

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Partridge v. Bain*, 2019 NSSC 232

Date: 20191119

Docket: SFHD-029489

Registry: Halifax

Between:

Steven Andrew Partridge

Petitioner

v.

Deanne Madeline Bain

Respondent

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Judge: The Honourable Justice Elizabeth Jollimore

Heard: July 15 – 16, 2019

Summary: Focused hearing on whether Ms. Bain contributed to business under section 18 of *Matrimonial Property Act*. Business was cash-based. Without business records, application was dismissed on findings of credibility. Any work done was not sufficiently significant to meet the threshold of section 18.

Key words: Family, matrimonial property, business asset, contribution, credibility

Legislation: *Matrimonial Property Act*, R.S.N.S. 1989, c. 275, section 18

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**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Partridge v. Bain, 2019 NSSC 232
ENDORSEMENT**

July 25, 2019

Steven Andrew Partridge v. Deanne Madeline Bain
1201-69513; SFH-D 100737

Appearances: G. Michael Owen for Steven Partridge
Jeanne B. Sumbu for Deanne Bain

Heard: July 15-16, 2019

Decision: I dismiss Deanne Bain's claim under section 18 of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275.

Introduction

1. The sole question is whether Deanne Bain has made a contribution to Steven Partridge's sole proprietorship, PEL General Contracting (which operates Eastern Shore Docks and Floats), under section 18 of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275.
2. Under section 18, Ms. Bain must prove that she has contributed work, money or money's worth. She must prove this contribution in respect of the business's management, maintenance, operation or improvement.
3. Deanne Bain admits that she bears the burden of proof on a balance of probabilities.
4. The business was a cash one, so there are no records to assist me. The parties agree credibility is a key issue because their evidence conflicted.

Credibility

5. Ms. Sumbu directed me to *Baker-Warren v. Denault*, 2009 NSSC 59 as an accurate statement of the law relating to credibility.
6. I may accept some, all or none of a witness's evidence.

7. I am to assess the totality of the evidence. In my reasons, I've given examples of the testimony which have led me to my conclusion. I have considered all the evidence, but it isn't necessary for me to transcribe all the evidence here.
8. Justice Forgeron identified 9 factors which she balanced when assessing credibility in *Baker-Warren v. Denault*, 2009 NSSC 59 at paragraph 19.
9. Of the factors Justice Forgeron listed, most are relevant to my assessment of Ms. Bain's credibility. I focus on Ms. Bain's credibility because she alone testified in support of her claim and her evidence conflicted with that of Steven Partridge, Colleen Johnson, Walter Partridge, and David Riel. For Ms. Bain's claim to succeed, I must accept her evidence and reject others' evidence.
10. I attach little importance to Ms. Bain's demeanor. Demeanor is seldom a good indicator of credibility: a bold liar may appear more credible than a nervous truth-teller.
11. Ms. Bain has an interest in the outcome which could motivate her to deceive.
12. Steven Partridge could be similarly motivated to deceive, and Walter Partridge might be motivated to deceive to support his son. However, no similar motive exists for Steven Partridge's former employees, David Riel and Colleen Johnson. Ms. Bain's evidence was not credible when contrasted with Mr. Riel's and Ms. Johnson's. For example:

- a. Mr. Riel recalled a general question about the landscaping business: Ms. Bain says it was a specific question about cash payments for the student workers. There is no reason why Mr. Riel would be motivated to deceive me about the question. His recollection was not challenged.

Ms. Bain would have a motive to characterize the question differently. She characterized the question in a way that was self-serving, suggesting she was involved in the business, but not in the dubious practice of paying employees without maintaining employment records.

- b. Ms. Johnson testified that her work "left nothing in the office that [she] didn't do". She described her work as preparing invoices, re-sending invoices, writing cheques, counting cash, preparing the bank

deposit slips, paying bills, preparing payroll, writing employee cheques, calling in the WCB amount, dealing with GST/HST remittances, assembling the parcel of financial materials for Mr. Papadopoulus, and answering emails for the business. Ms. Johnson testified that she worked at the business for 2-4 hours, 1-2 times each month, typically in the evening after her full-time job. Some tasks (making the WCB calls and GST/HST remittances) were done at noon hour from her full-time job.

In contrast, in the Can-Say statement which she adopted as her evidence, Ms. Bain said she did the work described by Colleen Johnson and additionally typed letters. In contrast with Ms. Johnson's experience, Ms. Bain said this work took her approximately 800 - 1,200 hours annually. In cross-examination, Ms. Bain said she spent 15 hours each week working for the business. She also said that the time she spent on the business could be "significantly more".

13. Ms. Bain did not offer her evidence in a candid and straightforward way.

- a. Ms. Bain did not answer questions directly.
- b. When a yes or no answer was called for, Ms. Bain would not restrict herself to yes or no, but would add self-serving information or information that would minimize the impact of an admission.
 - i. She would not agree that the Roywell property renovations were "significant" without adding that no structural renovations were done.
 - ii. Ms. Bain would not agree without equivocation that renovations to the Roywell property were significant – until Mr. Owen spent more than 10 minutes taking her through 32 pages of photographs.
- c. When answering questions, Ms. Bain offered the information she wanted to share in support of her view of events, even when this was not responsive to the question.
- d. When Ms. Sumbu did not object to certain questions, Ms. Bain challenged whether she was required to answer the questions and had

to be directed – by me or Mr. Owen – to answer.

14. Ms. Bain's evidence was self-serving.

- a. She presented herself as not condoning a marijuana grow op though the grow op was in the couple's home.
- b. She presented herself as not condoning Steven Partridge's paying his employees in cash though she says she was part of the business.
- c. Her estimate of the time she worked for the business is inconsistent with Ms. Johnson's evidence about how much time the work took.
- d. When confronted with her own negative behaviour, she would not directly admit what she had done, but would point to some negative thing someone else had done.

15. Ms. Bain's evidence was not always "in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions": *Faryna v. Chorny*, 1951 CanLII 252 (BC CA) at page 357.

- i. Ms. Bain claimed bank staff made an error on the matrimonial property status statement attached to the 2015 mortgage. Bank staff would have no basis to determine whether the property had been occupied as a matrimonial home and there is no reason to believe bank staff would complete this statement without information from Ms. Bain.
- ii. Ms. Bain claimed that she paid household and business bills and that Steven Partridge did not give her cash toward these costs. She offered no evidence to show her income could support both the household and business expenses.
- iii. Ms. Bain denied taking steps which resulted in HRM beginning a land use investigation, and sending the notice to comply to the business. She said she "asked whether someone could live on land 24/7 with water and power". The Municipality's actions followed immediately and cannot reasonably be seen as

anything other than arising as a result of her inquiries.

- iv. Ms. Bain denied being aware of HRM's notice to comply to the business, though this was delivered to the former matrimonial home where Ms. Bain's mother lived.

16. Ms. Bain said she paid business bills after separation. The *Matrimonial Property Act* provides an orderly and equitable settlement of affairs at the end of a marriage, reflecting the contribution each spouse has made to the marriage. If contributions were made **after** the couple separated, they cannot be contributions **to** the marriage because the marriage has ended.

17. In conclusion, I find Ms. Bain is not credible and I reject her evidence about the work she did for the business.

What contribution must Ms. Bain prove?

18. While I reject Ms. Bain's evidence of her contribution to the business, Steven Partridge gave evidence of things Ms. Bain did. His evidence was direct and straightforward. His evidence was not self-serving, and he made admissions against his own interest. According to Steven Partridge:

- a. On occasion, Ms. Bain brought him lunch while he plowed snow.
- b. For no more than 1 month when Steven Partridge was waiting to have an Interlock device installed in his vehicle, Ms. Bain dropped him off at his workplace while *en route* to her own workplace.
- c. Ms. Bain handled emails because Steven Partridge had no email access while he was working, and she corresponded with Mr. Papadopoulos, the accountant. Ms. Bain has provided 25 screen shots showing emails from HP Accounting or Harry Papadopoulos. She did not provide copies of the actual emails, so the volume and nature of business-related emails is unknown.
 - i. In some cases, it is possible that the entirety of the email message was contained in the message's subject line: "as requested, cheers hp"; "Hi! Here is that list again :)". Even

here, the nature of the email's content can't be determined.

ii. Some of the emails were not business-related.

1. The subject line discloses that Mr. Papadopoulos was preparing the parties' personal tax returns.

2. Or Mr. Papadopoulos was sending jokes:

“[Fwd:Fw: This is HYSTERICAL!!!] . . you guys has”;

“[Fwd: FW: the best singles ads ever printed]”;

“Fwd: Fw: The Guys' Rules]Original I”;

Re: Fw: Water bed - That was a scrrreeeaaaaa”;

“[Fwd: Fw: The Ant & The Grasshopper] (HP)”..

- d. Business bills (such as the storage unit) were paid on Ms. Bain's credit card and she had access to the bank account. She collected the airmiles on the credit card she used to pay the bills. Mr. Partridge testified he gave her cash to pay the bills, so she was not out-of-pocket.
- e. Ownership of a 20-foot utility trailer was registered in Ms. Bain's name so it could be insured on her policy. Mr. Partridge testified that he gave her cash to pay the cost, so she was not out-of-pocket.
- f. On occasion, Ms. Bain helped sort receipts.
- g. The business's paperwork was done at the kitchen table at the Roywell Drive home, and then in a small office at their second home.
- h. Business equipment was stored on vacant land adjacent to the couple's home.
- i. Title to the Roywell Drive home was registered in Ms. Bain's name because when this home was purchased, Steven Partridge already owned a home in British Columbia which made him ineligible for financing.

- j. Ms. Bain spent a few hours with two of Steven Partridge's paid bookkeepers when they began working for him.
19. It is hard to see how some of these activities, such as dropping off lunches, carpooling, paying bills through Ms. Bain's credit card so she could collect Air Miles, reducing insurance costs by registering a trailer in Ms. Bain's name, doing paperwork at the family home, storing equipment on vacant land, and registering the matrimonial home in Ms. Bain's name to enable mortgage financing, and would constitute a "contribution" to the "management, maintenance, operation or improvement" of the business.
20. A contribution deserving recognition under section 18 should be "significant" according to Justice Hallett in *Archibald*, (1981), 48 NSR (2d) 361 (TD).
21. In *Mitchell* (1986), 74 NSR (2d) 435 (TD), Chief Justice Glube concluded that Ms. Mitchell's work in Mr. Mitchell's home-building business was "absolutely minimal" and insufficient to warrant compensation under section 18.
22. Where contributions to a business were "limited and not large" they did not engage section 18 in *Eyking*, 2012 NSSC 409 at paragraph 97. Justice Wilson accepted the submission that a contribution must be "significant" to merit compensation under section 18: *Eyking*, 2012 NSSC 409 at paragraph 98.
23. Those activities which might be seen as a contribution (handling emails, sorting receipts and orienting bookkeepers) have not been proven to reach the level of significance required by the jurisprudence.

Directions:

Mr. Owen will prepare an order dismissing Ms. Bain's claim under section 18 of the *Matrimonial Property Act*.

Elizabeth Jollimore, J.S.C.(F.D.)