

NOVA SCOTIA COURT OF APPEAL
Citation: *Gaunt v. Hawes*, 2013 NSCA 40

Date: 20130326
Docket: CA 406161
Registry: Halifax

Between:

Geoffrey James Gaunt

Appellant

v.

Kelley Elizabeth Hawes

Respondent

Judges: Oland, Beveridge and Bryson, J.J.A.

Appeal Heard: March 26, 2013, in Halifax, Nova Scotia

Written Judgment: March 27, 2013

Held: Appeal dismissed per oral reasons for judgment of Beveridge, J.A.; Oland and Bryson, J.J.A. concurring.

Counsel: Appellant in person
Respondent in person

Reasons for judgment: (Orally)

[1] Mr. Gaunt was a financial advisor. What appears to have been a prolonged and bitter matrimonial break up with the respondent ended in a Corollary Relief Judgment dated April 7, 2009. It directed that an RRSP account in Mr. Gaunt's name be divided equally. Half was to be transferred to the respondent. For reasons that have yet to be satisfactorily explained, Mr. Gaunt did not take the necessary steps to comply with the Order.

[2] For that failure, the respondent was granted leave to apply for an a contempt order on February 15, 2011. The hearing proceeded before the Honourable Justice Deborah Gass on March 21, 2011. She found Mr. Gaunt to be in contempt of court for failing to do what he was directed to do – divide the RRSP account. Justice Gass ordered Mr. Gaunt to pay a fine in the amount of \$11,200 to the respondent on or before March 21, 2012, and in default of payment, to be imprisoned for 30 days. Her decision was duly encapsulated in a formal order of contempt dated April 19, 2011. Mr. Gaunt did not appeal from that finding and order.

[3] Nova Scotia Civil Procedure Rule 89.14 provides that a judge may discharge or vary a contempt order. Relying on this power, Mr. Gaunt asked that the contempt order of April 19, 2011 be discharged. Justice Gass heard the application on April 16, 2012. The request was based on the fact that Mr. Gaunt had declared bankruptcy on March 3, 2011. In oral reasons given that day, Justice Gass dismissed the application to discharge the contempt order, with written reasons to follow.

[4] Justice Gass issued written reasons on August 13, 2012 explaining why the fact of Mr. Gaunt's bankruptcy had no bearing on the original order of the Nova Scotia Supreme Court of April 7, 2009 or the Contempt Order of April 19, 2011. Her reasons are reported (2012 NSSC 305). A formal order was duly issued by the court on September 7, 2012.

[5] Mr. Gaunt appeals to this court as of right. He repeats the same arguments he made before Justice Gass. Mr. Gaunt relies on *Schreyer v. Schreyer*, 2011 SCC 35. His reliance is misplaced. The fact of his bankruptcy was, and is, irrelevant to the issue of his failure to comply with a lawful, direct and simple

order of a judge of the Nova Scotia Supreme Court. I agree with the conclusions by Justice Gass that the original order was not a debt. It was an order to do something. It could not be extinguished by filing for bankruptcy, not to mention that the contemptuous behaviour by Mr. Gaunt was his failure to comply with the order for close to two years prior to his filing for bankruptcy. Furthermore, the fine of \$11,200 imposed by the formal order of April 19, 2011 is not a debt but a penalty for breaching a court order. Even if it could be considered a debt, it was post bankruptcy.

[6] The appeal is dismissed with costs in the amount of \$1,500 payable to the respondent.

Beveridge, J.A.

Concurred in:

Oland, J.A.

Bryson, J.A.