NOVA SCOTIA COURT OF APPEAL
Citation: Murphy v. Wulkowicz, 2005 NSCA 147

Date: 20051123
Docket: CA 217527
Registry: Halifax

Between:

Martha A. Murphy

Appellant

v.

Robert M. Wulkowicz

Respondent

Judge(s):	MacDonald, C.J.N.S., Freeman and Fichaud, JJ.A.
Appeal Heard:	September 30, 2005 in Halifax, Nova Scotia
Held:	Appeal and cross-appeal dismissed without costs, per reasons for judgment of MacDonald, C.J.N.S.; Freeman and Fichaud, JJ.A. concurring.
Counsel:	Martha A. Murphy, the appellant in person Robert M. Wulkowicz, the respondent in person

Reasons for judgment:

[1] Chief Justice Kennedy of the Supreme Court granted the parties' divorce and resolved several corollary issues including the division of assets. The appellant wife took issue with this division, citing several purported errors by the judge. The respondent husband also cross-appealed. He too sought a more favourable division of assets. He also claims, for the first time on appeal, an entitlement to the appellant's health care coverage.

[2] Both parties, as self-represented litigants, sought to introduce fresh evidence on appeal.

[3] Having carefully reviewed the record together with the parties' submissions, I conclude there is no basis for admitting any of the proposed fresh evidence on appeal. This evidence was either readily available at trial, irrelevant, or both. Furthermore, I conclude that the judge committed no reversible error. I would dismiss both the appeal and the cross-appeal without costs.

BACKGROUND

[4] The parties are from the State of Illinois. They were married in 1994, each for the second time. Their dream was to sell their home in Chicago to retire in Nova Scotia. In May of 1999, they purchased a home on approximately 7.5 acres of land located at Half Island Cove, Guysborough County ("the home property"). A year later they purchased an adjoining 100 acre lot referred to as the "camp property" together with a third nearby 30 acre lot known as the "acreage".

[5] Unfortunately, after selling their Chicago home and while still in the process of transporting their belongings to Nova Scotia, the parties separated. This was in March of 2001. That same month the appellant filed for a divorce in Nova Scotia.

[6] The trial was held in Truro on January 17, 2003. The primary contest related to the division of assets. The main focus involved the disposition of the "camp property"; it apparently being agreed that Ms. Murphy would receive the "home property" and the "acreage". A second related issue involved the proceeds from the sale of the Chicago property. Mr. Wulkowicz handled this transaction and was called to account for the net proceeds. He insisted that the proceeds had already been divided evenly after expenses. On the other hand, Ms. Murphy insisted that

there were significant monies unaccounted for and that this shortfall should at least justify her receiving all three Nova Scotia properties.

[7] The judge awarded the disputed “camp property” to Mr. Wulkowicz. In doing so he observed that Mr. Wulkowicz’s accounting left a lot to be desired and that there was a shortfall owed to Ms. Murphy from the sale of the Chicago property. However, on the sparse evidence before him, the judge was unable to determine the exact amount of this shortfall. In the end the judge felt that any such shortfall would be adequately “addressed by the favourable differential in the value of the Nova Scotia land [two lots] and the motor vehicles that she will receive”.

THE ISSUES ON APPEAL

Overview

[8] Both parties have listed extensive grounds of appeal. Because they are self-represented, rather than repeat these grounds, I will try to paraphrase the thrust of their respective positions.

[9] Ms. Murphy’s main concern involved the fact that Mr. Wulkowicz was awarded the “camp property”. She feels that this is patently unfair for several reasons. First she feels that the judge ignored or underestimated the significance of the shortfall owed her from the sale of the Chicago property. Furthermore, Mr. Wulkowicz’s failure to provide a proper accounting should not prejudice her. She also suggests that the judge ignored or underestimated the significance of awarding Mr. Wulkowicz a lot of land adjoining her “home property”. Her “home property” she felt would be rendered useless to her because she is afraid of having him living so close by. Furthermore she asserts that Mr. Wulkowicz lied not only in his accounting but also when he said he planned to make Nova Scotia his home. She feels that the judge missed obvious evidence in this regard.

[10] Ms. Murphy also sought a credit for certain receivables she asserts were family debts which Mr. Wulkowicz should collect and share. She challenged the judge’s rejection of this claim.

[11] Ms. Murphy also takes issue with the fact that she has been unable to access her personal belongings which for several years now have been locked in two large trailers that Mr. Wulkowicz arranged to transport from Chicago to Nova Scotia.

She also asserts that the judge rendered too much assistance to Mr. Wulkowicz who was also self-represented at trial. Finally she suggests that the judge's decision was not rendered in a timely fashion and that this delay hampered his ability to unravel what was already a confusing body of evidence.

[12] From Mr. Wulkowicz's litany of confusing contentions, the following claims can be distilled. He seeks an entitlement to Ms. Murphy's health insurance which was cancelled by her post separation. He denies any agreement giving Ms. Murphy the "acreage" property and feels that he should receive it. Finally, because the "camp property" is landlocked, he seeks access by way of an easement over Ms. Murphy's "home property". In justifying much of this relief, Mr. Wulkowicz does not point to alleged errors on the part of the judge. Instead he feels justified as "sanctions and damages for the malicious egregious bad faith actions of the appellant".

[13] I will address each assertion in order. However, first I will deal with the respective applications to introduce fresh evidence on appeal.

ANALYSIS

The Requests to Introduce Fresh Evidence

The Test

[14] Hamilton, J.A. of this court recently addressed the four part test for admitting fresh evidence on appeal. In **Harris v. Nova Scotia Barristers' Society** [2004] N.S.J. No. 463**,** she noted:

> ¶ 105 With respect to the first two affidavits, the test for the admission of fresh evidence on appeal was set out by the Supreme Court of Canada in **Palmer v. The Queen**, [1980] 1 S.C.R. 759 at page 775:
>
> > Parliament has given the Court of Appeal a broad discretion in s. 610(1)(d). The overriding consideration must be in the words of the enactment "the interests of justice" and it would not serve the interests of justice to permit any witness by simply repudiating or changing his trial evidence to reopen trials at will to the general detriment of the administration of justice. Applications of this nature have been frequent and courts of appeal in various provinces have pronounced upon them --

> see for example **Regina v. Stewart** (1972), 8 C.C.C. (2d) 137 (B.C.C.A.); **Regina v. Foster** (1977), 8 A.R. 1 (Alta. C.A.); **Regina v. McDonald** [1970] 3 C.C.C. 426 (Ont. C.A.); **Regina v. Demeter** (1975), 25 C.C.C. (2d) 417 (Ont. C.A.). From these and other cases, many of which are referred to in the above authorities, the following principles have emerged:
>
> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see **McMartin v. The Queen** [[1964] S.C.R. 484].
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.
>
> ¶ 106 In **Thies v. Thies** (1992), 110 N.S.R. (2d) 177, this Court approved the use of the Palmer test for admission of fresh evidence on appeals in civil cases. I am satisfied the Palmer test is the appropriate test to apply in this appeal.

Mr. Wulkowicz's Proposed Fresh Evidence

[15] On appeal, Mr. Wulkowicz attempted to introduce four volumes of materials. The first volume is essentially a reproduction of the post trial brief that Mr. Wulkowicz tried to have the judge consider. It contained a great deal of untested evidence which was either irrelevant or in any case would have been readily available at trial. The trial judge properly refused to consider this material after the fact. Likewise it ought not be accepted by us. The second and third volumes essentially represent the entire record of a parallel claim Ms. Murphy made in the Circuit Court of Cook County, Illinois. This material bears absolutely no relevance to the issues either at trial or on appeal before us. Mr. Wulkowicz's fourth volume was filed on September 29, 2005, the day before we heard this appeal. It purports to be his sister's medical records verifying the many visits she made to the emergency department of the Oak Park, Illinois Hospital. Mr.

Wulkowicz thought these may be relevant to show why he was remiss in producing the appropriate documentation at trial. His excuse was that he was preoccupied caring for his sister. Again these documents have absolutely no relevance to any trial or appeal issue. I would deny Mr. Wulkowicz's application to admit fresh evidence in its entirety.

Ms. Murphy's Proposed Fresh Evidence

[16] We received material from Ms. Murphy on September 30, 2005, the actual day that this appeal was heard. They are the closing documents relative to the purchase of the "camp property" and the "acreage" property. According to this material, it appears that Mr. Wulkowicz overstated the purchase price of this property by as much as $70,000.U.S. Thus these documents may have been relevant at trial. Yet with due diligence, they could have been readily available for trial. In her affidavit supporting their admission, Ms. Murphy explained her failure to produce them at that time:

> ¶ 4 As I testified at trial, Respondent insisted on handling all details of the transaction and excluded me from all aspects of the purchase of the Camp Property.
>
> . . .
>
> ¶ 11 I continually asked Respondent for copies of the purchase documents in 2000 and after. At first, he told me he "couldn't find them"; after we separated, he simply never responded to my requests.
>
> ¶ 12 Despite the many attempts by Respondent to keep me from getting any of the documents relating to our purchase of the Camp Property and the Acreage, I have now managed to locate such documents and I am including them herewith.
>
> . . .
>
> ¶ 20 Although I asked for these documents many times over the last five years, I never received copies. It was only now, without the assistance of either Respondent, who was acting on my behalf in a self-appointed fiduciary status, that I was able to get copies which I now submit to the Court.

[17] Yet these documents, generated by the parties' property lawyers, date back to the year 2000. Ms. Murphy is an identified client and (either directly or through

her then counsel) could have easily secured this material well in advance of the trial. While this omission is regretful, it would not be proper for us to accept this material untested on the day of the appeal. In no case, without consent, could the Court of Appeal just admit the document as is and then use it. There would have to be the same opportunity for direct and cross-examination related to the document as would exist at trial. This highlights the rationale for the principle that the document, if available, should have been rendered at trial. It is not the role of the Court of Appeal to exercise *de novo* trial functions for the consideration of evidence which was available for the trial.

[18] In fact, it appears that both parties have attempted to essentially treat this appeal as a new trial supplementary to the original hearing. Considering they are self-represented litigants in an emotionally charged conflict, perhaps this should not be surprising. In any event, I would deny Ms. Murphy's application to admit fresh evidence.

The Case on Appeal

Standard of Review

[19] In reviewing an order for the division of assets, the usual civil standard applies. Recently, Bateman, J.A. in **Hendrickson v. Hendrickson** [2005] N.S.J. No. 145; 2005 NSCA 67, succinctly explained:

> ¶ 6 The standard of review on appeals from orders for child support and the division of assets is the usual civil standard. Findings of fact and inferences from facts are immune from review save for palpable and overriding error. Questions of law are subject to a standard of correctness. A question of mixed fact and law involves the application of a legal standard to a set of facts and is subject to a standard of palpable and overriding error unless it is clear that the trial judge made some extricable error in principle with respect to the characterization of the standard or its application, in which case the error may amount to an error of law, subject to a standard of correctness (**Housen v. Nikolaisen**, [2002] 2 S.C.R. 235; **MacIsaac v. MacIsaac** (1996), 150 N.S.R.(2d) 321 (C.A.)).

The Appellant's Grounds of Appeal

The Camp Property

[20] As noted, Ms. Murphy felt entitled to this property in large measure because of the significant shortfall she felt existed from the sale of the Chicago property. She maintains that Mr. Wulkowicz deceitfully withheld pertinent information in order to deprive her of her fair share. Yet the judge made a clear finding of fact rejecting this submission. He found Mr. Wulkowicz to be "creditable" on this issue. He wrote:

> ¶ 44 The matrimonial home was in Chicago. It was this property that the husband returned to the United States to sell. It did sell in October of 2000, for the price of $500,000.00 U.S.
>
> ¶ 45 Much of the hearing involved the questions of where that money went. The evidence is confusing.
>
> ¶ 46 The wife testified that she does not know what happened to much of the equity arising from that sale. The sale was overseen by the husband and he disbursed the funds. The husband struggled to explain that distribution.
>
> ¶ 47 Let me say that I found the husband to be creditable. Judges are too familiar with the spouse who hides, transfers, undervalues and manipulates assets, with the intent of preventing the former partner from sharing, in matrimonial property.
>
> ¶ 48 I do not believe that the husband in this case is acting in that matter. I conclude, rather, that he at trial was legitimately confused about how that money was used.

[21] The judge acknowledged the difficulty in tracking the proceeds from the sale of the Chicago property. In fact he was unable to determine the exact amount of the credit due to Ms. Murphy. Instead he chose a pragmatic solution. He concluded that the value of the assets retained by Ms. Murphy exceeded the value of those retained by Mr. Wulkowicz. This resulted in a credit to Mr. Wulkowicz. He then simply set one credit off against the other. He reasoned:

> ¶ 51 The wife submits that after debts were paid off and the Nova Scotia property purchased, there should have been approximately $186,500.00 U.S. left to be divided. She submits that she should have half of that, approximately $93,250.00 U.S.

> ¶ 52 She said that she received $60,000.00 U.S. from the sale proceeds, approximately one year after the closing. She agrees that an additional $8,000.00 U.S. was transferred to her account to look after household bills.
>
> ¶ 53 She says the remaining $118,500.00 from the sale was kept by the husband.
>
> ¶ 54 The husband says that she is mistaken. He is left with roughly the equivalent of what the wife received.
>
> ¶ 55 On the basis of the evidence properly before me, it is not possible to make a definitive finding.
>
> ¶ 56 I can determine that the wife should have received more of the equity derived from the sale of the Chicago property, however, on the evidence, I am unable to conclude exactly how much more.
>
> ¶ 57 I determine that this shortfall is addressed by the favourable differential in the value of the Nova Scotia land and the motor vehicles that she will receive.
>
> ¶ 58 I will not be ordering a cash equalization payment as sought by the wife.

[22] There was an evidentiary basis for the judge's conclusion that the value of the assets retained by Ms. Murphy exceeded the value of those retained by Mr. Wulkowicz. In fact, the evidence supported a differential in excess of $30,000 Cdn. For example, the judge accepted Ms. Murphy's value of the Nova Scotia real estate.

> ¶ 22 As indicated, the parties own three separate properties, all located at Half Island Cove, Guysborough County, Nova Scotia. There were no appraisals put into evidence. I accept the values submitted by the wife; the "house property" at $42,046.70, the "camp property" at $31,060.99, and the additional lot referred to as "the acreage" at $2,543.00.

[23] He also noted agreement on the value of the motor vehicles most of which went to Ms. Murphy. In doing so he accepted Mr. Wulkowicz's evidence that two of the vehicles in his possession no longer had any value:

> ¶ 29 The parties own or owned a number of motor vehicles. It is agreed that the wife will retain the 1996 Dodge Van (value $8,000.00) and the 1984 Ford Teaga Motor Home (value $8,000.00) and the 1979 Dodge Teaga Motor Home (value $2,000.00). These valuations are agreed upon.

> ¶ 30 It is agreed that the husband will keep the Ford Ranger truck that has a value of $500.00.
>
> ¶ 31 The wife has submitted that the husband should be credited with the value of a Travellers Motor Home and a "Cube Van," both of which, she says, will remain in his possession.
>
> ¶ 32 The husband responds that neither of these latter vehicles has any value. In fact, they will not be possessed by him. The Travellers Motor Home, he says, was left in the driveway of the Chicago house after the sale of that property, because it had no value. The Cube Van was purchased with proceeds of the sale of the Chicago property, to move the family goods to Nova Scotia, but broke down en route and was abandoned because the cost of repairs would have exceeded the value of the vehicle.
>
> ¶ 33 I accept the husband's explanation that the Travellers Motor Home and the Cube Van are now not a factor in the division of assets.

[24] Based on the above and as the following table demonstrates, Ms. Murphy would owe Mr. Wulkowicz $15,514.50 Cdn. to equalize the value of the Nova Scotia properties and motor vehicles she retained.

DIVISION OF NOVA SCOTIA PROPERTY AND VEHICLES

	Total	Mr. Wulkowicz	Ms. Murphy
ASSETS:			
Real Property:			
(a) "House" property	$42,046		$42,046
(b) "Acreage" property	$ 2,543		$ 2,543
(c) "Camp" property	$31,060	$31,060	
Motor Vehicles:			
(a) 1996 Dodge Van	$ 8,000		$ 8,000
(b) 1984 Ford Teaga	$ 8,000		$ 8,000
(c) Motor Home 1979 Dodge Teaga	$ 2,000		$ 2,000

Motor Home			
(d) Ford Ranger truck	$ 500	$ 500	
TOTAL ASSETS:	$94,149	$31,560	$62,589
Difference:			$31,029
Equalization payment to Mr. Wulkowicz ($31,029. ÷ 2)			$15,514.50

As the chart shows, Ms Murphy owed Mr. Wulkowicz $15,514.50 for his share of the real property and vehicles. The trial judge then needed to determine what amount Mr.Wulkowicz owed Ms. Murphy from the proceeds of the Chicago house.

[25] While the judge was unable to calculate the value of Ms. Murphy's credit from the Chicago proceeds, it fell somewhere between zero (according to Mr. Wulkowicz) and $25,250 U.S. (as noted by the judge using Ms. Murphy's figures- $93,250 - $68,000):

> ¶ 51 The wife submits that after debts were paid off and the Nova Scotia property purchased, there should have been approximately $186,500.00 U.S. left to be divided. She submits that she should have half of that, approximately $93,250.00 U.S.
>
> ¶ 52 She said that she received $60,000.00 U.S. from the sale proceeds, approximately one year after the closing. She agrees that an additional $8,000.00 U.S. was transferred to her account to look after household bills.

[26] Ms. Murphy's equalization claim of $25,250 U.S. is equivalent to approximately $35,000 Cdn. The judge faced the following conflicting submissions: on one hand, Mr. Wulkowicz claimed the credit from the proceeds was $0, and on the other hand, Ms. Murphy claimed it was $35,000 Cdn. The trial judge was unable to come to a conclusion on what the exact amount was, but he found it to be approximately what Ms. Murphy owed Mr. Wulkowicz for the real property and vehicles ($15,514.50). That amount, $15,514.50, is approximately half-way between what Ms. Murphy was claiming was owed ($35,000), and what Mr. Wulkowicz was claiming was owed ($0). Faced with two conflicting claims, the judge committed no error in finding the amount owed for the proceeds was approximately half-way between the two claims, and then setting it off against the amount owed to Mr. Wulkowicz for the real property and the vehicles. While his approach may appear somewhat arbitrary, this is sometimes necessary when it

comes to dividing matrimonial assets. As Hallett, J.A. of this court observed in **Gomez-Morales v. Gomez-Morales,** [1990] N.S.J. No. 357; (1990) 100 N.S.R. (2d) 137, it comes down to a question of fairness:

> [46] ... This valuation of half the equity is therefore somewhat arbitrary and for those who will criticize this approach, all I can say is that there is often little accounting precision on the division of assets between spouses. While one attempts to make the calculations with as much accuracy as possible, the basis of such calculations are generally estimates of value by experts. *As a consequence, even as a general rule, a court's division of property is, at best, an estimate of what is fair in the circumstances applying the criteria of the matrimonial property legislation.* Furthermore, the courts are regularly called upon in assessing damages arising out of personal injuries or death to fix amounts involving numerous contingencies and there is no reason why the court should not do so in determining fair values in matrimonial property cases. [Emphasis added]

[27] Finally on this issue, I note that the judge did in fact take into account Ms. Murphy's concerns about living next to Mr. Wulkowicz:

> ¶ 28 The husband has told this Court that he has developed a love for the camp land and considers it to be his only home. I find that the wife's unhappiness with the husband's proximity is not sufficient reason to deny him the opportunity to stay on that property. Having given the house property to the wife, I find it fair that the husband should have the "camp" property, and I so determine.

[28] In short the judge made certain factual findings that supported his conclusion to award Mr. Wulkowicz the camp property. I see no palpable or overriding error in this regard.

The Receivables

[29] At trial, Ms. Murphy maintained that the parties were owed two loans from family friends and that only Mr. Wulkowicz had the ability to seek repayment. They totalled $46,000. The judge rejected this claim and concluded that one was a gift to a family friend and that the other was a joint loan that Ms. Murphy could also seek to collect. Thus he concluded that they were not assets for division.

> ¶ 37 The wife has testified that the husband has loaned money to two acquaintances and should be credited with the value of these loans as receivables. The greater of the two is in the amount of $40,000.00 U.S. given to one John Gubbins, a friend of the husband's.
>
> ¶ 38 The wife characterized the transaction as a loan, which can only be collected by the husband.
>
> ¶ 39 The husband says that the money was given to pay the Chicago office rent for Gubbins, a close friend and social activist lawyer, about 16 years ago.
>
> ¶ 40 He says that the money is gone; Gubbins, having given up his practice and moved away. He says that the wife was a close friend of Mr. Gubbins' spouse and knew that the rent was being paid by the husband.
>
> ¶ 41 I accept the explanation of the husband and will not consider the amount a receivable to the husband.
>
> ¶ 42 The second transaction was the loan of $6,000.00 U.S. to one John Umlauf, another friend of the husband's. The husband agrees that this is a loan and anticipates repayment, however he says it was a loan made with the knowledge and consent of both he and the wife, and should be a receivable divided equally between the parties. I agree.

[30] Before us Ms. Murphy maintained that the judge's reference to her being a close friend to the debtor's wife is not supported by the evidence. Instead this assertion formed part of Mr. Wulkowicz's post trial submission which the judge expressly rejected. In her factum, Ms. Murphy develops the argument this way:

> ¶ 45 Concerning the Gubbins transaction, an essential part of the learned Trial Judge's opinion was based on the fact that "the wife was a close friend of Mr. Gubbins' spouse and knew that the rent was being paid by the husband." In fact, there is *no testimony anywhere in the record* that Appellant and Mrs. Gubbins were close friends. In fact, the only statement to this point is contained in *Respondent's Brief*, in which he asserts that Gubbins' wife "was [Appellant's] best friend." In addition to this being a blatant untruth, it is interesting that Respondent never offered testimony on this point at trial, when he knew it would be challenged as the blatant untruth that it was, but waited until he could no longer be cross-examined to make a factual statement *totally unsupported by the evidentiary record*, which the learned Trial Judge accepted as a fact. [Emphasis added by the appellant]

[31] I cannot accept Ms. Murphy's submissions on this point. The evidence establishes that both Mr. Wulkowicz and Ms. Murphy were friends of Mr. Gubbins:

> Martha Murphy, Direct Examination
>
> Q. The next thing is the accounts receivable. Let's deal firstly with the loan to John [Gubbins?]. It's showing an amount of $40,000 US. Can you explain the circumstances?
>
> A. John Gubbins was a friend of ours, a prominent attorney in Chicago. He had cash flow problems and needed to pay his rent and expenses. We happened to have some cash at that time and Bob just loaned it to John.

[32] Further, the evidence supports the fact that Ms. Murphy according to Mr. Wulkowicz likely would have discussed this issue with Mr. Gubbins' wife and that Mrs. Gubbins would have (erroneously) referred to the transaction as a loan.

> Robert Wulkowicz, Cross-Examination
>
> Q. Well that's my question, did you expect at that time that it would have been paid back?
>
> A. I had never characterized it as a loan, and the reason that Martha says it that way is because John Gubbins explained it to his wife as a loan.

[33] In this light, it is not a palpable and overriding error for the judge to infer that Ms. Murphy was a friend of Mrs. Gubbins and that she [Ms. Murphy] knew that the rent was being paid by the husband [Mr. Wulkowicz].

[34] In any event there was ample evidence for the judge to justify his conclusion that this transfer was a gift and not a loan. I refer to the following evidence tendered by Mr. Wulkowicz:

> I certainly told Martha, she certainly knew about it. It is none of her business what I chose to do with my money then. We were not married. We were living together, but she had no right to my assets or even to any sense that she could direct me in the use of my assets.

> I gave him that money. It was not a loan. I did it for a specific reason. John Gubbins later went under, got disbarred, and lives in Wisconsin, which I think is an ugly, ugly way, but certainly an understandable way about how bureaucracies deal with distressing intruders.

[35] I see no reversible error in these circumstances.

The Appellant's Personal Belongings

[36] Both parties agree on one thing. Mr. Wulkowicz arranged to have their personal belongings stored in two large trailers and shipped to Nova Scotia. For the past several years the trailers have been locked and Mr. Wulkowicz has had the key. Before us Mr. Wulkowicz acknowledged Ms. Murphy's right to access these items forthwith, although he asserted that they first had to be moved from her "home property" to his "camp property". I would direct that she be given immediate unconditional access. In other words, these trailers shall be unlocked while at their present location and Ms. Murphy shall be entitled to secure her personal belongings forthwith.

Other Alleged Errors

[37] Ms. Murphy asserts that the judge offered too much assistance to Mr. Wulkowicz as a self-represented litigant. I disagree. It is difficult for a judge to conduct a trial when one of the parties is self-represented. Two competing interests must be balanced. First the judge obviously cannot be an advocate for a party. At the same time the trial must be run as efficiently and fairly as possible. This may require the judge to offer guidance to a self-represented party. The appropriate balance falls within the judge's discretion. See **R. v. McGibbon** (1988), 45 C.C.C. (3d) 334 (Ont. C.A.). In this context I conclude that the judge in guiding Mr. Wulkowicz did no more than was necessary to ensure that the trial proceeded fairly and efficiently. The judge did not act as Mr. Wulkowicz's advocate.

[38] Finally Ms. Murphy submits that the judgment was filed beyond the six month deadline prescribed in s. 34(d) of the **Judicature Act**, R.S.N.S. (1989) c. 240. The judgment, dated September 4, 2003, was given within six months of March 4, 2003 when the final written submissions were filed. Section 34(d) therefore has no application.

[39] Except for Ms. Murphy's claim to access her personal belongings, I would dismiss her appeal.

The Respondent's Grounds of Appeal

[40] As I earlier noted, Mr. Wulkowicz points to no error on the part of the trial judge. He simply seeks relief because he feels mistreated by Ms. Murphy throughout the trial and appeal process. There is no merit to any of this. His claim for health care would fall under spousal support and that was never pleaded or appealed. His claim to the "acreage property" has no merit. For reasons already provided, the judge committed no reversible error in distributing the Nova Scotia land as he did. Finally his claim for an easement over Ms. Murphy's "home property" was never before the trial judge for consideration. It is not properly before us. I would dismiss his appeal.

DISPOSITION

[41] Aside from a direction that Ms. Murphy be given immediate access to her personal belongings, I would dismiss both the appeal and the cross-appeal in the circumstances without costs.

MacDonald, C.J.N.S.

Concurred in:

Freeman, J.A.

Fichaud, J.A.