

CANADA / JUDGMENT

Byrne v. Byrne

2015 BCSC 318

COURT

Supreme Court of British Columbia

DECIDED

3 March 2015

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2015 BCSC 318 Byrne v. Byrne

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Byrne v. Byrne,

2015 BCSC 318

Date: 20150303

Docket: E45278

Registry: New Westminster

Between:

Kenneth Earl Byrne

Claimant

And

Barbara Lynn Byrne

Respondent

Before: The Honourable Mr. Justice Armstrong

Reasons for Judgment

The Claimant, Kenneth Earl Byrne:

In Person

The Respondent, Barbara Lynn Byrne:

In Person

Place and Date of Hearing:

New Westminster, B.C.

October 6, 7, 2014

Place and Date of Judgment:

New Westminster, B.C.

March 3, 2015

- [1] The parties separated after a seventeen year relationship during which they accumulated a number of assets and substantial debt. These reasons will address their different claims concerning the allocation of debt, a division of their assets and whether the respondent is responsible for retroactive child support.
- [2] During their marriage, the parties acquired two motor vehicles, a family home, a trailer, a pension and RRSPs. Their debts were composed of student loans, bank loans, and credit card debt. The claimant's parents also made monthly payments to him over several months in 2010 and 2011 and they consider those advances as a loan which they expect him to repay. One question in this action is whether the money from his parents is a family debt that should be paid equally by the parties.
- [3] After separation the parties continued to live in the family home with their children. They reached an agreement where one parent would be absent from the home when the other parent was caring for the children. Because the respondent earned a higher income, the claimant expects the respondent to pay retroactive child support because he occupied the home and cared for the children for more time than the respondent.
- [4] The parties have agreed on the disposition of a number of issues including divorce, allocation of some debt, and the division of the respondent's pension. The parties also agree that a divorce should be granted; that the claimant will retain his truck and the trailer and will be responsible for the debt incurred to purchase those items; that the respondent will reimburse the claimant for her share of the family debts; and that the respondent will retain her SUV.
- [5] The balance of the issues to be decided are:
 - (a) is the respondent's SUV excluded family property?
 - (b) is the money given to the claimant by his parents a family debt to be divided between the parties?
 - (c) is the respondent liable to the claimant for retroactive child support?
 - (d) should there be an order requiring the parties to attend counselling?

Background

- [6] Both parties testified at the trial and the claimant's parents testified about money they had given their son to help him through some difficult financial times.
- [7] The claimant is 47 years old and the respondent is 44. The parties began living together in April 1995 and were married January 3, 1998. They separated on September 4, 2012.
- [8] There are two children of the marriage; T, born March 2008 and C, born April 2002.
- [9] The respondent is a paramedic with the British Columbia ambulance service.
- [10] During their marriage, the claimant studied to obtain a PhD and is currently a research scientist with FP Innovations working in the forest industry.
- [11] The claimant's income under the Federal Child Support Guidelines, SOR/97-175 [Guidelines] is \$73,500 and the respondent's corresponding Guidelines income is \$93,106. Child support and parenting issues were resolved in Provincial Court Proceeding # F15909/Port Coquitlam. An order was made August 6, 2013.
- [12] The only issue in this trial concerning the children was the claimant's request for retroactive child support from November 2012 to June 2013.
- [13] Each party filed form F8 financial statements that were referred to in the evidence. The claimant's statement was sworn November 8, 2013 and the respondent's was sworn February 12, 2014.
- [14] The value of the assets in the possession of each party are as follows:

Claimant

Respondent

2010 Ford Escape

\$21,000

2012 Chevy Silverado

\$21,000

2011 R-Vision Trailer

\$14,930

Scotia Bank RRSP

\$926

FP Innovations Retirement Plan

\$3,323

Scotiabank RRSP

\$3,491

Joint Chequing Account

\$664

Scotia Bank chequing account

\$653

Scotia Bank RESP

\$5,628

Scotia Bank RRSP

\$926

\$1,036

Scotia Bank RRSP

\$3,491

\$2,989

BC Ambulance Pension

Value to be determined

[15] The parties listed the following debts:

Claimant

Respondent

GMAC (Silverado Loan)

\$26,574

\$26,574

TD Bank Loan (R-Vision trailer)

\$25,835

\$25,835

Bank of Nova Scotia Loan

\$58,368

\$51,249

Mastercard

\$5,000

\$0.00

Student Loan

\$10,916

\$0.00

Family Loan to claimant's parents

\$16,200

\$0.00

[16] The claimant said he had a small pension resulting from work he did at BCIT during the marriage. He did not give many details about this asset but, it will also be divided equally.

[17] The disharmony in the relationship developed over time due to the parties differing expectations. The claimant, a research scientist, was delayed in achieving full time employment after finishing his degree and his pace of study coupled with difficult financial circumstances were a problem.

[18] The respondent began working as a paramedic in the early years after their marriage and was the primary source of income for the family, while the claimant was studying to obtain his doctorate degree. Eventually, she earned considerable income from her overtime assignments; this supplemented the family finances. As time passed, she grew resentful at the claimant's failure to become fully employed until 2010.

[19] In July 2010 the parties purchased a residence on Western Drive in Port Coquitlam. Their down payment was \$26,000 and the balance of \$520,000 was borrowed and secured by a first mortgage.

[20] The parties also renovated the house; those costs exhausted their other available resources and resulted in stress developing between them.

[21] The house was sold in June 2014 and after paying the mortgage balance the parties owed \$4,123, which was paid by the claimant.

Issues

Divorce

[22] The parties agree that a divorce should be granted based on the fact that the parties have lived separate and apart for more than one year. The respondent seeks an order that after the divorce, her name should be Barbara Lynn Crockatt.

- [23] I am satisfied the evidence supports the position of both parties and a divorce is granted to be effective 30 days after this pronouncement. In making this order, I am satisfied that appropriate arrangements have been made for the support of the children as set out in the Provincial Court order. I will also grant the order respecting the respondent's name.

The Silverado Truck and R-Vision Trailer

- [24] At the conclusion of submissions the parties agreed on the valuation of the Silverado truck and the R-Vision trailer for the purposes of this trial, as well as the outstanding debt incurred to purchase these items.
- [25] The respondent made payments on the loans for both vehicles until June 2013.
- [26] The first loan was a TD Auto Finance loan with an outstanding balance of \$26,209 as of September 2012. The second loan was from RBC with an outstanding loan balance of \$28,614; the combined balance was \$54,913. Since separation, the principal paid on the TD loan was \$326 and on the RBC loan \$2,726; the combined principal payments were \$3,052. Therefore the loan balance due as of June 2013 was \$51,861. The respondent agrees to take responsibility for one half of this amount, i.e. \$25,930.50.
- [27] This amount is offset by the value in the truck and trailer which will be retained by the claimant.
- [28] The parties therefore agree that the claimant will retain the truck and trailer and the respondent will pay \$7,500 as her share of auto finance loans as of the date of separation.

The Ford Escape

- [29] The respondent's father died in 2011 and she was a named beneficiary of a life insurance policy in the sum of \$50,000. At the time, the respondent needed a vehicle to travel to and from her work. After the respondent's father died her car broke down and she needed to replace her car; she was aware at this time that she was a beneficiary under her father's life insurance policy. As a result, the respondent and claimant searched for a vehicle for the respondent and on November 5, 2011 purchased a 2010 Ford Escape for \$30,904. They obtained a loan from the Bank of Montreal to fund the purchase.
- [30] On November 10, 2011 the respondent received \$50,527 from the Standard Life Assurance Company and on November 23, 2011 she repaid \$30,865 of the loan.
- [31] The vehicle was originally registered in the claimant's name but on December 15, 2012 he transferred the vehicle to the respondent.
- [32] The respondent contends that the Ford is excluded property under s. 85 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. She argues that this vehicle was purchased in anticipation of receiving the life insurance proceeds paid after her father died and she used the insurance money to repay the vehicle purchase loan taken to buy the Ford Escape.

[33] The claimant argues that the Ford was purchased in his name in November 2011 and 10 months before the parties separated. Prior to separation it was used by the family for various trips and he claims the Ford is not an excluded asset simply because the respondent used the insurance monies to pay off the purchase loan.

[34] The FLA provisions concerning family property and excluded property are as follows:

Family property

84(1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
- (b) after separation,
 - (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either, or
 - (ii) a beneficial interest acquired by at least one spouse in property if the beneficial interest is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either.

Excluded property

85(1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (b) inheritances to a spouse;
- (b.1) gifts to a spouse from a third party;
- (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
- (d) money paid or payable under an insurance policy, other than a policy respecting property, except any portion that represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;

- (e) property referred to in any of paragraphs (a) to (d) that is held in trust for the benefit of a spouse;
 - (f) a spouse's beneficial interest in property held in a discretionary trust
 - (i) to which the spouse did not contribute, and
 - (ii) that is settled by a person other than the spouse;
 - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

Family debt

86 Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

[35] In the circumstances, I am satisfied that the respondent's acquisition of the Ford Escape was made from money derived from a life insurance policy as contemplated in s. 85(1)(d) of the FLA. The respondent's entitlement to the money paid under the policy did not represent any compensation for losses to both spouses or lost income of a spouse.

[36] It appears that the respondent's insurance money was used to pay the debt to acquire the Ford Escape. The evidence did not indicate that the money was used to acquire or improve any other assets that might be excluded. When it was purchased, the Ford Escape was subject to charge in favour of the Bank of Montreal after the purchase completed. As Harvey J. said in *Asselin v. Roy*, 2013 BCSC 1681, at para. 222, s. 85 does provide for a tracing of excluded funds but not beyond the asset which was acquired from the disposition of the inheritance. That principle is apposite to this case; the insurance proceeds were used to pay the loan taken to buy the Ford Escape. The vehicle was encumbered by the security taken by the lenders and this security was released after the respondent paid the debt. As a result, the Ford Escape is property derived from the insurance proceeds and as such it is an excluded asset under s. 85(1)(d) and (g) of the FLA.

[37] In the result, I have concluded that the 2010 Ford Escape is not to be included in the division of family property.

The Family Loan

- [38] The claimant testified that in October 2010, he was in transition from school to work. At around this time the parties had begun renovations to their home and the expenses were becoming higher than they could afford. The claimant's father, Mr. Byrne Sr., agreed to lend him money at the rate of \$1000 every two weeks. Mr. Byrne obtained a line of credit and made payments into a joint account held with the claimant. Mr. Byrne Sr. said the arrangement was "done as a loan - no question about it". There were no terms of payment for the loan. Neither Mr. Byrne nor, Mrs. Byrne, spoke with the respondent about the loan. No document was ever signed as evidence of the loan nor was an express promise made to repay the amount given to the claimant.
- [39] From October 6, 2010 to May 6, 2011, Mr. and Mrs. Byrne made twice monthly payments to the claimant. The amount confirmed as advanced by them was \$16,200.
- [40] I accept that Mr. and Mrs. Byrne gave the claimant money to assist him in the transition from life as a student to an active member of the workforce. The issue is whether payment of these funds constituted a gift or loan. If it is a loan it will be characterized as a family debt pursuant to s. 86 of the FLA and subject to division between the parties.
- [41] Payments from a parent to an adult child are generally not presumed to be gifts; they are presumed to form a resulting trust in which the parent keeps an interest in the property. However it is open to a party claiming the transfer is a gift to rebut the presumption of a resulting trust by providing evidence to that effect: *Pecore v. Pecore*, 2007 SCC 17.
- [42] In *Pecore*, the Supreme Court of Canada addressed how the presumptions operate in the context of transfers from a parent to an adult child:
- (a) the focus in any dispute over a gratuitous transfer is the actual intention of the transferor at the time of the transfer (para. 5);
 - (b) When the transferor's intent is unavailable or unpersuasive, the presumptions of advancement (a gift) and resulting trust are useful guides and will apply (para. 23);
 - (c) gifts from parents to independent adult children are not presumed to be gifts; rather the presumption of a resulting trust applies (para. 36);
 - (d) there may be circumstances where a transfer between a parent and an adult child was intended to be a gift and it is open to the party claiming that the transfer is a gift to rebut the presumption of resulting trust by bringing evidence to support that claim (para. 41);
 - (e) the burden on the party claiming a gift was made is proof on a balance of probabilities (para. 43).

- [43] Several factors can be examined to distinguish between loans and gifts in the family context. These were addressed in *Kuo v. Chu*, 2009 BCCA 405 at para. 9 where the Court of Appeal adopted the factors described in *Locke v. Locke*, 2000 BCSC 1300 as applicable to the question of whether a loan or gift was intended:
- (a) Whether there were any contemporaneous documents evidencing a loan;
 - (b) Whether the manner for repayment is specified;
 - (c) Whether there is security held for the loan;
 - (d) Whether there are advances to one child and not others, or advances of unequal amounts to various children;
 - (e) Whether there has been any demand for payment before the separation of the parties;
 - (f) Whether there has been any partial repayment; and,
 - (g) Whether there was any expectation, or likelihood, of repayment.
- [44] In *M.F.R. v. B.P.R.*, 2010 BCSC 1063, the court concluded that no loan was made in circumstances where there were no contemporaneous documents or promissory notes produced to explain why money had been advanced. In *M.F.R.* repayment was never discussed with the wife. No security was given, no demand was made before separation, and no money was repaid to the husband's father.
- [45] In the case at bar, the respondent submits that the money Mr. and Mrs. Byrne paid to the claimant was a gift. The respondent knew that the claimant was receiving money from his parents but did not understand there was any agreement he was obliged to repay them. The indicia supporting her argument are as follows:
- (a) There was no evidence of a discussion about a loan or a promissory note and no details regarding the interest payable or the term of the alleged loan;
 - (b) There is no information regarding the timing or manner for repayment of the alleged loan before the Court;
 - (c) There was no security held for the alleged loan;
 - (d) There is no evidence regarding advances or loans to other children;
 - (e) There was no demand for repayment before or after the parties separated; and,
 - (f) There was never a repayment in whole or in part during or after the marriage.
- [46] I accept the uncontradicted evidence that Mr. and Mrs. Byrne borrowed money against a line of credit to assist their son. They seem to have no doubt that they were lending the money to the claimant, Although the presumption of resulting trust would usually operate to constitute these payments as a loan since it was made by parents to their adult child, there is a paucity of evidence to the effect that corroborates their contention that this was indeed a

loan. No other evidence corroborates the claimant's assertion or that of his parents, that this was money he is agreed to repay his parents.

- [47] I do not accept the claimant's assertion that the respondent was made aware of this loan and affirmed their obligation to repay his parents. However, that factor is not determinative of the question of whether a loan was made.
- [48] On the balance of probabilities and in the absence of evidence described in Kuo concerning parental loans, I am satisfied that the claimant's parents advanced this money without expectation of repayment of principal or interest and that their current desire for repayment was more likely triggered by the separation of the parties.
- [49] As a result, I conclude that the money paid by the Byrnes to their son is not a family debt as described in s. 86 of the FLA.

Tax Refunds

- [50] The claimant contends that he should be credited with a disproportionate contribution to the joint bank account by reason of an income tax refund he received after the separation date on March 22, 2013. He said there was a deposit of \$5,672 on that date but acknowledged that a portion of this was the respondent's income tax refund at the same time. His tax refund was \$4,155 and her refund was \$1,516.87.
- [51] Both cheques were deposited to their joint account and used to pay family debt. On the same day, March 22, 2013, the sum of \$5,083.91 was applied to a Canadian Tire MasterCard account which I accept was a family debt.
- [52] I am satisfied that at the date of separation, the parties had remitted income tax that would eventually be used to pay the tax owing at the end of the year.
- [53] Income tax refunds are classified as family property in the FLA by virtue of s. 84(2)(c)(i). There is some uncertainty concerning the characterization of tax refunds received after separation.
- [54] In *M.S. v. W.S.*, 2006 BCCA 391, which was decided under the former Family Relations Act, R.S.B.C. 1996, c. 128, Saunders J.A. for the Court of Appeal addressed this issue:
- [35] In *Tyabji v. Sandana* (1994), 112 D.L.R. (4th) 641, 2 R.F.L. (4th) 265 (B.C.S.C.), Spencer J. observed that a tax refund may be a family asset in some cases, but not in the case before him. I agree with that analysis. There is, I think, no hard and fast rule on the character of a tax refund; it will depend upon the circumstances of the case.
- [36] In this case, the 2002 refund was received while the parties both resided in the matrimonial home and it appears to have been treated in the family's customary way of pooling it with other assets. So, too, the 2003 refund was put into the pool of assets from which monies were drawn to support the family. Both refunds pre-date the triggering event. I see no practical difference between treating these refunds as income, or as family assets, because they were,

in any event, divided when the trial judge divided those assets that existed as at the date of the triggering event, being the order for dissolution of the marriage.

- [55] I am also satisfied that the monies held by Canada Revenue in the tax account of each party as of September 2012 were family property as defined by s. 84 of the FLA as at the date of separation. Monies that were paid into their tax accounts after that date would not be included in the division of family property. There was no accounting evidence or opinion evidence to analyse the parties' respective positions. On the basis that the parties separated two thirds of the way into 2012 I conclude that \$2,784 (or two thirds of the claimant's refund) was family property and \$1,015 of the respondent's refund was also family property. Thus, \$1,371 of the claimant's refund money that is not family property was used to pay family debt and \$500 of the respondent's tax refund that was not family property was also used to pay family debt. In order to achieve an equal division of those assets, the respondent is required to pay the claimant \$435.50.

Retroactive Child Support

- [56] After separation in September 2012 the parties continued occupying the family home. The parties paid household expenses on a 60/40 basis because her income exceeded his income by \$20,000 - \$25,000 per year. Some of their expenses were paid out of their joint account and others out of personal accounts. The house was sold in May 2013 for \$505,000. There was a \$4,123 shortfall paid by the claimant.
- [57] The respondent worked substantial overtime hours after separation. The parties arranged their affairs such that when she was working he would occupy the home and care for the children and when she was in the home, he would be absent. Both parties stayed with friends when they were away from the home.
- [58] The claimant contends that he cared for the children 78% of the time between September 2012 and May 2013. He contends that the respondent was obliged to pay him child support based on the fact that he cared for the children for more time than the respondent.
- [59] He said that on November 24, 2012 he put the respondent on notice that he would be seeking retroactive child support.
- [60] The claimant relies on *Bjorkman v. Bjorkman*, 2011 BCSC 1522. In that case, the respondent had paid substantial amounts of family expenses including mortgage and debt servicing. After separation the claimant had remained in the family home and the respondent paid a significantly disproportionate amount of the expenses for seven years.
- [61] In the end, Voith J. accepted that the respondent was to pay \$34,500 after crediting all of the expenses he had incurred on behalf of the household during his seven year absence. However, he also paid the majority of the children's special and extraordinary expenses under s. 7 of the Guidelines and Voith J. concluded that he had discharged his child support obligations.

- [62] There is a distinction between this case and Bjorkman. In this case the respondent continued to live in the house on a schedule designed to divide their time with the children equally. The claimant cared for the children for some time exceeding one half of the total parenting time; nevertheless the parties shared the house on an equal basis and both contributed to the financial needs of the family but the respondent's contributions exceeded the claimant's.
- [63] The claimant produced a calendar reflecting his view that he cared for the children approximately 78% of the time. The respondent testified that she was in the home on a four day four day schedule and cared for the children when she was there. It appears likely that the claimant cared for the children more than half of the time, but both parties shared the house and parenting of the children.
- [64] The Guidelines provide:
8. Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

Shared custody

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
 - (a) the amounts set out in the applicable tables for each of the spouses;
 - (b) the increased costs of shared custody arrangements; and
 - (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.
- [65] I do not accept that the claimant's role resulted in him having custody of the children for 78% of the time. His calendar purports to reflect the hours he cared for the children but, in my view, the parties' agreement was to share parenting equally and, for the most part, the respondent occupied the home on her days off. This is not a case where the children move between separate homes; in my view, the circumstances do not qualify him to receive child support as contemplated in s. 8 or s. 9 of the Child Support Guidelines.
- [66] The provincial court order clearly reflects that the parties share parenting of the children on no less than a 60/40 basis and the respondent pays child support to the claimant based on the difference between their incomes.
- [67] The claimant also relies on *Semancik v. Saunders*, 2011 BCCA 264 in addressing the four-point test from *D.B.S. v. S.R.G.*, 2006 SCC 37 for determining whether retroactive support should be payable. The Court of Appeal said:

[39] In D.B.S., the Court's analysis of the justification for and principles applicable to retroactive child support awards proceeded from the "core principles [that] animate the support obligations that parents have towards their children" (at para. 38):

They include: child support is the right of the child; the right to support survives the breakdown of a child's parents' marriage; child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together; and finally, the specific amounts of child support owed will vary based upon the income of the payor parent.

[40] Parents have an obligation to support their children in a way that is commensurate with their income. This parental obligation, like the child's corresponding right to support, exists independent of any statute or court order (at para. 54). It is the responsibility of both parents to ensure that the payor parent fulfils his or her actual obligation. Where they fail in this obligation, a court may order an award that recognizes and corrects this failure. Such an award is in no way arbitrary for the payor parent. To the contrary, it serves to enforce an obligation that should have been fulfilled already (at para. 68).

[68] The court addressed the four factors from D.B.S that should be considered:

[42] In D.B.S., Bastarache J. for the majority of the Supreme Court set out four factors to be considered in determining whether a retroactive award is appropriate: whether the recipient parent has a reasonable excuse for why support was not sought earlier; blameworthy conduct of the payor parent; the circumstances of the child; and whether any hardship would be caused by a retroactive award (at paras. 100-116).

[69] In this case, the parties continued to reside in the family home for nine months after separation. They shared the residence on the basis that the respondent would be absent from the home during her four-day work schedule. When she returned to the home the respondent vacated the home and she cared for the children. The parties contributed to the household expenses on a 60/40 basis and after the August 2013 provincial court order, the parties shared parenting on a 60/40 basis.

[70] Based on the parties' 2013 line 150 incomes, the respondent would have been required to pay the claimant \$352 per month. However, the respondent's payments toward the family expenses from September to May exceed the claimant's payments by \$9,591 or approximately \$1,066 per month.

[71] In D.B.S. at para. 38 the court described the objective of child support: "as much as possible, provide children with the same standard of living they enjoyed when their parents were together". In my view, after September 2012, the children enjoyed exactly the same standard of living in the same house with shared parenting. Although the claimant contends that he cared for the children 78% of the time, it is clear that the parties shared equal occupancy of the house and both cared for the children in those circumstances. The respondent paid more than one half of the household expenses and this is not a case in which the children needed additional financial support to achieve the same standard of living. I do not accept

that the respondent was obliged to pay support in these circumstances.

- [72] Further, it is my conclusion, adopting the reasoning in Bjorkman, that the disproportionate amounts paid by the respondent to meet the family expenses, while remaining in the home and caring for the children, more than offset any amount the claimant might have been entitled to receive for support during that time.
- [73] During the submissions, I indicated to the parties that insofar as they have resolved all of the parenting and child support issues in Provincial Court, it may not be appropriate to deal with retroactive child support in this proceeding. Both parties requested that I deal with this issue; presumably I have the authority under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) to deal with this issue. However, having reached the conclusion that the respondent does not have an obligation to pay retroactive support and that she clearly paid more than one half of the household expenses, I deal with the issue here. I will not make any order requiring the respondent to make retroactive payments for supporting the children from November 2012 until May 2013.

Counselling

- [74] The claimant asked the Court to order under s. 224 of the FLA to compel the parties to attend counselling for the purposes of improving their communications and reducing the conflict between them.
- [75] Insofar as the parenting of the parties' children is already before the Provincial Court, any counselling order would more properly be before that court. The issues in this litigation are primarily financial and to that end, pursuant to my discretion under s. 194(3) of the FLA I decline to make an order respecting counselling at this time.
- [76] I am not satisfied that the parties would benefit from an order from this Court compelling them to attend counselling at this time.
- [77] The factual basis for a s. 224 counselling order and the practical considerations of compelling the parties to attend counselling after they are divorced militate against such an order. I decline to accede to the claimant's request.

Conclusion

1. The parties will be divorced effective 30 days from the date of this judgment and thereafter the respondent's name shall be Barbara Lynn Crockatt;
2. The claimant will retain ownership of the Silverado truck and the R-Vision Trailer and will repay all indebtedness to TD Bank and GMAC (the vehicle loans) and will indemnify and save harmless the respondent for any payment she may be called on to pay;
3. The respondent will pay the claimant \$7,500 and will be discharged from any further obligation for the vehicle loans as between the parties;

4. For the period April 1995 to September 4, 2012, the respondent's BC Ambulance Pension will be divided in accordance with Part 6 of the FLA and the claimant's pension from his BCIT service will also be divided on the same basis;
5. The respondent will pay to the claimant one half of the outstanding student loan balance as valued at June 2013;
6. The respondent's 2010 Ford Escape vehicle is excluded family property and the claimant is not entitled to any interest in that vehicle;
7. The \$16,200 paid by the claimant's parents to the claimant is not a family debt to be shared equally by the parties;
8. The respondent must pay the claimant one half of the \$4,123 shortfall in the settlement of the debt following the sale of the family home;
9. The claimant is not entitled to retroactive child support for the time he lived in the family home to the exclusion of the respondent and cared for the children;
10. One half of the respondent's Scotia Bank RRSPs as valued on September 2, 2012 together with income earned on that amount to the present will be transferred to the claimant's RRSP;
11. One half of the claimant's Scotia Bank RRSPs as valued on September 2, 2012 together with income earned on that amount to the present will be transferred to the respondent's RRSP;
12. One half of the value of the claimant's FP Innovations retirement plan as valued on September 2, 2012 together with income earned on that amount to the present will be transferred into the respondent's RRSP. If the claimant's FP Innovations retirement plan cannot be divided then the claimant will transfer an equivalent amount to the respondent and the parties have liberty to apply for further directions concerning the division of that asset;
13. The claimant and respondent will each pay one half of the Bank of Nova Scotia consolidation loan, and in the event either party defaults on paying their one half of that debt, the defaulting party will indemnify and save harmless the other for any payment made by the other party;
14. The parties will have leave to seek further directions from the Court concerning the implementation of this order;
15. The parties will have leave to make further submissions concerning the costs of this proceeding. The claimant will make written submissions filed within 21 days of this order and the respondent will file a reply 21 days after receiving the claimant's submissions.

"The Honourable Mr. Justice Armstrong"

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