

CANADA / JUDGMENT

## Klopfstein v. Klopfstein

2025 BCSC 864

### COURT

Supreme Court of British Columbia

### DECIDED

9 May 2025

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2025 BCSC 864 Klopfstein v. Klopfstein

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Klopfstein v. Klopfstein,

2025 BCSC 864

Date: 20250509

Docket: E39561

Registry: New Westminster

Between:

Jost Klopfstein

Claimant

And

Gloria Anne Klopfstein

Respondent

Before: The Honourable Justice Hoffman

Reasons for Judgment

Counsel for the Claimant:

E.K. Chhina

K. Gill

The Respondent, appearing in person:

G.A. Klopstein

(April 22-24, 2025)

Counsel for the Respondent:

I. Turaglio

(April 25, 2025)

Place and Date of Summary Trial:

New Westminster, B.C.

April 22-25, 2025

Place and Date of Judgment:

New Westminster, B.C.

May 9, 2025

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## Overview

[1] This family law proceeding has a long and conflict filled history. The claimant is Jost Klopstein and the respondent is Gloria Anne Klopstein.

- [2] The parties met in Switzerland, the claimant's home country, in 1993 and began a common-law relationship in 1994. The parties married in 1995 and separated in March 2011 and were formally divorced pursuant to an order of the Court made on March 3, 2014 (the "2014 Order"). There are three children of the marriage who are now aged 19, 22 and 24. Since 2022, they have resided with the claimant.
- [3] The 2014 Order, which was made by consent, intended to resolve the issues of property division and spousal support among other matters. In short, the consent order provided for an unequal division of the family's numerous real estate assets. These assets consisted of the family home and a bare land both lot in BC, as well as over 20 rental condominiums and houses located in Edmonton, Alberta. These properties were heavily mortgaged at the time of the 2014 Order. The unequal division of the limited equity in these properties was intended to account for and resolve the respondent's claim to spousal support.
- [4] Pursuant to the terms of the 2014 Order, the joint properties were divided, and those allotted to each party were transferred into their names. They have been solely responsible for the care and maintenance of those properties since that time.
- [5] The 2014 Order used assessed values to arrive at an agreed valuation for the family real estate assets, with the exception of the family home which had been appraised. Concerns were subsequently raised that the valuations that formed the basis for division of the equity were not accurate. Justice Groves, who has case managed this high conflict matter, subsequently made an order on September 5, 2019, that all of the properties be appraised as of February 1, 2014.
- [6] On March 19, 2021, in reasons indexed as 2021 BCSC 498, Justice Groves pronounced judgment in an application brought by the claimant to set aside the provisions of the 2014 Order which resolved her spousal support claim and divided numerous parcels of property owned and acquired during her marriage (the "2021 Decision"). Justice Groves granted the application and set aside those provisions on the basis that a common mistake was made by the parties as to the value of the real property assets that were being divided.
- [7] The 2021 Decision sets out much of the factual background of the parties' relationship and the negotiation of the 2014 Order that is not necessary for me to repeat here. I am bound by the findings of fact made by Justice Groves.
- [8] As set out in para. 50 of the 2021 Decision, the parties agreed that the claimant would receive equity in the properties in the amount of \$362,872 and the respondent would receive \$528,705. However, once appraisals were obtained, the claimant's assets were valued at \$328,373, and there was no value in the claimant's assets with a balance of \$9,029 owing on these assets.
- [9] Beyond setting aside the provisions that relate to division of the real estate holdings and the spousal support, the 2021 Decision did not specify how to correct the common mistake that was made in respect of the value of the assets.

- [10] Since the 2021 Decision, the parties have been unable to agree on its implications, and the common mistake has gone uncorrected.
- [11] This summary trial is brought by the respondent in an effort, at least in part, to correct that mistake. I say "in part", because, in the interests of finality and to save the costs of a 10-day trial which is currently set to take place before Justice Groves in October, the respondent seeks significant relief beyond the correction of the mistake to resolve all outstanding issues between the parties.
- [12] It is the respondent's position that the 2021 Decision set aside in its entirety the term dividing the property, which were intended to satisfy the claim for spousal support. As a result, she says that the court must now engage in a fresh assessment of her entitlement to spousal support. In this regard she seeks retroactive lump sum spousal support from August 2012 to April 2025 and ongoing spousal support going forward to March 1, 2030. She also seeks a division of the properties but based on 2025 values. However, for simplicity's sake, she seeks to apportion the debts as they stood in 2014. In addition, she seeks retroactive child support from January 2017 to August 2024 and an apportionment of section 7 expenses.
- [13] The claimant takes the position that this summary trial should be limited to correcting the common mistake in the 2014 Order. He understood, both from appearances before Justice Groves and communications between the parties leading up to the scheduling of this hearing, that the summary trial would be narrowly focused on determining how to correct the mistake. The claimant argues that it would be premature to consider any claim for retroactive spousal support before determining what amount of lump sum spousal support is owing through a correction to the 2014 Order.
- [14] In correcting the mistake, the claimant submits that court must keep the parties' original intent intact by making an order which reflects that intention. The claimant says that contrary to this principle, the respondent is inappropriately seeking to litigate afresh matters that the parties intended to resolve by the 2014 Order. The claimant takes the position that the original intent of the parties demands that 2014 values should be used and the assets should be divided in accordance with the percentages achieved by the 2014 Order (59% to the respondent and 41% to the claimant). This would result in the claimant paying to the respondent the sum of \$197,441. In the alternative, if the court divided the assets equally and provided an additional \$83,000 payable for lump sum spousal support, the payment to the respondent would amount to \$242,589.
- [15] The claimant says that the additional issues raised by the respondent require testimony and cross-examination of witnesses to resolve. For example, he takes the position that the respondent is deliberately underemployed and that there is a dispute as to whether the children remain children of the marriage. In addition, the parties do not agree on the 2025 values for the real estate holdings. Each party retained their own appraiser, and the difference between the appraisals is over \$400,000. The claimant says that if the court is

required to resort to the 2025 values, then cross-examination of the appraisers will be required.

- [16] For the reasons that follow, I have concluded that it is not appropriate to resolve all the issues presented in this summary trial application. However, I am satisfied that I can find the facts necessary on the evidence before me and that it is just to determine the manner in which the 2014 Order should be corrected to reflect the intent of the parties. In coming to this conclusion, I recognize that the the parties and their children would greatly benefit from a full and final resolution of this painful chapter in their lives. However, correcting this mistake will give the respondent what the parties intended she should receive in 2014. Doing so does not preclude the respondent from seeking a retroactive variation for spousal support and child support at the upcoming trial.

## Issues

- [17] The issues on this application are as follows:

- a) What is the scope of the court's jurisdiction following the setting-aside of the term in the 2014 Order dividing the real estate assets?
- b) Are there issues raised in this application that are appropriate for resolution by way of summary trial pursuant to Rule 11-3(5) of the Supreme Court Family Rules?

Scope of Jurisdiction re Setting Aside the Property Division

## Application before Justice Groves

- [18] The parties appear to be in agreement that the issue of what remedy flows from Justice Groves' order setting aside the 2014 Order provision dividing the real estate assets is a legal question that can be resolved on this summary trial. However, there is disagreement both as to the grounds upon which Justice Groves set aside the provision in question and the resulting remedy.
- [19] In light of this disagreement, a careful review of the 2021 Decision is required. Justice Groves summarized what the respondent sought in her application as follows:
- [51] Although the notice of application is complex and wordy, it appears that Ms. Klopstein seeks to vary the 2014 Order on the basis of common mistake and unconscionability. Specifically, she seeks to vary the 2014 Order to provide her a lump-sum payment equal to 59% of the true value of the family properties as at the date of that order or an equivalent amount as equitable compensation. In the alternative, Mrs. Klopstein seeks retroactive and on-going spousal support.
- [52] It was agreed at the start of the application that the application would deal with the threshold issue of whether the two challenged aspects of the 2014 Order could be set aside. The two basis advanced for this are common mistake and unconscionability.

[Emphasis added.]

- [20] The respondent advanced two grounds, common mistake and unconscionability to set aside the 2014 Order. In respect of the unconscionability ground, the respondent relied on the vast difference between the values assigned to those properties in the 2014 Order and the true market value of those assets, together with the conduct of the claimant leading up to the 2014 Order.
- [21] The key determination in the 2021 Decision regarding the intent of the parties and what aspect of the 2014 Order was set aside is as follows:
- [63] What is abundantly clear on the facts before me is that the parties intended to offset the otherwise agreed to equal division of their real estate holdings substantially in Ms. Klopstein's favour so as to meet the agreed to obligation that Mr. Klopstein had to her for spousal support. It is equally clear that the parties were mistaken as to the value of assets. This mistake has led to a circumstance that the parties did not contemplate or agree to, a circumstance where Ms. Klopstein received no division of property and no spousal support. Based on the principles articulated in Valaire, I find the 2014 Order related to division of real estate assets and waiver of spousal support does not reflect the true agreement of the parties. Further, I find the parties always had the intention to recognize Ms. Klopstein's claim for spousal support and to substantially alter the otherwise prima facie equal division of their real estate assets in her favour to deal with her spousal support claim. They were mistaken as to the values of the real estate and thus the equity or lack thereof in the real estate. This was a common mistake. As such, those aspects of the 2014 Order need to be set aside. I make that order.
- [64] Having made that determination, I do not necessarily have to deal with the unconscionability argument. However, I will do so.
- [22] Justice Groves went on to make certain factual findings relevant to the conscionability argument. He found that the respondent was vulnerable and not in an equal bargaining position. He further found that the claimant engaged in underhanded conduct and was waging a war of attrition with the respondent. He then concluded as follows:
- [76] All that being said, this is fundamentally a case about common mistake and about the consequences thereof. It is abundantly clear to me that neither party anticipated that the real property holdings that they were dividing were valued at what the appraisal evidence confirms they are. They both clearly wanted to divide these properties initially equally, and then create compensation to Ms. Klopstein for her spousal support claim. Based on the values now known, that was not achieved. The remedy is to set aside, as noted above, the provisions of the 2014 Order as they relate to division of the real estate holdings and spousal support. That is my order.
- [23] Notably, Justice Groves did not award equitable compensation.

- [24] The notice of application and written submissions of the respondent filed prior to 2021 Decision are in evidence before me. In her notice of application, she sought an order that the claimant pay to the respondent the amount of compensation that he received above the 41% as was intended in the 2014 Order. In a July 31, 2019 affidavit sworn in support of the application before Justice Groves, the respondent deposed that the 2014 Order "was meant to divide all the family property based on a 59/41 division" which was "meant to provide me with more of the family property in lieu of the spousal support I was entitled to receive."
- [25] Justice Groves found that it was undisputed before him that the intent of the parties was for the respondent to receive 59% of the real property assets and that, in return, she would waive her claim for spousal support: 2021 Decision at para. 42.

### Positions of the Parties

- [26] On the application before me, the respondent takes the position that Justice Groves set aside the 2014 Order also on the basis of unconscionability. The respondent argues that if the agreement was set aside as unconscionable, the property division and spousal support terms are set aside in their entirety and that these issues must be litigated afresh. In other words, it is the respondent's position that she should not be held to the 59/41 division reflected in the 2014 Order. Rather, she submits that the court must first determine how much support she is entitled to and then unequally divide the true value of the equity in accordance with this entitlement.
- [27] The respondent relies on *Rick v. Brandsema*, 2009 SCC 10, where the Court set aside a separation agreement made in circumstances where the wife was in a vulnerable position that was exploited by the husband. In these circumstances, the Supreme Court found that the entire agreement was unenforceable because it was unconscionable owing both to the negotiation tactics used and the extent to which the agreement deviated from the objectives of the Family Relations Act, R.S.B.C. 1996, c. 128.
- [28] Following from the position that the spousal and property division provisions are set aside in their entirety and must now be re-determined by the court, the respondent says that the real estate assets should be divided using their 2025 values. Under the Family Relations Act, assets are generally valued as of the date of trial; however, the court retains discretion to fix another date, not earlier than the triggering event, to achieve fairness: *N.M.M. v. N.S.M.*, 2004 BCSC 346 at para. 76. The respondent submits that this summary trial application is, in effect, the date of trial.
- [29] The claimant says that the 2021 Decision is clear that the only basis for setting aside the provisions relating to the division of real estate holdings and spousal support was common mistake. He submits that the 2021 Decision found that the parties intended to divide the assets unequally in order to provide spousal support to the respondent and that any remedy provided on this application must uphold this intention as far as possible: *Valaire v. Valaire*, 2000 BCSC 1491; *Buschau v. Rogers Communications Inc.*, 2004 BCCA 142; *Janmohamed v.*

Janmohamed, 2016 BCSC 513.

- [30] The claimant submits that the above principles require the court to correct the mistake with reference to the 2014 appraised values. In doing so, he relies on the decision of *Janis v. Janis*, 2016 BCCA 364. This decision, under ss. 65-66 of the Family Relations Act, grappled with the issue of what valuation date should be used for the purposes of dividing a family business which increased in value significantly after the parties separated. The court reviewed the case law establishing that the date of trial should be used as the valuation date unless there is a reason to depart from this general rule. Following this review, Garson J.A. held that while the valuation date is typically described as the date of trial, it is more accurate define this point of time as the date "when one spouse's interests in a family asset is taken away and a compensation order is made": *Janis* at paras. 44-45, 49.

## Findings

- [31] I do not accept the respondent's submissions that Justice Groves set aside the terms at issue in the 2014 Order on the basis of unconscionability. As I read the 2021 Decision, Justice Groves did so on the basis of a mutual mistake as to the true value of the properties. The factual findings of Justice Groves as to the respondent's vulnerability and the claimant's conduct played no role in his finding that there was a mutual mistake. While he found that the claimant had greater knowledge of the value of the condominiums, he also concluded that "it was abundantly clear to me that neither party anticipated that the real property holdings that they were dividing were valued at what the appraisal evidence confirms they are": 2021 Decision at paras. 46, 76.
- [32] As found by Justice Groves, the intent of the parties was to total up the equity in their heavily mortgaged properties, divide it initially equally and then create compensation for the respondent's spousal support claim.
- [33] In rectifying a common mistake in an agreement between parties reflected in an order, the court must fashion a remedy which keeps intact the intent of the parties that was mistakenly reflected in the order: *Valaire; Buschau* at paras. 27-28; *Janmohamed*. In *Janmohamed*, the court held that doing so respects the ability to the parties to reach settlements and enhances certainty and finality of results for parties who make the effort to resolve their litigation without going to trial. The court held:
- [22] It is well-settled that a consent order is a final judgment which embodies the agreement of the parties and can be enforced as such, subject to certain limited exceptions. In *Shackleton v. Shackleton*, 1999 BCCA 704, the court stated:
- [12] A consent order is a formal expression of an agreement between the parties. Where parties intend to finally dispose of the issues between them, a consent order will operate as a final judgment: *Campbell v. Campbell* (1954), 1 D.L.R. 304 (B.C.S.C.). For the same reason that courts enforce settlement agreements, to provide certainty to parties settling disputes, consent orders are not easily altered. Subject to statutory provisions otherwise a consent

order may be set aside or altered in substance only in circumstances which justify the same treatment to the underlying contract: [citations omitted]

- [23] As stated in *Shackleton*, the salutary effect of enforcing a consent order is obvious: it provides certainty of result to the parties. This, in turn, encourages the parties to settle and avoid the expense, delay and uncertainty arising from ongoing litigation. I assume that these objectives were exactly what the parties hoped to achieve in this case by the granting of the Consent Order, since they avoided the trial that was about to begin the next day or so.
- [34] Using the corrected 2014 appraised values to rectify the mistake will best reflect the intentions of the parties in 2014. To use 2025 values to determine the correction would be to fix the parties with knowledge they could not have obtained when they agreed to the 2014 Order. Consistent with the principles in *Janis*, I find that the assets should be valued as of the date of 2014 Order as this was the date that the joint interests of the parties in the real estate holdings were dissolved and compensation was paid, albeit in an incorrect amount.
- [35] As I will discuss further below, the 2025 values of the properties may be relevant to any application by the respondent for a variation of the lump sum spousal payment provided for in 2014 Order.

#### What Issues can be Resolved in this Summary Trial?

- [36] Under Rule 11-3(15) the court may grant judgment on a summary trial application, either on an issue or the action generally, unless:
- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law; or
  - (ii) the court is of the opinion that it would be unjust to decide the issues on the application.
- [37] In *Hudema v. Moore*, 2021 BCCA 482 at para. 19, the Court of Appeal held that summary trials are available under this rule to promote the just and efficient resolution of disputes and that they may proceed where the court is able on the limited record before it to answer the relevant questions of fact and law.

#### Rectification of Common Mistake

- [38] Given my findings on the law, I am satisfied that I have sufficient evidence before me to fashion an appropriate correction of the common mistake.
- [39] The rectification of the agreement must reflect the intentions of the parties at the time it was made. This case is unusual as 11 years have passed since the 2014 Order was consented to by the parties. The temptation to use hindsight to colour the intention of the parties in 2014 is to be resisted. The respondent submits on this application that she has been "left holding the bag of the parties' bad investments" and that the rental condos have consistently lost money. She has had to subsidize those properties from the income she earned from the rental houses. In reply, her counsel, who appeared only on the last day of this hearing, argues that

the flaw in the claimant's proposal to rectify the 2014 Order is that it presumes that the respondent would have agreed to the same deal had the true value of the properties been known.

- [40] To address this argument, it is necessary to review the findings of fact in the 2021 Decision regarding how the parties acquired the 14 condominium units:
- [14] The origins of the purchase of the 14 condominium units in Edmonton is a crucial factor. As I understand the evidence, these are condominium/apartment units which were originally to be purchased by a third party, although in fact the original offer to purchase was in the name of Gloria Klopstein. She was on the contract as agent for this third party. It seems that the Klopsteins and this third party had an understanding that the respondent would assign her interest in the contracts of purchase and sale to this third party.
- [15] For reasons which are uncertain to me, the third party failed to provide the entirety of deposits and complete on the agreement. He paid part of the deposit, the evidence suggests, in the amount of \$70,000. He could not get his partial deposit back. Ms. Klopstein felt there was some advantage in completing the purchase of these properties because the partial deposit advanced from the third party could be applied to the Klopsteins' joint credit. Although it appears that Mr. Klopstein did not necessarily agree that this was prudent, the parties nonetheless went ahead with the purchase of the 14 condominium units.
- [16] I may have some of the facts leading up to this unique purchase arrangement wrong, but suffice it to say that I conclude on the evidence that initially Mr. Klopstein was reluctant to purchase these condominium units and Ms. Klopstein was keen to do so. Although the parties eventually agreed to purchase these condominium units and that Mr. Klopstein consented to the purchase, he very much felt that this was Ms. Klopstein's investment. At separation, he was anxious that she end up with "her" assets, these 14 condominiums.
- [41] The fact that all of the parties' real estate assets were heavily mortgaged is also significant. All of the assets, including the family home, were highly leveraged. Given their overriding intent to divide what equity they had in the properties, the desire of the claimant that the respondent be responsible for the Edmonton properties, I am unable to conclude that the parties would have agreed to a different division of the assets themselves. I find that they would have simply agreed to divide the equity unequally in a different ratio to create an amount to cover off the respondent's claim for spousal support.
- [42] Based on the assessed values, the 2014 Order divided the \$851,577 in total equity 41% or \$362,872 to the claimant and 59% or \$528,705 to the respondent. The respondent received approximately \$83,000 more than she would have had the equity had been divided equally.
- [43] The 2014 appraised assets revealed that the true equity in the properties was actually only \$319,344, and specifically, most of the Edmonton rental properties were worth significantly less than the mortgages registered against them. The assets transferred to the claimant were worth \$328,373 while the respondent's assets had negative equity in the amount of -\$9,029.

- [44] The claimant makes two proposals to ensure the intent behind the 2014 Order can be carried out. The first is based on a reapportionment using the 2104 appraised value of 41% to the claimant and 59% the respondent using the 2014 appraised values.
- [45] Dividing the true total equity on this basis would be:
- the claimant receives 41% or \$130,931;
  - the respondent receives 59% or \$188,413;
  - additional payment from the claimant to the respondent to provide 59% would calculated as follows:  $\$328,373 - \$130,931 = \$197,441$ .
- [46] This approach results in the claimant receiving just over \$33,000 over and above what she would have received had the equity in the property been divided equally.
- [47] Recognizing the disparity between this outcome and the arrangement the parties thought they were entering to cover off the claim for spousal support, the claimant's second proposal divides the equity equally (\$159,672 each) and provides an additional \$83,000 for lump sum spousal support. This results in a payment to the respondent in the amount of \$242,589.
- [48] The claimant notes that this lump sum amount is consistent with the Spousal Support Advisory Guidelines ("SSAG") using the parties' guideline incomes and status of the children as set out in the 2014 Order in that it falls between the mid (\$67,766) and high (\$97,375) SSAG amounts.
- [49] The claimant accepts that some form of interest is owing to the respondent given that she has been without the proper property division and lump sum spousal award for 11 years. The respondent is entitled to pre-judgment interest pursuant to s. 1 of the Court Ordered Interest Act, R.S.B.C. 1996, c. 79. In accordance with that section, interest is payable from the date on which the cause of action arose to the date of the order. The cause of action arose on March 3, 2014.

## Retroactive and Ongoing Spousal Support and Child Support

- [50] I now consider the question of whether it is appropriate to resolve the respondent's claims for retroactive and ongoing spousal support and child support on this summary trial.
- [51] I begin with the claimant's concern that he had little notice that these matters were to be addressed in the summary trial. Given the communications between the parties and to the court in the lead-up to this application, he understood that the summary trial was to deal solely with correcting the March 2014 Order. It was not until he received the notice of application filed on March 28, 2025, that the claimant understood that the respondent was seeking to expand the summary trial beyond this single issue. The claimant disputes the underlying factual basis for retroactive and ongoing spousal support on the basis that the respondent is highly educated and has the relevant experience to be earning far more than she does from managing her rental properties. He seeks to impute income to her on this

basis.

- [52] The claimant also says that any claim for child support needs to consider that his three children have been in his care since at least 2022 and continue to be children of the marriage due to their sons' various health conditions and their daughter's ongoing post-secondary education.
- [53] In the short period of time the claimant had to respond to the application, he was not able to collect and submit all of the relevant evidence necessary to deal with these issues although they are addressed to some extent in his affidavit. The claimant says that if given sufficient notice, he would have brought a cross-application for child support from the respondent.
- [54] As set out above, the respondent's position on this application was that the 2014 Order was set aside in its entirety and that the court should consider afresh the quantum of spousal support she was entitled to when the parties struck their agreement in 2014. This explains, at least in part, what the claimant says is an expansion of the issues on this application. The respondent has been without any spousal support for 11 years and, based on the evidence before me, has been struggling to keep the rental properties out of a negative equity position while the claimant has enjoyed a very significant increase in the equity of the properties assigned to him. This provides context to the respondent's efforts on this application to address the question of whether she is entitled to ongoing spousal support. In my view, the respondent is not to be faulted for attempting to achieve a final resolution of her claims.
- [55] The respondent's claim for child support is based on the fact that there has been no adjustment to child support since 2016. The last review of child support took place in 2019 and only covered child support for the years 2014 to 2016. Using DivorceMate calculations, she estimates that the claimant owes \$18,673 in support. This calculation takes into account an offset of \$8,845 that the respondent concedes she owes the claimant for the period up to August 2024. The respondent explained that she included the child support claim in her application because it is expensive to go to court and she wished to obtain a final resolution of all outstanding issues. Further, given the relatively modest amount, she submits that the matter could be easily resolved.
- [56] I find for the following reasons that it is not appropriate to resolve these issues on this summary trial.
- [57] First, I am satisfied that it would be premature to consider whether there is any outstanding obligation for spousal support before the corrected amount for the property division and additional lump sum spousal amount under the 2014 Order is provided to the respondent. She will have an obligation to account for this on her updated Form F8 Financial Statement, and the receipt of this amount will have to be considered in any analysis of whether there is a change of circumstances under s. 17(4.1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), sufficient to justify any variation in the lump sum spousal she will receive from the correction of the 2014 Order.

- [58] Without suggesting what the outcome of such an assessment would be, the fact that the respondent has been without spousal support for 11 years would need to be factored into any assessment of whether the lump sum spousal provided for in the 2014 Order, now recalculated at \$83,000, fulfilled her overall entitlement to support.
- [59] Practically speaking, given that child support is prioritized over spousal support under s. 15.3(1) of the Divorce Act, any entitlement to child support will need to be considered in conjunction with any future application to vary spousal support., either brought separately, or at the upcoming trial.
- [60] Secondly, the claims for additional spousal support and child support both engage disputes in the evidence, which I am unable to resolve on the basis of the affidavits before me.
- [61] Determining whether there has been a change in circumstances would require the court to resolve the dispute in the evidence as to the appropriate 2025 values for the real estate assets. The evidence before me is that most of the rental condominiums assigned to the respondent are in a less than desirable area of Edmonton. For the most part, even accounting for the different values arrived at in the two sets of appraisals, it would appear that the condominiums have not increased significantly in value. The values of these assets and the respondent's ability to generate income from them is relevant to the question of whether there has been a change in the respondent's means to earn an income.
- [62] Each party raised before me issues with respect to the appraisals obtained by the other, both respect to the qualifications and the ability of the appraisers to be unbiased. The respondent says that the appraiser obtained by the claimant is his acquaintance and alleges that the appraiser, due to this friendly connection, overvalued her assets and undervalued the claimant's assets. The claimant says that the respondent's appraisers are not properly qualified. While the claimant made an application to have the respondent's appraisers subpoenaed to attend the summary trial, it was not practical to accommodate that request without an adjournment. The claimant then took the position that if the 2025 appraisals were required to resolve any issues before the court, the disposition of that issue should be adjourned to allow for cross-examination to take place. I am satisfied that cross-examination of the appraisers would be necessary in order to determine the proper 2025 valuations for the assets.
- [63] The claimant takes the position that the respondent is deliberately under-employed and that, with her MBA degree and work experience, she could be earning far more than she does from managing her rental properties. The respondent says that managing her rental properties is a full-time job. The claimant takes the position she could engage the services of a property management company to do this work which would leave her free to earn employment income in addition to what she earns from the properties. I am satisfied that, at the very least, cross-examination on the parties' affidavits would be required to resolve this issue.

- [64] Accordingly, I find that the claim for additional retroactive and ongoing spousal and child support advanced by the respondent are not appropriate to be resolved by way of summary trial.
- [65] With respect to costs, the claimant seeks costs on the basis that the respondent unduly expanded the scope of this summary trial motion. While the claimant may have been surprised by the breadth of the application, I am satisfied that the respondent was genuinely trying to contain her costs by seeking a final resolution of all outstanding issues.
- [66] The record before me does not entirely explain why it took over four years to seek a resolution of this matter. The respondent says that she did not receive a copy of the 2021 Decision from the court and she did not learn of the decision until she called the court registry to follow up in early or mid- 2023. Once she was made aware that of the 2021 Decision, she contacted the claimant to inquire as to how to resolve the matter but did not get any substantive reply. In one sense, the claimant could be said to have been at least partially successful on this application in the sense that I have accepted that the remedy he advanced as most appropriate. However, the claimant could have offered to rectify the 2014 Order in this manner immediately following the 2021 Decision. Instead, after a significant period of time has passed, an application was required to force the issue. As such, each party is to bear their own costs in this application.

## Disposition

- [67] Accordingly, I order as follows:
- a) The 2014 Order is rectified to reflect that the total equity of the properties listed in Schedule A is \$319,344 which is to be divided equally between the parties with an additional \$83,000 payable by the claimant to the respondent as lump sum spousal support;
  - b) Taking into account the apportionment previously made pursuant to the 2014 Order, the claimant is to pay an additional \$242,589 to the respondent within 30 days of this order;
  - c) The \$83,000 portion of the \$242,589 payment which represents lump sum spousal support shall not be tax deductible by the claimant and is not taxable in the hands of the respondent;
  - d) The claimant is to pay court ordered interest to the respondent on \$242,589 calculated pursuant to the Court Order Interest Act within 30 days of this order from March 3, 2014, to the date of this judgment; and
  - e) The applications of the respondent for additional spousal support, child support and section 7 expenses are adjourned to the trial dates currently scheduled in October 2025.

"Hoffman J."

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