

Date: 19980618

Docket: C.A. 144042

NOVA SCOTIA COURT OF APPEAL  
Cite as: Hemphill Estate v. Hemphill, 1998 NSCA 119  
**Bateman, Hallett and Flinn, JJ.A.**

**BETWEEN:**

THE ESTATE OF JEAN HEMPHILL, by the	)	Hector J. MacIsaac
Guardian MARGARET McINNIS	)	for the Appellant
	)	
Appellant	)	
	)	
- and -	)	
	)	Thomas W. Jarmyn
	)	for the Respondent
ALDRICH HEMPHILL	)	
	)	
Respondent	)	Appeal Heard:
	)	June 18, 1998
	)	
	)	
	)	Judgment Delivered:
	)	June 18, 1998
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

**THE COURT:** Appeal dismissed per oral reasons for judgment of Flinn, J.A.; Hallett and Bateman, JJ.A. concurring.

**FLINN, J.A.:**

This is an appeal from the decision of Justice MacLellan of the Supreme Court of Nova Scotia. Justice MacLellan denied the appellant's application for a declaration of nullity of the marriage of Jean Hemphill and Aldrich Hemphill. The appellant's submission on the hearing of the application was that on the date of the marriage, December 10<sup>th</sup>, 1993, Jean Hemphill was incompetent.

In denying the appellant's application the trial judge said:

I am not satisfied based on the evidence I have heard or the exhibits introduced that at the time of the marriage, that is, December 10<sup>th</sup>, 1993, Jean Hemphill was incompetent. A person is presumed to be competent until proven otherwise. I appreciate the difficulties involved in attempting to prove that issue at this time, however, that is the burden the applicant must meet.

In concluding that the appellant had not established, on a balance of probabilities, that at the time of her marriage Mrs. Hemphill was unable to appreciate the nature and quality of the marriage contract, the trial judge made no palpable or overriding error. There is, therefore, no basis for this Court to interfere with that conclusion. (see **Toneguzzo-Norvell v. Burnaby Hospital**, [1994] 1 S.C.R. 114 (S.C.C.)).

The appeal is dismissed. The appellant will pay to the respondent his costs of this appeal which are fixed at \$1,000.00 inclusive of disbursements.

Flinn, J.A.

Concurred in:

Hallett, J.A.

Bateman, J.A.

NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

THE ESTATE OF JEAN HEMPHILL,  
by the Guardian MARGARET McINNIS

Appellant

- and -

ALDRICH HEMPHILL

Respondent

REASONS FOR  
JUDGMENT BY:

FLINN, J.A.  
(Orally)