Date: 19971209 Docket No. CA 140928

NOVA SCOTIA COURT OF APPEAL

Cite as: Benvie v. Mills, 1997 NSCA 193
Chipman, Pugsley and Cromwell, JJ.A.

BETWEEN:	)	
	)	
RALPH DOUGLAS BENVIE	)	Angus E. Schurman
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	
KATHERINE MARY MILLS	)	Margot E. MacDonald
	)	for the Respondent
Respondent	)	
	)	
	)	
	)	
	)	Appeal Heard:
	)	December 4, 1996
	)	
	)	
	)	Judgment Delivered:
	)	December 9, 1997

THE COURT: The appeal is dismissed and the award of costs will be made after receiving submissions from counsel as per reasons for judgment of Chipman, J.A.; Pugsley and Cromwell, JJ.A., concurring.

CHIPMAN, J.A.:

This is an appeal from an order made in Supreme Court increasing the amount of child support payable by the appellant to the respondent pursuant to s. 17 of the **Divorce Act**, S.C. 1986.

It is not necessary to set out the facts in order to resolve the issue presented to us, which is whether the Chambers judge erred in law or made a palpable or overriding error of fact in applying the **Federal Child Support Guidelines** made under s. 26.1 of the **Act**. In **Edwards v. Edwards** (1995), 133 N.S.R. (2d) 8 at p. 20, this Court said:

> . . . 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 p. 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.

The task presented to the Chambers judge on the respondent's application

for a variation in light of the Guidelines was to determine:

(1) the appellant's income in accordance with ss. 16 - 20 and the selection of the amount set out in the applicable table;

(2) whether an award different from the amount determined under s. 3 (involving the application of the table and any amount pursuant to s. 7) should be made by reason of undue hardship of the appellant;

(3) whether to provide for an amount pursuant to s. 7 (add-ons).

We have reviewed the record and the written submissions of counsel, heard oral argument and reserved the matter for further consideration.

(1) As to the appellant's income, the trial judge imputed to him a greater amount than that disclosed in the appellant's income tax return (s. 19). In his arrival at the compromise figure of $25,000, we cannot say that the result was unreasonable in view of the fact that there was evidence before the trial judge supporting a much higher figure which could have been reached.

(2) As to the second and third tasks, evidence of the circumstances supporting the appellant's case for hardship was presented, and counsel for the appellant made full argument respecting it. This evidence and argument were considered and taken into account by the Chambers judge. This is readily apparent from the fact that he awarded less than one half of the expense established by the appellant as reasonable within the scope of s. 7. The appellant has failed to demonstrate that the trial judge made any palpable or overriding error in this process.

In the result, the appeal must be dismissed. As counsel have indicated to us that an offer was made by one of the parties prior to the hearing of the appeal, we reserve

the question of costs. We would ask each counsel to submit, by letter to the Court with copy to opposing counsel within one week, details of the offer, and the position taken by counsel with respect to the same. We will then make our award of costs.

Chipman, J.A.

Concurred in:

Pugsley, J.A.

Cromwell, J.A.