

CANADA / JUDGMENT

Rempel v. Cardiff

2014 BCSC 183

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 183 Rempel v. Cardiff IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Rempel v. Cardiff, 2014 BCSC 183 Date: 20140204 Docket: 12-1780 Registry: Victoria Between: David Charles Rempel Claimant And Laurie Ann Cardiff Respondent Corrected Judgment: the text of the judgment was corrected at paragraph 13 on February 11, 2014 Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for the Claimant: A.R. Atwood-Brewka Counsel for the Respondent: R.C. Doell Place and Dates of Trial: Victoria, B.C. September 9-12, 2013 Place and Date of Judgment: Victoria, B.C. February 4, 2014

Introduction

- [1] On September 9, 2011, Mr. Rempel left the family home in the 2007 Ford Escape vehicle. He stopped to take \$10,000 out of the joint line of credit and continued on his way to Calgary where he now lives.
- [2] On May 17, 2012, he filed a notice of family claim. He stated the parties were married on June 26, 1999 and separated on September 9, 2011.
- [3] He sought orders for divorce, spousal support, and asset division, namely an equal division of family assets including the matrimonial home other pensions, savings and the like. He stated there were no children of the marriage.
- [4] Ms. Cardiff in response also sought orders for divorce and asset division. She sought to keep the family home in her name, and she stated that Mr. Rempel was able to support himself. She later amended her claim to seek child support for her foster child (her brother's son who at the time of this hearing was age 8).
- [5] Mr. Rempel is age 60 and works at a bowling centre. His total 2012 bowling centre and pension earnings is \$41,016. At the time of hearing, Mr. Rempel's total earnings increased to \$48,757.
- [6] Ms. Cardiff is age 55 and works for the Ministry of Health, and she earns \$60,078.

Background

- [7] The parties met in the 1970s when both were in the police academy, and they stayed in touch over the years.
- [8] Mr. Rempel entered a 24-year marriage and raised two children.
- [9] In 1998 he advised Ms. Cardiff he had separated and in 1999, he moved to Victoria where she lived.
- [10] Ms. Cardiff, hearing he did not have anywhere to stay, said he could move into the spare room in her modular home. Matters moved along, and they married in June 1999. Shortly thereafter, he lost his job.
- [11] In 2000, Mr. Rempel befriended a 20-year old escort with drug addiction problems; he said he felt obliged to financially assist her. As well, he was piling up a huge credit card debt exceeding \$90,000, and the stack of credit cards eventually crumbled.
- [12] In October 2001, he made a proposal in bankruptcy. Ms. Cardiff found herself dragged into the mess because he obtained two credit cards in her name. She made a proposal to creditors that she eventually paid out in December 2004.
- [13] In November 2001, Ms. Cardiff went into hospital. Mr. Rempel left her and departed with the 20-year old.
- [14] Rather amazingly, he came back, and after counselling and various promises of good behaviour, the marriage restarted in mid-2003.
- [15] My impression is Mr. Rempel is like many alcoholics: he is quite bright and can be very charming, but as events had shown and were to repeat, he is not reliable.
- [16] This behaviour is demonstrated over the years and is evidenced by a resume that shows many short-term employment jobs over the following five years while Ms. Cardiff had steady employment through the Medical Services Branch.
- [17] I note from the documents, his income for 1999 was \$6,539; 2000 - \$8,195; 2001 - \$9,700; 2002 - \$9,700; and 2003 - \$27,535. His employment through 2001-2003 was as a call centre trainer.
- [18] In 2004-2005, he was a production worker at Sherwood Industries. His income for 2004 was \$32,975; and 2005 - \$25,528.
- [19] In 2004, the modular home was sold, and they rented for a while.
- [20] Mr. Rempel then obtained employment for a short time with Elections BC during an election, in 2005 as a BC Ferry Clerk, and in 2005 - 2006 as a drywaller. His 2006 income was \$28,706.

- [221] In August 2005, Ms. Cardiff's younger brother fathered a child. Eventually in late 2006, Ms. Cardiff decided to assist him. She bought a home with a basement so that her brother and his child could have a stable home.
- [222] Ms. Cardiff put in \$75,000, which reflected the equity in the modular home and her savings, including cashing in over \$9,000 in RRSPs.
- [233] Sadly, in February of 2007, her brother left the infant child. The infant child was born with many disabilities not all of which were assessed at that stage and now the child had no parents.
- [244] Ms. Cardiff by any standard has a big heart inside her tiny frame. Mr. Rempel and Ms. Cardiff discussed the matter. Initially, Mr. Rempel was against the idea given their ages and various health issues, but he eventually agreed to fostering the child.
- [255] I note Mr. Rempel's employment for 2007 was as a quality assurance worker and his income was \$28,771, and later in 2007, he began working as a technical librarian at a helicopter company.
- [266] In February 2008, Mr. Rempel's drinking caught up with him again, and he faced DUI charges. And at the same time, his employment ceased.
- [277] In effect, he became a stay-at-home dad for the child, M., who in February 2008, was two-and-a-half. By then, I would think the child's disabilities were becoming apparent: he had fetal alcohol syndrome, autism and a palsy so severe that it was not expected that he would walk.
- [288] While Mr. Rempel had no occupation in 2008-2009, there is evidence of pictures and a page in Ms. Cardiff's tax return showing home renovations occurred, including: clearing trees; building a large deck; refurbishing a shed; installing a hot tub; rebuilding the basement; improving the living room and dining room; and putting a skylight in the roof. The tax document shows some \$11,000 in improvements, and in other evidence, it was suggested the total cost was some \$28,000. While Ms. Cardiff would have assisted in many ways, Mr. Rempel appears to have done most of the work. Ms. Cardiff said her brother completed some of the interior work after Mr. Rempel left.
- [299] In January 2009, after an arrest for a second DUI, Mr. Rempel said he stopped drinking. The legal and related costs were around \$10,000.
- [300] In 2009, Mr. Rempel went to Alcoholics Anonymous and has not had a drink since.
- [311] Mr. Rempel's income in 2009 was \$16,580 comprising CPP benefits - \$7,503; other pensions - \$2,987; and Employment Insurance - \$6,090.

- [32] By this point the marriage was already in tatters. Mr. Rempel said there was no intimacy in the relationship from early 2008. The child M. was three-and-a-half in February 2009 and four years of age in August 2009. I would assume preschool might start about then, and in September 2010, kindergarten would have started.
- [33] In 2009, Mr. Rempel began seeking female company on internet dating services. And in early 2010 when his father died, he met a cousin (K.J.) from Calgary at the funeral. That relationship soon blossomed, and they met regularly from time-to-time when he would take the ferry to Richmond to assist his mother but also liaise with K.J., through 2010 and 2011.
- [34] On November 1, 2010, the house mortgage was re-financed to purchase a Ford Escape vehicle to provide safe passage for M. to daycare and school. A smaller vehicle, an Aveo, was purchased for Ms. Cardiff to commute to work and park in a small parking space. As well, the line of credit was paid down.
- [35] Mr. Rempel's 2010 income was \$15,118 comprising CPP benefits - \$11,300, other pensions - \$3,584; other - \$233.
- [36] In 2011, his total income was \$16,372 comprising employment income - \$1,296; CPP - \$11,492; and other pensions - \$3,584.
- [37] I note Ms. Cardiff's income in comparison to Mr. Rempel's: 2004 - \$59,996; 2005 - \$55,906; 2006 - \$70,184 (including \$9,581 from her RRSPs that went into the house); 2007- \$56,593; 2008 - \$59,664; 2009 - \$60,711; 2010 - \$63,413.
- [38] On September 11, 2011, Mr. Rempel left Ms. Cardiff without any notice. He took the Ford Escape vehicle; a TV and a video-player; and his carpentry tools. He stopped to take \$10,000 out of the joint line of credit and put it into a joint account with K.J. that had been opened at an earlier time and continued on his path to Calgary.
- [39] Mr. Rempel pointed to the child, M. as the reason for the marriage breakdown. He said Ms. Cardiff devoted her love to her family more than to him. That fact may be part of it, but the heart of the matter is that Mr. Rempel agreed to take on the task of raising M. at an early date and he did express genuine feelings for M. He provided a father figure for the infant child for over two years, and while his efforts may have been overly authoritarian given M.'s autism, I accept that he had a significant positive effect on the child.
- [40] The social worker, Ms. Gallagher, noted that when M. was initially placed, he was not expected to talk or walk. M.'s progress, at least until September 2011, when the child was then six, was the work of both Ms. Cardiff and Mr. Rempel. Since then, the load has fallen on Ms. Cardiff's diminutive shoulders.
- [41] The cost to her health is evident. In 2011, she was hospitalized. In 2012, she was again hospitalized for another three months when she also had stomach surgery. The reality is that severe stress seems to cause real problems with her digestive tract.

- [42] M.'s custodian and guardian is the Ministry of Child Welfare. Ms. Cardiff provides care under contract as a foster parent. She is assisted by the government through various programs. In total, she receives some \$30,000 for providing the care that M. requires, but it is evident that not all of his growing needs are being met. She says he needs tutoring and more exercise such as swimming, which is not covered by the public funding.
- [43] Since Mr. Rempel left the house in September 2011, he has attempted to make contact with M. But evidently, M. took Mr. Rempel's leaving very badly. The social worker's opinion was that if Mr. Rempel was not going to be a constant presence, occasional contacts would not be encouraged as it would be too upsetting for M. Since those rules have been put in place, Mr. Rempel has made no attempt to contact M. save for sending the occasional present.
- [44] Mr. Rempel does have health issues, some arising from a leg length discrepancy and knee surgery in 2010. But Mr. Rempel landed on his feet in Calgary. His 2012 income was \$41,016 and for 2013 was \$48,757 including full-time employment with a Casino bowling alley.
- [45] Since Mr. Rempel left, Ms. Cardiff had to keep up the house and had her brother assist with some additional renovations and repairs to the house.
- [46] She has paid \$66,325 in mortgage, taxes and insurance, and she paid down the line of credit \$4,989.68
- [47] The evidence at trial showed that in 2010 and 2011, Mr. Rempel was using the line of credit to pay down his credit card in excess of \$5,000 as well as cash withdrawals in excess of \$19,000 including the \$10,000 taken on his departure in September 2011. Child support
- [48] Ms. Cardiff's claim for child support rests on the basis that Mr. Rempel has stood in loco parentis to the child and his child support is necessary to assist in raising of the child.
- [49] However, I am satisfied that M.'s true custodian and guardian is the Ministry of Child Welfare. Ms. Cardiff is simply a contractual party (albeit with a big heart) who has undertaken the care and raising of M. The monies she receives for M.'s care and upbringing are some \$30,000 per year; it covers most but not all the costs facing Ms. Cardiff.
- [50] There is no question that she and Mr. Rempel (while he was there) have done a remarkable job. The social worker indicated that when the file was opened, the child was not expected to talk or walk. M. has fetal alcohol syndrome, autism, and has a palsy affecting his ability such that he cannot run, but he can walk.
- [51] M. is now passing through grades at school though he needs a lot of help, but he can walk and otherwise enjoy much of his life. All these successes reflect credit on both Mr. Rempel and Ms. Cardiff.
- [52] Ms. Cardiff wishes to continue raising M.

- [53] Ms. Cardiff's counsel verbally altered his position to claim s. 7 special expenses, but that claim stands on no better legal basis than did the original claim and accordingly, I must dismiss that aspect of the claim. Mr. Rempel's claim for spousal support
- [54] Mr. Rempel is now making some \$48,000 per annum between his pension from the operating engineers union and his employment, and I see no basis for this claim. Property division
- [55] As noted on his September 2011 departure, Mr. Rempel took the 2007 Ford Escape vehicle; \$10,000 cash; a t.v. and VCR; and his carpentry tools.
- [56] Ms. Cardiff is left with the 2000 Chevrolet Aveo vehicle, the house together with its mortgage, the bank debt, her pension, and her savings.
- [57] Mr. Rempel also has pensions and some nominal savings to take into account.
- [58] It is useful to create a graph of the parties' incomes from 1999 through to 2012: Mr. Rempel Ms. Cardiff 1999 \$6,539 2000 \$8,185 2001 \$9,700 2002 \$9,700 2003 \$27,535 2004 \$32,975 \$59,996 2005 \$25,528 \$55,906 2006 \$28,706 \$70,184 2007 \$28,771 \$56,924 2008 \$28,926 \$59,664 2009 \$16,580 \$60,711 2010 \$15,118 \$63,413 2011 \$15,373 \$63,809 2012 \$ 41,016 \$61,691
- [59] In terms of the housing, Mr. Rempel arrived in 1999 with little save what he stood in, and he had little in the way of employment. Ms. Cardiff had a modular home where they continued to live until 2004 when the modular home was sold.
- [60] As well, Mr. Rempel created the credit debacle in 2001 and then departed the house and did not return until mid-2003.
- [61] In 2004, the modular home was sold, and the parties rented until November 2006 when the house was purchased with Ms. Cardiff paying \$75,000 towards the purchase.
- [62] In 2009, renovations were done; \$11,190 was spent, pursuant to the tax returns and claim for federal assistance; in total, some \$28,000.
- [63] I accept Mr. Rempel contributed his labour in 2009 and 2010 to the home renovations.
- [64] But plainly, Ms. Cardiff provided the majority of payments, both in the down payment and the costs of mortgage insurance and taxes. Indeed, there is but a five-and-a-half year period where Mr. Rempel earned anything more than 25 percent of Ms. Cardiff's income.
- [65] In the early years and after 2008, he would have contributed little other than his own living costs. From separation to trial, Ms. Cardiff has paid \$66,325 in mortgage insurance and taxes to maintain the home in good standing.
- [66] Regarding the renovations, counsel noted a refinancing of the house mortgage was done on January 7, 2011. \$48,994.81 was received that was used to pay \$26,994.81 for renovations, and to pay off the 2007 Ford Escape account of \$22,000. Line of Credit

- [67] Mr. Rempel conceded in cross-examination that his credit card was paid from the parties' joint line of credit.
- [68] As well, he conceded he opened a joint account with his partner, K.J. in Alberta in summer, 2010.
- [69] I am satisfied that he used \$19,910 from the line of credit to pay his Visa account and his cell phone as itemized in Exhibit 17, including the \$10,000 he took on his September 2011 departure.
- [70] The line of credit charges to Mr. Rempel of \$19,910 was solely for his benefit.
- [71] The line of credit at trial stood at \$21,574, and Ms. Cardiff paid \$4,989.68 on the line of credit since the separation. Other Assets
- [72] The other assets in issue are:
- a. 2007 Ford Escape vehicle: \$15,000;
 - b. Chevrolet Aveo: \$8,000;
 - c. Mr. Rempel's RRSP: \$4,093;
 - d. Mr. Rempel's pensions with the Engineers Union (two);
 - e. Ms. Cardiff's government pension;
 - f. Ms. Cardiff's RRSP savings;
 - g. Ms. Cardiff also showed \$8,482 Visa debt in her July 2013 financial disclosure;
 - h. Mr. Rempel also had a 1995 Oldsmobile: \$1,700;
 - i. A lawnmower tractor: \$1,000;
 - j. A Utility trailer: \$500;
 - k. Bank accounts of \$772.
- [73] Mr. Rempel claimed \$10,000 worth of furniture in the house as jointly owned, but I have no evidence or argument on that aspect. Discussion
- [74] The provisions of the Family Relations Act, R.S.B.C. 1996, c. 182 are applicable: see Family Law Act s. 252.
- [75] Section 51 provides for equal division of property. But the Court has discretion to reapportion if the statutory circumstances in s. 65 are found to be applicable. Those circumstances are found in s. 65(f) regarding the acquisition, preservation and liabilities that relate to the house.
- [76] While I am satisfied that Mr. Rempel did provide his labour and carpentry skills in 2009 and 2010 to improve the house, he has provided little financially.

- [77] Moreover, it is apparent that for only some five years could it be said he was making any financial contribution of consequence.
- [78] Effectively, he withdrew from the marriage between late 2001 and mid-2003. After 2008, he said the marriage had little for him, and in 2010, his attention plainly turned to K.J. when he went on his own to attend her birthday in the latter part of the year.
- [79] He said that he would have left the house in March 2011 save for the fact that he had to have knee surgery at that time and recuperate.
- [80] While his conduct is not relevant to property division, his actual contributions are. I find them to be very little in light of what Ms. Cardiff has provided.
- [81] Further, since separation she has paid the mortgage insurance and taxes of \$66,325.
- [82] When one looks at the house valuation of \$450,000 and its \$344,195 mortgage, the house only has nominal equity of \$105,805.
- [83] If the equity is shared, they would each receive \$52,402.
- [84] But I would find in the circumstances that Mr. Rempel's share, at best, is 25 percent or \$26,101. Against that amount is the \$66,325 that Ms. Cardiff has paid towards the mortgage insurance and taxes. As well, she was left with practically all of the outstanding amount on the line of credit that I find he took solely for his own benefit, i.e., some \$19,000 including the \$10,000 cash he took in September 2011.
- [85] As well, there is a substantial disparity in the vehicles' value. In the circumstances, I find Ms. Cardiff's contributions and payments subsequent to separation far outweigh any amount that Mr. Rempel might be entitled to from the equity in the house. Accordingly, I find he has no interest in the house equity.
- [86] Mr. Rempel is entitled to retain his interest in the Ford Escape and other chattels he has taken. Pension Division
- [87] Mr. Rempel acquired his interest in the Operating Engineers pensions before the marriage and those are solely his.
- [88] Regarding Ms. Cardiff's pension, by law she is obligated to share those pensions subject to this limiting provision: I find that Mr. Rempel made no effective contribution to their joint household from the time of the marriage to mid-2003, and by the end of 2010, he formulated his plan to leave his matrimonial bonds. Accordingly, in calculating his share of Ms. Cardiff's pension, the dates to be utilized by the pension divider shall be from June 30, 2003 to December 30, 2010. Costs
- [89] The parties have, in my view, divided success.
- [90] Ms. Cardiff succeeded on the property division at least so far as the house is concerned, but she lost her attempt to obtain child support for M.

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- [91] Mr. Rempel has not obtained spousal support and has no claim on the principal family asset, the house.
- [92] The parties are entitled to a divorce.
- [93] Given the outcome, the appropriate award in my view should reflect the divided success. Two of the three major issues were resolved in Ms. Cardiff's favour and she is awarded one-half of her taxable costs. "The Honourable Mr. Justice Crawford"
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