

2005 CarswellAlta 301, 2005 ABQB 175, [2005] A.W.L.D. 1377, [2005] A.W.L.D. 1378, [2005] A.W.L.D. 1380, [2005] W.D.F.L. 1713, [2005] W.D.F.L. 1708, [2005] W.D.F.L. 1707, 16 R.F.L. (6th) 313

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Nathoo v. Nathoo

Zarina Samsudin Raghani Nathoo (Plaintiff) and Shabudin Habib Hirji Nathoo (Defendant)

Alberta Court of Queen's Bench

P.W.L. Martin J.

Heard: November 16, 2004

Judgment: March 10, 2005

Docket: Calgary 4801-120688

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Counsel: Patrick Kenney for Plaintiff

Diann P. **Castle** for Defendant

Subject: Family

Family law --- Support — Spousal support under Divorce Act and provincial statutes — Entitlement — General principles

Husband, Canadian citizen and bookkeeper earning approximately \$15,000 per year, married wife in United States — Wife had moved from India to United States seven years earlier to live with her brother — Following civil ceremony, wife continued to live in United States while awaiting processing of her immigration application for residency in Canada — Husband agreed to sponsor wife and as part of that process undertook to support her for period of three years — As result of husband's sponsorship and undertaking, wife was granted permanent residence status in Canada — Parties formalized their marriage through religious ceremony according to their Ismaili faith — Parties cohabited together for approximately three months following religious ceremony and then separated — Wife, who earned no income and had no job skills, took up residence at women's shelter and issue arose as to whether she was entitled to spousal support — Husband to pay wife \$1,500 as lump sum spousal support payment and \$1,400 per month thereafter for eight months — Authorities are clear that in determining entitlement to spousal support, and perhaps also its duration, existence of sponsorship agreement is relevant factor to be considered — Where sponsored spouse is destitute and at risk of going on social assistance, sponsorship pledge, by itself and without reference to Divorce Act, fixes pledger with obligation to honour his undertaking — In view of wife's current predicament and husband's promise to support her and keep her off social assistance, wife was entitled to spousal support.

Family law --- Support — Spousal support under Divorce Act and provincial statutes — Entitlement — Means

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of spouses

Effect of immigration sponsorship agreement.

Family law --- Support — Spousal support under Divorce Act and provincial statutes — Time-limited award — Spouse to become self-sufficient

Effect of immigration sponsorship agreement.

Cases considered by *Martin J.*:

Achari v. Samy (2000), 2000 BCSC 1211, 2000 CarswellBC 1676, 80 B.C.L.R. (3d) 378, 9 R.F.L. (5th) 247 (B.C. S.C.) — followed

Anilevska v. Meheriuk (2001), 2001 ABQB 378, 2001 CarswellAlta 581 (Alta. Q.B.) — followed

Segal v. Qu (2001), 2001 CarswellOnt 2304, 17 R.F.L. (5th) 152 (Ont. S.C.J.) — followed

Thind v. Thind (1988), 14 R.F.L. (3d) 165, 1988 CarswellBC 579 (B.C. S.C.) — considered

Statutes considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

Generally — referred to

s. 15 — referred to

s. 15.2(6) [en. 1997, c. 1, s. 2] — considered

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Generally — referred to

Regulations considered:

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Immigration and Refugee Protection Regulations, SOR/2002-227

s. 135

RULING on wife's entitlement to spousal support.

***Martin J.*:**

Introduction

1 The issue in this case is the impact, if any, of an immigration sponsorship agreement on the obligation to pay spousal support following a short-term marriage.

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Facts

2 Mr. Nathoo was 49 years old and a Canadian citizen in December of 2002 when he married the plaintiff, then 37 years old, in Denton, Texas. The plaintiff had moved from India to Texas 7 years earlier to live with her brother. Following the civil ceremony, Ms. Nathoo continued to live in Texas while awaiting the processing of her immigration application for residency in Canada. Mr. Nathoo agreed to sponsor his new wife and as part of that process undertook to support her for a period of 3 years. As a result of Mr. Nathoo's sponsorship and undertaking, Ms. Nathoo was granted permanent residence status in November of 2003. There followed a religious ceremony to formalize their marriage according to their Ismaili faith on December the 27, 2003. Thereafter, the parties cohabited together until March of 2004, when they separated.

3 Ms. Nathoo then took up residence at the Calgary Women's Shelter, where she remains. She says she has no income and no job skills, and now asks that I award her spousal support in the amount of \$1,800.00 per month to allow her to establish and maintain a residence here.

4 Mr. Nathoo resists that application and says that his wife has family in Calgary with whom she could reside and who could support her until she is able "to get back on her feet." He also believes that she has work experience and could easily secure employment in Calgary and that her English skills are better than she admits. He advises that she is well educated, having received a B.A. from a university in India, and that she worked regularly, although illegally, while she was living in Texas. He also asserts that while in Texas the plaintiff sent money to her parents in Calgary and as a result has accumulated approximately \$50,000.00 which her family is holding for her. He believes that she committed immigration fraud and never intended to live with him as husband and wife for any significant period of time. Mr. Nathoo admits that he sponsored his wife's immigration to Canada and undertook to support her. However, he says that it was his understanding that she had to be working, studying, or be somewhat self-sufficient for this undertaking to be effective.

5 Finally, Mr. Nathoo advises that his income as an accountant/bookkeeper does not allow him to support his wife in the manner she now requests. He claims that his income over the past 3 three years has been in the range of \$15,000.00 per annum.

Analysis

6 The authorities are clear that in determining entitlement to spousal support, and perhaps also its duration, the existence of a sponsorship agreement is a relevant factor to be considered, together with the general principals applicable to spousal maintenance: *Anilevska v. Meheriuk*, 2001 ABQB 378 (Alta. Q.B.); *Achari v. Samy* (2000), 9 R.F.L. (5th) 247, 2000 BCSC 1211 (B.C. S.C.); and *Segal v. Qu* (2001), 17 R.F.L. (5th) 152 (Ont. S.C.J.).

7 With regard to the provisions of the *Divorce Act* which addresses the considerations to be taken into account in making an award for spousal support, (s. 15, and in particular s. 15.2(6)) it is usually difficult to find that the breakdown of such a short term (86 days) childless marriage has resulted in economic disadvantage. However, in this case, Ms. Nathoo left her brother's home in Texas to come here to live with her husband. In so doing both she and the Government of Canada were led to believe by Mr. Nathoo that no matter the provisions of the *Divorce Act*, he would support her for at least 3 years. The relevant portions of that undertaking are:

I undertake to provide for the basic requirements of the sponsored person and his or her family members who accompany him or her to Canada, if they are not self-support. I promise to provide food, clothing, shel-

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ter, fuel, utilities, household supplies, personal requirements, and other goods and services, including dental care, eye care, and other health needs not provided by public health care. I understand that the money, goods or services provided by me must be sufficient for the sponsored people to live in Canada.

I promise that the sponsored person and his or her family members will not need to apply for social for social assistance.....

I understand that the undertaking remains in effect no matter what may change in my life. For example, if I am divorced, change jobs, become unemployed, and/or go back to school, I will still be responsible to the sponsored person and his or her family members I am sponsoring or for whom I am cosigning.

I understand that, pursuant to section 135 of the Regulations to the *Immigration and Refugee Protection Act*, if I breach any of my sponsorship obligations I will be in default. I also understand that I will be in default if a government makes a payment that I have promised to repay in this undertaking.

8 With the breakdown of the marriage, Ms. Nathoo is apparently without the means or income to enable her to set up a residence of her own. It further appears that she has not yet been able to become self-sufficient, although notwithstanding her husband's sponsorship pledge, that remains her obligation. *Thind v. Thind* (1988), 14 R.F.L. (3d) 165 (B.C. S.C.); and *Anilevska v. Meheriuk*, *supra*.

9 These two factors are considerations upon which to order spousal support pursuant to s. 15.2(6) of the *Divorce Act*. The sponsorship pledge further supports that obligation. Indeed, in my opinion, where as here, the sponsored spouse is destitute and at risk of going on social assistance, that pledge, by itself and without reference to the *Divorce Act*, fixes the pledger with the obligation to honour his undertaking.

10 Therefore, in view of Ms. Nathoo's current predicament and her husband's promise to support her and keep her off social assistance, I find that she is entitled to spousal support.

11 With that issue decided, there are a number of matters in dispute regarding the assets of Ms. Nathoo and the income of Mr. Nathoo, which are not amenable to resolution on the basis of conflicting affidavits, the only evidence before me now. For example, Ms. Nathoo claims her husband has understated his income and has divested himself of some of his assets, notably his interest in a house for \$1.00, solely to better position himself to defend her claim for support. On the other hand Mr. Nathoo claims that his wife has accumulated approximately \$50,000.00 in savings and investments in Calgary which she is hiding to better qualify herself for spousal support.

12 I am unable to properly determine the true facts of this case solely on the basis of such conflicting affidavit evidence. Still, the parties ask that I do so rather than set the matter down for a hearing of these issues. That is a remarkable request which I am uncomfortable with. However, on reflection, I will do so but only an interim basis, ignoring the evidence of the parties' allegations of the other's assets, and based simply on my finding that Mr. Nathoo has the legal obligation to fulfil his promise to support his wife. That obligation may reasonably be discharged by him paying Mrs. Nathoo a lump sum of \$1,500.00 to allow her to secure rental accommodation, and thereafter \$1,400.00 per month.

13 I realize that the undertaking was for a term of 3 years, however, notwithstanding Mr. Nathoo's promise to care for his wife, with the collapse of their marriage Ms. Nathoo has a duty to become self-sufficient. She is an educated woman with workplace experience and I expect that she will be able to find employment and prop-

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erly support herself within a reasonably short period of time.

14 Therefore I direct that Mr. Nathoo pay his wife \$1,500.00 forthwith as a lump sum payment and \$1,400.00 per month, beginning March, 2005 and continuing on the first day of every month thereafter, up to and including October 2005. Thereafter I will review the parties' circumstances to determine if this support should continue or may be terminated.

15 One incidental matter remains. Mr. Nathoo apparently has Mrs. Nathoo's passport and some of her personal papers in his position. I direct that he return them to her forthwith.

16 Judgment accordingly.

Order accordingly.

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