

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Burke v. Dezagiacomo*, 2006 NSCA 62**

**Date:** 20060519  
**Docket:** CA 258928  
**Registry:** Halifax

**Between:**

Darryl Burke

Appellant

v.

Denise Dezagiacomo

Respondent

**Judges:** Saunders, Oland and Hamilton, JJ.A.

**Appeal Heard:** May 17, 2006, in Halifax, Nova Scotia

**Held:** Appeal dismissed per reasons for judgment of Hamilton, J.A.; Saunders and Oland, JJ.A. concurring.

**Counsel:** appellant in person  
respondent in person

Reasons for judgment:

[1] Darryl Burke, the appellant, appealed the June 2, 2005 consent variation order granted by Justice Deborah Gass varying the amount of child support to be paid by him with respect to his two daughters. The order was issued following a pre-trial conference with the judge at which both parties were present and unrepresented.

[2] With the parties' consent and based on Mr. Burke's income of \$31,500 per annum, the judge ordered Mr. Burke to pay \$1,250 for arrears of child support; ongoing child support of \$451 per month; \$1,000 as a contribution for past extra-curricular activities for his children; an ongoing contribution of \$100 per month towards their extra-curricular activities plus 50% of any such expenses in excess of \$100 per month and required him to inform Ms. Dezagiacomo, the respondent, of any change in his employment.

[3] The record is clear that Mr. Burke agreed to the terms of the consent order when the parties appeared before the judge.

[4] In his factum Mr. Burke did not dispute the payment of the ongoing table amount of child support. Instead he argued that he cannot afford the payments that he agreed to and that the judge did not take his expenses into account when she issued the consent order. Why it would be an error for the judge not to consider his expenses under the circumstances where he was agreeing to the terms of the order is not clear. Mr. Burke asked this court to reverse the judge's order that he pay arrears of child support, a contribution to past extra-curricular activities and ongoing amounts towards his children's extra-curricular activities.

[5] This is not a court of first instance. We are not to overturn support orders unless the judge has made an error in principle, has significantly misapprehended the evidence or unless the award is clearly wrong; **Hickey v. Hickey**, [1999] 2 S.C.R. 518, paras. 10, 11 and 12. Mr. Burke has not satisfied us that the judge made any error in issuing the order reflecting the parties agreement.

[6] Without in any way suggesting that in circumstances such as these an appeal lies to this court from a consent order, if we assume it does, then having reviewed the record and heard the parties, we are unanimously of the view that this appeal

should be dismissed. Having regard to the circumstances which led up to this appeal, each party shall bear their own costs.

Hamilton, J.A.

Concurred in:

Saunders, J.A.

Oland, J.A.