

CANADA / JUDGMENT

E. J. C. G. v. N. G.

2025 BCSC 609

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 609 E. J. C. G. v. N. G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

E. J. C. G. v. N. G. ,

2025 BCSC 609

Date: 20250124

Docket: E-223090

Registry: Vancouver

Between:

E. J. C. G.

Claimant

And:

N. G.

Respondent

Before: The Honourable Justice K. Wolfe

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

H. Vahidi

For the Respondent:

No Appearance

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 23, 2025

Place and Date of Judgment:

Vancouver, B.C.

January 24, 2025

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- [1] These reasons have been edited for publication. To safeguard the privacy and well-being of the children, the names of the parties have been initialized in the style of cause, and efforts have been made to anonymize, or where necessary redact, identifying details in the judgment.
- [2] THE COURT: These are my oral reasons for judgment. As I have prepared them in an expeditious manner, should either party order a transcript or should I decide to publish the reasons, I reserve the right to make changes to address issues of clarity, style, grammar, case citations or case references, but the substance and outcome of my decision will not change.

- [3] Ms. Vahidi, I will invite you at the end of the reasons to let me know if it would be of assistance to the claimant to have me publish the reasons and make them available, so that she does not incur that cost. However, maybe you want to hear them first before you decide.

Overview

- [4] The claimant mother applies for summary trial of a discrete issue in respect of her family law claim; specifically, unequal division of the former family residence located in [redacted], British Columbia (the "Family Home"). She asks the Court for the following orders under the Family Law Act, S.B.C. 2011, c. 25 [FLA]:
- a) unequal division of the Family Home, which would allocate 100 percent of the interest in the Family Home to her pursuant to s. 95; and
 - b) orders to facilitate that division of the family property, including orders requiring a transfer of title and cooperation with any necessary steps in order to transfer title in the Family Home to the mother, pursuant to s. 97 of the FLA.
- [5] The remaining issues sought by the mother in her notice of family claim, including an order for divorce, for child and spousal support, and for parenting arrangements, are not part of this summary trial application and will be determined at a future point in time.
- [6] The respondent father was served with the application materials in relation to the summary trial and chose not to respond or attend. As addressed below, in the circumstances I was satisfied it was appropriate to proceed in his absence.
- [7] The mother says it would be significantly unfair to divide the Family Home equally, as she acquired the land and built the home more than a decade before the parties began their relationship. She says only the increase in the value of the property since the relationship is "family property" under the FLA.
- [8] In considering how to divide that smaller subset of the interest in the Family Home, the mother says the following factors suggest there will be significant unfairness if the parties' interests are divided equally: the mother's role as sole caregiver to the parties' two children, the parties' current financial positions including the impact of the father's bankruptcy, the father's failure to pay any child or spousal support, and the mother's sole responsibility for all post-separation payments towards the Family Home and servicing of family debt. The mother says she should be found entitled to a 100 percent interest in the "family property" portion of the Family Home, such that the entirety of the Family Home should be hers.

- [9] For the reasons that follow, I grant the mother's summary trial application and order the unequal division of the portion of the Family Home that is "family property" with the result that 100 percent of the Family Home is allocated to the mother. I also grant an order requiring that title to the Family Home be transferred to the mother absolutely and an order that the father take any necessary steps, including signing of documents, to effect the transfer of title to the mother.

Background

- [10] The mother provided extensive materials in support of the summary trial application. I have reviewed and considered all of them, but in the interests of providing a decision on an expedited timeframe, my summary of the relevant background facts will be more cursory in nature.
- [11] I have reviewed the facts set out at paras. 1-52 of Part 2 of the notice of application. Based on my review of the evidence, I consider those paragraphs to be a sufficiently accurate statement of the background to the parties' relationship and, as it concerns the application before me, an accurate summary of the facts relating to the Family Home and the parties' financial and parenting circumstances since the date of separation. I rely on those facts. At a high level, the key facts relevant to the application I must decide are as follows.
- [12] The mother was born in 1979. She is a Canadian citizen. The father was born in the United Kingdom in 1985 and has been habitually resident in British Columbia since 2011.
- [13] In or around 2002, the mother purchased the land on which she built the Family Home, which she completed with some assistance from her father in and around 2003. The mother made significant renovations to the Family Home in 2011. The mother was the sole registered owner on title until July 22, 2014, when her previous former spouse was added as a tenant in common.
- [14] Prior to the relationship with the father, the mother was financially self-sufficient. There was no mortgage on the Family Home.
- [15] The mother and father met in October 2014 and began cohabitation on February 1, 2015. On August 17, 2015, the father was added to the title on the Family Home as a joint tenant with the mother, and the mother's former spouse was removed. The parties took out a \$400,000 mortgage where, as noted, the Family Home had previously been mortgage-free.
- [16] The parties were married on August 13, 2016. They have two children together, now aged six and nine. The mother was the children's primary caregiver and became a homemaker, she says, at the father's insistence. I need not decide the underlying reasons and accept that when the parties separated on May 13, 2022, the mother had been out of the workforce for some time.

- [17] The parties had joint finances, multiple lines of credit, and accumulated a relatively large amount of debt during their relationship. From separation until December 29, 2022, the mother provided primary care for the children and the father exercised parenting time several times a week. The father continued to make some charges on the parties' lines of credit and also made certain payments, but his payments may not have equalled his charges. He stopped making any kind of payments in November 2022.
- [18] On December 29, 2022, there was an incident of significant family violence in the Family Home in the presence of the children. It involved the mother, the father, and another individual. The police attended. The father was removed from the Family Home and put on an undertaking. Criminal proceedings ensued and the father is currently subject to a conditional sentence order as a result of that incident. After that incident, the father drained the parties' joint bank account.
- [19] Following the incident, the mother obtained a series of protection and other orders, including orders pronounced on January 12, 2023, by Associate Judge Bilawich. Since that date, the mother has had sole parenting time and responsibilities for the children. She has also had exclusive possession of the Family Home as a result of court orders.
- [20] The father was ordered to make payments towards expenses of the Family Home for a period of time and was ordered to make a lump-sum payment of support. He did not pay anything. The mother's evidence is that the family violence on December 29, 2022 was not an isolated incident and there was significant family violence, with various forms of abuse (including financial abuse), throughout the relationship. It is not necessary for me to decide any issues in relation to a potential history of family violence for purposes of this application.
- [21] The mother obtained further orders for child and spousal support on August 15, 2023, from Associate Judge Robertson. The Court imputed an income to the father of \$140,000 and ordered the father to make monthly payments of child and spousal support. The father has never paid.
- [22] The mother registered with what is now the British Columbia Family Maintenance Agency ("BCFMA"). Her registration became effective January 1, 2024. The evidence before me is that as of January 23, 2025, the father owes \$46,288.71 in arrears, not accounting for any support that he owed before January 1, 2024. The BCFMA has been unable to collect on any of the arrears the father owes, despite extensive efforts, including removal of the father's driver's licence and Canadian passport.
- [23] The mother's efforts to realize on the arrears of support are made more complicated because, on May 1, 2024, the father completed an assignment into bankruptcy. The mother did not learn this until August 2024.

- [24] The mother has been solely responsible for all expenses related to the children and the family home since the date of separation and has been solely responsible for the servicing of family debt since November 2022. The mother provided extensive evidence about the amount of such expenses over the relevant period of time, including providing viva voce evidence at the hearing before me to bring the amount of those expenses and debts up to date. They are significant.
- [25] I accept the mother's financial circumstances are dire. The mother's evidence includes details of the efforts she has made to get back into the workforce (while juggling sole parenting), to borrow funds, and even to sell her late mother's jewellery to make ends meet.
- [26] The situation has become even more dire because the mortgage on the Family Home is up for renewal. The deadline is March 24, 2025. The current balance on the mortgage is about \$411,000. As a result of the father's assignment into bankruptcy, if he is still on title as a joint tenant, it is unlikely the mother will be able to renew the mortgage.
- [27] The mother's brother is willing to co-sign the mortgage with her but, understandably, not if the father remains on title. The evidence indicates that the mother and her brother would be able to obtain a mortgage together on the Family Home. As a result, this application is urgent.

Issues

- [28] The issues for determination by the Court can be framed as follows:
- Should the hearing proceed in the absence of the father?
 - Is this matter suitable for summary trial?
 - Does the father's post-separation bankruptcy preclude the Court from making an order for unequal division of family property?
 - Would equal division of the Family Home or the "family property" in the Family Home be significantly unfair?

Analysis

Issue #1: Should the hearing proceed in the absence of the father?

- [29] As noted, the father did not attend the hearing of the summary trial application and did not file a response to the notice of application for summary trial or any responding affidavits.

- [30] Under Rules 10-3(2) and 21-6 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR], the Court has discretion to proceed with a chambers application (which includes a summary trial), a trial, or a hearing, in the absence of a party. Both rules permit the Court to receive evidence of service as the Court considers appropriate. Rule 10-3(2) provides that the Court "may proceed if, considering the nature of the chambers proceeding, [the Court] considers it will further the object of these Supreme Court Family Rules to do so".
- [31] A number of cases have identified the factors to consider when determining whether to proceed where a party fails to attend. Such factors include: whether the Court is satisfied that the party was served with notice of the hearing and any materials, and was aware of the hearing date; whether there has been communication with the absent party regarding the hearing; and whether the party has provided any response as to their attendance or position: see, for example, *Nelson v. Shepherd*, 2024 BCSC 416, and *Wolf v. Wolf*, 2018 BCSC 1907.
- [32] At the start of the hearing of the summary trial, counsel for the mother provided the Court with an affidavit from an employee in her office made January 23, 2025, addressing service on the father and attempts to ensure he was aware of the summary trial proceeding. In relevant part, I note the following.
- a) Pursuant to an August 15, 2023, order of Associate Judge Robertson, the mother was permitted to serve any materials on the father by email.
 - b) On January 6, 2025, the mother's counsel served the father by email with a notice of application and the supporting affidavit that had not previously been served. There was no response within the timeframe for response, or at all.
 - c) On January 20, 2025, the mother's counsel followed up with the father by email, confirming his non-response and the intention to proceed on January 23, 2025.
 - d) On January 21, 2025, the father responded to the mother's counsel by email, advising he had forwarded the information about the hearing to the "bankruptcy agency" and stating "I will not be able to attend this hearing." The mother's counsel acknowledged the response and confirmed that, despite his failure to respond and his intention not to attend, the Court might still proceed with the hearing.
 - e) Given the father's email response about forwarding the information to the "bankruptcy agency", on January 21, 2025, the mother's counsel contacted the insolvency trustee appointed in regard to the father's bankruptcy by phone to ensure the trustee was aware of the proceeding and the relief sought. The mother's counsel followed up by email to provide copies of the application materials and exchanged further emails with the trustee regarding the proceedings and the need to forward any court orders respecting division of property that might be made.

- [33] At the start of the hearing, the mother's counsel advised the Court she had attempted to email the affidavit of service and her written submissions to the father that morning, but for the first time had received an email bounce back. After discussion with counsel, I stood down the hearing briefly, so that counsel could have another individual in her office attempt to email the father again with those materials and counsel could attempt to contact the father by phone.
- [34] When the hearing resumed, the mother's counsel advised the Court the affiant of the affidavit of service had successfully emailed the father the outstanding materials and the mother's counsel had reached the father by phone. As an officer of the Court, the mother's counsel advised that on the call, the father confirmed:
- a) he had received all the materials, including those sent that morning;
 - b) he was aware the matter was before the Court and the mother intended to proceed in his absence if the Court considered it appropriate to do so; and
 - c) he did not intend or wish to attend the hearing, even by phone.
- [35] The mother's counsel advised the Court that the father confirmed again he would not be attending and stated words to the effect of, "nothing I can do about it."
- [36] On the basis of the materials provided and the additional steps taken during the court break at the Court's request, I was satisfied that: the father had been served with all the materials and was aware of the hearing date; there had been very recent communication with the father to confirm his lack of response materials; he was choosing not to attend; and the father appreciated the Court may exercise its discretion to proceed in his absence and to make an order against him. Accordingly, I exercised my discretion to proceed with the hearing of the summary trial application.

Issue #2: Is this matter suitable for summary trial?

- [37] The mother submits her application is suitable for summary trial. As noted, the father did not respond, so did not take a position on suitability.
- [38] Rule 11-3(15) of the SCFR permits a summary trial, unless the Court is unable, on the whole of the evidence, to find the facts necessary to decide the issues, or the court considers it to be unjust to decide the matter summarily. The leading case on whether a matter is suitable for summary trial remains *Inspiration Management Ltd. v. McDermid St. Lawrence*, 1989 CanLII 229 (BC CA).

- [39] With respect to finding the necessary facts, a conflict in the evidence is not necessarily fatal to a summary trial application. However, a judge should not decide issues of fact or law solely on the basis of conflicting affidavits: *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485 at paras. 58-60. Where other admissible evidence corroborates or contradicts one side's affidavits, the Court may be able to find the facts necessary, despite a conflict in the evidence: *Greater Vancouver Water District* at paras. 59-60.
- [40] When assessing whether summary disposition would be unjust, the relevant factors include, but are not limited to: the amount involved, the complexity of the matters, urgency, prejudice by reason of delay, the cost of a conventional trial in relation to the amount involved, the course of the proceedings, whether credibility is a critical factor, and whether the summary trial will create unnecessary complexity or result in litigation in slices: *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31.
- [41] On an application for summary trial, the Court must satisfy itself that the matter is suitable for summary trial, even where the parties agree or there is no opposition: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2012 BCSC 1799 at para. 93.
- [42] The mother says the discrete issue of whether equal division of the Family Home would be significantly unfair is a straightforward issue that can be determined primarily on the basis of the documentary evidence with respect to pre-relationship ownership of the Family Home, and the parties' financial and personal circumstances at and following separation. If the Court accepts the mother's position that the majority of the value of the Family Home is excluded property, the amount of money at issue in this proceeding is modest. In comparison, the cost of proceeding to a full trial on this issue would be disproportionate and, frankly, impossible for the mother given her current financial position. The mother also emphasizes the urgency of having the division of the Family Home decided, given the impending mortgage renewal date at the end of March 2025, and the prejudice both she and the children will suffer if this matter is not determined expeditiously.
- [43] In my view, the mother's application is suitable for summary trial. The factual and legal questions surrounding the request for unequal division of the Family Home are not complex, and I am able to find the facts necessary to decide them on the basis of the affidavit evidence and the documentary exhibits before me. Unlike with some of the issues that remain to be determined under the mother's notice of family claim, there are no significant conflicts in the evidence or issues of credibility at play that would make it unjust to decide this property division question summarily.
- [44] Rather than delaying or complicating the proceedings, resolving the question of the division of the Family Home will further the just, speedy, and inexpensive determination of the underlying claim. Most critically, in my view, there is significant urgency to having this matter determined far enough in advance of the mortgage renewal date that the mother has time to take subsequent steps. Directly related to that, and particularly given the father's bankruptcy, I am satisfied there is a substantial risk of prejudice if the resolution of this

matter is delayed and the insolvency trustee takes steps in respect of the Family Home in the absence of a court order determining the parties' interests.

- [45] In the circumstances, I conclude it is appropriate to exercise my discretion to decide the mother's application by way of summary trial.

Issue #3: Does the father's post-separation bankruptcy preclude an order for unequal division of family property?

- [46] Given the father's assignment into bankruptcy in May 2024, it is necessary to briefly address whether that fact somehow precludes the Court from making an order for unequal division of family property.
- [47] This issue was extensively canvassed by Justice Jackson in *C.K.M. v. H.R.M.*, 2021 BCSC 1297, at paras. 98-215. In that case, the claimant's trustee in bankruptcy instructed claimant's counsel to argue the assignment into bankruptcy precluded the Court from making an order for unequal division of family property. The claimant in *C.K.M.* argued that: a claim for unequal division had to be pursued through the bankruptcy process; the stay of proceedings triggered by her assignment into bankruptcy precluded the respondent's application for unequal division of property; and the claimant's interest in the family property had vested in the trustee upon assignment. The respondent argued that on separation, the FLA creates a proprietary interest in family property that is subject to division, which may eventually result in unequal division. As a result, the respondent argued that division must occur first, in order to determine what, if any, property is ultimately available to a bankrupt's creditors.
- [48] Justice Jackson rejected each of the claimant's arguments. Finding that a claim for unequal division of family property is not a claim provable in bankruptcy, Jackson J. found the statutory stay under s. 69.3 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA], does not apply or bar a claim for unequal division of family property. After a thorough review of existing caselaw and applying a fresh perspective, Jackson J. ultimately concluded that, after separation and until family property is divided (either by court order or by agreement), each spouse retains their right to an undivided half-interest in all family property as a tenant in common. Since each spouse's right is subject to division, it is not possible to know the extent of either's proprietary interest. To the extent any interest of the bankrupt spouse vests in the trustee upon assignment, that interest is also subject to division and therefore the BIA cannot preclude the Court from making the requisite order for division, including unequal division under the FLA.
- [49] The father's insolvency trustee is aware of these proceedings and did not take the position that the matter could not proceed or an order could not be made. In the circumstances, and given Jackson J.'s considered analysis of the issues in *C.K.M.*, I am satisfied it is open to me to make an order for division of family property, including unequal division if I determine appropriate, despite the father's post-separation assignment into bankruptcy.

Issue #4: Would an equal division of the Family Home be significantly unfair?

The legal framework

- [50] Before considering the specific requested division in this case, it is helpful to briefly outline the applicable legal framework for property division. Part 5 of the FLA governs property division in family law matters. The starting point for property matters is the presumption under s. 81 of the FLA that, unless an agreement or order otherwise provides, spouses are entitled to an equal interest in all family property, regardless of their respective use or contribution, and are equally responsible for family debt.
- [51] Section 84 of the FLA broadly defines "family property" to include all real or personal property owned by at least one spouse on the date of separation or in which at least one spouse has a beneficial interest, that is not excluded property under s. 85. Section 86 defines family debt to include all financial obligations incurred by a spouse during the relationship and after separation, if incurred for purposes of maintaining family property.
- [52] Section 85(1) of the FLA specifies categories of property excluded from family property. The category relevant to this case is property acquired by a spouse before the relationship began (s. 85(1)(a)). A party claiming that property is excluded property bears the onus of proving that claim on a balance of probabilities: FLA, s. 85(2). An excluded property claim must be established on the basis of clear and cogent evidence, although mathematical certainty is not required: *Shih v. Shih*, 2017 BCCA 37 at paras. 41-44.
- [53] The mother claims the Family Home is excluded property because it was acquired prior to the parties' relationship. She acknowledges that the amount by which the value of excluded property has increased since the later of when the relationship began or the excluded property was acquired is considered family property: FLA, s. 84(2)(g).
- [54] Under s. 87 of the FLA, the value of family property is presumptively based on its fair market value and is generally to be determined as of the date of the hearing, unless there is an agreement dividing family property and debt. There is no such agreement in this case. The Court may also determine that a different date should be used to value family property.
- [55] Section 95(1) of the FLA permits the Court to order an unequal division of family property or debt or both if the Court finds an equal division would be "significantly unfair", having regard to one or more of the factors set out in s. 95(2). I am not being asked to order any division with respect to family debt.
- [56] For purposes of this case, the relevant factors under s. 95(2) include:
- []
- (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;

- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;

[]

- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[Emphasis added.]

[57] The jurisprudence confirms there is a high bar to establish the kind of significant unfairness that warrants a departure from the presumptive equal division of family property. In *Singh v. Singh*, 2020 BCCA 21, the British Columbia Court of Appeal referred with approval to its earlier decision in *Jaszczewska v. Kostanski*, 2016 BCCA 286, before concisely summarizing the applicable principles as follows:

[134] it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.

[58] In considering a claim for unequal division of family property, the British Columbia Court of Appeal has confirmed that the proper analytical approach requires the Court to first consider the outcome of a notional equal division of family property, and then decide if that equal division would be unfair, given the factors in s. 95(2): *Healey v. Healey*, 2024 BCCA 68 at para. 69.

[59] Section 97 of the FLA permits the Court to make determinations and grant orders as required to give effect to a division of family property or family debt under Part 5 or Part 6 of the FLA. Relevant to this case, under s. 97(2)(b), the Court may require that title to a specific property granted to a spouse be transferred to, held in trust for, or vested in the spouse absolutely, for life, or for a term of years. Further, s. 97(1)(b) grants the Court authority, subject to certain exceptions, to "make any order that is necessary, reasonable or ancillary to give effect" to a division of family property or family debt.

A notional equal division

[60] To consider the outcome of a notional equal division of family property, I must first determine what constitutes the "family property" at issue in this case.

- [61] The mother submits the Family Home is excluded property, except for the value of the increase in the Family Home from the date of the beginning of the parties' relationship to the present day.
- [62] I accept that the Family Home is excluded property. Before me there is (as the case law indicates is required) clear and cogent evidence that the Family Home was acquired well before the parties' relationship, in fact, more than a decade before the parties' relationship. There is likewise evidence the mother was solely responsible for the purchase of that property, the construction of the Family Home, significant renovations to the Family Home, and the upkeep of the Family Home throughout that entire period of time. I have no difficulty concluding that the Family Home is excluded property.
- [63] I also accept the mother's submission that, as a result, the portion of the Family Home that constitutes family property is the increase in value of the Family Home from the date the parties' relationship began.
- [64] I have before me evidence of property valuation in respect of the Family Home. It is not perfect evidence, but it is sufficient to allow me to make the determination in this case. In this regard, I have evidence of an appraisal completed in January 2014, which indicates that, at that time, the property was valued at \$630,000. The January 2014 appraisal dates from approximately a year before the parties began cohabitating. There was a second appraisal done in August 2022. I am advised it was prepared for purposes of certain discussions between the parties in relation to the underlying family claim. The August 2022 appraisal valued the Family Home at \$680,000. The current value of the Family Home, according to the July 1, 2024, B.C. Assessment, is \$758,000 (as of July 1, 2023).
- [65] While the January 2014 appraisal is not specific to the date of the start of the parties' relationship, it is the best evidence that the Court has and I accept it is an appropriate starting point for valuing the Family Home. I am conscious that, given market trends, it is most likely the property increased slightly or stayed the same in value between January 2014 and February 2015, which would mean that any difference in using the January 2014 figures actually works to the father's benefit.
- [66] With respect to calculating the increase in value, I consider it appropriate to use the current B.C. Assessment value of \$758,000 for the Family Home. In my view, it would be inappropriate to use the valuation from the August 2022 appraisal considering it was completed more than two and a half years ago.
- [67] As a result, and with my thanks to counsel for doing the math, I accept the mother's submission and find the increase in value of the Family Home is \$128,000.
- [68] A notional equal division of that \$128,000 increase would result in each party being entitled to \$64,000.

Would an equal division be significantly unfair?

- [69] I turn then to whether an equal division, under which the mother and father would each be entitled to \$64,000, would be significantly unfair in the circumstances, with reference to the factors under s. 95(2) of the FLA noted above.
- [70] The mother relied on the factor in s. 95(2)(c), in relation to her contribution to the career potential of the father. I have no doubt that, since the mother served as the primary caregiver for the children, which enabled the father to continue working, that factor does weigh in favour of an unequal division.
- [71] There is substantial evidence before the Court with respect to family debt and the fact that significant family debt was accrued during the relationship. There is also clear evidence that the mother has solely borne responsibility for servicing the family debt essentially since the date of separation. I acknowledge the father made small payments up until November 2022, but that does not change my overall assessment. Accordingly, I find the debt factors under s. 95(2) also weigh in favour of an unequal division of the family property.
- [72] The main focus of the mother's submissions, both during oral submissions and in the written submissions which were provided to the Court, was on the factor that is known as the "catch-all" factor under s. 95(2)(i) of the FLA. I note a similar approach to considering whether equal division of family property would be significantly unfair was taken by the parties and the Court in C.K.M. I will focus my attention there as well. Under the "catch-all" factor, the mother asks that I consider the following factors, which I will deal with in turn.
- [73] The first factor is the care of the children. As already indicated, since the date of separation, the mother has been the primary caregiver for the children and, since the incident of significant family violence, the mother has had sole responsibility for the children. This is a significant responsibility. There are indications the mother has done her best to facilitate a relationship between the children and their father, but there is also evidence that, given some significant concerns for the safety and well-being of the children, at present, that needs to be a carefully monitored and supervised relationship. I am satisfied that this factor - the mother's sole responsibility for caring for the children, including for all of the expenses associated with caring for the children - favours an unequal division.
- [74] Turning next to the post-separation accumulation of interest on family debt, as was the case in C.K.M., there has been a significant accumulation of interest on the family debt, partially due to the fact the mother had to re-enter the workforce (after not having worked for a great many years) in order to begin providing for herself and her children after the date of separation. The accumulation of interest and mother's re-entry to the workforce is also connected to the father's refusal and failure to pay any form of child or spousal support.

- [75] As a result, while the mother has made very significant efforts to keep up with the servicing of the family debts, it is clear that, at most, she has been able to keep up with the interest on the family debts, and sometimes not even that. This is through no fault of her own. However, in my view, given that the family debt was accumulated during the relationship and yet the mother has been left with sole responsibility for paying it down, this factor also weighs in favour of an unequal division of the family property.
- [76] The parties' current financial positions, including the impact of the father's bankruptcy on the mother, is the next factor I was asked to consider. In terms of the parties' current financial circumstances, as indicated in my summary of the facts, the father has refused to pay any support towards the children or the mother since the date of separation, and the father has refused and failed to pay any amounts towards the household expenses for which the mother has been solely responsible. This is despite numerous orders from this Court obliging the father to make those payments. As a result, the mother has borne a disproportionate burden in terms of the financial obligations for the family and she will continue to do so. Given the father's assignment into bankruptcy in May 2024, it does not appear that at any point in the near future the father will be in a position to begin paying back what are significant expenses and significant arrears of child and spousal support. I find this factor weighs very heavily in favour of an unequal division of the family property.
- [77] Lastly, I take into account the fact that the mother has made significant personal sacrifices in order to provide for her family, as detailed above.
- [78] Given the significant burden the mother has had to carry in terms of supporting the children, the Family Home, and all of the servicing of family debts for more than the last two years, and given that the history of this file and the father's more recent assignment into bankruptcy does not suggest he is likely to be able to meet his support obligations at any point in the near future, I am satisfied that, on an objective basis, it would be significantly unfair to order the equal division of the increase in the value of the Family Home that constitutes family property. In my view, given all of the burdens the mother has had to bear, there would be a real sense of injustice that would permeate the outcome if the Court did not deviate from the presumptive equal division.
- [79] On that basis, I am satisfied, taking into account the volume of expenses the mother has had to address and deal with by herself, the substantial volume of arrears the father owes, and the other factors mentioned, that equal division would be significantly unfair. In making these comments, I am not in any way determining what the father might ultimately be ordered to pay. I appreciate the father may have reasons and face challenges that mean he is unable to make the necessary contributions at this time. However, the consideration before me is whether, despite all of those failings and all of the disproportionate burdens between the parties, it would still be fair to provide him with an equal division of the family property in the Family Home. I simply cannot find that to be the case.

Conclusion and summary of orders

[80] As a result, and in conclusion, I am satisfied this is an appropriate matter to determine by way of summary trial. I am satisfied the father's post-separation assignment into bankruptcy does not preclude me from making an order for unequal division of family property in favour of the mother. I am further satisfied that the only portion of the Family Home that is family property is the value of the increase in the Family Home dating from the start of the parties' relationship. Finally, I am satisfied that, on the facts of this case and for the reasons identified above, it would be significantly unfair to divide the value of that increase equally between the parties.

[81] I find that, in all the circumstances, the appropriate orders are the orders sought by the mother for an unequal division of the family property in favour of the mother, and an order that allocates 100 percent of the interest in the Family Home to the mother.

[82] I therefore grant the following orders:

- a) pursuant to s. 95 of the FLA, an order for unequal division of the former family home with a civic address of [redacted], and legally described as [redacted] (the "Family Home"), with 100 percent of the interest in the Family Home allocated to the claimant;
- b) pursuant to s. 97 of the FLA, a declaration that the claimant has sole ownership and right of possession to the Family Home;
- c) pursuant to s. 97 of the FLA, for purposes of giving effect to paragraph 1 of this order, an order requiring the parties to take all steps as are necessary to transfer the title to the Family Home currently registered in the parties' joint names as joint tenants into the sole name of the claimant, including:
 - i. providing consent where such consent is required; and
 - ii. signing documents where such documents are necessary

for the purpose of transferring the title to the Family Home into the sole name of the claimant.

[83] I will also make an order that the respondent's signature is dispensed with on this order, given that the respondent chose not to attend court.

[84] Finally, I will make an order that the mother is entitled to her ordinary costs of this application in any event of the cause.

"K. Wolfe J."

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