

NOVA SCOTIA COURT OF APPEAL
Cite as: Blackie v. Blackie, 1993 NSCA 199

Hallett, Matthews and Pugsley, JJ.A.

BETWEEN:

STEPHEN JAMES BLACKIE)	William P. Burchell
)	for the Appellant
Appellant)	
)	
- and -)	
)	Theresa M. Forgeron
)	for the Respondent
SHARON YVONNE BLACKIE)	
)	
Respondent)	Appeal Heard:
)	November 19, 1993
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)	Judgment Delivered:
)	November 19, 1993
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THE COURT: Appeal dismissed with costs to the respondent in the amount of \$1,000.00 plus disbursements per oral reasons for judgment of Hallett, J.A.; Matthews and Pugsley, JJ.A. concurring

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

HALLETT, J.A.

This is an appeal from a decision of Glube C.J. in a divorce proceeding. The appellant husband asserts that the learned trial judge erred: (i) in the manner she divided property pursuant to the **Matrimonial Property Act**; (ii) in awarding support of \$1,300.00 a month to the wife and children; and (iii) in failing to order that the support for the wife terminate in five years. Counsel for the appellant proposes that support ought to be reduced to \$400.00 a month for the wife terminating in five years and \$400.00 a month for the children.

We have reviewed the record, the decision of Chief Justice Glube and the arguments of counsel for the appellant. We are not persuaded that her conclusions should be disturbed. The parties are in their mid 40s; the marriage was of 21 years duration; it was a so-called traditional marriage with the wife staying at home to raise the children while the husband earned income to support the family. The learned trial judge did not err in finding the appellant's income was in the \$39,000.00 range nor did she err in deciding that the husband's half interest in a two unit apartment building was a matrimonial asset; the apartment was not operated in an entrepreneurial sense. We reject the argument that she erred in postponing the realization of the husband's interest in the matrimonial home for 15 years without interest. This is a common technique used by judges in situations such as this where the children need a home. It is simply a method of effecting an unequal division under **s. 13** of the **Matrimonial Property Act** when the circumstances warrant; this is what Chief Justice Glube did in postponing payment and in not awarding interest. While she might have

awarded interest payable at the end of the 15 year period we are not persuaded it was a legal error for her to have failed to do so on the facts of this case.

The learned trial judge did not err in deducting anticipated disposition expenses on the eventual sale of the matrimonial home in 15 years as it will, in all probability, have to be sold to someone other than the wife as keeping the house would not likely be warranted given the parties present financial circumstances and prospects.

We are satisfied the learned trial judge did not err in awarding support of \$1,300.00 a month for a wife and children. She recognized that Troy was partially self sufficient and appears to have taken this into account in the support order made. We are satisfied the appellant has the means to pay the award and the respondent and the children clearly have a need. This would not be a proper case for an award of support for the wife that terminated on a fixed date, that is not to say the wife should not attempt to secure training that could lead to her acquiring a degree of self sufficiency. If circumstances change an application to vary can be made.

The appellant's counsel has made a strong argument that the trial judge was incorrect in finding: (1) that Troy was a child of the marriage; and (2) that the Visa debt was a matrimonial debt. These findings did not carry significant financial consequences and considering the reasonableness of the overall financial results of the decision we do not need to deal with these issues nor the other minor issues raised on the appeal. The appeal is dismissed with costs in the amount of \$1,000.00 plus disbursements.

Hallett, J.A.

Concurring in:

Matthews, J.A.

Pugsley, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

STEPHEN JAMES BLACKIE

)
Appellant)

- and -
FOR

) REASONS

) JUDGMENT

BY:

SHARON YVONNE BLACKIE

) HALLETT,

J.A.

) (orally)
Respondent)

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