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| Droit de la famille — 241779 | | | 2024 QCCA 1583 |
| English translation of the judgment of the Court  COURT OF APPEAL | | | |
| CANADA | | | |
| PROVINCE OF QUEBEC | | | |
| REGISTRY OF | | MONTREAL | |
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| No.: | 500-09-030876-247 | | |
| (505-04-030078-224) | | | |
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| MINUTES OF THE HEARING | | | |
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**WARNING: Disclosure and circulation prohibited**: **The *Code of Civil Procedure* (“*C.C.P.*”) provides that, except as authorized by the court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a family matter to be identified (art. 16 *C.C.P.*).**

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| DATE: November 22, 2024 |  |
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| PANEL: THE HONOURABLE | MARK SCHRAGER, J.A. |
|  | GUY COURNOYER, J.A. |
|  | JUDITH HARVIE, J.A. |

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| APPELLANT | COUNSEL |
| R. R. | Mtre ROSALIE LAROUCHE  (*Rosalie Larouche Avocate*)  Absent |
| RESPONDENT | COUNSEL |
| J. M. | Mtre ERICA GOSSELIN  (*Lavin Gosselin Avocats*)  Absent |

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| On appeal from a judgment rendered on December 20, 2023 by the Honourable Aline U.K. Quach of the Superior Court, District of Longueuil. |

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| NATURE OF THE APPEAL: | **Family – Cancellation of support.**  **Application for leave to present indispensable new evidence (art. 380 *C.C.P.*).** |

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| Clerk at the hearing: Élizabeth Lanthier | Courtroom: Pierre-Basile Mignault |

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| HEARING |

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| 09:30 | Commencement of the hearing.  Continuation of the hearing held on November 21, 2024. Counsel were excused from appearing in Court. |
| 09:31 | **BY THE COURT:** Judgment – see page 3.  End of the hearing. |
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| Élizabeth Lanthier, Clerk at the hearing |

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| JUDGMENT |

**WARNING: Disclosure and circulation prohibited**: **The *Code of Civil Procedure* (“*C.C.P*.”) provides that, except as authorized by the court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a family matter to be identified (art. 16 *C.C.P*.).**

1. The trial judge granted in part the appellant’s application to reduce the support he pays to the respondent, his former wife, because of his reduced income stemming from his recent retirement.[[1]](#footnote-2) The support the appellant was paying her prior to the proceedings, amounting to nearly $4,500 per month, was reduced progressively as of January 1, 2024, ultimately arriving at a monthly amount of $1,000 as of July 1, 2024.
2. The appellant appeals from the judgment under appeal on the ground that the judge erred in refusing to cancel the support retroactive to July 1, 2023. Moreover, he asks that the amounts he paid since January 2023 be used to set off the arrears of support he owes to the respondent and that, consequently, those arrears be cancelled. With respect to the arrears, the appellant filed an application to present indispensable new evidence under art. 380 *C.C.P.* – namely, his latest statement of account received from Revenu Québec after the judgment under appeal, in order to show the most recent amount of accumulated arrears – although he had presented evidence at trial regarding the arrears. He is therefore seeking to update his financial situation on appeal through the use of this document, which the Court does not authorize as new evidence.[[2]](#footnote-3)

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1. The appellant argues that the judge erred in refusing to consider the additional evidence and the re-amended version of his application which he provided after the hearing had ended, at which point the judge had suspended her advisement and had granted the parties time within which to provide specific information in connection with a gap in the evidence that she had raised. This argument has no merit.
2. At the hearing, as the submissions were ending and both parties had finished presenting their evidence, the judge allowed the parties to provide her with calculations regarding the amounts of the Old Age Security pension and the Guaranteed Income Supplement for which the respondent would be eligible if support from the appellant were cancelled or decreased. She authorized calculations and additional submissions on a document not to exceed five pages. The authorization granted was noted in the minutes of the hearing and the judge stated that should a problem arise, an additional application could be filed. Under these circumstances, the judge was justified in not allowing the filing of new evidence and the amendment of the application absent an authorization to that effect or an application to reopen the proceedings. In any event, this decision has no impact because, as the appellant has acknowledged, the judge was already aware of the various items of evidence the appellant had sought to add, because these items had been addressed at the hearing. Moreover, the appellant has not shown how these items would have had a decisive effect on the outcome of the case.
3. The appellant also argues that the judge erred in concluding that the respondent did not have the burden of proving that it was impossible for her to become economically independent. The Court cannot accept this argument. The parties were married in 1972 and had three children for whom the respondent cared as a stay‑at‑home parent while the appellant held employment as a professional musician. The respondent suffers from severe rheumatoid arthritis that has prevented her from holding employment since 1981. The parties ceased cohabiting in 1988 and divorced in 1992 when they entered into an agreement on corollary relief, which agreement was homologated by the court and pursuant to which the appellant agreed to pay the respondent monthly spousal support of nearly $2,500 until the latter’s death or remarriage.
4. In October 2005, the appellant sought to have the corollary relief varied – namely, the cancellation of the support payable to the respondent – because his income had decreased. The parties arrived at an agreement, which was homologated by the court. The appellant once again agreed to pay the respondent support, until the latter’s death or remarriage, in the amount of nearly $3,200 per month, indexed annually. In that agreement, the appellant acknowledged that the respondent has been unable to work since 1981 due to her severe health problems.
5. The evidence supports the judge’s findings of fact that the respondent was unable enter the job market or become economically independent. The appellant has not demonstrated a palpable and overriding error in this regard.
6. The judge dismissed the argument that an agreement providing for the payment of support for life is contrary to public order. She did not err in this regard.[[3]](#footnote-4) The support should not be cancelled solely by reason of the passage of time or the size of the amount paid, considering that the agreement between the parties was for the payment of support for the respondent’s life, unless she remarried, and that the support is non-compensatory in nature due to the respondent’s health problems, which began during the marriage and resulted in her inability to work. The agreements, entered into freely by the parties and homologated by the courts, must be taken into consideration as they involve concessions by each party.
7. Lastly, the appellant contends that the judge erred in establishing the support. In his view, the judge should have cancelled the amount of support paid by him, retroactive to his retirement in January 2023. In addition, she should have cancelled the accumulated arrears of support because he effectively had to stop paying support to the respondent as of January 1, 2023, by reason of his reduced income.
8. The Court cannot accept these arguments. Trial judges have broad discretion when making support orders, which entails a high standard of review:

[translation]

[13] […] [T]he Court will overturn a support order only if the latter shows that the trial judge’s reasons disclose an error of law or a significant misapprehension of the evidence, or if the award is clearly wrong. This standard of review is especially high if, as in the case at bar, the appellant alleges that the judge erred by refusing to impose a termination date on his support obligation. Indeed, the imposition of such a termination date is an exceptional measure, which can only be justified in the presence of particular, precise, real and concrete circumstances, whose assessment is also a matter for the trier of fact.[[4]](#footnote-5)

[References omitted]

1. In early January 2023, the appellant retired and his annual income decreased from nearly $225,000 to approximately $100,000. In August 2023, the court issued a safeguard order reducing the support from $4,500 per month to $2,500 per month. The trial judge took these elements into account, as well as the appellant’s support obligation towards his son,[[5]](#footnote-6) and then performed an exhaustive analysis of the parties’ financial situation. The judge analyzed the respondent’s projected income, including the income generated by her assets. She considered the fact that the respondent will have to gradually liquidate her assets and granted her some time to do so, which justifies her decision to grant a progressive decrease of the support payments as of January 2024, instead of 2023 as requested.[[6]](#footnote-7) This decision is discretionary, and the appellant has not convinced the Court that the trial judge committed a reviewable error,[[7]](#footnote-8) save for one aspect. At paragraph 68 of the judgment under appeal, the judge concluded as follows:

[68] The Court finds that the wife’s present needs total $2,989.06 per month or $35,868.72 per year. Moreover, the Court estimates that, after liquidating her assets, the wife’s minimum annual income will be $34,614.88. In view of the foregoing, it is reasonable and appropriate to reduce the spousal support payment to $1,000 per month.

1. Based on this reasoning, the reduced support should have been $1,000 per year**.** On the other hand, the appellant’s support obligations under the *Divorce Act*[[8]](#footnote-9) and pursuant to the agreement between the parties are not solely compensatory.[[9]](#footnote-10) Accordingly, the Court will reduce the support payable to the respondent by the appellant to $500 per month as of July 1, 2024.

**FOR THESE REASONS, THE COURT:**

1. **DISMISSES** the application for leave to present indispensable new evidence;
2. **ALLOWS** the appeal in part;
3. **REVERSES** the trial judgment for the sole purpose of replacing the conclusion set out in paragraph [71], 4th dash, with the following:

[71] […]

- As of July 1, 2024, $500 per month.

1. **The whole**, without legal costs, given the nature of the case.

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|  | MARK SCHRAGER, J.A. |

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|  | GUY COURNOYER, J.A. |

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|  | JUDITH HARVIE, J.A. |

1. *Droit de la famille — 232133*, 2023 QCCS 4918 (judgment under appeal). [↑](#footnote-ref-2)
2. *Droit de la famille — 142041*, 2014 QCCA 1507, paras. 1-2; *Droit de la famille — 122136*, 2012 QCCA 1406. [↑](#footnote-ref-3)
3. *Droit de la famille – 133164,* 2013 QCCA 1945, paras. 28-38; *Droit de la famille – 122683*, 2012 QCCA 1742, para. 9; *Droit de la famille – 2190*, 1995 CanLII 5475 (QC CA). [↑](#footnote-ref-4)
4. *Droit de la famille — 211162,* 2021 QCCA 1047, para. 13. See also: *Hickey v. Hickey*, [1999] 2 S.C.R. 518, paras. 10-11; *Droit de la famille — 19982*, 2019 QCCA 930, para. 49; *Droit de la famille — 192617*, 2019 QCCA 2186, para. 10. [↑](#footnote-ref-5)
5. Judgment under appeal, paras. 37 and 67. [↑](#footnote-ref-6)
6. Judgment under appeal, para. 69. [↑](#footnote-ref-7)
7. *Droit de la famille — 091006*, 2009 QCCA 847, para. 12. [↑](#footnote-ref-8)
8. *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) [↑](#footnote-ref-9)
9. *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, paras. 49-50; *Droit de la famille — 221972*, 2022 QCCA 1549, paras. 29-30. [↑](#footnote-ref-10)