

41 Nfld. & P.E.I.R. 314

Murrin v. Murrin

Newfoundland Supreme Court, Trial Division

Noel, J.

Judgment: March 24, 1981

Murrin v. Murrin

Bertha Ena Murrin, Plaintiff v. Lawrence Murrin, Respondent

Newfoundland Supreme Court, Trial Division

Noel, J.

Judgment: March 24, 1981

Docket: Doc. 1370

Counsel: Raymond P. Whalen, Esq. , for the Plaintiff.

David C. Day, Q.C. , for the Respondent.

Noel, J. :

1 In this action, for division of matrimonial assets under *The Matrimonial Property Act, 1979 c. 32* , the plaintiff's counsel submitted that the court did not have jurisdiction to make other than an equal division of the matrimonial home. The parties agreed to have that question decided before proceeding with the hearing.

2 The submission was founded upon Sections 3 and 6 of the act. Section 3 provides that the purpose of the act is to reform the law with respect to matrimonial property in order, amongst other purposes, to give a one-half interest in the matrimonial home to each spouse. Section 6 declares that each spouse has a one-half interest in the matrimonial home owned by either or both spouses, and creates a joint tenancy with respect to it. Because of these express provisions, it was argued that the act should not be interpreted to derogate from the property interests so clearly created. Section 2(2) provides that the act shall be deemed to be remedial and shall receive such fair, large, and liberal construction and interpretation as best ensures the objects of the act and its purposes as set out in Section 3.

3 The act expresses the clear intention that each spouse shall hold an equal interest in the matrimonial home as joint tenants but the joint tenancy is not the same as a joint tenancy in common law. It is a joint tenancy created by the act and is subject to provisions of the act which distinguish it from a joint tenancy in common law, for example, the act imposes restrictions on the right of a spouse to alienate his or her interest. *Section 8* .

4 In addition to the purpose of creating the property interests referred to in Sections 3 and 6, the act, Section 17, expresses that the purpose of Part II is to recognize that child care, household

management and financial support are the joint responsibilities of the spouses and that there is a joint contribution by each of the spouses, financial and otherwise, that entitles each spouse to an equal division of the matrimonial assets acquired during the course of the marriage. In the circumstances stated in Section 19, including the circumstances that the spouses have been separated and there is no reasonable prospect of the resumption of cohabitation, either spouse is entitled to apply to a court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of the assets. The right of a spouse to have the matrimonial assets divided in equal shares is, however, not absolute for Section 20 provides that the court may make a division that is not equal where such a division would be grossly unjust or unconscionable taking into account any of the factors stated in that section.

5 Section 16(1) defines matrimonial assets as including all real and personal property acquired by either spouse or both spouses, with certain exceptions, during the marriage. A matrimonial home acquired during marriage is a matrimonial asset as defined by that section. The case of a matrimonial home acquired before marriage is dealt with, specifically, by Section 16(2) which declares that such a home is a matrimonial asset.

6 Since a matrimonial home is a matrimonial asset, it follows that, upon an application to divide matrimonial assets in equal shares, its division is subject to the provisions of Section 20 under which the court has jurisdiction to make a division which is not equal in the circumstances mentioned in that section.

7 Either party may apply for a day to proceed with the hearing.

8 Costs in the cause.

END OF DOCUMENT