

74 Nfld. & P.E.I.R. 198

Wedgwood v. Wedgwood

Newfoundland United Family Court

Noonan, U.F.C.J.

Judgment: April 14, 1989

Wedgwood v. Wedgwood

Godfrey James Wedgwood, Petitioner v. Marguerite Clare Elizabeth Wedgwood,
Respondent

Wedgwood v. Wedgwood (No. 3)

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Docket: Doc. 86/2581

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

Mr. Ian Kelly, for the Respondent.

Noonan, U.F.C.J.:

1 This matter deals with issues of corollary relief under the *Divorce Act*. It was heard with a companion action under *The Matrimonial Property Act* and both decisions are being filed together. Mr. Wedgwood asked, during the trial of the matters, that I deal with the question of access to Peter Timothy. There was an Order for reasonable access granted on November 27, 1987. However, there was no formal Application for Variation of Corollary Relief before me and, in my view, insufficient evidence was led to allow me to deal with the issue. This decision, therefore, will deal only with support.

2 The history of the Wedgwood marriage has been outlined in some detail in the matrimonial property action and I see no need to repeat it here. I propose to highlight the points which I believe to be relevant to the issues of support for Mrs. Wedgwood, Heather and Peter.

3 Mrs. Wedgwood completed her high school education and a commercial/secretarial course. Prior to her marriage she held various secretarial posts and, after her marriage to Mr. Wedgwood on October 14, 1961, she continued to be employed in the work force. Following the birth of their first child, Mrs. Wedgwood remained at home as a full time housewife and child care giver. It was agreed between the Wedgwoods that Mrs. Wedgwood would handle the house and children and Mr. Wedgwood would handle financial matters. They both participated in the children's activities and shared the household responsibilities from time to time, but, in the main,

the roles adopted by each were the traditional ones. Both contributed substantially to the marriage.

4 Mr. Wedgwood has been a very successful businessman and, through his work, was able to provide his family with a very comfortable life style. Mrs. Wedgwood says that during the marriage her husband was very generous and hard-working and, within reason, she could have whatever she wanted.

5 On June 28, 1985 the Wedgwoods separated after a marriage of almost twenty-four years. Mrs. Wedgwood remained in the matrimonial home with various of the children until its sale in June, 1988. Since separation Mr. Wedgwood has been contributing substantially to Mrs. Wedgwood's and the children's support. At the time of trial two children were living independently, one was studying in university and supported solely by her father, and the youngest child was living with his mother, attending school and enjoying access time with his father.

6 As indicated, it was the intention of the Wedgwoods that they share a traditional marriage. During the latter part of the marriage there were suggestions that Mrs. Wedgwood take up work outside the home. This did not materialize. However, Mrs. Wedgwood has attended university and completed two business courses and one English course during the marriage. Since separation Mrs. Wedgwood has taken no substantial positive steps towards upgrading or honing her existing skills. I believe this is due to the traumatic effect which the breakdown of the marriage has had on her and to the fact that she has the continuing care of Peter.

7 Mr. Wedgwood has remarried and purchased a home. His present wife, with whom he shares living expenses, is employed and earns a salary of \$36,000.00 per year.

8 Mrs. Wedgwood is asking for an Order of support between \$60,000.00- \$70,000.00 per year. She asks that the Order not be time-limited. She says that because of the length of her marriage, her present age, and the limited opportunities for employment, she will not be able to enter the work force at this time and maintain an appropriate life style for herself.

9 Mr. Wedgwood's position is that Mrs. Wedgwood's pre-marriage employment skills need to be upgraded. He believes that she should, in time, be able to obtain a position in the work force. He asks that the Order for Support be time-limited. He suggests that an appropriate order for support for Mrs. Wedgwood is \$30,000.00 gross per year for two years and \$6,000.00 gross for Peter.

10 This application is governed by section 15 of the Divorce Act. The relevant statutory provisions follow:

15(1) In this section and section 16, "spouse" has the meaning assigned by subsection 2(1) and includes a former spouse.

(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;
- (b) any or all children of the marriage; or
- (c) the other spouse and any or all children of the marriage.

(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 and 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 spouse or child.

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(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.

(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.

11 I propose to deal first with the issue of support for Peter Timothy. I have found a series of factors outlined by Judge Fleury in *Menage v. Hedges* (1987, 8 R.F.L.(3d) 225 at p.226 to be particularly helpful in determining the appropriate amount a non-custodial parent should contribute to children's support. They are:

- (a) The responsibility for providing child support is shared by both parents in accordance with their ability to pay;
- (b) Any amount ordered to be paid by way of support will be tax deductible in the hands of the payor and taxable in the hands of the spouse having custody of the child;
- (c) In assessing the capacity of both parents to provide financial assistance, all of their income producing assets should be considered including those assets acquired as a result of an equalization order;
- (d) It is frequently difficult to assess each and every expense generated by a child and an assessment of the need must take into account certain generalities;
- (e) The spouse who has custody of the children provides non-financial assistance to the children which can be considered when assessing the mutuality of the obligation of support;
- (f) The amount of support should be fixed having regard to present circumstances and may be varied subsequently in the event of a change in the financial circumstances of either parent.

12 It is clear from the evidence that Mrs. Wedgwood, at the moment, is unable to contribute financially to her son's support. The only income she can rely on is the family allowance. She has received dividend income of \$16,500.00 over the past three years but this income is not a certainty. Mr. Wedgwood will, therefore, have to meet 100% of Peter's support - at least for the present.

13 Mrs. Wedgwood prepared a financial statement based on an anticipation that, with her property settlement, she would purchase a home would to accommodate herself, Peter and Heather when she is home on vacation. She expected to negotiate a mortgage of about \$90,000.00 with a 25 year amortization period. She projected her total monthly expenses to be

\$4,155.54. I accept that her financial statement is based, by necessity, somewhat on conjecture.

14 Mr. Wedgwood's financial statement shows a gross income of \$96,000.00 per year. Based on that income, according to him he is left with a net monthly sum of \$2,520.85 after expenses. However, Mr. Wedgwood has, over the years, drawn additional sums from his company in order to meet household and family expenses. In 1987 he drew an additional \$117,503.00 from his company for a total of \$213,503.00. In that year his total tax liability was \$109,000.00 leaving a net income of \$104,503.00. Since separation Mr. Wedgwood made very substantial payments for his family's support. Because of the resolution of the matrimonial property issues, his ability to meet the needs of his family is enhanced.

15 In determining what I believe to be an appropriate amount to meet Peter's needs adequately I have used the approach adopted by Goodridge, J. (as he then was) in *Allan v. Allan* (1983), Divorce Registry No. 83/1358 (Nfld. S.C.T.D.) (unreported) and the method applied by Woolridge, J. in *Blanchard v. Blanchard* (1987) [64 Nfld. & P.E.I.R. 15](#) (Nfld. S.C.T.D.). I conclude that approximately \$1,200.00 per month is needed to meet Peter Timothy's basic needs. Mr. Wedgwood is to pay Mrs. Wedgwood the sum of \$1,200.00 per month for Peter Timothy's support on the first day of each month beginning May 1, 1989.

16 The remaining issue to be addressed is support for Mrs. Wedgwood. The first determination is whether or not she is entitled to an order for support. If she is entitled, the next questions are whether an order should be made and if so under what terms and conditions.

17 Counsel, in argument, discussed the trilogy cases - *Pelech v. Pelech* [1987] 1 S.C.R. 801, *Caron v. Caron* [1987] 1 S.C.R. 892 and *Richardson v. Richardson* [1987] 1 S.C.R. 857. These cases have heralded a significant change in the law of support in Canada. While these cases were decided under the Divorce Act, S.C. 1967-68, c.24 and dealt with the question of variation of settlement agreements, I believe the public policy objectives espoused in those cases apply to this case.

18 In the annotation of Pelech reported at p.232 of 7 R.F.L.(3d) Professor James McLeod observed

The reasons are also likely to affect the granting of support in the absence of a settlement agreement. The reasons of Wilson, J., in *Pelech*, *Richardson* and *Caron* confirm a basic support model. In order to obtain support, a claimant must prove:

- (1) need;
- (2) that the need arises for a legally acceptable reason; and
- (3) that the need/inability is causally connected to the marriage.

19 On the evidence before me I am satisfied that a need exists for Mrs. Wedgwood to be supported by Mr. Wedgwood. Her need is apparent because Mrs. Wedgwood, with her husband's

blessing, set aside her own career in the interests of the family. For that reason I find that her need for support is causally connected to the marriage. In my view she is entitled to an order for support.

20 An order for support as prescribed in section 15(4) may be by way of lump sum or periodic; it may be for a definite or indefinite period. The court has a broad discretion in determining the parameters of a support order.

21 As indicated earlier, Mrs. Wedgwood desires an open-ended periodic sum while Mr. Wedgwood seeks a time-limited order. In *Messier v. Delage* (1983), 35 R.F.L.(2d) 337 (S.C.C.) Chouinard, J. said, with respect to the duration of a spousal support order:

That does not mean that the obligation of support between ex-spouses should continue indefinitely when the marriage bond is dissolved, or that one spouse can continue to be a drag on the other indefinitely or acquire a lifetime pension as a result of the marriage or to luxuriate in idleness at the expense of the other, to use the expressions one finds in some discussions of the subject. It also does not mean that a divorced person cannot remarry, or that his new obligations or new advantages as the case may be will not be taken into consideration.

22 I think it is desirable that there be a degree of finality in the relationship between divorced persons. The degree of finality which can be afforded to the relationship is necessarily intertwined with the ability of the spouse in need of support to become economically self-sufficient. Each case is different and must be considered in light of its own particular circumstances. The *Divorce Act* directs the court to promote the economic self-sufficiency within a reasonable period of time "in so far as practicable". What does self-sufficiency mean? Surely it is a relative term. One must look at self-sufficiency against the economic climate of the marriage at the time of marriage breakdown.

23 In *Normore v. Normore*, (1987) Divorce Registry No. G.F.000006 (Nfld. S.C.T.D. G.F.) (unreported), Mr. Justice Wells said at page 3:

It is my view that a divorced spouse is not entitled in all cases to what has been called by one judge, "a pension for life". There are however exceptions such as I find this to be, when after a marriage of long standing one spouse's financial circumstances are vastly superior to those of the other. In such a case it is reasonable that an award of maintenance be made.

24 Professor Lenore J. Weitzman in her text *The Divorce Revolution* contrasts the traditional and modern rationales for support at pp 145 - 50. Judge Killeen in *Linton v. Linton* (1988) 11 R.F.L.(3d) 444 at 463 summarizes her theories as to the early underlying rationale for support or alimony as follows:

(1) that it enforced the husband's continuing obligation to the wife and prevented the dependent wife and children from becoming a public charge;

(2) that since only an innocent wife could obtain a divorce and receive alimony, its second legal purpose was to reward virtue and punish wrongdoing;

(3) that it gave effect to a "status principle", that is, the court would attempt to provide the wife with roughly the same standard of living she enjoyed during the marriage;

(4) that it compensated the wife for her labours during the marriage;

(5) that it was "to reinforce sharing, pooling, and partnership in marriage".

25 When one looks at the new "no fault" era, there are, at p.149 of Professor Weitzman's text three categories of women who have unusual financial needs:

1. those with custodial responsibility for children;

2. those who require transitional support to become self-supporting;

3. and those who are incapable of becoming, or are too old to become, self-supporting.

26 Mrs. Wedgwood has an obligation to seek self-sufficiency. She should not be excused from the obligation of trying to find employment unless there is some factual inability. On the evidence before me there is no factual inability. However, I believe that Mrs. Wedgwood, because of her long absence from the work force in the interests of her family, and, because of her age, will not be able to achieve full self-sufficiency even with re-training. Boyd, L.J.S.C. in *Rednall v. Rednall (1986) 4 R.F.L.(3d) 337* has analyzed the concept of self-sufficiency and in my view has developed a workable model. In that case, which, in many respects, is very similar to this one, Mr. and Mrs. Rednall had been married for about twenty-four years and, at the time of trial, Mr. Rednall was 53 years old, and Mrs. Rednall, 50 years. Judge Boyd says at pp. 358 - 59:

I am not surprised that she has found the transition to her new single state to be somewhat overwhelming. This difficulty is a natural consequence of the role which she played for some 24 years as a mother, wife and homemaker. In these circumstances, while I consider it to be in the spirit of the Divorce Act to promote the concept of self-sufficiency, I cannot ignore that the achievement of such a state will be thwarted, firstly, by the realities of the market place and, more subtly, by her own diminished level of self-confidence. Training may overcome the first hurdle, but some determined effort will be required to overcome the more subtle problem of asking a 50-year-old woman, with no real history in the work force, to muster the courage and confidence to strike out on her own.

In the circumstances, I consider that Mrs. Rednall is indeed entitled to permanent maintenance ... In stating that a spouse has an obligation to become economically self-

sufficient, I do not believe that either the Parliament or the legislature simply contemplated a situation in which a spouse could earn sufficient income to provide for his or her own basic needs. Rather, in my opinion, the Parliament and the legislature contemplated a situation in which a spouse could earn a level of income such as to cover the costs incurred in living a life-style not unlike that which that spouse would have enjoyed had the parties continued to live together. This statement is, of course, qualified by the recognition that following separation and the establishment of separate households, both spouses usually experience some diminishment of their individual standards of living. Given what I consider to be Mr. Rednall's high earning ability, that problem is not as graphic in this case.

In any event, I believe that although she is capable of attaining some measure of self-sufficiency, she will never attain that level of self-sufficiency which might be expected of a younger woman or perhaps even an older woman with more working experience.

27 Counsel for Mrs. Wedgwood has asked me to consider ordering a lump sum amount for her support. An award of a lump sum should not be made in an effort to achieve a more equitable division of matrimonial property. In *Carter v. Carter (1978) 19 Nfld. & P.E.I.R. 411* Mr. Justice Goodridge (as he then was) at p. 418 offers a list of cases which illustrated circumstances when it is appropriate to order lump sum support:

1. Where the husband's assets are in liquid form and permit a painless separation of a lump sum (*Zelko v. Zelko (1973)*, 11 R.F.L. 123);
2. Where the husband is of an advanced age (*idem*);
3. Where the wife has demonstrated an ability to deal with a lump sum properly (*idem*);
4. Where the parties are anxious to bring their relationship to a complete end (*idem*);
5. Where the imposition of an obligation to pay periodic sums would create further conflict between the parties (*Hayre v. Hayre (1973)*, 11 R.F.L. 188);
6. Where a lump sum is necessary to provide a home for the wife (*Carmichael v. Carmichael (1976)*, 69 D.L.R. (3d) 297);
7. Where the history of relations of the parties shows that the husband has failed to meet periodic payments and the only way to assure that the wife will be maintained is by a lump sum payment (*idem*);
8. To provide a nest egg against the contingencies of life (*Lazenby v. Lazenby (1975)*, 18 R.F.L. 393); and
9. To recognize the contribution of the wife to the marriage (*Feldman v. Feldman*

(1971), 2R.F.L. 173).

Having weighed the factors outlined by Mr. Justice Goodridge and carefully considering the entire matter, I conclude that it is not appropriate to order lump sum maintenance in this case.

28 There should, in my opinion, be an order for periodic support for Mrs. Wedgwood which is not time-limited. The order is, of course, open to review at any time if there is a change in circumstances. I think it is appropriate to encourage Mrs. Wedgwood to take steps to relieve her economic dependency which has resulted from her years of marriage and her work as homemaker, wife and mother. I think with a period of re-training and armed with the myriad of skills gained by her in her roles as homemaker, wife and mother, she should, in two years, be able to contribute financially to meeting her own needs. Counsel for Mr. Wedgwood has suggested that if she were able to obtain a position as legal secretary she should earn a minimum of \$15,000.00 per year.

29 It is always difficult to determine precisely a proper amount of maintenance. Mrs. Wedgwood should be able to live in a style which approaches the manner to which she has become accustomed and Mr. Wedgwood should not be crippled by the order.

30 I have considered the evidence as a whole in light of the factors and objectives prescribed by section 15 of the Divorce Act, the money available to Mrs. Wedgwood under the matrimonial property action and the effect of the Income Tax Act. I conclude that an appropriate amount that Mr. Wedgwood should contribute for Mrs. Wedgwood's support for 24 months commencing May 1, 1989 is \$3,300.00. He shall contribute the sum of \$2,400.00 per month for her support from May 1, 1991.

31 I have not dealt with support for Heather because Mr. Wedgwood is meeting her needs. I believe that with the order I have prescribed for Mrs. Wedgwood she should be able to provide for Heather during the holiday periods when she is at home.

32 I would like to say that I am very grateful indeed to both Counsel who have been of great assistance to me in determining both these matters.

Order accordingly.

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