
CANADA / JUDGMENT

Doell v. Prentice

2018 BCSC 1115

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 1115 Doell v. Prentice

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Doell v. Prentice,

2018 BCSC 1115

Date: 20180705

Docket: E1056

Registry: Powell River

Between:

Lorna Kuxy Doell

Claimant

And

Malcolm MacDonald Prentice

Respondent

Before: The Honourable Mr. Justice Kelleher

Reasons for Judgment

Counsel for the Claimant:

R.N. Hainsworth

Counsel for the Respondent:

B.M. Pearce

Place and Date of Trial:

Powell River, B.C.

January 16 - 19, 2018

May 15 - 18, 2018

Place and Date of Judgment:

Powell River, B.C.

July 5, 2018

Introduction

- [1] These are family law proceedings. Kuxy Doell and Malcolm Prentice began living together in 1992. They separated in 2015. The claimant, Ms. Doell, is seeking a division of assets and spousal support. The respondent's position is that he and Ms. Doell were parties to an agreement whereby neither would make any claim against the other if they were to split up.

Background Facts

- [2] Ms. Doell was born in 1965. She is a graduate of the University of Winnipeg. She moved to the Powell River area in 1991. She was married to her first husband at the time. In September 1992, she and her husband separated and he returned to Winnipeg.
- [3] Mr. Prentice was born in 1964 and raised in New Zealand. He left school at 16 and apprenticed as a refractory bricklayer. This trade works in the industrial sector, lining kilns and boilers with fire resistant materials.
- [4] He moved to Canada when he was 24, in approximately 1988. He stayed with his brother Douglas who was a millwright at the pulp mill in Powell River. Mr. Prentice worked in the woods for a few months, then worked at Cominco in Trail on a project building a kiln.
- [5] Mr. Prentice wanted to put some money together to purchase property. He resolved at the beginning of 1990 that he would save \$20,000 that year. He found work at the Port Mellon pulp mill and at Cominco during the year. By the time he was laid off at Cominco in December 1990 he had put away \$22,000.
- [6] He returned to Powell River and settled on it as a place to live: he enjoys the outdoors, hiking and mountain biking.
- [7] The claimant and respondent met in October 1992 and they began living together a short time later. She worked as a dog groomer and had a second job working in a veterinarian's office. In addition she had a casual position at the local hospital. She was called into work from time to time.

- [8] At the time, Mr. Prentice's employment was largely doing industrial work on maintenance shutdowns in the pulp industry. That involves doing repairs in plants and operations out of town.
- [9] The claimant testified that she and Mr. Prentice agreed early on to keep their finances separate. They decided not to marry unless they changed their then current view that they did not want children.
- [10] Mr. Prentice described the arrangements differently. He said he was interested in buying property, but it would be in his name. He was happy to share a home but he could not buy a home with "someone who has no money". He said he worked hard to acquire the money he had. He had no intention of "losing it".
- [11] In 1993 he purchased property at 2054 Ramsay Road. The price was \$55,000. He put in \$12,000 of his own money but retained some money to pay legal fees as well as to spend on the considerable repairs that would be necessary.
- [12] He testified that the arrangements with the claimant were as follows: he would pay everything to do with acquiring and maintaining the property, including paying property taxes and insurance. She could live there. They would share the household expenses: hydro, telephone, groceries, and pet food.
- [13] His evidence is that they had an agreement: they would keep their finances separate; if they split, each would take what each owned and leave the relationship; and there would be no lawyers.
- [14] Mr. Prentice said this agreement suited the claimant. She had a place to live. She was in debt, and this would give her an opportunity to retire the debt.
- [15] Ms. Doell denies the arrangement went beyond keeping separate finances. Mr. Prentice on the other hand testified that she told others, in his presence, the arrangements were that they kept their finances separate and each would keep their own property.
- [16] In fact, finances were kept entirely separate. They never had a single joint account or joint credit card. They each had a vehicle (Mr. Prentice had more than one). The owner of the vehicle maintained it, insured it, and bought the gas. When they dined out they would each typically pay for their own meal.
- [17] The Ramsay Road property needed a lot of work. It was run down and, in Mr. Prentice's words, barely habitable. Ms. Doell helped with wallpapering and some interior painting. She also helped clear the blackberry bushes. There was also help from their friend Perry DeMos.
- [18] Mr. Prentice is an accomplished handyperson. He carried out extensive renovations to the home and considerable landscaping. Land was cleared and grass was put in.

- [19] In 1995, Mr. Prentice acquired the property adjacent to theirs for \$60,000. Again he put it in his name. A mortgage was taken out for this purchase by Mr. Prentice. He made the mortgage payments.
- [20] The property was not very marketable. It had a mobile home. The home and the pad it was on encroached on Mr. Prentice's property. The claimant testified that she and her mother did a "deep clean" of the mobile home. Mr. Prentice rented it out such that the rent more or less covered the mortgage payments.
- [21] In 1996 the claimant's mother moved to Powell River. The same year, Ms. Doell decided to start a business of her own, looking after people's dogs. Her services included walking and boarding dogs, and feeding horses.
- [22] In approximately 1998, Mr. Prentice decided to refocus his work. He learned stone masonry and went into business. In this regard he built a large stone wall at Ramsay Road. He had the help of his brother Douglas and some other friends.
- [23] Ms. Doell testified that she assisted in collecting rocks. Mr. Prentice stated that her assistance was very minimal. In fact, he was cross-examined on the basis that it was put to him that Ms. Doell refused to help him because she was of the view that taking stones from the river was illegal. I find that any assistance she provided was not significant.
- [24] Phoebe Becker is the claimant's mother. She testified that she and her daughter discussed buying a place. Her daughter was not planning to live there but to keep dogs there.
- [25] Ms. Becker said they paid \$117,000 to purchase 11226 Tiller Road. It is in joint tenancy. The mortgage payments were \$550, of which Ms. Becker paid \$200 and her daughter paid the rest. The house has been refinanced since the purchase, to cover debts incurred by Ms. Doell.
- [26] Ms. Doell has never lived in this home. It has however served as a place for dogs she was looking after.
- [27] Mr. Prentice said that he was the beneficiary of the purchase of Tiller Road in the sense that dogs that used to be boarded in his home on Ramsay Road then moved over and stayed with Ms. Doell's mother.
- [28] In 2001, Mr. Prentice learned that a property at Kelly Creek was for sale. He was familiar with this property because, starting in 1995, Ms. Doell had walked the owners' family dog when they went to Victoria every second weekend.
- [29] The owners suggested to Mr. Prentice that he buy the property. He was interested and was able to put the purchase together by selling the Ramsay Road dwelling where he had lived.
- [30] Mr. Prentice and the vendor worked out a deal before the vendor listed the property. They were able to agree on a closing date far enough away that he could sell the Ramsay Road residence.

- [31] Mr. Prentice testified that he could not qualify for a mortgage. I infer that some of the work he was doing at the time was for cash such that his income could not be documented for mortgage purposes. His brother Douglas co-signed the loan. Douglas and he are registered as joint tenants of the property. Mr. Prentice said that Douglas has no beneficial interest in the property but has been left as a joint tenant because of the right of survivorship.
- [32] The arrangements for the Kelly Creek property were the same as for Ramsay Road. Mr. Prentice paid the mortgage, the property taxes, and the insurance. The household expenses were shared as before.
- [33] Mr. Prentice continued to work as a stonemason, and that is now his sole occupation. That is by choice. He works on construction of stone walls and fireplaces. His work is often as a subcontractor in residential construction.
- [34] Mr. Prentice had one substantial job on Nelson Island, doing a lot of stonework. He worked there for approximately one year, living on the island for four days a week. He said people recognized his good work on Nelson Island. It "put him on the map".
- [35] He has only rarely accepted work at a mill shut down. He testified that the last time he did so was approximately 2003.
- [36] When the parties moved to the Kelly Creek property there were three structures: a house where Mr. Prentice now lives; a cabin with water and power called Maple House, and a cabin with no services. The house needed extensive work. In fact, he considered tearing it down. But he put on a new roof and installed hardwood floors; he added windows and built a kitchen.
- [37] A lot of trees were cleared. He was able to sell 90 cords of firewood. He also received 50% of the value of the logs removed by a falling contractor.
- [38] Ms. Doell owned a horse named Cairo. Mr. Prentice cleared an area so Ms. Doell could keep her horse there. There was a tenant living in Maple House - a friend moved in and stayed some six years.
- [39] In 2002, Mr. Prentice sold the second Ramsay Road property for \$50,000. After paying the mortgage he obtained proceeds of some \$12,400. He did not share this with Ms. Doell. She did not claim any of the proceeds at the time.
- [40] After the parties moved to Kelly Creek, Mr. Prentice testified Ms. Doell did not make a real contribution around the property. According to him she said that she would not do any work on the property because if they split up she would get nothing out of it. Mr. Prentice said he was quite fine with that.

- [41] In April 2011, Ms. Doell fell off a horse. She suffered a concussion and this led, she said, to migraine headaches. This had a bad effect on Ms. Doell's life and her relationship with Mr. Prentice. She said that she was affected many days each month with migraine headaches and it affected her ability to earn money.
- [42] In 2013, Ms. Doell had the misfortune of losing two animals. Her horse Cairo developed colic and had to be put down. Her cat was treated for cancer but did not survive.
- [43] Both the claimant and the respondent testified that Ms. Doell was very saddened by the losses. It affected the relationship. Ms. Doell was less interested in going out. She said her headaches worsened.
- [44] At one point Mr. Prentice suggested she move to the cabin on the property, called Maple House. She did not do so.
- [45] In June 2014, she testified that he suggested she move out.
- [46] On May 13, 2015, Ms. Doell removed Mr. Prentice's name as the beneficiary of her will. She did not disclose that to him.
- [47] Ms. Doell moved out on September 15, 2015. She moved to premises owned by a friend, Mike Lawler.
- [48] Various witnesses testified about what they understood the relationship between the parties was.
- [49] Ms. Becker, the claimant's mother, testified she had a conversation with Mr. Prentice when he and Ms. Doell lived on Ramsay Road. She had assumed they were both on title. However, on this occasion, the respondent told her that if anything happened to their relationship her daughter would "get nothing". He said that was because they were not married. She tried to correct him, saying that marriage did not matter; common law rules were the same. He replied that that would not change anything; she would not get anything.
- [50] Yevgeny Lewis testified that he has known the respondent for more than 25 years. He testified that he understood that the family home belonged to Mr. Prentice. His understanding of the relationship is "what's his is his and what's Duxy's is Duxy's". He recalls that in 1992 or 1993 Mr. Prentice said this in the presence of, at least, the claimant, Perry DeMos, and someone else. In cross-examination he agreed the claimant never told him that she had no claim against the property; she also never mentioned spousal support.
- [51] Perry DeMos testified that he has known the parties for some 24 years. They met just after Ramsay Road had been acquired. He recalls learning that the two of them had agreed that their finances would be entirely separate: if they broke up Mr. Prentice would take what was his; Ms. Doell would take what was hers.
- [52] He said in cross-examination that he heard Ms. Doell say words to the effect that they keep everything separate.

- [53] Dave Bourassa and his former wife were friends of Ms. Doell and Mr. Prentice in the period from approximately 2000 to 2007. Mr. Bourassa recalled a conversation with Ms. Doell when they had moved into Kelly Creek. He said something along the lines of "your place looks great". She corrected him. She said words to the effect of, "this is Malcolm's. I have my own place. If anything were to happen, we go our own separate ways."
- [54] A couple of years later, he said, he remarked to her that it must be nice to have horses on "your property". Again she corrected him, stating, "This is Malcolm's property".
- [55] Mr. Bourassa agreed in cross-examination that she never mentioned anything about spousal support.
- [56] Luke Beauchesne has known the parties for more than 20 years. They did activities together, including a trip to Osoyoos with Ms. Doell's horse and with their dirt bikes. He recounted a conversation he had with Ms. Doell in the kitchen at Kelly Creek. She told them that she had just purchased a home and that in the event she and Malcolm ever split up she would have that and Malcolm would have his home.
- [57] Terry Bradshaw has known the parties for many years. He testified that several years ago he asked Ms. Doell if she and Malcolm were married. Her response was that they had an agreement: she would not claim anything if she and Malcolm split up.
- [58] Remy Beauchesne, the cousin of Luke, said that he met the parties around 2000 or 2001. Their situation was often the subject of discussion. He remarked that when they were out they each paid for their own meal. He learned that they did not believe in conventional marriage; they kept their assets separate and each had their own place. He heard this more from Mr. Prentice but Ms. Doell made reference to it as well.
- [59] In cross-examination he said that the chores seemed divided. Mr. Prentice was the cook; she cleaned up after. She maintained her horse. Mr. Prentice did 99% of the work around the property.
- [60] Karen Prentice is married to Mr. Prentice's brother Douglas. She testified that in the early 90s Mr. Prentice lived with Douglas and her. He then moved into the claimant's place for some seven months before he bought Ramsay Road. Her evidence is that the parties worked hard together to fix up Ramsay Road.
- [61] Kathryn Phillips did work for Ms. Doell from 2007 to 2015. In June 2015, Ms. Doell told her that she was saving her money to leave Mr. Prentice. She wanted nothing from him. She said to Ms. Phillips that Mr. Prentice had no reason to fear that she would go after half his assets.

Credibility

- [62] The two parties presented starkly different versions of what the agreement was between them. According to Ms. Doell, she proposed and he accepted that they would keep their finances separate. She also said they had an understanding about what would occur if they separated: they would be fair. She told Mr. Prentice she would not go to a lawyer and "take him for everything he has got". In cross-examination she denied there were conversations about property and an agreement that he would keep his property.
- [63] Ms. Doell went further. She accused Mr. Prentice of waging a campaign among their acquaintances to "sell" the idea that she had agreed she would receive none of his property.
- [64] Mr. Prentice for his part said the agreement that was reached was as follows: finances would be kept separate; if they split they would take what they own and leave; there would be no lawyers involved.
- [65] I have no difficulty concluding Mr. Prentice's recollection must be preferred. Contrary to the claimant's submission, he was neither "evasive" nor "flustered" in cross-examination. He was steadfast in maintaining his position.
- [66] Moreover Mr. Prentice's recollection is consistent with what other witnesses said and with all the surrounding circumstances. Mr. Prentice was asked about Ms. Doell's contribution to the work done at Kelly Creek. He said that she told him that she refused to do work on the property because if they split she would get nothing out of it. He was not challenged in cross-examination about this assertion.
- [67] Douglas Prentice's evidence is that Ms. Doell did not help with the physical work at Kelly Creek, fixing up the property. According to him, she often said that she did not want to work on it because it was not her property. He was not cross-examined with respect to this testimony. There was no application to call rebuttal evidence.
- [68] There is no room for ambiguity with respect to the three properties which Mr. Prentice purchased during their relationship. With respect to the initial Ramsay Road property, the neighbouring Ramsay Road lot and the Kelly Creek property:
- Ms. Doell made no contribution to the down payments;
 - she was not on title to the properties;
 - she was not signatory to the mortgages either as a mortgagor or guarantor;
 - she did not contribute to the mortgage payments; and
 - she did not contribute to property taxes or property insurance.
- [69] As well, Ms. Doell received none of the proceeds of the sale of either Ramsay Road property. She did not share in any rent earned at the second Ramsay Road property or at the cabin on the Kelly Creek property.

- [70] When parties separate it is common for them to discuss what the arrangements will be. There is no evidence that any such discussion took place when Ms. Doell moved out in 2015. That is entirely consistent with the assertion of Mr. Prentice that they had agreed long ago what would happen in these circumstances. It was only months later that she commenced these proceedings.
- [71] The evidence establishes that there was an agreement between the claimant and the respondent. It was not an agreement reached after negotiation, or give-and-take. Rather, it appears to be the condition set by Mr. Prentice for living together: the parties would keep their finances separate; the assets of each party would remain the assets of each party; and if they split up there would be no lawyers involved.
- [72] The agreement was decidedly one-sided. Mr. Prentice had saved a lot of money (some \$22,000) to invest in the home. He was a skilled tradesperson with a marketable skill. High-paying work was available to him. Ms. Doell on the other hand had a university degree and virtually no assets - a used car and a used dishwasher. She had workplace skills which were not high paying: an ability to care for dogs and horses.
- [73] I am sure that from her perspective the agreement sought by Mr. Prentice was better than nothing. She paid virtually nothing for shelter. As Mr. Prentice testified, it gave her an opportunity to repay debts.
- [74] The question then is how the law treats such an agreement. First, if the parties had been together for less than two years and were not married, they would not be "spouses" within the meaning of s. 3(1)(b) of the Family Law Act, S.B.C. 2011, c. 25 ("FLA"). The agreement that I have described above would bind both parties.
- [75] These parties, it is agreed, are spouses and subject to the FLA.
- [76] Under s. 92 of the FLA parties are entitled to make agreements to divide the family property and family debt:
92. Despite any provision of this Part but subject to section 93 [setting aside agreements respecting property division], spouses may make agreements respecting the division of property and debt, including agreements to do one or more of the following:
- (a) divide family property or family debt, or both, and do so equally or unequally;
 - (b) include as family property or family debt items of property or debt that would not otherwise be included;
 - (c) exclude as family property or family debt items of property or debt that would otherwise be included;
 - (d) value family property or family debt differently than it would be valued under section 87 [valuing family property and family debt].

- [77] There are two classes of agreement under the FLA. If the agreement is in writing and signed by each spouse in front of a witness, s. 93 states that the court may set it aside or replace it with an order. The agreement that is in place here is not in writing and was not witnessed. Section 93 has no application.
- [78] The question here falls to be determined under s. 95. That provision calls for equal division of family property or family debt unless an equal division would be "significantly unfair". That term was considered by Butler J. in *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44. As he put it, "significantly is understood to mean more than a regular impact - something weighty, meaningful or compelling."
- [79] The factors governing whether it would be significantly unfair to divide family property or debt are listed in s. 95(2):
- (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.
- [80] The respondent relied on *J.C. v. A.W.*, 2016 BCSC 1012, and *P.N.K. v. C.L.*, 2013 BCSC 1856.

- [81] In J.C., Bracken J. described the 30 year relationship between the parties as follows:
- [102] The parties allowed each other full autonomy as to how they spent their own money. The claimant conceded he knew little about the respondent's income or financial affairs beyond the limited areas of the cost of shelter, automobiles and day-to-day living expenses. Neither put their income at the disposal of the other.
- [103] I find that the parties agreed to keep their personal financial assets separate. Their separate financial assets did not become family property under the Family Relations Act. Therefore the parties are entitled to retain their personal financial and other assets as their own separate property.
- [82] He went on to state that, even if those assets were subject to division under the FLA, it would be significantly unfair to the respondent if he were not allowed to keep all of his own assets.
- [83] In this regard, Bracken J. relied on the decision of Punnett J. in P.N.K. In P.N.K. the parties had an oral agreement in respect of property division. His Lordship stated:
- [63] But it must be remembered that this was not a traditional marriage-like relationship. From its inception it was clear to both parties that it was not a joint family venture or partnership. It is difficult to see how the claimant could have an expectation of sharing in the economic fruits of the relationship. There was an explicit agreement that they would remain financially separate, with the claimant paying 50% of the rent, utilities and groceries. That was to be the extent of his financial contributions. They did not share bank accounts and did not commingle their funds in any fashion.
- [87] In this instance the agreement is oral, but was supported in evidence by the documents produced relating to the purchase of assets, the accounting for expenses, the registered ownership of the condo and the loans received by the claimant. I find that this couple agreed to keep their financial affairs separate and apart and that they did so throughout the relationship. The fact that at times the respondent was forced by the claimant's financial situation to allow him to fall into arrears does not change the fundamental terms of their agreement. It is clear on the evidence that parties never agreed to share the condo, the RRSPs or the pension of the respondent. While the claimant failed to live up to the terms of the agreement the respondent does not seek reimbursement from the claimant for the sums outstanding.
- [88] As a result, I am satisfied that if the FLA applies, this is a case in which I would order an unequal division of family property under s. 95. Section 95(1) provides that the court may order an unequal division if it would be "significantly unfair" to divide family property, family debt, or pension benefits equally. As noted, s. 95(2) provides a list of factors that the court may consider, including "the terms of any agreement between the spouses" (s. 95(2)(b)) and "a spouse's contribution to the career or career potential of the other spouse" (s. 95(2)(c)).

- [89] Dividing the family property or benefits under Part 6 (pension division) equally would in my view be significantly unfair on the rather unusual facts of this case. Firstly, the agreement between the spouses, as already discussed, is either an agreement to divide family property and debt unequally, or an agreement to exclude as family property items that would otherwise be included under the FLA. Secondly, s. 95(2)(c) is relevant given the respondent's contributions to the career or career potential of the claimant. The claimant, in comparison, made no contributions to the respondent's career or career potential.
- [84] Section 95(2)(b) is important in the present circumstances. The fact that the parties agreed there would be no division of property is an obvious factor in deciding whether there should be an equal division. However, s. 95(2)(a) is obviously important as well, in that the parties were together for nearly 23 years.
- [85] Mr. Prentice has learned the details of running a business: registering with WorkSafe BC, acquiring a GST account and the like. He has an accountant assisting him.
- [86] The claimant seeks an equal division of assets. The position of the respondent is that, because of the agreement, there should be an unequal division such that all of the family property is kept by Mr. Prentice. I respectfully disagree with both positions.
- [87] The agreement is an important factor. Much like in P.N.K. and J.C., it would be significantly unfair to order equal division because of it.
- [88] On the other hand, other factors lead me to the conclusion that it would not be proper for Mr. Prentice to keep all of the family property. Significantly, the parties were together some 23 years, and when they made the agreement they were not even at the stage of being "spouses" within the legislation as it then existed. The present circumstances can also be distinguished from P.N.K. and J.C.
- [89] In P.N.K., s. 95(2)(c) was a substantial factor. The respondent had been primarily responsible for the support of the family throughout their relationship, while the claimant pursued extensive education. This support from the respondent contributed significantly to the claimant's career potential, and weighed in favour of the respondent retaining all of her own property. Here, I find that the parties did not make significant contributions to each other's career or career potential.
- [90] In J.C., the claimant was the one who made it clear to the respondent at the outset of the relationship that he did not want to marry or combine financial affairs. This differs from the present situation, where the agreement was imposed by the respondent. The fact that the agreement was presented to the claimant without negotiation, as a condition for living with the respondent, affects the fairness of now allowing Mr. Prentice to retain all of the family property.
- [91] I conclude it is fair in the circumstances that Ms. Doell not receive an equal division but that family property be divided on an 80/20 basis. That is, Ms. Doell should receive 20%.

[92] The property appraisals are significantly different from the value ascribed to the properties by the BC Assessment Authority. If the parties cannot agree on a value for the properties for the purposes of dividing assets, new appraisals will be necessary. The cost of any such appraisal will be shared on an 80/20 basis.

[93] It is not appropriate that Ms. Doell's debt be part of the division. How she spent or overspent was never a concern of Mr. Prentice. It was not his business. He had no say in it. It would be significantly unfair to require him to share a portion of this debt.

Spousal Support

[94] Spousal support is governed under Part 7 of the FLA. Sections 161 and 162 provide:

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[95] There are three bases for entitlement to spousal support: compensatory, non-compensatory, and contractual. See *Moge v. Moge*, [1992] 3 S.C.R. 813; *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420; and *Miglin v. Miglin*, 2003 SCC 24.

[96] There is not a strong case for compensatory support in this instance. Compensation is for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise: *Chutter v. Chutter*, 2008 BCCA 507 at para. 50.

[97] Where parties have a close economic union there is a presumptive claim to an equal standard of living on dissolution: *Moge* at 870.

[98] These parties made a very deliberate choice not to have an economic union. They have never had a joint account or credit card. They have never made a joint purchase. Moreover, the parties chose not to have children. Thus there was no period of time where the claimant was not part of the workforce for that reason. There is little evidence that Ms. Doell suffered any disadvantage because of the marriage.

[99] Neither party sacrificed a career for the other. At the same time neither party made a significant contribution to the other's career.

[100] I conclude there are not compensatory grounds for spousal support.

[101] I turn to non-compensatory principles. In Chutter the court said:

[54] When compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded on the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[102] These parties are in very different positions. Mr. Prentice's means far exceed Ms. Doell's. Ms. Doell is earning low wages, while Mr. Prentice is maintaining a successful business.

[103] Mr. Prentice's income for support purposes is based on his last four years of income:

Year

Income

2016

\$48,942

2015

\$45,477

2014

\$28,835

2013

\$38,966

[104] The claimant argued that Mr. Prentice charges \$45.00 per hour. Therefore, his income should be imputed as \$90,000. I disagree. There is no evidence he is underemployed. When work comes in, he performs it.

[105] I conclude that Mr. Prentice's income for spousal support purposes is \$46,000.

[106] Ms. Doell's taxable income for the same period is:

Year

Income

2016

\$2,075

2015

\$6,161

2014

\$15,066

2013

\$17,636

[107] Ms. Doell testified that since 2011 she has suffered from debilitating migraine headaches. She claims that this has affected her income. However, apart from a single prescription, there was no medical evidence in this regard.

[108] In fact, Ms. Doell said she "fortunately only loses three or four dog appointments a year" as a result of the migraines. The revenue lost is \$16 per appointment or \$48-\$64 per year.

[109] Ms. Doell testified that her bookkeeping is done by her mother. But cross-examination of both Ms. Doell and Ms. Becker establish that the financial records are not reliable.

[110] Ms. Doell in cross-examination said she was unable to answer questions because it was in her mother's handwriting. But Ms. Becker testified that Ms. Doell had set up the bookkeeping and had done it for the first four years of the business operating. For that reason, counsel for the respondent was permitted to re-open cross-examination of Ms. Doell. Her explanations made little sense. The expenses claimed by Ms. Doell, which reduced her 2016 taxable income from \$19,590 in revenue to \$2,057 in net income are not supported by the evidence.

[111] The difficulty is that Ms. Doell claims to be unsure how the bookkeeping system works because her mother takes care of it. However, Ms. Becker does not appear to understand the bookkeeping system either.

[112] Ms. Doell has a university degree. She has chosen relatively low paying work. In my view it is appropriate to impute to her an annual income of \$20,000. That is less than what employment at minimum wage, for 40 hours per week, 48 weeks per year would result in.

[113] Having in mind the parties' circumstances, and the Spousal Support Advisory Guidelines, I award spousal support of \$850 per month for an indefinite period.

[114] If the parties cannot agree on costs, an application may be made by either party.

"The Honourable Mr. Justice Kelleher"

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