
CANADA / JUDGMENT

Pearson v. Devaux

2014 BCSC 1523

COURT

Supreme Court of British Columbia

DECIDED

12 August 2014

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2014 BCSC 1523 Pearson v. Devaux

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pearson v. Devaux,

2014 BCSC 1523

Date: 20140812

Docket: 32180

Registry: Penticton

Between:

Richard Alan Pearson

Claimant

And

Louise Kathleen Devaux

Respondent

Before: The Honourable Mr. Justice Cole

Reasons for Judgment

Counsel for the Claimant:

N.J. McDougall

Counsel for the Respondent:

D.M. King

Place and Date of Hearing:

Kelowna, B.C.

July 16-17, 2014

Place and Date of Judgment:

Penticton, B.C.

August 12, 2014

- [1] This is a summary trial dealing with a seven-year common law relationship. Both parties agree that this is suitable for a summary trial.
- [2] The claimant seeks an order that the respondent holds one-half of their retirement home in Penticton, in trust for him, and an order that the furniture and appliances purchased by him valued at approximately \$17,820 be returned to him and costs.
- [3] The respondent claims spousal support, an order vesting a percentage of the claimant's RCMP pension in her name, reference to the registrar to determine her survivor benefits in the claimant's pension, a declaration that the claimant holds his assets in trust for the respondent, and damages for assault, battery and costs.

BACKGROUND

- [4] The claimant was married and working for the RCMP in St. Lucia. He met the respondent in December of 2001 and became romantically involved in early 2002 and in the summer they commenced living together in St. Lucia. In December of 2002 they moved to the respondent's home in Reno, Nevada. In January of 2003 the claimant had retired from the RCMP and commenced receiving his pension. They relocated to Penticton, British Columbia in 2003. They purchased a home for \$280,000, and at the same time the respondent sold her home in Reno. In December of 2005 the respondent sold her condominium in Toronto and in January 2006 the claimant was divorced from his first wife. On July 13, 2009 the parties separated and this action was commenced on July 30, 2009.
- [5] When the parties moved into the respondent's home in Nevada, the claimant says that the respondent was anxious to leave Reno and return to Canada as she was not a United States citizen, was unemployed and was feeling stressed by her previous divorce. She denies that, saying the claimant wanted to move to Canada because he was having problems getting across the United States Border. He says he has high security clearance because of his time with the RCMP and that it was a mutual decision to move to Canada. He claims that she had not worked since 2000, and she has provided no documentation whatsoever as to any earned income from employment since 2000.

- [6] The respondent claims that she was happy in her home in Nevada. She had friends and relatives nearby and she says that when they agreed to move to British Columbia that he promised to look after her for the rest of her life and to give her a share of his RCMP pension survivor benefits.
- [7] The claimant is adamant that he never agreed to support her for the rest of her life. They were going to share expenses because they both had over \$1 million in assets but he agreed that she would be entitled to a share of his survivor benefits providing she was his spouse.

PENTICTON PROPERTY

- [8] The parties looked at real estate in Penticton, and in July 2003 they purchased a home. The realtor that they dealt with was Frank McKitrick. His evidence was:

I prepared the contract of purchase and sale in their presence and was instructed to include both names on the offer. I don't recall specially who instructed me to include both names on the offer, however, as disclosed herein, the parties were literally sitting beside each other at the time I prepared the contract of purchase and sale.

- [9] Both parties' names were listed as purchasers and he witnessed both parties signing the contract. After these proceedings were commenced, he was sent a copy of the contract of purchase and sale by the claimant's counsel and it showed that the claimant's name had been struck out. Mr. McKitrick said:

I was never asked to remove Mr. Pearson's name and I don't know who struck out where Mr. Pearson's name appeared in the contract.

- [10] The respondent's evidence was that:

At no time did I ever agree or suggest that the claimant's name should be on title in those circumstances and it was the realtor who presumptively wrote the claimant's name on the offer to purchase document. That was clearly a mistake and it was removed at our request once we saw it on there.

- [11] Mr. McKitrick said:

Throughout the course of my dealings, the parties always spoke of purchasing a property together and at the time of completing the Contract of Purchase and Sale, the parties clearly indicated to me that they would be taking title together. There was nothing in the completion of this contract that was done by me of a presumptive nature. I acted based on the instructions I received from the parties, who were together with me at all times.

- [12] Mr. McKitrick has been a full-time real estate agent in Penticton for the past 35 years. He did not know these parties before they met in 2003. He said:

The parties stand out in my mind as Mrs. Devaux was extremely well dressed, wore lots of jewellery, whereas Mr. Pearson was although professionally dressed, much more casual in his dress and actions. Mrs. Devaux had advised me that she had sold property in Reno, Nevada, and had been a realtor in Reno, Nevada, for a period of time.

[13] After the contract of purchase and sale was signed, the parties decided that the property should be purchased in the respondent's name alone. According to the claimant, the respondent did not want him on title because she may be involved in a lawsuit with the claimant's first wife. The respondent denies that allegation stating that:

At no time did the claimant offer to contribute any money to the purchase of the property. It was clear that I was going to be contributing all of the monies and assume all of the legal liability relating to the purchase of the home. The claimant made it clear that he expected me to use my resources to purchase the home.

[14] According to the claimant, they agreed that the respondent would pay one-half of the purchase price and there would be a mortgage or a line of credit for the balance of the purchase price and that he would solely be responsible for that. I accept the claimant's version of these event because the fact is he did make all the payments on the line of credit.

[15] In September of 2003, the claimant's first wife wanted to purchase a home and she and the claimant agreed that each party would take \$70,000 from their joint bank account to assist in the purchase of their respective homes. In September 2003 the claimant paid \$70,000 against the line of credit. He also paid approximately \$15,000 on December 31, 2004 and when the claimant settled with his first wife in January 2006 he then paid off the entire line of credit in the amount of some \$55,000.

[16] After these payments were made the claimant then requested that he be put on title as a one-half owner and the respondent responded by putting her hands over her ears, she started singing, mocking him and refused to sign the transfer documents that he had prepared.

ASSAULT

[17] The respondent says that she has been assaulted on a frequent basis by the claimant. He would put her in a headlock, would squeeze her thighs, or would backhand her. On one occasion she was backhanded by him while at the Summerland Yacht Club and said that the incident was witnessed by the manager of the Yacht Club.

[18] The manager, Christina Paskas, who had been the manager of the Summerland Yacht Club since 2005 and who read the transcript of the examination for discovery of Mrs. Devaux, states:

That I have never witnessed Mr. Pearson "hitting" Ms. Devaux, nor have I ever witnessed Mr. Pearson "backhanding in the face" Ms. Devaux.

[19] On December 10, 2009 the respondent attended the RCMP with a friend of hers and gave a lengthy statement which was recorded. The statement contained 17 pages and took 47 minutes. The respondent has admitted that the statements that she gave to the police were true.

[20] In her statement to the RCMP the respondent stated:

[T]he relationship started out being verbally and emotionally abusive. Um, Richard PEARSON was at the time going through a very nasty divorce with his first wife, which finally got settled in 2006. After that time when he was no longer focussing on the ex-wife all that anger got turned towards me and then he started becoming physically abusive with me after that time.

[21] In that statement she also said that he insisted that the house be put in his name only and not joint. She said:

So I kept resisting him to put the house in his name. I said no I'm not going to put it in his name. You know I'll put it in joint name.

[22] At page 3 of the statement she referred to the claimant seeing a counsellor, Dr. McEachern in Kelowna:

for six weeks and after the six weeks he thought he could just come back and move into the house and at that point in time I was advised by the counsellor not to allow this to happen and, just because of and I think we talked about this before, which he said to was she basically diagnosed him with Obsessive Compulsive Personality disorder and this is all in you know, the original report I gave to you and her conclusion, well, what she said to me was he will always have this Obsessive Compulsive behaviour. That with medication they could maybe tone it down.

[23] Dr. Heather McEachern filed an affidavit after being given a copy of the RCMP report of December 10, 2009. Dr. McEachern said:

6. I did speak to this soft-spoken woman, to discuss my therapeutic time with her estranged partner, my client, at his request. I do not recall the conversation in much detail as this was a therapy case, not a forensic one. I do recall she offered she was at peace with him out of the home and she was stressed by her perception of Mr. Pearson being obsessive and a rigid authoritarian nature. I explained my role as a his therapist and I offered that I found him to be motivated to reconcile and genuinely engaged in therapy to soften his delivery as a person with a strong interpersonal style. I could not make medication recommendations as a psychologist.

7. I did not diagnose Mr. Pearson as being OCD nor did I indicate that "with medication they could maybe tone it down from a 12 to a 10 but that will always be there" nor did I indicate "the chances of recovering from his behaviour at his age which at 65 is slim to none."

[24] On July 12, 2009, the respondent attended the emergency room at the Penticton Hospital. The nurses called the RCMP and Constable Knock was dispatched. He interviewed the respondent who stated that she had been in a common law relationship with the claimant,

who was a member of the RCMP in Saskatchewan and that he was very controlling and verbally abusive. Constable Knock asked the respondent if the claimant had ever been physically abusive to which she said that he never was because "he knows better than to do anything like that". She also stated there were never any threats, violence or property damage at any time.

- [25] The respondent gave evidence of an incident on September 14, 2009, when the claimant showed up in the back yard of their Penticton house. He tried to force his way into the house and said that she was shoved out of his way. She was shoved into the patio door and that is when she obtained bruising on her legs and arm.
- [26] The respondent also gave a statement to the RCMP on September 16, 2009, to request a peace bond application against the claimant. In that interview she never mentioned anything about the alleged assault that took place on September 14 on the patio.
- [27] On other occasions she said he shoved her into the patio chairs and on another occasion she said she was shoved into the patio table. She did go to a doctor who noted bruising and she had pictures taken of her bruised legs.

FINANCIAL DISCLOSURE

- [28] The respondent has consistently refused to make full disclosure of all the assets that she is entitled to. The evidence of the claimant is that the respondent told her many times that she was a beneficiary of a family trust in St. Lucia that was registered in the name of "DevMin". The trust owned property in St. Lucia that was sold and the respondent directed her mother to deposit her share which was \$1,111 (Caribbean currency) (\$44,000 Cdn.), in the respondent's personal bank account at First Caribbean Bank, Rodney Bay, in St. Lucia. All the documents save and except for one page of that account have not been produced.
- [29] The respondent had told the claimant that her father passed away in 1990 and there was an inheritance valued by the respondent in excess of \$278,000 held in her privately-managed account in London, England, and that she had money transferred from that account to purchase a home in Reno, Nevada. No documents have been produced with respect to those monies. The claimant also states that money from the respondent's father's estate was sent to an address in St. Lucia so that the accounting information would be available to the respondent. He says that the respondent would then have the accounting statement forwarded to her by her mother.
- [30] The claimant also says that the financial statements from the United Kingdom investment account that he reviewed had ongoing interest, dividend and capital gains income from those accounts and she has never claimed them in any income tax returns.

- [31] The respondent claims that her father's estate continues to be in litigation by her siblings but provides no documentary evidence. She says her mother controls everything and her mother will not cooperate. She also gave evidence that she has never received any money from her father's estate.

RESPONDENT'S POSITION RE TRUST

- [32] The respondent's position is that the Court must look at their entire relationship and it must be looked at on a holistic basis. She says that significant advantages and benefits were conferred on the claimant by the efforts of the respondent.
- [33] The claimant's income from 2003 to 2012 indicates an income that fluctuates from a low in 2005 of \$86,538 to a high of \$147,500 in 2013. The respondent's income fluctuated from a high in 2007 of \$45,483 to a low of \$3,003 in 2009. In June of 2002 the claimant had investment assets of approximately \$831,000 not including his RCMP pension, one-half of a Saskatchewan property that he and his first wife held of \$68,500, and his RCMP pension of \$766,170.
- [34] On February 17, 2005 he claimed investment assets of \$2,110,000 plus an automobile of about \$21,000.
- [35] The respondent says that her net wealth as of June 2002 was a condo in Toronto of \$325,000, equity in a Reno home of \$230,000, United States investments of \$125,000, a Jeep vehicle worth \$12,000, and contingent beneficiary of her father's estate of some \$278,153. She does not include her interest in a trust, DevMin in St. Lucia. On March 20, 2014, she declared her assets as the Penticton home of \$415,000, investments with RBC Dominion of \$103,000, a further account of \$4,000, a Caribbean account of \$46,000, a Burnstein account of \$7,000 and an automobile of \$1,000 plus the beneficiary interest in her father's estate of \$278,153 which she says is not available to her.
- [36] The claimant's evidence is that he paid for the mortgage, the taxes, the insurance, the utilities, and put money into two joint accounts. The one account that he put \$750 in every month was used by the respondent for groceries and other household purchases. There is no credible evidence that the respondent put any money into any joint account and she appeared to spend her money on her personal needs.
- [37] The respondent says, however, that it was because of her support of the claimant during the very litigious high-conflict divorce proceedings that took place over a period of about four years that she is entitled to a trust claim against all the assets he received upon the settlement of his marriage to his first wife.

- [38] One example of the respondent's claim was that she alleges that she prepare a letter that was signed by the claimant and sent to his lawyers dealing extensively with his negotiations concerning his divorce. She says that she typed that letter in Thailand when the letter itself clearly shows that it was typed in Penticton and they were leaving for Thailand. That is one of many examples where the assertions made by the respondent are simply not credible.
- [39] The respondent says that she did all the cooking, the cleaning, washing, ironing, washing the cars, in fact all the domestic work in their relationship. The claimant denies that that was the case that she did all the work and he said that although she was a very good housekeeper and cook the work around the house was shared and he continued to do his own laundry and ironing during their entire relationship.
- [40] The claimant says that with respect to the matrimonial home that there was an equal contribution financially because the respondent paid the down payment of \$140,000 but it was the claimant that paid off the \$140,000 line of credit.

- [41] The claimant refers to *Kerr v. Baranow*, [2011] 1 S.C.R. 269 at para. 17 which states:

Resulting trusts arising from gratuitous transfers are the ones relevant to domestic situations. The traditional view was they arose in two types of situations: the gratuitous transfer of property from one partner to the other, and the joint contribution by two partners to the acquisition of property, title to which is in the name of only one of them. In either case, the transfer is gratuitous, in the first case because there was no consideration for the transfer of the property, and in the second case because there was no consideration for the contribution to the acquisition of the property.

CREDIBILITY

- [42] I accept the evidence of the independent witnesses Heather McEachern, Christina Paskas and Mr. McKittrick. They have no interest in the outcome of this action. Their evidence supports the claimant's version of these events. The respondent's evidence is also inconsistent with the statements that she makes to the RCMP. I am satisfied that the respondent is not a believable witness and does not have any credibility. I accept the evidence of the claimant when it conflicts with that of the respondent.

PENTICTON HOUSE

- [43] I am satisfied that the parties intended to purchase the Penticton house together as that was clearly the intention when they signed the original offer to purchase. I accept that the parties changed their minds after the offer to purchase was signed and put the house in the respondent's name because they were concerned that the claimant's divorce and settlement had not been finalized and that the respondent and the claimant did not want the claimant's first wife to expose them to any legal action. I find that the agreement was that the respondent would pay one-half of the purchase price of the property and that the claimant would be solely responsible for paying for the other half of the property by paying off the

line of credit. The documents and the evidence of the claimant are consistent with the fact that he did pay off the line of credit some three and a half years after the home was purchased. I also accept the evidence of the respondent in her statement to the RCMP of December 10, 2009, when she stated: "You know I'll put it in joint name", referring to the Penticton property. I am satisfied that the respondent holds one-half of the Penticton property in trust for the claimant. I order that the respondent pay to the claimant one-half of the value of the home, that is one-half of the \$415,000 that the property is appraised at and that she has nine months from today's date to pay the claimant. If the respondent fails to do so, I order that the claimant be allowed to list the property for sale with liberty to apply for direction. I am delaying the purchase or sale of the property for nine months because of the conclusions I have reached with respect to spousal support.

- [44] With respect to the chattels and appliances, the most expensive chattels are in fact the appliances: stove, fridge, dishwasher, entertainment centre, and fireplace, that clearly belong to the home and most of which replaced other older items that were in the home. The rest of the furniture were items that were used by this family and in my view have very little value. They have not been appraised and in any event they should be divided equally between the parties and if they cannot agree then they are to be sold and the proceeds divided equally with liberty to apply.

CLEAN HANDS DOCTRINE

- [45] The respondent claims the claimant does not come to court with clean hands because he was hiding assets from his first wife prior to their separation agreement and divorce. There is, however, no credible evidence that the claimant's first wife was deceived or that the claimant was hiding any assets. The claimant said he believed that the Penticton property was not a family asset with respect to his first wife. He said that he did not know he had to disclose the Penticton property because he was not on title. I conclude that the claimant has not done anything to deceive his first wife and I reject the respondent's argument that he did not have clean hands.

RESPONDENT'S CLAIM AGAINST THE CLAIMANT'S PENSION AND OTHER ASSETS

- [46] The respondent says that she is entitled to a claim against the claimant's pension because she was promised a portion of the pension if she moved to Penticton with him. The evidence of the claimant is that she would be entitled to his survivor benefits if she qualified as a spouse and he prepared documents in order to ensure that there would be evidence that they commenced living together prior to him receiving his pension. There is no evidence before me as to what his survivor benefits would be but it is clear that she is no longer a spouse and is no longer entitled to qualify for those benefits. Whether or not he could have taken other steps to ensure that she could qualify was never brought out in the evidence.

- [47] The respondent claims that she still has a constructive trust with respect to a portion of the claimant's pension. However, the evidence is clear that the claimant paid into his pension for the maximum period of 35 years and after that point in time he made no contributions to his pension. It was only after he had 35 years of service that he commenced living with the respondent. Therefore, she has made no contribution with respect to the pension and I dismiss her claim.
- [48] The respondent claims that she is entitled to a constructive trust with respect to all his assets because she wrote letters, she gave him support, and she provided domestic services. But the evidence of the claimant is at odds with the amount of assistance she did provide. I am satisfied that although she was supportive she did nothing out of the ordinary. There is no evidence that her support in any way contributed to the assets that he received from his first marriage. In any event, there is no evidence before me that the respondent, as a result of the contributions she did make, suffered a corresponding deprivation. I do not accept the respondent's evidence that the claimant was responsible for her loss of income from her investments and the loss in selling her condo in Toronto as the respondent had at all times her own financial consultants in England, St. Lucia and with the Toronto Dominion Bank in Penticton. In short, the respondent has not satisfied me that she is entitled to a constructive trust based on the evidence before me and I dismiss her claim.

ASSAULT

- [49] I accept the evidence of the claimant that he did not assault the respondent. The respondent's evidence is so inconsistent with the evidence of Christina Paskas and Dr. McEachern and the statements she gave to the RCMP that I conclude she has not proven assault on a balance of probabilities and I dismiss her claim.

SPOUSAL SUPPORT

- [50] There have been promises made by the respondent at the examination for discovery for the production of documents. There has been an order made for production of documents and I am satisfied that the respondent has failed to make full complete disclosure of financial documents including banking documents, trust documents and her income tax returns filed in the United States and I therefore do not grant any order for spousal support at this time but order that the matter be set down when the respondent has made proper disclosure.
- [51] I accept the evidence of the claimant that he did not assault the respondent. I accept the claimant's evidence when it conflicts of that of the respondent.

The Honourable Mr. Justice F.W. Cole

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