

35 Nfld. & P.E.I.R. 407

Murphy v. Murphy

Newfoundland Court of Appeal

Mifflin C.J.N., Morgan and Gushue JJ.A.

Judgment: May 11, 1981

Murphy v. Murphy

Newfoundland Court of Appeal

Mifflin C.J.N., Morgan and Gushue JJ.A.

Judgment: May 11, 1981

Counsel: **David C. Day**, Q.C., for defendant -- appellant.

Mary E. Noonan, for Attorney General for Newfoundland.

Statutes considered:

Divorce Act, R.S.C. 1970, c. D-8, ss. 13, 15, 19.

Maintenance Orders (Enforcement) Act, R.S. Nfld. 1970, c. 224, s. 3.

Unified Family Court Act, 1977 (Nfld.), c. 88, s. 15.

Rules considered:

Unified Family Court Divorce R. 30

Appeal from order, reported at 19 R.F.L. (2d) 105 enforcing maintenance order.

**The judgment of the Court was delivered by *Morgan J.A.*:**

1 The issue raised on this appeal is the proper method of enforcing an extra-provincial order made pursuant to the Divorce Act, R.S.C. 1970, c. D-8.

2 The relevant facts are not in dispute and are as follows: The appellant, William Thomas Murphy, and the respondent, Christel Murphy, were divorced by decree nisi of divorce granted by the Supreme Court of Alberta on November 15, 1976, which provided, inter alia, that the appellant pay periodic maintenance to the respondent in respect of two children of the marriage. That decree nisi was made absolute on the 24th of February, 1977, and was registered in the Supreme Court of Newfoundland, Unified Family Court, on the 25th of January 1980, pursuant to the provisions of the Maintenance Orders (Enforcement) Act, R.S. Nfld. 1970, c. 224. The appellant did not comply with the maintenance provisions of the divorce order and the respondent applied to the Unified Family Court, under the provisions of the Maintenance Orders (Enforcement) Act to enforce the payment of arrears.

3 By way of preliminary objection, counsel for the appellant contended that the Unified Family Court had no jurisdiction under that statute to enforce a maintenance order made under a divorce decree granted pursuant to s. 11 of the Divorce Act. The respondent was not represented on the appeal, but the Attorney General of Newfoundland intervened by counsel who submitted that, while the Divorce Act provides the authority for granting and enforcing this maintenance order, the provincial legislation does not interfere with that jurisdiction, but rather assists in registering the orders and provides additional means of enforcing them.

4 The matter was heard by Justice Fagan [reported 19 R.F.L. (2d) 105], who dismissed the preliminary objection and directed that the show cause hearing continue. In reaching his decision, he relied, in the main, on the provisions of s. 19(3) of the Divorce Act which states:

s. 19(3) The provisions of any law or of any rule of court, regulation or other instrument made thereunder respecting any matter in relation to which rules of court may be made under subsection (1), that were in force in Canada or any province immediately before the 2nd day of July 1968 and that are not inconsistent with this Act, continue in force as though enacted or made by or under this Act until such time as they are altered by rules of court or regulations made under this section or are, by virtue of the making of any rules of court or regulations under this section, rendered inconsistent with those rules or regulations.

Based on this, the learned justice concluded [p. 111];

The provincial statutory provisions for the enforcement of maintenance orders which were in existence prior to 1968, are not inconsistent with the provisions of the Divorce Act, in my view, and, until rules and regulations are made pursuant to the powers granted by s. 19 of the Divorce Act, still prevail and are available to any party seeking to enforce maintenance payments.

5 The Divorce Act contains a jurisdictional scheme that vests judicial authority in the superior Courts. The superior trial Court of a province has original jurisdiction to grant a divorce and to make an order for corollary relief under s. 10 or 11. Under s. 15, a corollary relief order may be registered for enforcement in any other superior Court in Canada and when registered "... may be enforced in like manner as an order of that superior court or in such other manner as is provided for by any rules of court or regulations made under section 19". Subsection 1 of sec. 19 empowers a court to make Rules of Court applicable to proceedings under the Act within its jurisdiction, subject to an overriding power of the Governor General in Council to make uniform regulations under subs. 19(2). Subsection 19(3), the full text of which is quoted above, provides for a continuation of procedural laws that are not inconsistent with the Act and were in force in Canada or any province immediately before the coming into force of the Act. That subsection clearly applies to procedural laws in force in a province governing divorce proceedings prior to the coming into force of the Divorce Act. It does not apply to procedural laws, then in force, governing other matrimonial causes.

6 Prior to the coming into force of the Divorce Act, Newfoundland had no divorce legislation

and hence had no reason to provide for "any law or of any rule of court, regulation or other instrument made thereunder" as contemplated by s. 19(3). Under the Provincial Maintenance Orders (Enforcement) Act, "Court" when used with reference to Newfoundland includes any authority having statutory jurisdiction to make maintenance orders. That jurisdiction was exercised exclusively by provincial Courts and, in addition to making maintenance orders, these Courts were empowered, by s. 3 of the Act, to enforce in Newfoundland maintenance orders made by a Court in a reciprocating state that had been duly registered in accordance with the provisions of the provincial Act.

7 Under the Divorce Act, divorce jurisdiction is vested exclusively in the superior Courts. Section 19(1)(d) specifically empowers the superior Court of a province to make rules with respect to enforcement of orders made under that Act and, as noted above, by s. 15 an order made by a divorce Court may be registered in another superior Court and enforced "in like manner as an order of that superior court or in such other manner as is provided for by rules or regulations made under section 19". Any provincial legislation with respect to the enforcement of maintenance orders is confined to orders other than those made under the Divorce Act.

8 The Unified Family Court Act, 1977 (Nfld.), c. 88, established a division of the Supreme Court of Newfoundland to be known as the Unified Family Court. That Court is vested with, among other powers and duties, all the powers and duties of a superior Court under the Divorce Act. In addition it has exclusive jurisdiction, within its defined geographic area over matrimonial causes that previously came under the jurisdiction of provincial Courts.

9 Undoubtedly, the Unified Family Court, a division of the Supreme Court of Newfoundland, has jurisdiction to enforce an extra-provincial order made pursuant to the Divorce Act once that order has been registered as provided by Sec. 15 of that Act. That Court does not, however, have jurisdiction to enforce such an order under the provisions of the Maintenance Orders (Enforcement) Act. It exercises jurisdiction under the provincial statute, not as a superior Court, but as statutory authority appointed under the provisions of that statute, in the same manner as the provincial Courts in that part of the province outside the territorial jurisdiction of the Unified Family Court.

10 Contrary to the conclusion reached by the learned justice, the statutory provisions for the enforcement of maintenance orders in force prior to 1968 are not available to any party seeking to enforce maintenance orders made under the Divorce Act. The authority for a Court to enforce or pass on orders made pursuant to the Divorce Act must come from the federal legislation and be enforced in accordance with that legislation and Rules of Court made thereunder.

11 Rule 30 of the Unified Family Court Divorce Rules is similar to R. 29 of the Supreme Court of Newfoundland Divorce Rules and reads:

30.(1) Where an order has been made under section 10 or 11 of the Act by the appropriate court or any other province of Canada, the order may be registered in the Province by filing in the records office a copy of the order certified by the clerk of the court that made it, and when so filed it shall be entered as an order of the Supreme Court of

Newfoundland, Unified Family Court, and shall have and be given effect as such.

(2) The certified copy of the order shall be filed in the records office by delivering it by hand to the clerk or acting clerk in the records office or by sending it to the clerk by ordinary post accompanied by a request that it be registered pursuant to the Act.

12 The jurisdiction of the Unified Family Court and that of the Supreme Court, Trial Division, to enforce an extra-provincial order made pursuant to the Divorce Act arises when that order has been registered in the appropriate division of the Supreme Court, in manner prescribed by the Rules of Court. It will then be enforced as an order of that Court. In the case at Bar, the order was registered pursuant to the Maintenance Order (Enforcement) Act and, for the reasons stated above it is ineffective.

13 In the result, I would allow the appeal with no order as to costs.

*Appeal allowed.*

END OF DOCUMENT