

CANADA / JUDGMENT

Hildebrandt v. Hildebrandt

2023 BCSC 588

COURT

Supreme Court of British Columbia

DECIDED

14 April 2023

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2023 BCSC 588 Hildebrandt v. Hildebrandt IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Hildebrandt v. Hildebrandt, 2023 BCSC 588 Date: 20230414 Docket: E130386 Registry: Kelowna Between: Tannis Michelle Hildebrandt Claimant And Terrance Shawn Hildebrandt, Canadian Western Civil Enforcement Ltd., Central Interior Bailiffs Incorporated and Active Personal Property Appraisals Ltd. Respondents Before: The Honourable Mr. Justice G.P. Weatherill Reasons for Judgment Counsel for the Claimant: J.C. Spelliscy The Respondent appearing on his own behalf: T.S. Hildebrandt Place and Date of Trial/Hearing: Kelowna, B.C. March 6-10, 2023 Place and Date of Judgment: Kelowna, B.C. April 14, 2023 I. INTRODUCTION

- [1] This action, commenced on March 5, 2021, concerns the breakdown of the parties' marriage. The parties seek orders respecting the division of family property and debt, and spousal and child support.
- [2] This proceeding is governed by the provisions of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
II. BACKGROUND A. The Relationship and the Parties' Careers
- [3] The parties are both 51 years old. They met in high school in Prince George and began dating in 1997. The parties began cohabiting in June 1998 and were married on August 5, 2001 (the "Marriage"). Although the parties separated in February 2020 (the "Separation"), they continued to live in the same residence until the end of May 2020, when the respondent left the family home. They were divorced on February 1, 2023.
- [4] The claimant has a daughter from a prior relationship who was two years old when the parties began cohabiting. The parties have two children together, T.H., currently aged 21, and S.H., currently aged 19 (the "Children").
- [5] The claimant has been a licensed commercial bailiff since March 2000 and owned and operated Central Interior Bailiffs Inc. ("CIBI") with the respondent. She became a court-appointed bailiff in 2018. CIBI's business includes repossessing unpaid assets, serving court documents, collecting debts and filing liens.

- [6] The respondent has been a court bailiff since 2003. Early on in the Marriage, he obtained a government contract to perform bailiff work. He is also a certified personal property appraiser. He did not enjoy bailiff work and did not renew his government contract when it expired.
- [7] The Marriage was rocky almost from the outset. The respondent's decision not to renew the bailiff contract made matters worse.
- [8] In 2007, the claimant obtained the ICBC plate recover contract for the entire province. By this point, the Marriage was in serious trouble. The claimant wanted to relocate from Prince George to Kamloops for a fresh start. The respondent reluctantly agreed and the family moved to Kamloops in 2008. Instead of helping the claimant with the bailiff work, the respondent spent most days at a gym and spa. He relied on the claimant to support the family.
- [9] Also in 2007, the respondent incorporated Active Personal Property Appraisals Ltd. ("APPA") to act as a certified appraiser of seized goods, vehicles and other chattels.
- [10] In 2010, the claimant discovered that the respondent had struck up a relationship with the receptionist at the spa he was attending. She confronted him and filed for a divorce. The respondent refused to leave the family home until the following year, when he moved into the couples' fifth-wheel trailer parked in their yard. He spent his time engaged in recreational activities with the Children.
- [11] S.H. was having difficulty with the separation, so the claimant decided to attempt a reconciliation for his benefit. She made it a condition of reconciliation that the respondent obtain employment outside of the home. In September 2011, the respondent obtained full-time employment with the Ministry of Transportation as a Commercial Vehicle Safety Enforcement ("CVSE") officer. The couple's relationship improved for a short time before deteriorating again. The respondent resented having to work for CVSE with a set working schedule.
- [12] While employed with CVSE, the respondent was unable to do any bailiff work because of conflict of interest rules. Accordingly, the claimant performed all CIBI work from that time forward.
- [13] In 2015, the parties purchased a home located at 404 Monarch Court, Kamloops (the "Family Home") for approximately \$525,000. It required significant renovations, upgrades and repairs, which they undertook together from time to time as money permitted. The renovations were nearly complete by Separation, but there was still work remaining before it could be listed for sale. Between February and December 2020, the cost of completing the renovations was funded by a joint bank account to which both parties contributed. From January to April 2021, the claimant solely bore the final clean-up and staging costs ahead of the Family Home's sale in April 2021. The Family Home's net sale proceeds of \$424,975 are currently being held in trust by the respondent's previous lawyers.

- [14] In December 2017, the respondent incorporated Canadian Western Civil Enforcement Ltd. ("CWCE") to act as a court bailiff in two provincial geographical regions: Prince George to Prince Rupert, and Vancouver Island. Its business is the enforcement of writs of possession, writs of seizure and sale and all other court order enforcements. In order to perform its provincial contracts, CWCE was required to post irrevocable letters of credit totalling \$14,000.
- [15] In 2020 and at the respondent's insistence, all CIBI and CWCE business was combined and operated out of CWCE. All banking was through CWCE's accounts while CIBI sat idle. While the respondent was primarily responsible for performing CWCE's contracts, the claimant performed its bookkeeping and administrative work, and continued to perform bailiff work through CWCE.
- [16] In September 2019, the claimant required hospitalization as a result of some serious health-related issues. While the claimant was recovering and without any prior discussion, the respondent purchased commercial property located at 825 2nd Avenue in Prince George (the "Prince George Property") for \$265,000, using \$42,000 of family money for the down payment (the "Down Payment").
- [17] The respondent was turned down for conventional mortgage financing, so he obtained a one-year, high-interest (12%) private mortgage through Vabkol Investments Ltd. ("Vabkol"). The respondent undertook the necessary renovation of the Prince George Property using between \$20,000 and \$40,000 of family funds (the "Renovation Costs"), again without the claimant's knowledge or consent. The respondent has never disclosed the precise amount of the Renovation Costs.
- [18] The claimant was opposed to the purchase of the Prince George Property from the outset. Neither CIBI nor CWCE needed it for business operations and the claimant viewed the purchase as a frivolous expense that the family could ill afford. Nevertheless, the respondent purchased it over her objections. The claimant refused to be part of the Prince George Property and refused to sign any purchase or mortgage documents related to it. The respondent extended the Vabkol mortgage once when it became due in September 2020. He then unsuccessfully attempted to sell the Prince George Property. Ultimately, in November 2022, the respondent and Vabkol reached an agreement whereby the Prince George Property would be transferred to Vabkol in exchange for a full release of mortgage obligations. In the result, the Prince George Property was lost to Vabkol, along with the Down Payment and Renovation Costs.
- [19] By February 2020, the claimant had had enough of the respondent and the couple separated for the second and final time. Again, the respondent refused to leave the Family Home until May 2020, when he moved into a basement suite nearby. The Children stayed with the claimant. Despite the Separation, the respondent routinely returned to the Family Home unannounced and uninvited, claiming that it was his house and he could come and go as he pleased.

- [20] In July 2020, while the claimant was out of town performing bailiff business, the respondent entered the Family Home and removed computers, electronics and records of all three companies, CIBI, CWCE and APPA.
- [21] In the summer of 2020, the claimant restarted CIBI and recommenced bailiff work under its umbrella.
- [22] In August 2020, the respondent was terminated from his CVSE employment for improperly providing confidential information to third parties. He grieved his termination through his union and a settlement was reached. He received a severance package. Thereafter, his attention was focused on CWCE's court bailiff work.
- [23] APPA ceased operations in December 2020 and is not in good standing with the Registrar of Companies. The respondent now conducts chattel appraisals through CWCE. Also in December 2020, the couple's joint bank account and corporate accounts were closed and they each opened separate accounts. At the same time, the respondent moved to Prince George where he currently resides in rental accommodation.
- [24] Since the sale of the Family Home in April 2021, the claimant and the Children have been residing in rental accommodation in Kamloops.
- [25] Throughout the Marriage, the parties and their corporations banked mostly with the Bank of Montreal ("BMO"). They had a personal joint account (the "BMO Joint Account") and a personal joint line of credit (the "BMO LOC"). CIBI and CWCE each had separate lines of credit (the "CIBI LOC" and the "CWCE LOC"). Throughout the Marriage, the parties operated CIBI, CWCE and their personal finances using whatever funds were available from any source. The parties transferred funds back and forth between personal and corporate accounts and lines of credit as funds were needed, mostly at the respondent's direction. The parties did not account for those transfers, essentially treating all corporate and personal finances as one entity.
- B. Purchase and Disposition of Family Property
- [26] During the Marriage, the parties bought a number of vehicles, which included a 1966 Mustang (the "Mustang") and a 1968 Camaro convertible (the "Camaro") purchased as project vehicles. The respondent planned on restoring them for future resale. Although some restoration work was performed on the Mustang, no restoration work has been done on the Camaro. Currently, the engines and drivetrains in both vehicles have been removed and neither is roadworthy.
- [27] During the Marriage, the respondent also purchased four GSXR Suzuki motorcycles (the "Suzuki Bikes"), one of which was used for parts. In June 2020, he sold them for a total of \$4,000.

- [28] During the Marriage, the parties purchased a Lund fishing boat (the "Lund"), a Zodiac boat (the "Zodiac") and a H&H Utility Trailer (the "Trailer"). The claimant currently has possession of the Lund, the Zodiac and the Mustang. The respondent currently has possession of the Camaro and the Trailer.
- [29] In December 2019, and without the claimant's knowledge or consent, the respondent purchased a 2011 Ford tow truck (the "Ford") for \$30,000 using family funds. Shortly afterwards, repairs totalling \$2,000 were required. The Ford was sold in 2020 for \$33,000. The parties dispute who is in receipt of those proceeds.
- [30] Shortly after Separation in February 2020, and again without the claimant's knowledge or consent, the respondent purchased a second tow truck, a 2008 Dodge tow truck ("Dodge") at a cost of \$25,793 using \$15,000 from APPA's bank account and drawing the balance from the CIBI LOC. The respondent named CIBI as its purchaser. The Dodge required \$5,000 in repairs. It was sold for approximately \$24,000 net of those repair costs. The claimant currently holds those proceeds in a Manulife GIC (the "Manulife GIC").
- [31] In June 2020, the respondent sold a Husqvarna motorcycle (the "Husqvarna") he had purchased during the Marriage for \$8,500. The parties dispute who is in receipt of those proceeds. The claimant says she was not involved in its sale and has no knowledge of it. The respondent says he gave the cash sale proceeds to the claimant in an envelope. The claimant denies that she received the funds.
- [32] In January 2021, the respondent sold an Adventure Camper (the "Adventure Camper") for \$14,000. The respondent testified that he deposited \$7,000 of the proceeds into his personal account and the balance into CWCE's general account.
- [33] In the summer of 2021, the claimant sold a Mazda vehicle ("Mazda") for \$7,900 and placed those proceeds into the Manulife GIC. Together with the proceeds from the sale of the Dodge, \$31,900 has been deposited into the Manulife GIC.
- [34] In March 2022, the claimant sold another family vehicle, a Kia Sorrento (the "Sorrento"). She realized net proceeds of \$6,068.34, which are currently being held in trust.
- [35] Prior to Separation, each party held a modest registered retirement saving plan ("RRSP"). After Separation, the claimant continued to contribute to her RRSP while the respondent withdrew various amounts from his RRSP. The parties ceased using their joint accounts and began to operate their finances separately from one another as of December 31, 2020. The claimant owned a BMO RRSP under account number XXXXXX152, valued at \$14,426.48 on December 31, 2020 (the "Claimant's RRSP"). The claimant also owned a BMO Spousal RRSP under account number XXXXXX214, valued at \$9,299.62 on December 31, 2020 (the "Claimant's Spousal RRSP"). The respondent owned a BMO RRSP under account number XXXXXX328, valued at \$14,847.34 on December 31, 2020 (the "Respondent's RRSP"). C.
- Previous Court Orders

[36] There have been a series of court orders made since this action was commenced:

- a) March 29, 2021: Master Schwartz made a mutual restraining order to prevent either party from disposing of personal or corporate assets.
- b) April 8, 2021: The parties entered a consent order that the net sale proceeds of the Family Home and the Prince George Property, if any, were to be held in trust pending agreement or court order.
- c) July 19, 2021: Master Schwartz ordered, inter alia, that the Prince George Property be sold and certain other chattels be appraised and sold. Pursuant to this order, the claimant retained Mr. Gordon Cory of Worthington Business, Real Estate and Equipment Appraisals to appraise the vehicles detailed above (the "Worthington Appraisal").
- d) March 24, 2022: The parties entered a consent order, according to which the respondent would pay child support, on a without prejudice basis, of \$640 per month for S.H. from January through August 2022.
- e) October 24, 2022: Master Schwartz ordered the respondent to produce and deliver his income tax, banking and other records, and to respond to the claimant's Notices to Admit.
- f) December 29, 2022: The parties entered a consent order. The order adjourned the trial date of January 23, 2023, and ordered the respondent to make himself available for examination for discovery, comply with document and information requests and cooperate with the claimant's application for a divorce.
- g) February 1, 2023: The Court granted a divorce order by consent. II. CREDIBILITY AND FACTUAL FINDINGS

[37] By all accounts, the Marriage was an unhappy one, especially during its latter ten years or so. The claimant describes the respondent as being manipulative, controlling and verbally abusive throughout. She says he was demanding, degrading and easily angered. If he did not get his way, he would yell at her and occasionally became physically aggressive. She says that living with the respondent required her to walk on egg shells because she never knew from day to day what his behaviour would be like. She says that he was off in his own world and refused to help her with housework, raising the Children or CIBI business. The respondent likes boats, motorcycles, trucks and all-terrain vehicles. The claimant described these vehicles as his toys. The respondent spent much of his time playing with them, hanging out with his male friends, attending the gym and spa, and drinking. The respondent did not deny the claimant's allegations.

- [38] The claimant and respondent gave differing versions of events and transactions including the circumstances surrounding the purchase of properties and vehicles. The claimant's testimony was detailed and harmonized with the documentary evidence, whereas the respondent's evidence was general and often vague. Despite cautions, warnings and being given every opportunity to do so, the respondent failed to confront the claimant with his versions of events and transactions when he cross-examined her.
- [39] The claimant gave her evidence in a candid, straightforward and credible manner. I conclude that her evidence is reliable and I accept it without reservation.
- [40] To the contrary, the respondent did not do well giving his evidence in direct or cross-examination. His evidence was disorganized and unpersuasive in areas of conflict.
- [41] During cross-examination, the respondent's testimony often conflicted with both the documents in evidence and his examination for discovery evidence. For example, he maintained that he voluntarily resigned from his employment as a CVSE officer in August 2021. However, the documentary evidence establishes that he was terminated, that the termination was grieved through his union, and that the grievance was settled.
- [42] The respondent swore to the correctness of the income and expenses stated in his F8 Financial Statement of July 7, 2021. However, it is clear that he inflated his expenses significantly. Many of his claimed personal expenses were in fact paid by CWCE, for instance the \$700 per month in gasoline expenses. He claims to be paying \$200 per month for childcare and another \$800 for the Sorrento, even though he has not paid anything for childcare since the Separation and pays nothing for that vehicle. He claims to have spent \$300 per month to maintain the Ford because "it was a diesel". I do not accept these attempts to justify his inflated expenses.
- [43] The respondent was uncooperative and evasive during cross-examination, at times refusing to answer even questions that appeared to have obvious answers. He would not give a clear answer about transactions involving his personal BMO account when he was the only person with access to that account. He refused to admit that transfers between corporate and personal bank accounts occurred, even with documents before him showing that withdrawals from one account matched deposits to the other. At times, he testified that he did not recall important recent conversations or events, for instance suggesting that he did not know if he had listed the Camaro for sale since the Separation.
- [44] After hearing the parties testify, I accept the claimant's evidence and reject the respondent's where their evidence conflicts.

- [45] I conclude that, during the Marriage and after Separation, the respondent put his own wants and wishes above his family. I also conclude that shortly before or at the time of Separation, he acquired and later disposed of the Prince George Property, the Ford and the Dodge using family property and without discussion with the claimant. As a consequence, he significantly reduced the family property to be divided. I am satisfied that his actions were intentional, selfish and unreasonable.
- [46] Further, the respondent treated his obligations and duties under the FLA and court orders far too casually, to the point of ignoring them. The respondent has sold assets and failed to produce or disclose relevant documents, despite being aware of court orders restraining him from disposing of assets and requiring production, namely the orders of October 24 and December 29, 2022. III. ISSUES
- [47] The issues requiring determination are:
- a) the division of family property and family debt including both parties' applications for an unequal division of family property in their favour;
 - b) the claimant's application for child support for the 2021 calendar year;
 - c) the respondent's claim for spousal support;
 - d) the claimant's application for a fine under s. 213 of the FLA for the respondent's failure to comply with disclosure orders; and
 - e) costs. IV. POSITIONS OF THE PARTIES A. The Claimant
- [48] The claimant says that the parties were involved in a long-term, tumultuous marriage marked by the respondent's unrelenting verbal abuse and controlling behaviour. She says that his focus was not on the marriage or the Children but rather on himself: the respondent did what he wanted, when he wanted, and purchased "toys" and other items without asking the claimant. She says that the respondent was often disrespectful of her and that he generally treated her poorly.
- [49] The claimant says that since Separation the respondent has wasted or has significantly decreased the value of their family property and deliberately engaged in conduct worthy of sanction.
- [50] She asserts that the respondent was fiscally irresponsible throughout the Marriage and that he went on a spending spree in the months leading up to the Separation by buying the Prince George Property, Ford and Dodge, none of which were required to operate the family businesses. All have been subsequently sold or disposed of at a cumulative loss that has significantly reduced the value of family property. The claimant argues that, accordingly, an unequal division of family property in her favour is justified. She also says that the respondent has engaged in conduct designed to delay this case and has dramatically increased its costs. B. The Respondent

- [51] The respondent maintains that at all times during the Marriage, he worked equally as hard as the claimant, both inside and outside the home. He denies being abusive or fiscally irresponsible and contends that all family property should be divided equally.
- [52] He says the Prince George Property would have been a good investment had he been able to keep it and that he purchased the Ford and Dodge with the claimant's blessings. He says that the claimant intercepted the proceeds from the sale of both tow trucks and he has no knowledge of their whereabouts. V. DIVISION OF FAMILY PROPERTY AND DEBT A. Principles
- [53] The relevant parts of the FLA respecting division of family property are Parts 5 and 6. The starting point is set out in s. 81, which provides that parties to a separation are each entitled to an undivided one-half interest in all family property and are equally responsible for family debt. Unless there is compelling evidence to the contrary, the presumptive date for determining the value of family property and family debt is the date of trial: s. 87(b)(ii). The value of family property must be based on its fair market value: s. 87(a).
- [54] Notwithstanding s. 81, s. 95(1) of the FLA permits the court to order an unequal division of family property, family debt, or both, if it would be "significantly unfair" to equally divide it. Subsection 95(2) enumerates factors that the court may consider when determining significant unfairness, and reads in part as follows:
- (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; . . .
 - (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 . . . that may lead to significant unfairness.
- [55] Significant unfairness requires something objectively unjust, unreasonable or unfair in some important or substantial sense. There are numerous factors that can be considered when determining whether equal division would be significantly unfair. Two relevant factors are where one spouse caused a significant decrease in the value of family property beyond market trends after separation or where a spouse disposed of, transferred or converted

property that is or would have been family property: *Zilic v. Zilic*, 2021 BCCA 107 at para. 13.

B. Family Property

- [56] When the parties began cohabiting in June, 1998, neither had any assets or debt to speak of. The assets at issue in this case were all accumulated during their marriage and are family property. There is no excluded property. After twenty years of marriage, the parties have accumulated assets totalling approximately \$570,000.
- [57] I will set out my conclusions regarding the family property for division here. I accept the fair market values for the chattels in issue expressed in the Worthington Appraisal, because it is the only admissible evidence respecting valuations.

i. Corporations

- [58] The family property contains three corporations: CWCE, CIBI and APPA. The parties agree that the shares of CWCE have the same value as those of CIBI. The parties agree that the respondent should retain full ownership of all shares of CWCE, and the claimant should retain full ownership of all shares of CIBI. APPA has no assets, has not filed tax returns, and is not in good standing with the Registrar of Companies. I value the shares of APPA at zero. The respondent shall have full ownership and be free to dispose of APPA as he wishes. ii.

Funds Held in Trust

- [59] The family property contains two amounts held in trust, along with accrued interest:

- a) the net sale proceeds from the sale of the Family Home of \$424,975; and
- b) the sale proceeds from the Sorrento of \$6,068. iii. Registered Education Savings Plans

- [60] The Children's RESPs are part of the family property, valued at \$18,060.86 for T.H. and \$22,820.62 for S.H. The parties agree that the Children should retain the RESPs. The RESPs will be for the Children's exclusive use.

- [61] The RESP funds will be the first funds used for the Children's post-secondary education or training. In the event there is any shortfall for the Children's post-secondary expenses, the shortfall will be shared equally between the claimant and respondent.

- [62] If any portion of the RESPs remains unused by S.H.'s 25th birthday, the RESPs shall be collapsed and their balance, net of taxes, divided equally between the Children. iv. Vehicles and Bank Accounts

- [63] The family property contains the vehicles described above. Whichever party retains each vehicle, or the proceeds from the sale of the vehicle if it has been sold, must account to the other for their half of that family property. I find as follows:

- a) The claimant currently holds the net proceeds of \$31,900 from the sale of the Dodge and the Mazda in a Manulife GIC, along with accrued interest. She must account to the respondent for one-half of this amount.

- b) The claimant currently has the Mustang, Lund and Zodiac in her possession. The Mustang and Lund have appraised values of \$5,500 and \$22,500 respectively. The parties agree that the value of the Zodiac is \$500. The claimant will remain sole owner of these vehicles and must account to the respondent for one-half of their value.
 - c) The respondent currently has the Camaro and Trailer in his possession, with appraised values of \$22,800 and \$2,500 respectively. The respondent will remain sole owner of these vehicles and must account to the claimant for one-half of their value.
 - d) The respondent retained net proceeds of \$4,000 and \$14,000 from the sale of the Suzuki Bikes and Adventure Camper respectively. He must account to the claimant for one-half of this amount.
 - e) The respondent claims that the claimant intercepted and retained the net proceeds of \$33,000 from the sale of the Ford. I reject that claim and find that the respondent retained the sale proceeds. The respondent must account to the claimant for one-half of this amount.
 - f) The respondent claims that he gave the net sale proceeds of \$8,500 from the sale of the Husqvarna to the claimant in an envelope. He has provided no other details. The claimant denies having received the proceeds and says that the respondent was solely responsible for the sale and retained the proceeds himself. I accept the claimant's evidence and reject the respondents. I note that the respondent made no demands for the claimant to account to him for his one-half share, nor did he mention the proceeds from the sale of the Husqvarna in his F8 Financial Form or in any other fashion prior to trial. The respondent retained these proceeds and must account to the claimant for her one-half share.
- [64] The respondent must also account to the claimant for her one-half share of the following accounts, which he agrees are family property:
- a) the respondent's Toronto Dominion Bank Web Broker investment account, worth \$7,200; and
 - b) the \$3,600 received by the respondent when the APPA bank account was closed.
- v. Registered Retirement Savings Plans
- [65] The parties' three RRSPs are family property: the Claimant's RRSP, worth \$14,426.48 as of December 31, 2020; the Claimant's Spousal RRSP, worth \$9,299.62 as of December 31, 2020; and the Respondent's RRSP, worth \$14,847.34 as of December 31, 2020.
- [66] The claimant has made monthly contributions to the Claimant's RRSP since the Separation. The respondent has drawn down the Respondent's RRSP since the Separation to pay for personal expenses.
- [67] I conclude that the parties' RRSPs should be valued as of December 31, 2020, and shared equally.

- [68] Accordingly, the claimant must transfer \$4,439.38 to the Respondent's RRSP to reach equal division. Within 30 days of the pronouncement of this final order, the claimant will transfer \$4,439.38 from the Claimant's RRSP to an RRSP in the respondent's name by way of spousal rollover under s. 146(16)(b) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), subject to applicable locking-in rules and unlocking rules. vi. Pensions
- [69] The parties have three pensions between them that are family property: the claimant's Canada Pension Plan, the respondent's Canada Pension Plan, and the respondent's Public Service Pension Plan from his ten-year employment with CVSE (the "Respondent's Pension"). The Respondent's Pension includes additional benefits from a plan supplementary to that pension itself. These pension plans shall be divided pursuant to Part 6 of the FLA.
- [70] I order that the following dates apply for the purpose of dividing these pensions:
- a) The parties began cohabiting in June 1998;
 - b) The parties were married on August 5, 2001; and
 - c) The parties separated on February 1, 2020.
- [71] The parties' unadjusted pensionable earnings under the Canada Pension Plan will be divided under ss. 55, 55.1, and 55.2 of the Canada Pension Plan, R.S.C. 1985, c. C-8.
- [72] The claimant's share of the Respondent's Pension will depend on if or when the respondent commences that pension. I order as follows:
- a) If the Respondent's Pension has not yet commenced and the respondent dies before the claimant receives her share of the benefits, then the claimant is entitled to the benefits that the claimant would have received had the Respondent's Pension been divided under the FLA prior to the respondent's death;
 - b) If the Respondent's Pension has not yet commenced, the respondent may designate any person permitted by law to be a beneficiary of his share, including pre-retirement survivor benefits, without affecting the claimant's priority to the claimant's share; and
 - c) If the Respondent's Pension has commenced and there is a guarantee period, then the respondent must designate and maintain the claimant as the beneficiary of the guarantee period to ensure she receives her share. The respondent may only change the designation if the claimant predeceases the respondent.
- [73] The respondent will be a trustee of the claimant's share of the Respondent's Pension, owing all the duties of a trustee to the claimant as beneficiary in respect of that interest. If the respondent's estate or any other person receives part of the claimant's share of the Respondent's Pension, that person will hold the claimant's share in trust for the claimant upon receiving actual or constructive notice of the claimant's interest, and will pay it immediately to the claimant.

- [74] The parties must each pay half of the administrative fees charged for dividing the Respondent's Pension. The parties shall take all reasonably necessary steps to implement these orders and cooperate with each other in executing any necessary documents in a timely manner. The parties may apply to a court of competent jurisdiction for any further directions or orders required to facilitate and enforce the division. C. Family Debt
- [75] The only family debt that requires consideration is the BMO LOC, which has a balance of \$17,330 as of February 2023.
- [76] At Separation, the BMO LOC had a nil balance. On February 29, 2020, the respondent drew down the BMO LOC by \$25,793.25 to pay the invoice for the Dodge. The claimant paid off that balance using \$15,000 from APPA's account and an August 2020 transfer from T.H.'s account derived from the sale proceeds of a vehicle owned by the parties. At that point, the balance was again nil.
- [77] On December 22, 2020, the respondent insisted that the BMO LOC be used again, this time for a \$20,000 transfer to pay down the CWCE LOC. On December 26, the respondent withdrew a further \$5,000 from the BMO LOC for a legal retainer. On June 11, 2021, he withdrew a further \$2,000.
- [78] In my view, the BMO LOC is not a family debt. All these withdrawals were solely for the respondent's benefit. The claimant has been solely responsible for making principal and interest payments on the BMO LOC since December 2020. The BMO LOC is a debt owed by the respondent, who must not only reimburse the claimant for the payments she has made since December 2020, but also pay out the balance owing from his share of the family property. D. Unequal Division of Family Property
- [79] The claimant submits that it would be significantly unfair to her to equally divide the family property. She seeks an order for unequal division in her favour.
- [80] The claimant submits that the significant unfairness arises for the following reasons:
- a) The respondent unilaterally decided to purchase the Prince George Property a few months before Separation against the claimant's protestations. He used \$42,000 in family money for the down payment and agreed to a mortgage rate of interest that far exceeded conventional interest rates. He then spent a further \$20,000 to \$40,000 to renovate the Prince George Property;
 - b) The respondent lost the Prince George Property to the lender when he defaulted on the mortgage;
 - c) The respondent unilaterally decided to purchase the Ford and the Dodge for \$30,000 and \$25,793, respectively, despite there being no objective basis for believing that either was required by CIBI, CWCE or otherwise;

- d) The respondent did not contribute in any way to the Family Home's mortgage, repairs, insurance or other related costs from January 1, 2021 until its sale in April 2021;
 - e) The respondent made withdrawals from the BMO LOC and his RRSP for his own benefit; and
 - f) The respondent failed to comply with court orders related to disclosure of relevant documents and information.
- [81] The claimant asserts that, but for the respondent's actions, there would be more family property available for division, including the funds used to purchase and renovate the Prince George Property, the cost of purchasing and repairing the Ford and the Dodge, and his RRSP.
- [82] In his counterclaim, the respondent also sought an unequal division of the family property, on the basis that he contributed to the family assets post-Separation. The respondent wisely did not advance this argument at trial.
- [83] I am persuaded by the claimant's submissions respecting the Prince George Property and the tow trucks, and conclude that an equal division of certain family property would be significantly unfair to the claimant. An adjustment is required.
- [84] I do not consider an unequal division of family property to be the appropriate recourse for: the respondent's failure to contribute to the Family Home's expenses from January 1, 2021 through April 2021; his withdrawals from the BMO LOC and his RRSPs; or his failure to comply with court orders. I have dealt with, or will deal with, these aspects of the respondent's behaviour elsewhere.
- [85] The starting point in determining the fairest division of family property is to notionally divide the property equally: *Chang v. Chang*, 2020 BCSC 1783 at para. 106. Attached as Appendix A to these reasons is a Scott schedule, wherein I have equally divided the family property as determined above (the "Scott Schedule"). The Scott Schedule does not include the BMO LOC, which I will deal with separately. The Scott Schedule shows that if the family property were divided equally, the respondent would have to make an equalization payment of \$14,566 to the claimant.
- [86] The claimant seeks a 60 percent reapportionment of the sale proceeds of the Family Home and the Sorrento, resulting in her receiving \$43,104.50 more and the respondent an equal amount less. Value 50/50 Claimant (60%) Respondent (40%) Family Home Proceeds:
\$424,975 \$212,487.50 \$254,985 \$169,990 Kia Sorrento Proceeds: \$6,068 \$3,034 \$3,641 \$2,427
Sub Total: \$431,043 \$215,521.50 \$258,626 \$172,417
- [87] I accept that the claimant must receive 60 percent of the sale proceeds of the Family Home and the Sorrento in order to avoid significant unfairness. The claimant will receive \$258,626 and the respondent will receive \$172,417 with the balance of the family property to be divided equally. Any interest that has accrued on the \$431,043 since it was put into trust in April 2021, will be divided equally between the parties.

[88] The Scott Schedule reflects the findings I have already made regarding the family property in each party's possession. As reflected in the table below, the respondent nets out as having \$35,200 more than the claimant: Value Claimant Respondent TD Bank Account \$7,200 \$7,200 Active Bank Account \$3,600 \$3,600 2008 Dodge Tow Truck and Mazda \$31,900 \$31,900 Adventure Camper \$14,000 \$14,000 Suzuki GSXR Bikes \$4,000 \$4,000 2011 Ford Tow Truck \$33,000 \$33,000 Mustang \$5,500 \$5,500 Zodiac \$500 \$500 Lund Boat \$22,500 \$22,500 Utility Trailer \$2,500 \$2,500 Camaro \$22,800 \$22,800 Husqvarna \$8,500

\$8,500 Sub Total: \$156,000 \$60,400 \$95,600

[89] The respondent will pay \$17,600 to the claimant from his share of the proceeds of the sale of the Family Home and the Sorrento to equalize this discrepancy. Value Claimant Respondent Family Home Proceeds: \$424,975 \$254,985 (60%) \$169,900 (40%) Kia Sorrento Proceeds: \$6,068 \$3,641 (60%) \$2,427 (40%) Equalization payment: \$17,600 (\$17,600) Payment after division: \$275,619 \$154,727 VI. ADJUSTMENTS AND ADDITIONAL PAYMENTS

[90] In addition to the division of family property, the claimant seeks to be reimbursed from the respondent for:

- a) \$13,982.38 in payments she has made on the BMO LOC since December, 2020;
- b) \$2,189.99 representing one-half of the repair, renovation and cleaning costs required to sell the Family Home;
- c) \$328.13 representing one-half of Mr. Cory's invoice for preparing the Worthington Appraisal;
- d) \$2,896.36 representing one-half of the mortgage payments on the Family Home from January 1, 2021 until its sale in April 2021; and
- e) \$540 representing one-half of the 2022 insurance on the Lund.

[91] The respondent agrees that he must reimburse the claimant for \$13,982.38 respecting the BMO LOC. I have already determined that the balance owing on the BMO LOC is his debt and that it should be paid off from his share of family property.

[92] I conclude that the claimant is entitled to the reimbursements she seeks of \$2,189.99 for the cost of repairing, renovating and cleaning the Family Home and \$328.13 for the Worthington Appraisal.

[93] I decline to award her one-half of the Family Home's mortgage costs or the 2022 insurance on the Lund. The claimant resided in the Family Home to the respondent's exclusion until it was sold. Meanwhile the respondent resided in rental accommodation. Accordingly, I conclude the mortgage costs the claimant paid should be offset by the rent the respondent paid. Further, I have ordered that the Lund shall remain the property of the claimant and therefore the respondent should not be required to pay for its insurance. VII. CHILD SUPPORT

- [94] The Children have resided with the claimant since Separation. The respondent agrees that he owes the claimant outstanding child support for S.H. for the 2021 calendar year.
- [95] The parties agree that child support should be calculated based on the respondent's 2020 Guideline income of \$67,380, which translates into monthly child support of \$640 or \$7,680 (\$640 per month x 12 months) for the 2021 calendar year.
- [96] Accordingly, the claimant's claim for retroactive child support in the amount of \$7,680 is allowed. VIII. SPOUSAL SUPPORT
- [97] The respondent seeks spousal support from the claimant, who strenuously opposes the claim on the basis of entitlement.
- [98] The objectives of spousal support are set out in s. 15.2(6) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and s. 161 of the FLA. Entitlement to spousal support must recognize any economic advantages or disadvantages arising from the marriage or marriage breakdown, relieve against economic hardship and, as far as practicable, promote the economic self-sufficiency of each spouse within a reasonable timeframe. If entitlement to spousal support is established, the court then determines the amount and duration of support by considering such things as the conditions, means and needs of each spouse, the length of the relationship and functions performed by each spouse during the relationship.
- [99] On February 12, 2022, the respondent commenced working full-time for the Canada Revenue Agency as a Non-Filer Officer earning approximately \$29.00 per hour. His duties are to call persons who have failed to file tax returns. His 2022 earnings were \$49,420. In addition to that full-time work, he also works full-time as a self-employed court bailiff and certified asset appraiser through CWCE, which he says is doing well despite not producing any financial statements or tax returns for CWCE.
- [100] The respondent's sole basis for claiming spousal support is his claim that he makes less money than the claimant. What little income tax information the respondent provided, disclosed that he earned \$79,409 in 2021. The claimant's income from CIBI is roughly the same.
- [101] I am not persuaded that the respondent has proven entitlement to spousal support. He has not been economically disadvantaged by either the Marriage or its breakdown. Nor has he shown that he needs spousal support. He is employed full-time with the Canada Revenue Agency and CWCE. He is a licensed court bailiff and certified appraiser. I have already concluded that the expenses he lists in his latest F8 Financial statement are grossly exaggerated and, in any event, many are paid by CWCE. I conclude that the parties' annual incomes and expenses are roughly equal. The respondent is physically and psychologically functional. Neither party has been able to purchase a residence and both are currently residing in rental accommodations. They each have the ability to earn similar incomes and have the ability to increase their incomes should they wish to do so.

- [102] In the result, the respondent's claim for spousal support is dismissed. IX. RESPONDENT'S FAILURE TO DISCLOSE
- [103] The claimant seeks an order that, pursuant to s. 213 of the FLA, the respondent be fined \$5,000 for his failure to comply with disclosure orders made by Master Schwartz on October 24 and December 29, 2022.
- [104] Section 5 of the FLA imposes a duty on all parties to a family dispute to provide full and true information. The purpose of the section is to assist the parties with the resolution of the dispute.
- [105] The claimant made numerous disclosure requests of the respondent, when he was both represented by counsel and self-represented. I am satisfied that he failed to make timely or any disclosure of documents relevant to the dispute. This failure prompted the claimant to apply for document disclosure pursuant to s. 212 of the FLA. On October 24, 2022, Master Schwartz ordered the respondent to produce and deliver various income tax, banking and other relevant documents to the claimant's counsel within 14 days.
- [106] On December 29, 2022, the parties entered into a consent order that included a term that the respondent comply with Master Schwartz's order of October 24, 2022. Again, the respondent chose to ignore the order.
- [107] Subsection 213(2)(d) of the FLA authorizes the Court to order a person who fails to comply with a s. 212 disclosure order to pay an amount not exceeding \$5,000 to a party or spouse whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure.
- [108] The purpose of s. 213 is to secure the timely and complete disclosure of relevant documents and to deter those litigants who might be tempted to resist disclosure: *Ren v. Emerson*, 2017 BCSC 547. A fine may be ordered where the non-production and dilatory production of documents significantly hampered a party from moving the case forward.
- [109] I am satisfied that the respondent has either deliberately or carelessly failed to take the steps required of him to move this case forward and thereby caused the claimant unnecessary delay and expense.
- [110] Considering the evidence and the purpose of s. 213 of the FLA, I order the respondent to pay \$5,000 to the claimant, which shall be paid out of his share of the proceeds of the Family Home. X. COSTS
- [111] In addition, the claimant seeks special costs against the respondent for his conduct during these proceedings. In particular, she points to the respondent's failure to comply with court orders and his non-attendance at an examination for discovery on January 26, 2023.
- [112] Although the respondent's behaviour was inexcusable, I am not satisfied that it was egregious enough to warrant the sanction of special costs against him.

[113] The claimant will have her Scale B costs.

[114] The claimant's counsel is directed to draft this order and forward it to the respondent for signature. This draft order should be based on the draft form of order provided to the Court by Ms. Spelliscy during her submissions, with which I mostly agree. The respondent shall have 14 days from receipt of the order to sign and return it to the claimant's counsel for entry. If he fails to do so, I order that the requirement to have him sign the order be dispensed with. "G.P. Weatherill J." Appendix A - Scott Schedule based on equal division of family property Property/Debt Value Claimant Respondent Real Property: Monarch Proceeds (*interest has accrued) \$424,975.00 \$212,487.50 \$212,487.50 Total: \$424,975 \$212,488 \$212,488 Financial Accounts: TD Bank Account - TSH, Respondent's July 2021 Financial Statement \$7,200 \$7,200 Active's Bank Account proceeds \$3,600 \$3,600 Total: \$10,800 \$0 \$10,800 Corporate interests: CIBI Equals CWCE 100% CWCE Equals CIBI 100% APPA \$0 \$0 \$0 Total: \$0 \$0 \$0 Vehicles: Kia Sorrento Net Proceeds \$6,068.34 \$6,068.34 2008 Dodge Tow truck/Mazda Proceeds *On deposit w/Manulife GIC \$31,900 \$31,900 Adventure Camper \$14,000 \$14,000 Suzuki GSXR Motorbike Proceeds \$4,000 \$4,000 H&H Utility Trailer as per Worthington Appraisal \$2,500 \$2,500 1966 Mustang as per Worthington Appraisal \$5,500 \$5,500 Zodiac as per Worthington Appraisal \$500 \$500 1968 Camaro as per Worthington Appraisal \$22,800 \$22,800 Lund Boat as per Worthington Appraisal \$22,500 \$22,500 2011 Ford Tow Truck proceeds \$33,000 \$33,000 Husqvarna \$8,500

\$8,500 Total: \$151,268 \$66,468 \$84,800 Debt: BMO LOC *responsibility disputed Aggregate Value of Assets and Debts: \$587,044 \$278,956 \$308,088 Equalization payment calculation: (\$14,566)

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Prepared on 26 October 2026 · Esheria