

NOVA SCOTIA COURT OF APPEAL
Citation: *Hatchard v. Hatchard*, 2003 NSCA 100

Date: 20030926
Docket: CA 189268
Registry: Halifax

Between:

Patricia Hatchard, also known as Judy Hatchard

Appellant

v.

Dale St. Clair Hatchard

Respondent

Judges: Chipman, Oland and Hamilton, JJ.A.

Appeal Heard: September 24, 2003, in Halifax, Nova Scotia

Held: Appeal dismissed with costs payable by Ms. Hatchard to Mr. Hatchard in the amount of \$750.

Counsel: Michael G. Forse, Q.C., for the appellant
Robert C. Stewart, Q.C., for the respondent

Reasons for judgment:

[1] Patricia Hatchard, also known as Judy Hatchard, appeals the corollary relief order of Justice Hiram J. Carver, dated June 13, 2002, wherein he ordered that all spousal support payable to her by her ex-husband, Dale St. Clair Hatchard, would cease. At the hearing of the appeal it was indicated the appeal was dismissed with reasons to follow. These are the reasons.

[2] The parties married in 1985 and separated in 1997. They entered into a separation agreement in 1998 whereby Mr. Hatchard agreed to pay Ms. Hatchard spousal support in the amount of \$750 per month until such time as Ms. Hatchard entered into a common law relationship or remarried, at which time the payments would cease. The question before the trial judge was whether Ms. Hatchard had entered into a common law relationship with Jerry Paul Rafuse. He determined she had.

[3] Ms. Hatchard raises two grounds of appeal. Her first ground of appeal is that the trial judge erred in law in concluding that she was living in a common law relationship. Her second ground of appeal is that this conclusion by the trial judge was not supported by the evidence.

[4] Ms. Hatchard's first ground of appeal, involves both fact and law. Thus, the appropriate standard of review is palpable and overriding error, unless the trial judge made an error which amounts to an error in law thus changing the standard to one of correctness. **John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd. (2003), 63 O.R. (3d) 304 at ¶ 3.**

[5] Ms. Hatchard's second ground of appeal is that the evidence does not support the conclusion that Ms. Hatchard and Mr. Rafuse were living in a common law relationship. The appropriate standard of review applicable to this ground is palpable and overriding error as the trial judge had to make findings and/or inferences of fact to determine whether a common law relationship existed. **Housen v. Nikolaisen, [2002] 2 S.C.R. 235 at ¶'s 22 and 23.**

[6] Factors to be considered when determining if a common law relationship exists are set out in ¶ 18 of **Soper v. Soper (1985), 67 N.S.R. (2d) 49 (N.S.C.A.):**

18 I think it would be fair to say that to establish a common law relationship there must be some sort of a stable relationship which involves not only sexual activity but a commitment between the parties. It would normally necessitate living together under the same roof with shared household duties and responsibilities as well as financial support. I would also think that such a couple would present themselves to society as a couple who were living together as man and wife. All or none of these elements may be necessary depending upon the intent of the parties.

[7] While the trial judge did not specifically refer to each of these factors, his short decision suggests he considered many of them. In determining that Ms. Hatchard and Mr. Rafuse had a common law relationship, the trial judge noted that they looked together for a house for Mr. Rafuse to buy, they lived on different floors in the house he bought, Ms. Hatchard paid “rent” to Mr. Rafuse monthly, they vacationed together and went to social functions together. He also noted Ms. Hatchard failed to tell Mr. Hatchard of her new address for some months after she moved into Mr. Rafuse’s house which he needed to send his cheques to her for spousal support. Ms. Hatchard did not deny sexual relations.

[8] I am satisfied there was evidence, albeit conflicting evidence, before the trial judge on which he could find the existence of a common law relationship. After considering this evidence the trial judge made findings of fact that indicate he did not find Ms. Hatchard’s evidence credible. He is in the best position to make determinations of credibility. This court is not entitled to interfere merely because it may take a different view of the evidence.

[9] The trial judge’s view of Ms. Hatchard’s credibility is apparent from the last paragraph of his decision:

[4] I think, really, what you have got here is a mask and it is a mask that is set up not to appear as a common law relationship with rent and all those things, but when you lift that mask there is no question in my mind, when you take all the things that I have enumerated above into consideration, then a common law relationship has been proven in this particular case and I would direct that all payments due her under the agreement would automatically cease at this time.

[10] Ms. Hatchard has not satisfied me that the trial judge made any palpable or overriding error in his findings of fact or that he erred in the application of the law to the facts.

[11] Accordingly the appeal is dismissed and I would order costs payable by Ms. Hatchard to Mr. Hatchard in the amount of \$750 plus disbursements.

Hamilton, J.A.

Concurred in:

Chipman, J.A.

Oland, J.A.