
CANADA / JUDGMENT

P.J.L. v. C.A.L.

2020 BCSC 563

COURT

Supreme Court of British Columbia

DECIDED

9 April 2020

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2020 BCSC 563 P.J.L. v. C.A.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.J.L. v. C.A.L.,

2020 BCSC 563

Date: 20200409

Docket: E46483

Registry: New Westminster

Between:

P.J.L.

Claimant

And

C.A.L.

Respondent

- and -

Docket: H195073

Registry: New Westminster

Between:

Westminster Savings Credit Union

Petitioner

And

C.A.L.

P.J.B. also known as P.J.L.

Bank of Montreal

Vancouver City Savings Credit Union

Respondents

Corrected Judgment: The cover page of the judgment was corrected on April 15, 2020.

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

The Claimant in Action E46483 and Respondent in Action H1985073, appearing in person:

P.J.L.

Counsel for C.A.L.:

F. Arbabi

Counsel for the Director of Maintenance Enforcement:

J. Anderson

No other appearances

Place and Date of Hearing:

New Westminster, B.C.

October 3, 2019

Further Submissions Received:

October 17, 2019

Place and Date of Judgment:

New Westminster, B.C.

April 9, 2020

I. Introduction

- [1] There are applications in each of these related cases. The matter in which Westminster Savings Credit Union (WSCU) is the petitioner is a foreclosure proceeding that has largely concluded. A sum of money (about \$39,000) remains in court following a court-ordered sale of property. The other matter, P.J.L. v. C.A.L., is a family case.

- [2] In the WSCU case, the Director of Maintenance Enforcement (the "Director") seeks an order that certain monies in court be paid out to the Director.
- [3] In the family case, Mr. L. seeks orders: (1) terminating both his child support and spousal support obligations; (2) dividing the property of the parties; and (3) paying certain sums of money, or attributing certain payments already made, in order to effect property division such that all arrears of support are satisfied.

II. Facts

- [4] Ms. L. and Mr. L. began cohabiting in October 2007 and they married on July 2, 2011. The separation date is disputed; Mr. L. says they separated on September 26, 2012, while Ms. L. says "permanent separation" occurred in May 2013. At the time of the hearing Ms. L. was 45 years old and Mr. L. was 50. The parties are not divorced, though each of them claims a divorce in their pleadings.
- [5] Each of the parties already had children from prior relationships. At the time co-habitation began, two of Mr. L.'s three sons (twins who were then 15 years old) and Ms. L.'s then six year old daughter lived in the household. Mr. L. had an existing plumbing business and Ms. L. worked with him in that business. During their relationship they acquired a property in Mission, British Columbia (the "Property"), which was registered in their joint names.
- [6] On August 9, 2013, Mr. L. was ordered to pay interim child support of \$484 and interim spousal support of \$1,800 each month, commencing July 1, 2013. The support amounts were based on a Guidelines income of \$84,000 per year. In November 2013, the Director registered that support order as a charge against the title to the Property.
- [7] Mr. L. made few voluntary payments, and there were many enforcement proceedings and other steps taken by the Family Maintenance Enforcement Program (FMEP).
- [8] WSCU commenced foreclosure proceedings involving the Property on October 11, 2017 and ultimately the Property was sold by court order. After payment of certain debts, the balance of the sale proceeds (\$145,822.13) was paid into Court on December 12, 2018.
- [9] The arrears of support, including interest and default fees, totalled \$106,062.08 as of January 9, 2019.
- [10] In 2019 Mr. L. learned that Ms. L.'s child (the child who was the subject of the child support order) was now living with her biological father. His further inquiries revealed that the child had been living with her biological father for some time and that Ms. L. herself had asked the FMEP to discontinue collection of child support effective December 31, 2018. An affidavit from T.M.B., the child's biological father, confirmed that the child came to live with him in December 2018.

- [11] On March 28, 2019, Mr. Justice Milman ordered that \$83,501.37 be paid to the Director from the monies held in Court. This sum was applied to Mr. L.'s outstanding support arrears. As of August 22, 2019, the arrears of support (including interest and default fees) totalled \$30,841.83.
- [12] As for the monies in court, a Court Services printout shows that there were two payments made from the original sum of \$145,822.13: (1) \$24,426.03, which was paid to Vancouver City Savings Credit Union (VCSCU) on April 3, 2019; and (2) \$83,501.37, which was paid to the Director on April 17, 2019. The balance as of November 27, 2019 was \$39,093.07. The latter sum includes \$1,198.34 in accrued interest.

III. The Hearing

- [13] Ms. L., who as I recall appeared in the company of a support person, made submissions that were not entirely coherent, which gave rise to concerns on my part about her capacity to deal with and respond to legal proceedings. For example, at frequent intervals she uttered the words "all rights reserved" at the end of statements she made. When finally I asked why she did that, given that the words had no meaning in that context, she said she was "reserving her rights to remedy". She said saying those words "makes me feel better". Also, although she was able to respond to both questions from the bench and, at least somewhat, to the matter generally, she displayed disorganized thinking to a degree that was beyond the typical legal unfamiliarity that most lay litigants have.
- [14] Because of my concerns, I questioned Ms. L. about her work and disability situation. Ms. L. said she worked for the plumbing company until the parties separated but she is not working now and has not worked for some time. She said she has been on "provincial disability" since November 2014. She produced two documents, neither appended to an affidavit, as follows: (1) a letter from the Canada Revenue Agency (CRA) confirming she will be granted a disability tax credit for the years 2012 to 2019; and (2) a letter from the Ministry of Social Development dated May 29, 2015, showing that she had been given approval for designation as a person with disabilities.
- [15] In the affidavit she filed on this application, Ms. L. said in 2012 she was diagnosed with a number of afflictions (major severe depression, PTSD, anxiety, borderline personality disorder, and lupus). She deposed that she continues to suffer from those same psychological disorders and she listed seven prescription medications she takes daily to deal with those disorders.
- [16] In her submissions, Ms. L. linked her PTSD and other psychological issues to events that occurred in the relationship.

- [17] At the conclusion of the hearing I directed the parties to provide, within prescribed deadlines, brief written submissions on the "duration of support" issue, with specific references to the Spousal Support Advisory Guidelines (SSAG) notes on that issue, together with any authorities on the subject. Mr. L.'s submissions were filed on October 17, 2019. Ms. L. did not provide any written submissions.

IV. Positions of the Parties

A. The Director

- [18] The Director maintains a continuing charge against the monies in court because Mr. L. is still significantly in arrears of child and spousal support. Counsel for the Director said the arrears presently total about \$33,000 (further payments having come due after the August arrears total), and it is the Director's position that all the monies in Court should be paid out to the Director in payment of the arrears, with the remainder of the funds to be held by the Director as security for payment of Mr. L.'s further support obligations.
- [19] The Director said this was subject to the result in the companion action, P.J.L. v. C.A.L., where Mr. L. is seeking to cancel or reduce arrears of support.
- [20] The Director emphasized that the Court should not make any order for payment out (other than an order for payment of all funds to the Director) without giving the Director an opportunity to make submissions.

B. Mr. L.

- [21] Mr. L. seeks termination of both child support and spousal support. In the case of child support, he notes the child now resides with her biological father. He is content that child support be terminated as of December 31, 2018.
- [22] As for spousal support, Mr. L. maintains that the maximum duration of spousal support has already exceeded that set out in the SSAG. Specifically, he notes the SSAG recommends that for a five-year relationship, spousal support should be paid, at the low end, for one-half of that time (that is, two and a half years) or, at the high end, for a maximum of five years. Mr. L. seeks termination of his spousal support obligation as of August 31, 2018, which would be a duration of five years and two months.
- [23] Mr. L. says that as of August 1, 2018 Mr. L.'s support arrears totalled \$95,660.21. According to Mr. L., the payments made after that date total \$94,068.71 (this includes the \$83,501.37 payment as per the order made on March 3, 2019). He said the difference between those two figures is \$1,571. If, as he acknowledges, four more child support payments should be made in order to bring the matter to December 31, 2018 (a total of \$1,936), then this brings his "proper" arrears to \$3,527.29.
- [24] I pause to note that this arithmetic does not quite add up, but the differences are very minor.

- [25] As for division of property, Mr. L. says the only material assets are the funds derived from the sale of the Property. He notes that two large sums were paid out: (1) \$83,501.37, which was paid towards arrears of support, which he says should be viewed as a credit to Mr. L.; and (2) \$81,658.52 paid to Lawson Lundell LLP, solicitors for the Bank of Montreal, which related to debts in Ms. L.'s name. I pause to note the latter sum was paid on closing of the sale of the Property and did not form part of the sums paid into Court.
- [26] Mr. L. referred to a 2013 financial statement of Ms. L.'s in which she disclosed debts totaling \$33,500 (in fact, her 2013 financial statement shows debts of \$34,500; \$33,500 was the total of the amounts owed to the Bank of Montreal, the creditor that was paid from the proceeds of sale of the Property). From this, Mr. L. reasons that at least \$47,000 of the \$81,000 paid to the Bank of Montreal was post-relationship debt of Ms. L. (I note the actual difference is \$48,158.52).
- [27] Mr. L. said the amount of Ms. L.'s debts at the time of separation were matters for her to prove, and since she has not done so the Court ought to draw an adverse inference against her. He notes, in any event, that in Ms. L.'s response materials she says she accumulated debt due to non-payment of support, which is confirmatory of the fact that these debts were post-separation debts.
- [28] Mr. L. submits that if one characterizes the \$83,501 payment to the Director as a credit to Mr. L. (that is, as a notional payment to him) and the figure of \$81,658 as a notional credit to Ms. L., they have received roughly equal amounts, with Mr. L. receiving \$1,842 more.
- [29] Mr. L. said this matter should be resolved by: (1) Mr. L. paying Ms. L. \$1,842 (although I note it would actually have to be one-half that amount in order to equalize); (2) Ms. L. is paid \$3,527.29 for payment of the "proper" arrears of support; and (3) dividing the remaining funds equally, which Mr. L. calculates would mean payments to each of them of \$16,829.30.
- [30] Mr. L. noted that the only other potential asset of note is Mr. L.'s plumbing business. He said he incorporated the plumbing business in 1997, so the business predates the relationship. He said it is very hard to judge any value for this business, noting in particular that it has an enormous tax debt. A CRA audit from 2016 assessed back taxes and GST totaling \$171,872.69, which debt has now risen to about \$200,000. Mr. L. is subject to a requirement to pay and so he is paying off that debt in small amounts. The financial statements of the business show assets of just \$3,400 to \$4,600 for "property and equipment". Mr. L. says these circumstances demonstrate that there is no value or assets to be divided in the plumbing business.

C. Ms. L.

- [31] Ms. L. had a number of pointed criticisms about the financial statements of the plumbing business. She says no proper accounting has been done and the financial statements are "notice to reader" only, and therefore "hearsay". She suspects Mr. L. has moved money out of the company. Ms. L. said she has asked for full disclosure of all the company's financial documents, but when I asked about these requests, she said they were not made in writing. I note there was nothing about any requests for financial documents in her latest affidavit.
- [32] Although Ms. L. continued to make various criticisms about the lack of proper records or a proper accounting of anything to do with the plumbing business, ultimately she said she was "not concerned about any assets in the company". She said "I just want what's owed to me and to keep moving forward. I'm not interested in the company".
- [33] Ms. L. said all arrears should be paid and she wants spousal support to continue "until the divorce hearing". When I pointed out that the present hearing was the hearing dealing with final orders, she said "I'd like it [support] to continue". When I asked her if she had sought legal advice she said "not recently" and "I haven't gotten very far". She said "it is difficult for anyone to sort this out".

D. Mr. L. - Reply

- [34] Mr. L. responded by saying that he did in fact seek a divorce in the summary trial application, but was unable to do so because he did not have a clearance certificate.
- [35] As for Ms. L.'s complaints about lack of disclosure, and in particular concerning Mr. L.'s tax returns and notices of assessment, his counsel noted that tax returns for 2016, 2017 and 2018 were appended to Mr. L.'s Form F8 financial statement. He noted as well that Form F8 does not require audited statements for the company.
- [36] Finally, Mr. L. said the issue of Ms. L.'s disability is relevant only to quantum and plays no role in duration. He emphasized that Ms. L. was not disadvantaged in any way during the relationship; to the contrary, during the relationship Ms. L. attended college full-time at an early point in the relationship and, in doing so, she added to her accounting qualifications. Mr. L. also noted Ms. L.'s diagnosis of disability took place after the parties separated.

E. Supplemental Submissions

Evidentiary Objection

- [37] Counsel for Mr. L. began his supplemental submissions by repeating his objections, made at the hearing, to the admission into evidence of any statements or documents Ms. L. gave or provided in response to questions from the bench. Her statements, and the two government disability letters she referred to, were not contained in an affidavit, and in any event offended the filing deadlines that had been put in place by an order made on August 26, 2019.

- [38] I digress here to note that counsel's objections may be sound in law, but are less sound in terms of fairness and justice, given Ms. L.'s obvious difficulties. Experienced counsel know when it is time to take the foot off the litigation accelerator, and this was one of those times when that should have been done.
- [39] In any event, the application Mr. L. was making was essentially an application for the determination by summary trial of the remaining issues in the family case, including division of property. I say "essentially" because there was no mention in his notice of application of any Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] relied upon. As noted in *Zeher v. Josh*, 2011 BCSC 311, and subsequent authorities, this is not proper practice.
- [40] As this was a summary trial, the Court was obliged to consider whether it would be unjust to decide the issues on the application: SCFR 11-3(15)(a)(ii). The questions from the bench were largely directed at this issue.

Submissions on Duration of Support

- [41] Mr. L. says Ms. L.'s apparent claim of disability is not supported by any medical evidence, as it should have been. On this point, he relies on two cases, *S.M.B. v. L.M.B.*, 2006 ABQB 141 and *Biggs v. Biggs*, 2016 BCSC 1731.
- [42] Mr. L. submits that even if the Court is satisfied Ms. L.'s ability to earn income is hampered by disability, the maximum duration of spousal support has still been exceeded.

V. Discussion

A. Suitability for Summary Trial

- [43] Although the state of the evidence in this matter is far from ideal, I conclude this matter is suitable for disposition by summary trial. The factors I have taken into account in coming to this conclusion include: (1) the amount of money at issue is relatively small; (2) according to the Court's scheduling records, this matter has been scheduled for trial three times (with two further trial dates arranged but not confirmed), with no trial yet taking place; (3) this case has been unresolved for nearly eight years; (4) Ms. L.'s circumstances are such that it does not appear the state of the evidence will improve; and (5) I am satisfied that I am able to make the necessary findings of fact, on the support issues at least, and property division can be resolved once further information and submissions are supplied on a small number of remaining points.

B. Separation Date

- [44] As noted earlier, the parties did not agree on the date of separation. Mr. L. said the parties separated on September 26, 2012, whereas Ms. L. said (in her application response) "permanent separation" occurred in May 2013, which is after the date she filed her notice of family claim. Mr. L. deposed that the proceedings were "put on hold" while they engaged in marriage counselling.
- [45] The May 2013 date coincides with an event where there was a physical confrontation between the parties.
- [46] Evidently, the parties separated but both remained in the family home for a time. In Ms. L.'s response to counterclaim, she pleads that there were two unsuccessful attempts to reconcile, which may account for the differing dates advanced by the parties on this application.
- [47] I note, however, that Ms. L. has consistently pleaded that the parties separated on September 26, 2012. She asserted this as the separation date in her notice of family claim (filed October 12, 2012), her amended notice of family claim (filed August 1, 2013) and her response to counterclaim (filed October 24, 2013). She also verified the September 26, 2012 separation date in an affidavit she swore on October 11, 2012.
- [48] I consider it appropriate that the claimant be held to her pleadings. I conclude the parties separated on September 26, 2012.
- [49] Given that the parties commenced their relationship in October 2007, the duration of their relationship was five years.

C. Child Support

- [50] Both parties agree there should be an order terminating Mr. L.'s child support obligation effective December 31, 2018.

D. Disability

- [51] I agree that medical evidence will be necessary in most cases where a party asserts a disability that impairs their ability to earn income. However, given Ms. L.'s presentation in court and her minimal income, my concern is that she does not have the wherewithal to muster formal medical evidence. This distinguishes this case from those cited by Mr. L.
- [52] I note that in unreported reasons for judgment given in this matter on August 9, 2013, Armstrong J. said:
- [9] The claimant suffered depression and by June 2012 became unable to continue working. Due to these mental health issues, she took a leave of absence.

- [15] The claimant's debilitating depression created a claim on the claimant's mortgage insurance disability insurance plan and she has received \$1,132 per month since October 2012 as disability benefits.
- [16] The claimant has no other income .
- [53] This shows that Ms. L. was disabled from working during the parties' relationship and this disability continued at least to the time of Armstrong J.'s judgment. In an affidavit sworn on January 26, 2015, Ms. L. said she was on "income assistance disability" of \$962 per month and she had no other source of income. This shows that Ms. L.'s disability continued after the date of Armstrong J.'s judgment.
- [54] Given these circumstances, Mr. L.'s suggestion that Ms. L.'s claims of disability, as well as the letter from the Ministry confirming acceptance of Ms. L.'s disabled status that she proffered during the hearing (in response to questions from the Court), is something new, or is something he was unable to respond to, is somewhat disingenuous. I appreciate that there was an order made on August 26, 2019 requiring Ms. L. to file and deliver responding materials by certain dates, but the evidence of disability precedes those deadlines by a number of years.
- [55] Leaving aside, for the moment, the past evidence, in Ms. L.'s latest affidavit she describes herself as a "Person With Disability" and she describes her various diagnoses (from which, she says, she continues to suffer) and lists seven medications she takes on a daily basis. The May 2015 letter from the Ministry of Social Development, confirming that Ms. L. has been approved for designation as a person with a disability under the PWD program, is merely confirmatory of her affidavit evidence. To the extent that the Ministry letter was not formally before the Court through an affidavit, in light of the circumstances (and given that the letter was merely confirmatory of other evidence), I consider it appropriate to receive it pursuant to SCFR 10-3(4)(e), which states that the Court may "receive other forms of evidence": *Brown v. Brown*, 2020 BCCA 53.
- [56] Mr. L. has not countered any of this evidence with evidence of his own, and thus Ms. L.'s evidence stands uncontradicted. Accordingly, despite the absence of opinion or other evidence from a qualified physician, on the evidence before the Court I am satisfied that Ms. L. is presently disabled from earning any income other than disability income, and that her disability manifested itself prior to the separation of the parties.

E. Spousal Support Where One Spouse is Disabled

The Law

- [57] The leading case on the duty of a healthy spouse to support a sick or disabled spouse is *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 [Bracklow]. There, the spouses had a seven-year relationship. During the early years of the relationship, the wife worked and contributed to fifty percent or more of the couple's finances. One year after their marriage the wife

developed acute psychiatric problems and was unlikely to ever work again. The trial judge noted the marriage was not a long one, no economic hardship befell the wife as a consequence of the marriage or its breakdown, and the wife's health problems were not due to the marriage. He ordered that the husband pay spousal support of \$400 per month for 18 months.

- [58] In its reasons, the Supreme Court of Canada confirmed the law recognizes three conceptual grounds for entitlement to support: (1) compensatory; (2) contractual; and (3) non-compensatory (at para. 15). The Court said circumstances may require a healthy party to continue to support a disabled party even if there is no contractual or compensatory entitlement.
- [59] In *Bracklow*, both parties argued in favour of different rules on quantum, with "quantum" meaning both amount and duration. The wife argued that because support was awarded on the basis of need, she should continue to receive support as long as her needs persisted. The husband argued the length of the marital relationship is the most important factor in determining the quantum of support.
- [60] The Court rejected both arguments, indicating there is no fixed rule:
- [53] Both these arguments miss the mark in that they fix on one factor to the exclusion of others. The short answer to Mrs. Bracklow's argument is that need is but one of a number of factors that the judge must consider. Similarly, the short answer to Mr. Bracklow's contention is that the length of the marital relationship is only one of a number of factors that may be relevant. While some factors may be more important than others in particular cases, the judge cannot proceed at the outset by fixing on only one variable. The quantum awarded, in the sense of both amount and duration, will vary with the circumstances and the practical and policy considerations affecting particular cases. Limited means of the supporting spouse may dictate a reduction. So may obligations arising from new relationships in so far as they have an impact on means. Factors within the marriage itself may affect the quantum of a non-compensatory support obligation. For example, it may be difficult to make a case for a full obligation and expectation of mutual support in a very short marriage. (Section 15.2(4)(a) of the Divorce Act requires the court to consider the length of time the parties cohabited.) Finally, subject to judicial discretion, the parties by contract or conduct may enhance, diminish or negate the obligation of mutual support. To repeat, it is not the act of saying "I do", but the marital relationship between the parties that may generate the obligation of non-compensatory support pursuant to the Act. It follows that diverse aspects of that marital relationship may be relevant to the quantum of such support. As stated in *Moge*, "[a]t the end of the day ..., courts have an overriding discretion and the exercise of such discretion will depend on the particular facts of each case, having regard to the factors and objectives designated in the Act" (p. 866).

- [61] In the result, the Court remitted the case to the trial judge for the assessment of spousal support in conformity with its reasons. Subsequently, the trial court ordered payment of spousal support of \$400 a month for five years, a duration that was less than the duration of the parties' relationship.
- [62] The authors of the SSAG have provided commentary on this topic in their 2016 publication, C. Rogerson and R. Thompson, *Spousal Support Advisory Guidelines: The Revised User's Guide* (April 2016) (the "Guide"). There, the authors state (at p. 62):
- a) the illness and disability "exception" will generally be relevant where the marriage is short-to-medium length and there are no children in the care of the recipient, but disability is long-term;
 - b) the "law in these cases is particularly uncertain and confused, as the courts have not yet been able to work out a consistent approach";
 - c) illness and disability is recognized as an exception in the SSAG, "but the scope and operation of the exception is hard to nail down under the current law";
 - d) there are three common lines of decisions in the reported cases:
 - i. increase the amount and extend the duration;
 - ii. lower the amount and extend the duration;
 - iii. decide the matter within the existing SSAG ranges. This is the approach the Guide authors prefer.
- [63] In British Columbia, cases involving shorter marriages and relationships appear to generally adopt the latter approach.
- [64] In *Shen v. Tong*, 2013 BCCA 519 [Shen], the parties had a seven and a half year relationship. At the beginning of the relationship, the wife earned good income, but she was injured in a motor vehicle accident and was subsequently unable, for a variety of reasons, to return to her previous work or the same income. The wife presented little medical evidence. The Court of Appeal indicated it was an appropriate case to apply the SSAG without exception:
- [86] Both *Bracklow* at paras. 53 and 54, and *Rayvals v. Rayvals*, 2004 BCCA 630, indicate that indefinite awards may be unfair to a payor spouse despite the needs of a disabled partner: see also *Rayvals v. Rayvals*, 2008 BCSC 176 at para. 27, with which I agree. The SSAG commentary does list disability as a potential exception to the suggested duration of support, however, it also notes that many cases of illness or disability can be accommodated within the SSAG formulas: *Spousal Support Advisory Guidelines* (Ottawa: Dept. of Justice, 2008) at s. 12.4. In my view, based on the evidentiary record, this is an appropriate case to apply the SSAG and fix a termination date for spousal support.

- [87] Although there is some uncertainty as to when or if Ms. Tong will return to full-time employment, it must be recalled that this is a relationship of relatively short duration. Further, Ms. Tong is now employed, although admittedly not earning anywhere close to her previous income and she has received a reapportionment of the family assets. She also has her own non-family assets. Quite apart from any disability she may suffer, of which there was a paucity of medical evidence at trial, her entitlement to non-compensatory spousal support should be of a limited duration. I am satisfied that the cumulative effect of the factors affecting her earning capacity supports an award for a fixed term of three years, but not longer. The circumstances of this case are not so exceptional that this Court needs to look outside the SSAG to determine the duration or quantum of support. Mr. Shen should not be required to pay indefinite support. Given my conclusion in this regard, an order for review is not appropriate.
- [88] I would order that Mr. Shen pay \$2,000 per month for three years commencing on the first day of the month following this judgment. This amount is the mid-point suggested by the SSAG.
- [65] In *Powell v. Levesque*, 2014 BCCA 33, the couple lived together in a marriage-like relationship for eight years. The payee was unable to work because of disability; the payor was a member of the Canadian Armed Forces. On separation, the couple executed a separation agreement, which included payment of spousal support until the payee died, married or commenced cohabitation in another marriage-like relationship. Upon retiring from her employment at age 44 after 26 years of service (and with the onset of health issues of her own), the payor applied to vary the spousal support agreement. The Court of Appeal found the trial judge had erred in finding the payor's retirement, in the circumstances, did not constitute a material change in circumstances. On finding there was a material change, the BCCA determined it was appropriate to apply the usual SSAG range, which suggested a duration of spousal support of four to eight years. As the payor had already been paying for 12 years, the court considered her obligation extinguished and terminated spousal support.
- [66] In *Shellito v. Bensimhon*, 2008 BCCA 68, the parties had a five-year relationship, and no children. The wife suffered from significant migraines that had prevented her from being economically self-sufficient at the time of trial, but the trial judge concluded that she would likely be able to start part-time work shortly and return to full-time work within three years after that. He awarded spousal support in excess of the SSAG range, though declining somewhat over time, but ending after three years. The global amount exceeded the SSAG range somewhat. The Court of Appeal dismissed the payor's appeal of the award. While this case is an exception to the SSAG range, it is a very modest one.

[67] Although there are cases at the trial level where spousal support has been awarded outside the SSAG range, those cases (some of which are noted in the Guide) involved such features as strong compensatory claims, ongoing custodial responsibilities with children of the relationship, relationships of much longer duration than in the present case or, in one case (Eng v. Eng, 2006 BCSC 1353), the significant wealth of the payor. None of those factors is present in this case.

Application to this Case

[68] I deal first with the threshold issue of entitlement. There is no contractual or compensatory entitlement in this case. The evidence indicates no sacrifice or disadvantage to Ms. L. associated with the relationship. To the contrary, the fact the parties were in a relationship allowed Ms. L. to enhance her accounting credentials. Instead, her entitlement is non-compensatory in nature; that is, on the basis of need.

[69] Although Ms. L., in her oral submissions, indicated there was a causal relationship between her mental health issues and Mr. L.'s treatment of her while they were together, there was little or no evidence to that effect and, in particular, no medical evidence. This is an assertion that would almost certainly require medical evidence. Accordingly, I find that assertion to be unproven.

[70] Using a software-based SSAG calculator and inputting the facts as I have found them (together with incomes of \$12,000 and \$84,000, respectively, for the claimant and respondent), results in a spousal support duration from a minimum of two and a half years to a maximum of five years. The duration results are the same under both the "with child support" formula and the "without child support" formula.

[71] Taking into account the short duration of the relationship, the absence of any compensatory factors, the relative independence of the parties during their relationship - in in the sense that they each had skills that they brought to bear in the plumbing business - and the fact that spousal support has been paid (or at least has accrued) nearer the upper end of the SSAG range of amounts, all of which are to be balanced against Ms. L.'s compelling need, I am not persuaded that spousal support should continue any substantial amount of time beyond the range indicated by the SSAG.

[72] To adopt a passage from Rayvals v. Rayvals, 2008 BCSC 176, it is very unfortunate that Ms. L. is disabled and unable to work:

[27] but neither the case law nor the social obligation model of marriage, goes so far as to say that a spouse in circumstances such as this, is an insurer of a former spouse and is required to indemnify in whole or in part a former spouse for his or her needs for as long as he or she is in need.

[73] This passage was approved by the Court of Appeal in Shen (at para. 86).

- [74] Mr. L. proposes that spousal support should be terminated effective August 31, 2018. This support - when paid - would mean he would have paid spousal support at the upper end of the SSAG amounts for a period of five years and two months. I conclude that this is sufficient to discharge his obligation to pay spousal support.

F. Division of Property

Assets Generally

- [75] Mr. L. said the only property to divide is the money that was derived from the foreclosure sale of the Property. This aspect is not straightforward and so I will discuss it further under the next sub-heading.
- [76] Mr. L. says there are no other assets. Although the plumbing business was large enough to have a number of employees, at least at one point, it is now deeply in debt. The latest financial statements show that it has assets of \$136,000 and debts of \$747,000. The company was audited in 2016 and the CRA assessed unpaid taxes and GST at \$172,000, a sum that has increased to \$200,000 currently.
- [77] As noted earlier, Ms. L. expressed profound scepticism about any accounting records of the company, but ultimately said she was "not concerned about any assets in the company". She did not suggest there were any other assets to divide.
- [78] Although I was concerned that the 2018 corporate financial statements and evidence of its 2019 debts might not tell us much about the value of the company at the time of separation in 2012, there are indications within the court proceedings that the issue of the company's assets and finances has been litigated for some years. As an example, resort to the court file reveals an order made on August 19, 2014 directing Mr. L. to produce a variety of financial documents, both personal and corporate, from varying dates starting in 2010. This order was made at a time when Ms. L. was represented by counsel, and it is at least some indication that the assets of both the company and Mr. L. personally were being scrutinized. Despite this effort, there is no evidence before the Court that shows the company had any substantial value at the time the parties separated.
- [79] I conclude that the only property to be divided is the money derived from the sale of the Property.

The Sale Proceeds from the Property

- [80] The Property sold in 2018 for \$664,000, which garnered net proceeds (after commissions) of \$642,632.06.
- [81] From that sum, amounts were paid for outstanding taxes (about \$9,100), outstanding strata fees (\$7,200), and a mortgage (\$389,000). Certain debts were also paid: \$81,658.52 to a law firm acting for the Bank of Montreal, and \$9,741.50 to the Receiver General on behalf of the CRA. This left a balance of \$145,822.13, which is the sum that was paid into court.

[82] As noted earlier, court records show there were two payments made from the sum paid into court. These were: (1) \$24,426.03 paid to VCSCU on April 3, 2019; and (2) \$83,501.37 paid to the Director on April 17, 2019. The balance showing as of November 27, 2019 is \$39,093.07, which includes \$1,198.34 in accrued interest.

[83] Mr. L. reasons that two of the sums paid from the Property sale proceeds are effectively payments to the parties themselves. The first is a payment to the Bank of Montreal (\$81,658.52), which Mr. L. says was for payment of debts in Ms. L.'s name. He says the majority of that debt was post-separation debt, noting that the balance of these debts was only \$33,500 in July 2013. The second payment was the payment of \$83,501.37 to the Director, which he acknowledges is a payment towards his support debts. He suggests that the matter would be properly resolved by: (1) paying the support arrears; (2) equalizing the monies "received" by each party; and (3) dividing the remainder equally.

[84] There are several problems with that analysis. They are:

- a) Mr. L. says the sum of \$81,658.52 paid to the Bank of Montreal ought to be credited to Ms. L., but he also noted that only the majority of the amount was post-separation debt (because \$33,500 was shown as outstanding in 2013) and he estimated post-separation debt was in the range of \$48,000 (he actually said \$47,000, but I have used a corrected figure). That being the case, then \$33,500 should be considered pre-separation debt and divided equally, which I note was Ms. L.'s position as set out in her application response.

Given that Ms. L. agrees with this aspect of Mr. L.'s analysis, I conclude that only the sum of \$48,158.52 is to be considered a payment to Ms. L., as this sum was her post-separation debt;

- b) two sums have been paid from the Property sale proceeds - \$9,741.50 to CRA and \$24,426.03 to VCSCU - for which there is little evidence. It is not clear whose debts these were, or when they arose;
- c) Mr. L. has assumed that any remaining monies should be divided equally. Although both parties pleaded that there should be a reapportionment of assets in their favour, Ms. L.'s claim for reapportionment, which she based on "a greater need for self-sufficiency", appears to have substance given her minimal income and, as I have found, her disability.

[85] Accordingly, there will have to be some further evidence and submissions on the latter two issues.

[86] Given the current state of emergency, as well as certain difficulties that are evidently associated with communications in this case, I direct the parties to arrange (through Scheduling) a telephone conference before me. At that conference I will make directions for the filing of any further materials.

VI. Conclusion

- [87] I am satisfied Mr. L. no longer has an obligation to pay child and spousal support. Accordingly, spousal support shall cease effective August 31, 2018 and child support shall cease effective December 31, 2018.
- [88] As the Director requested, I decline to make an order for payment out of any monies in Court, at least at this time. I assume the Director will calculate the proper amounts owing based on these reasons, and if there is no dispute about the amount as calculated by the Director, payment out can perhaps be done by consent desk order. The parties have leave to seek directions on this aspect if need be.
- [89] On the property division issue, I direct the parties to arrange a telephone conference to discuss the filing of further evidence and submissions, as discussed earlier.
- [90] Costs will await the outcome of property division between the parties.

"Blok J."

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