

CANADA / JUDGMENT

Gaddi v. Bartholomew

2024 BCSC 2517

COURT

Supreme Court of British Columbia

DECIDED

19 December 2024

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2024 BCSC 2517 Gaddi v. Bartholomew

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gaddi v. Bartholomew,

2024 BCSC 2517

Date: 20241219

Docket: E63483

Registry: New Westminster

Between:

Florence Abaya Gaddi

Claimant

And

John Eric Bartholomew

Respondent

Before: The Honourable Justice Lamb

Oral Reasons for Judgment

The Claimant, Appearing on own behalf:

F. Gaddi

The Respondent, Appearing on own behalf:

J. Bartholomew

Place and Dates of Trial:

New Westminster, B.C.

December 3-5, 2024

Place and Date of Judgment:

New Westminster, B.C.

December 19, 2024

- [1] THE COURT (by videoconference): The claimant, Florence Abaya Gaddi, and the respondent, John Eric Bartholomew, were in a 10-year marriage-like relationship between 2011 and 2021. Ms. Gaddi brought this action seeking spousal support, a division of family property, damages for personal injury because she says Mr. Bartholomew gave her chlamydia, and repayment of a debt of \$1200.
- [2] Mr. Bartholomew acknowledges he owes Ms. Gaddi \$1200, and he undertook to pay that amount shortly after the trial concluded; however, he says all other claims made by Ms. Gaddi should be dismissed. Mr. Bartholomew says the parties agreed that each would keep their own property and be responsible for their own debts when they separated. Alternatively, he says that their incomes are fairly similar and that equal division of family property and debt would be significantly unfair in this case given the burden of debt he carries. Mr. Bartholomew does not acknowledge that he infected Ms. Gaddi with chlamydia, and he denies any significant harm in any event.
- [3] Ms. Gaddi denies there was an oral agreement regarding division of family property and family debt.
- [4] Both parties represented themselves at trial after having counsel file initial pleadings on their behalf. They both did their best to present their cases in an organized fashion. I will briefly outline the background facts regarding the parties' relationship before turning to the issues I must decide.

Background

- [5] Much of the background of the parties' relationship is not contentious.
- [6] The parties met in January 2009. At the time, Mr. Bartholomew was married and living with his wife in a house they owned in Delta, which I will call the Delta property. The parties started dating in February 2009. Soon thereafter, Mr. Bartholomew left his wife and two young children and moved into a basement suite in North Delta.
- [7] By 2010, Ms. Gaddi would spend weekends with Mr. Bartholomew in the basement suite during her time off from working as a live-in caregiver. Mr. Bartholomew was self-employed. He is a plumber by trade. His work flexibility allowed him to drive Ms. Gaddi to work.

- [8] In early 2011, the parties moved together to an apartment near King George SkyTrain station. Ms. Gaddi says that they moved in together in the spring of 2012 because she was required, as a live-in caregiver, to reside with her employer. However, I prefer Mr. Bartholomew's evidence on this point because he recalls living in a basement suite for two years after leaving his wife in February 2009. In any event, I am satisfied that the parties' relationship met the description of marriage-like by early 2011, even if Ms. Gaddi did not live in the King George apartment full time.
- [9] When the parties moved in together in the spring of 2011, Ms. Gaddi said she would pay half the rent, but she was not earning enough money to pay her share. Mr. Bartholomew ended up paying most of the couple's expenses at the time. After some period of time, they moved into a less expensive unit in the same building.
- [10] At some point in 2018, Ms. Gaddi tested positive for chlamydia. She confronted Mr. Bartholomew, her only sexual partner since meeting him in early 2009. She says Mr. Bartholomew admitted to infidelity. In his testimony at trial, Mr. Bartholomew did not deny his infidelity.
- [11] By early 2021, the parties were facing challenges to their relationship. The parties' final separation occurred in early 2021, either in February or March according to him or in April 2021 according to her. I find as a fact that the parties likely separated on or about April 1, 2021, after a final anniversary trip together to Tigh-Na-Mara in March 2021.
- [12] The parties agree that they continued to reside in the same rented residence until late June 2021, to provide stability for the foreign student they were housing at the time. Ms. Gaddi then moved out with all of the items she had purchased from the time they started cohabitating. Mr. Bartholomew was left with few household goods.

Analysis

Family property and family debt

Did the parties enter into an oral agreement?

- [13] Section 92 of the Family Law Act, S.B.C. 2011, c. 25 provides that parties may make agreements regarding the division of property and debt. Such agreements may be made orally or in writing. The fact that an agreement is not in writing does not bar its enforceability. The test for whether the parties have a binding agreement is an objective one -- that is, would a reasonable person find that the parties had reached an agreement: *M.F.W. v. M.A.H.*, 2019 BCSC 588 at para. 197, rev'd on other grounds 2020 BCCA 284.
- [14] To establish that there is a binding agreement, Mr. Bartholomew must prove that he and Ms. Gaddi reached an agreement on essential terms, and their agreement must be clearly set out: *Muller v. O'Flynn*, 2019 BCSC 1674 at para. 34.

- [15] Mr. Bartholomew testified that the parties entered into a "you take your stuff and I take mine" oral agreement at the end of their relationship. When this was put to Ms. Gaddi on cross-examination, she said she did not remember such a conversation. Mr. Bartholomew was not able to provide any greater detail of this conversation that he says occurred in February or March when they decided to separate, other than he was going to go his way and she was going to go hers. Mr. Bartholomew could not remember the exact words used, but he remembers they discussed staying in the house they were renting until after the student left at the end of the school year.
- [16] I accept that Ms. Gaddi took what she considered to be her personal belongings when she left the parties' shared residence in June 2021. The fact she took these items, which she had purchased over the course of the parties' relationship, provides some support for Mr. Bartholomew's evidence that the parties agreed to separate with each keeping their respective belongings and debts.
- [17] That said, I am not satisfied that the essential terms of any oral agreement to divide family property and debt were clear. There is no evidence that the parties identified the family property or debt to be divided, nor that they discussed the value of family property or debt as part of an alleged oral agreement. I am not satisfied the terms of the agreement were sufficiently clear such that a reasonable person would conclude they had reached an agreement on how to divide family property and debt.
- [18] I will now review the statutory framework for dividing family property and family debt before turning to my findings on that issue.

Statutory framework

- [19] Section 81 of the Family Law Act provides that each spouse has the right to an undivided half-interest in all family property as a tenant in common and is equally responsible for family debt, subject to an agreement or order that provides otherwise.
- [20] Section 86 defines family debt as all financial obligations incurred by a spouse during the period when the relationship between the parties begins and ending when the parties separate. Family debt also includes debt incurred after the date of separation for the purpose of maintaining family property.
- [21] Generally, the value of the family property must be based on its fair market value: Family Law Act, s. 87. Where there is no agreement to divide family property and debt, s. 87(b) provides that the value of family property and family debt must be determined as of the trial date. Family property and debt are identified as of the date of separation and valued as of the date of trial, unless the court otherwise orders.
- [22] Property acquired by a spouse before the relationship between the spouses began is excluded property: Family Law Act, s. 85.

[23] Section 95 of the Family Law Act allows the court to order an unequal division of family property only if equal division would be significantly unfair for one of the reasons set out in s. 95(2), including based on

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

[24] Section 97 of the Family Law Act gives the court authority to make orders to effect division of family property.

Family property

[25] The only significant family property to be divided is Mr. Bartholomew's interest in the family home he jointly owned with his wife, Anne Grimmett. Mr. Bartholomew co-owned the Delta property located at 8794 Shepherd Way in Delta, B.C., when he started his relationship with Ms. Gaddi. Ms. Gaddi concedes that the equity in the Delta property at the start of their marriage-like relationship is excluded property.

[26] The best evidence of the value of the Delta property when the parties' marriage-like relationship started in the spring of 2011 is the 2012 B.C. Assessment report, which assessed the value of the Delta property to be \$396,300 as of July 1, 2011. The December 31, 2011, mortgage statement for the Delta property shows principal owing of \$172,015.02. The amount owing as of July 1, 2011, was approximately \$174,900, which means the total equity in the Delta property as of July 1, 2011, was approximately \$221,400, of which half was owned by Mr. Bartholomew. I find that Mr. Bartholomew's excluded property in the equity of the Delta property is \$110,700.

[27] The Delta property was sold on August 29, 2024. At the time of sale, there was a mortgage and a line of credit registered against the Delta property and outstanding property taxes owing by Mr. Bartholomew to Ms. Grimmett. After accounting for these debts and legal fees, Mr. Bartholomew's share of the equity in the Delta property was \$529,983. I will address the other deductions from Mr. Bartholomew's share of the sale proceeds in a moment when I determine family debt.

[28] Mr. Bartholomew argues that the value of the Delta property ought to be valued as of the date of separation. He relies on the court decisions in *Davie v. De Mark*, 2017 BCSC 872, and *Bamford v. Mulyati*, 2017 BCSC 945. In my view, both of these cases are distinguishable. In *Davie*, the parties' relationship lasted less than two years, and the respondent brought most of the assets into the relationship and continued to pay all expenses after the parties separated. In *Bamford*, the parties' relationship lasted 14 years, but the respondent wife had left the family home suddenly with items that did not belong to her, and she did not participate in the trial three and a half years later.

- [29] In the case at bar, that is the case between the parties I am presiding over, the parties' relationship lasted a decade, longer than in *Davie*, and Mr. Bartholomew only contributed to the expenses related to the Delta property indirectly through child support payments. The evidence regarding how much child support he actually paid from April 1, 2011, to August 29, 2024, is unclear.
- [30] At paragraph 35 of *Rudyak v. Bekturova*, 2018 BCCA 414, our Court of Appeal said choosing a different date for valuation of family property should only be done where there is compelling evidence to depart from the valuation date set out in the Family Law Act, that is the date of trial. I am not satisfied there is compelling evidence in this case to depart from the usual rule. The three-year delay from the filing of the notice of family claim in October 2021 to trial is not unusual or excessive and not a reason to change the valuation date from the default set out in the Family Law Act.
- [31] As a result, I find the value of the family property is \$419,283.

Family Debt

- [32] Over the course of the parties' marriage-like relationship, Mr. Bartholomew accumulated significant debt in his name. Ms. Gaddi does not see these debts as her responsibility. However, I am satisfied that the debts incurred during the parties' marriage-like relationship are family debts as defined in s. 86 of the Family Law Act.
- [33] From prior to 2011 until approximately 2016, Mr. Bartholomew was self-employed as a contractor. Ms. Gaddi's earnings were relatively modest from 2011 to 2013, which meant that Mr. Bartholomew paid most of the parties' expenses from his earnings. However, he did not file taxes on time from 2011 to 2014, and his tax obligation for those years remained substantially unpaid until his personal tax debt was paid out of his share of the proceeds of sale of the Delta property. Mr. Bartholomew also brought personal income tax debt into his relationship with Ms. Gaddi.
- [34] Due to Mr. Bartholomew's failure to file income tax returns and the time that has passed, it is difficult to determine what his personal income tax debt was as of April 1, 2011. Doing the best I can with the evidence I have, based on his 2010 and 2011 income tax return informations issued on August 4, 2015, and July 27, 2015, respectively, Mr. Bartholomew owed approximately \$64,441 to CRA for personal taxes payable as of the spring of 2011. Based on his 2021 notice of application, Mr. Bartholomew owed \$108,609 to CRA for personal taxes payable as of the spring of 2021. As a result, I find that \$44,168 of his personal tax debt is family debt.
- [35] For a number of years during the parties' relationship, Mr. Bartholomew also failed to remit GST that he had collected on his contracting work. His GST debt was paid out of his share of the proceeds of the sale of the Delta property. As of the spring of 2011, Mr. Bartholomew owed approximately \$9,422 to CRA for unremitted GST. As of a statement dated July 11, 2022, Mr. Bartholomew owed \$45,123 for unremitted GST. I estimate that interest on unpaid GST

from April 1, 2021, to July 11, 2022, was approximately \$1500. As a result, I find that \$34,200 of Mr. Bartholomew's GST debt, which accumulated from the spring of 2011 to April 1, 2021, is family debt.

- [36] Finally, during the marriage-like relationship with Ms. Gaddi, Mr. Bartholomew fell behind on his child support payments. In 2020, Mr. Bartholomew negotiated a separation agreement with Ms. Grimmett that resulted in her agreeing to reduce the amount of child support owing to \$90,000. All of this debt was accumulated over the course of the parties' relationship and is family debt.
- [37] In 2011 or 2012, Mr. Bartholomew purchased supplies on credit and failed to pay. He was sued in Provincial Court and a judgment of \$22,481 was entered against him. Mr. Bartholomew was able to settle the debt by paying \$11,500. I am satisfied this is a family debt.
- [38] In 2019, Mr. Bartholomew hired a lawyer to negotiate a settlement agreement with his wife, Anne Grimmett. He borrowed money from his parents to pay \$41,770 in legal fees, all but \$800 of which was incurred prior to April 1, 2021. He also borrowed money from his parents during the parties' relationship to pay for his son's baseball, which he estimates totalled \$4000 to \$5,000. Ms. Gaddi understood the baseball fees were a gift from Mr. Bartholomew's parents to their grandchild, but I accept Mr. Bartholomew's evidence that his parents expected to be repaid. Mr. Bartholomew also borrowed money from his parents on occasion to pay \$600 monthly truck payments when he was low on funds, though he could not recall how often and when that happened. I find that Mr. Bartholomew has proven on a balance of probabilities that loans from his parents totalling \$45,000 were incurred during the parties' relationship and meet the definition of family debt.
- [39] In his submissions regarding family debt, Mr. Bartholomew included mortgage payments, property taxes, and utility payments he says he made with respect to the Delta property over the course of the parties' relationship. However, debt payments and expense payments made by one party or the other is not relevant to the determination of family debt. As noted by Justice Choi in *Yousefian v. Jafarmadar*, 2018 BCSC 855 at para. 13, the Family Law Act "does not contemplate a forensic accounting of expenditures during the relationship". Even if Mr. Bartholomew had made mortgage payments or paid property taxes and utilities for the Delta property during the parties' relationship, which is far from clear on the evidence at trial, such payments would not be relevant when determining family debt.
- [40] As a result, I find the total family debt to be divided is as follows:
- a) \$44,168 for Mr. Bartholomew's personal income tax debt;
 - b) \$34,200 for Mr. Bartholomew's GST debt;
 - c) \$90,000 for Mr. Bartholomew's child support debt;
 - d) \$11,500 for Mr. Bartholomew's debt to a supplier;

e) \$45,000 for Mr. Bartholomew's debt to his parents.

[41] The total amount of the parties' family debt is \$224,868.

Equal division of family property and family debt

[42] The net value of family property and family debt totals \$194,415. Equal division of family property and family debt results in each party receiving \$97,207.50.

[43] Mr. Bartholomew pleaded s. 95 of the Family Law Act and sought an unequal division of family property in his favour. He says that the equity in the Delta property should not be divided equally because Ms. Gaddi never lived in the house, which is not a factor specifically listed in s. 95(2) of the Family Law Act as a factor that may justify an unequal division of family property. Section 95(2)(i) allows the court to consider any other factor that may lead to significant unfairness. I am not satisfied that Ms. Gaddi's never having lived in the house is a factor that may lead to significant unfairness, as long as the division of family property and debt recognizes the debts incurred over the course of the relationship. The Delta property was essentially a family investment that increased in value over the course of the parties' relationship, and there is no significant unfairness in equally dividing the increased equity where neither party lived at the Delta property over the course of their relationship.

[44] None of the other factors specifically listed in s. 95(2) are relevant in this case. Mr. Bartholomew's debt was paid out of the proceeds of the sale of the Delta property and is no longer a factor in the assessment of significant unfairness. To the extent his debt is family debt, it has been divided. I am satisfied there is no significant unfairness in dividing family property and debt equally in this case.

Spousal support

Legal framework for spousal support claim

[45] Entitlement is a threshold issue to any award for spousal support.

[46] Ms. Gaddi's claim for spousal support is made pursuant to the Family Law Act. Sections 160 to 162 and 165 of the Family Law Act provide the legislative framework for ordering spousal support. If a spouse is entitled to spousal support after considering the objectives in s. 161 of the Family Law Act, then the amount and duration of spousal support must be determined based on the conditions, means, needs and other circumstances of each spouse: Family Law Act, ss. 160-162. Section 165 of the Family Law Act authorizes the court to order spousal support in the amount it considers appropriate once entitlement is established.

[47] The Supreme Court of Canada has identified that the purpose of spousal support "is to relieve economic hardship that results from [the] 'marriage or its breakdown'": *Moge v. Moge*, [1992] 3 S.C.R. 813 at 848 (emphasis in original). Marital partners "should expect and are entitled to share [the] financial benefits" that are generated from the marriage: *Moge* at 849. Those financial benefits can be equally distributed in many ways, including through

spousal support and division of property: Moge at 849. The court must consider "the respective advantages and disadvantages of the spouses as a result of their roles in the marriage": Moge at 849.

[48] The Supreme Court of Canada has identified three grounds for entitlement to spousal support:

- a) compensatory support, which relates primarily to the first two objectives set out in s. 161 of the Family Law Act;
- b) non-compensatory support, which relates primarily to the final two objectives set out in s. 161 of the Family Law Act; and
- c) contractual support.

[49] Ms. Gaddi's claim for spousal support is based on compensatory and non-compensatory grounds. I find that Ms. Gaddi is not entitled to spousal support on either compensatory or non-compensatory grounds.

[50] I will briefly review Ms. Gaddi's employment history and her role in the marriage-like relationship, before explaining why I find she is not entitled to spousal support.

Ms. Gaddi's employment history and role in the marriage-like relationship

[51] At the beginning of the parties' marriage-like relationship, Ms. Gaddi worked as a live-in caregiver consistent with her work visa. She then went to work for the Fairmont Hotel in the customer service department. Mr. Bartholomew generally drove her to work and picked her up from work. Ms. Gaddi was laid off in September 2020 due to the COVID-19 pandemic. Through early 2021, Ms. Gaddi was taking small courses and looking for employment.

[52] When Mr. Bartholomew lived in the basement suite from 2009 to 2011, he had parenting time with his two children overnight on Tuesdays and Thursdays and from Saturday morning to Sunday at noon. As I understand the evidence, his parenting time continued in the same pattern when he moved to the King George apartment, which increased the commute time to school for his children. Ms. Gaddi helped look after the children by making meals and doing laundry and taking them to the park. That said, she worked weekends for a number of years when she worked for the hotel, including during Mr. Bartholomew's parenting time.

[53] I am not satisfied that Ms. Gaddi's role in helping to look after the children interfered with her career path.

[54] After separation in August 2021, Ms. Gaddi started working 12 hours per week as a visitation coordinator at Strive, a long-term care facility. In October 2021, Ms. Gaddi started working 40 hours per week at a Marriott Hotel, but the hotel closed down in January 2022 due to COVID-19.

- [55] In February 2022, Ms. Gaddi was referred by Strive to a training program through the Fraser Health Authority, which included full-time pay for going to school. Ms. Gaddi started the HCAP program at Sprott Shaw College on June 27, 2022, and finished the program the first week of March 2023. She was required to return to work at the long-term care facility for one year, but by then her full-time position had been changed to casual. It is not clear what efforts she made to secure other employment in 2023, including potentially returning to work at the hotel, until she started working as a community health worker with Fraser Health Authority in December 2023.
- [56] In January 2024, she suffered a head injury while working for Fraser Health Authority, and she has worked intermittently since then. More recently, Ms. Gaddi had cataract surgery. She is currently working a split shift for Fraser Health Authority, and she is waiting for accommodation from Fraser Health Authority for daytime driving only. Her ophthalmologist is sending her for further testing, including a CT scan in February.
- [57] Ms. Gaddi's anticipated earnings for 2024 are unclear. She did not provide any 2024 pay slips as part of her F8 financial statement. She currently hosts one foreign student, though she suggests she earns no net income from having a student.
- [58] Ms. Gaddi says Mr. Bartholomew discouraged her from getting her driver's licence, which impeded her career progress. Mr. Bartholomew denies preventing her from getting her driver's licence. He acknowledged that it is expensive to get a driver's licence, which was a factor in their discussions on the topic. Ms. Gaddi acknowledges they discussed the cost of getting a driver's licence.
- [59] After separation, she managed to pass her driver's test, and she purchased her own vehicle, which allowed her to secure the position as a community health worker with Fraser Health Authority. That said, I am not satisfied it is more likely than not that Mr. Bartholomew prevented her from getting a driver's licence during their relationship. I accept that Mr. Bartholomew routinely drove Ms. Gaddi to her employment during their relationship when transit was not convenient, which made a driver's licence for her less of a priority. However, when they separated, she needed to become self-sufficient, which she did by getting her driver's licence.
- [60] Ms. Gaddi says that Mr. Bartholomew discouraged her from pursuing further studies. She said she was a nurse's aid in the Philippines before moving to Canada, and she wanted to qualify as a licensed practical nurse here. Other than testifying as to her desire to meet the B.C. standard, Ms. Gaddi offered no details about what training or qualifications she would have required to work as an LPN, whether she would have met the admission criteria, how long such training would take, and what difference it would make to her earning capacity.

- [61] I note that Ms. Gaddi has successfully completed a training program through Fraser Health Authority that qualified her to work as a community health worker. It is not clear why she could not have completed this program sooner or how her role in the marriage-like relationship with Mr. Bartholomew interfered with her pursuit of higher education.
- [62] As mentioned, Mr. Bartholomew is a plumber by trade. I am not satisfied that it is more likely than not that Ms. Gaddi's role in the relationship helped Mr. Bartholomew to advance in his career. He struggled to make ends meet as an independent contractor, and he fell behind on his personal income taxes and GST remittances. Ms. Gaddi suggested to Mr. Bartholomew on cross-examination that she allowed him to use her credit card to buy supplies for his business, meaning she used her credit to help him with his business. However, Mr. Bartholomew did not agree that was the case, and Ms. Gaddi did not testify about giving him access to her credit or provide any documents to support that idea.

Compensatory grounds

- [63] Justice Rowles summarized the purpose of compensatory spousal support as follows in *Chutter v. Chutter*, 2008 BCCA 507:
- [50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise . . . The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success . . .
- [64] I am not satisfied that Ms. Gaddi made sacrifices in assuming household responsibilities that resulted in a lower earning capacity. Put another way, her household responsibilities did not prevent her from working or advancing in her career as much as she wanted. I am not satisfied on the evidence that Ms. Gaddi was economically disadvantaged by the parties' marriage-like relationship. I find she has not proven, on a balance of probabilities, that her career path would have resulted in her earning more money had she not been in a marriage-like relationship with Mr. Bartholomew or that her marriage-like relationship with him held her back. It may be that the parties' limited finances meant they could not afford to pay for driver's training or continuing education, but that is a question of finances, not Ms. Gaddi's role in the parties' marriage-like relationship.
- [65] Similarly, I am not satisfied on the evidence that Ms. Gaddi helped Mr. Bartholomew to be more successful in his career. Mr. Bartholomew struggled to make ends meet and generate income as an independent contractor. It is not clear how Ms. Gaddi made sacrifices to help him in his career.

Non-compensatory grounds

[66] Justice Rowles summarized the purpose of non-compensatory spousal support as follows in Chutter, para. 54:

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

[67] Mr. Bartholomew argues that Ms. Gaddi is not entitled to spousal support because their earnings have not been that different since they separated in April 2021. In other words, he says the parties' means are not that different.

[68] Mr. Bartholomew provided a table of the parties' Line 15000 incomes (with a few gaps due to missing documents), and I will review those figures briefly:

Ms. Gaddi's income

Mr. Bartholomew's income

2011

\$17,782

\$24,427

2012

\$18,369

\$15,367

2013

\$12,119

\$50,506

2014

\$28,861

\$43,753

2015

\$36,210

\$56,177

2016

\$42,862

2017

\$60,395

2018

\$51,465

2019

\$44,373

\$52,578

2020

\$48,133

2021

\$52,012

\$72,595

2022

\$51,847

\$70,358

2023

\$33,347

\$65,329

[69] Ms. Gaddi says the gap in the parties' income is larger than Mr. Bartholomew's submissions suggest, which would result in him having greater means than his income tax returns indicate. Ms. Gaddi says that I should impute income to Mr. Bartholomew because she believes he worked for cash during their relationship.

[70] Section 6.1 of the Spousal Support Advisory Guidelines provides that the starting point for determination of income for spousal support purposes is the definition of income in the Federal Child Support Guidelines, SOR/97-175. Section 16 of the Federal Child Support Guidelines provides that a spouse's annual income is determined using the party's Line 15000 income. Section 19(1) of the Federal Child Support Guidelines allows the court to impute income to a spouse as the court considers appropriate. The party asking the court to

impute income must provide an evidentiary basis for a finding that income should be imputed: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36.

- [71] In closing submissions, Ms. Gaddi said Mr. Bartholomew had admitted to her that he did cash jobs when they were together, including a job for \$30,000 in Tsawwassen. She did not testify that Mr. Bartholomew had admitted to her that he did cash jobs. In cross-examination, Mr. Bartholomew said he reported all cash jobs on his income tax returns. I am not satisfied that Ms. Gaddi has provided the necessary evidence to prove that income should be imputed to Mr. Bartholomew.
- [72] The real question is whether Ms. Gaddi has suffered any economic hardship as a result of the breakdown of the marriage. When the parties separated in April 2021, Ms. Gaddi had been laid off due to the economic slowdown caused by the COVID-19 pandemic. To her credit, she continued to take courses until she found employment in August 2021. She was able to upgrade her qualifications through a program sponsored by Fraser Health Authority. Her income in 2021 and 2022 was not significantly less than Mr. Bartholomew's. Unfortunately, limited work was available to her through the long-term care facility in 2023, and health issues affected her earnings in 2024. According to her testimony, she has not returned to her pre-January 2024 earnings level.
- [73] What is less clear is why Ms. Gaddi did not supplement her 2023 casual employment with Strive with other employment until she started working for Fraser Health Authority in December 2023. I understand she was obligated to continue with Strive for a year after completing the HCAP program in March 2023; however, Ms. Gaddi did not testify she was not allowed to work elsewhere during that year, which is what she started doing in December 2023.
- [74] There is no presumption that a party is entitled to an equalization of income or to the same standard of living they enjoyed during the marriage: *Lee v. Lee*, 2014 BCCA 383 at paras. 60 to 61 and 65. In this case, Ms. Gaddi was able to increase her earnings in 2021 and 2022 from what she had earned during the relationship. In those two years, Mr. Bartholomew earned more than Ms. Gaddi but not significantly more. Ms. Gaddi did not testify that her standard of living dropped significantly after the parties separated or even that it dropped at all. To her credit, Ms. Gaddi retrained and took steps towards self-sufficiency.
- [75] Unfortunately, she suffered a setback in January 2024 when she was injured in a car accident. This accident occurred almost three years after the parties separated. In *Manhas v. Manhas*, 2023 BCSC 1120, Justice Caldwell considered a spouse's claim to entitlement to spousal support on non-compensatory grounds where the spouse alleged medical issues interfered with working:

- [71] While post-separation illness or disability might impact an order for non-compensatory spousal support in rare cases, usually this would require some connection between the disability and the marriage: see a review of the various factors to consider on this issue in *Marthinsen v. Marthinsen*, 2020 BCSC 619 at paras. 48 - 62. However, taking illness or disability into account would require evidence on the nature of the medical issues faced by the spouse seeking support: *Marthinsen* at para. 53.
- [76] In this case, Ms. Gaddi has provided no medical evidence to confirm the nature and extent of any injuries that may impair her working capacity. The lack of evidence concerning her 2024 earnings, including WorkSafeBC benefits, makes it difficult to determine whether the car accident has reduced her earnings. Similarly, the nature and extent of any vision issues is not clear and not supported by medical evidence. By early January 2024, Ms. Gaddi and Mr. Bartholomew were no longer financially interdependent, and Ms. Gaddi was well on her way to economic self-sufficiency. It is not reasonable in the circumstances of this case, including the relative earnings of the parties and Mr. Bartholomew's obligation to support his children with their post-secondary schooling (currently at a rate of \$1500 per month according to his F8 financial statement) to expect Mr. Bartholomew would continue to provide a financial safety net for Ms. Gaddi. On the whole, I am not satisfied this is one of those rare cases where a post-separation injury or medical condition gives rise to non-compensatory entitlement.
- [77] In finding Ms. Gaddi is not entitled to spousal support on non-compensatory grounds, I have considered the fact that she will receive some funds through the division of family property. While the sum is not large, Ms. Gaddi would not likely have been able to save close to \$100,000 from 2011 to 2021 had she not been in a marriage-like relationship with Mr. Bartholomew. Her earnings for many of those years were quite modest and not likely to have allowed for any savings. In addition to having a better standard of living during their marriage-like relationship than she could have afforded on her own income, at least from 2011 to 2014, Ms. Gaddi will receive an equal share of the increase in the parties' net worth over the course of the relationship, which is attributable solely to the increasing value of the Delta property, which Mr. Bartholomew owned before the start of the parties' relationship.

Summary of spousal support finding

- [78] I am not satisfied Ms. Gaddi has proven she is entitled to spousal support on a compensatory or non-compensatory basis.

Personal injury claim

- [79] I am not satisfied on the evidence that Ms. Gaddi has proven her personal injury claim. Mr. Bartholomew admits that Ms. Gaddi tested positive for chlamydia. However, there is no evidence that Mr. Bartholomew had chlamydia and infected her. Mr. Bartholomew testified that if he had it, he was unaware. He was not cross-examined on that evidence, and it was not put to him on cross-examination that he was the source of her infection.

- [80] Ms. Gaddi testified that she had no other sexual partners from 2009 to 2018 other than Mr. Bartholomew, which caused her to conclude that he was the source of her infection. However, Ms. Gaddi led no medical evidence to prove when she likely contracted chlamydia.
- [81] While I am prepared to take judicial notice of the fact that chlamydia is a sexually-transmitted infection, I have no evidence as to whether or not chlamydia can lay dormant for a period of time or whether symptoms are likely to surface shortly after exposure.
- [82] Ms. Gaddi's claim for damages for personal injury is dismissed.

Conclusion

- [83] The parties' family property and debt shall be divided equally, which means each of the parties is entitled to receive \$97,207.50.
- [84] Pursuant to s. 97 of the Family Law Act, to effect the division of family property and family debt, I order that Clark Wilson shall release \$97,207.50 to Ms. Gaddi from the funds that Clark Wilson holds in trust. Clark Wilson shall release the funds to Ms. Gaddi on or after January 21, 2025, unless the parties otherwise agree in writing.
- [85] Pursuant to s. 97 of the Family Law Act, to effect the division of family property and family debt, I order that Clark Wilson shall release the balance of the funds Clark Wilson holds in trust to the credit to Mr. Bartholomew to Mr. Bartholomew. Clark Wilson shall release the funds to Mr. Bartholomew on or after January 21, 2025, unless the parties otherwise agree in writing.
- [86] Ms. Gaddi's claim for spousal support is dismissed.
- [87] Ms. Gaddi's claim for personal injury is dismissed.
- [88] Success in this matter has been divided. The parties shall bear their own costs of this proceeding.
- [89] Those are my reasons.

"Lamb J."

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