Date: 20000211
Docket No: C.A. 159612

NOVA SCOTIA COURT OF APPEAL

Glube, C.J.N.S.; Chipman and Cromwell, JJ.A.
Cite as: Huggins v. Huggins, 2000 NSCA 30

BETWEEN:

ROBERT ALLEN HUGGINS	)	William M. Leahey
	)	for the Appellant
Appellant	)	
- and -	)	
	)	Helen L. Foote
	)	for the Respondent
A. MARIE HUGGINS	)	
	)	
Respondent	)	Appeal Heard:
	)	February 11, 2000
	)	
	)	Judgment Delivered:
	)	February 11, 2000

THE COURT: Appeal dismissed with costs in the amount of $1,000.00, including disbursements, per oral reasons for judgment of Glube, C.J.N.S.; Chipman and Cromwell, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

GLUBE, C.J.N.S.:

[1] This is an appeal from the portion of an order dated October 6, 1999 of Justice Deborah Gass of the Supreme Court of Nova Scotia, Family Division, which varied the spousal support awarded in the corollary relief judgment of 1997. In addition to varying child support and medical contributions, the order varies spousal support from $700.00 per month to $400.00 per month effective January 1, 1998.

[2] The issue on this appeal is set out in the appellant's factum as follows:

> Did the Learned Chambers Judge err in law in failing to provide a termination date for spousal support when there was clear evidence before the Learned Chambers Judge to the effect that the Respondent had obtained a full-time permanent position immediately upon the issuance of the Corollary Relief Judgment with an employer for whom she had worked during the marriage and from whose employment she had voluntarily withdrawn.

[3] The parties married on September 1, 1973 and separated on December 30, 1995. The facts disclose that Ms. Huggins had worked for her present employer between August 1977 and August 1980, resigning shortly after the birth of her first child.

[4] This was a traditional long term marriage (22.3 years). The parties agreed to joint custody at the time of the divorce with Ms. Huggins having the day to day care of their two children, now age 19 and 15, with the older attending university full time commencing in the fall of 1999.

[5] The standard of review of appeals in family matters is set out in the often

quoted passage from this court's decision in **Edwards v. Edwards** (1995), 133 N.S.R. (2d) 8 at p. 20:

> ... This court is not a fact finding tribunal. That is the role of the trial judge. Ours, as has been said many times, is a more limited role. We are charged with the duty of reviewing the reasons of the trier of fact with a view of correcting errors of law and manifest errors of fact. The degree of deference accorded to the trial judge with respect to factual findings is probably no higher anywhere than it is in matters relating to family law. Hart, J.A., put it well when he said on behalf of this court in *Corkum v. Corkum* (1989), 20 R.F.L. (3d) 197, at 198:
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> > In domestic matters the trial judge always has a great advantage over an appellate court. He sees and hears the witnesses and can assess the emotional aspects of their testimony in a way that is denied to us. Unless there has been a glaring misconception of the facts before him or some manifest error in the application of the law, we would be unwise to interfere.

(See also **Hickey v. Hickey** (1999), 172 D.L.R. (4th) 577.)

[6] The Family Division Judge did not err in failing to impose a termination date for spousal support. There was no evidentiary basis upon which such a termination date could have been imposed. (See **MacIsaac v. MacIsaac** (1996), 150 N.S.R. (2d) 321.)

[7] Justice Gass dealt with the factors and objectives set out in s.15.2 (4) and (6) and 17.(4.1) of the **Divorce Act**. The method to follow in determining a support dispute starts with the objectives and all must be considered. No one objective is paramount. (See **Moge v. Moge**, [1992] 3 S.C.R. 813 and **Bracklow v. Bracklow**, [1999] 1 S.C.R. 420 at p. 440.) The factors are looked at against the background of the objectives. (**Bracklow**, p. 440, para. 36.)

> Against the background of these objectives the court must consider the factors set out in s. 15.2(4) of the **Divorce Act**. Generally, the court must look at the "condition, means, needs and other circumstances of each spouse". This balancing includes, but it is not limited to, the length of cohabitation, the functions

> each spouse performed, and any order, agreement or arrangement relating to support. Depending on the circumstances, some factors may loom larger than others. In cases where the extent of the economic loss can be determined, compensatory factors may be paramount. On the other hand, "in cases where it is not possible to determine the extent of the economic loss of a disadvantaged spouse ... the court will consider need and standard of living as the primary criteria together with the ability to pay of the other party": **Ross v. Ross** (1995), 168 N.B.R. (2d) 147 (C.A.), at p. 156, per Bastarache J.A. (as he then was). There is no hard and fast rule. The judge must look at all the factors in the light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown.

[8] We are unable to find any palpable or overriding error by the learned judge which affected her assessment of the facts. (See **Stein v. The Ship "Kathy K"**, [1976] 2 S.C.R. 802 at 808.)

[9] On the issue of costs, they are within the discretion of the trial judge. In her decision, Justice Gass stated:

> The Court was also asked to considered [sic] ordering costs in the matter. I am not satisfied that costs are appropriate either way in this situation. I do conclude and agree with the Applicant that the failure to provide the disclosure in a timely fashion is not something that the Court ought to encourage. Clearly, it was obvious to him that the mother was working full time and he could have made an application to vary access [sic] [support] and thus I have made the order retroactive. At the same time, I think that making the order retroactive does reflect the Court's concern that ongoing disclosure with respect to incomes is appropriate and necessary in terms of the issue of spousal support.
>
> [Emphasis added.]

[10] Justice Gass clearly dealt with counsel's concerns (and hers) about non-disclosure of financial information.

[11] We would dismiss the appeal with costs in the amount of $1,000.00, including disbursements.

Glube, C.J.N.S.

Concurred in:

Chipman, J.A.

Cromwell, J.A.