

Spousal Support

Miglin v. Miglin, [2003] 1 SCR 303

Facts:

Eric and Linda Miglin separated after 14 years of marriage. They had four young children. They owned a resort in Northern Ontario. Each received a salary of approximately \$80,000 at the time they separated. Their combined salaries represented about one-half of the declared earnings of the business. Although they each received the same salary, Linda was the primary caregiver to the children, especially when Eric was at the resort and the children were still in school.

When Eric and Linda separated in 1993, they each hired a lawyer. Settlement negotiations lasted for 15 months. Their separation agreement had a full and final release of future spousal support claims. In consideration for this release, Linda received an annual salary of \$15,000 over five years as a consultant and sole interest in the family home. Eric also agreed to make the mortgage payments and pay child support of \$60,000 per year. Eric received sole interest in the resort which had a similar value to the family home.

Four years after signing the separation agreement, Linda applied for spousal support under section 15.2 of the *Divorce Act*. She also asked for sole custody and child support. At trial she was awarded \$4,400 per month in spousal support for a period of five years. The Court of Appeal confirmed the amount of spousal support, but removed the five year limit. Eric appealed to the Supreme Court of Canada.

The Issue:

What weight should a court give to a separation agreement that deals with spousal support?

The Decision:

The Supreme Court of Canada allowed the appeal and reversed the decisions of the trial judge and Court of Appeal. They found that the courts made an error in not giving the parties' agreement sufficient weight.

The court set out a two stage analysis:

1) An investigation must be taken into all circumstances surrounding the spousal support agreement at the time that it was entered into. Did the agreement represent the intentions and expectations of the parties? Were there circumstances of oppression, pressure, or vulnerabilities? Did the parties have professional assistance in negotiating the agreement that may address any concerns with imbalance? Finally, is there substantial compliance with the objectives of the *Divorce Act*?

Discussion Questions:

- 1) Do you agree with the Supreme Court of Canada's decision? Why or why not?
- 2) What is the test for overriding spousal support agreements? Is it too complicated?
- 3) Do you agree with the quote about what changes in circumstance are foreseeable at the time the agreement is signed?

Resources:

You can read the entire case at:

<http://canlii.ca/t/lg5lh>

You can find the *Divorce Act* at:

<http://laws-lois.justice.gc.ca/eng/acts/d-3.4/>

Relevant Law:

Divorce Act

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a 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 the other spouse.

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a 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 the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under

2) The second stage requires an examination of whether the agreement still reflects the original intentions of the parties and whether the act is still substantially complied with. If there are new circumstances, were they reasonably anticipated by the parties:

“We stress that a certain degree of change is foreseeable most of the time. The prospective nature of these agreements cannot be lost on the parties and they must be presumed to be aware that the future is, to a greater or lesser extent, uncertain. It will be unconvincing, for example, to tell a judge that an agreement never contemplated that the job market might change, or that parenting responsibilities under an agreement might be somewhat more onerous than imagined, or that a transition into the workforce might be challenging. Negotiating parties should know that each person’s health cannot be guaranteed as a constant. An agreement must also contemplate, for example, that the relative values of assets in a property division will not necessarily remain the same. Housing prices may rise or fall. A business may take a downturn or become more profitable. Moreover, some changes may be caused or provoked by the parties themselves. A party may remarry or decide not to work. Where the parties have demonstrated their intention to release one another from all claims to spousal support, changes of this nature are unlikely to be considered sufficient to justify dispensing with that declared intention” (paragraph. 89).

The court found that there should be significant weight given to the separation agreement in this case. The parties negotiated the settlement over a lengthy period of time with the help of legal and financial advisors. The agreement dealt with disadvantages from the marriage by providing a source of revenue to the wife for a period of five years and also aimed to promote self-sufficiency, which is in substantial compliance with the *Divorce Act*.

The court decided that the agreement was both fairly negotiated and substantially compliant with the *Divorce Act* at the time it was signed and any new circumstances were reasonably anticipated by the parties.

subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) 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 any obligation for the support of any child of the marriage;
 - (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.