NOVA SCOTIA COURT OF APPEAL
Citation: Betlem v. Tzagarakis , 2003 NSCA 141

Date: 20031208
Docket: CA 202904
Registry: Halifax

Between:

Mary-Alice Betlem

Appellant

v.

Peter R. Tzagarakis

Respondent

Judges:	Glube, C.J.N.S.; Bateman and Cromwell, JJ.A.
Appeal Heard:	December 8, 2003, in Halifax, Nova Scotia
Written Judgment:	December 11, 2003
Held:	Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Glube, C.J.N.S. and Bateman, J.A. concurring.
Counsel:	Colleen J. Scheuer, for the appellant M. Jean Beeler, for the respondent

Reasons for judgment:

[1] Ms. Betlem appeals a corollary relief judgment granted by Williams, J. in the Family Division of the Supreme Court. Ms. Betlem says that the judge made a number of errors in his assessment of the quantum of spousal support which he ordered to be paid by Mr. Tzagarakis for the period between separation and trial.

[2] In considering Ms. Betlem's appeal, we must remember that, as the Supreme Court of Canada has said, appeal courts should not overturn support orders unless the reasons of the judge disclose an error in principle, a significant misapprehension of the evidence or that the award is clearly wrong. This limited standard of review recognizes the discretion entrusted to the judge at first instance in making support orders, his advantages as a finder of fact and drawer of inferences and the desirability of finality in family law litigation: see **Hickey v. Hickey**, [1999] 2 S.C.R. 518 at paras. 11 and 12.

[3] Ms. Betlem submits that the judge failed to take into account her need for support and Mr. Tzagarakis' ability to pay in reaching his award. However, her argument is really that she does not agree with the weight that the judge gave to these factors which his reasons disclose that he considered. We see no error in principle, no misapprehension of the evidence and cannot say that the award is clearly wrong.

[4] It was agreed at trial that it would not be appropriate to order future spousal support for Ms. Betlem. As to an appropriate termination date for support prior to trial, the judge ruled that it should be as of October of 2001. Ms. Betlem argues that the period of spousal support should have been longer. Having regard to all of the circumstances including, but by no means limited to, the incomes of the parties and the fact that Mr. Tzagarakis has had day-to-day care of the children since mid-2001, we are not persuaded that there was any reversible error made by the judge in setting the termination date.

[5] Nor are we persuaded by the submission that the judge restricted Ms. Betlem's counsel in her cross-examination of Mr. Tzagarakis at trial. The transcript shows otherwise.

[6] Ms. Betlem says that the judge erred by taking into account her common law relationship when determining the quantum of support. We cannot agree. There

was evidence in the record about the expense sharing between Ms. Betlem and her new partner and such evidence, as the appellant's counsel concedes, is relevant to her need for support. We are not persuaded that the judge erred in taking this circumstance, as one of many, into account.

[7] Ms. Betlem submits that the judge erred in failing to consider the periods of time that the children of the marriage resided with the appellant in determining spousal support. We do not agree. The judge explicitly refers to child care arrangements as one of the factors which he considered and we cannot say he erred.

[8] The appeal is dismissed with costs fixed at $1000 inclusive of disbursements which may be set off against the payment which the respondent must make to the appellant under the corollary relief judgment.

Cromwell, J.A.

Concurred in:
Glube, C.J.N.S.
Bateman, J.A.