

Tiller v. Tiller

Ann Elizabeth Tiller, Petitioner and Kirk Gregory Tiller, Respondent

Newfoundland Unified Family Court

Hunt J.

Judgment: February 8, 1985

Docket: 82/1142

Counsel: D. Paul Althouse, Esq., for the petitioner

David C. Day, Esq., Q.C., for the respondent

Judgment of Hunt, J.:

1 This was a hearing of the question of maintenance due Ann Elizabeth Tiller (the "Wife"), the petitioner in the above petition for divorce, by Kirk Tiller (the "Husband"), the respondent, in the divorce petition.

2 The Wife, then twenty-three years of age, married the Husband on September 11, 1976. The Husband was twenty-six.

3 Prior to their marriage, the couple had arranged for the construction of a residence which they moved into on their return from their honeymoon.

4 They lived in the matrimonial home until their separation in late July or early August 1981. Although the marriage had started well, latterly there were difficulties and the parties had occupied separate bedrooms for some six weeks.

5 There were two children of the marriage. Gregory was born on April 24, 1979 and Brian was born after the separation on November 8, 1981.

6 A separation agreement was executed on October 9, 1981. This contained three paragraphs that are relevant to the matters before Court. These read as follows:

Maintenance

5. The Husband will pay to the Wife for her support and maintenance and for the support and maintenance of the child of the marriage the sum of \$1,000.00 per month with the first payment to be made October 1, 1981, said sum to be increased to \$1,100.00 per month upon the birth of the second child of the marriage BUT the parties agree that maintenance can be reviewed at any time after the sale of the matrimonial home.

Chattels Real and Household Contents

7. The Husband agrees that the Wife is to have exclusive possession of the matrimonial home until May 1, 1982, and all contents therein excepting the Husband's personal belongings. The parties agree that the matrimonial home is to be listed for sale January 4, 1982, to be sold on or after May 1, 1982, if a reasonable offer is made. The proceeds from the sale of the home are to be divided equally but the Husband is to be paid, as a first charge, the amount of any present indebtedness which he can prove is directly attributable to the purchase of the building lot on which the matrimonial home is situate, or directly attributable to the purchase or extension to the matrimonial home, said sum not to exceed \$16,000.00.

The Husband is to be entitled to his personal clothing and other personal articles and also the grandfather chair and stereo equipment and records, and the remainder of the household contents are to go to the Wife.

8. Until the matrimonial home is sold, the Wife is to be responsible for all household expenses except fire and auto insurance and municipal taxes which the Husband undertakes to pay.

Life Insurance

9. The Husband undertakes to continue his whole life insurance and undertakes to irrevocably name the child or children of the marriage as beneficiaries and to provide the Wife with proof of same if requested.

7 (There was attached to this page a photostat of a conditional insurance agreement made between the Husband and Confederation Life with respect to term insurance in the principal amount of \$100,000.).

8 The Wife was a registered nurse and worked from the date of marriage until 1979 when the first son was born. At that time she was a nursing instructor. She had approximately ten months absence during the time because of surgery on both her knees.

9 The surgery was performed by Dr. Philip Perkins, an orthopaedic surgeon who gave evidence with respect to the operation and the Wife's general physical condition. He identified

extensive arthritis in both knees which required the operations. He testified that she had arthritis associated with psoriasis which is one of the more severe forms of that ailment. Besides her knees, it affected her toes, her hands, including the thumb and finger joints, and hips. The arthritis is progressive and deformation will become worse as will the pain.

10 Dr. Perkins considers that it would be difficult for the Wife to work and says that the long-term prognosis is poor and the situation will get worse.

11 The Wife has come to terms with the ailment and has a good attitude with respect to it. There are periods of remission but these are difficult to anticipate.

12 It is difficult to know what the situation will be. Possibly, she will be able to continue her present situation for some time but it is probable that this will not be possible; and it cannot be ruled out that physically she will be unable to care for her children at some time in the future.

13 The overall evidence of the Wife with respect to the standard of life that she and her Husband enjoyed is that there were no financial problems. The Husband is the son of the proprietor of a highly successful business enterprise. The house was given to him, free cars were available as required, unlimited expense accounts were there and the couple had any extra money they needed at any time. She understood from her Husband that he would retire before he reached the age of forty and, in the meantime if her arthritis was bothering her, she could reside in Florida to escape the rigors of a Newfoundland winter.

14 She found it very difficult to reconcile the understanding which she had and which she says was based on assurances or statements made her by the Husband with the position that he presented in Court.

15 Russell Pelley, C.A., who is the auditor of William Tiller Limited, the principal employer of the Husband, and independent accountant for Tiller Holdings Limited, a separate company of which the Husband holds a nominal one percent interest, gave the Husband's income for 1982 as \$47,000. and for 1983 as \$56,000. This is an average of \$51,500 a year. There was a weekly salary of \$550. in 1983, bonuses, which depended on the company's profit for the year were added, as were additional benefits and the use of a motor vehicle. This totalled to \$56,000. Mr. Pelley also identified an interest free loan due William Tiller Limited on the residence with a balance due of \$11,300.

16 Mr. Pelley is familiar with the books of the companies in question and stated that he had no knowledge of the Husband receiving any hidden income and there was nothing to indicate that there was an artificial reduction of his income.

17 The separation agreement sets support and maintenance for the Wife and for the children at \$1,100. per month on the understanding that it will be reviewed at any time after the sale of the matrimonial home. The Wife was to have the exclusive possession of the matrimonial home until May 1, 1982 at which time it would have been listed and sold so that the proceeds could have been divided between the parties. Despite the efforts of the parties to have it sold, this has not

been done.

18 The Wife in her evidence stated that she had wished to receive \$1,600. a month but because she was pregnant and wished to avoid an argument, she accepted the figure stated with the knowledge that she had \$2,000. which would augment the payments until May 1.

19 Even though the house has not been sold, it is, in my opinion, proper and within the terms of the agreement to review maintenance terms and to re-assess the Wife's requirements.

20 There is no doubt that both parties are responsible for and will have to provide adequate support and maintenance for the two boys of the marriage. She is unable to work and, therefore, will be unable to contribute cash to the home. Her contribution, of necessity, will be restricted to the personal care and attention which she can give the boys. Bearing in mind the ages of the boys and having regard to all circumstances generally, this appears appropriate at this time.

21 As was apparent during the hearing, the future may be more complicated particularly if the Wife should find it impossible to continue this function without assistance. For the present, the interdependency of the Wife and sons can have a beneficial effect on the boys. It is the uncertainty of what will happen that causes concern and it could be that the whole question of direct care of the children will have to be reconsidered in the future. With that in mind, it would be well if the parties can consciously attempt to minimize any aggravations to the other with the hope that a feeling of appreciation and understanding will replace one that now appears to contain some bitterness and mistrust.

22 It is clear from recent authorities that while a marriage is not a guarantee that on its dissolution maintenance and support will automatically be awarded a spouse; nevertheless, a spouse is entitled to periodic maintenance in circumstances where a need for it has been demonstrated or established.

23 The marriage lasted a little less than five years but as against that, other factors show that her contribution to the marriage was very positive. This includes the fact that the pregnancies were a factor in her present medical condition. It was unfortunate that the marriage was not a success but the circumstances of its failure are not a factor in deciding the amount of maintenance that should be paid the Wife. Considering all factors which have been presented, the Wife is entitled to support and maintenance.

24 While it is obvious that there are difficulties in establishing an exact amount, I am of the view that an annual award of \$19,000. is a fair and reasonable one. Income tax and all household expenses except fire and automobile insurance and municipal taxes will be paid by her. However, the amount should be reviewed immediately on the sale of the matrimonial home.

25 An award is made of \$19,000. per year to have commenced as of October 1, 1984 and the petitioner shall be entitled to costs.

END OF DOCUMENT

