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NOVA SCOTIA COURT OF APPEAL

[Cite as: *White v. White*, 2000 NSCA 69]

BETWEEN:

HARRY LESLIE WHITE

Appellant

- and -

DEBBIE LYNN WHITE

Respondent

DECISION

Counsel: William M. Leahey, for the Appellant
Deborah E. Gillis, for the Respondent

Application Heard: May 18, 2000

Decision Delivered: May 18, 2000

**BEFORE THE HONOURABLE JUSTICE ELIZABETH ROSCOE
IN CHAMBERS**

Roscoe, J.A. (In Chambers) (Orally):

[1] The appellant, Harry Leslie White, has appealed the decision of Chief Justice Joseph Kennedy of the Supreme Court by which the arrears of maintenance were fixed at \$23,457.50, the on-going child support was reduced from \$450.00 per month to \$250.00 per month and supervised access to the child of the marriage by Mr. White was specified. As well, the order provided that the access should be reviewed by the Family Division of the Supreme Court in eight months, that is, in July, 2000.

[2] In the notice of appeal, the appellant raises issues pertaining to both the access and the arrears. The appeal has been scheduled to be heard on October 3, 2000.

[3] The respondent, Debbie Lynne White, has applied for security for costs on the appeal, pursuant to **Civil Procedure Rule 62.13** which says

(1) A Judge on an application of a party to an appeal may at any time order security for the costs of appeal to be given as he deems just.

(2) If a party fails to give security for costs when ordered, a Judge on application may dismiss or allow the appeal, as the case may require.

[4] Both parties in their written submissions have referred to the decision of Justice Macdonald in **Frost v. Herman** (1976), 18 N.S.R. (2d) 167, where he said at §3:

In my view, however, the discretion given a judge under the present Rule 62.13 to order security "as he deems just" should not be exercised in favour of an applicant unless special circumstances exist for so doing.

[5] The appellant denies that there are any special circumstances in this case, saying that the arrears of child support arose mainly during a time when he was an undischarged bankrupt. The respondent submits that the special circumstances are that the appellant was consistently in arrears of the child support order, failed to pay costs ordered against him at the time of the divorce in 1992, did not comply with the order to pay a matrimonial debt, and furthermore, has failed to pay all the child support subsequent to the decision under appeal.

[6] The appellant has filed a 1998 financial statement which does not show his current assets and liabilities. It also does not note that he is receiving rent from an apartment in his house. Counsel for Mr. White acknowledges the accuracy of the statement at paragraph 7 of Mrs. White's affidavit that says:

That the Appellant has not indicated in his Affidavit of May 16, 2000, that also in evidence before Chief Justice Kennedy was the evidence that his parents were paying between \$500.00 and \$600.00 per month for the rental of a basement apartment in Mr. White's home and that this was being effected by way of them paying that sum directly to Mr. Leahy to be applied to Mr. White's legal fees.

[7] There is, in my view, little to distinguish this case from **Monette v. Jordan** (1997), 163 N.S.R. (2d) 75, a decision of Justice Bateman where she ordered security for costs, after concluding, at paragraph 7:

In my view, the respondent, has demonstrated special circumstances sufficient to warrant security for costs. The appellant has ignored prior court orders requiring the payment of funds, notwithstanding that he has received substantial relief from the Court in the form of his successful Application to Vary. As in Frost, supra, he has acted in an insolvent manner toward the respondent. Nor has the appellant provided any information that would lead me to conclude that the appeal cannot be advanced if security is ordered.

[8] Therefore I will order security for costs. I will order the appellant to post security for costs in the amount of \$1,500.00 with the court on or before June 30, 2000, which is the date that the appeal book is to be filed.

Roscoe, J.A.