NOVA SCOTIA COURT OF APPEAL
Citation: *Snyder v. Porteous,* 2002 NSCA 163

Date: 20021212
Docket: CA 182200
Registry: Halifax

Between:

Ronald Snyder

Appellant

v.

Fay Porteous

Respondent

Judges: Glube, C.J.N.S.; Chipman and Roscoe, JJ.A.

Appeal Heard: December 12, 2002, in Halifax, Nova Scotia

Written Judgment: December 13, 2002

Held: **Appeal dismissed per oral reasons for judgment of Roscoe, J.A.; Glube, C.J.N.S. and Chipman, J.A. concurring.**

Counsel: Rubin Dexter, for the appellant
Franceen Romney, for the respondent

Reasons for judgment:

[1] The appellant Ronald Snyder appeals an order of Dyer, J.F.C. requiring him to pay $1300 per month spousal support to the respondent Fay Porteous. The order provides that it is to be reviewed in June 2003. The parties, both in their late fifties, had been common law spouses who cohabited for five years from August, 1996, to the time of their separation in September, 2001.

[2] The trial judge in a 21 page written decision reviewed the applicable sections of the **Maintenance and Custody Act**, R.S.N.S. 1989, c. 160, as amended, considered the various relevant factors and made numerous findings of fact. He noted that the appellant reported income of $80,700 in 1999, $58,200 in 2000, and in 2001 his gross monthly income was approximately $4538, or $54,456 annually. The appellant's statement of expenses showed a surplus of close to $800 even allowing for $450 per month for entertainment, alcohol and tobacco. He held investments valued at $140,000 in addition to significant equity in his home and a $30,000 camp property. At the time of the application the respondent was unemployed and resided in a 30 year old trailer with her 80 year old father who was very ill. The trial judge noted that the respondent had given her daughter investments in excess of $30,000 just after the separation so that she would qualify for social assistance and indicated that she should not expect full indemnification for her proposed budget of $1617. He urged the respondent to aggressively seek gainful employment. He was not prepared to assume what length of time would be required for that purpose, but observed that the appellant would not be required to support her indefinitely given the duration of the cohabitation. The trial judge considered the tax consequences of the order and noting that the application was made in early October, 2001, made the first payment due effective as of October 15th, 2001.

[3] The appellant, in his factum, states the issues on appeal to be:

> 22. Did the learned Judge err in awarding Porteous spousal support in the amount of $1,300.00 per month, effective from October 15, 2001, when Porteous' actual monthly budget from the said date to both the date of the hearing on December 5, 2001 and the date of the Order on appeal was only $604.00?
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> 23. Did the learned Judge err in including as part of the $1,300.00 monthly spousal support payable by Snyder to Porteous, effective from October 15, 2001, Porteous' discretionary

expenses for which the learned Judge found Porteous would access her own funds?

24. Did the learned Judge err in awarding Porteous, as part of the monthly spousal support of $1,300.00, effective from October 15, 2001, a monthly "reasonable accommodation allowance of $600.00 given that:
    (a) Porteous had not, in fact, actually incurred such expense or obligation from October 15, 2001 to the date of hearing on December 5, 2001 and to the date of the Order appealed from? and
    (b) Porteous continues not to incur such monthly expense?
25. Did the learned Judge err in fixing the amount of the "reasonable accommodation allowance" at $600.00 when there was no evidentiary foundation or basis for same before the learned Judge? Moreover, was such accommodation allowance something of which the learned Judge could take judicial notice?

[4] On appeal it is not our role to retry the case or to substitute our opinion for that of the trial judge. The determination of an application for support or maintenance is fact-based and discretionary in nature so that trial judges ... "must be given considerable deference by appellate courts when such decisions are reviewed." We should only intervene if ... "there is a material error, a serious misapprehension of the evidence, or an error in law." We are not entitled to overturn a support order simply because we would have made a different decision or balanced the factors differently. (**Hickey v. Hickey**, [1999] 2 S.C.R 518; [1999] S.C.J. No. 9 (Q.L.) and **Westhaver v. Westhaver**, [1999] N.S.J. No. 410 (Q.L.) (N.S.C.A.).

[5] Judge Dyer recognized that the respondent was entitled to reestablish herself on her own in a reasonable lifestyle. In order to move from her father's trailer she would need a reasonable accommodation allowance to pay rent. Given that rent is payable in advance, it would be unreasonable to expect her to be actually living in an apartment before she could make the application for support. The trial judge's conclusion that $600 is a reasonable accommodation allowance is entitled to deference.

[6] In our view, the trial judge carefully reviewed the evidence and the relevant considerations and reached a conclusion that is supported by the evidence. The order is reviewable in June 2003. At that time the respondent's actual accommodation expenses will be known and if the trial judge is satisfied that there has been a significant overpayment of support in the past, that can be taken into account when determining the future spousal support.

[7] We are not persuaded that the trial judge's decision contains any material error, serious misapprehension of the evidence or any error in law. The appeal is therefore dismissed without costs.

Roscoe, J.A.

Concurred in:

Glube, C.J.N.S.

Chipman, J.A.