

CANADA / JUDGMENT

Glueckler v. Glueckler

2014 BCSC 2128

COURT

Supreme Court of British Columbia

DECIDED

14 November 2014

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2014 BCSC 2128 Glueckler v. Glueckler IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Glueckler v. Glueckler, 2014 BCSC 2128 Date: 20141114 Docket: 21744 Registry:

Cranbrook Between: Jane Amelia Glueckler Claimant And Christopher Eugene Glueckler

Respondent Before: The Honourable Mr. Justice Melnick Reasons for Judgment Counsel for the

Claimant: R. Buddenhagen Counsel for the Respondent: B. Fairley Place and Date of Trial:

Golden, B.C. October 27 to 30, 2014 Place and Date of Judgment: Cranbrook, B.C. November 14, 2014

- [1] This is a matrimonial action in which the principal issues are claims respecting the division of the family assets, retroactive child support and occupational rent. I granted an order for divorce during the trial. I. BACKGROUND
- [2] The parties were married in Ontario in 1995 following a five year marriage-like relationship. They have three children who are no longer children of the marriage but who were so categorized for periods of time following the parties' separation on May 15, 2010. The oldest child is presently 23 years of age, the younger children, twins, 21. The family moved to Golden in 2003.
- [3] Ms. Glueckler is a currently unemployed registered nurse. She was laid off by Interior Health when her position with the dialysis unit at the Invermere hospital became redundant with its closure at the end of 2012. She is not actively looking for work although her employment insurance benefits have run out. She expects to re-enter the job market in the near future.
- [4] Mr. Glueckler is an automotive mechanic who is employed maintaining recreational vehicles. Historically his income has been a fair amount less than that of Ms. Glueckler. Neither seeks spousal support from the other, however.
- [5] In recent years, both parties have inherited money from the estates of their late fathers. Ms. Glueckler has recently purchased the home in Northern Ireland that her father owned upon his death. She did so largely with funds she inherited from his estate supplemented by some family funds for which she agrees she must account. Mr. Glueckler does not seek an interest in this home.

- [6] Mr. Glueckler's inheritance, received at an earlier point in time, was principally used for family purposes. Both parties' inheritances came about prior to their separation.
- [7] The separation came about in the context of a disagreement that took place in the family home respecting Ms. Glueckler's consumption of alcohol. Mr. Glueckler felt she had a problem, she believes (and still believes) that she does not. On that occasion, she also expressed her dissatisfaction with the marriage. Mr. Glueckler forcibly ejected her from the home. The parties' evidence differs as to whether she was effectively ousted permanently. She says that he changed the locks to prevent her re-occupation of the house; he claims that he did not change the locks, she was free to return and in fact did so for periods of time.
- [8] In any event, after the date of separation, Mr. Glueckler occupied the matrimonial home with their three sons, at least when one or more of them was not attending university or otherwise occupied. Ms. Glueckler at first lived an itinerant life although she soon acquired a holiday trailer (in fact two of them) in a park near Lake Windermere (Shady Brook). She did again live in the matrimonial home from the fall of 2010 through to the spring of 2011, although she occupied a bedroom that had been vacated by their oldest son who was at university. In May 2011, she purchased a modular home on property in Radium Hot Springs. She financed that with a loan guaranteed by her mother.
- [9] The matrimonial home is mortgage free except to the extent of its being subject to a line of credit secured against it. There is a small balance owing on that line of credit which the parties agree is their joint responsibility.
- [10] While both parties financially assisted their children after separation, that responsibility fell principally onto Mr. Glueckler's shoulders. Ms. Glueckler has not paid any child support. Mr. Glueckler now seeks retroactive child support, an obligation Ms. Glueckler, toward the end of the trial, acknowledged through her counsel.
- [11] The parties have certain furnishings, vehicles and other chattels which, to a certain extent, have been divided between them already. For the most part, each relies on her or his own opinions as to their values.
- [12] Following separation, a pick-up truck that was a family asset was stolen while Mr. Glueckler was on vacation. Ms. Glueckler appropriated the insurance proceeds for the contents while Mr. Glueckler used the insurance proceeds for the vehicle for living expenses and the purchase of a much less expensive vehicle. Each party agrees that he or she must account to the other for these insurance payments.
- [13] The parties both agree that the matrimonial home should be valued at \$300,000.

[14] There is an issue respecting Ms. Glueckler having claimed certain child tax credits for 2010 and 2011 so that Mr. Glueckler's similar claim was refused. He seeks compensation for the reimbursement he consequently had to make to the Canada Revenue Agency. Ms. Glueckler says that, at most, he should succeed only respecting the reimbursement he made for the 2011 tax year. II. APPLICABLE LEGISLATION

[15] The parties agree that the Family Relations Act, R.S.B.C. 1996, c. 128, is the governing legislation respecting this action. III. DISCUSSION

1. Retroactive Child Support A. Child Support

[16] I adopt the calculations prepared by counsel for Ms. Glueckler which I find fairly represents the amounts she owes to Mr. Glueckler for retroactive child support based on her income over the period of separation which is as follows: 2010 \$62,293 2011 57,245 2012 53,914 2013 22,534 2014 nil

[17] Thus, retroactive child support owing by Ms. Glueckler to Mr. Glueckler is: 2010 for three children (\$1,237.86 x 7.5 months) \$9,283.95 2011 for three children (\$1,138.80 x 12 months) 13,665.60 2012 for three children to October 23, 2012 (\$1,073.91 x 10 months) for one child (\$496.44 x 2 months) 10,739.10 992.88 2013 for one child (\$194.49 x 12 months) 2,333.88 2014 Ms. Glueckler had no income, nor do I impute income to her, during this period 0 \$37,015.41 B. Special or Extraordinary Expenses

[18] Each party contributed to the university education expenses of their oldest son and, for a short time, to that of one of their other sons. I am satisfied that Mr. Glueckler paid out \$21,000 for such expenses and that Ms. Glueckler paid \$6,080. It was suggested by Mr. Glueckler that, in fact, \$4,500 of this was paid for by the affected child. Ms. Glueckler says that sum was to pay for purchases of goods that child made using her credit card(s). I conclude, not without some hesitation, that Ms. Glueckler's version of events is more probably correct.

[19] Thus, Ms. Glueckler must account to Mr. Glueckler for one-half of \$21,000 less one-half of \$6,080 or \$7,460.

[20] As for Mr. Glueckler's claim for one-half of the costs of a specially designed bed for the oldest child, who is apparently quite tall, I conclude that Ms. Glueckler should not have to contribute to its \$2,290 cost as she was apparently not consulted respecting its purchase. It was a gift from Mr. Glueckler.

2. Occupational Rent

[21] The parties own the matrimonial home at 1304 Selkirk Drive, Golden, as joint tenants. Since separation it has been exclusively maintained by Mr. Glueckler. However, I am satisfied that for most of the period of the separation, Ms. Glueckler has been constructively ousted from occupying it, other than a period of about eight months during 2010 to 2011. She was in fact forcibly ousted on May 15, 2010, in circumstances where I am satisfied that Mr. Glueckler

made it evident to her that he did not wish to have her continuing to reside in the matrimonial home. Her returning to occupy their son's bedroom for a period of months I do not regard as her in any respect being welcomed back. It was a situation they both had to endure for a period of time until Ms. Glueckler was successful in purchasing another home.

- [22] In all the circumstances, I conclude that Mr. Glueckler is responsible to pay occupational rent to Ms. Glueckler from May 15, 2010 to date of trial less the eight months she did live in the premises and less her half share of the taxes and insurance during the entire period.
- [23] Jeff Konchak of Konchak Williams Appraisal & Consulting, gave opinion evidence that the market rent as of March 12, 2014, was \$1,200 to \$1,400 a month plus utilities. The only other evidence of market rent is that which Mr. Glueckler is actually receiving for the non-exclusive occupation of the home, approximately \$800 a month. Mr. Glueckler presently has in the home a single mother and her two children who, for some reason, he describes as "roommates" rather than "tenants". The single mother pays him \$200 a week for the use of the home except for the portion of the basement he occupies. I conclude that a fair monthly market rent is \$1,300 plus utilities, or \$650 a month for Ms. Glueckler's half share. However, the children also sometimes occupied the house. Ms. Glueckler had a responsibility to house them in her half-interest in the home. Taking that into account, I conclude that Mr. Glueckler is responsible to pay Ms. Glueckler \$550 a month in occupational rent for the period May 15, 2010 to October 31, 2014 less eight months which is the time I estimate Ms. Glueckler occupied their eldest son's room in the house. Mr. Glueckler may deduct from what I calculated to be rent totalling \$25,025 ($53.5 - 8 = 45.5$ months $\times$ \$550) one-half of the taxes and house insurance paid during this period. I will leave it to counsel to do this calculation. Liberty to apply if there is any disagreement on what amounts to include.
- [24] I only add this: my decision to award Ms. Glueckler occupational rent is predicated on my decision that she is responsible for, and is now able to pay, in the context of this judgment, retroactive child support. As she has largely not paid child support up to this point, and if she had not now been able to do so, I would not have awarded her occupational rent.

3. Storage of Ms. Glueckler's Chattels

- [25] I accept that, because she could not reside in the matrimonial home, and because I accept that Mr. Glueckler did not make storage space for her goods available to her, Mr. Glueckler has a responsibility to reimburse Ms. Glueckler for one-half of the storage costs she incurred. Thus, he must pay to her one-half of \$2,484.34, or \$1,242.17.

4. Division of Assets

- [26] I find that the matrimonial assets and their values are as follows. I have noted as well who shall have possession of each asset, the overall values of which, I find, the parties should share equally: ASSET MS. GLUECKLER MR. GLUECKLER 1. Matrimonial Home \$300,000 2. ING Accounts at Separation \$32,600 3. Withdrawal from Joint Line of Credit 15,000 4. Current Balance Owing to Line of Credit (4,094) 5. Insurance Proceeds - Stolen Truck and Contents

(Mr. Glueckler's allocation includes \$4,000 truck) 10,500 28,500 6. Tools and Shop Contents 4,000 7. Pontiac Firebird 2,000 8. Plymouth Breeze 250 9. Two Fifth-Wheel Trailers 12,500 10. Dodge Ram 2,000 11. Boat and Motor 1,600 12. Snowmobile Proceeds 6,000 13. Cargo Trailer 3,500 14. Chevrolet Truck 1,000 15. Withdrawal for Benefit of Ms. Glueckler's Brother 4,030 16. Canada Savings Bonds 8,450 17. Quad Sale Proceeds 3,500 18. Ontario Nurse's Pension 14,630 19. Household Effects (each retains what each has in his or her possession other than as noted) 2,000 20. Bear Carving (to be delivered to Ms. Glueckler if in Mr. Glueckler's possession) 1,000 21. Hot Tub(s) NIL NIL 22. Tuition Tax Credits/Dependant Credits 2,000 23. Dirt Bike 500 \$105,310 \$346,156 Thus, there is owing to Ms. Glueckler by Mr. Glueckler \$120,423 (\$120,423) \$225,733 \$225,733

[27] As to the tuition tax credits/dependant credits noted above, I am satisfied that the children were effectively in the exclusive custody of, and resided with, Mr. Glueckler after May 15, 2010, for the balance of that year and throughout 2011. Thus it was for Mr. Glueckler, not Ms. Glueckler, to claim these credits on his income tax return. She should not have done so in all the circumstances.

[28] On a balance of probabilities, I am not satisfied that the \$4,030 Ms. Glueckler withdrew for the benefit of her brother was offset by income tax refund(s) received by her on his behalf as she claimed.

5. Other Issues

[29] Ms. Glueckler's British Columbia Municipal Services pension should be divided between the parties on the Rutherford formula.

[30] Mr. Glueckler shall have 90 days to purchase Ms. Glueckler's interest in the matrimonial home by the payment to her of one-half of its appraised value of \$300,000 plus or minus the various adjustments noted above. Again, I leave it to counsel to calculate the net amount payable. Liberty to apply if need be.

[31] If Mr. Glueckler cannot, or decides not to, proceed with the purchase of the matrimonial home, it shall be listed for sale at such price, and on such terms, the parties agree. They shall have joint conduct of sale for the first six months, thereafter Mr. Glueckler for six months, then Ms. Glueckler for six months. Liberty to apply respecting terms. IV.

CONCLUSION

[32] The issues before me for decision, other than costs, are determined as outlined above. The parties may address the issue of costs in written submissions. "Melnick J."

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