

CANADA / JUDGMENT

Bednarik v. Mair

2023 BCSC 2389

COURT

Supreme Court of British Columbia

DECIDED

4 December 2023

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

2023 BCSC 2389 Bednarik v. Mair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bednarik v. Mair,

2023 BCSC 2389

Date: 20231204

Docket: E212820

Registry: Victoria

Between:

Scott Edward Bednarik

Claimant

And:

Sundee Lee Mair

Defendant

Before: The Honourable Justice Morley

(Appearance via videoconference)

Oral Reasons for Judgment

(In Chambers)

Appearing on his own behalf

by videoconference:

S. Bednarik

Counsel for the Respondent

appearing by videoconference:

J. Stamm

Place and Date of Trial/Hearing:

Victoria, B.C.

November 14-17, 2023

Place and Date of Judgment:

Victoria, B.C.

December 4, 2023

- [1] THE COURT: These are oral reasons for judgment. The parties -- or anyone else for that matter -- can request a written version of these reasons from the registry. If that happens, I reserve the right to edit these reasons for clarity, consistency of expression, error correction, or by adding subheadings or citations. The results will not change nor will the substance of the reasons.

I. OVERVIEW

- [2] The claimant Scott Bednarik seeks an order of property division under Part 5 of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA") against the respondent, Sundee Mair, who, he says, is his former spouse. The principal assets are a house at 2539 Mill Hill Road in Langford owned by Ms. Mair (the "Home") and Mr. Bednarik's defined benefit pension with the Telecommunications Workers Pension Plan. Mr. Bednarik says he and Ms. Mair lived in a spousal relationship from June 1, 2010 to June 30, 2019. He seeks a share in the increased value in the Home since June 2010, recognizing that this would also mean a division of the family debts and of his pension under Part 6 of the FLA.
- [3] Ms. Mair's primary position is that the case should be dismissed on the grounds either that she and Mr. Bednarik were never "spouses" under the FLA or, if they were, that the proceeding is out of time. Under s. 198(2) of the FLA, unmarried spouses may not start a proceeding for an order of property division more than two years after the date of separation. This was extended for one year because of the COVID pandemic. Since this proceeding was filed on September 16, 2021, if the date of separation was earlier than September 2018, I cannot make an order for property or pension division. In her pleadings, Ms. Mair said the separation occurred in November 2016, although her evidence was that it happened in October 2015. Either way, the proceeding would be out of time if I accept this evidence.

- [4] If I conclude the parties were spouses and the separation date was later than September 2018, Ms. Mair raises a number of other issues, including asking for an unequal division of the family property and an award of spousal support. Mr. Bednarik also asks for an uneven division of family property and debts in his favour.
- [5] I do not find it necessary to address these issues because I have concluded that while the parties had a spousal relationship, it ended in October 2016 at the latest.

II. BACKGROUND FACTS

- [6] Ms. Mair bought the Home with the father of her two children, Frank Scheithauer, in 1991. In an April 2004 separation agreement with Mr. Scheithauer, Ms. Mair obtained full title.
- [7] This separation agreement involved compromise on Ms. Mair's part, including no spousal support and no sharing of Mr. Scheithauer's investments, despite his greater income.
- [8] By all accounts, Ms. Mair put a lot of money and effort into improving the Home.
- [9] Mr. Bednarik met Ms. Mair because their then-teenage sons played hockey together. They both recall a Halloween date in 2008, which developed into a romantic relationship.
- [10] In early 2010, a year or so into the relationship, Mr. Bednarik needed to move. He was living with his son, Corbin Bednarik. He had primary parenting responsibility. The lease was coming to an end where the Bednariks were living. Ms. Mair had a tenant in her downstairs suite. Ms. Mair lived with her son and daughter in the remainder of the house. At some point, Mr. Bednarik approached Ms. Mair about the possibility of moving into the Home with Corbin.
- [11] Mr. Bednarik and Ms. Mair disagree about how reluctant Ms. Mair was to have this happen, and about how much pressure Mr. Bednarik put on her. However, they agree that Mr. Bednarik and his son moved in on June 1, 2010.
- [12] The formal arrangement was that Mr. Bednarik was to be Ms. Mair's tenant and pay \$875 per month by cheque. The parties agree that this was market rental at the time, although it is not in the rental market of 2023. Mr. Bednarik paid for a Telus package for Internet and television for the entire household, which he was able to get as a Telus employee at a discounted rate. He contributed \$200 by cheque for groceries. There was some dispute about whether he also bought groceries for the entire household or just for himself and Corbin. The tenancy, in theory, gave Mr. Bednarik exclusive possession of the lower-floor suite.
- [13] However, at least in the early years, the actual living arrangements were different. I will get into those arrangements in more detail when I address the differences between the parties, but it is agreed that Mr. Bednarik and Ms. Mair shared a bedroom and carried on a romantic relationship. It is also agreed that many meals were in common with Ms. Mair, Ms. Mair's children, Corbin Bednarik and Mr. Bednarik. It is agreed that Mr. Bednarik did work around the home and, to some extent, around the yard.

- [14] There was varying evidence about when Corbin Bednarik moved out. I accept Corbin's own evidence that this was in summer 2012. Nothing very much turns on it.
- [15] At least initially, after Corbin left, Mr. Bednarik continued to share a bedroom with Ms. Mair, although he may have sometimes slept downstairs on the couch. The downstairs room remained available for visitors.
- [16] It is disputed how long the romantic relationship and this living arrangement continued. It is also disputed whether this relationship and living arrangement ever amounted to a "marriage-like relationship" within the meaning of the FLA. I will address these issues later.
- [17] What is uncontroversial is that on June 30, 2019, Ms. Mair provided an eviction notice, which Mr. Bednarik disputed on the grounds he was a "common law spouse" of Ms. Mair. The door connecting the suite with the rest of the house was locked shortly afterwards and Mr. Bednarik has lived solely in the suite since the beginning of July 2019, at the very latest. There is no real dispute that the latest possible date of separation would be June 30, 2019.

III. WERE THE PARTIES EVER "SPOUSES" UNDER THE FLA?

- [18] I will now turn to the issue of whether Mr. Bednarik and Ms. Mair were ever spouses.
- [19] Ms. Mair initially conceded in her pleadings that there was a marriage-like or "spousal" relationship between July 1, 2010, when Mr. Bednarik began living in the Home and November 2016, the date of separation in her original pleadings, and still as an alternative if I find a spousal relationship before that. At the beginning of trial, I allowed Ms. Mair to amend her pleadings to allege that there had never been a spousal, as opposed to romantic, relationship, so that this issue could be decided on its merits.
- [20] Section 3(1)(b)(i) of the FLA says a person is a "spouse" if the person has lived with another person in a "marriage-like" relationship for a continuous period of two years. Under s. 3(3) (a), once the two years has elapsed, the relationship retroactively begins on the date on which they started living together.
- [21] At the outset, I want to acknowledge that determining whether a romantic relationship is "marriage-like" is often difficult. Marriages differ and so, too, do "marriage-like relationships". The question of whether a relationship in which the parties never decided to get legally married is sufficiently "marriage-like" to give rise to the rights and obligations of "spouses" under the FLA is one that necessarily requires courts of law to impose a binary, legal determination on a spectrum of human relationships: *Broadbent v. Seguin*, 2023 BCSC 1560, at para. 39.
- [22] Mr. Bednarik makes the point that a relationship can be "spousal" or "marriage-like" even if the parties never intended to marry. I agree. The democratic decision made when the Legislature enacted the FLA and its predecessor was to treat "marriage-like" relationships the same as marriages (with certain differences as set out in the statute itself). This was in recognition of societal changes that took place decades ago. As the Court of Appeal

recognized in *Austin v. Goerz*, 2007 BCCA 586, both marriage and marriage-like relationships are the subject of social change. Marriages are different now from what they were in the 1950s -- or any later date for that matter -- and what is "marriage-like" also evolves.

- [23] Through counsel, Ms. Mair has made the equally valid point that not all romantic or sexual relationships are spousal or "marriage-like". I agree with this, as well.
- [24] The issue then is where on the spectrum the relationship between Ms. Mair and Mr. Bednarik lay.
- [25] In deciding whether a relationship was a marriage-like one, the Court of Appeal has directed trial courts to engage in a "holistic" inquiry in which all of the relevant factors are weighed and considered, but in which no particular factor is determinative: *Austin* at paras. 58 and 62. This is not the application of a checklist, but it is important to consider whether commonly-accepted "indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship are present or absent": *Weber v. Leclerc*, 2015 BCCA 492, at para. 24. The inquiry takes into account both social evolution of marriage and of the relationships that can be compared to it (are "marriage-like").
- [26] I also find it helpful to consider the reasons why the Legislature would impose a default principle of property, debt, pension division, and the possibility of spousal support on certain relationships and not others. One such reason, emphasized by the Court of Appeal in *Gostlin v. Kergin*, (1986) 3 B.C.L.R. (2d) 264 (C.A.) is the recognition that some unmarried people have voluntarily embraced permanent or lifetime obligations for mutual support which the Court of Appeal in *Gostlin* considered normal for married people. Ms. Mair puts a great deal of weight on this factor, and argues strenuously that she never voluntarily took on such obligations with respect to Mr. Bednarik.
- [27] However, voluntarily taking on lifetime obligations is not the only reason for property, debt, pension division, or the possibility of spousal support. Another reason illustrated by the famous case of *Pettkus v. Becker*, [1980] 2 S.C.R. 834 is that it can be inequitable for a party to benefit from the interdependence found in what we call "common law relationships" even if, like Mr. Pettkus in that case, they are not committed to a permanent relationship or to sharing their savings. In *Pettkus*, the Supreme Court of Canada enforced a constructive trust on the assets built up by the couple when legal ownership was in the hands of the male spouse, even though it explicitly found that there was no common intention to share. When the Legislature enacted the FLA and thereby extended a presumption of property division to unmarried spouses, it decided that the underlying social reality earlier recognized in *Pettkus v. Becker* needed to be reflected in statutory property division law, and sought to avoid the expensive and divisive inquiry into the relative contributions of the parties to assets and liabilities built up during the relationship. It instead set out a scheme of family and excluded property and debts with a presumption of equal division of the former and non-division of the latter unless this would be "significantly unfair."

- [28] *Pettkus and Moge v. Moge*, [1992] 3 S.C.R. 813 (which dealt with the compensatory basis of spousal support) both teach us that economic interdependence in the spectrum of romantic relationships should not be understood narrowly or with too great a focus on the kind of "choice" that is appropriate in commercial or consumer transactions. Under the old Family Relations Act, unmarried people had to "contract in" to the property division regime. In enacting the FLA, the Legislature rejected this model and the court should not reproduce it by too narrow a focus on intention in becoming "spouses". It would defeat the intention of the purpose of the statutory scheme if it did not apply to relationships like the one in *Pettkus v. Becker* because one party did not consider him or herself committed to sharing assets or (if otherwise appropriate) income.
- [29] As a result, subjective understanding by each of the parties is relevant, but not determinative. If one or both parties think of themselves as "spouses" that supports the inference that they were, while thinking otherwise supports the inference that they were not. However, it is also possible for people to be wrong about the legal character of their relationship: *Broadbent v. Seguin*, para. 9.
- [30] The factors associated with marriage-like relationships were identified by the Supreme Court of Canada in *M. v. H.*, [1999] 2 S.C.R. 3 at para.59 in the context of recognizing, for constitutional purposes, that those factors also existed in committed same-sex relationships, a recognition that was made before marriage, as such, was also opened up.
- [31] These factors include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. None of these factors are either necessary or sufficient to establish a marriage-like relationship and they do not constitute a "checklist". Rather, the issue is the existence of the kind of relationship that attracts the policy considerations underlying the family property and debt division, pension division, and spousal support provisions of the FLA.
- [32] I will discuss what the evidence tells me about each of the factors. In that discussion, I will be addressing only the years, 2010-2015, since those are the ones during which there is agreement that a romantic relationship existed and during which the parties lived in the same house. I will discuss the situation between October 2015 and June 2019 later when I come to my findings about the date of separation.

A. Shared Shelter

- [33] At least in the initial years after Mr. Bednarik moved into the Home in June 2010, there was a distinction between the ways the parties characterized the shelter arrangements for legal purposes and the way they worked in practice.
- [34] Mr. Bednarik had a verbal tenancy agreement with Ms. Mair that covered the suite that had been occupied by an earlier tenant before, but Mr. Bednarik and Ms. Mair slept in the master bedroom and he and his son had full access to the house. The downstairs was fully furnished and could operate as what Mr. Bednarik called a "man cave." Mr. Bednarik and his

son sometimes spent time there on their own. After Corbin Bednarik moved out, the room that was theoretically Mr. Bednarik's was available for guests and was used by them when they stayed. Ms. Mair would offer it as a room without consulting with Mr. Bednarik specifically first. While Mr. Bednarik would sometimes sleep on the couch downstairs, I find that the parties largely shared their living quarters.

- [35] Ms. Mair recalls a very explicit conversation with Mr. Bednarik in which he promised that if he was to come into the Home, he would leave if and when they broke up and she asked him to and that he would make no proprietary claim. She says she provided him a written tenancy agreement which he wilfully neglected to sign.
- [36] Ms. Mair's recollection in this respect is corroborated by Rachelle McGregor, her friend and client, whom she looked to for advice in tenancy and financial matters. Ms. McGregor recalls that Ms. Mair was reluctant when Mr. Bednarik asked to move in because she was worried about losing the Home. Ms. McGregor advised her that there was no law against dating a tenant, but that it would be important to document the tenancy relationship. Ms. Mair recounted to Ms. McGregor that she did have a conversation with Mr. Bednarik.
- [37] Mr. Bednarik recalled a conversation in the first year they were together about what would happen if they broke up. While he conceded on cross-examination that he said he would go, in his recollection, this was confined to if it happened within a year or so of the initial move and was not about what would happen in a longer-term relationship. He also denied that he said anything about foregoing a proprietary interest in the Home. However, Mr. Bednarik, in his final submissions argued that Ms. Mair wanted to deny him any interest in the Home from the very beginning, a submission that makes sense only if that is what she expressed from the outset. I find, therefore, that Ms. Mair communicated early on to Mr. Bednarik that she expected him to leave and not claim an interest in the Home if they broke up.
- [38] While I find that Ms. Mair communicated that she expected Mr. Bednarik not to claim an interest in the Home and to leave if requested, it is more difficult to say how Mr. Bednarik responded. Ms. Mair's testimony was that she is conflict-avoidant and Mr. Bednarik would divert the conversation. She clearly said "no" to his proposal to get on title, but it is difficult to tease out at this stage what Mr. Bednarik actually said in response to her statements that she expected him to move on if they broke up. I think it is probable that he gave her some comfort on this score, but I also think it is likely that he tried to avoid tying himself down too much if the relationship continued for a longer period of time.
- [39] It is worth noting that this conversation would have occurred before the FLA and therefore at a time when property division between unmarried spouses was governed by the action for unjust enrichment as set out in *Pettkus v. Becker*, although I have no reason to think the parties were aware of the exact contours of the law at the time.

- [40] In the absence of a written agreement, I do not think it is possible to be more precise about what was agreed to than that Mr. Bednarik agreed he would not unreasonably pursue an interest in the Home in light of their relative contributions to it.
- [41] I find, however, that the point of the formal agreement of arrangement of cheques marked "rent" and a separate suite was to support this oral agreement about how property would be divided in the event the relationship came to an end. It was important to Ms. Mair that Mr. Bednarik was paying rent and had his own area, however notional, because she was concerned that Mr. Bednarik not claim any ownership interest in the Home if they split up. It was therefore intended to convey a tenancy relationship separate from their romantic and sexual relationship.
- [42] Ms. Mair claims she tried to get him to sign a tenancy agreement, but he would not do it. Mr. Bednarik disputes this. But it is clear there was at least an oral agreement, however vague, one that Ms. Mair reasonably interpreted as giving her some comfort about a possible property division in return for her agreement to have him live there.
- [43] Legally, this oral agreement would be relevant to Ms. Mair's request for an order of unequal property division under s. 95(2)(b) of the FLA, but it is not decisive as to whether there was a spousal relationship. This oral agreement also goes to Ms. Mair's intentions, a matter I will discuss later, but in considering the first factor of "shared shelter", the more relevant consideration is how the parties actually lived than how they characterized their arrangement financially or legally.
- [44] I find, therefore, that during the relevant period, Mr. Bednarik and Ms. Mair lived with one another within the meaning of s. 3 of the FLA and they shared shelter in the sense relevant for determining whether their relationship was spousal. Of course, this factor in itself is not determinative.

B. Personal Behaviour and Social Activities

- [45] While there is controversy about when Mr. Bednarik and Ms. Mair's romantic/sexual relationship ended, there was no doubt that one existed in the early years after Mr. Bednarik moved into the home in 2010. This is, of course, only one consideration in determining whether there is a marriage-like relationship and not definitive. However, all other things being equal, it supports a finding that there was a spousal relationship.
- [46] Mr. Bednarik and Ms. Mair socialized with others as a couple during these years. They started a darts team which lasted four years. They also went bowling, played baseball and went on camping and other trips, including to see Ms. Mair's family in the Interior of British Columbia on a number of occasions. I will refer to this evidence in more detail when I get to "societal perceptions of the couple", but it is clear that they shared social activities together.

C. Children

- [47] Ms. Mair and Mr. Bednarik did not have children together, a factor that of course would weigh heavily in favour of the finding of a spousal relationship between two people living in the same house. That factor is not present in this case.
- [48] However, between 2010 and 2012, both of Ms. Mair's children and Corbin were living in the same household. For the remainder of the relevant time period, Ms. Mair's children continued to live there and interacted with Mr. Bednarik. I must consider whether this blended household supports the existence of a spousal relationship. I am not being asked to consider whether either of the parties stood in the place of the parent with respect to the children of the other during this time.
- [49] Ms. Mair and Mr. Bednarik clearly had some relationship with the other's children, although it is equally clear that it was not the same kind of relationship they had with their own child or children in the house. Although I did not hear much evidence on this subject, it also seems clearly distinct from the relationship that each child had with their biological parent not in the house.
- [50] While Sullivan Mair did not testify, both Corbin Bednarik and Lindsay Mair did. Corbin Bednarik clearly had a relationship with Ms. Mair in which they would discuss things that they would not immediately talk about with Mr. Bednarik. To be sure, Corbin did not live in the house that long. However, some familial relationships continued with Ms. Mair. When Corbin left initially, he expressed his conflict with his father to Ms. Mair. Many years after he left the household, Ms. Mair would invite Corbin to dinner and talk about what he would do for his dad for holidays or birthdays. Whether she stood in the place of a parent to him or not, they had a "familial" relationship in a broad sense.
- [51] Lindsay Mair's relationship with Mr. Bednarik has become fraught, but that should not cast a retroactive spell on the fact that they had a familial, if not parental, relationship initially. Many years later, she referred to him as her "stepfather" in passing in a podcast, although she would not accept that as an accurate statement of his status, saying that it was just easier than setting out the whole reality.
- [52] The existence of this familial relationship is supported by Ms. Mair and Mr. Bednarik, as well. A major source of tension between them was Mr. Bednarik's view that Ms. Mair's children did not do enough around the home, a view he continued to express at trial and a view that Ms. Mair clearly resented. This kind of conflict is more likely to occur in a spousal or "marriage-like" relationship than in a true case of a landlord and tenant merely dating.
- [53] In broad terms, I would say the relationship of each of the parties to the other's children seemed consistent with what would generally occur in a second marriage or marriage-like relationship where children from previous relationships at these ages were in the same house. This supports the proposition that there was a marriage-like relationship in these early years.

D. Services

- [54] During these years, Mr. Bednarik and Ms. Mair provided each other with services. Ms. Mair did most of the cooking and Mr. Bednarik and Corbin Bednarik ate with her and her children or sometimes ate separately after filling up their plates. Mr. Bednarik says he also cooked sometimes, washed the dishes and helped in preparation and I accept that this was true at least at this stage in the relationship. Mr. Bednarik contributed \$200 per month towards the groceries Ms. Mair bought. There was some dispute about the extent to which he also purchased groceries for the common household, but what is relevant to me is that this aspect of the household economy was common.
- [55] Mr. Bednarik also did handywork around the house, including work in his trade as an electrician, but also other things. While Ms. Mair claimed that in later years Mr. Bednarik would not do much and would respond to her requests with, "Not my house, not my yard," she agreed that Mr. Bednarik was a hard worker in the earlier years.

E. Economic Support

- [56] It is common ground that throughout their relationship, Ms. Mair and Mr. Bednarik kept their finances separate. They did not have access to each other's bank accounts, they did not see each other's tax returns or have any other financial relationship beyond what Mr. Bednarik paid as "rent" and his contribution to the groceries. Mr. Bednarik made a consumer proposal during this period and Ms. Mair was not involved in that in any way. There was no economic relationship beyond that implicit in sharing shelter and providing each other household services. Thus, this factor speaks against a finding of a marriage-like relationship. However, it is not definitive because marriages and marriage-like relationships can coexist with separate finances, especially where there is economic interdependence in a broader sense.
- [57] One anomaly in this respect is that Ms. Mair received extended health and dental benefits as Mr. Bednarik's spouse from 2018 on, including during a period when all parties agree the spousal relationship was over. No records from before 2018 were available, but Ms. Mair was unable to provide any rational explanation for why she would start receiving extended health and dental benefits after she said the relationship was over and I am prepared to make an inference on a balance of probabilities that she likely was named as Mr. Bednarik's dependent for his extended health and dental plan many years before.
- [58] Mr. Bednarik also claimed he added Ms. Mair as his beneficiary for life insurance purposes, but he did not provide documents and there is no evidence that he ever made Ms. Mair aware of his intentions. I place no weight on this point.

F. Societal Perception of the Couple

- [59] Mr. Bednarik called several friends and co-workers who testified that he and Ms. Mair were a couple. John Lovelace worked with Mr. Bednarik at Telus and they became friends. He confirmed that Mr. Bednarik viewed himself as in a "couple" with Ms. Mair and he socialized with Mr. Bednarik and Ms. Mair as a couple, a point he reaffirmed on cross-examination.
- [60] Similarly, Scott Bentley, a friend and co-worker of Mr. Bednarik, recalled socializing with the parties as a couple at a golf tournament and Telus Christmas parties. Ms. Mair and Mr. Bentley's wife, Tracy, "got along great" according to him and the four of them joined a bowling league and would attend each other's houses after bowling or darts. Like Mr. Lovelace, Mr. Bentley reaffirmed that the parties appeared to be a couple to him and declined to make invidious comparisons between their relationship and his own on cross-examination.
- [61] Mr. Richard Beil testified as a close acquaintance of Mr. Bednarik, who had known him before he met Ms. Mair. Again, he speaks of socializing with the parties as a couple, including on camping trips in which they would share a tent. Mr. Beil had some recollection of the parties' living arrangements at the Property. At the time he visited, it was clear to him that the "suite" was being treated just as a basement and that the parties lived together in the entire house. On cross-examination, he agreed that he was not aware of any discussion between the parties of getting married, but considered they were very similar to many people he knew in long-term "common law" relationships.
- [62] I will discuss the duration of this relationship as perceived by Mr. Bednarik's witnesses in the next section concerning date of separation, but they compellingly suggest to me that the parties were viewed as a couple during the first five years or so of living in the Home.
- [63] Tracy Easter, Ms. Mair's sister also testified. Mr. Bednarik and Ms. Easter's husband got along quite well. Ms. Easter saw them as a couple a number of times, up to and including her 55th or 56th birthday party. While she characterized the relationship as "merely" a boyfriend/girlfriend relationship, my overall impression from her evidence was that prior to 2015 it was more. Mr. Bednarik was Ms. Mair's partner for extended family occasions of which there were a number in those years. Ms. Easter said she had spoken to Ms. Mair before October 2015 about Mr. Bednarik's relationship with Sullivan and Lindsay and that the nature of these conversations meant she was not surprised when they broke up. In my view, this kind of conversation is less likely to occur in the context of a casual dating relationship, even if extended, than one that has "marriage-like" characteristics.
- [64] Ms. Mair's witnesses who testified that Mr. Bednarik and Ms. Mair were not a couple in their perception did not, in my view, have much that was persuasive to say about the period before 2016.

- [65] Ms. Mair emphasized that she would refer to Mr. Bednarik as her "boyfriend". I accept this, but I do not give it much weight as suggesting a lack of societal perception of them as "common law" since adult heterosexual couples in spousal relationships will often refer to themselves as "boyfriend/girlfriend", there being no generally accepted term for the status in ordinary English in Canada.
- [66] I find that, to extended family and friends, they were a couple and their friends and extended family would have considered it impertinent to deny that this relationship was as significant as a married relationship. This is an important respect in which this case is different from that of *Broadbent v. Seguin*, a case heavily relied on by Ms. Mair, since in that case the relationship found not to be spousal was not a public one.

G. Subjective Perception

- [67] I agree with Ms. Mair that there is no evidence that she and Mr. Bednarik ever discussed getting married, but that, of course, is not determinative of whether the relationship was "marriage-like".
- [68] I accept that Mr. Bednarik viewed himself as being in a "common law" spousal relationship once he moved in.
- [69] Ms. Mair's subjective perception of the relationship was more complicated.
- [70] Ms. Mair denied she was "common law", but I think that primarily means she did not think she was agreeing to any kind of property division if they split up. I accept Ms. Mair's evidence that she never wanted Mr. Bednarik to have an interest in the Home and was concerned about that from the outset. Mr. Bednarik, in his final submissions, effectively conceded that point by saying "Ms. Mair [had] from the start of our relationship a premeditated plan to ensure that I would not receive a fair financial settlement if we ended up breaking up". Without accepting the pejorative characterization of her position, this is a concession that Ms. Mair, for her part, never voluntarily took on an obligation of lifelong support or conceived herself of having a relationship that implied such obligations.
- [71] To the extent that is implied by "common law status", I accept that she did not want that status with Mr. Bednarik. However, I do not think all marriage-like relationships necessarily have this form. For example, I do not think any court in British Columbia would find that the relationship in *Pettkus v. Becker* was not "marriage-like" because Mr. Pettkus never had any intention to support or share with Ms. Becker.
- [72] Ms. Mair clearly expected that Mr. Bednarik would contribute to the commonweal, including by working around the Home. She did not deny that they were committed to each other until she decided to break up with him. Ms. Mair never denied that their relationship was of an "indeterminate" duration and, by all accounts, it lasted for at least seven years.

[73] In my view, while Ms. Mair never had an intention to share her Home or take on lifelong support obligations and was indeed worried about any implications on this score, and while she may at various times have had or expressed doubts about the future of a relationship with Mr. Bednarik, I take her denials that they were "common law" to be a retrospective imposition of her current conflict on the reality at the time. Her subjective commitment was complicated but was consistent with a marriage-like relationship.

H. Conclusion

[74] In making a "holistic" determination of whether two people's relationship was sufficiently "marriage-like" to constitute a spousal relationship, it is important not to lose sight of the purposes of the FLA. If two people are found not to be "spouses", then none of the relevant remedies under the FLA are available at all: if they are, unequal division can be considered, written agreements will normally be enforced, and spousal support entitlement may or may not be established. Therefore, a finding that parties are not spouses should only apply to those relationships in which the purposes of the FLA are inapposite, and we should not draw the line so narrowly as to shut out relationships where expectations and interdependence of the kind the Legislature was concerned with are likely to arise.

[75] Another way of putting the same point is, just as marriages vary in the modern world, so, too, do marriage-like relationships.

[76] Ms. Mair and Mr. Bednarik did not have a relationship that was "like" a traditional marriage, but I find they had a "marriage-like" relationship when the better comparator is a less traditional contemporary marriage. Ms. Mair never had any intention of sharing property, especially the Home, with Mr. Bednarik and believed she obtained an oral agreement to this effect, albeit a vague one. This does not, however, mean they were not in a marriage-like relationship. Just as a marriage is consistent with such an oral agreement (or even a written prenuptial agreement), so too is a marriage-like relationship. At least in the early years, they shared a household and they presented to extended family and the community as a couple. They were involved in the lives of each other's children in a way similar to people in a second marriage with children of a similar age. Their finances were kept separate, but this is not unusual in non-traditional marriages.

[77] Taking into account all of the factors and making a "holistic" determination, I find that they had a spousal or marriage-like relationship in the first years after they moved in together.

IV. WHEN DID THE PARTIES SEPARATE?

[78] However, that leaves open the issue of when they separated. Ms. Mair pleads that it was by November 2016; Mr. Bednarik says it was not until the end of June 2019.

[79] Section 3(4) of the FLA says the following:

For the purposes of this Act,

- (a) spouses may be separated despite continuing to live in the same residence, and
- (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[80] It is only necessary that one of the parties form, communicate, and/or act on the intention to separate. Anyone may separate for any reason. Separation is, or at least can be, a unilateral decision. It is not a decision a spouse has to justify to the other party or to the court.

[81] While the FLA directs trial judges to consider a communication of an intention to separate permanently and an action demonstrating that intention, that is not to say these are the only things to consider.

[82] When parties dispute separation, courts called upon to resolve this dispute typically focus on the generally accepted characteristics of marriage or marriage-like relationships, including uncommunicated intention to remain in such a relationship, continuing sexual involvement, carrying on activities in public, sharing financial resources and sharing significant family events: *Sachdeva v. Sachdeva*, 2013 BCSC 313, para. 87; *Nearing v. Sauer*, 2015 BCSC 58, para. 56. Sexual involvement, or lack thereof, is relevant, but not conclusive: *Nearing* at para. 56.

[83] In *S.A.H. v. I.B.L.*, 2018 BCSC 544, at para. 55, Madam Justice Shergill helpfully framed the following questions to organize the analysis, while noting that the determination of a date of separation is a very fact-specific exercise:

- (a) Did at least one spouse have the intention to separate?
- (b) Was the intention to separate communicated to the other spouse?
- (c) Was the intention to separate acted upon? In other words, using generally accepted characteristics of marriage or marriage-like relationships, did one or both spouses take action that is consistent with the separation, such as:
 - i. Changing how they behaved with each other in public; and,
 - ii. Changing how they behaved with each other in private.

[84] As I will explain, in my view, the best interpretation of all the evidence is that Ms. Mair communicated her intention to separate permanently to Mr. Bednarik on October 24, 2016, (or possibly exactly one year earlier). That immediately changed their private behaviour. They were no longer sexually intimate. Mr. Bednarik no longer slept in Ms. Mair's bedroom and their spaces in their house became more delineated, although he still accessed the

upstairs of the house from time to time for almost four more years. Ms. Mair later took other actions demonstrating her intention to separate permanently, including exploring selling the Home in early 2017. While the parties remained friends until June 2019, they attended some important family events together and Mr. Bednarik had some access to the rest of the house until that time, my conclusion will be that the parties were separated as of the end of October 2016 (or possibly a year earlier depending on the true date of a weekend trip to Kelowna I am about to describe).

A. The Weekend of Ms. Easter's Birthday

- [85] Ms. Mair testified that she split up with Mr. Bednarik on the Monday after the weekend of her sister Tracy Easter's birthday, which would make the separation date October 26, 2015 (if, as she and Ms. Easter said without great confidence, the birthday was in 2015) or October 24, 2016 (a date more consistent with Ms. Mair's pleadings and with Lindsay Mair's testimony). On balance, I conclude that it was probably 2016, but it ultimately does not matter for the legal issues in this case, since either way the separation occurred too long ago for Mr. Bednarik to bring his claim. Unless Ms. Mair's evidence is radically false, the separation must have occurred before May 2017 when she provided Mr. Bednarik with a notice of rent increase and explored selling the Home with a realtor. I will describe these events later, but for now note that they place a limit on the year in which the birthday trip could have occurred.
- [86] I have three accounts of this weekend: from Ms. Mair, Ms. Easter, and (briefly and somewhat obliquely) from Mr. Bednarik who conceded he had an argument with Ms. Mair about his driving on the way back to Victoria.
- [87] It is common ground that Ms. Mair and Mr. Bednarik visited Tracy Easter, Ms. Mair's sister, and her family in Kelowna on the occasion of Ms. Easter's birthday. There is no dispute this visit occurred, or that her birthday is October 25. Mr. Bednarik and Mr. Easter got along particularly well and Ms. Easter reports that it was, outwardly at least, a "fun weekend".
- [88] Ms. Mair testifies that she had some doubts about the future of the relationship before this weekend. Mr. Bednarik had repeatedly expressed views that Ms. Mair was too lax in the way she raised her children and, from Ms. Mair's perspective, he acted in a demeaning way toward them. She also testified that she was concerned about the amount he drank and his spending habits.
- [89] I note that it does not matter whether Ms. Mair was correct in her perception of Mr. Bednarik. It is equally irrelevant if Mr. Bednarik had or has criticisms of her child-rearing, drinking, or spending. I am not called upon to determine whether those are as legitimate, less legitimate, or more legitimate than Ms. Mair's complaints about Mr. Bednarik. Everyone has a right to separate. Their reasons only have to be good enough for them. What matters to me is only when Ms. Mair decided to separate.

- [90] There is corroboration that Ms. Mair was angry about the way Mr. Bednarik treated her children. In her text messages with Mr. Bednarik in 2019, when he made a remark about making sure Lindsay's dinner is "kept HOT!" -- a remark she clearly interpreted as a dig at Lindsay for not doing enough around the house -- she angrily texted back, "Once an asshole always an asshole."
- [91] I accept Ms. Mair's testimony that this was already a source of friction in the fall of 2015 or 2016. Mr. Bednarik points out that Ms. Mair's testimony that she found out later that Mr. Bednarik engaged in "demeaning" comments to Ms. Mair's children was not supported by Lindsay Mair, who instead attributed the deterioration in their relationship to what she viewed as retrograde attitudes on the part of Mr. Bednarik to LGBT people. It is not for me to decide whether Ms. Mair was right about her concerns, just whether she had them. As a result, I do not need to resolve this discrepancy. I do not think it has any implications for credibility: Ms. Mair was clearly sincere about what she said. The relevant point was that in the fall of 2015 or 2016, she was having doubts about the relationship based on her perception of the relationship between Mr. Bednarik and her children and her concerns about his drinking and spending.
- [92] Ms. Mair testified that this crystallization of her intention to end the relationship occurred the Monday after Ms. Easter's birthday. The couple left Kelowna early to get to the ferry. Ms. Mair's perception was that Mr. Bednarik was moody, feeling the effects of staying up late drinking with Mr. Easter the evening before. Mr. Bednarik drove Ms. Mair's vehicle, a four-cylinder Honda. Ms. Mair says that he started "raging on me" and was unpredictable. She said he drove well above the speed limit out of anger with her, causing her to fear for the car. She testified that, when she told him to slow down, he would pick up speed. She found that disrespectful and threatening. In her recollection, he was verbally hostile and then just silent, but did not slow down.
- [93] According to her testimony, in the hours of highway driving, she decided she had to get home and then end the relationship.
- [94] When they finally got back to Victoria, Ms. Mair remembers telling Mr. Bednarik, "We are done! We are done with this relationship. And you are certainly never driving my car again." She says he just looked at her and closed the door between the downstairs suite and the rest of the house.
- [95] According to Ms. Mair, that was the end of any kind of sexual or romantic relationship. From that point on, she testified, "he knew better than to try to touch me."

- [96] In the spring of 2017, she said she tried to persuade Mr. Bednarik to move on, but he would not leave the Home. On May 1, 2017, she presented him with a rent increase to encourage him to leave, but she says he reacted angrily and refused to pay it. She spoke with Lindsay Mair, who was still living there, about selling the Home and Lindsay agreed. She contacted a realtor acquaintance, Jean Omelchenko, about selling the Home, but called that off when Mr. Bednarik's daughter died tragically that same month.
- [97] There is no question that Ms. Mair and Mr. Bednarik continued to be friends until the final breakdown of relations in June 2019. Ms. Mair went with Mr. Bednarik to his daughter's funeral. They continued to share Thanksgivings and Christmas celebrations along with their children and they all shared gifts on those occasions.
- [98] A review of text messages from the first half of 2019 shows that, at that point, they were sometimes eating together and socializing and did each other favours. An example would be that Ms. Mair picked Mr. Bednarik up after a medical procedure in March 2019 (I note, though, that no "relationship" is given on the form). While Mr. Bednarik says this was because they continued to have a spousal relationship, Ms. Mair says it was just a friendly relationship which she continued partly out of sympathy for Mr. Bednarik after his daughter's death and partly out of a desire to avoid conflict with him.
- [99] Ms. Mair took a few years before she made attempts to get Mr. Bednarik to move out, but by 2019 she said she was trying to get him to do that. After what she considered a number of warnings, she ultimately served him with the eviction notice on June 30, 2019.
- [100] Ms. Mair acknowledged she continued to be on Mr. Bednarik's benefits as a spouse, something she concedes was a "mistake". But she was clear that no sexual, romantic or spousal relationship continued after she made it clear that the parties were "done".
- [101] Mr. Bednarik agreed that there was a fight as a result of his driving on the way back from visiting the Easters. He did not recall her saying that they were "done" and, in any event, claimed the relationship continued more or less unchanged. In particular, he testified that they slept in the same bed until October 2018 and did not agree on cross examination that the sexual relationship had ended years before that.
- [102] I favour Ms. Mair's account for the following reasons:
- (a) Her description is detailed and specific and, other than the precise year, could hardly be a matter of misremembering. By contrast, Mr. Bednarik's memory was vague. Ms. Mair's account could only be wrong if she deliberately fabricated the entire story which is inherently less likely than a failure of memory.
 - (b) While it might seem that Mr. Bednarik could also not be just mistaken about whether the relationship continued for several years, I find that this is plausible in the unique circumstances of this case. Mr. Bednarik underwent a major depression when his daughter died in May 2017 and he indicated he had some depression even before that. By all accounts, during his depression he did not want to socialize and would often stay on his own in the

basement suite. Ms. Mair felt bad for him and had a conflict-avoidant style. Even if Ms. Mair clearly communicated her intention to separate, Mr. Bednarik could well have been more or less deliberately obtuse to this reality. Ms. Mair's conflict avoidance and desire not to cause him more pain plausibly allowed him to continue in denial until June of 2019.

- (c) In any event, if I had to choose between concluding that Ms. Mair fabricated her account of communicating her separation to Mr. Bednarik and Mr. Bednarik fabricating the continued relationship, the overwhelming bulk of the objective and independent evidence favours Ms. Mair's account.

[103] Having reviewed the text messages between Ms. Mair and Mr. Bednarik, all of which date to the first half of 2019, they are certainly consistent with a merely friendly relationship, occasionally punctuated by anger and frustration on Ms. Mair's part about Mr. Bednarik's remarks about her parenting or his placing tape on a security camera. There is nothing intimate or romantic in them, although they are often friendly, sometimes jokey and occasionally hostile. I recognize that this tone is consistent with a marriage-like relationship in what would be its tenth (and final) year. But at minimum the text messages do not support Mr. Bednarik's claims about the continuation of the relationship. They are compatible with Ms. Mair's account.

[104] More decisively, there are a number of objective indicators that any spousal relationship was over well before June 2019.

[105] For example, I have a document that Ms. Mair provided Mr. Bednarik a Notice of Rent Increase on May 1, 2017. This is an objective indication of an intention to separate and of steps taken further to it. Ms. Mair recalls providing it and Mr. Bednarik angrily refusing to pay. Mr. Bednarik does not recall this at all. I find that she gave it to him. It provides clear and objective and documentary evidence that Ms. Mair intended to separate at least by May 2017 and took steps on this intention.

[106] The bulk of the testimony I received from other witnesses supports Ms. Mair's account.

[107] First, Ms. Easter, a witness who seemed to have generally positive recollections of Mr. Bednarik, was clear that Ms. Mair immediately told her that she had broken up with Mr. Bednarik after the birthday weekend. She also testified that Ms. Mair never again referred to Mr. Bednarik as a romantic partner and they did not appear to be so when she and her husband visited in December 2017. She recalled Mr. Bednarik sleeping on the couch downstairs at that time. Ms. Easter's evidence was unshaken in cross-examination.

[108] Nicola Wallace testified that she became very close friends with Ms. Mair in the summer of 2016 and that for the next two years or so they saw each other very often as single best friends. She met Mr. Bednarik as a friendly downstairs neighbour, but he was clearly not a romantic partner in her observation. Ms. Wallace said that Ms. Mair eventually opened up about her past relationship with Mr. Bednarik, about the distress of the loss of his daughter and of her agitation at the conflict between Mr. Bednarik and her own children. The

relationship, according to Ms. Wallace, was clearly in the past. She was well situated to observe this, although she is not completely independent as a close friend of Ms. Mair.

- [109] Ms. Wallace acknowledged she had a bad memory for details, but as Ms. Mair's closest friend during the period 2016 to 2017 she could not really have failed to remember if Ms. Mair and Mr. Bednarik were in what appeared to be a spousal relationship. Mr. Bednarik conceded that when Ms. Wallace came to the Home, he did not interact with her, but said this was because she and Ms. Mair liked to talk and he found it irritating, possibly because of his depression. While I accept that Mr. Bednarik is remembering his reaction to Ms. Wallace's visits at dinner, I do not think it provides an explanation for why Ms. Mair's closest friend would observe her as single during those years, nor does it explain Ms. Mair's disclosure to Mr. Wallace about her view of the state of the relationship.
- [110] I note parenthetically that Ms. Wallace's testimony supports the earlier 2015 date for separation, but I do not put too much weight on this since dating is inherently one of the most difficult things for a witness to do in these kinds of cases, at least without an objectively determinable anchor of a specific life event. In any event, as I have already observed, it does not fundamentally matter to the issues in this case whether the separation was 2015 or 2016.
- [111] Jean Omelchenko was clearly an independent witness. She was the realtor Ms. Mair asked to take a look at the Home for evaluation in May 2017. At that point, Ms. Mair was, according to the common testimony of Ms. Omelchenko, Ms. Mair, and Lindsay Mair, exploring the possibility of selling the Home, a plan she gave up because of the death of Mr. Bednarik's daughter. Ms. Omelchenko confirmed that this happened and also confirmed that Ms. Mair told her about the relationship in the past tense.
- [112] In his submissions, Mr. Bednarik explained Ms. Omelchenko's evidence as Ms. Mair "trying to make people believe" that she had broken up with him before this was, in fact, true, but this does not make sense unless Ms. Mair had in fact broken up with him. The act of exploring selling the house with a realtor is an act in furtherance of separation. Ms. Mair, like anyone else, had the right to separate from her spouse if that is what she chose to do. By expressing this intention to Ms. Omelchenko, she was taking steps both verbal and potentially transactional to further that intention.
- [113] Erich Tworushka, who was on a common darts team with Mr. Bednarik and Ms. Mair in the early 2010s, testified that he was told about the couple's breakup at the time the darts team stopped playing (which must have been 2014 or 2015). Although he did not specifically say so, I find that he could only have been told this by Ms. Mair. I do not give a great deal of weight to his evidence in terms of precise dates since he was understandably vague about these, but he clearly was talking about a disclosure a number of years before 2019.
- [114] Rachelle McGregor also recalled a conversation with Ms. Mair when she referred to the end of the relationship with Scott Bednarik in around 2015.

- [115] Lindsay Mair testified that the romantic relationship with Mr. Bednarik ended in 2016. She was living in the house and would have been in close contact with her mother.
- [116] By contrast, none of Mr. Bednarik's friends and co-workers who testified were really able to corroborate his contention that he and Ms. Mair remained a couple up until 2019. While some of them testified that Mr. Bednarik only told them about a breakup at that time, their observations of Mr. Bednarik and Ms. Mair as a couple all occur before the end of 2015.
- [117] The only witness other than Mr. Bednarik himself who had both had an opportunity to observe whether Ms. Mair and Mr. Bednarik remained a couple and testified that they did was Corbin Bednarik.
- [118] I find that Corbin Bednarik was a candid and honest witness. His impression was that the parties remained in a marriage-like relationship until his father told him they split up in the summer of 2019, although Ms. Mair had earlier told him that she wanted Mr. Bednarik to leave. He resided briefly downstairs in the home in 2018 after he broke up with his then-girlfriend, paying rent. He thought that during this visit, Mr. Bednarik stayed "upstairs", although he qualified this on cross-examination as being "as far as I know". Still, he would, presumably, have observed if Mr. Bednarik, in fact, was in the downstairs suite on the couch.
- [119] Corbin Bednarik testified that while Mr. Bednarik and Ms. Mair were never a particularly physically affectionate couple (at least in front of him), they seemed to continue their ordinary level of affection when he visited them through 2017 and 2018. He seems to have visited relatively often and Ms. Mair and he continued to exchange gifts up to 2018.
- [120] In my view, Corbin Bednarik's observations are sound as far as they go. However, these observations are consistent with a continued friendship in the course of which Ms. Mair did not want to either hurt Mr. Bednarik's feelings more than necessary or engage in conflict with him and with Mr. Bednarik being in denial about the true status of his relationship.
- [121] Corbin's testimony makes it clear that his father continued to carry on with him as if he were still in a spousal relationship with Ms. Mair up to June 2019. This is also consistent with Mr. Bednarik's conversations with his co-workers. I infer that the most likely reason is that after his depression as a result of his daughter's death, Mr. Bednarik simply did not come to terms with his new relationship status with Ms. Mair until the events of June 30, 2019, made this undeniable even to him.
- [122] In summary, Corbin Bednarik's testimony does not, on an analysis, support Mr. Bednarik's view that the relationship continued past the weekend at the Easters, although it does support an inference that Mr. Bednarik was either unwilling or unable to come to terms with this fact.
- [123] Mr. Bednarik attacks Ms. Mair's credibility based on what he says are discrepancies and representations to public authorities in the past. An example is that Ms. Mair apparently did not seek a permit from the local government when she put in a septic field. Mr.

Bednarik also accused Ms. Mair of irregularities on her taxes, although he was unable to establish any. Ms. Mair conceded that she continued to draw on Mr. Bednarik's extended health and dental benefits as a "spouse" years after they separated, which she said was a "mistake". Mr. Bednarik asks me to draw negative inferences about her credibility.

- [124] I do not think any of these points establish that Ms. Mair is more likely than anyone else to lie under oath in this proceeding. I am certainly conscious that memory can be coloured by interest and by retrospect and I do not think either Mr. Bednarik or Ms. Mair were completely immune from this, but none of what Mr. Bednarik has advanced makes me specifically wary of Ms. Mair's testimony. Her demeanour was straightforward and she was willing to admit facts that went against her and mistakes on her part.
- [125] The canonical summary of the factors to be considered when assessing credibility are set out by Dillon J. in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296.
- [126] *Bradshaw v. Stenner* makes a critical distinction between the "veracity or sincerity" of a witness and the "accuracy" of the evidence that the witness provides. Equally sincere witnesses give very different versions of events. The ultimate question is not whether people are subjectively honest, but whether their testimony is a reliable indicator of what happened.
- [127] The art of assessment involves various factors, including (a) the ability and opportunity of each witness to observe events; (b) the firmness of the witnesses' memory (which should not be confused with the confidence with which it is expressed); (c) the ability of the witness to resist the influence of interest to modify their recollection; (d) whether the witness' evidence harmonizes with independent evidence that has been accepted; (e) whether the witness changes their testimony during direct and cross-examination; (f) whether the witness' testimony seems unreasonable, impossible, or unlikely; (g) whether a witness has a motive to lie (or, more generally, has or exhibits a bias that may shape even sincerely-held memories); and, the demeanour of the witness generally. Ultimately, as *Bradshaw* and the much earlier case of *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) teach, the validity of any individual witnesses' evidence depends most crucially on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.
- [128] Ms. Mair and Mr. Bednarik of course had the same opportunity to witness events. Mr. Bednarik's ability to process what was actually happening may have been impaired somewhat by the deep depression he suffered on his daughter's death, which may have made it more difficult to be truly realistic about the state of his relationship. Both of them gave different dates of separation at different stages of this proceeding. Ms. Mair in her pleadings said the relationship ended in 2016, but in her evidence it was 2015. The reason her dates were firmer at trial was because she could anchor it in her sister's birthday, an event everyone agreed Ms. Mair and Mr. Bednarik went to. I do not think this is entirely unusual in a case of this nature, but it of course suggests some caution about her memory

and indeed the memory of virtually every other witness for unanchored dates. Both Ms. Mair and Mr. Bednarik were consistent between direct and cross-examination and of course both have an interest in the result I come to.

- [129] The decisive issue in a finding of credibility, then, is how well the evidence of each of the parties harmonizes with that of independent witnesses whose evidence I do accept. On this basis, I find that Ms. Mair's account of the end of the relationship fits much better with the overall evidence.
- [130] The only real evidence to the contrary is Mr. Bednarik's own testimony. As I have noted, it was vague about the time after 2016. Mr. Bednarik agreed that when he was depressed, he stayed very much to himself. While he asserted sexual relations continued when that was put to him in cross-examination, he did not say this in direct examination. In my view, it is quite likely that he was in denial about the end of the relationship.
- [131] There is some evidence that supports the possibility he deliberately claimed the relationship went on later than it did. In particular, in 2016, he took a picture of pictures in the master bedroom, which the most plausible explanation is that he needed to prove the existence of the relationship at that time. It is hard to see why he would do this if he did not anticipate the possibility of litigation about his status in the Home. On the other hand, the fact that he continued to represent himself as in a relationship with Ms. Mair to Corbin and to his co-workers until the summer of 2019 makes me conclude that it is more likely that he was in denial than that he is being consciously deceptive. It is possible that he was getting ready for litigation at the end of 2016, but Ms. Mair's sympathy to him when his daughter died persuaded him (wrongly) that the relationship was continuing.
- [132] In any event, I do not need to decide whether Mr. Bednarik was in denial about the end of the relationship or is consciously fabricating. Either way, his evidence on this subject is unreliable.
- [133] As a result, I find that the parties separated no later than October 24, 2016.
- [134] The consequence is that Ms. Mair can keep her interest in the Home and Mr. Bednarik can keep a full interest in his pension and has no liability for spousal support.
- [135] Section 198 of the FLA requires an application for property division, pension division or spousal support be brought within two years of the date of separation (for unmarried spouses). As I have discussed, this was extended by one year as a result of the COVID-19 pandemic, but this does not change the fact that no property division, pension division or spousal support can take place since the time to bring an application for any of those orders expired on October 24, 2018.
- [136] Limitation periods may sometimes appear harsh, but they allow people to rely on what appears to be a settled state of affairs. They also avoid having to make decisions based on very old evidence. Both of these considerations are at work in this case. The trial made clear the difficulty of reconstructing dates and living arrangements many years after they

changed. Ms. Mair organized her life around the assumption that she had full ownership of the Home, an assumption the law permitted her to make two years after she broke up with Mr. Bednarik. She declined to sell, a decision she could have reconsidered, and she put more money into the Home. A fair arrangement involving spousal support, pension division, and splitting the increased value of the Home after 2010 that may have been available at that time is not available now.

[137] Under s. 87(b)(i) of the FLA, the date of valuation of family property and debt is the date of trial. This means that in the case of excluded property that has accrued in value since the relationship started, the approach is to value the property at the date of trial and subtract the value at the date the relationship began (in this case June 2010): *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272 at para. 69-71. That, of course, can result in a windfall to a party who made no claim on excluded property within the two years if its value has increased significantly.

[138] In any event, s. 198 of the FLA is the law and it is unambiguous. Proceedings for orders for property division, pension division, and spousal support must be brought within two years of separation, except in circumstances that do not apply here. Mr. Bednarik did not bring these proceedings within the two years of this date of separation. They must therefore be dismissed.

V. ORDER

[139] I therefore order that:

- a) the claim and counter-claim are dismissed;
- b) the claimant shall deliver exclusive possession of the entire house, including the basement suite to the respondent on or before March 1, 2024;
- c) the interim order requiring the claimant to pay the amount of \$875 on the first of the month by e-transfer to the respondent shall continue until the claimant delivers exclusive possession; and,
- d) the issue of costs is adjourned.

[140] I give the parties leave to arrange either written or oral submissions before me and I direct Mr. Stamm to do that before January 26, 2024.

[141] I would like very briefly to talk about the issue of exclusive occupation and the date for it.

[142] Mr. Bednarik, can you say how long would it take you, in your view, realistically to obtain a rental?

[143] SCOTT BEDNARIK: Obtain what, sir?

[144] THE COURT: A rental, to be able to find a new place?

- [145] SCOTT BEDNARIK: Well, the -- this next month being Christmas and how things are out here and me being so strapped for cash, I'll be lucky if I find something in three months.
- [146] CNSL J. STAMM: I have heard Mr. Bednarik's submission about three months. I do not believe he has paid his December rent yet, or has he?
- [147] SUNDEE MAIR: Yes, he has.
- [148] CNSL J. STAMM: Okay, I understand that this is a very difficult situation and the rental market is very difficult, but I am concerned about Ms. Mair getting stiffed on three months' rent because, again, as I expressed during the trial, I'm concerned that Mr. Bednarik's insolvent and so to add three more months of potential non-payment of rent, again, and I don't -- if Mr. Bednarik is going to go bankrupt, I don't know how the court can craft an order that would survive that if this does come to pass. So that's my concern here, Justice.
- [149] THE COURT: Well, I had no evidence that he is about to go bankrupt. So I will make the order that Mr. Bednarik provide exclusive possession of the entirety of the house, including the suite, on or before March 1, 2024, and then I will continue the existing interim order that rent be payable on the 1st of the month by e-Transfer.

"J. G. Morley, J."

The Honourable Justice J. G. Morley

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/23/23/2023BCSC2389.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bednarik-v-mair-2023>

Prepared on 26 October 2026 · Esheria