

CANADA / JUDGMENT

Quallie v. Quallie

2002 BCSC 740

COURT

Supreme Court of British Columbia

DECIDED

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2002 BCSC 740

Citation:	Quallie v. Quallie
Date:	20020514 2002 BCSC 740
Docket:	8156 Registry: Cranbrook IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:	ROBERT GLENN QUALLIE PLAINTIFF
AND:	LISA ANN QUALLIE ALSO KNOWN AS LISA ANN ANDERSON DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE GRAY

Counsel for the Plaintiff:

Muriel M. Matthews

Counsel for the Defendant:

Darrel C. Symington

Date and Place of Hearing/Trial:

February 12, 2002

Cranbrook, B.C.

INTRODUCTION

- [1] The parties are the divorced parents of Matthew Robert Quallie, born May 6, 1983 and now 19, and Leora Lynn Quallie, born February 21, 1980 and now 22. The defendant mother, Ms. Anderson, applied on the basis of affidavits for an order requiring the father to pay child support and education costs for both children. She seeks to vary (regarding child support) and rely on (regarding education costs) the written Separation Agreement signed by the parties in June 1997. Neither party sought cross-examination on the affidavits or suggested that the issues could not be resolved on the basis of the affidavit evidence.

FACTS

- [2] The parties separated in September 1996 after 22 years of marriage. Commencing with the separation, the children lived with their father.
- [3] The parties entered into a written Separation Agreement in June 1997. The plaintiff father obtained independent legal advice concerning this Agreement but Ms. Anderson waived her right to independent legal advice. The Agreement provided that the parties would retain joint custody and joint guardianship of the children. The Agreement contemplates that the children would continue to live with their father.

- [4] The Separation Agreement includes the following terms:

9.3 In consideration of the Husband receiving a disproportionately larger share of the parties' matrimonial assets, the Husband hereby waives entitlement to claim from the Wife ongoing financial support for the children of the marriage.

9.4 The parties agree that each will contribute financially to the cost of the children's post-secondary educations and that their contributions shall be, so far as practical, proportionate to the parties' levels of gross annual income.

9.5 In the event that the children choose to primarily reside with the Wife, the Husband shall pay to the Wife child support in the amount of \$300.00 per month per child until one of the following events occur:

- (a) the child becomes 19 years old;
- (b) the child ceases to be in full time attendance at an educational institution;
- (c) the child marries;
- (d) the child dies;
- (e) the child becomes self-supporting;
- (f) the child no longer primarily resides with the Wife.

11.8 The parties acknowledge and agree that Leora's and Matthew's trust accounts will remain intact for the benefit of the children. Upon the children attaining the age of twenty-five, the parties shall transfer the applicable trust account into that child's name. If a child dies before attaining the age of twenty-five, the amount in that child's trust account shall be transferred to the other child's trust account. In the event that either children attain (sic - neither child attains?) the age of twenty-five, the proceeds of the trust accounts shall be divided equally between the parties.

- [5] The Separation Agreement provides that neither party would claim maintenance from the other and that the matrimonial assets would be divided as set out in the Agreement. The schedules to the Agreement list the assets to be retained by each. The total of the estimated value of the listed assets is \$214,000 for the mother and \$314,600 for the father. These are estimates only, and the father argues that they should be given little weight. He particularly challenges the \$136,000 estimate of the value he retained in the home, saying that it is not supported by an appraisal.
- [6] The father alleges that he and the mother had agreed that the trust funds being held for the children could be used to pay for the children's education before they reached 25 years of age, but that otherwise they were not to be touched for any reason until the children turned 25. He says that the verbal agreement was not translated correctly into the terms of the Separation Agreement. However, the mother disagrees.
- [7] The father remarried in October 1997. The father asked Leora to leave his home at around that time, on the basis that she was not honouring the rules of the home, was skipping school, and was making long-distance telephone calls at her father's expense despite being told not to do so. Leora came home to find that all of her belongings had been thrown out of the window of the house onto the lawn. Leora went to live with her mother. Matthew stayed with his father and stepmother, and lived with them until June 2001.
- [8] The father paid the mother \$300 per month for Leora's support for the five-month period from November 1996 through March 1998. He did not pay for April and May 1998. During those months, Leora was spending some time at her boyfriend's and some time at home with her mother.
- [9] Leora moved back to her mother's home full-time in June 1998, and the father paid \$300 per month for her support for June, July and August of 1998.
- [10] Leora graduated from high school in June 1998 after attending only sporadically. Leora had a difficult time with the changes in her life surrounding the separation of her parents and in her relationship with her stepmother.

- [11] In September 1998, Leora began attending the Southern Alberta Institute of Technology (also known as "SAIT") in Calgary in a one-year medical transcription diploma program. The total cost for Leora's program at SAIT was \$13,000. The mother contributed \$8,000 to that and the mother obtained the balance of \$5,000 by withdrawing that sum from the Trust Account that had been established for Leora.
- [12] The father did not consent to the withdrawal from Leora's Trust Account. The signature of both parents was required for the withdrawal of money from the Trust Account but somehow Nesbitt-Burns, who held the investment, allowed the funds to be withdrawn. The father asked the mother to return the funds but she did not do so.
- [13] The father has not contributed to Leora's educational costs. He has not made any child support payment for Leora for the period after August 1998. It is his position that child support was no longer payable when Leora stopped living at her mother's home. The father planned to start assisting Leora directly beginning in September 1998, but did not do so, on the basis that Leora did not confirm the cost of her tuition and books. The father says that after he learned that funds had been withdrawn from Leora's Trust Account, he presumed that Leora had no need of further assistance. However, he also says that at all times he made it clear to the mother that he would also assist with the cost of Leora's education if he was provided with receipts, which he has not received.
- [14] The mother's gross income for 1998 was \$17,172.
- [15] Leora turned 19 in February, 1999. In May 1999, Leora completed the medical transcription program at SAIT with a 3.27 grade point average out of a possible 4. Leora worked at a medical office on a trial basis as part of her training, but has not received further employment in that field.
- [16] The mother's gross income for 1999 was \$22,648.
- [17] From May 1999 to July 2001, a period of a little over two years, Leora lived in Calgary and worked full-time, as a hostess in restaurants and then as a receptionist, supporting herself, but failing to put aside savings.
- [18] Matthew was in grade 12 for the school year 2000-2001.
- [19] Matthew had been a good student in prior years, but in grade 12 his grades slipped. Matthew's explanation is that during his final year of school he felt unwelcome around his stepmother, and in addition he had difficulty maintaining interest in some of his courses because they were not essential to his graduation.
- [20] Matthew graduated from high school in June of 2001, when he was age 18. In late June, Matthew's stepmother wrote him a letter complaining that he was not appreciating his father adequately and telling him to move out. Matthew did move out of the home of his father and stepmother and into his mother's home.

- [21] The father says that Matthew was asked to leave the home because he had been treating the home as if it were a hotel, such as by staying overnight at his girlfriend's. Matthew says that he was very uncomfortable around his stepmother.
- [22] Matthew has been living with his mother in Cranbrook since the end of June 2001. No one else lives with them now, although it appears that at one point Ronald Bohmer was living with the mother. The mother says that Matthew has been respectful of her house rules, has a great group of friends, and participates extensively in track and field.
- [23] In September 2001, Matthew started a two year business administration program at the College of the Rockies in Cranbrook. His goal is to start his own business eventually. His mother has been looking after his living expenses. For part of the time that he was a full-time student, Matthew was working part-time. He was earning about \$600 gross per month which he used for personal expenses. He is presently unemployed. In his first semester, he received grades that he calculates as an average 73.8%.
- [24] Between July 2001 and January 28, 2002, Leora attended school full-time to upgrade her grade 12 standing in order to qualify to attend the 4-year Dental Hygienist program at the Edmonton campus of the University of Alberta. During this period, Leora was working part-time as a receptionist and her mother was contributing \$480 per month to her educational expenses. All of Leora's marks in her high school upgrading program were between the high 70 percentiles to low 80 percentiles.
- [25] Leora could have obtained her high school upgrading by attending Cranbrook's College of the Rockies.
- [26] In October 2001, the father wrote the mother's counsel enclosing \$3,000 as support for Matthew for the period July 2001 to April 2002, being just before Matthew turns 19. The father also listed information that he expected to receive regarding Matthew's post-secondary education. He wrote "[o]ne-half tuition will be paid directly to the College. One-half the cost of books will also be paid provided receipts are presented. To date, no receipts have been provided for books already paid for." The mother took the position that this letter was an offer and returned the cheque on the basis that the offer was not accepted.
- [27] The father has made payments towards Matthew's books and tuition for the 2001-2002 College year. The father has paid \$775, consisting of \$410 (half of first term tuition) and \$365 (half of book costs). The mother has paid the remaining tuition and book costs of approximately \$1,550.
- [28] The father says that Matthew has not kept him advised about his first semester, and what courses he selected for the second semester. The father also says that Matthew has failed to provide receipts and information regarding tuition and books. Matthew says that his father made the inquiries at the time that he did not have the information, and that he gave his father information about the first semester.

- [29] I was provided with copies of College of the Rockies course registration data forms, which show the tuition for Matthew as \$803.22 for the fall 2001 semester and \$674.31 for the spring semester. I was also provided with a form showing Matthew's total book costs for both semesters as a total \$1,221.72. These figures total about \$2,700.
- [30] Leora plans to work for the nine-month period from January to September 2002. She hopes to attend the University of Alberta dental hygienist program commencing in September 2002. She is presently working full-time at a Calgary restaurant and with tips hopes to average \$2,000 per month before taxes. Between January and September 2002, Leora hopes to save about \$2,000 to apply towards schooling. The tuition is anticipated to be \$7,000 per year. Her monthly living expenses are anticipated to be \$1,240 per month. She estimates the total of tuition and living costs for the 9 month school year to be about \$18,000 per year.
- [31] The Separation Agreement was filed in this Court on December 7, 2001. The mother's application for enforcement or variation of the Separation Agreement regarding child support and post-secondary education is dated December 12, 2001. Counsel advised that it was served on the father on that day.
- [32] The mother is self-employed in her business Anderson Bookkeeping Services. Her annual income as set out in her Financial Statement of December 12, 2001, is \$22,948. The mother also has assets, including a home, two vehicles, and an RRSP. The assets have a total net estimated value of about \$190,000. The mother claims annual expenses of about \$38,500, which exceeds her reported gross income. The expenses she claims are roughly \$5,000 in compulsory expenses, \$7,200 in housing expenses, \$3,200 for utilities, \$7,700 for household expenses, \$2,000 for transportation, \$5,500 for personal items, \$4,000 for children, \$750 for health, nothing for debt repayment but \$3,300 for reserve for income tax, and nothing for vacation or pet care.
- [33] The mother has a teaching degree, 6 years of teaching experience outside B.C. as an elementary school teacher, and a degree in business administration. She is not qualified to teach in B.C. and her real estate licence is not valid. She believes her best prospects are in the bookkeeping field, although it will take time for her to build up this business. She uses her business administration training in that work.
- [34] The father is employed as an electrician by Tembec - Elko Division. His annual income, as set out in his Financial Statement of January 2002, is \$67,614. I was provided with a copy of his 2001 T4 Statement which shows employment income of \$68,786.97. The father also has assets, including a home, two vehicles, and an RRSP. The assets have a total net estimated value of about \$233,500. His financial statement states annual expenses are about \$81,000 but the addition on the statement was incorrect. On my calculations, the total of the amounts he claimed is only about \$76,000. This still exceeds his reported income. The expenses he claims are roughly \$21,000 in compulsory expenses, \$2,500 in housing expenses, \$3,000 for utilities, \$11,000 for household expenses, \$4,000 for transportation, \$11,000 for personal items, \$3,500 for children, \$1,000 for health, \$13,200 for debt

repayment, and \$5,000 for vacation and pet care.

- [35] The father says that he loves both his children greatly and is very sorry that the legal proceedings have become necessary. He says that he would like to help his children obtain a post-secondary education, but he does not have the same financial resources that the mother has. However, the father was assuming that the mother was living with a common-law partner, when she is no longer doing so. The father says that it will not help his children reach independence if financial guidelines are not set and adhered to. The father says that he is proud of Leora's achievements, but he sometimes gets distressed because she has the talent and ability to do so much more if she just applied herself.
- [36] The father is now essentially estranged from his two children. Leora, who lived with him until she was 17, last spoke to him in September 2001 and the conversation was unpleasant. The father describes the relationship as strained and thinks that is because Leora has not accepted his marriage to his current wife and that Leora does not like her stepmother. Matthew, who lived with his father until he was 18, says that since seeing the remarks his father made in his affidavit, he has been feeling very uncomfortable about communicating with his father.
- [37] The Trust Accounts are apparently held by Nesbitt-Burns, and each has a current value of about \$20,000.

ISSUES

[38] The issues are as follows:

- (a) What amount is the father required to pay the mother as child support for Matthew for the period June 2001 to now?
- (b) What amount, if any, is the father required to pay to the mother as child support for Leora for the period September 1998 through May 1999?
- (c) What amount, if any, is the father required to contribute towards the cost of Matthew's post-secondary education?
- (d) What amount, if any, is the father required to contribute towards the cost of Leora's education?

ANALYSIS

- [39] The mother says that the father effectively received an extra \$50,000 in assets on separation. She says that the father was unjustly enriched by this distribution. She makes that assertion by multiplying the number of months the children were expected to live with their father following separation until the child reaches age 19 by the figure of \$300 per month, which is the figure used for their support if they reside with her. On that basis, the children would have lived with their father for 97 months (29 months for Leora and 68 months for Matthew), and the father would have effectively assumed \$29,100 in responsibility for child support.

The mother argues that the distribution was unfair because the father received more than that in the disproportionate distribution of assets. However, the Separation Agreement does not articulate any basis for the amount of the disproportionately larger share of the matrimonial assets provided to the father. This argument does not assist me in resolving the issues.

(a) Matthew's Support

- [40] The Separation Agreement provides that in the event that the children choose to primarily reside with the mother, the father shall pay \$300 per month per child until the occurrence of a number of listed events.
- [41] Matthew has just turned 19, but prior to that, none of the listed events had occurred relating to Matthew. Accordingly, unless there is reason to vary the Separation Agreement, the father's obligation was \$300 per month until Matthew turned 19.
- [42] The mother argues that the Separation Agreement should be varied because of the change of circumstances arising from the coming into effect of the Federal Child Support Guidelines, SOR/97-175. Under the Guidelines, the father would be obligated to pay \$560 per month. There was no evidence regarding what was the gross income of either party at the time of the Separation Agreement.
- [43] I have concluded that the support for Matthew should be varied to comply with the Federal Child Support Guidelines. The Separation Agreement does not disclose the basis for the agreed term that the mother would be paid \$300 per month per child for child support. However, in the circumstances of this agreement, where there was no spousal maintenance and the father received a disproportionately large share of the family assets in recognition of his anticipated support of the children, I conclude that it is appropriate to ensure that Matthew benefits from the amount of child support that is required by the Guidelines.
- [44] For what period should the father be required to pay the increased child support? The mother's application to vary the support for Matthew was served on the father on December 12, 2001. I will order the increased child support amount commencing January 1, 2002.
- [45] Accordingly, the father owes the mother child support for Matthew at the rate of \$300 per month for the period June 2001 to December 2001 inclusive, and at the rate of \$560 per month for the period January 2002 to May 2002. That is a total of \$4,480 (7 x \$300 + 4.25 x \$560).

(b) Leora's Support

- [46] The mother claims child support for Leora for a total of 11 months, consisting of April and May 1998, and September 1998 through to the end of May 1999.

- [47] The father argues that the mother should not receive child support for April and May 1998 because Leora was living with her boyfriend. The mother argues that Leora stayed with her some of that period, and that she was required to maintain a home for Leora so should receive the child support.
- [48] In my view, Leora was still primarily residing with her mother during April and May 1998. Accordingly, the father is obligated to pay child support for Leora for each of those two months pursuant to the Separation Agreement. While the Federal Child Support Guidelines were in effect at that time, in light of the timing of the mother's application for payment of the arrears, I will not increase the amount of the child support to the guideline level. Accordingly, the father is obligated to pay the mother \$600 in respect of arrears of child support for Leora for April and May 1998.
- [49] September 1998 to May 1999 is the period that Leora was residing in Calgary and attending SAIT. In my view, Leora was not primarily residing with her mother in that period, and so pursuant to the Separation Agreement, child support is not payable to the mother for Leora for that period.
- [50] The mother is no longer entitled to receive child support for Leora, since Leora has reached age 19. The Separation Agreement provides that child support will cease at that time.
- (c) Matthew's Post-Secondary Education
- [51] The Separation Agreement requires each parent to "contribute to the cost of the children's post-secondary educations." The clause does not say how long such education may last, nor where such education may be taken, nor which costs are included.
- [52] In my view, the Separation Agreement requires the parents to contribute to education which is reasonable, and which is taken at a reasonable location, bearing in mind the circumstances of the parents both at the time of the Separation Agreement and at the time the education costs are incurred.
- [53] The Federal Child Support Guidelines at section 7 deal with a parent's obligation to contribute to a post-secondary education in circumstances where there is no Separation Agreement. Under those Guidelines, the court may order that a parent pay all or a portion of expenses for post-secondary education, taking into account several factors. While the section is not directly applicable, the factors described in that section are a helpful aid to determining what may be reasonable in the circumstances here. Those factors are the necessity of the expense in relation to the child's best interests, and the reasonableness of the expense, having regard to the means of the spouses and those of the child, and to the family's spending pattern prior to the separation.

- [54] The evidence demonstrates that some but not all post-secondary education is available in the Cranbrook area. For example, high school upgrading and the two-year business administration program are available in the Cranbrook area. It appears that the four-year dental hygienist program is not available there.
- [55] In construing the terms of the Separation Agreement, I must bear in mind the circumstances of the parties at the time of the agreement. It appears that at that time, the mother had a teaching degree and a business administration degree. In my view, the Separation Agreement must be construed on the basis that the "post-secondary educations" to which each parent must contribute would include attendance at university level schooling. Some university level courses are not available in Cranbrook.
- [56] Some sites and programs might not be reasonable for Matthew and Leora for reasons such as comparable training being available much more cheaply or where the program is unlikely to improve the circumstances of the child in question. However, taken alone, the fact that the education is outside the Cranbrook area is not enough to disqualify it from being an expense for which the parents are required to make a contribution.
- [57] To obtain an education a person's living expenses must be met. The Separation Agreement provides that child support will cease when the child reaches age 19. In my view, proper interpretation of the Separation Agreement requires that living expenses be included in "the cost of the children's post-secondary educations" to which the parents must contribute. This is similar to the approach taken by Pitfield, J. in *Johnson v. Johnson*, [1998] B.C.J. No. 1080 regarding parental obligations to pay room and board as part of educational expenses under the Federal Child Support Guidelines.
- [58] Matthew is doing well in his business administration course and, accordingly, seems well-suited to it. While he may have stumbled academically in grade 12, he appears to have recovered well. It is reasonable for him to take the business administration course in Cranbrook. Because Matthew is able to continue living with his mother, his living expenses are less than they could otherwise be.
- [59] Until Matthew turned 19, the reasonable relevant costs of his post-secondary education were only his tuition and related expenses like books and supplies. Upon turning 19, the mother ceases to receive child support for Matthew, and reasonable relevant costs will include Matthew's reasonable living expenses as well.
- [60] Are the parents required to pay all the reasonable costs of their children's post-secondary educations? Can the parent who is earning the lesser gross income, in this case the mother, make the contribution she considers appropriate and thereby force the other parent to contribute the proportionately greater amount?
- [61] In my view, both questions must be answered negatively. The Separation Agreement says that each parent "will contribute financially to the cost", not that each parent "will pay the proportionate share of the cost".

- [62] Accordingly, I must determine what amount is reasonable for each parent to contribute to the reasonable costs of Matthew's post-secondary education.
- [63] I will first consider Matthew's means. He was earning \$600 per month gross working part-time while attending school, but is presently unemployed. There is a suggestion that he was having trouble keeping up both the work and his studies, and on one occasion fell asleep at the wheel while driving to work. The evidence did not explain why he stopped working at the A & W. I find that Matthew can likely find some part-time work which will not unduly interfere with his studies. I estimate that he can likely earn a net of \$100 per month, being \$1,200 per year, to contribute to his education.
- [64] Can Matthew access the Trust Account described in the Separation Agreement to defray his education costs? The father asserts that the fund was to be available for education, but that is not stated in the Agreement. Furthermore, the Agreement states that the account will remain intact, and be transferred to the children if and when they reach age twenty-five. Most children incur post-secondary education expenses before age twenty-five. Accordingly, in my view the Separation Agreement does not contemplate use of the Trust Account for education.
- [65] Pursuant to the Trust and Settlement Variation Act, R.S.B.C. 1996, c. 463, the court may approve a variation of a trust where all persons with vested or contingent interests consent. Here, both children and both parents have contingent interests in the trust. If one child dies prior to age 25, the other child will receive that child's trust account. If both children die prior to reaching age 25, the trust accounts will be divided equally between the parents. Only if both children and both parents consent can the trust be varied to provide for either or both of Matthew and Leora's educational expenses before they reach age 25. No such application is before me, and, in any event, it appears that the mother does not consent at this time.
- [66] It may be that one or the other parent will be willing to lend money to Matthew, if required, on the basis that Matthew will repay the parent if he reaches age 25 and receives the trust money, and if not, the debt will be forgiven.
- [67] I turn then to the means of the parents.
- [68] The father's gross annual income is about \$68,500, being about three times the mother's gross annual income. His net assets are about \$233,500. Both parents will need to reduce their reported expenses to make any meaningful contribution to their children's education. Both parents can likely do so, by techniques such as reducing expenses and refinancing.
- [69] The mother's gross income for 1998 was about \$17,000 and for 1999 was about \$22,500. The mother's net assets are about \$190,000.
- [70] In considering the means of the parents to contribute to their children's education, the amount that each would be required to pay as child support based on their income gives some guidance to a reasonable contribution. If the father were required to pay the Guideline

amount for child support for two children based on his annual income of \$68,786.97, he would pay the annual amount of \$10,884. The mother would pay \$4,116 annually based on her annual income of \$22,948. In addition, both parents have assets. The father's reported expenses include repaying \$13,200 annually towards a homeowner's line of credit debt of \$36,619. He can be expected to refinance that debt to obtain further funds.

- [71] Matthew's educational expenses for 2001-2002, not including his living expenses, appear to have been about \$2,800. Matthew does not appear to have contributed to that, and there is no evidence that he has any savings now to do so.
- [72] With respect to 2001-2002, the parents together should have paid Matthew's total costs of about \$2,800. Divided proportionately, the father should have paid \$2,100 and the mother \$700. In all the circumstances, in my view that is reasonable. The father has already contributed \$775, and so he must repay the mother \$1,325 in respect of Matthew's 2001-2002 educational expenses.
- [73] For 2002-2003, I would expect Matthew to be able to contribute \$1,200 for his expenses. Assuming that they are at the same level as 2001-2002, Matthew will need a further \$1,600. Contribution by the parents proportional to their gross income would be \$400 by the mother and \$1,200 by the father. In my view, that is a reasonable contribution by the parents. In addition, the parents should contribute proportionately on the basis of their gross income to Matthew's reasonable living expenses during the 2002-2003 academic year. There was no evidence concerning that amount, and if the parties disagree, the parties may apply for a further order.
- [74] Both parents are entitled to receive information about the education costs to which they are contributing. This will enable them to consider whether in their view the costs continue to be reasonable and to consider their tax position. Accordingly, Matthew should supply each of them with copies of tuition and book receipts and with reports on his progress, such as transcripts of his grades. The parents are at liberty to pay the sums directly to Matthew or to the educational institution.

(d) Leora's Post-Secondary Education

- [75] The father has not contributed to any of Leora's post-secondary education, although he was willing to contribute to her medical transcription training if he was provided with the appropriate receipts.

(i) Medical Transcription Schooling

- [76] The mother contributed \$8,000 to the \$13,000 expenses of Leora's medical transcription schooling in 1998-1999, and obtained the other \$5,000 through withdrawal from Leora's Trust Account.

- [77] In my view, it was reasonable for Leora to take the medical transcription schooling. There was no evidence that such a course was available in the Cranbrook area and, accordingly, I find that it was reasonable for Leora to attend that schooling in Calgary.
- [78] Leora did not contribute to the costs, unless she can be taken to have agreed that her interest in the Trust Account, which she should receive in about three years when she reaches age 25, was properly reduced by \$5,000.
- [79] In my view, the parents had the means to contribute to Leora's medical transcription schooling. In my view, bearing in mind that Matthew was still in high school at the time that Leora attended this schooling, the father ought to have contributed \$6,000 and the mother \$2,000.
- [80] Accordingly, I order that the father pay the mother \$6,000 in respect of his contribution to Leora's attendance at the medical transcription schooling in 1998-1999.

(ii) High School Upgrading

- [81] Perhaps Leora should have realized while she was in high school that she should work to achieve the kind of grade 12 standing which would enable her to qualify to attend the dental hygienist program. However, when she was in grade 12, she was struggling with the difficulties related to her parents' separation and her father's new marriage. After Leora finished her medical transcription training and worked for a couple of years, she decided that she should upgrade her high school standing.
- [82] In my view, it was reasonable for Leora to upgrade her high school standing, although it may not have been reasonable for her to do so in Calgary rather than Cranbrook. However, high school upgrading does not constitute "post-secondary education" as contemplated by the Separation Agreement. Accordingly, I will not order the father to contribute to that schooling.

(iii) Dental Hygienist Program

- [83] Leora's anticipated costs for the dental hygienist program are \$18,000 for the 9 month school year. She anticipates being able to support herself during the other three months of each year.
- [84] The father argues that Leora has ceased to be a "child of the marriage", having worked and lived on her own for a period, and that he is not responsible for her further education. The flaw in that argument lies in the terms of the Separation Agreement. The Agreement does not provide that the parents must contribute to education costs only in the period when each child is a "child of the marriage" for the purposes of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 4. The Separation Agreement has dealt with the obligation to pay support differently from the obligation to pay education costs. It provides that the obligation to pay child support will cease on certain events, such as a child reaching age 19, when the child may still be a child of the marriage for the purposes of the Divorce Act. In my view, this is

consistent with the conclusion that the obligation to contribute to post-secondary education costs survives the child ceasing to be a "child of the marriage."

- [85] The father argues that since Leora has completed one post-secondary program, being the medical transcription schooling, the parents should not be required to contribute to further post-secondary education. I do not agree. In my view, taking into account Leora's best interests and aptitude, it is reasonable for Leora to pursue the dental hygienist program if she gets accepted.
- [86] I am not suggesting that the parents will be required to contribute to any post-secondary schooling sought by the children at any stage in their lives. Although Leora has completed one post-secondary program, it was only a one-year program. Having regard to the circumstances of the parties and particularly the level of education of the mother, I do not agree that the Separation Agreement should be construed to limit the required contribution of the parents to one year of post-secondary education.
- [87] There was no evidence concerning what student loans might be available to Leora. As discussed above regarding Matthew, the money in Leora's Trust Account cannot be obtained in accordance with the Separation Agreement and the Trust and Settlement Variation Act without the consent of both parents and both children. No such application is before me, and it appears that the mother is not willing to consent at this time. However, Leora may be able to borrow on the basis of her contingent interest in the Trust Account, which interest will vest in less than three years, so long as she survives.
- [88] How much should the parents be required to contribute to the \$16,000 balance of Leora's costs for the first year of the course and \$17,400 for the subsequent years?
- [89] In my view, taking into account the needs and means of the parents and Leora and Matthew as well, it is reasonable for the father to be required to contribute \$7,500 and the mother to contribute \$2,500 to Leora's 2002-2003 program, assuming that Leora is admitted into the dental hygienist program. The father's total contribution to his children for 2002-2003 will therefore be \$8,700 plus his proportionate share of Matthew's reasonable living expenses. The mother's will therefore be \$2,900 plus her proportionate share of Matthew's reasonable living expenses. These are reasonable contributions in light of the means of the parties.
- [90] As with Matthew, Leora should supply each of her parents with copies of tuition and book receipts and with reports on her progress, such as transcripts of her grades. As with Matthew, the parents are at liberty to pay the appropriate sums directly to Leora or to the educational institution.
- [91] I do not have sufficient evidence available to consider what the parents should contribute to Leora's post-secondary education costs for any subsequent years. If the parties are unable to agree, that will have to be the subject of further proceedings.

SUMMARY

- [92] It is unfortunate that the parties were unable to resolve the child support and education expense issues amicably. However, they appear to have different views about how the children should learn independence and responsibility, as well as different views about their financial means and needs and those of the other.
- [93] Both parties may feel it has turned out that the Separation Agreement was not perfectly fair to them. The mother apparently feels that the father got too large a proportion of the assets on separation, when it turns out the children moved out of his home before reaching age 19. The husband may feel that it is unfair that he is required to contribute to his children's education three times the mother's contribution, when she has about 80% of the amount he has in assets.
- [94] However, the parties elected to enter into the Separation Agreement in June 1997, and it clearly requires that contribution to the children's education be split on the basis of gross annual income. Both parties took the risk that things might turn out as they have and overall, the Separation Agreement has been fair to both parties.
- [95] It is my hope that resolution of the issues regarding child support and education costs will free the father to rebuild his relationship with his children, and they with him. Matthew and Leora lived with their father for the first seventeen or eighteen years of their lives and he deserves credit for his part in helping them become the bright and motivated young adults that they now are. They deserve his continued love and support.
- [96] Although the children have had difficulty adjusting to their parents' separation and their father's new marriage, the children are actively working towards establishing their own independent lives. I urge them to find a place in their lives for their father. I urge the father, as the more mature adult, to initiate contact with his children.
- [97] In summary, I order as follows:
- (a) the father pay the mother the sum of \$4,480 in respect of child support for Matthew for the period June 2001 through May 6, 2002;
 - (b) the father pay the mother the sum of \$600 in respect of child support for Leora for the period September 1998 through May 1999;
 - (c) the father pay the mother \$1,325 in respect of Matthew's 2001-2002 educational expenses;
 - (d) the father pay the mother \$6,000 in respect of his contribution to Leora's attendance at the medical transcription schooling in 1998-1999;
 - (e) assuming Leora is accepted in the 2002-2003 dental hygienist program, the father is required to contribute \$7,500 to those costs; and

- (f) the father pay \$1,200 towards Matthew's 2002-2003 education costs, together with a proportionate share of his reasonable living expenses.
- [98] I will remain seized of any further applications regarding the contribution of the parents to the post-secondary education of Matthew and Leora. Counsel may apply for an application to be heard by telephone or in writing. Unless counsel has specific submissions on the issue of costs, I award costs to the mother on Scale 3.

"V. Gray, J."

The Honourable Madam Justice V. Gray

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