

NOVA SCOTIA COURT OF APPEAL
Cite as: Lawrence v. Lawrence, 1995 NSCA 163

Freeman, Roscoe and Flinn, JJ.A.

BETWEEN:

MARGARET LOUISE LAWRENCE)	E. Anne MacDonald
)	for the appellant
Appellant)	
)	
- and -)	The respondent
)	appeared in person
)	
STEVEN SAMUEL LAWRENCE)	
)	
Respondent)	Appeal Heard:
)	September 29, 1995
)	
)	Judgment Delivered:
)	September 29, 1995
)	
)	

THE COURT: Appeal dismissed without costs, per oral reasons for judgment of Roscoe, J.A.; Freeman and Flinn, JJ.A. concurring.

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

ROSCOE, J.A.:

This is an appeal from a dismissal of an application made pursuant to ss. 11(1)(e) and 13 of the **Matrimonial Property Act**, R.S.N.S. 1989, c.275.

The parties were married in 1971, had two children born in 1972 and 1975 and acquired a home in joint tenancy in 1975. When they separated in 1977, Mrs. Lawrence remained in the home with the children. On August 27, 1981 she filed a petition for divorce and sought a divorce decree, a custody order, child support and costs. No relief pursuant to the **Matrimonial Property Act** was sought. A decree nisi, dated November 30, 1981, granted the divorce, ordered that Mrs. Lawrence have custody subject to reasonable access, that Mr. Lawrence pay \$100.00 a month child support and that he pay costs of \$75.00. The decree was made absolute on April 30, 1982. Since 1982 Mrs. Lawrence has resided in the house, paid the mortgage and other expenses and cared for the children. One child went to live with her father in 1991 and the other obtained her own apartment in 1992. The children are now both married.

The respondent submits that he took over the matrimonial debts at the time of the divorce. He says he is now prepared to transfer his interest in the matrimonial home to his children, but the appellant is reluctant to have her children as joint owners.

In 1992 the appellant brought an application to vary the decree nisi by requesting an order that the respondent convey his interest in the matrimonial home to the appellant. That application was dismissed by MacDonnell, J. who apparently suggested that the application should be brought pursuant to the **Matrimonial Property Act**. When that was done before Scanlan, J., he dismissed the application based on the provisions of s.12(1) of the **Act**:

Where

- (a) a petition for divorce is filed;
- (b) an application is filed for a declaration of nullity;

(c) the spouses have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation;
or

(d) one of the spouses has died,

either spouse is entitled to 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.

Justice Scanlan found that "None of the events as referred to in Section 12 of the Act apply to the case at hand."

Section 2(g) of the **Matrimonial Property Act** provides:

"spouse" means either of a man and woman who

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity, or

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,

and for the purposes of an application under this Act includes a widow or widower.

At the time of the application before Justice Scanlan, the parties were no longer spouses. We agree with his interpretation of s.12 as it applies to this unfortunate circumstance. The appellant is not assisted in our view by s. 5(4) of the **Act**. Justice Scanlan's decision is consistent with the decision of Morrison, J. in **Baxter v. Baxter** (1981), 46 N.S.R. (2d) 304, 22 R.F.L.(2d) 225 where it was held that an application could be made under the **Act** at any time up to the granting of the decree absolute.

The appeal is dismissed. Since the respondent was not represented by counsel, there should be no order for costs.

Concurred in:

Freeman, J.A.

Flinn, J.A.