

CANADA / JUDGMENT

Morneau v. Morneau

2001 BCSC 437

COURT

Supreme Court of British Columbia

DECIDED

22 March 2001

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PATRICIA LYNN MORNEAU
PLAINTIFF

AND:

KENNETH MAURICE MORNEAU
DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE BAUMAN

Counsel for the Plaintiff G.C. Baldwin

Counsel for the Defendant C.G. Green

Date and Place of Hearing/Trial: 6 & 7 February 2001

Vancouver, B.C.

- [1] The issues in this family litigation include the division of family assets and entitlement to spousal support.
- [2] The parties married on 4 September 1994 and separated on 8 August 1998. There are no children of the marriage.

- [3] Patricia Lynn Johnson (the plaintiff's preferred surname) is now 32 years old. She lives alone in an apartment in North Vancouver and works almost full-time as a medical office assistant. She earns approximately \$20,000 per year.
- [4] Kenneth Maurice Morneau is 33 years old. He is a trader for Action Direct, the Royal Bank of Canada's discount brokerage division. He currently earns \$48,500 per year, which includes a bonus that is not invariably earned in each year.
- [5] Prior to my granting the parties their divorce during the course of trial on 6 February 2001, there was no triggering event under the provisions of the Family Relations Act, R.S.B.C. 1996, c. 128.
- [6] The parties' assets are not extensive. Ms. Johnson entered the marriage with a few modest household furnishings and her 1987 automobile (a compact car with very high mileage).
- [7] Mr. Morneau brought his own later model car, \$2,500 in Canada Savings Bonds and a total of approximately \$13,000 divided between his Royal Employee's Share Ownership Plan ("RESOP") and his RRSP.
- [8] The former is a program by which the bank matches employee contributions to a registered share ownership plan to a maximum of three per cent of the employee's salary. The monies in the plan must remain there for two years before withdrawal. As I understand the scheme, the employee would normally then transfer the monies into his or her RRSP.
- [9] The parties purchased what is now the matrimonial home in May 1997. It is a condominium in North Vancouver. They paid \$150,000 for it and the down payment, some \$18,000, came from Mr. Morneau's RRSP to which he continued to contribute during the course of the marriage.
- [10] In order to avoid adverse tax consequences, Mr. Morneau must repay the monies to his RRSP. He will, of course, enjoy that asset as it appreciates in the future.
- [11] The matrimonial home is only valued at \$139,000 at this time. The home is subject to a mortgage in the approximate amount of \$122,000. Mr. Morneau has occupied the matrimonial home since the date of separation. He has received approximately \$13,600 in rent from boarders, but he has also made the mortgage payments and paid the taxes and strata council fees on the home.
- [12] Mr. Morneau now owns a 1999 Honda motorcycle valued at \$9,000. The down payment of \$3,500 came from the trade-in of his first motorcycle which in turn was purchased with the proceeds of the sale of his car. The balance of the purchase price has been financed by Mr. Morneau.
- [13] Ms. Johnson received a \$10,000 legacy during the marriage. Mr. Morneau managed the fund and it is clear that the parties treated it as a family asset.

- [14] I will not deal with an accounting of the legacy in these reasons. It is sufficient to say that Mr. Morneau's explanation of the use of the monies was entirely satisfactory. In the result, \$2,400 was left of the legacy at the date of separation and this was apparently withdrawn from the parties' joint account by Ms. Johnson after separation.
- [15] At this time, Mr. Morneau's RRSP is valued at \$12,075. At the date of separation it totalled \$7,278.
- [16] His RESOP is now valued at \$9,400. At the date of separation it totalled approximately \$3,050.
- [17] Ms. Johnson has an RRSP totalling \$942 at this time.
- [18] That summary will serve to set out the principal assets of the parties.
- [19] This was not a long term marriage. The parties are relatively young and they enjoy good educations, their health and reasonable prospects.
- [20] Mr. Morneau brought more in the way of assets into the marriage, but the parties worked as a team, combining their assets and making investments together during the union.
- [21] Unfortunately, they did not do as well as they might have hoped on those investments. The condominium has actually decreased in value and there have been stock market losses which ate into the \$10,000 legacy.
- [22] In my view, this case calls for a little rough justice in the division of family assets. "Rough" in the sense of "not perfect down to the last cent", but a fair approximation of what is a proper division of the not significant assets of these parties after, in effect, a four year marriage.
- [23] As a threshold determination, the matrimonial home must be sold and the net proceeds divided equally between the parties. Neither party, on the evidence, can afford to purchase the other's interest. I find no merit in the plaintiff's suggestion that the defendant's occupation of the condominium during the marketing of it, will in any way impede the sale. On the evidence, Mr. Morneau has taken care of and improved the asset since the date of separation. I will make no directions on the terms of the order for sale. If it is necessary the parties may apply.
- [24] Mr. Morneau's receipt of rent from the boarders is off-set by the fact that he paid the carrying costs of the home since the date of separation.
- [25] On the evidence, I find that the defendant has continued in occupation of the matrimonial home with the express or tacit permission of the plaintiff. I do not conclude that she was ousted from the home by the defendant and, in my view, this is not a case for occupation rent like that before Justice J.T. Edwards in *Atkinson v. Caton* 2000 BCSC 1157 (see in particular paras. 90 to 94).
- [26] I have considered whether there should be a reapportionment in favour of Mr. Morneau in light of his initial contribution of the down payment and the fact that he must repay his RRSP. But he will be left with that particular asset and all he has lost is possibly the

opportunity to earn a higher return if the monies had remained invested in the RRSP. Ms. Johnson, on the other hand, has for her part contributed to the investment in the matrimonial home through her income while the parties were together and, for example, by the use of part of her legacy to purchase appliances.

- [27] The equity in the Honda motorcycle is something less than \$3,500 in light of the inevitable depreciation since its purchase. Balanced against that, is the fact that Ms. Johnson withdrew approximately \$2,400 from the joint account after separation. It seems fair that Mr. Morneau retain the motorcycle and Ms. Johnson the \$2,400 together with her RRSP as a rough off-set.
- [28] I turn to Mr. Morneau's RRSP and RESOP. As I have indicated they have grown since the date of separation. But the plaintiff takes the position that her presumptive equal share in those assets arises on the triggering date - 6 February 2001 - not the date of separation: *Clarke v. Clarke* (1997), 46 B.C.L.R. (3d) 37 (C.A.).
- [29] In my view, the considerations set out in ss. 65(1)(a), (b) and (c) of the Family Relations Act, call for a reapportionment of the interests of the spouses in these two assets. Fairness dictates that Mr. Morneau enjoy the fruits of his savings since the date of separation.
- [30] I would divide the value of Mr. Morneau's RRSP and RESOP as of the date of separation equally between the parties. The division shall be carried out by way of spousal rollover or otherwise so as to ensure minimal tax consequences to the parties. If necessary, the parties may apply for further directions.
- [31] The plaintiff argues that as the defendant did not seek an unequal division of assets in his pleadings, it is not open to the court to so order. Here the plaintiff has invoked the provisions of s. 65 of the Family Relations Act and, in my view, that is sufficient to invoke the court's reapportionment jurisdiction at large.
- [32] Mr. Morneau will retain his investment account #688 99 152 26 in the amount of \$500.
- [33] As I understand the evidence, Mr. Morneau's Royal Bank pension (as distinct from his RESOP) is of only nominal value at this time and he shall retain that.
- [34] The parties shall each retain their Old Age Security and Canada Pension Plan entitlements and the personal property which they each currently possess (I exclude the appliances in the matrimonial home which should be sold as part of the real estate disposition).
- [35] I turn to the issue of spousal support. Counsel for Ms. Johnson urges an award of fully \$800 per month for three years and cites *Bracklow v. Bracklow* (1999), 169 D.L.R. (4th) 577. There, Justice McLachlin (as she then was) posed and answered this question at para. 13:

...

Is a sick or disabled spouse entitled to spousal support when a marriage ends, and if so, when and how much? More precisely, may a spouse have an obligation to support a former spouse over and above what is required to compensate the spouse for loss incurred as a result of the marriage and its breakdown (or to fulfill contractual support agreements)? I would answer this question in the affirmative.

...

[36] Justice McLachlin summarized her views at para. 49:

... However, contract and compensation are not the only sources of a support obligation. The obligation may alternatively arise out of the marriage relationship itself. Where a spouse achieves economic self-sufficiency on the basis of his or her own efforts, or on an award of compensatory support, the obligation founded on the marriage relationship itself lies dormant. But where need is established that is not met on a compensatory or contractual basis, the fundamental marital obligation may play a vital role. Absent negating factors, it is available, in appropriate circumstances, to provide just support.

...

[37] In the case before me I have a relatively young, healthy and well educated person, who has not been in receipt of spousal maintenance since the date of separation, a period of two and half years.

[38] It is true that she makes a modest salary, but that seems more of a reflection of her choice of work as a medical office assistant and the limited hours available on the North Shore for her employment in that occupation.

[39] Ms. Johnson has other educational qualifications to draw upon that may well qualify her for more remunerative employment.

[40] Bearing in mind the statutory considerations in the Family Relations Act and in the Divorce Act and the discussion of these provisions in Bracklow, Ms. Johnson has not made out a case for spousal maintenance on either the compensatory, contractual or the non-compensatory grounds.

[41] To the extent that she can demonstrate "need", in my view all of the circumstances at bar, including her underemployment at this time, represent "negating factors".

[42] As success has been divided, each party shall bear their own costs, unless there are matters which counsel wish to bring to my attention.

"R.J. Bauman, J."

The Honourable Mr. Justice R.J. Bauman

Vancouver, B.C.

22 March 2001

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