

CANADA / JUDGMENT

## Kroetsch v. Rahmany

2023 BCSC 1433

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2023 BCSC 1433 Kroetsch v. Rahmany

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kroetsch v. Rahmany,

2023 BCSC 1433

Date: 20230822

Docket: E200575

Registry: Vancouver

Between:

Amanda Lea Kroetsch

Claimant

And

Nima Rahmany

Respondent

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

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Place and Date of Trial/Hearing:

Vancouver, B.C.

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Place and Date of Judgment:

Vancouver, B.C.

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- [1] The sole issue in this trial is whether the parties are spouses as defined in the Family Law Act, S.B.C. 2011, C. 25 [FLA]. The claimant claims they were, and to succeed, she must establish on a balance of probabilities that they lived together in a marriage-like relationship for a continuous period of at least two years.
- [2] There is no dispute that they lived under the same roof for a period of about ten months (from June 2017 to March 2018), but their evidence diverges as to whether they cohabitated as spouses for any period before or after that. The claimant submits that they lived together from November 2015 until February 2019, even though they each had separate residences for some portions of that period.
- [3] The respondent's position is that the evidence does not show they ever had a marriage-like relationship, but even if they did, at most it lasted only for the ten months when they lived together.
- [4] The parties agreed that the issue of their status of spouses be tried first, and only if necessary would there be a subsequent hearing to address issues of spousal support and division of property.
- [5] The claimant also seeks a protection order, or in the event she does not succeed in establishing the respondent was her spouse, a conduct order. The respondent's position is that the court has no jurisdiction to grant either unless they are found to be spouses. In the alternative, if they are found to be spouses, he submits the evidence does not establish the need for either order.

## I. THE LEGAL TEST

- [6] There is no dispute about the legal test. The basis of the claim is s. 3 of the FLA which states:  
3(1) A person is a spouse for the purposes of this Act if the person
  - (a) is married to another person, or
  - (b) has lived with another person in a marriage-like relationship, and
  - (i) has done so for a continuous period of at least 2 years, or
  - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- [7] The onus of establishing the parties are spouses is on the person asserting a spousal relationship: *Blake v. Marining*, 2022 BCSC 1529 at para. 65. When assessing the evidence, courts should adopt a holistic rather than a "checklist" approach looking at "indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship": *Weber v. Leclerc*, 2015 BCCA 492 at para. 25.

[8] A list of criteria that may assist in that determination is set out in *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dis. Ct.) (cited with approval in *M. v. H.*, [1999] 2 S.C.R. 3 at para. 59; see also *Austin v. Goerz*, 2007 BCCA 586 at para. 57). At para. 16 of *Molodowich*, the court referred to a non-exhaustive list of factors:

[16] I propose to consolidate the statements just quoted by considering the facts and circumstances of this case with the guidance of a series of questions listed under the seven descriptive components involved, to varying degrees and combinations, in the complex group of human inter-relationships broadly described by the words "cohabitation" and "consortium":

(1) SHELTER:

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?

(2) SEXUAL AND PERSONAL BEHAVIOUR:

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

(3) SERVICES:

What was the conduct and habit of the parties in relation to:

- (a) Preparation of meals,
- (b) Washing and mending clothes,
- (c) Shopping,
- (d) Household maintenance,
- (e) Any other domestic services?

(4) SOCIAL:

- (a) Did they participate together or separately in neighbourhood and community activities?

- (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?

(5) SOCIETAL:

What was the attitude and conduct of the community towards each of them and as a couple?

(6) SUPPORT (ECONOMIC):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?
- (b) What were the arrangements concerning the acquisition and ownership of property?
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

(7) CHILDREN:

What was the attitude and conduct of the parties concerning children?

To the foregoing must be applied the following caveat of Mr. Justice Blair in the *Warwick v. Ontario Minister of Community and Social Services*, *supra*:

The extent to which the different elements of the marriage relationship will be taken into account must vary with the circumstances of each case.

- [9] Also relevant are the parties' intentions, particularly whether the parties viewed the relationship of as one that would be of a lengthy, indeterminate duration: *McDowell v. Andrews*, 2018 BCSC 2216 at para. 23. In discussing this factor, Mr. Justice Schultes in *Dey v. Blackett*, 2018 BCSC 244, held the parties were not spouses despite having lived together for more than two years (para. 195). Particularly relevant to his conclusion was the lack of both financial interdependence and mutuality of intention to be in a marriage-like relationship (at paras. 236-239).
- [10] Similarly, in *Voth v. Martin*, 2019 BCSC 834, Madam Justice Donegan commented that being spouses "involves more than living together from time to time" and what is needed is "evidence that these parties intended to have a solid, devoted, long-term relationship with the psychological and emotional support of a relationship akin to marriage" (para. 69).
- [11] The parties referred to a number of other cases, by way of examples of relationships that the court determined were, and were not, marriage-like. However, those cases were of limited assistance. I am not being critical of counsel. As they conceded, the determination of whether parties are spouses is highly fact-specific and involves a holistic assessment of the whole body of evidence.

- [12] While the parties agreed on the timing and occurrence of many events in their relationship, their evidence of their intentions and the significance of those events differed. The parties submit because of that, their credibility will be a key factor. There is no dispute that Justice Dillon's comments from *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, provides a helpful framework for assessing credibility.
- [13] Judging the credibility and reliability of witnesses is always an important evidentiary tool. In this case, however, I do not have major concerns that either party was being deceitful or untruthful with the Court. Instead, they clearly had different recollections and interpretations, and placed different significance on the events and circumstances of their past relationship. Both admitted they had a relationship that was intense and volatile, and characterized by a degree of tension and emotionality. In those circumstances, it is unsurprising that their testimonies varied significantly on important elements, but I am not persuaded that either party intended to deceive the Court. Accordingly, their reliability rather than credibility was an important factor.

## II. FACTS

- [14] The parties filed an agreed statement of facts, and many other facts were not disputed. However, their evidence differed significantly about key issues including what period of time they "lived together". However, these disputes arise primarily from their divergent testimony about their intentions, thoughts, and perceptions rather than differences about events themselves. Accordingly, many facts are not controversial, but their significance to the legal issues is.
- [15] I will outline the facts that are not in dispute, and then turn to analyze those (and others) in light of the parties' differing testimony and submissions about what those facts reveal about the status of their relationship.

### A. Initial Contact

- [16] The respondent is qualified as a chiropractor. However, just before meeting the claimant, he had begun to contemplate a transition away from that profession. The parties were both adherents of a personal development philosophy called the "Demartini Method". As part of his plan to leave his chiropractic practice, the respondent was in the process of developing his own philosophy called the "Overview Method". He wanted to build a business around that. He posted some videos online about his approach, which caught the claimant's attention, which led to her contacting him through Facebook in July 2015.
- [17] The claimant owned and operated a café in Steveston. She also had a successful business related to online sex work. At that time, the claimant was living with a same sex partner. She had moved to Canada from the United States, in part because of the inability of the couple where they previously lived to wed.

- [18] The parties met in person on August 2, 2015, at the claimant's café. At that meeting, the respondent indicated he thought he could help the claimant solve her gluten allergy, employing personal coaching. Apparently, they were both pleased with the results of his work, which spurred them to maintain contact.
- [19] The claimant's restaurant had not been doing well, and she had already thought about the idea of becoming a "coach" for the Demartini Method. Consequently, she found the respondent's ideas about building a business around his Overview Method to be very attractive. They talked about being in business together.
- [20] In the fall and winter of 2015, the respondent was leasing an apartment on Seymour Street, referred to by the parties as "Brava", although he was actually living in Pitt Meadows close to his chiropractor practice. Once he decided to cease practicing as a chiropractor, he moved into Brava. He was committed to building a business around the Overview Method. The business involved running group seminars or workshops in addition to having clients for whom he, or others he would train, provided coaching. Given her prior interest in coaching, the claimant was genuinely excited about the respondent's business, and being a part of it.

## B. Beginning of the Relationship

- [21] While the parties' initial contact and communication focussed on personal coaching in general, and the possibility of the respondent's business, they agree their relationship became sexually intimate in the fall of 2015. The claimant was in the process of ending her relationship with her same sex partner, so she kept the relationship secret at first.
- [22] Not long after the claimant's former spouse left Canada, in late November 2015, the parties travelled to Montreal and then to Rome. The respondent had work commitments in both cities. The parties stayed together in the same hotel room. Before leaving, the claimant had given up the residence she had shared with her former spouse in Richmond and moved all of her belongings to her father's residence, also in Richmond.
- [23] In early December 2015, the parties travelled to Spain for four days. The respondent went on a date with another woman one day and the claimant was displeased, so she got her own hotel room. They disagree on why she was upset.
- [24] Upon their return to Canada, the claimant visited her family in Ontario in late December 2015, but she did so alone.
- [25] When she returned to Vancouver, the claimant stayed with the respondent at Brava. They disagree on whether she had moved in with him, or was temporarily staying with him. In any event, in mid-January 2016, the claimant signed a one-year lease commencing February 1, 2016, for an apartment very close to the Brava, which they referred to as "Metro". They disagree on her motivation for leasing that apartment.

- [26] Despite having their own apartments, the respondent testified at trial that they probably spent 80-85 percent of their nights sleeping in the same residence. During his examination for discovery, he put that percentage higher, at 80 to 95 percent.
- [27] At the same time, the respondent began paying the claimant for her work in his business. It is not disputed that she received about \$3,000 per month for the administrative and logistical work she did for the business, plus another amount for coaching, which varied each month. The coaching fees were paid at the rate of \$150/hour.
- [28] In the period February 2016 to June 2016, the parties travelled to Barcelona, Montreal, Toronto, and Dublin for work. They agreed that during business trips, they would also undertake other activities together for personal pleasure.

### C. The Claimant Moves out of Metro

- [29] In June 2017, the claimant gave up her lease at Metro and moved into Brava to live with the respondent. They remained living there until the respondent gave up his lease at Brava. By that time, he had already bought another condo, which they referred to as Keefer; it was purchased in August 2017. The parties moved into Keefer in October 2017. Title to the Keefer has always only been in the respondent's name.
- [30] The parties continued to travel together as a couple for work including to Germany in July 2017, to New Zealand and Australia in September 2017, and between mid-October 2017 and February 2018 to Toronto, Hawaii, and Australia.
- [31] While almost all their travel was related to business, in July 2017, they attended the respondent's cousin's wedding in Seattle at which his parents and brother's family were in attendance. They also took short trips to Whistler and Squamish as a couple unrelated to business, but the evidence was not consistent on the timing of those.

### D. Assault and Aftermath

- [32] The respondent assaulted the claimant on March 11, 2018, which led to her moving out of Keefer the next day. She stayed with her father for short time, and then stayed with friends or had short-term accommodation. In September 2018, the claimant moved into an apartment in the Kitsilano neighbourhood of Vancouver.
- [33] The respondent remained living in Keefer until April 2018 when he moved in with his parents. By October 2018, there was friction between the respondent and his family such that he was not living with his parents or brother on any consistent basis. Instead, he claimed he was living "out of a suitcase". However, he agreed that he would end up staying with the claimant at her Kitsilano apartment, possibly as much as 60-70 percent between September and December 2018. He also paid for half the rent of the Kitsilano apartment for at least two months.

- [34] After the March 2018 assault and during the Spring 2018, the parties attended counselling both individually and together. They also took anger management courses, but not together. They attended a few other personal development and/or counselling sessions.
- [35] The parties had a physical altercation in December 2018 as the respondent was leaving the claimant's apartment. They disagree about the nature of that altercation and the degree of force involved. They do agree that the respondent never stayed in the Kitsilano apartment after that.
- [36] The parties ceased all communications with each other in early 2019.

#### E. Consistent Aspects of the Parties' Relationship

- [37] I find the parties testimony was consistent on the following matters:
- a) The respondent was divorced and was bitter about that experience, especially the financial consequences. He frequently stated that he wanted to avoid being put in a similar situation again. The claimant was aware of these concerns from the beginning of their relationship.
  - b) The respondent's family are of the B'Hai faith. The respondent testified that he would require his parents' written consent before marrying anyone and he believed they would never provide consent for him to marry the claimant. The claimant was always aware that of his belief, and the respondent's intention to respect his parents' wishes. In fact, the respondent did not tell his family about his relationship with the claimant for some time. When they found out about it, they did disapprove, expressing discomfort with the claimant's experiences with sex work. The claimant testified that she understood his parents' disapproval was a clear barrier to their ever becoming legally married. This evidence was consistent with testimony from other witnesses, including the respondent's father and brother.
  - c) The parties both described the relationship as being volatile. Their relationship was characterized by frequent, sometimes intense, arguing and fighting. There was also physical violence. Often arguments led to them spending the night sleeping in different residences. Their evidence about what prompted the arguments was consistent with each other, as well as with testimony from other witnesses.
  - d) A major source of contention between them was the respondent's prioritizing the business over the relationship, and the claimant's insecurity and dissatisfaction with that. The parties often argued about the status of their relationship, and how the relationship and the uncertainty of its status impacted the business. The respondent said the claimant constantly needed reassurance about the relationship and needed to "label it", which he said he was reluctant to do.
  - e) There is no dispute that they never held joint bank accounts or investments; Nor did they jointly hold or lease any property.

### III. ANALYSIS

- [38] The claimant has the burden to establish the parties lived together in a marriage-like relationship for a continuous period of two years,
- [39] There is no dispute that they lived under the same roof from June 2017 until March 2018, and before that, they had separate apartments; they do not agree whether their relationship was marriage-like for any portion of that cohabitation. They also disagree about whether they lived together for any period after March 2018.
- [40] Having individual residences is not necessarily fatal to a claim that two people "lived together" for the purpose of meeting the definition of a spouse. Nevertheless, the claimant must demonstrate that in addition to the undisputed period of cohabitation (ten months), there is a period or periods contiguous to that ten months totalling at least 14 months when they lived together in a marriage-like relationship.
- [41] The respondent's primary position is that their relationship, even during cohabitation, was never "marriage-like". However, in the alternative, he submits the evidence does not demonstrate that they were "living together" while they maintained separate residences. Because the period of undisputed cohabitation is only ten months, a key issue is whether they were living together in a marriage-like relationship outside of that period. He maintains the evidence does not support the claimant's position.
- [42] The claimant submits the relationship ended in February 2019 (the respondent says it ended much earlier). Therefore, to succeed on her theory of the case, she must establish that they began living together in a marriage-like relationship no later than February 2017.

#### A. Living Arrangements in January 2016

- [43] Upon their return from Italy, the claimant testified that she began living with the respondent at Brava. She stated they quickly realized they needed more space because they were both working from home. She had her own online business which required her to operate in a separate space. They agreed that she would rent an apartment close to Brava. She said Metro had large conference rooms available in which the respondent could run his workshops, and the respondent agreed that they held some workshops in Metro.
- [44] The respondent's position is that the claimant was not living with him in January 2016, but was merely staying with him temporarily until she found her own place, which she did quickly. He said it was not his intention at that time that they live together and that he made that very clear to her.

- [45] He testified that it was obvious to him as early as November or December 2015 that they should not live together because they were both high energy, and he described that they had a "power struggle" within their relationship. Thus, he submits the parties' desire for separate apartments was not related to the space and privacy required for work; rather, he had no intention of living with the claimant, and he believed a physical separation was necessary because of the nature of the relationship itself.
- [46] The respondent also points to a number of other facts which he says illustrates that the claimant did not at the time consider that she lived with him in Brava, including:
- a) she sent an email message, which described her living in Brava as being "for convenience";
  - b) she listed her Richmond residence with her former spouse as her previous address on her lease application, not Brava;
  - c) she did not list the respondent as her emergency contact on the lease, and;
  - d) she listed Metro as her address on tax returns, her independent contractor agreement with the respondent (for the business) and her utility bills.
- [47] I do not find these details to be compelling on their own. The claimant points out that listing Brava as her residence would not be helpful on her application for a new lease since it would only be one month. She also pointed to a form filled out at a health professional's office where she did list the respondent as emergency contact.
- [48] The respondent submits the fact that she never moved any furniture from storage into Brava, but did move it into Metro is significant. The claimant says the explanation is that Brava was simply too small to accommodate any more furniture. I do not find that explanation persuasive. Even if it is true that there was no room for her furniture, the evidence was that the parties did not discuss her moving more permanent belongings into Brava at that time.
- [49] The claimant also points to a draft cohabitation agreement as supporting her position. She had a cohabitation agreement prepared in January 2016 and presented it to the respondent. She proposed the agreement as a way to reassure the respondent that she was not "after his money". She was also a successful businesswoman and wanted to protect her assets. She submits its existence is consistent with the notion that they both considered themselves to be living together while at Brava. However, they never executed the agreement. She testified that was simply because they became too busy with work, and they had a loss of trust in one another.
- [50] The respondent's version is different. He remembers the document but denies they examined or discussed it in detail. He also says since the claimant very quickly moved into Metro, he believed it was unnecessary. Furthermore, he submits the fact that the agreement was never signed is more significant than its preparation.

- [51] I do not find the draft cohabitation agreement to support the notion the parties believed themselves to be in a marriage-like agreement. I find it difficult to believe that if the claimant was serious about wanting to protect her assets and she truly believed they were living together, she would simply not get around to having the agreement signed. It is more logical and consistent with common sense that they both understood the agreement was unnecessary since they were not actually living together.
- [52] The respondent also submits that the claimant's attitude when she gave up Metro is not consistent with her contention that they were already living together. He relies on a text message she sent on May 30, 2017, where the claimant refers to it "being official" that she was moving in with him at Brava. He also points to the claimant's text message to their house cleaner the same day referring her to "moving in" with the respondent.
- [53] The claimant argues one can interpret both messages as referencing only the logistics of her move (handing in keys, etc.) rather than her expressing anything about the status of their relationship. The respondent's interpretation of the text messages is more consistent with that the claimant did not believe they had lived together before that point.
- [54] What is more compelling is the inherent contradiction in the claimant's position. She claimed that they were "living together" at Brava in January but jointly decided she would rent Metro because they needed more space for their work and the business. However, she did not explain what about their work became so different such that in June 2017, they gave up the Metro. If anything, the rest of the evidence suggests they became busier with their work, suggesting a stronger need for separate space. What is more logical is that they were living apart, and they decided to cohabit as the relationship evolved. I agree with the respondent that the move did represent a significant change in the status of their relationship. That necessarily means the relationship before the claimant moved into Brava was "different" than after.
- [55] The reality is that the claimant's previous relationship had ended and she had given up the lease she and her former spouse had shared. She decided to accompany the respondent to Italy and then visited her mother in Ontario. Rather than "moving in" with the respondent, she stayed with him during that period of transition until she found her own place.
- [56] I also find the failure to execute the proposed cohabitation agreement to be inconsistent with the claimant's contention that they were living together. That it was not executed is consistent with the respondent's evidence that he had no intention at that point of living with her, due in large part to his divorce experience. The claimant testified that reluctance was one reason she proposed the agreement--to appease the respondent. If she actually believed they were living together, it is difficult to accept she would abandon that instrument so easily.

[57] For all those reasons, I do not find the parties were living together in January 2016. I find the claimant was merely staying with the respondent for convenience while looking for her own place, which she did quickly.

## **B. Whether the Parties Had a Marriage-like Relationship**

[58] As noted, the claimant cannot succeed unless she can establish the parties were living together in a marriage-like relationship no later than February 2017; however, she did not give up Metro and move into Brava until June 2017.

[59] The caselaw requires a holistic examination of many factors to see if it has the hallmarks of a committed relationship of indeterminate length. While it is not determinative, that they maintained separate residences for all but ten months of their relationship is a material fact that favours the respondent's position.

[60] Having reviewed all the evidence together, I am not persuaded that the parties were spouses for the following reasons.

### **1. Personal Behaviour**

[61] Although they lived together for ten months, the respondent emphasized that their entire relationship was characterized by uncertainty and instability. Their evidence was consistent that they tended to have a huge argument at least once a month. Their major arguments often ended in them sleeping apart. More importantly, the source of tension between them is most consistent with the respondent's characterization of their relationship.

[62] The claimant does not dispute that volatility, but submits that does not portray the full picture of their relationship. The problem is that I find the evidence she offers to contrast that picture is of much less weight and significance to the definition of their relationship. For instance, she placed emphasis on a conversation they had in a club during one of their international trips very early in their relationship. The respondent admitted to having a history of infidelity, and the claimant indicated she was very open to them being polyamorous. She testified his response was something like "said no girlfriend ever!" and then said he wanted to marry her.

[63] The respondent admits he said those words but denied it represented any kind of proposal or a genuine desire to marry her. Instead, he was enthusiastically surprised by her openness to his having other sexual partners.

[64] The claimant also pointed to the respondent's purchase of a ring from Tiffany's. She said they understood it to be a "promise" ring rather than engagement because that label was necessary to appease his family's discomfort with the relationship. The respondent's evidence was that it represented a promise to work on the relationship but nothing more.

- [65] I find neither of these facts provide support that they were in a marriage-like relationship, especially when measured against the uncontested evidence that they fought frequently and intensely about the degree to which the respondent was committed to the claimant.
- [66] I also find the parties had a significant difference of opinion about their sexual fidelity to one another. The respondent had other sexual partners between November 2015 and February 2019. The claimant testified this does not diminish their marriage-like relationship because they had agreed to be polyamorous.
- [67] However, I do not find the evidence was consistent that they reached a meeting of minds about what it meant to be polyamorous. Specifically, the claimant became upset on at least two occasions upon learning of the respondent's having had sex with another woman. She testified the reason she became upset was because the respondent had not adhered to certain conditions she claims they agreed to for one of them to have sex with someone else. The respondent denied there were any conditions placed on him.
- [68] The fact that his other sexual partners created tension strongly supports a finding that they had not reached a common understanding about being polyamorous. Furthermore, there is no evidence that the claimant ever engaged in other sexual relationships or encounters.
- [69] Rather than being indicative of polyamory, these facts illustrate there was a high degree of conflict between them about the issue. This more strongly supports the respondent's perception of their relationship than the claimant's.

## 2. Finances

- [70] The parties kept their finances completely separate. They never had a joint bank account and did not list each other as spouses on any official documentation. They each paid the rent, utilities, internet, and other expenses related to property leased in their own name. They did not jointly rent or own any property.
- [71] The claimant submits the fact that she had the respondent's credit card in her own name and had access to some passwords downplayed the significance of their lack of joint finances. I do not agree. The respondent testified the credit card and sharing of passwords was not unique to the claimant but was done with a few others in the business for administrative purposes. More importantly, given how the claimant herself described her role in the business, it would be expected that she would have both a credit card and access to certain passwords.
- [72] The respondent also contrasted their separate finances with the claimant's arrangements with her former spouse. She agreed she and her former partner had joint bank accounts and both names were on the lease. The claimant does not dispute those facts but submits the differing circumstances explains that. In final submissions, the claimant emphasized that she and her former spouse were not in business together, making the risk associated with shared finances less important.

- [73] I do not find that explanation convincing for two reasons. First, this was not evidence given by the claimant but was a point made for the first time in the claimant's reply. The respondent objected to the submission on that basis.
- [74] Regardless of that, it also fails to account for the undisputed evidence that the respondent was wary of sharing finances not because of their involvement in the business but because of his experience with his divorce. In other words, he specifically turned his mind to the implications of sharing finances and did not want to be put in a potentially vulnerable situation, as he believed he had previously been in his marriage. The claimant's testimony confirmed she was aware of his reluctance.
- [75] I discount the claimant's position that not sharing finances was done only as a way to protect their respective business. Instead, I accept the respondent's evidence and position that their finances were intentionally always kept separate, and this was an important signal that they were not in a marriage-like relationship.
- [76] I also find the circumstances surrounding their move to Keefer emphasized their financial independence from one another. It is relevant that the claimant was not on title and contributed no funds to the purchase. However, what is more important is that at trial she admitted she had no knowledge of the purchase price, down payment, mortgage details, taxes, and monthly strata fees. This is not consistent with partners getting a new home together.
3. Others' Perception of the Relationship
- [77] The parties did not have close relationships with each other's family. As noted, the claimant was aware from the beginning that the respondent considered his family's approval to be a necessity for any marriage. She also knew that he believed his family would not provide consent even if he had wanted to marry her. The claimant also acknowledged that she knew his family did disapprove of their relationship when they finally found out. The respondent's father and brother both testified, and neither of them considered the parties to be in a serious relationship, much less one that was akin to marriage.
- [78] The respondent met the claimant's mother on only one occasion, and there was no evidence he had any other contact with her. He had some contact with the claimant's father. For about two months, the respondent provided chiropractic services to the claimant's father, although he paid for the services like any other client. Her father also attended five or six of the respondent's workshops, again as a paying client.
- [79] The claimant's father testified that the three of them sometimes got together for dinner at a restaurant. However, he said he distanced himself from the couple when he became aware that there was physical violence, but his testimony was unclear on the timing of his awareness.

- [80] Overall, I do not find the parties' interactions with their respective families to strongly support the claimant's assertion of a marriage-like relationship.
- [81] In addition, a number of collateral witnesses testified. It is significant that a commonality amongst their testimony was the description of the parties' relationship being unstable, using phrases such as "on again off again" and "frequently thought relationship was over". They were also described as "boyfriend/girlfriend".
- [82] The claimant emphasized a live video broadcast online from Hawaii in December 2017 in which they both appeared. The video was intended for clients of the business. In it, the respondent referred to the claimant as his "partner, business partner and COO". He also said they were celebrating their two-year anniversary.
- [83] I do not find those descriptors to be a strong indicator that the respondent believed they were akin to spouses. I do not think it is uncommon for people who are dating but not in a spousal relationship to celebrate anniversaries. I also agree with the respondent that the use of the word "partner" is a modern, gender-neutral term that does not necessarily signify anything significant about a couple's relationship: Blake at para. 73. It is also relevant that the video was being used in the business. The respondent sometimes referred to their relationship as an example. In that context, it may have been advantageous to exaggerate the relationship for the sale of the business.
- [84] In any event, when viewed in light of the whole of the evidence, that does not counter the significant uncertainty of their status.

#### 4. Parties' Previous Relationships

- [85] The respondent says the undisputed evidence about the parties' previous relationship helps to shed light on their attitude towards spousal relationships, which supports his position. Specifically, the respondent points out that the claimant was in a committed relationship at the time she and the respondent became sexually intimate (the claimant testified she was in the process of breaking up with her spouse).
- [86] The respondent points to the factors missing in the parties' relationship that existed in the claimant's relationship with her spouse; he contends those missing factors show that even by the claimant's own standards, the parties' relationship was not one of spouses. Specifically, he points out the claimant and her spouse shared joint bank accounts even after their separation. They shared a residence which they both leased and they lived together there continuously for a number of years. They moved together from the United States to Canada. The claimant testified that but for the laws in the United States which prohibited same sex marriages at the time, she would have married her spouse.

[87] The respondent also relies on the undisputed evidence that he was clear in expressing caution and reluctance about entering a spousal relationship because of the experience of his divorce, especially the financial implications. The claimant confirmed during testimony she was well aware of his reluctance.

[88] I agree this evidence detracts from the parties having a marriage-like relationship.

## 5. Business

[89] The parties agree that their initial contact and early discussions were focussed on the respondent's desire to establish and grow a personal coaching business out of the Overview Method. They agree that both were involved in the development and growth of the business. However, they disagree about the extent to which the claimant's involvement with the business led to its success.

[90] Nevertheless, the respondent agrees that the claimant, who provided administrative services and coached, had a significant role akin to a chief operating officer ("COO"). It is also undisputed that the claimant was involved in the business in a greater capacity than any of the other coaches.

[91] Because the business was personal coaching, there was a significant blurring of lines by the parties regarding their business and personal relationship. Apparently, even some of their conflict was fodder for the respondent's coaching and instruction to clients.

[92] The implication of this intermeshing is that matters between them and shared events had dual characteristics. As an example, they had several international trips, but I find that travel was more closely aligned with the business than it was to their relationship. That is because the parties had very few trips not related to the business. Even though they may have enjoyed social and personal activities during the business trips, their testimony was consistent in describing the reason for the travel was the business.

[93] The respondent's devotion to the business in contrast to the energy he put into their relationship was also significant source of conflict between the parties. Things were at a peak of difficulty in February 2018 when the claimant formally resigned as COO of the business. This was shortly before the assault which preceded the claimant moving out of Keefer.

## 6. Period of Separation

[94] After the assault in March 2018, and until no earlier than September, the parties did not share a residence. The correspondence and testimony of that period is consistent with the parties having broken up.

- [95] The claimant contends that perspective is too narrow. She points to their undertaking counselling (some of which was joint) and the amount of time the respondent admits he spent at her Kitsilano apartment between September and December 2018 to submit the parties did not end their relationship until much later.
- [96] Nevertheless, the evidence is very clear that they did not live together between March and September, 2018. Even if that was not determinative, I find that the assault was a significantly disruptive event. I am unable to conclude that their relationship "stayed the same" in that period; there can be little doubt that it deteriorated. Accordingly, even if I had found they were living together in a marriage-like relationship up to March 2018 (a finding I do not make), there was a clear break after the assault.
- [97] Moreover, the fact that they engaged in counselling, even jointly, has to be assessed in the context of these parties' lives. In both their business and their personal lives, they were completely immersed in the world of personal coaching and self development. It would have been antithetical to their chosen career for them not to have engaged in counselling and receiving coaching after the assault. Accordingly, I do not find that has as much probative value in terms of defining their relationship as it might with parties not so immersed in personal coaching.
- [98] The claimant also emphasised the respondent's admission that he spent up to 70 percent of nights sleeping in the Kitsilano apartment and paid for half the rent for at least two months between September and December 2018. Those facts are consistent with them possibly reconciling for a short period, but I am not persuaded that period of reconciliation amounted to a marriage-like relationship. Even if it did, that was only for four months in a period not continuous with another period of cohabitation.

### C. Conclusions

- [99] For all the reasons stated in this judgment, I find the parties did not live together in a marriage-like relationship for two continuous years. I conclude they only lived together for ten months between June 2017 and March 2018. I am not satisfied on a balance of probabilities, based on the totality of evidence, that their relationship was akin to marriage when they did not reside together. For clarity, I also am not satisfied that their relationship was marriage-like when they cohabitated.
- [100] Accordingly, the claimant's action is dismissed.

### IV. CONDUCT ORDER

- [101] The claimant sought a protection order had the Court concluded they were spouses. However, she submits such an order or a conduct order can be issued even if they were not spouses. She seeks an order prohibiting the respondent from having any contact with her.

[102] The respondent submits the Court has no jurisdiction to issue such an order because the FLA has no application since they were not spouses. In the alternative, he also submits no such order is necessary because there is no evidence that the respondent presents any risk to the claimant's safety.

[103] Furthermore, he emphasizes that he was under a probation order not to contact the claimant, and that he has abided by that. The probation order arises from the following facts.

#### A. Criminal Proceeding

[104] On May 24, 2019, the claimant filed a complaint with the police about the March 11, 2018 assault; she also alleged other assaults.

[105] The respondent was charged with five counts of assault against the claimant.

[106] On June 13, 2022, the respondent pleaded guilty to two counts, which related to the March 11, 2018 assault and an assault he committed on June 15, 2017. I assume the other charges were stayed.

[107] The respondent received a one-year conditional discharge. He was put under probation terms, including that he "may have contact with [the claimant] for the purpose of proceedings under the FLA that takes place in the presence of legal counsel or in any court cases or case conferences but you may have no other contact with her, directly or indirectly, for any purpose". He is also prohibited from attending at any residence or place of employment, education or worship of the claimant.

#### B. Applicability of the FLA

[108] The claimant seeks a protection order pursuant to ss. 183-184 of the FLA. Section 183(2) empowers a court to make an order against a family member for the protection of another family member if two conditions are met: family violence is likely to occur, and the other family member is an "at-risk family member".

[109] The respondent contends this Court has not jurisdiction to issue a protection order once it concludes the parties are not spouses. I do not think that is true as a general proposition. The definition of "family member" in s. 1 includes people living together in a marriage-like relationship as a separate category from a spouse.

[110] However, in this case, the parties are not living together, so I agree that section cannot be invoked. Accordingly, I find I have no jurisdiction to issue a protection order in this case.

[111] In any event, even if the jurisdiction existed, I am not satisfied that there was evidence produced to satisfy me that the claimant is in need of protection from the respondent. The parties have had no contact or communication since early 2019, and there is no other evidence to indicate any future contact was likely.

[112] The claimant also suggested that if a protection order was not appropriate, that the Court could issue a conduct order prohibiting contact. I decline to do so for the same reasons I do not find it appropriate to issue a protection order.

## V. CONCLUSION

[113] For all those reasons, I dismiss the claim.

[114] The respondent is entitled to the costs of the action, unless there are facts of which I am unaware that are relevant to a different costs order. In that event, the parties have leave to request a brief hearing before me to address costs, but that request must be made no more than 30 days from the date of this judgment.

"Sharma J."

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