
CANADA / JUDGMENT

L.S.D. v. K.K.D.

2013 BCSC 1462

COURT

Supreme Court of British Columbia

DECIDED

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2013 BCSC 1462 L.S.D. v. K.K.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.S.D. v. K.K.D.,

2013 BCSC 1462

Date: 20130814

Docket: E35647

Registry: New Westminster

Between:

L.S.D.

Plaintiff

And

K.K.D. also known as K.K.K.

Defendant

And

P.S.D.

Defendant by Counterclaim

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Plaintiff:

C.K. Sabharwal

Counsel for the Defendant:

D.H. Unterman

Counsel for the Defendant by Counterclaim:

G.K. Tiwana

Place and Date of Trial:

New Westminster, B.C.

September 19-23, 2011

March 26-30, April 2 and 3, 2012

April 15-19, 22, 23 and 25, 2013

Place and Date of Judgment:

New Westminster, B.C.

August 14, 2013

Overview

- [1] These are matrimonial proceedings. While many of the usual issues; custody, support and the division of matrimonial assets are at play, the principal issue is the ownership of seven properties (the "disputed properties") claimed by K.K.D. to be beneficially owned by her husband, L.S.D. She asserts all seven properties are family assets in which she has an entitlement under the Part V of the Family Relations Act, R.S.B.C. 1996, c. 128 or, in the alternative, that she is entitled to an equitable interest in them under the doctrine of constructive trust.
- [2] Once the family assets have been determined, she seeks an unequal division of all the family assets in her favour.
- [3] Some of the disputed properties are in the joint names of the claimant and his father, P.S.D.; others are in the claimant's name alone. P.S.D., in his counter-claim, seeks a declaratory order that he is the sole beneficial owner of all seven properties based upon trust considerations. P.S.D. says, L.S.D.'s appearance on the seven titles was as a matter of convenience only. P.S.D. says that he and L.S.D. had a long standing agreement that the claimant was simply a 'caretaker' for his father's interest in the properties. P.S.D. provided all of the funds necessary to purchase the first three of the disputed properties. The properties purchased after 2004 were purchased with borrowed funds using P.S.D.'s assets as security. Mortgage payments were made exclusively from the rental received on the property.

- [4] L.S.D. agrees with his father. He says the only matrimonial property subject to division under the governing legislation, the Family Relations Act, R.S.B.C. 1996, c. 128, is the sum of \$206,000 (rounded) paid into court in foreclosure proceedings on the one property formerly owned by him and K.K.D., K.K.D.'s bank accounts and the motor vehicles owned by each of them.
- [5] Each of the husband and wife seek a divorce although each suggests different dates of separation. The date of separation is germane, according to L.S.D., because four of the disputed properties were acquired after 2004, the date he alleges the parties' marriage had broken down. This, he says, results in a denial of K.K.D.'s claims in those four properties regardless of whether he or his father is determined to be the beneficial owner.
- [6] K.K.D. also seeks an order for spousal support and child support for the parties' two children, S. and G. Until late into these proceedings, both resided with her. In April of this year, just prior to the last continuation S. moved in with his father. Now, L.S.D. seeks support from K.K.D. on S.'s behalf. The incomes of both husband and wife are in issue.

The Issues

- [7] The following issues require resolution:

- What is the beneficial interest of P.S.D. and L.S.D. in each of the seven disputed properties?
- Which of those properties, if any, are family assets within the meaning of the Family Relations Act?
- Does K.K.D. have an interest in some or all of the disputed properties independent of the Family Relations Act under the law of constructive trust?
- What are the other family assets and how should all of the family assets be divided?
- What is the proper parenting arrangement for S. and G.?
- What is the income of each spouse for the purpose of determining their support obligations?
- Is K.K.D. entitled to spousal support and, if so, for how long and in what amount?

Background

- [8] L.S.D. is 42. He currently is employed full time as a truck driver and part time as a cab driver. His stated income is \$54,000 to \$57,000 annually. In addition, he receives rental income from the disputed properties. L.S.D. says that income belongs to P.S.D. and shouldn't be used for computing his income for either spousal or child support calculations.
- [9] K.K.D. is 39. She is a certified daycare provider. She obtained her certification during the marriage. Her current income is approximately \$30,000 annually from three separate jobs as a daycare worker, a health aide and a server at a Wendy's restaurant.

- [10] P.S.D. operates a construction business known as Dam's Landscaping. As its name suggests, its focus is on fence building and landscaping. P.S.D. is married and, in addition to L.S.D., has two other children.
- [11] L.S.D. and K.K.D. married on May 1, 1994. According to L.S.D., they separated in June 2004 but remained living together under the same roof 'for the sake of the children'. K.K.D. says they separated in April of 2010 when they actually took up separate residences. The importance of the separation date is, presumably, with reference to the identification of family assets. The triggering event in these proceedings is the order for divorce pronounced at the conclusion of the trial.
- [12] There are two children of the marriage: S. and G. They are 17 and 15, respectively. Both remain dependent upon the parent with whom they reside. S. recently moved in with his father, G. remains in the care of his mother with whom he has resided since the parties physically separated in 2010.
- [13] The disputed properties (and their legal ownership) are as follows:
- 9274 - 125th Street, Surrey, British Columbia (L.S.D.);
 - 9221 - 125th Street, Surrey, British Columbia (L.S.D. 90%, P.S.D. 10%);
 - 9046 Ben Nevis Crescent, Surrey, British Columbia (L.S.D.);
 - 6250 Tyson Road, Chilliwack, British Columbia (L.S.D. 50%, P.S.D. 50%);
 - 46048 Higginson Street, Chilliwack, British Columbia (L.S.D.);
 - 12475 - 92nd Avenue, Surrey, British Columbia (L.S.D. 90%, P.S.D. 10%); and
 - 4691 Teskey Road, Chilliwack, British Columbia (L.S.D. 50%, P.S.D. 50%).
- [14] P.S.D., in his pleadings, claims he is the beneficial owner of all of the properties registered either jointly with L.S.D. or in L.S.D.'s name alone. His counterclaim was not filed until the opening day of the trial. Leave to file it was granted by consent.
- [15] Another property, 9038 Snowden Place, Surrey, British Columbia, which was registered wholly in the name of L.S.D., was sold prior to the commencement of these proceedings. The entire net proceeds were used to pay down the mortgage on Teskey Road.
- [16] The former matrimonial home of L.S.D. and K.K.D. located at 46446 Ferguson Place, Chilliwack, British Columbia, was sold during foreclosure proceedings as the trial proceeded. The residue of approximately \$206,000, being the owners' equity, was paid into court to the credit of the foreclosure action. It is admittedly a family asset.
- [17] K.K.D. disputes P.S.D.'s assertion of ownership in any of the disputed properties in her pleadings. In her counsel's opening, he submitted that L.S.D. was the sole owner of the disputed properties and all were family assets within the meaning of Part V of the Family Relations Act. Based upon that submission, she sought an equal division of the family assets.

During closing submissions, her counsel modified that position and submitted, at trial's end, that the seven properties were a joint venture between L.S.D. and his father, entitling each to a one-half beneficial interest in the seven properties, subject to the encumbrances registered against each and an unravelling of the joint credit facilities in their names. K.K.D. claims that L.S.D.'s one-half interest in each property is a family asset based upon K.K.D.'s direct and indirect contribution to each. Finally, she submits, an equal division of the family assets would be unfair to her.

- [18] In addition to the identification and division of family assets, K.K.D. seeks child and spousal support. Currently, there is an interim order directing that L.S.D. pay \$848 child support for the two children and \$200 monthly for spousal support.
- [19] The parties physically separated in April 2010, after an altercation, of sorts, at the then family residence on Teskey Road. They have lived physically apart since that time.
- [20] Since separation, L.S.D. has continued to manage the disputed properties and receive the rents as well as work as a truck driver and part time cab driver. K.K.D., until just before resumption of the trial in April of 2013, cared for both children and worked in a variety of different jobs.

Before Marriage

- [21] L.S.D. came to North America in the late eighties. He has a grade eight education from his native India. He initially lived and worked in the U.S.A. but came to Canada in 1994 at the insistence of his family so as to marry K.K.D. At that time, L.S.D.'s mother and younger sister remained in India. They later came to Canada and have lived here since the late nineties.
- [22] L.S.D. and P.S.D. both gave their evidence with the assistance of an interpreter. P.S.D. can neither read nor write in English. P.S.D. said he dealt with Punjabi realtors, bankers and counsel throughout as he acquired the disputed properties.
- [23] According to both L.S.D. and P.S.D., they arrived in Canada without any meaningful assets. When K.K.D. married L.S.D., she had little by way of assets. Both were in their twenties at the time of marriage.
- [24] P.S.D. came to Canada via the United States as a refugee in the spring of 1991. He came firstly as a visitor but then claimed refugee status in June 1991. He said he received a work permit in 1992 and was able to legally work. In his testimony, P.S.D. referenced ownership of acreage in India which produced income later brought to Canada to provide seed money for the disputed properties. Other than P.S.D.'s assertion of ownership, no evidence was produced proving ownership of property in India or the transfer of funds from India to Canada.

- [25] On their arrival in Canada, neither L.S.D. nor P.S.D. had the necessary immigration status to legally work in Canada or the United States. P.S.D. began working in construction almost immediately upon arrival. He was originally paid 'under the table' owing to want of a work permit. He worked mostly in labouring jobs in the construction or landscaping area until he formed his own business, Dam's Landscaping, sometime in the nineties.

Origin of Properties

9274 125 Street, Surrey, B.C.

- [26] L.S.D. lived and worked the United States until shortly before his marriage to K.K.D. He was unable to produce any financial records from his time spent in the United States but said he didn't bring any funds into Canada. K.K.D. says he brought funds which found their way into the acquisition of the first property acquired by P.S.D., 9274 125 Street, Surrey, B.C. ("9274").
- [27] Land title documents demonstrate that 9274 was acquired in late March 1994 for \$228,000 in the name of P.S.D. and a Mr. Sandhu. L.S.D. disavowed any knowledge of the circumstances of its acquisition, let alone beneficial ownership. However, L.S.D. lived there with P.S.D. from the date of its acquisition until his marriage. The co-owner, Mr. Sandhu was on title because P.S.D. couldn't obtain financing without Mr. Sandhu's assistance. Despite his appearance on the original title to 9274, Mr. Sandhu was never to have any beneficial ownership in the property. His name was removed from title in 1999 when the mortgage came up for renewal.
- [28] According to P.S.D., funding for the down payment on 9274, came from savings, money borrowed from friends and \$40,000 said to have come from India. P.S.D. said he had \$20,000 in the bank and he borrowed \$3,000 from a friend, Major Dhillon, and \$10,000 from Mr. Sandhu's son. P.S.D. testified that the \$40,000 balance was rent received on the acreage he owned or from the sale of crops grown on property he owned in India. P.S.D. testified that, when he purchased 9274, he was working for Kamla Framing or Gill Construction earning \$2,000 to \$2,500 per month. The remainder of the purchase price, approximately \$150,000, was raised by a mortgage. The \$73,000 down payment accords with the documents relating to the purchase which show a \$63,000 draft paid to the notary, together with a \$10,000 deposit at the time of the Offer to Purchase.
- [29] P.S.D.'s self-description of his income is to be contrasted with his 1994 tax return which shows gross income of \$10,980. In earlier years, it was less. No explanation was provided as to how he accumulated \$20,000 in savings given his modest reported income since his arrival in Canada. In his pre-trial discovery, put to him in cross examination, P.S.D. referenced only savings and borrowed funds as the source of the down payment. He made no mention of funds transferred from India.
- [30] After L.S.D. and K.K.D.'s marriage, all three parties took up residence in the basement of 9274. K.K.D. testified that 9274 was purchased as part of the wedding agreement between her parents and L.S.D.'s. It was to be registered in the names of her and L.S.D. The

registration of 9274 in P.S.D.'s name alone almost resulted in cancelation of the ceremony according to K.K.D. K.K.D. testified that L.S.D. brought savings from his earnings in the United States which were used as part purchase price for 9274 but didn't specify an amount. Both L.S.D. and P.S.D. denied this. P.S.D. confirmed that all money used to acquire all of the disputed properties was his and further that L.S.D.'s name was placed on 9274 only when he became sick in 2005 and was unable to manage it, and other properties, on his own.

- [31] From May 1994 until spring 1999, the parties lived together in the basement of 9274, save for a period when L.S.D. returned to the United States to work. Prior to his marriage, his immigration status precluded him from working in Canada. After marriage, K.K.D. sponsored his immigration application however L.S.D.'s work permit was not immediate. During L.S.D.'s time in the United States, K.K.D. says she drove daily between Washington State and Canada so as to spend time with L.S.D. while still maintaining her employment in Canada and looking after P.S.D.'s cooking and cleaning needs at 9274.
- [32] In July 1995, S. was born. L.S.D. returned to Canada shortly thereafter and the parties resumed cohabiting in the basement of 9274. In February 1997, G. was born. Thereafter, all five lived in the 700 square foot basement of 9274 until the arrival of P.S.D.'s wife and daughter in 1998 or 1999.
- [33] L.S.D. returned to Canada in September 1995 and stayed here until a period from 2001-2004 when he again lived and worked in Washington State. When he returned in 1995, he still didn't have a work permit. P.S.D. was then operating a landscaping business. According to K.K.D., L.S.D. worked side by side with P.S.D. in that business and the revenue, much of it unreported to the tax authorities, was shared. In 1997, the business became known as Dam's Landscaping and Fencing ("Dam's). K.K.D. says it was her and L.S.D. who came up with the name.
- [34] K.K.D. testified that Dam's funds, which were used periodically for payments in relation to some of the disputed properties, were the funds of both P.S.D. and L.S.D. Use of Dam's funds to pay expenses for the property later owned and occupied by K.K.D. and L.S.D. on 132A Street was not, according to K.K.D., a matter of P.S.D.'s generosity but rather the dedication of L.S.D.'s share of Dam's money towards his own needs. L.S.D. denied both that K.K.D. worked steadily after marriage and that he worked with his father and earned income in Canada prior to his return to Washington in 2001. He did not provide any meaningful explanation as to what he did throughout the years he was in Canada prior to 2001.
- [35] The rental received from the upstairs suite of 9274 was said to be sufficient to make the monthly mortgage payment but little more. The parties, according to K.K.D., pooled their income into a common bank account at the TD bank and paid their common expenses from the account. It is unclear whether the rent from upstairs was pooled with the earnings of the three of them because banking records were no longer available. The existence of the joint account was confirmed by P.S.D. and L.S.D. but each said it was short lived and that none of the funds deposited there found their way into the acquisition or preservation of any of the

disputed properties.

- [36] In 1999, 9274 was transferred into P.S.D.'s name alone from the names of him and Mr. Sandhu. In the five years following purchase, the mortgage was significantly reduced from its original amount of approximately \$150,000 to \$64,000. P.S.D. never satisfactorily explained how he was able to accomplish this given his reported income during the five year period between purchase of 9274 and renewal of the mortgage totalled less than \$45,000.

10749 132A Street, Surrey, BC

- [37] In 1998, a second property located at 10749 132A Street ("132A") in Surrey was purchased. K.K.D. says she was involved in the search for the house and that the down payment came from the joint account into which all of their earnings were deposited. She says a larger property was needed because P.S.D.'s wife and daughter had arrived in Canada and the 700 square foot basement suite of 9274 was too small to house them all. She testified that after her mother and sister in law arrived, squabbles began between herself and L.S.D. The result was an altercation resulting in charges being laid against L.S.D. K.K.D. left the basement suite for a time until the parties reconciled and moved into the property at 132A in the fall of 1999.
- [38] P.S.D. and L.S.D. both deny that K.K.D. had any involvement in the property's acquisition, but acknowledged the relationship between L.S.D. and K.K.D. was strained during 1998 and 1999. P.S.D. testified it was he who provided the funds for the purchase of 132A. Title was arranged so that L.S.D. owned 10% and P.S.D. the remaining 90% simply to assist L.S.D. in establishing creditworthiness with the lender. Both P.S.D. and L.S.D. denied any financial contribution by L.S.D. or K.K.D. P.S.D. testified the required \$30,000 down payment was raised by borrowing \$10,000 from his son and daughter-in-law, \$5,000 from a friend, Paul Sandhu and the rest from his savings. The borrowed money was subsequently paid back to his daughter and son-in-law while they were in India using P.S.D.'s money received from his acreage. P.S.D. said the joint TD account in the names of himself; L.S.D. and K.K.D. had been closed by the time 132A Street was acquired. He testified he repaid the \$5,000 borrowed from Paul Sandhu in "2000 or so" with the "Indian money".
- [39] Despite the imbalanced proportional ownership, L.S.D. co-signed the mortgage application on 132A Street and the resulting mortgage. The loan application represented to the financial institution, Surrey Metro Savings that both P.S.D. and L.S.D. worked for Dam's Landscaping. Each signed the document presumably verifying its accuracy. P.S.D.'s stated income was \$3,000 per month and L.S.D.'s \$2,500. In their evidence, both P.S.D. and L.S.D. denied the loan application was truly reflective of their circumstances at the time, either as to where L.S.D. worked or what each earned. Dam's later signed letters for use by L.S.D. at financial institutions, saying he was working for Dam's in 2004 at a salary of \$3,200 monthly. P.S.D. acknowledged the letter was intended to assist with financing some of the disputed properties. After its purchase, 132A Street was rented and the rental income sustained the mortgage payment.

- [40] When asked why he signed letters he knew to be untrue, P.S.D. replied the lending institutions required income verification documentation before they'd loan money and "the banks told him to lie".
- [41] L.S.D. and K.K.D. and the children moved to 132A, while P.S.D., his wife and daughter remained in the basement suite of 9274. K.K.D. and L.S.D. had begun to fight necessitating her moving out with the children for a brief period of time. K.K.D. alleged she was assaulted by L.S.D. and criminal charges were laid. Sometime between its acquisition in 1998, and the transfer of the whole to L.S.D. and K.K.D. in 1999, the property was placed wholly in P.S.D.'s name. K.K.D.'s counsel suggested the transfer of L.S.D.'s 10% interest into P.S.D.'s name was to protect L.S.D. because of the discord in his marriage. P.S.D. denied the title was ever changed from joint names into his alone but the Land Title documents indicate otherwise.
- [42] In any event, to facilitate reconciliation between his son and daughter-in-law, P.S.D. transferred 132A into the names of L.S.D. and K.K.D. in the latter part of 1999. Shortly following registration of the title into L.S.D.'s and K.K.D.'s names, K.K.D. swore, then filed, an affidavit in provincial court proceedings in Surrey effectively seeking withdrawal of any charges against L.S.D. or, at least withdrawal of a no contact order made in the proceeding.
- [43] The purpose of the transfer was to give L.S.D., K.K.D. and the children a separate place to live. P.S.D. acknowledged that the transfer of 132A into the names of his son and daughter-in-law was intended as a gift and that he expected nothing back in return. Upon the transfer into L.S.D. and K.K.D.'s names, the mortgage was assumed by them and from then on it was theirs to do with as they wished.
- [44] P.S.D. and his family continued to occupy the basement of 9274 following L.S.D. and K.K.D.'s move to 132A.

9221 125 Street and 12475 92 Avenue, Surrey, B.C.

- [45] In 2002, P.S.D. purchased 9221 125 Street, Surrey, B.C. ("9221") for \$248,000. A \$10,000 deposit was made and the remainder of the purchase price was financed. P.S.D. says he borrowed the \$10,000 from his TD Line of Credit. Title was taken in P.S.D.'s name alone although his daughter, Jasvir, guaranteed the mortgage. Later, in 2005, 9221 was transferred 90% into L.S.D.'s name with the remaining 10% in P.S.D.'s name. P.S.D. says the transfer was because he was sick and needed L.S.D. to manage the property for him.
- [46] 9221 consisted of two legal titles. One fronting 125 Street; the other 92 Avenue. The property was sub divided sometime after title had been transferred predominantly into L.S.D.'s name in 2005. A residence was built on the 'new lot' at 12475 92 Avenue, Surrey ("92 Avenue"). K.K.D. says L.S.D. oversaw the construction and acted as general contractor. P.S.D. said it was he who arranged for the trades and oversaw construction of the new home. Eventually, P.S.D. and his family moved into the new dwelling. They have continued to live there to date. The 'new' property, 92 Avenue, was perforce registered into the names of L.S.D. and P.S.D. in the same proportion as their ownership of 9221. P.S.D. testified that the subdivision plans

had been drawn and submitted at the time of the transfer of 9221 90% into L.S.D.'s name and that necessitated the same ownership for 92 Avenue or the subdivision would have to be re-filed.

- [47] In January 2002, L.S.D. ceased living in Canada and moved to Renton, Washington. He lived and worked there until his return in June, 2004. He testified that his family knew where he was and that he provided support for the children while he was absent. He said he made over \$50,000 in 2003 but never said what became of it. K.K.D. painted a different picture of their separation. She said she and the boys were left without any support and struggled to maintain the 132A residence. A third, smaller suite was built on the premises for her and the boys so she could rent out the other two. P.S.D. occasionally assisted with a mortgage payment or taxes with cheques written on Dam's account.
- [48] L.S.D. says he considered him and K.K.D. 'separated' in 2003 but was still trying to create a positive relationship for the sake of the kids. He says he came to Canada twice a month, staying sometimes with P.S.D. and sometimes with K.K.D. He returned to Canada in June 2004 and said that he and K.K.D. then agreed they would separate. She denied any such conversation.

9045 Ben Nevis Crescent, Surrey, BC

- [49] Around the same time as L.S.D.'s return, 9046 Ben Nevis Crescent, Surrey, B.C. ("Ben Nevis") was purchased. Originally title was placed wholly in P.S.D.'s name. It was later transferred to L.S.D. in 2005.
- [50] The Contract of Purchase and Sale for Ben Nevis named P.S.D., L.S.D. or 'nominee' as the proposed purchaser. The price was \$310,000. P.S.D. said he found the property and wanted it for a rental. It was wholly financed with money P.S.D. said was borrowed using an 'inter alia' mortgage over 9221. L.S.D. signed the purchase document because the realtor was English speaking. Title to 9221 was still in P.S.D.'s name alone when Ben Nevis was purchased.
- [51] After Ben Nevis was transferred into L.S.D.'s name, he assisted with its rental by preparing the rental agreements and dealing with tenants. All rentals received from Ben Nevis were to the credit of P.S.D., the real owner. Despite that, L.S.D. began declaring the rental income on his tax returns commencing in 2005. Likewise, he began including the rental income for 9274, 9221, and 92 Avenue in his return. When asked how P.S.D.'s ownership was reconciled with declarations on each of their tax returns as to their respective interests in the properties, they replied they did an accounting. The accountant who prepared each of their tax returns was apparently not involved with this internal reconciliation. L.S.D., at one point in his evidence, described it as a "verbal accounting". No records or working papers were produced.

46446 Ferguson Place, Chilliwack, B.C.

- [52] Ultimately, 132A was sold and the proceeds were used to acquire the family home at 46446 Ferguson Place, Chilliwack, B.C. ("Ferguson"). L.S.D. stayed in a hotel for two weeks but then, for the sake of the kids, he and K.K.D. purchased the Ferguson home in Chilliwack and moved into that residence with the two boys. The sale proceeds from 132A eventually found their way into the Ferguson home. Despite their separation, both L.S.D. and K.K.D. continued to file tax returns indicating their status as 'married'. L.S.D. went so far as to say K.K.D. tried to file denoting 'separated' status but was told she'd have to provide proof of separation by way of legal documentation.
- [53] Ferguson was acquired in 2004 in the joint names of L.S.D. and K.K.D. They resided at Ferguson until the purchase and construction of a new home at 4691 Teskey Road, Chilliwack, B.C. ("Teskey") in 2007.
- [54] Apart from a period of time when L.S.D. was residing in the United States from 2002 to 2004, he and K.K.D. made all the payments on 132A. Both of them worked. K.K.D. was the primary caregiver to the children during their early years. P.S.D. produced cheques written by Dam's in the years L.S.D. was in the U.S. demonstrating Dam's paid taxes and some other expenses associated with 132A as a 'favour to K.K.D.'. K.K.D. says she was unable to make all payments associated with the house because L.S.D. had left and wasn't sending money back for expenses of the family.

9038 Snowden Place, Chilliwack, BC

- [55] By 2004, K.K.D. and L.S.D. were living in Chilliwack. In July of that year, the property at Snowden was purchased for \$281,600. Title was placed wholly in L.S.D.'s name ostensibly due to P.S.D.'s illness although it was noted P.S.D. couldn't qualify for the mortgage 'alone'. L.S.D. testified that in respect of Snowden, the "bank advised me to put it into my name", although he offered no explanation as to why. L.S.D. and P.S.D. maintained that L.S.D. was a mere caretaker for his father's interest in Snowden.
- [56] P.S.D. guaranteed the mortgage on Snowden. Of the \$60,000 down payment required for the purchase, P.S.D. testified that \$49,122 was derived from his Indian property. He made reference to a TD Canada Trust account wherein US\$37,172 was deposited. The account was opened in January 2004. The deposit, said to have come from India, was made in or about July 2004.
- [57] No explanation was provided as to why funds, purportedly coming from India, were deposited in U.S., as opposed to Canadian funds.
- [58] The U.S. funds were then converted and exchanged into C\$49,122 and pooled with other funds taken from the Canada Trust account so as to result in a draft of \$60,000 being provided on July 14, 2004, to the solicitor in charge of the purchase, Mr. Dhot.

- [59] L.S.D. returned from the United States in June 2004. K.K.D. opined that the US\$37,172 were monies brought back from the U.S. by L.S.D. at or near the time of his return in June 2004. He denied bringing funds with him on his return.
- [60] L.S.D. stated that he and K.K.D. agreed to separate in 2004 and that they lived together thereafter as a matter of convenience for the sake of the children. Despite that, L.S.D. continued to file tax returns describing his status as 'Married' up to and including the filing of his 2011 T1 General tax return. K.K.D. said their separation occurred in April 2010. She referenced photographs of her and the claimant together in the Teskey residence and notes signed by him as late as 2009 wherein he professed his love for her and sought her forgiveness for his behaviour. L.S.D. denied the photos or documents were taken or written in the time frame given by K.K.D.
- [61] Snowden was sold in 2010 after separation. The entire net proceeds were used to pay down the mortgage on the Teskey property.

2005 Property Transfers

- [62] In 2005, titles to the Surrey properties, 9274, 9221 and Ben Nevis were transferred, in whole or in part, into L.S.D.'s name. The stated reason for all was L.S.D.'s illness.
- [63] Rentals were deposited into an account in the joint names of P.S.D. and L.S.D. along with P.S.D.'s wages. The mortgage payment for 9274 was paid from the joint account. L.S.D. says he never used the account for his own personal use but this was demonstrated to be untrue through cross-examination. When it was pointed out to him that he, L.S.D., had indeed used what was referred to as 'P.S.D.'s account', L.S.D., then later P.S.D., said they made adjustments between them to accurately reflect the true ownership of the accounts and/or lines of credit connected to both 9274 and 9221. Similar adjustments were said to have been made internally between the two of them to apportion tax consequences of ownership.
- [64] The transfer of 9221 was 90% into L.S.D.'s name with L.S.D. retaining the remaining 10%. No explanation was given as to the difference between the title to 9274 and Ben Nevis where 100% ownership was in L.S.D.'s name. The rental from 9221 was deposited into a joint account at RBC in the names of P.S.D. and L.S.D. The mortgage on 9221 was paid from this account. 9221 was later included amongst trust documents prepared by Larry Hagen in April of 2008 as being 100% beneficially owned by P.S.D.
- [65] L.S.D. all the necessary paperwork to complete the subdivision of the 92 Avenue property in 2006. The result was he acquired 90% of the title to 92 Avenue. P.S.D. and his family moved into the house later built on the property.

- [66] The reason given for the transfers was P.S.D.'s health. According to L.S.D., a doctor 'advised P.S.D. to rest' so his father transferred his real estate holdings into L.S.D.'s name. L.S.D., according to both him and P.S.D., was a mere caretaker for his father's interest in the four properties. The transfers were never intended to convey a beneficial interest in any of the properties to L.S.D.
- [67] No documents were signed to reflect this understanding until 2008 when trust agreements respecting the four properties were prepared by a solicitor, Larry Hagan, and signed by L.S.D. By this time, four other properties in Chilliwack had been acquired, all said by P.S.D. and L.S.D. to be subject to a trust in favour of P.S.D. Specifically Snowden, Tyson, Higginson, and Teskey were not the subject of any trust agreement.
- [68] P.S.D. says he was unaware when he made the transfers that any accompanying documentation should be prepared evidencing the true ownership was required. Lawyers handled all of the transfers. Neither L.S.D. nor P.S.D. testified as to the instructions given those lawyers or what advice was sought so as to accommodate P.S.D.'s illness and the stated need for L.S.D. to manage the properties. P.S.D. said the trust documents were only prepared after his wife and daughter raised concerns as to what would happen to his, P.S.D.'s properties, in the event P.S.D. died while title to his properties remained in L.S.D.'s name. P.S.D. sought legal advice in or around April of 2008 and the trust documents were prepared for four of eight properties. The lawyer they engaged was English speaking, contrary to P.S.D.'s assertion that he only engaged Punjabi speaking advisors. Neither L.S.D. nor P.S.D. testified that an interpreter was present when Mr. Hagen advised them. P.S.D.'s wife, daughter and Mr. Hagen didn't offer evidence.

6250 Tyson Road, Chilliwack, BC

- [69] In November 2005, Tyson Road was purchased. Title was placed in the joint names of P.S.D. and L.S.D. Both signed the mortgage. The down payment of \$81,755 came from the joint credit line at Coast Capital and a deposit from Dam's. Tyson was rented. The mortgage was paid from the same account where the rent was deposited. Being in Chilliwack, it was managed by L.S.D. who, by the time of its acquisition was living at Ferguson with K.K.D. and the two boys.

46049 Higginson Road, Chilliwack, B.C.

- [70] In July 2006, 46049 Higginson Road, Chilliwack, B.C. was purchased in L.S.D.'s name. The down payment came from the RBC credit line in the names of both L.S.D. and P.S.D. \$50,000 was taken from it together with \$20,000 from a Coast Capital line of credit in their joint names. The lines of credit were secured by the 125 Street properties. L.S.D.; not P.S.D. paid the \$5,000 deposit needed for Higginson. P.S.D. says that was because L.S.D. had used money personally from one of P.S.D.'s accounts and payment of the deposit was how L.S.D. repaid P.S.D. Higginson was rented and the income deposited in the RBC joint account. The mortgage was paid out of the account.

[71] Despite illness being the stated reason for L.S.D.'s caretaking of the Surrey properties, P.S.D. testified that after acquiring the various Chilliwack properties, L.S.D. dealt with them and he, P.S.D., dealt with the Surrey properties.

4691 Teskey Road, Chilliwack, B.C.

[72] Teskey was purchased in 2007. Title was placed in the joint names of P.S.D. and L.S.D. Neither gave a reason for placing the property in joint title given P.S.D.'s evidence that the property was solely for his benefit. A new home was constructed on at Teskey. L.S.D. said neither he nor K.K.D. had anything to do with its construction but they, not P.S.D., moved in upon its completion. Ferguson was rented. L.S.D. testified he and K.K.D. were getting Teskey 'free of charge' while they lived there but were never entitled to a share of the sale proceeds when and if it was sold.

[73] The down payment was primarily made up of funds held in a \$63,000 GIC which was the holdback on the construction funds for 92 Avenue. The proceeds were deposited into the Joint RBC account and combined with \$2,000 from Dam's to make up the down payment. The net sale proceeds from Snowden's sale were used to pay down the Teskey mortgage in 2010. Teskey was used by L.S.D. and K.K.D. as the family residence from approximately 2008 until their separation in 2010.

[74] Their previous family home on Ferguson was rented and the rental income retained by L.S.D. and K.K.D. Teskey was modified to allow K.K.D. to run her daycare from it. P.S.D. built a fence and did some other work in the yard to facilitate the daycare operation. Teskey, for all intents and purposes, became the family home of L.S.D., K.K.D. and their two sons. Neither P.S.D. nor L.S.D. testified as to any financial arrangement which saw benefit from his apparent one half interest. The mortgage on Teskey was funded from rentals received from properties said by both men to be P.S.D.'s property.

[75] When the rentals became positive, resulting in tax payable by L.S.D., there was no demonstrated accounting which indicates L.S.D. was reimbursed for tax he would have paid on revenue said to be P.S.D.'s. None of the accountants or other professional advisors said to have been aware of the arrangements regarding the properties was called to confirm P.S.D.'s and L.S.D.'s evidence. K.K.D. denied P.S.D. owned the seven properties.

P.S.D.'s Tax Reassessment

[76] In 2007, P.S.D. was reassessed by Canada Revenue Agency ("CRA") for the taxation years 2004 and 2005. CRA assessed P.S.D.'s business income for 2004 as \$245,781 net and for 2005, \$185,884. P.S.D. testified it was in respect of the transfers to L.S.D. of 9274; 9221; Ben Nevis and Snowden but didn't produce sufficient documents to demonstrate the basis for the reassessment. The result was P.S.D. was assessed over \$500,000 in respect of taxes unpaid, interest and penalties. P.S.D. disputed the reassessment and engaged an accountant to undertake an appeal. Some of the reassessment was apparently in respect of the property transferred to L.S.D. I say apparently because P.S.D. chose only to produce the barest of

minimums of documentation from CRA. He claimed the documents were kept at Teskey, a place he never resided, and that K.K.D. has them in her possession.

- [77] All of this evidence concerning his tax woes emerged as P.S.D. gave evidence in April of 2012. Upon the trial's resumption in April 2013, I was advised that a settlement had been reached between P.S.D. and CRA but I was provided with no further detail save for the assertion that CRA had reviewed the property transfers P.S.D. said was at the heart of the reassessment. P.S.D. was admittedly under cross-examination upon the resumption of the trial but no effort was made to seek leave to have him give evidence as to the settlement or offer up documents in support.

Finances since Separation

- [78] Upon physical separation in April 2010, K.K.D. and the two boys moved back into Ferguson. L.S.D. has continued to occupy a portion of Teskey until now. The remainder is rented.
- [79] L.S.D. has worked steadily since separation both as a truck driver and cab driver. His income from trucking is deposited into an account in the joint names of him and his father. The rents received from the various properties are applied on an ad hoc basis to 'whichever property needs it'. No distinction is made between properties jointly owned by P.S.D. and L.S.D. and those in L.S.D.'s name alone when it comes to paying taxes or mortgages. No records were produced which indicates any distinction between the properties and how each of L.S.D. and P.S.D. treats the income.
- [80] Following separation, L.S.D. paid nothing by way of support until a court order in November of 2010 resulted in the present order for support, both child and spousal. Prior to support being ordered, he paid his half of the mortgage on Ferguson. When support was ordered totalling \$1,048, he stopped making the mortgage payment. So did K.K.D. The result was foreclosure proceedings. The foreclosure resulted in a sale of the property. In the meantime, K.K.D. and the boys lived at Ferguson 'rent free'. When the property was ordered for sale, K.K.D.'s family purchased it. She now rents it back from them.
- [81] L.S.D., since separation, has been driving a truck and operating a taxi on weekends and some evenings. His reported income for 2012 is \$57,000. His T-4 from his employer, WestLink, together with Taxi trip sheets, was admitted into evidence by consent nearing the trial's conclusion. As well, his 2011 tax return, or at least a portion of it, was filed by consent. L.S.D. didn't testify as to any of the documents tendered although invited to do so. Presumably, because they required no explanation. The return, filed as Exhibit 35, contained a summary of the rental properties. In handwriting, beside each of the seven properties, save Haggonsen' (sic), 50% is written. Beside 'Haggonsen' (sic) is written 100%.
- [82] The return is incomplete. It doesn't have a Statement of Real Estate Rentals for each of the seven properties. The only rental statement provided was for Ben Nevis. Where the form indicates percentage of ownership, the author has filled in 50%. The co-owner is described as P.S.D. Legal title for Ben Nevis resides with L.S.D. Despite an invitation to counsel to have

L.S.D. testify to explain his current financial situation so as to assess his support obligations, L.S.D. did not give any update of his finances nor did he explain the 2011 return and its handwritten reference to ownership of the seven properties.

- [83] K.K.D. has had health issues which have interfered with her earnings over the period post separation. Those are stress related and unlikely to affect her income earning ability in the long term. At trial's conclusion she was working as a daycare provider, health aide and server at Wendy's. Her anticipated income from all three endeavours is said to be approximately \$30,000 annually.

Child Care since Separation

- [84] As noted, both boys remained in her care until just before the commencement of the third phase of the trial in April 2013. S., who is floundering in his studies, chose to go to live with his father. K.K.D. thinks this a bad decision and suspects S. is motivated by what she thinks is L.S.D.'s more relaxed attitude towards discipline and his greater ability to provide material things to S.. Nonetheless, she recognized that S., at almost 18, is able to 'vote with his feet'. She is prepared to welcome him back to her home should he choose to return.

Position of the Parties

L.S.D.

- [85] Through his counsel, L.S.D. denies he has any beneficial ownership in the disputed properties. He says, the only family assets are the net sale proceeds from the Ferguson property together with the bank accounts in the name of K.K.D. alone or together with the children. He submits that K.K.D. is self-sufficient, and, in any event, has not been economically disadvantaged as a result of the marriage so as to entitle her to spousal support or an unequal division of the family assets in her favour.
- [86] To the contrary, L.S.D. argues that because of K.K.D.'s non-disclosure of assets in her name, specifically bank accounts and insurance policies, the court should significantly reapportion the funds from Ferguson in his favour and, otherwise, leave each to retain the assets in their own name.
- [87] For child support purposes, he says that his income should be seen as something in the order of \$57,000 and that he should pay child support for G. based on this figure. K.K.D., he says, earns, or is capable of earning, an annual income of \$48,000 and, accordingly, should pay him support for S. based on this income. The modest difference would be payable monthly by L.S.D. to K.K.D. so long as the children remain in their current custodial situation.

P.S.D.

- [88] Surprisingly, perhaps, by trial's end, P.S.D.'s position as to the ownership of the disputed properties was markedly different than L.S.D.'s as well as that set forth in the counter-claim. In submissions, P.S.D. conceded that the evidence points to a different conclusion than that suggested by L.S.D. Ms. Tiwana argued that the Chilliwack properties should be treated differently than the Surrey properties. She acknowledged the former should be treated as the joint property of P.S.D. and L.S.D.; the latter as P.S.D.'s alone.
- [89] P.S.D. maintained, throughout submissions, that he had transferred the four Surrey properties, or portions of them, to L.S.D. without consideration. P.S.D. said there was no intention to make gift and, as such, either the doctrine of resulting trust or the trust agreements from April 2008 require transfer of the whole of the legal title in each of the Surrey properties back into his name.
- [90] The Chilliwack properties, she notes, were purchased primarily using borrowed funds from joint credit lines in the names of L.S.D. and P.S.D. The credit lines were secured against the Surrey properties. Thereafter the mortgages were funded using the rental income. The Surrey properties, P.S.D. says, are separate. They were acquired solely using P.S.D.'s funds and later transferred, without consideration, to L.S.D. The stated reason being P.S.D.'s poor health. His beneficial interest in the Surrey properties was later formalized in trust agreements signed by L.S.D. in 2008.
- [91] In the alternative, P.S.D. submits that if there was a contribution made by L.S.D. and/or K.K.D. to the acquisition or preservation of the four Surrey properties, it P.S.D.es by comparison to that of P.S.D. and the court should apportion ownership of the Surrey properties to reflect the disparity of those contributions. Ms. Tiwana suggests that the interest of L.S.D. or L.S.D. and K.K.D. would be restricted to 20% to 25% of the equity in the Surrey properties and that P.S.D. should be entitled to the remainder.
- K.K.D.
- [92] K.K.D., for her part, says that the seven disputed properties are beneficially jointly owned, in equal proportions, by P.S.D. and L.S.D. Again, a markedly different position than that set out in her pleadings and opening statement. She submits the evidence discloses a course of dealings between them over the years which lends to no other conclusion.
- [93] K.K.D. says she was actively involved with most, if not all, of the seven disputed properties. She, L.S.D. and the children resided in both 9279 and Teskey. She testified that she was active in seeking out some of the properties and, on occasion, worked in the properties painting, tiling or doing general clean up. Whatever the extent of her contributions physically to the various properties, it was modest in its totality.
- [94] As to spousal support, K.K.D.'s counsel says that entitlement has been demonstrated by virtue of the lengthy marriage and the role assumed by K.K.D. in the marriage coupled with the reasonably significant disparity in the income now earned by her and L.S.D. For the purposes of determining spousal support, Mr. Unterman urges that I include the net rental

income received by L.S.D. in addition to his income from driving truck and driving taxi. Mr. Unterman says this leads to a determination that his income is approximately \$72,000 annually as opposed to K.K.D.'s income which he characterizes as less than \$30,000 annually.

- [95] Support, he says, should be determined on the basis of a relationship of 16 years duration, from 1994 to 2010, but should be satisfied on the basis of a lump sum payment rather than periodic payments.
- [96] Child support is conceded to be problematic. S. resided with K.K.D. until shortly prior to the third phase of the trial in April 2013. S.'s intentions as to his residency seem unsettled. By that I mean he has only recently moved to his father's home. According to K.K.D., he has told her that he intends to return on some part time basis. Whether such would exceed 40% of the time making S.'s custody a shared parenting arrangement or whether he will remain with L.S.D. in excess of 60% of the time thus entitling L.S.D. to child support is currently unknown.
- [97] Neither of the parties made submissions concerning the current parenting arrangement or the terms of the guardianship order respecting either of them. At the commencement of the trial, I was told the parties were content with the arrangements which, at the time, were both S. and G. residing with their mother. That has changed through the course of the trial.
- [98] Each of L.S.D. and K.K.D. seem content with the current arrangement although K.K.D. makes clear she will welcome S. back into her home in the event he changes his mind.

Analysis

What is the beneficial interest of P.S.D. and L.S.D. in each of the seven disputed properties?

- [99] I begin with the observation that the evidence in this case, particularly that given by L.S.D. and P.S.D. was entirely unsatisfactory. The whole premise of P.S.D.'s assertion of beneficial ownership, whether of some or all of the disputed properties, is premised on the assertion that he alone was responsible for their acquisition. He says the subsequent transfers to L.S.D. were not intended as gifts but rather to assist P.S.D. during a time of difficulty when his health precluded him from managing the properties as he had done before.
- [100] Such is not borne out by the evidence. The Chilliwack properties were all acquired using funds borrowed by father and son jointly. The mortgages were paid with rental revenue. The Surrey real estate was used as security to borrow the funds used as down payments on the Chilliwack property. P.S.D. says he beneficially owned all the Surrey real estate and L.S.D. agreed. They were transferred to L.S.D. because of his father's health.
- [101] Despite the assertion by both, that P.S.D.'s health was pivotal in the decision to transfer the properties, in whole or in part, to L.S.D., no details were provided which could sustain the conclusion P.S.D. actually was in poor health. In fact, the evidence is to the contrary. P.S.D. testified that he remained active with Dam's throughout the period following 2004. He testified he actively sought out one of the Chilliwack properties, Snowden, for purchase and

arranged for the insurance. Following acquisition of the four Chilliwack properties, P.S.D. testified it was he; not L.S.D. who oversaw the Surrey rentals. He relied on L.S.D. only on matters requiring more fluency in English than he had.

- [102] No one, apart from P.S.D. and L.S.D. was called to testify as to apparent signs of ill health or the need to rest. P.S.D.'s wife and daughter, both of whom reside with him, seem likely to have had some knowledge of their P.S.D.'s health during the period he says he was unable to tend to the role associated with ownership of the disputed properties. Nor does it make sense that during the same period P.S.D. was transferring some or all of the legal interest in the four Surrey properties to L.S.D., he was acquiring a partial interest in Tyson and Teskey. On this point, I disbelieve both P.S.D. and L.S.D.'s evidence.
- [103] While I agree with counsel, Ms. Sabharwal, that K.K.D.'s evidence was wanting in some respects when she testified as to the origins of the properties, I accept her evidence, in preference to that of L.S.D. and P.S.D., that L.S.D., once back in Canada in 1995, worked with his father at the business which later became Dam's. I accept, as well, that it is more likely than not that L.S.D. returned from the United States both in 1994 and 2004 with savings accumulated from his work there and pooled those funds with his father.
- [104] P.S.D., I conclude, would not have been able, on his reported income, to have put together savings of \$20,000 to put towards the down payment of 9274 in 1994. Nor do I accept he is the owner of property in India which generated rents or revenue from crop sales so as to transfer whatever sum was said to be necessary so as to make up the 'unaccounted for' portion of the down payment. P.S.D.'s tax returns don't reference revenue from the Indian properties nor were any records produced to give credence to this otherwise unsupported contention.
- [105] When asked if he reported the Indian income on his Canadian tax forms, P.S.D. replied "no, because I paid tax in India". Despite it being apparent that Indian funds were a point of controversy with K.K.D., no documents were produced. P.S.D. did produce further documents during the break in the trial between April 2012 and April 2013 but nothing as to property in India or income derived from it.
- [106] Both L.S.D. and P.S.D. repeatedly misrepresented matters of a financial nature to the lenders who funded the mortgages placed on the disputed properties. In 1998, both represented themselves to Surrey Metro Credit Union as working for Dam's and earning far more than was disclosed on their tax returns. Similar letters were provided later in connection with the Chilliwack properties. P.S.D. explained the deception by testifying the banks essentially told him to make up the information. I don't believe him on this point.
- [107] In his examination for discovery put to him by Mr. Unterman, P.S.D. was asked the source of funds for the down payment on 9274. His answer did not reference the Indian funds that he later testified played such a significant role in the funding of 9274 and other properties at trial. The Indian funds were never referred to on any of the credit applications signed by P.S.D. On occasion, he needed a co-signer or guarantor so as to complete on offers he had

made on several of the properties. The only paper record of a transaction said to represent a transfer of 'Indian funds' is a document from Sangha Currency Exchange said to evidence the conversion of US\$37,172 dollars received, according to P.S.D., from India, converted to \$49,122 Canadian dollars then combined with other funds to make up the \$60,000 draft used to make the down payment on Snowden. The date the U.S. funds came to Canada corresponds, more or less, with L.S.D.'s return to Canada from the U.S. in September 2004.

- [108] P.S.D. provided no plausible explanation for the reduction of the mortgage on 9274 from approximately \$150,000 in 1994 to \$64,000 when Mr. Sandhu's name was removed from title. The rent from the upstairs renters was approximately the same amount as the monthly mortgage payment. P.S.D.'s reported income for the years 1994-1999, total, was approximately \$33,000. L.S.D.'s was less. K.K.D. said the two of them worked together, for cash, during much of that time. Absent a credible explanation for the payment down of the 9274 mortgage in the fashion I have described, coupled with the credit application tendered on behalf of P.S.D. and L.S.D. to Surrey Metro Credit, I prefer her evidence in this regard and conclude that P.S.D. and L.S.D. were working together at Dam's or its predecessor during the last half of the nineties.
- [109] L.S.D., despite testifying as to the accuracy of his income tax returns, acknowledged he was required to make repayment of Employment Insurance benefits because he had under reported, or failed to report, income he was earning while claiming benefits.
- [110] P.S.D. was reassessed by CRA for over \$500,000 of unreported income. His explanation was incomplete as to how, if at all, the reassessment involved the properties transferred to L.S.D. in 2004 and 2005. When the matter was settled with CRA during a hiatus in the trial, P.S.D. re-took the stand but leave was never sought to clarify the status of the CRA assessment, the amount of tax still outstanding and the details of a referenced settlement.
- [111] Both P.S.D. and L.S.D., when confronted with banking records clearly indicating the intermingling of their supposedly separate funds, testified as to 'reconciliations' they performed so as to internally adjust the discrepancy between the two of them.
- [112] In later years, L.S.D.'s pay cheque was deposited into a joint account into which some of the rental revenues were received. L.S.D. paid the \$5,000 deposit on Higginson, a property said by both he and P.S.D. to be P.S.D.'s property. P.S.D. explained that by stating that L.S.D. had used P.S.D.'s account for personal use earlier, and the payment of the deposit was in satisfaction of that 'debt'. Another \$5,000 deposit for Teskey was made from L.S.D.'s sole account with Coast Capital. L.S.D. testified they did a 'verbal accounting' when such happened and adjustments were made. Similarly, adjustments were undertaken, according to both, in respect of the tax consequences of L.S.D. declaring the rental income which, on their evidence, was P.S.D.'s income. P.S.D., not L.S.D., paid the tax owing.

- [113] While accountants were used to prepare the tax forms submitted by each of L.S.D. and P.S.D. to CRA, L.S.D. and P.S.D. seemingly undertook such adjustments on their own. No paperwork resulted which could later substantiate these claims. No cheques were provided to evidence P.S.D.'s assertion that he was reimbursed for any tax consequences incurred as a result of his 'caretaking' his father's properties.
- [114] P.S.D. said his accountant, Mr. Nagra, was aware of the arrangement between P.S.D. and L.S.D. Neither Mr. Nagra nor any of his predecessors who prepared the returns for P.S.D. and L.S.D. were called. The lawyer who prepared the trust deeds wasn't called to provide details of his instructions. Given the timing of the reassessment of P.S.D.'s income and the likelihood that such involved a consideration, at least in part, of the transfer by P.S.D. of four properties without declaring capital gains tax, it's likely the trust declarations had more to do with the reassessment than a worry expressed by either P.S.D.'s wife or daughter over the effect of the transfers in the event P.S.D. died while L.S.D. still held them in his name.
- [115] Although the date of separation has little importance to identification of the family assets, L.S.D.'s assertion that the parties separated in 2004 is a matter of some importance as it impacts his credibility. Both P.S.D. and L.S.D. testified K.K.D. and L.S.D. separated in 2004. Presumably so as to argue that the after acquired properties, regardless of beneficial ownership, is not affected by the marriage. The facts that parties continued cohabitation for a further six years after the stated date of separation, in and of itself, puts into question L.S.D.'s evidence about the state of his relationship with K.K.D.. The income tax returns of each make no mention of being separated. I disbelieve L.S.D. when he says K.K.D. tried to file as a single or separated person but was told 'she needed paperwork'.
- [116] More telling is the combination of photos depicting, if not marital bliss, a couple showing affection for one another while residing in the Teskey home and the notes from L.S.D. to K.K.D. asking for forgiveness and professing his love. Teskey wasn't purchased until three years following the supposed separation. The notes, I accept, were written in 2009 in the months leading to separation. I conclude the latter because they were written on Chilliwack Taxi trip logs. L.S.D. had no access to those prior to his employment with Chilliwack Taxi in 2005.
- [117] L.S.D.'s first Property and Financial Statement filed in this proceeding made no reference to trust arrangements for Teskey, Higginson and Tyson. He provided no plausible explanation as to why. He responded in cross examination that he signed what his father asked him to sign regarding the properties. Were he asked to sign trust declarations in respect of the Chilliwack properties, he would have.
- [118] He did not produce, although asked to by K.K.D., all of the credit applications prepared by him in respect of the disputed properties. Those he did, specifically the application to Surrey Metro Credit were inaccurate according to L.S.D.'s evidence. To the end, L.S.D. produced tax returns which were incomplete. His 2011 tax return contained only one Statement of Real Estate Rentals. Nothing was produced by L.S.D. relating to his U.S.

earnings during either of his two lengthy stints as a US resident. I consider it likely, given his work ethic, which L.S.D. would have returned on each occasion from the U.S. with savings. Given my disbelief of P.S.D. on the use of 'Indian funds' toward the purchase of any of the properties, the timing of the purchase of 9274 and Snowden with L.S.D.'s return from the U.S., I consider it probable that L.S.D. made substantial contributions toward both properties.

- [119] Perhaps by design, perhaps in error, L.S.D.'s 2011 return contains a Summary of Real Estate Rentals which lists all seven disputed properties. Beside each there is a handwritten notation of a "50% for all but 'Haggonson' (sic) and 100% beside it. Whether this is one of the 'internal adjustments' referenced by both P.S.D. and L.S.D. in their evidence or a document created solely for CRA is difficult to tell. L.S.D. didn't retake the stand to explain it. The Statement of Real Estate Rental for Ben Nevis refers to L.S.D.'s 50% ownership and lists the co-owner as P.S.D. At the Land Title Office, L.S.D. is listed as the sole owner of Ben Nevis. The document in no way conforms to the evidence given by L.S.D. and P.S.D. throughout the trial.
- [120] K.K.D.'s evidence was not without problems. She failed to reference numerous accounts in her name or jointly with the children.
- [121] She offered opinion as fact in matters relating to the acquisition of the disputed properties. She denied that her testimony as to some of the properties' origins was coloured by a review of title and banking documents she accessed as the litigation proceed forward wen, in fact, she was unable to explanations relating to the properties' acquisition at her discovery.
- [122] In my view, L.S.D.'s 2011 tax return comes closest to disclosing the true relationship between him and his father in respect to the seven disputed properties.
- [123] As to K.K.D.'s evidence, I agree with Ms. Sabharwal that it was wanting in respect of financial disclosure relating to bank accounts in either her name alone or those in the name of she and S. and G.. As well, an insurance policy with a cash surrender value was not disclosed in a timely fashion on her property and financial statement.
- [124] K.K.D. also displayed the unfortunate tendency of making assertions of fact as to the properties' financial origins when, in fact, it is clear from a combination of her evidence and that earlier given by her on discovery, that she had little knowledge as to the financial details surrounding the purchase of each piece of property. Her statements of "fact" were little more than inferences drawn by her from a review of documents which came into her hands after the commencement of the proceedings. That is the function of the court, not of a witness.
- [125] Nonetheless, on balance, I prefer the evidence of K.K.D. both as to her limited involvement as to the acquisition and preservation of the seven disputed properties and as to matters relating to the more mundane day-to-day matters such as who looked after the household and the children.

[126] With those general findings, I now turn to the applicable law.

[127] The premise underlying P.S.D.'s claim of beneficial ownership of the four Surrey properties is the doctrine of resulting or express trust. As to the Chilliwack properties, P.S.D. says they were a joint venture between him and L.S.D. arising from the use of equity in the Surrey properties which allowed them to acquire the four (including Snowden) properties. L.S.D. says all seven belong solely to his father.

[128] P.S.D. relies upon the trust documents prepared by Larry Hagen and signed by L.S.D. as well as the doctrine of resulting trust.

[129] In *Pecore v. Pecore*, 2008 SCC 17 [Pecore], the Supreme Court of Canada held that adult children who receive gratuitous transfers of property from their parents must rebut the presumption of resulting trust if they seek to resist an order that property so transferred should revert to the donee. Rothstein J. stated:

40 As compelling as some cases might be, I am reluctant to apply the presumption of advancement to gratuitous transfers to "dependent" adult children because it would be impossible to list the wide variety of the circumstances that make someone "dependent" for the purpose of applying the presumption. Courts would have to determine on a case-by-case basis whether or not a particular individual is "dependent", creating uncertainty and unpredictability in almost every instance. I am therefore of the opinion that the rebuttable presumption of advancement with regard to gratuitous transfers from parent to child should be preserved but be limited in application to transfers by mothers and fathers to minor children.

41 There will of course be situations where a transfer between a parent and an adult child was intended to be a gift. It is open to the party claiming that the transfer is a gift to rebut the presumption of resulting trust by bringing evidence to support his or her claim. In addition, while dependency will not be a basis on which to apply the presumption of advancement, evidence as to the degree of dependency of an adult transferee child on the transferor parent may provide strong evidence to rebut the presumption of a resulting trust.

[130] That invites the question, "what did P.S.D. gift to L.S.D.?" P.S.D. says all of the Surrey properties were his, beneficially, and, as such, he falls squarely within the principles enunciated in *Pecore*.

[131] With respect, I disagree. I have outlined my reasons for viewing much of P.S.D.'s and L.S.D.'s evidence with scepticism, if not outright disbelief.

[132] P.S.D., in my view, bears the burden of establishing that the properties transferred to L.S.D. were beneficially his at the time of transfer. In my view, he has failed to do so.

[133] Commencing with the purchase of 9274, I find it implausible that P.S.D., given his stated earnings, could have amassed savings of \$20,000 as part of the purchase price. Similarly, I disbelieve his explanation, repeatedly used to explain his ability to invest, that he has or had property in India sufficient to generate the income he says flowed to Canada in respect

of the acquisition of 9274, 132A or Snowden. Nowhere is the Indian property mentioned in P.S.D.'s income tax returns or in any application to secure financing for any of the properties. The documents said to show the incoming "Indian funds" are bank statements and a draft from Sangha Currency Trading said to evidence the transfer of funds from India show the only reference to a draft coming from India was in respect of the Snowden property. Those funds originated in U.S. funds and I find it far more likely that they represented funds returned by L.S.D. from his sojourn in the United States between 2002 and 2004; not funds from P.S.D.'s phantom "Indian acreage".

[134] It was open to P.S.D. to produce documents at any time during the trial evidencing ownership of property in India. He didn't.

[135] I find that 9274 was acquired by virtue of using the joint funds of L.S.D. and P.S.D. L.S.D. had just returned from the States where he'd been working. Why title was taken in P.S.D.'s name alone is a matter of conjecture. Perhaps worry over the impending arranged marriage, perhaps because L.S.D.'s immigration status didn't lend itself to property ownership. Whatever the reason, I find that L.S.D. did contribute to the acquisition of 9274.

[136] I accept K.K.D.'s evidence that L.S.D. worked with his father for Dam's. L.S.D. has always worked hard. Often he has held more than one job. His tax returns for 1995 to 1998 inclusive disclose a total of approximately \$30,000 of taxable income. P.S.D., on similar income, was able to reduce the mortgage on 9274 by approximately \$100,000 from 1994 to 1999. I find that P.S.D. and L.S.D. were working together under the name Dam's and that their pooled, unreported income was the primary source of funding for the reduction in debt.

[137] It also provided a source of funding for properties acquired later.

[138] In *Le v. Milburn* [1987] B.C.J. No. 2690 (BCSC), Southin J., stated:

When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame. In this case there has been some deliberate falsehood and some exaggeration.

[139] Despite maintaining, throughout the course of the trial and in the pleadings, that all seven properties belonged to P.S.D. beneficially, the 2008 trust declarations related only to the four Surrey properties. I find that to be so because it was those four properties which were the subject, at least in part, of CRA's reassessment of P.S.D.'s income tax returns. Such provides the only possible explanation for why the four Chilliwack properties owned in April 2008 were not included amongst the various trust documents.

- [140] I find the declarations of trust were to have no effect as between P.S.D. and L.S.D. in respect of the ownership of properties but were prepared solely for the purposes of dealing with the CRA reassessment. I reject both P.S.D. and L.S.D.'s evidence that the documents were to have any legal effect as between the two of them. Were they to truly represent the beneficial ownership of the Surrey properties, similar documents would have been prepared for the Chilliwack properties.
- [141] Just as I conclude the disputed properties were joint ventures owned equally by P.S.D. and L.S.D., so were the various bank accounts and lines of credit. L.S.D. may well have an interest in funds still on deposit with Dam's.
- [142] I accept that K.K.D. played a role in the listing of the properties on Craigslist when rentals needed to be renewed and a preparation of pro forma documents which contained the rental terms for each of the properties. I also accept she did some modest physical labour in respect of some although not all of the properties.
- [143] Here, for the reasons set out above, the evidence of P.S.D. and L.S.D. leave me with no clear picture of the actual arrangement in effect between them as to the ownership of the disputed properties. The best evidence, I conclude, is L.S.D.'s 2011 tax return and the statement of real estate rentals respecting Ben Nevis.
- [144] It would be tempting to simply leave titles to the property in the fashion L.S.D. and P.S.D. arranged them. That would work a substantial disadvantage to P.S.D. who, I find, contributed substantially and equally to all of the properties. This is conceded by K.K.D. at day's end.
- [145] In the result, I conclude that the seven disputed properties were acquired and preserved as a result of the joint efforts of, primarily, P.S.D. and L.S.D. On the evidence before me, it is impossible to separate or quantify the contribution of each. I accede to the submission of K.K.D. that there will be a declaration that the seven disputed properties are owned equally, as tenants-in-common, by P.S.D. and L.S.D.
- [146] Each of the seven properties is encumbered to some extent, by either mortgages or lines of credit. I am unable on the evidence before me to say with any certainty as to the amount owing in respect of any of the properties, I encourage the parties to come to some resolution in that regard or, alternatively, give liberty for the matter to be set down before me for a determination as to what debt charges which property. In doing so I intend in no way to affect third party rights but rather to determine the interest of K.K.D. in the disputed properties under the Family Relations Act.

Which of those properties, if any, are family assets within the meaning of the Family Relations Act?

[147] Because the action was commenced under the Family Relations Act, it remains the operable legislation governing the identification and division of L.S.D. and K.K.D.'s assets. The relevant provisions of the Act are:

Equality of entitlement to family assets on marriage breakup

56 (1) Subject to this Part and Part 6, each spouse is entitled to an interest in each family asset on or after March 31, 1979 when

- (a) a separation agreement,
- (b) a declaratory judgment under section 57,
- (c) an order for dissolution of marriage or judicial separation, or
- (d) an order declaring the marriage null and void

respecting the marriage is first made.

- (2) The interest under subsection (1) is an undivided half interest in the family asset as a tenant in common.
- (3) An interest under subsection (1) is subject to
 - (a) an order under this Part or Part 6, or
 - (b) a marriage agreement or a separation agreement.
- (4) This section applies to a marriage entered into before or after March 31, 1979.

Declaratory judgment

57 On application by 2 spouses married to each other or by one of the spouses, the Supreme Court may make a declaratory judgment that the spouses have no reasonable prospect of reconciliation with each other.

Family asset defined

58 (1) Subject to section 59, this section defines family asset for the purposes of this Act.

- (2) Property owned by one or both spouses and ordinarily used by a spouse or a minor child of either spouse for a family purpose is a family asset.
 - (3) Without restricting subsection (2), the definition of family asset includes the following:
 - (a) if a corporation or trust owns property that would be a family asset if owned by a spouse,
 - (i) a share in the corporation, or
 - (ii) an interest in the trust
- owned by the spouse;

- (b) if property would be a family asset if owned by a spouse, property
 - (i) over which the spouse has, either alone or with another person, a power of appointment exercisable in favour of himself or herself, or
 - (ii) disposed of by the spouse but over which the spouse has, either alone or with another person a power to revoke the disposition or a power to use or dispose of the property;
 - (c) money of a spouse in an account with a savings institution if that account is ordinarily used for a family purpose;
 - (d) a right of a spouse under an annuity or a pension, home ownership or retirement savings plan;
 - (e) a right, share or an interest of a spouse in a venture to which money or money's worth was, directly or indirectly, contributed by or on behalf of the other spouse.
- (4) The definition of family asset applies to marriages entered into and property acquired before or after March 31, 1979.

Excluded business assets

59 (1) If property is owned by one spouse to the exclusion of the other and is used primarily for business purposes and if the spouse who does not own the property made no direct or indirect contribution to the acquisition of the property by the other spouse or to the operation of the business, the property is not a family asset.

- (2) In section 58 (3) (e) or subsection (1) of this section, an indirect contribution includes savings through effective management of household or child rearing responsibilities by the spouse who holds no interest in the property.

Onus of proof

60 The onus is on the spouse opposing a claim under section 56 to prove that the property in question is not ordinarily used for a family purpose.

[148] There having been no earlier triggering event as defined in s. 56, the date for determination of which assets are family assets is the date of trial.

[149] The parties ordinarily resided, at times, in both the Teskey residence and 9274 making L.S.D.'s interest in them, by definition, a family asset. In addition, just like the other five properties discussed below, they were ventures to which K.K.D. contributed both directly and indirectly.

[150] Each of the five properties not ordinarily used throughout the course of the marriage was a 'venture' within the meaning of s. 58(3)(e) of the Act. K.K.D. contributed to them both directly and indirectly. Directly in terms of labour and administration she performed in relation to them but, more importantly, by virtue of her indirect contribution via her

homemaking and child rearing responsibilities. If I am wrong in the characterization of the five remaining properties as ventures, then they would be excluded business assets and the same considerations would apply.

[151] Whether L.S.D. was here or in the U.S., it was K.K.D. who primarily cared for the children and ran the household. In addition, she earned income which freed L.S.D.'s to make some of the financial contributing he was able to make.

[152] Hence, L.S.D.'s beneficial interest in each of the seven properties is a family asset to which K.K.D. is entitled, *prima facie*, to an undivided one half interest subject to s. 65(1) of the Family Relations Act.

Does K.K.D. have an interest in some or all of the disputed properties independent of the Family Relations Act under the law of constructive trust?

[153] Given my conclusion as to K.K.D.'s entitlement under the Act, I needn't examine whether any of her stated contributions entitle her to an interest in one or more of the disputed properties under trust considerations. My conclusion that L.S.D.'s interest in the disputed properties are a family asset provide, if nothing else, a juridical reason for the unpaid labour K.K.D. provided in respect of the properties.

[154] Her contributions were not sufficient so as to entitle her to any interest in P.S.D.'s share in the disputed properties and I did not understand her counsel to suggest otherwise.

What are the other family assets and how should all of the family assets be divided?

[155] In addition to the funds paid into Court in respect of Ferguson, the interest of L.S.D. in all seven of the disputed properties, both parties have automobiles and bank accounts in their name alone and jointly with others. K.K.D. also had, as at the date of separation, insurance policies which are, by definition, family assets. A policy was surrendered for \$10,000 after separation and the proceeds utilized solely by K.K.D.

[156] K.K.D.'s accounts have grown significantly since separation. This was elicited on cross examination on accounts undisclosed in her Form 8. She was never asked, nor did she volunteer, an explanation for the growth.

[157] While the date of separation is of no importance insofar as the identification of family assets, it has meaning when determining whether an equal division would be unfair *Norton v. Norton*, (1989) 19 R.F.L. (3d) 181 (BCCA). This is particularly so with accounts in financial institutions such as the case here. At the date of her first Form 8, K.K.D.'s disclosed one account with TD Canada Trust having a balance of approximately \$18,000. She made no mention of accounts in her name or those of the children at Khalsa Credit Union. Those accounts, in her name only, as it turns out, had balances in excess of \$25,000. Her savings account has been augmented, since separation, with the addition of \$33,000 said to be from the boys' accounts. None of this was disclosed in subsequent Form 8 filed in 2011 and 2012. Currently, K.K.D. has in excess of \$50,000 in her accounts.

[158] L.S.D. has accounts in his name and together with P.S.D. L.S.D. disclosed none of these in his 2010 Form 8. He disclosed vehicles he valued at \$23,000 including the Sienna retained and later sold by K.K.D. The focus of the inquiry into L.S.D.'s financial holdings centred on his real estate holdings and not much was made of the accounts in his and P.S.D.'s name together or his alone.

[159] I also conclude that L.S.D. may have an interest in Dam's account for reasons already given.

[160] Each of L.S.D. and K.K.D. has been less than forthright in their disclosure of their assets. L.S.D. has asked for the type of remedy suggested by Fraser J. in referenced *Cunha v. da Cunha*, (1994) 99 B.C.L.R. (2d) 93 (BCSC) [Cunha], wherein after determining that the respondent husband had concealed assets, he said:

I conclude that where there has been concealment of assets, it ordinarily should be held that the concealment is ongoing, that there are assets still undisclosed, and that the division of assets should be affected accordingly. I am not sure whether it is of consequence whether this is characterized as an assumption, a rebuttable presumption or an inference of fact. The result is the same. Such a holding may be avoided if the trial judge is satisfied by the conclusion of the trial that full disclosure has by then been made.

[161] L.S.D. argued that he should receive all or substantially all of the net proceeds of Ferguson based on the principles in *Cunha*. That submission loses much traction given my findings concerning L.S.D.'s disclosure and the quality of his evidence generally. K.K.D. made no submissions on a reapportionment founded on L.S.D.'s non-disclosure.

[162] Unlike in *Cunha*, I am satisfied, that I now know the identity of all of the major family assets. I say major because of a lack of clarity regarding both K.K.D.'s and L.S.D.'s non real estate holdings at the time of separation and thereafter.

[163] Where the court is satisfied all assets, ultimately, have been identified, the appropriate penalty for non-disclosure of assets should, in my view, sound in costs.

[164] As to L.S.D.'s one half interest in each of the seven disputed properties, Mr. Unterman argues that the division of family assets should be unequal in favour of K.K.D. by virtue of the provisions of s. 65(1)(e), the needs of each spouse to become or remain economically independent and self-sufficient. In addition, Mr. Unterman notes that L.S.D. has had the use and benefit of the seven disputed properties for the three years' post separation. He has paid support based upon an income of \$55,000 when, in fact, his income has been augmented by receipt of net rental revenues of approximately an additional \$13,000 annually.

[165] The converse of that, I find, is that K.K.D. had the sole use of Ferguson from 2010 until its sale and, for much of the time, failed to pay the mortgage. The result was a diminishment in the equity left for distribution to the parties.

- [166] Currently K.K.D. maintains bank accounts, either in her name alone or jointly with her sons, with significant holdings. One account had in excess of \$50,000 in it at trial. The source of funds, as noted, was unexplained, but I conclude that it had nothing to do with monies received from her use of family assets or monies received by her post-separation from L.S.D.
- [167] All of this, according to K.K.D., should lead to an unequal division of the real estate 55% in her favour and 45% in favour of L.S.D. She says that each should retain the financial assets in their name at the present time.
- [168] The net value of the real estate is said to be something in the order of \$2.5 million dollars. L.S.D.'s one-half share is \$1.25 million dollars. A half interest in that is \$625,000. This doesn't factor into account the proceeds from Ferguson. The evidence is unclear as to the current value of K.K.D.'s holdings. Some of the referenced accounts are in the joint names of her and one of the children. The beneficial ownership of those accounts is unclear.
- [169] Similarly, I am uncertain as to L.S.D.'s current financial holdings or that which he had at the date of separation or trial.
- [170] I am not persuaded that an equal division of the real estate found to be family assets, including the net sale proceeds of Ferguson, would be unfair. The only factor in play is s.65(1)(e) of the Act, which reads:
- 65 (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to
- (e) the needs of each spouse to become or remain economically independent and self-sufficient,
- [171] As against L.S.D.'s use of the rental income from what I have found to be family assets, is to be weighed K.K.D.'s use of Ferguson and the resultant diminishment of equity through her failure to pay the mortgage. On balance, given P.S.D. is entitled to one half the net rental incomes. In that regard, I find that K.K.D. has enjoyed a greater benefit than L.S.D.
- [172] As to the financial assets, the disclosure of each has been wanting. At separation, K.K.D.'s had holdings totaling over \$60,000; comprised of the Siena, an insurance policy, and money on deposit at TD Canada Trust and Khalsa Credit Union, and L.S.D.'s \$5,000 in automobiles. Some were referenced on her Form 8; others were not.
- [173] She has since disposed of the Sienna and used the trade in and insurance policy proceeds of approximately \$10,000 to buy a newer model Honda Civic. By 2011, according to her updated Form 8, most of the savings had been dissipated. By 2012, she reported zero under her financial assets. No reference was made in any of the Form 8s she tendered to accounts with Khalsa Credit Union or the disposition of the TD Canada Trust proceeds.

- [174] Given my uncertainty as to L.S.D.'s actual holdings in the bank at separation, coupled with my determination that spousal support to K.K.D. based on the living arrangement of the boys will not totally alleviate her economic dependency on L.S.D., I am of the view that is appropriate that each of them retain the other assets in their possession, including the proceeds of family assets which were disposed of post separation, for their own use.
- [175] Because of my uncertainty as to the full extent of the debt associated with the disputed properties, there will be liberty to apply. To state the obvious, the interests of all parties are subject to mortgages registered against the properties. The lines of credit are more problematic because I cannot say, with certainty, they have only been used for a purpose associated with the acquisition or preservation of the real estate I found to be family assets.
- [176] If the parties are unable to agree as to a mechanism for division of the family assets, there will be liberty to apply. The effect of my order is to declare P.S.D. a one-half owner of each of the seven properties. The remaining half interest in L.S.D.'s name, is a family asset to which K.K.D. is entitled to a one half interest as tenant in common.
- [177] I will not order the sale of the properties as it will affect the rights of P.S.D. who may, given he is the occupant of 92 Avenue, have much to say about the fashion in which the properties are distributed.
- [178] There was also evidence at trial of the various income tax levies as against P.S.D. in respect of the dispositions of 125 Street, both 9274 and 9221 and the Ben Nevis property resulting in the assessment of capital gains. If there are tax consequences which might affect the adjustment of the division as between P.S.D. and L.S.D.'s respective interests, I am prepared to hear submissions on that topic so as to ensure that those tax consequences are borne equally, in the first instance, by P.S.D. and L.S.D. There may be some impact on the share that would flow through to K.K.D. as a result of that determination.

What is the proper parenting arrangement for S. and G.?

- [179] Both boys are at an age where their expressed views need be taken into account. The Family Law Act, S.B.C. 2011, c 25 specifically mandates consideration of their views.
- [180] While concerned that S.'s situation is fluid, having regard to his age, I think it unwise to interfere with his decision to live with his father. G. has resided with his mother since the parties' separation and appears to be flourishing.
- [181] Neither party made submissions on matters of parenting time/access such that I presume each is satisfied to make arrangements directly with the child in the care of the other of them. Arrangements for contact between parent and child appear to be made directly without involvement of the other parent. Given the children's ages and the lack of any concern expressed over the current manner of arranging contact, there is no need to craft a parenting plan. If that changes, either party is at liberty to apply. I will remain seized of any such application.

[182] Accordingly, under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp), I make an order that each have sole custody of the child currently in their care. L.S.D. shall have custody of S. and K.K.D. shall have custody of G. Contact between the non-custodial parent and the child in the custody of the other of them shall be arranged directly through that child.

[183] Under the Family Law Act I grant the parties joint guardianship of the children based upon the 'Joyce Model' of guardianship.

What is the income of each spouse for the purpose of determining their support obligations?

[184] In the case at bar, Section 8 of the Federal Child Support Guidelines applies as follows:

8. Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

[185] For the purpose of calculating L.S.D.'s support obligations, I conclude his income should be set at \$60,000 based upon the evidence concerning his trucking and cab driving income of \$57,200 then grossing up the total by \$2,800 for tips from driving cab. I am not taking into account the rental income because (1) I have concluded that half beneficially belongs to P.S.D., and (2) K.K.D. has been the beneficiary of receiving support on S.'s behalf these past few months while L.S.D. has actually assumed financial responsibility for him. Rather than attempting to unravel that back to the date S. left K.K.D.'s care, I think it reasonable to modestly reduce L.S.D.'s income from what was stated in his tax return.

[186] K.K.D.'s income, given periods of unemployment in 2012 for health issues, is somewhat more problematic. She currently works at three different jobs. The lowest paying is Wendy's, the highest from daycare. The daycare employment doesn't generate full time 40 hour per week employment. Historic daycare records from the daycare operated at Ferguson were not provided despite request.

[187] Her bank accounts since separation have grown in a significant fashion without an explanation. Some of her business expenses are questionable, at least insofar as calculations of income for child support are concerned.

[188] I disagree that her admission as to cash received in any given year amounts to income for Guidelines purposes. Ms. Sabhrwal included sums received as Child Tax Credit and Universal Child Care Benefit as income in her submissions.

[189] A reasonable estimate of K.K.D.'s income, taking into account employment in all three jobs, is \$30,000 annually. The parties should review child support annually.

[190] The set off formula results in a net payment of \$269 monthly from L.S.D. to K.K.D. Same should commence August 1, 2013.

[191] The parties are to exchange their T1 General Tax Returns annually by May 15th of each year commencing in 2014. They will exchange Notices of Assessments as soon as same are received. Thereafter, they should attempt to adjust child support based upon their incomes and the living arrangements of the boys.

Is K.K.D. entitled to spousal support and, if so, for how long and in what amount?

[192] I disagree that K.K.D. is self-sufficient as a result of training received by her during the marriage. The evidence indicates she assumed a role in the marriage which placed her career second to that of L.S.D.'s and developed a career around the needs of her children and her husband. She looked after the boys while L.S.D. worked in the United States. She was the person primarily responsible for their care while the parties resided together in the basement of 9274.

[193] Her employment throughout the marriage has taken a back seat to other requirements as a homemaker and, in some measure, co-contributor to the business ventures of her husband and father-in-law. In short, I find she has suffered the type of economic disadvantage discussed in *Moge v. Moge*, [1992] 3 S.C.R. 813.

[194] The relevant factors provisions of the Divorce Act read:

15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[195] Here, the marriage is 16 years duration. K.K.D. assumed a role in the marriage which saw her subjugate career aspirations to family commitment.

[196] I conclude to deny her support claim would be to shift majority of the economic disadvantage of marital breakdown onto her shoulders.

[197] DivorceMate calculations, which factor into account the child support obligations of each party, suggest a range of support from a low of zero to a high of \$287 monthly. In my view \$250 is the appropriate amount of spousal support and L.S.D. shall commence paying that amount monthly commencing August 1, 2013 and thereafter the first of each month until further order of the Court.

[198] The quantum of support may be reviewed upon one or more of the children no longer qualifying for support as a child of the marriage. At the time the duration of K.K.D.'s support order should be assessed.

Summary of Orders Made

[199] To summarize, I have made the following orders:

1. All seven disputed properties are jointly owned by P.S.D. and L.S.D. as tenants in common subject to the encumbrances registered against the properties and to the outstanding balances on the lines of credit in their joint names:

9274 - 125th Street, Surrey, British Columbia;

9221 - 125th Street, Surrey, British Columbia;

9046 Ben Nevis Crescent, Surrey, British Columbia;

6250 Tyson Road, Chilliwack, British Columbia;

46048 Higginson Street, Chilliwack, British Columbia;

21475 - 92nd Avenue, Surrey, British Columbia

4691 Teskey Road, Chilliwack, British Columbia

2. L.S.D.'s beneficial interest in each of the seven properties is a family asset to which K.K.D. is entitled to an undivided one half interest.
3. The net proceeds from the sale of Ferguson are to be divided equally.
4. Otherwise, each of L.S.D. and K.K.D. shall retain any other assets in their own name and possession for their own use absolutely.
5. L.S.D. shall have custody of S. and K.K.D. shall have custody of G. Contact between the non-custodial parent and the child in the custody of the other of them shall be arranged directly through that child. They will have joint guardianship of the children based upon the "Joyce model".

6. L.S.D.'s income shall be set at \$60,000 and K.K.D.'s income shall be set at \$30,000. L.S.D. shall make a net payment of \$269 monthly to K.K.D. commencing August 1, 2013 as child support.
7. The parties are to exchange their T1 General tax returns annually by May 15th of each year commencing in 2014. They will exchange Notices of Assessments as soon as same are received. Thereafter, they should attempt to adjust child support based upon their incomes and the living arrangements of the boys
8. L.S.D. shall pay K.K.D. \$250 spousal support commencing August 1, 2013 and thereafter the first of each month until further order of the Court. The quantum of support may be reviewed upon one or more of the children no longer qualifying for support as a child of the marriage. At that time, the duration of support should be determined.
9. There will liberty to apply for directions as to how K.K.D. shall receive her interest in the divisible family assets and, if necessary, a calculation of the debt outstanding in the names of L.S.D. and P.S.D. and its effect on the equity in the properties.

Costs

[200] The respondent, K.K.D. has achieved substantial success in the litigation. P.S.D.'s success against L.S.D. falls short of what was sought and, having regard to my findings regarding the quality of his evidence, is not entitled to any costs. K.K.D. shall have one set of costs as against both P.S.D. and L.S.D. The only issue is the level of costs. Unless the parties agree, they may set the matter down for hearing before me.

"Harvey J."

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