

SUPREME COURT OF NOVA SCOTIA
Citation: Campbell v. Campbell, 2011 NSSC 293

Date: 20110714
Docket: Pic No. 1205-002980
SPD 069741
Registry: Pictou

Between:

Robert James Campbell

Petitioner

v.

Peggy Maureen Campbell

Respondent

ADDENDUM
(Addendum to 2011 NSSC 145)

Judge: The Honourable Chief Justice Joseph P. Kennedy

Heard: October 5, 2010, in Pictou, Nova Scotia

Counsel: Timothy G. Daley, Q.C. for the Petitioner
Roseanne M. Skoke for the Respondent

By the Court:

[1] Both parties have asked for an addendum to my decision of April 12, 2011 in this matter.

[2] That decision dealt with spousal support, child support and whether the daughter, Katelyn, remained "a child of the marriage".

[3] There had been a Separation Agreement (the "Agreement") entered into by the parties in November of 2006.

[4] Because circumstances had significantly changed since that date, this Court altered the obligations imposed on the Petitioner-Husband by that Agreement specific to support, both spousal and child.

[5] The Agreement also addressed the division of matrimonial property as of the parting of the parties in 2006.

[6] The Respondent Wife submitted that the division of the matrimonial property should be revisited and changed to her benefit. She asks this Court to address that issue by this Addendum.

[7] It is clear that on the issue of matrimonial property, the Agreement was intended to be definitive. Relevant provisions read:

4. The parties have reached a comprehensive agreement with respect to division of assets and support for each other and the children, custody and access, the particulars of which are contained in this Agreement.
5. The parties intend for the provisions herein to represent a full and final comprehensive settlement of all outstanding issues. No provisions shall be varied unless the variation of that provision is specifically permitted by this Agreement.
6. The parties acknowledge they have fully disclosed to each other their respective assets, income and liabilities and they have each received independent legal advice in relation thereto.

...

38. The parties agree that the aforementioned division of assets is mutually satisfactory and shall be final and binding on the parties and their respective estates and shall not be varied.
39. Except as provided herein, each of the parties hereto releases and discharges the other from any right, title, and interest or claim in or to the property of the other, whether such right, title, interest or claim is real, personal, legal, equitable or statutory.
- ...
43. The parties to this Agreement hereby confirm that the foregoing has been entered into without undue influence or fraud or coercion or misrepresentation whatsoever and that each has read the herein Agreement in its entirety and with full knowledge of the contents hereof and does hereinafter affix his or her respective signature voluntarily thereto.
44. Each party acknowledges that they have had independent legal advice.

[8] The Wife now says that she does not believe that she was given full disclosure by the Husband before she agreed to the division of the marital property, particularly with reference to the Husband's RRSP and a piece of real estate known as the Conrod Road property.

[9] Paragraph 29 of the Agreement provided as follows:

The Husband shall cause to be provided to the Wife 50% of all RRSP's held in his name calculated as follows:

RBC Financial No. 44430817	approx.	\$25,078.40
RBC Financial No. 880391172	approx.	\$54,482.00
BNS Plan No. 20581344	approx.	\$ 3,693.62
<u>SubTotal</u>		<u>\$83,254.02</u>

Plus Amount liquidated by Husband	\$ 3,000.00
<u>Sub Total</u>	<u>\$86,254.02</u>
Wife's share (1/2)	\$43,127.01

[10] The Wife says that she now suspects that there was additional money available in RRSPs that was not disclosed to her. She did not provide any additional evidence to support this position. The Husband did state in an Affidavit that he had removed \$8,500 from an RRSP in 2006, prior to the separation, but no explanation was given as to the use this money was put to.

[11] There is not, before this Court, evidence that would support a change in the division of RRSPs as agreed to at separation.

[12] There will be no revisiting of the division of the RRSPs under the Agreement.

[13] As to the Conrod Road property, this property contains 28 acres and the house in which the Husband presently resides. The Wife now wants a share of this property as a matrimonial asset.

[14] The Husband received this property from his mother's estate in 2010, years after the Agreement was signed.

[15] The Respondent Wife now says that the Husband effectively received the property in 1994 or 1995 as a gift from his mother. She recalls walking the property with him at the time.

[16] The Wife put a letter (receipt) in evidence that indicates that the Husband sold softwood from that property when it was owned by his mother. In that document he refers to the property as "my 28 acre woodlot" . The income derived was used to purchase a family motor vehicle.

[17] The Wife told the Court that she did not become aware of this letter until after the Agreement was signed.

[18] Nevertheless, the Wife was aware of this 28 acre property and the Husband's expectation of ownership when she signed the Agreement but made no claim to it at that time.

[19] The reality is that whatever the Husband's expectation, this property was not transferred to him until September 2010.

[20] I do not find that the Agreement should be altered to include this property as a matrimonial asset.

[21] The Wife says that tools that the Husband took from the house were not included in the Agreement and should have been divided. There is no explanation for why they were not included or why she did not require that they be.

[22] This evidence does not warrant intervention.

[23] Finally, the Wife claims the Husband's subsequent severance package should have been divided as a matrimonial asset.

[24] This severance package was included as the Husband's income for purposes of spousal support determined by the main decision and therefore the Wife has received the benefit of this income.

[25] The parties, both with legal assistance, came to an agreement as to the division of matrimonial assets when they separated in 2006 which they considered to be binding. Nothing was produced before this Court at this hearing to justify changing that agreement on this issue.

Kennedy, C.J.S.C.