
CANADA / JUDGMENT

Dubey v. Dubey

2008 BCSC 413

COURT

Supreme Court of British Columbia

DECIDED

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2008 BCSC 413 Dubey v. Dubey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dubey v. Dubey,

2008 BCSC 413

Date: 20080409

Docket: E053930

Registry: Vancouver

Between:

Adeline Hyacinth Dubey

Plaintiff

And

Harshvardhan Dubey

Defendant

Before: The Honourable Mr. Justice A.F. Wilson

Reasons for Judgment

Counsel for the Plaintiff

A. Ouellet

Counsel for the Defendant

C. McLeod

Date and Place of Trial:

March 3 - 7, 2008

Vancouver, B.C.

I Introduction

- [1] The plaintiff, Adeline Hyacinth Dubey, and the defendant, Harshvardhan Dubey, were married in Hong Kong on January 5, 1994. They separated on September 3, 2005. They have two children, Hannah Hyacinth Dubey, born January 20, 2001, and Alyson Ann Dubey, born April 18, 2003.
- [2] This trial dealt with the issues arising from their separation, specifically:
- the custody and guardianship of, and access to, the two children;
 - division of property, including a claim for compensation for two properties held by Mr. Dubey in India;
 - retroactive and ongoing child support;
 - Mr. Dubey's claim for spousal support.
- [3] At the conclusion of the trial, on March 7, 2008, I did grant the divorce, to take effect 31 days after that date. I also advised that the primary residence of the children would remain with Ms. Dubey, with further reasons to be provided with respect to that decision.

II History of the Parties

- [4] Mr. Dubey was born on June 28, 1970, in Ratlan, India, and is thus 37 years of age. Ms. Dubey was also born in Ratlan, on January 11, 1974, so is 33.
- [5] Both Mr. and Ms. Dubey were raised and went to school in Ratlan. Mr. Dubey met Ms. Dubey through Ms. Dubey's older sister, with whom he studied. After completing high school, Mr. Dubey went to university in Ratlan, completing a Bachelor of Arts in three years. Ms. Dubey also went to college in Ratlan for one year after completing high school.
- [6] Mr. Dubey's parents live on a farm in Raneja, approximately 35 kilometres from Ratlan. Mr. Dubey's father's first occupation was as a farmer. He still has approximately 60 acres of land, but broken into a number of plots. One-half of that property is arable land, and is now rented out by Mr. Dubey's father; the other half is barren land. In addition, however, Mr. Dubey's father had a movie theatre in Ratlan, which Mr. Dubey helped to manage while he was going to university. He was not paid for that work.
- [7] In March, 1993, Ms. Dubey obtained employment with Cathay Pacific, and moved to Hong Kong to take up that employment. Although Mr. Dubey remained in India, they continued their relationship, getting together when Ms. Dubey had trips to Bombay. However, in November 1993, Mr. Dubey also moved to Hong Kong, where he planned to find a job and

settle. Mr. and Ms. Dubey commenced cohabitation at that time, and married on January 5, 1994. At that time, neither of them had any significant assets, although there is evidence that Ms. Dubey may have purchased some gold by then.

- [8] Ms. Dubey did well with her job as a flight attendant with Cathay Pacific, a job she started when she was aged 19, and has continued to the present time. Mr. Dubey was not successful, however, in finding lasting employment in Hong Kong. He attributes that, at least in part, to the fact, unlike Ms. Dubey, his first language was Hindi and he was not fluent in English at that time. In August, 1996, he returned to India, and established a business as a goat farmer on property owned by his father. During the period they were in Hong Kong, Mr. and Ms. Dubey did purchase a property in Ratlan, intended to be a home when they visited there on vacation.
- [9] In October, 1997, the couple moved to Canada. Ms. Dubey had an aunt who was a flight attendant here, and who encouraged the move. The couple moved to the lower mainland of British Columbia in the hope that Mr. Dubey could obtain more regular employment, although the move did require Ms. Dubey to give up her employment with Cathay Pacific (Hong Kong), and to cash in her pension. She also lost some benefits, such as a housing allowance. In fact, she did continue to work for Cathay Pacific (Hong Kong) in Hong Kong for some time after the initial move, only starting employment with Cathay Pacific (Canada) in Vancouver in May, 1998. In the meantime, in January, 1998, Mr. Dubey obtained employment with Westfair Foods in a store it was opening on Grandview Highway in Vancouver. He has continued to work there, for at least a few hours each week, since that time.
- [10] At the time of the marriage, Mr. Dubey's father told them that he would give them a piece of property in Raneja. Mr. Dubey says that he did not take that seriously at the time, as his father was in a drunken condition. However, when the Dubey's were applying to immigrate to Canada, it was necessary to make a declaration of their assets. The Raneja property was thus transferred to Mr. Dubey, and included by him in his declaration of assets. He says, however, that he was never the equitable owner of that property, that it was put in his name only for the purposes of the immigration declaration. He now says that declaration was false. He says that he has never used that land, in fact has never even seen it, has received no rent with respect to it, and paid nothing to maintain it. He says he considers it to be his father's land. The other property of the parties shown on the immigration declaration was gold jewellery which had been purchased by Ms. Dubey in Hong Kong, which Mr. Dubey had appraised in India as having a value of approximately \$20,000 Canadian. Mr. Dubey says the gold was purchased after discussions between him and Ms. Dubey, using their joint accounts in Hong Kong, and later in Canada. He says the last purchase was done in March, 2003.

- [11] Mr. Dubey continued to be employed by Westfair on a permanent, part-time basis, initially from 32 to 37 hours per week, at minimum wage, stocking shelves. After his first year he became a shipper/receiver, the position he has held since. He says that he was offered a promotion by Westfair after two years, as a grocery supervisor on night shift in Whitehorse. However, as Ms. Dubey could not move there and continue her employment with Cathay Pacific, he decided not to take that job.
- [12] In 2000, Ms. Dubey became pregnant with Hannah. In accordance with Cathay Pacific policy, she was on ground leave. She was then on sick leave for a period before Hannah was born, on January 20, 2001. She then took maternity leave for one year. Mr. Dubey continued to work for Westfair, working both day and night shifts.
- [13] In July, 2001, the parties purchased a home at 5090 Hardwick Street, in Burnaby, for \$230,000. In 2002, renovations were done to the downstairs to put in a rental suite, and also a suite which would be available for a nanny. Also in that year, Ms. Dubey again became pregnant, and in August was again on ground duty. Alyson was born on April 18, 2003. Ms. Dubey took maternity leave until April, 2004.
- [14] In September, 2003, Mr. Dubey started a course as an aircraft maintenance technician at B.C.I.T., which continued until July 2004. He did very well in that course, as well as maintaining some hours of work with Westfair. In July, he became employed at Acro as an aircraft maintenance technician. At the same time, because Ms. Dubey had returned to work, the Dubey's hired a live-in nanny to look after the children. The following month, Ms. Dubey purchased a car, and got a driver's licence. Until that time, she had been dependant upon Mr. Dubey for driving both her and the children. Unfortunately, Mr. Dubey's employment at Acro did not work out, and it was terminated in November, 2004. Since that time, I accept his evidence that he has unsuccessfully made attempts to obtain other employment as an aircraft maintenance technician in the lower mainland. Some time after he was let go by Acro, he did resume his normal number of hours of employment with Westfair.
- [15] The parties separated on September 2, 2005. Ms. Dubey and the children initially lived with her aunt and uncle in Richmond, then in an apartment in Richmond. Since November, 2006, they have been living in co-operative housing.
- [16] In May, 2006, Mr. Dubey started employment with Future Shop. He started as a part-time merchandiser, working from 20 to 30 hours per week, and earning \$9 an hour. He continued, however, with his employment with Westfair. His employment with Future Shop did become what is considered full time, but that is only 32 hours per week, and his rate did increase to \$11 per hour. In the summer of 2007, he moved to sales, then two months later became a home-theatre technician. In that job he earns \$16 per hour, working 40 hours a week regularly, with some overtime, particularly in the Christmas and Boxing Day season. He advises that he enjoys that job, is doing well, and has the opportunity to become a master technician. As such, he would earn \$24 per hour for 40 hours a week, plus bonuses based on

the store performance. He has also continued to work one, four-hour shift a week with Westfair.

- [17] Ms. Dubey has continued with her employment as a flight attendant with Cathay Pacific, although attempting to work the least number of hours available to her, 85 hours per month. In fact, she works from 85 to 110 hours per month, which works out to between 12 and 18 days per month.
- [18] The Writ was issued in these proceedings on November 23, 2005. On January 27, 2006, there was a Judicial Case Conference, following which an order was made, by consent, that the family home at 5090 Hardwick Street in Burnaby be sold. There was also a declaration, pursuant to s.57 of the Family Relations Act, that the parties had no reasonable prospect of reconciliation. The home in Burnaby was, in fact, sold in June, 2006, for \$487,000. The net proceeds of sale were \$307,199, from which each party received \$60,000. The balance of the net proceeds, \$187,199, remains in the trust account of Ms. Dubey's former solicitor.
- [19] On September 21, 2007, a further order was made. By consent, the primary residence of the children was with Ms. Dubey, with the parties having joint interim guardianship. Access was specified, also by consent, including alternating weekends from Friday 7:30 p.m. to Sunday 7:30 p.m., extended on weekends which had statutory holidays; two consecutive weeks in each of July and August; one half of spring break; alternate overnight Christmas Eve to Christmas Day; Father's Day; the birthday of each child; plus other access as may be agreed. It was also agreed that Mr. Dubey would have telephone access to the children at 7:45 p.m. on non-access days. Ms. Dubey was determined to have an annual income of \$52,780 and Mr. Dubey \$31,872. Based on that, Mr. Dubey consented to monthly child support in the amount of \$499 per month, commencing October 1, 2007. He was also ordered to pay \$400 as his contribution to extraordinary monthly expenses, also commencing October 1, 2007. There were provisions that the parties could agree to allow the children to travel out of the Province of British Columbia, but neither was to change the children's permanent residence without further court order. Finally, the applications of Ms. Dubey for interim sole custody, and of Mr. Dubey for spousal support, were adjourned generally.

III Income of the Parties

- [20] As disclosed in their income tax returns, the income of each party in the last five years was as follows:

Year

Ms. Dubey

Mr. Dubey

2003

Income from employment \$17,838; Employment insurance maternity benefits: \$14,455;

Total Income: \$32, 293

Income from employment/

Total income: \$18,153

2004

Income from employment: \$23,564; Employment insurance maternity benefits: \$6,195;

Total Income: \$29,842

Income from employment/

Total income: \$23,761

2005

Income from employment /

Total earnings: \$53,521

Income from employment: \$18,272; Employment insurance benefits: \$8,333;

Total income: \$26,605

2006

Income from employment: \$50,467; Child care benefit: \$1,200;

Total income: \$51,667

Income from employment/

Total Income: \$31,873

2007

Income from employment T4: \$48,494

Employment income from Best Buy T4: \$25,544; employment income from Westfair T4: \$6,926;

Total employment income: \$32,470

[21] As noted in paragraph 13, renovations were done to the home in Burnaby in 2002 to include a rental suite. However, it does not appear that either of the parties has ever included rental income in their income tax returns. Until the separation, that income went into the family finances and can thus be disregarded. However, after the separation until the house sold by Mr. Dubey, it was received by him. It should thus be included in his income for the purposes of comparison. In 2005, he received four month's rent at \$575 per month for a total of \$2,300. In 2006, he received two months rent at \$575 and two months at \$600, for a total of \$2,350. Those amounts are gross revenue, and might properly be reduced by expenses relating to the rentals. On the other hand, however, no tax has been paid on them, which may offset the expenses properly chargeable to them. I thus consider it appropriate to include the gross

amount with Mr. Dubey's income, so that his income for 2005 will be considered to be \$28,905, and for 2006 \$34,223.

- [22] In the last three years Ms. Dubey has experienced a reduction in her income, while that of Mr. Dubey has increased. There is, however, good reason for that. Ms. Dubey says that in the year after the separation, because of her financial situation, she worked as much as possible. Since that time she has voluntarily reduced her hours. Further, in 2007, she was off sick for 96 days, culminating in surgery in June, 2007. She receives a lesser rate of pay for those days. I thus consider her income in 2005 to be a good indication of her potential income, should she choose to work the hours available to her and be in good health. There is no indication of any long-term problems with Ms. Dubey's health.
- [23] Mr. Dubey's income, on the other hand, has increased. In 2005 he did apparently have a period of unemployment, apart from minimal hours each week at Westfair, following the termination of his employment at Acro. It is not explained why he did not work more hours at Westfair sooner than he did, as his evidence was that he could elect his hours on a quarterly basis. In any event, he did increase his hours, and his earnings, in 2006. Those earnings have increased further in 2007. It can be anticipated that his earnings will continue to increase, particularly if he receives the promotion he is anticipating at Future Shop. However, his earning capacity in the immediate future will remain less than that of Ms. Dubey.

IV Credibility

- [24] The credibility of both of the parties has been a significant issue in this trial, with both attacked about prior statements inconsistent with their evidence at trial. Two points affecting credibility have already been mentioned: Mr. Dubey's evidence that he lied in the declaration of his assets required to immigrate to Canada, and the evidence that neither party declared the rental income from the suite in the family home on their income tax returns.
- [25] With respect to Ms. Dubey, discrepancies were shown in her Financial Statements. For example, in her Financial Statement sworn January 3, 2008, she showed her employment income as \$38,211, although her T4 for that year shows income of \$48,494. Also, she did not show any amount for child support received. On the expenses, she showed monthly income tax deductions of \$610 per month, although her total taxes payable for 2006 were \$5,219, or approximately \$433 per month. In her Financial Statement sworn February 6, 2006, Ms. Dubey showed employment income of \$36,000, although her actual income in the previous year was \$53,521. Both she and her counsel attempted to attribute that to errors by her previous counsel, and mere oversight on her part; she admitted she should have been more careful in reviewing the Financial Statements before swearing them. However, that is not sufficient. In each case Ms. Dubey has sworn the information in the Financial Statement to be true.

- [26] In her affidavit sworn July 4, 2007, in paragraph 8, Ms. Dubey indicated that she worked approximately 18 days per month, and required recovery time from her long flights. At that time, she was seeking funding for a nanny. She agreed, on cross examination, that she normally works between 12 and 18 days per month. She also admitted that on the New York flights she does take a nap, but does not on the Hong Kong flights and there is not a significant need for recovery time. Her answer to the question of why she had sworn that she worked approximately 18 days a month when, in fact, she works between 12 to 18 days per month was very telling: she responded that, at the time, it seemed better to put more days. That indicates a very flexible view toward the truth, that it will be bent to meet the needs of the time.
- [27] In her affidavit sworn August 24, 2007, Ms. Dubey also made some statements which she now admits not to be true. She said she had "no idea" about the \$1,600 that Mr. Dubey said she had "taken from the home". She now admits that \$1,600 was deposited in her account at that time. She said that after she left the family home, she did not use the line of credit whatsoever, but she now admits that she wrote a cheque to her former solicitor for \$3,000 on that account, and also made the last payment of \$800 to her former landlord on it. Perhaps most significant to one of the issues I have to decide, she said that she went to the safety deposit box during the month of September, 2005, she "found it to be totally empty". She now admits that not to be true, that, in fact, she took out two watches and a gold chain which were there at that time. In response to questioning on cross examination, she said that was a typing error. Again, that is not sufficient. A party swearing an affidavit has a duty to ensure that the statements in it are true.
- [28] Mr. Dubey, however, was also subject to attack about statements previously sworn to be true, but now admitted not to be accurate. In his affidavit sworn July 12, 2007, in paragraph 2, he said that when Ms. Dubey left the home, "she took \$1,600 in cash from the rental of the suite in our home". His evidence now is that he delivered the \$1,600 himself to Ms. Dubey at her aunt's residence. He also said in that paragraph that Ms. Dubey "also took over \$1,000 from the joint chequing account". However, he now agrees that what Ms. Dubey did was to make transfers from the joint chequing account, making a payment of \$500 on the MasterCard which he also used, as well as taking \$500 for herself. He also referred to Ms. Dubey taking \$3,860 from the line of credit, which was true, but did not mention that he also took \$3,000. In his affidavit sworn September 4, 2007, on the second page, Mr. Dubey deposed that he paid \$6,863 on the line of credit "that the plaintiff had accumulated in a short period of time after our separation". He admitted that was not accurate and that he knew it was not accurate when he swore that affidavit.
- [29] There are also a number of misleading statements, such as his reference in paragraph 2 of the affidavit of July 12, 2007, to Ms. Dubey having a Hong Kong bank account of \$8,800 without indicating those were Hong Kong dollars, equivalent to \$1,356 Canadian. Also in that affidavit, in the second page, he indicated that he remained in the home as a caregiver for the first two years after Hannah was born, when he was, in fact, employed on a full-time

basis by Westfair during those years and Ms. Dubey was home with Hannah in the first year, on maternity leave. He was also subject to criticism for omissions in his Financial Statement, such as in that sworn May 10, 2006, in which he disclosed no interest in real estate, although knew there were two properties in India registered in his name.

- [30] The result of those untrue, or misleading, statements by both of the parties is that I cannot rely on the evidence of either party, unless it is in some way corroborated. This is not a situation where I can prefer the evidence of one to the other, as both have been shown to be very flexible in their views of the truth.

IV Custody, Guardianship and Access

A Law

- [31] The principles to be considered in the issues of custody, guardianship and access in this matter are those set out in s.16 of the Divorce Act, R.S.C. 1985, c.3. Subsections (8) to (10) provide as follows:
- (8) Factors - In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
 - (9) Past conduct - In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
 - (10) Maximum contact - In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.
- [32] As stated by L'Heureux-Dube, J., in *Young v. Young* (1980), 84 B.C.L.R. (2d) 1 (S.C.C.) at paragraph 125, the objective in s.16(10) that a child have as much contact as possible with each parent is not an unbridled objective; it must be curtailed whenever the best interests of the child require it.
- [33] Although this application is under the Divorce Act, it is also useful to consider the factors to be taken into account as set out in s.24(1) of the Family Relations Act, which provides as follows:

24(1) When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:

- (a) the health and emotional well being of the child including any special needs for care and treatment;
- (b) if appropriate, the views of the child;
- (c) the love, affection and similar ties that exist between the child and other persons;
- (d) education and training for the child;
- (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise these rights and duties adequately.

[34] In *Robinson v. Filyk* (1996), 28 B.C.L.R. (3d) 21 (C.A.) the court noted that there are no factual or legal presumptions in custody decisions and, in particular, there is no presumption in favour of either sole or joint custody. The Court of Appeal said that, in each case, the court must consider the best interests of the children. In previous cases, courts had indicated that if the parents were unwilling to cooperate, joint custody should not be awarded. In *Robinson v. Filyk*, the Court of Appeal noted that as merely as one of the factors to be considered. However, in other cases, courts have held that an inability to communicate with respect to the children and animosity between the parents, may make joint custody inappropriate: see, for example, *D.V. v. M.B.B.*, [1998] B.C.J. No.2004 (S.C.); *Ness v. Ness*, 1999 BCCA 51; *Hildebeaugh v. Hildebeaugh*, 2000 BCSC 799; *J.S. v. G.J.S.*, 2005 BCSC 1373; and *Enns v. Enns*, 2007 BCSC 500.

B Discussion

- [35] As I indicated at the end of the hearing on March 7, 2008, it is appropriate that primary residence of the children remain with Ms. Dubey. As noted at that time, she has been either the primary or the joint caregiver for the girls throughout their lives, there is no evidence to show that she is not a fit and proper mother, the children are apparently doing well, and a move would likely be disruptive. That is so despite the fact that it is conceded that Mr. Dubey is a loving father, and has a good relationship with the children.
- [36] Mr. Dubey makes no criticism of the parenting provided by Ms. Dubey. His claims for custody and primary residence of the girls appear to be based on his claim that he has taken as much a part in the parenting of the girls as has Ms. Dubey, and that she is away from them for substantial periods due to her employment.
- [37] The first suggestion that Mr. Dubey has been as involved in the upbringing of the girls as much as Ms. Dubey is not borne out by the facts. His involvement, particularly in the early years, is likely minimized by Ms. Dubey. However, he certainly was not, as suggested in paragraph 2 of his affidavit sworn July 12, 2007, their primary caregiver for any extended periods of time. In the period after Hannah was born, when he says that he remained in the home as a caregiver, he was employed at Westfair Foods. In the first year of that period, Ms. Dubey was on maternity leave. In the first six months of 2003 she was back working as a flight attendant, and Mr. Dubey likely took a greater part in the care of Hannah. However, by

August of 2003, Ms. Dubey was back on ground duty as she was pregnant with Alyson. After Alyson was born, in April, 2003, Ms. Dubey again took maternity leave, while Mr. Dubey was employed on a part-time basis by Westfair. From September, 2003 until July, 2004, Mr. Dubey was attending B.C.I.T., attending for long hours during the day, and also working in the evenings. He was also continuing to work some time for Westfair.

- [38] In April, 2004, Ms. Dubey did resume her work as a flight attendant. At that time, I accept that Mr. Dubey likely took a significant role in the parenting. I note also that until Ms. Dubey got her driver's licence and purchased a car in August, 2004, Mr. Dubey was the one primarily responsible for driving both her and the children, including taking the children for medical care. However, in July, 2004, when Mr. Dubey commenced employment at Acro, a live-in nanny was hired. There has been a nanny for the children since that time.
- [39] Since the separation, I accept the evidence of Ms. Dubey that Mr. Dubey has had relatively little access. Ms. Dubey has produced a calendar for 2007, which she says indicates the times Mr. Dubey has exercised access. While that calendar is admittedly not entirely accurate, specifically not including the access which occurred at Christmas time, I accept that it is substantially accurate. It does indicate that Mr. Dubey has not exercised even all of the access to which he is entitled under the consent provisions of the order of September 21, 2007. For example, it indicates no access in October, 2007.
- [40] As to the concern that there is not a parent available to the children when Ms. Dubey is out of the country for work, that is a valid one. However, the evidence indicates that is from 12 to 18 days per month, and that she is available to be with the children the other days. There is a nanny available to care for them when Ms. Dubey is away. If the primary residence of the girls was with Mr. Dubey, the same problem, although for shorter periods of time, would arise when he was at work. Further, the proposal made by Ms. Dubey that she advise Mr. Dubey of her work schedule and that he can choose to have the children with him when she is out of the country is a reasonable one which meets that concern.
- [41] As I advised the parties at the conclusion of the hearing on March 7, 2008, I consider the level of communication between the two of them to be deplorable. Before the separation, the relationship was characterized by verbal abuse on both sides. That appears to have continued after the relationship. The nature of the communication is such that Mr. Dubey indicates that he does not wish to communicate with Ms. Dubey. That is certainly not in the best interest of the children and militates strongly against joint custody.
- [42] What is perhaps even worse than the animosity between the parties is that the children are being involved in it. For example, Mr. Dubey wanted to take the children to India for a two-week trip this spring break. Rather than responding to Ms. Dubey's e-mail requesting advice about what he wished to do for spring break, he had Hannah ask her mother, at the doorstep, whether he could take them on the two-week trip. The effect of that was to put Hannah directly in the middle of the conflict between her parents, a position that the children should never be put in. Any communication between the parents should be done

directly, if it cannot be done face to face or by telephone, then by e-mail.

- [43] In summary, no valid reason has been put forward why the existing living arrangement for the children with their mother in Richmond, attending schools in Richmond and with friends in Richmond, should be disrupted. I am satisfied that it is in the best interest of the children, considering the factors set out in s.16 of the Divorce Act and s.24(1) of the Family Relations Act, insofar as there is evidence to consider those factors (I do not have any evidence, for example, about the wishes of the girls in this respect), that the girls stay with their mother in Richmond.
- [44] With the level of animosity, and poor communications, between the parents, I also do not consider that joint custody is appropriate. There will thus be an order that Ms. Dubey have sole custody of the children, and that their primary residence be with her.
- [45] On the other hand, however, I am satisfied that despite the poor level of communication between Mr. and Ms. Dubey, an order for joint guardianship is appropriate. Mr. Dubey is entitled to be involved in the children's lives, and Ms. Dubey has a duty to ensure that occurs. She should thus, for example, be advising Mr. Dubey of any events in which the children are involved, and encouraging him to attend. There will thus be an order for joint guardianship of the children, including the following:
- (1) the parents are to be the joint guardians of the estate of the children;
 - (2) in the event of the death of either parent, the remaining parent will be the sole guardian of the person of the children;
 - (3) Ms. Dubey, as the custodial parent, who has the primary responsibility for the day to day care of the children, will have the obligation to advise Mr. Dubey of any matters of a significant nature affecting the children;
 - (4) Ms. Dubey will have the obligation to discuss with Mr. Dubey any significant decisions which have to be made concerning either of the children, including significant decisions concerning the health (except emergency decisions), education, religious instruction and general welfare of either of the children;
 - (5) Mr. Dubey, the parent who does not have custody, will have the obligation to discuss the foregoing issues with Ms. Dubey;
 - (6) each parent shall have the obligation to try to reach agreement on those major decisions;
 - (7) in the event that the parents cannot reach agreement with respect to any major decision despite their best efforts Ms. Dubey shall have the right to make such decision;
 - (8) Mr. Dubey shall have the right, under s.32 of the Family Relations Act, to seek a review of any decision which he considers contrary to the best interests of the children;

- (9) each parent will have the right to obtain information concerning the children directly from the third parties, including, teachers, counsellors, medical professionals and third party care givers.
 - (10) Ms. Dubey shall provide Mr. Dubey with copies of any school reports, medical reports, or other documents of significance relating to either of the children within 48 hours of receipt of such documents by her;
 - (11) Ms. Dubey shall advise Mr. Dubey of all events in which the children are involved, including parent-teacher conferences, at least 48 hours in advance of such events and Mr. Dubey will be entitled to attend such events.
- [46] Access shall continue as provided in the order of September 21, 2007, with the modification suggested by Ms. Dubey to deal with the situation when she is out of town. Mr. Dubey will thus be entitled to access to the children as follows:
- (1) Alternating weekends from 7:30 p.m. Friday to 7:30 p.m. Sunday;
 - (2) Should a statutory holiday fall on the weekend of Mr. Dubey's scheduled access, he shall return the children at 7:30 p.m. on the Monday of that weekend, and;
 - (3) Two (2) consecutive weeks in July, and;
 - (4) Two (2) consecutive weeks in August, and;
 - (5) One-half (1/2) of Spring Break, and;
 - (6) Notwithstanding the alternating weekend access, on odd numbered years Ms. Dubey shall have the children from 3:00 p.m. December 24 until 3:00 p.m. December 25, and Mr. Dubey shall have the children from 3:00 p.m. December 25 to 3:00 p.m. December 26, and on even numbered years this Christmas time access shall be reversed, and;
 - (7) Notwithstanding the alternating weekend schedule, Mr. Dubey shall have the children from 6:00 p.m. the day before Father's Day until 6:00 p.m. Father's Day, and;
 - (8) Notwithstanding the alternating weekend schedule, Ms. Dubey shall have the children from 6:00 p.m. the day before Mother's Day until 6:00 p.m. Mother's Day, and;
 - (9) Mr. Dubey shall have access to each child on her birthday from 3:00 p.m. to 7:00 p.m., and;
 - (10) Ms. Dubey will provide Mr. Dubey with a copy of her work schedule within 48 hours of when that schedule becomes available to her. Mr. Dubey will be entitled, upon notice by e-mail to Ms. Dubey at least 48 hours before the commencement of each trip on which Ms. Dubey will be out of the country for more than 24 hours, to exercise access during the period Ms. Dubey is out of the country; and
 - (11) Such other access as agreed between the parties.

- [47] Each party shall be entitled to take the children out of the Province of British Columbia for the purpose of holidays, on at least 7 days notice by e-mail to the other party, but neither party shall change the permanent residence of the children from the Province of British Columbia, unless with the written consent of the other party or court order.
- [48] At present, with the level of animosity between the parties, communication between them will be by e-mail. For that purpose, Mr. Dubey will be required to get an e-mail address in his own name, rather than continuing to use that in the name of Ms. Dubey.

V Division of Property

A Law

- [49] In *Toth v. Toth* (1995), 13 B.C.L.R. (3d) 1 (C.A.), Prowse J.A. said that a court should first consider division of property, then spousal maintenance. In doing so, it should attempt to avoid double recovery.
- [50] Pursuant to s.56 of the Family Relations Act, on the happening of a triggering event, in this case the declaration that there was no reasonable prospect of reconciliation made on January 27, 2006, each party is entitled to an undivided one-half interest in each family asset as a tenant in common. If such a division would be unfair having regard to factors set out in s.65(1), the court can vary that equal division. However, the test is not whether an unequal division would be fair, but whether an equal division would be unfair: *M.(S.B.) v. M(N.)* (2003), 14 B.C.L.R. (4th) 90 (C.A.).
- [51] Although the date of entitlement is the date of the triggering event, the date of valuation is normally the trial date, unless there is some reason to depart from that approach: *Blackett v. Blakett* (1989), 22 R.F.L. (3d) 337 (B.C.C.A.).
- [52] In *Laurence v. Laurence* (1991), 56 B.C.L.R. (2d) 254 (C.A.) the court considered a disposition of property owned by the husband in New Zealand. At trial, the land was held to be a family asset, and a compensation payment was ordered. The appellant argued that the British Columbia court had no jurisdiction to make an order respecting land in a foreign jurisdiction. The Court of Appeal agreed that no matrimonial order could be made in respect of the land itself, but held that the judge did have jurisdiction to make a compensation order with respect to that land.

B Family Assets

- [53] The only asset with respect to which a question arises as to whether it is a "family asset" is the property registered in the name of Mr. Dubey in Raneja. The first question with respect to that land, however, is whether he is the equitable owner, or the holder of a bare legal title.
- [54] I am satisfied, on the evidence before me, that Mr. Dubey is the equitable owner of the Raneja land. The transfer to him has the indicia of a gift: a stated intention to give the property as a wedding gift, followed with delivery of the title. Although Mr. Dubey did not

take his father's statement of that intention seriously at the time, because he had been drinking, it was carried out by way of the transfer to Mr. Dubey. Further, it was declared by Mr. Dubey to be an asset for the purpose of his immigration application. I thus do not accept his evidence that he holds bare legal title, and find that he is the equitable owner of that property.

- [55] The next issue is whether his interest in that property is a "family asset". Pursuant to s.60 of the Family Relations Act, the onus is on him to prove that the property in question is "not ordinarily used for family purpose". In this case, I find that onus to have been met. Although Mr. Dubey says his father gave the property as a wedding gift, it was put in the name of Mr. Dubey alone, rather than in joint names. It was declared to be an asset of Mr. Dubey on the application for himself and Ms. Dubey to immigrate to Canada, which may be considered to be a "family purpose". However, there is no evidence of any use of the property since that time by the family. Mr. Dubey denies that he carried out his goat farming business on that property, and there is no evidence to the contrary. Similarly, there is no evidence to the contrary to his evidence that he has never received any rent from the property, or paid any expenses with respect to it. I thus find that the property in question has not been ordinarily used for a family purpose, and is thus not a family asset.

C Reapportionment

- [56] Although Ms. Dubey said that she was seeking reapportionment of the family assets in the Amended Statement of Claim, that claim was not pursued at trial. In his Counterclaim, Mr. Dubey sought an order for equal division of family assets. There will thus be orders to give effect to equal division of the family assets.

D Valuation and Division of Family Assets

(a) Balance of Sale Proceeds of Former Matrimonial Home

- [57] The net proceeds remaining from the sale of the matrimonial home, after each party received \$60,000 in September, 2007, was \$187,199. Those net proceeds, together with interest accruing on the money held, will be divided equally.

(b) House in Ratlan, India

- [58] Although purchased by the parties as a vacation property, the house is registered in the name of Mr. Dubey. It is presently being occupied by his parents.
- [59] Ms. Dubey has provided a valuation report showing a value as at December 12, 2007, of 1,276,000 rupees. Mr. Dubey has provided a valuation as of February 9, 2008, in the amount of 1,298,000 rupees. I obtained an exchange rate on the last day of trial, which was agreed to by counsel, showing the value of 1,000 rupees to be \$24.50 Canadian. At that rate, the Canadian equivalents of the valuations are \$36,162 and \$31,801. As I have nothing to enable me to choose between the two valuations, I will use an average, \$33,982. There will be an order that Mr. Dubey compensate Ms. Dubey for her interest in that property in the amount

of \$16,990, to be paid from the amount he would otherwise be paid from the net proceeds of sale of the former matrimonial home.

(c) Vehicles

[60] Ms. Dubey has a 2004 Toyota Corolla with a Black Book value of \$9,750. It will be retained by her. Mr. Dubey will be entitled to \$4,875 for his one-half interest in that asset.

[61] At the time of the separation, Mr. Dubey had a 1990 Honda Civic from which he received insurance proceeds said to be in the amount of \$1,100. Ms. Dubey will be entitled to a credit for one-half of that amount, \$550. Mr. Dubey has a vehicle purchased since separation, which he will retain without any accounting to Ms. Dubey.

(d) Bank Accounts

[62] During the marriage, the Dubey's had a joint chequing account at The Toronto Dominion Bank. It had a balance at the time of separation of \$3,286. Since the separation, it has been used by Mr. Dubey as his account. Ms. Dubey thus agrees that it should be divided at the time of separation, with some adjustments for use of the account after the separation. In particular, Ms. Dubey's pay was deposited into that account on September 15, 2005, in the amount of \$1,417. She transferred \$500 out to her own account on September 26, 2005. On October 3, 2005, she transferred \$1,000 in from her own account. On September 23, 2005, she used \$500 from that account to pay the joint MasterCard. In addition, on September 20, 2005, Ms. Dubey paid \$1,900 on the MasterCard to cover expenses prior to separation. Ms. Dubey thus claims an amount of one-half of the balance of the account at separation, plus \$1,417 for the net amount of her deposits, and \$950 paid with respect to MasterCard bills arising before the separation. The net amount claimed is \$2,110. I accept that amount. Mr. Dubey will be entitled to retain the balance of the account, in the amount of \$35,988 as of December 21, 2007.

[63] At the time of separation, Ms. Dubey also had a U.S. dollar chequing account with a balance of \$13,219 U.S., with equivalent Canadian value of \$15,697. Mr. Dubey is entitled to one-half of that balance, \$7,048.

[64] There was also a joint H.S.B.C. account in Hong Kong, with a value of \$8,862 Hong Kong, or \$1,356 Canadian. Ms. Dubey subsequently closed that account and took the balance. Mr. Dubey is thus entitled to be compensated for one-half of that, in the amount of \$678.

[65] Ms. Dubey also had an account with I.N.G., with a value at separation of \$260. Mr. Dubey will be entitled to compensation of \$130 with respect to that account.

- [66] Since the separation, Mr. Dubey has continued to use the joint Toronto Dominion chequing account as his own account. In addition, he opened a separate account in his own name. Ms. Dubey has also opened a number of accounts, including a Toronto Dominion chequing account, and a new account at H.S.B.C. Apart from the adjustment for the balance on the joint chequing account noted above, each of them will retain those accounts without providing any accounting to the other party.
- [67] Mr. Dubey has an R.E.S.P. account with a balance as at December 21, 2007, in the amount of \$2,839. It is agreed by the parties that shall be retained for the children's education.
- [68] Ms. Dubey does have an R.R.S.P. account, which I understand came from the proceeds of the pension plan she cashed out with Cathay Pacific (Hong Kong) together with subsequent contributions made by Ms. Dubey and Cathay Pacific. As Ms. Dubey and her employer have both made contributions post separation, I consider that it should be valued, for the purpose of division of the family assets at the time of separation. The balance at that time was \$24,238. Ms. Dubey shall transfer to Mr. Dubey, by way of a spousal rollover, the amount of \$12,119.
- (e) Pensions and Life Insurance
- [69] I understand that neither party have any pension rights either with their present or former employers. Their credits under the Canada Pension Plan will be divided pursuant to the provisions of the Canada Pension Plan Act.
- [70] Ms. Dubey has a life insurance policy with no cash surrender value which she will retain.
- (f) Interests in Business
- [71] Ms. Dubey did make a claim against a business established by Mr. Dubey, T. & L. Cleaning & Maintenance. However, I accept Mr. Dubey's evidence that he has never operated that business, and it has no value.
- (g) Gold and Jewellery
- [72] There was a considerable amount of conflicting evidence with respect to gold purchased during the course of the marriage, whether it was purchased as jewellery or for investment, and what has happened to it. Ms. Dubey suggests that it was all personal jewellery, to which she should be entitled. However, it appears that it was purchased over a period of time, taking into account market conditions, and there may have been an investment element to it. It does seem to be agreed between the parties that, at one time, it was kept in the safety deposit box. It also appears to be agreed that it was taken out of the safety deposit box in June, 2005, when Ms. Dubey made a trip to India for a wedding. What happened to it after that time, however, is unclear. Ms. Dubey says that during the month of September, 2005, she returned to the safety deposit box and the jewellery was not there. As noted in paragraph 27, in paragraph 13 of her affidavit sworn August 24, 2007, she said the safety deposit box, "was totally empty". She now admits that is not true, that she in fact removed a gold chain

and two watches at that time. As to the other jewellery, her evidence is that it was left in the home. However, there is no evidence of Ms. Dubey asking Mr. Dubey to deliver it to her after that time, or of her picking it up when she went to the home on several occasions after the separation. Mr. Dubey denies possession of the gold jewellery.

[73] With the concerns I have about the credibility of both of the parties, I am not able to make a finding as to which of the parties, if either, is in possession of the gold jewellery. There will thus be no order with respect to gold or jewellery.

[74] Mr. Dubey says that there was cash in the safety deposit box, which is denied by Ms. Dubey. I am not able to make any findings of fact with respect to that, and there will thus be no order with respect to any cash.

(h) Furnishing

[75] With respect to the furniture in the matrimonial home, it appears Mr. Dubey did receive considerably less than Ms. Dubey. However, that appears to be, at least in part, as he wished. I accept that he did tell Ms. Dubey that she could keep whatever she wanted, as indicated by the fact that he assisted in the move of those furnishings to Ms. Dubey's storage locker.

[76] Mr. Dubey has disclosed a stamp collection with a stated value of \$300, and offers to compensate Ms. Dubey in the amount of \$150. There will be an order accordingly.

(i) Debts

[77] With respect to debts, at the time of the separation the parties did have a joint line of credit, with a very small balance. However, after the separation each party withdrew funds from the line of credit. Mr. Dubey withdrew \$3,000 and Ms. Dubey \$3,860. Those amounts were repaid by Mr. Dubey. He should thus be entitled to a credit for one-half of the \$3,860 withdrawn by Ms. Dubey and paid by Mr. Dubey. He will thus be entitled to a credit for \$1,930.

[78] The other debt incurred after the separation by one party on behalf of the other was on the MasterCard account. An adjustment has been made for the payments on that account by Ms. Dubey relating to purchases prior to separation. However, I accept her evidence that Mr. Dubey continued to use that MasterCard until November, 2005, when she closed that account and opened another one. She claims \$2,570 for MasterCard charges paid by her relating to Mr. Dubey's use after the separation. It is difficult to determine, however, which charges are hers and which are those of Mr. Dubey. I thus allow her a credit of one-half of that amount, \$1,285.

- [79] Each party has incurred other credit card debt since separation, for which each will be personally responsible. Each also alleges he or she has incurred personal debts, in the case of Ms. Dubey, \$10,000 to a friend in Hong Kong, Sharon Saunders; in the case of Mr. Dubey \$5,000 from C. Singh. No documentation or other evidence has been provided with respect to either loan. Each party will be responsible for payment of those personal debts in his or her own name.

VI Child Maintenance and Special Expenses

- [80] Ms. Dubey claims retroactive child maintenance for the period Mr. Dubey did not pay it until the order of September, 2007, plus ongoing child maintenance. She also claims a share of the expenses, primarily relating to the cost of the nanny, but also Alyson's preschool expenses, both retroactively and on an ongoing basis.
- [81] Mr. Dubey did make an initial payment of \$1,600 to Ms. Dubey after separation to cover her costs. However, that was apparently from rent received before the separation. He will thus be entitled to a credit for only one-half of that amount, \$800. He did commence child maintenance payments following the order in September, 2007, and has paid \$950 per month since that time.
- [82] Counsel for Ms. Dubey has calculated the amount of child maintenance payable by Mr. Dubey in 2005, 2006, and 2007 up until he started paying maintenance in October, 2007, based on his income, including rental income in the previous year. She has calculated the maintenance payable from September, 2005, to September, 2007, to be in the amount of \$11,576. That amount is not questioned by counsel for Mr. Dubey. Against that amount, Mr. Dubey will be entitled to the \$800 credit relating to one-half of the rent payment he made to Ms. Dubey following the separation. Since the order in September, 2007, commencing in October, Mr. Dubey has been paying \$950 a month rather than the \$908 he was required to pay. He will thus be entitled to a credit for \$252 for those six months. The net amount of child maintenance arrears is thus \$10,524.
- [83] Counsel for Ms. Dubey has also calculated the share of the extraordinary expenses payable by Mr. Dubey based on the respective incomes of the parties in those years. That does include the cost of the nanny, initially at \$700 per month from February until July, 2006, increasing to \$1,049 per month from September, 2006, until March, 2008. That is not the full amount paid by Ms. Dubey to a nanny, but an amount attributable to child care. For example, the present nanny, Medina, is paid \$1,274 per month, including \$325 room and board. Counsel has attributed \$1,049 to child care, and the rest for other housekeeping services she may provide. That is not questioned by counsel for Mr. Dubey.

- [84] While it may have been possible to provide child care more economically, I accept that with Ms. Dubey being out of the country for periods of time, a live-in nanny is the practical solution. That is the solution which was adopted even before the separation, and which Mr. Dubey does not question. He also indicates his willingness to pay his proportionate share of the extraordinary expenses, as claimed.
- [85] Counsel for Ms. Dubey has calculated the amount of those expenses to date to be \$13,220. Mr. Dubey has paid \$400 per month with respect to them since October, 2007, totalling \$2,054. The amount payable by him with respect to arrears of extraordinary expenses is thus also \$10,776. Ms. Dubey will be entitled to a credit for those amounts.
- [86] With respect to Mr. Dubey's ongoing obligation, it is necessary first to determine the respective income of the parties. Pursuant to s.16 of the Guidelines, a spouse's annual income is determined based on the line 150 total income in the person's income tax return. However, pursuant to s.19(1), "The court may impute such amount of income to a spouse as it considers appropriate in the circumstances ". One of those circumstances is where a spouse is intentionally underemployed, other than where the underemployment is required by the needs of a child of the marriage. In this case, neither of the children is said to have any special needs requiring their mother's attention. However, she is taking the minimum necessary hours of work in order to be with the children. In addition, her income was unusually low in 2007 due to the period of sickness, which is not indicated to be a recurring event. I consider her income in 2005, \$53,521, to indicate the amount of income she could earn if she chose to work the hours available to her. I thus take that income as her income for the purpose of calculating the sharing of extraordinary expenses.
- [87] I also do not consider the amount of Mr. Dubey's income as shown on his T4s for 2007 to reflect his income capacity. I am not prepared to impute any additional income to him as a result of his training as an aircraft maintenance technician, as it has not been shown that there is employment available to him in that field in the lower mainland, or that if he did obtain such employment, his income would increase. However, he is now in an employment in which he is successful, and has received a promotion which would not be reflected in the amount of his income received in 2007. I thus attribute income to him, based on his present position and earnings, in the amount of \$36,000.
- [88] Based on an income of \$36,000, the amount of maintenance payable by Mr. Dubey for the two children will be \$555 per month. In addition, he will be responsible for 40% of the special and extraordinary expenses. I accept those to be \$1,049 per month for the nanny. I accept that there are preschool fees for Alyson of \$156 per month during the school term. Annualized that amounts to \$130 per month. I also accept that there are swimming expenses of \$104 per month, but do not consider those are likely to be year round. I allow them at the annualized rate of \$87 per month, assuming that cost for 10 months of the year. That amounts to a total for special and extraordinary expenses of \$1,266 per month. Mr. Dubey's 40% share of that will be \$506 per month. The total maintenance and expenses payable by him will thus be in the amount of \$1,061 per month, commencing April 1, 2008.

[89] So long as child maintenance is payable, each party shall deliver to the other a copy of his or her income tax return, together with all attachments, by April 30 of each year. Each shall also deliver a copy of his or her Notice of Assessment within 30 days of receipt from Canada Customs and Revenue Agency. In addition, as long as special or extraordinary expenses are payable by Mr. Dubey, Ms. Dubey shall provide him with copies of receipts for expenses incurred, on a quarterly basis, within 30 days of the end of each quarter of the year.

VII Spousal Support

A Law

[90] Mr. Dubey claims spousal support in this case, based on the difference between his income and that of Ms. Dubey. He has historically had a lower income than her, and, as noted in paragraph 23, that is likely to continue at least for the foreseeable future. That income discrepancy increases substantially when the payments Mr. Dubey is required to make for child maintenance and special and extraordinary expenses are taken into account. However, it is rare to have a claim made by a non-custodial parent, as such a payment would reduce funds available to be used to support the children.

[91] The entitlement to maintenance is pursuant to s.15.2 of the Divorce Act. Subsections 4 to 6 of that section provide as follows:

- (4) Factors - In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
 - (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.
- (5) Spousal misconduct - In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.
- (6) Objectives of spousal support order - An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (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.

[92] The principles to be applied in considering a claim for spousal support have been considered in a number of cases. In *Moge v. Moge*, [1992] 2 S.C.R. 813, the court noted, among other things, that all four of the objectives of spousal support set out in s.15.2(6) of the Divorce Act must be considered on an application for spousal support, not just the ability to become self sufficient, in order to redress the advantages and disadvantages arising from the marriage and its breakdown.

[93] In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, the court set out three conceptual bases for entitlement:

- Compensatory, to redress the advantages arising from the marriage and its breakdown, as set out in *Moge*;
- Contractual, based on the agreement of the parties; and
- Non-compensatory, based on the respective means and needs of the parties.

[94] In *Yemchuk v. Yemchuk*, 2005 BCCA 406, at paragraph 50, Prowse J.A. said that in a long-term marriage, where each party has contributed their resources, an equality of standard of living, which may not be the same as equality of income, may be a just result. She also endorsed the use of the Draft Spousal Advisory Guidelines as a useful tool in assessing quantum and duration of spousal support, to supplement the case law. That approach has been endorsed by subsequent decisions in the Court of Appeal such as *Redpath v. Redpath*, 2006 BCCA 38, *MacEachern v. MacEachern*, 2006 BCCA 508, and *Dunnigan v. Park*, 2007 BCCA 329. However, the Advisory Guidelines deal with the issues of quantum and duration, not entitlement.

[95] Counsel for Ms. Dubey has provided two cases in which the court declined to order spousal maintenance, notwithstanding a discrepancy in the income of the parties: *Grams v. Grams*, 2004 BCSC 11; and *Elias v. Elias*, 2006 BCSC 124. In *Elias*, the court noted that both parties had worked throughout the marriage, that neither was economically disadvantaged as a result of the marriage, and that both were self supporting (at paragraph 58).

B Discussion

[96] In this case, although Ms. Dubey has consistently earned more than Mr. Dubey, and is likely to continue to do so for some time, many of the other factors upon which spousal support are based do not exist.

- [97] The parties did live together for almost 12 years, what might be called a mid-length marriage. However, both are still relatively young, Mr. Dubey, 37, and Ms. Dubey, 33. Both worked throughout the marriage, apart from Mr. Dubey's difficulties in maintaining a job, and Ms. Dubey's time off for maternity leave. I do not consider that there are any economic advantages or disadvantages to either spouse arising from the marriage, or its breakdown. Each pursued his or her own occupational goals. During the marriage, Mr. Dubey was able to obtain training as an aircraft maintenance technician, although that has not resulted in work in that field. Since the separation, he has been able to enter into a new line of work, in which it appears that he is doing well.
- [98] Ms. Dubey does have the ongoing responsibilities, including financial, arising from the care of the children. Although the expenses of that are partially compensated for by the amounts for child maintenance and for special and extraordinary expenses, there is still a financial cost to her of being responsible for the children. That is illustrated by the fact that she has chosen to work as few hours as possible so that she can spend more time with the children.
- [99] Each party has suffered some economic hardship as a result of the breakdown of the marriage, but it cannot be said that that of Mr. Dubey is any greater than that of Ms. Dubey.
- [100] Finally, each are now economically self sufficient.
- [101] In those circumstances, I am not satisfied that Mr. Dubey has established an entitlement to spousal support, notwithstanding the difference in their respective incomes. His claim for spousal support is thus dismissed.

VII Conclusion

- [102] I consider that Ms. Dubey has been primarily successful in this action, on the issues of the custody and primary residence of the children, division of property, and child and spousal maintenance. Unless there are factors of which I am unaware, such as Offers to Settle, she will be entitled to her costs of her proceeding on Scale B.
- [103] If there are issues with respect to costs or any of the calculations which need to be done as a result of this order, the parties will have liberty to apply.

Wilson, A.F. J.

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