

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Hurst v. Gill, 2012 NSSC 28

**Date:** 20120119

**Docket:** 1207-003211(059939)

**Registry:** Truro

**Between:**

Christine Mary Hurst

Petitioner

v.

Christopher Valentino Gill

Respondent

**Judge:**

The Honourable Justice Cindy A. Bourgeois

**Final Written  
Submissions:**

January 16, 2012

**Counsel:**

Mr. Bradford Yuill, for the Petitioner  
Mr. Timothy Daley, for the Respondent

**By the Court:**

**INTRODUCTION:**

[1] In a decision reported at 2010 NSSC 366, this Court addressed a number of issues arising from the marital breakdown of Christopher Gill and Christine Hurst. This included a determination and division of, marital assets and debts. By the conclusion of trial, the only marital asset remaining of any value was the sale proceeds of the former matrimonial home, which were being held in trust, pending the Court's determination. The existence of a post-separation judgment in favour of Mr. Gill's former solicitors was a complicating factor to what would have otherwise involved a straightforward equalization payment to Ms. Hurst from Mr. Gill's share of the proceeds.

[2] In its decision, this Court determined that the solicitor's judgment should not attach to the entirety of the equity of the matrimonial home, but only that share which remained, after Ms. Hurst's 50 percent interest as well as that portion reflective of the equalization payment owing to her were paid, as to do otherwise would have the effect of having Ms. Hurst's assets be utilized to pay Mr. Gill's legal expenses.

[3] On appeal, a majority of the Court, (Fichaud, JA dissenting), determined that this Court erred in its treatment of the solicitor's judgment, and that it should take priority over any claim that Ms. Hurst may have to an unequal division of the matrimonial home, and the proceeds of sale therefrom. See 2011 NSCA 100.

[4] This Court was directed by the Court of Appeal to reconsider the re-allocation of marital assets and debts as follows:

[84] In subordinating the Wickwire Holm judgment to a division of matrimonial assets, the trial judge erred at law. That error may well have affected the statutory exercise of her discretion when she divided matrimonial assets and liabilities. Accordingly, I would remit this matter to the trial judge to reconsider that division, in light of the priority of the Wickwire Holm judgment. The trial judge may wish to reallocate assets and liabilities, including set off any sums otherwise payable to Mr. Gill against his indebtedness to Ms. Hurst.

[5] This Court provided both parties with the opportunity to provide submissions prior to re-considering this matter. I have considered the submissions of both Mr. Gill and Ms. Hurst.

**DETERMINATION:**

[6] In paragraphs 40 through 60 of its initial decision, this Court made a number of factual determinations relating to the identification and valuation of various matrimonial assets and liabilities. The result of this analysis is illustrated in table format at paragraph 59, and reproduced below:

<b>Asset</b>	<b>Ms. Hurst</b>	<b>Mr. Gill</b>
Household contents	\$245.00	\$18,750.00
RRSPs		\$22,000.00
Motorcycle		\$12,000.00
Toyota truck		<u>\$ 3,900.00</u>
Totals	\$245.00	\$56,650.00

<b>Debts</b>		
RBC Visa	\$10,796.52	
BMO Mastercard	\$8,854.78	
Citifinancial/Leons	\$4,439.02	
Revenue Canada	\$6,470.91	
Psychological Assessment	\$5,690.00	
Totals	\$36,251.23	\$ 0

Equity of Ms. Hurst = \$245 - \$36,251.23 = (\$36,006.23)

Equity of Mr. Gill = \$56,650.00

To equalize, each party should have  $\$56,650.00 - 36,006.23 / 2 = \$10,321.88$

[7] In short, Mr. Gill retained almost all of the matrimonial assets, other than the proceeds of sale, and given that they were in her name, and only she had the ability to realistically pay them, Ms. Hurst was responsible for all of the marital liabilities. To equalize the division, Mr. Gill would need to make an equalization payment of \$46,328.11 to Ms. Hurst.

[8] Sale proceeds of \$136,314 were held in trust. On an equal division, each spouse would be entitled to \$68,157.00. The judgment in favour of Mr. Gill's solicitor was \$67,405.23. Following the determination of the Court of Appeal, it is my understanding that the judgment would be paid entirely from Mr. Gill's "share" of the sale proceeds. This would leave \$751.77 remaining in Mr. Gill's "share". I am not aware of whether these funds are still being held, or have been dispersed to Mr. Gill. Ms. Hurst should, if she has not already, receive her "share" of the sale proceeds, being \$68,157.00.

[9] In terms of other matrimonial assets, based upon his own evidence at trial, Mr. Gill had divested himself of the vast majority of the assets he retained post-separation. He cashed in substantially all of the RRSP investments, and bartered in lieu of rent, the contents of the matrimonial home. At trial, he still

retained the 1996 Toyota truck, which at that time was valued at \$3900.00. It is unknown whether this asset remains with Mr. Gill.

[10] There simply is no other means in the circumstances of this case to re-allocate the assets and debts between these parties, other than what was undertaken in the trial decision. As such, Ms. Hurst is owed an equalization payment of \$46,328.11 from Mr. Gill. Should there be sale proceeds remaining in trust from his "share" after payment of the solicitor's judgment, these should be transferred to Ms. Hurst as a small payment towards this debt.

[11] Before concluding, the Court will address one final issue. At paragraph 57 of the trial decision, the possibility of a marital debt arising in future was addressed by the Court as follows:

57. Vanderbilt University Medical Center - - During a trip to Nashville in 2007, Mr. Gill suffered a heart attack requiring hospitalization. Ms. Hurst testified that she had made arrangements for Blue Cross coverage prior to the trip, however, this was subsequently declined due to Mr. Gill having a pre-existing health issue. The bill for medical services, in excess of \$53,000.00, has not been paid. Mr. Gill testified that he has been contacted by a Collection Agency seeking payment, however, he was unable to state when the last contact occurred or the name of the agency. This debt would clearly be matrimonial in nature. However, it is not at all certain that it will be pursued. It would not be appropriate in my view to take this debt into consideration for the purposes of the present asset and debt division. In the event that Mr. Gill does in future make payment on this debt, either

voluntarily or otherwise, upon providing Ms. Hurst with proof of payment, she shall reimburse him 50 percent of the payment made.

[12] In light of the equalization payment outstanding, Ms. Hurst will be required to reimburse Mr. Gill for any payments of the above debt as contemplated above, only after the equalization payment has been retired in full. If the equalization debt is still outstanding, given that the Vanderbilt Medical Center bill is a marital liability, should Mr. Gill make payment towards it, fifty percent of any payment made should be considered as payment against the debt owing to Ms. Hurst.

[13] I would ask that Ms. Hurst's counsel provide for my consideration an order reflecting the above re-consideration.

J.