

CANADA / JUDGMENT

Reid v. Jager

2025 BCSC 2599

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2599 Reid v. Jager

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reid v. Jager,

2025 BCSC 2599

Date: 20250423

Docket: E97303

Registry: Nanaimo

Between:

David Oliver Reid

Claimant

And:

Brenda Jager, also known as Brenda Marjorie Jager

Respondent

Before: The Honourable Justice Morley

Oral Reasons for Judgment

The Claimant, Appearing in Person:

D. O. Reid

The Respondent, Appearing in Person:

B. M. Jager

Place and Date of Trial:

Nanaimo, B.C.

March 10-14, 2025

April 22-23, 2025

Place and Date of Judgment:

Nanaimo, B.C.

April 23, 2025

Table of Contents

I. Overview.. 3

II. FACTUAL background.. 6

A. Reliability and Credibility. 6

B. Chronology. 7

III. Family property and excluded property. 11

A. Undisputed Excluded Property. 11

B. The Harrison Way Properties. 13

C. Barrett Road. 19

IV. is equal division "significantly Unfair"?. 21

V. spousal support. 24

VI. Remedial Issue. 26

VII. declarations and Orders. 26

I. Overview

[1] These are an edited version of reasons originally given orally.

[2] The claimant David Oliver Reid and the respondent Brenda Marjorie Jager began living together in July 1993 and married June 18, 1994. They separated December 15, 2020. It was thus a marriage of almost three decades. The parties' children are now adults. The issues in this trial are property division and whether and how much, if any, spousal support Ms. Jager should pay Mr. Reid.

- [3] The main family property is real estate on Gabriola Island: two adjacent lots on Harrison Way (948 and 942 Harrison Way) and 1235 Barrett Road. Mr. Reid asks for an order for equal property division. Ms. Jager seeks declarations of excluded property and unequal property division. She opposes Mr. Reid's request for spousal support.
- [4] Before analyzing the legal and factual issues, I want to start with an observation. It became clear to me through this proceeding that both parties have a strong internal sense of values, to which they are each deeply committed, but which have come into conflict.
- [5] Mr. Reid emphasized his belief in community. He is proud of his contribution to his community on Gabriola Island -- in a number of capacities, but especially as a mentor for young people. He is widely known on Gabriola as "Coach Dave". Mr. Reid is intelligent, curious, and has many talents. He has clearly made a conscious decision not to use these gifts to optimize income or wealth acquisition, and that is part of his value system. Ms. Jager shares values of contributing to community and clearly has wide interests and curiosity. But from her perspective, "community starts with family". She has clearly been frustrated by Mr. Reid's priorities and, as I will address, what she sees as his lack of follow through. She has interests at least as wide as Mr. Reid's, but is more precise in her thinking and more pragmatic and outcome-oriented. She feels, no doubt from personal experience, that Mr. Reid not only devalued her contributions in trying to keep the family on track, but resented her for them.
- [6] It is not part of my role to sit in judgment of people's personalities or value systems. Indeed, the Property Division provisions of the Family Law Act, S.B.C. 2011, c. 25 ("FLA") have been amended over time to minimize the role of subjective judgment on the part of a judge about how people have ordered their lives. A divorce proceeding is not about who was or was not to blame for the breakdown of the marriage: Divorce Act, ss. 15.2(5), 16(5). And it is not about coming to a judgment about each spouse's relative contribution to the relationship: FLA, s. 81(a).
- [7] Equal division of the unexcluded family property (essentially, the property accumulated during the relationship) is the norm, unless it is significantly unfair (a high standard), and the Legislature has given guidance in s. 95(2) of the FLA of what that means in a way that is intended to avoid subjectivity on the part of the judge. Entitlement to spousal support is based either on compensation for inequalities arising out of the division of labour during the relationship or on need, based on a greater decline in living standards of one of the spouses after the relationship. To the extent couples make joint choices during a relationship that determine their earning capacity after that relationship breaks down, that will be relevant to spousal support. To the extent they have made their own choices in this regard, those choices are entitled to respect, but not to subsidy from someone else who has made different choices.
- [8] The issues I must decide must be decided according to law and are as follows:

- a) The extent to which Ms. Jager's claim that some of the family property is "excluded property" is justified. This turns primarily on what property can be traced to gifts to, or pre-relationship wealth of Ms. Jager. Importantly, increases in value of excluded property during a relationship are themselves family property subject to division.
- b) Whether there is a basis to depart from equal division of the unexcluded family property.
- c) Whether Mr. Reid is entitled to spousal support from Ms. Jager and, if so, what its duration and quantum should be. This turns on whether, after property division is concluded, there is a reason grounded either in compensation or need for additional redistribution of income between this couple. Importantly, need is defined in terms of standard of living during the relationship and not on what happened after it.

[9] For reasons I will explore in more detail, I come to the following conclusions:

- a) Ms. Jager's financial wealth in the form of term deposits and RRSPs is excluded, because it can all be traced to what she brought into the relationship, to gifts during the relationship, or to earnings after the relationship was over.
- b) The value of 942 and 948 Harrison Way, with the exception of \$10,000, was excluded property of Ms. Jager, at the time of purchase. However, the increase in value since that time is family property and I see no reason it should not be split 50/50.
- c) The title to the Barrett Road property is a family asset. However, the purchase was financed with a mortgage from Ms. Jager's parents, which was subsequently gifted to Ms. Jager. I consider this to effectively be a gift of the original purchase price, which is excluded property. The accrual in value since then, other than what can be specifically attributed to post-relationship investments by the parties, is family property.
- d) There is, in general, no substantial unfairness in equal division.
- e) Once that equal division is done, there is neither a needs- nor compensation-based rationale for spousal support.

II. FACTUAL background

A. Reliability and Credibility

- [10] The only evidence in this case was the testimony of each of the parties, along with whatever exhibits they filed. I also rely occasionally on their F8 Financial Statements. Mr. Reid conceded his F8s were not entirely in order, so I have approached them with caution. No issue was made of Ms. Jager's F8 information.
- [11] Most of the factual disagreements between the parties were not of great significance to the legal issues I have to decide. However, in some cases, there are disagreements and so I must make some general comments on how to address these discrepancies.

- [12] "Credibility" is about whether a witness is telling the truth, as opposed to being deliberately misleading. "Reliability" is about whether the truth, as the witness sees it and relates it, is accurate: it turns on the strength of the witness's perception, memory and ability to relate what is in their own mind. Assessing credibility and reliability involves examining the witness's evidence for the ability and opportunity to observe events, the firmness of their memory, whether they appear able to resist the interests at play to modify their recollection, a comparison of the evidence against independent evidence, the plausibility of the content of the witness's testimony, whether the witness changes evidence during direct examination and cross-examination, any motive to lie, and, only as a minor element, demeanour: *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296. Ultimately, the assessment of a witness's evidence turns on whether it is "consistent with the probabilities affecting the case as a whole and shown to be in existence at the time": *Farnya v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at p. 356.
- [13] I have no concerns with the credibility of either party in this sense. Both told their stories sincerely and honestly. I accept that the version they each told was the reality as they experienced and remembered it. All human beings have biases, including a tendency to remember things in a way that favours themselves. These biases are particularly strong when two people remember a relationship that has subsequently led to litigation. But both Mr. Reid and Ms. Jager tried their best to be as honest as possible with the court. They both said things that were not entirely in their own favour.
- [14] To the extent there are differences in their recollections, these are about reliability, not credibility. Here I have a general preference for Ms. Jager's version of events.
- [15] Ms. Jager is very careful and precise. She admitted to things that were not necessarily helpful to her and that may not have made her look good. She clearly has an emotional reaction to the way her marriage ended, but she was reliable in all her factual statements. Mr. Reid acknowledged that she "has a head for numbers" and deferred to her account of specific transactions.
- [16] Mr. Reid reacted more emotionally and defensively both on cross-examination and in response to questions from the court. His memory for details, by his own admission, was often not good.
- [17] In general, therefore, I prefer Ms. Jager's account where there are differences about specific or precise factual issues. On more general questions of characterization of the relationship as a whole, I take both parties to be candidly and truthfully expressing their own perspective, perspectives which I have to regard respectfully but critically. So, for example, each party had a different perspective on how much child rearing and domestic work the other did. To the extent it is relevant, I find that they both contributed to child rearing and domestic work.

B. Chronology

- [18] Ms. Jager was born July 30, 1967 and is therefore now 57. Mr. Reid was born November 2, 1969 and is thus now 55.
- [19] They met in 1987. At the time, they were each living with their respective parents, and they did not cohabit until 1993, although they were in a romantic relationship for most of that time.
- [20] Ms. Jager worked from a young age and acquired assets before the spousal relationship began. In August 1991, she bought a condominium in Port Coquitlam as an investment. In addition, she inherited \$80,000 in March 1993.
- [21] In April 1993, Ms. Jager moved to Nanaimo to work for the provincial government. She and Mr. Reid ultimately decided to live on Gabriola Island.
- [22] On June 28, 1993, Ms. Jager bought Lots 24 and 25, Section 12, Gabriola Island, Nanaimo District, Plan 23619. Lot 24 has an address of 942 Harrison Way and is vacant land. Lot 25 has an address of 948 Harrison Way and is where the home is located. The purchase price for Lot 24 was \$44,000 and for Lot 25 \$36,000.
- [23] Ms. Jager's original plan was to buy Lots 24 and 25 outright. She sold her condominium in Port Coquitlam for \$141,324, which was \$45,915.61 above the remaining mortgage. She also had her \$80,000 inheritance. She could have, with this money, bought Lots 24 and 25 outright.
- [24] However, buying the properties outright would have required paying a penalty equal to the three-years' interest on the mortgage for the condominium, at a time when interest rates were in the double digits. She decided instead to transfer the mortgage from the Port Coquitlam property to the Harrison Way properties, put the money necessary to repay the mortgage in term deposits and then repay the mortgage as quickly as possible.
- [25] She kept the money for this purpose separately from the money for family expenses, which was a joint account at the Royal Bank of Canada. The separate money included her original deposit on the Port Coquitlam property, her capital gain from selling it and money from a gift from her mother, ultimately deriving from an inheritance from her relative Nettie Berg.
- [26] By September 1996, Ms. Jager had followed through on this plan and paid off the mortgages. With one exception, she used the money she had earmarked for that purpose. The exception was that in 1994, she used \$10,000 from Mr. Reid's earnings as a seasonally-employed fisher to make an annual payment.
- [27] As a result of what the parties recall as misrepresentations from vendors, they had to tear down the building at 948 Harrison. Mr. Reid drew up the house design and obtained a building permit, which was issued August 24, 1994. Mr. Reid, Ms. Jager and Ms. Jager's father all contributed labour. I accept Mr. Reid's testimony that the bulk of the labour was his. The house was made habitable, but it was not finished. Ms. Jager testified that she used the remnants of her pre-relationship money to pay for materials and for necessary contractors.

- [28] The parties had three children, all born during the second half of the 1990s: Although there was some disagreement about this, I find that both parties were heavily involved in raising their children, including in some years homeschooling them.
- [29] Mr. Reid worked from 1989 until the early 2000s in fishing. The work was seasonal. Reid also had what he characterized as a "side hustle" in carpentry.
- [30] On January 6, 2024, the parties purchased 1235 Barrett Road for what has been variously stated as \$137,000 or \$136,000. Not much turns on this. In any event, \$136,000 of the purchase price (so either all of it, or all-but-\$1,000 of it) was financed by Ms. Jager's parents, Margorie and Cedric Jager, who secured that loan by way of a mortgage put on title to the property.
- [31] 1235 Barrett Road was and is zoned rural residential. The original plan to was to build a new family dwelling there and sell the Harrison properties to pay back Ms. Jager's parents.
- [32] At some point, Mr. Reid proposed building workshop on the Barrett Road property instead of just an electricity shed. Ms. Jager has, as I mentioned, an interest in bees, and she wanted to use the property for that purpose prior to the construction of a new house as well. Ms. Jager's parents agreed to advance money to build the workshop, as a debt, but only as needed.
- [33] 2006 was the last year that Mr. Reid was engaged in commercial fishing. In 2007 the foundation and farming of the Barrett property was accomplished. During this time, Mr. Reid enrolled at the University of Victoria. He did not finish a degree, but he did most of the coursework for a degree in environmental studies. Between 2007 and 2010, the children were no longer being homeschooled and were all in school.
- [34] Some money for work was provided by Ms. Jager out of an inheritance she received from her uncle. Marjorie Jager retained that money and debited it to repay for some of the work done. In 2009, an electrical permit was opened for the Barrett property. In 2010 and 2011, rough plumbing was done and the floor and roof was completed. The parties worked on metal siding during that time. There was some, albeit not continuous work, done between 2010 and 2014. After 2014, there seems to be a significant gap in major work. The workshop was uncompleted at that point and none of the permits were closed.
- [35] Ms. Jager testified that after 2010, there was no longer a plan for a single-family dwelling, and the work was confined to finishing a studio. Mr. Reid testified that the plan still existed, but money was not available because it went to Ms. Jager's brother. I prefer Ms. Jager's account on this point since she had a more detailed recollection. The money was available, but the work was not done.

- [36] Ms. Jager's father, Cedric, died in 2016. Subsequently, on September 23, 2017, Marjorie Jager wrote a letter to Ms. Jager purporting to discharge the mortgage on the Barrett Road property in Ms. Jager's favour. I will address this letter in more detail when considering its legal implications.
- [37] I do not need to go further into the events leading up to separation, now that a date has been agreed upon, namely December 15, 2020.
- [38] Initially, Mr. Reid moved to the Barrett Road property. There was no heat there and he was essentially camping, apparently on an intermittent basis.
- [39] Ms. Jager, shortly after the end of the relationship, received a new position that was better paying, as a lien consultant with the Ministry of Citizens' Services, and she has been working in that role since then with an income that is substantially above the income that she ever earned during the course of the relationship.
- [40] The parties did work together for a while after separation on continuing the project at Barrett Road. This broke down in 2023 as a result of an incident in which there was a contractor hired by Ms. Jager ceased to work on the project because of his lack of comfort with arguments between the parties. He then started to do some work with Mr. Reid at a house where Mr. Reid was housesitting. Ms. Jager was angered by this "poaching" because it made it more difficult for her to complete the project. Subsequent to that, she has done the work on her own and with her own money.
- [41] Mr. Reid has, since the end of the relationship, done various things in terms of income. He has stated that he has suffered multiple concussions. That is disputed. And Mr. Reid did not provide medical evidence. He has been doing coaching and had some income from that, some housesitting. Last summer, he operated a flower farm, but his testimony was that he nonetheless did not make much or any money from that. He did not have bookkeeping records, and he attributed his lack of income from that to a lack of business ability and assistance.

III. Family property and excluded property

A. Undisputed Excluded Property

- [42] Ms. Jager claims a number of assets as excluded property under s. 85 of the FLA. Many of them are not seriously disputed by Mr. Reid. I will address these first.
- [43] Ms. Jager has a 2013 Nissan Frontier truck registered in her name. On September 23, 2017, after her father's death, her mother, Marjorie, gave her \$50,000 as a gift, telling her to "go buy a truck". In 2017, Ms. Jager spent \$18,000 of this on a Chevrolet Silverado, putting the rest in a term deposit. In 2022, she sold the Silverado and with its proceeds plus \$15,000 from the term deposit, she bought the Nissan Frontier. Since it is traceable proceeds of a "gift from a third party", the Nissan Frontier is excluded property under s. 85(1)(b.1) of the FLA.

- [44] Ms. Jager has a number of financial assets through Gulf & Fraser Credit Union, an account which was set up for her at birth. Her equity shares at the Credit Union are therefore obviously excluded property. I am satisfied that the same is true of her other financial assets there:
- a) The entire balance of her account there ending #2465 consists either in what remains of gifts from her mother during the relationship or earnings after separation.
 - b) Term Deposit #2261, along with a registered Term Deposit #2795, consist in what was left from RESPs for the children, which were purchased with money Ms. Jager brought into the relationship.
 - c) Term Deposit #8390 in the amount of \$200,000 is from Marjorie Jager's 2020 gift.
 - d) Term Deposit #8416, in the amount of \$100,000 is from savings after the breakdown of the marriage.
 - e) Term Deposit #6141 is also from Marjorie Jager's 2020 gift.
 - f) TSFA Term Deposit #3198 derives in part from Marjorie Jager's 2020 gift and in part from post-separation income.
- [45] Similarly, all of Ms. Jager's RSP accounts at Gulf & Fraser are excluded property, subject to the principle that increases in value are family property under s. 84(2)(g) of the FLA:
- a) RSP Term #1216 is savings from after marriage break down.
 - b) RSP Term #9884 was set up before the marriage with about \$20,000: it now has \$35,268, including compound interest over those years.
 - c) RSP Term #2795, as I have mentioned, derives from the RESPs, which in turn came from Ms. Jager's excluded property.
- [46] Ms. Jager also has an RSP term deposit with Coastal Community Credit Union. It was originally \$1,000 when it was set up before the marriage and is now \$1,792.

B. The Harrison Way Properties

- [47] Mr. Reid argues that the Harrison Way properties, with the exception of the \$8,000 down payment, are family property. He proposes allocating \$4,400 as excluded to Lot 24 and \$3,600 as excluded to Lot 25, with the remainder to be divided in half.
- [48] By contrast, Ms. Jager argues that the Harrison Way properties, with the exception of the \$10,000 payment that came from family income is "excluded property".
- [49] I reject both positions.
- [50] Sections 85 (1)(a) and (b) of the FLA state that "property acquired by a spouse before the relationship began" and "inheritances to a spouse" are excluded.

- [51] The Harrison Way properties were not, themselves, either acquired before the relationship began or inherited. The Court of Appeal has explained recently, the rules for when property that is not literally acquired before a relationship or inherited (or within the other categories of excluded property) is nonetheless treated as "excluded" are the rules of "tracing": *Chapman v. Chapman*, 2024 BCCA 372 at paras. 93-95; *Mills v. O'Connor*, 2025 BCCA 34 at paras. 79-80. As Justice Abrioux says in *Mills*, "tracing is an analytical exercise whereby a court tracks the value that attaches to a proprietary interest through successive transactions into substitute assets". Thus, to the extent that the appropriate analytical exercise tracks the value of Ms. Reid's pre-relationship investment property and inheritance into the Harrison Way properties, that value is excluded.
- [52] In this case, Ms. Jager transferred a mortgage on a condominium she acquired before she began cohabiting with Mr. Reid and then paid it down with a combination of her capital gain from the sale from the condo, inherited money, and \$10,000 from Mr. Reid's fishing earnings, which were of course family income.
- [53] I accept Ms. Jager's evidence on the following factual points:
- a) From her sale of the condo and her inheritance, she had enough to pay for the Harrison properties outright.
 - b) However, if she had done so, she would have had to pay a substantial penalty on her mortgage from the condo.
 - c) She decided, instead, to put the excluded monies into term deposits and then use those to pay down the ported mortgage as quickly as possible. This had the financial benefit of avoiding the penalty.
- [54] If a person buys property outright with excluded property, then the original excluded value can easily be traced into the subsequently purchased property. If part of the purchase price is excluded and part of it is family property, then *Mills* instructs trial judges to divide the purchased asset up in proportion to the relative contributions: *Mills* at para. 87. If what had happened here was that \$10,000 of Mr. Reid's income was mixed with \$70,000 of Ms. Jager's excluded property to pay the \$80,000 purchase price, then 12.5% of the Harrison Way properties would be family property and 87.5% would be excluded.
- [55] Does it make a difference that in this case that \$8,000 was put as a down payment and the remaining \$72,000 was from a pre-existing mortgage, and subsequently, the mortgage was paid off from monies, of which all but \$10,000 was excluded? Is paying off a secured loan that was used to buy an asset with excluded funds different, for tracing purposes, from using the excluded fund directly to make the purchase?
- [56] As far as I can tell, this is a novel question in family law in British Columbia in the sense that there is no explicit discussion of it. There are some conceptual problems with tracing through a secured loan that is subsequently paid off because it means permitting the idea of a tracing that goes backwards in time at some point. Notwithstanding those complexities

and the novelty of the issue, I find that paying down a mortgage or other secured debt used to purchase the asset against which it is secured with excluded property is the same thing as purchasing the asset outright with that secured property.

- [57] I think this is a common-sense result. People largely understand that they can increase their assets ("build up equity") by paying down secured debts used to make an acquisition. However, in order to get to this common-sense conclusion, some relatively technical controversies in tracing law are unavoidable.
- [58] The problem arises because the immediate legal effect of paying a mortgage (or other secured debt) is the (partial) extinguishment of a liability. No asset is created. Rather, the asset against which the debt was secured was already owned by the party who extinguishes the liability.
- [59] This creates a problem for the law of tracing because one of the central principles of that law is that if all that is done with property is to pay down debt, then there is nothing to be traced into. A classic example is where a bad actor uses trust funds to pay down gambling debts: although the fraudulent gambler is definitely personally liable for doing that, there is no property into which the trust funds can be traced, and so the defrauded person is out of luck if the unsuccessful gambler is judgment proof. The defrauded person is entitled to trace into assets acquired by successful gamblers, even if they are worth more than the amount lost, but, in the nature of things, this is the less common situation.
- [60] However, things may be different in the circumstance where the value is not dissipated nor used to directly acquire an asset, but to pay down a debt that has been used to purchase an asset or that is secured against an asset that thus becomes unencumbered. When a mortgage is used to purchase land, it fits into both these categories. The law of tracing treats them differently, in ways that have implications for family law.
- [61] Tracing value used to extinguish a liability used to purchase the asset is called "backward tracing", since the chain of transactions involved do not all unfold forward in time. The original asset extinguishes the liability after the assumption of liability is used to get the asset into which the value is traced. This bothers some legal analysts because tracing is normally thought of as moving forward in time: see Matthew Conaglen, "Difficulties with Tracing Backwards" (2011) 127 L.Q.R. 432, which critiques Lionel D. Smith, "Tracing into the Payment of Debt" (1995), 54:2 Camb. L.J. 290.
- [62] In *Brazil v. Durant International Corporation*, [2015] UKPC 35 at para. 34, the Judicial Committee of the Privy Council held that "backward tracing" is legitimate when there is a "close and transactional link" between the incurring of the debt and the use of the traced value to discharge it. In doing so, they took a midpoint between the position defended by Professor Smith (value used to extinguish a liability can always be traced into whatever was acquired in return for incurring the liability) and by Professor Conaglen (backward tracing, while conceptually coherent, is never available as part of the law of equitable tracing). The problem with the former position, in the Privy Council's view, was that it could prejudice the

interests of unsecured creditors in situations where there was no real link between the property over which an equitable proprietary interest was being claimed and the injection of money to pay down debt. The problem with the latter position is that it would render money laundering trivially easy, and equity surely should not do that.

- [63] The problem, as with many middle ground positions, is that the "close and transactional link" formula is vague. This is good to the extent that it prevents easy money laundering and allows courts to protect innocent third parties. But it is more difficult to apply than a bright line rule. The Privy Council emphasized the importance of taking a realistic perspective in tracing. It therefore gave some examples of situations that would clearly constitute "close and transactional links".
- [64] If the principal reason for the liability was to acquire the asset, then that should be sufficient for a "close and transactional link". This applies to most residential mortgages and specifically to the mortgage in this case. So if *Durant* is good law in Canada, the fact that Ms. Reid structured the transaction as she did rather than buying the Harrison Way properties outright makes no difference. Either way, 7/8 of the properties should be excluded.
- [65] Since it comes from a foreign court, *Durant* is only a persuasive authority. It has never been definitively embraced by a Canadian court, and, indeed, some cases indicate that the legitimacy of "backward tracing" is still a live issue in Canada: *Metalworks Canada Ltd. v Warrack*, 2014 ABCA 389 at para. 36 and ftn. 1; *Bison Properties Ltd. (Re)*, 2018 BCSC 1299 at paras. 323-324. However, *Durant* relies on a Canadian case, *Agricultural Credit Corp. of Saskatchewan v. Pettyjohn*, (1991) 79 D.L.R. (4th) 22 (Sask. C.A.). Neither *Metalworks Canada* nor *Bison* positively decide whether backward tracing is possible, and *Metalworks* was decided before *Durant*, while *Durant* appears not to have been brought to the attention of the judge in *Bison Properties*. In my view, at least in the context of using excluded property to pay down a debt secured against the very asset that it was used to purchase, "backward tracing" where there is a close and transactional link fits with ordinary intuitions in family law and should be followed.
- [66] This is consistent with the general recognition, reflected in personal property security legislation, that a secured loan used to purchase an asset is functionally similar to a lease of that same asset with an option to purchase at the end of the lease period. I can see no harm in saying that the repayment of a secured debt used to purchase an asset can be traced into the value of that same asset. It is my sense that this is done routinely in British Columbia family law cases where excluded property is used to pay down a mortgage on a family home or other important asset with "equity" in it.
- [67] If I am wrong, there is an alternative way to get to a similar result. When a debt is discharged, equity "subrogates" to the person whose value discharged the debt the position of the creditor: *Bishopgate Investment Management Ltd. v. Homan*, [1994] EWCA Civ 33, *Leggatt L.J.* In simpler terms, when Ms. Reid used her excluded property to pay off the mortgage she gained an interest equivalent to a mortgage against the property, except that,

like all "equitable interests", this interest would not be enforceable against a purchaser who did not have notice of it. In effect, she got a \$70,000 unregistered mortgage. As a result of s. 84(2)(g) of the FLA, this approach will usually lead to the same result in family cases as the "backward tracing" approach, so long as the asset gains in value.

- [68] However, "equitable subrogation" is more complex and less intuitive than the simple view that "equity in property" obtained from excluded property is also excluded (a view that depends on "backward tracing"), and it could have unjust effects when the value of an excluded asset declines during the course of the relationship.
- [69] As the Court of Appeal indicated in *Mills*, while the law of equitable tracing is an important reference point for family law, ultimately its niceties should give way to the statutory purpose of doing justice between spouses. Where there are multiple tracing approaches, the simpler one is usually the appropriate one for family law: *Mills* at para. 102. So, in general, if excluded property is used to pay a mortgage (or other secured loan) that was in turn used to buy an asset, the asset, as of the date of purchase, should be considered to be excluded property. If both family property and excluded property were used to pay the mortgage or secured loan, then the equity in the asset should be divided proportionately. The equitable subrogation approach should only apply where the excluded asset is used to pay off a secured debt used for some purpose other than the purchase of the asset, and then probably only when there is some reason that the debt is not a family debt.
- [70] In any event, the two approaches lead to the same result here. Equitable subrogation would give Ms. Jager an interest equivalent to a \$39,000 mortgage in 942 Harrison and a \$31,000 mortgage in 948 Harrison, while on a backwards tracing approach she would those numbers would represent the excluded value since the rest of the value would be caught by s. 84(2)(g) of the FLA.
- [71] Ms. Jager also wants to trace \$14,415 of pre-relationship cash into the improvement value on 948 Harrison Way. In support of this, she points to the limited amount of ongoing income the parties had during those years.
- [72] 948 Harrison has an appraised value of \$495,000. \$464,000 of this is family value, of which half would go to Mr. Reid unless to do so would be "substantially unfair". I will address whether this would be so later.
- [73] A similar analysis applies to 942 Harrison. It has an appraised value of \$250,000 of which \$39,000 is excluded. The family value is \$211,000 of which Mr. Reid has a presumptive half interest.

C. Barrett Road

- [74] The purchase of the Barrett Road was financed virtually in its entirety by a \$136,000 loan from Ms. Jager's parents, which was registered as a mortgage. Title was in both the parties' names.

[75] In 2017, shortly after Ms. Jager's father died, Ms. Jager's mother gifted her daughter the mortgage. She wrote as follows:

In memory of your father and as an inheritance, I am gifting to you, [and your siblings], the amounts of mortgage and interest owing to me. This gift -- the release of your mortgage -- is intended for you alone, and is the value of the capital costs and accrued interest owed on the date of release -- August 26, 2017.

This is for the 1235 Barrett Road property on Gabriola Island.

[76] The mortgage was removed from title and the certificate of title showing this was attached.

[77] Following from the "backward tracing" analysis above, the gift of the mortgage to Ms. Jager could be traced through to the original purchase price, which effectively became excluded property.

[78] An equitable subrogation analysis would be inappropriate here. The younger Ms. Jager did not discharge Mr. Reid's debt, let alone in a way that would be enforceable in equity. Marjorie Jager's intentions could be construed as an assignment of the debt, even though she actually used the word "release". However, the flip side of this asset was a family debt. It would not be equitable to assign that debt to one of the members of the family. Even if it would, I have concerns about whether the interest on the mortgage remained enforceable after over a decade of non-enforcement. In my view, the appropriate analysis is to consider the original purchase price to be an after-the-fact gift and therefore excluded, but the increase in value of the land after acquisition as family property.

[79] The workshop on Barrett was recently appraised as worth \$212,000. Some of the work was done during the relationship with much of it occurring afterwards. During the relationship, labour was contributed by both parties. I accept Mr. Reid's evidence that the bulk of the labour was his, although I accept Ms. Jager's evidence that Mr. Reid failed to complete, despite his promises.

[80] Some of the costs of the work during the relationship can be traced to an inheritance from John Busik. The total inheritance was \$80,000. Bookkeeping entries from Marjorie Jager showed that she debited from Brenda's share \$20,758.19 that the senior Jagers advanced in expenses for Barrett Road. That amount is clearly an inheritance that can be traced into the overall value of the Barrett Road property, as improved.

[81] Ms. Jager wants me to attribute \$68,178 of the construction costs accrued during the relationship to inheritance and \$20,000 to pre-relationship savings. Her basic argument is that there was not enough money coming in through ordinary family income to pay for these things and that she kept them separate as the family bookkeeper. In my view, this is not sufficient to meet the onus of showing that money expended by a family during a relationship is traceable to excluded property.

- [82] The value of the workshop improvement on Barrett Road is, according to the parties' jointly retained expert \$212,000, while the land value is \$528,000. Ms. Jager was able to demonstrate that she spent \$20,758.19 from an inheritance from John Busik on the workshop during the relationship.
- [83] Since the end of the relationship, Mr. Reid has spent \$3,620 and Ms. Jager, \$61,128.83, on the completion of the existing workshop. While Mr. Reid did do some work in that respect, I conclude that Ms. Jager did most of the organization and project management and was the reason that it was completed. This is not technically excluded property because it is spent on a family asset after the end of the relationship, but I will address it in terms of the question of significant unfairness in the equality of property division.
- [84] The tools at the Barrett Road property at the time of separation and any timber or firewood there were family property. Much of the trial taken up with arguments about who took what. Evidence is not sufficient to suggest that either party took more than half and the parties are content that each keep what they now have. As a result, I will make no order with respect to any of that. Mr. Reid is not to take anything else from the Barrett Road property and anything there will vest entirely in Ms. Jager, subject to the payment I will order.

IV. is equal division "significantly Unfair"?

- [85] Ms. Jager asks for a departure from the presumption of equal division of the non-excluded family property. For the following reasons, I reject that submission.
- [86] The relevant provisions of s. 95 of the FLA are as follows:
- (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
 - (a) equally divide family property or family debt, or both []
 - (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
[]
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
[]
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[87] In *Singh v. Singh*, 2020 BCCA 21 at para. 134, the Court of Appeal explained the principle set out in s. 95 of the FLA as follows:

In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41.

Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.

[88] The proposition that the threshold for "significant unfairness" is a high one is supported by the text of s. 81(a) of the FLA, which provides the default rule that "spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution".

[89] In general, courts do not engage in a minute examination of the relative contribution of spouses to determine whether equal division is significantly unfair.

[90] Ms. Jager points to the cases of *Chang v. Chang*, 2020 BCSC 1783 [Chang] and *Hammond v. Holtz*, 2024 BCSC 447, in which equal division was found to be significantly unfair because of the different contributions of the spouses during the relationship. In my view, those cases are distinguishable because they both involved drastic differences in the contributions.

[91] In both cases, the trial judge was at pains to emphasize that "significant unfairness" is not a minute question of looking at specific contributions. In *Chang*, Mr. Chang himself admitted that he did not contribute much to the relationship. In my view, this case is quite different. On the evidence before me, both parents made a contribution and I would be defying the Legislature's injunction in s. 81(a) to inquire more closely than that.

[92] Ms. Jager raised concerns about Mr. Reid, particularly after 2014, not returning to sufficiently well-remunerated market income, especially after the children were either in school or even adults. I can understand her perspective on that. At the same time, the evidence as I heard it was that Mr. Reid was a good parent, that he had carpentry skills, that he was a valued and beloved member of the community because of his contributions to it, and that he did attempt to work at the Barrett Street project, albeit not consistently. I think it is true that he exaggerated his own project management abilities, and that he was not necessarily good at completing things. I think in some cases he has held onto events that did not occur in his life and expressed blame to Ms. Jager for the fact that he did not, especially in relation to his thoughts about creating a kayak business.

[93] But in my view, this is not a case where there was such a disparity of contribution as to justify unequal division of family property. Rather, it was one in which Mr. Reid decided to specialize in parenting and working with people in the community. The fact that his choices frustrate Ms. Jager does not mean he did not contribute.

- [94] Relative contribution is not easy for courts to figure out after the fact, and it is really for the parties to decide at the time of the relationship. At some point, someone may decide that they need to separate because they do not feel the other person is contributing enough. But except in extreme circumstances, the courts will not interfere with equal property division based on contribution during the course of the relationship.
- [95] A different question arises in terms of the improvements after separation. Those did substantially improve the overall value of the Barrett Road property. The workshop would not have been constructed but for Ms. Reid -- Ms. Jager, rather, her efforts, and she expended substantially more money. I therefore think that that money should be treated basically equivalent to the way that excluded property would be treated, even though it is not technically excluded property. But I note that Ms. Jager did not pay occupational rent in the five years since the four and a half years since the separation. I think that that has to also be taken into account in terms of what is fair.

V. spousal support

- [96] Mr. Reid is claiming spousal support from Ms. Jager.
- [97] There are two relevant bases for spousal support, compensatory and non-compensatory, which, at least typically, means on the basis of "need".
- [98] I do not think there is a basis for compensatory spousal support for Mr. Reid. Both parties gave up the potential for maximizing their market earnings during the course of the marriage. Both of them did so to have the kind of lifestyle they wanted and raise their children the way they chose. Mr. Reid gained substantial educational opportunities during the course of the marriage, and it has really been his choice not to pursue the career opportunities that these might have opened up. I am not judging that choice, just finding that it was his choice. I reject the idea that Ms. Jager prevented Mr. Reid from starting a business making kayaks or canoes. There was the potential for the capital for that from the term deposits that Ms. Jager had put aside.
- [99] Mr. Reid has a lot of talents. He is well respected on Gabriola. He could make more than he does. He certainly could make above minimum wage, in my view. And if he really wanted to optimize income, he could probably make a substantial amount of income. I do not think that is going to happen, but I think that is more because of his choices in life and his value system than it is because of a loss of capacity because of this relationship. So, I do not accept a compensatory basis for spousal support.
- [100] Ms. Jager's income now is substantially more than Mr. Reid's. But this is because of things that happened after the separation. The parties had very low money incomes during marriage.

- [101] I also agree with Ms. Jager that there is not a non-compensatory or "needs" basis for spousal support if there is an appropriate division of family property. The parties' "needs" in this sense are determined in terms of the lifestyle at the time of the relationship. The parties had very low money incomes during the course of their marriage, Mr. Reid in particular. I think Mr. Reid could earn enough money that he could live a lifestyle equivalent to what he had during the marriage and in fact better.
- [102] Mr. Reid stated that he had brain injuries. He denied, though, that this meant he could not work. I do not dispute the accidents occurred, but I did not get any medical evidence of the impact that they might have had on him. He decided not to disclose information about it. I think it follows that I cannot make a finding that he has a needs-based entitlement to spousal support based on those injuries, whatever they might have been.
- [103] Mr. Reid says the flower farm last year did not make money -- despite the fact that he worked extremely hard and was successful in marketing the flowers -- because he did not have anyone to manage the business side and he is not good at that. That may be, but it is not reasonable to expect Ms. Jager to address that. Mr. Reid will need to get someone to help him with the business side of such activities and pay them accordingly and he should take this into account when he thinks about what a particular enterprise will bring in.
- [104] During the course of the trial, it was clear that Mr. Reid can be astute about financial matters when he chooses to be, although I accept he has difficulty focusing. So, I do not accept that he would be unable to, with reasonable assistance, make a business, generate a reasonable income that was higher than that during the marriage. And if he really does think that he is unable to do that because of a lack of organization, then he should get employment so that someone else is taking care of that or hire someone with the organizational skills. He is well-liked, obviously intelligent, has a university education and no obstacles to employment. I do not think it would be appropriate to order spousal support in the circumstances.
- [105] Mr. Reid should get some occupational rent as long as Harrison remains unsold. There was no evidence about this. It was not really an issue that was brought before the parties, and so I am going to give them an opportunity to try to figure out what that should look like. It should be discounted by half, but it should be equivalent to the market rent for properties of that nature until they are sold.

VI. Remedial Issue

- [106] In order to partition the property, they will either have to be sold or one party will have to buy the other out. It is not realistic for Mr. Reid to buy Ms. Jager out.
- [107] Ms. Jager's intentions are to sell Harrison Properties and then buy Mr. Reid out from Barrett if she is able to. I will provide for a reasonable time in which she can do that. Occupational rent will create an incentive for her to do so reasonably quickly.

VII. declarations and Orders

- [108] Subject to s. 12 of the Divorce Act (Canada), the claimant David Oliver Reid and the respondent, Brenda Jager Marjorie Jager, who were married at Vancouver, British Columbia, Canada on June 18, 1994, are divorced from each other, the divorce to take effect on the 31st day after the date of this order.
- [109] All interim and interlocutory orders in this proceeding are vacated, unless expressly retained by this order.
- [110] This Court declares that the date of the separation of the parties is February 1, 2021, and that the parties have lived separate and apart since that date.
- [111] This Court declares that the following property of the Respondent, Brenda Jager also known as Brenda Marjorie Jager, is excluded property within the meaning of s. 85 of the Family Law Act:
- a) The 2013 Nissan Frontier for which the registered owner is the Respondent.
 - b) All financial assets in the name of the Respondent.
 - c) \$31,000 of the value of the lands described as Lot 24, Section 12, Gabriola Island, Nanaimo District, Plan 23619, with a Parcel Identifier of 003-134-938 and a municipal address of 948 Harrison Way, Gabriola Island BC ("948 Harrison Way").
 - d) \$39,000 of the value of the land lands described as Lot 25, Section 12, Gabriola Island, Nanaimo District, Plan 23619, with a Parcel Identifier of 003-134-946 and a municipal address of 942 Harrison Way, Gabriola Island BC ("942 Harrison Way").
 - e) \$156,781.19 of the value of the lands described as Lot 6, Section 18, Gabriola Island, Nanaimo District, Plan 30963, with a Parcel Identifier of 001-191-616 and a municipal address of 1235 Barrett Road, Gabriola Island BC ("1235 Barrett Road").
- [112] The family property, other than the excluded property of the Respondent, is to be divided equally, except for an adjustment such that the Respondent's interest in the lands at 1235 Barrett Road is increased to represent her greater expenditure after the end of the relationship on the construction of the workshop located there. In particular:
- a) Ms. Jager shall own \$232,000 of the value of 948 Harrison in trust for Mr. Reid.
 - b) Ms. Jager shall own \$105,500 of the value of 942 Harrison in trust for Mr. Reid.
 - c) Mr. Reid and Ms. Jager shall own title to 1235 Barrett Road as tenants in common with Mr. Reid owning half his legal interest in trust for Ms. Jager.
- [113] The respondent Brenda Jager, also known as Brenda Marjorie Jager, must list 942 Harrison and 948 Harrison (the "Harrison properties") for sale, no later than October 22, 2025, on the following terms:

- a) The respondent shall have conduct of sale.
- b) While the Harrison properties remain unsold, the respondent shall be responsible for property tax, maintenance and other routine expenses associated with the Harrison properties and shall pay the claimant half the market rent as occupational rent.
- c) The respondent shall consult the claimant prior to hiring a realtor.
- d) The realtor hired by the respondent shall inform the claimant, by email, of all of the following:
 - i. The realtor's recommendations on work to get the Harrison properties ready for sale.
 - ii. The realtor's recommended listing price.
 - iii. The receipt of any offers for 942 Harrison, 948 Harrison, or both.
 - iv. The realtor's recommendation as to whether to accept an offer or make a counteroffer.
- e) Any counteroffer or accepted offer must contain, as a term, that the offer or counteroffer is subject to approval by the claimant or court order.
- f) The claimant must state whether he approves an accepted offer or counteroffer within 48 hours. If the claimant approves the accepted offer or counteroffer or does not respond within 48 hours, the respondent may remove the condition that the offer or counteroffer is subject to approval by the claimant or court order. If the claimant rejects the accepted offer, the respondent may seek approval of the offer or counteroffer from the court.
- g) On closing, the respondent must distribute the proceeds of sale as follows:
 - i. Payment of real estate commission, legal expenses and other standard closing expenses.
 - ii. Payment of unpaid property taxes.
 - iii. Reimbursement of reasonable expenses to get the property ready for sale.
 - iv. The respondent will receive the following amounts of excluded value:
 - 1) \$31,000 for 948 Harrison;
 - 2) \$39,000 for 942 Harrison.
 - v. The remainder will be divided equally between the claimant and the respondent.
- [114] The respondent Brenda Jager also known as Brenda Marjorie Jager may buy out the claimant's interest in 1235 Barrett Road for \$184,464.40, provided she does so before April 23, 2026. If she does each party shall be responsible for 50% of the capital gains tax on the buy out and the respondent may hold back \$60,000 towards the claimant's share of the capital gains tax. If half the total capital gains tax for both parties is less than \$60,000, the respondent must pay the remainder to the claimant. If half the total capital gains tax for both parties is more than \$60,000, the claimant must pay the difference to the respondent.

[115] If the respondent does not buy out the interest of the respondent in 1235 Barrett Road prior to April 23, 2026, 1235 Barrett Road must be listed for sale, on the following terms:

- a) The respondent shall have conduct of sale.
- b) While Barrett Road remains unsold, the respondent shall be responsible for property tax, maintenance and other routine expenses associated with the Harrison properties.
- c) The respondent shall consult the claimant prior to hiring a realtor.
- d) The realtor hired by the respondent shall inform the claimant, by email, of all of the following:
 - i. The realtor's recommendations on work to get the Harrison properties ready for sale.
 - ii. The realtor's recommended listing price.
 - iii. The receipt of any offers for 1235 Barrett Road.
 - iv. The realtor's recommendation as to whether to accept an offer or make a counteroffer.
- e) Any counteroffer or accepted offer must contain, as a term, that the offer or counteroffer is subject to approval by the claimant or court order.
- f) The claimant must state whether he approves an accepted offer or counteroffer within 48 hours. If the claimant approves the accepted offer or counteroffer or does not respond within 48 hours, the respondent may remove the condition that the offer or counteroffer is subject to approval by the claimant or court order. If the claimant rejects the accepted offer, the respondent may seek approval of the offer or counteroffer from the court.
- g) On closing, the respondent must distribute the proceeds of sale as follows:
 - i. Payment of real estate commission, legal expenses and other standard closing expenses.
 - ii. Payment of unpaid property taxes.
 - iii. Reimbursement of expenses to get the property ready for sale.
 - iv. The respondent may take a holdback equal to \$120,000 for the amount of capital gains payable on the sale and is responsible for paying capital gains for both parties from this amount.
 - v. The respondent will receive \$317,071.21 in excluded value.
 - vi. The remainder will be divided equally between the claimant and the respondent.
- h) If half the total capital gains tax for both parties is less than \$60,000, the respondent must pay the remainder to the claimant. If half the total capital gains tax for both parties is more than \$60,000, the claimant must pay the difference to the respondent.

- i) Under Part 6 of the Family Law Act, Mr. Reid's share of the pension benefits accrued by Ms. Jager in the Public Service Pension Plan is equal to $50\% \times A/B$, where A is the period beginning July 21, 2014 and ending December 15, 2020 and B is the period in which Ms. Jager accrued pension benefits, measured in the same unit of time as A.

"J. G. Morley, J."

The Honourable Justice Morley

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