

CANADA / JUDGMENT

Robinson v. Sankey

2022 BCSC 2177

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 2177 Robinson v. Sankey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Robinson v. Sankey,
2022 BCSC 2177
Date: 20221213
Docket: 11552
Registry: Prince Rupert

Between: James Henry Robinson
Claimant

And: Cenita Georgina Sankey
Respondent
Before: The Honourable Mr. Justice Punnnett

REASONS FOR JUDGMENT Counsel for the Claimant: S. Davidson Respondent on her own behalf: C.G. Sankey Place and Date of Hearing: Prince Rupert, B.C. June 27-29 and September 2, 2022 Written Submissions of the Claimant: October 25, 2022 Written Submissions of the Respondent: November 14, 2022 Place and Date of Judgment: Prince Rupert, B.C. December 13, 2022

Introduction

[1] The issues in dispute in this trial are division of family property and debt and spousal support. They arise from a marriage-like relationship commencing March 2007 or later in 2008 and ending September 1, 2019. The claimant was born February 9, 1953, and the respondent June 16, 1962. They are 69 and 60 years of age respectively.

- [2] On January 24, 2020, the respondent applied for spousal support in the Provincial Court of British Columbia. On February 13, 2020, an interim order was made that the claimant pay the respondent \$1,026 on February 17, 2020, and \$2,480 per month thereafter based upon an income of \$144,347.39 for 2019. The sum ordered was at the Spousal Support Advisory Guidelines [SSAG] midpoint.
- [3] On August 27, 2020, the spousal support order was reduced to \$1,798 per month commencing September 1, 2020, being the SSAG low point. The reduction was based upon imputing an income of \$30,368 to the respondent based on a return to work by her at minimum wage and her receipt of disability benefits.
- [4] This proceeding was commenced by the claimant in August 2020 to address property and debt issues. By consent this Court ordered the Provincial Court proceeding file 11344 be consolidated with this proceeding under s. 194(3)(c) of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

Background

- [5] The parties originally had a brief relationship in 1981 but separated before their daughter Leah Sankey was born.
- [6] In 2004, before the parties recommenced their relationship, the respondent purchased a home at 334 8th Avenue West, Prince Rupert, British Columbia, legally described as PID 007-461-771, Lot 42, Block 22, Section 5, District Lot 251, Range 5, Coast District Plan 923 (the "Property"). She financed it with a mortgage from Scotia Mortgage Corporation of \$47,335.
- [7] In 2008 the claimant moved in with the respondent at the Property.
- [8] When the parties reconnected in 2008 the claimant had just commenced his career as a longshoreman, having ceased his previous employment as a red seal carpenter, and the respondent was employed as a taxi driver. As is typical for a longshoreman in this area, becoming a member of the union requires years of on-call work on varied shifts over which the worker has no control. After seven years he was admitted to the International Longshore & Warehouse Union in 2013.
- [9] He continues to be so employed, however must mandatorily retire on December 31, 2023, the year in which he turns 70 years of age, at which time he will be entitled to 15 years of service credit in the Waterfront Industry Pension Plan. The respondent ceased working in 2009.

- [10] The parties planned substantial renovations to the Property including a new roof, new bathroom and an addition. Materials were purchased and work commenced including the laying of the foundation for the addition. As the claimant was working full-time the renovations proceeded slowly and were never completed because of the parties' separation. He did complete a new drainage system around the foundation and replaced the hot water tank.
- [11] In addition to the incomplete renovations, the parties' debts increased arising from the materials purchased for the renovations, improvements to the Property and the purchase of a truck. Position of the Claimant
- [12] The claimant has chosen to work until he is 70 years of age to maximize his pension and repay the debts arising from the parties' relationship. He seeks equal division of the family assets. He also seeks to impute income to the respondent, disputing that she is incapable of working and her assertion that he told her not to work and would support her. He seeks an order that he pay spousal support as ordered by the Provincial Court, to be paid as a lump from his share of the family property, and that his obligation to pay spousal support terminate as of January 1, 2024, when he retires. Position of the Respondent
- [13] The respondent seeks continued maintenance, payment of maintenance arrears and retention of the Property. She states she ceased working in 2009 due to health concerns and with the agreement of the claimant. She disputes the claimant's claim against the Property, saying he was only a renter. Preliminary Matters
- [14] The allegations of family violence are disputed. They do not require resolution as I find, as did the Provincial Court judge, that those allegations bear no relevance to the issues.
- [15] As for the respondent's assertion that the claimant was only a renter and has no interest in the Property, her only evidence in support is her testimony that the claimant knew she was keeping the house to pass to their daughter and that his only entitlement was as a renter. She provided no rental agreement, no record of rent being paid and no details of the "rental" arrangement. The alleged rental arrangement is not established. Rather, the evidence is they cohabited as a couple in the Property and treated it as their home.
- [16] The only remaining contentious issue relates to the circumstances of the respondent ceasing work as a taxi driver. As previously noted the respondent states she ceased working as a taxi driver because of her arthritis and because the claimant told her she did not have to work as he was earning enough money. The claimant asserts he only said she should stop driving a taxi given her health issues and because she hated the work, but did not say she should stop all work. Other than unsuccessful attempts by the respondent, encouraged by the claimant, to qualify for disability payments during their relationship, the claimant worked and the respondent remained home. No contractual basis for spousal support has been established.

- [17] The planned renovations were substantial including a new roof, a foundation for an addition and a bathroom renovation, none of which were completed. Costs were incurred for that which was done. Unfinished renovations are likely to affect the market value of a property. However, neither party led evidence of the effect of such unfinished renovations, whether positive or negative, on the value of the home. Given that lack of evidence the renovations, their costs and their effect on the value of the Property will be treated as neutral. What is in evidence is that such renovations including material costs increased their consumer debt.
- [18] Neither party obtained appraisals of the Property. What is in evidence are the BC Assessment values for the home when the relationship commenced in 2008 of \$94,100, at the date of separation in 2019 of \$174,800 and as of July 2021 of \$228,100. Neither party disputed those values. They were content to proceed to trial using them.
- [19] Also contributing to their debts was a purchase, at the insistence of the claimant, of a new 2015 pickup truck for \$70,000 under a conditional sales agreement after a trade-in. The respondent retained the vehicle after separation but could not make the payments and it was re-possessed in May 2021 leaving a debt of \$14,120.88 included in the Scotia Bank sums below.
- [20] The respondent remains resident in the Property. The claimant has no home in Prince Rupert. The respondent submits the claimant has an interest in a home in Old Masset, British Columbia and a right to possess one in Kincolith, British Columbia. However, the claimant testified that the one in Old Masset is his ex-wife's and that she lives there with children and grandchildren and the one in Kincolith had been willed to him by his mother and was since then purchased from him by the government. Hence on the evidence neither of them remains his property and given they pre-date the parties' relationship, neither are relevant to the issues before the Court. Family Property and Debt
- [21] The assets of the parties at separation and their values as of the date of trial consisted of:
- | Asset | Registered Holder | Approximate Value | Allocated to |
|--|---|---------------------|---------------------------|
| Scotia Bank RRSP | **2195 James Robinson | \$4,574.57 | \$4,574.57 |
| Bank Account | **01458 James Robinson | \$194.48 | \$194.48 |
| Bank Account of James Robinson | ending 01457 | \$2,205.70 | \$2,205.70 |
| Bank of Nova Scotia | **63-20 Cenita Sankey | \$50.82 | \$50.82 |
| Bank of Nova Scotia Money Master Savings | **86-88 Cenita Sankey | \$97.97 | \$97.97 |
| Bank of Nova Scotia Combined RRSP | **829 Cenita Sankey | \$25,337.64 | \$25,337.64 |
| Non-excluded Equity in the Property | \$174,800 - \$0 mtg at separation minus \$94,100 - \$30,000 mtg in 2008 | = \$110,700 | |
| | \$110,700.00 | \$110,700.00 | |
| Total | | \$143,161.18 | \$6,974.75 |
| | | | \$136,186.43 Debts |
- [22] The claimant stated he had no lines of credit or credit card debts when the parties commenced cohabiting. The respondent had the mortgage on the Property.
- [23] The debts of the parties as of trial are:
- | Debts | Approximate Value | Allocated to |
|--|----------------------|--------------|
| James Robinson Allocated to Cenita Sankey Scotia Momentum Visa | *334-012 \$18,045.99 | \$18,045.99 |
| Scotia American Express | ** 80014 \$493.07 | \$493.07 |
| Joint Scotia Line of Credit | *285 018 | |
| | \$24,595.79 | \$12,297.90 |
| | \$12,297.89 | |
| BMO Mastercard | \$4,034.03 | \$4,034.03 |
| Scotia Line of Credit | | |

**738-022 \$19,109.47 \$19,109.47 Scotia Line of Credit **863-025 \$10,598.32 \$10,598.32 Scotia Bank Momentum Visa **807 \$2,025.08 \$2,025.08 Scotia Bank Line of Credit **322-704 \$7,410.60 \$7,410.60 Total debts: \$86,312.35 \$64,578.78 \$21,733.57

- [24] The claimant proposes the following division of family property and debt: Total equity (total assets of \$143,161.18 less total debts of \$86,312.35) = \$56,848.83 Half of total equity \$28,424.42 Total equity to Cenita Sankey (\$136,186.43 - \$21,733.57) = \$114,452.86 Total equity to James Robinson (\$6,974.75 - \$64,578.78) = -\$57,604.03 Equalization payment from Cenita Sankey to James Robinson \$86,028.44 Less spousal support owed by James Robinson until the end of 2023 (\$12,889.62 arrears as of June 2022) minus an incorrect amount (August 2021 to June 2022) plus \$1,798 for 18 months (July 2022 to December 2023) -\$45,198.62 Total owing to James Robinson \$40,829.82
- [25] The proposal does not adjust the RRSPs for taxes and the claimant submits such is appropriate as he will be able to draw on his RRSPs without penalty, as is likely the case for the respondent given her limited income. The respondent does not oppose the use of the before-tax values of their RRSPs. In addition, the lump sum spousal support proposed by the respondent is calculated before tax without deduction by the claimant or inclusion in the respondent's income given the set-off of that sum from the amount owed by the respondent to the claimant on property division.
- [26] The applicable principles regarding division of family property and debt are not in issue. Section 81 of the FLA provides that on separation, each spouse has an undivided half interest in family property as a tenant in common with the values to be determined as of the date of trial (s. 87). There is no issue regarding the excluded property owned by the respondent before the parties' relationship: s. 85.
- [27] Section 95(2) of the FLA addresses whether equal division of family property would be significantly unfair. There is no basis for a finding that equal division of family property would be significantly unfair. The division of family property and debt after excluding the acknowledged pre-relationship value of the Property results in the respondent retaining the home with equity of which includes her excluded portion, and her interest in the employment pension of the claimant. The respondent remains responsible for the debts totalling \$21,733.57 plus the balance due to the claimant. The claimant shall remain responsible for the remaining debts. The claimant's proposed division of property and debt after payment of the arrears of spousal support and current support to December 31, 2023, result in him leaving the relationship with no significant assets other than \$40,829.82 payable by the respondent to him and his portion of his employment pension.
- [28] The parties agree their Canada Pension Plan ("CPP") credits shall be divided for their period of cohabitation. There will be an order that their unadjusted pensionable earnings under the CPP during the period January 1, 2008 to September 1, 2019 will be divided pursuant to the Canada Pension Act, R.S.C. 1985, c. P-6 [Canada Pension Act] upon either party applying.

- [29] The claimant did not seek an order for sale of the Property in his pleadings, although at trial he sought such an order. The respondent wishes to retain the Property as her home and have it available for their daughter to inherit.
- [30] The respondent as of the date of trial had not made inquiries about obtaining a mortgage to satisfy any order in this proceeding. She doubted she would qualify given she is surviving on disability payments and spousal support (when paid). She did not address the possibility of employment income allowing her to obtain a mortgage.
- [31] I decline to make an order for sale in these circumstances.
- [32] The respondent shall pay to the claimant \$40,829.82 within 90 days of the date of this order.
Spousal Support
- [33] The claimant proposes the current payment of \$1,798 per month ordered in the Provincial Court be continued until December 31, 2023, at which time his retirement will be a material change. Although not entirely clear from the respondent's submissions, she appears to seek SSAG support calculated without income being imputed to her.
- [34] Section 160 of the FLA addresses the duty to provide spousal support for an entitled spouse:
160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support].
- [35] Section 161 sets out the objectives of spousal support and s. 162 the amount and duration:
161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time. 162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:
 - (a) the length of time the spouses lived together;
 - (b) the functions performed by each spouse during the period they lived together;
 - (c) an agreement between the spouses, or an order, relating to the support of either spouse.

- [36] Spousal support may be awarded on three models of support: compensatory, non-compensatory and contractual. As noted earlier, no contractual claim is established.
- [37] Compensatory support arises from any economic loss or disadvantage suffered by a recipient because of the parties' roles in the relationship. Here the respondent's assumption of household duties did support the claimant in advancing his career as a longshoreman given his long hours of shift work while her career was not pursued. However, any compensatory support claim is not substantial. The non-compensatory claim is the more significant given the length of the relationship, the respondent's limited means and her post-separation standard of living.
- [38] In the Provincial Court, Judge Stewart found compensatory entitlement to spousal support was present but "not dominant". Non-compensatory entitlement was found based on the length of the relationship, the degree of financial interdependency of the parties and the resulting need for a period of transition and time to adjust "standards of living and concepts of need". He found the respondent could earn \$15,000 per annum without a reduction in her disability payments. At that time her disability payment was \$1,183.42 per month or \$14,201.04 a year. As noted, on August 27, 2020, the spousal support order was reduced to \$1,798 per month commencing September 1, 2020. This was the low end of the SSAG range of \$1,793 and \$2,391 given the debt load of the claimant, the limited needs of the respondent and the onus on the respondent to become self-sufficient.
- [39] Despite that order, the respondent has not tried to work. She views herself as disabled by her arthritis and asthma despite participating in softball and floor hockey, albeit at a level commensurate with her ability, and apparently does not view that level of ability as sufficient for any employment. She also can walk some distance on local hiking trails. She further raises issues related to her intellectual limitations, limited education and the like although they did not prevent her from working for most of her life. She has not sought possible employment and hence has not determined if she in fact cannot work. No medical evidence has been provided to support her assessment of her employability. During the trial she displayed intelligence and drive. I conclude she can make reasonable efforts to support herself whether full or part-time and has an obligation to seek employment that accommodates her disabilities. Such income may either be a supplement or an alternative to disability payments.
- [40] The claimant's employment income in 2021 was \$150,623.97. For 2022 it is anticipated to be approximately \$148,000. The respondent's disability payments if not receiving spousal support are \$1,183.42 per month for a total of \$14,201.04 per annum.
- [41] The spousal support payable pursuant to the SSAG based on the claimant's income of \$148,000 and income imputed to the respondent of \$15,000 is \$1,829 per month set at the low end. The respondent's income does not include social assistance: SSAG, s. 6(2); *Lawrence v. Lawrence*, 2006 BCSC 167 at para. 84.

- [42] Given the weak compensatory claim, the needs of the respondent, encouragement of the respondent to seek employment, the debts the claimant is responsible for, his lack of assets and the fact that the respondent is living in a mortgage-free home militate in favour of support at the lower range. I see no reason to order spousal support in an amount that differs from the Provincial Court order.
- [43] The position of the claimant is that the Provincial Court-ordered support should remain in place with the same quantum to be ordered by this Court until December 31, 2023, when his retirement is to take effect. Given the claimant's debt obligations, he cannot pay such spousal support and the debt payments. Hence, he seeks an order for lump sum support from July 1, 2022 to December 31, 2023 (18 months x \$1,798).
- [44] The claimant's pension is anticipated to total \$1,950 per month after 15 years of service. As the exact date of commencement of their cohabitation is in dispute it is agreed that 2008 will apply. As he began contributing when the parties commenced residing together in 2008 and they separated in 2019, he acknowledges 11 of those years shall be divided. The estimated pension division is \$715 per month to the respondent and \$1,235 to the claimant. The resulting annual pension division will be \$14,820 per annum for the claimant and \$8,580 for the respondent.

Orders

- [45] The respondent shall retain the Property and pay to the claimant \$40,829.82 within 90 days of this order.
- [46] The claimant shall be responsible for the following debts and any accrued interest:
- a) Scotia Momentum Visa #**334-012 \$18,045.99
 - b) Scotia American Express #**80014 \$ 493.07
 - c) One-half of joint Scotia Line of Credit #**285 018 \$12,297.90
 - d) BMO Mastercard \$ 4,034.03
 - e) Scotia Line of Credit #**738-022 \$19,109.47
 - f) Scotia Line of Credit #**863-025 \$10,598.32 Total: \$64,578.78
- [47] The respondent shall be responsible for the following debts and any accrued interest:
- a) One-half of Joint Scotia Line of Credit #**285 018 \$12,297.90
 - b) Scotia Bank Momentum Visa #**807 \$ 2,025.08
 - c) Scotia Bank Line of Credit #**322-704 \$ 7,410.60 Total: \$21,733.58
- [48] The claimant shall pay the arrears of spousal support due as of June 2022 in the amount of \$12,834.62 adjusted for the incorrect payment of \$55.00 to the respondent.

- [49] The claimant shall pay spousal support to the respondent in the amount of \$1,798 per month from July 1, 2022 to December 31, 2023 as a lump sum of \$32,364.
- [50] Subject to any further court order unless there is a material change in the parties' circumstances other than the claimant's retirement the spousal support payable by the claimant to the respondent terminates effective January 1, 2024.
- [51] The parties unadjusted pensionable earnings under the Canada Pension Plan during the period from January 1, 2008 to September 1, 2019 will be divided pursuant to the Canada Pension Act upon either party applying.
- [52] The claimant's employment pension with the Waterfront Industry Pension Plan shall be divided for the period of January 1, 2008 to September 1, 2019.
- [53] No submissions were made regarding costs. If sought, the parties are at liberty to apply through Scheduling to have costs spoken to. "The Honourable Mr. Justice Punnett"

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