

Case Name:

Sharpe v. Sharpe

Between
Margaret Sharpe, applicant, and
David Sharpe, respondent

[2006] O.J. No. 5490

Court File No. FS-06-57992-00

Ontario Superior Court of Justice

G.I. Pardu J.

Heard: November 17, 2006.

Judgment: November 29, 2006.

(15 paras.)

Family law -- Marital property -- Equalization -- Husband not required to make advance equalization payment where he had significant exclusions from inheritance such that he might not have to ultimately pay equalization.

Family law -- Maintenance and support -- Spousal support -- Principle of equality of standard of living -- Quantum -- Relationship -- Divorced -- Duration of marriage -- 21 to 25 years -- Payor's annual income -- \$200,001 plus -- Payee's annual income -- Under \$25,000 -- Order -- Interim -- Amount of award -- Periodic (monthly) sum -- \$10,000 plus -- Wife awarded \$20,000 per month in interim spousal support where husband had income of \$60,000 per month and wife had nominal income -- Award would leave wife with 35 percent of net disposable income of parties -- Award not disproportionate, given 25-year duration of marriage, wife's traditional role during marriage, wife's significant impairment due to multiple sclerosis, and lifestyle parties enjoyed prior to separation -- Wife not required to use RRSP income on interim basis, as she would need these funds later.

Motion by wife for interim spousal support, and advance equalization payment of net family property -- Husband earned \$61,000 per month while wife had nominal income of less than \$85 per month -- Couple lived together for almost 25 years -- Wife did not work outside home during marriage -- Wife was 47-year-old, significantly impaired with multiple sclerosis -- Husband was 51-year-old successful investment advisor -- Husband paid wife \$15,000 in support in three months since separation, and helped her purchase condominium -- Wife sought \$25,000 in monthly support

-- Husband suggested \$10,000 as appropriate monthly support -- Husband suggested wife did not need so much money, as she lived modest lifestyle during their cohabitation and should not be awarded support that vastly exceeded her reasonable needs -- Husband submitted wife should use her capital asset, RRSP that could generate \$3,000 per month in income -- HELD: Motion by wife allowed in part -- Wife awarded \$20,000 per month in spousal support -- Advance equalization payment not ordered where husband had significant exclusions related to inherited assets meaning he might not ultimately owe equalization payment -- Considering generous income enjoyed by husband, role adopted by wife during cohabitation, length of marriage and wife's disability, parties should not be left with markedly disparate lifestyles -- Husband's characterization of pre-separation lifestyle as modest was not correct, as parties lived in home worth \$1.2 million and owned home in France worth \$1 million -- Wife would incur additional expenses for transportation, groceries and meals living on her own, increased by her inability to use her hands -- Based on income of \$60,000 for husband, payment of \$20,000 per month to wife would leave husband with disposable income of \$22,660 and wife with disposable income of \$12,151 -- Figures not disproportionate, and would afford wife with standard of living roughly comparable to that enjoyed during cohabitation -- Income from RRSP not attributed to wife on interim basis, as she might need those funds in later years.

Counsel:

James S. Marks, for the Applicant.

Ronald Sleightholm, for the Respondent.

1 G.I. PARDU J.:-- This is a motion for interim spousal support. The husband earns approximately \$61,000.00 per month; the wife has a nominal income of less than \$85.00 per month. The parties lived together for nearly 25 years, separating on August 9, 2006. The wife did not work outside the home during marriage. She is 47 years old and significantly impaired by multiple sclerosis. She has no peripheral vision; she cannot drive, and has difficulty walking and using her hands.

2 In the three months since separation, the husband has provided her with \$15,000.00 in support and has also helped her with a condominium purchase which will close in a few months. The husband is 51 years old and a very successful investment advisor.

3 The wife is asking for \$25,000.00 per month; the husband suggests that \$10,000.00 per month would be adequate.

4 In *Moge v. Moge*, [1992] 3 S.C.R. 813 at paragraph [84] the court said,

Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the rate assumed by one party. As marriage should be regarded as at joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution

5 In this case, given the generous income enjoyed by the husband, the role adopted by the wife during cohabitation, the length of the marriage and the wife's disability, the parties should not be left with markedly disparate lifestyles.

6 Counsel for the husband argues that this principle should be tempered by two factors. He argues firstly that the wife had a modest lifestyle during cohabitation and that she should not be awarded support which vastly exceeds her reasonable needs, and secondly that the wife should resort to her capital assets, specifically her registered retirement savings plan which could generate at least \$3,000.00 additional income per month.

7 I would not characterize the pre-separation lifestyle as modest. The husband continues to occupy the matrimonial home, worth \$1.2 million. The parties own a home in France worth \$1 million. While the wife was quite restrained in her expenditures for clothing during marital cohabitation, in other respects their lifestyle was quite luxurious. The wife will be moving into a two-bedroom condominium in Toronto and will incur substantial expenses for items such as transportation; while the parties were together she and her husband would go together for social outings. She will now have to pay for a driver. Some of her other expenses such as groceries and meals outside the home will be higher because of the difficulty she has using her hands. She estimates that the mortgage, utilities and carrying costs associated with her condominium will be \$5,586.73 per month.

8 Based on an income of \$60,000.00 to the husband, payment of \$20,000.00 per month spousal support will leave the husband with \$22,660 net disposable income, or 65.1% of the total. That support will leave the wife with \$12,151 net disposable income or 34.9% of the total.

9 In all the circumstances this does not seem disproportionate and will afford the wife a standard of living roughly comparable to that enjoyed during cohabitation albeit with a different emphasis. The wife's RRSP was worth \$486,732.18 on separation. On an interim basis I am not inclined to attribute income to the wife from that source. It may be that she will need some of those funds in later years. It cannot be assumed that the husband will always enjoy his present level of income; he may retire at some point. As noted in Annual Review of Family Law 2005, McLeod and Memo, Thompson Carswell, at page 300,

Major J. confirmed that while a younger spouse did not have to consume capital to pay living expenses, an older spouse may have to do so. Although a court will always take a payee's capital into account in determining support, different considerations apply depending on a payee's age. A dependant must use his or her capital in a fiscally responsible manner at all times. However, what is a reasonable use of capital when a payee is younger, may not be when he or she is older. Younger people acquire assets to provide for themselves when they are older and can no longer work. While younger people are not expected to draw down capital for living expenses if there is any other alternative, an older person may reasonably be required to do so. An older payee should be required to realize on his or her assets, including a pension, to generate income, in the same way as a payee is forced to do when he or she retired and starts to receive pension income. A payee should not be allowed to maintain capital and force a payor to draw down capital to maintain them both.

10 The husband is the sole owner of a \$1.2 million dollar real property which he inherited; by the same token I do not expect him to realize income from that property for the purpose of assessing his support obligations. It may be that some adjustment of support will be required when the ultimate capital position of each party is resolved.

11 Accordingly, an order will issue ordering the husband to pay interim spousal support of \$20,000.00 per month commencing September 1, 2006, with credit to be given to the husband for \$15,000.00 paid by him since then.

12 The wife also asks for an advance payment on account of equalisation of net family property, in the sum of \$50,000.00 it is not clear to me that the husband will owe an equalization payment; he has significant exclusions related to his inherited assets. For that reason I do not order an advance equalization payment.

13 If the wife needs capital to advance the litigation or for other purposes than the husband should consent to her borrowing against the security of any interest she has in real property, including jointly held property for that purpose.

14 Since that relief was not specifically requested I do not order it at this stage, but if the issue cannot be resolved leave is given to the wife to bring a motion for that purpose.

15 If necessary, the parties may make brief written submissions regarding costs addressed to me at:

Superior Court of Justice
426 Queen Street East
Sault Ste. Marie, ON P6A 1Z7

G.I. PARDU J.

cp/s/qlala/qlmxt/qlesm

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