

SUPREME COURT OF NOVA SCOTIA
(Family Division)

Citation: Johnson v. Johnson, 2013 NSSC 181

Date: 20130613

Docket: 1201-059695

Registry: Halifax

Between:

Michael Kenneth Johnson

Petitioner

and

Patricia Elizabeth Johnson

Respondent

Judge: Associate Chief Justice Lawrence I. O’Neil

Date of Hearing: February 18, 2013

Counsel: Michael Johnson, Self Represented
Sally Faught, counsel for Patricia Johnson

By the Court:

Introduction

[1] Mr. Johnson filed a Notice of Application for a Contempt Order on June 11, 2012. In response, on September 19, 2012, the Respondent, Ms. Johnson filed the case of *MacLellan v. Giovannetti*, 2012 NSSC 212, and raised the issue of the Court's jurisdiction to find contempt when a failure to pay money is alleged.

[2] When the parties appeared on October 22, 2012, Ms. Johnson advised the court that she had not received bank statements from Mr. Johnson in support of his

claim. In response, Mr. Johnson undertook to get the bank statements and to return on December 3, 2012.

[3] The matter was returned to me on December 3, 2012 for a status report on Mr. Johnson's efforts to obtain copies of bank records confirming his payments on Ms. Johnson's mortgage as per clause (6) of the parties' Corollary Relief Judgment dated November 17, 2006.

[4] On December 3, 2012, Ms. Johnson's counsel, Ms. Sally Faught, appeared by telephone. Ms. Johnson was not present. Mr. Johnson appeared and reported on his progress in obtaining the requested bank documents.

[5] The issue of the Court's jurisdiction was the subject of a hearing on Monday, February 18, 2013.

Issue

[6] Ms. Faught challenged the court's jurisdiction to entertain Mr. Johnson's application. Ms. Faught is retained for this issue only.

Decision

[7] The parties Corollary Relief Judgment, dated November 16, 2006 has a number of clauses designed to ensure Ms. Johnson retained the parties' former matrimonial home. Clauses 2 - 8 provide as follows:

2. The Respondent Michael Kenneth Johnson shall execute a quit claim deed in favour of the Petitioner Patricia Elizabeth Johnson to the parties' matrimonial home located at 12 Nestor Crescent, Dartmouth, Halifax County, Nova Scotia thereby releasing his interest in the matrimonial home to the Petitioner Patricia Elizabeth Johnson.

3. In order to assist the Petitioner Patricia Elizabeth Johnson to keep the matrimonial home, the Respondent MKJ shall continue to act as mortgagor/guarantor on the mortgage encumbering the matrimonial home until such time as the first of one of the following events occurs:

- a) The Petitioner Patricia Elizabeth Johnson sells the matrimonial home;
- b) The Petitioner Patricia Elizabeth Johnson dies;

c) The mortgage is paid in full.

4. The Respondent Michael Kenneth Johnson shall sign mortgage renewals for the matrimonial home from time to time as and when requested by the Petitioner Patricia Elizabeth Johnson.

5. While the Petitioner Patricia Elizabeth Johnson is at liberty to renew the mortgage on the matrimonial home, she may not refinance the mortgage or do anything to increase the principle [sic] of the mortgage.

6. To further assist the Petitioner Patricia Elizabeth Johnson in keeping the matrimonial home, the Respondent Michael Kenneth Johnson shall pay \$300 per month to the Petitioner Patricia Elizabeth Johnson on the first day of each month commencing March 1, 2006. These payments shall continue on the first day of each month until the first of the following events occurs:

a) The Petitioner Patricia Elizabeth Johnson turns 55 years of age;

b) The Petitioner Patricia Elizabeth dies;

c) The Petitioner Patricia Elizabeth Johnson begins to draw monthly payments from her share of the Respondent Michael Kenneth Johnson's military pension;

d) The Petitioner Patricia Elizabeth Johnson sells the matrimonial home;

e) The Petitioner Patricia Elizabeth Johnson gives written notice to the Respondent Michael Kenneth Johnson that his payments are no longer required.

7. The aforementioned payments by the Respondent Michael Kenneth Johnson to the Petitioner Patricia Elizabeth Johnson are not to be construed as spousal support and shall constitute an interest free loan to the Petitioner Patricia Elizabeth Johnson. Under no circumstances shall the Respondent Michael Kenneth Johnson be obligated to make payments in excess of a total of \$18,000.

8. Any payments made by the Respondent Michael Kenneth Johnson to the Petitioner Patricia Elizabeth Johnson shall be paid back to the Respondent Michael Kenneth Johnson without interest upon the occurrence of one of the following events:

a) The Petitioner Patricia Elizabeth Johnson sells the home;

b) The Petitioner Patricia Elizabeth Johnson dies.

[8] Mr. Johnson's Notice of Application for Contempt Order, filed June 11, 2012, makes the following allegation:

The allegation against you

It is alleged that you did not fulfill the agreed upon conditions of the Corollary Relief Judgment in which Patricia Elizabeth Johnson agreed to repay the money loaned to her so she could keep the matrimonial home, until (1) the home was sold or (2) she was eligible to collect her share of my monthly veteran annuity.

[9] In support of the allegation, Mr. Johnson refers to an earlier affidavit filed on June 6, 2012. Paragraphs 5 - 10 of that affidavit are as follows:

5. I had agreed to pay half the mortgage (\$300) at the Separation Meeting in February 2006 until she was eligible to collect her share of my military pension or sold the family home, whichever came first. I had in fact, been paying the mortgage payments since I lived in the family home.

6. In August 2009 I received a registered letter from CFPS (Canadian Forces Pension Services) that in November of the same year, my annuity payment would be lowered, as Patricia would begin to collect her share of the Canadian Forces Pension Annuity.

7. I paid for half the mortgage until my pension was diminished to an extent that I was unable to pay my own bills. I was then also unable to pay half the mortgage payment.

8. I had sought the services of Credit Counselling Services of Atlantic Canada due to an extreme level of debt. I got rid of all my credit cards, and was successfully struggling with my debt crisis, until CRA (Canada Revenue Agency) advised that I owed them approximately \$28,000.

9. At this time I was referred to PWC (Price Waterhouse Coopers), as there was no way I was going to be able to pay back this debt. Instead of bankruptcy, I entered into a Financial Proposal, which was less of a payment but over 4 years.

10. I drove by her neighbourhood in November 2009, and saw that a different family was living there. Patricia was supposed to notify me upon the sale of the home, and make arrangements to pay back the money I had contributed towards the mortgage.

[10] In response, Ms. Johnson filed a hand written document stating the following:

With reference to the above case I would like to submit a citation from *MacLellan v. Giovannetti*, 2012 NSSC 212 dated 20120601 for the judge to review regarding my case.

At that time I would also like to advise that I have not received any bank statements from Mr. Johnson regarding the amount owing for the contempt order. (The case has been adjourned to October 22, 2012, 9:30 - 10:00). I have received a certified letter from Mr. Johnson but no bank documents and several phone calls.

Conclusion

[11] Rule 89.02 provides as follows:

Contempt and order for payment of money

89.02 A contempt order may not be granted to punish a failure to pay money, unless the failure is in violation of either of the following kinds of orders:

- (a) an order for family maintenance or support;
- (b) an order for recovery of money that expressly provides that a failure to turn over, or pay, funds may be punished as contempt.

[12] Mr. Johnson is seeking the remedy of a contempt finding because of Ms. Johnson's alleged breach of the parties' 2006 Corollary Relief Judgment. He says she agreed to repay money loaned to her and she has failed to do so.

[13] Justice Beryl MacDonald, in *MacLellan v. Giovannetti*, 2012 NSSC 212 discussed the availability of a contempt order as a possible remedy when there is an alleged failure to pay money. The decision is a helpful discussion of the state of the law and recent changes to it.

[14] Mr. Johnson's current application can not be considered because a contempt order may not be granted to punish a failure to pay money and herein the alleged violation is not within either exception of R.89.02. The draft order filed by Mr. Johnson is further notice that his complaint is of a failure to pay money. The application is dismissed.

[15] Mr. Johnson is a self represented person. In his affidavit, he complains of other failings of Ms. Johnson that may form the basis of a contempt application.

For example, he complains that “Patricia was supposed to notify me upon the sale of the house”. A contempt application founded on this complaint may be entertained by the Court. He also complains that she did not give notice to him that his payments on the mortgage were no longer required.

[16] Should Mr. Johnson wish to proceed with a contempt application, he is reminded to review Rule 89 of our Court and the associated form. The ‘Rules of Court’ and our body of law provide for ‘other’ civil remedies that are less onerous when viewed from the perspective of an Applicant. A contempt proceeding is a quasi criminal proceeding with incarceration as a potential penalty. Notice to the alleged contemnor of the particulars of the conduct or omission complained of is essential. For a discussion of the formal requirements to be met prior to entering a finding of contempt, see the decision in *Godin v. Godin*, 2012 NSCA 54.

[17] In addition, special rules have long existed and governed whether contempt is an available proceeding when non payment of a debt is alleged. (*McMillan v. McMillan*, 2012 NBQB 195).

[18] The Court is not prepared to amend the Notice on its own motion.

[19] It is to be observed that the file contains a Notice of Motion for Contempt Order that contains the following allegation against Ms. Johnson: “Did not fulfill the agreed conditions of the Corollary Relief Judgment”. It appears this notice was not served. I observe that this allegation does not contain sufficient detail of the allegation to inform Ms. Johnson of the alleged contemptuous conduct, in any case.