

NOVA SCOTIA COURT OF APPEAL

Citation: *Werner v. Werner*, 2013 NSCA 6

Date: 20130108

Docket: CA 389565

Registry: Halifax

Between:

Thomas Rolf Werner

Appellant

v.

Yvonne Werner

Respondent

Judge: The Honourable Justice Peter M. S. Bryson

Appeal Heard: November 27, 2012

Subject: Family law, custody, access, best interests of child, child and spousal support, unequal division of matrimonial assets.

Summary: The parties were both German citizens. In February, 2008, they married after brief (4 weeks) acquaintance. Mr. Werner was then almost 57, Ms. Werner was 28. Ms. Werner left a lucrative job in Switzerland to join Mr. Werner in immigrating and retiring to rural Nova Scotia. Ms. Werner gave birth to their son in the summer of 2009. In October 2009, Mr. Werner assaulted Ms. Werner who fled the family home. Mr. Werner commenced custody proceedings in family court, but shortly thereafter returned to Germany where he brought a series of applications for custody, alleging that Ms. Werner was a danger to herself and the child. The German courts refused his applications. Following trial in Nova Scotia, Ms. Werner was awarded sole custody with no access by Mr. Werner.

The trial judge awarded spousal and child support based on an imputed income of \$70,000. He also awarded \$125,000 as a lump sum for both spousal support and unequal division of matrimonial assets. He did not break down the \$125,000 between support and property division. The trial judge also ordered a psychiatric assessment of Mr. Werner at IWK Children's Hospital, prior to any consideration of access to the child.

Mr. Werner appealed, arguing that the trial judge erred by not awarding access. He also challenged the judge's order for a psychiatric assessment, imputation of income, spousal and child support, and division of property. Ms. Werner cross-appealed, arguing that the trial judge should have awarded a greater amount for child support, spousal support, and division of matrimonial property.

Issues:

Did the trial judge err:

- (1) in awarding custody to Ms. Werner, with no access?
- (2) in awarding child maintenance when Mr. Werner had little or no income?
- (3) in awarding spousal support?
- (4) in making an unequal division of matrimonial assets, particularly in light of the short duration of the marriage?

Result:

With two variations, the appeal and cross-appeal were dismissed. Trial judge did not err in law. He recognized that contact with both parents was optimal. But Mr. Werner had endangered his young child and effectively deprived both Ms. Werner and their son of appropriate support. The trial judge was best placed to assess Mr. Werner's anger management issues and the risks he posed to Ms. Werner and their child.

The trial judge found that Mr. Werner was capable of lucrative employment, had substantial assets and had been evasive and inconsistent about ownership of them. He had to convince Canadian immigration authorities that he had an \$800,000 net worth, yet he paid only \$300 per month child maintenance, while paying \$3,000 a month to an adult child of his from his first marriage. Ms. Werner had supported the family and exhausted her resources as a result of Mr. Werner's conduct. She could not work in the immediate future. Child and spousal support based on \$70,000 imputed income was justified by the evidence, as was unequal division of matrimonial assets. Trial decision varied by providing for psychiatric assessment at comparable facility. Lump sum award of \$125,000 was broken down as \$95,000 for spousal support and \$30,000 for unequal division of matrimonial assets.

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 22 pages.