

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Touesnard v. Touesnard, 2013 NSSC 261

Date: 20130816

Docket: Ant. No. 1205-01882

Registry: Antigonish

Between:

Kevin Touesnard

Plaintiff

v.

Beverly Touesnard

Defendant

Judge: The Honourable Justice N. M. Scaravelli.

Heard: August 14, 2013, in Antigonish, Nova Scotia

Final Written Submissions: July 18, 2013 by M. Louise Campbell, Q.C.
August 12, 2013 by Coline Morrow

Written Decision: August 16, 2013

Counsel: Coline Morrow, for Kevin Touesnard
M. Louise Campbell, Q.C., for Beverly Touesnard

By the Court:

[1] This is a motion by Mr. Touesnard for an interpretation of a Pension Division Order issued in relation to a divorce action concluded on February 24, 2004.

[2] The Pension Division Order divided Mr. Touesnard's employment pension equally between the parties as of the date of separation January 15, 2000, pursuant to Section 68 (b) of the Nova Scotia Pension Benefit Regulations. The order provided in part:

1. Pursuant to Section 61 of the Pensions Benefits Act, RSNS, 1969 C. 340, the administrator shall divide the pension at source, allocating 50 percent of the pension earned between the date of the marriage and the entitlement date, inclusive, to the respondent.
2. Any provision of the Pension Plan of the Petitioner which operates so as to index the amount payable to the Petitioner under the Pension Plan shall apply to the Pension Benefit transferred to the Respondent pursuant to the terms of this Order ...
5. In the event of any dispute as to the interpretation of this order, or any provision under the Pension Benefits Act which may arise in respect to this order, either party may apply to the court for such direction and further orders as may in the circumstances be necessary.

[3] The plan in question is a defined benefit pension plan registered in the Province of Nova Scotia.

[4] The pension was not put in pay following the divorce. Mr. Touesnard continued to work and made regular contributions to his pension following the divorce. In 2011 while contemplating retirement, Mr. Touesnard contacted the administrator of the pension requesting clarification of his pension division calculations. By letter dated December 7th, 2011 the administrator advised that pursuant to the Nova Scotia Pension Benefits Act and the Nova Scotia Pension Benefit Regulations, Mr. Touesnard's accumulated pension based on a retirement date of June 1, 2011 was \$2,897.33 of which Ms. Touesnard's proportionate share calculated according to the formula set out in Section 80 of the regulations would be \$842.14. The letter provides in part as follows:

The Pension Division Order dated February 24, 2004 provides for a division of Mr. Touesnard's pension earned under the Plan between the date of marriage and the entitlement date (September 6, 1975 to January 15, 2000), with 50% of the pension earned allocated to Ms. Touesnard. The division is to be made pursuant to the Nova Scotia Pension Benefits Act (the "Act"). In accordance with the Nova Scotia Pension Benefits Regulations (the "Regulations"). Ms. Touesnard subsequently completed the required forms to be designated as a Limited Member of the Plan.

Under the Regulations (the specific regulations cited below came into effect June 4, 2001 and apply to all court orders dated after June 4, 2001), a “separate pension in favour of a spouse or common-law partner as a limited member, resulting from division of a defined benefit, must (a) be equal to a proportionate share of the pension that the member or former member would have received had there been no division under the Act” (S.75). The calculation of the proportionate share of a defined benefit is outlined in Section 80 of the Regulations...

[5] In 2003 prior to the completion of the divorce, Mr. Touesnard received a evaluation estimate of his monthly pension from the pension administrator. At that time the administrator advised the pension entitlements accrued during the period of the marriage payable at age 65 amounted to \$988.84 per month. Based on this information Mr. Touesnard submits Ms. Touesnard is only entitled to receive 50% of the benefit which is \$494.42 per month upon his retirement.

[6] I am unable to agree.

[7] The pension plan is a defined benefit plan which is determinative as it relates to division. Once designated as a “limited member” of the plan Ms. Tousnard was entitled to a separate pension. The true value of the pension in a defined benefit is unknown until the member elects to have the benefits commence. Pursuant to Section 75 of the Act it must be equal to a proportionate share of the pension that Mr. Tousnard would have received had there been no

division under the Act. The proportionate share is calculated by way of a formula set out in Section 80 of the regulations. By applying the formula the pension administrator determined that Ms. Tousnard's proportionate share of his accumulated pension as of June 1, 2011 would have been 29.0661 % or \$842.14.

[8] The calculations made by the plan administrator in 2003 are of no relevance at this stage as they were stated to be based on the assumption that Mr. Tousnard's employment terminated on January 15, 2000 and would be put in pay at that time which, of course they were not.

[9] As a result, the calculations made by the pension administrator as set out in the December 11, 2011 correspondence was in accordance with the Pension Division Order and the provisions of the Pension Benefits Act of Nova Scotia and its regulations.