

CASE NO.**VOL. NO.****PAGE****BRIAN ROSS SCHAFFNER****- and - WANDA LEIGH JO-ANNE SCHAFFNER**

(Appellant)

(Respondent)

CA173985

Halifax, N.S.

Hamilton, J.A.

[Cite as: *Schaffner v. Schaffner*, 2001 NSCA 185]

APPEAL HEARD:

December 13, 2001

JUDGMENT DELIVERED:

December 21, 2001

SUBJECT: Family Law, Right to Notice and Hearing.**SUMMARY:**

Some years after a divorce order was granted, the unrepresented parties appeared before the trial judge, in response to Mr. Schaffner's application to vary an interim consent order to have his daughter live with him and vary child support. Prior to the appearance Mrs. Schaffner, without notice to Mr. Schaffner, wrote to the court asking that all corollary relief matters be dealt with at the same time. After discussion with the parties in court, and without any evidence being heard, the trial judge did not proceed with a hearing and suggested to the parties they hire a lawyer to draft a corollary relief judgment, apparently on the basis he felt all corollary relief issues had been agreed to by the parties. No order was prepared by the parties.

Some months later, Mrs. Schaffner applied to have all corollary relief matters determined, following which Mr. Schaffner applied for custody of both children, child support and forgiveness of arrears. At the time set for the hearing of both applications, counsel for both parties met with the trial judge in chambers and settlement negotiations took place unsuccessfully.

Following these discussions in chambers, the matter moved into the court where Mrs. Schaffner's counsel read into the record the terms of the corollary relief judgment his client wanted. Mr. Schaffner's counsel clearly indicated his client would not consent to the proposed order and objected to a corollary relief judgment being issued without a hearing. He indicated he wished to present evidence and conduct cross-

examination. The trial judge granted the corollary relief judgment as read into the record, stating it reflected the agreement he felt the parties came to when they appeared before him previously.

ISSUE: Did the judge err in granting the corollary relief judgment?

RESULT: Appeal allowed. The granting of the corollary relief judgment constituted an injustice. It was granted on the basis of comments made by Mr. Schaffner on issues he did not know were going to be dealt with at the first hearing and it is not clear from the record that he understood he was agreeing to a final resolution of all corollary issues, consented to deal with them or understood the consequences of such consent. Interim provision was made for child support and the residence of the children.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.