

NOVA SCOTIA COURT OF APPEAL
Citation: *Zenner v. Zenner*, 2015 NSCA 100

Date: 20151110
Docket: CA 435892
Registry: Halifax

Between:

Rainer Zenner

Appellant

v.

Denyse Zenner

Respondent

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: September 23, 2015, in Halifax, Nova Scotia

Subject: Family law: confirmation hearings and the requirement for a material change in circumstances

Summary: The appellant was ordered to pay spousal and child support in 1990. Multiple attempts were made by him to have those obligations cancelled, and all arrears forgiven. He has been, for the most part, unsuccessful. In 2008 a provisional order was issued by the P.E.I. Supreme Court stopping spousal and child support as of 2005 and 2006, and forgiveness of arrears, but only back to those dates. This order was confirmed by the B.C. Supreme Court in 2011. In 2013, the appellant obtained a provisional order from the Ontario Superior Court that would vary the 1990 judgment and forgive all arrears. The confirmation hearing was held in Nova Scotia, the current residence of the respondent. The request for confirmation was refused as the appellant had failed to demonstrate a material change in circumstances since the 2008 P.E.I. provisional order.

Issues:

- (1) Did the confirmation hearing judge err in his conclusion that there had not been a material change of circumstances since 2008?
- (2) Was the appellant denied natural justice in the litigation involving the 2008 P.E.I. provisional order, and its confirmation in British Columbia?

Result:

Appeal dismissed. The appellant failed to demonstrate that the confirmation judge committed an error in law, misapprehended the evidence or came to a conclusion tainted by a palpable and overriding error of fact or mixed law and fact. The introduction of the *Child Support Guidelines* in 1997 did not mandate a retroactive recalculation of child support in 2015. In provisional proceedings in 2000 and 2008 the *Guidelines* were in place, but the appellant's claims of earning little or no income were simply not accepted by those Courts.

The appellant did not argue before the confirmation judge that he had been denied natural justice in the litigation involving the 2008 provisional order, and its confirmation in British Columbia in 2011. And in any event, the argument had no merit. He had ample opportunity in the 2008 proceedings, where he was represented by counsel, adduced evidence and made submissions. There is no evidence that the appellant sought involvement in the confirmation hearing process in British Columbia, or that the delay deprived him of natural justice or was otherwise an abuse of process.

<p><i>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 16 pages.</i></p>
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