

CANADA / JUDGMENT

Moore v. Cosby

2025 BCSC 1226

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1226 Moore v. Cosby

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Moore v. Cosby,

2025 BCSC 1226

Date: 20250630

Docket: 162855

Registry: Victoria

Between:

Heather Dawn Moore

Claimant

And:

Sean Robert Cosby

Respondent

Corrected Judgment: The text of the judgment was corrected on the front page on July 7, 2025.

Before: The Honourable Madam Justice Warren

Reasons for Judgment

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Place and Dates of Trial:

Victoria, B.C.

October 28 - November 1,
and 5 - 8, 2024

Place and Date of Judgment:

Victoria, B.C.

June 30, 2025

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Introduction

- [1] This is a family law proceeding arising out of a five-year relationship between the parties. A preliminary issue is whether the claim is barred by the two-year limitation period in s. 198 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. If the claim is not time barred, it will be necessary to determine what property and debt division orders should be made.

Background

- [2] The claimant, Heather Moore, was 59 years old at the time of the trial. The respondent, Sean Cosby, was 56 years old at the time of the trial.
- [3] Each of the parties initially expressed some uncertainty about whether their marriage-like relationship began in 2008 or 2009 but, by the end of the trial, it was agreed that it began in May of 2009.
- [4] Ms. Moore has three children from a prior relationship. Mr. Cosby has two children from a prior relationship. They do not have children together. When the parties started living together, the oldest of the five children was about 14 years old and the youngest was eight years old. During the relationship, the children, who are now adults, spent most of their time with Ms. Moore and Mr. Cosby.
- [5] The parties separated in the summer of 2014. The specific date of separation is in dispute.
- [6] Prior to the parties' relationship, Ms. Moore worked in an administrative position for a school district. She owned a house in Shawnigan Lake, where she resided with her children. When the parties decided to move in together, she sold her house, which she says generated net proceeds of \$8,000. Mr. Cosby disputes that Ms. Moore realized any net proceeds from the sale of her house. He says that Ms. Moore brought no assets of material value into the relationship.
- [7] Prior to the parties' relationship, Mr. Cosby worked as a heavy equipment operator for his father's excavation business, and, during the summer months, he operated a jet ski rental business out of a marina on Shawnigan Lake.
- [8] In the 1990s, Mr. Cosby purchased a five-acre property on Forsyth Way in Shawnigan Lake (the "Forsyth Property") on which he subsequently built a small log cabin (the "Forsyth Cabin"). In about 2002, he and the mother of his children separated and thereafter their children resided primarily with him. He and the children lived in the Forsyth Cabin for a time, but later he rented it out and they moved into a modular home on a leased property on Sylvester Road. Subsequently, they moved into a small cabin he built on the Sylvester Road property (the "Sylvester Cabin"). He considered the Sylvester Cabin to be his, but there is no dispute that it has no practical value because he does not own the property on which it is built.
- [9] In about 2006, Mr. Cosby commenced the process of subdividing the Forsyth Property into a one-acre parcel and a four-acre parcel. His plan was to sell the one-acre parcel and use the proceeds to build an addition onto the Forsyth Cabin. The subdivision process was protracted. Among other things, Mr. Cosby had to apply for rezoning; negotiate access with the owner of a neighbouring property; bring water to the one-acre parcel and to the neighbouring property; construct a driveway; and rough in a building site. He started working on the project in 2006, and it was in progress when the parties' relationship began.

- [10] In May 2009, Ms. Moore and her children moved into the Sylvester Cabin with Mr. Cosby and his children. Ms. Moore testified that she used the proceeds from the sale of her Shawnigan Lake house to purchase a boat for the parties and to fix up the Sylvester Cabin to make it habitable by the larger blended family. Ms. Moore continued to work for the school district. Mr. Cosby continued to work for his father and, during the summers, to operate the jet ski rental business. He also continued to work on the subdivision project.
- [11] The subdivision was finally approved in September of 2010. The total cost of preparing the property to meet the requirements for subdivision was about \$60,000, which Mr. Cosby borrowed from his father. In December 2010, Mr. Cosby sold the one-acre parcel for \$208,000. I will refer to the remaining four acres as the "Subdivided Forsyth Property". Mr. Cosby used \$60,000 of the proceeds from the sale of the one-acre parcel to repay his father and the balance was expended on completing a renovation and addition to the Forsyth Cabin.
- [12] Mr. Cosby commenced the renovation project on the Forsyth Cabin in January 2011. It was a substantial undertaking that converted the Forsyth Cabin into a large, seven-bedroom log house (the "Forsyth House"). Mr. Cosby also built another, small cabin at the "bottom" of the property (the "Second Forsyth Cabin") which he rented to a friend named Darren McLaughlin. Mr. Cosby performed much of the construction work himself, while also working for his father and running the jet ski business. Ms. Moore and the children helped from time to time with smaller tasks.
- [13] Mr. Cosby did not obtain any permits or building inspections for the construction of the Forsyth House. He did not obtain an occupancy permit. He testified that he was aware that he was required to obtain permits and have inspections performed. He did not provide a rational explanation for not doing so.
- [14] The parties moved into the Forsyth House in December 2011. Construction was substantially complete at that time, but there was still some finishing to be done. Ms. Moore withdrew \$5,000 from her RRSP account to purchase appliances for the Forsyth House.
- [15] In 2012, the Subdivided Forsyth Property was remortgaged. Ms. Moore testified that the parties intended to use the new mortgage proceeds to build a shop on the Subdivided Forsyth Property and finish off the Forsyth House, but that Mr. Cosby controlled the money, and she did not know what he used it for. Mr. Cosby said he used the money to build the shop; but he also said that he started construction of the shop in 2014 and that it is still not finished.
- [16] In early 2014, the parties obtained a \$20,000 joint line of credit. They used about \$6,300 to buy a larger vehicle for Ms. Moore. Ms. Moore testified that both parties accessed money from the line of credit from time to time, but the monthly interest payment was paid from Mr. Cosby's bank account. Mr. Cosby agreed that he paid the interest, but he said he did not withdraw any money from the line of credit.

- [17] During the parties' relationship, Ms. Moore performed most of the home-making and childcare duties. She cared for all five of the children, did most of the driving, and helped with homework. She did most of the cooking for the family, and most of the housework and the laundry. Mr. Cosby testified that he performed some of these tasks, and I accept that he helped occasionally, but he was away from home often, working in his job, on the development of the Forsyth Property, and on the construction of the Forsyth House. I find that Ms. Moore assumed the bulk of the home-making and childcare tasks.
- [18] During the relationship, both parties contributed to the household expenses. Ms. Moore used her employment income and the child support payments she received from the father of her children to cover some bills and buy food and supplies for the blended family. Mr. Cosby paid the mortgage and most of the utility bills. His financial contributions were larger than hers, but I am satisfied that she expended virtually all the income available to her on the family.
- [19] As mentioned, the Forsyth House was built without permits or building inspections. In 2018, Mr. Cosby received a letter from the Cowichan Valley Regional District ("CVRD") identifying various violations and deficiencies. Mr. Cosby testified that the main areas of concern are the drain tiles, the septic system, a deck railing, concrete work, the chimney, wiring, and plumbing. Mr. Cosby has obtained quotes estimating the cost of correcting these deficiencies at approximately \$150,000.
- [20] The parties' relationship was always rocky. Among other things, they had different parenting styles and often argued about the children. The children did not always get along and this created stress in the household. The friction came to a head in the summer of 2014.
- [21] Ms. Moore and her two younger children moved out of the Forsyth House on September 20, 2014. Her oldest child was already living on her own by then. There is no dispute that the parties separated before Ms. Moore physically left on September 20, 2014, but they disagree about the actual date of separation. Mr. Crosby places the separation on or about May 30, 2014. Ms. Moore says they separated in the first or second week of September 2014.
- [22] Ms. Moore filed her Notice of Family Claim on July 5, 2016. If the parties separated before July 5, 2014, her claim is barred by s. 198 of the FLA.
- [23] Each party anchors their position on the separation date to a specific event:
- a) Ms. Moore's daughter, Hannah, turned 17 on May 30, 2014. Mr. Cosby maintains that during a family birthday dinner that evening, Hannah declared that Craig Partridge, the father of one of her friends, wanted to date Ms. Moore. Mr. Cosby says this was the last straw for him and, later that evening, he told Ms. Moore the relationship was over. Ms. Moore denies that any of this occurred.
 - b) Hannah was in a car accident on August 17, 2014. Ms. Moore maintains that Mr. Cosby was not supportive of her during this upsetting event, and the next day he told her that her children were out of control and she was a bad parent. She says this was the last straw for

her and she began making plans to move out. She says that after securing rental accommodation, she told Mr. Cosby she was leaving. She places that conversation in the first or second week of September 2014. Mr. Cosby denies that they had any such conversation after Hannah's accident. He maintains that Ms. Moore had been preparing to move out for several weeks prior to the accident.

Issues

- [24] In her Notice of Family Claim, Ms. Moore sought orders respecting children, spousal support, and the equal division of family property and debt. She identified, as family property, the Subdivided Forsyth Property as well as various vehicles, including jet skis and snowmobiles. Ms. Moore has now abandoned all claims other than her claim for equal division of the Subdivided Forsyth Property.
- [25] Mr. Cosby filed a Counterclaim. The latest version is his amended counterclaim filed January 28, 2020. He sought child support orders and orders related to property and debt. He pleaded that Ms. Moore's claim was barred by the two-year limitation period in s. 198 of the FLA. In the alternative, he sought equal division of family property and family debt or, in the alternative, unequal division in his favour. He specifically identified, as family property, the Subdivided Forsyth Property and Ms. Moore's employment pension. Mr. Cosby has since abandoned his claim for child support.
- [26] The issues to be determined are: 1) the separation date; and 2) the parties' respective claims in relation to: a) the line of credit; b) Ms. Moore's pension; and c) the Subdivided Forsyth Property.

Positions of the Parties

- [27] Mr. Cosby says the parties separated on or about May 30, 2014. Ms. Moore says the parties separated in the first or second week of September 2014.
- [28] There is no dispute that the line of credit is a family debt for which the parties are presumed to be equally responsible under s. 81 of the FLA. There is no dispute that at the time of the trial, the outstanding balance on the line of credit was \$19,000. As I understood it, Mr. Cosby's position is that despite the balance being \$19,000, the debt should be valued at \$29,000 to reflect interest payments made by him since the separation and then divided equally. I was provided with no authority for that approach. I take Mr. Cosby's submission in this regard as an argument in favour of reapportioning responsibility for the line of credit in his favour.
- [29] Ms. Moore conceded that the increase in the value of her pension during the parties' relationship is family property that must be divided equally in accordance with Part 6 of the FLA.

- [30] There is no dispute that the Subdivided Forsyth Property is excluded property under s. 85 of the FLA, having been derived from the Forsyth Property which Mr. Moore acquired before the relationship began. There is also no dispute that, pursuant to s. 84(2)(g) of the FLA, the amount by which its value (and before it existed, the Forsyth Property) increased since the relationship began is family property. However, the parties do not agree on the quantum of that amount. In addition, Mr. Moore seeks reapportionment of that amount in his favour, either by selecting the separation date as the date for valuation or by dividing the value unequally.

Credibility and Reliability

- [31] The factors identified by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, play a role in assessing whether the evidence of a witness is truthful and accurate. These factors include: the ability of the witness to resist being influenced by their interest in recalling the relevant events; the internal and external consistency of the witness's evidence; whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence; whether their evidence seems unreasonable, improbable, or unlikely, bearing in mind the probabilities affecting the case; and the witness's demeanour, meaning the way they present while testifying.
- [32] I have applied these principles in my assessment of the credibility of all the witnesses.
- [33] The most significant area of conflict in the parties' evidence concerned the timing of their separation. Each of the parties called collateral witnesses to corroborate their respective testimony about that issue. I will say more about the substance of the evidence of each of those witnesses later. For now, I will comment briefly on the credibility and reliability of their evidence.
- [34] Ms. Moore called three collateral witnesses: her daughter Hannah, and her friends Kimberly Duffe and Darlene Witt. I did not have concerns about the credibility or reliability of the core aspects of the testimony of Ms. Duffe and Ms. Witt. While I accept that Hannah's testimony was credible, for reasons I will explain when discussing the separation date, I concluded that her evidence about the timing of the separation was not sufficiently reliable to give it much weight.
- [35] Mr. Cosby called four collateral witnesses: his daughter Annika, his friends Darren McLachlin and Richard Miller, and an acquaintance, Gordon Wolf. I concluded that Mr. Miller's testimony was not credible and that it would be unsafe to rely on it at all. For reasons I will explain when discussing the separation date, I concluded that Annika's testimony and that of Mr. McLaughlin and Mr. Wolf concerning the timing of the separation was not sufficiently reliable to give it much weight.
- [36] I turn now to the testimony of the parties themselves.

- [37] Ms. Moore testified in a calm and reasonable manner, without exaggeration or hyperbole. Her testimony was internally consistent. Her recollection was not perfect, but any memory lapses and factual errors concerned routine or relatively insignificant details. For example, she was initially mistaken about the year the parties commenced cohabiting, but Mr. Cosby made the same mistake, and, given the passage of time, this is an understandable error that did not affect my assessment of her credibility or the reliability of her evidence about significant matters. Ms. Moore's evidence about the events that triggered the separation was corroborated, to some extent, by Ms. Duffe and Ms. Witt. Ultimately, I was satisfied that her testimony about events central to my analysis of the issues to be resolved was both credible and reliable.
- [38] In contrast, Mr. Cosby was not a credible witness. There were several aspects of his testimony and courtroom behaviour that caused me to conclude that it would not be safe to rely on his evidence in the absence of reliable corroborating evidence. Some examples will suffice to ground this conclusion.
- [39] First, Mr. Cosby's testimony at trial about the central factual dispute--the timing of the separation--differed in material ways from evidence he gave in an affidavit he swore prior to the trial.
- [40] In his direct evidence at trial, Mr. Cosby said that he told Ms. Moore the relationship was over on the evening of May 30, 2014, after Hannah said, during her birthday dinner, that her friend's father, Craig Partridge, wanted to date Ms. Moore. At trial, he maintained he had a clear recollection of this event. He said it "floored" him and he felt betrayed. He said that within the next couple of days, Ms. Moore told him she had found a house to rent and they agreed to go their own separate ways, but they continued to sleep together, most nights, until Ms. Moore moved out in September 2014.
- [41] In an affidavit sworn September 6, 2018, Mr. Cosby expressly noted his position that Ms. Moore's claim was statute barred because "she did not file the claim until more than two years after [they] had separated". Thus, he was aware of the significance of the separation date when he described the circumstances of the separation in that affidavit. According to that affidavit:
- in the first week of June 2014, Ms. Moore told their mutual friend, Mr. Miller, that she and Mr. Cosby were separating, and she was moving into a new house being built by her new boyfriend; and
 - Ms. Moore moved out of the master bedroom by about April or May 2014, and began sleeping in the guest room.

- [42] In the affidavit, Mr. Cosby said nothing about Hannah's May 30, 2014, declaration, feeling floored or betrayed by it, or telling Ms. Moore that the relationship was over later that evening. Given the significance he attached to this event in his direct evidence, it almost certainly would have been mentioned in the affidavit if it was true. Also, the affidavit version is inconsistent with Mr. Cosby's trial testimony on the question of when he and Ms. Moore stopped sleeping together.
- [43] In summary, the trial version was that Mr. Cosby decided he wanted to separate on the evening of Hannah's birthday, and he told Ms. Moore of his intention the same evening. In contrast, the affidavit version was that Ms. Moore told a third party that she and Mr. Cosby were separating. I concluded that Mr. Cosby changed his evidence on this central point to align more closely with the legal principles applicable to determining the separation date.
- [44] Second, Mr. Cosby's testimony at trial about his jet ski business differed significantly from evidence he gave on that topic during his examination for discovery. His evidence during the examination for discovery was nonsensical and appeared to be an attempt to obscure the truth. For example, at various points during the discovery Mr. Cosby:
- agreed he had a jet ski rental business on Shawnigan Lake, but later said he had never described this enterprise as a business even though he admitted he rented out jet skis for money;
 - denied the jet ski business was his business;
 - indicated that he had a partner in the business;
 - later said he was one of several owners of the business, but he did not know the names of the other owners;
 - said Mr. Miller owns part of the jet ski business and he, Mr. Cosby, must own half the jet ski business; and
 - claimed not to know how Mr. Miller decides how much money to allocate to him for the jet ski rentals.
- [45] In contrast, Mr. Cosby's evidence at trial about the jet ski business was coherent and rational. He said he had been operating it during summer months for many years and, since the early 2000s, out of the marina owned by Mr. Miller. He said he himself owns the jet skis and he pays to have them repaired when necessary. He said he charges customers for rentals by running a credit card through the marina's machine. He said he writes "jet ski" on the back of the receipt and puts it in the till. He said, at the end of each month, Mr. Miller adds up the jet ski receipts, deducts the cost of gas used, and pays the balance to Mr. Cosby in cash. He said he earns about \$3,000 to \$4,000 a month from this business, during the summer months. While Mr. Cosby's evidence on this issue at trial was rational in isolation, the conflicts with his evidence during examination for discovery undermine his credibility.

- [46] Third, Mr. Cosby admitted that for many years he did not report the income he earned from the jet ski business or rental income for tax purposes. He agreed that he "cheated" on his taxes, indicating that he is prepared to be dishonest to advance his own financial interests.
- [47] Finally, Mr. Cosby engaged in behaviour in the courtroom while Ms. Moore was testifying that undermined his credibility.
- [48] While under cross-examination, Ms. Moore disclosed that Mr. Cosby had been making gestures towards her during her testimony and that she was upset by it. Ultimately, footage from a closed-circuit video camera installed in the courtroom was obtained and played in open court. The footage captured Mr. Cosby, who was sitting behind counsel and in Ms. Moore's line of sight, gesturing while she was testifying. At one point he extended the middle finger on his left hand in Ms. Moore's direction. When questioned about this, he admitted that he was making the gesture that is well known to convey the message "fuck you". He claimed that he made this gesture as an instinctive reaction to Ms. Moore's testimony and that he was not directing it at Ms. Moore. Later in the footage, Mr. Cosby is seen making a gesture with the index finger and thumb on his right hand that resembled cocking a gun. He denied any intention of making a gun cocking gesture and claimed that he was fidgeting.
- [49] Having reviewed the material excerpts from the footage several times, it is clear to me that Mr. Cosby was indeed directing the middle finger gesture towards Ms. Moore and that he made a gun cocking gesture at least once. It should go without saying that this kind of behaviour is completely unacceptable. I concluded that he had become so overwhelmed by his own self-interest that he was willing to resort to intimidating Ms. Moore in open court. This demonstrated the extent to which his judgment--and ultimately his credibility--had been compromised.
- [50] For all these reasons, I prefer Ms. Moore's testimony over that of Mr. Cosby, where it conflicts.

The Date of Separation

- [51] Again, Ms. Moore commenced this proceeding on July 5, 2016. If Mr. Cosby establishes that the parties separated prior to July 5, 2014, Ms. Moore's claim must be dismissed as time barred by application of s. 198 of the FLA. The material part of that provision provides as follows:
- (2) A spouse may start a proceeding for an order under Part 5 to divide property or family debt, Part 6 to divide a pension, or Part 7 for spousal support, no later than 2 years after,
- .
- (b) in the case of spouses who were living together in a marriage-like relationship, the date the spouses separated.

[Emphasis added.]

[52] Section 3 of the FLA assists with the determination of the date of separation. It provides, in material part:

(4) For the purposes of this Act,

(a) spouses may be separated despite continuing to live in the same residence, and

(b) the court may consider, as evidence of separation,

(i) communication, by one spouse to the other spouse, of an intention to separate permanently, and

(ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[53] In determining the date of separation, it is not necessary for me to find that the parties agreed to separate. Rather, I must find a settled intention of one spouse to repudiate or end the relationship and a communication of that intention by word or action. This is to be assessed objectively, on the totality of the evidence. (See: *Gupta v. Kumar*, 2023 BCCA 106 at para. 13; *H.S.S. v. S.H.D.*, 2016 BCSC 1300 at paras. 40-48; *Cole v. Cole*, 2016 BCSC 716 at para. 30.)

[54] With these principles in mind, I turn to consider the evidence, bearing in mind that the central question is whether Mr. Cosby has met the onus of establishing that it is more likely than not that, prior to July 5, 2014, he regarded the relationship to be at an end and, by his words or conduct, demonstrated that this state of mind was a settled one.

[55] For the reasons already discussed, I do not accept Mr. Cosby's uncorroborated evidence that he decided to separate from Ms. Moore on or about May 30, 2014, and communicated his intention to Ms. Moore that evening. Ms. Moore expressly denied that Mr. Cosby said anything about separation on or in the days following Hannah's birthday on May 30, 2014.

[56] Mr. Cosby's daughter Annika testified that, in June of 2014, she saw packing boxes in the basement of the Forsyth House and noticed that in one or more of the boxes were family photographs belonging to Ms. Moore that had previously hung on a wall in the Forsyth House. She said that she asked Mr. Cosby about this, and he told her that he and Ms. Moore were separating. Annika maintained that she was sure she saw the boxes in June 2014, because on July 1, 2014, she took over the lease of a residence where her mother had been living and she subsequently moved there from the Forsyth House. She suggested that she must have seen the boxes when she was still living in the Forsyth House.

[57] Annika's testimony about the timing of her seeing the boxes is not sufficiently reliable to be given weight. I was not persuaded that her memory of the timing of this event, which occurred ten years before she testified, was accurate. In her direct evidence, Annika said Hannah's car accident occurred in mid July 2014. The accident actually happened in mid

August. There is no reason to believe her memory about the timing of seeing the boxes is more accurate than her memory of the timing of the car accident. Annika's suggestion that she must have seen the boxes in June because she took over the lease of the other residence on July 1 is not persuasive. While the timing of her taking over the lease was clear, she acknowledged that her move out of the Forsyth House was gradual and she had belongings in both places for some period. She did not say that she never went into the basement of the Forsyth House after July 1, 2014.

- [58] Gordon Wolf is an acquaintance of Mr. Cosby's. He testified that he worked for a subcontractor on the construction of the house that Ms. Moore later moved into in September 2014. He lived across the street and saw Ms. Moore there after she moved in. He testified that he saw Ms. Moore come to the house a couple of times while it was under construction and he was there working. Mr. Wolf testified that he worked at the house for only a couple of months from the end of May 2014 through to July of 2014, the implication being that Ms. Moore must have been at the house before the end of July. Mr. Wolf maintained that it was not possible that his recollection of the timing of his observations of Ms. Moore at the house was off by a month or so; in other words, that it is not possible that he observed her there in August of 2014.
- [59] Mr. Wolf's testimony about the timing of his work on the house is not sufficiently reliable to be given weight. He did not provide a cogent explanation for how he could remember, with certainty, that his work at the house ended in July of 2014. The evidence did not disclose something so memorable about the duration or timing of his work there to conclude that his testimony on these points, given ten years later, was reliable. He acknowledged that he had not refreshed his memory about the timing and duration of his work on the house from reviewing any documents.
- [60] Darren McLaughlin has been a good friend of Mr. Cosby's for at least 30 years. He rents the Second Forsyth Cabin from Mr. Cosby. As discussed below, in June of 2014 the parties had a serious argument that culminated in the police attending the Forsyth House. Mr. McLaughlin testified that when the police arrived, they approached his cabin first and he told them to go up to the big house. He testified that a few days later Mr. Cosby told him that he and Ms. Moore were going to separate. I was not satisfied that there was something so memorable about the timing of this disclosure that Mr. McLaughlin could reliably recall that it was a few days after the police came to the house. Also, Mr. McLaughlin's evidence about what Mr. Cosby told him was very generic--just that Mr. Cosby told him they are going to separate. The argument between the parties in June was a serious one and it is possible that, a few days later, Mr. Cosby said something to Mr. McLaughlin to the effect that the relationship was in peril--or that it might be ending--without either party having a settled intention. For these reasons, I cannot give Mr. McLaughlin's evidence much weight.
- [61] As mentioned, Mr. Miller is the owner of the marina out of which Mr. Cosby operates his jet ski rental business. Mr. Miller testified that in early June 2014 Ms. Moore was at the marina and told him that she was leaving Mr. Cosby and moving into a house owned by Craig

Partridge. This testimony suffers from the same weakness as that of many of the other collateral witnesses. I was not persuaded that, ten years after the fact, Mr. Miller could accurately place this conversation with Ms. Moore in June 2014. He claimed to be confident about the timing because the marina was not busy at the time. However, the marina would not likely be busy on a rainy day in August either. Mr. Cosby himself noted that the success of the jet ski business was impacted to a significant extent by the weather. Further, Mr. Miller harbours significant animus towards Ms. Moore. He admitted that after Ms. Moore and Mr. Cosby separated, he and Ms. Moore dated, and when that relationship ended he drove past her house and threw garbage onto her property. He said he did that because she was "so nasty". This extreme ill-will towards Ms. Moore caused me to seriously question the credibility of Mr. Miller's evidence.

- [62] The balance of the evidence favours Ms. Moore's position on the date of the separation.
- [63] As discussed, Ms. Moore testified that the separation was triggered by Mr. Cosby's reaction to Hannah's car accident on August 17, 2014. She testified that she formed the intention to separate shortly after that day and began looking for a place to live. She testified that in the first or second week of September 2014, she told Mr. Cosby she was moving out. She testified that when she told Mr. Cosby she was leaving, he was upset, he cried, and he said words to the effect of "why now, when the kids are essentially grown, and when things are just going to get better for us". I accept this evidence. As discussed, Ms. Moore's testimony on the points of contention was credible and reliable. In addition, it was corroborated, to some extent, by the testimony of Ms. Duffe and Ms. Witt.
- [64] Ms. Duffe testified that, in mid August of 2014, Ms. Moore told Ms. Duffe that Ms. Moore and Mr. Cosby were separating, and that the catalyst for the separation was Hannah's car accident. Ms. Witt testified that, in late August or early September 2014, Ms. Moore told her that the relationship was ending, and that Hannah's accident had been the "turning point". While I have the same concerns about the reliability of these witnesses' memories of the specific timing of these disclosures by Ms. Moore, I accept that each of them reliably remembered what Ms. Moore said about the catalyst being Hannah's accident. While there is nothing to indicate the timing was memorable, the fact that Ms. Moore claimed that Hannah's accident was the catalyst is something that a witness would likely remember.
- [65] Hannah testified that less than a month after the car accident, Ms. Moore told her that they were moving out of the Forsyth House. I was not satisfied that this evidence could be given any weight because, like several of the other collateral witnesses, I was not satisfied that Hannah's memory of the timing was accurate.
- [66] Much of the undisputed evidence supports Ms. Moore's position. This includes:
- Ms. Moore did not physically leave the Forsyth House until September 2014;

- Ms. Moore and Mr. Cosby continued to share a bedroom in the Forsyth House, at least on most nights, until shortly before she moved out, even though there was at least one guest bedroom available; and

- Ms. Moore and Mr. Cosby attended a "couples" BBQ together at Ms. Duffe's house on July 19, 2014. Mr. Cosby attempted to minimise the significance of this event at the trial, but during his examination for discovery he agreed that they socialized together as a couple through the end of July 2014.

[67] Mr. Cosby submitted that the circumstances surrounding an argument between the parties in June 2014 supported his position on the separation date. I do not agree.

[68] There is no dispute that the parties had a serious argument in mid-June 2014. Among other things, Mr. Cosby threw some of Ms. Moore's belongings out of the house and she called the police.

[69] Ms. Moore testified that she could not recall what triggered this argument. She said that after the police came to the house, she transferred what remained on the line of credit (\$9,650) to her own bank account, that Mr. Cosby somehow accessed her account and transferred \$9,000 on to his credit card, that she discovered this and reversed the transfer, and then she transferred \$9,000 back on to the line of credit. Her explanation for transferring the money from the line of credit in the first place was that she thought the relationship might be ending and, if that happened, she would need some money. However, she emphasized that the parties' relationship had always been rocky. She reiterated that the relationship did not end at the time of the June argument, and she and Mr. Cosby carried on as they had following numerous previous arguments. She said she concluded that she should return the money to the line of credit because they had resolved the issue that triggered the argument, and putting it back was the right thing to do. Mr. Cosby testified that the argument was triggered by him discovering that Ms. Moore had drained the line of credit by transferring \$9,650 from it to her own bank account on June 16, 2014.

[70] Irrespective of whose version of what triggered the June argument is correct, the line of credit documentation is more consistent with Ms. Moore's position on the date of separation than with Mr. Cosby's position. The documents show that the account was depleted on June 16, 2014, by the withdrawal of \$9,650, and that \$9,000 was returned on June 17, 2014. In contrast, the line of credit was depleted again on August 21, 2014, by the withdrawal by Ms. Moore of \$5,000, which was not returned. The fact that Ms. Moore returned most of the money withdrawn in June but did not return the money withdrawn in August is more consistent with her position on the date of separation.

[71] Mr. Cosby bears the burden of satisfying me that it is more likely than not that the parties separated prior to July 5, 2014. For the forgoing reasons, he has not met that burden. I find that the parties separated sometime during the first two weeks of September 2014. It follows that Ms. Moore's claim is not barred by s. 198 of the FLA.

Property and Debt Division

Legal Principles

- [72] Pursuant to s. 81 of the FLA, there is a presumption that each spouse is entitled to a one-half interest in "family property" and is equally responsible for "family debt". Pursuant to s. 95 of the FLA, that presumption can be displaced and an unequal division ordered if an equal division would be "significantly unfair" having regard for the factors listed in s. 95(2) and (3).
- [73] The first step is to identify the "family property" and "family debt" that is subject to division.
- [74] The term "family property" is defined in s. 84 of the FLA. The definition includes all real and personal property "owned by at least one spouse" on the date the spouses separate, except for "excluded property". The amount by which the value of excluded property has increased since the relationship began, or the excluded property was acquired, is included within the definition of family property: s. 84(2)(g).
- [75] Section 85 lists the categories of excluded property. There are two categories that have relevance in this case: property acquired by a spouse before the relationship began (s. 85(1)(a)), and property derived from such excluded property or its disposition (s. 85(1)(g)).
- [76] The term "family debt" is defined in s. 86 of the FLA. The definition includes all financial obligations incurred by a spouse "during the period beginning when the relationship begins and ending when the spouses separate".
- [77] As noted, the presumption of equal division of family property and family debt can be displaced and an unequal division ordered if an equal division would be "significantly unfair" having regard for the factors listed in s. 95(2) and (3). In *Hannon v. Hopson*, 2022 BCCA 314, Butler J.A. summarized the principles applicable to determining significant unfairness in this context in these terms:
- [69] The meaning of significant unfairness, as required under s. 95(2) before an order for unequal division of family property can be made, has been the subject of numerous decisions of this Court. Justice Garson conveniently summarized the jurisprudence in [*Singh v. Singh*, 2020 BCCA 21]:
- [130] In *Jaszczewska v. Kostanski*, 2016 BCCA 286, Justice Harris, for the Court, engaged in an extensive analysis of s. 95. He first noted that the Legislature sought to increase certainty, fairness, and predictability in property division matters with the FLA by reducing the discretion of the courts to depart from equal division: at para. 36. The test in the previous legislation (Family Relations Act, R.S.B.C. 1996, c. 128) only required unfairness, whereas the FLA requires "significant unfairness." In addition, the legislature more precisely specified the factors to be considered in applying this threshold.

- [131] Justice Harris agreed with the analysis in *Remmem v. Remmem*, 2014 BCSC 1552, in which Justice Butler (as he then was) defines "significant" as "extensive or important enough to merit attention" and something that is "weighty, meaningful or compelling," concluding that to justify an unequal distribution "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)": at para. 41, citing para. 44 of *Remmem*. Justice Harris then noted that it would be unwise to attempt to define the meaning of "significant unfairness" but found that reapportionment under s. 95 would require "something objectively unjust, unreasonable or unfair in some important or substantial sense": at para. 42. He said:
- [144] ... in enacting s. 95(2)(i) the Legislature recognized that there may be factors other than those listed that could ground significant unfairness. Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion.
- [132] Ultimately, Justice Harris held that unequal division was justified in the case under appeal given that the significant increase in value to one property in question was caused in part by the respondent after separation: at paras. 52-53.
- [133] In *V.J.F. v. S.K.W.*, 2016 BCCA 186, Justice Newbury described s. 95 as requiring a high threshold of "significant unfairness" to depart from equal division: at para. 81. Other cases have reached similar conclusions about the high threshold necessary to reapportion assets under s. 95. In *Khan v. Gilbert*, 2019 BCCA 80, for example, Justice Fenlon noted that cases in which unequal contribution was found to reach the significantly unfair threshold have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: at para. 32.
- [134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.
- [70] As the decisions referenced by Justice Garson note, the question of significant unfairness is to be examined through consideration of the factors listed in s. 95(2), which provides some constraint on a judge's discretion. However, as Justice Harris observed in *Jaszczewska v. Kostanski*, 2016 BCCA 286, the list of factors is not closed as s. 95(2)(i) allows consideration of "any other factor" that may lead to significant unfairness. While that allows for consideration of factors other than those enumerated, it is not open-ended. Rather, it permits only consideration of a limited class of factors: those related to the economic characteristics of a spousal relationship: *Singh* at para. 138. As observed by Justice Garson,

that is a broad class that includes the relative contribution of spouses:

- [139] The economic characteristics of a spousal relationship is a broad class, but one that is narrower than the general term in s. 95(2)(i). With regard to Sullivan's third requirement, there are clearly other factors relevant to the class that are not enumerated in s. 95(2)(a)-(h). For example, this limited class would allow for the consideration of the relative contribution of spouses to the acquisition, preservation, maintenance, or improvement of family property during the relationship, as suggested by Jaszczewska at para. 44.

[Internal reference added.]

- [78] The presumptive valuation date for family debt and family property (other than pension plan benefits) is the date of trial or the date of an agreement dividing family property and family debt, and the value must be based on fair market value: FLA s. 87. A departure from the presumptive date for valuation of family property is effectively a reapportionment or unequal division of the family property, which can only be done on a finding of significant unfairness under s. 95 of the FLA: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76; *Rudyak v. Bekturova*, 2018 BCCA 414 at para. 35; *Banh v. Chrysler*, 2022 BCCA 74 at para. 26, citing *Blair v. Johnson*, 2015 BCSC 761 at para. 69.

- [79] Absent agreement of the parties, pension plan benefits that are family property are divided in accordance with Part 6 of the FLA.

Identification of the Family Property and Family Debt

- [80] As noted, there is no dispute that the line of credit is "family debt".
- [81] There is no dispute about the property that was "owned by at least one spouse" on the date of separation. The only property at issue is the Subdivided Forsyth Property and Ms. Moore's pension. On the date of separation, Mr. Cosby owned the Subdivided Forsyth Property and Ms. Moore owned her pension.
- [82] Ms. Moore's pension existed at the time the parties' relationship began. Pursuant to s. 85(1)(a) of the FLA, the pension is her excluded property. However, pursuant to s. 84(2)(g), the increase in its value since the beginning of the parties' relationship in May 2009 is family property.
- [83] Mr. Cosby owned the Forsyth Property (the entire five acres) at the time the parties' relationship began. There is no evidence to contradict Mr. Cosby's testimony to the effect that the entire value of the one-acre parcel that was subdivided and sold in 2010 was used to improve the Subdivided Forsyth Property (\$60,000 to repay Mr. Cosby's father for funds expended to achieve the subdivision, and the balance of the sale proceeds applied to the construction of the Forsyth House). In other words, the Subdivided Forsyth Property was derived from the pre-existing five-acre Forsyth Property. Pursuant to s. 85(1)(g), the Subdivided Forsyth Property is Mr. Cosby's excluded property. However, pursuant to s. 84(2)(g), the amount by which its value (and before it existed, the Forsyth Property) increased

since the relationship began is family property.

- [84] Mr. Cosby urges me to accept that, at the time the relationship began, he had another asset that was later expended to improve the Subdivided Forsyth Property. This is a quantity of logs that his counsel urges me to find was harvested and milled by Mr. Cosby before the relationship began. On Mr. Cosby's behalf, it is argued that the value of his excluded property must include \$50,000 to reflect these logs. I am not persuaded by this argument. The evidence falls far short of establishing, even in rough terms, the number of logs acquired by Mr. Cosby before May 2009 and used in the construction of the Forsyth House.
- [85] Mr. Cosby testified that before the parties' relationship began, he harvested and milled between 150 and 200 logs. He testified that these logs were about 24 feet long and he estimated their value at between \$15 and \$20 per foot. However, his evidence was clear that these logs were used in the construction of the Forsyth Cabin, years before the parties' relationship began. The value of these logs would therefore be reflected in the value of the Forsyth Property as at May 2009. The evidence about additional logs used in the construction of the Forsyth House was limited to a single statement from Mr. Cosby to the effect that at the time he harvested the logs for the Forsyth Cabin he anticipated adding onto it one day, and he harvested and milled additional logs for that purpose. He did not provide even a rough estimate of the number of those additional logs. This provides an insufficient evidentiary basis for concluding that logs acquired by Mr. Cosby before the relationship began contributed in a material way to the construction of the Forsyth House, or valuing any such contribution.
- [86] In summary, the line of credit is the only family debt subject to division, and the family property subject to division is the increase in the value of Ms. Moore's pension since May 2009 when the relationship began and the difference between the value of the five-acre Forsyth Property as at May 2009 and the value of the Subdivided Forsyth Property either at separation or at trial.

Value of the Family Property and Family Debt as at the Trial

- [87] As mentioned, at the time of the trial, the line of credit balance was \$19,000.
- [88] The parties agree that Ms. Moore's pension is to be divided in accordance with Part 6 of the FLA. No more need be said about its value.
- [89] Determining the increase in the value of what ultimately became the Subdivided Forsyth Property between the beginning of the parties' relationship in May 2009 and the trial in November 2024 is more difficult.
- [90] There is no clear evidence of the value of the entire five-acre Forsyth Property in May 2009. The following evidence does exist:

- A historical appraisal of the Forsyth Property as of May 2008 (one year before the relationship began) values it at \$435,000. This appraisal expressly notes that the valuation does not reflect the subdivision potential, and the author of the appraisal opined that, as such, \$435,000 should be considered a minimum value.
- The 2009 assessed value of the Forsyth Property was \$440,000.
- A historical appraisal of the Subdivided Forsyth Property as of September 2010, that is, an appraisal of the remaining four acres after subdivision but before construction of the Forsyth House, values it at \$405,000.
- The one-acre parcel sold for \$208,000 in December 2010.
- There was a mortgage on the Forsyth Property in May 2009. Unfortunately, there is no evidence of the principal amount of the mortgage as at May 2009. There is evidence that as at December 2010, the principal balance was \$197,000. There is also evidence that the mortgage was increased to \$245,000 in June 2012, and the balance in October 2024 (when the trial commenced) was \$167,000.
- There is no clear evidence of the state of the work required to obtain subdivision approval or the amount of money expended to that end as of May 2009, but Mr. Cosby testified that the work began in 2006 and was finished in 2010, at a total cost of about \$60,000.

[91] Having considered all of this evidence, I find that the value of Mr. Cosby's equity in the Forsyth Property as of May 2009, when the parties' relationship began, was \$361,200. I reach this conclusion in the following manner:

- a) The market value by the end of 2010, just prior to the sale of the one-acre parcel, was about \$613,000. This is the sum of the appraised value of the Subdivided Forsyth Property as of September 2010 and the sale price of the one-acre parcel in December 2010. The appraised value of the entire five acres in May 2008, without reflecting the potential for subdivision, was \$435,000. The difference between the two is \$178,000, which reflects, in rough terms, the value of completing the subdivision. I appreciate that some of the increase in value between May 2008 and late 2010 may have been due to market forces and unrelated to the subdivision, but I have no evidence of market trends during the material time. In the circumstances, I attribute the entire difference of \$178,000 to completing the subdivision.
- b) The subdivision project took about four years to complete (from 2006 to 2010). Assuming a consistent progression in the work, it would have been about 75 percent complete in May 2009 when the relationship began. Seventy five percent of \$178,000 is \$133,500.
- c) From the forgoing I find that the market value of the Forsyth Property in May 2009 was about \$568,500 (the May 2008 appraised value of \$435,000 + \$133,500 which is the added value of a subdivision project that was 75 percent complete).

- d) I find that the balance owing on the mortgage as of May 2009 was about \$207,300. This is based on the evidence that the principal was reduced by \$78,000 between 2012 and 2024 (about \$6,500 per year or \$542 per month), and the inference that it would have been reduced at a similar rate between May 2009 and December 2010, a period of 19 months. From this, I infer that the principal balance in May 2009 was about \$10,300 ($\$542 \times 19$) higher than in December 2010, when the evidence shows it was \$197,000.
- e) Deducting the mortgage balance as at May 2009 (\$207,300) from the market value as of May 2009 (\$568,500), leaves equity of \$361,200.
- [92] Determining the equity in the Subdivided Forsyth Property at the time of trial is somewhat less complicated. Ms. Moore says the best evidence of the market value at the time of the trial was the 2024 assessed value of \$1,408,000. Mr. Cosby agrees that it would be appropriate to view the 2024 assessed value as the market value if the Forsyth House had been constructed with permits. He submits that the true market value is about \$150,000 less than the assessed value, as this is the amount required, on the evidence, to correct the deficiencies identified by the CVRD. I agree with that submission. Mr. Cosby's evidence of the cost to correct the deficiencies identified by the CVRD was not challenged. The mortgage balance at the time of the trial was \$167,000. I find that the value of the equity in the Subdivided Forsyth Property at the time of the trial was \$1,091,000 ($\$1,408,000 - \$150,000 - \$167,000$).
- [93] It follows from the forgoing that, between the beginning of the parties' relationship in May 2009 and the completion of the trial in November 2024, what ultimately became the Subdivided Forsyth Property increased in value by \$729,800 ($\$1,091,000 - \$361,200$).

Division of the Family Property and Family Debt

- [94] Again, there is no dispute that the increase in the value of Ms. Moore's pension during the parties' relationship should be divided in accordance with Part 6 of the FLA. However, Mr. Cosby submits that responsibility for the line of credit and the increase in the value of what became the Subdivided Forsyth Property should be reapportioned in his favour.
- [95] As I have already noted, to displace the presumption of equal division of family property and family debt there must be a determination that equal division would be significantly unfair having regard for the factors listed in s. 95(2) and (3) of the FLA. The unfairness must be compelling: something objectively unjust, unreasonable or unfair in some important or substantial sense.
- [96] Mr. Cosby suggests that he should be credited in some manner for the fact that he has paid the interest on the line of credit during the roughly ten years since the parties separated. I accept that he has done so.

- [97] One of the factors listed in s. 95(2) as relevant to the determination of significant unfairness is whether a spouse, after separation, caused a significant decrease in the value of family debt: s. 95(2)(f). Mr. Cosby did not cause a decrease in the line of credit, so this factor is not directly engaged. However, the interest payments he made prevented a significant increase in the line of credit in the post-separation period. In my view, this is a factor appropriately considered to fall within the general consideration noted in s. 95(2)(i); any other factor that may lead to significant unfairness.
- [98] Ms. Moore acknowledged that during the parties' relationship, she routinely withdrew funds from the line of credit account. She acknowledged that she withdrew \$5,000 just prior to moving out of the Forsyth House to assist with the costs of moving and setting up a new residence. Ms. Moore and Mr. Cosby were jointly liable for the line of credit, and they benefited equally from his ongoing payment of the interest in the post-separation period. In all the circumstances, it would be objectively and significantly unfair for him to assume that burden alone.
- [99] Mr. Cosby's counsel suggested in closing arguments that Mr. Cosby had paid \$10,000 in interest on the line of credit since the parties separated. However, that amount is not supported by the record. Mr. Cosby did not quantify the total paid in his testimony and the line of credit statements that were marked as exhibits cover the period only up to March 2017. In the circumstances, in accordance with Rule 14-7 of the Supreme Court Family Rules, B.C. Reg. 169/2019, I grant Mr. Cosby leave to prove the total quantum of interest payments made by him between October 1, 2014, and November 30, 2024.
- [100] In summary, I am satisfied that, subject to Mr. Cosby establishing the quantum of the interest paid by him in the period between separation and trial, it would be significantly unfair for the parties to equally share responsibility for the current line of credit balance of \$19,000. Assuming Mr. Cosby establishes that quantum, then Ms. Moore shall bear responsibility for that portion of the current line of credit balance equal to the interest paid by Mr. Cosby in the period in question, plus 50 percent of the remainder, and Mr. Cosby shall bear responsibility for the other 50 percent of the remainder. For example, if Mr. Cosby established that he paid interest of \$10,000 during the period in question, then Ms. Moore would bear responsibly for \$14,500 of the current balance of \$19,000, and Mr. Cosby would bear responsibility for \$4,500 of the current balance of \$19,000.
- [101] Mr. Cosby has 60 days from release of this judgment to produce to Ms. Moore documentary evidence of the total interest he paid on the line of credit between October 1, 2014, and November 30, 2024. If he does not do so, then the parties shall bear equal responsibility for the line of credit balance of \$19,000. If he does so and Ms. Moore accepts that evidence, then Ms. Moore shall bear responsibility for that portion of the line of credit balance equal to the interest paid by Mr. Cosby in the period in question, plus 50 percent of the remainder, and Mr. Cosby shall bear responsibility for the other 50 percent of the remainder. If he does so but Ms. Moore does not accept that evidence, then he has leave to arrange a case management hearing before me, through Supreme Court scheduling, to determine the

procedure for him to attempt to prove the amount of interest in question.

[102] I turn now to the division of the increase in the value of what became the Subdivided Forsyth Property. As I understood the submissions, Mr. Cosby advances three bases for reapportionment of this asset in his favour:

- The parties' relationship was of relatively short duration, which is a factor identified in s. 95(1)(a) of the FLA.
- Mr. Cosby made greater contributions to the Subdivided Forsyth Property before and during the parties' relationship, in the form of his physical labour and assumption of the vast majority of the costs and expenses of developing and maintaining the property, which is a factor he says should be considered under s. 95(2)(i) of the FLA.
- The mortgage payments Mr. Cosby made since separation have reduced the principal outstanding on the mortgage, and the substantial increase in the value of the Subdivided Forsyth Property between the separation and the trial is attributable to the combination of market forces and his mortgage payments. I take this to be an invocation of s. 95(2)(f) and (i) of the FLA.

[103] Mr. Cosby submits that the significant unfairness that would, in the circumstances, result from the equal division of this asset could be appropriately addressed by either dividing it 65/35 in his favour or valuing the asset for purposes of division at the separation date rather than at the trial.

[104] I was not persuaded by these arguments.

[105] As already noted, a departure from the presumptive date for valuation of family property is effectively a reapportionment or unequal division of the family property, which can only be done on a finding of significant unfairness under s. 95 of the FLA. Significant unfairness is a high bar. Having considered the bases advanced by Mr. Cosby globally, that bar has not been met.

[106] There is no historical appraisal in the record expressing a view as to the market value of the Subdivided Forsyth Property when the parties separated in September 2014, but the 2015 assessed value was \$697,000. I am prepared to accept that there has been a significant post-separation increase in value due to market forces.

[107] A significant post-separation increase in an asset's value due to market forces coupled with a lack of contribution by one spouse has been referred to in judgments of this Court as a basis for a finding of significant unfairness: see *A.J.E. v. T.B.W.*, 2017 BCSC 1657 at paras. 144-147; *Charan v. Charan*, 2018 BCSC 1537 at paras. 163-176. In those cases, the unfairness was addressed by setting the separation date as the date for valuing the asset instead of the presumptive trial date.

[108] The wording of s. 95(2)(f) of the FLA does not appear to have been considered in those cases. It expressly provides that a significant post-separation increase or decrease in value "beyond market trends" is a factor that may be considered in determining whether an equal

division of family property would be significantly unfair. This indicates that a post-separation increase or decrease in value due to market trends would not, itself, support a finding of significant unfairness. As observed by Justice Young in *K.A.L. v. K.J.L.*, 2017 BCSC 651 at para. 286: "there should be compelling evidence to depart from the standard valuation date as the date of trial thereby disentitling one property owner [to] the benefit of the increase in value of property which is brought about by market forces and not as a result of direct effort of the other party". There is no such compelling evidence here.

[109] Mr. Cosby acknowledged that, in 2015, Ms. Moore sought to negotiate a resolution of the issues arising out of the separation, but he ignored her efforts in this regard. Beyond that, the evidentiary record does not permit me to attribute more fault to one party than the other for the lengthy delay in bringing this matter to trial. It appeared to me that both parties could have and should made greater efforts to advance the litigation in a timely manner. In other words, on the record here it cannot be said that Ms. Moore's approach to the litigation would render it significantly unfair to allow her to benefit from a post-separation increase in value due to market forces.

[110] Mr. Cosby alone covered all costs and expenses associated with maintaining the Subdivided Forsyth Property in the period between the separation and trial, including the mortgage payments. The mortgage principal was reduced by about \$78,000 in the post-separation period. However, he had the benefit of exclusive possession and use of the Subdivided Forsyth Property, while Ms. Moore paid rent to live elsewhere.

[111] I accept that Mr. Cosby made far greater contributions to the Subdivided Forsyth Property before and during the parties' relationship, in the form of his physical labour and assumption of the majority of the costs and expenses of developing and maintaining the property.

[112] In *Jaszczewska v. Kostanki*, 2016 BCCA 286, the Court cautioned that while unequal contributions may be a relevant factor in assessing the fairness of an equal division, the circumstances where this will be so should be constrained. Cases where unequal contributions resulted in a finding of significant unfairness have involved "marked, prolonged, and intentional or unexplained disparities in contributions to family burdens": *Khan v. Gilbert*, 2019 BCCA 80 at para. 32, citing *Nanara v. Nanara*, 2017 BCSC 1447 and *E.H.H. v. C.L.M.*, 2017 BCSC 1299.

[113] The value of the contributions Mr. Cosby made before the parties' relationship has been accounted for through his excluded property claim.

[114] During the parties' relationship, Mr. Cosby contributed more to the household expenses than did Ms. Moore, and he contributed far more physical labour to the development of the Forsyth Property and the construction of the Forsyth House than did Ms. Moore. However, there was no significant disparity relative to their resources. Ms. Moore is a person of modest means. I accept her testimony that, when the relationship began, she applied proceeds of approximately \$8,000 from the sale of her Shawnigan Lake house to Cosby/

Moore family purposes. She later applied approximately \$5,000 from her RRSP to the purchase of appliances for the Forsyth House. I accept that she expended virtually all the income available to her during the relationship in the form of employment income and child support payments she received from the father of her children on the Cosby/Moore family. Mr. Cosby acknowledged that Ms. Moore assisted with some of the lighter physical work associated with the construction of the Forsyth House. She also assumed the bulk of the home-making and childcare tasks, including in relation to Mr. Cosby's children, which allowed him to devote his non-working time to the development of the Forsyth Property.

- [115] Mr. Cosby has not discharged the onus of establishing that an equal division of the increase in the value of what ultimately became the Subdivided Forsyth Property between the beginning of the parties' relationship in May 2009 and the completion of the trial in November 2024 would be significantly unfair. The \$729,800 increase in the value of that asset shall be shared equally.

Conclusion

- [116] The parties separated at some point during the first two weeks of September 2014.
- [117] Mr. Cosby has 60 days from release of this judgment to produce to Ms. Moore documentary evidence of the total interest he paid on the line of credit between October 1, 2014, and November 30, 2024. If he does not do so, then the parties shall bear equal responsibility for the line of credit balance of \$19,000. If he does so and Ms. Moore accepts that evidence, then Ms. Moore shall bear responsibility for that portion of the line of credit balance equal to the interest paid by Mr. Cosby in the period in question, plus 50 percent of the remainder, and Mr. Cosby shall bear responsibility for the other 50 percent of the remainder. If he does so but Ms. Moore does not accept that evidence, then he has leave to arrange a case management hearing before me, through Supreme Court scheduling, to determine the procedure for him to prove the amount of interest in question.
- [118] The increase in the value of Ms. Moore's pension between May 1, 2009, and September 30, 2014, is to be divided equally between the parties in accordance with Part 6 of the FLA. The parties will equally share any administrative fees associated with the division of the pension.
- [119] Mr. Cosby shall pay compensation of \$364,900 to Ms. Moore for her interest in the Subdivided Forsyth Property.
- [120] If it is necessary for the parties to speak to costs, either of them may arrange a hearing before me for that purpose through Supreme Court Scheduling, provided that, within 30 days of the release of this judgment, they contact Supreme Court Scheduling to obtain a hearing date. If a costs hearing is necessary, the parties shall exchange written submissions setting out their respective positions at least 30 days before the hearing.

"Warren J."

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