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Kieley v. Kieley

Newfoundland Supreme Court, Trial Division

Mahoney, J.

Judgment: July 9, 1982

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Genevieve Bridget Kieley, Plaintiff v. Jerome Joseph Kieley, Defendant

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Docket: Doc. 932

Counsel: **David C. Day**, Esq., Q.C., for the plaintiff.

William A. Collins, Esq., for the defendant.

Mahoney, J.:

1 The parties were at one time husband and wife; the plaintiff takes this action against the defendant seeking a division of matrimonial assets pursuant to The Matrimonial Property Act of this Province. The plaintiff asks that the matrimonial assets be divided between them in equal shares; in his defence the defendant seeks an unequal division, in his favour, of those assets.

2 The plaintiff and defendant were married on March 31, 1970; they separated on July 17, 1976 and, on June 17, 1980, the plaintiff was granted a Decree Nisi of Divorce. Two children were born of that marriage; both are in the plaintiff's custody. The defendant pays maintenance for the two children by court order.

3 During the marriage this young couple acquired matrimonial assets, including a modern one-storey home at the Town of Holyrood where they lived together. Evidence was led at trial that this house is worth \$47,500.00 on the open market. I accept that valuation. The house is subject to a mortgage, the outstanding balance due on which is about \$11,000.00.

4 The parties also acquired other assets, including household furniture and furnishings. They also had a Duster automobile which the defendant later disposed of for \$1,800.00; the trade-in value given him for it when he bought another vehicle after the parties had separated.

5 The defendant has a good job at Holyrood; he anticipates earning approximately \$30,000.00 in 1982. The plaintiff has part-time work as a waitress. She earns less than \$5,000.00 per year. Since date of separation she has acquired a house trailer in which she resides with her two children at Avondale, a town situate a short distance from Holyrood.

6 During the marriage both parties worked and contributed their earnings to their common good. They were provident people, for they were able to acquire a nice home. Each contributed as much as he or she could to the marriage and their welfare during the period prior to the marriage breakdown.

7 The plaintiff listed the matrimonial assets in her former husband's possession as:

- (1) Duster motor vehicle
- (2) Stove
- (3) Refrigerator
- (4) Clothes washer
- (5) Household appliances
- (6) Kitchen table and chairs
- (7) Dining room set
- (8) Other living room furniture including colour T.V.
  
- (9) drapes
- (10) Master bedroom suite
- (11) Bedding (except for one bed)
- (12) Bathroom items
- (13) Stereo
- (14) Small chair
- (15) Most other household items

8 The plaintiff stated that she has received only (1) a toaster (2) a kitchen cannister set (3) chesterfield and chair (4) coffee table (5) two beds (6) bedding for one bed.

9 The defendant has rented the matrimonial home since the parties separated and has used the rent for upkeep of the home and for mortgage payments.

10 The plaintiff says the matrimonial assets have the following value:

(1) Matrimonial home	\$47,500.00
(2) Duster motor vehicle	1,800.00
(3) Other chattels	5,000.00
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TOTAL	\$54,300.00
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11 The matrimonial home was vacant at the time this matter was heard and the defendant has the \$1,800.00, the worth of the Duster motor vehicle, included in the value of the motor vehicle he now has and on the purchase of which he traded in the Duster motor vehicle.

12 The plaintiff has a debt of \$400.00 due to Avco Finance Company incurred upon the purchase of a vacuum cleaner. She says this must be paid from the matrimonial assets as she does not have the vacuum cleaner. This seems reasonable, as the vacuum cleaner was purchased prior to the date of separation.

13 The position taken by the defendant is simple. He says that he earned more money during the period of the marriage than did the plaintiff and thus he was able to contribute more to the acquiring of their home and its contents. He says that she spent a considerable amount of her earnings on personal things for herself and thus was not able to contribute as much as did he to the common marriage fund. I cannot allow the bank loan now owed by the defendant for that was raised by him after the parties had separated and the proceeds were used by him to purchase a motor vehicle.

14 I am satisfied, however, that she did contribute her earnings into the marriage, that she worked when she could and that she looked after the children and did the general housework for the family. Hers was a major contribution to the marriage. There is no evidence before me in this case to warrant my ordering an unequal division of the matrimonial assets; indeed the evidence leads me rather easily to the conclusion that this is a case where those assets should be divided equally.

15 The plaintiff is entitled to one half of the matrimonial assets. She stated in evidence that she is not interested in buying out the defendant's interest in the matrimonial home. I now have to try and arrive at a value for those assets, as I propose to allow the defendant to purchase the plaintiff's one-half interest in those assets as an alternative to having all sold.

16 The matrimonial home is worth \$47,500.00 less the amount due on the mortgage, being \$36,500.00. There must be deducted from this the \$400.00 due by the plaintiff to Avco Finance Company for purchase of the vacuum cleaner as above stated. This leaves a total of \$36,100.00. Her one-half share in this amounts to \$18,050.00.

17 The other matrimonial assets are:

(1) Duster automobile - the value of which is	\$1,800.00
(2) Furniture and furnishings	5,000.00

