

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Jones, Hallett and Matthews, JJ.A.
Cite as: Myatt v. Myatt, 1992 NSCA 34

BETWEEN:

SIDNEY RUTH MYATT)	Gavin Giles
)	for the appellant
appellant)	
- and -)	Douglas C. Campbell, Q.C.
)	for the respondent
REGINALD DONALD MYATT)	Appeal Heard:
)	December 9, 1992
respondent)	Judgment Delivered:
)	December 9, 1992

THE COURT: Appeal dismissed without costs per oral reasons for judgment of Jones, J.A.;
Hallett and Matthews, JJ.A. concurring.

JONES, J.A.:

This is an appeal from a decision of Roscoe, J. to terminate the appellant's entitlement to spousal support effective November 15, 1993. The parties married in 1967 and separated in 1990. They were divorced in 1991. The Corollary Relief Judgment incorporated the provisions of a

settlement agreement dated May 14, 1991. The respondent agreed to pay \$1,500 per month for the support of the appellant and their 17 year old daughter. The agreement acknowledged the obligation of the appellant to become economically self-sufficient. The appellant taught school during the earlier years of the marriage but withdrew to care for the child. She subsequently continued her education and obtained a combined B.A. and B.Ed. degree in 1986. She has worked as a substitute teacher. She has not obtained any steady work since the separation. Both parties are now 48. The respondent has remarried. The appellant made an application for increased support. The respondent applied to terminate the order. The application for increased support was dismissed. The respondent's application was granted and the trial judge directed that the support order would terminate on November 15, 1993. There was a preliminary question on the appeal as to whether the appeal was filed in time, however the Court is satisfied that there is no merit in that ground as in our view the order was not interlocutory. The order for termination of support is the only issue on appeal.

The learned trial judge heard evidence on the application. The trial judge carefully considered the evidence in her decision and concluded:

"I am not satisfied that Mrs. Myatt has made reasonable efforts to become economically self-sufficient since the divorce as she is required in accordance with the Minutes of Settlement. It is obvious that she is very bitter about the divorce and continues to be emotionally upset as a result. She testified that it would take ten

years to get over the bitterness. It is time, however, for Mrs. Myatt to put that behind her and attempt to become self-sufficient. The **Divorce Act** requires that an order for support promote self-sufficiency, and in the case of Mrs. Myatt, I agree that she needs the incentive of a terminal order to achieve that goal. The effect of a terminal order would be that she would have the definite burden of proving an inability to become self-sufficient in order to have the court extend the payment of spousal support beyond the terminal date. It would also require her to prove a causal connection between her economic dependency and the marriage. I agree with the submissions of Mr. Myatt's counsel that Mrs. Myatt must concentrate her job search on those positions for which she is qualified. She should consider the possibility of employment counselling to assist her in becoming more focused in her endeavours. Now that the child of the marriage is nearing completion of high school, Mrs. Myatt must not rule out the possibility of either a position that requires overnight travel occasionally or relocation to another area where teaching jobs are available.

Mr. Myatt submits that the spousal support should continue for a period of 18 months. I find, under all the circumstances,

that it is appropriate that the spousal support continue until November 1, 1993. At that time, the child of the marriage will be almost 20 years old, and it should be clear, by October of 1993, whether she is continuing her education. Between now and then, Mrs. Myatt will have two opportunities to apply for teaching positions at the commencement of the school year.

I will therefore order that the present order for combined spousal and child support continue to and including November 1, 1993. If the parties are unable to agree on an appropriate level of child support, or on whether the child is still a child of the marriage as defined by the **Divorce Act**, an application to vary will have to be made at that time. If Mrs. Myatt becomes employed prior to November, 1993, an application to determine the appropriate level of child support may have to be made, if the parties are unable to agree."

We find no palpable or overriding error on the part of the learned trial judge in determining the issue of termination. The appeal is dismissed except to the extent of deleting the word "absolutely" at the end of paragraph 2(a) of the order.

There will be no order for costs.

J.A.

Concurred in:

Hallett, J.A.

Matthews, J.A.