

CANADA / JUDGMENT

Loss v. Walters

2024 BCSC 1012

COURT

Supreme Court of British Columbia

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2024 BCSC 1012 Loss v. Walters

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Loss v. Walters,

2024 BCSC 1012

Date: 20240612

Docket: E16804

Registry: Chilliwack

Between:

Shoneena Lee Loss

Claimant

And

Robert Raymond Walters

Respondent

Before: The Honourable Justice Walkem

Reasons for Judgment

The Claimant, appearing in person:

S. Loss

The Respondent, appearing in person:

R. Walters

Place and Date of Trial:

Chilliwack, B.C.

April 8-10, 2024

Place and Date of Judgment:

Chilliwack, B.C.

June 12, 2024

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I. Introduction

- [1] The claimant, Shoneena Loss, and respondent, Robert Walters, separated approximately seven years ago. Issues related to parenting time, child support and spousal support have been settled between them. Division of assets, specifically property and business interests, and debt, remain outstanding.
- [2] In 2006, the parties began to live together. They had their first child, C., in 2008. They separated in September 2010 and reconciled less than a year later in the summer of 2011. Their second child, R., was born in 2016. The parties lived together and developed several family businesses on properties they owned in the Boston Bar area. The parties separated on January 2018. The relationship was approximately twelve years long.
- [3] After separation, the parties entered a series of mediations. A mediation in July 2021 addressed family assets and debt, including real property and businesses. A mediation in September 2021 addressed issues related to the children, including parenting time, as well as spousal and child support. Ms. Loss challenges the validity of the July 2021 mediation, while Mr. Walters seeks to have it enforced. Neither party disputes the agreements made at the September 2021 mediation.
- [4] Both parties were self-represented. A trial scheduled for last year was adjourned due to a forest fire. No examinations for discovery have occurred, nor has document exchange occurred. The parties nonetheless agreed that the trial should proceed.

A. Property

- [5] Two lots owned by the parties, and lands where structures that the parties agree are family assets are situated, are part of a broader expanse of land known as Washtock Farms. This land has been in the family of Mr. Walters' mother, Lorianne Walters ("L.W."), for several generations. L.W. was not called as a witness by either party.
1. Parcels One and Two
- [6] Two side-by-side pieces of land owned by the parties are:
 - a) Parcel one (Part S1/2, 4 Barrel Rd, Boston Bar), a 20 acre parcel where the respondent operates Sandy Pines Campground. [12 Part S1/2, Legal Subdivision 11, Section 5, Township 12, Range 26, Meridian W6, Yale Div of Yale Land District, Twp Pl 10/5/21] PID: 011-287-683

- b) Parcel two (Part N1/2, 4 Barrel Rd, Boston Bar), a 20 acre parcel where the respondent operates a RV Park. [12 Part N1/2, Legal Subdivision 11, Section 5, Township 12, Range 26, Meridian W6, Yale Div of Yale Land District] PID: 011-290-722

[collectively, the "two parcels".]

- [7] The parties invested family resources to improve the two parcels and develop the campground and RV Park on them. Ms. Loss operated healing retreats on the two parcels.
- [8] In or around 2005, before the parties became a couple, Mr. Walters paid off a debt owed by his father. In exchange, the two parcels were registered in Mr. Walters' name, as well as that of his two sisters. Mr. Walters says that his parents required his two sisters' names be added to title due to their concern that the land remain within the family. Only Mr. Walters contributed any funds.
- [9] In or around 2016, the parties learned that one of Mr. Walters' sisters, who was on title to the two parcels, faced possible bankruptcy. The parties also feared that this sister's numerous romantic partners could make a claim against the two parcels. The parties worried that their interest in the two parcels was at risk.
- [10] Ms. Loss asked to be added to title to the two parcels, and to have Mr. Walters' sisters' names removed. Mr. Walters said Ms. Loss threatened to leave with the two children if this was not done. Ms. Loss denied that she had coerced Mr. Walters into adding her name to title. Mr. Walters' assertion is inconsistent with Ms. Loss's actions in ensuring that the parties' children maintain a close connection to their paternal family. I find it plausible that Ms. Loss may have said she did not want to continue developing, or living on, property she did not own. Overall, I do not accept Mr. Walters' suggestion that Ms. Loss coerced him into adding her name to the title of the two parcels.
- [11] In April of 2016, title to the two parcels was transferred to the parties as joint tenants. Mr. Walters' two sisters were removed from title. No money was paid to the sisters. Mr. Walters covered the costs of the transfer.
- [12] A historic appraisal assessed the value of each of the two parcels to be \$40,000 at the time the relationship started. The assessed value of each parcel was \$185,000 (parcel one) and \$165,000 (parcel two) in 2019. Each parcel was valued at \$350,000 in an updated appraisal commissioned by Ms. Loss in 2024. The same appraiser did all appraisals. Mr. Walters did not participate in the updated 2024 appraisals and suggests that they have not accounted for the fact that there are no water rights attached to the parcels and no legal access right of ways. Mr. Walters had the opportunity to participate in having updated appraisals done and did not. Mr. Walters' testimony was that he had provided this information to the appraiser when the original appraisals were done. I accept that the 2024 updated appraisals reflect a reasonably accurate valuation of the market value of the two parcels at the date of appraisal.

2. Structures

- [13] Part of the challenge the parties face is that some structures, including the former family home and buildings integral to the campground, and RV Park businesses, are located on land owned by L.W. The outdoor kitchen, washroom and shower facilities, a few camping spots, some parking, and the entrance to the campground were constructed on L.W.'s property. The parties did not survey property lines before building these improvements.
- [14] The relaxed attitude of situating new buildings or structures on either of the two parcels, or on L.W.'s land, reflects the fact that the parties generally treated their efforts as a family enterprise. This laissez-faire approach worked until the couple separated, when the blurred lines created considerable confusion, which is reflected in the issues before me in this matter.
- [15] Three additional structures are located on L.W.'s land: the Cabin, Trowse, and Soul Shack.
- a) Cabin
- [16] The Cabin is the former family home, and current home of Ms. Loss and the children.
- [17] When the parties briefly separated in 2010, Ms. Loss asked L.W.'s permission to build the Cabin on her property. Ms. Loss wanted the parties' son, C., to remain close to his father and paternal family. Ms. Loss contributed \$13,363.35 she received as an inheritance from her father's estate to purchase a kit that formed the main part of the Cabin. Ms. Loss invested additional funds for material and labour. Friends and community members donated material and labour. Mr. Walters contributed labour to build the Cabin. While building the Cabin, the parties reconciled. The Cabin was expanded over the years and became the family home. No lease was in place with L.W.
- [18] Ms. Loss sought a quote for the Cabin to be moved, and learned that only a 20 foot by 20 foot portion of the Cabin can be relocated. The parts of the Cabin which sit on a foundation and cannot be moved, include the living room and mudroom. For practical purposes, the Cabin cannot be moved and still remain usable as a family home for Ms. Loss and the children.
- [19] The assessed value of the Cabin in 2019 was \$60,000, and \$90,000 in the updated 2024 assessment.
- b) Trowse
- [20] Initially, when the parties commenced their relationship, they lived in a travel trailer with a structure built around it (the "Trowse") situated on L.W.'s property. Though the travel trailer has subsequently been removed, the structure remains. The Trowse can be rented out to generate revenue.
- [21] An appraisal assessed value of the Trowse at \$5,000 in 2019. The parties agreed this was the appropriate valuation.
- c) Soul Shack

[22] The Soul Shack is a structure that was built to support Ms. Loss's business. The Soul Shack initially provided space that Ms. Loss worked out of, and could be used as indoor space for retreats. The Soul Shack can be rented out to generate revenue.

[23] An appraisal assessed value of the Soul Shack at \$5,000 in 2019, and the parties agreed this was an appropriate valuation.

3. Family Businesses

[24] Ms. Loss is an Indigenous healer, doula, and holistic health practitioner. Ms. Loss organizes and offers holistic healing retreats, and also participates as a host and facilitator for the retreats organized by others. The family generated income from renting retreat spaces, camping revenue, and some units were rented through Airbnb associated with the retreats. Ms. Loss paid some funds to L.W. for some retreat activities which occurred on L.W.'s land. At the time of the July 2021 mediation, Ms. Loss rented clinic premises which were destroyed by the 2021 Lytton forest fire.

[25] Mr. Walters is a millwright. He operates the RV rental park and leases RV spaces for both long-term and short-term leases on parcel two and at other spots throughout the Washtock Farms property. Mr. Walters upkeep the campground. The parties agree that the campground has fallen into a level of disrepair and neglect, to some extent reflecting the disagreement between the parties.

II. Issues

[26] The issues before me are:

1. Is the July 2021 Mediation Agreement valid?
2. If a binding agreement was reached at the July 2021 mediation, should it be set aside pursuant to s. 93 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]?
3. If the Mediation Agreement is not valid or if it should be set aside, how should family assets and debts be divided between the parties?

[27] Ms. Loss raised the issue of family violence, post-separation, in the form of restrictions on her financial autonomy and coercion or threats regarding property. I address the impact of family violence while discussing the resolution between the parties in this case.

III. the July 2021 mediation agreement

[28] The July 2021 mediation was conducted by two co-mediators, Rob and Bob Finlay, and occurred remotely over Zoom due to the COVID-19 pandemic. The mediation was conducted "shuttle style" with the mediators relaying positions back and forth between the parties, as opposed to the parties speaking directly with each other. Mr. Walters participated with his legal counsel in the same space. Ms. Loss was by herself. Ms. Loss's counsel, Ms. Gill, participated intermittently by Zoom from another location. Ms. Loss had not met Ms. Gill

prior to the mediation. Ms. Gill, as outlined below, participated in place of Ms. Loss's counsel, Mr. Jodway.

A. Agreement to Mediate

[29] The Mediation Agreement included the following terms:

2.1 Each party that has qualified for legal aid must attend the mediation with Counsel. Each party that does not qualify for legal aid may attend the mediation alone or with Counsel.

4.1 Each party is permitted and encouraged to seek independent legal advice at any time, including before signing a written agreement, to ensure that the legal rights and obligations of any agreement made at the mediation are fully understood.

5.1 Each party will fully disclose to all other parties and the Mediators, in a timely manner, all true information relevant to the issues being negotiated at the mediation.

5.2 No party will be bound by any agreement made at the mediation if any material information is withheld at the mediation.

B. Terms of the July 2021 Mediation Agreement

[30] The July 13, 2021 mediation agreement, the ("July 2021 Mediation Agreement") was signed electronically by each of the parties and their respective legal counsel.

[31] In summary, the July 2021 Mediation Agreement provided that:

- a) Mr. Walters was to get sole title to the two parcels and sole ownership and use of the Soul Shack and Trowse.
- b) Ms. Loss was to get sole ownership and use of the Cabin.
- c) The parties were to attend a further mediation in September 2021 to discuss terms of the lease between Ms. Loss and L.W. which would be required for Ms. Loss to live in the Cabin, as it is situated on L.W.'s property (L.W. was not a party to the mediation and no mediation occurred with her in September 2021).
- d) Mr. Walters was to get the RV business.
- e) Ms. Loss was to get the campground business but would be required to enter into a lease with Mr. Walters to use the underlying land (parcel one). The terms of Ms. Loss's lease to use the campground land would be \$1 per year for the initial three year lease, which would "automatically renew unless there is a significant change of circumstances". Ms. Loss would pay Mr. Walters \$7.50 per day for each camper or retreat participant for maintenance and cleaning costs.
- f) Family debt was identified as being a \$53,000 line of credit in Mr. Walters' name, of which Ms. Loss would pay \$12,500 and Mr. Walters \$40,500.

- g) A debt of \$15,000 in Ms. Loss's name was to be considered her debt alone, and not family debt.
- h) Mr. Walters' excluded property was identified as \$40,000 in each of the two parcels (\$80,000 in total) as well as RRSPs he had accumulated prior to the relationship.
- i) No excluded property was identified as Ms. Loss's.
- j) Investment assets to be divided between the parties were identified as: \$33,600 (RRSP Algonquin) and \$39,300 (RRSP Investor Group of which \$27,100 was identified as excluded property). Of this, \$22,900 was identified to be subject to a spousal roll over from Mr. Walters to Ms. Loss.
- k) Ms. Loss was to get \$105,000 as full and final settlement for her interest in family property (the investment rollover of \$22,900 was included in this amount).
- l) The parties indicated their intention to leave the two parcels to their children.
- m) The preamble provided that all parties acknowledged that:

each party has fully disclosed all true information relevant to the terms of this Agreement; and each party has been advised by the mediators to seek independent legal advice prior to signing a written agreement, to ensure that the legal rights and obligations of any agreement made at the mediation are fully understood.

- n) Specific provisions regarding the campground business and land where the Cabin was situated on were that:
 - 1. Robert will have sole ownership of the Campground (20 acres) [parcel one] and RV Leases (20 acres) [parcel two] for his use alone.
 - 2. Robert will have sole ownership of trowse and Soul Shack for his use alone.
 - 3. Shoneena will have sole ownership of the Cabin for her use alone.
 - 4. Shoneena will have sole ownership of the Campground business, which does not include the Campground (acres), for her use alone and Robert will have sole ownership of the RV business for his use alone.
 - 5. The parties will enter into a 3-year renewable lease of the Campground (20 acres). The lease of the Campground (20 acres) will automatically renew unless there is a significant change of circumstances. The lease rate will be \$1.00 per year.
 - 6. Shoneena will pay Robert \$7.50 per day for each camper and retreat participant for maintenance and cleaning costs.
 - 7. The parties will attend mediation in early September 2021 to discuss terms of the lease between Shoneena and Robert's mother, and child and spousal support.

C. Circumstances Surrounding the Mediation

- [32] Ms. Loss points to the following correspondence as illustrating important context of the Mediation Agreement. Though some of the emails introduced as evidence did not list the date on which they were sent, I accept they were sent during the period identified. I identify where no date is discernible.
- [33] On June 21, 2021, Ms. Loss emailed the mediator Rob Finlay, notifying she had had "zero communication" with her lawyer Mr. Jodway about the mediation, and asked for the date of the mediation.[1]
- [34] On July 7, 2021, the mediator notified Ms. Loss that she had missed the mediation orientation and that they would complete the orientation during the mediation itself. The mediator asked Ms. Loss to confirm that she was still interested in participating in mediation, and to return a signed copy of the Agreement to Mediate. Ms. Loss returned the signed Agreement to Mediate.
- [35] On July 7, 2021, Ms. Loss wrote to the mediator, referring to the impact of the Lytton forest fire (which started on June 30, 2021, and still not contained at the time of the mediation):
- "I have recently lost my business and my local community was wiped out by a fire. My apologies for not knowing what day it was as I have been assisting on the front lines our people whom have been displaced and lost everything."
- [36] On July 8, 2021, Mr. Jodway wrote to the mediator that another lawyer from his firm, Ms. Gill, would be attending the mediation, and that he would relay this information to Ms. Loss.
- [37] Before the July 2021 mediation, and likely between July 9-13, though there is no date attached to this email correspondence, Ms. Loss wrote to the mediator, copying Mr. Jodway and Ms. Gill, mentioning the forest fire and evacuations, and her inability to get her 2020 income tax information together and suggesting that the mediation be postponed: "Is this plausible, or shall we postpone? Perhaps if [Mr. Walters] is in agreeance to postpone it would be best."
- [38] After the July 2021 mediation occurred, likely on July 13, though the date is not clear, the correspondence was sent before Ms. Loss signed the Mediation Agreement. Ms. Loss wrote to Mr. Rob Finlay, indicating her belief that the agreement was contingent upon two subsequent agreements and raising questions about the meaning and consequences of the proposed terms:
- "I am in agreeance with this given the terms of the leases with both parties are agreeable. Do I have to sign this now? Does it mean I am signing over my land?"
- [39] On July 14, 2021, Ms. Loss wrote to Ms. Gill and Mr. Jodway:

"Because everything ended so fast yesterday and [Ms. Gill] had to leave the office I was left frazzled.

I have noticed a few things in the agreement that need to be changed, but I have signed already."

[40] Ms. Loss outlined her concern that a previous mediation was postponed to allow for an updated property assessment which was still not provided, and that the campground and RV businesses were not assessed, nor were the revenues of those businesses accounted for. Ms. Loss noted her belief that the "small details [will] get drawn up in the lease agreements, which this mediation agreement is dependant on "

[41] Ms. Loss followed up with another email to Mr. Jodway and Ms. Gill, though there is no date in the email, it appears to have been sent after the above email.

"Signing this agreement was only under the conditions that I am in agreeance with [L.W.'s] proposal, early September.

I need to know what the legal implications are for signing the agreement for the buy out and not following through if I do not agree."

[42] Ms. Loss wrote a further follow up email to Ms. Gill, though no date is shown, it was sent after the above email, identifying her concern about the Cabin:

"I now own my cabin but I may not be able to remain here because of the amount of rent [L.W.] will be charging me?

And I will have to leave my home, that I cannot sell because it's on [L.W.'s] property?"

[43] After the July 2021 mediation, counsel for Mr. Walters forwarded a draft consent order which purported to record the mediation terms. Ms. Loss directed Ms. Gill not to sign the draft consent order.

[44] On September 29, 2021, Ms. Gill wrote to Mr. Walters' lawyer indicating Ms. Loss's concerns, identifying that it was Ms. Loss's belief the mediation agreement was conditional upon separate leases regarding the Cabin and campground business:

Ms. Loss does not agree to the value of the buyout without a lease agreement in place. There has been no consideration of the value of the campground business and RV business and does not reflect the possibility of a full buyout, provided that Ms. Loss cannot effectively run the business on leased land without a consensual lease agreement.

[45] In September 2021, Ms. Loss received a lease agreement from L.W. which proposed that she pay \$500 per month in rent to continue to live in the Cabin on L.W.'s property. It also proposed that Ms. Loss only be allowed to park one vehicle at a time on the property, be restricted to an area where Mr. Walters had planted marker posts, and that either party could cancel the lease with three months' notice.

[46] Around this time, Ms. Loss was notified that Mr. Jodway's legal aid retainer had expired and had been tied only to issues of child and spousal support, and not the property issues she was concerned about. Ms. Loss responded that she would apply to have legal aid coverage continued, and indicated her belief that she was subject to family violence in the form of financial coercion: "My livelihood is being threatened. My safety in my own home is being threatened; Access to vital resources such as water to [my] home is being threatened."

IV. Positions of the Parties

[47] First, Ms. Loss argues that the July 2021 Mediation Agreement is not binding because the parties did not reach agreement on key terms. Ms. Loss asserts that the agreement was preliminary in nature and contingent on future agreements, notably regarding leases and terms of use for the campsite and the land the Cabin was situated on, with Mr. Walters and L.W. Further, that some terms were ambiguous and unclear.

[48] Second, if an agreement is found to exist, Ms. Loss argues that it should be set aside, under s. 93 of the FLA, on the following grounds:

- a) Lack of disclosure of relevant information. Ms. Loss argues that she had incomplete financial information including: no up-to-date valuation of the properties (the latest valuation reflected 2019 values and the mediation occurred in 2021); no valuation of the businesses; and no, or incomplete, information about the \$53,000 line of credit that was apportioned as family debt;
- b) Mr. Walters took improper advantage of her vulnerability;
- c) Ms. Loss was suffering from PTSD and under duress when she signed the agreement due to the fact that the Lytton forest fire had destroyed her business premises and impacted her client base;
- d) Ms. Loss did not understand the nature or consequences of the agreement; and
- e) Ms. Loss lacked adequate legal representation. Ms. Loss's argument about the inadequacy of her legal representation is intertwined with her assertion that she did not understand the nature and consequences of the agreement.

[49] It is Mr. Walters' position that, given the involvement of legal counsel, professional mediators, and the signing of the July 2021 Mediation Agreement by all parties, that the Mediation Agreement is binding. In particular:

- a) The July 2021 Mediation Agreement represents the culmination of extensive negotiations with the assistance of legal counsel and professional mediators, effectively resolving all disputes between the parties;

- b) The July 2021 Mediation Agreement encompassed all necessary terms regarding Ms. Loss's use of the Cabin, as well as how Ms. Loss would operate the campground business on land transferred to Mr. Walters' sole name;
 - c) Years have past since the July 2021 mediation, and that his interests would be prejudiced if it were not enforced, as property values have risen in the interim;
 - d) Mr. Walters disputes that Ms. Loss was experiencing PTSD at the time of the July 2021 mediation and denies that any coercion occurred; and
 - e) Mr. Walters argues that asking Ms. Loss to agree to a consent order which reflects an agreement he felt they reached is not coercion.
- [50] If the July 2021 Mediation Agreement is set aside or found to be invalid, Mr. Walters proposes, in the alternative, that any interest Ms. Loss has in the two parcels be compensated in an amount equal to the increase of property value during the relationship, and that the property should not be ordered sold.

V. Law on family property under the FLA

- [51] Family property is defined in s. 84 of the FLA as including real property, business interests, investments, money, pensions, and increases in value of any excluded property during a relationship. Parties are entitled to a presumption of equal division of family property and family debt upon separation pursuant to s. 81. Pursuant to s. 95, a court will only reapportion family property to provide for an unequal division if an equal division would be "significantly unfair".
- [52] Property can be excluded from family property under s. 85 if it is acquired by a spouse before the relationship began, is an inheritance or a gift to a spouse from a third party, or in some other specific situations. The spouse claiming that property is excluded is responsible for demonstrating how that exclusion occurs.
- [53] Under s. 87 of the FLA, valuation of family property must be based on fair market value and determined as of the date of an agreement dividing family property, or at the date of the court hearing to determine those matters. Setting the valuation date at another date, as proposed by Mr. Walters, requires the application of s. 95(1) of the FLA and a finding of significant unfairness.
- [54] The objectives of the FLA include to encourage parties to resolve disputes outside the court process: FLA s. 4(b). Encouraging negotiated settlements and affording respect to the parties' freedom to structure their post-separation lives in a manner that reflects their own objectives and concerns is a significant policy goal in family law legislation: *Miglin v. Miglin*, 2003 SCC 24 [Miglin] at para. 66, and *Hartshorne v. Hartshorne*, 2004 SCC 22 at para. 67.

- [55] Sections 81 and 92-94 of the FLA provide that the parties can make agreements that displace equal division of family debts and assets. Section 94(2) directs that the court may not divide property that is the subject of a written agreement unless that agreement is first set aside under s. 93.

VI. Did the Parties Reach an Enforceable Agreement?

- [56] When a dispute over an agreement arises, there must first be an inquiry into whether the parties have actually reached an agreement. The fact that a negotiated agreement favours one party, or is improvident, does not, in and of itself, invalidate that agreement. The usual principles of contract formation apply. That is, would it have been clear to an objective, reasonable bystander that the parties intended to contract, and whether the essential terms of that contract can be determined with a reasonable degree of certainty.
- [57] The Court of Appeal outlined this consideration in *Kuo v. Kuo*, 2017 BCCA 245 at para. 38 as follows:
- [38] When a dispute arises, the first question is whether the parties have agreed on all essential terms of the purported settlement: *Fieguth* at 70. The usual principles of contract formation apply. The court must analyse the evidence to determine whether, in all the circumstances, it is clear to the objective, reasonable bystander that the parties intended to contract, and whether the essential terms of that contract can be determined with a reasonable degree of certainty: *Lacroix v. Loewen*, 2010 BCCA 224 at paras. 35-36. If they have, unless otherwise agreed, an obligation to furnish a release is implied: *Fieguth* at 69-70.
- [58] This Court must address whether, on an objective basis, the terms of an agreement between the parties could be determined with a reasonable degree of certainty from the July 2021 Mediation Agreement.
- [59] Mr. Walters argues it is clear Ms. Loss intended to sign over her interest in the two parcels. In addition to a monetary payment of \$105,000, Ms. Loss would get (1) the Cabin, and she would need to negotiate lease terms with L.W. so that she could live in it; and (2) the campground business. Mr. Walters also argues that the July 2021 Mediation Agreement provided sufficient detail about an agreement for how Ms. Loss could operate the campground business on land she would transfer her interest to Mr. Walters' sole name. The July 2021 Mediation Agreement purported to give Ms. Loss "sole ownership of the Campground business", while Mr. Walters was to get full ownership of the underlying land. The agreement required that the parties enter a three-year lease, for a rate of \$1.00 per year, that would automatically renew unless there was a significant change of circumstances. It did not address Ms. Loss's use of campground facilities situated on L.W.'s land.
- [60] Ms. Loss argues that no agreement was reached about (1) the terms of her being able to live in the Cabin on L.W.'s property, and (2) the specifics of her operation of the campground and how the campground would be maintained by Mr. Walters.

- [61] Ms. Loss believed there was a misunderstanding about amounts she would pay to Mr. Walters. Ms. Loss's evidence was that she believed the amount of \$7.50 would be paid per campsite per night - not per person, per day. She argued that she could end up losing considerable amounts of money under the wording. To illustrate, if a family of five were to stay overnight, under her understanding Ms. Loss would have owed \$7.50 for that stay. Under the wording of the agreement, Ms. Loss would have owed \$7.50 per person x 5 people x 2 days = \$75.00.
- [62] After separation, L.W. and Mr. Walters sought to restrict Ms. Loss's use of the area around the Cabin--restricting her ability to park more than one vehicle in the yard or to construct a skateboard course for her children adjacent to the Cabin--and interfered with Ms. Loss's access to an area on L.W.'s land needed to maintain water flow to the Cabin in the winter. Post-separation, it seems Ms. Loss was no longer viewed as a family member but rather an interloper on the Washtock family property.
- [63] Ms. Loss's evidence was that she thought the July 2021 Mediation Agreement was contingent upon future consensual agreements between herself and L.W. and Mr. Walters. A belief in future consensual lease agreements being required is reasonable on the face of the July 2021 Mediation Agreement itself, particularly given the Cabin's location and the ongoing business arrangement between herself and Mr. Walters contemplated in the agreement. Immediately following the mediation, Ms. Loss's communications are consistent with a belief that the agreement was preliminary and required further agreements to be operative.
- [64] *Partington v. Brown*, 2020 BCSC 2075, was cited by Mr. Walters for the proposition that unresolved issues do not invalidate a settlement agreement. *Partington*, at para. 58, emphasizes that formal mediation agreements in family matters, and the solemn written obligations entered into, should not be easily ignored. I do not find *Partington* to be of much assistance on the facts before me. In *Partington*, one spouse alleged that there was an oral agreement that was contrary to the written agreement, evidence of which the judge said "borders on the preposterous": *Partington* at para. 27. The judge made an order enforcing the written agreement.
- [65] Mr. Walters also drew my attention to *Isfeld v. Isfeld*, 2022 BCSC 1925. The assertions of Ms. Loss in the present case are similar to the respondent's assertions in *Isfeld* that he thought a Memorandum of Understanding, made during a mediation, was only a tentative arrangement and subject to him obtaining further legal advice. Justice Elwood focused his analysis on the test for whether a contract was formed: *Isfeld* at para. 18, ultimately finding that the parties reached a legally binding agreement based on the terms of the Memorandum of Understanding.

- [66] The agreement in Isfeld had no essential terms which still required negotiation or agreement, and the language was found to be "clear and unambiguous": Isfeld at para. 72. Furthermore, the respondent's conduct after the mediation in Isfeld was consistent with having accepted the essential terms of a settlement, including his insistence that the claimant comply with a pick-up time set out in the agreement, and his reference to support payments as payments on which the parties "had agreed".
- [67] In the case before me, the July 2021 Mediation Agreement specifically contemplated that there would be a mediation with L.W. in which Ms. Loss's ability to continue to live in the Cabin on L.W.'s property would be addressed. Further, I find that the terms upon which Ms. Loss could operate the campground were unclear and ambiguous, including the provision that the lease would be renewed absent a "significant change in circumstances." The extent of the maintenance and cleaning to be provided by Mr. Waters was also not specified. Ms. Loss's evidence, which I accept, was that the parties still had to work out terms of how they would interact in operating and maintaining the campground.
- [68] When essential provisions governing a contract have not been settled or agreed upon, the preliminary agreement cannot constitute an enforceable contract and is merely an "agreement to agree": Berthin v. Berthin, 2016 BCCA 104 at para. 48. Only once the parties agree on the essential terms that form part of an agreement does it become binding.
- [69] I find that the July 2021 Mediation Agreement was not a final agreement between the parties. Key issues related to Ms. Loss's use and operation of the campground, and Cabin, were not fully settled but remained dependant upon further agreements. First, with L.W., over the terms which Ms. Loss could continue to live in the Cabin on L.W.'s land. Second, over the terms of Ms. Loss's use of the campground lands and terms of its operation and maintenance with Mr. Walters. Further, agreement with L.W. about use of campground facilities on L.W.'s property.
- [70] On a consideration of the totality of circumstances, I find that no agreement was reached. Key terms were left to be decided in subsequent negotiations, other terms were ambiguous. On the evidence before me, I find that the July 2021 Mediation Agreement is not an enforceable agreement.

VII. should the agreement be set aside pursuant to s. 93 of the FLA?

A. Overview of the s. 93 Legal Framework for Setting Aside an Agreement

- [71] Had I found that an enforceable agreement was reached, I would nonetheless have set it aside under s. 93(3)(c) on the basis that Ms. Loss did not understand the nature or consequences of the agreement for the reasons which follow.
- [72] Section 93(1) of the FLA provides that parties can apply to set aside agreements regarding property division where the agreement is in writing and witnessed.

[73] Sections 93(3) - (4) of the FLA state:

93 (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.
- (4) The Supreme Court may decline to act under subsection (3) if, on consideration of all of the evidence, the Supreme Court would not replace the agreement with an order that is substantially different from the terms set out in the agreement.

[74] In *Y.L. v. G.L.*, 2020 BCSC 808 at para. 283, Justice Matthews described s. 93 as a codification of the two-pronged approach to determine whether to set aside an agreement that was outlined in *Miglin*. The first prong of considerations under s. 93(3) relate to fairness in the formation of the agreement. If it is found that the agreement was fairly reached, the court must then consider factors related to the substantive fairness of the effect of the agreement under s. 93(5). Justice Matthews summarized principles in relation to s. 93(3) at para. 285.

[75] I find the following principles described by Matthews J. to be of particular relevance to the present case:

- a) the court should consider the s. 93(3) considerations holistically, and not in isolation to each other as the combination of certain factors may lead to setting aside the agreement where each of the factors alone would not, or where the presence of a factor in favour of setting aside the agreement may be ameliorated by the absence of another factor;
- b) the fact-specific nature of the inquiry, particularly the relative vulnerabilities of the parties and/or the relative amount of information they have about each other's financial affairs is such that the cases are not necessarily readily comparable;
- c) with regard to failing to disclose significant property, debts or other relevant information:
 - i. failure to disclose financial information or incomplete disclosure impacts the integrity of the bargain made. The extent and nature of the failure determines whether the court will intervene;

- ix. where the party complaining of non-disclosure has general knowledge of the other party's assets and their value, non-disclosure of the exact value may not result in an agreement being set aside where the non-disclosure is not a deliberate attempt to avoid addressing the division of those assets or to deprive the other party of information he or she should have in making the agreement;
- x. the non-disclosure must be significant and material;
- d) with regard to one spouse taking advantage of the other's vulnerability, including the other's ignorance, need or distress:
- i. the parties' relative abilities to understand financial matters is relevant to the assessment of whether one party took advantage of the other's vulnerabilities;
- ii. vulnerability of a less powerful party should not be presumed, there must be evidence to support a finding of vulnerability;
- iii. whether the party who asserts vulnerability had input into the content of the agreement is relevant to assessing this factor;
- iv. legal advice may negate vulnerability but does not necessarily do so and the absence of legal advice does not lead to a presumption that a vulnerability has not been exploited;
- e) with regard to whether one of the spouses did not understand the nature or consequences of the agreement:
- i. whether the party received independent legal advice is relevant, but not determinative;
- [76] Section 93(5) provides a further basis to set aside an agreement that is significantly unfair, on consideration of the length of time that has passed since the agreement was made, the intention of the spouses making the agreement to achieve certainty, and the degree of reliance by the spouses on the agreements terms. Section 93(5) only applies if none of the circumstances in s. 93(3) existed when the parties entered into the agreement: *Blom v. Blom*, 2021 BCSC 181 at para. 79.

B. Section 93(3)(a) - Failure to Disclose

- [77] Ms. Loss argues the mediation suffered from a failure to disclose (a) the current value of the two parcels, as the most recent valuation was done in 2019 and the mediation occurred in 2021; (b) the specifics of the line of credit apportioned as family debt; (c) any valuation whatsoever of the campground and RV Park businesses; and (d) details of family debt Mr. Walters held, namely the line of credit with a balance of \$53,000.
- [78] The issue of a failure to disclose was discussed in *Donnelly v. Weekley*, 2017 BCSC 529 [Donnelly]:

[108] In a perfect world, disclosure would be immediate and complete. In the real world, for a court to set aside all or part of an agreement for failure to disclose under s. 93(3)(a) of the FLA, a party to an agreement must demonstrate that a significant asset, debt, or other information relevant to the negotiation of the agreement was not disclosed.

[Emphasis in original.]

[79] Regarding the value of the two parcels and the businesses, there is not necessarily a failure to disclose, simply a failure by both parties to obtain updated assessments or valuations. Ms. Loss did raise this as an issue prior to, during, and after the mediation. The amount of family debt in Mr. Walters' name was disclosed, though without adequate detail about how it arose.

[80] I accept that there was a lack of significant information, namely the up-to-date property assessments, valuation of the two businesses, and information about the line of credit debt which was divided between the parties as family debt. The extent of non-disclosure, in itself is not sufficient to form a basis to set aside the agreement. This lack of disclosure is nonetheless a factor taken into consideration holistically with other s. 93 considerations.

C. Section 93(3)(b) - Taking Improper Advantage of Vulnerability

[81] Section 93(3)(b) requires not only that a spouse be vulnerable, but that the other party also take improper advantage of that vulnerability: *Donnelly* at para. 121.

[82] Ms. Loss made general assertions of coercion and duress, and she stated that she was suffering from PTSD at the time of entering the agreement. The July 2021 mediation occurred approximately one week after the 2021 Lytton forest fire which burned down Ms. Loss's clinic premises.

[83] Mr. Walters refers to *O'Dacre v. Cross*, 2019 ONSC 2265 [O'Dacre] to address Ms. Loss's claims of suffering from PTSD. In that case, minutes of settlement were signed by the respondent, who argued he was suffering from depression when he signed, planned to take his own life, and never expected to be bound by the terms of the agreement. The court rejected the respondent's claim to set aside the minutes of settlement.

[84] Material evidence to support a finding of PTSD, for example evidence of a counsellor, was not provided. I cannot find on the evidence before me that Ms. Loss suffered, or did not suffer, from PTSD, as insufficient evidence was provided for me to make that determination either way.

[85] I accept that Ms. Loss was under stress at the time of the July 2021 mediation given the ongoing forest fire and destruction of her business. There is no evidence before me that Mr. Walters aimed to exploit that vulnerability to gain concessions from Ms. Loss.

D. Section 93(3)(c) - Not Understanding the Nature or Consequences of the Agreement

- [86] Section 93(3)(c) allows the court to set aside an agreement respecting property division if a spouse did not understand the nature or consequences of the agreement.
- [87] The facts of this case have some similarities to *Delege v. Delege*, 2016 BCSC 630, where the claimant's uncontradicted evidence was that she thought that the agreement was a draft that could be used to seek refinancing. She believed that there would be no binding agreement until it had been formally signed by the parties. The court was satisfied that the claimant did not understand that a binding agreement had been entered into by her lawyer, and that this meant that she did not understand "the nature or consequences of the agreement" within the meaning of s. 93(3)(c).
- [88] Justice G.C. Weatherill, in *C.K.C. v. P.R.C.*, 2024 BCSC 279 at para. 120, set aside an agreement on other grounds, but noted that he would also have set it aside under s. 93(3)(c). The claimant's inaccurate understanding of a declaration of trust ultimately meant that she did not understand the nature or consequences of the agreement.
- [89] A similar provision to s. 93(3) of the FLA exists in s. 56(4) of Ontario's Family Law Act, R.S.O. 1990, c. F.3. The court in *O'Dacre* inquired whether the respondent in that case understood the nature or consequences of the minutes of settlement, or whether he had signed due to duress. The court found that the respondent understood the consequences of the agreement, but that he did not care what the consequences were because they did not intend to be bound by its terms. The court also found that the economic and personal pressures described by the respondent were the type commonly felt by parties involved in the negotiation and settlement of domestic financial disputes and were not circumstances that would constitute duress: *O'Dacre* at paras. 48-49.
- [90] Mr. Walters pointed to *Gelber v. Gelber*, 2020 ONSC 1570, to address Ms. Loss's concerns regarding communication with her lawyer during the mediation process. In *Gelber*, the respondent asserted that his lawyer had pressured him and did not fully explain the settlement to him, and furthermore did not obtain his final instructions before soliciting minutes of settlement on his behalf. *Gelber* concerned a lawyer's ability to bind their client in an agreement, and not the effectiveness of their representation. There is no allegation that a lawyer bound Ms. Loss here. Instead, Ms. Loss challenges the effectiveness of her legal representation.
- [91] Although Ms. Loss was represented by counsel, her counsel failed to reply to her emails prior to the mediation. A replacement counsel that Ms. Loss had never met attended the mediation intermittently, was not present for a significant portion of the mediation and left before the mediation concluded. On a consideration of the evidence I accept, I find that Ms. Loss did not receive adequate legal advice before she signed the agreement. The factual nexus of Ms. Loss's communications, and lack thereof, with legal counsel speaks to the issue of whether Ms. Loss understood the nature or consequences of the agreement. The

inadequacy of legal representation is one factor, with other listed circumstances.

- [92] If the July 2021 Mediation Agreement was found to be valid, I would set it aside on a consideration of all the considerations outlined above, viewed holistically, on the basis that Ms. Loss did not understand the nature or consequences of the agreement.
- [93] I accept that when Ms. Loss signed the agreement, she considered the agreement to be preliminary, subject to consensual lease agreements with L.W., and subject to further negotiation of how the campground would operate between herself and Mr. Walters.
- [94] I would not replace the July 2021 Mediation Agreement with an order that is substantially similar, therefore s. 93(4) is not applicable.

VIII. Family Violence

- [95] Ms. Loss asserts that post-separation she has been subjected to family violence in the form of coercion and threats involving property, and acts which impact upon her financial autonomy.

- [96] The FLA defines family violence as including elements of financial coercion or control under the rubric of psychological or emotional abuse as follows:

"family violence" includes, with or without an intent to harm a family member,

- (d) psychological or emotional abuse of a family member, including
- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
- (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,

- [97] Under the FLA, there is an overarching concern about the impact of family violence on parties before the court, and how the presence of family violence may impact upon listed factors that a court is called upon to consider. The family violence regime generally addresses the protection of a vulnerable family member from their spouse or former spouse, or a family member of a spouse or former spouse. The FLA specifically contemplates the ability to issue protection orders and conduct orders to address family violence, and directs that family violence must be considered in making determinations about the best interests of children. How family violence is to be considered in cases such as the present one, involving asset division, is less clear.

- [98] The court must be aware of the presence and nature of family violence in all decisions under the FLA. The impacts of family violence expressed through coercion or threats regarding property, or limitation of a party's financial autonomy, may be real and significant, but not readily apparent.

- [99] The inclusion of these financial abuse, as a form of psychological abuse and control, mandates consideration of financial control or property related coercion as a real and serious form of family violence. These types of family violence may be more difficult to see, or assess the impacts of.
- [100] The family violence is alleged to have occurred after the July 2021 Mediation Agreement was signed by Ms. Loss, and it does not affect whether the agreement was binding or whether she understood its nature when she signed.
- [101] When Ms. Loss did not comply with the terms of the July 2021 Mediation Agreement (as she did not believe that an agreement had been reached) and did not agree that a court order should be entered reordering those terms, she argues that Mr. Walters, supported by L.W., subjected her to family violence in the form of coercion or threats regarding property, unreasonable restrictions on, or prevention of, her financial autonomy regarding her ability to live peacefully in the Cabin, her ability to operate her retreat business, or the campground business. Additionally, Ms. Loss was subject to invective laden threats from Mr. Walters to burn down or destroy campground facilities that her retreat business relied upon.
- [102] The specific incidences Ms. Loss argues equate to family violence include:
- Threats from Mr. Walters to restrict Ms. Loss's use of facilities needed for her business and threats to burn or otherwise destroy those facilities;
 - Mr. Walters attempts to coerce her to agree to the terms of the July 2021 Mediation Agreement, by threatening to not upkeep or improve the campground if she did not agree to be bound by terms set out in the July 2021 Mediation Agreement;
 - Mr. Walters and L.W. restricted access to campground facilities on L.W.'s property; and
 - Mr. Walters and L.W. restricted, or threatened to restrict, access to lands that Ms. Loss needed to upkeep water access to the Cabin in the winter.
 - Though no date is listed, apparently after December 2021, Mr. Walters texted Ms. Loss expletive-laden correspondence demanding that she remove a trailer and the Trowse from Airbnb. He threatened to break windows, burn structures down, rip structures down, and asserted that he was getting "ripped off" by Ms. Loss. That correspondence included the following messages from Mr. Walters regarding campground facilities:
 - o "Shit [sic] it down. I will go burn it right now";
 - o "Get your trailer off the property to.[sic] Fuck toy ..I'm boarding up the trouse right now. Take it off the air B and B .Your [sic] so selfish";
 - o "I will go smash the fucking windows right now"; and
 - o "I might just throw a match in it right fucking now".

- On September 9 2023, Ms. Loss asked Mr. Walters about clean up of the area around the Cabin where she and the children live, after fire suppression activities which Mr. Walters and a fire crew had undertaken to protect the Cabin caused some disarray. He responded: "[don't] touch anything as it's not your property", and further, "when you abide by a lease agreement to be on that property maybe things can happen. As for now. Do not touch anything."
- Mr. Walters interfered with Ms. Loss's retreat business beyond what was reasonable by removing the propane tanks/heater units needed.
- Mr. Walters further interfered with Ms. Loss's retreat business by approaching Ms. Loss's clients directly with complaints about her, causing at least one major client to remove their business.

[103] Mr. Walters denies that family violence, in the form of financial control or property related coercion, exists. He argues that taking steps to enforce a binding agreement between the parties is not coercion, financial abuse, or family violence.

[104] The evidence before me, that I accept, was that L.W. sometimes sought to intercede on Mr. Walters' behalf in the dispute between the parties, and at other times Mr. Walters purported to speak for L.W. in negotiations with Ms. Loss. For example, L.W. and Mr. Walters proposed that Ms. Loss would not have to pay rent to L.W. if Mr. Walters did not have to pay spousal support.

[105] It appears Mr. Walters thinks Ms. Loss does not have a legitimate claim for parcels one and two which are part of the Washtock Farms lands. Based on both Mr. Walters' and Ms. Loss's evidence, it appears L.W. feels similarly. This core belief has driven an antagonistic attitude against Ms. Loss post-separation. Ms. Loss, on the evidence, is committed to keeping her children connected to their father and his family, a commitment she attributed to the fact that her own family had experienced dislocation and divide, and Ms. Loss's commitment has come at considerable cost to her given the animosity that I have found on the evidence before me.

[106] On the evidence before me, I find that there is evidence of family violence in the form of coercion, intimidation and threats regarding property and prevention of financial autonomy directed against Ms. Loss. Mr. Walters prevented Ms. Loss from running the campground business by removing equipment. He threatened to damage or burn facilities that she relied upon. She was threatened with not having access to an area needed to maintain running water in the winter to the Cabin. Clients of Ms. Loss's were approached directly by Mr. Walters and she lost retreat business as a result. Ms. Loss was also subject to coercion and threats regarding her ability to live in the Cabin.

- [107] Here, the post-July 2021 mediation family violence, occurred through a series of minor actions which, combined, paint a picture of coercion and control and attempts to exclude Ms. Loss from the family property, restrict her ability to operate her retreat business on the family property, and impact her ability to live in the former family home without interference. At the same time, she cannot practically move the Cabin and have it remain useable as her family home.
- [108] Absent other considerations, the presence of family violence does not, in itself, impact property division between the parties. In *He v. Guo*, 2022 BCCA 355 at paras. 34-36, the Court of Appeal discussed considerations of family violence within the sphere of family property. Family violence is only relevant where it impacts the "economic characteristics" of a spousal relationship, as property-related trials should not be a free ranging enquiry into the conduct of the parties:
- [34] [T]here is nothing in s. 95 that indicates family violence should be awarded special consideration absent impact on (to use the words of Singh) the economic characteristics of a spousal relationship. An unfulfilled intention does not meet that standard, and while Ms. Guo testified that the filing of the Immigration Marriage Fraud Report had a psychological and emotional impact on her, there was no evidence before the court that it had any negative financial consequence or otherwise hindered Ms. Guo in attaining economic self-sufficiency. There was, for example, no evidence she lost opportunity, was delayed in her education, incurred extra expenses, or suffered reduced or lost employment as a result of the report's filing.
- [35] This approach, in my view, accords with the approach of the legislative assembly, which opted to include references to family violence elsewhere in the Family Law Act - for example, s. 37(2)(g) and (h) explicitly require family violence to be considered when assessing the best interests of a child. To interpret s. 95(2)(i) as including family violence when the conduct at issue lacks any sort of economic impact would be contrary to the balance struck by the legislature.
- [36] Importantly, the property provisions of the Family Law Act are not intended to facilitate a free-ranging enquiry into the conduct of the parties. Such a result would expand litigation, creating trials within trials on collateral issues unrelated to the property and financial support claims properly brought under the legislation. It would expand, not streamline, litigation.
- [109] Family violence may impact the options available to the person who is subject to that violence, and it may be necessary to consider this factor in relation to property division. Being aware of family violence requires the court not only taking steps to keep a family member physically safe (for example, through issuing a protection order, or reflecting it in decisions about children), but also safe from financial coercion or threats against property and its ongoing impacts of psychological control or coercion.

- [110] Where family violence in the nature of coercion or threats about property or a person's financial autonomy occurs, those factors must be considered as part of the context in dividing the family property. For example, the court should to avoid a decision which could exacerbate or prolong the family violence that a party experiences.
- [111] Section 95 of the FLA allows for a court to divert from an equal division of property if an applicant can show that equal division would be significantly unfair, including on consideration of "any other factor" pursuant to s. 95(2)(i). The existence of family violence that has an economic impact on the parties is a factor that may be considered under this analysis.
- [112] That is not the case before me. Ms. Loss is not asking for an unequal division of family property. She is arguing that absent an equal division, she is currently, and will continue to be, subject to ongoing family violence in the form of coercion and control and limitation of her financial autonomy. The fact that Ms. Loss has sought other financial opportunities (for example, she has opened other clinics) does not diminish the impact of the family violence. Ms. Loss has continued to live in the Cabin, without paying the lease fee requested by L.W. but subject to limitations (i.e., restrictions to parking only one vehicle, constant threat that she could be denied the right to live in the Cabin where it is currently situated, facing the possibility that she will be denied access to an area needed to maintain running water to the Cabin) and subject to an ongoing dispute which she has said makes it nearly impossible for her to operate her business on the family property, or to live in peace in her home. At the same time, Mr. Walters has continued to operate and benefit from the RV Park.
- [113] The current situation is untenable, in part because of the family violence and the lack of clarity surrounding how the living and business arrangement is supposed to work. Ms. Loss has been largely unable to continue with her business on the two parcels.
- [114] The shared evidence of the parties was that they have found a way to interact well regarding their children. This is certainly to be commended. The long-standing nature of the relationship between the parties, and the fact that they have continued to work together cooperatively in raising the children, is a unique situation. It was the testimony of Ms. Loss, corroborated by her actions, that it is very important for her that her children maintain a positive and close connection to Mr. Walters and his family. I have no doubt that maintaining this connection has come at significant emotional and psychological cost to Ms. Loss. The nature of the family violence I have found is not acute. It is persistent, and occurs at a low level, and I find that it nonetheless has had a significant impact on Ms. Loss.
- [115] The parties have been unable to come to workable arrangements for how to live together on the family property. Ms. Loss has been unable to operate the campground, and her retreat business has suffered. The fact that portions of the parties' businesses, and Ms. Loss's home (the Cabin), are located on the property owned by L.W., has created real difficulties. Mr. Walters has, at times, subjected Ms. Loss to very nasty and threatening language, and has approached her retreat clients and impacted her ability to continue to generate income

from that source. At the same time, Mr. Walters has continued to unilaterally generate RV Park income.

- [116] The factual nexus within which the family violence occurs is relevant to whether there is significant unfairness in ordering equal division of family property. Mr. Walters submits that since years have passed since the July 2021 Mediation Agreement and property values have significantly risen in the interim, it would be significantly unfair to set the valuation date for family property as the date of trial.
- [117] I appreciate that Mr. Walters was in a difficult position, given that he had the apparent belief that a binding agreement had been reached between himself and Ms. Loss. If Mr. Walters had made comprehensive efforts to carry out what he perceived to be his end of the mediation agreement, including not using campground maintenance or a lease agreement between Ms. Loss and L.W. as leverage to attempt to extract concessions from Ms. Loss, not engaging in any threats towards property, and not interfering with Ms. Loss's ability to run the campground or retreat businesses, he may have successfully argued that it would be significantly unfair to overlook his reliance on the agreement. However, that did not occur. Mr. Walters has, additionally, unilaterally benefitted from revenue generated from the RV Park in the interim, while Ms. Loss's ability to operate retreats on the family property has dwindled. Ms. Loss has had to seek and develop other opportunities outside of the family property.
- [118] Given the overall context, I do not find it is significantly unfair to Mr. Walters to divide the family property equally as contemplated by s. 81, with the date of trial being the valuation date as contemplated by s. 87.

Regarding Inadequate Evidence

- [119] The evidence before me reflected the fact that the parties were self-represented, though each clearly put a lot of thought and effort into their arguments.
- [120] I have considered the following cases where courts have grappled with incomplete evidence and the principle of finality in family law matters: *Bodine-Shah v. Shah*, 2014 BCCA 191 at paras. 55-59; *Boylan v. Boylan*, 2021 BCSC 1726 at para. 5; and *M.W. v. N.L.M.W.*, 2021 BCSC 1273 at para. 343. I have contemplated where a decision is possible based on the evidence before me. Where there is sufficient, if not perfect, evidence to do so, I make the findings necessary to resolve the issues between the parties.

IX. Summary

- [121] In summary, I order as follows:
1. That the July 2021 Mediation Agreement is not binding, as it does not meet the test of being an agreement between the parties.

2. The family property, including the two parcels, Cabin, Trowse, Soul Shack, and investments, minus each parties' excluded property, should be equally divided between the parties based on the current valuation of the property.

[122] Family Assets are as follows:

Parcel one (Campground Property) Campground property valued March 12, 2024 at \$350,000

Parcel two (RV Park Property) valued March 12, 2024 at \$350,000

Cabin valued March 12, 2024 at \$90,000

Trowse, \$5,000

Soul Shack, \$5,000

Algonquin RRSP, \$33,600

Investors Group RRSP, \$43,014.47

[123] There was not enough evidence before me to identify the nature of the family debts or how they should be split between the parties.

[124] I find that the RV business and campground business are family assets. There was no evidence about their value or how that value has changed subsequent to separation. On the information before me, I cannot determine what an equal division of those businesses may look like.

[125] Excluded Property is as follows:

Ms. Loss: inheritance received from her father's estate that she invested in the Cabin of \$13,363.35.

Mr. Walters: \$80,000 value of the two parcels when the relationship began; and a contribution to the Investor Group RRSP in the sum of \$27,100 that he made while not in a relationship with Ms. Loss.

X. Settlement Conference

[126] The parties have reached an impasse. Mr. Walters says he does not have money to afford to purchase out Ms. Loss's interest in the two parcels and other family assets. Ms. Loss has indicated that she does not want to leave the area where she lives now as she wants her children to remain close to their paternal family.

[127] The parties should have the opportunity to attempt a division that gives effect to these reasons before the court imposes an order. The parties are directed to attend a settlement conference before another Judge or Associate Judge who is made aware of these reasons, with the aim of helping them to resolve the issues between them. The parties should invite L.W. to be present for parts of the discussion involving family assets situated on L.W.'s property. This settlement conference should be scheduled within 2 months of the date of

this decision, or as soon thereafter as possible.

[128] If they cannot resolve the matters between them through a settlement conference, the parties are at liberty to request to appear back before me within 6 months of the date of this decision to make further submissions on the specifics of how the family property should be divided to give effect to these reasons.

[129] Mr. Walters continues to benefit from revenue generated by the family property, the RV Park. Ms. Loss, partially as a result of the family violence I have found, does not benefit from the family property and her business endeavors on those properties have been curtailed. I order, when the parties proceed to a settlement conference, that Mr. Walters pay to Ms. Loss \$4,000 to assist her to engage legal counsel to participate. That amount is to be provided within five weeks of the date of this decision.

"A. Walkem J."

[1] Ms. Loss's argument, in part, centers around the inadequacy of the legal representation she received. These reasons reflect the evidence before the court of both the parties. Ms. Loss's legal counsel did not make any representations.

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