
CANADA / JUDGMENT

Mather v. Mather

2008 BCSC 393

COURT

Supreme Court of British Columbia

DECIDED

4 April 2008

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2008 BCSC 393err1 Mather v. Mather

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mather v. Mather,

2008 BCSC 393

Date: 20080404

Docket: E063090

Registry: Vancouver

Between:

Ronald William Boyd Mather also known as

Ronald Mather

Plaintiff

And

Marci Mather, Raymond McKibben and Lisa McKibben

Defendants

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

Counsel for the plaintiff

S.L. Booth

Counsel for the defendant Mather

M.R. Slay

Raymond McKibben in person for himself and Lisa McKibben

Date and Place of Trial/Hearing:

February 20 - 22 & 29, 2008

Vancouver, B.C.

- [1] This action is primarily concerned with the division of the matrimonial home, which is owned in joint tenancy between the plaintiff and the three defendants. Child support is also in issue. Custody, guardianship and access have been agreed between the parties.
- [2] Ronald and Marcie Mather were married in April of 1994 and separated in February of 2005. They have three children, born in 1995, 1997 and 2000.
- [3] When the parties first married, they lived in rental accommodation. Mr. Mather was not working and Ms. Mather was just completed an insurance course. Shortly after the marriage, Mr. Mather obtained a good job and remained the primary breadwinner until the separation. Ms. Mather worked part time at an insurance agency. She was the primary caregiver for the children.
- [4] In order to get into the housing market, they purchased a house, which is now the matrimonial home, with Ms. Mather's brother, the defendant Raymond McKibben, and his wife, Lisa. The McKibbens had recently married. All four people are joint tenants.
- [5] The purchase price was \$325,000. Ms. Mather and Mr. McKibben had a trust fund from their parents consisting of the family allowance payments their mother, Mrs. McKibben Sr., had deposited for them in individual trust accounts over the years. The accounts also contained some bonds from their grandmother. By using these funds, the parties were able to make a down payment of \$102,000. Mr. Mather's full-time employment enabled the couples to obtain a mortgage, which was high enough to allow for some renovations to the bottom floor of the house.
- [6] On September 3, 1996, the day before the agreement closed, at the insistence of Mrs. McKibben Sr., all four signed the following agreement:

We Raymond G. McKibben, Lisa D. McKibben, Marcie G. Mather and Ronald W. Mather do acknowledge that the sum of \$102,000.00 used for the downpayment and renovation of our home at 1433 East 29th Street, North Vancouver, B.C. came from Trust accounts held for Marcie G. Mather and Raymond G. McKibben.

We promise that in the event that the house must be sold because of divorce, incompatibility between couples or for any other reason, we will return the money \$102,000.00 to the original accounts in the name of Marlene G. McKibben to hold in trust again for Marcie G. Mather and Raymond G. McKibben.

Any equity in the home would then be split equally between all four parties.

- [7] The Mathers moved into the top floor of the home right away. Renovations were required to the lower floor before Raymond and Lisa McKibben could move in, and these were done by Christmas.
- [8] Shortly after purchase, the parties learned that they had to pay a property purchase tax of \$4,500 which they had not expected to have to pay. Mrs. McKibben Sr. paid for it. Mrs. McKibben Sr. did not characterize this as a loan during her testimony; however Ms. Mather has listed it as a loan on her financial statement.
- [9] In 1997, the grandmother, having been asked for some money by another sibling and determined to provide equally for all her grandchildren, contributed \$20,000 to the mortgage.
- [10] In 1998, Mr. McKibben, who owns his own dump truck and related business, built a garage on the property with the assistance of his father and Mr. Mather. Until trial, the Mathers understood the money for this garage had come from Mr. McKibben's grandmother, but Mr. McKibben testified that his grandmother gave him only \$3,000 of the \$15,000 needed for materials. He paid for the rest himself.
- [11] Ms. Mather testified that she always understood Mr. McKibben was to recover \$15,000 for the garage if the house were sold, which she did not consider fair if the money had come from their grandmother. However, hearing Mr. McKibben's testimony that he paid \$12,000 himself toward the garage, she said she now understands his position.
- [12] All four parties had intended the original purchase to be based on a five year plan. However, in 2001, each couple still had no chance of getting into the housing market on their own, and there were now five children between the two families - 3 in the Mather's family, and 2 in the McKibben's. They decided, rather than move, to do an extensive renovation to the property. They refinanced and borrowed another \$90,000, and constructed additions to each floor. Mr. Mather did a great deal of the work, assisted by Mr. McKibben and his father.
- [13] In 2005, Ms. Mather decided to separate from Mr. Mather. She asked him to leave the house. She took his credit cards as he had always handled the finances and wanted to be able to control the debt.
- [14] Mr. Mather moved to an apartment owned by his sister. He testified he was in a difficult emotional state. He quit his employment of many years and did not see the children regularly, although Ms. Mather urged him to exercise access. By the end of 2005, he had set up a carpentry construction business with a friend. This business, which began as a proprietorship, has now been incorporated and is growing successfully.
- [15] For some reason, which even Mr. Mather seems unable to fully explain, he bought an expensive motorcycle after the separation, drives it infrequently, but has to make payments of about \$500 a month on it.

- [16] Mr. Mather is now in another relationship, and sees the children regularly. Access has been agreed upon.
- [17] At the time of separation, the Mathers had a great deal of debt. They refinanced once again and borrowed \$35,000. The McKibbens borrowed the same amount. Ms. Mather controlled the payments for their family. She paid off a large debt of \$23,000 associated with consolidated vehicle loans, and shifted payments back and forth between credit cards, trying to pay them off at the lowest interest rate. Two large lines of credit amounting to almost \$24,000 remained unpaid at the time of separation. Their total has remained unchanged over the years since separation as Ms. Mather has continued to service those debts by paying interest only. She has also paid the mortgage and all the expenses associated with the house. Each couple regularly deposits \$1,500 into the house account, but this has recently resulted in a small shortfall. Two of the children have very high dental expenses. Ms. Mather has paid \$40/month on the dentist's account.
- [18] After separation, Ms. Mather increased her hours at the insurance agency in order to make more money. However, she had a number of health problems and also found that the children still needed her at home on a more regular basis so went back to part time. Recently, because of the stress of litigation she has been given a short leave of absence. She admits she could advance in the company, and has been urged by the managers to take other courses for a higher level of job, but this would require a move and she prefers to stay on the North Shore where she is close to home and the children's school.
- [19] When she worked full time she made about \$35,000. Her part time work results in an income of about \$23,000/year. She has been assisted with her living expenses since separation by her new partner who, until recently, lived in the home with her. Despite their present separate living arrangements, they intend to make a future together.
- [20] Ms. Mather does not seek compensation for the mortgage payments, property taxes, or credit card debts, but she seeks an order that Mr. Mather contribute equally to the maintenance of the lines of credit. Unfortunately, it does not appear that the parties will have the money necessary to deal with these debts, other than by servicing them, unless the house is sold, but that is a decision they will have to make.
- [21] Ms. Mather has established trust funds for each of their children and wishes to retain the management of those funds.
- [22] Mr. Mather seeks to recover his interest in the house. The house is now appraised at \$875,000. Their mortgage is currently about \$315,000. This leaves \$560,000 equity in the house to be divided between the two couples.
- [23] Mr. Mather suggests the half interest held by himself and Ms. Mather be reapportioned 60/40 in her favour. Ms. Mather submits that reapportionment 80/20 in her favour would not be unfair.

- [24] Lately, there has been a great deal of tension between Ms. Mather and her brother because of the litigation. Resistance to selling the house is very strong, especially and understandably, from the McKibbens. Mr. McKibben has cerebral palsy but he has not allowed this to become an obstacle to his self-sufficiency; he is intelligent and motivated and has developed his own business, employing his father as well. Mr. McKibben depends on the house and the garage for his business. He is very attached to the neighbourhood, and testified that his children are very happy there. They are used to having the Mather children living in the same house.
- [25] Mr. McKibben admitted that it would not be impossible to move but it would be very difficult for him, financially. He would have to start again. I should note that Mr. McKibben represented himself during the trial, but considered his interests with respect to the house to be in line with his sister's, and although he conducted separate cross-examinations and testified himself, he relied on Ms. Mather's counsel to a great extent.

The house

- [26] Ms. Mather seeks reapportionment of the Mathers' half interest in the home in her favour on the basis of an 80/20 split, or a postponement of sale for eleven years until the children are out of school.
- [27] Mr. Mather is content with a compensation order. He does not want his children to have to leave the house. Ms. Mather says she has some ability to refinance, but the extent to which she could pay a compensation order is unclear.
- [28] Mr. McKibben urged the court not to order partition and sale of the house, and to put the happiness and well-being of the children ahead of everything else. Being as frank and fair as he was throughout the trial, he said he would always ensure his family was taken care of, but losing the house would obviously be a severe emotional and financial blow for him and his family.
- [29] The Partition of Property Act was not pled, and issue was taken with whether Mr. Mather holds an interest in the requisite 50% to require sale. Section 6 of the Act provides that unless there is good reason to the contrary, the court must direct a sale of the property where it is requested by a party who is individually or collectively interested to the extent of 50% or more of the property. As Mr. Mather holds his 50% collectively with Ms. Mather, I am satisfied that he does have standing to request partition and sale, and whether the Act was pled or not, that is the only alternative if a compensation order cannot be accommodated.
- [30] However, the first issue to determine is the extent to which the home should be reapportioned in Ms. Mather's favour. Presumptively, each party starts with a half interest in the property. Mr. Mather does not contest that Ms. Mather should have a greater share than he should; nevertheless Ms. Mather bears the onus of establishing that the proportion she seeks would not be unfair.

- [31] It is important not to be carried away by the emotional tides of this case into making a division of property that would allow Ms. Mather and the McKibbens to stay in the house just because it is easy to feel sorry for them and for the children of the two families who have always lived together. Purchasing a house in this manner is fraught with the potential for an unhappy ending.
- [32] Section 65 of the Family Relations Act governs reapportionment:
65. If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to
- (a) the duration of the marriage
 - (b) the duration of the period during which the spouses have lived separate and apart,
 - (c) the date when property was acquired or disposed of
 - (d) the extent to which property was acquired by one spouse through inheritance or gift
 - (e) the needs of each spouse to become or remain economically independent and self sufficient, or
 - (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse
- the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.
- [33] The length of the marriage, length of separation, and date of acquisition of the property are neutral factors. Given all the circumstances surrounding the various payments from Ms. Mather's family, counsel subsumed their argument respecting the potential applicability of s. 65(d), which refers to gifts or inheritances, in s. 65(f). Ms. Mather submits that s. 65(e) operates in her favour.
- [34] There are factors in favour of both parties. Mr. Mather contributed a large amount of the expertise and work required for the renovations, and a substantial amount to the garage. He was the primary breadwinner throughout the marriage.
- [35] On Ms. Mather's side, she contributed \$51,000 toward the downpayment. \$20,000 of the mortgage was paid through a gift from Ms. Mather's grandmother, of which \$10,000 was for Ms. Mather. Mrs. McKibben paid the property taxes upon purchase. Mr. McKibben Sr. helped with the construction. The evidence regarding the source of money for the garage was unclear - it appears to have come either from the grandmother and/or Mr. McKibben himself, but in any event, Mr. Mather contributed to its construction so I regard it as a neutral factor.

- [36] Mr. Mather argues that the promissory note should be given little weight as it was put in place because Mrs. McKibben was concerned that her children were marrying young and quickly. He says that given the duration of the marriage, and the likelihood that the trust funds would have been used for a family purpose anyway, the effect of the note is offset by his substantial work on the property.
- [37] I am of the view that the substantial funds which came from the McKibben side - the trust funds, the tax payment by Mrs. McKibben, the money from the grandmother - should count as a significant factor under s. 65(d) and (f). Although Mr. Mather did substantial work on the property to improve its value, Ms. Mather was looking after the home and children while he did this work, so, while important, I do not view the contributions as balancing each other off. While these amounts are not loans to be repaid, neither were they gifts to the family, with the possible exception of the payment of taxes. The agreement as to the down payment, while not sought to be enforced as a contract, contradicts the notion that the trust funds were a gift to the family. As well, evidence before the court was that the grandmother gave the money to each of her grandchildren, not to their families. These funds are contributions that assisted materially in acquiring and maintaining the property and which accrued either directly or indirectly through Ms. Mather.
- [38] Mr. Mather takes the position that he has no money left to pay any spousal support, and Ms. Mather does not suggest that Mr. Mather could pay spousal support on top of the reapportionment. She says the factors that would support an award of spousal support should be considered in connection with her self-sufficiency under s. 65(e). Mr. Mather also points to the assistance Ms. Mather receives from her new partner.
- [39] Ms. Mather increased her hours of work to cope with the strained financial situation after separation, and Mr. Mather did not assist until ordered to do so by the provincial court. Meanwhile he had spent a large amount of money on a motorcycle. Ms. Mather was left with the full responsibility for the children and all the family debt until she obtained an order from the provincial court, including one for arrears. Her position that taking on full time work immediately after separation compromised her ability to care adequately for the children, given all the circumstances, was reasonable. However, it is also important that the family was deeply in debt at the time of separation and Ms. Mather's additional earning power was going to be needed in any event if the parties were to make ends meet. Continuing to work at reduced hours, though beneficial to the children, was not financially feasible, although the break-up of the marriage made the situation even more difficult. Ms. Mather's position that she does not want to have to move to another location in order to advance in the company is reasonable.

- [40] Given her role in the family and her reduced prospects for full time work and advancement while caring for the children, Ms. Mather would, in my view, have some entitlement to spousal maintenance. However, it would not be a substantial amount or of long duration. The children are older now and she should be able to increase her hours and make more money, once the stress of litigation is over. As well, she has an ongoing relationship with a generous partner.
- [41] A long-term postponement is another way or reapportioning property. However, Ms. Mather has not shown that a postponement of several years would not be unfair to Mr. Mather. He is entitled to recover his interest in the home and begin to build a new life.
- [42] Taking all the factors in s. 65 into account, particularly Ms. Mather's contributions to the property and her role in the family, her assumption since separation of the primary responsibility for the children, which will continue into the future, and the inability of Mr. Mather to pay any spousal support, and weighing these against the admittedly substantial contributions in labour made by Mr. Mather, I find that the home should be apportioned 75/25 in favour of Ms. Mather.
- [43] I do not know if this division will result in the home having to be sold, or whether refinancing is available to buy out Mr. Mather's interest. Other than feeling a great deal of sympathy for the McKibbens, I am unable to say that there is good reason not to order a sale. Sale was always contemplated as a potential future event for these two families, even though they hoped to remain in the house and had good reason to attempt to do so, given the current housing market.

Child Support

- [44] The parties differ over the income amount upon which to apply the guidelines.
- [45] In January of 2006, Mr. Mather was ordered to pay \$948 per month for child support, based on an income of \$51,697. Arrears were declared in the amount of \$4,740. The arrears have now been paid.
- [46] Mr. Mather's ITR for 2006 shows income of \$63,497. However, Mr. Mather said part of that was business income from his proprietorship that had to be declared but was in fact rolled into the present company and is not available to him. As well, the income statement for the company for 2007 shows a profit, but only if two large receivables are paid. Mr. Mather contends that any amount left over, assuming the receivables are paid, will be needed for working capital in the company and will not be paid as dividends. His partner, Mr. Simms, confirmed this in his testimony.
- [47] Mr. Mather has declared \$55,200 for 2007. He does agree that a portion of vehicle expenses that are paid for by the company should be included in his income. Assuming he uses the vehicle 20% of the time for personal use, that would add about \$5,500 to his income, making it \$61,000.

- [48] The evidence that the profit from the proprietorship was necessary to ensure the viability of the company was not contested, nor was it disputed that the company requires ongoing capital to function. I accept that the profit from the proprietorship was not available to Mr. Mather personally. Obviously, if dividends are paid in the future, his income will have to be adjusted accordingly. Now, however, I accept that his income should be set at \$61,000, which means that child support will be paid at the rate of \$1,204 per month, and Mr. Mather is responsible for 68.9% of the extraordinary expenses.

Pensions and RRSPS

- [49] Ms. Mather has a small pension from her employment which she admits is a family asset and should be divided under Part 6. Ms. Mather has an RRSP of \$12,000 which is a family asset, but which she submits would be unfair not to reapportion fully to her, as it came from the trust fund that pre-dated the marriage and has never been used during the marriage. I agree with those positions.
- [50] Mr. Mather has a small RRSP of under \$765. He also cashed in a GIC of \$1,000 after the separation. No argument was addressed to these items, presumably because they are so small. I am proceeding on the basis that there is no need to account for them.

RESULT

- [51] The parties have agreed that Ms. Mather will have custody of the children, and that Mr. Mather will have specified access of one overnight visit every two weeks.
- [52] Child support payable by Mr. Mather is set at \$1,204/month on the basis of an income of \$61,000. Extraordinary expenses will be divided proportionately to the parties' respective incomes, which is almost exactly 70% from Mr. Mather and 30% from Ms. Mather, reviewable annually.
- [53] Ms. Mather's RRSP is not a family asset.
- [54] Ms. Mather's pension will be divided in accordance with Part 6. The parties will retain their CPP credits.
- [55] The parties will be jointly responsible for the payment of the balance on the lines of credit and Mr. Mather will reimburse Ms. Mather for half the servicing costs from the date of separation to the present. Ms. Mather will assume responsibility for the remainder of the credit card debt.
- [56] Mr. Mather will retain the assets in his possession or registered in his name; Ms. Mather will retain the assets in her possession or registered in her name.
- [57] Ms. Mather will continue to manage the children's trust funds, which will be kept separate for the benefit of the children.

[58] The 50% interest in the matrimonial home held by Ms. Mather and Mr. Mather will be reapportioned 75/25 in Ms. Mather's favour. Ms. Mather has until June 1, 2008, or such other date as agreed upon between the parties, to arrange for financing for a compensation order, or the house will be listed for sale. Ms. Mather will have conduct of sale; Mr. Mather's consent is required for the listing and selling price, with liberty to apply in the event of a disagreement.

Costs

[59] The main issue at trial was the division of the home. On the material before me, Ms. Mather has been successful on that issue. Unless there is a reason to speak to costs, Ms. Mather will have her costs from Mr. Mather at Scale B. There will be no order for costs for or against Mr. McKibben.

"M.A. Humphries J."

The Honourable Madam Justice M.A. Humphries

May 9, 2008 - Revised Judgment

Please be advised that the Reasons for Judgment of Madam Justice M.A. Humphries dated April 4, 2008 have been edited.

· On page 4, paragraph 13, the first line of sentence, the name "Mr. McKibben" has been replaced with "Mr. Mather".

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/Jdb-txt/SC/08/03/2008BCSC0393err1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mather-v-mather-2008>

Prepared on 29 October 2026 · Esheria