**NOVA SCOTIA COURT OF APPEAL**
**Citation:** *Dorofeev v. Dorofeeva*, 2025 NSCA 6

**Date:** 20250205
**Docket:** CA 529950
**Registry:** Halifax

**Between:**

Dmitry Dorofeev

Appellant

v.

Maria Dorofeeva

Respondent

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| **Judge:** | The Honourable Justice Carole A. Beaton |
| **Appeal Heard:** | January 23, 2025, in Halifax, Nova Scotia |
| **Facts:** | Following a divorce, the appellant husband was ordered by the Supreme Court of Nova Scotia – Family Division to pay child support, special expenses, and equalize matrimonial property with the respondent wife. The husband appealed, arguing errors in the division of debts and the assessment of his income for child support (paras 1-3). |
| **Procedural History:** | Supreme Court of Nova Scotia – Family Division: Ordered the appellant to pay child support, special expenses, and equalize matrimonial property (para 1). |
| **Parties Submissions:** | Appellant: Argued that the trial judge erred by not admitting evidence of out-of-country debts, unfairly dividing only Canadian debts, and not directing an unequal division of debts. He also claimed the judge improperly assessed his income for child support and demonstrated bias (paras 2-3). |

Respondent: Did not participate in the appeal (para 5).

**Legal Issues:**

- Should the husband's motion for fresh evidence be granted?
- Did the trial judge err in her decision regarding the division of debts?
- Did the trial judge demonstrate bias in her decision-making?

**Disposition:** Motion for fresh evidence and appeal dismissed, without costs.

**Reasons:** Per Beaton J.A. (Bryson and Gogan JJ.A. concurring):

The motion for fresh evidence was dismissed because the appellant failed to demonstrate due diligence in presenting the evidence at trial. The evidence was available but not translated due to cost, and the appellant did not provide a sufficient explanation for its absence at trial (paras 21-31). The appeal was dismissed as the trial judge's decision was based on the evidence presented, and there was no error in law or fact. The judge's decision was not biased, and the appellant's dissatisfaction did not substantiate a claim of judicial bias (paras 32-38).

***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 39 paragraphs.***

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| **Judges:** | Bryson, Beaton and Gogan, JJ.A. |
| **Appeal Heard:** | January 23, 2025, in Halifax, Nova Scotia |
| **Held:** | Motion for fresh evidence and appeal dismissed, without costs, per reasons for judgment of Beaton, J.A.; Bryson and Gogan JJ.A. concurring |
| **Counsel:** | Dmitry Dorofeev, self-represented appellant<br>Maria Dorofeeva, respondent (not participating) |

**Reasons for judgment:**

[1] Following a trial, the Honourable Justice Pamela MacKeigan of the Supreme Court of Nova Scotia – Family Division ("the judge") ordered the appellant husband Mr. Dorofeev to pay prospective s. 3 support and prospective s. 7 special expenses, and arrears of both, pursuant to the *Federal Child Support Guidelines*, SOR/97-175. In the Corollary Relief Judgment ("the order") of January 19, 2024, issued in conjunction with a Divorce Order of the same date, the judge also required him to pay monies to the respondent wife Mrs. Dorofeeva, to equalize the division of their matrimonial property.

[2] The husband now appeals from the order and seeks to adduce fresh evidence in support of his arguments. In his Notice of Appeal, he claims the judge erred in: not admitting evidence of certain out-of-country matrimonial debt, unfairly dividing only matrimonial debts held in Canada and not directing an unequal division of debts.

[3] In written and oral submissions the husband makes two additional arguments: the judge erred in not properly assessing his income available to pay child support and she demonstrated bias in her decision making. On the former issue, the parties acknowledged before the judge they had reached an agreement that the husband would pay prospective child support of $500 per month and a proportional sharing (40 percent) of s. 7 expenses of $420 per month for hockey, dental and vision care for the parties' child. Retroactive child support of $10,139.14 was to be paid in monthly instalments of $300 per month. Those matters having been settled between the parties and their agreement confirmed on the record by the judge, there is no basis that would justify this Court going behind it.

[4] The only arguments for us to consider on appeal concern the parties' debts. There are two questions before this Court. The first is should the husband's fresh evidence motion be granted? The second is has the husband established the judge erred in her decision in any of the ways he suggests in his written and oral arguments?

[5] The respondent wife Ms. Dorofeeva did not participate in the appeal. For the reasons that follow, I would dismiss both the fresh evidence motion and the appeal, without costs.

*Background*

[6] At the outset of the hearing before her, the judge identified three remaining issues between the parties that required her determination. In oral submissions before us, the husband agreed those were division of matrimonial debts, what other of the child's expenses might fit the definition of a s. 7 expense, and retroactive s. 7 expenses.

[7] In her oral, unreported decision the judge first reviewed the evidence put before her. Regarding the division of matrimonial property, she began by noting that household contents and vehicles had been previously divided to the parties' mutual satisfaction. The only question remaining was how to apportion the parties' matrimonial debts. The judge ultimately directed the husband to pay the wife $7,385.83, representing an equal "division of debt" between them.

[8] To appreciate the context of the husband's argument before this Court, a brief review of pertinent sections of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275 ("the *Act*") is useful. Section 12(1)(a) provides that when a petition for divorce is filed, either spouse may:

> […] apply to the court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division.

While the *Act* makes no specific reference to "matrimonial debts", the calculation and apportionment of any proven debt, then subtracted from any assets, is implicit in a judge's matrimonial property division task.

[9] Section 13 of the *Act* allows for an unequal division of matrimonial assets in those instances "[…] where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable […]". In contemplating an unequal division, courts may consider several factors as enumerated in s. 13, including:

> (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;
>
> […]
>
> (e) the date and manner of acquisition of the assets; […]

[10] Deciding upon a just division of matrimonial assets, whether equal or otherwise, demands as a prerequisite sufficient disclosure of a party's property. Section 14 of the *Act* directs that disclosure, augmented by reference to the *Nova Scotia Civil Procedure Rules*:

> **Statement of particulars of property**
> **14 (1)** When application is made for division of matrimonial assets, each spouse shall file with the court and serve on each other a statement, verified by affidavit, disclosing particulars of all property of that spouse.
>
> **Manner and form of statement**
> **(2)** A statement pursuant to subsection (1) shall be made in the manner and form required by the rules of the Supreme Court.

[11] In this case, both *Rule* 59.21(2)(e) referencing claims of child support and *Rule* 59.22(2) referencing a claim for division of assets would have been triggered well before trial. This meant both parties were required to file a sworn Statement of Income and Expenses (child support) and a sworn Statement of Property (division of assets), to assist one another and the court in addressing their respective claims.

[12] The judge derived her authority to direct an equalization payment in s. 15 of the *Act*:

> **15** On an application for the division of matrimonial assets, the court may order
>
> …
>
> (f) that one spouse pay to the other spouse such amount as is set out in the order for the purpose of providing for the division of the property, and make such other orders and directions as are ancillary thereto.

[13] At trial, as on appeal, the husband was self-represented and spoke through an interpreter. In his evidence he explained his position regarding debts, in response to the judge's question about his understanding of the wife's claim in relation to matrimonial debts:

> **Q.** So Ms. Dorofeeva ... er, Dorofeeva ...
>
> **A.** Uh, huh.

**Q.** ... is claiming that the Rogers, the Nova Scotia Power, the RBC Line of Credit, and the PC Financial card, as well as the Canadian Tire credit card, and the RBC credit card, are all matrimonial debts, okay?

**A.** Maria's part Canadian, Maria's part.

**Q.** Okay.

**A**. There's a joint debt that I am communicating you.

**Q.** I'm sorry, there's a joint Canadian debt? Is he ...

**A.** No, I apologize. Maybe it will be ... it's complicated and hard to understand but I will try to explain. Maria in her claims to the half of our matrimonial debts indicates her part that is Canadian. I was living in Russia and my debts are in Russia. And Maria was living in Canada for (Inaudible) Canada. Since we are family, Maria's Canadian debt and my Russian debt should be combined and divided equally. When we separated, when we stopped living together, we calculated the total of who owes what to who and it turned out that joint account mine, worth $20,000. That after having split all the debts. I asked Maria whether she would like to split or to participate in this debt and she said no. And to sum up, if we take the Russian part of debts and the Canadian part of debts by combining ... by combining (Inaudible due to speaking at same time as Interpreter) the largest part of the debt is still ... is still on me. I ask you to please keep that in mind because despite that here the Canadian part is (Inaudible). There's my part that I attached as part of evidence.

**Q.** All right. So these debts that are listed, there's ... does he have a copy there?

**A.** Yeah.

**Q.** Yeah. There are credit card statements or statements verifying the debts.

**A.** That's part of the debts. Part of joint debts.

**Q.** So you acknowledge these are part of the joint debt?

**A**. This was my part, the part that I submitted to you.

**Q.** No, I understand. So you're acknowledging these are part of a joint debt. But you're saying there was an agreement between the two of you that she would deal with these debts and you'd deal with the Russian debts. Is that what you're saying?

**A.** You are right. And the ... my part is larger and I am taking care of that part and I'm not laying it on Maria. Maria is taking care of her part herself.

**Q.** So are you saying that there was a meeting between the two of you and this is how you decided who would pay for what?

**A.** No, we were sending texts to each other.

**Q.** So you're saying ...

**A.** We were texting and came to the conclusion that my part is bigger.

**Q.** So are you ... is his evidence that there are text messages that document their agreement as to the debt?

**A.** Unfortunately not. I apologize. That is due to the fact that Maria turned off my phone because the phone was registered to her and she turned it off and all my messages were (Inaudible). I cannot provide this agreement but already we were talking about that.

**Q.** Sorry?

**A.** Using text, through text messages.

**Q.** All right. However, I just want to be clear, these debts here you recognize as being ... you were aware of these debts and that you've acknowledged they're matrimonial debts.

**A.** Yes, yes.

(Emphasis added)

[14] As will be seen, the reference to text messages is important to the consideration of the husband's fresh evidence motion, to be discussed later.

[15] Subsequently, the wife testified:

**A.** All Russian debts Dmitry informed me but never seen any contracts. I never seen any proof of it. And it always was like new information. Today we have this one, today we have this one. And I never have access to his bank account or anything.

**Q.** No, just ... where ...

> **A.** When ... once they ... he told me again here in Canada that we have a big debt in Russia, I remind him that he has company in Russia where he's part of around $100,000 which if he would like he can cover if those debts exist.

[16] The wife was not cross-examined on her evidence, which had suggested she knew nothing about Russian debts, or whether they were business or matrimonial. In closing submissions, the wife's counsel argued the husband had not furnished documentary evidence to support the existence of any matrimonial debts that may have been incurred in Russia.

[17] During his submissions to the judge, the husband referenced a power of attorney executed by his wife, a copy of which he had provided to the court. He argued that document established he had been acting on behalf of his wife in certain Russia-based financial transactions. He maintained it supported his position that obligations both in Canada and in Russia comprised the parties' total matrimonial debt. Unfortunately, the difficulty for the judge and counsel for the wife was that document was in another language and had not been translated to English; it was not understandable by them. More critically, the husband did not put before the Court any documentation such as, for example, bank or credit card statements documenting balances, to assist in proving the existence of the Russian debts he was claiming.

[18] The following exchange between the husband and the judge illustrates the obvious evidentiary difficulty. It began with the husband stating:

> […] I would ask you to take into consideration that there is a Canadian debt about which we have spoken at length which is transparent. But there is also Russian debt that his (sic) transparent and known.
>
> **THE COURT:** The problem is I have absolutely no information about the Russian debt, how much it is, if it exists. There's no documentation. There's no evidence before the Court.
>
> **MR. DOROFEEV:** I have these documents. I did not attach them. It is ... they're like quite voluminous and to interpret them you know too much ...
>
> **THE INTERPRETER:** The Interpreter would like to ask a question to double check with ...
>
> **MR. DOROFEEV**: This was asked when it was about the price of the (Inaudible) there are too many documents, too expensive to translate them. And I know that the judge would not look at the loan translated documents but here

there are a couple of examples, loan agreements. That there are all the documents exist.

**THE COURT:** That's not ... that evidence isn't before the Court. Okay, thank you.

**MR. DOROFEEV:** I understand. I just want to say that (Inaudible) electronic world confirms that Maria was aware of our debt and was in agreement with them. I have an electronic letter where all our debts are described. And there is a confirmation from Maria that she sent me back this letter (Inaudible). Confirmation of the (Inaudible) that Maria was not aware and she's not supposed to be aware, is the power of attorney from her giving me the rights to make all the decisions on her behalf.

(Emphasis added)

[19] In her decision the judge commented:

Mr. Dorofeev submits when the parties separated, they agreed through text messages that he would pay the parties' debt in Russia, and Ms. Dorofeeva would pay their debts in Canada. Mr. Dorofeev testified he no longer has the phone with the text messages exchanged by the parties to verify the agreement reached as Ms. Dorofeeva took the phone.

[…]

[…] Mr. Dorofeev did not provide documentary evidence to support the existence of the debts claimed or the amount of the debt owed. There are no attachments to either statement of property, no credit card statements or loan agreements that could substantiate the claim being made. Merely listing a credit card debt to MKB Bank in Russia in the amount of $9,169 is not sufficient.

Ms. Dorofeeva does not acknowledge or adopt these debts as matrimonial debt. Her evidence is Mr. Dorofeev controlled the finances, and while he talked of debt, she never saw supporting documentation to verify the debt or the amount.

In his submissions to the Court, Mr. Dorofeev stated he has documentation to support the debt but did not attach the documentation as it would be too expensive to translate.

(Emphasis added)

[20] As the husband had not provided sufficient evidence of matrimonial debt incurred in Russia, the judge was not prepared to grant his request that the wife pay to him $34,510.50 to equalize the total of what he contended was the matrimonial

debt, as incurred in both Canada and Russia. Instead, the judge considered the evidence of, and made findings about, the debt outstanding in Canada, noting the husband's acknowledgment that the debts listed in the wife's Statement of Property were matrimonial in nature. From there, the judge ordered the husband to pay the wife $7,385.83, to equalize their Canadian debts.

*The fresh evidence motion*

[21] The husband seeks to enter before this Court evidence of extracts from text messages between the parties, loan agreements and credit card statements, a copy of a Power of Attorney (referred to earlier herein), a table of assets and debts prepared by him, and various bank statements, payment orders and receipts. All these materials have been translated from the Russian language into English by a translator whose certification is affixed to each of them. In oral argument the husband submitted he prepared the fresh evidence motion materials "to prove" his wife was aware of all the debts he seeks to have considered.

[22] The test for admission of fresh evidence on appeal is without controversy. In the four and half decades since the Supreme Court of Canada decided *R. v. Palmer*, [1980] 1 SCR 759, appellate courts have routinely applied its prescribed analytical framework.

[23] The *Palmer* test makes possible the admission of fresh evidence where a party can establish: due diligence in their efforts to adduce the evidence at trial, the relevance of the proposed evidence, the credibility of the proposed evidence, and whether the evidence could have affected the result at trial had it then been available. This Court has also required the proposed evidence to be in an admissible form (*Wolfson v. Wolfson*, 2023 NSCA 57 at para. 128, quoting from *Armoyan v. Armoyan*, 2013 NSCA 99 at para. 131 [leave to appeal to SCC refused, 35611 (February 2014)]).

[24] In *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada reconfirmed the application of the *Palmer* criteria in family law matters. *Barendreg*t leaves no doubt as to the significance of the due diligence criterion of the *Palmer* analysis, meaning parties must take all reasonable steps to present their best case at trial (para. 36). The Court continued:

> [43] In sum, the due diligence criterion safeguards the importance of finality and order for the parties and the integrity of the judicial system. The focus at this stage of *Palmer* is on the *conduct* of the party. This is why evidence that could, by

> the exercise of due diligence, have been available for trial should generally not be admitted on appeal.
>
> (Emphasis added)

[25] Later in its decision, the Court again instructed appellate courts examining the due diligence question to scrutinize the conduct of the party seeking to adduce the evidence:

> [59] Ultimately, this criterion seeks to determine whether the party could — with due diligence — have acted in a way that would have rendered the evidence available for trial. The due diligence inquiry should focus on the *conduct* of the party seeking to adduce such evidence rather than on the evidence itself. And in doing so, a court should determine, quite simply, why the evidence was not available at the trial: *G.D.B.*, at para. 20.

[26] On the due diligence question, in his affidavit filed in support of the fresh evidence motion the husband states, without any elaboration, that the many documents he now seeks to have admitted "were not available to me at the time of the trial as they were located in Russia and they were difficult to obtain due to the current political situation". However, at trial the husband told the judge he had the documents, but it was too expensive for him to have had them translated.

[27] It appears the documentary evidence the husband now seeks to have admitted is evidence that was available to him at the time of trial, and materials not translated for trial have now been afforded that process.

[28] As to text message records, the husband indicated to the judge and repeats in his affidavit that he had no access to the phone that contained them. However, voluminous passages, which he says he selected and extracted from texts, were translated and are attached to his affidavit. It is unclear how his opportunity to access the texts only arose after trial, and whether those passages are an accurate reproduction of the original messages.

[29] The husband was represented by counsel for a period prior to the divorce hearing, during which time he filed a sworn Statement of Property. It did not contain any of the information he now seeks to tender. After he became self-represented, he filed a further Statement of Property with the court, again with the same deficiency. Discussion between the parties and the judge at the outset of the hearing also revealed the husband and his counsel had attended a settlement conference prior to trial. Therefore, it is reasonable to conclude that by the time of

trial, the husband ought to have known that documentary evidence would be needed to support his assertions about the existence of debt he was seeking to have considered.[1]

[30] The husband has not provided a sufficient explanation as to why the documents now appended to his affidavit could not have been made available for trial. Post trial, the husband has undertaken the effort, and presumably the expense, to take extracts from text messages and secure translation of both them and the documents. Why this was not done for trial, and how it is the text messages are now available to him, has not been explained.

[31] With respect, the husband's fresh evidence motion does not withstand scrutiny of the due diligence prong of the *Palmer* test. For the foregoing reasons, I would dismiss the fresh evidence motion.

*Did the judge err in her decision or demonstrate bias?*

[32] The Court is guided in its assessment of issues advanced on appeal by the application of the standard of review. It prescribes the Court's task, because "an appeal is not simply a re-hearing of the matter, nor an opportunity to have a panel of judges take a 'fresh' second look at the case, in the hope of securing a different result" (*MacCallum v. Langille Estate*, 2022 NSCA 15 at para. 12).

[33] The standard of review on appeal from a division of matrimonial assets (or in this particular case, debts) was set out in *Davis v. Harrison*, 2023 NSCA 74:

> [34] The standard of review on an appeal from a division of assets, such as a pension, is well established. As stated in this Court's recent decision of *Wolfson v. Wolfson* (2023 NSCA 57):
>
> > [39] A judge's exercise of discretion in the classification and division of property will not be interfered with by this Court unless the judge has erred at law, applied incorrect principles, made a palpable and overriding error of fact or the result is so clearly wrong as to amount to an injustice. (See *Saunders v. Saunders*, 2011 NSCA 81 at para.18, *Cunningham v. Cunningham*, 2018 NSCA 63 at para. 15 and *Moore v. Darlington*, 2017 NSCA 67 at para 40.)

[1] Certain visa credit card statements found at Exhibit "E" to the husband's fresh evidence motion affidavit are dated 2024, and a "Lendcare" credit agreement is dated 2023, calling into question the relevance of these documents as they fall well after the date of separation.

> [40] Issues of fact, including inferences, and issues of mixed fact and law from which no error of law is extractable, are reviewed for palpable and overriding error. Issues of law, including points of law which are extractable from mixed questions of fact and law, are reviewed for correctness. (See *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8 and 27).

[34] As noted earlier, the husband submits the trial result was unfair because debts he maintains exist were not included in the judge's calculations. His arguments about error center around his contention there should now be permitted a different equalization of debts than was decided by the judge.

[35] The judge could only decide the issues before her on the basis of relevant evidence that she accepted. Her reasons demonstrate she properly interpreted the evidence used to reach her factual conclusions, and she correctly applied the law. The husband's arguments do not support the conclusion the judge erred in law, in mixed fact and law, or in fact. There is no basis upon which this Court could now interfere with her decision (*Laframboise v. Millington*, 2019 NSCA 43 at para. 14).

[36] Finally, the husband asserts the judge demonstrated bias against him in deciding the case. Litigants asserting a reasonable apprehension of bias have been previously reminded by this Court about the "onerous" burden to establish such a claim (see e.g. *Green v. Green*, 2022 NSCA 83 at para. 43; *Evans v. Larocque*, 2025 NSCA 4 at para. 53). As recently stated in *Ward v. Murphy*, 2025 NSCA 5 "the assessment of bias is contextual, begins with a strong presumption of judicial impartiality, and requires the discharge of a heavy burden, on cogent evidence, establishing serious grounds" (at para. 45).

[37] The husband is dissatisfied with the judge's decision, however his argument regarding judicial bias is not borne out in the record. *Murphy v. Ibrahim*, 2023 NSCA 42 observes that "[w]hile litigants may desire that a different outcome had occurred, it does not justify making frivolous claims of judicial bias" (at para. 18).

[38] In conclusion, the husband's arguments cannot succeed on appeal.

[39] I would dismiss both the fresh evidence motion and the appeal, without costs.

Beaton, J.A.

Concurred in:

Bryson, J.A.

Gogan, J.A.