
CANADA / JUDGMENT

R.L. v. Y.P.L.

2016 BCSC 1153

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 1153 R.L. v. Y.P.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.L. v. Y.P.L.,

2016 BCSC 1153

Date: 20160622

Docket: E018918

Registry: New Westminster

Between:

R.L.

Claimant

And

Y.P.L.

Respondent

Before: The Honourable Madam Justice Burke

Reasons for Judgment

Counsel for the Claimant:

C. Carta

Counsel for the Respondent:

R. Hamilton

Place and Date of Trial:

New Westminster, B.C.

February 22-25, 2016

Place and Date of Judgment:

New Westminster, B.C.

June 22, 2016

Introduction

[1] This is a family law case which arises under the Family Relations Act, R.S.B.C., c. 128 [FRA]. The issues are as follows:

- (1) Is either party entitled to arrears of child and spousal support?
- (2) What is the appropriate division of family assets?
- (3) Costs.

Background

- [2] Ms. R.L. and Mr. Y.P.L. were married on May 9, 1987, in Suva, Fiji. At the time, Mr. Y.P.L. was 34, and Ms. R.L. was 18.
- [3] Mr. Y.P.L. is from British Columbia. He had traveled to Fiji and met his future bride in Suva, Fiji. After some discussion between the families, the couple were married within a very short period of time.
- [4] Two weeks later, in May 1987, the couple moved to reside together in a home on Canada Way in Burnaby, British Columbia (the "Family Home"). The couple ceased to cohabit as a couple in March 2003. Ms. R.L. moved out of the Family Home in November 2004.
- [5] There were four children of the marriage: M.A.L, born July 1989; A.L, born September 1991; M.I.L, born January 1993; and N.L., born September 1997. During the marriage, Ms. R.L. was the primary caregiver of the children and performed the household duties. She did not work outside the home. Mr. Y.P.L. is a cabinetmaker/carpenter and general handyman.
- [6] This was not a happy marriage. It was a high-conflict relationship. Police regularly attended at the house due to the volatility of the fights between the couple. There were also allegations of abusive behaviour towards the children.
- [7] In March 2003, the couple separated after a violent incident in which Mr. Y.P.L. was charged. He later pled to a peace bond and lived in the basement until February 2004. This is disputed by Mr. Y.P.L.

- [8] What is not disputed is that in 2003 or 2004, the Ministry of Children and Family Development apprehended the children after a neighbour called about the constant fighting and police presence.
- [9] M.I.L. and N.L. were placed with a foster family. M.A.L. and A.L. lived in a group home. There is no doubt this was a turbulent and stressful time for both Mr. Y.P.L. and Ms. R.L. Although they both appeared to love the children, the conflict between them created great difficulty for the family.
- [10] By March 2004, Ms. R.L. had commenced family proceedings seeking a divorce, custody and guardianship of the children, support for the children and herself, and a division of family assets. A statement of defence was filed by Mr. Y.P.L. on July 26, 2004.
- [11] On November 1, 2004, the parties signed a consent order (the "Consent Order"), which granted Mr. Y.P.L. sole interim custody and guardianship of the children with reasonable access of Ms. R.L. to the children. In addition, it provided that Mr. Y.P.L. would have exclusive occupancy of the family residence located at Canada Way, Burnaby, until the conclusion of the family proceedings. The issues of the amount of support for the children, the value of the family assets, and the obligations of the parties to pay family debts were adjourned generally.
- [12] Ms. R.L. testified she provided her consent to the Consent Order in order to have her children returned to the home. She said at that time she was living in the upstairs in the home, while Mr. Y.P.L. lived in the basement. Her focus was to have the children returned. She said the parties would try to work on their relationship for the sake of the children. She just wanted the children back.
- [13] Mr. Y.P.L. denies he ever lived in the basement or that he ever left the children.
- [14] Ms. R.L. testified she did not understand what exclusive occupancy meant at the time and understood the guardianship to be on a temporary basis until the matter was resolved.
- [15] Mr. Y.P.L. refuted this and pointed out the Consent Order was agreed to when both had legal counsel.
- [16] Ms. R.L. said once the Consent Order was signed, the arguments started again and Mr. Y.P.L. was again violent. The police were called. Mr. Y.P.L. presented the Consent Order providing that he would have exclusive occupancy of the home to the police, who told Ms. R.L. she had to leave.
- [17] Ms. R.L. said Mr. Y.P.L. told her to get out, and she left with only her clothes. Staying first with the neighbours, Ms. R.L. went to California to live with her mother and sister for about six months. She then returned to B.C. With no skills, she worked part-time at minimum-wage jobs in restaurants over the years and ultimately secured a security job. In contrast, Mr. Y.P.L. says Ms. R.L. left the Family Home to "travel" before returning to B.C.

- [18] While Mr. Y.P.L. says the Consent Order confirms his testimony that he was living in the Family Home with the children and Ms. R.L. was living elsewhere, I do not find it necessary to resolve this conflict. The reality is since that time the children largely lived with Mr. Y.P.L., with the exception of certain periods where M.A.L. or M.I.L. lived with their mother, which I will discuss below.
- [19] M.I.L. and N.L. returned to the Family Home with Mr. Y.P.L. in March 2005. A.L. returned in the fall of 2004. M.A.L. continued to reside in a group home until July 2006 and for several years after lived separately with each of Mr. Y.P.L. and Ms. R.L.
- [20] Ms. R.L. said she was unable to move the family law proceedings forward as she did not have money for lawyers. She noted every time she tried to proceed, Mr. Y.P.L. would make excuses. While the matter was set for trial in early 2008, it was adjourned, as Mr. Y.P.L. said he did not have a lawyer at the time. Throughout this time, Ms. R.L. said she wanted the matter settled, including obtaining joint custody of the children.
- [21] In 2010, the couple were divorced. Ms. R.L. remarried for a short time and has since separated. She currently lives with her boyfriend.
- [22] A trial in this matter was booked for the fall of 2015. Unfortunately, the trial was unable to proceed due to lack of court resources at that time. It was re-scheduled and commenced on February 22, 2016.
- [23] I turn to the first question I must deal with as part of my considerations in this case.

Is either party entitled to arrears of child and spousal support?

Child support

- [24] There is no dispute neither party ever paid each other child support. The children, however, lived the majority of the time with Mr. Y.P.L.
- [25] Ms. R.L. indicates M.A.L., her oldest daughter, came to live with her in Surrey in the summer of 2005. She lived with her until 2010 and regularly visited her father. M.A.L. turned 19 in 2008 but continued to live with her mother until 2010.
- [26] When M.A.L. moved out, M.I.L. moved in with her mother in 2010 and lived with her until August 2014. M.I.L. turned 19 in 2012.
- [27] During this time, Mr. Y.P.L. received the government child benefit for the children. Ms. R.L. estimated this to be \$260 a month for each child. When she was living with Mr. Y.P.L., she received \$900 a month for the four children as a child benefit.
- [28] Neither A.L. nor N.L. ever lived with their mother after her departure from the Family Home in November 2004.

- [29] Mr. Y.P.L. and M.I.L. testified that while the children saw their mother frequently, none lived with Ms. R.L. for any length of time while under 19. M.I.L. said she lived with her mother for two years in a series of basement suites when she turned 19, as she was trying to repair her relationship with her mother. I will address the testimony of M.I.L. later in these reasons.
- [30] A January 22, 2014, affidavit of Mr. Y.P.L. confirms M.A.L. moved in with her mother. Accordingly, I accept Ms. R.L.'s testimony on this point.
- [31] While no doubt there is child support owing, I will deal with the amounts between the parties further in my analysis.

Special expenses

- [32] The evidence establishes A.L. and M.I.L. required orthodontic treatment. The cost was \$6,435.00 and \$6,255.00 respectively. Ms. R.L. says there was an agreement with Mr. Y.P.L. to share these expenses. The expenses were, however, not shared.
- [33] Mr. Y.P.L. provided five cheques in the amount of \$200 each. Ms. R.L. paid the remaining amount of \$11,690.

Spousal support

- [34] Mr. Y.P.L. has not paid any spousal support since Ms. R.L. departed the Family Home in difficult circumstances in November 2004. He says she has not proven entitlement to spousal support, as there is no evidence she sustained an economic disadvantage from the marriage. He points out since separation Ms. R.L. has remarried, separated, and currently lives with another man. He says any economic disadvantage is well-compensated by the significant increase in her share of the equity of the Family Home due to the increase in the value of real estate.

Legal Principles

- [35] In considering a spousal support order under the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), the Court must take into account the condition, means, needs, and other circumstances of each spouse, including (s. 15.2(4)):
- (a) The length of time spouses cohabited;
 - (b) The functions performed by each spouse during cohabitation; and
 - (c) Any order, agreement or arrangement relating to support of either spouse.
- [36] The Divorce Act sets out the objectives of a spousal support order at s. 15.2(6):
- (a) Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

- (b) Apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligations for the support of any child of the marriage;
- (c) Relieve any economic hardship of the spouse arising from the breakdown of the marriage; and
- (d) In so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[37] The Court in *Chutter v. Chutter*, 2008 BCCA 507 at para. 52, cited the decision of *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, in which the Court recognized that marriage is a joint endeavour, such that the longer the relationship and the closer the economic union, the stronger the presumption of equal standards of living is on dissolution.

Application of Legal Principles

- [38] Ms. R.L. fulfilled the role of wife and mother from 1987 until the separation of the couple in March 2003. This was a marriage of 16 years, albeit not a happy one. Four children were born in the course of 10 years: three daughters and a son. Ms. R.L. fulfilled her role as mother and took care of the household throughout that period of time, including cooking, cleaning, and paying the bills. As she was not working outside the home, she did not financially contribute to the household.
- [39] These are the hallmarks of entitlement to compensatory support. As per *Moge*, no one objective of spousal support is considered in isolation. Compensatory support does not require the recipient to be in any financial need: at p. 852.
- [40] There is also, however, no doubt Ms. R.L. would have been entitled to non-compensatory support on the basis of financial need. Ms. R.L. had limited income over the years and has not worked since 2012. She is presently supported by a boyfriend.
- [41] Ms. R.L. worked minimum wage jobs for years and lived in basement suites throughout this period. In 2007, Ms. R.L. was ill with cancer, which was treated. Meanwhile, Mr. Y.P.L. worked as a carpenter/handyman and made a reasonable, though modest, income over the years. Ms. R.L. also pointed out Mr. Y.P.L. earned income from renting the basement suite.
- [42] There is much controversy over whether this occurred and what amounts, if any, Mr. Y.P.L. received from this rent. Ultimately, however, I need not resolve this issue, other than to say Mr. Y.P.L.'s testimony on this point reflected adversely on his credibility.

Child/spousal support

- [43] I would begin the following by saying that both parties agree an exact calculation of monies owing is difficult in this case due to the length of time that has passed since separation and the absence of some financial records.

- [44] Ms. R.L. provided calculations of child support she may owe to Mr. Y.P.L. based on her income and when M.A.L. or M.I.L. lived with her. Her income was minimal over the years, starting from \$4,315 in 2004 and rising to \$29,489.45 in 2013-14 as a result of her security job, at which time she would owe child support for one child. She is, however, at present, receiving workers' compensation benefits, which form a large part of this amount.
- [45] Calculations as to what Mr. Y.P.L. may owe in spousal support to Ms. R.L. until 2012 were also set out in the mid-range spousal support guidelines, based on Mr. Y.P.L.'s varying income over the years. These numbers varied from a low of \$7,500 to a high of close to \$50,000. The offset of these numbers result in an amount of \$2,952 owing from Ms. R.L. to Mr. Y.P.L. I accept these numbers to reflect the reconstruction of amounts likely owing between the parties but never paid.
- [46] As I have concluded spousal support would have been owing, I will, rather than award or specifically quantify arrears, take these numbers into account - as has been suggested by the parties - in considering the issue of reapportionment of what is essentially the only asset of the parties under s. 65 of the FRA, the statutory framework that governs in this case.
- [47] While the specific numbers are not definitive and are really only estimates based on the passage of time, I note:
- 1) Ms. R.L. would ultimately owe Mr. Y.P.L. roughly \$3,000 in child support based on the fact the children lived largely with Mr. Y.P.L. and Mr. Y.P.L. would have been required to pay spousal support in the mid-range to Ms. R.L. based on his income until 2012;
 - 2) Mr. Y.P.L., however, would owe Ms. R.L. \$5,345 for 50% of the special expenses owed for the children's dental care, as he only paid \$1,000 of \$6,345, being 50% of the funds expended on dental expenses for the children.

What is the appropriate division of family assets?

- [48] The major issue between the parties, however, concerns the division of property. The main asset is the Family Home at Canada Way. The parties have agreed the matter of child and spousal support should be dealt with as part of the equities in the argument concerning reapportionment of the only known family asset.
- [49] As stated, the statutory framework under which this matter is governed is the FRA. Section 56 of the FRA provides that each spouse is presumptively entitled to an undivided half interest in each family asset as a tenant in common at the time of a triggering event.
- [50] Pursuant to the legislation, as of that date, the non-owning spouse acquires a beneficial interest in the assets that are determined to be family assets. The owning spouse, therefore, holds the beneficial interest in trust. The determination of the family assets will, accordingly, be made as of that date.

- [51] Section 58(2) of the FRA defines a family asset as "[p]roperty owned by one or both spouses and ordinarily used by a spouse or minor child of either spouse for a family purpose." There is no dispute the Family Home is a family asset in this case. As per s. 56(1), each spouse is entitled to an undivided half interest.
- [52] Interest vests at the time of the triggering event. There is no dispute the trial date is used as the date of valuation. Mr. Y.P.L. is therefore considered to hold Ms. R.L.'s interest in trust as of the triggering event date. She would accordingly receive the increase in value in the family asset.
- [53] In this case, Ms. R.L. argues the triggering event is the November 2004 Consent Order. Mr. Y.P.L. says it is the 2010 Divorce Order. The parties disagree over this date as they argue it impacts the considerations to be taken into account in ascertaining reapportionment of a family asset. I will deal with that later in my analysis.

The Agreement

- [54] Mr. Y.P.L. argues, however, the couple had an agreement concerning the ownership of the Family Home, in which they agreed certain settlement monies from a lawsuit in Hawaii belong to Ms. R.L. and the Family Home belongs to Mr. Y.P.L. As a result, prior to considering s. 65 of the FRA, it is necessary to consider the validity of the agreement referenced by Mr. Y.P.L.
- [55] In 1999, Ms. R.L. suffered an assault while on a family vacation in Hawaii. She commenced a lawsuit in Hawaii that ultimately resulted in a settlement of USD \$117,360. After various fees were deducted, including lawyers' fees, Ms. R.L. was provided with a bank draft for \$53,595.59 in late 2002. These funds translated into CAD \$84,215.49 and were deposited into her bank account in December 2002.
- [56] Ms. R.L. indicated she used \$50,000 of those monies to put drapes in the house, buy appliances, build the fence and a driveway, and buy furniture for the house. The rest was used on a vacation and other household matters.
- [57] This version of events is completely denied by Mr. Y.P.L. He says on August 7, 2002, the parties signed an agreement that provided the money from Hawaii belonged to Ms. R.L. and the Family Home belonged to him.
- [58] Mr. Y.P.L. says he never saw any of those funds and Ms. R.L. kept them for herself. He alleges she used the funds to purchase a property in Fiji and says the parties agreed he should have the house and she should have her settlement proceeds from Hawaii. Once she had the money, Mr. Y.P.L. says, she left the house.
- [59] Mr. Y.P.L. testified Ms. R.L. came home one day in a taxi with a new computer and printer, typed a document reflecting the agreement, and asked him to sign it.
- [60] That document reads:

This is an agreement from [R.L.] to [Y.P.L.]

The money from Hawaii belongs to me [R.L.]. The property on 4630 canadaway belongs to you [Y.P.L.] The money from hawaii will go towards all three daughters for their dental care. This agreement was made on 08-07-2002 from I [R.L.].

The document then appears to be signed by both parties.

[61] The evidence on this agreement is fundamentally conflicting and very difficult to resolve.

[62] While Ms. R.L. recognizes her signature on this document, she denies an agreement to this effect. She maintains she first saw this document in 2014 at an examination for discovery. The agreement was allegedly signed in August 2002. At that time, Ms. R.L. did not know the amount of any settlement proceeds she would receive. In those circumstances, it is very unlikely Ms. R.L. would reach such an agreement.

[63] I conclude Mr. Y.P.L. is unable to establish the document in question as a valid agreement under the FRA for the purposes of division of assets in this case. There is significant uncertainty associated with this document. The testimony of Mr. Y.P.L. alone is insufficient and not consistent with the probabilities of a reasonable person in the circumstances. His testimony on this point is confusing, and I am unable to accept it.

[64] The agreement also references Ms. R.L. paying for dental work for her daughters, but does not mention her son, N.L. It says the money will go towards dental care. This is not something that reflects any potential agreement about similar-based assets between the parties, as argued by Mr. Y.P.L. when he references the equity in the Family Home being \$100,000 in August 2012.

[65] The short answer, in any event, is that even if this was an agreement - which is very doubtful - it was not witnessed by any other person as required by s. 61(3) of the FRA and therefore is not binding per s. 61(4).

[66] As I have concluded this is not a binding agreement, the focus of the case turns on reapportionment of the equity in the main asset: the Family Home.

Section 65 - Reapportionment of equity in the Family Home

[67] Pursuant to s. 65 of the FRA, Mr. Y.P.L. maintains it would be unfair for the equity in the Family Home to be divided equally. He says so for two main reasons. First, the spouses have lived separate and apart for at least 12 years, during which he bore the costs associated with raising the children, including food, clothing, shelter, and activities. Second, he paid all of the costs of the Family Home, including the mortgage, and he has made improvements and repairs to the home.

- [68] As a result, Mr. Y.P.L. argues he has provided a vastly greater contribution to the house both before and after the marriage. Equal equity would therefore be most unfair in circumstances of this case.
- [69] Mr. Y.P.L. also says Ms. R.L. ransacked the house when she departed, taking all the furniture and causing extensive damage, including flooding and kicking the doors. He says he made repairs to this significant damage in the amount of \$50,000. There was no documentation to support this.
- [70] I must first determine Ms. R.L.'s contribution either by funds or work in the Family Home and family enterprise, and whether that is sufficient to entitle her to an equal interest in the property in view of the 12-13 years post-separation in which she has contributed nothing to the house.
- [71] Part of the considerations on equity is the underlying issues of the extent of the set-offs to which either party is entitled. In particular, Ms. R.L. says she is entitled to spousal support, which she was never provided, and Mr. Y.P.L. should account for the receipt of rental income from the basement suite.
- [72] There is much debate about the relative contributions to this house.
- [73] The house on Canada Way was purchased for \$55,000 in 1976 and was originally owned by Mr. Y.P.L. and his brother-in-law, D.M. Mr. Y.P.L. paid a \$10,000 deposit provided to him by D.M. and had a mortgage with Citizen Bank for the rest of the funds. In 1978, D.M. transferred his half interest in the property to Mr. Y.P.L. for one dollar. Mr. Y.P.L. ultimately paid off the initial mortgage of \$55,000.
- [74] There is, however, conflicting evidence on the ownership of the property. In 2014, Mr. Y.P.L. noted in his F8 statement of March 19, 2014, that his brother had a one-third interest in the property. In a later affidavit of September 10, 2015, he denies his brother has any interest in the property. For the purpose of this matter, I note that only to indicate this, again, reflects adversely on Mr. Y.P.L.'s credibility.
- [75] The couple moved into the Family Home in 1987. A new house was built in 2000. According to Ms. R.L., this was to accommodate their four children, as the original two-bedroom house was too small. The new house had nine bedrooms, five bathrooms, and three floors. Each child would have their own room and there was a three-bedroom basement suite.
- [76] At the time of the house construction, the family took out a loan for \$150,000, \$100,000 of which was used to build the house. During that time, the family lived in a basement suite a block away for approximately five to six months. Ms. R.L. described her role during that time as paying the contractors and trades people and attending at the worksite to ensure the matter was moving along. Mr. Y.P.L. was still working but worked on the house on his days off and evenings.

- [77] There is some dispute over the occurrence of a fire or fires at the original home and the extent of the damage.
- [78] Ms. R.L. described a house fire that occurred prior to the new house being built. She was in the kitchen, and while she was attending to the children the stove got too hot and a grease fire occurred. The fire department attended, and the kitchen hood fan was damaged. As the house was to be demolished shortly after this, no repairs were done and the family proceeded with the building of a new house.
- [79] Mr. Y.P.L. had a somewhat different version of events. He said Ms. R.L. deliberately attempted to burn the house down - initially a smaller fire and then a large fire - as he refused to sponsor her family to Canada. He indicated he spent \$45,000 repairing it the first time and \$80,000 the second time. Finally, he demolished the house after these repairs and built a new house in two to three months.
- [80] This testimony is not persuasive. There may well have been two fires, but it is unlikely Mr. Y.P.L. would have expended the funds for repairs and then demolished the house. Mr. Y.P.L. was uncertain, could not remember details, changed his version of events a number of times, and provided nothing to support these claims. He said he did not make an insurance claim because with the first fire he was not sure if his insurance claim had lapsed, and by the second fire, he was sure it had lapsed. These are significant amounts of money. It is not probable that Mr. Y.P.L. would not at least have checked to see if his insurance would cover at a minimum the first fire. In addition, to demolish the Family Home after these extensive repairs seems unlikely, despite the rationale he provided, which was that the smell remained.
- [81] While M.I.L. testified as to the existence of two fires in the damage, she was six years old at the time. I conclude her memory of the extent of the damage is likely influenced by her father's version of events, to whom she remains very loyal. Indeed, it is fair to say M.I.L. has suffered due to the tumultuous, unhappy relationship between her parents. She understandably feels strongly about retaining the financial assets for her father and siblings, especially due to the difficult relationship with her mother. She essentially does not consider her mother a part of the family and therefore entitled to no part of the Family Home. This is a sad situation all around. Her testimony, however, was so one-sided that, as a result, I cannot give it much weight.
- [82] It is not disputed, however, that at least one fire occurred, and Mr. Y.P.L. paid the cost of these repairs. There is also no doubt the Family Home was demolished and a larger Family Home built in 2000. While there is some debate about the extent, Mr. Y.P.L. did the finishing work, including finishing off the plumbing and electrical.

Legal Principles

- [83] The statutory framework under which this matter is governed is the FRA. Section 56 of the FRA provides in relevant part:

Equality of entitlement to family assets on marriage breakup

56 (1) Subject to this Part and Part 6, each spouse is entitled to an interest in each family asset on or after March 31, 1979 when

- (a) a separation agreement,
- (b) a declaratory judgment under section 57,
- (c) an order for dissolution of marriage or judicial separation, or
- (d) an order declaring the marriage null and void

respecting the marriage is first made.

- (2) The interest under subsection (1) is an undivided half interest in the family asset as a tenant in common.

[84] Pursuant to the legislation, as of the triggering event in s. 56(1), the non-owning spouse acquires a beneficial interest in the assets that are determined to be family assets. The owning spouse, therefore, holds the beneficial interest in trust. In this case, a consent order concerning custody, guardianship and occupancy of the Family Home was issued on November 1, 2004. A court order of divorce was issued on June 2, 2010, under s. 12 of the Divorce Act. Ms. R.L. argues that the triggering event was the 2004 Consent Order. Mr. Y.P.L. argues the triggering event was the Divorce Order.

[85] As per *Blackett v. Blackett* (1989), 63 D.L.R. (4th) 18 (B.C.C.A.) the date of valuation is the trial date unless there is a reason to depart from that approach. That is not argued to be the case in this matter. Generally, the parties are entitled to share equally in any increase in the value between the date of the triggering event in the date of the disposition or date of trial: *Mills v. Mills* (1980), 20 R.F.L. (2d) 197 (B.C.S.C.). This is especially so where the change in value is attributable to market forces operating independently of the action of the spouses.

[86] Based on s. 56(1) and the Consent Order, I find that the triggering event in this case was the Divorce Order issued in 2010.

[87] The Consent Order granted Mr. Y.P.L. sole interim custody of the children, with Ms. R.L. to have reasonable access. Mr. Y.P.L. was also given exclusive occupancy of the Family Home pending resolution of these proceedings. Issues of support were adjourned. As I read the Consent Order, it does not meet any of the criteria for a triggering event set out in s. 56(1). It was not an order for dissolution of the marriage. The judge issuing the Consent Order did not make a declaration under s. 57 that the spouses have no reasonable prospect of reconciliation with each other. Further, I have already found that there was no separation agreement between the parties.

[88] As a result, Ms. R.L.'s interest in the Family Home did not crystallize until the Divorce Order in 2010. That is the date I will use in my analysis under s. 65.

[89] Section 65 of the FRA provides for reapportionment of the family asset. The presumption of equal division provided under s. 56 prevails unless it is unfair based on the criteria set out in s. 65(1):

- a) the duration of the marriage,
- b) the duration of the period during which the spouses have lived separate and apart,
- c) the date when property was acquired or disposed of,
- d) the extent to which property was acquired by one spouse through inheritance or gift,
- e) the needs of each spouse to become or remain economically independent and self-sufficient, or
- f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse.

If equal division is found to be unfair, taking into account the factors set out in s. 65(1)(a) to (f), the assets can be divided or re-apportioned into shares determined by the court. The test under the FRA is a lower threshold than under the present Family Law Act, S.B.C. 2011, c. 25, which requires a finding that equal division is "significantly unfair" for reapportionment to occur.

[90] The onus of proof is on the spouse seeking reapportionment: *Toth v. Toth* (1995), 13 B.C.L.R. (3d) 1 at para. 62 (C.A.). Here, Mr. Y.P.L. seeks a 75-25 split of the interest in the Family Home.

[91] Ms. R.L. argues Mr. Y.P.L. has fallen far short of meeting that onus and asks for the presumptive 50-50 split.

[92] Mr. Y.P.L. says the years since the separation are the most compelling reason that justifies an unequal division. He says Ms. R.L. admitted he paid all of the family expenses, mortgage, taxes, insurance utilities, and repairs of the Family Home and other family expenses. This continued to be the case after separation, and Ms. R.L. paid nothing for child support or any expenses on the Family Home.

[93] Ms. R.L. says, however, the basement suite was rented for at least \$700 a month, and this covered the mortgage and other household expenses. This should be taken into account in the equities as she would have been entitled to 50% of that rental income. Furthermore, she says he did not do the extensive upkeep he maintains as evidenced by a recent appraisal that indicates the house is in poor repair.

Application of Legal Principles

[94] As set out in *Mann v. Mann*, 2009 BCCA 181, the fundamental question is whether the statutory division of 50% is unfair after considering the factors listed in s. 65 at the triggering event. It is not a standard of "significantly unfair": paras. 45-46.

- [95] Turning to the factors set out in s. 65, I note first, as per s. 65(1)(a), the duration of the marriage is one of the factors to consider. In this case, this is a marriage of 16 years. The longer the marriage, the more likely family assets will be divided equally. A marriage of 16 years is on the lengthier side of the equation.
- [96] Section 65(1)(b) requires the Court to consider the duration of the period during which the spouses lived apart. This is particularly relevant when the value of a family asset has changed between the date of separation and the date of trial. Here, by 2010, the couple had lived apart for more than 6 years. However, Ms. R.L. had made a claim for division of family assets in March 2004 and sought to pursue it over the years. She was essentially evicted from the home on short notice in November 2004. The matter did not proceed to trial due to delays caused by both parties, a lack of resources, and, at least on one occasion, when Mr. Y.P.L. successfully sought an adjournment of the trial in 2008 due to the lack of a lawyer. I therefore conclude this factor is relatively neutral in this case.
- [97] As per s. 65(1)(c), the date the property was acquired is one of the factors to be considered. A half-interest in the property was acquired by Mr. Y.P.L. in 1976 and fully transferred in 1978. The initial mortgage was paid off, but a more significant loan to build the new house in 2000 was acquired by virtue of the equity in the house. As noted, there is some conflicting evidence on ownership but, for these purposes, I accept Mr. Y.P.L.'s contribution to the original purchase of the property as a factor in reapportionment under s. 65(1)(c).
- [98] Under s. 65(1)(e), the Court must consider need for each spouse to become or remain economically independent and self-sufficient. While Mr. Y.P.L. says this is neutral as both parties had modest income, at the time of separation in March 2003, Ms. R.L. had been primarily a homemaker and childcare giver to four children for 16 years. This role enabled Mr. Y.P.L., as the wage-earner, to undertake that activity. When Ms. R.L. left, as per Mr. Y.P.L.'s direction, she did so in November 2004. She had no skills and supported herself largely on minimum-wage jobs, required to pay rent as she was no longer living in the Family Home. Mr. Y.P.L. did not pay spousal support, which impacted on her ability to become self-sufficient and provide a home for the children.
- [99] Mr. Y.P.L. relies heavily on s. 65(1)(f) and his sole contribution over the years to the Family Home. Section 65(1)(f) requires the consideration of the acquisition, preservation, maintenance, and improvements of the property. I conclude first that Mr. Y.P.L. has had exclusive use of the family property for a significant time. While there is no doubt he was the sole contributor to the home, despite his claims he has not established significant "maintenance" or "improvement" to the property. This reality is reflected in the current appraisal filed with the Court, which describes the property in poor condition. It notes:

The home has the original finishes and cabinets with no updating noted. The housekeeping is not up to standard and the home not been well maintained and consequently does not show well. Cleaning up is required and substantial deferred maintenance was noted.

- [100] In this case, there is no doubt in the 16 years of marriage where the parties lived together, Ms. R.L. made a lot of contributions both in undertaking all the workload and child care responsibilities and in dealing with some of the administration during the construction of the new house. She also says she used her monies to buy furniture and drapes for the home. Contribution to the accumulation of an asset is viewed on a broad basis, which includes financial contribution or by way of child care, household management, and other such activities.
- [101] I am, however, cognisant of the reality that Mr. Y.P.L. paid for all the expenses of the house during the lengthy period of separation. More importantly, he provided a home and childcare for the children after Ms. R.L.'s departure.
- [102] This decision is not easy, as the difficult circumstances of a fractured family continue to reverberate. This is reflected in the testimony of M.I.L. In addition, there is a serious dearth of documents that contribute to the challenges in this case. While the testimony of M.I.L. attributed blame to Ms. R.L. on this account, I must discount this, on the basis set out earlier. I note also the possibility a more healthy relationship may have been achieved for both Ms. R.L. and her daughter if Ms. R.L. had access to financial resources at the pertinent time.
- [103] I would note a couple of things. First, Ms. R.L. had to rent other accommodation. While Mr. Y.P.L. was paying toward the mortgage and expenses in the home, he has not had to pay rent while living there. Though Ms. R.L. has not made a claim for occupation rent, it is clear from jurisprudence that I may consider that factor in my analysis of reapportionment: *B.G.P. v. L.M.P.*, 2012 BCSC 1240 at paras. 42-47.
- [104] Second, Mr. Y.P.L.'s testimony regarding the rental suite in the Family Home was troubling at best. Ms. R.L. claims that the suite has been producing rental income. Mr. Y.P.L. says that the suite has been empty for much of the last 12 years. His evidence regarding this changed several times and was difficult to follow. Unfortunately, his lack of credibility combined with the dearth of documentation make it very difficult to find anything in this regard. Ultimately, I will not factor this into my analysis.
- [105] Third, counsel for Mr. Y.P.L. provided several cases in which the family asset was reapportioned heavily in favour of one party, including *Dale v. Dale*, 2006 BCSC 1683, *Shen v. Tong*, 2013 BCCA 519, *Ferreira v. Peloquin*, 2012 BCSC 1952, and *B.G.P.* While these cases were illustrative of the analysis the Court must undertake under s. 65, they also show the analysis to be largely dependent on the facts of the case and the discretion of the Court. Further, none of the cases provided were on all fours with the matter at hand. For example, in *Ferreira*, the husband was awarded an 80-20 split; however, the couple in that case separated after only six years of marriage, and the property at issue was not the matrimonial home. In *Dale*, the Court reapportioned 70-30. There, the couple separated after four years of marriage, and both had significant mental disabilities, which affected their ability to become economically self-sufficient.

- [106] Finally, I reiterate that Mr. Y.P.L. bears the onus here. His testimony lacked in credibility and reliability. He was unable to produce documentation to support many of his claims. Due to this, I give no weight to his claims regarding the costs of repairing the Family Home following the fire (or fires) or the damage allegedly caused by Ms. R.L. upon moving out of the house. I also find that Mr. Y.P.L. failed to establish that his conduct was responsible for any increase in the value of the Family Home.
- [107] After considering the factors and all of the evidence, and in view of the reality Mr. Y.P.L. paid for the large majority of expenses to raise the children, I conclude some adjustment should be made to the presumed 50% equal division of the Family Home. I find Mr. Y.P.L. is entitled to 60% of the family property and Ms. R.L. to 40% of the family property. This, in my view, takes into consideration the larger amount of childcare and costs that Mr. Y.P.L. ultimately provided in raising the children. It also acknowledges his financial and personal contribution to the Family Home over the years.
- [108] The Family Home is assessed at a little over \$1,000,000. This would provide Mr. Y.P.L. with \$600,000 and Ms. R.L. with \$400,000, minus the liability on the home. This, in my view, is a more appropriate division of the only family asset between these parties, as reflected under s. 65.

Costs

- [109] As both parties have had moderate success in these proceedings, I order that each should bear his or her own costs in the matter.

"Burke J."

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