

CANADA / JUDGMENT

Skoreyko v. Skoreyko

2003 BCCA 554

COURT

British Columbia Court of Appeal

DECIDED

6 October 2003

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2003BCCA0554 Court of Appeal for British Columbia Citation: Skoreyko v. Skoreyko,

2003 BCCA 554 Date: 20031006

Docket: CA030028 Between: Tracy Rosalie Skoreyko Appellant (Plaintiff) And Richard Mike Skoreyko Respondent (Defendant)

Before: The Honourable Madam Justice Prowse The Honourable Madam Justice Ryan The Honourable Mr. Justice Thackray Oral Reasons for Judgment K.M. Birney Counsel for the Appellant W.K. Zimmerman Counsel for the Respondent Place and Date: Victoria, British Columbia October 6, 2003

- [1] PROWSE J.A.: Ms. Skoreyko is appealing from the order of a chambers judge, made July 12, 2002, providing that Mr. Skoreyko pay spousal support to Ms. Skoreyko in the amount of \$400 per month, commencing on August 1, 2002, and continuing on the first day of each and every month thereafter. [2] Ms. Skoreyko submits that the chambers judge misapprehended the evidence as to Mr. Skoreyko's income, gave too much weight to Mr. Skoreyko's debts and insufficient weight to his means, and failed to exercise his discretion judicially in making an award of spousal maintenance which was inadequate. [3] By way of background, the parties were married in 1978, separated for three years in 1987, resumed living together in 1990 and finally separated in 1993. The parties both worked at remunerative employment during the marriage and following their separation. They had no children. [4] Ms. Skoreyko petitioned for divorce in 1998. By that time the parties had been living independently for approximately five years. Subsequently, Ms. Skoreyko suffered a profound loss of vision in both of her eyes which ultimately led to her being dependent on a disability pension in the amount of \$22,500 per year. She is now 46 years of age. [5] Mr. Skoreyko entered into another relationship following the separation, but that relationship had ended by the time of the chambers application. The chambers judge estimated Mr. Skoreyko's income at approximately \$66,000 per year but noted that he had substantial debt. Most of that debt apparently related to a condominium Mr. Skoreyko owns, which is fully financed, and to a vehicle he bought, which he uses in his employment. The nature of his debt is set out in the materials. Mr. Skoreyko is 49 years of age. [6] The parties were divorced on February 5, 2001. The terms of the consent order of that date provided that Ms. Skoreyko would share in Mr.

Skoreyko's pension, but that she would retain her RRSP investment in the amount of approximately \$48,000. The parties had very little else by way of assets upon their separation. [7] The chambers judge reviewed the evidence before him and observed that this was a case which engaged the principles set forth by the Supreme Court of Canada in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420. He noted that the foundation for spousal support in this case was non-compensatory, and arose primarily from Ms. Skoreyko's financial need related to the onset of her physical disability following the separation. Based on an analysis of the *Bracklow* decision, and with particular reference to s. 15.2(6)(c) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), the chambers judge concluded that Ms. Skoreyko was entitled to support based on the pattern of mutual economic dependency generated during the marriage, and the need to relieve against the economic hardship Ms. Skoreyko suffered as a result of the breakdown of the marriage. In the result, having regard to all of the circumstances, including, but not limited to, the length of the marriage, the length of the separation, the nature of the parties' relationship and the roles they played during the marriage, the fact that Ms. Skoreyko's disability arose five years after the parties had separated, and the respective financial circumstances of the parties, the chambers judge determined that an award of support in the amount of \$400 per month for an indefinite duration was appropriate. [8] I have reviewed all of the materials which were before the chambers judge. I am not persuaded that he misapprehended the evidence relating to Mr. Skoreyko's finances or that he overemphasized Mr. Skoreyko's debts. Nor am I persuaded that he erred in determining the quantum of support. As *Bracklow* makes clear, cases of this nature are very difficult and, more importantly, are fact-driven. In this case, the chambers judge could have made an award for a greater amount of spousal support for a shorter period of time. Instead, he chose to make an award which would top up Ms. Bracklow's disability income over the long term. Despite the excellent submissions of counsel for Ms. Skoreyko, I am unable to conclude that the chambers judge erred in principle or otherwise in making his determination as to an appropriate award of spousal support on these facts. I would, therefore, dismiss the appeal. [9] RYAN J.A.: I agree. [10] THACKRAY J.A.: I agree. [11] PROWSE J.A.: The appeal is dismissed. [DISCUSSION WITH COUNSEL] [12] There is nothing extraordinary about this case that brings it outside of the normal rules of costs following the event. "The Honourable Madam Justice Prowse"

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