

CANADA / JUDGMENT

Finnbogason v. Norseman

2025 BCSC 66

COURT

Supreme Court of British Columbia

DECIDED

17 January 2025

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2025 BCSC 66 Finnbogason v. Norseman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Finnbogason v. Norseman,

2025 BCSC 66

Date: 20250117

Docket: E14916

Registry: Campbell River

Between:

Allan Mark Finnbogason

Claimant

And

Eva Norseman née Jakubisinova

Respondent

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Claimant:

H. Wenngatz

Counsel for the Respondent:

R. Krasman

Place and Dates of Trial:

Courtenay, B.C.

September 16-19 & 24, 2024

January 9, 2025

Place and Date of Judgment:

Campbell River, B.C.

January 17, 2025

INTRODUCTION

- [1] The only remaining questions for me to decide in this family law case are the division of matrimonial property and whether the claimant is entitled to spousal support, which, following the parties' submissions, I intend to address in that order. The claimant is now 57 years old, the respondent a decade or so younger.

BACKGROUND

- [2] The parties began living together in 1999. They married on April 19, 2000. They separated in August 2020. They had no children. The claimant was born in Canada, the respondent in what used to be known as Czechoslovakia. The parties met in the summer of 1999 while the respondent was on vacation, staying with her aunt, Maria Stanek, in Pender Harbour, BC. The claimant was Ms. Stanek's neighbour. The claimant, then in his early 30s, testified that he was on an approximately year-long "hiatus" from work and did not have money to pay rent. His evidence suggests that there have been reasonably frequent "hiatuses" of this sort in his adult working life. He moved in rent-free with the respondent and Ms. Stanek in exchange for helping them with chores around their property. In short order the parties became engaged and started to plan their wedding.
- [3] In November 1999, the claimant was helping a friend fix his truck at the Pender Harbour Mill. He was working under the hood and priming the carburetor when his friend turned the key in the ignition. This caused an explosion and the claimant was badly burned. He was taken to Vancouver General Hospital and was in a coma for three weeks. 32 percent of his body was burnt in varying degrees, his arms and chest the most severely. The claimant spent a total of five weeks in the hospital. He regained the use of his hands within the first year but they are not as strong as they used to be. The flesh of his arms and hands is permanently damaged and tears easily.
- [4] While the claimant was in hospital, Ms. Stanek sold her property at Pender Harbour. The parties moved in with the claimant's parents in Port Coquitlam. Within months of leaving the hospital, the claimant negotiated a settlement of his tort lawsuit related to the burn incident for just under \$200,000. He used \$100,000 of the settlement funds to set up an illegal

marihuana grow operation. He never saw any return on this investment as the operation was shut down by the police before he could get a crop out. All of his equipment was seized and forfeited. He was charged with narcotics offences, pled guilty, and was handed a conditional sentence of two years less a day and a \$10,000 fine.

MARRIED LIFE, INCOME & PROPERTY

- [5] The parties married as planned on April 19, 2000. Their marriage certificate, registered on April 28, 2000, lists "Allan Mark Norseman" as the bridegroom. The claimant testified that he and the respondent agreed that their respective surnames were too difficult for English speakers to pronounce. They decided that they would go by the surname "Norseman" instead. The couple discussed this with the Justice of the Peace at their wedding ceremony, who advised the claimant to write his name on the paperwork as he would when, in due course, he made a formal application to change it. He did not follow through with this. His legal name remains Allan Mark Finnbogason.
- [6] After the parties were married they lived for a while with the claimant's parents in Port Coquitlam, BC before setting up in a rental house nearby. The respondent went to work with a company called Basic Health in New Westminster, where she stayed from 2000 until 2006, when the company moved to Richmond, BC. By then, the parties had bought a house on Shook Road in Mission, BC. The daily commute to Richmond was too onerous, so the respondent quit her job. After taking a few months off, then briefly working at a hotel in Harrison Hot Springs, she was hired at Shoppers Drug Mart where she remained for 15 years in various positions, including, latterly, as the in-store post office manager. In 2021 she parlayed this role into full-time work with Canada Post. Her annual salary is now around \$56,000.
- [7] The Shook Road house is on a lot that is part of a larger vacation property where the parties are permitted to live full-time because of some sort of "grandfathering" in the tenure arrangements. The purchase price of the property was \$80,000. The parties made a down payment of \$5,000, and the rest was funded by a mortgage loan taken out in the respondent's name. The loan was guaranteed by her aunt, Maria Stanek, and the property was registered solely in the name of Eva Norseman. The claimant testified that this was done to make life "easier" for the respondent. Because he was older than her and in compromised health, he felt that she would out-live him and the house would belong to her in the end whether he was on title or not. The respondent thinks it had mostly to do with his desire to appear asset-free in order to evade child support payments to the mother of his only child, Chantelle Nadon. This pleasant young woman testified at trial and told me that she has become friendly with her father as an adult, but her mother was forced to pursue him for years in the Provincial Court and register with the Family Maintenance Enforcement Program to get any financial help with raising her.

- [8] The claimant testified that he worked a variety of jobs during the parties' relationship. He talked in general terms about his involvement in construction, trucking, retail, and other occupations. The available documentary evidence of his income starts in 2012. In that year and in 2013, he made just over \$60,000 annually working at a company as a pilot car operator. From mid-2014 to 2016, he was self-employed, operating his own pilot car business under the name Norseman Pilot Car. His reported income in 2014 was \$42,794, and in 2015 it was \$28,150. I was provided with no proof of income for 2016 or 2017. Since 2018 the claimant says that his sole sources of annual income come from a federal disability pension and provincial social assistance.

SLIP AND FALL

- [9] In January 2016, the claimant had a slip and fall accident on some icy stairs outside a hotel in Sayward, BC. He was in that remote part of Vancouver Island on one of his many expeditions in search of Sasquatch, of whose existence he claims to be certain. As a result of this mishap he suffered soft tissue injuries, a fractured left ankle, fractured vertebrae and an aggravation of his pre-existing ankylosing spondylitis. He described his ankle pain as being so severe that sometimes he cannot stand up. This extreme sort of pain comes on with strenuous activity and he told me that he experiences it every couple of months. He also suffers from chronic back pain which ranges from nagging to acute. He applied for and was rejected twice before being granted his federal disability pension in May 2018, which, as I have said, is now supplemented by provincial social assistance payments. His cumulative present-day reported annual income is approximately \$15,380.
- [10] The claimant's slip and fall tort claim was settled at a mediation in June 2019. The settlement amount was \$350,000 all inclusive. The payout to the claimant after legal fees and disbursements was \$216,690.29. In November of the same year, the parties used \$136,946.90 of these funds as a down payment on a residential property at 79 Lynwood Road in Campbell River, BC. As with the place on Shook Road, this property was registered solely in the respondent's name, and for the same reasons. The claimant said it was "just easier", and he was reasonably sure that he would pre-decease her and she would end up with the property anyway. The claimant wanted to keep the remainder of the settlement funds as "fun money" and for improvements to the Lynwood Road property. Against the respondent's wishes, the parties took out an \$80,000 mortgage to cover the remainder of the purchase price.

SEPARATION

- [11] The parties separated in around August 2020. The claimant's evidence was that this occurred mostly because the respondent did not want to move to Vancouver Island, as had been his plan for several years. The respondent told me that it followed her discovery that, over the August 2020 long-weekend, and without her knowledge or approval, the claimant and his ex-girlfriend had gone off on a camping trip together on Vancouver Island, once again on a Sasquatch-finding excursion. The respondent was extremely upset by this. Before the

claimant returned home she fired off a text to him declaring that their marriage was over, and she never changed her mind. The claimant has been living in the Lynwood Road residence ever since. The respondent has remained in Mission at the Shook Road address, where she would like to stay for good.

RENTAL INCOME

- [12] Prior to separation the residence on Lynwood Road was renovated to include a self-contained suite, and the parties arranged for friends of the claimant to rent it for \$1,000 per month until sometime in 2021. As I have said, the claimant himself moved into the house after his fateful camping weekend. The claimant took on a new renter who stayed from January 2021 to March 2022, paying \$1,400 per month. When this last tenant moved out, the claimant did not find a replacement, telling the respondent that there was no point in doing so with their trial date fast approaching, after which he reckoned that the property would probably have to be sold. As it happened, however, an original hearing date was adjourned and the trial ended up being delayed for two and a half years.
- [13] The claimant's excuses for failing to get in new tenants were not persuasive. He said that the only person with whom he wished to share a residence was the respondent, and that tenants were noisy and interfered with his privacy. The claimant left it entirely to the respondent to continue paying the Lynwood Road mortgage and expenses, as she had done all along, but now without the help of the rental revenue let alone any contribution from him. She struggled to pay all the bills associated with the ownership of two residential properties, and she told me that she drained her tax-free savings account to do so. She finally stopped paying the Lynwood Road mortgage and taxes in August 2023. The claimant has continued to live on the property without tenants. He has paid none of the bills. In default of mortgage payments, the lending institution, the Royal Bank of Canada ("RBC"), has initiated foreclosure proceedings.

FORECLOSURE

- [14] An appraisal was done of the Lynwood Road property on January 7, 2023 assessing its market value at \$377,000. The appraised value of the Shook Road property is \$320,000, and the mortgage on it was paid off years ago. With respect to the Lynwood Road foreclosure, on October 29, 2024 RBC was granted a consent order declaring the mortgage to be in default, and that the amount of money due and owing as of September 19, 2024 was \$68,331.81, with interest accruing at the rate of 3.19 percent per annum. The consent order requires the respondent to pay this amount immediately, plus \$3,583.01 related to an overdraft on her account, together with RBC's costs on Scale A. The redemption period ends on April 20, 2025.
- [15] I summoned the parties back to court on January 9, 2025, to make inquiries about this RBC consent order and to hear what, if anything, had been done about it. I was advised by counsel that no portion of the redemption amount has been paid, and that the consent order

has now been registered against title to the Shook Road property. I would emphasise that the Lynwood Road property only went to foreclosure in the first place because after March 2022 the claimant refused to take in tenants or to assist the respondent in paying any of the bills. The monthly mortgage payment was only \$400 per month and for almost three years the claimant could have got more than three times that amount by renting the suite.

DIVISION OF PROPERTY

- [16] At the end of the trial, the parties notified me that they had come to agreement about division of all their personal property and financial accounts. They agree that the Shook Road property is a family asset subject to the statutory presumption that they are each entitled to an undivided one-half interest. They agree that the Lynwood Road property is a family asset and that the down-payment of \$136,946.90 for it came entirely from the claimant's slip and fall settlement funds. The claimant argues that this amount should be excluded under s. 85(1)(c) of the Family Law Act, S.B.C. 2011, c. 25 ("FLA").
- [17] The respondent says there is no such exclusion because the settlement was "all-inclusive" and the claimant has not demonstrated what portion, if any, of the settlement money was in relation to lost income. She relies on *Jackson v. Jackson*, 2015 BCSC 2114 at paras. 10-12, citing *A.A.P. v. G.T.F.*, 2015 BCSC 662. I accept, of course, that the claimant bears the onus of proving any exclusion, but it seems that it is no bar to his claim that the value of the exclusion cannot be precisely determined: see *L.M.N. v. K.L.N.*, 2022 BCSC 2173 at para. 151, citing *Shih v. Shih*, 2017 BCCA 37 at paras. 40-44. In *Boyd v. Foster*, 2019 BCSC 901, the court relied on a personal injury mediation brief to infer that 60 percent of an all-inclusive settlement amount was excluded property.
- [18] Section 85(1)(c) of the FLA provides that a settlement or award of damages as compensation for injury or loss is excluded property but not if it represents compensation "for lost income": s. 85(1)(c)(ii). The "lost income" referred to in this subsection is a past loss. The words are expressed in the past tense and do not include compensation for future loss of income earning capacity: see *Hopson v. Hannon*, 2020 BCSC 794 at para. 191, *aff'd* 2022 BCCA 314, citing *Boyd* at paras. 62-71.
- [19] The claimant's slip and fall mediation brief was adduced in evidence in the present case. His submission was that \$175,000 should be awarded in non-pecuniary damages; \$141,217.50 for past loss of income earning capacity; \$650,000 for future loss of income earning capacity; \$80,000 for loss of housekeeping capacity; and \$197,461 for cost of future care. The total demanded was thus \$1,243,678.50, and the final settlement of \$350,000 was roughly 28 percent of that amount.
- [20] Applying that percentage to the various heads of damage, which may or may not have been precisely what was negotiated, but nevertheless would seem to be a rational metric, then \$49,000 was for non-pecuniary damages; \$39,540 was for loss of past income earning capacity; \$182,000 was for loss of future income earning capacity; \$22,400 was for loss of

housekeeping capacity; and \$55,289 was for the cost of future care. By this reckoning, all but \$39,540 of the award of \$350,000, or roughly 89 percent, represented compensation for injury and loss other than lost income. It is possible, therefore, that roughly 89 percent of the \$136,946.90 down-payment on the Lynwood Road property came from funds to which the claimant might have asserted a claim of exclusion.

- [21] But this is not what he did. The money was deposited directly into a bank account in the respondent's sole name with the intention, I find, that it would be used by the parties to pay for their joint expenses and activities. The respondent was always in charge of the family economy. The claimant told me that he had no interest in such things. He said that he never had his own bank account during the marriage. Within a few months of the mediation, the parties jointly agreed that the settlement funds would be used to purchase the Lynwood Road property. The claimant testified in straightforward terms that it was an investment for both of them. It was registered in the respondent's sole name because, once again, it was "easier", but also because he "loved and trusted her" and expected to spend the rest of his life with her. His evidence was explicit that, as far as he was concerned, the property belonged to both of them, and his intention was that it would become hers exclusively when he died.
- [22] The evidence suggests that what was left of the settlement funds after the Lynwood Road purchase has long since been spent, and it seems clear enough that it was used for the same sort of family purposes as all other revenue that flowed into the parties' accounts during their 20 years operating as a single economic unit. There is no evidence to show that any portion of the settlement funds would be retained as the claimant's separate property. I find, instead, as did my colleague Wilson J. in the analogous case of L.M.N. at para. 167, that the claimant intended to make a gift of the settlement funds to the general purposes of their joint spousal enterprise.
- [23] It follows that the Lynwood Road property is subject to the statutory presumption of equal division set out in s. 81 of the FLA. All that remains to be considered is the claimant's argument for a re-apportionment in his favour under s. 95 of the FLA on the footing that an equal division would be significantly unfair. His argument relies, once again, on the fact that the down-payment on the property comprising much of its present-day equity came from his personal injury settlement funds, and also that the parties' relationship broke down only nine or so months after the property was acquired. There is no doubt that this was a material change of circumstances, or that the claimant's intention that the property should be held as a long-term joint investment has become impossible. The respondent wants her share of the property now.
- [24] Having decided that the slip and fall settlement funds lost their quality as excluded property once the claimant used the money to purchase Lynwood Road in the respondent's sole name for their joint benefit, nevertheless I am prepared to accept, as previously stated, that by far and away the majority of the settlement funds were likely paid for injury or loss other than lost income, including for pain, suffering, and the cost of the claimant's future care and maintenance. In my view, it would be wrong to ignore this factor when considering whether,

in all the circumstances, fairness requires an order of re-apportionment: *Hannon v. Hopson*, 2022 BCCA 314 at paras. 80-81.

- [25] I have concluded that it would be significantly unfair to divide the Lynwood Road property equally because the parties split up only a short time after it was acquired, and the money to buy it came primarily from funds paid to the claimant, not only as compensation for bodily injury and loss of capacity, but also for future pecuniary losses and costs which are still likely to arise. To fail to account for this would be objectively unfair: *Jaszczewska v. Kostanski*, 2016 BCCA 24. To redress this unfairness, and to restore equity and balance to the parties' matrimonial property settlement, I hereby order that the equity in the Lynwood Road property must be divided unequally.
- [26] In my view, a fair re-apportionment would be 60-40 percent in favour of the claimant. In setting this ratio, I have considered that the respondent paid the mortgage and other bills related to the property by herself for some 17 months without any assistance from the claimant when at the very least he could have taken rent-paying tenants to relieve her burdens. She is entitled to credit for this. The practical result will be that when, as seems inevitable, the Lynwood Road property is sold in foreclosure, of the approximate sum of \$300,000 in net proceeds, the claimant will be entitled to \$180,000, and the respondent to \$120,000.

SPOUSAL SUPPORT

- [27] The claimant's demand for spousal support, both past and prospective, is dismissed. I am not satisfied on all of the evidence that he is totally disabled or that he cannot earn income from employment of some kind or other. The medical evidence he relies upon to make his case to the contrary is the same that he submitted in support of his federal disability pension over six years ago. I have been provided with no current independent medical or other persuasive evidence to suggest that he is totally functionally incapacitated or unfit for any type of work. For the reasons that follow, I conclude that he will be capable of supporting himself on terms of financial equality with the respondent absent any ongoing material assistance from her.
- [28] I would refer, off the top, to his testimony about his newfound "hobby" of buying tractors and fixing them up for re-sale. The claimant estimates that he has sold 16 or so overhauled tractors since separation, doubling his money each time. None of this income has found its way onto his annual tax returns. On the last tractor he sold, he made a profit of \$2,500 to \$3,000. He testified that he only does this sort of work when he feels physically capable of it, and the last tractor took him six months to complete. He insists that, other than this, he cannot work any sort of regular job in any occupation because of his injuries, and the only supplement to his own testimony on this subject, as I have said, is dated medical opinion evidence saying that the claimant was disabled back in 2018, and that his deficits would likely affect his capacities to some degree or other into the future. No one, other than the claimant himself, has suggested that he is totally and permanently incapacitated, and as far

as I am concerned, his tractor repair and other activities are proof that he is not.

- [29] I note, as well, that the documentation produced for the claimant's successful appeal of the initial denial of his application for disability benefits was not accompanied by the appeal decision itself. I agree with the respondent that this decision, which the claimant could most certainly have presented in evidence, would necessarily have yielded valuable information about the basis on which the appeal was allowed and whether the claimant's disability was considered to be permanent or merely prolonged. The respondent has argued that the absence of this evidence should lead me to draw an adverse inference against the claimant. She emphasised, as well, that the claimant has failed to follow medical advice given to him to rehabilitate his injuries and mitigate his losses, and by his own admission the claimant has not taken therapeutic advice from his family doctor or any other health professional in years.
- [30] Certainly, the claimant's failure to present easily accessible evidence shoring up his claim for indefinite maintenance from an ex-spouse who can ill-afford to pay it must be seriously weighed in the balance. He confirmed in his own testimony that he has taken none of the physiotherapy and declined the surgery recommended by his medical advisers to remediate his injured ankle. He also claims to have suffered a stroke sometime after he qualified for his disability pension, and that this has negatively affected his cognitive functioning, but there was no sign of this during his lengthy turn in the witness box, and he conceded in cross-examination that he never sought medical attention for such a thing. He left me to accept his word for it, presumably on the basis of self-diagnosis, but I prefer the evidence of the respondent, who of course was living with him at the time. She said that he complained about a stroke but she noticed nothing wrong with him. She told him that they should go to the hospital to have him evaluated just in case, but he refused. When he finally consulted with his family physician months later, at an appointment to which he was accompanied by the respondent, all that was recommended, apparently, was that the claimant should take "baby aspirin" and exercise twice per week.
- [31] I also heard evidence from the claimant and his own witnesses that casts substantial doubt on his claim of total functional incapacity. In addition to his tractor re-building activities, the claimant continues to enjoy camping, fishing, hunting, riding "quad" motorcycles, and exploring remote areas of BC in search of Sasquatch. The claimant called evidence from his friends Laurel Gareau and Russ Tremblay, as well as from his daughter, Chantelle Nadon, all of whom testified that the claimant continues to pursue his customary physical activities, only with reduced strength and agility. I accept this evidence - that the claimant's physical capacities have been reduced from what they used to be - but it falls well short of corroborating his narrative of total disability.
- [32] The claimant testified with some pride that while at high school he was designated a "gifted" student, and he made it clear that he rates his own intellectual abilities to be far above average. I accept that he is no longer suited to work requiring a lot of physical strength or stamina, such as his former employment in construction, but he told me himself that he has

made no effort since 2016 to seek or secure employment in lighter or more sedentary occupations, or to retrain for better paying low-impact jobs in keeping with his superior intellect and aptitudes. He told me that recently he considered applying for work on the fuel dock of a marina. He abandoned the idea for reasons that he did not explain, but I conclude that he would not have thought of it in the first place unless he felt capable of it. The evidence leads me to conclude that he was right.

- [33] I find that the claimant is, in fact, capable of remunerative work in any physically undemanding job that is suited to his high intelligence, and he has an obligation, in my view long-neglected, to get on with becoming maximally self-sufficient. The respondent earns only \$56,000 per year. In the modern economy such a salary does not go far. The claimant bears the onus of establishing that he is entitled to a share of the respondent's modest income on non-compensatory principles, because in my view there is no other basis for considering it. He has failed to do so. I have no hesitation in imputing a much higher income to the claimant than he has reported in his recent tax returns. In my view, given his intelligence, skills, experience, and potential for re-training, the imputation should be fixed at a rate well above the minimum wage, and even if he does not work full-time, I consider that \$42,000 would be the bare minimum appropriate.
- [34] I would repeat, as well, that over the last three years or so the claimant could and should have been earning rental income from the Lynwood Road suite, which after all was built for that very purpose. It was fetching \$1,400 per month in 2020 when the last tenant departed and no replacement was sought, and I think it likely that it would be closer to \$2,000 by now. He declined to access this income for reasons of his own that, as I have said, I do not find persuasive. He has failed without reasonable excuse to use this asset to maximise revenue either to maintain the property or support himself. In my view he has no right to look to the respondent to make up the difference.
- [35] Finally, for reasons which I have already explained, while I cannot accept the claimant's excluded property claim, I have decided to order a 60-40 percent re-apportionment of the Lynwood Road property in his favour given the parties' materially changed circumstances soon after it was acquired. At the risk of repetition, this is because the money used to purchase it came from his June 2019 slip and fall tort settlement, which was awarded in material measure to cover aspects of his future maintenance, including lost income earning capacity. This reapportionment will effectively restore to the claimant access to additional funds to support himself, and correspondingly relieve the respondent of any obligation to contribute to his maintenance on non-compensatory principles.

DIVORCE

[36] All of the preconditions for a divorce are present in the evidence. I am satisfied that the couple identified in the marriage certificate, notwithstanding the incorrect identification of the claimant, are the parties who appeared before me at trial. If a divorce order can go on those terms, it is hereby made effective 30 days after the date of this judgment. If not, because of the misstatement on the marriage certificate, the parties will have to explore what administrative steps are required to sort it out.

CONCLUSION

[37] Orders will go accordingly. Success has been mixed on the limited questions that the parties asked me to decide on this trial. They will bear their own legal costs. I hereby direct that the respondent's counsel will draw up an order that accords with this judgment, which may be submitted electronically for my signature. Counsel have leave to apply if any further orders or directions are necessary.

"Baird J."

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Prepared on 29 October 2026 · Esheria