

CANADA / JUDGMENT

Card v. Card

2009 BCSC 865

COURT

Supreme Court of British Columbia

DECIDED

29 June 2009

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2009 BCSC 865 Card v. Card IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Card v. Card, 2009 BCSC 865 Date: 20090629 Docket: 40338 Registry: Kamloops Between: Christine Margaret Card Plaintiff And Mathew Ian Card Defendant Before: The Honourable Mr. Justice Meiklem Reasons for Judgment Christine Margaret Card appeared on her own behalf: Mathew Ian Card appeared on his own behalf: Place and Date of Trial: Kamloops, B.C. February 11 & 12, 2009 Place and Date of Judgment: Kamloops, B.C. June 29, 2009

- [1] The contentious issues in this divorce action relate to division of property and quantum and duration of spousal support.
- [2] The parties were married on October 7, 1989 after some months of cohabitation, and separated on June 30, 2007. The triggering event for purposes of determining interests in family assets was a s. 57 order granted by Master Hyslop (as she then was) on December 3, 2007. As of the date of trial, the parties were aged 46 and 48 respectively. There are three children of the marriage aged 18, 16, and 14 at the date of trial.
- [3] By Master Hyslop's order of April 21, 2008, the defendant was ordered to pay interim basic child support of \$1,626.00 per month plus \$220.00 per month for his share of extraordinary expenses, both commencing January 1, 2008. He was ordered to pay interim spousal support of \$100.00 per month commencing April 1, 2008.
- [4] The parties were both represented by counsel most of the way through this litigation but represented themselves at trial. They did so in a very organized and efficient manner.
- [5] The plaintiff was essentially a traditional stay-at-home mother and homemaker until 2006, and she is now employed as a constituency assistant for an elected Member of the Legislative Assembly. Her gross pay is \$896.00 bi-weekly. Her annual income in 2008 was approximately \$23,300. Mrs. Card has a Grade 12 education and when she completes two more courses, she will obtain an Administrative Assistant certification. She has the ability to earn income by taking in students as boarders, and apparently has done so, but there is no evidence as to her net income from that endeavour.

- [6] The defendant is a steamfitter by trade, and has been a member of the Plumbing and Pipefitting Workers Local 170 since July 1981. Mr. Card's recent hourly rate has been \$42.50 (although he earned \$50 per hour working in Fort McMurray in 2006 and 2007). He testified that he works from 1400 to 2200 hours over the course of 7 to 8 months per year. His is a member of a defined benefit union pension plan contributed to solely by his employers. As of November 2007, he had 24.6 years of service and an accrued monthly pension benefit of \$1,898.44. Mrs. Card's options are to collect her portion when Mr. Card retires or to take out the commuted value of her portion to a locked-in RRSP at any time after Mr. Card turns 55.
- [7] Mr. Card's Line 150 income in the four years 2005 through 2008 was \$82,221, \$98,271, \$138,621, and \$85,027.40. The plaintiff argued that additional income should be imputed to Mr. Card because he has free living accommodation and a meal allowance provided by his employer.
- [8] The parties co-own the former matrimonial residence, which the plaintiff continues to reside in. The 2009 assessed value of the home is \$302,000, and it was appraised as of December 10, 2008 at \$315,000. The balance owing on the mortgage on the home was \$35,238.41 as of February 8, 2009. Mrs. Card has been paying the mortgage payments from and including July 1, 2007. The mortgage balance on August 16, 2007 was \$44,112.26.
- [9] Mr. Card holds an RRSP account valued at \$52,322.43 as of February 11, 2009. Mrs. Card holds one RRSP with a value of \$10,210.81 as of February 12, 2009, and another valued at \$12,323.54 as of February 6, 2009.
- [10] Mr. Card is a co-owner, together with his mother, of a manufactured home on Westsyde Road in Kamloops, which was acquired in August 2006 for \$60,000, but I am satisfied that it is not a family asset.
- [11] Mrs. Card seeks a reapportionment of the family home, principally on a consideration of her need to become economically independent and self-sufficient. She also seeks a lump sum for at least part of her spousal support entitlement. Mr. Card does not oppose the notion of a lump sum award in partial offset of his spousal support obligation, but he wants to realize sufficient capital in the division of assets to purchase a house in Kamloops. He agrees that she should be able to retain the house, and Mrs. Card has been pre-approved for a mortgage that will facilitate that solution.
- [12] An additional basis for the plaintiff's reapportionment claim is her position that proportionally more than half of the \$30,000 down payment on the Kamloops home came from her pre-marriage resources than from Mr. Card's resources. I am not able to find that established on a balance of probabilities, due to a lack of documentary evidence and any formal reconciliation of their relative contributions nearly twenty years ago. Mr. Card's evidence was considerably more detailed as to the intermingling of funds realized from the sale of her mobile home, the sale of his house, the acquisition and sale of two others, and payment of a loan to her parents.

- [13] The court is generally required to come to a decision on the appropriate division of assets before addressing spousal support entitlement and quantum, which depends to some degree on a means and needs analysis after the capital assets of each party are known. Sometimes, however, as noted in *Mohajeriko v. Gandomi*, 2009 BCSC 393 by MacKenzie J., the issues of property division and spousal support blend or overlap. Such is the case where reapportionment is sought on the basis of the need to remain or become independent and self-sufficient, which is obviously akin to the objectives of spousal support set out in s. 15(2) of the Divorce Act. In such cases it is important to avoid double recovery.
- [14] In *Mohajeriko*, which involved a short marriage, the court reapportioned assets 75/25 in favour of the defendant husband and then considered spousal support and awarded a 25% interest in the assets to the wife as a lump sum spousal award (which the parties agreed to in principle), with the result being an equal division of assets, which was then resolved by a compensation payment. In that case the defendant lacked the liquid resources to pay the amount awarded, so the award was secured by a charge on the property in his name.
- [15] The following table sets out the family assets and their value as of the trial date, before apportionment:
- | Assets in Plaintiff's Name | Assets in Defendant's Name |
|---|---|
| ½ interest in Lot 22, Plan15123, Section 6, Township 21, Range 17, W6M Kamloops Div Yale LD PID:004-512-197 | ½ interest in Lot 22, Plan15123, Section 6, Township 21, Range 17, W6M Kamloops Div Yale LD PID:004-512-197 |
| \$157,500 | \$157,500 |
| ½ of mortgage charging Lot 22 (\$17,619.20) | ½ of mortgage charging Lot 22 (\$17,619.20) |
| RRSP Investors Group \$10,210.81 | RRSP \$52,322.43 |
| RRSP RBC Spousal \$12,323.54 | Union Pension (To be divided pursuant to Part 6 of the Family Relations Act) |
| unknown | Total Assets less share of joint obligations in plaintiff's name: \$162,415.15 |
| Total Assets less share of joint obligations in defendant's name: \$192,203.23 | Total Family Assets to be divided, net value, \$354,618.38 |
- [16] I have not included in this table any apportionment of a remaining joint line of credit debt in the amount of \$14,900. Each party claims the other should be responsible for this balance. The plaintiff drew \$15,000 out of the line of credit as a self-help way of obtaining one-half of the cash balance on deposit in an account in the name of Mr. Card in the month of separation. Her position is that the approximately \$30,000 in that account was a family asset, and he should be responsible for the line of credit to equalize their share of that asset. Mr. Card says she received the money and should repay the loan, thereby impliedly arguing that the funds in the bank were not a family asset. Mr. Card has been paying the interest on the line of credit to date.
- [17] The account in question was used by Mr. Card to accumulate his wages and pay family expenditures and as a means of controlling the plaintiff's access to family finances by regularly allocating limited funds to a joint account with the plaintiff. There is no question that this account was ordinarily used for a family purpose and as such fits that definition of a family asset. The only difficulty that I see with Mrs. Card's analysis is that she "equalized" her interest in this account on the basis of its maximum monthly balance, prior to the usual withdrawals and transfers, whereas it is the usual minimum monthly balance that would

represent accumulated reserves somewhat akin to savings. The minimum balance in this account in July, 2007 was \$24,465, so I find that the defendant should be responsible for the line of credit debt to the extent of \$12,232.00, and the plaintiff to the extent of the remaining \$2,668.00. I will factor that adjustment into my final order, by crediting Mr. Card with the \$2,668.00 and providing that he shall assume the payment of the line of credit.

- [18] On a consideration of the factors set out in s. 65(1), I do not find a basis to reapportion the parties' interests in the former matrimonial residence on the basis of unfairness of an equal division, but the compensation payment that will be notionally payable by the defendant to equalize the division of assets described in the table in para. 15 above, together with a lump sum award of a portion of the spousal support I will discuss shortly, will operate to the same effect and reduce the compensation flowing from the plaintiff to the defendant for his interest in the home.
- [19] The notional equalization payment flowing from the defendant to the plaintiff for the RRSP assets in the table is \$14,894.04. This amount is then reduced by \$2,668.00, for a balance of \$12,226.04. Crediting Mrs. Card that sum against Mr. Card's $\frac{1}{2}$ equity in the home of \$139,880.80 leaves a balance of \$127,654.76 prior to factoring in a spousal support lump sum.
- [20] Turning to the issue of spousal support, I note first that Mr. Card fairly acknowledges an obligation, but the parties disagree as to the extent that Mrs. Card has been disadvantaged by the marriage and its breakdown. Mrs. Card seeks the maximum spousal support award for the longest duration and points to the dramatic disparity in their earning capacity. Mr. Card points to Mrs. Card's outgoing personality and says that she is liked and well known and very employable. While her personal attributes may give her an advantage in being hired over less attractive personalities in the specific job market she enters, they will likely not prevail over skills, qualifications and experience which are required if she is to make a significantly greater income. I find that this 18-year traditional marriage has significantly disadvantaged Mrs. Card economically.
- [21] Turning to the Spousal Support Advisory Guidelines ("SSAG"), I received the work product of prior counsel in preparing calculations based on respective incomes of \$92,674 and \$26,296. I am not aware how counsel derived these specific incomes, but they are representative enough to utilize in referring to the guidelines. At those incomes the indicated range of spousal support is a minimum of \$287, mid-range of \$630, to a maximum of \$1,086 per month with duration of 19 years from the date of separation. Mrs. Card submitted that Mr. Card has the proven capacity to earn over \$100,000. At respective incomes of \$100,000 and \$26,296, the SSAG range is \$480 to \$1,315 per month, with a mid-range of \$967.
- [22] Mrs. Card's monthly living expenses set out in her January 29, 2009 Form 89, after editing to delete expenses stated for debt servicing, legal fees and apportioning food and housing as matters partly covered by child support are in the range of \$3,300 per month. Her income is approximately \$1800 per month from employment together with whatever she makes from boarding students. She clearly is also entitled to spousal support on the basis of need.

- [23] Mr. Card's last Form 89 in November 2007 precedes the interim support orders in this action, and lists expenses such as the mortgage on the home, which he no longer pays, children's expenses, and meals outside the home in the amount of \$550 per month which I understand are now covered by a meal allowance. I am unable to estimate his current monthly expenses on the basis of that evidence, but I infer that he has the ability to pay spousal support in the ranges indicated by the SSAG, as well as child support pursuant to the guidelines, and he did not make any submission to the contrary.
- [24] If I was not going to be awarding a lump sum I would award Mrs. Card spousal support in the amount of \$1,100 per month, commencing July 1, 2007. The order would be indefinite in duration, but with a specific provision for review at the instance of either party after six years from the date of these reasons, to supplement the right that either party normally has to seek a review upon a material change in circumstances. Mr. Card would be credited with the amount he has paid pursuant to the interim order against the retroactive amount due of \$24,000. Instead of that award, in the particular circumstances of this case, where both parties wish the plaintiff to retain the house on an affordable basis and the defendant is agreeable to a lump sum in partial satisfaction of his spousal support obligation which would reduce his periodic payments in the immediate future, I award a lump sum spousal support payment of \$60,000, and ongoing spousal support in the amount of \$500.00 per month commencing on July 1, 2009 and continuing until further order of the court, but reviewable at the instance of either party after six years from the date of these reasons.
- [25] When that lump sum is offset against Mr. Card's remaining equity as calculated in para. 19 above, the final result of the property division is that Mr. Card is entitled to a compensation payment from Mrs. Card in the amount of \$67,654.76 in exchange for a transfer of his interest in the family home. That sum shall be paid within 60 days, and Mr. Card shall first provide a signed and registerable transfer in a timely fashion in trust to a conveyancer designated by Mrs. Card. I understand that payment to be well within the plaintiff's ability to obtain by way of a pre-arranged mortgage, but if difficulties arise, the parties are at liberty to apply for an alternative disposition.
- [26] Turning to the issue of child support, I determine Mr. Card's current annual guideline income for that purpose to be \$88,500.00. (This is the average of the three lowest of his last four years' Line 150 income.) The table amount for basic child support is \$1,685 per month, which is payable commencing July 1, 2009. Paragraphs 3, 7, and 8 of the interim order of April 21, 2008 in respect of extraordinary expenses are made final and shall be repeated in the order drawn to implement these reasons.
- [27] The defendant's interest in his union pension with the Plumbing and Pipefitting Workers Local 170 is to be divided pursuant to the provisions of Part 6 of the Family Relations Act.
- [28] An order of divorce is granted.

[29] I am aware from comments made during the trial that the parties have exchanged offers at various times in the past and this may have a bearing on the appropriate order in respect of costs. Therefore, I will defer making any order as to costs but grant leave to the parties to arrange through the registry to speak to the court on the subject of costs. The parties might wish to consult either their former counsel or new counsel for advice in that regard. "I.C. Meiklem J." MEIKLEM J.

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