

CANADA / JUDGMENT

Odiorne v. Odiorne

2019 BCSC 1240

COURT

Supreme Court of British Columbia

DECIDED

29 July 2019

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

2019 BCSC 1240 Odiorne v. Odiorne

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Odiorne v. Odiorne,

2019 BCSC 1240

Date: 20190729

Docket: E1752874

Registry: Prince George

Between:

Robin Lee Patricia Odiorne

Claimant

And

Ritchie Leroy Odiorne

Respondent

Before: The Honourable Mr. Justice Skolrood

Reasons for Judgment

Counsel for the Claimant:

K. Parker

Counsel for the Respondent:

D.W. Lindsay

Place and Date of Trial/Hearing:

Prince George, B.C.

June 3-7, 2019

Place and Date of Judgment:

Prince George, B.C.

July 29, 2019

Introduction

- [1] The principal issues in dispute in this family law matter are spousal support sought by the claimant and the division of family property.
- [2] The issues are complicated somewhat by the fact that the parties initially separated in 2006 and signed a self-drafted separation agreement at that time. They had a number of subsequent reconciliations and further separations prior to their final separation in August 2017.
- [3] The parties agree to a divorce and I am satisfied on the evidence that the criteria set out in the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) have been established.

Background

- [4] Rather than dealing with the background facts in a straight chronological fashion, it is useful to review the evidence under a number of relevant subject headings.

The Parties and the History of Their Relationship

- [5] The claimant is currently 56 years old and the respondent is 57. They began living together in 1982 and were married on July 23, 1983.
- [6] They have two children: a daughter Brittany born in 1987 and a son Taryn, who goes by the name Rocky, born in 1993.
- [7] The claimant graduated from high school in 1981 then worked for a few years in different capacities for a local gas company. In 1987 she attended vocational college in Vancouver and obtained a certificate in hair styling. Since about 1988, she has worked primarily as a hair stylist with the exception of various periods of time when she was away from work following the birth of her children and for health reasons.
- [8] The respondent has been continuously employed by West Fraser Forest Company (formerly Weldwood) since he was 17 years old.
- [9] I will return to the parties' employment history below.

- [10] Both parties testified about the numerous times during their 35 year relationship when they separated for varying lengths of time. They agree that these separations followed a certain pattern. The claimant would typically leave the home for a period, then after a time to cool off, the parties would begin spending time together and eventually they would resume cohabitation. The parties disagree about the number of times this occurred and the length of some of the separations.
- [11] The parties initially separated in the first year or so after their marriage, although the respondent says it was shortly after the honeymoon. The claimant said they were apart for about six months whereas the respondent said it was eight months.
- [12] In or about 1991, the claimant moved out with their daughter into an apartment. She said they were gone for about five months. The respondent said this separation lasted for about two years.
- [13] The respondent said there was another separation in 1995 or 1996. The claimant did not recall any such separation. She said that after 1991, the parties were together continuously until 2006.
- [14] In 2006, Rocky sustained a brain injury in a dirt bike accident. He was in the hospital for a number of days and then required extensive rehabilitation and learning support. The claimant took the lead in supporting Rocky through this period.
- [15] The parties agree that they separated in or around May 2006. This separation was serious enough that they executed a Separation Agreement effectively dated May 15, 2006 (the "Separation Agreement"), although they did not sign the Agreement until March 2, 2017. The latter date coincided with the sale of their home, located at 225 Thompson Road ("225 Thompson"). Their signatures were not witnessed by anyone and neither party sought or received any legal advice prior to signing. The Separation Agreement is a standard form agreement that the claimant obtained. The blank sections of the standard form were all completed by the claimant.
- [16] The Separation Agreement contains the following relevant terms:
- a) Recital E states that the parties intend the agreement to be "a final settlement of their respective rights to and in property owned jointly and/or separately";
 - b) Clause 8, under the heading "Support", provides that the respondent will pay the claimant \$500 per month commencing July 1, 2007 and continuing until May 21, 2012. It is common ground between the parties that this was intended as child support for Rocky. May 21, 2012 coincides with Rocky's 19th birthday;
 - c) Clause 10 provides that the respondent will pay for all of Rocky's sports and extra activities;

- d) Clause 11 sets out a table identifying the assets that each party will retain. Clause 11(a), which deals with the respondent's assets, includes the following: "House 1399 Picard Place owned solely by Ritchie Odiorne purchased with his portion of proceeds from separation";
- e) Clause 14(d) provides that "On or about 1 day of March, 2007, the matrimonial home was sold and proceeds were divided to the satisfaction of the Husband and Wife "; and
- f) At clause 16, the parties acknowledge a number of facts relevant to the validity of the Agreement, including that they each have general knowledge of the other's affairs, each has read and understood the Agreement and each signed the agreement as a free agent.

[17] In addition, there is a hand-written addendum attached to the Separation Agreement, in the claimant's writing and signed by both parties, that states:

Divided \$ from sale of house. Hope for reconciliation. Picard house owned by Ritchie solely.

Robin has no legal right to this property.

Negotiation still pending on pension. If divided by the two parties, division to be made 14/06-50%. Buy out may be possible.

- [18] Following the execution of the Separation Agreement, the respondent completed the purchase of a new home located at 1399 Picard Place in Quesnel ("Picard"), which is referred to in the Separation Agreement. I will discuss Picard in greater detail below when dealing with the parties' property.
- [19] The parties subsequently reconciled in 2008 and the claimant moved into Picard with the respondent. They differ however on how long she remained there. The claimant says that she lived at Picard with the respondent for a number of years, except for a brief separation in late 2009 and early 2010. In support of her position, she has produced a number of cell phone bills from 2014 and the first half of 2015 which list her address as Picard.
- [20] The respondent testified that the claimant moved into Picard along with Rocky in 2008 and stayed for about 13 months, after which she moved into her parents' home at 241 Thompson Road ("241 Thompson"). They separated again in 2010 then reconciled and he moved into 241 Thompson with the claimant. That did not work out so after 6 months he moved back to Picard and lived there until 2013 when he again moved to 241 Thompson. According to the respondent, there was another subsequent separation and he moved back to Picard until 2015.
- [21] The parties then reconciled again and the respondent sold Picard in August 2015 and moved back in with the claimant at 241 Thompson.
- [22] Both parties agree that they separated for a final time in August or September 2017. While the claimant said she thought it was September, her notice of family claim alleges that the parties have been living separate and apart since August 31, 2017.

- [23] Following separation, the respondent paid no spousal support until an interim Order was granted by Mr. Justice Schultes dated October 5, 2018 (the "Interim Order") which required the respondent to pay support in the amount of \$3,000 per month effective July 1, 2018. The retroactive date of July 1 resulted in the respondent owing arrears of spousal support of \$9,000. According to the respondent, as of the date of trial, he had paid \$2,200, leaving a balance owing of \$6,800.
- [24] It is also useful under this heading to describe one other set of circumstances that ultimately figures in the principal property issue in dispute.
- [25] In February 2004, a surgeon, Dr. Casses, performed a laparoscopic cholecystectomy and a hysterectomy on the claimant. During the surgery, the claimant's bladder was lacerated and another surgeon was called in to repair the bladder. The claimant said that it took her 6-8 months to recover and that she still experiences bladder problems.
- [26] In August 2009, a CBC reporter interviewed the claimant and a number of other former patients of Dr. Casses about problems they had encountered following surgery by him. That interview was subsequently broadcast in September 2009. Dr. Casses then sued the individual patients as well as the CBC for defamation. A trial was ultimately held between October 2014 and February 2015 and, on November 24, 2015, Dr. Casses' claims against all defendant were dismissed.
- [27] On May 25, 2016, the Court made an order for special costs against Dr. Casses in respect of his claim against the claimant.
- [28] Initially, when the action was first brought against the claimant, she believed she had no insurance coverage and she and the respondent borrowed \$5,000 from the respondent's parents to retain a lawyer. The respondent later learned that other individual defendants were having their defence costs covered through their home insurance. The respondent said that he tried several times to get his home insurer to provide coverage but it refused. Ultimately however, while the trial was ongoing, the insurer changed its position and agreed to provide coverage. As a result, the claimant was not required to pay legal fees. The special costs that were ultimately awarded went directly to the insurer as indemnity for its costs.

The Parties' Property

- [29] When the parties began living together in 1982, they rented an apartment. After about four years, they purchased a house on Moffet Street in Quesnel. They subsequently sold that house and in 1988, they purchased the respondent's parents' home on Lewis Drive. They sold that house in November of 1992. They then bought a house on Dixon Street where they lived for a few years before selling it and then buying 225 Thompson in April 1996. They purchased that house from the claimant's parents and both parties were on title.

- [30] The parties kept 225 Thompson until their separation in 2006. According to the respondent, when they separated, the claimant moved in with her parents at 241 Thompson and he remained at 225 Thompson until the house could be sold. That occurred in March 2007. This again accounts for the fact that the Separation Agreement refers to a separation date of May 15, 2006, but the Agreement was not signed until March 2017.
- [31] As reflected in the Separation Agreement, the parties split the sales proceeds from 225 Thompson equally, each receiving about \$54,000. The respondent then purchased Picard. Both parties' names are listed as purchasers on the contract of purchase and sale for Picard but ultimately, only the respondent's name was on title. The respondent said that he asked the claimant to help him with the contract which is why her name appeared there, but it was always intended that he was buying Picard himself.
- [32] The respondent said that he used his share of the sales proceeds from 225 Thompson to purchase Picard, although he also required mortgage financing. Of note, the purchaser's statement of adjustments for the purchase of that property does not indicate any payment by the respondent beyond a \$3,000 deposit. The respondent said he was unable to locate any documentation verifying his use of the 225 Thompson proceeds.
- [33] The respondent again sold Picard in August 2015 and moved into 241 Thompson with the claimant. In or about September 2015, an agreement was reached whereby the claimant's mother, Juanita Leblanc, agreed to sell 241 Thompson to her daughter Rebecca, the claimant's sister, and her husband Robert Alexander, and to the respondent.
- [34] The basic elements of this transaction are not in dispute. Prior to September 2015, Juanita Leblanc had owned 241 Thompson for many years. She had lived in the home with her husband up until his death in 2012. The house had been built when her parents were still alive and it had been configured to accommodate two families. While not zoned as a duplex, there were two separate suites in the house which were referred to during the trial as "Side A" and "Side B".
- [35] After the death of Mr. Leblanc in 2012, Rebecca and Robert relocated to Quesnel from Surrey, B.C. to be closer to Juanita. They moved into Side A with her. Side A is the larger of the two suites. It has two bedrooms upstairs, and another downstairs along with a rumpus room.
- [36] The claimant lived in Side B during those periods of time when she was not living with the respondent at Picard. Again, the parties differ on when and for how long the claimant was at the different residences.
- [37] In or around September 2015, the claimant and the respondent reconciled again and the respondent moved into Side B with the claimant. It was around this time that the agreement for the sale of 241 Thompson was reached.
- [38] The basic transaction was as follows:

- a) The sale price was \$300,000;
- b) The purchasers were the respondent, Rebecca and Robert;
- c) As reflected in the title certificate, the respondent purchased an undivided 50/100 interest, Rebecca and Robert purchased an undivided 49/100 and Juanita continued to hold an undivided 1/100 interest together with Rebecca;
- d) Juanita as the vendor provided each of the respondent and Rebecca and Robert a gift of \$50,000 in equity, which resulted in each of them paying \$100,000 towards the purchase price. (There was a subsequent adjustment to reflect the fact that the Side B air conditioner was not working so, in fact, the respondent paid \$97,300); and
- e) The purchasers-the respondent, Rebecca and Robert-agreed to a right of first refusal. That agreement was reflected in a second contract that essentially provided that if one of the parties wanted out of the property, the other party had the first option to purchase that party's interest.

[39] While these details are not in dispute, the circumstances leading to the transaction and the manner in which it was structured are.

[40] The claimant said that her mother, Juanita, had proposed that her two daughters, Rebecca and the claimant, buy the house and that Juanita would continue to live there. She said that she and the respondent agreed to buy half, but they were concerned about her potential liability in connection with the Casses lawsuit, so they decided that her name would not go on title.

[41] Juanita LeBlanc testified that she agreed to sell 241 Thompson to the two couples: the claimant and respondent and Rebecca and Robert. She said that she gifted each couple \$50,000 towards the purchase price. Juanita said that the documents show the respondent buying the property, and receiving the \$50,000 gift, in his name only because they were concerned about the claimant's possible liability in the Casses lawsuit. She said that the respondent was particularly concerned about this.

[42] Juanita said that she had no intention to gift \$50,000 to the respondent alone and that she gave them equity in the property on the belief that they were a couple and would continue to be a couple "until their old age". She considered the \$50,000 gift to each daughter as part of their inheritance.

[43] Once the sales transaction completed, Juanita said she continued, and continues to this day, to pay the insurance and taxes on the property.

- [44] Rebecca LeBlanc gave similar evidence about the transaction. She said that when Juanita initially proposed selling the house, the claimant and respondent did not want to participate but the two couples ultimately decided to buy the house together. Juanita said she would give each couple \$50,000 as part of their inheritance. According to Rebecca, that figure was arrived at because each of their three brothers had received about \$50,000 in cash or benefits from the parents previously.
- [45] Rebecca also testified that the claimant was not put on title due to concerns about the Casses lawsuit. With respect to the right of first refusal, Rebecca said that the two couples discussed this and agreed that there should be some mechanism so that one party could not sell half the house out from under the other.
- [46] The respondent described the purchase of the interest in 241 Thompson differently. He said that he and Juanita always had a good relationship. In September 2015, he knew that she was having financial difficulties but that she wanted to stay in her house. He said that she knew he could come up with \$100,000 so it was proposed that he buy a half interest. He said that the \$50,000 was a gift to him alone and that there was never any discussion of the claimant coming on title. He said that he bought the property in his name only to protect himself given the history of their relationship. He similarly said that it was he who proposed the right of first refusal because he wanted an out if the relationship soured again.
- [47] The respondent denied that the claimant was left off title due to concerns about the Casses lawsuit. He said that while his home insurer initially denied coverage, ultimately he succeeded in convincing it to provide coverage for the claimant's defence. He said that the insurer advised them of this during the trial in early 2015 so by September 2015, when the agreement was executed for 241 Thompson, there was no issue about possible personal liability for the claimant.
- [48] Following their separation in August 2017, the claimant moved into Side A of 241 Thompson with her sister and mother and the respondent continued to live in Side B. In April of 2019, the respondent exercised the right of first refusal and, as a result, Rebecca and Robert purchased his interest in 241 Thompson for \$198,333.00. The net proceeds after expenses were \$194,333.12. The respondent received half of that, \$97,166.56, and the remainder is being held in trust pending the outcome of the litigation.
- [49] There are a number of other assets in issue that I will return to when dealing with the property claims.

The Parties' Employment/Incomes

- [50] The claimant began working as a hair stylist in or about 1988. Initially she worked at a local hair salon and then in the mid 1990's, her mother purchased the salon and the claimant took on the role of manager. That salon closed in around 2001 or 2002.

- [51] The claimant said she then stayed home for a period with the children, although she picked up some periodic work as a stylist. In 2004, she had surgery which kept her off work, then in 2006/2007 she worked at a daycare and for a community living agency.
- [52] In or about 2010, she began working as a hair stylist at the Maple Park Barber Shop in Quesnel. She worked on a chair rental basis, meaning that she paid the owner a certain amount for use of a stylist chair and then kept the balance of what she earned.
- [53] If the fall of 2010 and the spring of 2011, she accompanied Rocky when he attended barber school in Burnaby. The parties agreed that this training would assist in enabling Rocky to find and maintain stable employment. When she returned, she worked for a period of time at another salon in Quesnel.
- [54] In May 2014, the claimant purchased Maple Park Barber Shop for \$30,000. I will deal with the circumstances surrounding the purchase in greater detail when considering the property claims.
- [55] The claimant's income, which has generally been in the form of self-employment income either as a contractor at other salons or as the owner/operator of Maple Park Barber Shop, is as follows:

2008 \$7,179

2009 \$5,303

2010 \$8,225

2011 0

2012 \$3,065

2013 \$7,610

2014 \$6,678

2015 \$10,781

2016 \$14,885

2017 \$8,168

2018 \$8,421

- [56] As noted, the respondent has been continuously employed by West Fraser at its Quesnel plywood plant since he was a teenager. He started as a labourer and then in 2005 he became a charge hand. In 1997, he was promoted to supervisor. In 2005 he became a general supervisor, meaning he was in charge on one full shift. After about 10 years in that position, he returned to being a department foreman in the pressing department, which is his preferred area.

[57] Through his employment, the respondent has extended health benefits, life insurance and a pension.

[58] The respondent's employment has provided him with a steady income for many years. His line 150 income dating back to the parties' separation in 2006, through until 2018 is as follows:

2006 \$85,996

2007 \$82,783

2008 \$83,134

2009 \$87,956

2010 \$88,530

2011 \$87,350

2012 \$90,742

2013 \$96,869

2014 \$98,688

2015 \$102,173

2016 \$99,714

2017 \$107,234

2018 \$108,812

Issues

[59] The issues to be decided are:

- a) The validity and effect of the Separation Agreement;
- b) Spousal support for the claimant;
- c) Division of proceeds from the sale of 241 Thompson;
- d) Division of other family assets;
- e) Division of the respondent's pension and CPP; and
- f) Division of family debts.

Discussion

Validity and Effect of the Separation Agreement

- [60] The claimant submits that the Separation Agreement should be disregarded for the purpose of considering both spousal support and division of family property. She submits that at the time the Separation Agreement was signed, she was financially vulnerable and did not fully understand her rights.
- [61] The respondent submits that the Separation Agreement reflected the parties' agreement at the time it was executed. They had separated on a number of previous occasions but this was the first time that they went to the length of documenting terms. The respondent submits further that there has been no application by the claimant to set aside the Separation Agreement and that, in any event, any such application is out of time.
- [62] Section 93 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides for the setting aside of an agreement respecting division of family property and debt. Section 93(3) states:
- (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:
- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.
- [63] Section 164(3) sets out a similar provision for setting aside an agreement respecting spousal support. Subsection (5) of both sections provides that even if the criteria in subsection (3) are not met, the Court has a residual discretion to set aside an agreement that is "significantly unfair".
- [64] Section 198(3) provides that an application to set aside or replace an agreement concerning property or spousal support must be brought "no later than 2 years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application".
- [65] I will deal first with the respondent's point that there is no application to set aside the Separation Agreement. No such relief is sought in the notice of family claim filed on December 14, 2017. Indeed, the notice of family claim indicates that there is no prior agreement, court order or court proceeding relating to any of the claims made in the notice.

[66] The claimant's trial brief filed December 21, 2018, does include the following under the heading "Issue in Dispute":

Amendment of Pleadings - setting aside May 15, 2006 Separation Agreement

The Claimant seeks an Order setting aside all or portions of the May 15, 2006 Separation Agreement

[67] No application to amend the pleadings was made at trial.

[68] The respondent cites *Best v. Best*, 2009 BCSC 928 where Mr. Justice Joyce considered s. 65 of the former Family Relations Act, R.S.B.C. 1996, c. 128 which permitted reapportionment of a spouse's pension "on application". Justice Joyce held that the failure to plead s. 65 was fatal to a reapportionment application (at para. 14). See also: *L.S.S. v. R.G.S.*, 2004 BCSC 872 at paras. 41-43.

[69] I agree with the respondent that absent a plea in the notice of family claim seeking to rely on ss. 93(3) and 164(3) of the FLA, it is not now open to the claimant to seek to have the Separation Agreement set aside.

[70] I would add that, in any event, the trial took place in June 2019, some 12 years after the Separation Agreement was signed. The claimant has not provided any evidence that would support the postponement of the two year limitation period in s. 198(3) for bringing an application to set aside the Agreement.

[71] I therefore find the Separation Agreement to be binding on the parties.

[72] What then is the effect of the Separation Agreement in respect of the matters in issue in this trial?

[73] With respect to the property issues, s.83(2) of the FLA provides:

Nothing in this Part affects a division of property under an agreement or order in a circumstance where, after the agreement or order was made, spouses live together and then separate again.

[74] Thus the fact that the parties reconciled after the execution of the Separation Agreement does not affect the division of property set out therein.

[75] The Separation Agreement is relevant to the determination of the length of the parties' relationship in the context of considering the claimant's application for spousal support. On this point, the respondent cites *Berezowski v. Keutzer*, [1995] B.C.J. No. 518 (B.C.S.C.) [Berezowski], where Mr. Justice Curtis similarly considered the impact of a resumption of a common law relationship following the execution of a separation agreement. At para. 12, Justice Curtis referred to the decision of Mr. Justice Dohm, as he then was, in *Smart v. Weiwor*, (1987) 7 R.F.L. (3d) 172 at 175 [Smart]:

In the instant case the agreement is as complete as one will see and, in my view, it accurately and fairly reflects the view of the parties in August 1984, namely, that they should separate from one another and live separate lives on a permanent basis. I have no doubt that that agreement was considered by both parties as being final and binding and having the effect of dissolving their relationship. When the parties recommenced living with one another in April 1985, I do not think that this so revised the agreement of the former relationship. In my view, a second relationship was created which in no way depended upon the former one. There was, in effect, no life line between the two relationships. The first one came to an end when the plaintiff and defendant executed the separation agreement. The second one commenced in April 1995.

- [76] Justice Curtis came to a similar conclusion in *Berezowski* and found that the separation agreement there represented the parties' mutual intention at that time to put a permanent end to their relationship and the subsequent resumption of co-habitation did not change that (at para. 13).
- [77] In my view, the observations in both *Smart* and *Berezowski* are apt in the circumstances of this case. While the parties had previously separated a number of times, and then reconciled, they made the decision in May 2006 to prepare the Separation Agreement, which again was then executed in March of 2007 following the sale of 225 Thompson. I am satisfied that the decision to prepare and sign the Separation Agreement reflected their mutual intention that the relationship was over.
- [78] As was also the case in *Smart* and *Berezowski*, I am satisfied that when the parties reconciled again in 2008, that signalled the beginning of a new or second relationship and, as such, the length of the relationship for the purposes of the trial and the matters currently in issue runs from 2008.
- [79] As discussed above in my summary of the evidence, there were a number of subsequent separations although the parties disagree on how many and on their duration. In my view, despite living apart at various times, there was no intention by either party to sever the marital relationship prior to the acknowledged final separation in August 2017.
- [80] There are a number of indicia that support this conclusion. The claimant remained on the respondent's extended health care plan through until the end of 2018. The claimant introduced into evidence numerous photographs of the parties together and with other family members throughout the years since 2008, including a photograph of them together in Mexico a few years ago as well as on other trips taken together. There is also a photograph of a ring that the respondent gave the claimant as a present about four years ago. Further, there is no evidence that either party had other romantic relationships during the times when they were not living together.
- [81] Also of note, both parties listed their marital status on their annual income tax returns as "married" up until the 2017 tax year, when both indicated that they were "separated".

[82] Finally, the circumstances surrounding the sale of 241 Thompson support a finding that the parties remained a couple. As I will return to below, I accept Juanita Leblanc's evidence that she never would have sold a share in 241 Thompson to the respondent, and gifted him \$50,000 towards the purchase, had she not been satisfied that the parties continued to be a couple in a committed relationship.

Spousal Support

[83] The Separation Agreement again provided for no spousal support for the claimant. However, as that Agreement was intended to bring final resolution to the parties' former relationship, it does not limit the claimant's right to seek spousal support arising out of the "new" relationship that commenced in 2008.

[84] Since effective July 1, 2018, the respondent has been paying spousal support in the amount of \$3,000 per month pursuant to the Interim Order. While not apparent on the face of the Order, counsel advised that the support amount was set at the low end of the range under the Spousal Support Advisory Guidelines [SSAG] on the basis that the respondent would continue to make payments on the loan used to purchase Maple Hill Barber Shop.

[85] The onus is on the claimant to establish entitlement to spousal support. In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at 431, Madam Justice McLachlin (as she then was) discussed the three conceptual grounds for spousal support:

the law recognizes three conceptual grounds for entitlement to spousal support: (1) compensatory; (2) contractual; and (3) non-compensatory. These three bases of support flow from the controlling statutory provisions and the relevant case law, and are more broadly animated by differing philosophies and theories of marriage and marital breakdown.

[Emphasis in original.]

[86] The operation of these conceptual grounds was further explained by our Court of Appeal in *Chutter v. Chutter*, 2008 BCCA 507:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (*Bracklow*, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent

union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[Emphasis in original.]

- [87] The claimant submits that she is entitled to spousal support on both compensatory and non-compensatory grounds. In terms of compensatory grounds, she submits that she was the primary care giver for the children for much of their early lives and that she was particularly involved in caring for Rocky after his accident. For example, she stayed with him during his time at barber school in Burnaby. She has also been primarily responsible for managing the Maple Hill Barber Shop which was purchased in part to ensure that Rocky would have employment. In terms of non-compensatory grounds, the claimant points to the significant disparity in the parties' post-separation incomes and the difference in their respective lifestyles.
- [88] The respondent disputes the claimant's entitlement, in large part on the basis that she is under-employed and has taken no steps to increase her income or to increase the revenues earned by Maple Hill Barber Shop, which the respondent submits she runs in an inefficient and non-economic manner.
- [89] I am satisfied that the claimant is entitled to spousal support. While both parties were involved with the children in the early years, I accept that the claimant took the lead in caring for Rocky after his accident and in ensuring that his needs were met, for example in helping to shepherd him through barber school. I am further satisfied that during the marriage, the claimant assumed the role of "secondary earner" to the respondent who had stable and highly remunerative employment.
- [90] I am also satisfied that since separation, there has been and continues to be a significant disparity in income and lifestyle between the parties which warrants an award of spousal support.
- [91] The respondent's income for the purposes of calculating support is straight forward. His line 150 income from 2018 is \$108,812 and I find that is the appropriate income figure to use for him.
- [92] The appropriate income for the claimant is less clear. As set out above, her line 150 income for 2017 and 2018 was just over \$8,000, all of which was earned through Maple Hill Barber Shop. However, the respondent submits that the claimant is not maximizing her income from the business. He notes that she only works part time and that despite her evidence that she is unable to work more due to various medical issues, there is no medical evidence to substantiate her claim. He notes as well that the claimant collects no chair rent from Rocky and she has taken no steps to increase revenues, either by opening for more hours or

relocating to a better location.

- [93] The respondent submits that income should be imputed to the claimant of no less than \$30,000 per year.
- [94] Section 19 of the Federal Child Support Guidelines, SOR/97-175, provides that income may be imputed to a spouse in certain circumstances. This section is also used for the purpose of imputing income for spousal support purposes. Section 19 (1)(a) provides:
- 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse.
- [95] In *Wilson v. Wilson*, 2016 BCSC 1315, Mr. Justice Armstrong held that the court must consider the parties' prior incomes, their ages, skills, training and health to determine if their reported incomes should be the incomes used to determine spousal support (at para. 160).
- [96] Here, the claimant's income over the past five years has ranged between a low of approximately \$6,700 in 2014 to a high of about \$14,800 in 2016. Her 2017 and 2018 incomes of about \$8,000 is thus consistent with her past earnings.
- [97] It should also be noted that one of the reasons for buying Maple Hill Barber Shop was to ensure that Rocky would have a job. The respondent agreed to this. That said, he raises some valid points about how the claimant operates the business. While his proposal to impute income to the claimant of \$30,000 is unrealistic and out of keeping with past experience, she has shown herself capable of generating at least \$14,000 in annual income. As that was in 2014, it is not unreasonable to assume that she is currently capable of earning at least \$15,000 from the business. I therefore impute income to her of \$15,000.
- [98] Using these income figures and a relationship length of 9 years, taking account of the 2006 separation, results in a range under the SSAG of \$1,046 at the low end, \$1,221 in the mid-range and \$1,395 at the high end. I consider this to be an appropriate case in which to award the high end given that, even using that figure, there will continue to be a significant income gap between the parties.
- [99] Effective August 1, 2019, the respondent will therefore pay the claimant spousal support in the amount of \$1,395 per month for an indefinite period. The respondent will continue to be liable for any arrears owing under the Interim Order.

Proceeds From the Sale of 241 Thompson

- [100] As set out in para. 48 above, the respondent sold his interest in 241 Thompson to Rebecca and Robert in April 2019 for approximately \$198,000. He received half of the net proceeds and the other half, approximately \$97,000, remains in trust.
- [101] The principal issue in dispute between the parties concerns Juanita's gift of \$50,000 towards the respondent's purchase of 241 Thompson. He submits that it was a gift to him alone. The claimant, supported by Juanita and Rebecca, submits that the gift was to the claimant and respondent together.
- [102] I agree with the claimant. I accept her evidence that the intention was for her and the respondent to purchase the interest in 241 Thompson together and that the gift of \$50,000 from Juanita was for this purpose. I also accept the claimant's evidence that she was left off title because of concerns about potential liability in the Casses litigation.
- [103] On this point, the respondent submits that he and the claimant learned during the trial of the Casses litigation that the claimant had insurance coverage. That was well before the September 2015 purchase of 241 Thompson thus, at the time of the transaction, there was in fact no liability issue.
- [104] In fact, the decision in the Casses litigation was not released until November 2015. Prior to that time, I accept that there was uncertainty about the claimant's position, even with the insurance having been resolved. Further, no evidence was led about the scope of the insurance, for example, whether it would have covered all of any damages and costs awarded against the claimant in the event she was found liable. Again therefore, I accept the claimant's position that the Casses litigation was a factor that led her and the respondent to agree to keep the claimant off title.
- [105] I would add that the respondent's evidence that Juanita made the \$50,000 gift solely to him without any discussion of the claimant being involved is devoid of any air of reality.
- [106] In her closing submission, the claimant submitted that the \$50,000 gift from Juanita was made on the expectation that the claimant and respondent would remain a couple. Since that did not occur, she submits that the gift amount should be returned to Juanita.
- [107] I do not accept this submission. On Juanita's own evidence, the \$50,000 gift was intended for the claimant and the respondent together and it is therefore properly characterized as family property.
- [108] The claimant also took issue with the respondent's claim to the \$97,300 he paid towards 241 Thompson as excluded property. She submits in particular that the respondent has not proven what money he originally used to purchase Picard and then subsequently what money from Picard went to purchase the interest in 241 Thompson.

[109] With respect to the purchase of Picard, it was acknowledged by the claimant by way of a notice to admit issued by the respondent that his share of the sale proceeds from 225 Thomson, which was approximately \$54,000, went toward the purchase of Picard. It is not now open to the claimant to resile from that admission. The respondent's evidence is that when he sold Picard, he used the sale proceeds, combined with the \$50,000 gift from Juanita, to buy the interest in 241 Thompson. An order to pay dated August 28, 2015 confirms that the respondent received net proceeds from the sale of Picard of just over \$95,000 and I accept his evidence that he used that money to put towards the purchase of 241 Thompson.

[110] It is also important to note that the claimant expressly agreed in the Separation Agreement that she had no interest in Picard and that it was "owned by Ritchie solely".

[111] I am therefore satisfied that the \$97,300 that the respondent put towards the purchase of 241 Thompson is excluded property pursuant to ss. 85(1)(a) and (g) of the FLA which provide:

85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

[112] In particular, I am satisfied that the \$97,300 paid by the respondent towards 241 Thompson was derived from the disposition of excluded property. I am further satisfied that there was no intention on the part of the respondent to gift that money to the claimant so as to effectively convert it to family property. In this regard, the case is distinguishable from other cases in which funds or property that were otherwise excluded were used to purchase new property in the name of the other spouse (see for example: V.J.F. v. S.K.W., 2016 BCCA 186).

[113] On this analysis, the sales proceeds from 241 Thompson are to be divided as follows:

Net sales proceeds: \$194,333.12

Less excluded amount \$97,300.00

Balance to be divided \$97,033.12

50% to each party \$48,516.56

Other Family Assets

[114] Leaving aside the respondent's employment pension, which I will return to, there are a number of smaller assets to be divided. None have been appraised but I accept the respondent's approach of taking the average of the two values proposed by the parties. Where the parties agree on the disposition of the asset, I have followed that agreement. Where the parties disagree, I order that the asset be sold and the proceeds divided equally subject to the parties agreeing otherwise.

[115] The following table sets out the disposition:

Asset	Average Value	Disposition
1996 Boat/Trailer	\$4,750	To be sold
2011 Dodge truck	\$14,400	To be sold
2009 Tiberon	\$7,000	Claimant
2000 Motorhome	\$22,000	Respondent
2007 R1 Motorcycle	\$3,750	Respondent

[116] Based on the above, the boat/trailer and the Dodge truck will be sold and the proceeds divided equally. The parties will agree on how to effect the sale, failing which they can apply for directions. With respect to the Tiberon, the motorcycle and the motorhome, the respondent will pay the claimant \$9,375 as an equalization payment.

[117] I have not included in this list the Maple Park Barber Shop. The respondent agrees that the claimant can keep the business and he attributes no value to it. I have also not included a side-by-side all terrain vehicle that the parties' daughter essentially handed over to them or an FZ1 motorcycle. The side-by-side remains the property of the daughter and the motorcycle is excluded under the Separation Agreement. The parties agree that each will retain any household items currently in their respective possession.

[118] I turn now to the respondent's employment pension. He is a member of two pension plans: the West Fraser Mills Ltd. Salaried & Executive Pension Plan and the IWA-forest industry Pension & LTD Plan. The two plans reflect the fact that the respondent has at different times been a salaried management employee and a union employee. The parties will also be entitled to Canada Pension Plan ("CPP") benefits upon retirement.

[119] The claimant seeks an equal division of both the respondent's employment pension and of CPP benefits for the entire period of January 1, 1983 to December 31, 2017. The respondent submits that the pensions should be only be equally divided for the period of January 1, 1983 to May 2006. In support of his position, the respondent relies on the addendum to the Separation Agreement which states:

Negotiation still pending on pension. If divided by the two parties, division to be made May 14/06-50%

[120] I accept that the intention as reflected in the Separation Agreement was that the respondent's pension would be divided as of May 2006. However, the parties resumed their relationship in 2008 and I have found that there was no subsequent break in the marital relationship. As such, any pension benefits that accrued between the date of reconciliation and the final separation on August 31, 2017 shall also be divided equally.

Debts

[121] The respondent produced a credit card statement (Account #4520050027552510) dated September 18, 2017. While the credit card is in his name only, I accept his evidence that the claimant had a second card and that this account was used for joint family purchases. The balance of \$3,794.47 will therefore be divided equally.

[122] The principal debt in issue is the outstanding bank loan for the purchase of the Maple Hill Barber Shop. According to the respondent, whose evidence I accept on this point, the \$30,000 purchase price for the barber shop was initially financed through a line of credit. However, when the respondent discovered that the line of credit was not being paid down, the parties converted it to a loan effective January 2017 (Account #222624). Both parties made payments on the loan until June 2018. Since that time, only the respondent has been making monthly payments of \$600.00.

[123] The parties agree that the balance owing will be divided equally, however, I agree with the respondent that he is entitled to credit for the payments that he has made since June of 2018.

Conclusion

[124] In summary, I make the following orders:

- a) The parties are divorced with the order to take effect 31 days from the date of this order;
- b) Effective August 1, 2019, the respondent will pay the claimant spousal support in the amount of \$1,395 per month for an indefinite period. The respondent will continue to be liable for any arrears owing under the Interim Order;
- c) The claimant is entitled to \$48,516.56 as her share of the proceeds from the sale of the respondent's interest in 241 Thompson;
- d) The 1996 boat/trailer and the 2011 Dodge truck will be sold with the proceeds of sale to be divided equally between the parties. The parties will agree on how to effect the sale failing which they may apply for directions;

- e) The claimant will keep the 2009 Tiberon and the respondent will keep the 2000 motorhome and the 2007 R1 motorcycle. The respondent will pay the claimant the sum of \$9,375 as an equalization payment for these assets;
- f) The parties will each retain the household items currently in their possession;
- g) Pension benefits accrued under the respondent's employment pensions and under CPP will be divided equally for the periods of January 1, 1983 to May 15, 2006 and 2008 to August 31, 2017;
- h) Each party will be responsible for one half of \$3,794.47, the amount owing on Account #4520050027552510 as of September 18, 2017; and
- i) The parties will each be responsible for one half of the outstanding balance owing on the loan (Account #222624) subject to the respondent receiving credit for amounts he has solely paid on the loan since June 2018.

[125] Success has largely been divided and accordingly, I am inclined to order that the parties bear their own costs. However, if the parties wish to make submissions on costs, they may make arrangements to do so.

"Skolrood J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/12/2019BCSC1240.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/odiorne-v-odiorne-2019>

Prepared on 27 October 2026 · Esheria