

29 Nfld. & P.E.I.R. 55

Tucker v. Tucker

Newfoundland Supreme Court Trial Division

Noel

Judgment: March 7, 1979

Tucker v. Tucker

Dorothy Marie Tucker, Petitioner v. Walter Tucker, Respondent

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Docket: Doc. 1001, 03143

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

Mr. Gordon MacNab, for the Respondent.

Noel, J.:

1 On 24 June 1977 a decree nisi was granted in which it was provided that: as to maintenance either party may apply. The petitioner now does so.

2 The petitioner, 20 years old, divorced, and the respondent, 27 years old, bachelor, were married on 23 September 1973. They ceased to co-habit 12 July 1975. There are no children of the marriage.

3 The evidence of the petitioner was taken a year ago after which the matter was adjourned sine die. At that time, she had completed a course in interior designing at the Institute of Technology, Calgary, and was earning, take home, about \$600.00, monthly.

4 The respondent's usual employment is as a heavy equipment operator. He is presently unemployed. His work is seasonal. His rate of pay last season was \$5.00 an hour and he earned \$1900.00. He lives alone in his own home.

5 It is quite obvious that the petitioner's income is much better than that of the respondent and that, particularly, from an income point of view, she is much better placed. She does not ask for periodic maintenance, the reason is obvious, but for a lump sum.

6 *The Divorce Act, section 11*, provides:

11.(1) Upon granting a decree nisi of divorce, the court may, if it thinks fit and just to do so having regard to the conduct of the parties and the condition, means and other circumstances of each of them, 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 both or either

(i) the wife, and

(ii) the children of the marriage; ....

7 It is not reasonable, in the circumstances of this case, to make an order requiring the respondent to pay a lump sum for the maintenance of the petitioner. She is much better off, in terms of income, than he is and her income potential is better. She is a young woman, now 27 years of age. She is well educated and has a profession which should enable her to earn a good living. She is not in need of financial assistance from the respondent. When they separated, they settled their financial affairs in what appears to have been a reasonable manner. The respondent, on the other hand, does not seem to be able to gain a full time, good paying, employment. At least, his history does not indicate that he can. That is borne out by the evidence, not only of himself, but of the petitioner. Any lump sum payment would require the respondent to sell his home or borrow. The home, of course, is the reason for this application.

8 The petitioner feels that she is entitled to a share of the family home by reason of her contribution made during marriage. Even if there were jurisdiction to award a lump sum on that basis, the petitioner would not be entitled as there was no intention on the part of either party that she should share. The home was owned by the respondent before the marriage. During the marriage the interior was completed by the respondent with materials provided by a friend for whom he had done some favours. No doubt, since both parties were working, some of her money and a lot of her effort went into the home but not sufficient to make it unjust for the respondent to claim full ownership of the home. It would be unjust to oblige the respondent to sell his home or to borrow in order to provide a lump sum payment to the petitioner who is not in need of it and whose income potential is so much greater than his own. The parties to this short marriage, 21 months, made a fair disposition of their property when they separated and there is no reason to interfere with it.

9 The application is dismissed with costs.

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