

NOVA SCOTIA COURT OF APPEAL

Citation: *Hepworth v. Hepworth*, 2012 NSCA 117

Date: 20121123

Docket: CA 354165

Registry: Halifax

Between:

James Hepworth

Appellant

v.

Tammi Hepworth

Respondent

Judge: The Honourable Justice Linda Lee Oland

Appeal Heard: May 31, 2012, in Halifax, Nova Scotia

Subject: Divorce - Division of Assets - Home on Land owned by Band - *Indian Act*, R.S.C., 1985, c. I-5, ss. 18 and 20 - *Matrimonial Property Act*, R.S.N.S. 1989, c. 275, s. 3(1) and 4(1)

Summary: The appellant, a member of a First Nations Band, and the respondent, who is Caucasian, lived in a home on the reservation for some ten years. The Band had provided the land, infrastructure, construction workers, and a subsidy. The parties also contributed funds. The trial judge determined matters on their divorce, including retroactive child support and division of matrimonial debts and assets. He held that the wife was entitled to compensation for the home and relied on certain evidence as to its value. When he realized that that amount did not result in the bottom line he intended, the judge relied on different evidence to support his revised valuation. He also calculated the equalization payment.

Issue: Whether the judge erred in ordering compensation for the home; if not, whether he erred in his original or revised valuations.

Whether he erred in deciding that a line of credit was a matrimonial debt and in accepting that there was no asset value to a certain account.

Whether he erred in his calculation of the equalization payment.

Result: Appeal allowed and cross-appeal dismissed. In the particular circumstances of this case, although the appellant did not hold a Certificate of Possession, he was lawfully in possession pursuant to s. 20(1) of the *Indian Act*. His interest was sufficient to fall within the definition of “matrimonial assets”. Accordingly, the judge did not err in finding that the respondent was entitled to compensation for the home. Nor did he make any palpable and overriding error in his original valuation. However, his revised valuation which was not based on his own assessment of the evidence amounts to an error in principle. His original valuation was upheld.

The grounds of appeal pertaining to asset values in a bank account and to a line of credit were essentially determinations of credibility. There was no basis for interference with the judge’s findings as to credibility. As for the cross-appeal, the judge made no palpable and overriding error in estimating retroactive child support based on the evidence available to him. The equalization amount was recalculated.

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 23 pages.