

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** *MacDonnell v. MacDonnell*, 2005 NSSC 227

**Date:** 20050812

**Docket:** S.T. 1207-002579 (032879)

**Registry:** Truro

**Between:**

Gerald Michael MacDonnell

Petitioner

v.

Michelle Christine MacDonnell

Respondent

**Judge:**

The Honourable Justice Walter R.E. Goodfellow

**Heard:**

June 27, 2005, in Halifax, Nova Scotia

**Final Written  
Submissions:**

August 11, 2005

**Counsel:**

Joseph A. MacDonnell, for the petitioner  
C. LouAnn Chiasson, for the respondent

**By the Court:**

**BACKGROUND:**

[1] The Divorce Application was heard June 6 and June 27 and I filed a written decision June 28, 2005 (*MacDonnell v. MacDonnell*, [2005] NSSC 182), addressing the issue of the validity of a marriage/reconciliation contract and concluded that it was invalid. It was anticipated that the parties could move on to resolve the outstanding property issues but unfortunately that has not transpired, the major stumbling block being the disposition of the matrimonial home.

**CUSTODY:**

[2] The written representations by Mrs. MacDonnell's solicitor post my decision of June 28, 2005 requests that there be a condition precedent to the joint custody determination whereby Mr. MacDonnell would be required to attend family counselling.

[3] I have given this request very careful consideration and given the background to the custody/access issue, the age of the children, the agreement that

the children should remain in the care of their mother with access to be arranged directly between Mr. MacDonnell and the children, etc., that the determination and direction given in my earlier decision with respect to custody and access should prevail and be reflected directly in the corollary relief judgment.

**MATRIMONIAL PROPERTY ACT - Unequal Division:**

[4] Mr. MacDonnell advanced evidence of an inheritance/contribution which at one time he advanced to be in the range of \$40,000, however the evidence established that the maximum inheritance contribution would have been \$34,000 and possibly slightly less. Given the time of the inheritance/contribution and that it went directly into the matrimonial pot and provided for a number of years a major contribution to the family's well-being and in particular their home, it seems to me that Mr. MacDonnell has failed to meet the onus upon him of establishing on a balance of probabilities that this inheritance/contribution should result in an unequal division in his favour. The *prima facie* equal division of matrimonial assets should in these circumstance prevail particularly given the passage of time and length of cohabitation in the matrimonial home.

**DISPOSITION OF MATRIMONIAL HOME:**

[5] Both the parties wish to maintain the matrimonial home. It is presently occupied by Mrs. MacDonnell and the two children, Andrea Christine MacDonnell, born May 19, 1988, now 17 and Jillian Evonne MacDonnell, born March 18, 1991, now 14. Mr. MacDonnell's relationship with the children is sad and unfortunate and at the time of the hearing there was virtually no communication between the oldest child and her father and less than a strong relationship between the youngest daughter and her father. To provide Mr. MacDonnell with the matrimonial home would require the removal of their two children as they will undoubtedly remain with their mother. This would result in a disruption of considerable magnitude both emotionally and financially and in the circumstances it should be avoided. Accordingly, in the disposition of the matrimonial property Mr. MacDonnell will execute a deed to Mrs. MacDonnell conveying his interest in the matrimonial home subject to the existing mortgage.

[6] I expressed concerns at the trial as to the capacity of either party to financially handle the ownership of the matrimonial home and I was assured then and have been assured since by Mrs. MacDonnell's solicitor that financial

arrangements are in place and that Mrs. MacDonnell can indeed buy out Mr. MacDonnell's interest in the property. Following *Marcus v. Marcus*, [2004] N.S.J. No. 381, the parties appear to agree the average value of their respective views of the value of the home less disposition costs, 6% real estate commission plus H.S.T. , \$10,988.25 less legal fees and H.S.T. inclusive of costs re migration \$1,500 less the mortgage of \$36,028.50 leaving a total equity at the end of June 2005 of \$110,733.25.

[7] Both counsel provided spread sheets with respect to the disposition and value of assets and debts. Some of the assets such as appliances are conceded to remain with the home and have received the same value in each representation. I accept Mr. MacDonnell's view that the 1997 Ford Taurus is overvalued by Mrs. MacDonnell at \$3,000 and fix its value at \$2,400. The remaining discrepancies are not substantial and I accept Mrs. MacDonnell's division and valuations so that prior to addressing the issue of the debts the only adjustment in Mrs. MacDonnell's proposed property division and valuation is that the 1997 Ford Taurus retained by Mr. MacDonnell is to be valued at \$2,400 which requires an adjustment of \$300 in Mr. MacDonnell's favour.

[8] Turning to the debts, it seems to me that Mrs. MacDonnell's proposal is a cleaner and more acceptable manner of addressing responsibility for the debts. Undoubtedly, there will be some variation in reality because of interest rates, etc., however, the court can only work with what it has and accepting Mrs. MacDonnell's figures as of the time of trial. The Royal Bank Line of Credit \$13,852.11 will be the responsibility of Mr. MacDonnell. The Royal Bank Visa (Joint) of \$1,000, the Sears account of \$200 and the Bank of Montreal van joint loan of \$21,239.56 will be the responsibility of Mrs. MacDonnell.

[9] In the end result the equalization payment due by Mrs. MacDonnell to Mr. MacDonnell will be \$57,097.90.

[10] Mrs. MacDonnell will resume responsibility for the mortgage as of July 1, 2005 and this determination is on the assumption that Mr. MacDonnell has paid all the mortgage payments to and inclusive of the month of June, 2005. Mrs. MacDonnell will be responsible for what, if any, penalty is payable on the payout by her of the existing mortgage in her refinancing. Mrs. MacDonnell will pay the equalization payment to Mr. MacDonnell on or before October 15, 2005 and should Mr. MacDonnell make a mortgage payment in the interim he is to be

reimbursed for the same. Mrs. MacDonnell will have the benefit of any existing insurance policy.

[11] Mr. MacDonnell has made payments on the mortgage since the separation in lieu of spousal and child support and the only practical conclusion is that all payments to and inclusive of June 30, 2005 shall constitute satisfaction of the child support obligation to that date and henceforth, Mr. MacDonnell commencing July 1, 2005, shall pay child support based on his income said to be \$27,000 per annum requiring a payment of \$373.00. This will likely result in an adjustment in Mr. MacDonnell's favour for the months of July and August. The corollary relief judgment will contain the standard clause requiring Mr. MacDonnell to provide Mrs. MacDonnell with a copy of his income tax return whether filed or not and any notices of assessment on an annual basis commences for the year 2005 on or before May 30, 2006.

**COSTS:**

[12] Both parties seek costs and it is most unfortunate that they were not able to make a determination of the matrimonial home given the realities of the situation.

However, it is to be remembered that Mrs. MacDonnell did sign a marriage/reconciliation agreement contrary to the advice she received from an independent lawyer and Mr. MacDonnell was not unreasonable in pursuing a determination as to the validity of that agreement. There are pluses and minuses on both sides and in the end result I conclude the appropriate disposition with respect to costs is that each party bear their own costs.

**J.**