
CANADA / JUDGMENT

Lucik v. Lucik

2008 BCSC 531

COURT

Supreme Court of British Columbia

DECIDED

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2008 BCSC 531 Lucik v. Lucik

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lucik v. Lucik,

2008 BCSC 531

Date: 20080430

Docket: 85-1962

Registry: Victoria

Between:

Emma Jean Lucik

Plaintiff

And:

Peter Lucik

Defendant

Before: The Honourable Mr. Justice Metzger

Reasons for Judgment

Counsel for the Plaintiff:

N.P. McKay

Counsel for the Defendant:

L.P. Gagnon

Date and Place of Trial/Hearing:

20080327

Victoria, B.C.

BACKGROUND AND CONSENT MATTERS

[1] The plaintiff Emma Jean Lucik filed a notice of motion dated November 6, 2007 seeking the following orders:

1. Divorce;
2. Spousal support retroactive to April 1, 2007 in the amount of \$2,361 per month;
3. Equal division of the defendant's pension;
4. Equal division of the defendant's severance payout;
5. Equalization of the each of the party's Canada Pension Plan credits;
6. That each party will be responsible for their debts;
7. That each party will retain the bank accounts, investments, vehicles and personal property in his or her name;
8. Reapportionment of the equity in the family home 100% in her favour;
9. That the defendant's share of the sale proceeds from the family home be held in trust as security for payment of his spousal support payments;
10. That all other claims arising from the marriage be dismissed; and
11. Costs.

[2] The defendant Peter Lucik does not oppose orders numbered above as 1, 3, 5-7, and 10. Subject to any other comments on those items in these reasons, those orders are hereby granted on the terms agreed between the parties. The order for divorce will be granted upon the filing of a Registrar's Certificate indicating all requirements have been met.

[3] In brief, Mr. Lucik opposes the remaining items of relief sought on the following grounds:

2. While liability for spousal support is conceded, Mr. Lucik says that quantum and duration must be determined taking into account the upcoming termination of his employment;
4. Mr. Lucik says that his severance payout is in respect of loss of future wages and is not a family asset;

8. Mr. Lucik says that there is no reason in the present case why Ms. Lucik should receive more than 50% of the proceeds of the family home; he goes further and says that he should receive more than 50% of the proceeds to give effect to the compensation order that he seeks against Ms. Lucik under s. 66(2)(c) of the FRA for allegedly dissipating family assets shortly before the s. 57 declaration;
 9. Mr. Lucik says that there is no evidentiary basis upon which this court should order security for future spousal support payments; and
 11. If he is successful on the contentious matters, Mr. Lucik seeks costs.
- [4] Emma Jean Lucik is 58 years old and Peter Lucik is 57. They were married in 1974 and separated in 1995 but reconciled in less than a year. They permanently separated January 19, 2006. The two children of the marriage are independent adults.
- [5] At the hearing in this matter on March 27, 2008, I made the following orders:
1. By consent, a s. 57 declaration effective on that date; and
 2. On the court's own motion, an order directing the defendant's employer to not pay out any severance funds to the defendant until further order of the court.
- [6] I have concluded that the severance payout is not a family asset, and that the uncertainty of Mr. Lucik's future employment situation is best addressed by providing a review provision in the spousal support order. Quantum of spousal support, security for spousal support, and reapportionment of the family home are inter-related in this case. I have concluded that the appropriate solution is to reapportion the family home in favour of Ms. Lucik, to order spousal support at the lower end of the range, and to not make an order for security for spousal support.
- [7] I will address each issue in the order set out above. The appropriate spousal support will be determined after the division of assets. See *Vennels v. Vennels* (1993), 76 B.C.L.R. (2d) 69, at para. 27.

SEVERANCE PAY

- [8] Article 11, s. 9 of the defendant's collective agreement provides:

The company shall pay to each employee with five (5) or more years of service, severance pay, in the amount of one (1) week's pay for each year of service when his employment is permanently discontinued due to lay off.

- [9] The defendant is a union millwright who has been with the same employer for 33 years as of the March 27, 2008 s.57 triggering event. His employer is selling the mine in which the defendant works. The property will not continue as a mine. The defendant will be permanently laid off once all of the site's reclamation work is completed. This date is uncertain but will likely occur whenever a new owner takes over the property, presumably by the end of 2008.
- [10] Is the severance pay a family asset due to being earned during the marriage? Mr. Justice R.A. McKinnon in *Davies v. Davies* (30 June 1995), Chilliwack D00009373 (B.C.S.C.), stated as follows at para. 13:

In *Read v. Read* (1993), 9 Alta. L.R. (3d) 87, 46 R.F.L. (3d) 426 (Q.B.) Perras J. examined a severance package and determined that it had two aspects: it was a reward for past services and compensation for lost future wages. The portion that recognized past services was ordered to be shared, for most of it was earned during the parties' cohabitation. The portion representing lost future earnings, was not family property, and therefore not shareable. A similar analysis was employed by Vickers J. in *Stewart v. Stewart* (1993), 50 R.F.L. (3d) 294 (B.C.S.C.) and Allan J. in *Warrington v. Warrington* (15 March 1991), New Westminster Registry No. D023509 (B.C.S.C.).

- [11] Madame Justice Allan in *King v. King*, 2004 BCSC 871, at para. 37, commented on *Henry v. Henry*, [1992] B.C.J. No. 1522 as follows:

... the Court found that anticipated severance pay amounted to a family asset because it fell within the meaning of "pension"; also it was not a future contingency because the husband had an indisputable "right" to the severable pay upon retirement. ...

Contrary to the situation in *Henry*, the defendant in the case at bar does not have an indisputable right to the severance payout. He only qualifies for it if he is permanently laid off. The defendant is not entitled to a severance payout if he quits or retires. It does not fall within the meaning of a pension.

- [12] I am satisfied that the particular severance payout at issue in this case is compensation for future lost wages. The fact that the duration of the severance payments is determined by reference to the overall length of employment does not negate this conclusion.
- [13] It follows that the order sought by Ms. Lucik numbered #4 above is dismissed. The second order from the March 27, 2008 hearing is hereby vacated, and Mr. Lucik's employer is to pay him any severance to which he becomes entitled, without further order of this court.

REAPPORTIONMENT OF EQUITY FROM THE SALE OF THE FAMILY HOME

- [14] There is approximately \$141,000 left in trust from the sale of the matrimonial home, which would normally be divided equally between the parties. However Ms. Lucik has made a claim for reapportionment pursuant to s. 65 of the Family Relations Act, R.S.B.C. 1996, c. 128 (the "FRA"), and Mr. Lucik has made a claim for compensation under s. 66(2)(c) of the FRA due to the plaintiff's alleged wasting of family assets.
- [15] I deal first with Ms. Lucik's reapportionment claim. She submits that her economic needs, decreased earning capacity due to her age and lack of work experience, damaged credit record, and the defendant's unwillingness to pay support all warrant a reapportionment of the house sale proceeds.
- [16] It is clear that Ms. Lucik's potential income from employment is lower than that of Mr. Lucik, and that this will remain the case in the future. Ms. Lucik has worked part time at the Royal Bank since she was 22 years old, and I accept her evidence that her skills are increasingly outdated in a computerized world and that she does not have strong prospects for obtaining more remunerative employment. She is currently not working due to medical difficulties. While there is no evidence that she will be unable to return to work, it is not certain that she will be able to do so. Her employment history consists entirely of part-time work.
- [17] It is true that Mr. Lucik will soon be laid off at work, but when that occurs he will be provided with over seven months of severance pay during which he can seek new employment. He has experience as a foreman. There is every reason to expect that he will find new employment, although that employment may be less remunerative than the position he is leaving.
- [18] Ms. Lucik notes that the November 1, 2006 interim spousal support order of \$1,600 per month was based on Mr. Lucik paying the mortgage and utilities on the family residence. Ms. Lucik says that when the family residence was sold on July 13, 2007, she discovered that Mr. Lucik had missed three mortgage payments totalling over \$6,000. She says that this has damaged her credit rating such that she will need to make a higher down payment in the event that she purchases a new home. She says that this factor weighs in favour of her application for reapportionment under s. 65(1)(f) of the FRA.
- [19] A review of Ms. Lucik's credit report dated September 28, 2007 shows a past due amount on the mortgage of \$7,682 and a "last activity" date of February 2007. It indicates that this account is a "joint contractual responsibility". It shows past due amounts as follows: two past due amounts over 30 days, one past due amount over 60 days, and two past due amounts over 90 days. It also shows what appears to be a retailer credit account that prior to 2003 was turned over to a collection agency, and apparently subsequently repaid. Otherwise, her credit report appears quite positive.

- [20] There is no evidence that Ms. Lucik has applied for and been declined a mortgage, or that a lender has limited the amount of credit it will extend to her, on account of her credit report. I give no weight to this factor in the reapportionment analysis.
- [21] Ms. Lucik alleges that Mr. Lucik has a history of failing to pay spousal support, both during the parties' brief separation in 1985, and since their permanent separation in 2006. She relies on *Crooker v. Crooker* (1988), 13 R.F.L. (3d) 145 (B.C.S.C.), and subsequent cases in her submission that her inability to count on future spousal support payments should result in a reapportionment of the family home. She seeks 100% reapportionment. Alternatively, she seeks security for spousal support. As I understand her position, if she had to choose between a greater reapportionment of the proceeds of the family home or spousal support at the higher end of the range, she would choose the former. These submissions all require a finding of fact on the history of Mr. Lucik's support payments.
- [22] Ms. Lucik submits that Mr. Lucik has made no voluntary spousal support payments, and that the only funds that she has received are those obtained through the attachment efforts of FMEP. Mr. Lucik says that he made four voluntary payments totalling \$1,610 between November 24, 2006 and January 19, 2007, and that this is all that he could pay given his ongoing obligation to keep the mortgage current.
- [23] The FMEP records clearly establish that Mr. Lucik made the payments he claims. The first two are noted in the calculation of arrears as of December 18, 2006 when Ms. Lucik enrolled with FMEP. The latter two payments show on the FMEP account after it was created. Starting February 9, 2007, FMEP began garnishing Mr. Lucik's wages. Immediately before that date, he was \$4,820 in arrears. By May 2, 2007, the arrears had been paid. FMEP has continued to garnish \$738 from Mr. Lucik's paycheque on a bi-weekly basis to keep his account with FMEP in accordance with Master McCallum's current order.
- [24] It is clear that Mr. Lucik has not entirely failed to make spousal support payments. However, it is also clear that before FMEP became involved, he was paying far less spousal support than he was required to pay by court order. Mr. Lucik's explanation is that given the two month delay in having the taxes withheld from his paycheque reduced to reflect the interim spousal support order, there was no way that he could meet bi-weekly mortgage payments of \$700, monthly spousal support payments of \$1,600, and support himself on bi-weekly gross earnings of approximately \$2,500. Initially, he kept the mortgage current and paid a lower amount in spousal support. Once FMEP started garnishing his wages, he met his spousal support obligations (including the paying of arrears) but the consequence was that the mortgage fell into default, for which Ms. Lucik seeks a retroactive variation of spousal support as is discussed below.
- [25] Prior to having the amount of the tax withheld from his paycheque adjusted pursuant to the interim spousal support order of November 1, 2006, Mr. Lucik's mandatory deductions were approximately \$700, leaving him with approximately \$1,800. If he made the required bi-weekly mortgage payments of \$700 and the bi-weekly spousal support payments of \$738, he

would be left with \$362 every two weeks or approximately \$775 per month to meet his expenses other than mortgage/rent expenses. I accept that this amount would not have been sufficient to meet his needs. However, for the months of November, December 2006 and January 2007, he paid a total of only \$1,610, or a monthly average of \$533 instead of \$1,600. He therefore had \$1,842 left for his non-mortgage expenses. While he may not have been initially able to pay the full amount of spousal support ordered, I do not accept that Mr. Lucik paid all that he could in spousal support. Had he prioritized the spousal support payments, I am satisfied that the arrears would not have grown to nearly \$5,000 by February 2007.

- [26] Thus, while Mr. Lucik did make some payments such that the situation is not as bad as alleged by Ms. Lucik, I am satisfied that Mr. Lucik's history of failing to meet his spousal support obligations is a factor to consider on reapportionment. I have taken into account Mr. Lucik's choice not to pay spousal support to Ms. Lucik during the parties' separation in 1985.
- [27] Mr. Lucik seeks a compensation order for Ms. Lucik's alleged recent dissipation of potential family assets. He cites her withdrawal of \$16,708 from her retirement savings plan with her employer (the "Savings Plan") during 2006, and her obtaining \$40,000 by placing a second mortgage against the family home on June 30, 2006 without the knowledge or consent of Mr. Lucik. Ms. Lucik made no payments on the mortgage, and the cost of discharging the mortgage from title when the family residence was sold was \$41,179. Mr. Lucik says that these amounts greatly exceeded Ms. Lucik's reasonable living expenses, especially because Ms. Lucik has stated in her affidavits that she was residing with her sisters and apparently not paying rent.
- [28] Ms. Lucik says that she was driven to withdraw these funds because of Mr. Lucik's repeated refusal to provide her with spousal support until the November 2006 interim order. Ms. Lucik asked for \$2,000 in support per month shortly after she moved out. Had Mr. Lucik paid this amount, she would have received \$18,000 for the period of January to October 2006. Of the \$40,000 face amount of the second mortgage, Ms. Lucik deposed that \$28,216 was paid to her. Of this amount, she deposed that \$10,000 was paid in legal fees, \$5,000 was paid to her Visa, and \$1,613 was paid to Coast Capital Savings Credit Union, leaving \$9,600 for her use. Ms. Lucik says that prior to the interim spousal support order, she had withdrawn \$9,076 from her Savings Plan, not approximately \$12,700 as alleged by Mr. Lucik. Much of this discrepancy is due to the fact that the final withdrawal of 2006 took place after the interim spousal support order, and is excluded from Ms. Lucik's calculation. Thus, the thrust of Ms. Lucik's argument is that she ultimately received only approximately \$18,000 from these potential family assets prior to the spousal support order effective November 1, 2006, the exact amount that she had requested by way of spousal support.

- [29] Ms. Lucik also notes that she did not seek retroactive spousal support before Master McCallum because she had in effect obtained those funds by self-help. I note also that Ms. Lucik paid approximately \$1,850 in property taxes from the mortgage proceeds, and paid for some other minor expenses for the matrimonial home after she moved out. More generally, Ms. Lucik says that there is no evidence that she failed generally to use the funds at issue for family purposes.
- [30] Counsel for Ms. Lucik candidly conceded that Ms. Lucik made improvident decisions about the terms of the mortgage that she took out, and that her spending decisions in respect of the mortgage, and generally during the marriage, may not have been the most wise. However, she submits that these were the actions of a person in a desperate situation due to her husband failing to provide her with the spousal support despite knowing of her need. Mr. Lucik had a statutory duty to support Ms. Lucik even before the spousal support order was made.
- [31] The evidence supports the general finding that the parties had difficulties managing their finances over the years. Each party says that the other is at fault for this state of affairs. Ms. Lucik accuses Mr. Lucik of a gambling problem, and Mr. Lucik accuses Ms. Lucik of uncontrolled spending, particularly at Christmas time. In the circumstances, I do not find it necessary to express an opinion on these counter-accusations.
- [32] Under the FRA, the policy of the property regime is that neither spouse can be called to account for how they spent family assets prior to a triggering event. A s. 66(2)(c) order is an exception to this principle, and in my view is to be exercised sparingly and only in clear cases of unfairness. The leading case on this matter is the decision of our Court of Appeal in *Newson v. Newson* (1986), 2 R.F.L. (3d) 137 at 155-56:
- (1) Where a spouse has disposed of or spent "potential" family assets shortly before the end of a marriage or after separation, a compensation order may be made in respect of such disposal or expenditure.
 - (2) Compensation orders are not made in respect of every disposal or expenditure. There must be proof of "unfairness" having regard to the factors enumerated in s. [65] of the Act. For example, a disposal or expenditure that deprived the other spouse of a reasonable expectation that on the happening of the triggering event the "potential" family asset would be available for division, might well be "unfair".
 - (3) Depreciation or appreciation in value of "potential" family assets, resulting from market forces between the date of separation and the triggering event, is unlikely to give rise to "unfairness".

- (4) The Wagner [v. Wagner (1982), 36 B.C.L.R. 68 (S.C.)] case and the Gourlay [v. Gourlay, [1985] B.C.D. Civ. 1647-07 (S.C.)] case are cases where "potential" family assets have been disposed of or spent at or near the end of an "uneasy" marriage (but before separation). But it is only in those or similar unusual circumstances that the court ought to make compensation orders in respect of disposals or expenditures made during the marriage.
- [33] Section 66(2)(c) permits the court to reverse the outcome of a spouse in effect converting potential family assets into personal assets in anticipation of an impending triggering event. Such orders should not be made unless clearly required by the circumstances of the case.
- [34] I accept that when one spouse places a mortgage on a family asset and receives all of the money proceeds from the mortgage, such action can justify a compensation order: *Marineau v. Marineau*, [1983] B.C.J. No. 103. However, I conclude that such an order is not appropriate in the present case. I say this while mindful of the fact that a more accurate calculation of the monies that Ms. Lucik actually withdrew from potential family assets would probably include the \$3,923 withdrawn by Ms. Lucik from the Savings Plan in December 2006, thus increasing the total actually received by her personally to approximately \$22,000. This is without including the payments to Ms. Lucik's matrimonial lawyer, Visa, and Coast Capital Savings Credit Union, which could be argued to be inappropriately excluded from her calculations. Notwithstanding the arguments that could be made on either side of these matters, having considered all of the circumstances, I am not of the view that her withdrawal of those funds constitutes an unfairness within the meaning of s. 65 that should be remedied by a compensation order. The factors upon which I placed the most weight in arriving at this decision are:
- The statements in *Newson* at p. 156 that the court does not have a general power to review spouses' spending habits during the marriage, and that a compensation order is not to be made merely in respect of reckless, wasteful or improvident expenditures;
 - Mr. Lucik's failure to pay Ms. Lucik any support until required to do so by court order, and then paying less than ordered, thus putting Ms. Lucik in desperate financial circumstances; and
 - The facts of this case are not as bad as those in *Marineau* - the \$45,000 mortgage in that case would be worth nearly double that amount today, and the mortgage was taken out of there to support the wife's business; by contrast, the mortgage in this case was smaller and went to a significant extent for living expenses and debt servicing.
- [35] I do, however, consider the amelioration of Ms. Lucik's financial situation by amounts withdrawn from potential family assets by her to be generally relevant to her needs within the meaning of s. 65(1)(e). Including the December withdrawal and the subsequent success by FMEP to have all spousal support arrears paid, she personally received \$3,600 more for the period of January to December 2006 than she would have received had Mr. Lucik agreed to pay her \$2,000 per month from February to December 2006. In addition, she reduced the credit card debt that she is taking out of the marriage, and got a head start on payments to her lawyer, to the combined total of \$15,000. While I do not find that those actions

constituted an unfairness to be remedied by a compensation order, they do leave her nearly \$20,000 better off financially today than had she not taken those steps. Her claim for reapportionment is therefore weaker than it would have been had she not taken those steps. I have considered her actual financial circumstances as of the s. 57 triggering event, as affected by these withdrawals, for the purposes of making my conclusion on reapportionment.

- [36] I recognize that this was a very long marriage, thus strengthening the presumption of equal division.
- [37] Balancing all of the factors, especially the concern that spousal support may not be fully and consistently paid in the future, and Ms. Lucik's need to be self-sufficient, I conclude that the presumption of equal distribution of family assets would be unfair in the present case within the meaning of s. 65 of the FRA. Accordingly, I order the proceeds of the family residence be reapportioned 75% in favour of Ms. Lucik and 25% in favour of Mr. Lucik.

SPOUSAL SUPPORT - QUANTUM, DURATION, AND REVIEW

- [38] Entitlement to spousal support requires a consideration of the objectives in s. 15.2(6) and the factors in s. 15.2(4) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
- [39] Entitlement to spousal support is conceded. I am satisfied that both the compensatory and needs-based aspects of spousal support are engaged in this case (*Moge v. Moge* [1992] 3 S.C.R. 813, *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420). In particular, I am satisfied that Ms. Lucik interrupted her career in order to be the primary caregiver to the children of the marriage. She took a leave of absence from work in 2005 due to an anxiety-related disability that was caused at least in part by the parties' marriage which has been at times a very unhappy one. She subsequently returned to work but her anxiety difficulties forced her to take another leave of absence in December 2007. She applied for long-term disability benefits on her employer's advice, and is currently appealing the denial of that application by the insurer.
- [40] Mr. Lucik has not yet been laid off. In my view, the appropriate approach in the present case is to make a spousal support order based on Mr. Lucik's present employment income, together with a review provision.
- [41] For marriages over 20 years in length, the Spousal Support Advisory Guidelines call for support to be indefinite and quantum to be between 37.5 and 50% of the gross income difference between the parties. I accept that Mr. Lucik's income is now \$70,100 per year, rather than the \$76,000 per year that he has earned in past years by working overtime. I accept his evidence that significant overtime will not be available to him in the future. In submissions, Ms. Lucik suggested that her income for spousal support purposes was \$19,746. This was the amount that she earned previously from employment. She hopes to return to employment or to receive her disability benefits which are currently under appeal with the insurer. This figure was accepted by Mr. Lucik in his submissions.

- [42] The gross income difference between the parties is therefore \$50,354. The range is between \$18,883 and \$25,177 per year, or \$1,574 and \$2,098 per month. I bear in mind the principle from *Redpath v. Redpath*, 2006 BCCA 338, at para. 42, that it may be an error of law to "substantially" depart from the Guidelines in the absence of "exceptional circumstances" or, as subsequent cases have stated, at least a "reasonable explanation" (for example, *McEachern v. McEachern*, 2006 BCCA 508 at para. 64). I see no reason to depart from the Guidelines in this case. Any uncertainty with respect to Mr. Lucik's employment is adequately dealt with by the review order that I will make.
- [43] I reapportioned the proceeds of the family home due in significant part to the factor relating to Mr. Lucik's poor history of prioritizing the payment of spousal support. Having done so, and weighing the factors in s. 15.2(4) of the Divorce Act in light of the objectives in s. 15.2(6), I have concluded that it is appropriate that Mr. Lucik's continuing spousal support obligation be at the lower end of the range. I order Mr. Lucik to continue to pay to Ms. Lucik the sum of \$1,600 on the first day of every month on an indefinite basis.
- [44] It is unknown exactly when Mr. Lucik will be laid off. He will then have eight months of severance pay. It is unknown what his remuneration will be in any new employment that he finds. It is also unknown whether Ms. Lucik's medical situation will improve to allow her to resume employment, or whether she will receive disability payments in the future. That makes this case a prime candidate for a review order, notwithstanding the caution from the Supreme Court of Canada in *Leskun v. Leskun*, 2006 SCC 25, at para. 39. I order that either party may apply for a review of this spousal support order after Mr. Lucik has been laid off and his severance pay has run out, and in any event such review to take place no later than September 30, 2009.
- [45] It was submitted for Ms. Lucik that imputation of income was necessary to prevent Mr. Lucik from voluntarily choosing not to work in order to put her out of future spousal support. It was submitted for Mr. Lucik that he may not be able to earn as much in a new position as he has in the unionized position that he has held for the last 33 years. These matters will be addressed by the reviewing judge. This applies both to payors and payees. See for example *Vennels v. Vennels* (1993), 76 B.C.L.R. (2d) 69, and *McEachern* at para. 57 respectively.
- [46] To facilitate the review, and any subsequent variation application, I order that by June 1, 2009, and each subsequent year by that date, both parties exchange their tax returns and notices of assessment, together with any supporting documentation such as T-slips, and that if either party is not working, that they also provide the other with information on steps that they have taken to find employment, or a doctor's letter indicating that they are unable to work.

SECURITY FOR PAYMENT OF SPOUSAL SUPPORT

- [47] Ms. Lucik says that Mr. Lucik has said that he would either quit his job, move to the Czech Republic, move to Sechelt, or retire early and work part time for another employer. She characterizes this as a threat to quit work simply to leave her without adequate means of support. She asks that Mr. Lucik's share of the proceeds from the family residence be held in trust as security for future spousal support payments.
- [48] As stated earlier, I have concluded that Ms. Lucik's concerns regarding non-payment of spousal support are best addressed by reapportioning the proceeds of the matrimonial home in her favour, which I have already done. I dismiss the application for security for spousal support numbered #9 above. My reasons for doing so are:
1. Ms. Lucik has already received an additional 25% of the proceeds of the matrimonial home due in part to this concern;
 2. While Mr. Lucik has not paid the full amount of the existing spousal support order, this is not a case where he has willfully chosen to pay nothing in complete defiance of the order;
 3. I find that the evidence does not establish that Mr. Lucik actually intends to leave the jurisdiction;
 4. FMEP has had success in garnishing Mr. Lucik's wages in the past when necessary; and
 5. Mr. Lucik also has legitimate needs for a nest egg as he begins his financially independent future.
- [49] To order that these funds remain in trust would preclude his use of those funds to a degree that I find is not justified in the circumstances.

RESULT

- [50] The proceeds of the matrimonial home are reapportioned 75% in favour of Ms. Lucik. Mr. Lucik's severance package is not a family asset and Ms. Lucik has no interest in it. Mr. Lucik will continue to pay Ms. Lucik \$1,600 per month on an indefinite basis. There will be a review of spousal support once Mr. Lucik's severance pay has run out and in any event, any time after September 30, 2009. The parties shall exchange their tax and employment information yearly. There will be no order for security for spousal support.
- [51] I find that substantive success has been divided evenly. In the circumstances, each party will bear their own costs.

"R.W. Metzger, J."

The Honourable Mr. Justice Metzger

May 2, 2008 - Revised Judgment

Corrigendum to the Reasons for Judgment issued advising that in paragraph 48, in item 1., the amount of 20% should be 25%, thus it should read in part:

"Ms. Lucik has already received an additional 25% of the proceeds of the matrimonial home ".

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