
CANADA / JUDGMENT

A.R.C. v. M.M.C.

2003 BCSC 854

COURT

Supreme Court of British Columbia

DECIDED

2 June 2003

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2003BCSC0854

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.R.C. v. M.M.C.,

2003 BCSC 854

Date: 20030602

Docket: E014641

Registry: New Westminster

Between:

A.R.C.

Plaintiff

And

M.M.C.

Defendant

Before: The Honourable Mr. Justice Chamberlist

Reasons for Judgment

Counsel for Plaintiff:

I.G. Gibson

Counsel for Defendant:

J.E. Kovacs

Date and Place of Hearing:

May 8, 2003

New Westminster, B.C.

INTRODUCTION

- [1] These divorce proceedings come before the Court pursuant to Rule 18A of the Rules of Court. At the conclusion of the Hearing on May 8, 2003, I granted an Order for divorce. I reserved on the remaining issues which include:
- (a) Whether or not there should be an equal division of family assets;
 - (b) Identification of family assets and liabilities;
 - (c) Whether or not the Defendant should succeed on his claim for occupational rent;
 - (d) Whether or not a compensation payment should be made for a Ford truck disposed of by the Defendant;
 - (e) Whether or not a Toyota Corolla automobile, in the possession of the Defendant is a family asset;
 - (f) Whether or not a loan made by the Defendant to his daughter is a family debt to be adjusted between the parties.
- [2] In addition to these issues, the Defendant seeks an Order that he compensate the Plaintiff by way of spousal roll-over of an RRSP for her interest in his Rogers Sugar Pension. He also seeks an Order that the parties be given time to determine whether or not the Canada Pension Plan benefits to

which they are both entitled should be equalized at this time, or the parties given an opportunity to review the issue at equalization of the Canada Pension Plan benefits.

BACKGROUND

- [3] The parties married on August 26, 1989, and separated on May 4, 2001, resulting in an eleven to twelve year marriage. There had been an off and on again relationship between them for some four years previous to their date of marriage and there is some disagreement between the parties as to the duration of this prenuptial relationship.
- [4] Ms. A.R.C. is presently 56 years of age and Mr. M.M.C. is 54 years of age. It was a second marriage for both of them. Both the parties were employed during the marriage, although Ms. A.R.C. lost the employment she had enjoyed from the date of marriage in 1995 due to restructuring. She received a severance settlement and was unemployed for approximately four months during which she upgraded her computer skills and thereafter started working for the Teamsters Union, earning approximately \$44,000 per year. This was substantially more than she had earned at her previous employment.

- [5] Mr. M.M.C. was at the time of marriage employed by Rogers Sugar, where he had commenced employment on June 8, 1987. He was always during the marriage the spouse with the most income. The primary family asset being the former matrimonial home located at [] B.[] Place, Surrey, British Columbia was purchased on June 23, 1989 for \$102,000. The possession date was July 1, 1989. Although the parties were not married, the property was acquired by them in Joint Tenancy, and a mortgage in the principal amount of \$81,600 in favour of Vancouver City Savings and Credit Union was registered against the property with both parties executing that mortgage. It is not disputed that the deposit and monies required to complete in the amount of \$17,434.66 for a total of \$22,434.66 was contributed entirely by Mr. M.M.C..
- [6] The parties maintained separate bank accounts over the course of their marriage, save and except for one joint bank account which was used to make mortgage payments and pay the property taxes on the former matrimonial home. Each party contributed to the joint bank account, although Mr. M.M.C. contributed more than Ms. A.R.C.. In addition to the unequal contribution towards the mortgage obligation, Mr. M.M.C. effectively reduced the 25 year amortization of the mortgage to 11 years by making additional principal payments totalling \$46,945.71. This amount, together with the \$22,434.66 that he initially put in to the purchase price of the former matrimonial home should, he submits, result in a reapportionment of 65%/35% in the former matrimonial home in his favour. In addition the Defendant submits that an unequal distribution is also warranted by the fact that he paid substantially more for renovations to the home, and in particular, kitchen renovations that were made in 1990.
- [7] The parties separated in March 2001 as a result of a disagreement between them centering on selling the former matrimonial home to acquire another home where Mr. M.M.C.'s daughter and family would move in with them. Ms. A.R.C. submits that she was effectively ousted from the former matrimonial home due to a threat by Mr. M.M.C. that if she did not go along with this desired purchase of another home to assist his daughter and her family, there would be problems between them. She moved out of the former matrimonial home at date of separation and Mr. M.M.C. has remained in the home. Ms. A.R.C. has had to rent an apartment for approximately two years and claims occupational rent as a result of her being forced to leave the matrimonial home. Ms. A.R.C. seeks an equal division of all family assets and apportionment of their pensions pursuant to Part VI of The Family Relations Act. She also seeks compensation payments relating to assets disposed of or reduced in value since the date of separation and rejects Mr. M.M.C.'s position that the loan taken out to assist his daughter, three weeks after separation, is a family debt.

EQUAL OR UNEQUAL APPORTIONMENT OF FAMILY ASSETS

[8] Pursuant to s.56 of The Family Relations Act, each spouse is on the happening of either of the events set out therein, entitled to an undivided half interest in the family assets as a Tenant in Common. In the case at Bar, that event is the Order for divorce I granted on May 8, 2003, at the conclusion of this summary trial. Notwithstanding the presumptive division, s.65 provides as follows:

65(1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse.

[9] In *Murchie v. Murchie* 53 B.C.L.R. 157, 39 R.F.L. (2d) 385 (B.C.C.A.) the Court had occasion to deal with the concept of "unfairness" as used in s.65 of The Family Relations Act. In that case the Court determined that a trial court may look at the totality of the assets and the equality of ownership given by s.56, but that it was also proper to look at each individual asset and decide whether that asset should remain in equal ownership in Tenants In Common, or whether that would be unfair with the meaning of s.65. At para. 27 the Court stated:

I refer to the Judgment of this Court in *Baird v. Baird* 33 B.C.L.R. 77, [1982] 2 W.W.R., 25 R.F.L. 17, 130 D.L.R. (3d) 128, Seaton J.A., in giving the judgment of the Court, said [p.82]:

The Court should not set aside s.43 by (now s.56) substituting the division that in its view would be just. The Court is not authorized to interfere unless equal division "would be unfair" and then only if it is "unfair having regard to" the criteria set out in s.51. There is, in my view, no basis for finding unfairness in this case when one has regard to those provisions.

As I understand that passage, the trial Court and this Court ought not to be trying to settle on the distribution of assets that seems to the judges to be a just one. The Family Relations Act requires equality. It is only if there is real unfairness in equality that the Court is justified in interfering. Interference can only come through a finding that equality would be unfair.

[10] In the case of Murchie, supra, the marriage was, as in this case, of two persons in their forties which lasted for some 12 years. On the facts of that case the Court found there was no reason in relation to the duration of the marriage why equality of division would be unfair. At para. 29 the Court said this:

The husband had significant assets at the start of this marriage, including most particularly his dental practice and the associated management of that practice. As the trial judge said, he was at that time a person of means. In a comparatively short marriage of one or two years the fact that the asset was brought to the marriage by one of the spouses and not crated by the joint effort of the spouses would be a reason why equality of distribution of that asset in that marriage would be unfair. That parties marry in contemplation of each other's assets and by entering marriage they give up other opportunities of doing other things. In my opinion, when two people in their forties marry and stay married for the length of time which the parties have stayed married in this case, it is not unfair that both spouses should share equally in the assets brought into the marriage by each of them.

[11] Murchie, supra, was followed by Edwards J. in *Eby v Eby*, Victoria Registry No. 5939/30480 February 26, 1997. In that case the husband and wife were aged 69 and 57 respectively. They cohabited from 1982 until their marriage in 1986, except for a separation of several months in late 1985 and early 1986. They separated on March 13, 1996. As a result it was a marriage of some ten years and a cohabitational relationship of some 13 or 14 years. In that marriage, as in the case at Bar, the wife had brought no significant financial assets to the marriage.

[12] The husband's position in that litigation was that the family assets, aside from automobiles and household effects should be divided unequally in his favour in light of the fact that he contributed virtually all of the financial assets to the marriage. The Court rejected the submissions of the husband at paras. 25 and 26 stating:

25 Counsel for the wife referred to *Murchie v. Murchie* (1984), 53 B.C.L.R. 157 in which the Court of Appeal established that the Court is justified in interfering with the Family Relations Act requirement of equality of division of family assets only where "there is real unfairness in equality" noting (at p.164) "...parties marry in contemplation of each other's assets and by marriage they give up opportunities to do other things."

26 In the circumstances of this case, the factors to be considered are the duration of the marriage, the needs of each spouse to become or remain economically self sufficient and the circumstances of acquisition. The duration of the marriage was such that equality would not be unfair. An equal division will leave the husband self sufficient, although less well off, and promote the wife's self sufficiency. The fact of the husband was the sole financial contributor is not, in light of the observation in *Murchie* to which I have just referred, enough in itself to justify interfering with the equal division of these assets.

- [13] These comments apply equally and with the same force to the circumstances of this marriage. While there is no doubt that Mr. M.M.C. contributed more financially to the former matrimonial home, he at all material times had a greater income than Ms. A.R.C.. When she was working, however, at the job that she lost in 1995, she did contribute rateably more to the joint bank account used for mortgage payments than Mr. M.M.C..
- [14] It should also not be forgotten that title to the property was taken in both names prior to their marriage. Ms. A.R.C. had the same joint and several liability with respect to the mortgage that was registered against the property, although paid off earlier through Mr. M.M.C.'s efforts. Her financial contributions, and financial responsibility for the mortgage registered against the former matrimonial home, coupled with the duration of the marriage, in my view, confirms that equality in the apportionment of this particular family asset would not be unfair.
- [15] Mr. M.M.C. and Ms. A.R.C. did maintain separate bank accounts other than the joint account utilized for the mortgage payments. It is not surprising that on their second attempt at marriage they determined to have the financial independence they each put in place. Having put that independence in place by what appears to be an implicit mutual agreement, it seems to me that it would have been easy and straight forward for Mr. M.M.C. to request an agreement from Ms. A.R.C. that he would be compensated for any additional monies he had contributed to the joint matrimonial home. This was not done. Given the circumstances of this not being done and the maintenance of the joint account, I conclude there was no intention that he should be compensated. The longer this second marriage, the less important is the fact of unequal contribution. This is a marriage of many years. While one cannot say it is traditional in the organization of household income, it is nevertheless a second marriage where both parties opted for independent financial lives except for the family home.
- [16] The equal division of this asset worth some \$209,000 will leave Mr. M.M.C. self sufficient and it will also promote Ms. A.R.C.'s self sufficiency.
- [17] In the recent decision of *S.B.M. v. N.M.* 2003 B.C.C.A. 300, Mr. Justice Donald, speaking for the Court with respect to the division of assets said this starting at para. 23:
- [23] ...The legislature created a presumption of equality - a presumption that can only be displaced by demonstration that an equal division would be unfair. So the issue of fairness is not at large, allowing a judge to pick the outcome that he prefers from among various alternative dispositions, all of which may be arguably fair. He must decide, in accordance with the language of s.65(1), that an equal division would be unfair before he considers apportionment. Otherwise, although an equal division would be fair, a reapportionment could be ordered on the basis that is more fair, and that, in my opinion, is not what the statute intends.

[24] The correct approach was well described by Mr. Justice Lambert, for the majority (Madam Justice Southin dissenting, but not on this point) in *Lackhart v. Lackhart* (1989), 19 R.F.L. (3d) 359 at 362:

The general rule is the rule provided by the legislature in s.43 [now s.56]. The family assets must be divided equally. The exception to that rule occurs only where equality of division would be unfair, and then only when the unfairness arises from the specific factors set out in lettered paragraphs of s.51 [now s.65].

In my opinion, in this case, equality of division would not have given rise to unfairness. The question of whether equality is unfair is not to be decided on the basis of narrow distinction. The determining factor is whether equality is offensive to a sense of fairness and justice, having regard to the circumstances of the parties.

[18] I conclude that there is no unfairness with an equal division of the former matrimonial home.

IDENTIFICATION OF FAMILY ASSETS AND DEBTS

[19] The only issues that arose at trial with respect to family assets and family liabilities were firstly the loan by Mr. M.M.C. to his daughter three weeks after separation, the disposition of the Ford Pickup Truck to his nephew and the value of his RRSP.

[20] With respect to the loan to his daughter, I find that this is not a family liability. Although the loan may have been discussed with Ms. A.R.C. prior to separation, it cannot be said that it is a family liability. In fact, it was the concept of offering assistance to Mr. M.M.C.'s daughter and family that ultimately led to the break up of their marriage. It would be best if Mr. M.M.C. dealt directly with his daughter with respect to this liability which is his alone.

[21] Mr. M.M.C. disposed of a 1986 Ford Pickup Truck. He gave it to his nephew who had assisted with projects around the former matrimonial home. In his affidavit of February 20 he deposes that the Truck was in poor repair and that he had received estimates of \$2,000 worth of work needed to be done and that the most that he would get on a sale would be \$3,000 after the work was done.

[22] The only information that Ms. A.R.C. provides me relative to value is in her affidavit of February 21, 2003, where she states that it is unlikely that the Truck was only worth \$1,000 as the Defendant had just converted it to propane.

[23] I find the values to be speculative at best. For the purposes of family division of assets, I am not prepared to put any value on the 17 year old Pickup Truck given to Mr. M.M.C.'s nephew.

[24] Both Mr. M.M.C. and Mrs. A.R.C. had RRSPs with Investors Group at the time of separation. Mr. M.M.C.'s Investors Group RRSP has only \$450 value at the triggering event. He does concede that at the time of separation it had a value of \$3,200 but that he had collapsed a portion of it to replace furnishings and chattels for the former matrimonial home after Ms.

A.R.C. had moved out. There has been volatility in the value of these RRSPs since that time and I propose to put a present day value of \$3,200 on it. Ms. A.R.C., I believe, agreed at trial that she was not claiming a \$4,000 line-of-credit which she had at date of separation was a family liability.

- [25] At time of separation, the parties each had vehicles with them which were registered in their own names. Mr. M.M.C. had recently purchased a 2001 Toyota Corolla, which he had purchased using his savings account. He submits that the savings account was never used for a family purpose and that therefore it had not been identified as a family asset. In reality, however, both parties had vehicles which they would have used to take them to and from work and as such, notwithstanding the maintenance of individual accounts by them, was a family purpose and pursuant to the provisions of s.58 I find both vehicles to be family assets because both were used for the purpose of earning income that was available to the family unit.

MS. A.R.C.'S CLAIM FOR OCCUPATIONAL RENT

- [26] Ms. A.R.C. moved out of the former matrimonial home in May 2001. She states that she was forced to leave because of her fear of Mr. M.M.C. when he was drinking and the fact that he had rifles in the family home. There was no history of violence between the parties. Her fear I find to be unsubstantiated by the evidence, and merely being her interpretation of what he had said to her if they did not agree to assist his daughter and her family. I have concluded that she wanted to leave her husband and did accomplish that by moving out of the former matrimonial home. I do not find that she was forced to leave, but rather left on her own violation. The law with respect to occupational rent being ordinary property law is that a Joint Tenant could not claim compensation for occupation rent from the other unless it was shown that he or she had been ousted. (*Spicer v. Spicer*, [1985] B.C.J. No. 1746 Victoria Registry No. CA150-83 (C.C.A.) at para.7). In *Spicer*, supra, the Court at para. 7 went on to say:

There may be circumstances under the Family Relations Act where one would take into account the occupation by one joint tenant of the family home. One example comes to mind and that is where the occupant is claiming credit against the proceeds of sale for mortgage payments or maintenance expenses.

- [27] In *Donovan v. Donovan* Vancouver Registry No. D53585, [1986] B.C.J. No. 922, Paris J. had occasion to summarize the principles with respect to occupational rent in the family law setting at paras. 13-16 inclusive as follows:

13. I summarize the principles which emerge from the two foregoing cases as follows.
- (1) In the first instance a co-tenant out of possession could not claim occupational rent because he normally had the right to go back into possession.

- (2) However, such a claim would be considered by the Court if he had been required to vacate or was ousted from the property.
- (3) Furthermore, if the occupying tenant put forward a claim for expenditures made to the benefit of the property, (as in the case at Bar) he was required as a condition of that equitable relief to submit to a claim for occupational rent - and this, apparently, regardless of whether or not the non-resident tenant had vacated the property voluntarily.
14. Thus it would seem that even on the basis of ordinary property law the question of conduct at the time of separation, namely whether or not there had been "ouster", would be irrelevant in this case because a claim is put forward by the plaintiff for compensation for upkeep and mortgage payments made by him since separation.
15. In any event, it must be borne in mind that in an action under the Family Relations Act, when parties put forward "claims" for occupational rent and credit for mortgage payments and maintenance of the matrimonial home since the date of separation, they are not put forward on the basis of a cause of action based on ordinary property law. They are really put forward as factors which the Court may consider in deciding whether or not to exercise its discretion under s.51 of the Act to reapportion the shares of the property otherwise due each party. The Court may or may not give effect to such factors depending on all the circumstances of the case.
16. A fortiori it follows, it seems to me, that in a Family Relations Act action a Court will not often find it necessary to consider whether "ouster" occurred when deciding whether to make an allowance for occupational rent, and that is so even if principles of ordinary property law are borne in mind. It seems to me this approach is more in keeping with the spirit of s.51 of the Family Relations Act which was apparently meant to exclude the conduct of the parties as a consideration in the reapportionment of family assets.
- [28] Applying those principles to the facts of this case, I have concluded that Ms. A.R.C.'s claim for occupational rent for the past two years must be dismissed. Firstly no claim has been made by Mr. M.M.C. for expenses incurred by him. He has paid the property taxes for 2001 and 2002 and has also paid utilities. I understand that these expenses associated with the former matrimonial home are some \$3,300. In addition, he has been responsible for the maintenance of the home over the past two years.
- [29] Secondly, in the circumstances of this case, as I find that there was no "ouster" and given the accelerated pay-down of the mortgage by Mr. M.M.C., I am not prepared to make an allowance for occupational rent in favour of Ms. A.R.C.. In coming to this conclusion I am also mindful of the fact that although Ms. A.R.C. left the former matrimonial home in May 2001, she did not commence Court proceedings until July 2002, a full year after separation and did not at any time seek exclusive occupancy of the home herself. I also note that it was over six months from the time the action was commenced that Ms. A.R.C. produced her Property and Financial Statements. These additional factors, in my opinion, weigh heavily in not compensating Ms. A.R.C. for Mr. M.M.C.'s occupation of the former matrimonial home

to this time.

CONCLUSION

[30] I find therefore that the assets and debts in the parties' name, but excluding the former matrimonial home are as follows:

Ms. A.R.C.:

1989 Toyota Tercel: \$ 500.00

Investors Group RRSP: \$ 5,995.72

Royal Bank RRSP: \$ 2,880.50

Teamsters Pension Interest: \$21,900.00

Total value of family assets: \$31,276.22

I find the value of the family assets in Mr. M.M.C.'s name to be as follows:

Mr. M.M.C.:

Westminster Savings Credit Union RRSP: \$ 31,882.61

2001 Toyota Corolla: \$ 14,000.00

Rogers Sugar Pension (subject to
update): \$ 55,900.00

Investors Group RSSP: \$ 3,200.00

(Increased by \$2,750.00 on basis of
evidence that value was \$3,200 at
separation).

Total value of family assets: \$104,982.61

Less credit card balances for

family debt as at separation: -\$ 450.00

Total: \$104,532.61

[31] On this basis the total family assets are \$135,808.83 with an equal entitlement of each party to \$67,904.42, and a compensatory payment required to be paid by Mr. M.M.C. to Ms. A.R.C. in the amount of \$36,628.20, which I so order.

- [32] Mr. M.M.C. has requested that he retain his Rogers Sugar Pension entitlement in specie. I am prepared to allow that to happen provided that he initiates a spousal RRSP roll-over in accordance with Part 6 of the Family Relations Act and the Income Tax Act provisions. The parties are at liberty to address this issue by further application in the event of disagreement. Ms. A.R.C.'s Teamsters Pension will be adjusted between the parties in accordance with Part 6 of the Families Relations Act. The costs of valuing the pensions for division is to be equally shared by the parties.
- [33] Counsel for Mr. M.M.C. asked that I not make an order for division of their CPP benefits in accordance with that statute pending the parties' assessment as to whether or not it is in their best interests to do so. I agree that this matter should be looked into to determine whether it is in their best interests to order a division of their combined CPP benefits in accordance with the statute. I propose that I reserve my decision with respect to the CPP benefits until the parties have had an opportunity to determine what is in the best interests of Mr. and Mrs. A.R.C.. I will hear further submissions in this regard on the application of either party.
- [34] Other than the assets specifically described in these Reasons, the parties have in their possession family assets which have been with them since separation. It will be a term of the divorce that each party will retain assets, other than those discussed in these Reasons, without any claim thereon by the other.
- [35] That leaves the issue of the former matrimonial home. Ms. A.R.C. sought exclusive conduct of sale with respect to same. She has suggested that Mr. M.M.C. will be difficult to deal with respecting the sale of the subject property, and that she should therefore have sole and exclusive conduct of sale.
- [36] I do not agree. No previous application was made by Ms. A.R.C. for an order that the property be sold. There is nothing to indicate that there will be problems in having the property listed and sold. I order that the parties have joint conduct of sale with the net proceeds, after payment of real estate fees, legal fees, adjustments for taxes and utilities, to be apportioned equally between the parties.
- [37] Both parties have claimed costs of these proceedings. The greatest unresolved issues between the parties when they got to Court were the issues of reapportionment claimed by Mr. M.M.C. and occupational rent claimed by Ms. A.R.C.. There has been divided success and therefore I order that each party bear their own costs of the proceeding.

"E.G. Chamberlist, J."

The Honourable Mr. Justice E.G. Chamberlist

June 24, 2003 - Corrigendum to the Reasons for Judgment issued by the Mr. Justice E.G. Chamberlist advising that on page 19, paragraph 30, my findings of the value of the family assets in Mr. M.M.C.'s name should be changed from:

I find the value of the family assets in Mr. M.M.C.'s name to be as follows:

Mr. M.M.C.

Westminster Savings Credit Union RRSP

\$1,882.61

2001 Toyota Corolla

\$14,000.00

Rogers Sugar Pension (subject to update):

\$55,900.00

Investors Group RRSP:

(Increased by \$2,750.00 on basis of evidence that value was \$3,200 at separation).

\$3,200.00

I find the value of the family assets in Mr. M.M.C.'s name to be as follows:

Mr. M.M.C.

Westminster Savings Credit Union RRSP

\$31,882.61

2001 Toyota Corolla

\$14,000.00

Rogers Sugar Pension (subject to update):

\$55,900.00

Investors Group RRSP:

(Increased by \$2,750.00 on basis of evidence that value was \$3,200 at separation).

\$3,200.00

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/03/08/2003BCSC0854.html>

CASE PAGE <https://chat.esheria.ai/case-law/canada/a-r-c-v-m-m-c-2003>

Prepared on 26 October 2026 · Esheria