

CANADA / JUDGMENT

Rolston v. Rolston

2009 BCSC 1367

COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 1367 Rolston v. Rolston IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Rolston v. Rolston, 2009 BCSC 1367 Date: 20091006 Docket: E083418 Registry: Vancouver Between: Colin William Rolston Plaintiff And Katherine Irene Rolston Defendant Before: The Honourable Madam Justice Stromberg-Stein Reasons for Judgment Counsel for the Plaintiff: Carey Linde Counsel for the Defendant: Ruth Lea Taylor Place and Date of Trial: Vancouver, B.C. March 9 - 13; September 8, 9, 11, 2009 Place and Date of Judgment: Vancouver, B.C. October 6, 2009

- [1] The plaintiff, Colin William Rolston, born July 28, 1957, age 52, and the defendant, Katherine Irene Rolston, born June 7, 1958, age 51, were married December 28, 1985. Their 24 year marriage produced two intelligent, talented children: Frances, born September 14, 1990, age 18; and Eryn, born March 27, 1992, age 17.
- [2] The parties separated August 16, 2004. Their lengthy separation has been acrimonious in the extreme.
- [3] A number of issues remain to be resolved. Reliability and Credibility
- [4] In terms of reliability and credibility, I find the evidence of Ms. Rolston is to be preferred to that of Mr. Rolston. It will be clear from my reasons herein why I have reached this conclusion. Suffice it to say, Mr. Rolston was evasive and non responsive to questions. His evidence lacked detail and documentary support. Without any financial records, at times he seemed to just make things up. More importantly, he engaged in dishonest conduct in the disposal of family assets.
- [5] There has been no proper accounting by Mr. Rolston. His income tax returns do not reflect the income he admits receiving from rentals, the bed and breakfast and arcade games. Mr. Rolston's failure to properly document or to produce documentation with respect to his dealings with family assets and his lack of business financial records attracts the finding of an adverse inference against him where relevant. Divorce
- [6] There will be an order for divorce, by consent, on the basis the parties have lived separate and apart since August 16, 2004 and there is no prospect for reconciliation: ss. 8(2) and 10(1), Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3 [Divorce Act]. Children Custody and Guardianship

- [7] In February 2006, the parties agreed to an order for joint custody and joint guardianship. Given the age and maturity of the children, a custody order is unnecessary. The order for joint guardianship continues by consent. Child Support
- [8] There is confusing and conflicting evidence about where the children lived following separation. The weight of the evidence suggests that, following separation, Mr. Rolston remained in the family residence and the children moved to rental accommodation with their mother. The children lived with their mother from August 2004 until February 2006 when Eryn went to live with her father. At some point, Eryn's primary residence was with Mr. Rolston while Frances lived primarily with her mother. Essentially Frances lived with her mother from August 16, 2004 to February 1, 2007 and then from February 2008 to present. However, the children, particularly Frances, moved back and forth between the parents.
- [9] A court order was made on July 20, 2005 for primary residence of the children with Mr. Rolston. With respect to that court order, Ms. Rolston asked the court for sole custody because Frances had gone to her father's and had not returned. She said she absolutely panicked. Just a few days before, she maintains, she had been locked out of the house and she had been assaulted by Mr. Rolston. She was not able to go to the house or call the house to know what was going on with the children. She said she was the "basket case" Mr. Rolston made her out to be when she broke down in court, prompting the Master to suggest she needed psychiatric help.
- [10] On March 22, 2007, Ms. Rolston was ordered to pay child support in the amount of \$399 on the basis that both children were living with Mr. Rolston. On that date, arrears of child support were fixed at \$5,154, with enforcement suspended until further order of the court. In fact, for most of the period represented by the arrears, Frances was living with her mother. Ms. Rolston paid child support as ordered until May 2008. She did not revisit the issue of child support in court because of the delay and expense it would have entailed, particularly since her lawyer was in the Lower Mainland. Instead, she meticulously calculated what she owed for child support for one child, in accordance with the Child Support Guidelines, based on her income as it was reduced when she was on disability. Ms. Rolston's January 18, 2009 Property and Financial Statement indicates an annual income of \$42,515.20. However, presently, she is on long term disability and grosses \$2,363 a month, or \$28,356 a year. In addition, she pays \$296 a month for family benefits, which is a taxable benefit.
- [11] Over the years, Mr. Rolston collected Canada Pension disability benefits for both children, approximating \$408 a month, as well as the Child Tax Benefit, even while the children were not living with him. Mr. Rolston was asked to provide an accounting but he has not done so. In particular, he has not accounted for any monies for the times Frances was with her mother. He has not paid any child support for Frances over the past five years. Because Frances is 18 years old, she now receives the monthly Canada Pension disability benefit directly.

- [12] I am satisfied Ms. Rolston has met her child support obligations. I am satisfied on the basis of the evidence at trial that there are no arrears of child support. I cancel the order fixing arrears for child support. If necessary, I would vary the child support order to reflect the material changes in circumstances reflected in the evidence.
- [13] I conclude there is no retroactive child support owed by Ms. Rolston.
- [14] The parties have a joint obligation to support their children in accordance with their ability to contribute. The children's financial needs are being met. It is not appropriate to fix an amount for child support by either parent for either child. This is a case where any financial support is and should be paid directly to the children.
- [15] Both children are in college and work part time. Frances lives with her mother in Kamloops and is supported by her mother. Eryn lives in rental accommodation in Williams Lake with a friend. Mr. Rolston pays for that accommodation and claims he lives there, but apparently he lives in Vancouver for the most part. Ms. Rolston insures a scooter for Eryn. Apparently Mr. Rolston bought Eryn a car but it is still in Vancouver.
- [16] There is a RESP for both children, with about \$23,000 in each plan. These funds have not been accessed as the children's tuition is paid for by Ms. Rolston but is reimbursed by Ms. Rolston's employer, Thompson Rivers University. This is a taxable benefit to her. The children will receive a refund cheque for some or all of their tuition and Ms. Rolston intends to let them keep the refund in order to cover their expenses. As well, Ms. Rolston has paid for their text books and school fees.
- [17] Ms. Rolston plans to leave the RESP plans intact so long as her employer covers the children's tuition.
- [18] Ms. Rolston is named as the sole subscriber to the RESP. Mr. Rolston seeks to be added as a subscriber, or seeks an order that in the event the children do not use their RESP funds he is entitled to half the value. I decline to make either order. The parties cannot work together. There is distrust and hostility. Further, there is evidence that Mr. Rolston improperly dealt with and disposed of assets in Ms. Rolston's name. Ms. Rolston has demonstrated that she can and will protect the interests of the children. There is no reason to be concerned that the funds will not be used to advance the children's education, or in the unlikely event that they do not continue in school, for the benefit of the children. Special and Extraordinary Expenses
- [19] Ms. Rolston seeks a contribution for special and extraordinary expenses she incurred for the children from the date of separation to August 2008. These are detailed at Exhibit 8, Tab 46: for Frances, \$40,241.50; and for Eryn, \$3,935.02. The bulk of the expenses for Frances relate to her equestrian activities which both parties encouraged during the marriage and following separation. Frances is a very talented equestrian. Mr. Rolston was well aware these expenses were being incurred and even listed them as a substantial expense in his 2005 Property and Financial Statement. Eryn's expenses relate to music lessons and camps. Eryn

is a talented musician. I conclude the parties should share these expenses in proportion to their incomes. The parties have not worked out the figures. For expediency, I calculate that Mr. Rolston will reimburse Ms. Rolston for one third of these expenses. Rounded up, that is \$15,000.

- [20] Eryn needs orthodontic work, estimated to be \$8,000. Ms. Rolston's plan only covers \$1,500. Mr. Rolston will be required to contribute one third of the orthodontic expenses not covered by insurance, when the expenses are incurred. Ms. Rolston will be required to contribute two thirds of the orthodontic expenses not covered by insurance, when the expenses are incurred. Insurance Policies
- [21] Ms. Rolston pays for three insurance policies on the life of Mr. Rolston. These policies are owned by Mr. Rolston. Due to Mr. Rolston's poor health he would now be uninsurable. Ms. Rolston understood the children were the named beneficiaries. She learned at trial that Mr. Rolston changed the beneficiary to his mother on one policy, a Canada Life universal life policy for \$100,000, to secure a loan from his mother. On that policy, Ms. Rolston pays \$104.59 a month. That policy has a cash surrender value and Ms. Rolston is concerned that Mr. Rolston may take advantage of that. There are also two term policies with Sun Life. One is for \$100,000 and Ms. Rolston pays the annual premium of \$435. The second term policy with Sun Life is for \$17,000 and Ms. Rolston pays the annual premium of \$123.75.
- [22] Ms. Rolston seeks to have the children irrevocably designated as beneficiaries and to be granted ownership of the policies. I conclude it is appropriate to make these orders, in view of the fact that Ms. Rolston pays for these policies, and having regard to Mr. Rolston's history of dissipating and disposing of family assets, to ensure the children's interests are protected.
- [23] Ms. Rolston has insurance with her work. She, too, is to designate the children irrevocable beneficiaries on her insurance. Division of Family Assets
- [24] The relevant provisions of the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA] are ss. 56 and 65.
- [25] Section 56 of the FRA provides each spouse with entitlement to a presumptive one-half undivided interest in each family asset as a tenant in common upon a "triggering event", as described in s. 56(2). In this case, the triggering event is May 4, 2006 when a s. 57 declaration was made.
- [26] The presumptive one-half undivided interest under s. 56(2) is subject to an order for reapportionment under s. 65(1) where an equal division of family assets would be unfair. The court may reapportion the division of family assets or may make a compensation order to address any resulting unfairness to the parties, having regard to the factors set out in s. 65(1): (a) the duration of the marriage; (b) the duration of the period during which the spouses have lived separate and apart; (c) the date when property was acquired or disposed of; (d) the extent to which property was acquired by one spouse through inheritance or gift; (e) the needs of each spouse to become or remain economically independent and self-

sufficient; or (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse.

- [27] The onus is on the party seeking to prove an equal division of assets would be unfair.
- [28] In considering the factors in s. 65(1) (a) to (d) of the FRA, the duration of the marriage was 24 years; the duration of the period during which the spouses have lived separate and apart is over five years; all the property was acquired by the parties throughout their marriage; and none of the property was acquired by one spouse through inheritance or gift with the exception of some family heirlooms belonging to Ms. Rolston and her jewellery
- [29] Most significant in this case are the factors in s. 65(1) (e) and (f).
- [30] Having regard to s. 65(1) (e), the court must consider the needs of each spouse to become or remain economically independent and self-sufficient. Mr. Rolston suggests this may be more difficult for him because of his disparate earning ability due to health concerns. Ms. Rolston has health concerns as well.
- [31] Having regard to s. 65(1) (f), there has been significant dissipation of family assets by Mr. Rolston following separation.
- [32] Mr. Rolston seeks almost 100% reapportionment of family assets with the exception of Ms. Rolston's pension. He bears the onus.
- [33] I conclude there is no basis for a reapportionment having regard to the lengthy marriage and the relative positions of the parties, including their serious health issues.
- [34] The family assets will be divided equally subject to my findings herein. Family Residence
- [35] The family home was in the name of Ms. Rolston and had clear title with no encumbrances. It sold for net \$449,025.29. Each party received an advance of \$120,000. The balance, \$192,888.43, is held in trust by Ms. Rolston's lawyer.
- [36] Ms. Rolston was forced to get a court order to sell the family home. She was granted sole conduct of the sale. The completion date was July 9, 2008 and Mr. Rolston was ordered by the court to provide vacant possession to the purchaser on or before July 8, 2008. His lawyer wrote a letter indicating he would provide vacant possession on July 6. In fact, Mr. Rolston only left the house at midnight July 8. Mr. Rolston claims he did his best to move out of the house despite suffering from kidney stones at the time. Mr. Rolston testified he was sure some of his 10 helpers helped to clean the mess that had built up in the residence for 14 years. Gratuitously, he added that he was sure a lot of the mess was from when Ms. Rolston was in the home. Despite what he says were his best efforts, Mr. Rolston left the house in disarray. Ms. Rolston gained access to the family home at the last possible moment before possession and she faced a mess of old, damaged furniture and junk. Ms. Rolston had to pay cleaners to clean the house, she had to address a water problem, buy a new dishwasher, and pay for junk removal. The completion date had to be extended one day, not only to provide vacant possession, but because Mr. Rolston would not let the water inspector into the house

so the buyers would complete.

- [37] Ms. Rolston seeks compensation for her labour, time, money and expenditures to salvage the house sale. Ms. Rolston is entitled to compensation for half the amount she spent, about \$3,195, for arranging vacant possession of the family home.
- [38] As well, Ms. Rolston paid movers a non-refundable deposit of about \$700 to move a piano Mr. Rolston promised to leave for her but had, in fact, taken. In addition, she paid \$167 to rent a storage unit for the piano. Ms. Rolston is entitled to compensation of \$867 from Mr. Rolston.
- [39] Mr. Rolston was given a \$5,000 advance from the proceeds of sale to assist in his relocation which he must account for in the calculation of the final payout of the proceeds of the sale of the family home.
- [40] Ms. Rolston paid the 2005 property taxes and penalty in the amount of \$3,249.62. Thereafter, she could not afford to pay the taxes. Mr. Rolston did not pay any taxes. Ms. Rolston is entitled to credit for half of the taxes she paid.
- [41] In addition, Ms. Rolston paid for house insurance from February 16, 2005 until July 2008 at \$171.51 a month. Ms. Rolston is entitled to credit for half of the property insurance she paid.
- [42] The parties will share the cost of two appraisals of the house, \$344.50 and \$262.50, and the expenses flowing from the sale of the house. Occupational Rent, Bed and Breakfast and Rental Income
- [43] Ms. Rolston seeks occupational rent from Mr. Rolston in the amount of \$1,000 for the period September 1, 2004 to July 8, 2008.
- [44] Mr. Rolston ousted Ms. Rolston from the family home around March 2005, changing the locks and security system and telling her she was not allowed to enter the house. She alleges he physically threw her out of the house and called the police when she came to visit Eryn. Mr. Rolston maintains he was the one assaulted while he was on the toilet.
- [45] Following separation, Ms. Rolston rented accommodation for herself and the children. She received no financial assistance from Mr. Rolston when the children lived with her. Mr. Rolston remained in the home until July 9, 2008, paying no rent and doing very little to maintain the home. His girlfriend and her two children lived in the house for one and a half years at no cost to them. This would have impacted the number of rooms available to generate revenue as the house was used as a bed and breakfast.
- [46] In 2003 Ms. Rolston started a bed and breakfast which she ran as a sole proprietorship. A Profit and Loss statement for July 31, 2004 to August 1, 2005, for Rolston Management Limited, indicates the bed and breakfast revenue was \$6,847. Mr. Rolston testified this seemed awfully high and suggested Ms. Rolston arbitrarily moved things around in the books. There is nothing to support his contention.

- [47] There is evidence Mr. Rolston continued to run a bed and breakfast but he has failed to provide any documentation or to account for any monies received. He advertised on the Internet, 'Rolston's Retreat Bed and Breakfast for \$79-199'; there are entries in the guest book up to September 30, 2005; and an article was written about the bed and breakfast in 2008. Therefore, I impute revenue for the bed and breakfast for four years at \$27,388. Ms. Rolston is entitled to half; namely \$13,694.
- [48] The evidence establishes the market rent of the home would be \$2,000 a month. Mr. Rolston's evidence is that he was able to garner about \$1,000 a month just from the rental of two rooms.
- [49] Mr. Rolston failed to provide any documentation or to account for any rental monies he received. Two tenancy agreements were discovered when the house was sold; Mr. Rolston admitted receiving about \$2,400 from the two tenants. As well, Mr. Rolston rented to "Brittany" who paid about \$200 a month for three months and stayed for about three to four months without paying any rent. Ms. Rolston is entitled to half the rental income of \$3,000, namely \$1,500.
- [50] I conclude it is fair and equitable to make an order for occupational rent in the amount of \$1,000 a month for the period of September 1, 2004 to July 8, 2008. Rolston Management and Rolston Family Trust
- [51] Mr. Rolston controls Rolston Management, originally incorporated by the parties for the purchase and operation of a car dealership. To purchase the dealership, Ms. Rolston's parents loaned the parties \$65,000. The dealership was sold in 1999 for about \$1.2 million. Thereafter, Rolston Management was used to hold about 30 arcade machines and by Mr. Rolston to run the bed and breakfast from the family home.
- [52] Rolston Family Trust owned 50% of Rolston Management. Ms. Rolston was the only beneficiary of Rolston Family Trust. When the dealership was operating, up to \$70,000 flowed through Rolston Family Trust and was paid out to Ms. Rolston and the children. Prior to separation, tax returns indicate no money flowed through Rolston Family Trust.
- [53] Mr. Rolston maintains Rolston Management and Rolston Family Trust are both virtually worthless. Mr. Rolston listed Rolston Management expenses as Internet, phone, office space, advertising, technical assistance, heat and light, parts and supplies. He wrote off part of the house. No books or records were presented to this Court. Apparently he is now the trustee of Rolston Family Trust but he maintains he does not have any books or records. He claims Ms. Rolston has them. Ms. Rolston denies this. Ms. Rolston claims all documentation relating to the companies was in the house at separation. There is minimal evidence with respect to the two entities as Mr. Rolston failed to provide this Court with the business records. Arcade Machines

- [54] Prior to separation the parties acquired a number of arcade games for business and investment purposes. Mr. Rolston refused to verify a 2003 list of arcade games held by Rolston Management that was prepared by Ms. Rolston. He has provided no documentation. I accept that the list is accurate. Ms. Rolston was a meticulous, precise, honest witness. The purchase price of the arcade games was about \$86,408. Mr. Rolston denied buying more arcade games after separation, but when confronted with evidence to the contrary, he claimed he bought and sold a machine for a friend.
- [55] Since separation, Mr. Rolston has sold all but four of the arcade games. Most were disposed of in violation of a court order dated May 4, 2006. At one point, Ms. Rolston photographed Mr. Rolston as he and movers loaded arcade games from a theatre into a truck. Ms. Rolston attempted to follow the truck, unsuccessfully. She does not know what happened to the arcade games and Mr. Rolston has never shared this with her. He claims the most he received for a machine was \$5,000. He thinks he received about \$22,000 in total. As well, he sold a token dispensing machine for \$1,060 and failed to account to Ms. Rolston. He produced a bill of sale for one game only. He claims all the other receipts and documents are missing. He claims he gave a gumball game to Eryn.
- [56] Mr. Rolston's evidence concerning the arcade games was evasive and most unsatisfactory.
- [57] I accept the evidence of Ms. Rolston that the resale value of the arcade games would approximate \$73,000. They were assets of Rolston Management. Ms. Rolston is entitled to a compensation order for half the resale value of the arcade games.
- [58] Prior to separation the arcade games earned Rolston Management on average about \$1,500 a month. This is corroborated by bank records. Mr. Rolston claims that last year he only earned \$240. After separation, Mr. Rolston reported in an email to Ms. Rolston that the games earned him on average \$600-800 a month. Strangely, under oath he denied the email was his. He said it was not the first time; he claimed the email was a forgery or a fraud. I do not believe him.
- [59] What Mr. Rolston did admit to was that after separation he did not account for any income from the arcade games.
- [60] In a Profit and Loss statement for Rolston Management for July 31, 2004 to August 1, 2005, arcade revenue is indicated as \$15,459. Mr. Rolston claims this is an error.
- [61] Not only has Mr. Rolston failed to account for the sale of the arcade games, he has failed to account for the income generated by the arcade games before he disposed of them. Ms. Rolston is entitled to compensation for half the value of the income generated from the arcade games before they were sold. It is impossible to ascertain what this amount would be because Mr. Rolston kept no documents or records. In the circumstances, I impute two years of arcade revenue based on the 2004 to 2005 revenue. I conclude she is entitled to a compensation order for half that amount (\$30,918); namely \$15,459. Right of First Refusal

- [62] Pursuant to an agreement dated July 7, 2005, in relation to Heartland Motors, Mr. Rolston received \$5,000 he claims was a deposit on a Right of First Refusal valued at \$40,000. After paying legal fees he claims he netted \$1,300. He has provided inadequate disclosure regarding this family asset. What was produced at trial was a \$5,000 cheque stub from Ranchland Honda without any indication what it was for. Ms. Rolston seeks her share of \$40,000.
- [63] Ms. Rolston maintains it is highly suspicious that at the time Mr. Rolston emailed her that he had the opportunity to buy the dealership for \$255,000, he accessed approximately the same amount of money, \$262,000, by cashing in investments and borrowing money on credit cards and lines of credit. However, if he exercised the Right of First Refusal then he would not have received \$40,000.
- [64] Suspicious as this all seems, I am satisfied Ms. Rolston should share half of \$5,000. She is entitled to compensation in the amount of \$2,500. RRSP and Investments
- [65] At separation, the parties cashed in one investment and divided it equally, each receiving about \$26,000. Mr. Rolston cashed in his RRSP valued at \$46,964 and investments valued at \$10,400. Ms. Rolston is entitled to half those values. Ms. Rolston retained her RRSP intact. It was valued at \$124,070 at separation and is presently valued at \$145,457.
- [66] Ms. Rolston complains she has been deprived of any income and growth from Mr. Rolston's investments during the lengthy separation to trial. I agree. To compensate her, she does not have to share the increase in the value of her RRSP from the date of separation. Mr. Rolston is entitled to half the value of Ms. Rolston's RRSP at the date of separation by way of spousal rollover. Pension
- [67] Ms. Rolston acquired her municipal pension one year prior to marriage. When the dealership was sold, the parties put \$70,000 into her plan to purchase 12 years of employment service. The total pensionable service is now 20 years. The pension is valued at \$140,000 and it is a family asset. In addition, Ms. Rolston has a \$3,000 investment account from a pension, locked in to age 65. The present value as of September 1, 2009 is \$4,320.78. These are subject to equal division in accordance with the plans. Boats, Trailers, ATV, Horse Panels, Pool Table
- [68] In February 2008, after a court order restraining the disposition of assets, Mr. Rolston disposed of a 1990 Lund boat and trailer to a repair shop for \$3,100. The value of the boat and trailer when purchased by the parties in 1997, was \$13,990. The evidence of Ms. Rolston is that the present value more closely approximates \$12,000. Mr. Rolston claimed there might have been a mechanic's lien imminent. The purchase agreement was in the name of Ms. Rolston as was the vessel licence and the insurance on the trailer. Ms. Rolston never signed any transfer papers and had no knowledge of the sale. Mr. Rolston admitted he spent the money without accounting to Ms. Rolston. Mr. Rolston must account to Ms. Rolston for half the value of the boat which I accept is \$12,000.

- [69] The parties owned an ATV that came with the house. Ms. Rolston recalls seeing it being loaded onto a truck and driven from the property the first day of the garage sale. Mr. Rolston claims it was dangerous, he couldn't use it, and he needed groceries. He sold it for \$2,800 and did not account to Ms. Rolston. Ms. Rolston is entitled to half this amount.
- [70] Mr. Rolston claims a NRS pontoon raft and trailer, purchased for \$5,027, which he guesses is valued at \$2,000, were stolen. The trailer was in Ms. Rolston's name. She values it at \$3,000. Mr. Rolston reported the alleged theft to the police but no charges have ever been laid. A friend of Mr. Rolston, with whom he stored the raft and trailer, was investigated for the theft. Mr. Rolston has not produced a police report. He made no insurance claim and says he was not aware there was insurance covering the theft. The circumstances of the disappearance of the raft and trailer are very suspicious given the fact that Mr. Rolston had no need to store the raft and trailer off his property. I conclude that in all probability he disposed of these family assets. Ms. Rolston is entitled to half the value of \$3,000 as compensation.
- [71] In 2006 Mr. Rolston sold a Zodiac boat for \$1,500. He claimed it needed repairs. There is no documentation. Ms. Rolston said it was in good condition at separation. Originally it was purchased by Rolston Management Limited for \$3,990 but was later transferred into Ms. Rolston's name in 2002 because of tax concerns about it being held by the company. Ms. Rolston's evidence is that this boat is valued at \$4,000. I accept her evidence. The insurance was in her name, renewable November 15, 2004. She was never asked to sign a transfer form. She received no money from the sale. Ms. Rolston is entitled to half the value of \$4,000 as compensation.
- [72] In 2002, for \$3,420, the parties purchased and insured in their joint names a travel trailer. It was insured until October 23, 2004. It was in good condition at separation. After the court order restraining disposition of assets, Mr. Rolston claims the travel trailer was worthless and fell apart so he scraped it. He did not offer it to Ms. Rolston and she only discovered at trial what Mr. Rolston claims he did with it. Ms. Rolston is entitled to half the value of the trailer as compensation which I determine to be \$3,420.
- [73] Mr. Rolston sold panel fencing for horses, bought by Ms. Rolston on May 12, 2004, for \$2,699. He did not account to her for the monies he received. He produced a document of sale dated August 24, 2005 which does not indicate the selling price. Ms. Rolston is entitled to half of \$2,699 as compensation.
- [74] Mr. Rolston claims he sold the pool table for \$500 on the Internet. Ms. Rolston is entitled to half of this amount as compensation. Toyota 4Runner

- [75] The parties received two cars when they sold their car dealership in 1999: a Toyota Camry in Mr. Rolston's name and a Toyota 4Runner in Ms. Rolston's name. The Camry was totalled in an accident. Mr. Rolston's name was added to the 4Runner. Mr. Rolston could not drive because of his deteriorating eyesight and in 2002 Mr. Rolston lost his driver's licence. Ms. Rolston was the only one driving the 4Runner at the time of separation, it was registered in her name, and it was her only vehicle.
- [76] On May 2, 2005, Ms. Rolston received a call at work from Mr. Rolston telling her the 4Runner was "on the hook" and it would be towed unless she agreed to his terms of settlement of the divorce. She had to agree to sign the house into his name. She refused and Mr. Rolston made good on his threat; the car was towed from a parking lot while Ms. Rolston was at work.
- [77] Ms. Rolston reported the incident to the police but they refused to act, saying it was a civil matter.
- [78] Mr. Rolston put the 4Runner in storage for about one year. On numerous occasions Ms. Rolston demanded the return of the 4Runner. She was forced to buy another car.
- [79] Once out of storage, Mr. Rolston let his girlfriend and her children drive the 4Runner, as well as his friend and Frances. At one point the vehicle was impounded because it was being driven by an unlicensed driver.
- [80] Ms. Rolston next came into possession of the 4Runner following a call from ICBC in October 2007. She learned there had been a default on the insurance on the 4Runner and because it was in her name she would not be allowed to renew her licence or insurance unless she paid the insurance on the 4Runner in full. Frances drove the 4Runner to her mother in Kamloops and Ms. Rolston paid the outstanding insurance of \$946.47. The 4Runner had an additional 50,000 kilometres on it from when it was last in her possession. She had to repair the brakes. The expenses incurred by Ms. Rolston to sell the vehicle total \$1,933.84.
- [81] Pursuant to a court order the vehicle was sold in June 2008 for \$10,077.41. Ms. Rolston was given conduct of the sale of the Toyota 4Runner. The funds are held in trust by Ms. Rolston's lawyers. Ms. Rolston is entitled to the proceeds of sale of the 4Runner to compensate her, having regard to Mr. Rolston's egregious conduct resulting in Ms. Rolston having to purchase another vehicle. Jewellery
- [82] At Mr. Rolston's insistence, Ms. Rolston was forced to obtain appraisals on jewellery that was clearly gifted to her. The appraised value for insurance purposes is \$11,625, and for liquidation purposes is \$1,385. In addition, Mr. Rolston has a ladies Rolex watch, appraised at \$21,990, with a replacement value of \$5,500, that Mr. Rolston maintained was not a gift. He claimed the watch had sentimental value and even suggested he would wear it.

- [83] Mr. Rolston's claim to Ms. Rolston's jewellery shows the extremes to which Mr. Rolston has gone and will go to lay claim to anything of value acquired by or for the parties. Ms. Rolston testified, if the jewellery, including the watch, had not been in her safety deposit box at separation she would never have seen them again. Contrast this with Ms. Rolston turning over to Mr. Rolston his dealership ring that was in the safety deposit box.
- [84] Mr. Rolston seemed to withdraw his claim to the jewellery in final argument with the exception of the watch. In any event, I conclude the jewellery, including the watch, of modest value that it is, was gifted to Ms. Rolston and is not a family asset. Airmiles and Aeroplan
- [85] By consent, each party will keep the existing Aeroplan miles in their own name, free of any claim from the other party.
- [86] At separation each had their own Airmiles accounts in their own names. However, Mr. Rolston transferred Airmiles in Ms. Rolston's name into Rolston Management and redeemed 7,300 miles for his own purposes, obtaining an IPOD, a feather duvet and a nine piece cooking set, which he had sent to his address. In doing so, he changed Ms. Rolston's address on the account to his address and his email address. Ms. Rolston only learned of this when one of her daughters told her she had received an IPOD from Airmiles. Mr. Rolston's conduct in this regard is clearly dishonest to say the least. Although there is no evidence of the value of the Airmiles Ms. Rolston is entitled to compensation for these Airmiles. I set compensation at \$500. Small Claims Court Settlement
- [87] Mr. Rolston received \$1,000 in a settlement of a Small Claims Court action on behalf of Heartland Motors Ltd. He claims there were many costs incurred in achieving this settlement. He has produced inadequate documentation to support this claim. He has not accounted to Ms. Rolston. Ms. Rolston is entitled to share half of this settlement. Heirlooms
- [88] Ms. Rolston seeks compensation in the amount of \$5,000 for her personal effects and family heirlooms which she claims Mr. Rolston disposed of without her consent.
- [89] Mr. Rolston agreed he did not allow Ms. Rolston access to the family home, even to collect her personal belongings. Mr. Rolston refused to agree to any exchange of property, including Ms. Rolston's personal possessions, unless Ms. Rolston agreed to resolve all matters his way.
- [90] Ms. Rolston wanted her personal effects and heirlooms. Mr. Rolston claims he gave her the majority, virtually everything, "within reason". He denied selling her items at the garage sale, saying he wasn't running the garage sale. He claimed all that was made was \$18.76. He claimed Ms. Rolston coerced someone to set up a clandestine operation to purchase books from the garage sale and then he suggested a woman stole the books. He claimed he never sold his daughters' baby books and that obviously they were stolen. His evidence is unbelievable.

- [91] There is evidence Ms. Rolston's items were sold at the two day garage sale in 2006. Some of these items were priceless and irreplaceable, consisting in part of inscribed childhood books with her grandmother's signature, a child's wicker rocker that was over 100 years old, and toys and children's clothing. Ms. Rolston unsuccessfully tried to stop people from attending the garage sale by postering the neighbourhood and telling people not to buy her possessions.
- [92] Ms. Rolston is entitled to compensation in the amount of \$5,000 for the callous disposition of her personal and irreplaceable items. Contents of House
- [93] The parties had a fully furnished home. Ms. Rolston received very little of value with respect to the contents of the home, which were insured for \$238,700 replacement value. Mr. Rolston took the lion's share, and certainly anything of value, including a \$10,000 stereo system. Ms. Rolston did get back her grandmother's china, a silver set, and five Waterford crystal glasses. On the submissions of counsel and the evidence before the court, it is impossible to estimate Ms. Rolston's entitlement to compensation. At minimum she is entitled to compensation that amounts to half the value of the stereo system; namely, \$5,000. Summary
- [94] In summary, the family assets and liabilities are identified and divided as set out in Appendix A, attached. Police Involvement
- [95] About two months after Mr. Rolston had the 4Runner towed, and after Ms. Rolston learned Mr. Rolston had taken her Airmiles, Ms. Rolston went to the house. She was admittedly loud and angry and told Eryn that Mr. Rolston had stolen the 4Runner. She hoped Eryn would come with her. She claims Mr. Rolston came out of the bedroom and dragged her out of the house. She denies going into the washroom and assaulting him while he was on the toilet. The police were called. Both parties were arrested. Neither was charged. Ms. Rolston signed an undertaking to have no contact with Mr. Rolston and not to go to the house.
- [96] Shortly after this incident, Mr. Rolston called the police when Ms. Rolston showed up at the Williams Lake Stampede Grounds where Frances was riding and where Ms. Rolston's horse was kept. She was with a boyfriend. She denied any yelling, swearing or threatening. Mr. Rolston called the police, claiming he was being accosted. The police did nothing.
- [97] In August 2005, Ms. Rolston attended at an insurance agency where Mr. Rolston had just obtained insurance for the 4Runner in her name. She was upset that the insurance had been renewed without her signature and attempted to grab the insurance documents from him. The police were called. Later the police came to her home and arrested her but did not take her anywhere. A few days later a police officer told her no charges were being pursued but she should not go to the house.

- [98] During the garage sale in 2006, Ms. Rolston placed posters on poles along the road leading to the house, indicating the parties were in the process of a divorce; she attempted to convince people not to buy her personal possessions. The police were called but did not come to the house either Saturday or Sunday. By telephone, the police warned Ms. Rolston not to go to the house.
- [99] When the arcade machines were being loaded into trucks, Ms. Rolston took pictures from across the street. Mr. Rolston told her he would call the police if she did not go away. She called her lawyer and talked to the police on the phone.
- [100] In 2005, Mr. Rolston was investigated by the police and a social worker after he struck Frances. Spousal Support
- [101] Mr. Rolston seeks spousal support. He has never received any spousal support since separation over five years ago. In fact, his application for spousal support was dismissed on March 22, 2007.
- [102] Sections 89 and 93 of the FRA, the provisions for spousal support, provide, in part that:
- 89(1) A spouse is responsible and liable for the support and maintenance of the other spouse having regard to the following:
- (a) the role of each spouse in their family;
 - (b) an express or implied agreement between the spouses that one has the responsibility to support and maintain the other;
 - (c) custodial obligations respecting a child;
 - (d) the ability and capacity of, and the reasonable efforts made by, either or both spouses to support themselves;
 - (e) economic circumstances.
- (2) Except as provided in subsection (1), a spouse or former spouse is required to be self sufficient in relation to the other spouse or former spouse. 93(1) Subject to the Divorce Act (Canada), a court may make an order on application, ... requiring a party to the proceeding to discharge his or her liability...
- (b) under section 89 ... by paying to the person designated in the order the amount the court considers reasonable. 93(4) If a spouse will be living separate and apart from the spouse against whom the application is made, the court may, as it considers appropriate, adjust the amount of its order under subsection (1)(b) to take into account the needs, means, capacities and economic circumstances of each spouse, including the following:
 - (a) the effect on the earning capacity of each spouse arising from responsibilities assumed by each spouse during cohabitation;
 - (b) any other source of support and maintenance for the applicant spouse;

- (c) the desirability of the applicant spouse having special assistance to achieve financial independence from the spouse against whom application is made;
- (d) the obligation of the spouse against whom application is made to support another person;
- (e) the capacity and reasonable prospects of a spouse obtaining education or training.

[103] The factors applicable to making an order for spousal support are set out in s. 15.2(4) of the Divorce Act: 15.2 (4) In making an order under subsection (1) , the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse. 15.2 (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

[104] The objectives of a spousal support order are set out in s. 15.2(6) of the Divorce Act: Objectives of spousal support order 15.2 (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[105] In determining the quantum and duration of spousal support in this case, it is also necessary to bear in mind the three models of spousal support described in Bracklow v. Bracklow, [1999] 1 S.C.R. 420, 169 D.L.R. (4th) 577, namely: compensatory, contractual and non-compensatory (needs-based).

[106] Mr. Rolston also seeks an order for retroactive spousal support. There is discretion to make an order for retroactive support: S(L) v. P(E), 1999 BCCA 393, 50 R.F.L. (4th) 302.

[107] The issue to consider for a spousal support order is whether either party suffers economic disadvantages or hardship arising from the marriage or its breakdown or cannot attain economic self-sufficiency.

- [108] Mr. Rolston is an astute businessman and a highly successful salesman. At his examination for discovery in 2006 he indicated because of his extensive experience he had the opportunity to work as a consultant. Apparently nothing came of that. He indicated he was looking into employment through the CNIB but nothing came of that. He says because of his lack of vision and inability to drive his options are limited.
- [109] After separation, in credit applications, his income is stated to be \$4,000 a month. Mr. Rolston denied filling out applications for credit, maintaining he was interviewed and he may have provided the information. On a Scotia Bank credit application, dated April 21, 2005, Mr. Rolston is indicated as self-employed, with a monthly income of \$4,000, assets totalling \$71,000 and the value of his home at \$380,000. He failed to report that the house was solely in Ms. Rolston's name. On one application he stated his sources of income were arcade machines and a bed and breakfast. He denied providing information that he was employed at a bed and breakfast earning \$4,000 a month on a Scotia Bank credit application dated July 27, 2005, for a limit increase on his Visa. He agreed he may have said his property was valued at \$450,000. He said, although he signed the document, he hadn't read it and all he was agreeing to was an increase on his Visa.
- [110] In February 2006, before Master Baker, Mr. Rolston candidly admitted that he had made some expenditures in the depths of despair that were self-centered but that he carried that burden and was fully accountable to the credit card companies. He claimed he dealt in a lot of cash and did not deny that he had gone through \$262,000. At trial he denied admitting he accessed or spent \$262,000. Of note, his 2005 Financial Statement indicated debt of about \$11,000. By 2006 his Financial Statement indicates his debt had swollen to about \$69,000. By 2008, he reported debt of almost \$203,000. He claims his credit card debt has gone to collection. He claims he owes his mother \$61,000. He has no documentation to prove these assertions. At separation, the parties were debt free.
- [111] As Mr. Rolston's counsel asserted in argument, both parties come to court injured, either physically or emotionally. Mr. Rolston has had serious heart issues since about 1992. He has arterial sclerosis, hypertension, and unstable angina. He has had a number of surgical procedures on his heart - bypasses and stents. He has macular dystrophy and is considered legally blind although he retains some peripheral vision. He suffers from depression. He has had kidney stones. He has been on Canada Pension Disability benefits since 2001. He receives about \$1,067 a month plus \$208 a month for Eryn so long as she is in school full time. His CPP T-A for 2008 indicates an income of \$12,726.
- [112] Upon divorce, Mr. Rolston will lose health care benefits from Ms. Rolston's employer. He estimates this will cost him about \$200-250 a month.
- [113] Ms. Rolston works as a records assistant at Thompson Rivers University in Kamloops but she has been on long term disability benefits since February 4, 2009 due to stress which is directly attributable to the breakdown of the marriage. She receives \$1,900 a month. She pays about \$200 a month to maintain health and insurance benefits for her family. She has a

BA in psychology. She worked as a disability claims adjuster for five years, leaving that job when Mr. Rolston took a position in the United States. She could not work in the United States. When the parties returned to Canada, they bought the Heartland Toyota dealership where she worked until the business was sold. She worked briefly for an accounting firm doing clerical work before going to work in 2000 at Thompson Rivers University, Williams Lake campus, as coordinator of the Registrar's office, a position she held to 2007. During her work at Thompson Rivers University she was on both short term disability and long term disability for stress. At one point she was disciplined due to her performance. She testified the catalyst for her stress/disability leave was the July 2005 assault by Mr. Rolston, when he dragged her from the house and cracked her head on a concrete step.

- [114] In addition to work stress, she has suffered tremendous personal stress due to the very acrimonious marital breakup. She claims her first difficulty with stress was in April 2005, when Mr. Rolston's threatened to put her in a 'pine box'.
- [115] In addition to long-standing stress, anxiety and depression issues, she was recently diagnosed as bi-polar. Her other health concerns are asthma, pancreatitis, acne, thyroid, and rheumatoid arthritis in her hands.
- [116] Ms. Rolston hopes she will be able to return to some form of work once the stress of this trial is behind her.
- [117] At separation, Ms. Rolston's income was around \$36,000. In 2007, her income was around \$29,000. She moved to Kamloops in February 2007, in part to accommodate Frances whose riding coach had moved there. During the trial Mr. Rolston suggested Ms. Rolston's income should be imputed at the level of earnings she made in Williams Lake, suggesting she had intentionally underemployed herself by needlessly moving to Kamloops. This meritless claim was dropped in final argument when it became apparent the difference was minimal.
- [118] I conclude Mr. Rolston is not entitled to spousal support. There is no economic disadvantage arising from the marriage breakdown. In terms of need, his previous application for support was dismissed. He has provided misleading information about his financial position. He accessed approximately \$262,000, by cashing in investments and borrowing money on credit cards and lines of credit which has inexplicably disappeared. He cannot account for the \$120,000 advanced to him from the purchase of the family home. Mr. Rolston has dissipated and disposed of family assets with impunity. Based on Mr. Rolston's dissipation of family assets, I would draw an adverse inference based on his need and his ability to be economically self-sufficient and he is not entitled to support on any of the Bracklow models. Costs
- [119] In the normal course, the successful party, in this case Ms. Rolston, is entitled to costs in this action. There is no reason to depart from the normal course. "The Honourable Madam Justice Stromberg-Stein" APPENDIX A ASSETS AND LIABILITIES PARTICULARS DIVISION PAYABLE BY MR. ROLSTON TO MS. ROLSTON PAYABLE BY MS. ROLSTON TO MR. ROLSTON Special and Extraordinary Expenses Frances:\$40,241.50 Eryn:\$3,935.02 paid by Ms. Rolston

Shared in proportion to income: 1/3 Mr. Rolston and 2/3 Ms. Rolston \$15,000.00 Expenses Related to the Family Residence \$3,195 of expenses incurred by Ms. Rolston to provide vacant possession Equal division \$1,597.50 \$867 of expenses incurred by Ms. Rolston with respect to moving and storing the piano Compensation in full for Ms. Rolston \$867.00 \$5,000.00 advance to Mr. Rolston from proceeds of sale Equal division \$2,500.00 \$3,249.62 in property taxes paid for by Ms. Rolston Equal division \$1,624.81 \$171.51 per month in home insurance paid by Ms. Rolston for February, 2005 until July, 2008 (42 months totalling \$7,203.42 Equal division \$3,601.71 \$607 incurred by Ms. Rolston for appraisals Equal division \$303.50 Occupational Rent \$1,000 per month for September, 2004 to July 2008 (47 months) totalling \$47,000.00 No division \$47,000.00 Bed and Breakfast Revenue for 4 years at \$27,388 Equal division \$13,694.00 Rental Income Income of \$3,000 Equal division \$1,500.00 Arcade Machines \$73,000 resale value when sold by Mr. Rolston Equal division \$36,500.00 Arcade Revenue Two years revenue at \$15,459 a year, totalling \$30,918 Equal division \$15,459.00 Right of First Refusal \$5,000 paid to Mr. Rolston Equal division \$2,500.00 RRSP (Mr. Rolston) Cashed in at separation; valued at \$46,964. Equal division \$23,482.00 Investments (Mr. Rolston) Cashed in at separation; valued at \$10,400 Equal division \$5,200.00 Pension (Ms. Rolston) Valued at \$140,000 Equal Division in accordance with pension plan \$70,000.00 Investment Account (Ms. Rolston) Valued at \$4,320.78 Equal division in accordance with pension plan \$2,160.39 RRSP (Ms. Rolston) Valued at \$124,070 at separation Equal division by way of spousal rollover \$62,035.00 Lund Boat Sold by Mr. Rolston in 2008 for \$3,100; valued at \$12,000 Equal division \$6,000.00 ATV Sold by Mr. Rolston in 2006 for \$2,800 Equal division \$1,400.00 NRS Pontoon Raft and Trailer Allegedly stolen; valued at \$3,000 Equal division \$1,500.00 Zodiac Boat Sold by Mr. Rolston in 2006 for \$1,500; valued at \$4,000 Equal division \$2,000.00 Travel Trailer Scrapped by Mr. Rolston; valued at \$3,420 Equal division \$1,710.00 Panel Fencing Sold by Mr. Rolston in 2005; valued at \$2,699 Equal division \$1,349.50 Pool Table Sold by Mr. Rolston for \$500. Equal division \$250.00 4Runner Sold in 2008 pursuant to a court order; \$10,077.41 held in trust Full proceeds to Ms. Rolston Jewellery Gifted to Ms. Rolston No division Airmiles 7,300 Airmiles redeemed by Mr. Rolston from Ms. Rolston's Airmiles Compensation to Ms. Rolston \$500.00 Small Claims Settlement Mr. Rolston received a \$1,000 settlement on behalf of Heartland Motors Equal division \$500.00 Heirlooms Belonged to Ms. Rolston but sold at the garage sale in 2006 Compensation to Ms. Rolston \$5,000.00 Contents of the House Taken mostly by Mr. Rolston Compensation to Ms. Rolston \$5,000.00 TOTALS \$196,039.02 \$134,195.39 TOTAL AMOUNT OWING BY MR. ROLSTON TO MS. ROLSTON: \$61,843.63 One-half balance of \$192,888.43 funds in trust re: residence: Less: amount owing by Mr. Rolston to Ms. Rolston: AMOUNT DUE TO MR. ROLSTON: \$96,444.22 \$61,843.63 \$34,600.59 One-half balance of \$192,888.43 funds in trust re: Residence: Plus: amount owing to Ms. Rolston by Mr. Rolston: AMOUNT DUE TO MS. ROLSTON: \$96,444.21 \$61,843.63 \$158,287.84

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