

SUPREME COURT OF NOVA SCOTIA
Citation: DeCoste v. DeCoste, 2005 NSSC 12

Date: 20050121
Docket: 1210-000783
Registry: Antigonish

Between:

Ralph Joseph DeCoste

Petitioner

v.

Laura Maria DeCoste

Respondent

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Judge: The Honourable Justice C. Richard Coughlan

Heard: September 21 and 22, 2004, in Antigonish, Nova Scotia

Final Written Submissions: October 1, 8 and 13, 2004

Decision: January 21, 2005

Subject: Family Law - Separation Agreement - Effect of Reconciliation on Division of Matrimonial Assets - Grounds for Setting Aside Being Unduly Harsh or Unconscionable

Summary: The parties separated. Both had independent legal advice and a separation agreement was executed. The wife's solicitor advised against her signing the agreement as the solicitor considered the division of real property was not equal. The wife executed the agreement against her solicitor's advice. Deeds were exchanged. Subsequently, the parties reconciled and resumed cohabitation for more than a year and a half. The parties separated again and a petition for divorce was issued.

Issue:

1. Should the separation agreement be varied or set aside as being unduly harsh or unconscionable?
2. As the parties reconciled, does the separation agreement govern the division of matrimonial assets, and if not, what is the proper division of matrimonial assets?

Result:

Given the circumstances surrounding the execution of the separation agreement, it should not be varied or set aside. The wife had independent legal advice. She understood her solicitor's advice and signed the agreement freely and voluntarily.

The separation agreement does not contemplate the resumption of cohabitation of the parties. The division does not survive reconciliation as there is no provision in the agreement for it to do so. Therefore, the real property is a matrimonial asset as defined under the *Matrimonial Property Act* as it is not "property exempted under a marriage contract or separation agreement". This was a marriage of long duration and there is no reason to have other than an equal division of the matrimonial assets.

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