

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Singleton (Re), 2004 NSSC 259

Date: 20041213
Docket: S.K. 234814
Registry: Kentville

IN THE MATTER OF: the application of Mary Ann Singleton and Thomas Leroy Singleton for an Order granting permission to mortgage real property owned in part by their infant children, Thomas Ellis St Clair Singleton and Samantha Mary Singleton.

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Judge: The Honourable Justice Gregory M. Warner

Heard: November 17, 2004

Subject: CPR 47.01-03..Mortgaging children's interest in property.

Issues: In what circumstances should a Court approve encumbering children's ownership interest in the home they occupy with their parents.

Summary: In July, 2004, the grandmother gifted a home to her daughter and three teenage grandchildren but not to her son-in-law. The family had rented the home for eight years. The applicants (son-in-law and daughter) sought to mortgage the home for \$47,000.00 to consolidate existing debts and buy a new family vehicle. The son-in-law had gone into arrears on his bills when on a fifteen week stress leave in the spring of 2004 and was in some financial difficulty.

CPR 47.03 permits disposal of a child's property where it is necessary for the maintenance, support or education of the child, or for “any other reasonable cause”. There appears to be no reported decision in Nova Scotia under this Rule. The history of the Rule, and the analogous principles (fiduciary and *parens patriae*) were reviewed.

Result: Approval of the mortgaging of the children's interest in the property was not granted, even though the mortgage would indirectly benefit the minor children because the primary beneficiaries were the parents. Caution

should be exercised when encumbering children's interest in property. It is the children's interests, not the family's interests that are to be protected.

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