

Docket No: C.A. 149199

Cite as: Garnier v. Caldwell, 1998 NSCA 219

BETWEEN:

November 19, 1998

Appeal dismissed without costs per oral reasons for judgment of Bateman, J.A.; Hart and Flinn, JJ.A. concurring.

BATEMAN, J.A.:

[1] This is an appeal by Edith Muriel Garnier from the decision of Justice Frank Edwards of the Supreme Court.

[2] Pursuant to a Corollary Relief Judgment dated December 5, 1996, the appellant was receiving support in the amount of \$700 per month for the three children of the marriage who were in her custody. In May of 1998 she applied to the Supreme Court to vary the maintenance. In her supporting Affidavit she requested an amount of monthly support in accordance with that provided in the **Child Support Guidelines** and for a contribution towards the children's extraordinary expenses pursuant to **s.7** of the **Guidelines**. Mr. Caldwell filed an Affidavit dated the day of the hearing. In that Affidavit he indicated that the oldest son, Mark, who is 17 years old, had recently moved out of his mother's home and was living with a third party. Mr. Caldwell further deposed that Mark had advised that he was planning to move in with his father. His counsel advised Justice Edwards that Mark was now living with his father. When the matter came on for hearing, on June 29, 1998, Justice Edwards conducted a preliminary discussion with counsel for the parties. One of the issues concerned Mr. Caldwell's income, which, from the documents before the Court, appeared to be uncertain in amount. Justice Edwards suggested a compromise figure subject to re-application and retroactive adjustment, should his estimate prove wrong. The Judge then suggested that a Consent Order

might be entered into by the parties, whereby Ms. Garnier received support for the two children in her care and paid support for the child in Mr. Caldwell's care. Counsel for the parties agreed. The resulting Order, consented to as to form and substance, provides for a net payment by Mr. Caldwell to Ms. Garnier in the amount of \$307 per month and that the parties shall have joint custody of Mark.

[3] It is from that Order that Ms. Garnier appeals. She asserts that the net maintenance that she receives is inadequate to provide for the two children remaining in her care. In her submissions she further claims that she did not consent to the terms of the Order.

[4] This Court in **Cosper v. Cosper** (1995), 141 N.S.R. (2d) 344 approved the comments of Hallett, J., as he then was, in **Pineo v. Pineo**, (1981), 45 N.S.R. (2d) 576 (N.S.S.C.) in regard to the authority of a solicitor to bind his client to an agreement with a third party. We are not persuaded on the material before us that we can interfere with the Consent Order. That being said, it is troubling that a fuller inquiry was not made into Mark's status as a "child of the marriage" nor, in light of Ms. Garnier's limited income in relation to that of Mr. Caldwell, that consideration was not given the undue hardship (**s.10**) provision of the **Guidelines**, nor an assessment made of Ms. Garnier's request for a **s.7** amount.

[5] Accordingly, the appeal is dismissed, but, in the circumstances,
without costs.

Bateman, J.A.

Concurred in:

Hart, J.A.

Flinn, J.A.