C.A. No. 100729

NOVA SCOTIA COURT OF APPEAL
Cite as: LaPaix v. Manning, 1994 NSCA 129

Clarke, C.J.N.S.; Chipman and Pugsley, JJ.A.

BETWEEN:

WILLIAM AUGUST LAPAIX	)	William August LaPaix
	)	Appellant in Person
Appellant	)	
- and -	)	
	)	Katherine A. Briand
	)	for the Respondent
GRISELDA MANNING	)	
	)	
Respondent	)	Appeal Heard:
	)	June 13, 1994
	)	
	)	
	)	Judgment Delivered:
	)	June 13, 1994
	)	

THE COURT: Appeal dismissed, without costs, from the decision of a trial judge relating to child support, per oral reasons for judgment of Clarke, C.J.N.S., Chipman and Pugsley, JJ.A. concurring.

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

CLARKE, C.J.N.S.:

The appellant, Mr. LaPaix, appeals from the January 5, 1994 decision of Justice MacDonnell. He varied the Decree Nisi concerning the maintenance and support provisions for the three children of the marriage, aged 18, 15 and 12.

The decision is reported in (1994), 127 N.S.R. (2d) 62.

Since 1982, when the parties were divorced, the children have been in the custody of the respondent, their mother.

The respondent applied to increase child support: the appellant applied for a decrease. After a hearing, the Family Court judge, as a referee, filed his report to which the respondent entered an objection. After reviewing the record of the proceedings and considering the submissions of the parties, Justice MacDonnell varied the recommendations made in the report to require the appellant to pay support of $375.00 per month for each child. However, the appellant was not required to pay support for the oldest child while she lived with him in Halifax.

The appellant contends Justice MacDonnell erred, first by increasing the amount of child support based on his failure to consider relevant evidence, second by failing to recognize the adverse effect an increase would have on the appellant's financial capacity to earn from his business due to uncertain economic conditions, and third by overemphasizing unfavourable "misleading and one sided representations" made by the respondent.

In these circumstances Justice MacDonnell is given broad powers by **Civil Procedure Rule 35.03(3)** which provides:

> (3) On receipt of a referee's report, the court may itself or on the application of any party,

(a) adopt the report in whole or in part;

(b) vary or reverse the report or any finding therein;

(c) require a supplemental report from the referee;

(d) remit the reference or any part thereof for further consideration to the same or any other referee;

(e) decide any question or issue referred to the referee on the evidence taken before the referee, with or without any additional evidence;

(f) vary or reverse any previous direction of the court;

(g) give such judgment based on the report or otherwise as it thinks just.

This Court in **Krizsan v. Krizsan** (1985), 65 N.S.R. (2d) 169 observed at p. 170 that when dealing with a report from a referee, the judge is not a "rubber stamp" but must consider the merits of an objection if one be made. Such is the case here.

After carefully reviewing the entire record in this proceeding and considering the written and oral submissions made by the appellant on his own behalf and counsel of the respondent on her behalf, we have concluded that there was evidence upon which Justice MacDonnell could arrive at the conclusions he reached. There is insufficient cause to conclude that he committed reversible error. This is a court of review and not of retrial. Accordingly the appeal is dismissed, without costs.

There is one additional matter. The appellant and counsel of the respondent say that after Justice MacDonnell rendered his decision, and before this appeal was heard, the appellant filed a fresh application to vary, alleging a further change in his circumstances. They inform this Court that a hearing was held by Judge Hubley, as a referree, in April 1994

and that he made a recommendation. The most recent proceedings before the Family and Supreme Courts are not before us at this time.

C.J.N.S.

Concurred in:

Chipman, J.A.

Pugsley, J.A.