

Wells v. Wells

In the Matter of The Maintenance Act, Chapter 223 R.S.N. 1970

Mollie P. Wells, Complainant and Robert Wells, Respondent

Robert Wells, Plaintiff and Mollie P. Wells, Defendant

Newfoundland Unified Family Court

Hunt J.

Judgment: September 18, 1984

Docket: F/83/320, F/83/365

Counsel: Ian Kelly, Esq., for the Plaintiff/Respondent

**David C. Day**, Esq., Q.C., for the Defendant/Complainant

Judgment of Hunt, J.:

1 This is a hearing with respect to an application by Mollie P. Wells (the "Wife") for maintenance under The Maintenance Act and an action by Robert Wells (the "Husband") for a division of matrimonial assets. It is requested that an order or judgment previously made with respect to the two matters be clarified and extended.

2 The immediate cause for the hearing was a notice of motion filed in the action dealing with matrimonial assets. In the notice of motion the Husband requested clarification of the obligation of the parties with respect to taxes, insurance and loan payments on the matrimonial home in St. John's and maintenance costs, taxes and mortgage payments on the Florida condominium. When that matter was called, counsel for the Wife asked that the maintenance claim be also heard so that it could be decided who would be responsible for income tax on the award for maintenance. Later it was requested that other aspects of matrimonial property be dealt with.

3 Dealing with the question of the income tax on the maintenance ordered, this should be paid by the Wife. The question of taxes came up in the initial hearing, particularly during the evidence of Robert J. Healey, C.A. who filed Revenue Canada Interpretation Bulletin IT-118R as Exhibit RJH 1. The Husband, at that time, paid tax on his entire income and because the circumstances warranted or allowed it, Mr. Healey was anxious to arrange the payment of maintenance so that

the tax payable on the Husband's income be kept to a minimum amount by having it taxed in two parts in the hands of the Husband and Wife. This minimizes the amount subject to the highest bracket or rate of tax.

4 This means that the amount of maintenance is taxable in the hands of Mrs. Wells and in computing the amount of maintenance this was taken into account. It was not stated but it was intended that the tax payable on the maintenance be the responsibility of Mrs. Wells.

5 With respect to maintenance costs, taxes and loan payments on the matrimonial home in St. John's, the first two should be borne by Mrs. Wells and the loan payments by Mr. Wells. It must be borne in mind that the Husband would be entitled, under normal circumstances, to a sale of the home but has agreed to exclusive occupancy by Mrs. Wells thus depriving himself of a large capital fund. Also, it indirectly increases the maintenance he pays her in that if she had her portion of the fund, the income from it would be available to her and reduce the maintenance she should receive.

6 The amount of maintenance was computed so that it included shelter. In lieu of rental the payment of running expenses should be included as a responsibility of the Wife. However, the payments relating to the loans were not intended to be included as Mrs. Wells' responsibility and should be paid by the Husband with an account kept of them so that he can be reimbursed on the sale of the home. Again, the parties are reminded that insofar as this hearing is concerned and subject to such further evidence as is adduced and such further submissions that are made, an order for a sale of the matrimonial home can be applied for by the Husband at any time. The payments on the Florida condominium, until its sale, are also the responsibility of the Husband. Again, a record of them should be kept so that he can be reimbursed at the time of sale.

7 With respect to matrimonial property there is an order outstanding that the matrimonial home in St. John's be sold. However, by agreement between the parties this has been stayed and the condominium in Florida has been on the market for several months. But because the market is depressed an acceptable price has not been forthcoming and a sale has not been completed.

8 The parties have agreed that efforts for its sale be continued and that the St. John's matrimonial home together with its contents and the contents of the Florida condominium, which were moved to the St. John's home, be held for the time being. Either party may apply at any time for the sale of any or all of the items involved but in the meantime it is their joint wish that it be held and that Mrs. Wells have the exclusive right of occupancy and use.

9 The portion of the furniture which had been in the matrimonial home or in the Florida condominium and which is now in Mr. Robert Wells' possession or being used by him will, also, be continued in his possession pending application by either party for the sale of it.

10 With respect to land at St. Phillips, I must rule that it is owned by Mr. Wells and is not a matrimonial asset. This was a gift from a client and while it might have been indirectly the result of legal services, it was not given to Mr. Wells as remuneration for his having acted. The fact that he told his son that he intended to use the land for a home does not alter the fact that the land

was not matrimonial property because it was a gift to him. If he had acted so that the intention became a fact, the land would have become matrimonial property. In my view, to hold that the land was matrimonial property would, in effect, indicate that I have not accepted the straightforward account of its acquisition given by Mr. Wells and would indicate that I had assumed it was acquired in some other fashion not supported by evidence.

11 The sum of \$15,000. was received by Mr. Wells from his mother. He says it was given for the purpose of paying off a loan on the matrimonial home and was not a gift to both of the parties. Mr. Wells says that he has treated the amount as a loan. He obtained it specifically to replace a mortgage when he was informed the interest rate of the loan secured by that mortgage would be increased. On the basis of the present evidence I would rule that the amount is a loan by Mrs. Wells, Senior, and should be repaid her from the proceeds of the sale. It may be that there can be a written declaration from Mr. Wells' mother who advanced the money as to what is the status she intended. Obviously, the parties have very properly been reluctant to have Mrs. Wells, Senior, become directly involved in the dispute and this is the reason there has been no direct evidence with respect to it.

12 Accordingly, the question of the matrimonial property has been resolved by the parties. It is to remain with the party that has it and the other will sign such formal documentation, in the case of motor vehicles, as is necessary to continue the status quo. Included in property taken by a party will be the land at St. Phillips which will be owned by the Husband and the \$15,000. which refinanced the matrimonial home by paying off a mortgage - unless prior to its sale the Husband's mother who furnished the \$15,000. indicates it was her intention that the amount be a matrimonial asset.

13 The outstanding items are the matrimonial home in St. John's and its contents including the furnishings and other contents of the Florida condominium sent from there and such furnishings from both homes taken by Mr. Robert Wells to his apartment together with the Florida condominium.

14 Arrangements for the sale of the Florida condominium are to be continued and an offer acceptable to both parties should be accepted. If either party feels an offer should be accepted and the other does not, then an application to court may be made so that each party will have an opportunity of being heard and having the question of the sale resolved insofar as the court can have effective jurisdiction.

15 Mrs. Wells is to continue to have exclusive use of the matrimonial home and its contents.

16 Mr. Wells is to continue to have exclusive use of those furnishings which are in his possession.

END OF DOCUMENT