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CANADA / JUDGMENT

## Coltman v. Williams

2018 BCSC 595

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Supreme Court of British Columbia

DECIDED

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2018 BCSC 595 Coltman v. Williams

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Coltman v. Williams,

2018 BCSC 595

Date: 20180307

Docket: E13488

Registry: Chilliwack

Between:

Andrew Scott Coltman

Claimant

And

Melanie Sian Williams

Respondent

Before: The Honourable Mr. Justice Macintosh

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

David R. Thompson

Counsel for Respondent:

Bianca L. Scheirer

Place and Date of Hearing:

New Westminster, B.C.

February 26-28;

March 1, 2018

Place and Date of Judgment:

New Westminster, B.C.

March 7, 2018

## INTRODUCTION

- [1] In this family law dispute, these reasons address primarily the financial issues the parties have raised. Parenting time and some miscellaneous issues were spoken to briefly in final argument, and I will address them toward the end. I propose to address the financial issues individually, and I ask the parties to calculate the financial outcome of the case by taking into account my determination of the individual issues. The parties have leave to apply before me in person or by telephone, arranged through the registry, if they require further direction.
- [2] Mr. Coltman, who is 51, and Ms. Williams, who is 47, met at a motorcycle show in the Lower Mainland in about the middle of January, 2013. Mr. Coltman established further contact with Ms. Williams through a dating website. A friend of Ms. Williams at a motorcycle club vouched for Mr. Coltman and he and Ms. Williams began dating by about the end of January.

### WHEN DID A MARRIAGE-LIKE RELATIONSHIP BEGIN?

- [3] Mr. Coltman and Ms. Williams never married. When did they form a marriage-like relationship? Mr. Coltman says it was in April, 2013. Ms. Williams says it was in December, 2013. That is relevant because Mr. Coltman claims a half interest in the increase in value of Ms. Williams' house on Sleepy Hollow Road in Cultus Lake ("Sleepy Hollow") for the period of the marriage-like relationship.
- [4] Mr. Coltman argues for April 30, 2013 because it was in April that the couple learned Ms. Williams was pregnant with their child. From when they began dating, Mr. Coltman and Ms. Williams discussed having a child together and that they should try to conceive sooner than later, given their ages. Neither had had a child before.
- [5] Mr. Coltman, therefore, views the April, 2013 pregnancy as cementing his relationship with Ms. Williams. On April 30, 2013, he made an informal will, leaving everything he had to Ms. Williams. He did that because he was committed to her, and because she would be the mother of his child. The child, a boy named Aryton, was born on December 11, 2013.

- [6] Between April and December, 2013, the couple almost always spent weekends together at Sleepy Hollow. On weekdays, they generally lived together at Mr. Coltman's house on Harvie Road in Surrey ("Surrey house"). Before that, Ms. Williams had spent more nights living in Vancouver, where she often roomed with a girlfriend in order to be closer to her work. She paid rent for the room she used in Vancouver. After April, 2013, Ms. Williams stayed with her friend in Vancouver less often, but did so as required from time to time for her Vancouver work.
- [7] By mid-2013, Mr. Coltman contemplated selling his Surrey house, and the couple anticipated that after he did sell, they would live together in Sleepy Hollow full time. On July 23, 2013, responding to Mr. Coltman's e-mail to her earlier that day, Ms. Williams wrote by e-mail as follows:

Oh baby, I can see Larry's point. [Larry is a close friend of Mr. Coltman] Maybe you should sell ? Less stress. I bet the market will continue to fall if anything You could put the money aside until you feel safe within your new life with me and poppy [the name given to the child to be born] It's the same effort to prep to sell than to rent it. Worth a thought.

Maybe if you were safe in Sleepy with me, the commute would be tolerably briefly ? You should put that hottub on Craigslist for free if they come get it or cheap It'd be nice to stage the house with a big deck space That deck would be nice for us in the evenings too ?

I love you,

**Mx**

- [8] In fact, Mr. Coltman moved full time to Sleepy Hollow in December of 2013. The sale of the Surrey house began with a decision to sell in about late July or early August, leading to a listing to sell in the fall of 2013, and the sale completing in January, 2014.
- [9] As Mr. Coltman testified, he could not maintain the Surrey house, get Sleepy Hollow ready for a child, and carry on with his employment all at the same time.
- [10] Two decisions of this Court shedding light on when a marriage-like relationship begins are *Davie v. De Mark*, 2017 BCSC 872, and *Williams v. Killey*, 2014 BCSC 1846, at paras. 40-46. Following are paragraphs 99 and 100 from *Davie*:

As noted in *Weber v. Leclerc*, 2015 BCCA 492 (CanLII), leave to appeal refused 2016 CarswellBC 295 (S.C.C.), "economic dependence or interdependence" is not an essential characteristic of marriage: at para. 12. What is more important, is whether the parties see their relationship "as one of indeterminate, lengthy duration": *Weber*, at para. 17, citing *Takacs v. Gallo* (1998), 1998 CanLII 6429 (BC CA), 157 D.L.R. (4th) 623 (B.C.C.A.).

Moreover, the manner in which the parties conducted their lifestyle and their interactions with each other at the material time can objectively evince a marriage-like relationship, even without financial interdependence: *Takacs*, at para. 24.

[11] Taking the evidence as a whole, I find Mr. Coltman and Ms. Williams formed a marriage-like relationship by July 31, 2013. Because Ms. Williams' pregnancy was something the parties had encouraged, and to some extent had planned, and Mr. Coltman, by April 30, 2013, wanted Ms. Williams to have all his property on his death, I was inclined to find that the marriage-like relationship began even before July 31. However, I will accept the tenor of Ms. Williams' evidence on the question, at least to the extent that I find that the marriage-like relationship was only formed by July 31, 2013. Ms. Williams endeavoured in her testimony to play down the early part of the relationship, implying that it was not marriage-like until sometime after July 31, 2013. However, in my view, the parties by then had settled upon a relationship of "indeterminate and lengthy duration", having regard to Weber, cited above at para. [10]. The parties will take the appraisal evidence for Sleepy Hollow as of April, 2013, and December, 2013, and adjust it pro rata to thereby determine the value of that property as of July 31, 2013.

#### **ALLOCATING THE INCREASE IN VALUE OF SLEEPY HOLLOW AFTER SEPARATION**

[12] It is common ground that the relationship ended in January of 2016. The issue to be addressed next is whether Mr. Coltman's interest in the increased value of Sleepy Hollow ends as of January, 2016 or, instead, at the time of trial, which, for purposes of the appraisal evidence, the parties are treating as January, 2018.

[13] Sections 81, 87 and 95 of the Family Law Act, S.B.C. 2011, c. 25, are relevant for resolving this issue. They provide:

81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
- (b) 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.

87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,

- (a) the value of family property must be based on its fair market value, and
- (b) the value of family property and family debt must be determined as of the date
  - (i) an agreement dividing the family property and family debt is made, or
  - (ii) of the hearing before the court respecting the division of property and family debt.

...

95(1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
  - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
  - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
  - (c) a spouse's contribution to the career or career potential of the other spouse;
  - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
  - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
  - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
  - (g) the fact that a spouse, other than a spouse acting in good faith,
  - (i) substantially reduced the value of family property, or
  - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
  - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
  - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[Emphasis added.]

- [14] Section 87 provides that the presumptive valuation date will be the date of the court hearing. Section 95 allows the Court to make an unequal division of property if it would be significantly unfair to divide the property equally.
- [15] Ms. Williams points to s. 95(2)(a), and the short duration of the relationship, July, 2013 to January of 2016, as a factor supporting an unequal division. Mr. Coltman points to the extensive work he did to improve Sleepy Hollow, beginning as early as February, 2013. Some considerable time at trial was devoted to addressing the extent of Mr. Coltman's work on Sleepy Hollow. Ms. Williams sought to downplay his contribution, but I have no doubt Mr. Coltman worked hard at Sleepy Hollow, taking steps to upgrade the property.
- [16] The appraisal evidence for Sleepy Hollow does not address the improvements Mr. Coltman or Ms. Williams made to the property. The appraisal evidence is based on market comparables in the context of the real estate market as a whole. Mr. Coltman, therefore, cannot and does not argue that his labours increased the market value of Sleepy Hollow quantifiably. Instead, Mr. Coltman introduced the evidence of his labours to support his argument that no significant unfairness arises from valuing Sleepy Hollow for purposes of this proceeding as of January, 2018 instead of January, 2016. He did not sit lazily by during the relationship. He worked hard to improve the property from the outset until he had to leave the property in January, 2016.
- [17] He also points out that there have not been long delays from the time of separation to the time of trial. It is the case, also, that during the relationship, by far the larger financial contribution came from Mr. Coltman, but that is essentially offset by the fact that Ms. Williams was clearly the primary homemaker and caregiver for Aryton.
- [18] Ms. Williams has carried the property tax and other obligations for Sleepy Hollow in 2016 and 2017. The total property expenses in that time were approximately \$11,000. Ms. Williams continues to live there.
- [19] On this issue of significant unfairness, the parties cited two decisions of this Court, *Slavenova v. Ranguelov*, 2015 BCSC 79, and *Davie*, cited earlier in these reasons. At paras. 143-177 of *Davie*, and in *Slavenova*, the Court found significant unfairness unless there was unequal division. The facts in *Slavenova* are very different from those at bar. The facts in *Davie* are more comparable. *Davie* took into account the fact that the relationship lasted only a year.
- [20] What is "significantly unfair" was addressed in *L.G. v. R.G.*, 2013 BCSC 983, at para. 71:

In my view, the term 'significantly unfair' in s. 95(1) of the FLA essentially is a caution against a departure from the default of equal division in an attempt to achieve 'perfect fairness'. Only when an equal division brings consequences sufficiently weighty to render an equal division unjust or unreasonable should a judge order a departure from the default equal division.

- [21] When I apply the reasoning in the cited authorities to the facts before me, and embark on the "significant unfairness" analysis, I find that the relative brevity of the relationship necessitates an unequal division to some extent, despite the hard work Mr. Coltman put into Sleepy Hollow. It would be significantly unfair if no adjustment whatever was made. In the result, I move the valuation date back from January, 2018 to April 30, 2017.
- [22] Addressing the first and second issues considered above in these reasons, I therefore award Mr. Coltman one-half of the increase in the value of Sleepy Hollow from July 31, 2013 to April 30, 2017. The appraisal evidence is to be adjusted pro rata on a monthly basis to determine the financial value of that conclusion.

### THE JETTA CAR AND THE BMW BIKE

- [23] In 2015, in the course of the relationship, the parties purchased a Jetta car from funds in their joint account. The car was put in Ms. Williams' name and it was hers to drive on weekdays with the couple sharing it on weekends. Each side tendered "black book" valuation evidence for the year and particular model of the Jetta, employing rounded numbers. Ms. Williams submits the car to be worth \$22,000. However, taking the Jetta's mileage into account, and the needed repair costs, estimated to be \$4,000, I accept Mr. Coltman's submission that the car ought to be valued at \$10,000. Mr. Coltman has the Jetta now. He will pay Ms. Williams \$5,000 for her interest.
- [24] Mr. Coltman purchased a BMW motorbike in the course of the relationship out of the funds in the parties' joint account. The funds in that account derived from Mr. Coltman having sold his Surrey house. In my view, Mr. Coltman was the sole owner of the BMW motorbike and its sole operator. I find he has satisfied the onus of showing that it is excluded property in accordance with s. 85(1)(a) and (g), and (2), of the Family Law Act.

### PENSION AND RSPs

- [25] Mr. Coltman has a pension at work referred to in the evidence as the Vector pension. Ms. Williams has an RSP. The parties will employ Part 6 of the Family Law Act to divide equally the increases in value of the Vector pension, Ms. Williams' RSP, and any other RSP pension interests they have, and have had, over the time of their marriage-like relationship, from July 31, 2013, when I have found their marriage-like relationship began. The end date for that valuation will be February, 2018, which is approximately the date of the trial. (For the order made above in this paragraph, I am not accepting Ms. Williams' submission that RSP-\*8 and RSP-\*3 are family property. They are to be treated the same in that respect as the mutual fund RSP-\*\*\*1 which the parties agree is excluded property. Also, Ms. Williams' RSP will be adjusted upward for the purpose of these calculations, to take into account the \$6,200 she removed from her RRSP to purchase the Mini car.)

BANK ACCOUNT 7\*\*\*\*7:

[26] When Mr. Coltman sold the Surrey house in January, 2014 he netted \$133,000. He put that into a joint account with Ms. Williams, account 7\*\*\*\*7. He did so in order to treat the money as their joint property. When the relationship ended, in January, 2016, Mr. Coltman took the remaining balance in the account of \$105,255. Mr. Coltman cannot demonstrate that that money is excluded from the family assets, nor is it significantly unfair, in my view, to allocate that money 50/50 as between the parties, and that is my order. Mr. Coltman argued that the reasoning in *V.J.F. v. S.K.W.*, 2016 BCCA 186, should lead to the conclusion that Ms. Williams, at best, is entitled to only 25% of the account, but I do not read that authority as leading to such a conclusion on the facts here.

## SPOUSAL SUPPORT

- [27] Mr. Coltman's child support for Aryton is not in issue. Mr. Coltman has been faithful in fulfilling his child support obligations. His monthly payment for child support, pursuant to the current Guidelines, is \$804.
- [28] In spousal support, Mr. Coltman pays at present \$350 per month, which began October 1, 2017, on an interim and without prejudice basis, pursuant to an order of this Court made on September 20, 2017. He submits that he should pay nothing for spousal support going forward. Ms. Williams seeks \$959 for spousal support. She makes her claim retroactive to July 19, 2016, when she filed her counterclaim seeking spousal support. \$959 is the mid-range Spousal Support Guidelines number, using the "with child support" formula, on the assumption that Mr. Coltman's annual income is \$84,124, which it is, and Ms. Williams' annual income is \$20,000, which it is.
- [29] Mr. Coltman's submission is that Ms. Williams' current income of \$20,000 is too low for use in this analysis because, he submits, she should be earning more. If she were earning \$40,000, the mid-range spousal support number would be \$245.
- [30] Mr. Coltman points out that Ms. Williams has usually earned more than she earns now. In 2012, her income was \$96,944. In 2013, it was \$56,645. In 2014, having had Aryton in December, 2013, Ms. Williams earned only \$23,358.
- [31] She earns less than that now from all sources. Today, Aryton is four years and approximately three months old, and will attend kindergarten this fall.
- [32] Ms. Williams has 20 years' experience working in the field of costume design, as a seamstress, cutter, assistant costume designer, and costume designer. She has maintained membership in the union for that industry, and is on the union seniority roster. She has also worked as a shopper in the entertainment industry. She was a shopper in 2013 when she met Mr. Coltman. She was working then in Vancouver, job sharing, and working three 12-hour days per week. Ms. Williams quit that work to have Aryton, and her earnings have stayed relatively low ever since.

- [33] This fall, Ms. Williams is planning to begin a one-year course of study, government sponsored for single parents, with a view to becoming a social worker. The starting wage for her, after graduation, is expected to be approximately \$20 an hour. By contrast, the hourly rates for employees in Ms. Williams' union are \$29.19 for a seamstress and \$34.70 for an assistant costume designer.
- [34] Ms. Williams is fully entitled to embark on her anticipated course of study, and abandon her more lucrative work in the entertainment industry. However, Mr. Coltman is not obligated to pay for that choice or, at least, for all of it. In my view, Ms. Williams' income for Spousal Support Guidelines purposes in 2016-2018 has to be, at least, \$30,000, and that is the number I order the parties to employ.
- [35] Mr. Coltman is ordered to pay spousal support at the mid-range under the Spousal Support Guidelines on the basis that his annual income is \$84,124 and Ms. Williams' annual income is \$30,000, with child support of \$804.
- [36] Mr. Coltman's spousal support obligation will be retroactive to July 19, 2016, when Ms. Williams filed her claim for spousal support. However, from the retroactive payments, Mr. Coltman is entitled to deduct the amounts he has paid in spousal support until now. Those amounts include \$350 times five months, or \$1,750, pursuant to the court order referred to earlier. I believe, based on submissions by Ms. Williams' counsel, they also include payments by Mr. Coltman to Ms. Williams from January 1, 2016 to August 31, 2016, in the amount of \$4,920.
- [37] Finally, with respect to spousal support, Mr. Coltman's ongoing obligation will end March 31, 2019, given the relatively short duration of the marriage.

## FURTHER REQUESTED ORDERS

- [38] In the course of final argument, counsel for Ms. Williams proposed that parenting time be changed in anticipation of Ms. Williams attending school full time this fall. However, the present order for parenting time purports to be final, and the circumstances have not changed at this stage from the circumstances giving rise to the present order. The better course is to await a material change in circumstances; that is, the available time for each parent when there is a material change. Failing a new agreement, either party may apply then.
- [39] Ms. Williams also asks that the present interim "no contact" order be made permanent. That is acceptable, and I order that, subject to the parties' right to e-mail one another for the pick-ups and drop-offs of their son.
- [40] The CPL and spousal lien on Sleepy Hollow will be removed when Ms. Williams has paid to Mr. Coltman his financial interest in that property, subject to any set-off right she has as a result of the above orders.

- [41] Mr. Coltman will have 30 days from March 20, 2018 in which to remove his belongings from Sleepy Hollow, and he and Ms. Williams can e-mail one another, and he can be on the property, for that purpose.
- [42] Any further orders sought are by consent, and I leave it to the parties to incorporate them in the minutes of order.
- [43] I thank counsel for their helpful submissions.
- "MACINTOSH J."
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