

Docket: C.A. 148510

Pugsley, Hallett and Cromwell, JJ.A.

Judgment Delivered:
December 1, 1998

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

The reasons for judgment of the Court were delivered by:

CROMWELL, J.A.: (Orally)

On this appeal, Thane Arthur Bell argues that Hamilton, J. erred in awarding his former wife, Carole Jean Bell, spousal support upon divorce.

The parties had been married for almost 30 years prior to their separation in 1996. They have three children, born in 1970, 1972 and 1977. It is agreed that none is now a child of the marriage for the purposes of child support. The appellant earned approximately \$66,500.00 in 1998, the respondent \$37,000.00. Although the respondent worked either full time or part-time through a good deal of the marriage, she was the primary caregiver for the children and the appellant was the primary breadwinner.

The trial judge made the following findings with respect to spousal support:

..... Considering Mrs. Bell's evidence of her role in the family and bringing up the three children and the secondary status her part time job played in the family income and considering the provisions of s. 15 of the ***Divorce Act***, I find Mrs. Bell has suffered economic hardship as a result of the marriage breakdown. I appreciate Mrs. Bell was working as a nurse at the time of her marriage and is still working as a nurse. The fact that she did not work at all for some years during her thirty year marriage while the three children were young, that she worked at jobs unrelated to nursing sometimes when the children were young, that she worked part time so that she could be with the children and look after their needs, the fact that she chose a nursing home to work in as opposed to hospital work, so that she could work part time to supplement the family income and allow the family to have extras and yet look after the needs of her family, all satisfy me she has suffered economic hardship as a result of the marriage breakdown, entitling her to spousal support. Mr. Bell had the opportunity of continuous employment throughout the marriage, which

Mrs. Bell does not have because she took the majority of the child care into her hands. If Mrs. Bell had had the same opportunity for continuous employment, she would be in a much more secure employment situation today than she is with only two full time years of employment with her present employer, although I appreciate she was employed by her present employer on a part time basis for approximately eight years before that. She has made efforts to become self-sufficient as is required by the **Act** by getting full time work since separation, but her budget satisfies me that she needs financial support from Mr. Bell even taking into account the double counting of some of the debts shown in her Statement of Financial Information, and I agree with Mr. MacKinnon [counsel for Mr. Bell], there is some doubt counting. Considering her Statement of Financial Information and also considering Mr. Bell's Financial Statement of Financial Information, I find Mrs. Bell has a need and that Mr. Bell has the ability to pay. I find Mrs. Bell is entitled to spousal support in the total amount of \$800.00 per month, which given her present age of fifty-four and her medical problems, I find should be paid indefinitely. This amount of \$800.00 will be taxable to her and will be tax deductible to Mr. Bell.

The relevant provisions of the **Divorce Act**, R.S. 1985, c. 3 (2nd Supp.) are as follows:

15.2(1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of

a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

The appropriate role of the Court of Appeal in a matter of this kind is a strictly limited one. We should not interfere with the trial judge's decision unless we are persuaded that her reasons disclose material error which includes significant misapprehension of the evidence, or error in principle: see **Moge v. Moge**, [1992] 3 S.C.R. 813 at pp. 832-33; (1992), 99 D.L.R. (4th) 456 at pp. 466-7 (S.C.C.).

In essence, the appellant argues that the respondent has suffered no economic disadvantage as a result of the marriage and has not established need. As regards the question of need, the trial judge found otherwise and we are not persuaded that she made any error requiring the intervention of this Court on appeal. With respect to the question of economic disadvantage, both the **Divorce Act** and the Supreme Court of Canada in **Moge** make it clear that all four of the objectives set out in s. 15.2(6) should be considered along with the mandatory factors set out in s. 15.2(4) including the means, needs and circumstances of the

parties, the length of time they cohabited and the functions performed by the spouses during cohabitation.

Having reviewed the record, the reasons of the learned trial judge and considered the written and oral submissions of the parties, we are not persuaded that the trial judge made any error in law or fact that would permit appellate intervention in this case.

The appeal is, accordingly, dismissed with costs which we would fix at \$750.00 plus disbursements.

Cromwell, J.A.

Concurred in:

Hallett, J.A.

Pugsley, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

THANE ARTHUR BELL

Appellant

- and -

CAROLE JEAN BELL

Respondent

REASONS FOR
JUDGMENT BY:

CROMWELL, J.A.
(Orally)