
CANADA / JUDGMENT

Cizmic v. Cizmic

2015 BCSC 1430

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 1430 Cizmic v. Cizmic

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cizmic v. Cizmic,

2015 BCSC 1430

Date: 20150813

Docket: E11655

Registry: Campbell River

Between:

Joseph Anthony Cizmic

Claimant

And

Stefica Cizmic

Respondent

Before: The Honourable Madam Justice Devlin

Reasons for Judgment

Counsel for the Claimant:

G.W. Currie

Counsel for the Respondent:

J.L. Desilets

Place and Date of Trial:

Campbell River, B.C.

July 7 - 10, 14, 16 - 17, 2015

August 5, 2015

Place and Date of Judgment:

Campbell River, B.C.

August 13, 2015

I. OVERVIEW

- [1] The marriage of Joseph and Stefica Cizmic has come to an end. They have three children of the marriage. It is recognized by both parties that the main issue in this case is the application by the respondent mother to relocate the residence of the three children from Campbell River to Coquitlam, B.C. The claimant father opposes the relocation of the children. The parties agree that the Divorce Act, R.S.C. 1985, c. 3 applies to the custody and relocation decisions in this case.
- [2] The parties agree that they should have joint custody of the children pursuant to the Divorce Act and that each party remain guardian of the children pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [3] In addition, the division of property is at issue. Both parties are seeking an equal division of family property pursuant to the FLA.

II. BACKGROUND FACTS

- [4] The claimant, Joseph Anthony Cizmic, was born on October 9, 1968 and is currently 46 years of age. The respondent, Stefica Cizmic, was born on April 25, 1978 and is 37 years of age. The parties were married on July 7, 2001 and separated on November 19, 2013. The three children of the marriage are:
- Manda Danica Cizmic, born October 1, 2002, who is now 12 years old;
 - Maja Marica Cizmic, born August 4, 2004, who is now 11 years old; and
 - Ivo Srecko Cizmic, born September 29, 2005, who is now nine years old.
- [5] The claimant was born in Vancouver and grew up in Campbell River along with his parents and two siblings, Philip and Sandra, all of whom continue to reside in Campbell River. Sandra is married and has three children who range in age from 20 to 26 years old.

- [6] The respondent was born and raised in Coquitlam, B.C., where her parents continue to reside in the family home. The respondent has four siblings, including a twin sister. Three of her siblings reside in Coquitlam and amongst them there are eight children ranging in age from one to ten years old. One brother resides in Chilliwack with his two children.
- [7] Both parties are of Croatian heritage and enjoy the love and support of their extended families.
- [8] In June 2001, the parties purchased the matrimonial home located at 1056 South Alder Street in Campbell River, B.C. The home is located a short walk from the paternal grandparents home as well as the claimant's sister's home. The parties' plan was to live and raise their family in Campbell River. The parties agree that they entered into a traditional marriage in which the claimant worked full-time outside of the home while the respondent was a stay at home mother. For a short time after their marriage, the respondent continued with her studies until early 2002 when she began to experience some issues with her pregnancy. Part of their future plan was for the respondent to resume her studies once their children had started school.
- [9] It is obvious that the parties are loving and devoted parents of their three children. Clearly they have done an excellent job in raising their children, who are happy, healthy and well-adjusted. The children have close friendships with other children in Campbell River and have all done well in school. They are engaged in a variety of extracurricular activities ranging from dance to soccer. The children are particularly close to their paternal grandmother in Campbell River, Maria Cizmic, who has taken an active role in every aspect of the children's lives since they were born.
- [10] The claimant is a journeyman electrician who was until recently employed by Pyramid Corporation in Norman Wells, NWT, working a 15 day in and 13 day out schedule, earning approximately \$100,000 per year. He worked in Norman Wells from June 2010 until August 2015. Prior to that, from April 1990 until April 2009, the claimant worked at the Elk Falls Mill in Campbell River. In 2009, the mill closed down and the claimant was on Employment Insurance until he obtained the job in Norman Wells. The claimant has obtained new employment in Campbell River with Discovery Automation Ltd. effective September 2, 2015 as a maintenance electrician.
- [11] In June 2011, the respondent completed the teacher's aide program and obtained employment as an educational assistant. She has worked as an educational assistant in both the Comox and Campbell River school district. Most recently, she received a temporary posting in Campbell River for the 2013/14 school year. She has been hired as a casual on-call educational assistant with the Coquitlam school board commencing September 2015. Prior to her work as an educational assistant, she had worked in the Canadian Tire and Home Depot in Campbell River while the claimant was unemployed. As a college student, she worked at McDonald's.

- [12] Since their separation on November 19, 2013, the parties have continued to reside in the former matrimonial home under a nesting arrangement pursuant the September 18, 2014 order of Mr. Justice Thompson. There has been no order regarding custody or residency. Pursuant to the Thompson J. nesting order, the claimant resides in the family residence with the children when he is in town, and the respondent resides in the residence when he is in the NWT. The respondent obtained an apartment in Campbell River as a separate accommodation.
- [13] The parties jointly retained Mr. Bruce Muir, a registered Social Worker, to prepare a views of the children report under s. 211 of the FLA. Section 211 provides that the court may appoint a person to assess the needs of the children, their views and the ability and willingness of the parties to satisfy the needs of the children, for purposes of legal proceedings relating to Part 4 of the FLA (Care of and Time with Children) in a family law dispute. Although there was no court order formally appointing Mr. Muir under s. 211, after a preliminary ruling neither party objected to the admission of his evidence as an assessment under s. 211 and I will treat it as such.

III. CREDIBILITY AND RELIABILITY OF WITNESSES

- [14] The witnesses called by the claimant were the claimant, his mother Mrs. Cizmic Sr., his brother Philip Cizmic, his sister Sandra Culo, as well as a family friend, Sandra Robillard. The witnesses called by the respondent were the respondent, her father Mr. Ante Buric and her twin sister Maria Richards.
- [15] I find that all the witnesses who testified on behalf of the parties were honest and forthcoming. Few were cross-examined and none of their evidence was seriously challenged. Indeed, I found their testimony provided the Court with a unique glimpse into the dynamic of the Cizmic-Buric family and revealed to me a family which is kind, loving and supportive of each other regardless of the circumstances. They are all proud of their Croatian heritage and their family. I am certain that they all have a genuine interest in the happiness and well-being of the children.
- [16] Based on their evidence, I accept that both parents have been fully engaged in their children's care, activities and lives generally since birth, with some degree of normal and necessary division due to the demands of employment and circumstances that present themselves.
- [17] As I have said, the parties testified and I have had the benefit of observing them over a ten-day trial. With respect to the claimant, Joseph Cizmic, I found that he provided his evidence in a straightforward and honest fashion. Despite the fact that he was extensively cross-examined, there was nothing elicited that caused me to question his credibility or reliability. It was clear to me that the claimant cares deeply for the respondent and that their marital breakup is heartbreaking for him. I note that other than concerns he expressed about some of the respondent's decisions since their separation, he is fully supportive of her as a

mother.

[18] I do not have the same level of confidence in the testimony of the respondent. As I have already said, I find that she is a dedicated and caring mother who loves her children. However, I found that some of her evidence was vague and confused, particularly when it dealt with the circumstances around the period she lived on her own and financial matters. I did not find her memory to be reliable on many of these issues. In addition, she was less than supportive of the claimant in his capacity as a father. Her evidence simply did not accord with that of all of the others who have testified in this proceeding. While I certainly do not reject all of her evidence, I do question some specific aspects of it and thus, as I will set out, I do not find her credible with respect to some key issues.

IV. ISSUES

[19] The key issues in this case are as follows:

1. Should the children be relocated to Coquitlam?
2. What are the income levels of the parties for the purposes of calculating child and spousal support?
3. What is the relevant date that the parties began living in a marriage-like relationship, as defined under the FLA?

[20] The specific issues regarding the division of assets are:

1. Is the claimant entitled to an exclusion of any part of the former matrimonial home relating to the initial purchase of the home, which was comprised in part of his RRSPs?
2. Are the respondent's CIBC student loans a family debt within the meaning of s. 86 of the FLA?
3. Is the sum of \$10,000 provided to the claimant from his parents in June 2001 a loan and therefore a family debt within the meaning of the FLA?
4. Is the sum of \$4,000 provided to the claimant from his brother a loan, and therefore family debt within the meaning of the FLA?
5. Is the parties' consumer debt a family debt within the meaning of the FLA?

V. ANALYSIS OF ISSUES

A. Relocation of the Children to Coquitlam

[21] As noted, there are currently no orders or agreements between the parties relating to custody and access of their three children. The key issue for the Court to determine is whether the respondent's application to relocate the children from Campbell River to Coquitlam should be granted. While both parties agree that each should have joint custody of the children, my finding on the relocation application will inevitably inform the particulars of the custodial arrangement between the parties.

[22] It is acknowledged that the proposed relocation of children, against the wishes of the non-moving parent, is difficult. As Madam Justice Saunders of our Court of Appeal stated in *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230 [Hejzlar] at para. 23:

In the tangle of competing benefits and detriments to the child it is not easy to determine the best interests. This is particularly so where family members beyond the parents are an important part of the child's home life.

[23] In this case, I am faced with a difficult decision similar to that of the trial judge in the case of *Falvai v. Falvai*, 2008 BCCA 503 [Falvai]. Considering the positions of the parties, I have to determine whether the interests of the children would be best fulfilled by remaining with their mother as their primary caregiver in her new location of Coquitlam, with more limited access to their father, or by residing with their father in Campbell River with more limited access to their mother.

[24] The reality is this: the consequence of either custodial arrangement would be less time with the non-custodial parent and would require the children to travel in order to facilitate access with that parent. In my view, given that the respondent has indicated she will relocate with or without the children, this consequence is inevitable.

1. The Law

[25] The applicable principles relating to relocation under the Divorce Act were outlined in the leading decision of the Supreme Court of Canada in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 [Gordon].

[26] However, we are dealing with an initial application for custody and principal residency. The test in *Gordon* has been adopted in a modified manner to mobility issues that arise in the context of an initial application for custody and principal residency under the Divorce Act: *Nunweiler v. Nunweiler*, 2000 BCCA 300 [Nunweiler]; *Falvai*; *S.S.L. v. J.W.W.*, 2010 BCCA 55 [S.S.L.]; and *Hejzlar*. The first stage of the test requiring a material change of circumstances is, of course, redundant in an initial application. The focus therefore immediately turns to the factors listed in para. 49(7) of *Gordon*. Those factors must be modified to the extent that there is no pre-existing order that has established a "custodial parent" and an "access parent". With these "adjustments", the child-centered test from *Gordon* continues to govern an initial application for custody and residency under the Divorce Act that involves a mobility issue.

- [27] The jurisprudence recognizes that the only test on a custody application is the best interest of the child. In *Nunweiler*, considering the application of *Gordon* to an initial custody application, *Saunders J.A.* modified the analysis by limiting the application of the *Gordon* factors to those relevant to an initial custody application where one parent proposes relocating. In so doing, the Court of Appeal considered the following factors from *Gordon* as being relevant to an initial application:
- (c) the desirability of maximizing contact between the child and both parents;
 - (d) the views of the child;
 - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (f) disruption to the child of a change in custody; and
 - (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
- [28] In *Nunweiler*, *Saunders J.A.* balanced those modified factors with other relevant considerations, including the trial judge's findings that it was in the child's best interest to spend most of her time with the mother who had been her primary caregiver, and the mother's lack of improper motive for wanting to relocate the child from the community in which the child's father resided. In the result, the Court of Appeal concluded that the mother should have sole custody of the child without geographic restriction, but continue to share guardianship of the child with the father.
- [29] In *Falvai*, *Smith J.A.* found that in an initial application where there is no pre-existing determination that the relocating parent is the one best suited to meet the child's needs, the reasons offered by a parent who wishes to relocate with his or her child are to be respected. However, respect for the parent's views on relocation does not create a presumption in law favouring, or refusing, custody to that parent. The parent's wish to relocate is simply one of the factors to be balanced with the other relevant factors in determining the best interests of the child. When considering mobility in the context of the broader custody analysis, which requires the court to evaluate competing parenting plans, the focus of the inquiry becomes the impact of the proposed move on the child's best interests, rather than the reasons for the proposed move.
- [30] In *S.S.L.*, *Huddart J.A.* held that in joint parenting situations where one or both parents' needs (economic, educational or personal) are seen as requiring a change, the court's task is to analyze the evidence in four possible scenarios: primary residence with a parent in the new or present location, or joint physical custody in the new or present location. This is to be considered without presuming that the current care-giving and residential arrangement is the preferred one, as the status quo should not be the default result. It must not be assumed that one parent cannot move. Similarly it is not appropriate to rely on any assumptions as to what the parents will actually do depending on the decision of the court:

Stav v. Stav, 2012 BCCA 154 [Stav] at para. 130.

- [31] Most recently in *T.K. v. R.J.H.A.*, 2015 BCCA 8 [T.K.], our Court of Appeal had an opportunity to review the legal framework with respect to the issue of custody and relocation of children. In that case, the appellant mother commenced divorce proceedings in which she applied to relocate with the children of the marriage from the Victoria, B.C. area, where she and the father had lived for the almost ten years of their marriage, to Toronto, where she was raised and her family continues to reside. The trial judge found that it was in the children's best interests that they continue to be co-parented in the de facto joint custody and shared residency arrangement the parties had implemented in the Victoria area after their separation. Accordingly, the mother's application to relocate with the children was denied.
- [32] In dismissing the appeal, Smith J.A. found the trial judge weighed all of the relevant factors set out in *Gordon* and other relevant circumstances relating to the needs of the children and the ability of the respective parents to satisfy them. The judge did not rely on the reasons volunteered by the mother for wanting to relocate or the father's reasons in preferring not to relocate, for a presumptive disposition in favour of the status quo; rather, he properly weighed all of the evidence in determining the custodial arrangement that was in the best interests of the children.
- [33] Smith J.A. found that when one parent wants to relocate, effectively ending the joint custodial arrangement, the reasons for that parent's move would be very relevant to determining whether the children's needs could be met by only one of the parents. Smith J.A. summarized her finding as follows at para. 54:

In summary, there may be many legitimate and worthy personal reasons for a parent wanting to relocate or a parent wanting to remain in the children's existing community, that are entitled to be respected. However, those reasons may also be relevant to the question of whether the proposed move meets the children's needs and/or the parent's ability to provide for those needs and therefore may be a necessary consideration with the other relevant evidence to determining the custodial arrangement that is in the best interests of the children.

- [34] As stated in *Gordon*, an inquiry into the custodial arrangement that is in the best interests of the children must consider "all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them" (para. 49(2)). While the reasons for a parent's proposed move, absent an improper motive, must be treated with respect, they will likely be relevant to determining what custodial arrangement is in the best interests of the children: *T.K.* at para. 57.
- [35] As the trial judge did in *T.K.*, I can group the relevant considerations into categories. In this case, the relevant considerations can conveniently be grouped into the following categories:
1. existing arrangements and the relationship of the children to the parents;

2. the mother's reason for moving, only as it is relevant to her ability to meet the needs of the child;
3. desirability of maximizing contact between the children and both parents;
4. views of the children;
5. disruption to the children due to a change in residency including disruption to the children on removal from family, schools, and the community he or she has come to know; and
6. careers and financial concerns.

2. Existing Arrangements and Child/Parent Relationships

a) Existing arrangements

- [36] Both parents have been very involved with each child throughout their lives. The bond and love between them is obvious and strong. The views of the child report revealed that the children do not favour either parent. Both parents are competent, capable care-givers. The existing nesting arrangement is in the nature of de facto joint custody. The children are healthy and happy, although the younger children have become more attached to their mother since learning of the respondent's intended move, especially when they are in Coquitlam.
- [37] There are two reasons why the existing arrangement cannot be sustained. Firstly, the mother has testified that she is in the process of moving back to her parent's home in Coquitlam. If I understand her evidence correctly, she has already moved out of her Campbell River apartment and has relocated all of her personal items to Coquitlam. She has an offer of employment with the Coquitlam school board as an on-call educational assistant. She had no hesitation in testifying that she was moving to Coquitlam whether or not the children are allowed to relocate with her.
- [38] Secondly, the father has obtained full-time employment with a Campbell River company which will eliminate the need for him to travel for extended periods of time to Norman Wells. Obviously, the nesting arrangement is no longer feasible.
- [39] Given that the current arrangement cannot continue, I must consider what the proposed parenting plan is for both parties. The respondent submits that she is the only party who has a realistic plan. Her plan is that the children's primary residence will be with her at her parent's home in Coquitlam with access to the claimant one week per month in Coquitlam and one further weekend in Campbell River. The children's holiday periods would be divided on a roughly even basis with the possibility that the respondent might have a greater share. The parties would meet to exchange the children in Nanaimo.
- [40] In contrast, the respondent says the claimant has no firm plan, including where the children would live, how they would get to school and recreational activities or how he would afford to transport them to see the respondent. The respondent bases this submission on the

assumption that the family home will have to be sold, resulting in the claimant moving away from the proximity of Mrs. Cizmic Sr. and his siblings. As a result of the move, she submits the support from Mrs. Cizmic Sr. will not be available to the children prior to and after school.

[41] Respectfully, I disagree with the respondent's submission. I find no reason to believe that the current support network available from the Cizmic family in Campbell River will dramatically change if the children were to remain in Campbell River. Mrs. Cizmic Sr. and the claimant's extended family are committed to the children and I have no reason to believe that they will withdraw their long standing support for them. Additionally, I have heard no compelling evidence suggesting that the claimant will be forced to sell his home or, more importantly, that he will be unable to secure more affordable alternative housing in the Campbell River area that remains close to his support network.

b) Relationship of parents and children

[42] With respect to the role as primary caregiver, the respondent has had the opportunity to act as the primary caregiver given that the parties had a traditional marriage and the respondent did not work outside the home for the majority of the marriage. However, I found that the respondent unfairly minimized the importance of the claimant's role as caregiver. All of the witnesses who testified described the claimant as a caring and engaged parent. There is no evidence to support the respondent's claim in her written submissions that the claimant spent all his free time going fishing or playing video games.

[43] The respondent had the opportunity to pursue her own interests, as the family purchased two German Shepard dogs as pets to enable her to pursue Shutzhund dog training. Sometimes the respondent would take the younger children with her to these training sessions. On occasion, when the respondent would attend sessions away from Campbell River, the claimant along with Mrs. Cizmic Sr. and the rest of the family were always available to assist with the children and support the respondent in her recreational activities.

[44] When the mill closed and the claimant was offered employment in Norman Wells, the parties agreed that he should take the job even though it meant that he would be away from the family for weeks at a time. While away, the claimant was in daily contact with family - calling three to four times per day - and despite the long-distance continued to be a fully engaged parent, as is evident from the copy of communications between the parties. In addition, the claimant testified as to details regarding the children, such as their friends, activities and doctors, which one would not expect of someone less than engaged with his children. Further, the claimant testified, and I accept, that it was very difficult for him to be away from his family during this period.

[45] The respondent also submits that even when the claimant was home he was still not involved as the caregiver and would simply take the children to his mother's house. I find that this is also an unwarranted criticism of the claimant's dedication to his children. In fact,

it has been clearly established that Mrs. Cizmic Sr. was a central figure in the children's lives and her home was the place where the family gathered. The Cizmic family in Campbell River always played a key role in the lives of the children and it was important to all of them to be together as much as possible as a family. The claimant recognized the importance of family, and I do not accept that he was motivated in encouraging visits with the children's grandmother in order to skirt his parental responsibilities.

3. The Respondent's Reasons for the Move

- [46] As stated earlier, the reasons for a parent's proposed move, absent an improper motive, must be treated with respect. However, "[t]he fact that a move is in the best interests of the parent seeking to relocate does not necessarily mean it will be in the children's best interest": Stav at para. 90.
- [47] The respondent intends to return home to her parent's residence where she will have the emotional and financial support of her parents and siblings. In her testimony, she said she could not afford to live in Campbell River and planned to reside with her parents for as long as it takes to gain financial stability, full-time work, an improved credit rating and her own car. I gather that the respondent would not have to pay rent while living with her parents. There is no doubt that these are all valid reasons, but they may relate more to her personal needs and not necessarily the best interest of her children.
- [48] There is no doubt that the parties had financial challenges despite the fact that the claimant was making approximately \$100,000 per year when working in Norman Wells and the respondent was making, as of recently, \$24,000 per year as an educational assistant. The concentration of their debt appears to be from credit cards, which accumulated over several years. The parties did not lead extravagant lifestyles. There were no expensive vacations with the children or questionable purchases. Other than travelling to Coquitlam to visit with the Buric family or going to the Buric family vacation home in Ferndale, Washington, the children did not go on vacations. While the parties have accumulated considerable consumer debt, I do not agree with the respondent's submission that they were not able to maintain a single household. That is not to say there will not be challenges as a result of the claimant changing to a less lucrative job in Campbell River and the respondent's uncertain employment prospects in Coquitlam. Obviously, the parties will need to adjust their finances to accommodate these changes.
- [49] The respondent testified that she cannot afford to live in Campbell River. No doubt the respondent will benefit financially in not having to pay rent to her parents; however, there is no indication as to how long this financial arrangement would last.
- [50] The respondent will likely face additional financial uncertainty due to her change in employment upon her move to Coquitlam. The respondent worked with the Campbell River school district and had acquired some seniority which, as I understand the evidence, would assist in securing further work terms with that school board. However, the respondent's new job in Coquitlam is an on-call position with no certainty as to her actual work schedule.

Additionally, she has neither benefits nor job security. There is no evidence that the respondent has an alternate work plan in the event she does not obtain maximum hours with the Coquitlam school board. The reality of the current situation is the respondent's employment plan is, in my view, more uncertain than her previous position in Campbell River.

- [51] Accordingly, although the respondent claims her reason for moving is to obtain greater financial security, I am not of the view that this would result in a significant benefit to the children themselves. For these reasons, I give this reason for moving little weight when considering what is in the children's best interest.
- [52] Another reason for the respondent's proposed relocation relating to the children's best interest is the benefit of greater contact with her extended family in Coquitlam. She testified that the children will be able to attend the same schools as their cousins, and that the children will have access to their Croatian heritage through their church and community events. Further, she submitted they will be able to participate in the same type of extracurricular activities as they did in Campbell River.
- [53] Although contact with the respondent's extended family in Coquitlam is important, there already exists a strong relationship between the Cizmic children and the respondent's extended family in Coquitlam. As stated earlier, the evidence revealed that the respondent and her children visited her family in either Coquitlam or at the family home in Washington State. They would regularly get together for family birthdays, holidays and other family events. In addition, members of the Buric family would sometimes travel to Campbell River. This established relationship is acknowledged by the children themselves when speaking to Mr. Muir. For these reasons, I consider this reason for moving of little weight when analyzing what is in the children's best interest.
- [54] The respondent also submits the children will have access to their Croatian heritage through their church and community events. As an example, the respondent refers to her desire to teach her children the tamburica. I note that the children have significant, if not greater, opportunities to engage with their Croatian heritage in Campbell River. Since the children were born, Mrs. Cizmic Sr. has exposed them to the Croatian language, customs and food. There is no evidence that the respondent was prohibited from teaching the children the tamburica while residing in Campbell River. Accordingly, I give this reason for moving little weight when considering what is in the children's best interest.

4. Maximum Contact with Both Parents

- [55] Maximum contact with both parents is a mandatory consideration under s. 16(10) of the Divorce Act. The section states that the child should have as much contact with each parent as is consistent with the best interests of the child. The principle of maximum contact is not absolute and cannot always be achieved: Stav at para. 129.

[56] This section also requires the court to consider the willingness of the person for whom custody is sought to facilitate such contact. Here, both parents are prepared to share parenting on an equal basis if the parents and children reside in the same locale. While there have been some issues in this regard since separation, I am confident that both parties recognize that they must make the best interests of the children, including maximum contact with the other parent, a priority. I understand that both are prepared to offer generous access to the other if they reside in different cities. However, it is quite obvious that the principle of maximum contact will be sacrificed to a very significant degree if the children move to Coquitlam without their father or if their mother moves to Coquitlam without them. Either of these scenarios would be detrimental to the children.

5. Views of the Children

[57] As noted, Mr. Muir's report makes it quite clear that the children do not favour spending more time with either parent over the other. The eldest daughter Manda expressed a preference to remain in Campbell River because of her relationship with her paternal grandparents and family, her friends, her school and all of her extracurricular activities. She said she thought both parents did a great job and she would prefer things to stay the same. When Mr. Muir advised Manda that her mother intended to move to Coquitlam she became distraught. Manda acknowledged that if they stayed in Campbell River they would get lots of help from her father's family. She also said that moving the Coquitlam would "take quite a while to get use to".

[58] The respondent suggests that the Court should give little consideration of Manda's views because she did not explicitly state why she wanted to remain in Campbell River or where she wanted to live. I am not prepared to dismiss Manda's views. Where a clear view can be expressed by the child it should be taken into account, having regard to all of the circumstances including the age and maturity of the child. In *Stav*, the Court of Appeal emphasizes how important the views of an older child may be. The trial judge was found to have attributed insufficient weight to the views of a 15 year old boy as a "compelling factor in this analysis" (at para. 135) and the trial judge's order permitting the move of children to Israel with their mother was reversed on appeal. Similarly, in *McGowan v. McGowan*, 2001 BCSC 1070, Tysoe J. found at para. 22 that the child who had just turned 11 was sufficiently mature to settle his own future. Here, Manda articulated why she wanted to remain in Campbell River and her negative reaction to the news that her mother intended to move to Coquitlam was, in my view, an indication of her view of that proposed change.

[59] The younger children were also interviewed. Ten-year old Maja was aware that her mother was thinking about moving to Vancouver. She said she had all her friends in Campbell River as well as her father, her grandparents, her aunt, uncle and three cousins. She also said that she went to Coquitlam about once a month and that her grandparents, her mother's family and 14 or 15 cousins resided in that area. She explicitly mentioned going to her grandmother's house for dinner every Sunday with their dad and could choose to go if they were with their mother. Maja said she would be fine on the mainland or in Campbell River,

but thought that Manda would be the most affected because she wants everyone to be happy. Maja also said she thought her father would figure out a way to be with them if they moved.

- [60] Nine-year old Ivo Cizmic's interview was shorter, as he confirmed all of the details of his living and parenting arrangements as his sisters did. When asked about moving to Coquitlam, Ivo said that he felt both places were equal and he too thought his father would also move.
- [61] Clearly, Manda is the older and more mature child and at 12 years old she is the one capable of more fully comprehending the realities of the change in her living arrangement. For that reason, I give her opinion greater weight than that of her younger siblings.
6. Disruption to the children due to removal from family, schools and community
- [62] Despite the children's young age, I find that they are firmly entrenched in the Campbell River community. For the reasons set out below, I find that the children will be significantly impacted by the proposed move in terms of the roots they have put down in Campbell River, including their involvement in the community, their close friendships and their participation in extra-curricular activities. In addition, the family support system in Campbell River is extensive and well-established.
- [63] The Cizmic family is very well established within the Campbell River school system. All three children attend school in Campbell River. Manda will be going into grade 8 at Southgate middle school and Maja will be joining Manda at Southgate this September. The fact that Maja will be attending the same school as her older sister is of some comfort to the parents because the parties agree that Maja is a shy, quiet young girl who does not make friends easily. The claimant also made arrangements with the school to ensure that Maja's closest friend is placed in the same class in September. Ivo is currently in Sandown Elementary school, which is the same school his sisters attended. Both schools are close to the family home, as well as the paternal grandmother's home.
- [64] Both parents have been involved in the school lives of their children. They have both attended school events with their children and are familiar with their teachers. Mrs. Cizmic Sr. had also attended most, if not all, of the children's school concerts.
- [65] An example of the claimant's involvement with his children is the fact that he arranged to meet with the children's teachers and principals shortly after the separation to inform them of the family situation and requested that they inform him if they notice any signs of distress in the children.
- [66] It is also important to note that the children's uncle, Philip Cizmic, is a principal in the Campbell River school system which provides the family with an additional connection within the local school system.

- [67] As stated earlier, the children are also involved in a variety of extracurricular activities. For several years, Manda has been dancing with the Urban Dance Connections, which is the same group that her cousin Nichole had been involved with. Maja is also participating in Urban Dance. Conveniently, the dance studio is located close to both the family home and the Cizmic Sr. residence. In addition, Manda attended violin classes and ukulele lessons on a weekly basis. Ivo is an avid soccer player and skate boarder.
- [68] The children are also involved in the local Church. Ivo and Maja attended catechism class and Manda goes to the weekly youth group. A Cizmic family friend is the youth group leader.
- [69] The respondent focuses on the fact that her children will be in the same schools as some of their cousins and that they will be located in the same city as many of them. The respondent seems to suggest that the cousins will simply substitute in for the friends and family the children have in Campbell River. The difficulty with this submission is it does not acknowledge the impact that leaving behind their friends, school mates and teachers will have on her children. While the children may indeed be close to their cousins, one should not trivialize the impact the move would have on their world. Additionally, as noted above, the children have a strong bond with their paternal grandmother. Not only is this relationship important in terms of maintaining familial bonds, but Mrs. Cizmic Sr. provides the children with additional exposure to their Croatian roots and culture. While this may be facilitated in Coquitlam, in my view it is not in the children's best interest to disrupt the children's close relationship with their paternal grandmother at this particularly difficult period in their young lives.

7. Careers and Financial Concerns

- [70] As stated earlier, the respondent has obtained an on-call position as an education assistant in Coquitlam. At present she has no scheduled hours of work, nor does the position provide her with any benefits. Her previous employment with the Campbell River school board as an educational assistant had enabled her to accumulate some seniority, thus increasing her opportunity for employment in the 2015 school term. While the respondent will not pay rent while living with her parents, unless she obtains substantial hours of work with the Coquitlam school board she will have no income. The respondent's plan simply does not support the proposition that the children will benefit financially from the move.
- [71] The claimant has obtained an electrician position with Discovery Automation Ltd. in Campbell River starting on September 2, 2015. Initially, he will be working 32 hours per week and his salary is estimated to be \$54,080. The claimant intends to obtain additional work in order to supplement his salary. The respondent has criticized the claimant for abandoning his well-paying job in Norman Wells and says this will only contribute to the already poor financial situation the parties find themselves in.

- [72] However, when the parties decided that the claimant should accept the job in Norman Wells they knew it would not be for the long term. The fact that the claimant obtained a new position in Campbell River where he can be closer to his family cannot be viewed as a negative. The claimant is aware that he will need to supplement his salary with additional work in order to meet his financial demands. He has articulated a plan to do so.
- [73] On the other hand, the claimant has no concrete plan other than living rent free with her parents and hoping that she is offered work with the Coquitlam school board. Unlike the claimant, she has no plans to supplement her income even though the children will be in school full-time and her family is close by to assist her with any child care issues. The respondent has made the career decision to leave her job in Campbell River where she had obtained some seniority and a work history to accept an on-call position in a new school district where she has no work history and no certainty of earning any particular amount of money.
- [74] Accordingly, in my view, the career and financial position of the parties militates in favour of the children remaining in Campbell River with the claimant.

8. Conclusion

- [75] In this case the Court must make an educated prediction as to what scenario is in the best interests of the three children. In considering all of the relevant factors listed in Gordon, I find that the best interests of the three Cizmic children would be served by remaining in Campbell River. In reaching this conclusion I have considered, among other things, the views of Manda, the eldest child, and the significant disruption to the children's roots, their involvement in the community and their relationship with their extended family in Campbell River.
- [76] Accordingly, I find that the parties shall share joint custody and guardianship of the children. The primary residence of the children will be in Campbell River with the claimant as the primary caregiver. The parties must facilitate maximum contact with the respondent and the children.
- [77] In the event the scenario changes, the parties are at liberty to apply to amend these conditions.

B. Income Levels of the Parties

- [78] The parties submit that this Court should impute the income of the other on the basis that they are both intentionally under-employed. The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work: *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200 [Van Gool] at paras. 28-31.

- [79] Further, as discussed in *Barker v. Barker*, 2005 BCCA 177 at paras. 18-19, there is no requirement of a finding of bad faith on the payor or deliberate avoidance of child support responsibilities in order to impute income. The focus is on whether the payor is not earning to capacity. To determine if a parent is earning to capacity, the following considerations must be taken into account: that parent's age; education; experience; skills; health; and the job opportunities reasonably available.
- [80] The respondent submits that the claimant terminated his lucrative job in Norman Wells because the working conditions were unpleasant without any regard of the burden that a reduction of his income would have on the children. As a result, the claimant intentionally reduced his income to avoid paying child support.
- [81] I have found that the claimant's decision to obtain new employment in Campbell River was consistent with the original plan discussed with his spouse and was motivated by a desire to reduce the amount of time he was absent from his children. I find that the claimant acted reasonably in all the circumstances. There is simply no evidence to suggest that the claimant is deliberating attempting to avoid his support responsibilities. Certainly, the claimant's salary with his new job in Campbell River is significantly less than that of his Norman Wells position. However, the claimant is well-aware of that fact and stated that he intends to pursue other employment options to supplement his income.
- [82] I do agree with the respondent that based on a review of the Van Gool and Barker factors, the claimant is capable of earning more than the \$54,080 salary he expects from his new position. Accordingly, based on the salary from his new job plus the anticipated income from the additional jobs he expects to obtain, I impute an annual income of \$70,000 to the claimant as of September 2015. I am satisfied that this represents a reasonable forecast of his future income for the purposes of calculating his support obligations.
- [83] For the purposes of calculating child and spousal support, I find that the claimant's income is \$100,000 annually up until August 31, 2015 and \$70,000 annually after that date.
- [84] The respondent submits that her income should be considered \$24,200, which is the amount she earned in 2014/15 in salary combined with Employment Insurance payments. The claimant submits that considering the respondent's age, health, education, work history and education she has the capacity to earn an income of at least \$30,000 and invites this Court to impute her income at \$37,500. I agree that there is no reason why the respondent cannot maximize her income. The evidence in this case does not support a finding that the needs of the children require her to work reduced hours. In addition to her past employment as an educational assistant, she has also worked as cashier and has demonstrated an ability to acquire work when necessary. There is nothing preventing the respondent from doing so now. The respondent has testified that her goal is to become more economically self-sufficient. Therefore, I find that it is reasonable to impute income of \$30,000 annually for the respondent.

C. Date of Commencement of Marriage-Like Relationship

- [85] The parties first met in 1992 when they were both involved with the B.C. wrestling team. As a result of their mutual interest in wrestling, their paths crossed and their friendship developed despite the difference in their ages. The parties began dating shortly after the respondent's 19th birthday in April 1997. Due to their age differences, her parents did not approve of their relationship, causing considerable friction between the respondent and her parents. When they started their relationship, the respondent was living at home with her parents and attending Douglas College. The claimant was on strike from the Campbell River mill and had moved to Vancouver to live and work with his cousin at the Waldorf Hotel. The claimant remained in Vancouver until April 1998, when he resumed work at the mill. While in Vancouver, the claimant purchased a used vehicle and insured the respondent so that she could use the car.
- [86] The respondent moved out of her parent's home in 1998 over their disagreement regarding her relationship with the claimant. Until that time, her parents had paid for her education and living expenses. The respondent first moved to a basement suite in New Westminister. In order to pay for school, the respondent obtained student loans. The claimant also assisted the respondent by adding her to his bank account in the event she needed some assistance with her expenses. There was no documentation provided at trial to assist in determining what, if any, amount of funds the respondent obtained from the claimant during this time.
- [87] In September 1998, the respondent rented a bachelor suite in New Westminister. She also obtained a student loan with the BMO to finance her studies and accommodations while also working part-time at McDonald's.
- [88] As the claimant was back working in Campbell River, the parties' relationship continued long distance with the claimant coming to see her whenever he was not working. The respondent spent Christmas 1998 in Campbell River at the claimant's parent's house.
- [89] Meanwhile, in the fall of 1998 the claimant's brother Philip Cizmic had purchased a house in Campbell River and the claimant moved into the house with his brother in January 1999. Philip Cizmic testified at trial and I accept his evidence with respect to this event.
- [90] In January 1999, the respondent obtained a student loan with CIBC. Their relationship continued and they would see each other as time permitted, either in New Westminister or while attending wrestling tournaments. By this time they were in a committed relationship.
- [91] In August 1999, the respondent moved to Nanaimo to attend Malaspina College (now Vancouver Island University). The claimant was still working in Campbell River. Their long-distance relationship continued, although they were now both located on Vancouver Island. While the respondent characterized her move to Nanaimo as a joint move by both parties, I do not agree. Although the claimant was spending a considerable amount of time with the respondent by this time, I do not consider them to have been cohabitating at this stage.

- [92] In December 1999, the parties became engaged while in Campbell River for Christmas. In January 2000, the claimant added the respondent to his medical benefit plan and made her a beneficiary to his pension and life insurance policy through his employment.
- [93] Often the date when the cohabitation actually began is blurred because people "ease into" relationships, gradually spending more and more time together. The claimant submits that the parties began cohabitating as of January 1, 2000. The respondent takes the position that the parties began cohabitating shortly after she moved out of her parent's residence in 1998.
- [94] The respondent relies on the factors set out in *Takacs v. Gallo*, 48 B.C.L.R. (3d) 265 (C.A.) to support her argument that the parties were in a marriage like relationship when the respondent left her family home in order for the parties to continue their relationship. These factors are listed at para. 46 as shelter; sexual and personal behaviour; services; social; societal; support (economic); and children. However, having considered those factors, I find that the respondent's evidence with respect to this issue is problematic, as the following independent evidence militates against this finding:
- (1) Philip Cizmic testified that in January 1999 he and his brother both moved from their parent's home into his newly purchased home in Campbell River. Philip acknowledged that his brother dated the respondent during this period and would spend a considerable amount of time in Nanaimo;
 - (2) the Student Loan Agreements were made in the respondent's name, specifically:
 - (a) the CIBC Student Loan, which indicated a marital status as single, signed and dated January 12, 1999, in the amount of \$2,278;
 - (b) the BC Student Loan Certificate of Eligibility, which indicated her marital status as single, for the period of September 1999 to April 2000, in the amount of \$1,315;
 - (3) the respondent's CRA Income Tax return, which indicates as follows:
 - (a) marital status as single for the 1998 Tax year;
 - (b) marital status as single for the 1999 Tax year; and
 - (c) marital status as common law for the 2000 Tax year.
- [95] When cross-examined regarding these documents, the respondent testified that she understood that "they" did the forms this way to ensure that she could obtain student loans. She also said she thought she would still get a student loan in 2000 even with her common law status, and that the claimant did her taxes for her. The respondent had virtually no reaction when it was suggested to her that by doing so she was committing a fraudulent act.

- [96] I do not accept the respondent's evidence on this point. I have had the opportunity to observe these parties over 10 days of evidence; I have also observed some of their family members and friends. The parties are honest, hard-working people who are supported by a kind and loving extended family. I cannot accept that either party deliberately engaged in fraud in order to obtain the student loans. I do not find the respondent credible on this point.
- [97] There is no doubt that the parties were engaged in a committed relationship which intensified over time. There is no doubt that the claimant was supportive of his girlfriend over the years, particularly given the fact that their relationship had strained her relationship with her own family. There is no doubt that he assisted her and spent a considerable amount of time with her in both the lower mainland and Nanaimo.
- [98] However, based on all of the evidence, I find that the earliest the parties began living in a marriage-like relationship is December 31, 1999.

D. Property Division

- [99] The parties agree that they are both entitled to an equal division of family property and family debt pursuant to s. 81 of the FLA, regardless of their respective use or contribution. They also agree that on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.
- [100] However, the issue remains as to what should be characterized as excluded property pursuant to s. 85 of the FLA, which will be addressed with respect to the claimant's RRSPs.
1. Is the claimant entitled to an exclusion of any part of the former matrimonial home relating to the initial purchase of the home using RRSPs?
- [101] The former matrimonial home was purchased in June 2001 for \$140,000. The parties obtained a mortgage of \$129,500 and required \$15,732 to complete the purchase. The home was originally purchased in their joint names. The parties redeemed the RRSPs to complete the purchase of the home.
- [102] The claimant redeemed a \$14,737.41 RRSP and the respondent redeemed \$4,000, which was a spousal RRSP created by and contributed to by the claimant.
- [103] The claimant says the down-payment on the parties' home is an excluded asset because those monies came from RRSPs that he had acquired prior to 2000. In particular, he argues he had acquired \$11,387.96 as of December 31, 1999. Further, he says the down payment of \$15,732.00 was all his money which he had obtained prior to their cohabitation.
- [104] The claimant acknowledges that while some of the money may have gone into renovations the parties did on the home, rather than the down payment, there is no issue that the money came from him.

- [105] The respondent says the claimant is not entitled to an exclusion relating to the RRSPs used to purchase the home, as the claimant has not met the onus necessary to gain the exclusion under the FLA.
- [106] Under s. 85(2) of the FLA, the onus of proof that property falls within the definition of excluded property is on the spouse seeking to exclude the property.
- [107] In *Asselin v. Roy*, 2013 BCSC 1681, Mr. Justice Harvey observed the following when considering the requirements under the FLA as opposed to the FRA:
- [106] To implement the objectives, more mathematical certainty from a clear evidentiary record is required. Where inheritances are said to come into play, estate documents should be produced. Where exclusion of property is sought, on whatever basis, documents showing the value of property as at the time cohabitation commenced and at the date of separation will be critical in the assessment which the court is to perform.
- [Emphasis added.]
- [108] The difficulty I have with the claimant's position is due to the lack of certainty regarding the down payment. While there is no doubt that the claimant redeemed some of his RRSPs when contemplating the purchase of the home, I have also found that he obtained a \$10,000 loan from his parents to assist with the purchase of the home. In addition, the claimant himself acknowledges that not all of the RRSPs went towards the down payment. In fact, he argues that some would have gone towards renovations the parties conducted on the home at the time of purchase.
- [109] The evidence presented lacks the mathematical certainty required for the Court to determine the precise amount of excluded property. I agree with the respondent that the onus under s. 85 of the FLA has not been met.
- [110] Therefore, I dismiss the claimant's application for exclusion of a portion of the down payment from the division of family property.

E. Determination of Family Debts

1. Student Loans

- [111] Having found that the parties began living in a marriage like relationship as of December 1999, I find that the student loans the respondent acquired as of that date are family debts. The parties will have to conduct some further investigation to determine which amounts presently payable were incurred after December 1999.
- ##### 2. Is the \$10,000 provided by Mrs. Cizmic Sr. a loan or gift?

- [112] The respondent relies on the analysis in *Locke v. Locke*, 2000 BCSC 1300, recently adopted in *Byrne v. Byrne*, 2015 BCSC 318, to support his submission that the \$10,000 advanced by Mrs. Cizmic Sr. was not a loan. In *Locke*, the court identified a number of factors to consider when analysing whether a loan or gift was intended. Having considered those factors in light of the evidence that was elicited at trial and set out below, I find that the claimant has established on a balance of probabilities that the \$10,000 was a loan.
- [113] The claimant and his mother both testified that a \$10,000 loan was given to the couple in June 2001 to assist with their purchase and renovation of the house in Campbell River. In addition, a copy of a \$10,000 bank draft dated June 27, 2001, payable to the claimant, was produced as an exhibit and identified by Mrs. Cizmic Sr. as the loan document. Mrs. Cizmic Sr. explained that there were no formal repayment terms. Rather, it was provided on the basis that they would pay it back when they could manage it financially. To date, there has been no payment.
- [114] Mrs. Cizmic Sr. also testified about a gift of \$5,000 that she and her husband gave the parties as a wedding gift. A copy of the BMO bank draft made out to both parties was identified by Mrs. Cizmic, dated July 2001.
- [115] The respondent's position is that there is no independent evidence or indicia to support the claim that the \$10,000 was a loan and the Court should accept the respondent's evidence that this was a gift to assist the couple with the cost of their wedding. Of interest, the circumstances under which the money was advanced and the understanding that it would be repaid when the parties were able are essentially the same terms Mr. Buric described when testifying about the July 2007 loan of \$10,000 he advanced to the parties. The existence of that loan is conceded by the claimant. The fact that the terms of the repayment of the loan are the same is not surprising, given that both the Cizmic and Buric families are dedicated to their children and grandchildren and would be willing to do whatever they could to ensure their happiness. Both sets of parents love and trust their children and accordingly did not need to enter into a formal discussion about the terms of the loan.
- [116] I find that the \$10,000 was indeed a loan provided by Mrs. Cizmic Sr. As I have already stated, I found Mrs. Cizmic Sr. to be a credible witness. She is an honest, generous person who was totally committed to the well-being of her family. While she may have struggled during her testimony due to some language barriers, I find she had no problem recounting relevant facts.
- [117] In contrast, I found the respondent to have been vague or confused with respect to many dates and events during her testimony. With respect to this particular issue, I find that the respondent is clearly mistaken and has confused the \$5,000 gift in July 2001 with the \$10,000 loan in June 2001.
- [118] Accordingly, I find the \$10,000 from Mrs. Cizmic Sr. to be a family debt.

[119] The claimant suggests, for the ease and convenience of the parties, the claimant should assume responsibility of the \$10,000 loan to his parents while the respondent assume responsibility of the July 2007 \$10,000 loan from her parents. I leave that to the parties to work out on the understanding that I find both amounts to be loans and hence a family debt to be shared equally between them.

3. Is the \$4,000 provided by Philip Cizmic a loan?

[120] The respondent relies on the same argument with respect to the \$4,000 provided by Philip Cizmic. She maintains that she was only aware of a \$1,750 loan provided by him, and was never told of the total amount.

[121] Philip Cizmic testified that he provided a loan to the parties in July 2009 on the understanding that they would pay it back when they "got back on their feet". At that time, the mill was curtailed and he offered them some assistance. The loan was given in five cheques: \$1,000 and \$750 in July, 2009; and \$750 in each of September 1, 2009, October 3, 2009 and November 1, 2009.

[122] The respondent says she was only aware of the \$1,750 loan. As I have already stated, I found the respondent's evidence on certain matters to be weak in terms of dates and details. This is one of those matters.

[123] I found Philip Cizmic to be a credible witness who testified in a fair and unbiased fashion. I accept the evidence of Philip Cizmic and the claimant on this point and find that the parties owe a family debt of \$4,000 to Philip Cizmic.

4. Consumer Debt

[124] The parties agree that they share responsibility for the consumer debt owed by the respondent to collection agencies for amounts due on various credit cards.

[125] It is apparent that to date the parties have not engaged in negotiations with the collection agencies regarding these debts. The parties will have to conduct some further investigation to determine the amounts owing in order to structure the equal sharing of these debts.

VI. CONCLUSION

[126] In summary, the Court makes the following orders and findings:

- (1) The parties will be divorced effective 31 days from the date of this judgment;
- (2) The respondent's name shall be changed to Stefica Buric;
- (3) The application by the respondent to relocate the three children of the marriage to Coquitlam, B.C., is dismissed;
- (4) The primary residence of the children will be with the claimant in Campbell River;

- (5) The parties will share joint custody and guardianship of their children, with the claimant being the children's primary caregiver;
- (6) The respondent will have parenting time with the children one weekend per month in Coquitlam and will be at liberty to have a further weekend per month with the children in Campbell River. The parties will arrange for the exchange of the children in Nanaimo or any other location they agree upon. If the parties cannot agree on a parenting schedule, they are at liberty to bring this matter back before this Court;
- (7) The parties will divide the children's academic holidays on an equal basis. In the event the parties cannot arrange the schedule, they are at liberty to bring the matter back before this Court;
- (8) I find that the claimant's income level is \$100,000 annually up until August 31, 2015 and thereafter I impute his income to an annual amount of \$70,000. The respondent's income level is imputed as \$30,000. These figures shall be used to calculate the appropriate amount of child and spousal support between the parties. A review of the quantum of spousal support should occur after two years and a review of the quantum and entitlement to support after four years from the date of this judgment. In addition, the quantum of spousal support and child support shall be reviewable upon a material change of circumstances for either party;
- (9) The parties shall share section 7 special or extraordinary expenses in proportion to their respective incomes;
- (10) In terms of property division, I find that the claimant has not met the burden under s. 85(2) of the FLA of proving that a portion of the down payment on the family home should be excluded from the division of family property. Therefore, I find there should be an equal division of the claimant's RRSPs;
- (11) With respect to the matrimonial home, the claimant must pay the respondent her equal share in the value of the home within 90 days of judgment. In the event the matrimonial home must be sold, there shall be an order for joint conduct of sale. The proceeds from the sale of the home shall be divided equally between the parties;
- (12) I find that the student loans acquired by the respondent since the parties began living together in a marriage-like relationship on December 31, 1999 are family debts and the responsibility for their repayment shall be shared equally between them;
- (13) I find that the \$10,000 provided by Mrs. Cizmic Sr. and the \$4,000 provided by Philip Cizmic to the parties are loans, as opposed to gifts, and therefore are family debts;
- (14) I find that the consumer debt of the parties is a family debt, and shall be shared equally between them. I direct the parties obtain the necessary information to value and structure the equal sharing of these debts;

- (15) I order a division of the claimant's pensions pursuant to Part 6 of the FLA with the date of cohabitation being December 31, 1999 and the date of separation being November 19, 2013;
- (16) The family vehicles are to be sold and the proceeds applied to any outstanding amounts due on the vehicle loans. The parties will be equally responsible for any remaining balance on those loans;
- (17) By consent, the parties agree that the respondent will be at liberty to renew the children's passports and the claimant will sign such documents as are necessary to permit the renewal. The respondent will retain the children's passports;
- (18) Each party will be at liberty to travel with the children in the continental United States during his or her parenting time. Each party will give the other notice of any trip to the continental United States exceeding three days in duration. Such notice must occur seven days in advance of the travel. Further, the respondent will provide the claimant with the children's passports for travel in the continental United States upon 48 hours' notice from the claimant. The claimant will return the children's passports to the respondent within 48 hours of the children's return to Canada;
- (19) The parties are at liberty to apply for any further orders required to give effect to these reasons for judgment.

VII. COSTS

- [127] The respondent's counsel has requested that the parties be allowed to speak to costs. Accordingly, if the parties are unable to reach an agreement on costs, they are at liberty to bring an application to this Court.

"The Honourable Madam Justice Devlin"

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