiereifamilylaw.com) and should be sent to my clerk, Patrizia Generali at: [Patrizia.Generali@ontario.ca](mailto:Patrizia.Generali@ontario.ca).
8. No funds shall be disbursed to either party from the trust proceeds being held by SRK Professional Corporation, pending the agreement between the parties on costs or the release of my decision on costs after submissions. Thereafter, the parties shall direct SRK Professional Corporation to release the trust proceeds to each of them in accordance with the Order of Stevenson J. dated February 15, 2019, this Order and any agreement between the parties on costs or costs Order made by me.

*Order accordingly.*