

NOVA SCOTIA COURT OF APPEAL

Roscoe, Pugsley and Flinn, JJ.A.

Cite as: Cosper v. Cosper, 1995 NSCA 122

BETWEEN:

CLARA INKUMSAH COSPER

Appellant

)
)
) Brian J. Hebert
) for the Appellant

- and -

RONALD LEE COSPER

Respondent

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)
) Mary E. Meisner, Q.C.
) for the Respondent

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)
) Appeal Heard:
) May 30, 1995

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) Judgment Delivered:
) May 30, 1995

THE COURT:

Leave to appeal is denied as per oral reasons for judgment of Roscoe, J.A.; Pugsley and Flinn, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

ROSCOE, J.A.:

The appellant seeks to set aside a Corollary Relief Judgment and an order

dealing with the division of the respondent's pension, which were issued by consent of the parties after a half day of evidence had been presented in the parties' Divorce trial. The record before this Court includes a transcript of that evidence and the discussion between Justice Stewart and the two lawyers. The agreement was read into the record in the presence of both parties and later incorporated into the two orders.

The factual background of the marriage is set out in a decision of Judge Gass of the Family Court which is reported at (1993), 121 N.S.R. (2d) 295, so it is not necessary to repeat it here. Suffice it to say that the appellant is a 59 year old well educated person who, although unemployed at the time of the Divorce trial, has held a variety of responsible positions in the past. The respondent is a tenured university professor earning approximately \$75,000. a year.

The agreement read into the record provided that the parties have joint custody of the seventeen year old child of the marriage, that the appellant have the day-to-day care and control of the child, that the respondent pay \$500.00 per month child support, plus \$120.00 orthodontist payments, and that the respondent pay \$1,350.00 per month as spousal support until the appellant becomes employed. The agreement also provided for a division of the debts. The second order provided that the respondent's pension credits earned from the date of the marriage to the date of the separation, a period of twenty years, be divided at source. As a result of the bankruptcy of the parties around the time of the separation in 1989, there were no other assets of significance in the jurisdiction. The appellant retains interests in family property in her homeland.

The appellant claims that her lawyer pressured her into making an

agreement which was unfair and seeks to introduce fresh evidence in that respect. She is asking this Court to set aside the consent orders and remit the matter to the Supreme Court for re-hearing where she would ask for an unequal division of the respondent's pension, higher spousal support and a compensatory support order.

The appellant has not satisfied the test set out in **R. v. Palmer** (1979), 50 C.C.C. (2d) 193 (S.C.C.) and as applied in civil cases in **Thies v. Thies** (1992), 110 N.S.R. (2d) 177 (C.A.) for the admission of fresh evidence. There is nothing before this Court that persuades us that we should interfere with the agreement reached by the parties. We adopt the reasoning in the cases cited by the respondent, including **Pineo v. Pineo** (1981), 45 N.S.R. (2d) 576 (S.C.) and **Scherer v. Paletta** (1966), 57 D.L.R. (2d) 532 (Ont. C.A.), regarding the authority of a solicitor to bind his client in coming to this conclusion. If, as indicated in **Revelstoke Companies Ltd. v. Moose Jaw et al.**, [1984] 1 W.W.R. 52 (Sask. Q.B.), an error has been made by the solicitor, the appellant may have a remedy against the solicitor.

Section 39 of the **Judicature Act**, R.S.N.S. 1989, c. 240 provides that no consent order made in the Supreme Court is subject to appeal to this Court without leave of the court. We have carefully considered the materials placed before us, the able arguments of counsel, both written and oral and have come to the conclusion that we should not grant leave to appeal.

We deny leave to appeal and order the appellant to pay costs to the respondent in the amount of \$750.00, plus disbursements.

Roscoe, J.A.

Concurred in:

Pugsley, J.A.

Flinn, J.A.