
CANADA / JUDGMENT

Greenwood v. Greenwood

2019 BCSC 382

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 382 Greenwood v. Greenwood

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Greenwood v. Greenwood,

2019 BCSC 382

Date: 20190319

Docket: E12239

Registry: Chilliwack

Between:

Angela Greenwood

Claimant

And

Raymond John Greenwood

Respondent

Before: The Honourable Mr. Justice Sewell

Reasons for Judgment

Counsel for Claimant:

T.L. Grace

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Counsel for Respondent:

D.R. Thompson

R.S. Mundi

Place and Date of Trial:

Chilliwack, B.C.

January 29-31 and

February 1-2, 2018

New Westminster, B.C.

June 14-15 and 21-22, 2018

Place and Date of Judgment:

Chilliwack, B.C.

March 19, 2019

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Introduction

- [1] This family law case results from the breakdown of a long term marriage that produced five children. A number of issues arose at trial. However, the principal issues to be resolved are division of family property and spousal support.
- [2] The claimant Angela Greenwood is 51 years old. The respondent Raymond Greenwood is 55. They began living together in June 1993, were married on January 14, 1996 and separated in 2014.
- [3] The precise date of separation is difficult to determine. The parties lived in the same house until February 2015 and comingled their finances until May 2015. Given the length of their relationship little turns on the actual date of separation. However I find on a balance of probabilities that the parties separated in December 2014, when the claimant commenced this proceeding.
- [4] The names and dates of birth of the five children are as follows;
1.
Ryan
August 4, 1999
 2.
Tyler
September 8, 2001
 3.
Maelyn
August 20, 2003
 4.
Hanna
March 8, 2007

5.

Nathan

December 7, 2011

- [5] At the date of trial Ryan was living independently and the parties agree that he is not a child of the marriage for the purposes of child and spousal support.
- [6] The other four children have lived with the claimant from the time of separation.

Background

- [7] The parties filed an agreed Statement of Facts which I have attached as Appendix A to these reasons. In setting out the background facts I may repeat some of those facts for context. I have considered and relied on the agreed facts in preparing this decision.
- [8] Ms. Greenwood was born in England and came to Canada as a child. She has a high school education and some training in the Information Technology field.
- [9] At the time she met Mr. Greenwood she was living in Victoria and was employed as an administrative assistant with Anderson Consulting. Mr. Greenwood moved in with her in June 1993. Sometime later the parties opened a joint bank account. In April 1997 they moved from Victoria to Port Coquitlam.
- [10] On August 4, 2000 the parties purchased a home on Mulberry Place in Burnaby. The property was purchased for \$255,000, financed in part by a mortgage of \$191,250.
- [11] With the exception of one maternity leave, Ms. Greenwood was employed outside of the home until August 2001. At that time she went on maternity leave with her second son, Tyler. Tyler was born in September 2001. Before Ms. Greenwood was able to return to work she was laid off. She became pregnant with Maelyn in late 2002 and has been a stay at home care giver for her children since that time.
- [12] On December 19, 2002 the parties purchased a home on 13th Avenue in Mission for \$263,000.
- [13] Ms. Greenwood began home schooling the children of the marriage in 2009 and has continued to do so until the present time.
- [14] In November 2013 Ms. Greenwood moved out of the matrimonial bedroom. However, the parties continued to live together as a family unit in the same residence and continued to be supported primarily on Mr. Greenwood's income.
- [15] In 2014 each party received a distribution of \$65,000 from the Sandra and John Greenwood Trust (the Family Trust).
- [16] Ms. Greenwood commenced these family law proceedings on December 10, 2014.

- [17] On February 26, 2015 Ms. Greenwood moved out of the matrimonial home with her four younger children. Mr. Greenwood continued to live in the home.
- [18] On May 25, 2015, at a Judicial Case Conference, the parties consented to an order that they have joint guardianship of the four youngest children, that the children would have their primary residence with Ms. Greenwood and that Mr. Greenwood would pay interim child support in the amount of \$1,551 per month for the four younger children.
- [19] The parties sold the 13th Avenue property on May 28, 2015. The following amounts have been paid out from the proceeds of sale;
- a. Refine Orthodontics - \$3,804.53 on June 10, 2015;
 - b. Two child support payments of \$1551.00, totalling- \$3,102.00 in June and July 2015;
 - c. \$2,500.00 was distributed to each the Claimant and the Respondent on June 10, 2015;
 - d. \$10,000 was distributed to each the Claimant and the Respondent on November 28, 2016;
 - e. \$30,000 was distributed to each the Claimant and the Respondent on June 21, 2017;
 - f. \$15,000 was distributed to each the Claimant and the Respondent on February 8, 2018; and
 - g. Chilliwack Oral Surgery - \$294.39 on March 12, 2018.
- [20] \$237,321.72 of the proceeds of sale remains in trust.
- [21] Mr. Greenwood was employed by Quality Move Management for a long period of time. In 2014, his employment income was \$66,516.
- [22] In June 2015, Mr. Greenwood quit his job and moved to Alberta to live on a farm owned by his brother. Since that time he has been employed as a seasonal labourer on the farm.
- [23] In 2016 Mr. Greenwood earned \$60,000 in employment income and \$45,168 from the Family Trust but in 2017 he earned only \$42,500 in employment income and received no distributions from the Family Trust.

Issues

- [24] The following issues remain outstanding in this case;
1. What the Parenting Arrangement should be, and in particular summer parenting time arrangements for the youngest 3 children;
 2. Whether income should be imputed to either party;
 3. Whether any spousal support is payable to Ms. Greenwood;
 4. Whether the respondent has any excluded property;

5. Whether there should there be an unequal division of the proceeds of sale of the matrimonial home in favour of the claimant.

Credibility

- [25] Before turning to a consideration of the above issues I will address credibility.
- [26] The evidence of the parties conflicts in many respects, which I will outline later in these reasons.
- [27] I found Ms. Greenwood to be a credible witness. Her evidence was generally consistent with the documents produced at trial. It also seemed to me to be consistent with the probabilities suggested by the surrounding circumstances.
- [28] Unfortunately, I am forced to conclude that that I should be sceptical about Mr. Greenwood's evidence.
- [29] Much of his evidence was difficult to accept and was inconsistent with the documentary evidence. His evidence tended to be self serving. Some of Mr. Greenwood's evidence verged on being disingenuous.
- [30] Mr. Greenwood testified that his income in 2017 was \$42,500 because he was employed on a seasonal basis by his brother Phillip on his farm in Saskatchewan. However, he offered no reasonable explanation as to why he quit his job within days of the Judicial Case Conference. The explanation that he did give was that he expected his wife to move with the children to Victoria. However, apart from Mr. Greenwood's testimony there is no indication anywhere in the evidence that Ms. Greenwood has any such intention. Ms. Greenwood denies having any such intention.
- [31] Mr. Greenwood unconvincingly tried to portray himself as an unsophisticated person who had no knowledge of the affairs of the Greenwood family. In his evidence in chief he professed to have little knowledge about the Family Trust. He did not produce the Trust Deed until after the commencement of the trial. When the Trust Deed was finally produced, it showed that Mr. Greenwood was one of the trustees.
- [32] Mr. Greenwood also testified that the Family Trust did not file tax returns. It was only after I ordered further production of documents in the course of the trial that tax returns for the Family Trust were produced.
- [33] Mr. Greenwood also testified that these documents were beyond his control. However, he was a trustee under the Family Trust and as such had the right to access to the records of the Family Trust.
- [34] In his evidence in chief Mr. Greenwood failed to disclose that his son Ryan had received over \$84,000 from the Family Trust in 2017 and that Ryan had given some of that money to him.

[35] For the forgoing reasons, I accept Ms. Greenwood's evidence when it conflicts with that of Mr. Greenwood.

Parenting Arrangements

[36] Ms. Greenwood submits that this is a case in which there should be an order for parenting based on the Joyce Model with Ms. Greenwood having the majority of parenting time.

[37] Mr. Greenwood agrees that this the appropriate order but asked for an order granting him extended periods of parenting time with the four younger children in Saskatchewan on his brother's farm and or in Victoria at his mother's home.

[38] The claimant is particularly concerned about the welfare of Hannah and Nathan, the two youngest children.

[39] The parties agree that that the four youngest children should live with Ms. Greenwood. They also agree that they both be guardians on the Joyce Model.

[40] Accordingly, the parties will share equally all of the s. 41 parental responsibilities for the four younger children under s. 40(2) of the Family Law Act, S.B.C. 2011, ch. 25 (the FLA) pursuant to the Joyce Model as follows:

1. In the event of the death of a guardian, the surviving guardian(s) will be the only guardian of the children;
2. Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;
3. Each guardian will have the obligation to discuss with the other guardians any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
4. The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
5. In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child will be entitled to make those decisions and the other guardian will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the child, under s. 49 of the Family Law Act; and,
6. Each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.

- [41] While the parties are agreed on this order, I am satisfied that would have been the order I would have made even without Mr. Greenwood's agreement.
- [42] Ms. Greenwood has been responsible for the care and upbringing of the children throughout the marriage. She has home schooled them since 2009. The children appear to thriving under her care, despite facing some significant health challenges.
- [43] Mr. Greenwood lives in Saskatchewan for most of the year and in Victoria for the rest of the year. He does not have a residence of his own in either location. It is clearly in the best interests of the children that the present parenting arrangement continue.
- [44] Mr. Greenwood seeks parenting time with the children during Spring Break, for the months of July, and for one week at Christmas. He submits that the children should spend the month of July with him on the Saskatchewan farm. He also seeks an order that the children spend two weeks with him on Spring Break, either in Victoria at this mother's house or in Saskatchewan.
- [45] Mr. Greenwood says that these arrangements are consistent with what the parties originally agreed to after separation but that Ms. Greenwood has not been cooperative in facilitating parenting time. He points out that he was forced to make an application in 2017 to get parenting time in July of that year.
- [46] Ms. Greenwood points to the ages of the two older children who live with her. Tyler is 17. Maelyn will be 16 in August of this year. Her position is that it should be up to those children to determine how much time they wish to spend with their father. At the very least she submits that these children should be consulted before parenting time is arranged. An additional issue is that Tyler is enrolled in an apprenticeship program in Chilliwack that must be accommodated in any parenting schedule.
- [47] Ms. Greenwood is also concerned that the sleeping arrangements in both of the locations proposed by Mr. Greenwood are inadequate. She is not opposed in principle to the children spending time on the farm or in Victoria in the summer but seeks an order requiring that suitable accommodation be provided to them.
- [48] Ms. Greenwood also is concerned that the two youngest children both have special needs that make it difficult for them to be away from her care for prolonged periods of time. She has expressed concern that the youngest children do not receive proper supervision when they are in Saskatchewan, despite Master Caldwell's Order of June 2017 directing that they be supervised by an adult.
- [49] Ms. Greenwood proposes that Mr. Greenwood's parenting time for Hannah and Nathan be restricted to one week periods in Victoria unless the parties agree otherwise.

- [50] Ms. Greenwood submitted letters from Hannah, Maelyn and Tyler. I have decided to consider those letters together with the other evidence in this case. The letters were written in March 2017. I found the letters to be sincere and did not detect that any coaching had gone into their writing.
- [51] To a certain extent, time has bypassed the letters from Tyler and Maelyn. I have considered them only in the context of deciding whether they are old enough to make responsible decisions about when and where they wish to spend time with Mr. Greenwood.
- [52] I have read Hannah's letter. I find her descriptions of the living accommodations available on the farm and in Victoria to be reliable. I have taken the concerns she expressed about those conditions into account in considering parenting time for Mr. Greenwood.
- [53] I have concluded that Mr. Greenwood should have parenting time with Hannah and Nathan but that time should be in Victoria unless Ms. Greenwood otherwise agrees. I am concerned that Mr. Greenwood has not taken Hannah's epileptic seizures sufficiently seriously to justify him taking her out of province and away from her doctors for an extended period. Similarly I found Mr. Greenwood to be somewhat cavalier in his reaction to Nathan's diagnosis of Autism Spectrum Disorder.
- [54] I am also somewhat concerned by the disparity in Mr. Greenwood's treatment of Ryan and his other children. If their evidence is to be accepted Mr. Greenwood's mother has provided Ryan with substantial, almost extravagant financial assistance over the past few years through distributions from the Family Trust. At the same time however, Mr. Greenwood has taken the position that he cannot afford to provide funds for fees for medical and dental treatments for the youngest children.
- [55] I have a strong suspicion that a significant portion of the distributions to Ryan were in fact intended to benefit Mr. Greenwood. However, even if they were not, they show a remarkable disparity in the financial assistance given to Ryan and the other four children.
- [56] In the result, I find that Mr. Greenwood may exercise parenting time with the Tyler and Maelyn at times to which they agree. Mr. Greenwood will have one week of parenting time at Spring Break and one week over Christmas, and three weeks in July with Hannah and Nathan. Mr. Greenwood will not take the youngest children to Saskatchewan without Ms. Greenwood's consent.
- [57] In addition, Mr. Greenwood will ensure that Hannah and Nathan have proper sleeping arrangements in Victoria and will keep Ms. Greenwood informed about those arrangements. In this regard, Hannah is not to share a room with her father and brother unless Ms. Greenwood agrees to that arrangement.
- [58] The parties have liberty to apply with respect to the form of the parenting order.

Imputation of Income

- [59] Each party seeks an order imputing income to the other for the purpose of determining their respective Guideline Incomes.

Ms. Greenwood's Income

- [60] Mr. Greenwood submits that Ms. Greenwood should have an income imputed to her because she has refused to seek work outside the home. He points out that she has worked in the information technology area in the past. He says that it is unreasonable for her to continue to home school the children of the marriage.
- [61] Mr. Greenwood relied on the power of the court to impute income pursuant to s. 19(1) of the Federal Child Support Guidelines, SOR/97-175 (the "Child Support Guidelines").
- [62] I can find no basis for imputing income to Ms. Greenwood. Ms. Greenwood is currently homeschooling the three youngest children of the marriage. For reasons that I will set out later in these reasons I am satisfied that it is reasonable for her to continue to do so.
- [63] I am also of the view that any amount of employment income that Ms. Greenwood could reasonably be expected to earn given the length of time she has been out of the workforce would not materially exceed the increased child care costs she would incur as a result of being employed outside of the home.
- [64] I am therefore of the view that Ms. Greenwood's income for spousal support purposes should be determined in accordance with the Spousal Support Advisory Guidelines (SSAG) and that no additional income should be imputed to her.

Mr. Greenwood's Income

- [65] Mr. Greenwood's income has fluctuated significantly over the years. Up to the middle of 2015, he had been employed for many years with a moving company. His duties with that company included long distant moves that kept him away from home for prolonged periods. From 2011 to 2014 his income from employment with that company ranged from a high of \$76,932 to a low of \$66,515.
- [66] In 2014, he received \$65,000 from the Family Trust, which was grossed up to \$76,666 for tax purposes. In 2016, he received a grossed up amount of \$45,168 from the Family Trust. He testified that the 2016 amount was intended to go to Ryan and was paid to him for tax purposes only. I do not accept this evidence.
- [67] Mr. Greenwood admitted that some of the funds distributed paid to Ryan in 2017 were used by him, and I infer that the same is true for the funds he received in 2016.
- [68] In June 2015, Mr. Greenwood quit his job with Quality Move Management and moved to live on a farm owned by his brother Phillip in Saskatchewan. He lives in a house on that farm for part of the year and spends the rest of the year living with his mother in her home in Victoria.

- [69] His works as a seasonal farm labourer on his brother's farm. In 2015 his employment income was \$61,425. In 2016 his employment income was \$60,000. In 2017 it declined to \$42,500. At trial he estimated his 2018 income would be \$40,000.
- [70] Mr. Greenwood's stated employment income is based on seasonal work. He has not provided any reasonable basis for not being fully employed. His employer is his brother. In addition, Mr. Greenwood has taken several trips since separation, including at least two to Hawaii.
- [71] Two issues arise from these facts. The first is whether Mr. Greenwood is intentionally under-employed. Section 19(1) of the Child Support Guidelines provides as follows;
- 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- [72] Mr. Greenwood has led no evidence that would suggest that his under-employment is attributable to any of the factors set out in s. 19(1)(a). Accordingly I am satisfied that it is appropriate to impute employment income to him which exceeds the amount he reports earning.
- [73] The second issue is the benefits which Mr. Greenwood can reasonably be said to be receiving from his living arrangements and the Family Trust.
- [74] Mr. Greenwood testified that he pays \$800 per month in rent to his brother. There is no evidence that he pays anything to his mother for room or board. He produced no documents corroborating the evidence he gave about his monthly expenses. While he states that he pays rent of \$800 per month for a room in the house on his brother's farm he has produced no documents confirming such payments. In his Financial Statement of December 2017 he listed a liability of \$16,800 as arrears of rent owed to his brother. Based on \$800 per month, this represents 21 months of arrears. Arrears of that magnitude owed to a sibling are a strong indication that there was no real intention that any such rent would actually be paid.
- [75] Mr. Greenwood has failed to produce other relevant documents. I am satisfied that Mr. Greenwood is receiving benefits in kind in the form of room and board from his mother and brother. In addition, I draw an inference that at least some part of the distributions made from the Family Trust to Ryan in 2017 were for the benefit of Mr. Greenwood.
- [76] In September 2015, Mr. Greenwood's mother made a gift of \$300,000 to Philip and Raymond Greenwood and Phillip's son. These funds were used to purchase trucks and trailers for a company, Greenwood Trucking Ltd. Mr. Greenwood has not reported any net income from that company and testified at trial that it is currently inactive due to competition from truckers who were formerly employed in the oil and gas industry. Despite this fact, Mr.

Greenwood has made no effort to turn the equity in Greenwood Trucking into income earning assets.

[77] Section 23 of the Guidelines permits the court to draw an adverse interest against a payor spouse who fails to provide income information required by s. 21. I am satisfied that Mr. Greenwood has failed to disclose the income available to him for support purposes.

[78] I impute income to him for support purposes in the amount of \$75,000 per year based on the following factors;

1. Mr. Greenwood prior to separation earned close to that amount over a prolonged period;
2. Mr. Greenwood's lifestyle is supported by the members of his family and from distributions from the Family Trust;
3. Distributions, at least in part, from the Family Trust ostensibly made to Ryan have been used by Mr. Greenwood to meet his expenses;
4. Mr. Greenwood has not satisfactorily explained why assets are sitting unproductively in Greenwood Trucking Ltd. .

[79] It may be that in the future Mr. Greenwood will receive distributions from the Family Trust or otherwise increase his income. I therefore order that the income imputed to him shall be the greater of \$75,000 or his actual line 150 income. This imputation of income is applicable to entire period of time after the parties separated.

Entitlement to Spousal Support

[80] Ms. Greenwood seeks an order that Mr. Greenwood pay spousal support.

[81] Mr. Greenwood does not dispute that Ms. Greenwood has a claim for spousal support based both on the compensatory ground and because she is in need. However, he submits that no spousal support is payable because there are 4 children of the marriage, and based on his stated income together with the income he says should be imputed to the claimant, no spousal support is payable under the SSAG.

[82] His position is that the issue of spousal support should be deferred until there is a change either in the number of children receiving child support or the incomes of the parties.

[83] This position is premised on him having income of \$42,500 or less and an income \$20,000 being imputed to Ms. Greenwood. However, I have imputed an income of \$75,000 to him and have declined to impute any income to Ms. Greenwood.

[84] Based on a Guideline Income of \$75,000 for Mr. Greenwood and no income for Ms. Greenwood, Mr. Greenwood would be required to pay \$143 per month in spousal support at the mid range and \$316 per month at the high range.

[85] The authorities direct that I should divide the family property and before fixing the amount of spousal support, taking into account the amount of child support payable under the Child Support Guidelines.

[86] I will therefore address these issues before determining the amount of spousal support payable.

Family Property

[87] Two issues arise with respect to the division of family property.

[88] The first is whether there is any excluded property and the second is whether Mr. Greenwood has made a gift of what would otherwise have been excluded property to Ms. Greenwood.

Excluded Property

[89] Mr. Greenwood submits that he has \$90,000 in excluded property, representing the proceeds of sale of a property on Lodge Ave in Victoria. Mr. Greenwood and his brother each owned a 1/2 interest in that property when the parties began living together.

[90] In June 2000, 7 years after commencement of cohabitation, Mr. Greenwood purchased his brother's interest. The freehold transfer for that purchase shows a market value of \$70,000 for that 1/2 interest on the date it was acquired. At that time he obtained a mortgage of \$80,000 from his parents to buy his brother's interest. In July 2001 Mr. Greenwood sold the Lodge property for \$210,000. He testified that this sale resulted in net proceeds of approximately \$130,000 but produced no documents showing specifying what proceeds were actually received.

[91] Mr. Greenwood testified that about \$40,000 of the proceeds were used to pay off family debts and \$90,000 was put into an investment account in the parties' joint names at Odlum Brown. Records from Odlum Brown show a deposit of \$90,000 into a joint account on August 7, 2001.

[92] Mr. Greenwood's submission is that this \$90,000 should be regarded as excluded property. He appears to concede that the \$40,000 cannot be traced into any other family property.

[93] A number of issues arise from this claim. The first is that Mr. Greenwood has not produced any reliable documentary evidence of the value of his interest in the Lodge property at the commencement of cohabitation. He did produce a financial statement prepared at the time of his divorce from his first wife in which he stated that the value of the Lodge Ave property as of June 1994 was \$112,500. However, it is not clear whether that was the total value of the property or the value of his 1/2 interest. He did not produce any of the conveyancing or Land Title documents relating to the acquisition of the property.

[94] As I have indicated above, he certified that the value of the 1/2 interest he acquired from his brother in 2007 was \$70,000.

- [95] The onus is on Mr. Greenwood to establish the value of the excluded property on clear evidence.
- [96] The legal test for establishing a claim to excluded property under s. 85 of the Family Law Act is stated in *Shih v. Shih*, 2017 BCCA 37. The onus is on the person claiming the excluded property to establish the exclusion on a balance of probabilities with clear and cogent evidence.
- [97] The test does not require precision or mathematical certainty, but it must still meet the aforementioned standard. Where documentary evidence is not available, the party must testify about their recollection of the transactions in dispute and this will be scrutinized for credibility.
- [98] The judgement in *Shih* sets out the applicable process for determining the value of excluded property.
- [37] Before I address the question of Mr. Shih's assets, it is first necessary to discuss the legal test that has been formulated for the determination of excluded assets.
- []
- [40] The flaw I see in the Asselin analysis adopted by the judge is that it rests on the assumption that the FLA demands "precision" or "mathematical certainty". I can see nothing in the Act that demands "precision" or "mathematical certainty" in the standard of proof for establishing a claim to excluded property.
- [41] The inherent challenge which confronts litigants under the FLA is that in many relationships of any significant length, documents will have been destroyed and memories dimmed. A legal standard that demands mathematical certainty or precision risks defeating legitimate claims.
- [42] In my opinion, the proper test for establishing a claim to excluded property under s. 85 of the FLA is the same as in any civil case - proof on a balance of probabilities. The requirement of certainty and precision in my view improperly tips the standard closer to the criminal standard of proof beyond a reasonable doubt.
- [43] I do not quarrel with the proposition that, in order for a party to establish excluded property, he or she must do so with clear and cogent evidence. If documentary evidence is not available, the party bearing the onus of proof will need to testify as to their recollection of the transactions in dispute. That evidence will be scrutinized for credibility.
- [44] However, in balancing the evidence as a whole, the trial judge must be permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties.

- [99] In this case Mr. Greenwood gave no evidence of the value of the Lodge Avenue property at the date of commencement of the parties' relationship. I can give no weight to the contents of his financial statement prepared in his previous divorce because I do not know what interest he was valuing. If he was valuing his 1/2 interest, I have difficulty in reconciling that valuation with the value of \$70,000 he certified 9 years later when he acquired his brother's 1/2 interest. In addition I have found Mr. Greenwood to be an unreliable witness, particularly with respect to financial matters.
- [100] I therefore find that Mr. Greenwood has not established the value of the excluded property represented by Lodge Avenue.
- [101] In addition, Mr. Greenwood deposited the \$90,000 of sale proceeds in issue into a joint investment account with Ms. Greenwood. This raises two further issues.
- [102] The first is how the proceeds of sale should be allocated between the \$40,000 that were spent and the \$90,000 that was deposited into the account. Mr. Greenwood's submission assumes that all of the funds invested were excluded property. However, it is clear that at least some portion of the funds received from the sale was family property because Mr. Greenwood acquired his brother's 1/2 interest during the marriage. In addition there would in the normal course have been an increase in the value of Mr. Greenwood's 1/2 interest between 1993 and 2001, which would be family property pursuant to s. 84(2)(g) of the FLA.
- [103] I find that Mr. Greenwood has not established on a balance of probabilities how much of the \$90,000 is excluded property. The onus was on him to do so. I therefore conclude that the full amount of the two investment accounts are family property subject to division in accordance with the FLA.

Did Mr. Greenwood give 1/2 of the \$90,000 to Ms. Greenwood

- [104] The second issue arises from the fact that the proceeds were put into the joint investment account with Ms. Greenwood. In *V.J.F. v. S.K.W.*, 2016 BCCA 186, the Court of Appeal held that the common law and equitable principles relating to gifts survived the passage of the FLA.
- [105] If I am wrong in my conclusion that Mr. Greenwood has not proven on a balance of probabilities that the \$90,000 was excluded property, I am satisfied that Mr. Greenwood intended to make a gift of 1/2 of the \$90,000 to Ms. Greenwood. The funds were deposited into a joint account. Given the manner in which the parties managed their finances, I conclude that it was his intention to transfer a beneficial interest in 1/2 of the funds to Ms. Greenwood. He has led no evidence to rebut the presumption of advancement that applies to transfers from one cohabiting spouse to another.

Division of Family Property

[106] The two most significant items of family property are the net proceeds of sale of the matrimonial home and the parties' respective RRSPs.

Matrimonial Home

[107] Ms. Greenwood seeks an order for an unequal division of the proceeds of sale of the matrimonial home. The authority to order an unequal division is found in s. 95 of the FLA:

95(1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
- (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[108] Ms. Greenwood submits that this is a case in which s. 95(3) of the FLA is applicable and an unequal division of the proceeds of sale of the matrimonial home is necessary to achieve the objectives of spousal support set out in s. 161 of the FLA and s. 15(6) of the Divorce Act.

[109] Section 161 of the FLA provides as follows:

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[110] Section 16.2(6) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) contains virtually identical terms.

[111] Ms. Greenwood has a strong claim for spousal support based both on compensatory grounds and because she is in need, given the circumstances of her children. An important object of spousal support is to allow the party receiving support to maintain a lifestyle that approximates his or her circumstances prior to the breakdown of the marriage.

[112] I find that that Ms. Greenwood gave up her career to provide child care and later home schooling for the five children of the marriage. I reject Mr. Greenwood's evidence that home schooling the children was not a prudent step taken in the best interests of the children.

[113] The evidence satisfies me that home schooling was and continues to be in the best interests of the children in the circumstances of this case. A brief review of the evidence demonstrates why this is so.

[114] The eldest child Ryan, is no longer a child of the marriage. However, his struggles with the public school system played a significant role in the decision to home school the children. In 2009, Ryan began to experience behavioural problems, including running away from school. The public school he attended set up an Individual Educational Plan for him, but funding for that plan was not always available. Once Ms. Greenwood began to home school

him, his grades improved dramatically. He graduated from high school and is now pursuing a career as a pilot.

- [115] Similarly, at the time of trial Tyler was achieving straight A grades in high school and was enrolled as an apprentice as a cabinet maker.
- [116] The two youngest children have special needs. Hannah has been diagnosed as suffering from epilepsy and is subject to seizures. Nathan has been diagnosed as having ADHD. Both these children are benefiting from the structured learning environment being provided by their mother.
- [117] Mr. Greenwood says that he has only a limited income. He denies that he owns any substantial assets apart from his interest in Greenwood Trucking Ltd. On the other hand he clearly is benefitting from the affluence of his family. He is a beneficiary of the Family Trust and has in the past received substantial financial support from his parents before the Family Trust was established. There is no doubt that the parties relied on such gifts and distributions to support their lifestyle while they cohabitated.
- [118] Mr. Greenwood's mother testified that there would be no further distributions to him from the Family Trust until these proceedings are concluded. However, I find that she intends to resume distributions to him once his obligations to Ms. Greenwood have been determined in this case.
- [119] I also find that Mr. Greenwood will continue to benefit from distributions ostensibly made to Ryan. It is also apparent that Mr. Greenwood continues to receive significant benefits from his family in the form of free accommodation and board as well as subsidized vacations.
- [120] I find that Mr. Greenwood's expectations as a beneficiary of the Family Trust and the lifestyle benefits he receives from his mother and brother are relevant in determining his means, needs and circumstances.
- [121] I have also reviewed Ms. Greenwood's Form 8 Financial Statement. I found this document to be a reliable and conservative statement of her monthly expenses. Ms. Greenwood is managing to support herself, three totally dependant children and one child who is living with her but earning some income on a budget of \$4190 per month. This indicates to me that she is frugal and prudent in her spending patterns. However, even with substantial child tax benefits from both levels of Government, her annual expenses are significantly greater than her income.
- [122] On the other hand there is no question that Mr. Greenwood made a substantial financial contribution to the acquisition and maintenance of the family home. In addition, the default position under the FLA is an equal division of family property.

- [123] In this case Mr. Greenwood submits that his income is so low that there would be nothing payable to the Ms. Greenwood if the recommendations in the SSAG are applied. I have already stated that I am satisfied that Mr. Greenwood is intentionally underemployed and that his stated income appears to be inadequate to support his lifestyle. I am also satisfied that he is receiving lifestyle and financial assistance from the members of his family. These considerations led me to impute an income of \$75,000 to him.
- [124] Unfortunately, even at this level of income the spousal support payable pursuant to the SSAG is insufficient to provide a reasonable living standard for Ms. Greenwood and her children. Their predicament is worsened by the decisions made by the Greenwood family to provide ample support to Ryan but virtually nothing for the other children of the marriage.
- [125] Based on the SSAG, Mr. Greenwood should pay spousal support of \$316 per month for an indefinite period at the high end of the range. When combined with child support payable of \$1815 per month this will result in Ms. Greenwood and the four children receiving 60% of the Net Disposable Family Income. However, in my view, this amount is insufficient to meet the objectives of spousal support, and in particular, to permit Ms. Greenwood and her children have a standard of living that approximates her pre separation standard.
- [126] I find that an order for spousal support based on the SSAG will not adequately meet the objectives of s. 161 of the FLA and s. 15.2(6) of the Divorce Act.
- [127] There are two available remedies to address Ms. Greenwood's needs. The first is to order Mr. Greenwood to pay spousal support in excess of the amount recommended under the SSAG. The second is to order an unequal division of the proceeds of sale of the matrimonial home.
- [128] I have concluded that s. 95(3) of the FLA is applicable in this case. I find that Ms. Greenwood has devoted her life not only to providing the normal advantages to her children that a parent with primary parenting responsibilities bears but also by taking on the additional burden of home schooling the children. I am satisfied that such home schooling was necessitated by the particular challenges she experienced with Ryan, Tyler, Hannah and Nathan. Ms. Greenwood's income earning capacity has been severely affected by her responsibilities as a parent and educator.
- [129] The breakdown of this marriage has caused significant economic hardship for Ms. Greenwood. She has also been disadvantaged economically by the role she played in caring for and educating her children.
- [130] I find that an award of spousal support cannot adequately address these factors, given Mr. Greenwood's decision to be underemployed and the decision made by his family to cease to make any further distributions to him from the Family Trust.

[131] I consider it necessary to order an unequal division of the proceeds of sale of the matrimonial home to address these issues. I therefore order that the proceeds of sale of the family home be distributed 80% to Ms. Greenwood and 20% to Mr. Greenwood. The extra fund received by Ms. Greenwood will permit her to provide suitable accommodation for her family and generally improve her standard of living.

[132] In paragraph 19 of these reasons I set out the interim distributions of funds from the net proceeds of sale of the matrimonial home. Mr. Greenwood has received a significantly greater share of those interim distributions than he is entitled to under the unequal division I have ordered. Ms. Greenwood submits that the practical way of addressing this issue is to order that the remaining proceeds be paid to her. I accept this submission. I have done a calculation of the amount remaining owing to Mr. Greenwood after taking the excess benefits he has received into account. That calculation has satisfied me that Mr. Greenwood is not materially prejudiced by such an order.

Division of Remaining Family Property

[133] The remaining property belonging to the parties is as set below.

[134] Ms. Greenwood's Assets:

1.

Coast Capital chequing account (8007)

\$5,347.03

2.

Coast Capital savings account (1870)

\$3,271.06

3.

Worldsource Financial RRSP (3583)

\$212,518

4.

CI Investments TFSA (3682)

\$21,958

5.

2014 Toyota Sienna

\$25,000

[135] Mr. Greenwood's Assets:

1.

Chequeing Account

\$10,000

2.

Odium Brown RRSP

\$261,000

3.

Interest in Greenwood Trucking

\$100,000

4.

Beneficial Interest in Family Trust

Unknown

5.

2009 Chevrolet Malibu

\$13,000

[136] There is some dispute over whether all of the above assets are family property.

[137] I have concluded that the Coast Capital accounts and the CI Investments TFSA in the name of Ms. Greenwood are not family property.

[138] I do not have any evidence as to the balance in the Coast Capital Chequeing account at the time of separation. The account appears to have been opened shortly before this action was commenced. I understand that this account is used by Ms. Greenwood for her everyday banking. I conclude therefore that all of the funds in the account were deposited post separation from funds received by Ms. Greenwood after that date.

[139] The same considerations apply to the Coast Capital Savings account. It was opened in June 2015, seven months after the commencement of this action. I therefore conclude that any funds in it represent deposits made by Ms. Greenwood out of funds she received after separation.

[140] The CI Investments TFSA was opened on May 2, 2017. There is no evidence that any family property was deposited into that account.

[141] Ms. Greenwood concedes that Mr. Greenwood's \$10,000 chequeing account is not family property.

[142] Ms. Greenwood concedes that the Worldsource Financial RRSP is family property, subject to division.

[143] With regard to Mr. Greenwood's assets, his counsel submits that he should keep the Odlum Brown RRSP and Ms. Greenwood should keep the Worldsource RRSP. I find that such a division would be contrary to the provisions of the FLA. I find that both RRSPs are family property, which should be divided equally.

[144] Mr. Greenwood takes the position that withdrawals that Ms. Greenwood made from her RRSP should be taken into account in any division of the RRSPs. I do not recall any evidence from the parties as to the value of the respective RRSPs at separation. However, I do note that in her December 2017 Financial Statement Ms. Greenwood included a tax return for 2015 which showed that \$6334 had been withdrawn from her RRSP in that year. I therefore fix the value of the RRSPs at separation were as follows;

1. Ms. Greenwood's RRSP \$218,851
2. Mr. Greenwood's RRSP \$261,000

[145] Section 146(16)(b) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), provides for tax-free rollovers of RRSPs between spouses where there is a court order or written separation agreement. I order that Mr. Greenwood roll over \$21,075 into Ms. Greenwood's RRSP. This will equalize the accounts at \$239,926, rounded to the nearest dollar.

[146] Mr. Greenwood's shares in Greenwood Trucking Ltd. do not appear to be family property. While the documentary evidence provided was less than satisfactory, it does appear that Greenwood Trucking was started in 2015, after separation, with funds that were advanced by Mr. Greenwood's mother to her two sons and Philip Greenwood's son Billy.

[147] I cannot conclude that there has been an increase in the value of Mr. Greenwood's interest as a beneficiary of the Family Trust. The Family Trust was created in 2012. Its assets are shares in Greenwood Resources Ltd, which in turn owns certain royalty rights. Given the nature of the underlying assets supporting the trust I cannot infer that its value has increased since Mr. Greenwood acquired an interest in it. However, the evidence of Mr. Greenwood's mother and in particular her evidence that there would be no further distributions to Mr. Greenwood while these proceedings are outstanding further reinforces my view that an unequal division of the matrimonial home is necessary.

[148] I also order that the vehicle owned by Ms. Greenwood be retained 100% by her. I find that she requires this vehicle to transport her children and to assist her to cope with her ongoing parenting responsibilities. The circumstance I outlined in making an unequal division of the sale proceeds of the family apply equally to the vehicles. Because of this distribution I order that Mr. Greenwood's vehicle be retained exclusively by him.

[149] The parties are also agreed that the Odlum Brown Family RESP will be divided equally if that has not already been done.

Support Arrears

- [150] Ms. Greenwood claimed spousal support in her Notice of Family Claim. On May 25, 2015 Master Keighley made a consent order that Mr. Greenwood had a Guideline Income of \$66,500 and that Mr. Greenwood should pay interim child support of \$1551 per month for the youngest four children who were living with Ms. Greenwood.
- [151] I have already decided that Mr. Greenwood should have an income of \$75,000 per year imputed to him. That imputation will apply in any year in which his line 150 income has fallen or will fall below that amount.
- [152] This imputation of income, together with the unequal division of the family home will in my view adequately address the objectives of the spousal support set out in the Divorce Act and the FLA.
- [153] In her written argument Ms. Greenwood prepared a calculation of arrears of spousal and child support based on Mr. Greenwood's actual line 150 income for the preceding years and imputing an income of \$102,686 to him in 2018. I do not understand Mr. Greenwood to challenge these calculations, although of course he does not agree with the assumptions upon which they are based.
- [154] I find that Mr. Greenwood should be liable for past support payments from June 1, 2015 onwards. The parties comingled their finances until May 2015. Mr. Greenwood continued to deposit his salary into the family joint account up to that time and the funds were used to pay the family's expenses.
- [155] I would also modify the calculation of the arrears owing for 2016 and 2018. In both of those years I find that Mr. Greenwood should be imputed an income of \$75,000. I agree with Ms. Greenwood that spousal support should fixed at the high level to adequately address the objectives of spousal support.
- [156] I have also extended the period of arrears to December 31, 2018.
- [157] I have therefore recalculated the arrears owing by modifying Ms. Greenwood's calculation as follows:

Year paid

AG's tax return Line 150 Income

RG's 150 Income

Child Support - 4 Children

Spousal Support High Level

2018

\$2,026 (2017)

\$75,000 (imputed)

\$1,815

\$316

2017

\$2,141 (2016)

\$107,508 (2016)

\$2,434

\$852

2016

\$18,891 (2015)

\$75,000 (imputed)

\$1,815

\$316

2015

\$79,233 (2014)

\$139,492 (2014)

\$3,044

\$112

Year

Child Support

Spousal High

Total Owed Child Support + High Spousal

Less Paid

Total Child and Spousal Owing

2018

\$21,780

\$3,792

\$25,572

\$18,612

\$6,960

2017

\$29,208

\$10,224

\$39,432

\$18,612

\$20,820

2016

\$21,780

\$3,792

\$25,572

\$18,612

\$6,960

June to December, 2015 (7 months)

\$21,308

\$784

\$22,092

\$10,857

\$11,235

Totals

\$94,076

\$18,592

\$112,668

\$66,693

\$45,975

[158] Accordingly, the total amount owing for arrears to December 31, 2018 is \$45,975.

Section 7 Expenses

[159] Based on the awards I have made Mr. Greenwood will be responsible for 94.9% and Ms. Greenwood for 5.1% of special and extraordinary expenses.

Disclosure and Fine under Section 213(20(d)(iii) of the Family Law Act

[160] Ms. Greenwood seeks an order imposing a fine of \$5000 on Mr. Greenwood for his failure to make adequate document disclosure of his financial circumstances.

[161] Ms. Greenwood relies in particular on Mr. Greenwood's failure to make any documentary disclosure with respect to the Family Trust until I made orders for production in the course of the trial. In this regard, I find that Mr. Greenwood did not fulfill his obligations under the Supreme Court Family Rules to make all reasonable efforts to obtain such basic documents as the Trust Deed, the Financial Statements for the Trust, income tax filings by the Trust and information about its assets.

[162] Mr. Greenwood's counsel's only answer to this lack of disclosure was to argue that Ms. Greenwood had not made any interlocutory applications for its production. However, the onus was on Mr. Greenwood to obtain the documents. There can be dispute that these documents were relevant. Mr. Greenwood was a trustee of the Trust and was therefore entitled to access of all of these documents.

[163] In addition, Mr. Greenwood failed to produce adequate documentation to permit Ms. Greenwood to determine how much he received from Ryan's distributions from the Family Trust. Finally Mr. Greenwood did not make timely disclosure of the financial statements of Greenwood Trucking Ltd. to permit Ms. Greenwood to determine the impact of his interest in that company on his Guideline Income.

[164] I need not recite the numerous authorities that have stressed the importance of making proper and timely disclosure of financial matters in Family Law proceedings. I find that the best that can be said on Mr. Greenwood's behalf is that he failed to take his disclosure obligations seriously. Such conduct is unacceptable and must be sanctioned.

[165] I therefore order Mr. Greenwood to pay a fine of \$5000 to Ms. Greenwood for his failure to meet his disclosure obligations.

Summary of Orders

I make the following Orders;

The parties shall be joint guardians of Tyler, Maelyn, Hannah and Nathan. Parenting responsibilities will be exercised on the Joyce Model with the claimant having primary responsibility for the day to day care of the children. An income of \$75,000 per year is imputed to Mr. Greenwood for the purposes of determining child and spousal support in any year in which he reports less than that amount on his tax return. No income is imputed to the claimant for the purposes of determining spousal support. Mr. Greenwood will pay child support and spousal

support to the claimant at the high range set out in SSAG from June 1, 2015. The amounts payable for child and spousal support shall be adjusted annually in accordance with the Guidelines and the SSAG. Spousal support will continue for an indefinite period. Mr. Greenwood's claim to excluded property is dismissed. The parties have the following family property;

- a. The proceeds of sale of the matrimonial home
- b. Worldsource Financial RRSP 3583
- c. Oldum Brown RRSP
- d. Toyota Sienna
- e. Chevrolet Malibu

The remaining net proceeds of sale of the matrimonial home will be paid to Ms. Greenwood as an unequal division of family property. The Toyota Sienna will be retained by Ms. Greenwood and the Chevrolet Malibu will be retained by Mr. Greenwood as unequal divisions of family property. Mr. Greenwood will roll over \$21,075 from the Oldum Brown RRSP to Ms. Greenwood to equalize the values held in each RRSP. Mr. Greenwood will pay Ms. Greenwood the sum of \$45,975 for arrears of child and spousal support. Mr. Greenwood will pay a fine of \$5000 to Ms. Greenwood pursuant to s. 213(2)(d)(iii) of the FLA.

Costs

[166] The parties have liberty to arrange to make submissions on the proper costs order to be made in this case.

"Sewell J."

Appendix A

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