

Schwerdtfeger v. Schwerdtfeger

Phyllis Elaine Schwerdtfeger, Petitioner and Klaus Martin Schwerdtfeger,
Respondent

Newfoundland Unified Family Court

Noonan J.

Judgment: April 2, 1990

Docket: No. 3267

Counsel: Mr. **David C. Day**, Q.C. for the Petitioner.

Mr. F. Alfred D. Pike for the Respondent.

Noonan, J.:

1 This decision deals with support for Mrs. Schwerdtfeger, support for Tony, a child of the marriage, and costs.

Background

2 This divorce petition was heard in conjunction with an application for division of matrimonial assets. During the trial a portion of the action under the *Matrimonial Property Act*, (now *The Family Law Act*), was compromised and following the trial I was advised that the outstanding matrimonial property issues had been resolved. I received a copy of the compromise agreement in March, 1990. Under that agreement Mrs. Schwerdtfeger received \$30,000.00 in full and final settlement of the division of matrimonial property. The only outstanding issues are matters of corollary relief under the *Divorce Act*.

Spousal Support

3 Mr. and Mrs. Schwerdtfeger were married on July 18, 1964. During the marriage there were two children born - Susan Barabel on August 20, 1965 and Tony Martin on July 30, 1968. On May 1, 1987 after almost twenty three years of marriage the couple separated. Mrs. Schwerdtfeger left the matrimonial home and returned to live with her mother. The two children remained with their father in the matrimonial home. Susan is a Registered Nurse and is self-sufficient. Tony has special needs and at the time of the trial he was in high school. Mr. Schwerdtfeger said that he expected Tony to remain dependent for another two to four years.

4 During the marriage both Mr. and Mrs. Schwerdtfeger worked outside the home. Mr.

Schwerdtfeger, a qualified carpenter and draftsman, worked throughout the marriage with various construction firms. This work was not secure and often took him away from the family. He says that he suffers from certain health problems which apparently are not impeding his ability to work.

5 Mrs. Schwerdtfeger says she started working at age sixteen having received a Grade IX education. During the marriage she upgraded her skills through the Fisheries College but did not receive a Grade XI diploma. She says she believes she has the qualifications necessary to enter certain programmes at the Cabot Institute of Applied Arts and Technology. During the marriage Mrs. Schwerdtfeger worked in various jobs including bartending and waitressing. She says she sometimes worked two jobs outside the home. Her income was necessary, she says, to make ends meet and to provide her with pocket money and things for the children. Mr. Schwerdtfeger was the primary financial provider but supplementary income was necessary.

6 During the marriage Mrs. Schwerdtfeger had various medical problems but she said her health now is fine. She says that she always wanted to obtain a trade but she lacked self-confidence. In my view she also lacked the encouragement of her husband. After separation Mrs. Schwerdtfeger obtained a job cooking for a group of religious sisters. Her job is permanent and her income is rather modest. She continues to live with her mother but she says she would like to be "on her own". She says she would like to further her education but would have difficulty funding it. She had no specific plans in that regard. Her counsel filed a prospectus from the College of Trades and Technology, (now the Cabot Institute) and drew my attention to certain courses in the food industry which he submitted may be appropriate for her.

7 Mrs. Schwerdtfeger says that during the marriage she was the primary child care-giver and that she managed the household. She said that Mr. Schwerdtfeger did not do much in those areas. I was told however by his brother-in-law, Mr. Dwyer, that Mr. Schwerdtfeger was an excellent groundsman and gardener.

8 There is an interim order for support for Mrs. Schwerdtfeger in the amount of \$300.00 per month which was granted by Mr. Justice Riche on October 8, 1987. Mrs. Schwerdtfeger asks that she receive either a lump sum equalling payments of \$300.00 per month for two or three years, or preferably, that the periodic sum continue to be paid indefinitely.

9 Mr. Schwerdtfeger is of the view that Mrs. Schwerdtfeger has worked outside the home throughout the marriage and that she has not lost opportunities for development and training. Further he says there is no indication that she is interested in or is considering future training. He says he should not have to continue with support payments for Mrs. Schwerdtfeger.

Child Support

10 Mr. Schwerdtfeger says that at least six hundred fifteen dollars is needed each month to meet Tony's basic needs. He is meeting that obligation fully. In his opinion Mrs. Schwerdtfeger should share in meeting Tony's needs. Mrs. Schwerdtfeger says that she cannot contribute to Tony's support at the moment but that "whatever I can do I will".

Legal Considerations

a. Spousal Support

11 The issue of spousal support is covered in *section 15 of the Divorce Act, 1985*. The relevant subsections are:

15.

(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of

(a) the other spouse;...

(4) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse ..., including

(a) the length of time the spouses cohabited;

(b) the functions performed by the spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of the spouse...

(7) An order made under this section that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse

within a reasonable period of time.

12 I have applied the factors and objectives of an order for spousal support to the evidence presented before me. I am satisfied that Mrs. Schwerdtfeger has suffered an economic disadvantage because of her marriage and the role she adopted during that marriage. I believe that Mr. Schwerdtfeger owes her a duty to assist in her attaining economic self-sufficiency.

13 I have reviewed the prospectus filed from the College of Trades and Technology and in particular the courses which were highlighted by Mrs. Schwerdtfeger's counsel. These courses are of approximately 42 weeks duration.

14 I believe it appropriate that Mrs. Schwerdtfeger be given the opportunity to upgrade her skills thereby promoting her economic self-sufficiency. Accordingly, if Mrs. Schwerdtfeger undertakes a program of study at the Cabot Institute of Applied Arts and Technology by September 30, 1990, and continues in full-time attendance, I order that Mr. Schwerdtfeger continue to pay Mrs. Schwerdtfeger the sum of \$300.00 per month for her support until June 30, 1991. If Mrs. Schwerdtfeger does not undertake such a program of instruction by September 30, 1990, Mr. Schwerdtfeger shall continue to pay the sum of \$300.00 per month for her support until September 30, 1990.

b. Child Support

15 The issue of child support is covered in *section 15 of the Divorce Act, 1985*. The relevant subsections are:

15.

(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court may think reasonable for the support of

(b) any or all children of the marriage; or...

(4) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances ... of any child of the marriage for whom support is sought, including

(a) the length of time the spouses cohabited;

- (b) the functions performed by the spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of the ... child.
- (8) An order made under this section that provides for the support of a child of the marriage should
- (a) recognize that the spouses have a joint financial obligation to maintain the child; and
 - (b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

16 On the evidence presented I am satisfied that Tony is a "child of the marriage" as defined in *section 2 (1) of the Divorce Act*. I have examined closely the financial circumstances of both Mr. and Mrs. Schwerdtfeger and I conclude that, in her present circumstances, Mrs. Schwerdtfeger is unable to contribute to Tony's needs. In reaching that conclusion I have considered my order with respect to Mrs. Schwerdtfeger's support and the balancing claim paid to her under *the Matrimonial Property Act*.

17 Order accordingly.

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