
CANADA / JUDGMENT

Nanara v. Nanara

2017 BCSC 1447

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 1447 Nanara v. Nanara

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nanara v. Nanara,

2017 BCSC 1447

Date: 20170817

Docket: E49396

Registry: New Westminster

Between:

Ravinder Kaur Nanara

Claimant

And

Darshan Singh Nanara

Respondent

Before: The Honourable Mr. Justice Abrioux

Reasons for Judgment

Counsel for Claimant:

R. Tretiak, Q.C.,

C. Hall

Counsel for Respondent:

M. Uzelac

Place and Date of Trial:

Vancouver, B.C. and

New Westminster, B.C.

June 12-16 and 19, 2017

Place and Date of Judgment:

New Westminster, B.C.

August 17, 2017

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I: INTRODUCTION

[1] The principal issues in this family law proceeding are:

- the division of family assets and, in particular, whether reapportionment in the claimant's favour is appropriate;
- the respondent's responsibility, if any, for the \$87,000 cost of the parties' daughter's wedding in 2015;
- whether the parties' son, who is attending medical school, is a child within the meaning of s. 146 of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA"), such that the respondent is responsible to contribute to his support; and

· whether the respondent is liable in damages for his alleged assault of the claimant in November 2013.

[2] The respondent also seeks nominal spousal support from the claimant, although he concedes there should be no support payable by the claimant to him at this time.

[3] For the reasons that follow, I have concluded:

· there should be an unequal division of the family assets in favour of the claimant, which reapportionment will take into account a contribution by the respondent to the wedding expenses;

· the claim for retroactive support for the son, Maninderjeet, is granted as is leave to apply for prospective support;

· the respondent's claim regarding spousal support is dismissed; and

· the claimant shall recover \$1,500 as nominal damages for the assault of November 17, 2013.

II: BACKGROUND

[4] The claimant is 62 years old, the respondent 66.

[5] Ms. Nanara obtained a Bachelor's Degree in History and completed one year of a Master's Degree in India prior to immigrating to Canada in 1980. Mr. Nanara had arrived in Canada from India in 1975. The parties were subject to an arranged marriage. One of the primary reasons for conflict between the parties over the years was Mr. Nanara and his family's displeasure with Ms. Nanara's family regarding an alleged breach of an agreed amount as a dowry. Ms. Nanara came from a very poor family.

[6] The parties were married on May 19, 1980, and divorced on May 26, 1987. They had four children, two daughters Sarabjeet and Daljeet, who are now 34 and 32 respectively, and two sons Maninderjeet and Binderpal, who are now 28 and 26 respectively.

[7] The circumstances surrounding their divorce are not entirely clear, but it appears to have been intended to facilitate the respondent's subsequent marriage to the claimant's sister, with the claimant's agreement, in order to expedite her entry into Canada. The parties resumed cohabitation shortly after their divorce with their two youngest children being born after this had occurred.

[8] The parties then continued to cohabit until their separation on November 17, 2013, being the date of the alleged assault. The ongoing dispute regarding payment of the dowry was compounded by Mr. Nanara's brief marriage to Ms. Nanara's sister; expenses which Mr. Nanara alleged he was owed regarding this marriage were apparently the source of the events which culminated in the alleged assault.

[9] For the sake of simplicity, I shall refer to both the period when the parties were in fact married and their period of cohabitation for many years thereafter as "the marriage".

- [10] While the circumstances surrounding the parties' divorce are troubling, neither party asserts that this event is material to the issues between them in this proceeding.
- [11] The parties' principal joint assets are two residential premises, one in Richmond and one in Vancouver, each of which contains one or more rental suites. The Vancouver property, located at 2218 East 35th Avenue, was purchased in September 1983 and was the family residence until the time of separation. The Richmond property, located at 8051 No. 4 Road, was acquired as an investment in May 1998. Each property has rental suites. Since their separation Ms. Nanara has continued to reside at the Vancouver property with the three youngest children. Daljeet was married in the fall of 2015 and no longer resides with her mother.
- [12] Since the date of separation, Mr. Nanara has resided at the Richmond property.
- [13] The rent from both properties has historically been used to pay utilities, property taxes, mortgage payments, and for costs associated with property maintenance. The Vancouver property is unencumbered. There is a mortgage registered against the Richmond property which, at the time of trial, secured an indebtedness of approximately \$20,000.
- [14] Ms. Nanara has worked two or three jobs at a time during most the marriage. This has included making window coverings, in the fast food industry, including graveyard shifts, and ultimately as a care worker after she upgraded her education to obtain the necessary qualifications. In addition, I accept that she was the spouse who was primarily responsible for household duties and taking care of the children as they were growing up.
- [15] For several years, Ms. Nanara has held three full-time positions at various Vancouver hospitals and care facilities. She currently works full-time hours at each of Pinegrove Place in Richmond, Vancouver General Hospital, and St. Paul's Hospital. She regularly works 16-hour days. She testified, and I accept that her work schedule has had a negative impact on her health and that she cannot continue working to the same extent she has in the past. She currently spends in excess of \$1,000 per month for the uninsured portion of her insulin treatments for diabetes.
- [16] The respondent has been employed as a housekeeper and general labourer/cabinet maker over the years.
- [17] Due to her industrious nature, there has been a significant disparity between the parties' financial contributions to the marriage and the acquisition of their assets.
- [18] Ms. Nanara's line 150 income for the years 2014, 2015, and 2016 was \$82,879, \$80,114, and \$95,656 respectively.
- [19] The respondent's income for the years 2014, 2015, and 2016 was \$37,571, \$25,613, and \$28,170 respectively.

- [20] The parties had a joint bank account until November 2001. Their incomes were deposited into that account, as was the rent from the various rental units.
- [21] In November 2001, Ms. Nanara returned to Vancouver following a two-month holiday to India. During her absence, Mr. Nanara had commenced proceedings against her. On October 25, 2001, he obtained an ex parte order which granted him exclusive possession of the family home, being the Vancouver property, and restrained Ms. Nanara from dealing in any way with family assets, including funds in the joint account. On December 7, 2001, Mr. Nanara had the restraining order set aside.
- [22] It was Ms. Nanara's evidence that while she was in India, Mr. Nanara removed joint property from their safety deposit box, being certain gold bars and bracelets. Mr. Nanara says that he returned all the property at a later date, but there remains a dispute on this issue with Ms. Nanara claiming that six to eight gold bars and two bangles were not returned. Mr. Nanara seeks the equal division of \$18,265, being the appraised value of the gold bars and jewellery currently contained in the safety deposit box.
- [23] As a result of what had occurred, Ms. Nanara opened her own bank account, and, beginning shortly after her return from India, her salary was deposited into that account. She built up considerable savings over the years to the point that at the time of separation, she had accumulated approximately \$300,000 in her own name.
- [24] Until the date of separation, Mr. Nanara collected the rents from tenants and made the payments with respect to both properties. It was Ms. Nanara's evidence, which I accept, that Mr. Nanara would regularly look to her to cover shortfalls. Following the separation, the rents from the Vancouver and Richmond properties continued to be used to pay for the various expenses, but it was Ms. Nanara's evidence, which I accept, that to the extent there were shortfalls between rent and expenses on those properties that she continued to pay for the difference.
- [25] Since their separation, Ms. Nanara, with the assistance of Maninderjeet, has collected the rents and paid the expenses for both the Richmond and Vancouver properties, even though Mr. Nanara resides at the Richmond property. Neither party has paid rent for the suites they respectively occupy in those properties.
- [26] It was the claimant's evidence that she has spent approximately \$235,000 of her own savings since the separation to:
- reduce the mortgage on the Richmond property and pay additional expenses not covered by the rent;
 - pay for extensive renovations to the Vancouver property, including a new deck;
 - support Maninderjeet while he has been at university, including medical school; and
 - pay all the expenses for Daljeet's wedding.

- [27] The parties, by and large, agree as to the values of the principal family assets. Mr. Nanara does not dispute the various amounts paid by Ms. Nanara for improvements to the Vancouver property and Daljeet's wedding, but does dispute his responsibility to pay a portion of the wedding costs.
- [28] The Divorce order made no provision for corollary relief. That is presumably because the parties continued to live in a marriage-like relationship thereafter except for a brief period following the respondent's marriage to the claimant's sister.
- [29] Accordingly the parties submit, and I agree, that the various issues which arise from this proceeding should be governed by the FLA. In any event, the conclusions I have reached with respect to support for Maninderjeet and the respondent's claim for spousal support would likely have been the same whether the provisions of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) or the FLA were applied.

III: THE CLAIM FOR SUPPORT FOR MANINDERJEET

- [30] The claimant seeks child support for Maninderjeet's post-secondary education, including retroactive support for his undergraduate studies and his first two years of medical school, to be in effect until he completes his education. She also seeks payment of university fees and other expenses as section 7 expenses.
- [31] She submits the respondent is intentionally underemployed and that his income should be imputed at \$37,500 per year.
- [32] Based on this income, the claimant's position is that the respondent should be paying \$342 per month in basic table support pursuant to the Federal Child Support Guidelines, SOR/97-175 as a contribution to Maninderjeet's living expenses and approximately 30% of special and extraordinary expenses pursuant to section 7.
- [33] The respondent's position is that there is no basis for this claim either retroactively or prospectively. He points to the fact that Maninderjeet did not testify at the trial, that Maninderjeet had worked in the past, and that the evidence is unclear as to whether he is actually still pursuing his medical studies.
- [34] The claimant testified that, to date, she has spent a total of \$62,889.30 on Maninderjeet's undergraduate and medical school tuition. This consists of \$21,250 as claimed on her first financial statement sworn August 26, 2015, and \$41,639.30 as claimed on her financial statement sworn May 24, 2017. These amounts include three bank drafts payable to Maninderjeet of \$5,000 dated August 17, 2012, \$4,000 dated October 2, 2012, and \$6,500 dated April 28, 2013.
- [35] Ms. Nanara also testified that Maninderjeet still has two years of medical school remaining, and the cost of tuition is estimated to be an additional \$18,635.38 for his third year and \$26,092.38 for his fourth year of medical school. As a result, once Maninderjeet graduates from medical school she will have paid approximately \$107,500 for his undergraduate and

medical school expenses without any contribution from the respondent. This does not include the approximately \$522 per month that UBC also estimates a student living at home will need for living expenses.

- [36] The respondent testified that he had contributed \$5,000 by way of a bank draft towards his son's educational expenses in 2012 or 2013, but provided no supporting documentation. He also stated that when he still lived in the Vancouver property, he gave Maninderjeet \$500 on a regular basis for food since he did not want to eat the same food as his parents. His evidence, however, fell well short of establishing that any support was paid by him to his son since the date of separation.
- [37] It was also the respondent's evidence that his income from employment has decreased from approximately \$35,000 - \$37,000 per year to \$28,000 per year due to the claimant arranging for individuals to attend his places of employment and harass his employers such that his hours were then reduced. He also alleges that the claimant attempted to get him dismissed from one of his jobs.
- [38] I have concluded that Maninderjeet is a "child" within the meaning of s. 146 of the FLA, meaning that he has not yet withdrawn from the charge of his parents, until the completion of his second year of medical school.
- [39] In that regard I accept the claimant's evidence that Maninderjeet has been supported exclusively by her during the period of his post-secondary school education.
- [40] I do not accept the respondent's evidence that the claimant has taken steps to harass his employers or to have him dismissed. This evidence defies common sense. In light of the amounts the claimant has spent on her children over the years, a subject to which I shall return, she would, logically, be taking whatever steps she could to have his income increase, not decrease.
- [41] It was also the respondent's evidence that he worked "seven days a week" while he and the claimant were living together. That evidence then changed to an undefined period in the 2001 timeframe. I do not accept this evidence either. If the respondent had been employed to the extent he now says he was, his annual income would have been significantly greater than it in fact turned out to be.
- [42] I also accept the claimant's evidence that members of the family attempted to assist the respondent in maintaining work or to find employment opportunities over the years.
- [43] The conclusion I reach upon considering all the evidence on this issue is that, throughout the time frame the parties were together and in particular since 2001, Mr. Nanara was quite content to have the respondent work multiple full-time jobs and be the parent primarily responsible for performing the vast majority of household duties and raising the children. This provided him with a standard of living and the opportunity to acquire assets with the claimant which would not otherwise have been possible without her efforts.

- [44] Since I do not accept the respondent's explanations regarding the reason(s) for the decrease in his income in 2016 and 2017, I impute his income for child support purposes at \$37,500 per year, retroactive to the date of separation.
- [45] I now wish to address the claimant's generosity towards her children and the fact Maninderjeet did not testify at the trial.
- [46] Mr. Nanara was not the only member of this family unit who developed, what I would term, a sense of entitlement regarding the claimant's efforts over the years.
- [47] Ms. Nanara testified that she would do whatever she could to assist her children, that she could not say "no" to them and she did not expect to be paid back the many thousands of dollars she has spent to raise and educate them.
- [48] There was evidence to the effect that Maninderjeet had a position with Canada Post while he was at university, but the details were limited to the fact that he did so during peak seasons and earned \$26/hour. In particular, there was a lack of detail as to:
- when and for what periods he worked;
 - his annual income;
 - why he stopped working; and
 - what attempts, if any, were made to find alternate employment.
- [49] There was also no evidence as to what attempts, if any, were made by Maninderjeet to obtain bursaries, whether he was eligible to apply for scholarships, what success, if any, he had and the like.
- [50] No explanation has been provided as to why Maninderjeet did not testify at the trial, and it is evident he could have provided much if not all this missing information.
- [51] I also note that, notwithstanding Ms. Nanara's evidence regarding what she expects she will have to spend to support her son while he completes his last two years of medical school, I am not satisfied that Maninderjeet will in fact be pursuing his degree in September 2017.
- [52] That is because, notwithstanding the claimant's testimony, her counsel's written submission refers to Maninderjeet's "temporary leave of absence from medical school". Reference is also made to his having commenced medical school prior to the parties' separation. Since this occurred in November 2013, Maninderjeet or, at the very least, the claimant ought to have explained why three and a half years later he has completed only two years of his four-year medical education program.
- [53] The claimant's evidence also fell short of stating unequivocally that her son is registered for his third year of medical school in September 2017.

- [54] The evidence is also clear that Maninderjeet has taken advantage of his mother's largesse. She provided him with the use of her visa card which he then used to make personal purchases of \$50,000 before she decided she had had enough and withdrew his credit card privileges. This occurred after her separation from the respondent.
- [55] In *W.P.N. v. B.J.N.*, 2005 BCCA 7, the Court of Appeal applied the well-known non-exclusive Farden factors to conclude that a 23-year-old medical student qualified as a child of the marriage. Justice Levine noted at paragraph 24 that the availability of student loans is but one factor to be taken into account and that it is not necessarily required that a child exhaust every source of potential funding prior to a parent being responsible to contribute to her/his support.
- [56] I have concluded that there is sufficient evidence for me to conclude that Maninderjeet was a child within the meaning of s. 146 of the FLA and that the respondent had the ability to contribute to his support while he was at university, both while an undergraduate and during his first two years of medical school.
- [57] In *W.P.N. v. B.J.N.*, at paragraph 12, Justice Levine noted that the chambers' judge had referenced the UBC Medical School website to obtain information regarding the living costs and university expenses for medical students at that institution.
- [58] There is similar evidence before me in this proceeding.
- [59] When I consider:
- the claimant's evidence demonstrating the amount she has spent for Maninderjeet's education for both undergraduate and medical school, being approximately \$63,000;
 - the fact that Maninderjeet was apparently already a full-time medical student at the time of separation;
 - my conclusion that the respondent has the ability to pay child support based on an imputed annual income of \$37,500 from the date of separation onwards;
 - the lack of evidence regarding Maninderjeet's current educational plan regarding medical school, whether part time employment is available or reasonable under the circumstances and the ability to access financial aid; and
 - there was no evidence regarding any attempts by the claimant to seek child support prior to the commencement of this proceeding in August 2015,
- I conclude that the respondent should pay the claimant \$20,000 as retroactive support and as a contribution to section 7 expenses to the date of trial.
- [60] I am not prepared to make an order for prospective child support due to the paucity of the evidence on this issue.

[61] The claimant has leave to apply for prospective child support based on a proper evidentiary record, and I will seize myself of that application.

IV: THE APPORTIONMENT OF FAMILY ASSETS

A: The Legal Framework

[62] The principal sections of the FLA which apply to this issue are ss. 81, 87, 95 and 97, in particular 95(1) (2) and 97(1)(a). Section 95(1) and (2) provide:

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
- (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[63] Certain of the key principles which may apply to this proceeding include:

- (a) the FLA espouses a presumption of equal division of family property, the entitlement to which exists independent of contributions or use. However, unequal contribution after separation can be a relevant consideration in reapportionment: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 44;
- (b) the court must first "go through the notional exercise" of equal division, then consider if equal division would be significantly unfair. "Significantly unfair" means "compelling or meaningful having regard to the factors set out in s. 95(2)". There must be "very persuasive reasons" from departing from equal division: *Parton v. Parton*, 2016 BCSC 1528 at para. 71 [Parton]; *Dheenshaw v. Gill*, 2017 BCSC 319 at paras. 44-45; *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44;
- (c) lack of financial disclosure is a factor which may be taken into account in considering whether an unequal distribution is appropriate: *Bamford v. Mulyati*, 2017 BCSC 945 at para. 43; *Ahmadi-Abbasabadi v. Ahmadian*, 2017 BCSC 648 at para. 171;
- (d) reapportionment is meant to remedy substantial unfairness but does not require both parties to be in absolute equality. *Parton* at para. 108.

B: The Parties' Positions

- [64] It is the claimant's position that family property should be divided unequally in her favor as it would be significantly unfair to divide family property equally as at the date of trial given. To support this position the claimant relies on, in particular, her significant financial contributions, with no assistance from the respondent, to the maintenance and debt servicing of the Richmond property after separation.
- [65] Ms. Nanara also submits that over the course of the relationship, she contributed significantly more to the family wealth than did Mr. Nanara. She also contributed more to the care of the children and household than did the respondent.
- [66] She points to the fact that since the parties' separation, she has wholly supported the family as well as maintained and preserved both the Vancouver and Richmond properties, and says it would be significantly unfair to divide the present market value, and indeed the present equity, of the real properties equally given her efforts following separation to preserve and maintain those properties. Furthermore, the claimant has spent the majority of her life savings and the vast majority of her income post separation preserving the properties and supporting the children.
- [67] In addition to the expenses related to the preservation of the family properties, the claimant says it is not disputed that she was also solely responsible for paying the expenses related to Daljeet's wedding. She argues that the respondent agreed, prior to separation, that Daljeet's wedding would be paid for by the parties as had been the case with their eldest daughter's wedding. Despite this, the respondent provided no assistance to such expenses.

- [68] The respondent's position is that in light of the length of the marriage, there is no basis for the claim for an unequal division of family property.
- [69] He also submits that there was no agreement that he would pay for half of the wedding expenses and that the evidence regarding custom on this issue is insufficient to make him responsible for those costs. He points to the fact that he was prohibited by a court order from attending the wedding and says that, in any event, he was not consulted regarding the amounts which were ultimately paid for this event.
- [70] He also submits that the evidence is unclear as to the amounts the claimant collected for rent post separation and what expenses were paid. He says there needs to be a proper accounting and the issue as to what the claimant has in fact paid to preserve both properties should be referred to the Registrar.

C: Analysis

- [71] The claimant prepared a Scott Schedule (the "Schedule") which sets out family assets and debts held by each party as at the date of trial. Based on the Schedule, she seeks a reapportionment in her favour of approximately \$345,000 more than what would be the case under an equal division.
- [72] The principal basis for this amount is:
- the difference between the value of the Vancouver property of \$1.88 million, which she proposes should be transferred to her, and the Richmond property at \$1.25 million, which should be transferred to the respondent;
 - the expenses she has paid to maintain the properties since separation;
 - a 50% contribution by the respondent to both of Maninderjeet's education and Daljeet's wedding expenses; and
 - she should be entitled to keep 100% of her RRSP, worth \$82,500, with the respondent keeping his undisclosed pension entitlements.
- [73] I commence my analysis by rejecting the respondent's submission that this issue cannot be properly decided without a reference to the Registrar.
- [74] The claimant prepared and filed several binders as exhibits which set out in considerable detail the various invoices and receipts, bank statements and drafts, and particulars upon which the Schedule was based, even though the Schedule itself was only first presented during legal submissions.

- [75] I find that the Schedule appears to be accurate based on the documentary exhibits. In fact, no real issue was taken by the respondent with the documents themselves and the cross-examination of the claimant as to their reliability was virtually non-existent. In my view, it is not for the respondent, having had the opportunity to challenge as he considered appropriate the claimant's evidence as to the amounts she has paid since separation, to now argue that there should be a hearing before the Registrar to deal with these very issues.
- [76] I also find that the respondent did agree to pay for half of Daljeet's reasonable wedding expenses but then, as he testified on examination for discovery, "changed his mind". His conduct in attending the temple with his daughter, her future in-laws, and the claimant after the couple's engagement is corroborative of his acknowledging financial responsibility in that regard. In addition, the cultural basis for his obligation to pay his share of the wedding expenses was not significantly challenged by the respondent during the cross-examination of either the claimant or Daljeet. Mr. Nanara confirmed his cultural obligation to pay for his daughter's wedding in his testimony. There is also the fact that Mr. Nanara had paid for half of his eldest daughter's wedding expenses which is consistent with his cultural obligations as a father.
- [77] The rationale for the respondent changing his mind appears to relate to a deterioration of his relationship with Daljeet. She had been the catalyst behind this court ordering that Mr. Nanara not attend the wedding. In her evidence, Daljeet testified that she had realistic concerns that her father's plans were to attend the wedding in order to be a disruptive force. She also stated that she softened her position as the wedding date approached and told her father he could attend. But by that time the court order was still in force, and no application was made to have it varied or set aside.
- [78] There is then the issue as to whether the \$87,000 for the wedding can be considered reasonable.
- [79] In that regard, the comments I have made earlier regarding Mr. Nanara and Maninderjeet's sense of entitlement regarding the claimant's income earning potential and sense of obligation to take care of her family members essentially without question, also applies to Daljeet and the wedding.
- [80] During their evidence, both the claimant and Daljeet went out of their way, in my view, to emphasize how reasonable the wedding expenses were. I was quite skeptical of portions of this evidence given that, as was consistent with other portions of her evidence, Ms. Nanara appeared incapable of resisting any request from her children for money, a character trait they were quite willing to take full advantage of.
- [81] Portions of the amount claimed for the wedding related to building a new deck and other renovations for the Vancouver property. Even if these amounts were not reasonable wedding expenses, they would still be a proper expense for preserving and maintaining the Vancouver property after separation.

- [82] When I consider all the evidence relating to the wedding expenses, I conclude that a reasonable amount for the wedding, for which Mr. Nanara is 50% responsible, is \$65,000. That is, Mr. Nanara is responsible for \$32,500 of the wedding expenses.
- [83] When I apply the legal framework to which I have referred to the facts of this case as I have found them, I also conclude that there should be a reapportionment in the claimant's favour. I find the existence of several s. 95(2) factors including:
- (a) the claimant has paid approximately \$114,000 since separation towards the Richmond property, including the reduction of the mortgage principal;
 - (b) she has also paid approximately \$36,000 towards maintaining the Vancouver property since separation; and
 - (c) there was a significantly unequal contribution by the parties during the marriage, both financial and otherwise. This is not a case where one party has earned more than the other over the years but still contributed relatively equally to the relationship by other means, such as household and parental responsibilities. In this case, the claimant has, throughout the marriage, contributed both financially and non-financially in a far greater proportion than the respondent.
- [84] The claimant submits that she has paid approximately \$300,000, net of rent received from the rental suites, since the separation that should have been joint expenses. This includes the expenses to which I have referred relating to the properties, Maninderjeet's education, and Daljeet's wedding.
- [85] According to the Schedule, the total family assets as at the date of trial, which I find to be the appropriate valuation date, are approximately \$3.225 million which includes the claimant's \$83,000 RRSP.
- [86] An equal division of family assets would result in each party receiving approximately \$1.6 million in assets. Ms. Nanara effectively seeks a 60/40 apportionment in her favour, which would result in her receiving approximately \$1.953 million in assets and the respondent receiving \$1.295 million.
- [87] In my view, the following factors, many of which I have previously referred to, support a 60/40 apportionment of assets in favour of the claimant:
- since the separation the claimant has spent approximately \$150,000 of her own funds to maintain the Vancouver and Richmond properties. The expenses the claimant has paid towards the Richmond property include additional mortgage payments for the sole purpose of reducing the principal, which, if the assets are divided as proposed by the claimant, would be for the sole benefit of the respondent;

- while I have previously determined the amounts the respondent should contribute towards, respectively, Maninderjeet's education expenses (\$20,000) and Daljeet's wedding expenses (\$32,500), the fact that the claimant has, to date, been solely responsible for such family expenses is an indicator of the extremely inequitable division of family expenses;
- the respondent has not provided any evidence to explain why he has been continually underemployed, working only casual or part time hours, for the duration of the relationship while, during the course of the relationship, the respondent has upgraded her education and worked multiple full time jobs at a time; and
- the respondent has not been forthcoming regarding the value of his financial assets, namely pensions he holds from GF Strong and IWU.

[88] I agree with the claimant that the assets should be apportioned 60/40 in her favour in accordance with the Schedule. I have also taken into account that Mr. Nanara is not responsible for any of Ms. Nanara's "over indulgence" towards Maninderjeet and Daljeet in reducing the amounts claimed by Ms. Nanara as described above.

[89] A 60/40 apportionment will have the practical result of the Vancouver property and the RRSP's vesting in the claimant and the Richmond property vesting in the respondent. The respondent will also keep his unvalued pension interests with GF Strong and the IWU. If those pensions are less than the claimant's RRSPs, then he bears the fault for that unequal division since he did not provide the required documentary disclosure regarding those pensions or lead any evidence as to their value.

[90] The contents of the safety deposit box are not referred to in the Schedule. Since I am unable to resolve the different accounts of the parties on this issue, the contents are to be divided equally. If the parties are unable to agree on that division, then the items are to be selected on an alternative basis with Ms. Nanara making the first selection.

D: Conclusions Regarding Family Assets

[91] I make the following orders:

- (a) the Vancouver property is to be transferred to the claimant;
- (b) the Richmond property is to be transferred to the respondent;
- (c) any certificates of pending litigation registered against either property are to be removed;
- (d) the claimant shall assume sole responsibility for the mortgage on the Richmond property and indemnify and save harmless the respondent with respect to same until the mortgage is discharged from the Richmond property;
- (e) each party shall retain all non-registered financial assets in their own name without compensation to the other;

- (f) each party shall retain sole responsibility for all debt in their own name without compensation to the other and indemnify and save harmless the other with respect to same;
- (h) each party shall retain all household contents and vehicles in their possession without compensation to the other;
- (i) each party shall retain their own employment pension without division of same or compensation to the other;
- (j) each party shall retain any RRSPs in their own name without compensation to the other; and
- (k) each party shall retain their own CPP credits;
- (l) the contents of the safety deposit box are to be divided equally.

V: THE RESPONDENT'S CLAIM FOR SPOUSAL SUPPORT

[92] The respondent seeks a nominal amount of \$1.00 per month for spousal support.

[93] He relies on ss. 160-163 of the FLA, which I shall not set out in these reasons.

[94] He submits he is entitled to spousal support in view of the lengthy relationship of 30 years of cohabitation "during most of which the Claimant's income outstripped that of the Respondent by a 2-1 ratio."

[95] Mr. Nanara acknowledges that he has an obligation to attempt to become self-supporting but argues in his written submission that:

The Respondent is now of retirement age whereas the Claimant has several working years remaining. As a result of the breakdown of the relationship the Respondent will no longer have the economic benefit of a spouse who has earnings three times greater than his as he embarks on his retirement years. He has limited command of English and only an elementary school education obtained in India. He is earning to his capacity.

During the relationship and continuing to the present the Claimant indulged in her children beyond her legal parental duty, as they continued into adulthood and this pattern continues to do so today. They remain living with her without apparently contributing financially to food accommodations or utilities and such that the Respondent was unable to benefit as a spouse from the disparity in their incomes. This parenting choice was made voluntarily by the Claimant.

As the Respondent currently has income sufficient to support his current needs, he is at retirement age an award of nominal spousal is warranted. Should it be determined that the claim for spousal support be dismissed then the appropriate order would provide that it be dismissed with liberty to apply upon a change of circumstances as per: *Sager v. Sager*, 2003BCCA 46 and *Cornelissen v. Cornelissen* 2003 BCCA 666

- [96] I do not accept this submission. As I have noted in these reasons, there has been a considerable inequality between the claimant's and respondent's contributions to the marriage throughout the duration of the relationship, and I have commented on what I consider to be Mr. Nanara's propensity for taking full advantage of Ms. Nanara's inability to say no to her family.
- [97] I have also not accepted Mr. Nanara's evidence that he is employed to his capabilities and have found that Ms. Nanara will be unable to continue working to the extent she has in the past. It is completely unreasonable, in my view, for Mr. Nanara to be expecting the claimant to continue working as she has, due in part to the state of her health.
- [98] This is not a situation, in my view, where the respondent has established an entitlement to support on compensatory and/or non-compensatory grounds: *Jendruck v. Jendruck*, 2014 BCCA 320 at para. 16; *Lee v. Lee*, 2014 BCCA 383 at paras. 63-66. Mr. Nanara has not demonstrated that he should be compensated by way of spousal support for any economic contributions or sacrifices he incurred during the relationship. Also, by very virtue of the fact that Mr. Nanara states in his written submissions he "currently has income sufficient to support his current needs", there is also no non-compensatory basis on which to award him spousal support.
- [99] As a result of the apportionment of the family assets, the respondent will now own the Richmond property which has two rental suites free of any encumbrances. This will provide an additional source of revenue to him.
- [100] The claim for spousal support is dismissed.

VI: THE ASSAULT

- [101] The claimant seeks damages for assault and battery, and intentional infliction of mental distress.
- [102] In her testimony, Ms. Nanara described the events of November 17, 2013, during which she says the respondent assaulted her. According to the claimant, the respondent choked and punched her and threw her to the ground. She said she was hospitalized the next day and was left bruised and with a broken wrist and a sore shoulder, aggravating a previous injury. The assault occurred after a family gathering when the respondent was verbally abusive towards her in the presence of various family members.
- [103] The respondent denies the details of the incident as reported by the claimant. He does admit to having drunk alcohol and says he was provoked by the claimant while at a family gathering at Ms. Nanara's sister's home in Surrey. This was the same sister he had married years earlier. There was a dispute regarding an amount of money he alleged was still owing to him in relation to that marriage. He testified that the police attended at the Vancouver property later that evening but no further action was taken.

- [104] Mr. Nanara was found guilty of common assault and was given an absolute discharge. He was also ordered to pay a victim surcharge of \$100.00.
- [105] Having heard the evidence of both parties, I am satisfied that the respondent did assault the claimant the evening of November 17, 2013.
- [106] In light of the absence of any medical evidence regarding the effects of the assault, I am not satisfied that the injuries were as serious as the claimant maintains.
- [107] I award damages of \$1500 for the assault which is in the range awarded *Dhillon v. Gaba*, 2014 BCSC 1474 at paras. 74-77.

VII: CONCLUSION

[108] In conclusion:

- (a) the family assets shall be apportioned 60/40 in favour of the claimant, and this apportionment is to include payment by the respondent of \$20,000 for retroactive child support and \$32,500 as a contribution to Daljeet Nanara's wedding expenses;
- (b) the claimant has leave to apply for prospective child support for Maninderjeet Nanara;
- (d) the respondent's claim for spousal support is dismissed; and
- (e) the claimant is awarded \$1500 in damages for the assault of November 17, 2013.

[109] The claimant has been substantially successful. Unless there are other factors which may affect costs of which I am unaware, she is entitled to her costs of this proceeding at Scale B.

"Abrioux, J."

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