

CANADA / JUDGMENT

Drinkall v. Drinkall

2019 BCSC 1025

COURT

Supreme Court of British Columbia

DECIDED

25 June 2019

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2019 BCSC 1025 Drinkall v. Drinkall

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Drinkall v. Drinkall,

2019 BCSC 1025

Date: 20190625

Docket: E49441

Registry: Kamloops

Between:

Monique Drinkall

Claimant

And

Gary Allen Drinkall, Drinkall Ranches Ltd. and High Prairie Outfitters Ltd.

Respondent

Before: The Honourable Madam Justice B.J. Brown

Reasons for Judgment

Counsel for Claimant:

M.N. Fus

Counsel for Respondent:

J.H. Cluff

Place and Date of Trial:

Dawson Creek, B.C.

October 18-20, 2017

October 23-27, 2017

March 12-16, 2018

New Westminster, BC

April 18, 2018

December 10, 12 and 13, 2018

Place and Date of Judgment:

Kamloops, B.C.

June 25, 2019

Table of Contents

Background. 4

Issues. 4

Position of the Claimant 4

Position of Gary. 6

Property Division. 7

Shares in Drinkall Ranches Ltd. 7

Are the shares an excluded asset?. 8

What is the value of Gary's interest in Drinkall Ranches Ltd?. 12

What is the value of Gary's interest in HPO?. 15

Arizona House. 16

Miscellaneous Assets. 17

Spousal Support. 17

Gary's Income. 22

Monique's Income. 23

Calculation of Spousal Support 26

Child Support. 28

Conclusion. 30

- [1] These are family proceedings.
- [2] The action was started in October 2013. The pleadings have been amended several times. In the most recent amended notice of family claim Ms. Monique Baldwin ("Monique"), the claimant, seeks an order for divorce; orders with respect to parenting arrangements for two children, Kelsey born June 16, 1999 and Jenna born March 26, 2001 and an order for child support. She also seeks an order for spousal support and division of family property which included Drinkall Ranches Ltd. and High Prairie Outfitters Ltd. ("HPO") doing business as Tracks B.C.
- [3] In their amended response to family claim the respondents Gary Drinkall ("Gary"), Drinkall Ranches Ltd. and High Prairie Outfitters Ltd. say that Gary is a minority shareholder of Drinkall Ranches Ltd. but his shareholding is excluded property pursuant to s. 85 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Gary says that he has been the exclusive caregiver for the children since the date of separation. He agrees to the divorce.
- [4] In his counterclaim Gary seeks an order for divorce. He seeks sole custody of the children, Kelsey and Jenna or alternatively, principal residence of the children and designated parental responsibilities. He seeks child support from Monique.
- [5] He pleads that his interest in Drinkall Ranches Ltd. is a gift and excluded pursuant to s. 85 of the FLA.
- [6] He seeks unequal division of family property and family debt, specifically a property in Casa Grande, Arizona of which Monique and Gary are the legal owners. He says that the funds to purchase that property were from Glen Drinkall's ("Glen") shareholder's loan account and the interest that he and Monique have in that property is subject to a debt to Glen.
- [7] The trial of this matter was prolonged. It started in October 2017 in Dawson Creek, B.C. It continued in March 2018 in Dawson Creek. It was adjourned again and concluded in December 2018 in New Westminster, B.C.

Background

- [8] Gary and Monique started living together in March 1991. They married July 3, 1993. They separated in July 2013. They had three children together. They have a son, Tyler born December 28, 1995. They have two daughters: Kelsey born June 16, 1999, and Jenna born March 26, 2001.

Issues

- 1. Determination and division of family property;
- 2. Parenting arrangements;

3. Child support; and
4. Spousal support.

Position of the Claimant

[9] Monique argues with respect to property division as follows:

1. CPP Credit should be divided on the statutory scheme. Gary agrees. I will make this order;
2. She should receive a compensatory payment of \$16,000 for half of the value of household goods retained by Gary in excess of what she received;
3. She should receive compensation for 50% of the issued shares in HPO in the name of Gary. She said that these shares should be valued at least at \$333,000, and compensation for breach of the restraining orders;
4. With respect to Drinkall Ranches Ltd., she seeks compensation for half of the shares held in Gary's name. She says that he has not demonstrated that his shares are excluded assets. She argues that Drinkall Ranches Ltd.'s accounting is "retrospective, variable, unconventional". Income, expenses and assets are co-mingled with those of other related companies. She seeks compensation of \$700,000, half of the \$1.4 million high-end of the Spence valuation. She seeks additional compensation due to payment of legal expenses by Drinkall Ranches Ltd., the lack of disclosure and diversion of income to Tracks BC Contracting Ltd., and the exclusive use of assets;
5. With respect to Casa Grande, the Arizona House, she seeks an order for compensation for her share of the value of the Arizona house. She suggests that the value be set by a court ordered appraisal immediately after the close of the trial with the cost of the appraisal to be paid by Gary. She wants the respondents to pay transfer costs and tax consequences;
6. Monique seeks compensation payment of \$20,000 to reimburse her for her labour and expense invested into the Wabi home which she was unable to purchase because Gary refused to sell the Arizona house for the listed price.

[10] With respect to the children, Monique seeks the following orders:

1. Kelsey turned 19 on June 16, 2018 so no custody order should be made with respect to her.
2. Jenna remains a child of the marriage and for so long as she is a child of the marriage there should be joint custody.

[11] She argues that Kelsey is an adult making her own choices about her education and using RESPs. She will continue to support Kelsey directly and there should be no order for child support for Kelsey.

- [12] Jenna is in a committed relationship and has withdrawn from her parents care for the present time. Again, Monique proposes that she will support Jenna directly and if Jenna becomes dependent on her parents again and is residing with Gary, Monique will pay child support pursuant to the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.) [Divorce Act].
- [13] Monique seeks spousal support on a permanent basis. They were in a marriage-like relationship more than 20 years. Her employability is limited. She has a progressive disease which affects her ability to walk, stand and to use her arms and hands. Her ability to work will reduce over time. Because of the high-conflict nature of the litigation she seeks a lump sum spousal support order calculated on the basis of imputed income to Gary of \$120,000 and to her of \$30,000.

Position of Gary

- [14] Gary argues that his shares in Drinkall Ranches Ltd. is an excluded asset. They were a gift from his father Glen.
- [15] With respect to HPO, Gary argues that guide outfitting appears to be a sunset industry. He suggests that an average value of \$302,000 would be an appropriate figure to use for valuation purposes.
- [16] With respect to the Arizona house, he argues that Glen withdrew \$161,115.68 from his shareholder's loan account to purchase the home in Arizona. The house was not meant to be a gift to Gary and Monique. He argues that there is no jurisdiction of the Court to deal with the real estate that is outside of the province.
- [17] With respect to the children, Gary argues that over the last four years Monique has had very little involvement in the children's lives. He says that Kelsey remains a child of the marriage. She is attending postsecondary education and is dependent upon the support of her parents to do so. He says that the appropriate order would be joint custody with the principal place of residence to remain with him. He suggests a Joyce Model order with the default decision-making power to remain with Gary and reasonable and generous access to the claimant, in accordance with Kelsey's wishes.
- [18] He argues that child support should be based on an income of \$32,500 for Monique which would result in a child support order of \$304 per month. He says that Monique's contribution toward special and extraordinary expenses would be 60%.
- [19] He argues that Monique has made no contribution towards special and extraordinary expenses for the children. Kelsey has participated in rodeo activities which have permitted her to obtain scholarships. He estimates that the cost of these activities at \$91,912.60.
- [20] As to spousal support, Gary argues there is no evidence of significance to support a compensatory entitlement. He argues that she was not disadvantaged by leaving her position as a travel agent and becoming primary caregiver for the children.

- [21] He argues that in the time since they separated Monique has earned more than he has.
- [22] He says that the main argument in support of a claim for spousal support is non-compensatory. He says that this is based on the alleged disparity between his income and hers. He says that his income has remained static at \$1,800 per month since 2011. He estimates that his total income, including benefits from the companies is \$41,904 annually.
- [23] He argues that her ability to work is not impeded by the Charcot-Marie-Tooth disease.
- [24] He concludes that there is no basis on need or compensatory principles for a payment of spousal support to Monique.

Property Division

Shares in Drinkall Ranches Ltd.

- [25] Perhaps the most contentious item for property division is Gary's shares in Drinkall Ranches Ltd.
- [26] On separation, spouses are entitled to an undivided half interest in family property, subject to the deduction of excluded property: FLA, ss. 81, 84, 85. Excluded property includes gifts to a spouse from a third party: FLA, s. 85(1)(b.1). A spouse claiming the property as excluded property is responsible for demonstrating that the property is excluded: FLA, s. 85(2).

Are the shares an excluded asset?

- [27] Monique was born in June 1970 in Lewiston, Idaho. After high school she went to work with a travel agency in Idaho. She met Gary in February 1991 in Reno.
- [28] While Monique continued to work in the travel business until 1995, Gary would travel back and forth between the United States and Canada. He worked as a hunting guide, initially for Folding Mountain, a business of his brother Dale and his father Glen. Eventually Gary started his own business called Alberta Safaris.
- [29] Gary and Monique married in July 1993 and by 1995 they were talking about starting a family. Gary wanted to ranch and Monique agreed.
- [30] Eventually Glen and his wife Carolyn Drinkall ("Carolyn") sold their ranch in the area of Stavely, Alberta and the two couples moved to a property in the Lone Prairie area in British Columbia.
- [31] It is the basis of that arrangement which is in dispute.
- [32] Monique testified that the new ranching venture was to be 50-50, i.e., half owned by each of the couples. Glen and Carolyn had more money, but Monique and Gary contributed all that they had. The permits for hunting in Alberta were sold and Gary and Monique put that money into the ranch. She and Gary were younger and could do more physical labour, particularly as time passed. She testified that there was a lot of work to get the ranch up to the level they wished. She and Gary moved in June 1995 and stayed in a trailer and later a

bunkhouse on the property before the property was formally transferred to Drinkall Ranches Ltd. In approximately October/November Carolyn, Gary and Monique renovated a little house on the property for Monique and Gary to live in. Glen and Carolyn moved into the property in November. Monique and Gary's son Tyler was born December 28, 1995.

- [33] After they moved to the ranch there were further discussions about the shareholdings in the ranch. Monique testified that Gary pursued Glen to get it done. Even though they were 50-50 in the ranch Glen continued to refer to it as "my" ranch. What he said went. Meanwhile Gary was putting in the work and money and wanted to be part of the decision-making. When he questioned Glen, Glen would become agitated. Eventually the shares were transferred so that Gary held 48% of the shares, Carolyn 1% of shares (as she always had) and Glen 51% of the shares. Monique only learned after the event that they did not receive half of the shares.
- [34] Gary testified that he was born November 1968 in Calgary. The family moved to Stavely, Alberta when he was two. In 1982 or 1983 his father bought the Toad River guiding business and he worked there when he was out of school. He left school in 1986 and worked as a guide. He wanted to start guiding as his brother Dale did.
- [35] By 1995 he did not know whether he wanted to ranch or be a guide outfitter. Monique had continued to live and work in Idaho even after their marriage in 1993. He suggested that she move to southern Alberta. They could live on his parents' property. However, his father started looking in northern British Columbia for a ranch property and found the Lone Prairie property. He said there was no discussion with his father at that point about them joining with him. However, that property was closer to his deer and black bear hunting area and so they all decided to go and live there. They moved into the property in June and he helped with haying. Monique was four to five months pregnant. They fixed up the old bunkhouse to live in. They loaded up the ranch belongings from Stavely and moved them to Lone Prairie. He said there was never a business discussion and there was never any discussion of transfer of shares. He said that he did not care. Gary says Monique was always pressing because "we are nothing here, get something" and "[s]he wanted me to be a partner. One day Glen said "I have transferred 48 shares". It was not a big deal. He probably told Monique. He said he recalled nothing about being 50-50 in the ranch. He just knew they were going to help his parents.
- [36] Glen testified that he bought the Stavely property in the 60s. He ran a painting business and had a hired hand or his wife to run the cows on the Stavely property. Eventually the government expropriated part of the Stavely property. After expropriation the property was not large enough to make a living. He started looking in British Columbia where land was cheaper. He wanted to ranch closer to the Toad River outfitting operation. The property in Alberta was sold for \$860,000 and the Lone Prairie property was bought for the same amount.

- [37] He had helped his other children financially. He had helped his daughter Lori to buy a ranch about 25 years earlier. He helped his son Dale with the outfitting and ranch at Toad River. He gave the outfitter's licence to Dale.
- [38] Gary was already in the outfitting business and it was really an advantage for him to be in the north of British Columbia. The idea for Gary to join in the ranch at Lone Prairie came from Gary. Gary wanted to join them and to see if he liked it. Glen and Carolyn had a house there. Monique was pregnant. Gary's job was in northern Alberta and it just was natural that he would come and help out on the ranch. There was no discussion regarding terms. Glen's intention was that the ranch would be for Gary and his family in the future. He said "I did not see what the panic was". It was just common knowledge "come up and we'll ranch together and we'll see if it works". There was no discussion at that time. Glen said at that time: "I was not prepared to give it to a couple of 25-year-old kids". He said that when they initially talked he was sure that Monique must have participated. He never said when he would make a decision regarding the change of status. Afterward everyone was working so hard there was no chance to talk. By 1999 he decided it was time "they had some shares". He said it was "quite apparent to me at that time it was going to work". He could not say how he arrived at 48 shares. He always wanted to keep control of the business.
- [39] Carolyn testified that with respect to the Lone Prairie ranch, "Gary was going to try it for a while, come up and help us, work back and forth". At some point the shares were transferred to Gary. Glen said: "He has been here for four years. He wants to continue, give him shares". No money was paid for the shares. Before the transfer 99% of the shares were held by Glen and 1% by Carolyn.
- [40] I prefer the evidence of Monique on this topic. In my view her evidence is more consistent with human experience. I do not accept that she and Gary would move to northern British Columbia, she from Idaho and he from southern Alberta simply to see whether they liked it. As everyone has acknowledged, the ranch does not pay much for wages. Gary and Monique initially contributed what assets they had to the ranching venture and continued to do so. They also contributed their labour.
- [41] Second, although Glen denied that there was any agreement when Gary and Monique moved to the ranch, aspects of his evidence support Monique's version of events. When he says that he "did not see what the panic was", he confirms Monique's evidence that there was an arrangement and that there was discussion with him about performing on that arrangement. It belies the evidence of the three Drinkalls that there was no discussion and the transfer of the shares came out of the blue. His evidence that in 1999 he decided that it was time that "they" had shares also supports her evidence that Monique and Gary were to be shareholders with Glen and Carolyn and belies the suggestion that he simply "gave" 48 shares to Gary.

- [42] I am satisfied that at least Glen, Gary and Monique discussed the arrangements before the move to the Lone Prairie ranch. The arrangement was that each of the couples would be half owners of the ranch. It may be that Glen did not intend to perform this immediately and had his fingers crossed behind his back during the discussions. Nonetheless, Gary and Monique moved to the ranch on that basis. They contributed what assets they had as well as their labour to the ranching operation. There was discussion between the move in 1995 and the transfer in 1999 about performing on the promise. It is consistent with Glen's approach to each of his other children, i.e., setting them up in business, that he would do the same for Gary and his family. Nor was it a gift to Gary. As Glen acknowledged in his evidence it was for "them".
- [43] Accordingly, I am not satisfied on the evidence that Gary's shares in Drinkall Ranches Ltd. are an excluded asset.

What is the value of Gary's interest in Drinkall Ranches Ltd?

- [44] Monique argues that she should receive \$700,000 for Gary's interest in the ranch. She says that that number is derived from the high end of the valuation prepared by Donald Spence of Spence Valuation Group. She says that payment should be made within 30 days or the property should be listed for sale. She says that the respondents have failed to properly disclose the financial circumstances of the ranch. She has had no return on her investment in the ranch for several years. She did not share in the benefits of the income stream to pay for litigation expenses as the others did. She did not have use of the assets or credit facilities of the ranch. Drinkall Ranches Ltd. resisted document and financial disclosure throughout the litigation. The Court has a less than clear picture of income and expenses. Mr. Spence performed his valuation based on the limited information he was given. Monique was not permitted to examine equipment for updated values or to determine what equipment there was. She argues that cattle were put in personal names rather than under the name Drinkall Ranches Ltd. Personal cattle have not been included in the evaluation despite cattle expenses being paid by one or other of the companies and no adjustment for the use of property, grazing land, hay, and wear and tear on the equipment has been made.
- [45] She argues that the shareholder loans, particularly for Glen are not accurate. She says that this has resulted in a lower than accurate valuation of Drinkall Ranches Ltd. She says that valuation is also reduced because of payments made by Drinkall Ranches Ltd. directly to counsel for the respondent or indirectly by issuing a cheque to Tyler Drinkall or Carolyn who in turn paid counsel. She has indirectly paid 25% of the respondents counsel fees. These payments were in breach of the restraining order, not being payments made in the usual course of business. Similarly, the purchase of horses for Kelsey's rodeo competitions are breaches of the restraining order.
- [46] She argues that the respondents underestimate the value of the equipment to their own advantage.

- [47] Gary argues that the main difference between valuations is the difference in the value of the equipment owned by Drinkall Ranches Ltd. He argues that his valuation should be preferred as he has worked with the equipment in the years since Monique left the property. He argues that the proper value of the equipment is \$229,500.
- [48] He argues as well that the value of the 48 shares that he will hold in Drinkall Ranches Ltd. should be at the low end of the range, \$1,090,000.
- [49] He says that the value of the Drinkall Ranches Ltd. should be further reduced by a bill which the accountant for Drinkall Ranches Ltd. is going to be rendering of approximately \$40,000.
- [50] Finally, he notes that there has been no reduction in valuation for estimated taxes on disposition of shares.
- [51] The parties jointly retained Spence Valuation Group to prepare a valuation of Drinkall Ranches Ltd. and HPO.
- [52] Gary's interest in Drinkall Ranches Ltd. as at November 30, 2016 was:
1. Based on the assumptions of the claimant, low \$1,151,000, and high \$1,400,000;
 2. Based on the assumptions of the respondent, low \$1,090,000, and high \$1,331,000.
- [53] There are two factors that account for most of the difference between these valuations. The first, and most significant is the value attributed to other capital assets, which I understand to be equipment and chattels, etc. Gary values these at \$257,000. Monique values them at \$431,000. The second factor is the minority discount. Mr. Spence applies a discount of between 5% and 15% to reflect that Gary holds only 48% shares in Drinkall Ranches Ltd.
- [54] Turning first to the value of the equipment, etc. The parties chose not to have the equipment professionally valued. Instead they have each provided their own estimate of value. I recognize that each of them has an interest in, consciously or unconsciously, skewing the value to their own advantage. In addition, I accept as Monique has argued that the respondents may well have failed to properly maintain the equipment in the face of this litigation.
- [55] Nonetheless, I am simply left with two estimates of value. The only conclusion that I can draw is that the equipment is properly valued somewhere between \$257,000 and \$431,000. I will fix the value of the equipment at \$344,000.
- [56] Next, the valuation depends in part on the minority discount. Mr. Spence has suggested a range of 5% to 15% reflects the 48% interest that Gary holds in Drinkall Ranches Ltd. As I have found above, while Gary has only received 48% of the shares, the arrangement was that each of the two couples was to receive a 50% interest in the ranch. On that basis, the minority discount should be akin that applied for HPO, that is 0 to 10%.
- [57] Accordingly, I will apply a 10% discount.

- [58] Using a 10% discount rate, valuing the equipment at \$344,000 and adding the amount due to Gary, I arrive at a range of \$1,197,000 to \$1,246,000. In my view, the fair value for Gary shares in Drinkall Ranches Ltd. is \$1.2 million. Monique is entitled to one half of this or \$600,000.
- [59] Section 97 of the FLA provides wide discretion to give effect to property division. Courts take corporate and distributive taxes into account where evidence suggests property division will have tax consequences: *Maguire v. Maguire*, 2016 BCCA 431 at paras. 38-39. Courts adopt an "if and when" approach to orders regarding contingent tax liabilities, based on principles from *Stein v. Stein*, 2008 SCC 35; *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 69-70. The evidence must demonstrate a contingent liability, and that the spouse will likely distribute the asset and attract the taxes: *Sanai v. Mahmoud*, 2017 BCCA 155 at para. 33-34.
- [60] As to the reduction in value for estimated taxes on disposition of the shares, I am not persuaded that Gary will be disposing of the shares or that an additional discount, beyond that already applied by Mr. Spence in his valuation is appropriate.
- [61] Monique argues that Drinkall Ranches Ltd. should be valued toward the high end or she should otherwise be compensated because the Drinkalls used corporate funds to pay their legal fees and diverted business from Drinkall Ranches Ltd. to Tracks BC Contracting Ltd. While this may have had some impact on the value of the shares of Drinkall Ranches Ltd. I am not persuaded that it would be significant. I have no evidence of the effect.
- [62] Finally, with respect to the bill which we are advised the accountant may be going to render to Drinkall Ranches Ltd., I am not persuaded that this is an appropriate deduction. The account itself was not introduced in evidence. I have no idea whether the amount is appropriate, how much of that account may be the respondent's fees relating to the litigation, etc.

What is the value of Gary's interest in HPO?

- [63] Spence Valuation Group also prepared a valuation of Gary's interest in HPO as at 2016 valuation date. The values ranged from \$267,000 to \$333,000.
- [64] Again, the range depends primarily on two variables: the value given to inventory and other capital assets, and the minority discount rate. As with Drinkall Ranches Ltd., the parties did not have the inventory and capital assets professionally valued. They each provided me with their own valuation. The range for inventory and other capital assets is between \$72,000 (the respondents' estimates) and \$128,000 (the claimant's estimates). I will somewhat arbitrarily fix the value midway in range, that is, \$100,000.
- [65] Applying these figures to Schedule A to the Spence report, I get a range between \$20,000 and \$83,000 for the value of Gary's shares. In my view Gary's shares in HPO have a value of \$50,000.

- [66] Gary has a note payable to him by HPO of \$180,000. There is also \$78,000 due to Gary's company, 0989851 B.C. Ltd. In total, Gary's interest in HPO as at December 31, 2016 has a value of \$308,000. Monique would be entitled to one half of that or \$154,000.
- [67] Monique also argues that this valuation was after HPO received and illicitly distributed \$200,000. She argues that but for this distribution, the value of the company would be higher.
- [68] In May 2016, HPO received \$200,000 in compensation for the impact of the Site C dam project on HPO's territory. In breach of the March 11, 2014, s. 91, FLA restraining order Gary quickly distributed the funds. He lied at discovery to avoid disclosure. Had those funds been retained as the Court order required, they would be available for distribution now. It may be that other expenses would be outstanding. However, an accounting cannot be done at this point. The funds were dissipated by Gary. The fault is his. Monique is entitled to \$50,000 being one half of Gary's interest in those funds.

Arizona House

- [69] In 2011, the parties had a particularly large cattle sale. They had significant funds available to them. As Monique testified, they decided to purchase a house in Arizona that could be used by both couples. She and Gary found it. She took care of furnishing it. When the parties separated, she and Gary agreed to sell the property. The idea was that the property would be sold and the proceeds divided four ways. Monique and Gary hold title to the property.
- [70] Instead, Glen purported to have a lien over the property and took legal steps to prevent the sale of the house. He argued that his shareholder's loan in Drinkall Ranches Ltd. was used to purchase the house.
- [71] I am satisfied that there was no discussion between the parties about using Glen's funds to purchase the residence. There was no loan made to Gary and Monique. The funds to purchase the house simply came from the sale of the cattle. Each of the two couples had an equal interest in those proceeds, based on my view of the arrangement made between the parties. I am also satisfied that that was the agreement between the parties before the house was purchased. Each of the two couples would have an equal interest in the property. It was simply placed in Monique's name because she was an American citizen. Any adjustment to Glen's shareholder loan account was an after the fact accounting entry and did not reflect the agreement between the parties.
- [72] I conclude that Monique has a one quarter interest in the property. I ask that the parties provide me with a joint appraisal of that property. Monique will be entitled to compensation of 25% of the value of the property. In the event the parties are not prepared to appraise the property jointly, I will direct Monique to provide me with an appraisal of the property. As to Gary's submission that there is no jurisdiction in the Court to deal with Monique's interest in the property and to provide her with an order for compensation, I disagree. The court may order a compensation payment for extra territorial property. The relief Monique seeks is in personam relief: K.B. v. J.B., 2016 BCSC 1904. She seeks a compensation order and will

relinquish title to the Arizona house.

Miscellaneous Assets

- [73] Monique argues that she received fewer or less valuable miscellaneous pieces of family property than Gary. Gary says she received more. I am not satisfied that she received less, so will not order payment in this regard.
- [74] She also argues she should be compensated for money she spent on the Wabi house which was lost when the sale of the Arizona property was prevented by Glen. I am not persuaded that is Gary's fault and will not order compensation for this loss.

Spousal Support

- [75] Monique seeks spousal support on a permanent basis. She argues that they had a marriage-like relationship for more than 20 years. She left her job as a travel agent to move to northern British Columbia to work on the ranch and guiding businesses and raise three children. She says that her employability is limited. She has Charcot-Marie-Tooth syndrome which has progressed over the years and now affects her ability to walk, to stand and to use her arms and hands. She says that she also has other orthopedic complaints and has developed a frozen shoulder at her current job. She is working part-time at \$25 per hour. Her ability to work will decline over time and her personal care and housekeeping will become more time-consuming.
- [76] She seeks lump sum spousal support based on an imputed income to Gary of \$120,000 and to her of \$30,000. She argues that based on the history of conflict between these parties it is appropriate that she receive a lump sum spousal support award. She also seeks arrears of spousal support of \$1,000 per month, \$11,000.
- [77] Gary argues that Monique is not entitled to spousal support on a compensatory, non-compensatory or contractual basis.
- [78] He argues that there is no evidence that there was any other employment track that Monique gave up in order to care for her family. He argues that he has suffered the same disadvantages over the past four years as he has been the primary caregiver for the children. He says that he has earned less than Monique for the past 2 1/2 years. In addition she has not been paying child support at the rate that she earned over the past two years. He says that while there was some basis for compensatory support while he remained in possession of most of the family property, that will disappear once a compensation order is made. He says that in addition, her failure to pay child support on the basis of her income militates against finding any need for compensatory spousal support.
- [79] He says that the main argument in support of the claim for entitlement to spousal support is non-compensatory. However, he argues that in fact Monique earns more than he does so this claim is illusory.

- [80] He says that his income has remained static at \$1,800 per month since 2011.
- [81] He acknowledges that his income is complicated by the bookkeeping system operated by the Drinkalls. The companies pay for items that are arguably personal expenses. He says that if he did not have his expenses paid, because of the isolation of the ranch, they would have to be paid for to entice any hired hand to work there. He estimates that his total income including the value of these benefits is \$41,904.
- [82] He submits that he has been doing less well than Monique.
- [83] He points to her income over the years:
- 2014 - \$37,742.20
 - 2015 - \$42,429.28;
 - 2016 - \$42,726.80; and
 - 2017 - \$49,941.88 (to the date of trial).
- [84] He submits that there is no reason that she could not work full-time for one of her contracting jobs, an income exceeding \$60,000 per year.
- [85] He says that she has not satisfied her obligation to the Court that she applied for appropriate positions and therefore the Court should draw an adverse inference concerning her credibility on the issue.
- [86] He argues that the Charcot-Marie-Tooth disease does not interfere with her ability to work. He disputes that the cold interferes with her ability to work. He says she worked from a heated cab.
- [87] He argues that while she has not worked during the winter for the past two years she has house-sat for a friend which provides free accommodation. He argues that she should be imputed income for this accommodation.
- [88] He says that an adverse inference should be drawn against her for contending that she is unable to work either in winter or at certain employment. He says that she did not do anything to provide the Court with medical reports to substantiate her position until after the trial adjourned in October 2017.
- [89] He argues that there is nothing to show that her present ability to work has been affected by her syndrome. Her most recent work schedule belies the contention that her condition affects her ability to hold down employment. She is still very active.
- [90] Gary argues that the report of Dr. Phan, Monique's treating neurologist, is not objective. He says Dr. Phan is not objective. She had no knowledge of the circumstances under which Monique was working. Accordingly, her opinion should be given little weight.

- [91] A spouse may be entitled to support on compensatory, non-compensatory, and contractual grounds: *Moge v. Moge*, [1992] 3 S.C.R. 813 [*Moge*]; *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 [*Bracklow*]; *Miglin v. Miglin*, 2003 SCC 24; *Chutter v. Chutter*, 2008 BCCA 507 [*Chutter*].
- [92] Orders for spousal support awards should deliver the following objectives: Divorce Act, 15.2(6). The Court considers all objectives, and no single objective automatically takes precedence over the others: *Moge* at 850-853.
- a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [93] I am satisfied that Monique is entitled to spousal support on a compensatory and non-compensatory, or needs-based, basis.
- [94] Compensatory support speaks largely to the first two objectives of spousal support. It "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse": *Moge* at 864. The recipient spouse may suffer compensable disadvantage by taking on primary childcare and domestic responsibilities at the expense of future earning power and prospects: *Moge* at 861-863, 867-868; *Bracklow* at para. 39. The payor spouse may have realized economic advantages from the recipient's unpaid contributions, labour and efforts: *Chutter* at para. 51. The parties should equitably share the economic consequences, good and bad, of the marriage and marriage breakdown: *Moge* at 864.
- [95] Regarding Monique's compensatory entitlement, she was employed as a travel agent before the parties decided to move to northern British Columbia and the ranch. I am satisfied that while she may not have remained in the travel industry, given its changes over the decades, she would have remained employed in some capacity and her employment prospects would be better than they currently are. She was out of the competitive workforce for 20 years. There is no dispute that she was primarily responsible for looking after the house and raising the children as well as contributing to the ranch business and to the guiding business. Monique is entitled to support on compensatory grounds.

- [96] Non-compensatory support deals mainly with the latter two objectives. A spouse's needs are determined on a relative basis, considering the standard of living shared by the couple during the marriage: Chutter at para. 55. A spouse is obliged to make reasonable efforts to achieve self-sufficiency as far as practicable in that spouse's circumstances: Hsieh v. Lui, 2017 BCCA 51 at para. 47.
- [97] I am satisfied Monique is entitled to support on a needs basis. Since separation, Monique's finances have been significantly more limited than Gary's, and the standard of living she would be able to afford but for support differs greatly from that which the couple enjoyed over their long relationship. Monique's means and needs establish her entitlement to non-compensatory support.
- [98] The Court determines a spouse's income for support purposes first with reference to the Federal Child Support Advisory Guidelines: ss. 15-20; Brandl v. Rolston, 2013 BCCA 235 at paras. 29-30. Section 19 provides the Court "may impute such amount of income to a spouse as it considers appropriate in the circumstances". It is appropriate to impute income to reflect a spouse's underemployment or unemployment (absent child or health exigencies), or where a spouse unreasonably deducts expenses from income: Guidelines, ss. 19(1)(a), 19(1)(g).

Gary's Income

- [99] Monique submits and Gary concedes that I must impute income to him because the companies pay a number of his expenses.
- [100] Monique submits, without particularizing how I arrive at the figure, that I should impute income to him of \$120,000.
- [101] Gary calculates the benefits he receives from HPO and Drinkall Ranches Ltd. at \$23,922.24 per year. I do not accept this as an accurate estimate of all of the benefits that Gary receives. For example he estimates the housing benefit at \$742.56 per month. Gary lives in a 4000 square-foot house that was built in 2008. From the photos, it is clearly a lovely residence. I do not accept that it would be possible to rent such a house for less than \$1,500 a month even in as remote a location as the Drinkall Ranches Ltd. ranch. Next, Gary estimates the benefits for lease payments for his vehicle, car insurance and licence at 20%. This suggests that only 20% of his use is personal. I have been provided with no objective support for this conclusion and I do not accept it. Third, there is no calculation whatever for the benefit of horses, quads, boats, etc. that he has personal use of which are owned by one of the other corporate entities. There is no calculation of the amounts that the company or companies spend on his personal travel, entertainment, etc. In short, I have no confidence in the estimates that Gary has prepared with respect to the income to be attributed to him.
- [102] In my view, conservatively, he needs an income of at least \$75,000 to support his lifestyle. See e.g., Sullivan v. Struck, 2015 BCCA 521 at para. 72.

Monique's Income

- [103] Monique has been employed since separation in a variety of seasonal occupations. She has driven a bus, rock truck, etc.
- [104] Monique has Charcot-Marie-Tooth syndrome and says that this condition affects her ability to work. It is a degenerative disease. As a result she is clumsy. It affects her fine motor skills. Cold affects the condition. Her hands will not work and she suffers muscle weakness. She has difficulty opening bottles, etc. The disease is progressive. She has been regularly seeing a specialist in Edmonton, Alberta. She has had falls or nearly fallen at work. The hours of work are difficult. She runs heavy equipment. She had started driving a packer and then a rock truck. She has worked up to 16 hours a day. It is seasonal work from March or May until late fall. She finds it hard to work in the cold. Once her hands and feet are cold they will stay cold and she suffers shooting pains. The cold gives her pain and makes her mobility worse. She found the heavy equipment work through the grapevine. While she has some skill she is slower than other workers. If she uses her hands too much they will quit working. At work she must wear steel-toed boots which are heavy and cause pain down the front of her legs. She has strains and sprains to her ankle. She suffers from tripping, falling and twisting. She has to walk more slowly.
- [105] She produced a report from her treating neurologist. Dr. Phan explained that Monique suffers from a progressive nerve disorder which is not of itself fatal. It causes significant disabilities. One can have a normal life expectancy if there are no complications. For example, if there is no feeling in the extremities or if there is not good caretaking of the extremities an infection can set in and the individual can die from the infection. In addition, the individual may die from an accident. Life expectancy is shortened by complications but not by the disease itself.
- [106] Monique must be careful when she walks. She falls frequently. Falling is described as a "huge issue". She has described worsening weakness in her hands. She describes pain, burning, aching and cold all the time. Dr. Phan could feel that her hands and feet were cold. Her extremities are also discoloured. Parts of her feet are sensitive and other parts are insensate. Her symptoms have continued to progress. Nerve pain is a very common symptom.
- [107] She is unstable when walking. She has a foot drop. She has difficulty getting up from a chair. Dr. Phan is concerned with regard to her safety. Driving a rock truck is not appropriate for Monique because it is not safe for her to do so.
- [108] At Gary's request, Monique was assessed by Phil Towsley, a consultant occupational therapist and by Diana Cameron, a vocational rehabilitation consultant.
- [109] In providing her vocational opinion, Ms. Cameron said at p. 8:

Based on the available medical and allied information, Ms. Baldwin has physical limitations related to balance, mobility, and dexterity. She has difficulty with prolonged keyboarding. Dr. Phan has opined Ms. Baldwin is unsuited to working as a rock truck driver, and has recommended that she pursue less physically-demanding work. Mr. Towsley suggests Ms. Baldwin has sufficient balance for general ambulation, but notes she has fallen while walking on even terrain. Mr. Towsley indicates Ms. Baldwin is unsuited to work associated with prolonged standing, repetitive or prolonged stooping, and low-level positions. As per Mr. Towsley, Ms. Baldwin has the capacity for sedentary, and some light and medium strength demands. Ms. Baldwin sees her primary employment barriers to be her standing and walking limitations, and her need to work at her own pace and take breaks.

[110] Ms. Cameron opined:

Despite Ms. Baldwin's demonstrated ability to access employment as a heavy equipment operator on a competitive basis, it is my opinion that she is not well-suited to the physical demands of this work. Based on the available medical and allied information, I have concerns regarding Ms. Baldwin's ability walk on uneven terrain, climb in and out of equipment, and perform pre-trip inspections. In my opinion, based on the available medical and allied information, as well as Ms. Baldwin's work history, education background, and transferrable skills, she has a number of vocational options she could consider on a direct-entry basis (i.e. without pursuing further training). Examples of vocational options Ms. Baldwin could consider include hotel/motel front desk clerk, bank teller, retail sales clerk, receptionist, and customer service clerk. I expect Ms. Baldwin may need to be selective in order to secure a retail sales or bank teller position that does not involve prolonged standing. In my opinion, Ms. Baldwin could increase her competitiveness for such jobs by undertaking computer skills upgrading, such as the self-paced Microsoft Office course offered through Northern Lights College in Fort St. John. The cost of this course is \$195. This course also has an optional certification exam, which costs \$109. There are currently numerous job postings for receptionists, hotel/motel front desk clerks, retail clerks, and bank tellers in Fort St. John.

[111] With training, Monique may be able to obtain a higher paying job. However some of those positions may not be available because of prolonged upper extremity use. Ms. Cameron said at pp. 9-10:

I would note that some of the foregoing jobs may require prolonged upper extremity use, including prolonged keyboarding. Based on the available medical information, I expect Ms. Baldwin may need to be selective in order to secure a job with productivity demands that are within her tolerances. This may limit the number of such jobs to which she is suited. Ms. Baldwin may also benefit from using adaptive technologies, including dictation software. An ergonomic specialist could comment more definitively regarding the workplace modifications and adaptations that would best assist with symptom management on-the-job.

[112] Ms. Cameron noted at pp. 10-11 that the median range income for employed females in Fort St. John was \$33,812. For those working full-time for a year, it was \$49,709. Unemployment among females in Fort St. John is 8.5%. Among employed females, only 43.9% work full-time and full-year. Accordingly if Monique remains in Fort St. John, she is likely to work less than a full year.

[113] Ms. Cameron said at p. 11:

Mr. Towsley has indicated Ms. Baldwin may need to start using a cane. I have concerns regarding the impact of her increasing mobility limitations on her competitive employability in the future. In my opinion, if Ms. Baldwin were to attend a job interview with a cane, this may be viewed unfavourably by some employers. This may make securing work more challenging for Ms. Baldwin than the average job applicant. I would defer to the appropriate medical experts with regard to the anticipated timeline of Ms. Baldwin's declining mobility.

[114] She suggested that vocational rehabilitation may assist Monique in obtaining employment.

[115] Since those reports were prepared, Monique was able to find employment. She started working in October 2018. She works in an office five hours per day and receives \$25 per hour. She has a frozen shoulder but she is able to do the work. There is a little walking involved but not much. Although she is tired after work she is able to cope. She is working Monday to Friday. She is hoping that it will be long-term employment. There has been no suggestion that she would be laid off.

[116] If Monique continues at her current employment she will receive something in the order of \$31,250 per year. In my view this is reasonable employment for her. It is above the median hourly rate in her region. It is also work suitable to her condition because it has limited hours and because her employer is prepared to accommodate her condition. As such, I am not prepared to impute further income to her.

[117] I reject Gary's argument that income should be imputed to Monique because she stays in the house of friends while they are out of the country. The idea that this is effectively paid house-sitting or its value was not put to Monique in cross-examination.

Calculation of Spousal Support

[118] The Court may order support be paid in lump sum or periodic payments. In deciding whether to order a lump sum payment, the Court should consider the advantages, disadvantages, purposes and effects of a lump sum and periodic payment. The Court of Appeal in *Parton v. Parton*, 2018 BCCA 273 at paras. 47-48 said:

In *Davis v. Crawford*, 2011 ONCA 294 (Ont. C.A.), the Ontario Court of Appeal discussed the relevant factors for consideration and, in doing so, emphasized the need to distinguish the purpose of a lump sum spousal support award from the effect of such an order. As the Court noted, any lump sum spousal support order will, in effect, involve the transfer of property from one spouse to another, although the redistribution of assets is not the purpose of spousal support:

- [60] It is well accepted -- and undisputed -- that a lump sum award should not be made in the guise of support for the purpose of redistributing assets: *Mannarino; Willemze-Davidson v. Davidson* (1997), 98 O.A.C. 335 (C.A.), at para. 32. Moreover, the governing legislation does not recognize redistribution of assets as one of the purposes of a spousal support award.
- [61] That said, a lump sum order can be made to "relieve [against] financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home)": *Family Law Act*, s. 33(8)(d).
- [62] In any event, the purpose of an award must always be distinguished from its effect. Any lump sum award that is made will have the effect of transferring assets from one spouse to the other. The real question in any particular case is the underlying purpose of the order: *Willemze-Davidson* at para. 32.
- [63] Similarly, it is well accepted that an important consideration in determining whether to make a lump sum spousal support award is whether the payor has the ability to make a lump sum payment without undermining the payor's future self-sufficiency.
- ...
- [66] Most importantly, a court considering an award of lump sum spousal support must weigh the perceived advantages of making a lump sum award in the particular case against any presenting disadvantages of making such an order.
- [67] The advantages of making such an award will be highly variable and case-specific. They can include but are not limited to: terminating ongoing contact or ties between the spouses for any number of reasons (for example, short-term marriage; domestic violence; second marriage with no children, etc.); providing capital to meet an immediate need on the part of a dependant spouse; ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure or where the payor has the ability to pay lump sum but not periodic support; and satisfying immediately an award of retroactive spousal support.
- [68] Similarly, the disadvantages of such an award can include the real possibility that the means and needs of the parties will change over time, leading to the need for a variation; the fact that the parties will be effectively deprived of the right to apply for a variation of the lump sum award; and the difficulties inherent in calculating an appropriate award of lump sum spousal support where lump sum support is awarded in place of ongoing indefinite periodic support.

[69] In the end, it is for the presiding judge to consider the factors relevant to making a spousal support award on the facts of the particular case and to exercise his or her discretion in determining whether a lump sum award is appropriate and the appropriate quantum of such an award.

[Emphasis added in *Parton v. Parton*, 2018 BCCA 273]

48 The factors discussed in *Davis* generally apply in this province when lump sum spousal support is considered. In *Robinson v. Robinson*, 2011 BCSC 1489 (B.C. S.C.), for example, after quoting extensively from *Davis*, Justice Watchuk awarded \$330,000 in lump sum spousal support. In explaining her reasoning, Justice Watchuk noted that a lump sum award is appropriate in circumstances where the payor spouse has insufficient income to pay spousal support on an ongoing basis, but has capital assets with which to make a lump sum payment. She also noted that lump sum spousal support may contribute to self-sufficiency and assist the recipient spouse to achieve an appropriate standard of living. This Court upheld her decision in reasons indexed as 2012 BCCA 497 (B.C. C.A.).

[119] I am not persuaded that a lump sum award is appropriate in this case. Such an award would preclude a variation application and would unnecessarily reduce Gary's assets.

[120] The relationship between these parties is not unusual and does not require such an award.

[121] I am not persuaded that Gary breached an agreement by taking the Child Tax Benefit, so will not order repayment on this point. He has not paid 11 months of spousal support at \$1,000 per month. These arrears must be paid.

[122] On the basis of Monique having an income of \$31,250 per year and Gary having an income of \$75,000 per year, Spousal Support Advisory Guidelines indicate a range of spousal support between \$1,203 and \$1,604. I will set spousal support at the midrange of \$1,400 per month. The duration will be indefinite.

Child Support

[123] Monique argues that Kelsey turned 19 in June 2018 and is an adult. She is in her second year at a two-year college, Otero College in Colorado. She is on the college rodeo team. She uses RESP funds to support her education. She has not consulted with her mother with respect to her education. She has not explained her plans, her efforts to earn money and contribute to her own education. She has not provided a budget. Monique argues that there should be no order with respect to s. 7 expenses including university. Monique argues that she should pay her contribution to Kelsey's education directly to Kelsey, after consultation with her.

[124] With respect to Jenna, Jenna will be 19 in March 2020. She and her boyfriend who is also 17 are expecting a baby in early January. Their plans are that they will both be finished grade 12 at the end of January 2019 and her boyfriend will then be working.

- [125] Monique argues that while Jenna is a child of the marriage there should be an order for joint custody. She says that while Jenna is planning to become independent from her parents, this is prospective. Monique says that when and whether Jenna will be able to do so remains to be seen.
- [126] Again, because of the difficulties of communication between Monique and Gary, Monique suggests that each parent work directly with Jenna to provide financial support to her and no order for child support or s. 7 expenses be made.
- [127] Monique asks that the RESP in Jenna's name should be kept for her future use, not transferred for Kelsey's use or cashed in.
- [128] Gary argues that he has made all decisions with respect to the children over the past four years. He argues that Kelsey remains a child of the marriage and Jenna will no longer be a child of the marriage as of January 2019. He argues that Kelsey remains a child of the marriage. She is still attending post-secondary education and is dependent on the support of her parents to do so. He argues that the order to be made with respect to Kelsey is: joint custody; principal place of residence to remain with Gary; a Joyce Model order for the default decision-making power to remain with Gary; reasonable and generous access to the claimant in accordance with Kelsey's wishes.
- [129] He argues that child support should be \$304 per month and that Monique's proportionate share of extraordinary expenses would be 60%.
- [130] In *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 at 64-65, Master Joyce (as he then was) set out the factors to be considered when determining child support for an adult child who is attending postsecondary education. They are:
- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
 - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
 - (4) the ability of the child to contribute to his own support through part-time employment;
 - (5) the age of the child;
 - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
 - (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;

- (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [131] Considering these factors, I agree with the submissions of the claimant that there is no basis for her to pay child support to Gary for Kelsey. Kelsey does not live at the ranch. She attends college. Apparently she lived at the ranch very briefly in the summer of 2018. It would be appropriate for Kelsey to put together a budget of her expenses, her sources of income and to discuss the matter with her mother so that her mother may determine how much she is able to contribute to Kelsey's education. In the event that the parties are not able to resolve this matter independently, Gary may of course apply for an order specifying Monique's contribution to Kelsey's support. I would expect the same detailed calculation and budget would be provided to the court so that the court may determine the appropriate contribution from Monique, should she not be willing to do so on her own.
- [132] With respect to Jenna, it appears that Jenna has withdrawn from the care of her parents and is no longer a child of the marriage. Should she once again become a child of the marriage, the parties may make the appropriate application.
- [133] With respect to the RESP in Jenna's name, that will not be disbursed without the agreement of the parties or further order of the court.

Conclusion

1. Gary will pay Monique \$600,000 for her interest in Drinkall Ranches Ltd.
 2. Gary will pay Monique \$204,000 for her interest in HPO.
 3. The parties will have 90 days to obtain an appraisal of the Arizona house. Thereafter, Monique may obtain an appraisal. I will make the appropriate compensation order.
 - 4 Gary will pay spousal support of \$1,400 per month, indefinitely.
 5. Gary will pay \$11,000 arrears of spousal support.
 6. I have not addressed enforcement of these orders. If the parties have not made satisfactory arrangements for payment of the monetary awards within 90 days, they may apply for directions.
- [134] The parties may speak to costs if necessary.

"B.J. Brown J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/10/2019BCSC1025.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/drinkall-v-drinkall-2019>

Prepared on 29 October 2026 · Esheria