NOVA SCOTIA COURT OF APPEAL
Citation: ***LeVatte v. LeVatte***, 2007 NSCA 60

Date: 20070515
Docket: CA 267411
Registry: Halifax

Between:

Robert Darryl LeVatte

Appellant

v.

Margaret A. LeVatte

Respondent

Judge(s):	Roscoe, Hamilton & Fichaud, JJ.A.
Appeal Heard:	May 14, 2007, in Halifax, Nova Scotia
Held:	Appeal dismissed, as per reasons for judgment of Hamilton, J.A.; Roscoe & Fichaud, JJ.A. concurring
Counsel:	Lloyd I. Berliner, for the appellant Margaret A. LeVatte, self-represented respondent

Reasons for judgment:

[1] The father, Robert Darryl LeVatte, appealed the following provision of Justice M. Clare MacLellan's June 3, 2006 interim order:

> 1. That the Applicant, Robert LeVatte, is to pay child support arrears in the amount of $38,593.00 forthwith in full.

[2] He commenced this appeal rather than wait to have these arrears finally determined at the parties' divorce trial set to be heard five months from now in September 2007.

[3] In his factum he submitted that this provision in Justice MacLellan's order was a final determination of these arrears which could not be revisited at the divorce trial:

> 16. The [father] submits that the Order of June 5, 2006 by Justice MacLellan setting the arrears is a final decision regarding retroactive child support and as such, the [father] is foreclosed on submitting evidence on that issue at the final hearing in this matter.
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> . . .
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> 29. Further, the [father] submits that if Justice MacLellan's decision is permitted to stand, the [father] would be denied the opportunity to present his case and evidence on the determination of retroactive child support and arrears at the trial on the basis of res judicata.

[4] The father argued that the judge erred in making this order because she did not have jurisdiction to deal with child support arrears at the hearing of his April 8, 2005 interim application which was held on January 3, 2006. He argued that while his written application sought forgiveness of child support arrears, the judge decided at the May 25, 2005 pre-application conference that she would not deal with the arrears in light of Justice A. David MacAdam's outstanding April 17, 2003 consent order which provided:

> (2) Robert Darryl LeVatte shall pay Margaret Ann LeVatte the sum of Two Thousand Five Hundred Dollars ($2,500.00) per month in child support which

> sum shall be payable on the 10th day of April, 2003 and continuing on the 10th day of every month thereafter until the final hearing is held in respect of this matter. Robert Darryl LeVatte does not agree that this quantum is an appropriate amount of child support and Margaret Ann LeVatte states that this quantum is an appropriate quantum of child support. **In any event, neither party shall make an application to retroactively adjust the child support for the term of the interim support orders dating from January 2003 until the final hearing is determined.**
>
> (Emphasis mine)

[5] There is no dispute the amount of child support arrears set out in Justice MacLellan's order, $38,593.00, reflected the child support ordered by Justice MacAdam, $2,500.00 per month times the number of months since his order less the amounts that had been paid.

[6] The standard of review in an appeal of an interlocutory order such as this is that this Court will not intervene unless wrong principles of law were applied or a patent injustice would result. See: **Willick v. Willick**, [1994] S.C.J. No. 94, ¶ 27; [1994] 3 S.C.R. 670.

[7] Whether Justice MacLellan determined that she could not or would not deal with the arrears at the hearing of the father's application is of no importance to the father's argument in this appeal given that her order made no change to the child support previously ordered by Justice MacAdam. Before and after her order the father was obliged to pay the same amount of child support at the same times.

[8] The father's counsel drafted the order. It may have been clearer had it specifically stated in ¶ 1, as it did in paragraph 2 dealing with security and as it did in Justice MacAdam's order, that the amount of child support arrears could be altered by the court at the divorce trial. Reading the judge's reasons for her decision as a whole it is a reasonable inference that this is what she intended. The trial judge will be in a better position to determine the proper amount of child support since the date of Justice MacAdam's order assuming the father complies with the various orders for disclosure, which he had not done prior to the appearances before Justice MacLellan.

[9] This being the case there is no merit to the argument that child support arrears cannot be revisited at the September trial.

[10] I am satisfied the judge did not apply a wrong principle of law and that her decision did not give rise to a patent injustice and accordingly would dismiss the appeal.

[11] The mother represented herself on appeal. I would order the father to pay forthwith to the mother her disbursements associated with attending this hearing which I would fix at $500.00.

Hamilton, J.A.

Concurred in:

Roscoe, J.A.

Fichaud, J.A.