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Neville v. Neville

Newfoundland Unified Family Court

Fagan, J.

Judgment: December 17, 1980

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Docket: 1002

Counsel: **David Day**, Q.C., for the petitioner

David Sparkes, for the respondent

Fagan, J.:

1 At the trial of this matter a decree nisi was granted the petitioner on the grounds of physical and mental cruelty. Custody of the two children, namely, Maxine and Wade, was granted to the petitioner with reasonable access to the respondent.

2 Counsel for the petitioner seeks an order of maintenance for the petitioner and her children, who are presently receiving social assistance. The respondent gave evidence, under oath, which in effect amounts to his having no income, no savings, no prospects of work, nor is he in a position to provide any maintenance to his wife and children. However, he is the owner of two pieces or parcels of land at North River, Conception Bay, which appear to have a market value of twentythree thousand (\$23,000.00) dollars with an outstanding mortgage in the sum of nineteen thousand (\$19,000.00) dollars. Repayment of this mortgage is presently in arrears.

3 Section 11 of the *Divorce Act* provides that the court may make one or more of the following orders, namely:

(a) an order requiring the husband to secure or to pay such lump sum or periodic sums as the court thinks reasonable for the maintenance of the wife and the children of the marriage if it thinks it fit and just to do so, having regard to the conduct of the parties and the condition, means or other circumstances of each of them.

From the evidence, it is quite clear that the petitioner is entitled to such an order particularly in the light of the respondent's conduct towards her and their children. On the question of condition and means of each of them, we have the petitioner living on social assistance trying to educate her two younger children, who are presently attending Grade XI high school classes. She is unable to find any employment in her home town. Her home is a rented premises containing

some furnishings belonging to her. She does not have a motor vehicle or means of transportation, or savings of any sort. The respondent, on the other hand, has a four thousand (\$4,000.00) dollar equity, at least, in the pieces or parcels of land at North River. If there is continuing default in payment of mortgage instalments on the loan secured by these properties, it may very well end in foreclosure.

4 In order to secure the entitlement of the petitioner and the children to some support and maintenance, counsel seeks an order that the respondent pay maintenance to the petitioner and that as security for such payments he be ordered to provide security therefore by pledging his equity in the aforementioned property.

5 I am satisfied on the evidence before me that the petitioner and her two children are entitled to maintenance, and in the circumstances, the respondent should pay to her for her support the sum of two hundred (\$200.00) dollars on the first day of each and every month beginning the first day of December, A.D., 1980, and that the respondent pay for the support and maintenance of the children, Maxine and Wade, the sum of three hundred (\$300.00) dollars monthly, payable on the first day of each and every month, beginning the first day of December, A.D., 1980, while the said children fall within the purview of the *Divorce Act* of Canada. Upon ceasing to qualify under the said Act, the amount payable in respect of the children will reduce by the amount of one hundred and fifty (\$150.00) dollars each.

6 Pursuant to the provisions of section 12(b) of the *Divorce Act*, as security for the payment of the said periodic sum, the respondent is to execute, in favour of the petitioner, a mortgage of his equity of redemption in the two parcels of land at North River, Conception Bay, described by him in evidence in this court with the usual conditions contained in such mortgage.

7 The petitioner will have her costs in this matter.

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