

CANADA / JUDGMENT

Robbins v. Loveday

2022 BCSC 1280

COURT

Supreme Court of British Columbia

DECIDED

29 July 2022

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2022 BCSC 1280 Robbins v. Loveday

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Robbins v. Loveday,

2022 BCSC 1280

Date: 20220729

Docket: E57459

Registry: Kamloops

Between:

Nicole Danielle Mae Robbins aka Nicole Danielle Mae Loveday

Claimant

And

Lloyd Lyle Loveday

Respondent

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment

The Claimant appearing on her own behalf:

N.D.M. Robbins

Counsel for the Respondent:

C.O. Soll

Place and Date of Trial/Hearing:

Kamloops, B.C.

April 4, 6-8, 21-22, 2022

Place and Date of Judgment:

Kamloops, B.C.

July 29, 2022

Introduction

- [1] The parties began cohabiting on May 1, 2013 ("Date of Cohabitation"), were married on August 20, 2016 ("Marriage") and separated on either April 1, 2018 (according to the respondent) or February 25, 2019 (according to the claimant) ("Date of Separation").
- [2] They each had children from prior relationships and each brought assets into the Marriage. Each now seeks orders for a divorce, and the division of family assets and family debt. In addition, the claimant seeks orders that the respondent pay her spousal and stepparent child support related to her now 11-year-old son, JR-Z.
- [3] Following six days of evidence, which was well in excess of the allotted trial time, the parties proposed to file written submissions and return for one day of oral submissions. Following delivery of written submissions, both parties advised that they were content to rely solely on their written submissions as filed.

The Claimant's Evidence

- [4] The claimant is currently age 53. She completed her high school education in 1986 and then commenced, but did not complete, a two-year business administration certificate program at the BC Institute of Technology. The following five years found her operating her own esthetics business. She later obtained a psychiatric nursing diploma at Douglas College and began employment in that capacity with the Interior Health Authority in Kamloops ("IHA").
- [5] She has four children from past relationships, the oldest three are currently in their mid-to-late twenties. JR-Z, her youngest, was approximately one-and-one-half years old when she first met the respondent through an online dating application in August 2012.
- [6] On July 15, 2012, approximately two weeks before meeting the respondent, the claimant suffered a work-place shoulder injury that put her off work indefinitely ("Workplace Injury"). From the time of the Workplace Injury to 2018, the claimant was engaged in disputes with IHA, the Workers Compensation Board ("WCB") and her disability insurer, Great West Life ("GWL"), over income replacement. Those disputes eventually resolved, and by July 2018 the claimant was paid what she should have been paid in wage replacement and started receiving indexed long-term disability pensions through GWL, WCB and the Canada Pension Plan ("Disability Pensions") which are currently \$4,041 per month in total. She expects to

continue receiving the Disability Pensions until at least age 65. She says the Disability Pensions relate to physical and psychological issues that stem from the Workplace Injury which includes chronic pain and depression. Additionally, she says that in 2009 she was diagnosed with, and continues to suffer from, post-traumatic stress disorder ("PTSD").

- [7] The claimant has not worked in any capacity since the Workplace Injury. She says she stayed at home and looked after her children and the respondent's children while the respondent worked. She says that following the Workplace Injury, GWL attempted to retrain her into a management occupation, but those efforts ultimately proved unsuccessful.
- [8] At the Date of Cohabitation, the claimant owned and lived at a home in the Juniper area of Kamloops ("Juniper Home") the basement of which she rented out. She says that when she met the respondent, he was struggling financially, was \$80,000 in debt and that she lent him \$56,300 to help pay his outstanding bills and mortgage payments. She admits that shortly thereafter, the respondent repaid her \$50,000 from the net sale proceeds of a home he owned. She claims that there was an outstanding balance of \$6,300.
- [9] The claimant testified that in February 2014 the parties decided to purchase a home together in the Lac Le Jeune area south of Kamloops for \$703,000 ("Family Home"). She had earlier sold the Juniper Home (which netted her approximately \$209,000) and a travel trailer (netting her \$11,000). She says she used most of the net sale proceeds from the Juniper Home firstly, to pay off a bank line of credit of \$40,000 and secondly, toward the down payment on the Family Home. She stated that the respondent had outstanding credit card debts of \$14,000, and in order to qualify for the mortgage of \$562,400 required to purchase the Family Home, their banker insisted those debts to be paid. The claimant says she lent the respondent \$16,000 from her line of credit, which together with the \$6,300 he owed her previously, increased his debt to her to \$22,300.
- [10] By the claimant's calculations, the \$703,000 purchase price of the Family Home was made up of TD Bank mortgage proceeds of \$562,400, a \$40,000 joint line of credit and \$100,600 from the proceeds of the sale of the Juniper Home.
- [11] After the Date of Cohabitation, the claimant alleges that the respondent took over the management of her financial affairs, including preparing her income tax returns. She asserts that he made significant mistakes in doing so that resulted in her being charged penalties and interest.
- [12] The claimant also alleges that the respondent secreted money out of their joint account and either gambled it away, invested it secretly or placed it in undisclosed accounts. She alleges that the respondent had a habit of over-spending on things they could not afford. She says that he refused to talk to her about their finances or follow a budget. She says she did not have a voice in the couple's financial affairs.

- [13] At the end of their Marriage, the claimant was involved in stressful family law litigation with her previous spouse, PZ, JR-Z's biological father ("JR-Z Litigation"). In August 2018, she told the respondent that she wanted a break in their relationship and moved his belongings from their bedroom to the basement where he resided until she left the Family Home on February 15, 2019. She says she did so to take care of her mental health and because she did not want to engage with the respondent any longer.
- [14] JR-Z has been living with his biological father since August 29, 2019 as a result of the Ministry of Children and Family Development ("MCFD") apprehending him from the claimant following serious abuse allegations made against her, culminating in an order made in the Provincial Court that she have no contact with JR-Z ("Provincial Court Order"). She denies all allegations and has been attempting to have JR-Z returned to her ever since he was apprehended. She believes that the respondent was instrumentally involved in a conspiracy with PZ to remove JR-Z from her life and make her out to be a horrific person.
- [15] Currently, she is focussing on holistic self-rehabilitation of her physical and mental health and is hoping to work as a counselor and women's advocate in the future.

The Respondent's Evidence

- [16] The respondent is currently age 60. At the Date of Cohabitation, he was employed full-time at Thompson Rivers University ("TRU") as the Director of Strategic Partnerships. He commenced that employment in July 2009, and remained in that position until January 17, 2017 when he was terminated without notice. Following his termination, he attempted unsuccessfully to develop a consulting business together with the claimant that they called Loveday Solutions. In August, 2018, he obtained employment with the Nicola Indian Band in Merritt where he remains currently employed.
- [17] He met the respondent through an online dating site in July 2012, and they began dating. The claimant then lived at the Juniper Home while he resided on a rented farm property. The claimant told him that she was employed by IHA as a full-time psychiatric nurse. While he understood from her that she suffered a minor work-place shoulder injury and needed some minor rehabilitation, he observed that she would get dressed and leave for work each day. When they began cohabiting in May 2013, he assumed she was going to work on a daily basis.
- [18] He denies knowing that the claimant had any sort of disability. Over the course of their relationship, he observed the claimant to participate in sporting and other activities including snowmobiling, kayaking, skiing and mountain biking without apparent difficulty. At the same time, he understood that the claimant was engaged in a hard-fought and ongoing claim with IHA, GWL and WCB, but he understood it related to a dispute over whether she should be paid based on full-time work, as she alleged, or .6 or .7 full-time equivalent, as the WCB alleged.

- [19] In 2016, the respondent understood that because the claimant had been off work for a period of time, the WCB required that she retrain. From his observations, the claimant was not diligent in the prescribed retraining program, but instead was focussed on yoga, walking the couple's dog and other recreational activities. He testified that the claimant made any excuse to not participate in the retraining program, and as a result she did not complete the courses. The respondent recalls attending a meeting with the claimant and WCB representatives and observed the WCB representatives to be frustrated that she had not yet returned to work. From the respondent's observations, the claimant appeared physically and mentally functional.
- [20] The respondent denies that the claimant was a stay-at-home mom for his children as the claimant suggests. He says that in fact, his children were terrified of her and never wanted to be alone in the Family Home with her.
- [21] At the time of his termination from TRU in January 2017, the respondent was earning \$92,000 per year. His severance package included a salary of 13 months in lieu of notice for a total of \$114,000 paid monthly. That monthly severance income was deposited into the couple's joint bank account and was used by the parties to fund their monthly expenses. Commencing in March 2018, the respondent received employment income benefits until August 2018, when he secured his current employment with the Nicola Indian Band.
- [22] The respondent's mother died in March 2014. In June 2014, the respondent received an inheritance from her estate, out of which he paid \$25,000 against the mortgage on the Family Home. The balance of his inheritance was used to pay family expenses in accordance with his understanding that the parties were pooling their resources and sharing their assets, income and expenses.

Issues

[23] The issues for determination are:

- i. Divorce;
- ii. Spousal support;
- iii. Child support; and
- iv. Division of family assets and debt.

Family Law Act

- [24] The sections of the Family Law Act, S.B.C., c. 25 [FLA] relevant to the division of assets and debt are ss. 81, 84, 85, 86, 87, 95, 96 and Part 6 dealing with pension division.
- [25] The FLA espouses a presumption of equal division of family property, the entitlement to which exists independent of contributions or use.

- [26] Section 81 provides that each spouse is entitled to a one-half interest in all family property on separation. Section 84 defines "family property" as all real and personal property which:
- a) On the date of separation is owned by a spouse or in which a spouse has a beneficial interest; or
 - b) After the date of separation is owned by a spouse or in which the spouse acquires a post-separation interest, but which is derived from property that meets the definition of family property.
- [27] Family property also includes income tax refunds, money in financial institutions, pension plans, the value to which excluded property may have increased since cohabitation: FLA, s. 84(2). Income tax refunds received after separation that arise from income tax remitted before separation are family property: *Byrne v. Byrne*, 2015 BCSC 318 at para. 55.
- [28] Family debt includes debt incurred by either spouse during the period between when the relationship began and separation: FLA, s. 86(1).
- [29] Family property is to be valued based on its fair market value, and debt is to be valued as at the date of trial: FLA, s. 87.
- [30] Property that is excluded from family property includes property acquired by a spouse before the relationship began, and inheritances received at any time either before or during the relationship: FLA, s. 85(1). Excluded property does not include payment from a third party as a settlement or award, as compensation or insurance policy for lost income of a spouse: FLA, s. 85(1)(c) and (d). Inheritances are considered excluded property under s. 85(1)(b).
- [31] The onus of proving that property is excluded is on the party seeking the exclusion. Section 84(2)(g) includes in the definition of "family property" any increase in value of excluded property during the course of the parties' relationship. If excluded property is transferred into the joint names of the parties, the intention of the transferring spouse as to whether he or she intended the transfer as a gift determines whether the property retains its excluded character.
- [32] An unequal division of family property, family debt, including pensions, may be ordered if it would be significantly unfair to divide family property and debt equally: s. 95(1). Considerations for an unequal division include the duration of the relationship, and whether family debt was incurred in the normal course of the relationship, among other considerations: FLA, s. 95(2).
- [33] In short, and subject to the rules regarding excluded property, both parties are entitled to family property and responsible for family debt, regardless of their respective use or contribution and, on separation, each is entitled to an undivided one-half interest in all family property and are equally responsible for family debt: FLA, s. 81.

Discussion

- [34] As is typical in unpleasant family law trials, the version of facts given by the claimant differed greatly from the respondent's version. Having heard and observed both testify, where their evidence differed, I prefer the respondent's evidence. He gave his evidence in a straightforward and credible manner, and he answered questions put to him, both in direct and cross-examination, logically, calmly and persuasively. Further, to a large degree, his version of the facts was supported by the documentary evidence.
- [35] The same cannot be said for the claimant's evidence, which was riddled with accusatory statements against the respondent that were not only unsupported by documents in evidence, but were often contradicted by them. She spent much of her testimony attempting to present herself as a vulnerable victim of the respondent's efforts to rob her of her assets, often casting dispersions on him in the process. Her evidence included suggestions that he fraudulently completed tax returns on her behalf and hid money and other family assets from her. She went further by alleging that he attempted to cause her harm by loosening the wheel nuts on her vehicle prior to her taking a trip, railroaded her and that he conspired with PZ and others to alienate her lawyer from her in the JR-Z Litigation, which allowed PZ to "kidnap" him. All of these allegations were without proof.
- [36] The theme of her evidence was that the respondent was untrustworthy, was guilty of frivolous spending and gambling throughout their relationship, sabotaged her GWL rehabilitation plan and generally conducted himself in an improper manner throughout their relationship and this case.
- [37] I conclude that the claimant's attempts to paint the respondent in this manner were driven by her intense animosity towards him which coloured her evidence. I reject her allegations without reservation.
- [38] The evidence proffered by the claimant respecting the financial resources each party brought into the relationship, their respective debt, and her working arrangement was, at best, confusing. She spent a considerable amount of time going through bank account statements during their relationship, which in the end contributed nothing of substance. I could not determine what monies came out of what account and for what purpose. All of the allegations the claimant made about the respondent's irresponsible spending and misappropriation of monies, misrepresentations of his financial picture and overpayment of credit cards were not proven.
- [39] The claimant's written submissions, in the form of an email directed to Supreme Court Scheduling, were similarly imprecise. Instead of identifying the issues for resolution, focussing on the evidence at trial and the law, they were a diatribe of how she has been persecuted by the system and unfairly treated by this Court.

- [40] The focus of her submissions was an attempt to disparage the respondent in relation to JR-Z and her firmly held belief that the respondent had an agenda to conspire with PZ to "kidnap" him by sabotaging her court hearing in 2018 resulting in JR-Z being taken from her custody. She contends he did so to avoid having to pay child support. She makes unfounded allegations of "legal games, harassment, rapes and drugging" and "gang involvement, threats and RCMP favours". She alleges that the respondent is "in bed with" PZ and that she was threatened by PZ's lawyers, social workers, PZ and the respondent.
- [41] These (and numerous other allegations the claimant makes against the respondent and others) have no foundation in the evidence before me, are mostly hearsay and, in any event, have no bearing on the issues I must decide. The claimant seems focused on re-litigating a matter that was before the Provincial Court in 2018. Her submissions were mostly rambling, irrelevant to the issues and unhelpful.
- [42] In contrast, the respondent's submissions focused on the issues, the evidence and the law. He set out in succinct terms what the evidence was and what he thought the appropriate orders should be, including how the assets and debts of the parties should be divided or apportioned and whether the respondent should be ordered to pay spousal or child support.
- [43] I agree with the respondent's submissions on the issues to be decided in their entirety. I accept that once the parties decided to cohabit in May 2013, they decided to merge their resources and operate as a joint family enterprise with each of them contributing to the family as their circumstances would allow.
- [44] As will be seen later, I am not persuaded by either party that it would be significantly unfair to either of them to divide their family assets equally.
- i. Document Disclosure
- [45] The claimant has not filed a F8 Financial Statement since June 4, 2019, nor has she filed any income taxes since 2018. She says she has not done so because she has a lot on her plate.
- [46] Supreme Court Family Rules [Rules] R. 9-1(1) requires each party to prepare and deliver a list of all documents in the party's possession or control that could be used by any party at trial to prove or disprove any material fact. Despite court orders and demands from the respondent's counsel that the claimant produce such a list, she has failed to do so. These include requests for medical records related to her inability to work and requests for an updated F8 Financial Statement. Her stated reasons for failing to respond to the respondent's document requests and generally meet her obligations under the FLA and Rules were because she "had a lot on [her] plate" and because she had difficulties with her computer, cell phone, vehicle and because she was jailed from January 10, 2022 through February 25, 2022 in relation to the JR-Z Litigation.
- [47] Rule 5-1(18) of the Rules obliges each party to file an updated F8 Financial Disclosure not more than 63 days before trial. Rule 5-1(28) empowers the court to draw an adverse inference from a party's failure to comply with financial disclosure. Further, s. 213 of the FLA

empowers me to draw an adverse inference against the claimant for her failure to comply with disclosure requirements. While I appreciate that the claimant was self-represented, she was nevertheless expected to familiarize herself with the relevant legal practices and procedures, prepare her case and be respectful of the court and court process: C.A.T. v. S.T.B., 2020 BCSC 593 at para. 48 [CAT].

- [48] Here, the claimant largely ignored her obligations to disclose relevant documents and to prepare and organize her case for trial. She treated her responsibility far too casually and attempted to blame her failure to comply with the Rules on others. While some relaxation of the rules would be fair given that she was self-represented, "fairness is a two-way street and there are limits" to what the court can do: CAT, at para. 48.
- [49] The claimant stated that this trial was the first time in three years that she has had an opportunity to review all the documents she brought with her to court, many of which had not previously been disclosed to the respondent.
- [50] I noted during the trial that the claimant had numerous and seemingly well-organized document folders that she referred to during her testimony and that she was able to retrieve on request, usually quite quickly. It is clear to me that the claimant is intelligent and articulate, and is capable of being organized. However, for reasons that are unclear, she produced selective documents and records in a hodgepodge and unorganized fashion.
- [51] Her explanations for her lack of timely disclosure and troubles preparing for the trial were not persuasive. I conclude that she treated this case as unimportant. If she was serious about it, she would have found ways to meet her obligations. I considered her explanations to be more excuses than anything else.

ii. The Claimant's Disability Income Receipts, Money Transfers and Assets

- [52] The claimant's explanations of the inter-relationship between monies received from and paid back to IHA, WCB and GWL were confusing and difficult to follow. Similarly, her explanations of monies she says the respondent transferred from the couple's joint account and what she referred to as his "creative CRA tax filings for her" and his "tax mischief" were confusing and difficult to follow. Indeed, her evidence on these points was hopelessly incoherent.

iii. Date of Separation

- [53] At the Date of Separation, the claimant continued to be involved in the JR-Z Litigation with PZ and was under significant stress. The respondent had been laid off by TRU and was also under significant stress. By January 2018, their relationship and marriage had fallen apart and they were effectively living separate lives even though they continued to share the Family Home and its expenses.

[54] I conclude that the date of separation was April 1, 2018, the date, according to the respondent and which I accept, the parties agreed to separate and live separately in different parts of the Family Home. They were not intimate after April 1, 2018, and only shared a bedroom when the respondent's son returned home from school and there were no other options. After April 1, 2018 they did not eat together as a family, go out together or interact with each other's children. This date is also consistent with the first time the parties listed the Family Home for sale, which was followed by a relisting with a different realtor in June 2018. The claimant ultimately vacated the family home in February 2019.

iv. Divorce

[55] Both parties seek a divorce from each other. Each has confirmed that there is no prospect of reconciliation. I am satisfied that the requirements for the granting of a divorce order as set out in the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3, have been met.

v. Spousal Support

[56] The claimant seeks an order that the respondent pay her spousal support of \$2,332 per month for an indefinite period. Before I am able to make such an order, the claimant must show entitlement to spousal support either on compensatory or non-compensatory grounds. The objective of an order for spousal support includes recognizing any economic disadvantages the claimant suffered arising from the marriage or its breakdown and relieve her of any economic hardship arising from the breakdown of the marriage.

[57] At the Date of Cohabitation, the claimant was off work from IHA due to the Workplace Injury, and she was collecting disability benefits from IHA, WCB and GWL. She has not returned to work since then. She has provided no reliable or persuasive evidence of how the medical conditions she claims she now has may have impacted her ability to find gainful employment, nor has she proffered any medical evidence confirming any condition that would impede her ability to work.

[58] According to the respondent, whose evidence I accept, the claimant was able to function in her day-to-day activities throughout their relationship. As described earlier, he noted her to engage in many physical activities inconsistent with her being disabled from work.

[59] Even if I accepted the claimant's unsupported claims that she suffered and continues to suffer ongoing medical issues related to her shoulder, chronic pain and depression (including that she was diagnosed with PTSD prior to her employment with IHA and that she suffered the Workplace Injury), I am not persuaded that she is disabled from work or will be in the future.

- [60] During the trial, the claimant described herself as very goal-oriented with a positive outlook. She testified that she has a number of career ambitions including careers in counselling, life-coaching and screenwriting. She testified that she has not sought any employment since the Date of Separation because she has had a lot on her plate, mainly involving the ongoing JR-Z Litigation.
- [61] Further, and of note, the claimant enjoyed an average gross annual income of approximately \$72,000 as reported on her income tax returns. Portions of this income comprised non-taxable WCB benefits that varied from year to year. The claimant testified that she did not feel dependent on the respondent, indeed at one point during her cross-examination, she described herself as a "cash cow" for the respondent.
- [62] Further, the claimant has not filed a F8 Financial Statement since June 4, 2019, and, despite previous orders for disclosure that have largely been ignored and despite a series of requests from the respondent's counsel, she has not disclosed any of her income tax documents since 2018. Beyond a handful of tax information slips produced for the first-time during trial, she has not provided evidence confirming her current income.
- [63] I am satisfied on the evidence that she has not suffered any economic disadvantage as a result of the marriage or its breakdown. Although the claimant seemingly suffered the Workplace Injury the year prior to the Date of Cohabitation and has not returned to work since, I accept the respondent's evidence that she was fully capable of returning to work in a full-time capacity and has simply chosen not to do so.
- [64] Accepting the respondent's evidence as I do, I conclude that the claimant, for her own reasons, has chosen to rely on the Disability Pensions, has chosen not to be retrained and chooses not to become self-supporting.
- [65] I accept the respondent's evidence that throughout their relationship, and despite that the respondent's two children were living in the Family Home, the claimant was not the stay-at-home mom as she suggests other than to JR-Z. I accept the respondent's evidence that his son was self-reliant and his daughter was afraid of the claimant, wanted nothing to do with her and stayed at her mother's home when the respondent was working out of town.
- [66] In short, the claimant has not proven entitlement to either compensatory or non-compensatory spousal support. The respondent did not receive a financial advantage from the relationship and the claimant testified that she suffered no financial disadvantage from the relationship.
- [67] Respecting need, she has not filed a F8 Financial Statement since June 2019. During her evidence, she provided updated estimates of her monthly expenses some of which I considered reasonable, some of which I considered exaggerated. In the end, I conclude that her monthly income is sufficient to cover her reasonable monthly expenses and she has not proven a need for spousal support.

[68] I conclude that the claimant is currently unemployed by choice as she focuses on other matters, including the protracted JR-Z Litigation. Any perceived "need" she has for support is, in my view, self-imposed.

[69] In sum, I conclude that no spousal support is payable to the claimant by the respondent, either retroactive or prospective. Her claim for spousal support is dismissed.

vi. Child Support

[70] There are no children of the marriage. Nevertheless, the claimant seeks an order that the respondent be required to pay stepparent child support of \$830 per month to her for JR-Z. As earlier mentioned, JR-Z is currently age 11 and is the child of the claimant from a prior relationship. Since August 2019, JR-Z has been residing full-time with his biological father. The Provincial Court Order included an order restraining the claimant from contacting or communicating with JR-Z. Accordingly, she has had no significant contact with him since he was apprehended by the MCFD. Since approximately September 2020, JR-Z's father has been his primary care giver. The claimant is not supporting JR-Z and there are no orders in place requiring her to pay child support.

[71] Section 147(5) of the FLA provides that stepparent support is secondary to that of a child's parents and guardians and extends only as appropriate on consideration of the standard of living the child experienced during the relationship between the stepparent and his spouse and the length of time the child lived with the stepparent.

[72] JR-Z's father is not a party to this action and the claimant has taken no steps to add him as a party respecting her application for stepparent child support. JR-Z's father has not filed his own application for stepparent child support from the respondent. In addition, there is no evidence about PZ's financial circumstances or JR-Z's current living arrangements or standard of living.

[73] Under these circumstances, the respondent has not proven that the respondent ought to pay child support to her and there is no basis for an order under s. 147 of the FLA that the respondent pay child support.

[74] Accordingly, the claimant's application for stepparent child support from the respondent is dismissed.

vii. Division of Family Assets

[75] A significant issue at trial related to how the parties' family property and family debts should be divided. The respondent says, and I agree, that the following is family property that is to be divided between the parties:

i. The net sale proceeds of the sale of the Family Home, presently in the amount of \$395,678.70 and currently held in trust by the respondent's counsel ("Monies in Trust");

ii. The Respondent's TRU pension;

- iii. The parties CPP pensions;
 - iv. TFSA's in the respondent's name;
 - v. RRSP's; and
 - vi. Personal property and equipment.
- ("Family Property")

- [76] Other assets include the parties' respective vehicles and the proceeds of the sale of two snowmobiles and an ATV which were kept by the claimant. The claimant also has a pension for when she was employed at the Kamloops Regional Correctional Center ("KRCC") that ended in 2009, and a modest IHA pension.
- [77] The claimant says that there is additional family property that must be accounted for and divided including, among others, the proceeds of the sale of aviary equipment that the respondent has kept, tools, farming equipment, fishing and camping equipment and hidden bank accounts and/or investments ("Hidden Accounts") that the respondent has failed to disclose (together, "Additional Family Property").
- [78] Additionally, the parties' family debts must be determined and divided between them. Those debts include the parties' respective, and relatively modest, credit card debts at separation and a CRA debt owed by the respondent for the 2018 taxation year.
- a. Claimant's Submissions
- [79] While her submissions are far from clear, it appears the claimant seeks orders giving her \$317,000 of the Monies in Trust, a lump sum payment of \$75,000 as her share of the respondent's TRU pension, a split of their CPP pensions from May 2013 to the Date of Separation, one-half of the respondent's TFSA of \$10,000, plus one-half of the sale of the respondent's aviary equipment of \$20,000 and one-half of the Additional Family Property which she values at \$20,000.
- [80] Further, she seeks an order that she is entitled to one-half of the Hidden Accounts that she suggests are in the range of \$200,000, \$5,000 for monies she says she put into Loveday Solutions business (the unsuccessful business the parties attempted to launch after the respondent was terminated from TRU), one-half of what she refers to as "investing from 2013-2017" that she values at \$93,000, accounting costs she claims to have incurred of \$2,614, \$2,498 that she says she spent for "sprucing up" the Family Home's basement, "emergency accommodations costs" of \$16,586 that she says she incurred after she left the Family Home, repayment of \$4,000 she says the respondent gave to his previous wife, and legal fees of \$75,000 that she claims to have incurred respecting this action and the JR-Z Litigation (together, "Claimant's Additional Claims").

- [81] Respecting the Hidden Accounts, the claimant asserts that the respondent failed to disclose investment accounts that accumulated over the years of their relationship to approximately \$200,000. She alleges that, through "trickery", the respondent helped himself to family money from their joint accounts and invested in his name only. She says that he has neither disclosed the Hidden Accounts nor has accounted for their value. The claimant says she believes there is a "high probability" that the Hidden Accounts exist because of both comments the respondent made to her during their relationship and from documents she says she reviewed.
- [82] The claimant also seeks reimbursement of multiple other expenses and monies she says the respondent either helped himself to from their joint account to pay for "toys", electronics, legal bills related to the JR-Z Litigation, her CRA refunds and money he paid to his ex-wife, from monies that included those paid by her son for rent and monies transferred by her daughter into their joint account, which she suggests the respondent spent improperly. She also says that monies she owes IHA in the approximate amount of \$6,000 for overpayment of sick leave benefits pending the determination of her long-term disability ought to be a family debt even though that debt relates to the period of March 2019 - June, 2019 after the Date of Separation.
- [83] All told, she sums up her submissions seeking an order that the respondent pay her \$620,428, plus costs of \$75,000 and a split of their respective pensions. Additionally, she wants to be repaid the \$22,000 she says the respondent still owes her from 2013.
- b. Respondent's Submissions
- [84] For his part, the respondent seeks an equal division of Family Property save the portion of his RRSP related to his pre-relationship TRU pension that he cashed out and locked into his RRSP. Respecting the alleged Hidden Accounts, the respondent vehemently denies that they exist. He maintains that his F8 Financial Statements are true and complete and disclose all his assets.
- [85] The respondent submitted a Scott Schedule setting out what he submits the division of family assets/debts should be ("Scott Schedule"):

Asset/Debt

Claimant

Respondent

The Family Residence

\$197,839.35

\$197,839.35

The Forrester

NIL

(excluded property)

The Escape

NIL

(excluded property)

The Arctic Cat

\$10,000.00

The Quad

\$2,000.00

The ISCU Account

\$2,356.68

The TFSA

\$2,144.96

(the remaining balance being the Respondent's post-separation investment)

The Claimant's Unlimited Account

\$504.91

Divisible Portion of the Respondent's RRSP

\$71,866.38

Respondent's Excluded Property Claim in the Respondent's RRSP

NIL

(excluded property)

The Claimant's Manulife

At least \$17,086.83

The Claimant's Pension

Unknown

The Withheld Monies

\$130,868.84

The Settlement

\$180,000.00

The Chattels

Unknown

(arguably \$21,365)

The Respondent's Visa

(\$978.97)

The Respondent's Amex

(\$987.71)

Revenue Canada Debt

(\$4,233.96)

The Claimant's Visa

(\$398.02)

The HSBC MasterCard

(\$1,131.82)

Equalization

(\$120,000.00)

\$120,000.00

[86] The respondent says that when the parties commenced cohabitation, they decided to pool their respective pre-relationship monies in order to purchase the Family Home and agreed to share income, expenses, assets and liabilities equally thereafter. In other words, he contends that they gifted their respective pre-relationship assets to each other with the intention of pooling their resources as a couple because they were building a life together.

[87] Alternatively, if it is determined that assets each party brought into the relationship are excluded property, then he says the claimant's excluded property is \$140,000 (comprising the \$20,000 she paid as a deposit on the purchase of the Family Home, plus a \$120,000 down payment) and his excluded property is the \$50,000 that he received as an inheritance from his mother's estate.

c. Conclusion re: Assets and Debts for Division

- [88] Other than her bare allegations, the claimant has not provided any evidence to back her assertions that the respondent has hidden assets, investments or money. In short, I reject the claimant's assertion that the respondent routinely siphoned money out of the joint account and other accounts for his own purposes. Respecting the Claimant's Additional Claims for which the claimant seeks reimbursement, I conclude that they were shared expenses and are not recoverable, or are unproven.
- [89] That leaves for determination how the Family Property should be divided, which includes a determination of what property, if any, is excluded property.
- [90] I accept the respondent's evidence that the parties agreed to pay day-to-day family expenses from their joint bank account and that the respondent's wages were deposited into that account on a monthly basis.
- [91] The claimant alleges that the respondent's handling of her income tax filings for the years 2015, 2016 and 2017 were improper and that she was unable to obtain income tax refunds as a result. Her evidence on this point was also confusing and difficult to follow. These assertions have not been proven.
- [92] The respondent's Scott Schedule was reviewed by the parties during their testimony. I consider it to be a good starting point for how the Family Property and Family Debt should be divided.

c. Monies in Trust

- [93] At the Date of Cohabitation, the claimant owned the Juniper Home that she rented out to tenants. I conclude that the monthly rental income received was sufficient to pay the mortgage payments. She sold the Juniper Home in February, 2014 and she used \$148,615 (\$128,615 down payment and \$20,000 deposit) of the net sale proceeds to fund the purchase of the Family Home in March, 2014. Although the claimant suggests she put a further \$40,000 from the sale proceeds of the Juniper Home into the purchase of the Family Home by paying off a line of credit secured against the Family Home, she has failed to produce any documents to support this claim and no persuasive evidence was led on the point. The onus is on the claimant to prove that she made this investment and she has failed to do so: FLA, s. 85(2).
- [94] In March 2014, the respondent received an inheritance from his mother's estate of \$50,780 and he made a lump-sum payment on the Family Home's mortgage.
- [95] The parties purchased the Family Home in 2014 for \$703,000 plus the property purchase tax of \$12,000, and they sold it in the spring of 2019 for \$850,000, netting them approximately \$395,000, which was placed in trust pending the outcome of trial.
- [96] The claimant's evidence was that when the parties began to cohabit, they intended to keep their respective pre-relationship assets separate and points to her eHarmony dating profile and joint Wills they made during their relationship that did not provide for the respondent,

but rather gave \$240,000 of "liquidable assets" to her natural children. The respondent's evidence was that when the parties began to cohabit, their intention was to pool their pre-relationship assets into the purchase of the Family Home. The respondent says that their Wills were drafted in that manner to recognize that he had a life insurance policy that names his children as beneficiaries while the claimant did not.

[97] I conclude that the parties purchased the Family Home as a joint family venture and pooled their pre-relationship funds (which were initially excluded funds under s. 85 of the FLA) to do so. Both parties agree that they were excited about starting their new lives together and intended to pool their respective assets to purchase the Family Home with the intention of gifting those assets to each other. The Family Home was registered in their joint names and thereafter each held an undivided interest in it. It is not disputed that neither party documented an intention nor took steps to keep their respective investments into the Family Home separate during their relationship.

[98] In sum, I conclude that, while the parties' initial investments into the Family Home were excluded property, they became family property. Accordingly, the Monies In Trust is family property pursuant to s. 84 of the FLA and is to be shared equally: *Pisarski v. Pisarski*, 2019 BCCA 129 at paras. 27-30. I order that each party is entitled to \$197,839.35 of the Monies in Trust plus one-half of any accrued interest on that sum.

d. Respondent's TFSA

[99] The respondent has \$9,749.82 in a TFSA ("Respondent's TFSA") in his name that he opened during the parties' cohabitation. It accumulated to \$10,724.06 as at the Date of Separation. In December 2018, the respondent withdrew \$9,274.44 of that balance to cover the claimant's legal expenses related to the JR-Z Litigation. In December 2019, the balance of the Respondent's TFSA was \$854.36 due to the depressed market. In 2020, the respondent started re-investing in the Respondent's TFSA using his post-separation income, leading to its current value. Most of the Respondent's TFSA is therefore excluded property.

[100] The respondent calculates, and I accept, that the sum of \$2,144.96 of the current balance of the Respondent's TFSA is family property to be divided equally between the parties.

e. Pensions

[101] In addition to each party's respective Canada Pension Plans, there are two other pension plans that must be considered.

[102] First is the claimant's IHA pension plan. The claimant testified that she joined the IHA pension plan on April 11, 2011. At the Date of Cohabitation, she was off work due to the Workplace Injury, not contributing to the plan and has not contributed to it since. Accordingly, the claimant's IHA Pension Plan is excluded property and belongs exclusively to the claimant.

- [103] Second is the respondent's TRU pension plan. His contributions commenced automatically in July 2009, when he started work at TRU and continued to contribute until January 2018, 13 months after his termination. He received a buyout of \$200,000, \$120,000 of which he locked into his TD RRSP and \$80,000 was unlocked. A portion of the unlocked \$80,000 went into the couple's joint account and a portion into his TFSA, which was used to pay the family bills as needed, including the claimant's legal fees related to the JR-Z Litigation.
- [104] The respondent says that of the \$200,000 pension, \$100,000 should be excluded and \$100,000 should be considered family property of which \$29,134.17 was used for family expenses prior to separation. He bases this on the fact that he was employed at TRU for four years prior to cohabitation with the claimant, and for four years of cohabitation.
- [105] The current value of the locked in RRSP is \$171,866. I accept the respondent's submissions that \$100,000 of that sum is excluded property and that the claimant is entitled to \$35,933 representing one-half of the remainder of \$71,866.
- [106] Respecting the parties respective Canada Pension Plans, they will be divided in accordance with Part 6 of the FLA. The parties will have liberty to apply if further orders are required.

f. RRSP's and Other Accounts

- [107] As at December, 2017, the claimant's Manulife RRSP acquired during the parties' cohabitation was valued at \$17,086. The claimant has not provided any up-to-date valuation. The claimant also had a bank account (referred to during trial as her "Unlimited Account") with a balance at the Date of Separation of \$504.91. The respondent is entitled to a one-half share of each of those.
- [108] The respondent has an Interior Savings Credit Union account with a balance of \$2,356.68 as at the Date of Separation. The claimant is entitled to a one-half share.

g. Vehicles and Related Chattels

- [109] The claimant continues to drive a 2011 Subaru vehicle she brought into the marriage. She claims that it is in disrepair and requires substantial repairs. She valued it at \$6,000 in her last F8 Financial Statement. The respondent suggests, and I agree, this vehicle is excluded property.
- [110] The respondent purchased a Ford Escape in 2010 ("Escape") for \$25,000, which was financed on an 84-month (seven year) loan. It was paid off in 2017. He still drives this vehicle which he values at \$3,500 based on the value of similar vehicles on Auto Trader. The respondent also purchased a 2019 Chevy Volt in June 2019 for \$22,000. I accept the respondent's valuation as the best evidence of the value of the Escape available. The Escape is family property and the claimant is entitled to one-half of its value, or \$1,750.
- [111] When the Family Home was purchased in 2014, the parties also purchased a 2008 Artic Cat snowmobile, a Kodiak Quad with a snow-blade for snow plowing and other items totalling \$5,000, including art work from a vendor. The respondent testified that the snowmobile

alone was worth about \$10,000 at the time it was purchased. During the relationship, the respondent purchased a second snowmobile for \$1,200 and made significant repairs to it. On separation, he sold it to a neighbour for \$1,500 and put the proceeds into the joint account. He says the claimant disposed of the Artic Cat and Kodiak and he has no knowledge of what she received for it. He values them at \$10,000 and \$2,000 respectively. Whatever the value, the claimant kept the proceeds of their sales and has not accounted to the respondent for them.

[112] Doing the best I can with the evidence, I assess the value of the Artic Cat at \$5,000 and the Kodiak at \$1,000. They were both family property, and the claimant sold them and failed to account to the respondent for the net proceeds. The respondent is entitled to share in one-half of the value, or \$3,000.

h. Furniture, Other Belongings and Other Claims

[113] The claimant seeks reimbursement for the expenses she incurred when she "quickly and quietly" left the Family Home in February 2019, which she says was due to being fearful of the respondent and his behaviour towards her. Her decision to leave seems to have been prompted by her review of the reasons for judgment issued in the JR-Z Litigation, in particular, in relation to her interpretation of the judge's comments about the respondent's evidence, which she considered disloyal and "gaslighting". Her take was that the respondent was conspiring with her lawyer to ensure the MCFD took her son away from her.

[114] The expenses she claims have not been proven. In fact, I conclude that while the respondent was away, the claimant "quickly and quietly" packed up the lion's share of the parties' furniture and other belongings from the Family Home, garage and shed ("Furniture"), packed them into a moving truck and left without notice. The respondent returned later that day to essentially an empty home. The claimant has made no effort to fairly divide the Furniture with the respondent. I shall assess the value as best as the evidence will allow.

[115] Based on the respondent's evidence of value, and making what I consider to be appropriate adjustments for the fact that most of the Furniture was old and used, I assess the value as at the Date of Separation at \$10,000. Accordingly, the claimant must account to the respondent for one-half of that sum, or \$5,000.

i. The Claimant's "Withheld Monies" and IHA Settlement

[116] The respondent asserts that the claimant must account to him for monies totalling \$130,868.34 that he contends comprise:

- i. \$34,325 - monies she transferred from their joint account into her personal account shortly following separation;
- ii. \$59,747.34 - a cheque she wrote on the parties' joint account shortly before it closed; and

iii. \$36,796 - an income tax refund she received for the 2018 taxation year.

[117] The claimant says that she used these funds to repay GWL to balance historical overpayments of disability benefits they made to her for which they were demanding payment.

[118] While the evidence on what happened to these funds is confusing, I am prepared to give the claimant the benefit of the doubt (but barely) that she needed and used these funds to repay GWL. I do this because there was evidence of the overpayment of benefits by GWL, evidence that GWL was demanding to be repaid, and evidence that GWL is no longer pursuing the claimant.

[119] Accordingly, I do not accede to the respondent's suggestion that the \$130,868.34 was retained by the claimant for personal post-separation expenses for which she must account to him.

[120] Post-separation, the claimant also settled her claim for disability benefits she claimed she was owed as a result of the Workplace Injury ("Settlement"). The amount of the Settlement is unknown because the claimant has not disclosed the details despite repeated demands that she do so. Nevertheless, the respondent argues that the Settlement was make up for the lion's share of the \$253,689 the claimant reported as her 2018 income.

[121] The respondent's analysis is based on the claimant's average line 150 income between 2013 and 2018 inclusive of \$72,000. He argues that assuming \$72,000 of the \$253,689 the claimant reported as income in 2018 related to her disability benefits, the balance must be the Settlement amount, or \$180,000. He asserts that this must surely be considered family property.

[122] I accept the respondent's submission that the Settlement is family property, not excluded property, for which the claimant must account: FLA, s. 85(1)(d)(ii). Given the claimant's lack of disclosure, I also agree with the respondent's calculation of the amount of the Settlement. Accordingly, the respondent is entitled to one-half of the Settlement amount of \$180,000.

j. Family Debt

[123] The parties' family debts are relatively modest by comparison to the Family Property.

[124] I am satisfied that as at the Date of Separation, the family debt comprised the following:

i.

Claimant's Visa

\$398.02

ii.

Claimant's HSBC MasterCard

\$1,131.82

iii.

Respondent's Visa

\$978.97

iv.

Respondent's Amex

\$987.71

v.

Respondent's CRA debt

\$4,233.96

[125] The adjustment of this family debt will be allocated in the schedule below.

Allocation of Family Property and Debt

[126] Based on the evidence I have accepted, I make the following allocations of family property and family debt between the parties:

Asset/Debt

Claimant

Respondent

The Family Home

\$197,839.35

\$197,839.35

The Forrester

NIL

The Escape

\$3,500

The Arctic Cat

5,000.00

The Quad

\$1,000.00

The Respondent's ISCU Account

\$2,356.68

The Respondent's TFSA

\$2,144.96

The Claimant's Manulife RRSP

\$17,086.00

The Claimant's Unlimited Account

\$504.91

Divisible Portion of the Respondent's RRSP

\$71,866.38

The Claimant's Investments

NIL

The Claimant's Pension

NIL

The Withheld Monies

NIL

The GWL Settlement

\$180,000.00

The Furniture

\$10,000.00

The Respondent's Visa

(\$978.97)

The Respondent's Amex

(\$987.71)

Revenue Canada Debt

(\$4,233.96)

The Claimant's Visa

(\$398.02)

The HSBC MasterCard

(\$1,131.82)

Total before equalization

\$409,900.42

\$271,506.73

Equalization

(\$69,196.85)

\$69,196.84

TOTAL:

\$340,703.57

\$340,703.57

Summary of Orders

[127] I make the following orders:

- a) Subject to s. 12 of the Divorce Act (Canada), the claimant, Nicole Danielle Mae Robbins, also known as Nicole Danielle Mae Loveday, and the respondent Lloyd Lyle Loveday, who were married at the Town of Lac Le Jeune in the Province of British Columbia on August 20, 2016, are divorced from each other, the divorce to take effect 31 days from the date of these reasons;
- b) The claimant's claim that the respondent pay her spousal support is dismissed;
- c) The claimant's claim that the respondent pay her stepparent child support for JR-Z, born December 15, 2010, is dismissed;
- d) The balance of sale proceeds of the Family Residence, currently held in trust by counsel for the respondent, shall be equally divided between the parties, subject to the terms set out below;
- e) The claimant shall keep her Manulife Financial Personal Plan as her sole property absolutely, free from any claim by the respondent;
- f) The claimant shall keep the benefits accrued to her under the pension plan related to her KRCC employment including benefits in any other plan that may supplement that plan, as her sole property absolutely, free from any claim by the respondent;
- g) The respondent shall keep \$100,000 of the balance in his TD RRSP as his excluded property pursuant to s. 85(1)(b) of the Family Law Act, free from any claim by the claimant;

- h) The respondent shall keep the remaining balance of his TD RRSP as his sole property absolutely, free from any claim by the claimant;
 - i) The claimant shall keep the 2010 Subaru Forester currently in her possession, or the sale proceeds thereof, as her excluded property pursuant to s. 85(1)(b) of the Family Law Act;
 - j) The respondent shall keep the 2008 Ford Escape currently in his possession, or the sale proceeds thereof, as his sole property absolutely;
 - k) The claimant shall keep the sale proceeds of the 2008 Artic Cat and Kodiak quad, as her sole property absolutely;
 - l) Each party shall keep those bank accounts in his or her respective names as his or her sole property absolutely, free from any claim by the other;
 - m) The claimant shall keep the monies she withdrew/retained from bank accounts/income tax refunds she received at or after Separation, as her sole property absolutely;
 - n) The claimant shall keep the Settlement Amount in the approximate sum of \$180,000 she received in 2018 for lost wages during the relationship as her sole property absolutely;
 - o) Each party shall be solely responsible for the debts in his or her name alone;
 - p) Each party shall keep those chattels in their respective possession as his or her sole property absolutely, free from any claim by the other; and
 - q) The claimant shall pay the respondent the sum of \$69,196.85 from her share of the Monies in Trust to equalize the division of family assets and family debt.
- [128] The respondent's counsel is directed to draft the formal order and forward it to the claimant at her last known email address for her review. She shall have 30 days from receipt of the draft order to sign the order or provide any suggested changes. Should the respondent fail to do so, I order that the claimant's signature on the order be dispensed with.

Costs

- [129] The respondent was the successful party in this case. Subject to matters of which I am unaware, he is awarded Scale B costs of these proceedings.

"G.P. Weatherill J."

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Prepared on 29 October 2026 · Esheria