

NOVA SCOTIA COURT OF APPEAL

Citation: Quigley v. Willmore, 2008 NSCA 33

Date: 20080422

Docket: CA 287370

Registry: Halifax

Between:

Karen Quigley

Appellant

v.

Gary Willmore

Respondent

Judge: The Honourable Justice Elizabeth Roscoe

Appeal Heard: April 10, 2008

Subject: Divorce Act, “ordinarily resident”

Summary: The appellant filed a petition for divorce in Nova Scotia on November 7, 2006. The respondent filed a petition for divorce in Texas on November 9, 2006. On an application to determine whether the appellant met the residence requirements of the **Divorce Act**, the Supreme Court (Family Division) judge found that she had not been ordinarily resident in Nova Scotia for at least one year prior to filing her petition and therefore dismissed her petition for divorce and declared all previous interim orders to be void.

Issues: Did the judge commit palpable and overriding error in determining that the appellant was not ordinarily resident in Nova Scotia for one year prior to filing the petition?

Did the judge err in declaring the interim orders to be void?

Result: Appeal on jurisdictional issue dismissed. There were numerous

facts that supported the judge's conclusion that the appellant was not ordinarily resident in Nova Scotia for the year prior to filing the petition for divorce.

While the judge may have been able to sever the appellant's applications for custody and support under provincial legislation if he had been asked to do so, and assuming without deciding, that the appeal court could revive the interim orders, it makes little sense to do so at this time given that a Family Division judge has now assumed jurisdiction under a new petition filed by the appellant and declared that Nova Scotia is the *forum conveniens*.

However, since the interim order made pursuant to the **Matrimonial Property Act**, has been executed and third parties have relied on the order, and since the respondent's financial interests in the property remain subject to determination and accounting, it is appropriate to reinstate that order.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.