

CASE NO.

VOLUME

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Cite as: Chislett v. Chislett, 1997 NSCA 181

ELAINE CHISLETT

GARY CHISLETT

- and -

(Appellant)

(Respondent)

C.A. No. 136428

Halifax, N.S.

Clarke, C.J.N.S.
(orally)

APPEAL HEARD:

November 19, 1997

JUDGMENT DELIVERED:

November 19, 1997

WRITTEN RELEASE OF ORAL:

November 20, 1997

SUBJECT:

FAMILY LAW - Attachment of Pension Entitlement - Forgiveness of Arrears - Variation of Maintenance Award

Maintenance Enforcement Act, S.N.S. 1994-95, c. 6, ss. 24,37

SUMMARY:

Soon after the father was ordered to pay support for two children, he voluntarily quit his job, sold his assets and moved to Quebec. Left behind was his pension entitlement accumulated from his relatively long term employment at Michelin. After his arrears exceeded \$30,000.00 and garnishment had been issued, the Director of Maintenance Enforcement applied to transfer the father's pension funds to the Director to be applied to the arrears of maintenance.

The Chambers Judge heard the application by telephone conference. He made orders with respect to the pension funds whereby they were applied to and secured for the maintenance account. Upon the father disputing the amount of the arrears during the telephone conference, the trial judge urged him to come to Nova Scotia for a hearing so that it could be worked out.

A hearing date was set and notice was given to the mother through her counsel. At the hearing all parties were present and evidence was taken. Counsel for the mother objected to the proceeding dealing with any of the settlement or forgiveness of arrears or any variation being made in the

maintenance order. She alleged these were not properly before the Court.

The Chambers Judge, in an effort to settle all of the matters, issued an order whereby a new calculation of arrears was made and in addition, the order included the forgiveness of a portion of the alleged existing arrears and also suspended the existing order and varied downward the payments of maintenance required by the father for the two children.

ISSUE: The mother appealed alleging that the Chambers Judge erred in law by forgiving accumulated arrears and by amending the terms of the existing order without applications to settle, forgive or vary having been made.

RESULT: The appeal was allowed. Those portions of the order dealing with the determination of arrears, which involved forgiveness and the revised (downward) order of child support were set aside. That portion of the order dealing with the attachment of the pension funds was not disturbed.

The Court found that, laudable though the intentions of the Chambers Judge were in these circumstances, the only matter before the Court was the application made by the Director of Maintenance Enforcement concerning the transfer of the amount of the father's pension entitlement to the Director. The Court found the record did not reveal that there ever was an application before the Court to fix or forgive arrears or an application to vary the order of child support. Therefore, neither issue had been properly placed before the Court.

This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 7 pages.