

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Coxon v. Joesse-Coxon, 2010 NSSC 132

Date: 20100409

Docket: 1201-061952

Registry: Halifax

Between:

John Anthony Coxon

Petitioner

v.

Debra Lee Joesse-Coxon

Respondent

Judge:

The Honourable Justice Deborah Gass

Heard:

October 9 and November 24, 25 & 26, 2009,
in Halifax, Nova Scotia

Counsel:

Russell Quinlan, for the Petitioner
Michael King, for the Respondent

By the Court:

[1] This is a divorce proceeding commenced by Dr. John Anthony Coxon August 9, 2007, and amended October 17, 2007. Debra Lee Joosse-Coxon filed an Answer September 14, 2007.

[2] The Petitioner sought a divorce, a division of property and no spousal support.

[3] The Respondent sought spousal support, property division (including pension) and costs.

[4] The Amended Petition included a request for costs and reference to an oral agreement to comply with an unsigned marriage contract.

BACKGROUND:

[5] The Petitioner and Respondent are 66 years of age and 56 years of age respectively. This was a second marriage for both of them. There are no children of the marriage. Dr. Coxon was widowed and Ms. Joosse-Coxon was divorced. Dr. Coxon was previously married in 1977. His wife became seriously ill in 1980, shortly after the birth of their daughter. The late Mrs. Coxon spent most of her married life thereafter in a nursing home until her death in 2005.

[6] Dr. Coxon retired after 31 years as a professor of chemistry at Dalhousie University and is now an Honorary Professor Emeritus. He met his present wife in February 2006 and they were married in December 2006. Just prior to their marriage, she sold her house, which she had owned since 1977 jointly with a previous spouse and then solely. She then moved into the Petitioner's residence, which he owned since 1983. They separated six and one-half months later, in July 2007, although the Respondent did not move out until August 2007.

[7] The Respondent seeks spousal support from the Petitioner. It is her position that even though the marriage was of six and one-half months' duration, she was disadvantaged by the marriage and its breakdown.

[8] She sold her house to move in with her husband. It was her evidence that the Petitioner pressured her to sell the house, rather than retain it as a rental

property. This was denied by the Petitioner, although he acknowledged that he thought it would be less problematic for her to sell it than to try to rent it, given the rental market and responsibilities of being a landlady. Prior to her marriage, her income was CPP benefits of about \$600.00 per month and some income from a boarder, although there was no boarder in the month prior to the sale of the house.

[9] She further testified that she sold the house for below the market value because of the Petitioner's pressure, which he denies.

[10] When she sold the house, she invested the proceeds of the sale. It is her position that she lost money in her investments because her husband pressured her to choose his financial advisor and he mishandled her funds causing her losses. She filed a complaint against her investor and was compensated in the amount of approximately \$12,600.00.

[11] Her position in support of her claim for spousal support is that she lost income of \$500.00 per month from her boarder, potential rental income of \$1,000.00 per month if she had rented her house rather than selling it, and she lost money on her investments, all because of the Petitioner's actions.

[12] The Petitioner's evidence is that he did not pressure the Respondent to do anything. It is his evidence that he advised her to accept the offer of \$155,000.00 because the real estate market was slow, and only one couple had looked at the possibility of renting the premises.

[13] Further, Dr. Coxon's evidence, which is not contradicted, is that her funds from the sale of the property and all money she brought to the marriage with her was retained by her separately and at no time did they hold any joint accounts together. There was no advantage to Dr. Coxon from her sale of the home or her investments. He merely advised her to invest her money rather than leaving it in a low or no interest account, and recommended his own advisor, with whom she met on her own when decisions were made.

[14] Finally, it is his evidence that, contrary to her being disadvantaged by the marriage, she enjoyed a significant financial advantage from the marriage. She lived virtually expense free, and Dr. Coxon calculated the expenses he incurred to support the many trips and lifestyle he provided while in the relationship.

[15] She enjoyed a relatively luxurious lifestyle during the short relationship with her husband, after having lived for 30 years in her home in Dartmouth on a modest income.

[16] The Respondent wants to buy another house. She suffers from fibromyalgia, is addicted to Valium since the age of 15, and has numerous other health problems.

[17] She brought an application for interim spousal support before the Honourable Justice Legere-Sers.

[18] In her decision, at paragraphs 28-30, Justice Legere-Sers stated:

[28] Her circumstances for the six and one-half months during which she lived with Mr. Coxon were superior to her pre-marital situation in that most, if not all, of her monthly expenditures, rent, utilities, food, heat, etc., were covered for her. She purchased gifts and incidentals.

[29] Nothing in the evidence would indicate the respondent/applicant was financially adversely affected by the short-term marriage other than selling her home and now needing to look for appropriate accommodations.

[30] This is a very short marriage with little financial contribution by Ms. Joose-Coxon. Other than the fact that she sold her home and needs to re-establish herself residentially and financially, the impact of this marriage does not work to her detriment. It would have obviously worked to her advantage had it lasted but it did not.

[19] Justice Legere-Sers emphasized however that this was an interim hearing and the findings and determinations are in no way to be construed as having any bearing on the long term decision the court would make following a full trial of the matter.

[20] However, those facts, as found in the interim hearing, are supported by the evidence at this “final” stage of the proceedings - the divorce trial itself.

[21] This is a very short marriage of six and one-half months.

[22] The Petitioner’s income is approximately \$101,000.00 per year, derived from pensions and old age security.

[23] The Respondent's income is derived from a CPP disability income of about \$625.00 per month and income from investments, the amount of which is unclear.

[24] The only joint property is the vehicle which was retained by the Respondent.

[25] The Respondent claims a lump sum of spousal support. There are also some items of a personal nature that are in dispute between the parties.

[26] The Respondent's position is that she requires, and is entitled to, a lump sum of approximately \$100,000.00 to enable her to purchase a house and put her back to where she was prior to the marriage.

[27] I am satisfied on the evidence that it was the parties' intention to be separate as to property and that neither would make a claim against the property each brought into the marriage. This is borne out by the fact that they never joined their assets; each maintained separate bank accounts and investments, and the assets each had were longstanding assets held by each prior to the marriage (although some of the Respondent's assets changed in nature from real estate to cash to investments).

[28] The Respondent is of the view that she suffered losses as a result of her sale of the home. The evidence in support of this was provided by a real estate agent who did an analysis of the sale of properties in the area around the same time, and concluded that the range of sale prices was between \$145,000.00 and \$170,000.00, with the average selling price being \$160,000.00. The Petitioner originally listed the house in September 2006 for \$166,000.00, then lowered it to \$161,900.00, and eventually sold it two months from the original listing date for \$155,000.00.

[29] Her evidence was that to put her back into a comparable house now would cost about \$185,000.00.

[30] Her second claim for compensatory support is based on her assertion that she lost money as a result of investing her funds with her husband's agent, Hugh Smilestone, and this was attributed to her husband's pressure to do so. In May 2007 she invested a total of \$161,075.91, comprised of sale proceeds and some savings, as well as RRSP's. In June of 2009 when she withdrew the funds, the total value was \$105,532.00 and by September 2009 they were up to \$112,849.00.

[31] Mr. Smilestone testified as to the discussions which led to Ms. Joosse-Coxon choosing the investment option which would satisfy her needs. She wanted to withdraw \$750.00 per month. By August 2007 she was inquiring about withdrawing the funds in their entirety and they discussed liquidation and the fee of \$7,350.00 to do so. They met further after she and the Petitioner separated, and she increased her withdrawals to \$1,000.00 per month.

[32] In 2007 she took out \$12,000.00. She ultimately filed a complaint against her investor, alleging improper investment advice, indicating that the investment choice entailed too much risk for her. Although the investment advisor was surprised by her claim and was of the view that it was unfounded, he was advised to settle the claim and it was done.

THE LAW:

[33] The law governing spousal support is found in s. 15 of the *Divorce Act*:

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[34] Lump sum awards generally are awarded to address a specific and immediate need, such as the purchase of a home.

[35] Here, the Petitioner has already paid \$6,000.00 in interim support to meet the immediate need for support.

[36] The lump sum she is seeking now is to compensate her for the sale of her home and her investment losses, both for which she holds the Petitioner responsible. These are economic disadvantages she attributes to the marriage and its breakdown.

[37] Lump sum awards of this nature are generally found in mid to long term marriages, again to meet a specific need such as the purchase of a home or for retraining when a party has been out of the workforce to accommodate the needs of the family.

[38] There must be evidence of a specific and immediate need. In *MacNeil v. MacNeil* [1994] N.S.J. No. 105 (C.A.) it was held that lump sum spousal support is not intended to be a means of redistributing assets.

[39] In *Mosher v. Mosher* [1995] N.S.J. No. 133 (C.A.), an eleven year marriage with three children, the Court of Appeal reduced the trial judge's lump sum award of \$18,000.00 to \$5,100.00. The \$5,100.00 was for retraining specifically.

[40] In *Vermuelen v. Vermuelen* [1999] N.S.J. No. 193 (C.A.) the parties were married for thirteen years and jointly ran a farming operation. They had two children. He kept the farm and she was awarded temporary exclusive occupation of the home with the children, custody, child and spousal support. A lump sum award of \$10,000.00 granted at trial towards a down payment on a house, was overturned on appeal, finding no evidence of a specific and immediate need. There was speculation about the cost of renting a home and she expressed a preference for the purchase of a home for herself and the children, but no specific price was established, except a range she could afford.

[41] In *Marshall v. Marshall*, 2008 N.S.S.C. 11, the parties separated after a "mid-length" marriage. They had two children. The court reiterated the onus of proving a specific and immediate need as a pre-requisite to a lump sum order.

[42] In *Ahn v. Ahn*, 2007 B.C.S.C. 1148, the Applicant moved from Seattle to Vancouver for the marriage which broke down after a year. In that case an award of \$50,000.00 was made for lost wages and the fact that she had sold her home. The ability to pay was also a factor and the payor had a net worth of almost three million dollars. Further, the Applicant was required to move out of the country to

take up residence with her spouse. The wife gave up her longstanding employment in the U.S. and made a modest contribution to her husband's business. He had also failed to pay timely interim support.

[43] In *Roberts v. Shotten* (1997) 156 N.S.R.(2d) 47 (C.A.), which was a one year marriage, the court ordered a lump sum of \$5,000.00 less the gross amount of any interim periodic spousal support already paid, and emphasized that support was not intended to be tantamount to redistribution of property, nor is it like a tort claim for damages, but to provide an equitable sharing of the results of the advantages conferred on one spouse to the disadvantage of the other.

CONCLUSION:

[44] This marriage was a colossal mistake which turned out to be a very costly one for both of them. I cannot conclude that her post separation losses are something that warrant compensation by way of spousal support.

[45] The losses she experienced post separation (investments) cannot be borne by the Petitioner. This loss is not the result of the marriage - rather the economy of the day.

[46] The Respondent chose to sell her house. She could have kept the property and rented it. The proceeds of the sale did not go to the family/marital unit, but were invested by her, in her own name. I am not satisfied that the "pressure" she described was of such a nature to amount to duress.

[47] The Respondent was a mature, 53 year old, previously married woman, living independently even with the handicaps she detailed in her evidence. She enjoyed a temporarily enhanced lifestyle in which her husband paid all the household bills and she spent her own money for the most part on herself.

[48] During the marriage and post separation she withdrew her own funds.

[49] Any losses she incurred after the sale of her house were post separation and due primarily to external economic circumstances resulting in a general downturn in the market.

[50] I do not accept her evidence that she was blinded by love and that he wielded such influence over her that she was not thinking clearly when she made the decisions regarding the sale of her house and her investments. While she testified as to the nature and quantity of drugs she has been consuming over the years (Valium, Tylenol 3, Tylenol 6, and other medications), in my view it reflected more on her ability to remember details, and where the evidence differed I found the Petitioner's evidence to be more reliable than the Respondent's. There is no evidence of any sinister intent on the part of the Petitioner which is borne out by the fact that he in no way benefited from her financial decisions.

[51] There were no advantages conferred on the Petitioner at the expense of the Respondent. She did not give up a career for the benefit of family nor was she engaged in child rearing as part of the partnership. She did not have to sell her house to relocate for her husband's career, nor did she give up a job to relocate for her husband's career.

[52] If one were to accept her evidence, one would conclude she had become a slave to him; if she felt so much pressure one would have expected she would have changed her mind, and not gone ahead with the sale of the house. This kind of "pressure" is not borne out by the rest of the evidence. She testified that she gave him receipts for things she purchased. There was no explanation for this and it flies in the face of logic.

[53] The more the Respondent testified, the more her credibility diminished.

[54] While she may not have used good judgment, I do not find she made her decisions under duress, to the advantage of the Petitioner.

[55] While I have sympathy for the Respondent in this situation, I cannot conclude that her claim for lump sum support is warranted. She has the ability to rent accommodation. In fact she rented accommodation at \$75.00/night for two months at the Cambridge Suites and then a condominium at \$1,350.00/month post separation. She has the ability to purchase a more modest home.

[56] There is no evidence before the court that she applied for and was denied a mortgage with a bank. There was no evidence that she attempted to obtain financing through the multitude of private mortgage brokerage firms, or that she sought a co-signor.

[57] There is no basis for compensation for the loss of any value of the house today, two and one-half years post separation. That would be vague and speculative and impossible to substantiate. The only relevant time frame would be any increase in value from the date of sale (November 2006) to separation (July 2007).

[58] The most the court can conclude is that the house might have sold for slightly more money, given time. Her evidence was that it would probably have sold for \$10,000.00 more. Even if that were the case, \$10,000.00 is nowhere near the \$100,000.00 she seeks.

[59] The operative word in the *Divorce Act* is “reasonable”. The court must consider what is reasonable support in the context of the facts before it.

[60] Here, the amount of spousal support sought is grossly disproportionate to any of the factors considered by the *Divorce Act*, and in particular the extremely brief duration of the marriage.

[61] She has already received \$6,000.00 in interim, transitional support. If, out of an abundance of caution it was appropriate to compensate her for some loss and to recognize her need, the court could not consider an additional lump sum of anything more than a nominal and arbitrary amount, and that would be offset by the fact that the Respondent retained the parties’ 2005 Dodge vehicle. There were other miscellaneous claims for loss or damage to items which I do not find to be substantiated, except for the jewellery and the fur coat. I do not find that the Respondent has established on balance that the Petitioner destroyed or caused to be destroyed belongings of the Respondent.

[62] Therefore, there shall be no further compensation paid to the Respondent. He shall forthwith return the fur coat, and she shall forthwith return the gold chain and wedding bands belonging to his late wife.

J.