

CANADA / JUDGMENT

Normand v. Normand

2012 BCSC 171

COURT

Supreme Court of British Columbia

DECIDED

1 February 2012

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2012 BCSC 171 Normand v. Normand IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Normand v. Normand, 2012 BCSC 171 Date: 20120201 Docket: 080302 Registry: Williams Lake Between: Sylvia Rose Normand Plaintiff And Joseph Allain Conrad Normand, also known as Alan Normand Defendant Before: The Honourable Mr. Justice Parrett Reasons for Judgment Counsel for the plaintiff: D. Komori Appearing for the defendant: Joseph Allain Conrad Normand, In Person Place and Date of Trial: Williams Lake, B.C. February 1, 2, 3, 4, and 5, 2010 Place and Date of Judgment: Williams Lake, B.C. February 1, 2012

INTRODUCTION

- [1] This is a matrimonial proceeding in which the parties seek a variety of relief under the Divorce Act, R.S.C. 1985, c. 3 and the Family Relations Act, R.S.B.C. 1996, c. 128.
- [2] Previous proceedings in the Provincial Court of British Columbia led to an order pronounced on July 6, 2007. In that interim order, Walters P.C.J., by consent, ordered -
- a) That Sylvia Normand shall have primary residence of the child, Kerry Mark Normand, born June 16, 1995;
 - b) That the parties shall share joint guardianship of the child with joint guardianship defined in the order;
 - c) That the child's residence shall not be changed outside of the greater Williams Lake area;
 - d) That Alan Normand shall have the following access:
 - i. Every weekend from Friday at 5 p.m. to Sunday at 5 p.m. with the exception of one weekend per month, which shall be Sylvia Normand's weekend, to be decided by the first day of each month; ii. One week in August to be agreed upon between the parties; iii. All discussions regarding access and guardianship are to occur between the parties by email correspondence;

- e) That Alan Normand shall pay support for the child in the amount of \$654.00 per month, commencing July 15, 2007 and continuing on the 15th of each and every month thereafter. This is on a without prejudice basis to either parties' position to seek a variation;
- f) That Alan Normand shall pay spousal support of \$846.00 per month, to commence on July 15, 2007 and to continue on the 15th of each and every month thereafter. This is on a without prejudice basis to either party to seek to vary this amount;
- g) That child and spousal support may be reviewed at the request of either party on or after April 1st, 2007.
- [3] It is obvious both from the date of the order and the advice of the parties that the final date in this order was intended to reflect a review on or before April 1, 2008 and that 2007 was, in fact, a typographical error.
- [4] At this trial it also became obvious that both litigants wished all issues resolved in this hearing and in this court.
- [5] The difficulty with that, in my view, arose from the existence of the order made in the Provincial Court, which was a court of competent jurisdiction in which both parties had elected to proceed.
- [6] With the agreement of both parties an identical order was pronounced in this court and then after convening as a Provincial Court the original order was vacated.
- [7] At the conclusion of the trial, and after hearing from the defendant about his position on various issues, and prior to reserving judgment on the case, I made a series of orders -
 - a) Having found that all the requirements were met I granted the divorce based on the breakdown of the marriage within the meaning of s. 8(2)(a) of the Divorce Act;
 - b) On the basis of the evidence at trial I made an order that the parties share joint custody of the child, Kerry Mark Normand, born June 16, 1995, with primary residence of the child being with the plaintiff, Sylvia Rose Normand, and the defendant Joseph Allain Conrad Normand having reasonable and generous access to the child;
 - c) The parties were also granted an order that they share joint guardianship with that guardianship including the 'Joyce model' terms. In the event the parties were unable to agree on the specifics of those terms they were given liberty to apply to define them.

ISSUES

- [8] The remaining issues outstanding were the financial issues, including -
 - a) Child support;
 - b) Spousal support; and
 - c) Division of assets.

BACKGROUND

- [9] The plaintiff, Sylvia Rose Normand, was born on September 16, 1960 in Ottawa, Ontario and was, at the time of trial, 49 years of age. The defendant, Joseph Allain Conrad Normand, was born on February 8, 1964 in Orillia, Ontario, and was, at the time of trial, about to turn 46 years of age.
- [10] The parties met and began living together, full time, in 1988 or 1989, shortly after the time the defendant, who was already a qualified carpenter, completed his qualifications as a gas fitter.
- [11] The plaintiff, at the time, had a daughter, Lee-Anne Storie, born November 28, 1982, who was living with her.
- [12] The family continued to reside in Ontario until the fall of 1993. By this time Mr. Normand's construction work had been severely curtailed as a result of the economic climate in Ontario. After discussions, the family packed up and moved to British Columbia, initially to Victoria where Mr. Normand's brother lived. In 1994 they left Victoria when Mr. Normand found work in Williams Lake.
- [13] The move to Williams Lake seemed to work well for Mr. Normand. His initial employment with Innovative Interiors lasted for some four months during which he became acquainted with the construction industry in that area. Mr. Normand moved on to Spruce Lee Construction where he was employed for the next six years or so.
- [14] The stability of this employment allowed them to save enough to put a down payment on a 4-plex which they purchased and moved into in 1996. This purchase followed the birth of the couple's son, Kerry Mark Normand, on June 16, 1995.
- [15] During his employment with Spruce Lee Construction, Mr. Normand testified he was trained to do everything in construction and learned to bid jobs as well as picking up a lot of side jobs he did on his own.
- [16] On May 10, 2002, Norm's Carpentry Inc. was incorporated. The defendant was named as the new company's president and the plaintiff as its secretary. Mr. Normand was allocated 51 Class A Common Voting shares and the plaintiff 49. The two were the company's only officers and shareholders.
- [17] On August 3, 2002, the parties' married at Powassan, Ontario.
- [18] While the defendant began working at various construction projects at different First Nations communities, the plaintiff remained at home caring for the home and children, as well as managing the other three units of their 4-plex. As a part of her functions she, in the defendant's absence, rented out the suites, collected the rent and dealt with any problems as they occurred. These absences included a period of nearly three years from the fall of 2003 to the winter of 2006. During this time the defendant worked at remote locations where he was provided accommodation, returning to Williams Lake on weekends before returning to

the work site.

- [19] In October 2006 the parties separated, but the plaintiff continued to occupy one of the units of the 4-plex and continued to collect the rents and deposit them to their joint account. The plaintiff testified that the separation came as a complete shock to her and occurred when the defendant moved out unexpectedly.
- [20] At the time of their separation in October 2006 the parties had been married for four years but their period of cohabitation had spanned some 17 years. THE DEFENDANT'S CONDUCT WITH RESPECT TO COURT ORDERS AND DIRECTIONS
- [21] It is important in this action for a variety of reasons to examine the defendant's attitude towards and compliance with court orders.
- [22] This background is important to a proper consideration of Mr. Normand's credibility and his evidence as a whole. In particular, it is an important backdrop in considering his actions with respect to the parties' major assets, specifically, his dealings with Norm's Carpentry Inc. and the 4-plex they jointly owned.
1. July 6, 2007 Order of the Provincial Court
- [23] On July 6, 2007 the defendant was ordered to pay the plaintiff \$1,500 per month (\$654 for child support and \$846 for spousal support). Mr. Normand, in his evidence, testified that he could not afford to pay \$1,500 a month and that he did not agree with the order.
- [24] The reality of the matter is that the order of July 6, 2007 was a consent order and was endorsed as such on Mr. Normand's behalf by his then counsel, Alan Czepil. Quite apart from that fact, as noted in the order itself, Mr. Norman was present and in attendance at the hearing.
- [25] In addition the order was based on a financial statement sworn by Mr. Normand in the Provincial Court proceedings on May 31, 2007 and filed the same date. In that financial statement Mr. Normand swore that his annual employment income was \$70,000.
- [26] The defendant also testified that prior to the order he was "giving her \$300 per week and paying the expenses on the 4-plex". He went on to testify that he paid her "all the way through" and that although he never kept track of it he ". . . would say I gave her money up to January or February 2008".
- [27] Under cross-examination Mr. Normand conceded that he did not give her money on a weekly basis and retreated to the position that in at least a couple of months he gave her \$1,200.
- [28] Mr. Normand also testified that the Family Maintenance Enforcement Program was contacting him "within a month of the order being given". While it was never clarified satisfactorily in the evidence, for that to be true, he would likely have had to miss the first payments required under the order which were due on July 15, 2007.

- [29] The Family Maintenance Enforcement Program ("FMEP") arrears printout entered as part of Exhibit 2 (Tab 30) shows in its opening entry on February 7, 2008 "Arrears at Enrolment \$5,170.00".
- [30] Whether or not the FMEP enrolment took place 'within a month' or in February of 2008, by that time arrears of nearly \$750 per month had accrued since the date of the order.
- [31] The records produced indicate that throughout the period covered from February 2008 to January 2010 the defendant at no time paid the support ordered but consistently paid \$750 per month.
- [32] It is also clear that each of the payments that were made originated from the business chequing account of Norm's Carpentry Inc. and began, in fact, on July 17, 2007.
- [33] On the date that first payment was made the balance in the corporate account was \$56,400.58. It appears clear that from the outset the defendant was in breach of the order he consented to, despite the fact he had the means to make the payments, and that he has consistently remained in breach of that order up to the date of trial and by the 26th of January 2010 his arrears stood at some \$27,937.76 according to the Family Maintenance Enforcement Program.
- [34] Perhaps most significantly the evidence is that all payments made towards child and spousal support were made, on Mr. Normand's direction, from the corporate bank account. Considering that the defendant held 51% of the shares and the plaintiff owned 49%, and that nothing about these payments qualified them as a corporate expense, Mr. Normand effectively paid the plaintiff, in part, with her own money.
- [35] Finally, Mr. Normand, in his evidence, testified that he totally disagreed with this order and that he never consented to it. Mr. Normand seems completely oblivious to the fact that Mr. Czepil, in signing the order, did so as both his counsel and his agent.

2. May 26, 2008 Mutual Restraining Order

- [36] On May 26, 2008 another consent order was filed and entered, this time the order was made in this court. In this case the order was approved and consented to on the defendant's account by his new counsel, Wesley Shields. This order provided that:
1. The Plaintiff and Defendant be mutually restrained and enjoined from disposing of, encumbering, signing, or in any similar manner in dealing with family assets, or of any assets in which the Plaintiff or Defendant has, or may have an interest, pending final determination of this action, without the consent in writing of the other party or without further Order of this Court.
- [37] Apparently undaunted, Mr. Normand, within two weeks, advertised for sale a pickup truck and sold it. Although the plaintiff testified that she objected to the sale she in fact signed a document dated August 7, 2008 agreeing to the sale and received half the proceeds.

[38] Mr. Normand sold a 4-wheel ATV without the plaintiff's written consent or a court order.

[39] Mr. Normand, in my view, breached the terms of this order in one respect at least.

3. June 17, 2008 Order of Master Hyslop

[40] On June 17, 2008 this proceeding came before Master Hyslop for a Judicial Case Conference. Once again the defendant was represented by counsel, and again his counsel was Wesley Shields. Mr. Normand was present at the hearing although his counsel attended by telephone.

[41] During the course of this hearing a series of orders were made by consent. Once again Mr. Shields endorsed the order on Mr. Normand's behalf indicating both his approval as to form and his consent. Two of these orders are of significance here:

3. The Defendant, Joseph Allain Conrad Normand (aka Alan Normand), will provide to counsel for the Plaintiff the following materials with the List of Documents:

i) Corporate Tax Returns for Norm's Carpentry Inc. for the years 2005, 2006 and 2007. ii) The May 31, 2008 Financial Statement for Norm's Carpentry Inc. when available. iii) The General Ledgers for Norm's Carpentry Inc. for 2005 through 2008. iv) RRSP statements for 2005 to present.

v) Corporate bank records for Norm's Carpentry Inc. and his personal bank statements, for 2005 to present. vi) A list of equipment for Norm's Carpentry Inc. . . .

5. The Defendant, Joseph Allain Conrad Normand (aka Alan Normand), will provide a list of personal items he wants from the matrimonial home within two weeks of the date of this Order.

[42] Although the plaintiff testified that the defendant never produced these documents, it is clear that the corporate financial documents have been produced although those produced at this trial bear the date stamp January 29, 2010. If that is the date of their production it would be some 18 months after the date of the order in question and some three days before the trial of this matter began.

[43] Contained within the material are other documents which otherwise indicate that some of the documents may have been produced as early as December 2009 when counsel were exchanging correspondence concerning the documents.

[44] Once again it is clear that Mr. Normand, despite by this time having the assistance of Patricia Schmit, Q.C., continued to ignore the spirit and the intention of the order of June 17, 2008.

4. January 14, 2010 Order of Truscott J.

- [45] On January 14, 2010, a little more than two weeks before this trial began, the plaintiff returned an application to have the defendant provide information previously requested at an examination for discovery within seven days.
- [46] The examination for discovery had been held on October 26, 2009.
- [47] On the application the plaintiff sought answers as to where certain funds removed from the company account had gone. At the time of the examination for discovery the questions related to the transfer out of \$15,000 on February 28, 2007 and \$40,000 on October 10, 2007.
- [48] Mr. Normand's sole answer to those questions, prior to this application, was "I believe Flo Pelchat has that information". Ms. Pelchat was the accountant Mr. Normand dealt with.
- [49] Ms. Pelchat provided a letter in which she advised that she was informed by Mr. Normand that the \$15,000 went into an RRSP. She goes on to say that she does not know where the \$40,000 went.
- [50] At the hearing before Truscott J., Mr. Normand's explanation was that the \$40,000 went into "a Norm's Carpentry term deposit, . . . I believe . . .".
- [51] Truscott J. ordered Mr. Normand to provide information to Mr. Komori, counsel for the plaintiff, as to where the \$40,000 was deposited within seven days and documents showing the source of a \$20,000 deposit to the company account on November 30, 2007.
- [52] As the hearing proceeded Mr. Normand offered various explanations for what became of the \$20,000 ("I spent it on expenses"), and a company term deposit for over \$71,000 that he transferred into his own name, ("I put it in the name of a third party").
- [53] As he was pressed Mr. Normand finally acknowledged that this money was in a bank account in his mother's name.
- [54] At that point Truscott J. placed Mr. Normand in the witness box and after swearing him in, Mr. Normand testified that -
- a) \$20,165.26 taken from a company term deposit was transferred into his mother's account;
 - b) \$71,480.97 which he transferred out of a company term deposit into one in his own name was transferred on June 24, 2008 to his mother's account, this transfer clearly taking place after the restraining order was pronounced;
 - c) That of the approximate \$91,000 placed in that account he testified that there was over \$70,000 remaining and that he had spent the rest on "expenses";
 - d) The \$40,000 he had originally spoken about he testified had been deposited to the same account of his mother.

- [55] At the conclusion of this testimony Truscott J. ordered Mr. Normand to obtain a printout from the bank which, amongst other things, would provide the current balance in the account and provide it to counsel for the plaintiff that same day, January 14, 2010.
- [56] Mr. Normand never complied with that order and never, prior to trial, provided the printout that had been ordered or other documentary evidence concerning the location of the money or of its disbursement.
- [57] In a final bizarre twist, and after Mr. Normand had been warned both during the trial and during his final submissions that an adverse inference might well be drawn against him as a result of his failure to comply with the court orders and to account for the missing funds in any reasonable way, some documents appeared and were presented after the close of the trial on February 4, 2010.
- [58] On February 12, 2010 the Court Registry in Williams Lake received a letter and attached documents from Geraldine Normand of Brantford, Ontario.
- [59] The covering letter is dated February 9, 2010 and the body of the letter reads: To whom it may concerns, This is regarding my personal bank account I'm not releasing to anybody my personal bank account numbers, I did take care of Alain's money, however he used it all up and more, and he has an outstanding debt personally. I helped him through a rough period of his life by paying his lease on the pick-up, his phones, his hydro on the 4 Plex and more bills. The attached bank statements are also my personal bank account and my personal expenses are not showing because it's a private matter. I hope Alain and Sylvia can finish their dispute it's been a long process, and if you have any other questions regarding this matter, you can contact me at [phone number].
- [60] The documents attached to this correspondence are photocopies of bank statements beginning on October 10, 2007 and concluding on October 30, 2009.
- [61] During this time frame one statement, covering the period from July 31, 2009 to August 31, 2009, is missing.
- [62] The closing balance on the bank statement before the missing one is \$37,662.44 and the opening balance on the next included statement is \$20,322.49. The final closing balance on the last statement is \$6,846.77.
- [63] On my direction copies of these materials were sent to counsel for the plaintiff and to Mr. Normand.
- [64] Counsel filed a written response advising that they did not seek to reopen the case and providing written submissions. On my further direction Mr. Normand did the same.
- [65] As Mr. Komori points out in his submissions the documents presented in this highly unusual manner are of little assistance. The copies produced have been highly edited and altered before they were forwarded to the court. In particular -

- a) All names and identifying designations, including branch numbers and account numbers, have been removed;
 - b) Throughout the statements entries appear to have been completely obliterated by use of something like white-out;
 - c) The statements end with a statement covering the period September 30, 2009 to October 30, 2009 which fails completely to meet the requirements of the order of Truscott J. of January 14, 2010 and to provide the balance in the account as of that date;
 - d) The material provides no explanation for Mr. Normand's sworn evidence on January 14, 2010 before Truscott J. that there was something in excess of \$70,000 still in the account;
 - e) The \$70,000 discrepancy happens to, more or less, correspond to the amount of the withdrawal of \$71,480.97 on June 24, 2008 which does not appear as a deposit on these edited and altered documents. I note in passing that Mr. Normand, on January 14, 2010, testified that those funds were transferred to his mother's account.
- [66] These documents will be received as exhibits in these proceedings to complete the record. They are of little or no value in supporting the defendant's evidence concerning these impugned transactions but they do support the fact and the inescapable conclusion that the defendant has continued to disregard and breach the orders made by this court for disclosure in this action, and that he breached the restraining order.
- [67] The most unsettling aspect of this part of these proceedings is found in the transcript of the proceedings on January 14, 2010, found in Exhibit 1, Tab 12.
- [68] At this point I will simply illustrate the difficulty by using the example of the \$40,000 transferred out of the company account on October 10, 2007. On page 10 of the transcript Mr. Komori turns to that transaction and his question at the examination for discovery: . . . I have requested he tell me where that money was transferred to.
- [69] After pointing out that Mr. Normand's accountant said that she does not know where that money went, Mr. Komori quotes the "answer" provided by Mr. Normand in his sworn affidavit in paragraph 11(b).
- [70] Mr. Komori makes it abundantly clear on page 11 of the transcript what the question was: MR. KOMORI: So he hasn't answered the question which is where that money went to. It was transferred and the question is, to what place was that money transferred? So he has not answered that question. And I am seeking an order that he provide the answer as to where that money was transferred to.
- [71] Ms. S. Francoeur's affidavit #1 raises the issue addressed in paragraphs 6 and 7:
6. A review of the bank statements for the company also indicate that on February 28, 2007 there was a \$15,000.00 transfer out of the company account to a point unknown. On October 10, 2007 there was another transfer of \$40,000.00, again to a point unknown.

7. The Norm's Carpentry bank statements also indicate that \$20,000.00 was transferred into the account on November 30, 2007 from a point unknown in origin. [Emphasis added.]
- [72] Mr. Normand's affidavit response with respect to the \$40,000 refers specifically to paragraph 6:
11. I now turn to answering the issues raised in Affidavit #1 of S. Francoeur as follows: . . .
- b. Paragraph 6 - On October 10, 2007 \$40,000.00 was recorded in the General Ledger at page 59 as a Shareholder's credit due to me of \$40,000.00 which is a draw to me and is recorded at page 159 in the general ledger as a shareholder's draw to me and is eventually accounted for as T-4 earnings. This was a bank transfer to me on the company account # ...
- [73] Whether or not I was to view that response as deliberately deceptive, providing some detail while ignoring the question asked is not the unsettling part of this transcript. The learned chambers judge then turned Mr. Normand's attention specifically to the question and to the specific transaction involving the \$40,000: THE COURT: Right. Mr. Normand, where did the \$40,000 go to? I know you say it went to you. . . . THE COURT: All right. So I'm on to the 40-thousand-dollar one now. ALAN NORMAND: Yes. THE COURT: And he is simply looking for physically where did the \$40,000 go to? ALAN NORMAND: The \$40,000 went to a Norm's Carpentry's term deposit, Your Honour, I believe. THE COURT: All right. And what is that deposit number? ALAN NORMAND: I don't have it handy right now. THE COURT: Is it something that you know about already, Mr. Komori? MR. KOMORI: I have - - ALAN NORMAND: Yes, he does. MR. KOMORI:
- - the documents as it relates to Norm's Carpentry, the term deposit. You will see that there is a summary from the bank at tab 4, my staff's first affidavit. THE COURT: Tab 4. MR. KOMORI: It's Exhibit B. How he says that that money went to the term deposit is a complete mystery to me. The bank ledgers - - or the bank statements show that a term deposit was purchased on June 7, 2007 for \$108,406.18 and from that point - - THE COURT: Are you looking at B? MR. KOMORI: I'm sorry, yes, B, page 9. THE COURT: Oh, the second page there that - - all right. MR. KOMORI: And - - THE COURT: This hundred - - hundred and eight thousand dollars. MR. KOMORI: Yeah. THE COURT: Yes. MR. KOMORI: And the bank statement show that there was a direct transfer from the company account of \$108,406.18 into that term deposit. THE COURT: Yes. So that - - but that's on June 7th? MR. KOMORI: Yes. THE COURT: Yes. MR. KOMORI: And then it goes through and details how that money - - what happened to that money which is essentially no more monies came into it. It kept on going out from that point. THE COURT: Yes. But the accountant says the 40,000 went out on October 10th, which is after June 7th. MR. KOMORI: Yes. And he is saying that the money went into the term deposit. [Emphasis added.]
- [74] Mr. Normand, it appears, was becoming concerned about the explanation he had given to the court, so, at page 14 of the transcript, he offers a somewhat different version. Having firstly advised the court that the \$40,000 was placed in a company term deposit, he shifted to the following: THE COURT: All right. What's the answer? ALAN NORMAND: To add to this,

Your Honour, it was re-injected, which is Number C. THE COURT: Number C where? ALAN NORMAND: In my affidavit, 11C. THE COURT: Just a second. ALAN NORMAND: Where it says is re-injected into the company - - company to 20,000 of that 40,000, My Lord, was re-injected for CRA. I had taxes to pay at the time. THE COURT: All right. So 40,000 went into this term deposit, you say, on or about October 10th, 2007, is that right? ALAN NORMAND: I don't have the paperwork on the term deposit, Your Honour, so I'm assuming - - THE COURT: But that's what you say? ALAN NORMAND: Yeah. THE COURT: Are you sure about that? ALAN NORMAND: I'm not sure. THE COURT: All right. What do you want to do, Mr. Komori, about getting an answer to this? MR. KOMORI: Well, I want him to provide an answer as to where the 40,000 went and - - THE COURT: Do you want that in another affidavit or do you want that in a discovery? MR. KOMORI: Well, actually - - well, what I would like is for him to produce the documents that show where the \$40,000 went. Did they - - if my - -

[75] As matters progressed Mr. Normand again attempted to show company bank records that showed some money going back into the account. This ended with the following exchange: ALAN NORMAND:

- - of the bank statements. This is the transfer of the other one. This is where it was re-injected to pay for the CRA. MR. KOMORI: What he is showing me, My Lord, is a bank statement on the company account indicating there was a transfer back in the company on November 30th of \$20,000. THE COURT: Right. MR. KOMORI: A little notation beside it saying "Unknown", and that still doesn't answer the question. THE COURT: Where is the document that shows the \$40,000 being deposited? ALAN NORMAND: I don't have that, Your Honour, right now. I'm sorry. THE COURT: That's not here, but you have it someplace else? ALAN NORMAND: I couldn't - - to be honest with you, My Lord, I - - I just don't know exactly - - this is 2007, so I'm not positive on - - on how that money was moved, My Lord. So I'd have to dig up again more paperwork to try to find that. THE COURT: Well, the accountant can't answer that as to where the money physically went, and she says she has no documents in her possession showing where the money went.

[76] The exchange continues and the learned chambers judge explains yet again what the issue is: THE COURT: I mean we know shareholder loans can show loans to shareholders and loans from shareholders. So I have no idea what your shareholder loan account was, and I - - and I know as a matter of accounting, you can - - ALAN NORMAND: Right. THE COURT:

- - put something anywhere physically. Where did the money go? ALAN NORMAND: I can't answer that right now, My Lord. THE COURT: Well, how are you going to answer that when you're asked it at trial? ALAN NORMAND: I'll have to - - well, I'll have to find the information. THE COURT: You took out of the company account \$40,000 on October 10th, 2007. You may have taken 20 of that and put it back in on November 30th, but right now, we simply want to see - - ALAN NORMAND: Right. THE COURT:

- - where you deposited the \$40,000. Now, do you understand that issue? ALAN NORMAND: Yeah, I understand. THE COURT: All right. And how long is it going to take you to provide that? ALAN NORMAND: I'm not sure. At the trial. THE COURT: No. It has to be before the trial. ALAN NORMAND: Okay. THE COURT: If presumably, Mr. Normand, the accountant can't appear - - doesn't appear to be able to help you further on where you actually picked up the money and took it to. So presumably, you either put it under your mattress or you put it in a bank account someplace. ALAN NORMAND: Right. THE COURT: Now, you've got access to your mattress and your bank account. It doesn't take very long, because the banks keep records - - ALAN NORMAND: Yes. THE COURT:
 - - on this, for you to go to wherever you say you put that \$40,000 and get the record that shows its deposit. ALAN NORMAND: Okay. THE COURT: You - - perhaps you don't keep a bank book up to date. Nobody does anymore. ALAN NORMAND: I don't. THE COURT: You probably go to ATMs all the time. But you can get from the bank a record of deposits. So where did the \$40,000 get deposited, that's the issue? ALAN NORMAND: Okay. THE COURT: All right. By order of this court, you have seven days to provide that information to Mr. Komori. Okay? ALAN NORMAND: Okay. [Emphasis added.]
- [77] Mr. Komori then moved on to the issue of where the \$20,000 deposited into the company account originated. This inquiry resulted in the following revealing exchange on page 18: ALAN NORMAND: It shows an injection into Norm's Carpentry of \$20,000 to pay for the revenue. THE COURT: All right. Well, presumably the \$20,000 came, you say, from the place where you deposited the \$40,000. ALAN NORMAND: Yes. THE COURT: All right. And would that - - that would be from the - - ALAN NORMAND: And it - - THE COURT:
- - same source? ALAN NORMAND: Yes. THE COURT: Right? So when you - - when you provide the information of where the 40-thousand-dollar deposit went, you should be able to provide that same document that shows the withdrawal of \$20,000 on November 30th - - ALAN NORMAND: That's right. THE COURT: Right. ALAN NORMAND: Yeah. THE COURT: Do that within seven days as well. All right? ALAN NORMAND: Okay. I'll try. [Emphasis added.]
- [78] Mr. Normand is apparently becoming a bit concerned about the way the chambers hearing is progressing so at page 20 he tries a different approach when asked about the withdrawal of \$21,165.26 from the company account: THE COURT: Okay. Well, then it's not in the company, Mr. Normand, where did it go? ALAN NORMAND: I spent it. How's that? THE COURT: Well, sure. We all have to spend money, but then the questions are going to become, this is money taken out from March 13, 2008, what did you spend it on and when? ALAN NORMAND: I haven't been working through and with the company for two years, so - - THE COURT: Mm-hmm. ALAN NORMAND:
- - basically it was personal expenses. [Emphasis added.]
- [79] When the questioning moved on to the \$71,480.97 withdrawn on June 24, 2008 from a company term deposit Mr. Normand continued his new approach at page 24: THE COURT: All right. So on June 24, 2008, you took out what was now you had title to your personal term

deposit? ALAN NORMAND: That's right. THE COURT: Is that right? ALAN NORMAND: Yeah. I believe so, yeah. THE COURT: Okay. And when you took it out, where did it go? ALAN NORMAND: Basically, it just went back as a shareholder's loan. It went - - it came to me. THE COURT: I know it came to you. ALAN NORMAND: Right. THE COURT: All right. And what did you do with it? ALAN NORMAND: I basically - - THE COURT: Did - - did you put it into a bank account? ALAN NORMAND: No, Your Honour. THE COURT: Did you - - what did you do with it? ALAN NORMAND: I took it out and spent it. THE COURT: Is this like the \$20,000? ALAN NORMAND: Yes. [Emphasis added.]

- [80] It is shortly after this exchange that matters escalated for Mr. Normand and, once again, the following exchange is, in my view, revealing: THE COURT: All right. Mr. Normand, I want you to get in the witness box and be sworn in. And we'll deal with the 20,000, the 71. We'll get your evidence right now and that'll be it. ALAN NORMAND: My evidence, I don't have it, My Lord, right now. THE COURT: No, No. ALAN NORMAND: Sorry, but . . . THE COURT: No, no, no, no. I'm not - - I'm not concerned about that. You've told me that the 20,000 you simply took out in cash, put it in your pocket, never put it in a bank account and spent it on expenses. ALAN NORMAND: I believe that's what I did, Your Honour. THE COURT: Well, then I'm prepared to take your evidence under oath of that so Mr. Komori is satisfied you're speaking under oath. Do you have a problem with that? ALAN NORMAND: No, I don't. THE COURT: No. Now, on the 71,000, you say that it came out of a term deposit that was in your name. ALAN NORMAND: Yes. THE COURT: And - - you say it went where on - - it went out on June the 24th, '08, where did it - - where was it on June the 25th, '08? ALAN NORMAND: It was in my possession. THE COURT: You mean it was in your pocket again? Did you put it in a bank account, another account anywhere; a term deposit, an RSP or anything? ALAN NORMAND: I - - I - - excuse me, My Lord, can I go to the bathroom? THE COURT: Yeah, we can take a break. ALAN NORMAND: Okay. Thank you. THE CLERK: All rise. . . . THE CLERK: We're on the record. THE COURT: All right. Mr. Normand, you told me where the 20,000 went and the 71,000, you say it went to you, but you don't think it went anywhere else? ALAN NORMAND: I - - basically, My Lord, I didn't want to get anybody else into this melee of numbers, but the truth is, My Lord, is the money was taken, the 71,000, out of I believe my personal name. THE COURT: Yeah. Because you put the account in your personal name. ALAN NORMAND: That's right, Your Honour. THE COURT: Yeah. Yeah. ALAN NORMAND: And was then placed into a third party's term. THE COURT: Where it still sits? ALAN NORMAND: Of course not all of it, Your Honour, because I did pay myself out of that to continue paying the bills that I had to pay, My Lord. THE COURT: Well . . . ALAN NORMAND: And, My Lord, if I can add, there is - - it's still in where it is. It's still open. It's still there. Not all of it, no. THE COURT: No, I know. But what's left of it is there? ALAN NORMAND: Yes, My Lord. THE COURT: How much is there? ALAN NORMAND: The last recollection, I think there was close to \$70,000 there, Your Honour. THE COURT: Seven - - 71? ALAN NORMAND: Seventy thousand dollars. THE COURT: Pardon me? ALAN NORMAND: Seventy. THE COURT: Seven - zero out of the 71. ALAN NORMAND: Seventy thousand dollars. THE COURT: Right. You know, but this is money that started in a term

deposit of the company. ALAN NORMAND: Originally, yes, My Lord. . . . THE COURT: And when you changed it into your name then thereafter you took 71,000 out and put it into the name of a third party? ALAN NORMAND: That's right. [Emphasis added.]

- [81] Over 18 pages of transcript and nearly as many versions of the events Mr. Normand finally acknowledged, after being placed under oath, that he had taken the money and put it in the name of a third party.
- [82] Having literally told the learned chambers judge minutes before that he had not put it in a bank account and that he had spent it, the final story emerges, if not yet completely. It was placed in a "third party's term" and he apparently didn't spend it because there is close to \$70,000 still there.
- [83] Even at this stage Mr. Normand has not given up for he has still withheld the name and he now begins to argue whether he should be required to reveal it: THE COURT: You're going to have to supply the name of that third party. You are responsible for that money. I'm not making any determination, Mr. Normand, as to whether you have to give up any of it to Ms. Normand in the lawsuit. But you do have to disclose where you took company money. ALAN NORMAND: I understand that, My Lord. THE COURT: Yes. ALAN NORMAND: But isn't it really irrelevant, My Lord? Like . . .
- [84] The exchange goes on and finally concludes with the following: THE COURT: No, I know that. But agreeing that you have a responsibility to it and actually paying the money is a different question, you understand? ALAN NORMAND: I understand perfectly, Your Honour. But it was never my intention, My Lord, to - - to not give her her share of what the company was worth. THE COURT: I know that, Mr. Normand. But she's entitled to know where her share is because if she goes to trial and you stand up and say, I agree, judge, she's entitled to 49 percent of that money, then the next question is going to be, where do we get it, Mr. Normand? Where do we get it so that we can give it to her? That's the point. And she doesn't want to rely upon you at that point in time saying to the court or to her, I'm not telling you where it is. I've hidden it away. She'd like to know where her money is now. Why can't she, it's her money? ALAN NORMAND: And your question is, My Lord, sorry? THE COURT: Why can't she? ALAN NORMAND: I did not say she cannot - - THE COURT: No. ALAN NORMAND: - get her money. THE COURT: No, no. Why can't she know now where her money is? ALAN NORMAND: There is no reason why she can't know. THE COURT: Well, then tell us. Tell her through her counsel where this money is. ALAN NORMAND: It's in my mother's name, Your Honour. the court: And is it in a bank account? ALAN NORMAND: Yes, it is. THE COURT: In your mother's bank account? ALAN NORMAND: Yes, it is. THE COURT: All right. And so your mother has it in a bank account that is solely in her name? ALAN NORMAND: Yes. THE COURT: All right. What - - what more do you need, Mr. Komori? ALAN NORMAND: I didn't want to get her involved, My Lord.

- [85] With this final exchange the matter has truly come full circle. It is important to recognize the fact that this entire exchange took place between the defendant and the court, and the latter part after the defendant was placed under oath.
- [86] I can reach no other conclusion on the whole of the evidence and my observations of Mr. Normand that in his communications with the court on January 14, 2010 he was deliberately deceptive and misleading and actively concealing both his mother's involvement and what became of the money taken from the company.
- [87] This conclusion is more than amply supported by many portions of the transcript itself -
- a) Mr. Normand's final statement that I didn't want to get her involved is tantamount to an admission that throughout he was aware of the real facts and was withholding them;
 - b) The neat distinction he drew when asked by the chambers judge where the money was on June 25th and his answer was "It was in my possession" is a distinction drawn by someone who is aware of the facts and carefully obscuring them;
 - c) Mr. Normand's responses that the money was either (i) re-injected into the company or (ii) spent on expenses represent a fairly steady refrain which leaves unexplained his final evidence that there was about \$70,000 left in the account;
 - d) Mr. Normand's repetitive agreement with the chambers judge that the \$20,000 came from the same source as he deposited the \$40,000 to and would show on the same statement is also indicative of knowledge that the funds were in his mother's account;
 - e) When asked where the money went his response, "I spent it. How's that?" is the furthest thing from a responsive answer;
 - f) His next series of answers (paragraph 78 above) represent a sequence where after being asked by the Court "...where did it go?" He replied:
 - i. "it came to me"; ii. he denied putting it in a bank account; iii. "I took it out and spent it".
 - g) In the next sequence after he was placed in the witness box and sworn in, his responses were:
 - i. "It was in my possession"; ii. "excuse me, My Lord, can I go to the bathroom?"; iii. "was then placed into a third party's term [sic]"; iv. "The last recollection, I think there was close to \$70,000 there".
- THE DEFENDANT'S OVERALL CREDIBILITY
- [88] The plaintiff submits that the defendant "lacks any sense of credibility in this matter ..." The plaintiff's position is based in part on the way in which the defendant has ignored various court orders, his consistent pattern of failing to make the required disclosure and finally the partial disclosure, after the close of the trial, of documents that have been blanked out and edited apparently by someone who was not called as a witness in these proceedings.

- [89] Regrettably, in addition to the difficulties I have already detailed above, there are a number of portions of the defendant's evidence at this trial which give a good indication of the defendant's attitude and approach to this matter -
- a) During the course of his evidence Mr. Normand gave a fairly detailed account of their marriage breakdown. In that account he advised that he was contacted by "a friend at the TD bank" to co-sign a loan Sylvia had applied for. Mr. Normand went on to advise that he found out the loan was to cover a Visa debt she had and that he was upset about the deception and "couldn't understand where all the money was going." He went on to testify that he was "baffled by the amount of money she was going through ..." He concluded this portion of his evidence by testifying that "I lost a lot of faith and trust in her so I moved out in October 2006". What was completely missing from this version of the events was any reference until his cross-examination of the confrontation between them concerning his relationship with Bev Frizzie. During the course of his cross-examination Mr. Normand conceded that the relationship did not break down totally because of the loans but insisted that the plaintiff did not confront him about his relationship with Bev Frizzie in October 2006 but rather in August of 2006.
 - b) Mr. Normand testified that he was really upset when he had found that the plaintiff had taken everything from their 4-plex unit that "we had purchased together with my money . . .".
 - c) Mr. Normand conceded in his evidence at trial that substantial sums of money were taken from the company account and deposited in an account held by his mother. As but one example, on June 7, 2007 money was taken from the company account and used to purchase a term deposit for \$108,406.18. On Mr. Normand's direction and without the plaintiff's knowledge this term deposit was transferred into Mr. Normand's name personally. Mr. Normand conceded during his cross-examination that none of these funds ever went back into the company account, but despite his evidence that "it was spent" no credible evidence was ever presented as to where it went.
 - d) In one of his affidavits, that sworn April 8, 2009, and in his evidence at this trial, Mr. Normand gave a clear indication of his view of the company. The company is really me, and the only assets are my tools, an old ATV and old boat, a leased pickup, a canopy and company computer . . .
 - e) The evidence is equally thin on where other corporate funds went and what they were used for. These funds include (i) \$20,165.26 withdrawn from the company account on March 13, 2007 and sent to his mother; (ii) \$71,480.97 withdrawn from the company account on June 24, 2008; and (iii) \$40,000 withdrawn from the company account on October 10, 2007. These funds alone total \$131,646.23 and with the greatest of respect to Mr. Normand he has wholly failed to provide any reasonable explanation for the way in which he handled the company accounts and disbursements from it, let alone for the cavalier way in which he ignored the plaintiff's interest in the company.

- [90] During his testimony Mr. Normand advised the court -
- a) that his Mom had advised him that there was nothing left;
 - b) that he trusted his mother; and
 - c) that his mother does not want to get involved.
- [91] The breathtaking simplicity of this approach is difficult to describe. Quite apart from the fact that it is founded entirely on hearsay presented in the face of an apparent consistent refusal to obey either his disclosure obligations or the orders of this court, it amounts to a litigant standing in the courtroom and simply repeating the mantra "trust me".
- [92] The problem is that after careful consideration I don't. It is enough to conclude, as I do, that Mr. Normand's evidence is utterly unreliable but I go further; Mr. Normand is an individual who, through his conduct and actions, has placed himself and his opinions beyond that of his family or the orders of this court.
- [93] He appears to believe that he has no obligation to account for his activities or to obey court orders made against him.
- [94] Perhaps the most revealing evidence of this attitude and approach is found in the general ledger of the company. That document shows Mr. Normand's use of the company accounts as a personal resource and bank account before and after separation.
- [95] The transactions recorded represent a pattern of use by the defendant which reflect his use of the funds as his personal bank account. The parties separated in October of 2006. Examining the General Ledger entries starting in November of 2006, I note that in addition to a large number of apparently business related expenditures there are a large number of entries that appear to be purely personal expenditures by Mr. Normand (and charged to his shareholders account). These entries include -
- a) Numerous small charges to Wildwood Foods, some as small as \$9.64;
 - b) Charges related to purchases he apparently made at McDonalds;
 - c) Numerous charges related to purchases he apparently made at: Williams Inn McLeese Lake Station Becker Meats Fraser Inn Hotel Hong Shang Restaurant Boston Pizza Walmart A & W Canada Safeway Red Dog Roadhouse Hollywood Video Chilcotin Hotel Moxie's Restaurant KFC Panago Pizza Comer Station Pub
- [96] These are but a sample of literally hundreds of personal charges apparently run through the corporate chequing account. These items ranged in amounts from items as small as a \$6 video rental to items of something close to a \$1,000 charge to United Furniture.

- [97] The missing and unaccounted for large transfers of funds are but one part of the picture of how Mr. Normand was using the corporate accounts for his own benefit. This use, combined with his failure and refusal to make proper disclosure of documents related to the accounts and missing funds, has made a detailed reconciliation of the accounts and a proper valuation of the company impossible.
- [98] At the least Mr. Normand never accepted his obligations to make disclosure and properly account for his actions; at worst he deliberately obscured those actions and his use and expropriation of family assets.
- [99] On the other side of this picture we have nothing but Mr. Normand's evidence that "sometime in 2007 it all became a vague memory as I began drinking heavily, and not going to the jobsites".
- [100] He went on to testify that although he worked to the end of 2007 much of it is hazy and that he hasn't worked since.
- [101] He acknowledged that he has no medical reason why he has not worked and that he has not sought medical assistance. No medical evidence was presented at this trial.
- [102] Against this somewhat inexplicable picture stands the evidence of the plaintiff and her common law spouse, William Jurer, both of whom testified that they regularly see the defendant picking up supplies and rental equipment and pulling a trailer used in his business several times a month.
- [103] In Mr. Jurer's case he described seeing the defendant loading plywood, lumber and rental equipment at construction supply businesses in Williams Lake.
- [104] The wholly inadequate records provided at the last minute by Mr. Normand's mother are of relatively little assistance. Mr. Komori submits that these documents raise more questions than they resolve but that a number of entries seem to point towards a continuing business operation contrary to Mr. Normand's evidence.
- [105] I agree. I prefer the evidence of the plaintiff and Mr. Jurer where it is in conflict with that of the defendant.
- [106] On the whole of the evidence I am satisfied that Mr. Normand extracted sufficient capital from the company, concealed it and, in all probability, used it as "seed money" to continue his business operations through a different company or proprietorship.
- [107] I specifically reject his evidence that he has not worked since December of 2007. Even if I were wrong in that conclusion there is no explanation whatsoever offered for this voluntary reduction of income.
- [108] In my view, just as he concealed his use of his mother's bank account for use in his financial affairs, it is probable that he has established other concealed accounts from which he continues to operate his financial affairs.

- [109] Such a probability is little more than a modest extension of the pattern proven in this case.
DIVISION OF ASSETS AND LIABILITIES
- [110] The order made by Master Hyslop on June 17, 2008 included as paragraph 1 a declaration that there was no reasonable prospect of reconciliation between the parties. The entered order, however, is in these terms: There is no reasonable prospect of reconciliation between the parties, subject to the Defendant, JOSEPH ALLAIN CONRAD NORMAND (aka Alan NORMAND), filing an affidavit to that effect. [Emphasis added.]
- [111] On July 7, 2009, in his affidavit #2, Mr. Normand provided the only affidavit material I have been able to locate that says in paragraph 1(a) that "There is no possibility of reconciliation between myself and the Plaintiff".
- [112] It would appear that this portion of the affidavit would have satisfied the conditional aspect of the order as of July 7, 2009, nearly 13 months after the order was given.
- [113] The evidence before this court is unclear as to how the learned Master came to make the declaratory order she did on June 17, 2008, but the last portion of that order would appear to make it clear that the order given was conditional and that it was specifically conditional on further evidence being provided.
- [114] The jurisdiction of a Master to make a final order and, in particular, this specific type of declaratory order under the Family Relations Act has been somewhat controversial. The issue has been specifically considered by Melnick J. in *S.M.Z. v. A.Z.*, 2005 BCSC 341, affirmed by the Court of Appeal, 2006 BCCA 132, and again by our Court of Appeal in *Pye v. Pye*, 2006 BCCA 352.
- [115] It is likely that in the present case the order may well be beyond the jurisdiction of a Master, particularly where it seems apparent on the face of the order that the declaratory order was made in the absence of evidence considered necessary for the order to be made.
- [116] In my view, and absent proper evidence concerning what led to the order in this case, it seems unwise to grant declaratory relief conditionally, particularly where the jurisdiction to make the order has been found to require the evidence in question.
- [117] In all of these circumstances, the approach will be that the triggering event in the case at bar is the divorce order I granted, at the conclusion of this trial on February 5, 2010, and the date for valuation in this case should be considered to be the date of trial.
- [118] There is not much in the way of disagreement between the parties about what constitutes family assets. The disagreement between the parties is found in their valuation of those assets and, in particular, in their approach to the division of those assets.

- [119] The 4-plex purchased by the parties in 1996 was occupied by the parties as their family home until their separation in October of 2006. After separation the plaintiff and their son continued to occupy the unit until they eventually left in May of 2007. Throughout this period the income generated from the other three units paid expenses related to the property and was otherwise used for family purposes.
- [120] The 4-plex was clearly a family asset. It was sold on July 31, 2009 with the net proceeds of the sale held in trust. As of March 4, 2010 those proceeds totalled \$130,107.82.
- [121] The defendant also has a Registered Retirement Savings Plan which, as of October 31, 2009, totalled \$98,242.54. The plaintiff has a Retirement Savings Plan with a balance of \$10. Norm's Carpentry Inc.
- [122] The central difficulty in this litigation and, in the division of assets, flows from the way in which the defendant utilized the income and the assets of this jointly owned corporate enterprise.
- [123] Earlier in these reasons I have dealt with the fact that the defendant used their company's bank accounts as his personal resource, charging personal items such as restaurant meals, bar bills and even video rentals to the company account, leaving it to the company accountant to straighten out the matters later.
- [124] All of this was done without the plaintiff's knowledge or express consent.
- [125] The extent to which the defendant ignored the plaintiff's 49% interest in the company reached its peak, however, when having consented to a \$1,500 support order in Provincial court on July 6, 2007, he paid \$750 a month to the plaintiff from the company account. The \$1,500 a month payment he had agreed to (\$654 for child support and \$846 for spousal support) was never paid in any month since the order was made and the \$750 which was paid was, in reality, paid to the extent of 49% with the plaintiff's own money.
- [126] The ultimate irony, however, was reached in the defendant's submissions when he took the position that the payments he did make (from the company account) should be credited as against the plaintiff's interest in the company.
- [127] I am fully aware that monies taken from a corporate entity may be charged to a shareholder's account and credited as such to a single shareholder. What has occurred here, however, is that the defendant has, by his actions and his refusal to make proper disclosure and his repeated deliberate breaches of various court orders, obscured and concealed his use of corporate assets and his continued employment and/or business activities.
- [128] The difficulties he has created are completely of his own making and, if an attempt to value those assets falls into error, it is because of his actions.
- [129] It is impossible to properly assess the value of Norm's Carpentry Inc. at the material time, but doing the best I can and taking into consideration -

- (a) the money taken, firstly the large corporate term deposit (\$109,974.36 as at November 30, 2007, less \$20,000 returned to the company and the \$8,069.28 paid to Kerry Normand's account, yields a value of \$81,905.08);
 - (b) the \$40,000 taken on October 10, 2007;
 - (c) the \$16,505.80 received from his 2005 notice of reassessment; and
 - (d) the anticipated \$16,055.80 refund with respect to his 2007 return; I assess the value of Norm's Carpentry Inc. as at the material date as \$195,000, adding in what seems to be a reasonable sum for tools, equipment and other corporate assets. Rental Proceeds Of 4-Plex
- [130] Based in large part on the records kept by the plaintiff, I assess the rental income received by the defendant from May 2007 to July 2009 at \$7,200. The plaintiff is entitled to one-half of that income. CPP Credits
- [131] These credits will be divided under the legislation with the period of cohabitation being fixed at January 1, 1989 to October 1, 2006.
- [132] Each party will retain the personal assets presently in their possession and will remain responsible for their personal debts.
- [133] In light of the defendant's conduct in this action and with respect to the corporate assets, I have placed a value on the assets of Norm's Carpentry Inc. and reapportion that asset 100% to the defendant. The evidence recited above makes it abundantly clear that further cooperation and disclosure from the defendant is unlikely in the extreme.
- [134] The plaintiff will execute whatever documents are necessary to transfer her interest to the defendant. Those transfers will be prepared and provided at the defendant's expense.
- [135] The proceeds presently in trust that arose from the sale of the former matrimonial home are reapportioned 100% to the plaintiff.
- [136] The defendant's RRSP will also be rolled over and transferred into the plaintiff's name with this asset being reapportioned 100% to the plaintiff.
- [137] The defendant will retain the \$7,200 of rental revenue which will be reapportioned 100% to him.
- [138] The asset division will reflect the following - Plaintiff Defendant Proceeds of former matrimonial home 100% to the plaintiff (as at March 4, 2010) \$130,107.82 Rollover of defendant's RRSP 100% to the plaintiff (October 31, 2009) 98,242.51 Norm's Carpentry Inc. 100% to the defendant \$195,000.00 Rental Income 100% to the defendant (May 2007 to July 2009) 7,200.00 TOTAL \$228,350.13 \$202,200.00
- [139] Ordinarily and in different circumstances I would make a compensation order equalizing this division of assets, but the circumstances here dictate a different order.

- [140] The defendant has submitted that his arrears of support should be cancelled or alternatively that the support he did pay should be allocated half to her and offset in the assessment of the value of the company. Neither approach, in my respectful view, is fair or proper. The defendant's arrears as at January 26, 2010 stood at some \$27,937.76 and the calculation provided by plaintiff's counsel amounted to \$30,134.20 at the end of this trial.
- [141] The discrepancy in the division of assets is approximately \$26,150, of which the defendant would be entitled, on an equal division, to \$13,075.
- [142] In the interest of bringing at least this aspect of the matter to a close the plaintiff will retain the excess, whatever that current balance will be. After crediting that excess to the arrears the remaining arrears will be fixed at zero as at January 31, 2010. SUPPORT
- [143] The plaintiff seeks continued support for both herself and the child of the marriage. Child support is sought based upon the Child Support Guidelines. Spousal support is sought on both compensatory and needs basis.
- [144] Mr. Normand's position on support is best summarized by his statement during submissions that the original order, which he consented to, was totally unfair but he "would pay child maintenance and spousal [support] to the time of division of assets".
- [145] I was unable to ascertain any rational basis on which he articulated this position.
- [146] The primary difficulty in this aspect of the matter is determining the defendant's income. I have touched earlier in these reasons on some aspects of Mr. Normand's evidence and the difficulties it presents. I have also touched in some detail on his credibility, particularly with respect to financial matters.
- [147] The income evidence is as follows - Total Income Net Income 2004 \$43,642.00 \$33,642.00
2005 70,000.00 20,000.00 2006 70,000.00 55,246.00 2007 51,153.86 50,907.86
- [148] Throughout this time period Mr. Normand operated Norm's Carpentry Inc. and, in addition, he made significant contributions to his RRSP's. These were \$10,000 in 2004; \$50,000 in 2005; \$14,754 in 2006; and \$246 in 2007.
- [149] Significantly, his use of corporate funds resulted in significant payments of his personal expenses. As examples of this, the corporate income tax returns and financial statements show "company expenses" for vehicles, office and storage, telephone and utilities, that were applied at least in part to his personal expenses: Vehicle Office Telephone/Utilities Total
2004 \$9,011 \$1,097 \$1,223 \$11,331 2005 9,034 157 1,282 10,473 2006 10,363 154 2,070 12,587
2007 16,614 2,265 4,672 23,551
- [150] Over the same period business income as recorded in the corporate records varied widely from a loss of \$474 in 2004 to income of \$76,144 after tax (May 2005 financial statement[1]) or \$74,301 (T2 Tax Return[2]). In 2006 it dropped to a loss of \$4,175 (2006 Corporate Tax Return[3]) before rising to either \$74,975[4] or \$76,136[5] in 2007.

- [151] Given the overall difficulties with the disclosure of the corporate financial affairs generally and the defendant's use of the company account as, effectively, a personal bank account, it is difficult to properly evaluate the defendant's income.
- [152] This is particularly so in light of his evidence at this trial that: I never in my entire career made \$70,000 with Norm's Carpentry.
- [153] Mr. Normand went on from this position to assert that he never agreed to or consented to the Provincial Court order and, in fact, violently disagreed with it.
- [154] Mr. Normand's evidence in this respect is, in my view, patently false. Mr. Normand's 2005 and 2006 T1 Tax Returns both record employment income of \$70,000. Both of these tax returns were prepared, on their face, by professional tax preparers. In each case they are stamped by his accountant, the first by Malinowsky & Co. and the second by F.L. Pelchat & Co. As well in each case his Notice of Assessment in 2005 and his Notice of Reassessment in 2006 confirmed his line 150 total income at \$70,000.
- [155] If this was not sufficient we also have in evidence Mr. Normand's financial statement sworn on May 31, 2007 and filed in Provincial Court. This sworn financial statement was, at least in part, the underpinning for the consent order made in the Provincial Court on July 6, 2007. In it Mr. Normand swears that his employment income was \$70,000 and on page 5 that his annual income for a child support claim and his annual income for a spousal or parental support claim was \$70,000.
- [156] The real difficulty is the absence of reasonable financial data or indeed any financial data for the defendant since 2008.
- [157] Counsel for the plaintiff has presented a series of calculations that build on speculation in the absence of evidence of the defendant's current means and urges the court to find that he has an income of \$100,000 per annum.
- [158] With respect, at trial this court was presented with virtually no evidence of Mr. Normand's activities or income. Indeed, Mr. Normand's evidence at trial was that 'sometime in 2007 it became a vague memory'. He went on to say that in May 2007 he began drinking heavily and after 2007 he hasn't worked since.
- [159] I have already indicated that I do not accept that evidence and prefer the evidence led by the plaintiff as to the defendant's continued construction activities.
- [160] In the absence of any supporting credible evidence or medical evidence indicating some level of incapacity I can only conclude that the defendant is either continuing to work and concealing it or he has deliberately and voluntarily pulled out of employment to frustrate these proceedings.

- [161] I find on the basis of his 2005 and 2006 income tax returns that he has the capacity to earn at least \$75,000 per annum. His employment data for 2007 and 2008 is not representative as it is impacted by his efforts to conceal his activities, the money and his financial transactions.
- [162] I find that for the purposes of these proceedings the defendant has an annual income of \$75,000. In the event this is incorrect, I would impute that income to him.
- [163] Nothing in this case would take this matter out of the presumptive rule established by s. 3(1) of the Guidelines. Child Support
- [164] The defendant will pay support for the child, Kerry Mark Normand, born June 16, 1995, in the amount of \$701 per month commencing February 1, 2010 and continuing on the first of each and every month thereafter. Spousal Support
- [165] The plaintiff's income since 2005, as revealed in the evidence before the court, is as follows:
Employment Total Net 2005 0.00 \$1,831.91 \$1,831.91 2006 \$5,000.00 10,733.25 10,733.25 2007 22,769.00 22,769.00 22,769.00 2008 21,371.00 24,090.00 24,090.00 2009 23,103.00
- [166] The 2009 earnings are taken from her T4, and less the union dues of \$665.06 represent an employment income of \$22,438.01. This appears to be the high point of her employment earnings and given her overall background it would appear unlikely that this income level will increase significantly.
- [167] The plaintiff sets out expenses of \$38,214.48 per annum. This set of expenses is a somewhat 'bare bones' set of expenses leaving little, if any, room for contingencies.
- [168] In contrast, the defendant sets out expenses of \$44,188.68 per annum. This list of expenses includes \$18,000 of support payments which could only have been incurred if he had paid the support ordered by the Provincial Court. As I observed above I can find no instance when he paid more than \$750 per month.
- [169] It is clear on the evidence, despite the defendant's denials that there was an agreement between the parties that the plaintiff would maintain the home while he took on the role of breadwinner for the family unit.
- [170] This agreement reflected reality for the couple whose relationship began in 1988 or 1989 when the plaintiff's daughter from a previous relationship was 6 years old.
- [171] The family moved to British Columbia from Ontario in 1993, living initially in Victoria before moving to Williams Lake in 1994. The birth of their son took place the following year.
- [172] Despite her obligations with the children and the home, the plaintiff assisted by effectively managing their rental units, often during extended absences of the defendant. She also carried out some minimal jobs in the family business.

- [173] The reality remains that she, at her present age, has achieved a level of employment that is reasonable given her time out of the workforce over the course of a 17 year relationship. She will likely be left in employment of a similar nature.
- [174] As a result of the relationship and its breakdown, Ms. Normand has been left with the anticipated results of such a hiatus; less opportunities for seniority, missed promotions and lack of access to many fringe benefits that often accompany long term employment.
- [175] On a compensatory basis the plaintiff has a need for support which will, in all probability, continue and, in my view, the defendant has an ability to pay.
- [176] The length of this relationship leads to the conclusion that this was a close economic union which should as closely as possible achieve a level of equal standards of living.
- [177] On both compensatory and non-compensatory grounds I find the plaintiff has established her entitlement to spousal support.
- [178] Having calculated the range of support under the Spousal Support Advisory Guidelines, the results under the "With Child Support" formula yield a low of \$574, a mid-range of \$836 and a high of \$1,105 per month.
- [179] At the mid-point the division of Net Disposable Income ("NDI") would leave the defendant with 49.6% while providing the plaintiff and the couples' child with 50.4%.
- [180] In my view, given Mr. Normand's reluctance to honour court orders, his complex manipulation of the financial resources of their jointly owned company and his lack of credibility, the midpoint is the appropriate range.
- [181] The order will be that the defendant pay spousal support of \$836 per month, commencing on February 1, 2010 and on the first of each and every month thereafter. The Guidelines recognize this as an indefinite or unspecified duration, but, in light of the absence of current information, I will direct that a review take place in four years. COSTS
- [182] In light of the way in which this matter came to trial and the difficulties touched on throughout these reasons, the plaintiff is entitled to recover her costs from the defendant. As requested by counsel the scale of those costs may be addressed if necessary. "W.G. Parrett, J."

- [1] Exhibit 1, Tab 8
- [2] Exhibit 2, Tab 23
- [3] Exhibit 2, Tab 22
- [4] Exhibit 2, Tab 21
- [5] Exhibit 1, Tab 8

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