NOVA SCOTIA COURT OF APPEAL
Citation: *Campbell v. Brown*, 2004 NSCA 78

Date: 20040610
Docket: CA 214420
Registry: Halifax

Between:

Kevin Wayne Campbell

Appellant

v.

Patricia Alexandria Brown

Respondent

Judges:	Roscoe, Bateman and Saunders, JJ.A.
Appeal Heard:	June 10, 2004, in Halifax, Nova Scotia
Held:	**Appeal dismissed per reasons for judgment of Bateman, J.A.; Roscoe and Saunders, JJ.A. concurring.**
Counsel:	Steven G. Zatzman, for the appellant Kenzie MacKinnon, for the respondent

Reasons for judgment:

[1] This is an appeal from a judgment of Justice Mona M. Lynch of the Supreme Court (Family Division) (reported as **Brown v. Campbell** [2003] N.S.J. No. 400 (Q.L.)). It arises from an application by the respondent, Patricia Alexandria Brown, to harmonize child support with the Federal Child Support Guidelines and a cross-application by the appellant, Kevin Wayne Campbell, to terminate the support.

[2] The parties separated in 1988 and divorced in 1995. Their two daughters were born in 1982 and 1985. Ms. Brown applied to vary the child support on May 1, 2002, seeking support in the Table amount and special expenses retroactive to January 1, 1999. Mr. Campbell has paid less than the basic Guideline amount of support over the years since the separation. The application did not come on for hearing until April 29, 2003. It was Mr. Campbell's position at that time, that both daughters had ceased to be "children of the marriage" and eligible for child support.

[3] In a thorough and thoughtful decision, in which she considered the circumstances of each daughter in detail, Justice Lynch concluded that both daughters, while preparing for independence, continued to be dependent upon their mother for support. The judge ordered support in the Table amount for the younger daughter, and partial Table support for the older, taking into account that daughter's ability to contribute to her own support. She declined to award full retroactivity, limiting the commencement of the support to the date of the application by Ms. Brown. No order for special expenses was included, Ms. Brown having abandoned that claim at trial.

[4] Mr. Campbell says that the judge erred in concluding that the parties' daughters remained children of the marriage. In particular, he says that neither is seriously pursuing further education. The judge's conclusion that the daughters are "children of the marriage" is directly linked to her factual findings and inferences from the facts found (**MacLennan v. MacLennan** (2003), 212 N.S.R. (2d) 116; N.S.J. No. 15 (Q.L.)(C.A.) at paras. 37 to 41) . These findings are immune from review absent palpable or overriding error (**Housen v. Nikolaisen**, [2002] 2 S.C.R. 235). To the extent that this determination involves the application of a legal standard to the facts found, it too is entitled to be reviewed

by this same standard unless it is clear that the trial judge made some extricable error in principle, amounting to an error of law, with respect to the characterization of the standard or its application. We are not persuaded that there is any such error here.

[5] Accordingly, the appeal is dismissed with costs payable by the appellant to the respondent in the amount of $2000.00 plus disbursements.

Bateman, J.A.

Concurred in:

Roscoe, J.A.

Saunders, J.A.