NOVA SCOTIA COURT OF APPEAL

Citation: ***MacNeil v. MacNeil-Meyers***, 2009 NSCA 105

Date: 20091021
Docket: CA 305763
Registry: Halifax

Between:

Joseph MacNeil

Appellant

v.

Olive Roseanne MacNeil-Meyers

Respondent

Judges: Bateman, Oland and Fichaud, JJ.A.

Appeal Heard: October 8, 2009, in Halifax, Nova Scotia

Held: Appeal dismissed per reasons for judgment of Bateman, J.A.; Oland and Fichaud, JJ.A. concurring.

Counsel: Appellant in person
Alan Stanwick, for the respondent

Reasons for judgment:

[1] Mr. MacNeil, who is self-represented, appeals from a corollary relief judgment which was issued on October 1, 2008. The order on appeal was granted in conjunction with a divorce. The unpublished reasons for judgment of Justice M. Clare MacLellan of the Nova Scotia Supreme Court (Family Division) were delivered orally on July 3, 2008.

[2] The parties lived together from 1994 until their separation in 2005. At the time of the final hearing in 2008 Mr. MacNeil was 65 years old and Mrs. MacNeil was 68. Both had been married before and brought assets into this union. Mrs. MacNeil entered the relationship owning the house in which the parties resided and Mr. MacNeil had a pension from his lengthy service in the military and a RRIF account. The union was a traditional one for parties of this age. Mrs. MacNeil had limited income and was principally a homemaker. Mr. MacNeil was the breadwinner, supplementing his pension income with employment. He was industrious and did substantial work repairing and improving the home.

[3] The parties' pre-trial positions precluded settlement. Mrs. MacNeil wished to retain a full interest in the home. If that was agreeable to Mr. MacNeil she would not seek an interest in his savings or pensions nor would she ask for spousal support. Mr. MacNeil felt that he should share equally in the value of the home in view of his significant physical and monetary contribution to its maintenance and improvement. As his military pension and savings were acquired prior to cohabitation he wished to retain the full interest in those assets. He was not prepared to pay spousal support. The matter proceeded to trial.

[4] The trial judge ordered an unequal division of assets, with Mr. MacNeil to receive a 15% interest in the value of the residence (which was to be sold) and to retain, without division, his pension and RRIF account. She ordered that he pay lump sum and monthly spousal support of $4000.00 and $350.00 respectively. Each party was to retain the personal property in his or her possession unless ownership was disputed, in which event the property would be sold and the proceeds divided. From Mr. MacNeil's perspective, Mrs. MacNeil retained essentially all of the household contents with the exception of the appliances which were to be sold with the home.

[5] Mr. MacNeil is unhappy with the process leading up to the divorce and with the result. At the hearing of this appeal he asked that we order a new trial. In his notice of appeal he seeks an equal division of the matrimonial real property and household furnishings, wishes to retain his pension and RRIF and asks that he not be obliged to pay spousal support.

[6] Mr. MacNeil does not appreciate our limited ability to adjust the trial decision or order a new trial. In layman's terms, we cannot interfere with the judge's decision unless she has clearly wrongly applied the law or significantly misunderstood the facts. We cannot intervene simply because we might have decided the issues differently.

[7] Mr. MacNeil believes that the judge was wrong about the facts, in particular, his significant contribution to the maintenance and improvement of the residence. The trial judge's reasons reveal that she understood Mr. MacNeil's position that he had contributed at least $40,000 and substantial energy to the improvement of the home. Facts are determined by the judge on the evidence presented to the Court. The judge was not satisfied that Mr. MacNeil had offered sufficient proof of his alleged contribution. In view of the limited documentary proof submitted at the hearing, I cannot say that the judge erred in concluding that Mr. MacNeil had not proved his contribution. In any event, regardless of his monetary or physical contribution, there was no proof that the changes to the residence appreciably increased its sale value.

[8] Mr. MacNeil puts forth concerns related to the process and progress of the divorce proceeding, including the fact the interim hearings were adjourned several times; that the home was not sold within the time frame ordered at an interim hearing; the manner in which evidence was proffered; and the service he received from his counsel. While these matters were clearly a source of frustration for Mr. MacNeil, I am not persuaded that they impacted the result to his detriment. Both counsel filed post-hearing submissions. In reviewing the record I would conclude that Mr. MacNeil's position was clearly put forward by his counsel at trial and understood by the judge.

[9] These parties are of limited means. The judge fixed the spousal support on the basis of their respective pension incomes of approximately $17,400 for Mrs.

MacNeil and $22,900 for Mr. MacNeil. On the evidence at trial, the judge did not err in concluding that Mrs. MacNeil was entitled to support.

[10] Mr. MacNeil says that the home sale proceeds should have been held pending the hearing of this appeal. But the launching of an appeal does not automatically delay the progress of those things ordered to be done by the trial judge. Mr. MacNeil did not apply to this Court to have the funds held, and, even had he done so, it is not clear that he would have succeeded in delaying the disbursement of the monies.

[11] The length of time this matter took to come to trial and the delay between the hearing and final order are regrettable, but did not impact the result. In summary, although Mr. MacNeil has ably expressed his complaints with the order under appeal, I am not persuaded that there are errors which would entitle this Court to allow the appeal in any respect.

[12] Accordingly, I would dismiss the appeal but, in the circumstances, with neither party contributing to the costs of the other.

Bateman, J.A.

Concurred in:

Oland, J.A.

Fichaud, J.A.