
CANADA / JUDGMENT

Goobie v. Young

2009 BCSC 631

COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 631 Goobie v. Young

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Goobie v. Young,

2009 BCSC 631

Date: 20090511

Docket: 17818

Registry: Prince George

Between:

Cheryl Lynne Goobie

Plaintiff

And

Thomas William Young

Defendant

Before: The Honourable Mr. Justice McKinnon

Reasons for Judgment

Counsel for the Plaintiff:

Charles G. Fletcher

Counsel for the Defendant:

Richard C. Gibbs, Q.C.

Dates and Place of Trial:

October 27, 28, 29, 30, 31, November 3, 4, 5, 6, 7, and December 1, 2008

April 1, 2, 3, 2009

Prince George, B.C.

- [1] The parties had a relationship of varying intensity from 1988 to 2005. Ms. Goobie brought proceedings in this court in 2002 but did not pursue relief then claimed until final separation in 2005. She has one child, Khristen Lea Stiles, now 24 years of age. Khristen was a child of her marriage to Mike Stiles but was supported by the defendant Dr. Young throughout her minority.
- [2] The plaintiff claims maintenance for herself, child support for Khristen and determinations, declarations and ancillary orders respecting the ownership and division of property owned by the defendant. The defendant, by counterclaim seeks orders limiting the plaintiff's claim to her registered one half interest in Prince George area property which I will call "the farm".
- [3] There was considerable evidence led respecting Thomas W. Young Medical Services Corp., a professional corporation originally designed as a vehicle to operate both the medical practice and the farm. The defendant had the voting shares and the plaintiff a minority non voting block of shares. I am uncertain as to the present status of this company although apparently it now has few assets. In any event, it was not a party to this action and I cannot make any orders in respect to it. My sense of the evidence led about the company was that it was simply to show its historical place in the parties' relationship and perhaps to lend credence to the trust claims.
- [4] The parties were never married and thus claims are governed by the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], the common law and equity.
- [5] Spousal and child maintenance claims rely upon provisions of the FRA and upon case law interpreting those provisions. The property claims advanced by the plaintiff rely primarily upon equitable considerations, particularly the law respecting trusts. The plaintiff claims that the defendant was unjustly enriched by her efforts by which she suffered deprivation.
- [6] Counsel for the defendant commented in his final submissions that, "While a great deal of ground was traversed in evidence, at its root this is a simple case". I agree. The plaintiff is obliged to prove on a balance of probabilities the following: that she is entitled to a share of all Dr. Young's assets based upon trust law principles, that she is entitled to spousal maintenance and that Khristen is entitled to continued child maintenance.

THE HISTORICAL BACKGROUND

- [7] The plaintiff at trial was 47 years old. The defendant was 55.

- [8] The defendant attended Royal Rhodes Military College after high school for one year and then the University of Manitoba where he obtained B.Sc. in Pharmacy in 1972. He then moved to New Brunswick where, in 1978 he enrolled in medical school at Dalhousie, graduating in 1982. In his second year he engaged in the Canadian Forces, and after graduation he practiced medicine at various bases in Canada, including Comox, B.C. It was at Comox in 1987 where he purchased his first home, paying cash.
- [9] The defendant had by this time been involved in several romantic relationships but none lasted. He decided to take an extended European vacation in the summer of 1987. It was while on this trip that he met the plaintiff.
- [10] They met at a Canadian Forces base in Baden Baden, Germany, in the summer of 1987 where the plaintiff was residing with her husband, Mike Stiles, a member of the Armed Forces, and her infant daughter, Khristen, born February 20, 1985. While touring Europe, the defendant decided to do a locum assignment with the Canadian Forces at Baden Baden for three months and it was there that he met the plaintiff, who was having difficulties in her marriage to Mr. Stiles. The parties commenced a relationship that included several trips about Europe. Ultimately the plaintiff's marriage ended when she was assaulted by Mr. Stiles and she was obliged to return to Canada.
- [11] The parties had by then reached some commitment to each other and discussed where the plaintiff and her daughter might go on their return to Canada. The evidence varies as to the extent of that commitment and the promises made. The plaintiff had few choices. She apparently was unable to obtain any assistance from family in Canada and although she had a friend in Nova Scotia, she did not consider that a viable option for residency.
- [12] According to the plaintiff, the defendant said that he needed a Christian wife and she was the most eligible candidate, thus she and her daughter could move to his home in Comox, B.C. where presumably (from her perspective) they would marry.
- [13] According to the defendant, he intended to return to B.C. and do locums throughout the province and given that he would be away most of the time, he offered his home to the plaintiff and her daughter. He considered that arrangement would suit everyone's needs and would "permit me to carry on our relationship".
- [14] The evidence of the plaintiff and defendant on the issue of marriage is in stark contrast. The plaintiff testified that they often spoke of marrying, that rings were purchased and at one time plans were made to wed in Nova Scotia. I found the defendant's version to be somewhat disingenuous. He conceded that he purchased an engagement ring and ultimately a wedding ring and that they obtained a marriage license in Nova Scotia, but contends that none of that should be considered a commitment to marriage. That struck me as an astounding position to take.

- [15] Notwithstanding my rejection of his evidence on this issue, they never did marry and it is clear to me that as time went on, the plaintiff had less interest in the prospect and did not pursue the point. She claimed they were busy with the farm and other things such that marriage simply got moved to the back burner.

The Journey from Comox

- [16] The parties lived in the home owned by Dr. Young at Comox from about April of 1988 to the summer of 1989. During that time Dr. Young was frequently away throughout B.C. doing locum work. The plaintiff and her daughter remained in the home where she did the household work, including cooking and shopping. Although I was never given any sums, there is evidence that she was receiving maintenance payments from her former spouse for some period.
- [17] The plaintiff was then 26 years old and had a Grade 12 education. She took advantage of her time in Comox to take university level courses by correspondence, obtaining good grades.
- [18] In Comox, a rather strange incident occurred. The plaintiff concocted a story about being "stalked" by an ex boyfriend. Police were called and soon determined that no such incident had taken place. Indeed the plaintiff admitted that she made up the story. She said at trial that she made up the story because the defendant was moody and suffering depression and she thought the claim might bolster their relationship. The defendant admitted to "moody" episodes, but denied any psychiatric difficulties. He said that he was "distraught" that she would go to such lengths to preserve the relationship and determined to work harder at making it a success.
- [19] Dr. Young decided to obtain training in anaesthetics which he thought would augment his plans to practice in a rural setting. To this end he enrolled in a one year residency program in Winnipeg and they all moved there.
- [20] The plaintiff enrolled at the University of Winnipeg, taking out a student loan to assist. She took two semesters and again did well. On conclusion of his residency, Dr. Young was obliged to practice for one year in a rural Manitoba setting. They settled in Selkirk, a 45 minute drive from Winnipeg. Ms. Goobie continued her studies at the University of Winnipeg, commuting each day. Khristen was placed in day care in Selkirk. Ultimately Ms Goobie was able to complete, save for one course, a full two year university program.
- [21] By the summer of 1991 Dr. Young determined that he did not have a future in Selkirk and moved to Quesnel, B.C. where they purchased a home in both names. The defendant worked at a local medical clinic and the plaintiff at an elementary school as a supervisor.

- [22] Once again, Dr. Young grew restless and after only four months moved the family back to Manitoba to work at, and possibly purchase an interest in, a clinic in Beausejour. The plaintiff testified that although she would have preferred to continue her studies at the University of Winnipeg, she was persuaded by Dr. Young to train as a medical office assistant.
- [23] The plaintiff stated that prior to moving from Quesnel, she had obtained approval (presumably from the University of Winnipeg) to take a course in political geography by "night school". She started this course but was involved in a motor vehicle collision and was unable to complete it. She did however embark upon a career as a medical office assistant, obtaining on the job training at the Beausejour clinic and later at other locations.
- [24] Following what became a familiar pattern, Dr. Young grew unhappy in Beausejour and relocated to Quesnel about May of 1992. They moved into the home that had been purchased earlier but remained only a few months, moving to Prince George in June or July of 1992. The Quesnel home was sold and another purchased in the Hart Highlands area of Prince George, again in both names.
- [25] It was in Prince George that Dr. Young finally settled permanently. The plaintiff maintained that she wanted to continue with her studies and eventually obtain employment as a counsellor but was persuaded to abandon those plans and work as a medical office assistant (MOA).
- [26] Ms. Goobie testified that commencing in Beausejour, Dr. Young "coerced/persuaded" her to abandon university and train as an MOA, promising her that such a career would benefit them both. She claimed that he wanted her as his office manager as that would allow them to split income and maximize earnings for their "retirement".
- [27] Dr. Young's version is that he always encouraged Ms. Goobie to obtain education or training in some field. He testified that he paid "several thousand dollars" to retire her student loans and placed her on title to the Quesnel and Prince George properties because "it was the right thing to do". There is no issue that Ms. Goobie made no monetary contribution to the purchase of the original asset and her contributions to subsequent purchases came from her equity as each property was sold. Nor did she make any monetary contribution to mortgages or taxes. By 1998, the Hart property was fully paid for.
- [28] In or about 1993, Dr. Young commenced his own practice in Prince George and by 1994, Ms. Goobie was employed as his MOA and earning a salary. The evidence varies as to the time she spent as an MOA but there is no issue that she was paid a salary which she described as "adequate" to August of 2006 when all payments stopped. Dr. Young testified that over the years to separation he also contributed as much as \$100,000 to Ms. Goobie's RSP account. She claimed it was closer to \$70,000 but in any event the funds all came from Dr. Young one way or another.

- [29] Commencing in 1994, after Dr. Young started his practice, the plaintiff worked for him as an MOA but apparently never full time, as the practice always had another person working full time as an MOA. After 1997, when the farm was purchased, the plaintiff divided her time between the farm and the clinic. She conceded that she was "fairly" paid for her services as an MOA. There is evidence that her salary in the years 2000 through 2006 varied between \$40,000 and \$55,000 per annum.

THE FARM

- [30] The plaintiff had an historical interest in horses. As a child her family kept horses and she competed in dressage at a fairly high level. In 1980-81 she spent a year in the United States taking an apprenticeship program in horse breeding. The defendant had no prior knowledge of horse operations but was keen to give it a try.
- [31] There was much disagreement in the evidence about the business plan eventually adopted. The plaintiff maintains that she only wanted a simple small operation where she could have a horse or two, whereas the defendant had grand plans for an extensive breeding operation. For the purposes of this judgment, it matters little whose plan it was, the result was a disaster.
- [32] A 36 acre farm on Old Cariboo Road was purchased in November of 1998 for \$305,000. It had a large 4,000 square foot home, some perimeter fencing and outbuildings. It was registered to both parties. Pure bred Andalusians were purchased, equipment bought, and new buildings and interior roads were constructed over the next few years. Exhibit 21 shows that in addition to the purchase price, \$684,726.83 was plowed into the property by Dr. Young from his earnings. The business has never made money. It is no stretch to describe it as I did earlier--a disaster.
- [33] The plaintiff is still residing at the farm with Khristen. In 2007 her farm income seems to have been about \$10,000 while expenses were \$78,155.88. She receives, by way of court order, monthly interim spousal payments of \$800 and child maintenance payments of \$551. Notwithstanding her view that she could obtain rental income for suites within the farm home, she has not pursued this option. She told me about future plans to develop the operation as a "bed and bale", horse training and boarding, kennel facilities for Khristen's dog operations etc. none of which strikes me as realistic. One needs only to look at the historical financial mess to conclude that there is no possible way, short of infusion of more capital, that one could carry on a business. The plaintiff is relying upon Court orders flowing from this trial to provide her with the financial resources necessary to continue farming.

THE TRUST CLAIM

- [34] The thrust of the plaintiff's claim for a division of Dr. Young's assets rests upon the principles of unjust enrichment, coupled with the characterization of their relationship as one of marriage.

- [35] The parties were not married and as indicated earlier in this judgment, as time went on, neither had any interest in the topic. A great deal of evidence was led respecting the plaintiff's expectation of marriage and I accept that early in the relationship it was a reasonable expectation for her to have. However, the idea of marriage lost its lustre for both many years before the separation and I cannot assess the evidence based upon a "marriage". This was a common law relationship of about fifteen years and financial claims resulting from it are governed by principles of trust law as defined by Courts over the years.
- [36] In *Nova Scotia (Attorney General) v. Walsh*, 2002 SCC 83, [2002] 4 S.C.R. 325, a claimant challenged the constitutionality of Nova Scotia's statutory property-sharing regime in that it only applied to married spouses. The claimant had been in a common law relationship for ten years. The Supreme Court of Canada determined that it was not unconstitutional for a provincial government to distinguish between married and unmarried spouses in the application of property sharing legislation. In the result, the plaintiff's claim to Dr. Young's assets must be based upon "unjust enrichment".
- [37] The law respecting unjust enrichment in family matters can be traced to *Murdoch v. Murdoch*, [1975] 1 S.C.R. 423, cited in *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436, which developed the notion of the "remedial constructive trust".
- [38] In *Pettkus v. Becker*, [1980] 2 S.C.R. 834, the Court determined that such a trust could assist in determining property interests between unmarried spouses and *Rawluk v. Rawluk*, [1990] 1 S.C.R. 70, established that the doctrine of unjust enrichment and trust doctrines generally work in tandem with family property statutes (see: Aaron Franks and Melanie Kraft, Epstein Cole LLP, "Unjust Enrichment: Whatever happened to Peter v. Beblow?" (Paper presented to the National Judicial Institute Family Law Seminar on Financial and Property Issues, Victoria, 11 February 2009) [unpublished]).

UNJUST ENRICHMENT

- [39] *Peter v. Beblow*, [1993] 1 S.C.R. 980, determined that the test for unjust enrichment requires that three elements be established:

1. an enrichment
2. a corresponding deprivation
3. the absence of a juristic reason for the enrichment.

- [40] It is not enough to maintain that the division claimed is "fair," assuming that can be established. In *Pettkus*, McLachlin J. (as she then was) stated the following at ¶4:

Notwithstanding these rather straightforward doctrinal underpinnings, their application sometimes has given rise to difficulty. There is a tendency on the part of some to view the action for unjust enrichment as a device for doing whatever may seem fair between the parties. In the rush to substantive justice the principles are sometime forgotten. [] The constructive trust idea stirs the judicial imagination in ways that assumpsit, quantum meruit and other terms as

associated with quasi-contract have never quite succeeded in duplicating. [] Occasionally the remedial notion of constructive trust is even conflated with unjust enrichment itself, as though where one is found, the other must follow.

- [41] The plaintiff at bar has failed to establish any enrichment enjoyed by the defendant through her contributions, nor has she established that she has suffered a corresponding deprivation.
- [42] The plaintiff commenced her relationship with Dr. Young with little in the way of higher education, no practical training in any remunerative field and no assets save for some furnishings. The defendant was already a qualified medical doctor when he met the plaintiff. She contributed nothing to that qualification. Apart from her work as an MOA and some accounting services for the defendant, for which she was "adequately compensated", the plaintiff has made no contribution to the success of the medical practice.
- [43] She ended the relationship with; the equivalent of two years university education, training as a Medical Office Assistant, years of income from that training, RSP's having a value at one time of somewhere between \$70,000 and \$100,000 and a one half interest in a farm clear of encumbrances. The plaintiff's claim for a division of Dr. Young's assets is dismissed.
- [44] The defendant is entitled to recover \$8,000 which the plaintiff took from the defendant's personal account at the time of separation and to \$17,000 which represents one half of the proceeds realized from the sale of Panorama Place, a condominium owned by Dr. Young and to which I have concluded she had no claim. The defendant agreed to pay her these funds on a "without prejudice" basis to facilitate the sale. The plaintiff had filed a CPL against his assets.

THE CLAIM FOR SPOUSAL MAINTENANCE

[45] Section 89 of the FRA states the following:

89(1) A spouse is responsible and liable for the support and maintenance of the other spouse having regard to the following:

- (a) the role of each spouse in their family;
 - (b) an express or implied agreement between the spouses that one has the responsibility to support and maintain the other;
 - (c) custodial obligations respecting a child;
 - (d) the ability and capacity of, and the reasonable efforts made by, either or both spouses to support themselves;
 - (e) economic circumstances.
- (2) Except as provided in subsection (1), a spouse or former spouse is required to be self sufficient in relation to the other spouse or former spouse.

- [46] I do not propose to repeat my conclusions and the evidence respecting the plaintiff's present status. She has been in receipt of interim spousal maintenance of \$800 per month since August 23, 2007. She has continued to live at the farm and operate a money-losing business since that time, obviously pinning her hopes for the future on extracting a large sum of money from Dr. Young with which she could carry on this money-losing business.
- [47] Ms. Goobie has the ability to earn in excess of \$50,000 per year as an MOA but chooses not to do so. In my view she is therefore not entitled to any further spousal maintenance pursuant to s. 89 of the FRA. Her claim in this regard is dismissed, as is her claim for retroactive spousal maintenance based upon an imputed income for Dr. Young in this interim period.

THE CLAIM FOR CHILD MAINTENANCE

- [48] Clearly Khristen dislikes the defendant and bears considerable animosity towards him. She has had no contact with him since August of 2005, when she and her mother were dismissed from their part time work at Dr. Young's clinic.
- [49] I can appreciate that such termination could cause upset and I have concluded that Dr. Young can be insensitive at times, although not purposely so. He expressed sadness at this loss of contact with Khristen and stated that he hoped to re establish contact with her at some future time.
- [50] All his efforts to establish a relationship have been rebuffed by Khristen. She destroyed three letters he sent over the past few years in which he attempted to effect reconciliation. She made comments when testifying that clearly indicated she had no interest in re connecting with the defendant, saying on one occasion "I don't care if I was at one time his daughter".
- [51] Historically, Dr. Young has contributed considerably to Khristen's well being which included annual tuition payments at a private school in the thousands of dollars.
- [52] In my view Khristen's animosity toward Dr. Young is unreasonable. She claims that he violated her privacy by leaving copies of her medical condition at the examination for discovery of the plaintiff for everyone to see. That is simply not so. Dr. Young was then and I accept remains, concerned for Khristen's health. On no occasion has he tried to invade her privacy. He has made comments and expressed concerns solely from the perspective of ensuring that she received timely and adequate medical advice and treatment.
- [53] Khristen suffers serious medical problems but I was not provided with any medical opinion to support a claim that she is "unable, by reason of illness, disability or other cause, to withdraw from parental charge".

- [54] There is no issue that she was seriously ill with a variety of problems in 2006 and 2007. She underwent several surgeries both locally and in Vancouver. She takes prescription drugs for her physical condition and for depression. However by the time of trial, she seems to have recovered sufficiently to operate a dog boarding business from which she can earn in excess of ten thousand dollars a year.
- [55] In *Wesemann v. Wesemann* (1999), 49 R.F.L. (4th) 435, Martinson J. discussed the obligation of a "parent" to continue maintenance payments to an adult "child". She cited Master Joyce (as he then was) in *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 at 64-65 where he enunciated the following factors to consider on this issue:
1. whether the course of studies is part time or full time;
 2. whether or not the child has applied for, or is eligible for, student loans or other financial assistance;
 3. whether the career plans of the child are reasonable and appropriate;
 4. the ability of the child to contribute to his/her own support through part-time employment;
 5. the age of the child;
 6. the child's past academic performance and whether the child is demonstrating success in the chosen course of studies;
 7. what plans the parents made for the education of their children, particularly where those plans were made during co-habitation;
 8. in the case of mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [56] Khristen is 24 years old. She is not presently enrolled in any educational institution although she has been in the past and obtained goods grades. Her health has been somewhat precarious but as indicated earlier, I have no expert medical evidence that she now cannot work at some kind of employment. She does operate a kennel business from the farm and has training in both law and medical offices. In the result, I am unable to conclude that she is "unable to withdraw" from parental charge.
- [57] If I am wrong in that conclusion then I would terminate maintenance based upon her unreasonable estrangement from the defendant.
- [58] In *Marsland v. Gibb*, 2000 BCSC 471, Romilly J. held that a 19-year-old female who had clearly demonstrated, without any reasonable basis, rejection of a paying parent, was not entitled to continued maintenance notwithstanding a demonstrated need for same.

[59] Khristen has unilaterally terminated her relationship with Dr. Young without establishing any reasonable basis for doing so. She has taken up her mother's cause, and added some unreasonable allegations of her own to justify her rejection of the defendant. I accept defence counsel's comments that "Khristen doesn't want the defendant's love, concern or contact; all she wants is his money and his property to live on".

[60] The claim for child maintenance is dismissed.

[61] The sole asset to which the plaintiff has a claim is her registered interest in the farm. The defendant submitted that I should make an order for sale of this property but that relief is not claimed in the pleadings and I am not persuaded that such an order should go without further submissions from the parties. One may wish to purchase the interest of the other or one or both parties may have submissions to make in respect to the disposition of this property. Leave to apply on this issue is granted.

[62] The parties also have leave to speak to the matter of costs.

"The Honourable Mr. Justice McKinnon"

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