

CANADA / JUDGMENT

Der Woon v. Zadorozny

2019 BCSC 2004

COURT

Supreme Court of British Columbia

DECIDED

22 November 2019

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2019 BCSC 2004 Der Woon v. Zadorozny IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Der Woon v. Zadorozny, 2019 BCSC 2004 Date: 20191122 Docket: E162384 Registry:

Vancouver Between: Gerald Der Woon Claimant And Laura Zadorozny Respondent Before: The

Honourable Mr. Justice Bowden Reasons for Judgment Counsel for Claimant: G.W.D. Abrams

Counsel for Respondent: C. Alvarez Gomez J. Chow, Articled Student Place and Date of Trial:

Vancouver, B.C. July 3 - 5, 2019 Place and Date of Judgment: Vancouver, B.C. November 22, 2019

Introduction

- [1] The respondent, Laura Zadorozny, sought a preliminary determination of the date of separation. It is her position that the notice of family claim was statute barred as it was filed by the claimant, Gerald Der Woon, more than two years after the parties' separation.
- [2] The court ruled that, pursuant to Rule 14-6 of the Supreme Court Family Rules, the date of separation should be determined before the trial proceeds further.

Background

- [3] The parties met on an internet dating site and began cohabiting in the summer of 2006. The claimant moved into the respondent's house in Richmond, B.C., which she had owned since 2009. The parties never married.
- [4] The claimant was a renovation contractor but made only a modest income of between \$20,000 to \$35,000 per year. He was indebted to the Canada Revenue Agency for taxes going back three or four years. The respondent helped him with that debt by taking out a mortgage on her home. She also used some of the mortgage proceeds to pay for renovations of her house.

- [5] The respondent worked in sales at Ikea. The evidence is not clear as to her income while she worked there. In 2012 she injured her back while working and, apart from a gradual return to work over a six week period, it does not appear that she went back to work again at Ikea because of her physical limitations. Her income since her injury appears to have been modest. In 2017 it was only \$2,817. She also withdrew some funds from her RRSP to cover her living expenses.
- [6] The parties shared household expenses although it appears that the respondent bore the largest portion of those costs. The claimant contributed about \$1,000 per month towards the respondent's mortgage expense and also did some renovations.
- [7] It seems that their relationship began to deteriorate after the respondent was injured at work. The parties began seeing a relationship counsellor but things did not improve. Nevertheless, it seems that they continued to sleep together from time to time although the respondent says that at times they slept in separate rooms because the claimant snored.
- [8] It is not disputed that on June 17, 2014, the respondent made the claimant a nice dinner and then told him that their relationship was over. She said that they had not resolved any of their issues and needed to end it.
- [9] After that, the claimant and respondent did not sleep together and talked infrequently. About three days later, the claimant asked the respondent if she was resolved in her decision and she said she had never been more resolved. They no longer went out socially together; they didn't travel nor did they have family or friends visit them for dinner and they no longer had meals together other than once or twice.
- [10] Early in July 2014, the respondent told her brother-in-law that her relationship with the claimant was over.
- [11] The respondent was told by her counsellor to give the claimant a firm time to leave her house and she told him that he should leave by August 1, 2014. The claimant said that would not be long enough for him to arrange to move so she said he could stay until September 1, 2014. He left the house on that date.
- [12] After her announcement to the claimant that their relationship was over she took some steps to deal with her finances. She considered that she had about \$30,000 in an RRSP that would be available if she needed it to cover living expenses.
- [13] On June 18, 2014 she met with her ex-husband about her circumstances and told him that she and the claimant had split up the day before. He confirmed this in his testimony. She was concerned about her financial circumstances and wasn't sure how she was going to pay her mortgage because the employees of Ikea were on strike. Her father was going to pay her \$500 a month and her ex-husband agreed to pay her \$500 per month to help with her living expenses. In an email to him on June 19, 2014 she told him about an appointment she had made with a lawyer to find out her rights and, referring to the claimant, said, "He could linger here for a while till he gets his shit together and I just want him out asap."

[14] At a gathering of her co-workers early in July 2014 she told some of them that she and the claimant had broken up.

[15] The claimant filed a notice of family claim on August 18, 2016.

Analysis

[16] Pursuant to s. 198 (2) of the Family Law Act, SBC 2011, c. 25, when spouses have lived together in a marriage-like relationship a spouse may not start a proceeding for an order to divide property or debt or for spousal support later than two years after the date that the spouses separated.

[17] Section 3(4) of the Family Law Act provides:

(4) For the purposes of this Act,

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

[18] Although the claimant left the family home on or about September 1, 2014, I have concluded that the parties separated on June 17, 2014. (C.P v. K.W.A., 2018 BCSC 332 (CanLII) and Nearing v. Sauer, 2015 BCSC 58).

[19] On June 17, 2014 the respondent clearly expressed her intention to end the relationship of the parties and her actions following her expressed intention were entirely consistent with her statement that she intended to separate. Although in the same residence, they talked infrequently, they slept in separate beds and they stopped socializing as a couple with friends or family. Shortly after her declaration to the claimant, she announced their separation to her father, her ex-husband and her co-workers. She also took steps to deal with her financial circumstances as she was unemployed at the time.

[20] In my view, it was not incumbent upon the respondent to take steps to have the claimant removed from her house. She acted fairly and reasonable in allowing him to stay until September 1, 2014 so that he could find another place to live. A meeting of the minds is not required as to the date of separation. The claimant did not testify that the respondent did anything to lead him to believe that the relationship continued after June 17, 2014. Quite the contrary, a few days after her declaration that their relationship was over she said she had never been more resolved about a decision.

Conclusion

[21] By virtue of the limitation period in s. 198(2) of the Family Law Act, the action by the claimant is dismissed.

[22] Costs are awarded to the respondent at Scale B. "Bowden J."

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