

CANADA / JUDGMENT

Pedersen v. Pedersen

2001 BCSC 1138

COURT

Supreme Court of British Columbia

DECIDED

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Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LAURA JANE PEDERSEN
PLAINTIFF

AND:

JAMES KEVIN PEDERSEN
DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE McKINNON

Counsel for the Plaintiff: J.E. Kovacs

Counsel for the Defendant: M. Matias

Dates and Place of Trial: May 28, 29, 30, 31

June 1, 4, 5, 6, 7, 8, 11, June 12, 13, 2001

New Westminster, BC

- [1] This matrimonial action involves the usual issues associated with the end of a marriage. Most would have been capable of resolution without a prolonged trial but for claims respecting the children.

- [2] Indeed not much time was directed to financial issues. The focus was almost entirely upon the issue of custody/guardianship. The plaintiff claims sole custody and sole guardianship. The defendant seeks joint custody and joint guardianship.
- [3] The plaintiff, at trial, abandoned her claim to spousal maintenance and for a restraining order. She conceded the defendant's right of access to the children and suggested it continue in accordance with an interim order of this court.
- [4] No issue is taken respecting the divorce and, as the evidence supports the period of separation claimed in the writ of summons, there will be an order for divorce.

BACKGROUND

- [5] The parties married at Surrey, B.C. on June 13, 1992 and separated May 15, 1998. It was a first marriage for both. The plaintiff is now 39 years old and the defendant is 44. He is a registered nurse and she provides care services to a Community Living Society. Neither has full time employment although Mr. Pedersen seems to enjoy something close to that, depending upon his real or perceived availability.
- [6] There are two children: Karlee Jane, born April 3, 1994, and Christian James, born June 14, 1996. The first judicial intervention appears to have occurred June 25, 1998 when Mr. Pedersen obtained an ex parte order from Master Joyce (as he then was) for custody but, on being made aware of this order, Ms. Pedersen brought her own motion. Some discussion occurred in the corridors of the court house which resulted in an order for joint custody, although Ms. Pedersen was given the exclusive right to reside with the children in the matrimonial home. An order for review on July 13, 1998 was also made but no such review ever took place.
- [7] On November 30, 1998, Master Joyce ordered interim joint custody with access for each denoted in a Schedule "A". On that occasion Mr. Pedersen was found to have a Guidelines income of \$47,000 and Ms. Pedersen an income of \$13,200. Mr. Pedersen was ordered to pay maintenance of \$657 per month plus s. 7 expenses of \$137.
- [8] On December 31, 1999, Ms. Pedersen brought an ex parte application for custody following the failure of Mr. Pedersen to deliver the children to her as required. Master Joyce granted that application, ordering that she have "temporary sole custody" and adjourning the claim for custody to January 5, 2000.
- [9] The usual delays associated with accommodating various schedules postponed the hearing until March 13, 2000 when Master Donaldson directed access to the defendant from 7:00 a.m. Monday to 6:00 p.m. Wednesday of each week and this schedule has prevailed to date and is one with which Ms. Pedersen is content.

- [10] Mr. Pedersen had filed a motion for interim joint custody and joint guardianship on February 17 and for other relief as well but Master Donaldson adjourned these claims generally on March 13 with a direction that they be set before Master Joyce. Although Master Donaldson ordered a s. 15 report, none was ever prepared, nor did the adjourned issues ever come before Master Joyce.
- [11] No further court proceedings occurred until trial, suggesting at least a modicum of contentment with the "interim" schedule. Ms. Pedersen has "sole temporary custody" while Mr. Pedersen exercises access between 7:00 a.m. Monday to 6:00 p.m. Wednesday. She is content with this arrangement as a permanent order insofar as access is concerned but seeks an order for sole custody and guardianship. He is not content and wishes equal parenting time. Mr. Pedersen suggested alternating each week or each parent has the children for 3.5 days of every week which is his preference.
- [12] In his opening statement to me, counsel for Mr. Pedersen said that his client sought "only two things, and they are all he seeks in this trial: that the two children of the marriage go back to spending 50% of their time with him as they were up until the Plaintiff/Mother unilaterally reduced it to three out of seven days on June 30, 1999, that the Plaintiff/Mother seek and accept professional psychiatric help."
- [13] Counsel then proceeded to list a series of incidents of self-mutilation, alleged overdoses, and acts of "paranoia", all against a refusal, he said, by the plaintiff to seek and maintain psychiatric assistance. He concluded his opening with the plea that: "all the father asks this court is to give the children the benefit of more time with their father. That is all he has ever asked."
- [14] It was ringing rhetoric that at first sounded convincing and righteous. However, the sum of the evidence, although establishing considerable mental difficulties suffered by the plaintiff at one time in the relationship, was not at all persuasive in supporting the defendant's "fears".
- [15] Indeed, I came away from this trial uncertain as to whether the defendant is a conniving manipulator or, someone suffering his own demons such that he simply refuses to accept that the plaintiff now enjoys relatively good health. In either case his assessment of the plaintiff's mental health is grossly distorted and one not at all supported by the evidence.
- [16] Mr. Pedersen took every opportunity to explain to me his "rights" as a father. He frequently, and without prompting, cited "experts" who supported his views about children in almost every facet of their lives. He professed a level of expertise gained from much reading and study such that I formed the impression that he considers himself an expert in the field of child care.

- [17] He considers Ms. Pedersen inferior in both knowledge and ability, insofar as child rearing is concerned. He has convinced himself that she continues to be a threat to the well-being of the children and until she completes a period of rehabilitation under the guidance of a qualified professional such as a psychiatrist, he claims she should not have any ability to manage the children's lives.
- [18] Mr. Pedersen is the only person who espouses this belief. No professional considers that Ms. Pedersen is now anything but a well-adjusted, loving and responsible parent who has done an extraordinary job of rehabilitation following considerable emotional upheaval in her life. This was also the sum of the evidence of the relatives, friends and acquaintances who testified in her behalf.
- [19] This recovery occurred in spite of Mr. Pedersen's inability or refusal to appreciate the problems his wife experienced and his inability or refusal to assist in any meaningful way in her recovery. I can only describe his involvement in the healing process as peripheral, much like a curious bystander who is unable or unwilling to "get involved".
- [20] I regret having to describe Mr. Pedersen in this way. Clearly he loves his children but it is a skewed love. Mr. Pedersen does not have a measured rational response to daily situations. He has no real understanding of the children's needs. The many instances of conflict referred to in the evidence, the actions of Mr. Pedersen both at the children's school and their activities, his responses to crises, combine to persuade me that a joint parenting regimen would never work to the children's best interests, nor would anything but a limited joint guardianship be in their best interests.
- [21] Mr. Pedersen either genuinely believes his wife suffers a mental disability or he has embarked upon a devious course of action to portray her in that light simply to advance his custodial claim. If the former, there is no evidence to support such a claim, notwithstanding his counsel's submissions in that regard. If the latter, then such reprehensible conduct would certainly preclude granting the relief he seeks. In either event, the best interests of the children dictate that they remain in the sole custody of their mother.
- [22] I arrived at this conclusion after considering and reviewing all of the evidence, as I am obliged to do. In this regard, I did not consider either Dr. Smith's report or the 600 pages of clinical notes said to support Dr. Smith's conclusions.
- [23] The defendant wished to rely upon the opinion of Dr. Smith, a psychiatrist, who opined that Ms. Pedersen has serious mental health problems which require ongoing therapy and which "negatively" impact upon her ability as a parent. I refused to admit this report, providing reasons which I will not repeat here but essentially I rejected it in part because Dr. Smith's views were based upon unproven hypothetical situations and in part because of his reliance upon the clinical notes of a Dr. Severy.

- [24] Reports such as Dr. Smith's are often admitted, even though marginally relevant, and the issue decided on the basis of weight. However in this case, the defendant declined to call Dr. Severy, a treating psychiatrist, even though he was available to testify.
- [25] I was told that Dr. Severy would be called and indeed he was subpoenaed by the defendant and appeared in the courtroom. Obviously he had nothing supportive to say in terms of the defendant's theory respecting his wife because counsel informed me that after speaking with the doctor he did not wish to call him. Dr. Severy then stood up and said that he wished to be called, that he had important evidence to give concerning the plaintiff's health. Notwithstanding, he was not called.
- [26] In rejecting Dr. Smith's report, I indicated that I was entitled to draw an inference adverse to the defendant for his failure to call Dr. Severy. The inference I drew was that Dr. Severy had nothing to say in support of Dr. Smith's opinion.
- [27] I also refused to admit the 600 pages of clinical notes said to "support" the claim of mental instability of Ms. Pedersen. I was not directed to any particular passage in those reports, rather I was invited to simply help myself to the smorgasbord. I declined the invitation.

THE HISTORICAL PERSPECTIVE

The plaintiff's history

- [28] Ms. Pedersen described an "o.k." childhood but one marked with difficulties. Her mother is now 64 years old and resides in Abbotsford. There are seven children--five girls and two boys. Ms. Pedersen maintains close relationships with most of her siblings, particularly her sisters who reside near her. The extended family by all accounts is now a happy and reasonably close group that regularly celebrates festive occasions and who provide support for one another.
- [29] Heroin addiction was a problem for her natural father and at least two siblings. Her father died in 1995 of pneumonia. The two siblings have managed to recover from their addiction and even Mr. Pedersen acknowledges that he has no issue with Ms. Pedersen's extended family and sees them as a valuable resource for his children. He claimed that Ms. Pedersen disclosed an event from her childhood that involved one brother "shooting" her father in a dispute but she denied this and no sibling who testified supported such misconduct.
- [30] There were some unfortunate childhood incidents. One brother was physically abusive (not sexually) toward Ms. Pedersen and her sisters but generally, given the turmoil that must have been occasioned with a father who was a heroin addict, it was a surprisingly normal household. This is obviously a testament to the plaintiff's mother and the support of an extended family.
- [31] Ms. Pedersen's parents separated when she was a young child. Her mother then married a Mr. Stewart in 1975. They separated in 1996. The plaintiff described her stepfather as "controlling, easily angered, not approachable" and on one occasion, physically abusive. He

struck her in some petty argument over domestic duties. The separation of Mr. Stewart and the plaintiff's mother occurred over an issue that has no bearing to these proceedings and I therefore do not feel it necessary to comment further about it. Suffice to say Mr. Stewart has no contact today with the plaintiff or her children.

- [32] The plaintiff's siblings are now successful members of the community. Several are health care workers, one is a homemaker and one manages a tree farm. Her mother works as a retail clerk and while she has had bouts of depression requiring professional care, she now is healthy and very much a part of the plaintiff's life. I believe that between the siblings, there are ten nieces and nephews and all interact to a greater or lesser extent (depending upon age) with Karlee and Christian.
- [33] The plaintiff is closest to her two sisters, Dawn and Colleen. They are a source of both emotional and physical support for her and have been throughout the period of separation to trial.
- [34] Ms. Pedersen graduated from grade 12 with average to above average marks. She was a reasonably active student in extra-curricular activities and generally led a life that one might refer to as a typical teenage lifestyle. On graduation she attended Douglas College and then Simon Fraser University, eventually receiving a diploma in Youth and Child Care in 1985. She travelled with Katimavik, a federal government youth program. Throughout, and to this day, she maintains a close association with religious affiliations, notably the Baptist Church. It was while attending a Baptist Church in Delta that she met D.G. and her husband, R.G., in 1979.
- [35] In 1980 and for the ensuing four years she lived at their home, trading board and room for care of their children. Almost from the beginning, she said, she was subjected to repeated sexual assaults from R.G. These continued until she left in 1984. It was not until 1997 that R.G. admitted the assaults and the following year his wife conceded that she had become aware of them. However nothing was done. The plaintiff declined their request for some sort of reconciliation meeting. She was then in therapy with her own counsellor and was content to resolve issues with this professional help.
- [36] The parties met in 1989. Mr. Pedersen was attending the University of Victoria and Ms. Pedersen met him through a mutual friend. She was then studying at Simon Fraser and living with her mother in Surrey. Mr. Pedersen moved to Vancouver after completion of his studies in Victoria and worked as a nurse at Pearson Hospital. They married in April, 1992. The plaintiff was then employed as a supervisor of five clients at the Variety Children's Villa.
- [37] The plaintiff and defendant set up housekeeping in a rented basement suite owned by Ms. Pedersen's sister Colleen Bergen and her husband. Mr. Pedersen's family reside in Ontario and until the marriage, the plaintiff had never met any of them.

The defendant's history

- [38] The defendant was born and raised near London, Ontario. His parents, who faithfully attended every day of this 13-day trial reside on a farm at Ailsa-Craig, Ontario. He has two brothers, Jeff and Kyle. Kyle has some health problems. Although once married he is now separated and resides alone on the farm in separate quarters from his parents. Jeff lives near the farm with his wife and two children.
- [39] I accept the defendant's evidence that he has a close relationship with his family and that he is in contact with them regularly. Indeed, one complaint voiced by the plaintiff was that he was so often on the telephone with his parents that she considered it "unusual". He visits Ontario as often as time and finances allow. Karlee has visited on two occasions and Christian once. His parents have come to British Columbia several times since the marriage as has his brother Kyle. I do not believe Jeff has ever visited.
- [40] The defendant has no relatives in British Columbia apart from a cousin who lives "somewhere in the mountains". He does not appear to have many friends, notwithstanding his claim to the contrary. Peter Hawkins and Tom Hugh were mentioned as friends but Mr. Pedersen said the plaintiff was not keen on having them over for visits and so the friendship waned. Apparently he did not renew the friendship after separation.
- [41] Susan Boch and Thomas Hu gave evidence for the defendant but neither is very close to Mr. Pedersen. Ms. Boch met him through a bible study group and has seen him interact with his children, but infrequently. Mr. Hu was a roommate of Mr. Pedersen's before the marriage and has maintained contact with him over the past ten years. He describes his contact with the defendant and his children as "three or four times a year" including the occasional camping trip.
- [42] Mr. Pedersen is a registered nurse with some specialized training in cardiology that would appear to provide him with skills very much in demand in this era of health care crisis. Notwithstanding, in the past year or more, he has arbitrarily given up full time employment to work a casual rota which he says better accommodates his preference to spend equal time with his children. He commented that the rotation of nurses on a eight-day schedule does not permit anything but a casual designation, given his need to have at least 31/2 days per week with his children.
- [43] He has experienced some work-related problems. In 1994 he was cited for professional errors in respect to patient care. Although he repeatedly used the phrase "allegedly" when asked about the matter, he did concede that he was found guilty of failing to meet professional standards. After much delay, which I assume was associated with appeals of one form or another, he was obliged to take courses in "interpersonal conflict skills, asserting oneself under pressure and critical skills for communication in conflict".

[44] Until completion of those courses in 1997, Mr. Pedersen worked at his profession under a conditional license. In February 1997 after completion of the courses, the conditions on his license were removed. Thereafter he has worked without restrictions.

[45] Between 1994 and 1997, although working a "casual" schedule, Mr. Pedersen said that he maintained full time hours alternating between Surrey Memorial Hospital and Langley Hospital. His line 150 income for the following years reflects both part time and full time employment:

1997

\$46,800.00

1998

\$46,885.40

1999

\$41,903.00

2000

\$38,814.00

[46] Mr. Pedersen worked full time at Surrey Memorial Hospital until the end of July 1998. At that time he opted for a one year "leave" from his full time position in order to accommodate an ultimate move to cardiology, where he believed he was best suited, given his advanced training.

[47] I did not understand this "leave", as apparently there were no positions available in cardiology when he took leave from his permanent position. Indeed, Mr. Pedersen took a very long time to answer pointed questions in cross-examination on this issue. He conceded that he was neither physically nor mentally ill at the time and could only say that the "leave" period gave him some mobility to transfer to the cardiac ward at a moment's notice. Like much of his evidence, it was confusing, rambling and entirely self-serving.

[48] The sum of the employment evidence suggests to me that Mr. Pedersen does not want to work full time, although he could easily do so. He has decided that neither his health nor his duties as a parent permit such a schedule. In 2001, he has worked very little, claiming that his health is poor and that his doctor has suggested he take time from work.

[49] To the trial in May/June, 2001 he had earned only \$1,500. He said that he relied upon friends, food vouchers, and E.I. disability insurance to get by. He maintains that the effects of the separation, legal proceedings and child care responsibilities have drained him emotionally and physically such that he simply cannot maintain a regular work schedule.

- [50] There is no other evidence in support of these claims. It was simply Mr. Pedersen's self-assessment of his condition. No medical evidence was offered and no witnesses commented upon his "disability". It was entirely Mr. Pedersen's assessment and not very convincing. I had no difficulty rejecting this alleged disability, concluding that it was an aspect of his plans to portray himself as a champion of father's rights, someone the judiciary was obliged to recognize as an "equal parent". This was particularly evident in the alternate excuse for failing to maintain regular employment.
- [51] The alternate excuse for not working reasonable hours is that it interferes with his parenting "rights". He claims that since registered nurses work on an 8-day rotation schedule, and as he is entitled to equal time with his children, he could not maintain full time employment because it would interfere with his "equal time". Even if this were a plausible explanation for failing to work on a permanent basis, he has historically managed to obtain full time income on a variety of part time shifts.
- [52] I have concluded that this approach by Mr. Pedersen to his obligation to contribute reasonable monetary support for his children, whatever the custodial arrangement, reflects his own flawed assessment of events. It is neither reasonable nor necessary.
- [53] Events leading to and consequent upon separation occupied much of the trial days for they spoke to the health issues and the propriety and impropriety of certain actions.

PRE-SEPARATION

- [54] Despite the incidents of abuse referred to in Ms. Pedersen's life before meeting Mr. Pedersen, she never received any professional help at the time. At her marriage she considered herself healthy with no "mental health issues".
- [55] I was told about several incidents on the honeymoon that resulted in Mr. Pedersen taking a room in a separate hotel, but matters were resolved, and the couple returned to Surrey to commence life together.
- [56] Once settled in a basement suite at her sister's rental home, the couple went about their separate employment obligations. Mr. Pedersen developed the habit of leaving for work several hours before it was necessary, an event that he did not think unusual but which caused a great deal of argument. On one occasion when arguing about this, Ms. Pedersen threw a glass at him after he had just gone out the door.
- [57] It caused no injury to Mr. Pedersen and was not intended to do so but for reasons which I find somewhat bizarre, Mr. Pedersen complained to police and members of the plaintiff's family. He maintained that police suggested to him he have his wife sign a "contract" and so he prepared such a document which apparently stipulated that if Ms. Pedersen repeated her actions, she would agree to be arrested. It was one of the many strange and inappropriate actions that Mr. Pedersen took, allegedly on the advice of others who were never produced as witnesses.

- [58] In 1993, Ms. Pedersen suffered a miscarriage but said that apart from disappointment, the event did not trouble her mentally. On the birth of Karlee she conceded she suffered some post-partum depression. The birth was difficult and although Mr. Pedersen was excited and anxious about events, she says he did not offer the support she felt she needed at the time.
- [59] Nothing critical turns on this time. Each simply has a different view of events. Ms. Pedersen recalls Mr. Pedersen as domineering, accusing her of starving the infant through inadequate breast feeding and attempting to control her care of the child. Mr. Pedersen says he was simply concerned as there were difficulties and that he did his best to assist. In any event Ms. Pedersen continued with E.I. leave from her job to devote full care to Karlee and Mr. Pedersen maintained full employment. In January 1995 she returned to part time employment and then full time by September.
- [60] To the birth of Christian in 1996, both were employed, Mr. Pedersen full time and Ms. Pedersen 3 days per week which was consistent with their plans. Each attended to child care duties in accordance with their employment obligations. Ms. Pedersen's sisters and mother also assisted when required.
- [61] Following Christian's birth, Ms. Pedersen utilized her E.I. maternity leave, and although she intended to return to work in January, 1997 she was told in September of 1996 that the position was redundant. There were no part time positions then available so a joint decision was made that, given child care requirements and Mr. Pedersen's rotating schedule, it would be best for Ms. Pedersen to await a part time opening. Eventually she obtained part time employment with a special needs home in Surrey where she is still employed.
- [62] Gradually, after Christian's birth, arguments surfaced over child care issues. Everything from day care to parenting style became an issue. Communication, never very good, got worse. Mr. Pedersen does not dispute that he often sought the opinion of others in regards to everything from child care issues to laundry tips. It seems he preferred this route to discussions with Ms. Pedersen.
- [63] Although he denies having a "controlling" nature as alleged by Ms. Pedersen, there are many incidents that support her assessment in this regard.
- [64] On Easter Sunday, 1997 Mr. Pedersen was working a shift that would not permit him to arrive home until well after the usual dinner hour. The plaintiff and her extended family attended at the Pedersen residence for dinner. On arriving home after the event, Mr. Pedersen was upset that the celebration had taken place in his absence. He telephoned several of Ms. Pedersen's siblings complaining about them eating "his" turkey in his absence. Although he would not admit this conduct, the best he could say in his evidence was that he didn't "think" he had made such calls.

- [65] The plaintiff's mother lived with the couple for a time while awaiting possession of a new home after a sale of her old place. Silly disputes arose and one developed into a major incident. The plaintiff's mother wanted to paint her basement room but as her son-in-law had not been consulted beforehand, he refused permission. The plaintiff decided to take the children out for a walk while her mother and husband resolved the dispute but Mr. Pedersen refused her permission to leave.
- [66] A physical altercation then took place between the plaintiff's mother and Mr. Pedersen that resulted in police intervention and Mr. Pedersen's arrest. He spent a night in gaol then on release stayed at the Salvation Army Hostel for six nights without any notice to his wife. During his absence he contacted a counsellor, Faith Auton-Cuff, in an apparent effort to obtain professional assistance for a deteriorating marriage. On telephone advice from Mr. Pedersen, his wife attended Ms. Auton-Cuff for the first time on August 27. The next day the couple re-united but relations were strained.
- [67] The plaintiff's mother remained in the home until October when, according to the plaintiff's account, her mother moved to another daughter's home because she was unable to resolve her differences with Mr. Pedersen. The plaintiff said that he continued a petty tyranny such as setting the table for his family but not setting a place for his mother-in-law. She quickly came to appreciate that he did not want her around.
- [68] Mr. Pedersen denies any such conduct and maintained that his mother-in-law simply did not want to eat with them and would pick up the place he had set for her and move downstairs.
- [69] It was not a very convincing explanation. He did concede that he was upset over the painting issue but that the primary responsibility for it rested with the plaintiff's mother.
- [70] Several incidents of physical altercations took place between the plaintiff and defendant with each behaving badly. Later, each took an anger management course, Mr. Pedersen in September, 1997 and Ms. Pedersen in February/March, 1998. This was at Mr. Pedersen's suggestion.
- [71] In October, 1997 Ms. Pedersen arranged for a candle party in her home with her cousin, friends and relatives while her husband was at work. This is apparently a home sale program where candles are displayed for retail sale. On discovering the event had taken place, Mr. Pedersen telephoned his wife's cousin who was the organizer, complaining that it had gone on without his "permission".
- [72] Ms. Pedersen's occasional efforts to go off by herself with her children were often thwarted by Mr. Pedersen insisting upon going along. He saw nothing wrong with this conduct, indicating that he had a right to spend as much time with his children as he pleased. Such an action by itself is quite meaningless, but added to the sum of Mr. Pedersen's conduct it takes on much more significance.

- [73] Throughout the Christmas season of 1997, the plaintiff was attending counselling with Ms. Auton-Cuff but it was not effective in resolving the matrimonial difficulties. The plaintiff said that the defendant continued to be cool and unresponsive to her requests to talk through their difficulties. She made her own Christmas arrangements which included child care by her sisters and attendance at several extended family gatherings.
- [74] On January 2, 1998 after an attempt to discuss events with the defendant, she says he abruptly left the home and did not contact her until January 7. In the interim he telephoned her sister, complaining that she had deprived him of his children over Christmas.
- [75] On January 7, the defendant telephoned his wife but refused to say where he was staying and asked merely to meet with her at a church and to bring him some clothes. That done, she had no further contact with him until a meeting at Ms. Auton-Cuff's office on January 14 but even then there was no discussion respecting the marriage.
- [76] Mr. Pedersen, without notice to his wife, rented an apartment and remained there for some time. He declined to speak of their difficulties, all of which created considerable anxiety for his wife.
- [77] On January 8, Ms. Pedersen saw her family doctor as she was having trouble breathing and was emotionally upset. He prescribed medication for depression and anxiety.
- [78] Ms. Pedersen testified that throughout this period she became "overwhelmed" by events and on February 10, 1998 took an overdose of her medication. She maintained it was not a suicide attempt but rather was prompted by a desire to "sleep/relax, just go to sleep, have time by myself."
- [79] Upon ingesting this medication, she considered that it might have been an unwise choice and so called her counsellor, Ms. Auton-Cuff. During this conversation, Mr. Pedersen entered the room and on discovering what had happened an altercation took place between them. Ms. Pedersen left, walked to a nearby mall and called Ms. Auton-Cuff and her sister to let them know she was alright.
- [80] Mr. Pedersen, appropriately in my view, telephoned 911 and obtained emergency assistance which resulted in Ms. Pedersen being treated at the local hospital where she remained overnight.
- [81] During the period February 10 to May 4, 1998 the plaintiff continued her slide into despondency. During this time she disclosed to her husband the sexual assaults by Mr. G. and other events that she felt may be affecting her mental health.
- [82] The plaintiff perceived that her husband was unsympathetic, not supportive and remained cool and aloof, contributing to her sense of despair. Mr. Pedersen considered that he was most sympathetic and tried his best to appreciate his wife's situation.

- [83] It was in this climate that Mr. Pedersen took the usual course for him. He became obsessed with researching his wife's "problems", reading a great deal of material and discussing the situation with professionals and non-professionals. On either litigant's version of events, there was little or no communication in this period about the direction of their marriage.
- [84] On April 29, 1998, unable to sleep, the plaintiff wandered into her kitchen, took a poultry pin which she heated on a stove element and proceeded to draw the pin across her wrists several times. She said she was "numb" throughout and returned to bed after putting cold water on the burns.
- [85] Mr. Pedersen said that he came into the kitchen just after the event and after calling the crisis line, assisted his wife in dressing the wounds. The plaintiff says that it was not until the next night she disclosed this action to her husband who promptly called Ms. Auton-Cuff. It is not material to determine which version is correct rather the important point is that it marked the first of several occasions of self-mutilation by Ms. Pedersen.
- [86] On May 4, 1998 once again feeling despondent, Ms. Pedersen took more of her medication than was prescribed. She did so she said, in the hopes of getting some "sleep", as a release from her matrimonial problems. However, she almost immediately recognized that such a course might be dangerous and telephoned her pharmacist for advice. Although her husband was present in the home at the time she said that she did not trust him to provide her with assistance.
- [87] Mr. Pedersen testified that he actually called both the pharmacist and an ambulance with the result that Ms. Pedersen was again hospitalized at M.S.A. Hospital until May 12. During her stay in the psychiatric ward, Ms. Pedersen saw Dr. Uppal, a psychiatrist, several times. She prescribed medication for depression with continuing assistance from Ms. Auton-Cuff.
- [88] On May 13, again during the night, Ms. Pedersen wandered into the kitchen and for reasons she cannot explain, took a heated poultry pin and burned the word H E L P across her abdomen. Mr. Pedersen discovered this either immediately after the event, or the next day, depending upon whose version one accepts. In any event, an ambulance was called but the plaintiff declined suggested hospitalization, preferring instead to attend Ms. Auton-Cuff.
- [89] At Ms. Auton-Cuff's suggestion the plaintiff persuaded a friend, Karen Moody, to stay with her for a night as a "buffer" between her and her husband. They watched a movie, drank a modest amount of alcohol and during the course of discussions, Ms. Pedersen disclosed the act of self-mutilation.
- [90] Ms. Moody was distressed by this, which response triggered in Ms. Pedersen an inappropriate reaction. In an attempt to demonstrate that it was an act of no consequence, she took her friend's lighted cigarette and inflicted a minor burn on her arm.

- [91] The plaintiff assured her friend that she ought not to be upset and then went to bed. Unable to sleep and feeling distressed she said she spoke with her husband, asking him to "hold her" to reassure her and then told him what she had done. His reaction was to immediately telephone police and the ambulance, something the plaintiff tried to prevent by unplugging the telephone. She maintained that she did not need such help, rather she needed only to talk with her husband and sort out their problems.
- [92] Mr. Pedersen testified that after his wife unplugged the phone he went out to a pay phone, called the ambulance but they refused to attend as his wife had previously refused treatment. He then spoke with a physician at the hospital without satisfaction and finally called police.
- [93] He says he was worried his wife was becoming "highly psychotic" and that it was "irreversible". He also considered her a high risk for suicide, telling police about her previous mutilations. Armed with this information Ms. Pedersen said police threatened her with arrest if she did not voluntarily accompany them to hospital. Under those circumstances she said she reluctantly went with them.
- [94] After a few days at M.S.A. Hospital, Ms. Pedersen was transferred to Riverview Hospital, a hospital specifically designated for mentally ill people. I was not informed as to the precise reason for this transfer; it certainly was not done with her consent. She remained at Riverview until June 8 when she transferred back to M.S.A. Hospital and then released.
- [95] During her stay at Riverview, Ms. Pedersen said that she met daily with a psychiatrist, Dr. Severy, who provided therapy and a change in her medication. She also met with a social worker. She admitted to several outbursts caused by frustration, particularly over child care matters that Mr. Pedersen was re-arranging while she was in hospital.
- [96] Mr. Pedersen informed his wife's sister Colleen that notwithstanding the fact she had often cared for the children, and that she had them in her home for most of Ms. Pedersen's hospitalization, he considered her "unfit" and intended to obtain paid care. According to Ms. Pedersen, her husband told her while she was in hospital that he considered her family "dysfunctional".
- [97] Colleen Bergen testified that Mr. Pedersen's actions both hurt and concerned her. She had often looked after the children over the years and he had never complained about her care.
- [98] Mr. Pedersen's assertions that throughout his wife's difficulties he remained calm, supportive, and generally helpful simply do not ring true. He was not helpful at all when she was hospitalized in Riverview and conceded that he was "disappointed" she had been released without his input.

POST-SEPARATION

- [99] On Ms. Pedersen's release from hospital, she and the children remained with her sister Colleen for several weeks. On June 24 she and Colleen, together with the children, attended at the family home for the purpose of obtaining articles and clothing. Mr. Pedersen had changed the locks, considering the situation "chaos" and that as his wife was seriously ill, he never knew "what she would do next".
- [100] Unable to enter the home, Ms. Pedersen went round the back and attempted to enter through an open window. Mr. Pedersen was home and observed this. He called police who arrived and supervised the plaintiff's removal of various items.
- [101] Thereafter, Mr. Pedersen obtained the ex parte order previously referred to in para. 6 and the litigation process began its inexorable path.
- [102] I have provided this extensive review of the medical/mental issues because they are fundamental to the defendant's claim that Ms. Pedersen continues to suffer a serious mental illness. As indicated, she does not. No professional supports Mr. Pedersen's view of his wife's condition.
- [103] Dr. Severy was not called by defence notwithstanding his attendance within the court consequent upon a subpoena. I drew an inference adverse to the defence that he would give any evidence supporting Mr. Pedersen's claim.
- [104] Dr. Campbell became Ms. Pedersen's family physician upon her release from hospital in May of 1998, although his first full assessment did not take place until June 10. On that occasion she complained of the side effects of Haldol and so, given what he perceived as an improvement in her condition, he determined to stop that medication.
- [105] Two weeks later, he assessed her once again and determined that she was making good progress. His opinion letter of March 19, 2001 states at p. 2:

She followed up in my office in 2 weeks and her mental status exam was normal. She seemed to be quite content with the therapy that she had received at Riverview and had a plan in place for dealing with her proposed separation from her husband and her single parent management of her children. She was spontaneous and made good eye contact. She acknowledged that her family support was excellent. It was determined on that visit that her Haldol would be discontinued. For the next three months her progress continued to improve and Tegretol was eventually tapered and then discontinued. Her only medication then was Effexor 1 bid.

- [106] The report then tracked her progress and various regressions over the next two years, culminating with an overdose of Tylenol in January, 2001. Dr. Campbell attributed this to the strain of the impending trial, difficulties with Mr. Pedersen and the effects of changing medications. Neither he, nor any other professional, nor Mrs. Pedersen viewed it as an attempt at suicide.

[107] Dr. Campbell changed her medication to Wellbutrin 150 mg. daily in February, 2001 to which she has responded very well. He encouraged her continued therapy with Ms. Auton-Cuff but did not believe she had any need for psychiatric assistance. He referred her once only to Dr. Said, a local psychiatrist, to ensure that the level of medication he had prescribed was appropriate. In his testimony at trial, Dr. Campbell described Ms. Pedersen as a very co-operative patient, who discusses issues with him, particularly medication changes.

[108] Dr. Campbell is also the children's physician and he considers them well cared for by the plaintiff. On p. 4 of his report he states:

Throughout the past 21/2 years Laura has demonstrated admirable parenting skills. She shows unending patience with both of her children when she is in office.

[109] Mr. Pedersen has also attended upon Dr. Campbell but it was Dr. Campbell's view that it was primarily for the purpose of obtaining information about his wife.

[110] Faith Auton-Cuff is a psychotherapist who practices in Clearbrook, B.C. She has two music degrees, a psychology degree, a nursing diploma and a Masters degree. Presently she is a PhD candidate in clinical psychology with Seattle University and will complete a three-year course in August and then start a 12-month internship at Riverview Hospital.

[111] Ms. Auton-Cuff has an impressive work history including risk assessment of violent offenders at Matsqui Institute, therapist at Chilliwack General Hospital and a member of a team reviewing family violence, sexual abuse and post-traumatic stress disorder. She has conducted seminars for physicians, psychiatrists, nurses and other professionals in the area of borderline personality disorders. She is also the author or co-author of numerous articles and papers.

[112] In Ms. Auton-Cuff's opinion letter of March 19, 2001 she states:

Laura has had a tumultuous return to "life outside hospital" including a return to her regular three-days-per-week employment as a child-care worker who works with high-risk, severely mentally and physically challenged clients, as well as attempting to navigate the turbulent waters of custody and access with Kevin and her children.... Laura continues to attend regular, weekly therapy sessions with me with the exceptions of holidays. She is extremely motivated, is actively engaged in the very hard work of therapy, is responsible, punctual, and has never missed a scheduled session. She has experienced some moments of desperation where she "cried out for help" by telephoning the community crisis line, who had an ambulance take her to emergency at MSA for safety reasons. These occasions as well as occasions of self-injury did not ever occur when the children were with her, and she stated she was never suicidal during those times, but took pills to allow her to sleep and forget the pain temporarily. Those desperate behaviours have abated, she no longer self injures, and is not suicidal. Laura is actively learning and applying new adaptive, coping behaviours. Her current diagnosis would be PTSD (in remission). She continues to see her family physician, Dr. Campbell who assists her in the pharmacological treatment of

aspects of depressive and anxiety symptomatology important in the stabilization of emotion regulation.

Laura's resiliency in spite of her biological vulnerability, the invalidating environments she has been exposed to, the intrusive nature of Kevin in her life and his constantly "shining the spotlight" on her mental health during this custody battle is clinically amazing. Laura has somehow been able to find within herself the strength to heal, engage with regular, difficult therapy, learn new ways of being in the world, maintain regular, highly responsible stressful employment and be a loving, responsible, creative mother to Karlee and Christian. Because of her amazing resiliency and my knowledge of the hard therapeutic work she has accomplished, I do not believe that her mental health detrimentally affects her capacity to care for her children and provide them with a safe, loving, nurturing environment....

In my experience, Laura is rational, is continuing to actively heal, and is a loving caring, concerned mother who has a strong bond with her children.

- [113] At trial, Ms. Auton-Cuff described self-injury as a "coping" method. She said that it was important to learn alternate, acceptable methods for coping, something she and Ms. Pedersen have managed to develop. Although various reports have referred to Ms. Pedersen as mirroring some traits of a borderline personality disorder ("BDP"), it was Ms. Auton-Cuff's view that the plaintiff did not meet the criteria, having only 2 of 9 required traits. Mood swings and self-injury were the two traits.
- [114] She described self-injury as a method often used by adolescents. It tends to shift attention away from emotional pain. Physical pain is substituted for emotional pain. It was Ms. Auton-Cuff's view that the plaintiff no longer had any traits of BDP and if not for the stress associated with the trial she would not require any continued therapy.
- [115] Mr. Pedersen's view is that the well-being of the children requires his participation as a custodial parent having equal time with them in light of his perception that the plaintiff continues to suffer serious mental illness.
- [116] One would have thought that if he seriously believed the plaintiff suffered a mental illness such that the children's well-being was in jeopardy he would not be satisfied with joint custody.
- [117] I am satisfied that the plaintiff is healthy both mentally and physically, that she loves the children and properly cares for them. She makes informed, reasonable decisions in their daily lives directed to their best interests. Although the defendant loves his children, he does not make the same reasoned decisions, nor does he act in their best interests.

CUSTODY

- [118] Notwithstanding my conclusion that Ms. Pedersen is now healthy and perfectly capable of a custodial role, it remains to consider whether Mr. Pedersen is also capable of discharging such a role. The question posed might be phrased as follows: is it reasonable in the circumstances to direct a joint custodial/guardianship order?
- [119] Both parents share a commitment to a Christian faith and seek to broaden the children's experience by having them attend various activities. Both are also committed to their education. The problem with Mr. Pedersen is his approach to these pursuits.
- [120] During their marriage, both attended Mountain Park Christian Church. Pastor Cameron Stuart testified that presently only Mr. Pedersen attends as the matrimonial acrimony was such that the tension was not healthy for the Pedersens or the congregation.
- [121] Although Pastor Stuart was careful in his testimony to avoid attaching blame for this situation, his evidence clearly demonstrates that the problem lay with Mr. Pedersen. He spoke of the defendant continually blaming his wife for the break down. He recalled the defendant circulating a letter of support for himself amongst the congregation that many felt inappropriate.
- [122] Pastor Stuart eventually had a discussion with the defendant about his obligations both financially and morally, particularly over a failure to pay school fees for Christian. In response he said that Mr. Pedersen became very angry, shouting and yelling. There were several occasions when Pastor Stuart had to caution Mr. Pedersen about his behaviour.
- [123] Eventually the Church's Elder Board, which I assume is some kind of advisory body, had to meet and make rules for Mr. Pedersen when within Church property. He was obliged not to discuss his wife with anyone, not to lobby on his behalf, and not to shadow his wife. In the event of failure to comply he would be expelled from the congregation. According to Pastor Stuart, Mr. Pedersen acknowledged these rules and agreed to abide by them. There have been only minor problems since.
- [124] Pastor Stuart stated that he sees Mr. Pedersen on an average of once a week and while he often speaks with him, it was his impression that Mr. Pedersen, although cordial, does not absorb much of what Pastor Stuart tells him. He considered Mr. Pedersen a "selective" listener who takes information that he likes, using it for his own purposes, but rejecting the rest.
- [125] Pastor Les Goertz of Cedarbrook Church is pastor for Ms. Pedersen. She has been attending since November, 2000. Shortly after she began attending, he said that the defendant also began attending but not when the plaintiff was present. Pastor Goertz first saw Mr. Pedersen when he wore a name tag with the name "Kevin" on it. During several conversations over the next three weeks he came to appreciate that he was the plaintiff's husband. Believing they were a couple, he telephoned the plaintiff to obtain Mr. Pedersen's number and learned of the separation.

- [126] Pastor Goertz testified that the plaintiff was reluctant to provide any information, informing him only that she had changed churches to get away from Mr. Pedersen. The result was that Pastor Goertz spoke with Pastor Stuart and the two agreed that Mr. Pedersen should continue with Pastor Stuart and that Pastor Goertz would convey this decision, something he said he had never had to do in more than 30 years of ministering.
- [127] Apparently Mr. Pedersen felt the need to converse at times with Pastor Goertz notwithstanding that he was not a member of his church. Pastor Goertz said that Mr. Pedersen had spoken with him in May intimating a potential change in custody, something he said he had discussed with the children. Pastor Goertz cautioned him not to speak of these issues with the children. He considered this conversation with Mr. Pedersen "a bit strange".
- [128] Pastor Goertz has had limited contact with the plaintiff but in none of their conversations has she said anything negative about Mr. Pedersen, nor has she spoken of the court case.
- [129] Karlee attends MacMillan Elementary School and it is anticipated that Christian will attend next year as well. Mr. Pedersen has made himself something of a nuisance at this school in the past by his constant attendance and often inappropriate conduct.
- [130] Parents are encouraged to volunteer for certain activities and Mr. Pedersen seems to lead the list of volunteers. Deborah Mele, Karlee's kindergarten teacher, said that Mr. Pedersen volunteered "quite often, just showed up, say 12 times a month." He would also come around after class and engage her in general discussion about his life. She considered that in these conversations, it was equally divided between himself and Karlee. No other parent did such a thing.
- [131] Ms. Mele said that the average rate of attendance for volunteers was about 3 times per month. Ms. Pedersen was within this average. She considered Mr. Pedersen to be "disruptive", to "always be around". He would not always come into the classroom but sometimes just stood by the door and peered in. In the first week of school he was at the door taking notes of her conversation with the students.
- [132] Ms. Mele was sufficiently distressed that she spoke with her principal and learned that such conduct was not permitted. Presumably it stopped, but Ms. Mele said that she was "uncomfortable and nervous" around Mr. Pedersen.
- [133] On occasion Mr. Pedersen would complain to Ms. Mele that he was worried about Karlee. He did not feel her report card gave him enough information. He also felt that she might be dyslexic. Notwithstanding Ms. Mele's assurances to him that she was doing well, he was not satisfied.
- [134] On one occasion he engaged Ms. Mele in conversation about the court case, showing her various documents and intimating that Ms. Pedersen had a mental illness.

- [135] Ms. Mele testified that she never had any problem with Ms. Pedersen but that Mr. Pedersen made her "uncomfortable". He would volunteer on days that he did not have the children, creating conflict for Ms. Pedersen.
- [136] On Valentine's Day 2000 he brought a large cake and all the articles necessary for a school party without any prior notice to Ms. Mele. While she thought it a "nice" gesture she said it created an awkward situation because other parents had the responsibility for these things. She testified that "it was almost as though he was planning my day."
- [137] Tanya Johnson, Karlee's grade one teacher, had the same problem with his many attendances at school. She said he was there so often some of the children began asking her why Karlee's father was "always there". On one occasion he showed up on a Friday, Ms. Pedersen's access day, and she tearfully queried Ms. Johnson about this. Eventually, after meeting with her principal, she told Mr. Pedersen his activities would have to be restricted. She recalled the meeting as most uncomfortable. Mr. Pedersen was restricted to the library and parking lot duty until resolution of the issues as was Ms. Pedersen.
- [138] According to Ms. Johnson, although Ms. Pedersen considered the decision to be unfair to her since she had not caused any difficulty, she tearfully agreed to abide by the terms. Ms. Johnson felt that she had to be even handed about the issue even though she said she considered Ms. Pedersen a co-operative and supportive parent and one with whom she had never had any difficulty.
- [139] The following letter sent by Mr. Pedersen on January 18, 2001 to Principal Carmichael of McMillan Elementary School is a good example of Mr. Pedersen's past conduct and a powerful indication of his projected conduct if provided joint custody/guardianship. The letter refers to Mr. Carmichael's refusal to permit Mr. Pedersen and a group with which he was associated from putting on a "play" which Mr. Pedersen claimed explained mental illness to children.

Dear Mr. Carmichael,

I handed in a volunteer registration sheet but am available more than I have been utilized. If there is no way for Mrs. Johnson and I to co-ordinate our schedules to partner in Karlee's education, I will simply sit in on some classes to be more aware of how school life is going for Karlee.

I noted with some concerns that Karlee's Mother was Mrs. Johnson's teaching assistant twice in December 2000. While this was a kind and compassionate gesture toward Karlee's Mother, I note that it was you, Principal Carmichael, who told me in December 2000, that it was inappropriate to expose young children to mental illness.

Perhaps you have reconsidered your position and are now ready to help the Abbotsford Branch of the B.C. Schizophrenia Society put on that play to help young children cope with mental illness. There are at least 40 families in Abbotsford dealing with serious mental illness; some of these will be teacher's families.

- [140] Anita Huebert testified to her care of the children and her observations of the Pedersens during that tenure. She said that when she was interviewed by them it was Ms. Pedersen who asked all the questions regarding her delivery of child care. She considered these questions appropriate for a parent to ask when assessing day care for children. She found Mr. Pedersen to be so effusive in his compliments about her baking, housekeeping, etc. that it made her "uncomfortable".
- [141] Mrs. Huebert also taught a religion class at Mountain Park Church. She began to notice a pattern whereby Mr. Pedersen would often be at the church, peering into her class and following her about. He also made unannounced frequent visits to her home when she was caring for the children. The whole thing made her "uncomfortable" such that she spoke with Laura Pedersen requesting that she inform her husband to stop coming around and stop phoning her about trivial things.
- [142] Mrs. Huebert often observed Mr. Pedersen at church, noting that even after separation, he sat with his wife and children even when it was apparent Ms. Pedersen was trying to distance herself from him. It was her observation that he "clutched" his children, smothering them at every opportunity. She also became concerned that Mr. Pedersen was often at stores and malls where she happened to be shopping and it made her very uncomfortable.
- [143] Mrs. Huebert cited many other examples of Mr. Pedersen's strange and inappropriate behaviour ranging from quizzing her about trivial issues to complaining about his wife and her manner of parenting.
- [144] Mrs. Huebert has never had any difficulty with Ms. Pedersen and considers her a well-balanced, concerned and committed parent who behaves appropriately in all situations.
- [145] Wally Huebert, her husband, also testified that he spoke with Mr. Pedersen about the many telephone calls and trivial requests he was making of Mrs. Huebert. Mr. Huebert asked him not to make these calls to which he said Mr. Pedersen accused him of interfering with his rights as a parent.
- [146] Mr. Huebert said that he made several attempts to set up meetings with Mr. Pedersen to try and sort out the issues but received no response. He said that Mr. Pedersen claimed not to have received the messages he left in this respect, however did not suggest any new arrangement.

- [147] Mary Holland testified to various incidents involving Mr. Pedersen. She has known both parties since 1997 although considers herself primarily a friend of the plaintiff. She is a homemaker with two children. Her daughter Colleen shares some extra school activities with Karlee and as well Mrs. Holland has provided occasional child care for both Karlee and Christian.
- [148] Mrs. Holland considered Mr. Pedersen "controlling, overbearing and non-nurturing" in respect to his children. By contrast she described Ms. Pedersen as "loving, patient, and nurturing".
- [149] She derived these opinions from her own observation of both parents and insofar as Mr. Pedersen was concerned told me about an incident involving the girls' Pioneer club where Mr. Pedersen announced to parents at the meeting that he was going to get a court order to force his wife to give him Karlee's Pioneer vest on days that he had access. This apparently related to Mr. Pedersen's irrational insistence that he actually have possession of his daughter's vest.
- [150] Mrs. Holland also testified to events at Halloween, a trip to the dentist and a soccer game all in 1999 when she observed Mr. Pedersen to act inappropriately in relation to the children.
- [151] As I indicated previously, many of these incidents standing alone would have little significance. However, collectively they offer a profile of Mr. Pedersen as a manipulator whose focus is upon himself, not his children. I do not know whether this is a deliberate course of action or simply a product of his personality. It really doesn't matter.
- [152] It would be detrimental to the well-being of these children to have their father play any role in the important decisions affecting their lives. He simply cannot abide any contribution from Ms. Pedersen and would without doubt, evade every suggestion she might make respecting mutually required decisions.
- [153] I reiterate my observation that Mr. Pedersen loves his children. The difficulty is that he perceives he is the parent who knows what is best for them and also what is best for Ms. Pedersen, notwithstanding considerable evidence to the contrary. He rejects any advice or suggestions that do not accord with his own views. He has become obsessed with his rights as a parent. The children are his focus only to the extent he can use them to control his own agenda. A joint custody/guardianship order would be impossible in this climate.
- [154] There will be an order for custody of the two children to Ms. Pedersen with access to Mr. Pedersen as follows:
1. 7:00 a.m. Monday to 6:00 p.m. Wednesday of each week provided, however, if Monday is a statutory holiday, the children shall be delivered at 9:00 a.m.
 2. Telephone access on Thursday and Saturday at 7:00 p.m. Ms. Pedersen to have telephone access to the children on Tuesdays at 7:00 p.m.

3. Summer access of 21 days during the months of July or August of each year which will include the weekly access during the 21 days period. Mr. Pedersen to provide to the plaintiff by April 30 of each year the dates on which he intends to exercise this access.
4. The plaintiff shall be entitled to exercise a similar period of uninterrupted time with the children, giving the same notice. The intent is simply to provide each with a 21-day period during which weekly access is suspended.
5. If conflict in the summer dates arises then in even-numbered years the defendant's request will take priority and in odd-numbered years, the plaintiff's request will take priority.
6. During the exercise of summer access, each parent will permit the children telephone access to the other parent at 7:00 p.m. on each Tuesday, Thursday and Sunday.
7. Weekly access shall be suspended on December 24, 25, and 26 of each year and substituted with:
 - (a) In 2001 and odd-numbered years thereafter, the children will be with the defendant from 12:00 noon on December 24 to 12:00 noon on December 25 and the children shall be with the plaintiff from noon on December 25 to noon on December 26.
 - (b) In 2002 and even-numbered years thereafter, the children shall be with the plaintiff from 12:00 noon on December 24 to 12:00 noon on December 25 and the children will be with the defendant from 12:00 noon on December 25 to 12:00 noon on December 26.
 - (c) The children shall be with the defendant each father's day from 1:00 p.m. to 7:00 p.m.
 - (d) Mr. Pedersen may attend at the children's school to volunteer, as permitted by the school authorities, but such attendance is restricted to his days of access. He is permitted as well to attend at the school to observe any special events or events in which the children are taking part such as school plays, recitals, sports days etc.
 - (e) Neither party will enroll either of the children in any activity such as soccer, swimming lessons or any similar activity which would require attendance at that activity during a time when the child or children will be in the care of the other party, without first obtaining the written consent of the other party.
 - (f) Neither party will register or authorize either child to participate in a field trip or other school activity during a time when the child or children will be in the care of the other party, without first obtaining the written consent of the other party.
 - (g) In even-numbered years commencing in 2002, the defendant may enroll the children in a five-day vacation bible school in the month of July or August provided that the dates of the vacation bible school shall not interfere with the plaintiff's summer holiday. The defendant shall be responsible for the cost of the vacation bible school and the plaintiff shall facilitate the children's participation in the vacation bible school.

- (h) In odd-numbered years commencing in 2001, the plaintiff may enroll the children in a five-day vacation bible school in the month of July or August provided that the dates of the vacation bible school shall not interfere with the defendant's summer access. The plaintiff shall be responsible for the cost of the vacation bible school and the defendant shall facilitate the children's participation in the vacation bible school.
 - (i) Neither the plaintiff nor the defendant shall attend at the church attended by the other unless specifically invited by the other party.
 - (j) Neither party shall remove the children from the Province of British Columbia for a period in excess of 24 hours, except for the defendant's summer access and the plaintiff's summer holiday, without the written consent of the other party, or approval of the court. In the event either party intends to remove the children from the Province of British Columbia for the summer holiday or summer access as defined, he or she shall provide to the other in writing, at least 30 days in advance, a complete itinerary setting out the dates of departure and return, the address(es) where the children will be staying and telephone number(s) where the children may be contacted for the entire period that the children will be out of the Province of British Columbia.
 - (k) The plaintiff shall provide to the defendant 30 days notice in writing before she changes the ordinary place of residence of the children.
 - (l) All written notices referred to shall be delivered to the residential address of the party to whom notice is given and each party shall at all times keep the other advised of his or her residential address.
- [155] There will be a limited joint guardianship order to include the following: Mr. Pedersen is entitled to obtain copies of school records, including notices, circulars and generally all material sent to parents. He is entitled to copies of all medical/dental information respecting the children and is entitled to prompt notification of any problems concerning their health, education, religious training and social development. Ms. Pedersen will provide whatever written authority is required to effect this direction.

CHILD MAINTENANCE

- [156] I have commented extensively upon Mr. Pedersen's failure/refusal to work reasonable hours, notwithstanding evidence that he could easily do so. There is no credible evidence to support his claim that he cannot now work due to medical difficulties.
- [157] He has historically enjoyed near full employment with attendant income. I accept the plaintiff's argument that for Guidelines purposes it is fair to average his income for the past five years. I set his income at \$44,600 which is rounded to the nearest dollar and direct payments of \$626 per month commencing September 1, 2001. I am mindful of the request that payment commence July 1, however, Mr. Pedersen is not presently employed and will need some time to arrange employment.

FAMILY ASSETS

[158] No major issues arise respecting the division of family assets. It is agreed that the matrimonial home, presently occupied by the plaintiff, should be sold and the net proceeds divided equally after payment of all encumbrances and charges related to it. In order that there be no dispute in that regard, I direct the following amounts must be paid from the sale proceeds:

1. The real estate commission and GST.
2. The Van City Mortgage.
3. All the usual adjustments between vendor and purchaser.
4. All legal fees associated with the sale.
5. One-half the balance then remaining to the plaintiff.
6. From Mr. Pedersen's one-half share will be deducted the sum owing on the mortgage to Christine Marcotte together with any costs associated therewith.
7. Also payable from Mr. Pedersen's share is all child support arrears owing Ms. Pedersen as calculated by the F.M.E.P. plus all interest, fees or other charges less the sum of \$923.52 agreed to be credited to him.

[159] Given my assessment of the defendant's inability to cooperate in any meaningful way, I grant the plaintiff's application for sole conduct of the sale of the home. I also accept that the plaintiff purchased the refrigerator and stove after separation and these are not family assets. She is entitled to make her own arrangements in regard to those items without accounting to the defendant.

[160] It is conceded that neither the State Farm Insurance policy nor the Commercial Union Insurance policy are family assets and accordingly the defendant is entitled to retain same without compensation to the plaintiff.

[161] Each shall retain the automobile in their possession. Mr. Pedersen shall keep the 1986 Camry and Ms. Pedersen the 1987 Acura.

[162] The plaintiff is entitled to an equal interest with the defendant in his B.C. Superannuation Pension Plan. Entitlement shall be calculated from marriage to the triggering event. For ease of calculation this would be from June 13, 1992 to November 30, 1998. Until such time as the division is effected, the defendant will be trustee for the interest of the plaintiff. Should any particular wording be required to effect this or any other direction in this judgment, the parties have liberty to apply. Each will pay one-half the fees charged to effect the division ordered.

[163] Canada Pension Plan credits shall be divided in accordance with the Canada Pension Plan Act.

RRSPs

- [164] Mr. Pedersen had \$14,764.03 and Ms. Pedersen \$3,365.62 in registered pension funds. On January 27, Mr. Pedersen transferred \$6,622.78 to the plaintiff. These are family assets to which each is entitled to one-half. Accordingly, each is entitled to \$9,064.88.
- [165] The plaintiff has retained her own funds and has also received the \$6,622.78 from Mr. Pedersen. This leaves a balance due Mr. Pedersen of \$923.63 (the parties calculated \$923.52) which is the sum agreed to be deducted from the balance owing the plaintiff on sale of the home.
- [166] It is agreed that the plaintiff has responsibility for the debts to ScotiaBank Visa, The Bay, and Sears. The defendant is responsible for debts to B.C. Tel and CIBC.
- [167] The plaintiff sought an order that the proceeds due Mr. Pedersen on sale of the matrimonial home be "placed in trust" with the F.M.E.P. as security for child maintenance payments. Alternately she asked for an "unequal division" of the home to the extent of \$9,000 which approximates the value of Mr. Pedersen's insurance policies that the parties agreed were not family assets.
- [168] There is no compelling evidence, at this juncture, to support the application to secure the balance of proceeds in the manner requested. Nor am I prepared to order the alternate "unequal division". The request was not pursuant to s. 65 of the Family Relations Act but rather pursuant to some notion of unfairness that the defendant received the insurance proceeds. It was not a persuasive argument.
- [169] The trial was almost entirely directed to the issue of custody and given the plaintiff's success in that regard I order that she is entitled to her costs.
- [170] Judgment accordingly.

"R.A. McKinnon, J."

The Honourable Mr. Justice R.A. McKinnon

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