

# COURT OF APPEAL FOR ONTARIO

CITATION: Nowlan v. Monsour, 2023 ONCA 111

DATE: 20230215

DOCKET: C70269

Fairburn A.C.J.O., Doherty and Pardu JJ.A.

BETWEEN

Angela Jane Nowlan

Applicant (Respondent)

and

Eli Monsour

Respondent (Appellant)

Enoch C. Anekwe, for the appellant

Frédéric P. Huard, for the respondent

Heard and released orally: February 13, 2023

On appeal from the order of Justice Robert A. Riopelle of the Superior Court of Justice, dated December 31, 2021.

## REASONS FOR DECISION

[1] The appellant argues that the trial judge made numerous errors. These include determining the equalization payment, dismissing his claim for occupation rent, determining spousal support, and allocating responsibility for liabilities related to a car and a pool installation.

[2] We do not agree.

[3] The trial judge's conclusion that the valuation date was December 26, 2017, was unassailable. The appellant argues further that the trial judge erred in concluding that there was no reliable evidence of the value of the wife's jewelry on that date. The trial judge's finding was reasonable, based on the quality of the evidence before him. In any event, adding back the value that the appellant attributes to the jewelry would not have altered the respondent's net family property calculation, since her valuation date liabilities exceeded the value of her assets on that date by a wider margin. We see no error in the trial judge's assessment of the value of the respondent's assets, including bank accounts, on that date.

[4] There was no ouster, by the respondent, of the appellant from the matrimonial home. There was no basis for a claim for occupation rent in these circumstances, particularly where the respondent waived child support for this period, in light of the benefit she had of occupying the home.

[5] The appellant says that the trial judge erred in awarding spousal support in the high end of the range, suggested by the guidelines, and in fixing a commencement date. We see no palpable and overriding error in the trial judge's decision, which is owed deference.

[6] The wife always had possession of the car and paid the loan payments on it. The appellant agreed that she could have the car. We see no error in the trial

judge's treatment of this issue and the agreement communicated to him by the appellant.

[7] The wife took out a loan for a swimming pool installed in the home solely owned and occupied by the appellant at the time of trial. The amount owing on the valuation date (December 26, 2017) was \$23,553.56. The trial judge ordered the husband to pay that loan, effective August 20, 2019, since he had the benefit of sole occupation and ownership of the house as of that date. There is no information in the record to indicate how much was left owing on the pool loan as of August 20, 2019, so there is no evidentiary basis for this court to readjust the trial judge's calculations.

[8] In any event, since the trial, it has come to light that the appellant did not disclose whole life insurance policies he owned on the valuation date, which had a value of approximately \$60,000.00, and that should have been included in his net family property calculation. The respondent does not ask that the appellant's net family property be recalculated, but simply asks that the appeal be dismissed, as she wants finality. The issues raised by the appellant regarding the trial judge's calculation of net family property are dwarfed by the appellant's own non-disclosure.

[9] For these reasons, the appeal is dismissed.

[10] Costs should follow the result of the appeal. The appellant shall pay the respondent costs fixed at \$7,000.00, inclusive of taxes and disbursements, in addition to the costs awards already made against him by this Court.

“Fairburn A.C.J.O.”

“Doherty J.A.”

“G. Pardu J.A.”