

**SUPREME COURT OF NOVA SCOTIA**  
**(TRIAL DIVISION)**

**Citation:** *Schnare v. Schnare* (February 4, 1983), Halifax 1201-22257 (NSSC(TD))

1983 CarswellNS 470

[1983] WDFL 447

**Date:** 1983-02-04

**Docket:** 1201-22257

**Registry:** Halifax

**Between:**

**Helen Leone Schnare**

Petitioner

v.

**Everett Bernal Schnare**

Respondent

**LIBRARY HEADING**

**Judge:** The Honourable Justice J. Doane Hallett

**Heard:** February 4, 1983

**Summary:** Wife seeking an unequal division of property after ~~18~~<sup>29</sup>-year marriage with 3 children. Husband has worked full-time as a carpenter, except for seasonal layoffs. Wife has worked steadily for the last 20 years. The parties have a home (worth \$55,000). Other assets in each party's name were of roughly equivalent value. Wife's equal share in assets (\$34,000): husband will mortgage the home to the wife (under subsection 15(e) and pay interest of 11% per year on this until the \$34,000 is paid. This is her entitlement under the *Matrimonial Property Act* and for support under the *Divorce Act*. The wife would not be prejudiced by the delay in selling or re-financing the home.

**Key words:** Family, Matrimonial property, Unequal division

**Legislation:** *Matrimonial Property Act*, S.N.S. 1980, c. 9, subsection 15(e)

1981

File No. 1201-22257

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

HELEN LEONE SCHNARE,

Petitioner,

- and -

EVERETT BURNAL SCHNARE,

Respondent.

HEARD

at Halifax, Nova Scotia, before the Honourable  
Mr. Justice Doane Hallett, Trial Division, on  
February 4, 1983.

DECISION

February 4, 1983.

COUNSEL

W. Brian Smith, Esq., for the petitioner;

E. Anthony Ross, Esq., for the respondent.

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Respondent.

HALLETT, J.:

The parties to these proceedings were married on January 1, 1952. There were three children of the marriage, all of whom are grown up. Mrs. Schnare left the matrimonial home approximately two and a half years ago and the evidence satisfies me that the marriage had broken down due to lack of communication and lack of mutual interests.

While the children were young, Mrs. Schnare did not work but for the past twenty years she has had steady employment. Mr. Schnare is a carpenter and, of course, has worked throughout the marriage and for the last six or seven years has been employed by Thomas R. Inkpen Contractors Limited. He has had full employment with the exception of seasonal layoffs during the winter months.

Mrs. Schnare filed a petition for divorce on the grounds of physical and mental cruelty. The grounds were not contested. She joined with her petition a claim for a division of assets pursuant to the Matrimonial Property Act, c. 9, Acts of 1980. As in most of these cases, the dispute is over money. Both filed the required Statements of Property under the Matrimonial Property Act and Statements of Financial Information as required by this Court in connection with divorce proceedings. The parties agreed that the value of the matrimonial home is \$55,000.00 and it is unencumbered. It is the principal asset.

First, to deal with the grounds for divorce. I am satisfied that Mr. Schnare treated Mrs. Schnare with mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses and the divorce is granted on those grounds.

In her testimony, Mrs. Schnare stated that she was interested in receiving the sum of \$35,000.00. It is a reasonable inference that in making this statement she meant that this would be in full settlement of any claim she has under the Matrimonial Property Act and for any claim for maintenance under the Divorce Act.

I will deal with the division of assets under the Matrimonial Property Act. There can be absolutely no

question that the matrimonial home which I infer from the Statements of Property is in the name of Mr. Schnare, is a matrimonial home within the meaning of the Matrimonial Property Act and Mrs. Schnare is clearly entitled to half the value of that home. The Statements of Property filed show that each of the spouses has certain assets in their respective possession which have negligible value. Mrs. Schnare has some furniture, some china and crystal, a washer and dryer, a television set, a few paintings and a humidifier, the total value of which would not exceed \$5,000.00. Mr. Schnare has some furniture, a few appliances and a travel trailer. Again, the value of these would not exceed \$5,000.00. Each has a small piece of land in the country of negligible value. Apart from the home, the only assets that either of them have that are of any value are a car and a truck owned by Mr. Schnare which I find have a value of approximately \$13,000.00. An argument was made by counsel for Mr. Schnare that the truck is a business asset and, although it becomes somewhat academic in most of these cases, I am satisfied on the evidence the truck is not primarily held in connection with a business purpose and therefore not a business asset. It is used incidentally by Mr. Schnare at his work but is primarily used for going to and coming from work and used to tow his recreational trailer. I find that he is not required by his employer to have a truck, although it is a convenience to his employer that he does; his employer pays

him five cents a kilometer for the use of the truck when Mr. Schnare picks up supplies in connection with contracts being performed by his employer.

Apart from those assets which are in their respective possession, the value of which is approximately equal, the assets that were generated through the marriage consist of the matrimonial home and the two vehicles. It is clear from the evidence that Mrs. Schnare used all her income for family purposes over the years she worked and it is reasonable to infer that Mr. Schnare did as well. In short, apart from those assets which I have stated constitute a set off, the parties have accumulated assets of a value of approximately \$68,000.00, being the home and the two vehicles. There is absolutely no question that Mrs. Schnare is entitled at a minimum to an equal division of the matrimonial assets which entitles her to a payment in the amount of \$34,000.00, which I shall order be paid to her on or before June 1, 1983. So long as the \$34,000.00 is not paid, it shall bear interest at the rate of eleven per cent per annum from this date. This period of time will enable Mr. Schnare to either sell the property or refinance it.

In accordance with Section 15(e) of the Matrimonial Property Act, I shall order that Mr. Schnare execute a mortgage on the property to secure payment of the sum due.

Turning now to the question of maintenance under the Divorce Act, I have reviewed the respective budgets of both parties and they are not unreasonable.

Certainly, Mrs. Schnare's budget at \$1,590.00 per month cannot be said to be unreasonable. Her income from employment is approximately \$1,070.00 a month so she has a shortfall of \$520.00.

Based on the figures supplied for the past four years, Mr. Schnare's monthly income would average \$1,500.00. He calculates his monthly expenses at approximately \$1,700.00. His monthly expenses are a little higher than Mrs. Schnare's despite the fact that he is not paying either rent or a mortgage as she is. He has been living in the home, which is unencumbered. He had budgeted for greater expenditures than Mrs. Schnare with respect to recreation and vacations. In addition, he has some expenditures to make for repairs to the home if he retains it. I am assuming, of course, that the valuation of \$55,000.00 of the home as agreed upon between the parties reflects the home in its present condition. If the repairs were to be made prior to its sale and if it were to be sold, it would seem appropriate that the parties attempt to agree on some equitable arrangement with respect to payment of the cost of these repairs. With respect to Mrs. Schnare's shortfall of employment income to meet her expenses, the \$34,000.00 award invested at eleven per cent

would produce an excess of \$300.00 a month interest income alone, which would narrow her monthly deficiency to something in the order of \$200.00. If she were to purchase an annuity, it would narrow the deficiency even further although I have no specific evidence on this point. However, the interest payment on the award would bring her monthly income to approximately \$1,400.00 while Mr. Schnare's employment income of \$1,500.00 a month could be increased modestly, if the house were sold, by the income he could earn on the balance of the funds realized on the sale of the house which would be something in the order of \$8,000.00 or \$9,000.00 after deducting \$34,000.00 and whatever real estate commission might be involved. Based on his expenses which, of course, are calculated on the basis of living in the property, he would have a shortfall of something in excess of \$100.00.

Considering the respective means and needs of the parties, it does not seem appropriate to me that an order for either lump sum or periodic maintenance be made. Both parties may have to cut back somewhat on their expenditures.

The fact of the matter is, looking at the overall history of the marriage, the contribution of both spouses to the marriage, their respective income and employment situations, an order in this range is a reasonable award whether one makes the order under the Matrimonial Property Act, the Divorce Act or a combination of the two Acts. Had I concluded that Mrs.



Schnare was entitled only to share equally in the proceeds of a sale of the home, I would have made up a difference by way of a lump sum maintenance award so as to give her income comparable to her needs. Counsel for Mr. Schnare had indicated a preference for periodic maintenance rather than lump sum maintenance if I were considering an award of maintenance under the Divorce Act. I am satisfied that in view of Mr. Schnare's failure to make any payment whatsoever over the two years since the parties separated and in view of his statement to Mrs. Schnare that he would not pay her more than \$20,000.00, she would likely encounter considerable difficulty in collecting periodic maintenance payments. It would therefore be inappropriate to award periodic maintenance.

In summary, Mr. Schnare shall be required to pay Mrs. Schnare the sum of \$34,000.00 in full of all claims under the Matrimonial Property Act and the Divorce Act.

Mrs. Schnare shall have her costs to be taxed.

In these cases, a Court is going to look at the overall position of the parties and not become tied up over what property should be classified as a matrimonial asset or a business asset as defined in the Matrimonial Property Act. The Court will look at both the Matrimonial Property Act and the Divorce Act and determine what is appropriate and reasonable under the circumstances, applying the remedies available under both Acts.

Mrs. Schnare's counsel described her request for a payment of \$35,000.00 as being modest. He was not far off the mark. It was certainly a reasonable position and the same could not be said for the position taken by Mr. Schnare, as testified to by his wife and not denied by him. Mrs. Schnare has made a very substantial contribution to the marriage, both as a wife, mother and income earner. I feel the award made is reasonable but if it is wrong, it is wrong because it is not enough.

I should add one further point. Should Mr. Schnare decide to refinance the house to pay the award, he cannot be heard to say that the award is unfair because he will not be able to make ends meet because of his mortgage payments. There is no reason why on a marriage breakdown in circumstances such as these, where the children have grown up, one spouse should feel entitled to live on a higher standard than the other by staying in the matrimonial home while the other lives in an apartment. This is fine if it can be afforded but this would not appear to be so in this case. If the money available is such that both spouses are required to live in more modest circumstances than they had become accustomed to, then both spouses should share in a diminished standard of living.



J.

Halifax, Nova Scotia,  
February 4, 1983.

1981

File No. 1201-2:

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

HELEN LEONE SCHNARE	)	
	)	DECISION OF
- and -	)	
	)	HALLETT, J.
EVERETT BURNAL SCHNAREO	)	