

CASE NO.**VOL. NO.****PAGE**

FRANK RAYMOND MacPHAIL

- and -

DEBORAH GAIL MacPHAIL

(Appellant)

(Respondent)

CA 179475

Halifax, N.S.

CROMWELL, J.A.

[Cite as: *MacPhail v. MacPhail*, 2002 NSCA 159]**APPEAL HEARD:** November 28, 2002**JUDGMENT DELIVERED:** December 10, 2002**SUBJECT:** Divorce - Corollary Relief - Matrimonial Property - Child Support

SUMMARY: The parties separated in 1995 following 21 years of marriage. About four years prior to separation, the respondent's mother had conveyed lands to herself, the appellant and respondent as joint tenants. The appellant was not aware of this conveyance at the time. The spouses paid nothing for the conveyance, never occupied or exercised ownership in any fashion over the lands and did not contribute to the cost of maintaining them. In 2001, the appellant quit claimed his interest in the property.

At separation the couple's two children were 18 and 16 and both continued to reside with the appellant in the matrimonial home. They went on to obtain university degrees away from home, ceasing to be children of the marriage in 1999 and 2000 respectively. In early 2001, the appellant applied for "retroactive" child support for the period between separation and the dates on which the children had become independent.

At trial, the judge concluded that the property conveyed by the respondent's mother was not a matrimonial asset and refused to exercise his discretion to order "retroactive" child support. The appellant appealed.

ISSUES:

1. Did the judge err in finding that the property conveyed by the respondent's mother was not a matrimonial asset?
2. Did the judge err in refusing to order "retroactive" child support?

RESULT: Appeal dismissed. While the judge erred in finding that the property was not a matrimonial asset, it was an obvious case for an unequal division pursuant to s. 13(e) of the **Act**. The result reached by the trial judge, that is, that the appellant would not share in the property conveyed by his mother-in-law, was affirmed. As to "retroactive" child support, the circumstances in the record provided a proper basis for the judge's refusal to exercise his discretion to order child support.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.