

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Drozdowski v. Drozdowska, 2011 NSSC 211

Date: 20110601

Docket: SFHMCA-067442

Registry: Halifax

Between:

Slawomir Anthony Drozdowski

Applicant

v.

Monika Regina Drozdowska

Respondent

Judge:

The Honourable Justice Deborah Gass

Heard:

December 1, 2 & 3, 2010, in Halifax, Nova Scotia

Counsel:

Kim A. Johnson, for the applicant

Michele J. Cleary, for the respondent

By the Court:

[1] Each of the parties has applied for costs in this matter. The trial of this matter occurred over 2.5 days.

[2] There were a multitude of issues at the outset: custody, access, child support, spousal support, exclusive possession of the family home and ultimately division of matrimonial property, including pensions.

[3] Initially, the value of the matrimonial home was in dispute. There were issues of admissibility of certain evidence. On the second day of trial, the parties had reached agreement on the value of the matrimonial home.

[4] The applicant was seeking an unequal division of matrimonial property by virtue of his parents' contribution towards the acquisition of the matrimonial home. He also argued that property in Poland belonging to the respondent and her brother ought to be considered in unequally dividing the assets here.

[5] The court denied the claim for an unequal division.

[6] The parties were able to reach substantial agreement on most other property matters.

[7] However, substantial trial time was taken up with evidence in support of, and refuting, a claim under s. 13 of the *Matrimonial Property Act*.

[8] Although considerably less evidence was led on parenting issues, with each parent seeking primary care of both children, the applicant suggested at trial that custody be split with the daughter being in the mother's care and the son in the father's care.

[9] The decision was that the daughter be in the mother's primary care and that they share the physical care of the son.

[10] The father had sought an order for maintenance based on a split custody arrangement. Maintenance was ordered by applying s. 9 insofar as the shared parenting of one of the children was concerned, along with the table amount for

one child. They were ordered to proportionately share the cost of any agreed upon extra-curricular activities.

[11] While success was mixed, I do conclude that the respondent was more successful in matters which consumed the majority of the trial time.

[12] However, counsels' submissions disagree on the nature of the pre-trial negotiations and offers to settle.

[13] The applicant contends that the result was \$10,000.00 more to his benefit than the original offer to settle of \$115,000.00. However, in his purported settlement proposal with a handwritten date of October 1, 2010, he outlines the matters still in dispute as:

1. 10K debt that we owe my parents (\$ for paying down the mortgage)
2. 67K proceeds from the sale of townhouse on Shepherd Rd
3. Division of equity of your house in Poland
4. Division of our pensions

[14] The proposed agreement, however, speaks only of the payment of \$115,000.00 for the applicant's equity in the house. However, the October 5th proposal includes the house proposal and the disputed items with a payout of \$38,000.00 to resolve them.

[15] The parenting result was mixed also, although it was closer to the respondent's proposal.

[16] With regard to the aforementioned items still in dispute at the time of trial, the applicant agreed to the pension division (4) at the commencement, and after hearing the evidence the respondent agreed to the \$10,000.00 debt owing to the parents (1). The court rejected claims 2 and 3.

[17] The applicant should not however be punished for seeking \$185,000.00 going into the trial when an apparent original offer was to accept \$115,000.00. However, with a result that was mixed, the issues being so numerous, and the

nature of the pre-trial discussions themselves somewhat conflicted and confusing, I must conclude that the parties should bear their own costs in these circumstances.

Gass, J.