

NOVA SCOTIA COURT OF APPEAL
Citation: *Arenburg v. Arenburg*, 2016 NSCA 83

Date: 20161110
Docket: CA 452334
Registry: Halifax

Between:

Darrell R. Arenburg

Appellant

v.

Joanne Lynn Arenburg

Respondent

Judges: Farrar, Oland, and Van den Eynden, JJ.A.
Appeal Heard: November 9, 2016, in Halifax, Nova Scotia
Written Release November 10, 2016
Held: Leave granted and the appeal is allowed with costs per reasons by the Court
Counsel: Rubin Dexter, for the appellant
Michael K. Power, Q.C., for the respondent

By the Court orally at the conclusion of the appeal hearing:

[1] The appellant, Darrell Arenburg, seeks leave to appeal and, if granted, appeals from the interlocutory decision of Justice C. Richard Coughlan dismissing Mr. Arenburg's motion for disclosure of documents and for an order compelling the respondent to re-attend for a discovery examination (reported 2016 NSSC 177).

[2] For the reasons that follow, we would grant leave to appeal and allow the appeal with costs to Mr. Arenburg on this appeal and the motion below.

[3] By way of background, Mr. and Mrs. Arenburg were married on September 28, 2000 and separated July 21, 2014. Ms. Arenburg filed a petition for divorce on August 27, 2014.

[4] The parties entered into a partial Separation Agreement dated July 20, 2015 wherein Mr. Arenburg agreed to pay to Ms. Arenburg the sum of \$324.00 per month spousal support based on her income of approximately \$30,000 from all sources.

[5] Subsequent to the partial Separation Agreement and before a draft consent Corollary Relief Order and Divorce Order could be taken out, Mr. Arenburg says he became aware of two issues: an error in the period that the parties had cohabited; and the veracity of Ms. Arenburg's income disclosure.

[6] A date assignment conference was scheduled with Justice Coughlan for November 20, 2015. On November 19, Mr. Arenburg's counsel wrote to counsel for Ms. Arenburg indicating that he would raise the following issues at the date assignment conference:

1. The period which the parties cohabited prior to marriage;
2. That Ms. Arenburg's sworn evidence before the court, including her Statement of Financial Information and her *viva voce* testimony on her motion for interim spousal support was false in that she did not report her income from gratuities.

[7] Immediately prior to the November 20, 2015 date assignment conference with Justice Coughlan, counsel for the respondent agreed that Ms. Arenburg would voluntarily attend at a further examination for discovery to be examined on the two issues raised in the letter of November 19, 2015.

[8] On January 20, 2016, Ms. Arenburg voluntarily attended a further examination for discovery to answer questions relating to the two issues.

[9] At the discovery, Ms. Arenburg refused to answer questions as to the manner in which tips and gratuities were distributed by her employer. She also refused to produce financial documentation requested.

[10] That led to Mr. Arenburg's motion seeking the production of the financial information and an order that Ms. Arenburg be directed to re-attend her discovery.

[11] In dismissing the motion, the motion judge concluded that the information was no longer relevant in light of the partial Separation Agreement.

[12] We agree with the appellant that the motion judge erred in failing to appreciate the nature of the issues in dispute between the parties. This misapprehension led him to conclude that the information was not relevant. With respect he erred in so concluding.

[13] Based on the pleadings, evidence, and submissions by counsel, Mr. Arenburg squarely placed before the motions judge the issues of spousal support and whether the parties' settlement agreement would ultimately bind them.

[14] The record satisfies us that subsequent to the parties' agreement on the terms of spousal support and their joint intention to obtain a divorce and corollary relief judgement by consent, new information came forward. This new information caused Mr. Arenburg to further doubt whether the prior sworn evidence of Ms. Arenburg respecting her income was accurate and truthful. As noted earlier, the parties' actual date of separation was also an issue, but less contentious.

[15] As a result of these outstanding issues, Mr. Arenburg sought relevant and further information from Ms. Arenburg before deciding to either proceed with the divorce and relief sought on an uncontested basis or proceed to a full trial seeking to set aside the spousal support agreement on the basis of a failure to disclose. As noted earlier, to facilitate his inquiry Ms. Arenburg agreed to submit to further discovery examination.

[16] At the discovery, counsel for Mr. Arenburg limited his inquiries to questions directly relevant to the identified contentious issues. Furthermore, the documents he requested from Ms. Arenburg were similarly directly relevant. There was no basis upon which to object to the lines of inquiry. The position adopted by Ms. Arenburg and her counsel was unjustified, particularly so, since she had agreed to re-attend for discovery on those very issues.

[17] Parties must accurately and truthfully disclose relevant information respecting their assets and income. Our *Civil Procedure Rules* and case law requires it. In disputes flowing from the breakdown of a marriage parties are encouraged to resolve them consensually and in doing so parties often will compromise. That said, the framework for decision making must rest upon candid, truthful and adequate disclosure. Parties who fail in this regard do so at their own risk.

[18] In this case, it remains to be seen whether the disclosure Ms. Arenburg has made to date is reliable and truthful. However, Mr. Arenburg is entitled to the information he seeks, and Ms. Arenburg must answer the relevant related lines of inquiry.

Costs

[19] Mr. Arenburg is entitled to costs in the Court below, on appeal and the throwaway costs due to the failed discovery examination. We would award costs of \$1,000.00 for the motion below, \$1,000.00 for costs of the appeal and \$500.00 for the throwaway costs on the discovery.

Conclusion

[20] Leave to appeal is granted and the appeal is allowed with costs to the appellant in the amount of \$2,500.00. Ms. Arenburg is further ordered to re-attend at discovery and to produce the following documents:

1. All monthly bank statements for the savings account in the name of the Respondent at the Scotiabank for the period from January 1, 2013 to present;
2. All monthly VISA statements for the period from January 1, 2013 to present;

3. The application for financing/credit completed by the Respondent in connection with the purchase by her of a 2014 Hyundai motor vehicle.

Farrar, J.A.

Oland, J.A.

Van den Eynden, J.A.