

**SUPREME COURT OF NOVA SCOTIA**  
**(APPEAL DIVISION)**

**Citation:** *Cleaves v. Cleaves* (March 23, 1982), Halifax SCA 00905  
(NSSC(AD))

27 RFL (2d) 239

**Date:** 1982-03-23

**Docket:** SCA 00905

**Registry:** Halifax

**Between:**

**Weldon David Cleaves**

**Appellant**

v.

**Marilyn Lorraine Cleaves**

**Respondent**

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**Judge:** The Honourable Justice Gordon L.S. Hart, Justices Angus L. Macdonald and Leonard L. Pace, concurring

**Heard:** March 23, 1982

**Summary:** Matrimonial home owned by parties in joint tenancy. No funds to pay wife for her interest in home before its sale. Award of interest at rate of 17% per year pending sale overturned on appeal: "no award of interest should have been made". Until the sale, the parties "will jointly have to suffer the loss of income resulting from its lack of use."

**Key words:** Family, Matrimonial property, Equal division, Pre-judgment interest

**Legislation:** *Matrimonial Property Act*, S.N.S. 1980, c. 9

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WELDON DAVID CLEAVES - and - MARILYN LORRAINE CLEAVES  
(Appellant) (Respondent)

S.C.A. 00905

HALIFAX

HART, J.A.

Matrimonial Property Act - Division of assets - Interest on award

Court held that a division of assets requiring the husband to pay \$30,000.00 to the wife out of the proceeds of the sale of the matrimonial home should not bear interest during the period before sale of the home

IN THE SUPREME COURT OF NOVA SCOTIA  
APPEAL DIVISION

Hart, Macdonald and Pace, JJ.A.

BETWEEN:

WELDON DAVID CLEAVES	)	Douglas J. Livinstone
	)	for the appellant
	)	David G. Cottenden
- and -	)	John R. Cameron
	)	for the respondent
	)	
MARILYN LORRAINE CLEAVES	)	Appeal Heard:
	)	March 23, 1982
Respondent	)	Judgment Delivered:
	)	March 23, 1982

THE COURT: Appeal allowed with costs per oral reasons for judgment of Hart, J.A.; Macdonald and Pace, JJ.A., concurring

The reasons for judgment of the Court were delivered orally by:

HART, J.A.:

This is an appeal from the decision of His Honour Judge Lester L. Clements wherein he, after granting a decree for divorce to the wife and custody of the sixteen-year-old son to the husband, awarded a division of matrimonial assets under which the wife was to receive the sum of \$30,000.00, which included one-half the value of the pension of the husband. He further awarded a lump sum of maintenance in the amount of \$1,000.00 as well as periodic payments of \$300.00 a month to the wife, \$700.00 costs and required the husband to pay interest at the rate of 17% per annum on the \$30,000.00 until paid to the wife after sale of the matrimonial home.

We have reviewed the record and heard the arguments advanced by counsel in the appeal and the notice of contention filed herein. We are satisfied

that the trial judge made no error in the division of assets under the *Matrimonial Property Act* and in his award of maintenance and costs. We unanimously agree, however, that no award of interest should have been made. The home is held by the parties in joint tenancy and it is expected that until the sale takes place there will be no funds from which the \$30,000.00 can be paid. The sale should be arranged as soon as possible so the wife will have the use of the \$30,000.00 but, until such time as the sale is completed, she and the husband will jointly have to suffer the loss of income resulting from its lack of use.

The appeal is hereby allowed with costs, which are fixed in the amount of \$500.00.

Hart, J.A.

Concurred in:  
Macdonald, J.A.  
Pace, J.A.