

CANADA / JUDGMENT

S.V.A. v. D.M.D.

2023 BCSC 1258

COURT

Supreme Court of British Columbia

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2023 BCSC 1258 S.V.A. v. D.M.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.V.A. v. D.M.D.,

2023 BCSC 1258

Date: 20230724

Docket: E91258

Registry: Nanaimo

Between:

S.V.A. also known as S.A.

Claimant

And

D.M.D. also known as D.D.

Respondent

Before: The Honourable Justice Tammen

Reasons for Judgment

Counsel for the Claimant:

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Counsel for the Respondent:

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Place and Dates of Trial:

Nanaimo, B.C.

February 27-28, March 1-3

and May 12, 2023

Place and Date of Judgment:

Nanaimo, B.C.

July 24, 2023

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Introduction and Overview

- [1] Due to the sensitivity of this family matter, I have chosen to anonymize the party's names along with any related persons in this proceeding for confidentiality and publication purposes. The respective individuals will be identified by initials where appropriate. The claimant, S.A., and the respondent, D.D., were in a marriage-like relationship for approximately 15 years, from sometime in 2004 or 2005 to March 2020. They disagree about the commencement date of that relationship, and I will address that question in due course. However, S.A. and D.D. certainly built a life together during the currency of their relationship, including raising two children, who are now teenagers. All issues surrounding parenting were resolved by the parties prior to, or during, trial, and I made a consent order in that regard on March 3, 2023.
- [2] The remaining issues are all financial. By the conclusion of trial, the central questions remaining to be decided were these:

- a) What is the commencement date of the parties' marriage-like relationship;
 - b) How should family property and debt be divided, this includes the following sub-questions:
 - 1) Was there an oral agreement to keep all finances, including assets, separate;
 - 2) What is the extent of the respondent's excluded property claim;
 - 3) Should there be equal or unequal division of family assets;
 - c) Does either party owe the other retroactive child support?
- [3] There are also some minor financial adjustments to be made, but the foregoing list captures the most pressing and important issues. I will address the issues in the order set out above, and only summarize the evidence necessary to decide the issues. However, before doing so, I will set out in very broad strokes the non-controversial factual backdrop to this case.

Relationship History of the Parties

- [4] The parties met in 2002, and quickly became involved in a romantic relationship. At all material times, S.A. has worked as an x-ray technician at various hospitals on Vancouver Island. D.D. has enjoyed a long career with the RCMP, and is currently a corporal in the Identification section. When they first met in 2002, D.D. lived in Comox, BC in a home she had purchased some years earlier ("Glacier View"). S.A. was living a peripatetic lifestyle, often housesitting for, or staying with, friends or acquaintances. She had no permanent fixed address. S.A.'s parents lived in Comox, and she often visited them, and occasionally stayed overnight at their home.
- [5] In late 2002 and early 2003, D.D. was working full-time at the Comox RCMP detachment. S.A. was working at Royal Jubilee Hospital in Victoria, BC but was on extended medical leave due to a snowboarding injury sustained in spring 2002. S.A. was doing much of her physiotherapy and other rehabilitative work in Comox.
- [6] The parties disagree about the amount of time S.A. spent staying with D.D. at Glacier View from early 2003-December 2005, when D.D. says S.A. moved into Glacier View full-time. S.A. testified that from January, 2003 onward, she wanted to spend as much time with D.D. as possible, and would be in Comox frequently, always staying with D.D. D.D. testified that S.A. maintained a part-time residence in Victoria, and spent much time there, and that S.A. occasionally stayed with her parents when in Comox.
- [7] S.A. and D.D. started talking about having children together in late 2003. By early 2004, they had commenced taking steps with a sperm donor to put those plans into action. In December 2004, they reached agreement with a different donor, and D.D. attempted to carry a child to term several times. Ultimately, D.D. gave birth to two children, a girl named "P." in May 2006 and a boy named "F." in January 2008.

- [8] The parties shared all parental responsibilities for the children. Both worked different shifts during the relationship, and both tried to ensure that the children's needs were being met by their parents, with little need for third-party child care. S.A. had more flexibility with her work schedule and hours than D.D., and would generally drive the children to school. After school pick up arrangements were shared. S.A. often worked overtime, and her evidence, which I accept, was that she generally took time off in lieu of overtime pay, in order to be available for the children.
- [9] In July 2007, D.D. was posted to Sidney, BC and she remained working there until September 2012. The parties jointly purchased a home in Sidney ("Malaview") in July 2007. The initial plan was that the family might move to Sidney and live in Malaview, but that plan never materialized. Malaview has remained a rental property, which has generated income for the parties.
- [10] In September 2012, D.D. obtained a position with the Identification section in Campbell River, BC. In February 2014, D.D. became fully certified as an Identification officer, and she was promoted to corporal in September 2015.
- [11] D.D. went on medical leave in January 2020, and was still on leave at the time of trial. The parties separated in March 2020. For a time, S.A. lived in a guest house on the Glacier View property, but moved out at the request of D.D. S.A. has since purchased a home on Cook Avenue, a short distance from Glacier View. D.D. continues to reside at Glacier View. Post-separation, the parties have shared parenting time and responsibilities more or less equally.
- [12] At the conclusion of trial, counsel advised me that the parties had agreed to list the Malaview house for sale.

Issue One: Commencement of Marriage-Like Relationship

- [13] S.A. submits that I should find that the marriage-like relationship commenced in January 2004. She testified that, from January 2003 onward, she considered herself to be in a committed relationship with D.D., and that she wanted to spend as much time as possible with D.D. in Comox. By January 2004, she and D.D. were taking active steps to have a child together. S.A. said that when she returned to work after her injury leave, she was required to work at Royal Jubilee Hospital to prove that she was capable of resuming full-time duties. She transferred to Comox in mid-2005. At that time, S.A. added D.D. to her benefits plan.
- [14] D.D. submits that I should find that the marriage-like relationship commenced in December 2005. The reasons she gave for that position were these:
- There was a viable pregnancy that had gone beyond the first trimester;
 - S.A. had a permanent full-time position in Comox, starting (she said) in March 2006;
 - S.A. by then had less involvement in Victoria, and had commenced living at Glacier View; and

- d) The couple set up a joint Visa account, for shared expenses, including those related to children.
- [15] D.D. characterized the relationship prior to December 2005 as that of a long-distance dating couple. She said that, prior to December 2005, S.A. did not contribute to basic household expenses, apart from occasionally buying groceries. After that date, D.D. continued to pay the mortgage, but S.A. contributed approximately half the cost of utilities and property taxes.
- [16] In Canada, when courts are asked to determine the existence of a marriage-like relationship, judges are required to take a "holistic" approach, which considers all relevant evidence, including both the parties' subjective intentions and objective evidence which sheds light on the question: *Weber v. Leclerc*, 2015 BCCA 492 at para. 22. There are myriad factors which may be appropriately considered, as noted in *Molodowich v. Penttinen*, [1980] O.J. No. 1904 at para. 17, 1980 CanLII 1537 (O.N.S.C.), but the "checklist" approach must be avoided: see *Coad v. Lariviere*, 2022 BCCA 222 at para. 148.
- [17] In order for a relationship to be "marriage-like", actual cohabitation under the same roof is not required: *Athwal v. Walia*, 2021 BCSC 608 at para. 55; *Connor Estate*, 2017 BCSC 978 at para. 47. Co-mingling of finances may be a consideration, but is not determinative: *Austin v. Goerz*, 2007 BCCA 586 at para. 60.
- [18] The mutual intention of the parties must be that the relationship resemble a marriage, in that it be of lengthy, indeterminate duration. Importantly, the court will consider whether there is objective evidence "consonant with those intentions": *Weber* at para. 23.
- [19] In my view, the fundamental question is whether there is evidence that the parties formed a mutual intention to share their lives with one another, to build a life together, and if their subsequent actions bear out those intentions.
- [20] In this case, the evidence, both objective and as to subjective intentions, overwhelmingly points to a commencement date much earlier than that posited by D.D. I am persuaded that S.A. has correctly identified the date as January 2004.
- [21] As noted, I accept S.A.'s evidence that she was, by that time, spending as much time living at Glacier View as her work and other commitments would permit. Clearly, both S.A. and D.D. viewed the relationship as being of lengthy, indeterminate duration. They were certainly making plans to make a life together, to be a family, and importantly, to add to their family unit by having children. By January 2004, they had taken the important step of formalizing an arrangement with a sperm donor, to put their plan to have children into action. Although the donor changed, their mutual plan to have children and raise a family together did not. I fail to see any significance to a pregnancy that gets past the first trimester. That milestone merely put the plan closer to fruition.

- [22] There is other evidence which, while far less important than the efforts to have children together, supports my conclusion. When D.D. filled out S.A.'s 2004 income tax return, she listed Glacier View as S.A.'s address. The parties exchanged rings in winter 2003/2004. S.A. said those were commitment rings. D.D. resisted that characterization, but agreed that the exchange occurred. Importantly, D.D. turned down a work transfer to Prince George in late 2003 or early 2004 because S.A. did not wish to move there, in part because it would be far removed from potential donors. D.D.'s actions in rejecting the transfer for those reasons bespeak a permanent, committed relationship, one in which important life and career decisions are made by the family unit, not individuals.
- [23] In summary, I find that the parties' marriage-like relationship commenced in January 2004.

Issue Two: Division of Family Property and Debt

- [24] Before addressing the discrete issues raised, I will comment on the alternative submission of the claimant that I should decline to adjudicate on claims of the respondent that were not properly pled and that were raised for the first time at trial. I make a preliminary observation that it is potentially unfair to the claimant to be forced to guess at the respondent's legal position on something as important as a prior agreement to keep assets separate. That is what S.A. was required to do in this case.
- [25] Despite the parties attending a judicial case conference, a judicial settlement conference and a mediation, the respondent's position on these important issues crystallized very late in the litigation. The amended counterclaim makes no reference to a prior agreement to keep assets separate, and makes a very broad claim to excluded assets. The specific claim concerning inheritance funds was only made in a Form F8 financial statement sworn in January 2023.
- [26] The evidence in support of the inheritance funds was disclosed during the trial and ultimately summarized in a document which became Exhibit 5.
- [27] The amended counterclaim expressly lists several reasons there should be unequal division of family assets, but makes no mention of a prior agreement. Neither s. 92 nor s. 95(2)(b) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], is pled, yet in final submissions, the respondent relies on both sections.
- [28] Nonetheless, I will consider the merits of these claims, since in my view it is in the broader interests of justice that I do so. There must be finality in this litigation, and I should attempt to resolve all outstanding issues between the parties. The claim of a prior oral agreement emerged in the discovery evidence of D.D., and thus S.A. had some notice of it. The basic amount of the claimed exclusion based on inheritance was included in the financial statement made approximately six weeks before trial. To the extent that there is potential prejudice to the claimant in the late disclosure of evidence said to support the claim, I intend to hold the respondent to the strict proof of those claims, in particular the tracing of funds. Any doubt in that regard will be resolved in favour of the claimant. In that way, the

potential prejudice is greatly attenuated.

Was there an oral agreement to keep finances separate?

- [29] The issue of existence of a prior oral agreement is very straightforward. In short, the respondent's claim fails for want of proof. On the core issue, whether there was such an agreement, the parties' evidence is diametrically opposed. S.A. said there was no agreement to keep assets separate. She believed she and D.D. were building a life together and would share in what they had accumulated in retirement. She said she would not have built such a life with D.D., which included children, if there were an agreement to keep assets separate. D.D. said there was such an agreement, and she would not have continued in the relationship if not for the agreement. She said, in part, "I wasn't aware my assets were up for grabs."
- [30] S.A.'s further evidence on the point was succinct. She said there was no discussion about keeping assets separate.
- [31] D.D.'s evidence on the point was rambling, disjointed and confusing. She said that when she and S.A. decided to get the joint Visa card for shared expenses, they had a broader conversation on the subject of finances. D.D. said what they discussed was "crystal clear" and she did not feel the need to write it down. She said she and S.A. agreed that they had very different approaches to money, and they reached some form of common understanding about financial matters. D.D. said she was very clear with S.A. that "she could do whatever she wanted with her money and I would do what I wanted with my money, after the common expenses were paid."
- [32] The long answer that concluded with the passage quoted above was rambling and difficult to follow. Immediately after the quoted passage, D.D. said that they never argued about money, and the reason was because they had "this agreement." However, the totality of her evidence on this critical issue failed to describe even a specific conversation in any detail, and certainly was not evidence of an agreement or meeting of the minds. Even if one were inclined to find an agreement from this evidence, which I am not, it did not include assets, but was directed solely at spending habits of the parties.
- [33] This case is not factually similar to *Voitchovsky v. Gibson*, 2022 BCCA 428. In that case, based on the evidence of both parties and objective evidence, the trial judge "found there was an oral agreement between the parties to hold their assets individually and that they would not share joint ownership of anything with the exception of certain specified property": at para. 10.
- [34] In this case, S.A. expressly denied any such agreement. D.D.'s evidence, as noted, was imprecise, and really amounted to little more than her expectation. As I have noted, D.D.'s evidence on this critical point does not support the existence of an express agreement between the parties.

- [35] The law is clear that the onus is on the party alleging an agreement to prove the existence of the agreement. D.D.'s own evidence falls well short and is incapable of being interpreted as evidence of an agreement to keep all assets separate and thus excluded from the FLA regime of family property and equal division of same.

The Respondent's Excluded Property Claims

- [36] The respondent's excluded property claims, as set out in her pleadings and financial statements, are vast and broad. However, many of those claims are contingent on a finding in her favour on the issue I have just decided against her, the existence of a prior agreement. Thus, there are a finite number of discrete claims left to be addressed.
- [37] Several of those are conceded by the claimant.
- [38] The parties agreed to value Glacier View at trial at \$763,000. The value at January 31, 2004 was \$275,000, and there was a mortgage of \$38,000. That leaves an excluded property claim of \$237,000, the respondent's equity in the home at the date of commencement of the marriage-like relationship.
- [39] S.A. also concedes that D.D. has proved that at the time the relationship commenced, D.D. had investments totalling \$122,239, in two separate accounts, and that those funds are excluded property.
- [40] S.A. agrees that \$15,491 is the excluded portion of a severance payment D.D. received in March 2012.
- [41] Finally, S.A. concedes that D.D.'s post-separation contributions to her TFSA, totalling \$9,000, are excluded property.
- [42] The contentious items are the \$80,000 down payment for Malaview and the various funds D.D. received as an advance on an inheritance, totalling \$191,909.31.
- [43] With respect to both the down payment and inheritance funds, S.A. submits that they cannot be considered excluded property unless D.D. can show direct tracing of the funds. In the case of the down payment, that would be evidence that the source of the funds was money accumulated by D.D. prior to the commencement of the marriage-like relationship. For the inheritance funds, which came in tranches over several years, the evidence would need to show a reasonably contemporaneous investment or transfer into an identified account, as opposed to mingling with other funds.
- [44] I agree with the claimant that D.D. bears the persuasive burden of tracing these funds in order to sustain her claim that they are excluded property.

- [45] The tracing submission also applies, in part, to the severance funds, detailed above. Counsel have agreed that the potential amount of the severance payment that is excluded is \$21,491, subject to a tracing analysis. I agree with S.A.'s submission that all but \$6,000 of those funds went into long term investment accounts, and is thus excluded property. \$6,000 remained in D.D.'s CIBC account, and was mingled with other funds, and is thus not excluded. That leaves the amount previously conceded by S.A. (\$15,491) as excluded property.
- [46] I will next address the Malaview down payment (\$80,000) which D.D. paid in July 2007. In my view, D.D. has not met her burden of showing the source of those funds in order that they be excluded property. D.D. said the funds came from an old CIBC account, since closed, and that she has been unable to unearth any records for that account. D.D. has not demonstrated that the \$80,000 was not part of the \$122,239 already conceded by S.A. to be excluded property, or that it was not money earned and saved after the commencement of the relationship, in January 2004. In those circumstances, I do not consider the \$80,000 to be excluded property.
- [47] Finally, I will address the inheritance funds. That money came to D.D. from 2014-2020, in seven discrete distributions, made by D.D.'s brother under a power of attorney, while D.D.'s mother was suffering from acute Alzheimer's disease and unable to manage her affairs.
- [48] Before turning to the specific evidence, I wish to make some general observations about this claim of D.D. I have great sympathy for D.D.'s circumstances, and accept unreservedly that her intention was to attempt to honour her mother's memory by placing the inheritance funds in low-risk investment vehicles. However, I agree with the claimant's submission that D.D.'s evidence was a largely ex post facto attempt to randomly assign the losses she suffered with certain investments to other funds, and attribute the gains to inheritance funds. For the most part, D.D. did not segregate the inheritance funds sufficiently to show with precision which investments those funds ultimately formed part of.
- [49] In most instances, D.D. first placed the advances into her two main bank accounts, with Scotiabank and CIBC, where they often became intermingled with other funds prior to being invested in specific investment accounts.
- [50] I have considered all of Exhibit 5, the viva voce evidence of D.D., and the submissions of counsel as to all the inheritance funds. I agree with the position of S.A., as set out at para. 110 of her written submissions, that only three portions of the interim distributions can properly be traced and be considered excluded property. For clarity, I reproduce para. 110 in its entirety:

With respect to the \$191,909 claimed inheritance, the Claimant accepts the following as being traced and therefore excluded, because there is a fairly short period of time between the receipt of the funds and the investment (the remaining claimed exclusions being intermingled significantly and not properly traced). The paragraph references are to Exhibit 5:

- a. Par 7 - the first deposit of \$70,000 led to an almost immediate investment of \$69,379 in July 2014 and that amount is accepted as excluded and traced.
- b. Par 8 - The second deposit of \$40,000 is more complicated. It was all mingled into the Respondent's general account. There is an error attempting to trace the \$12,000 at (b) as this occurred before the deposit. Only the \$20,000 at (c) is traced closely enough in time to the deposit and is accepted. The \$8,400 used to pay the Claimant's line of credit is a clear mingling.
- c. Par 9-15 - these transactions took place so much later - 2 years - there cannot be a proper tracing and distinguishing between what was received as inheritance and what was saved and invested from earnings.
- d. Par 16 - the 3rd deposit of \$30,000 was received in January, 2016 but was then intermingled with her other earnings and there was no investment until May 2017 from that account and then later ones at the end of 2017. There is no way to know which of these funds were spent on living expenses or invested because of the length of time they remained in the general account with other earnings. This is not accepted as a traced exclusion.
- e. Par 17 - the 4th deposit was received in October, 2016 and there were no claimed tracings into investments until November 2018. Again, this is not accepted as a proper tracing.
- f. Par 18 - the 5th inheritance claimed is \$18,000 received in November, 2019. The 2 amounts distributed to investments a few months later in February, 2020 are accepted tracings and total \$10,157. The remaining funds are claimed to be traced to an investment over a year later and is not accepted.
- g. Par 19 - this claimed exclusion is a duplicate of 18(a), which has already been accepted, so this other claimed exclusion is not agreed with.
- h. Par 20 - these funds were mingled with other earned funds used for living expenses and cannot be traced.
- i. Par 21 - the post separation contributions to the TSFA of \$9,000 in total are accepted as excluded.

[Underline in original.]

[51] As a final point, I note that D.D. conceded that in the relevant time period she suffered significant losses with certain investments, totalling approximately \$100,000. Although D.D. said those investments were made using her savings, the funds were co-mingled to such an extent that it is impossible to attribute them in that fashion.

[52] In summary, the total amount of D.D.'s excluded property claim is \$483,266, broken down as follows:

- \$237,000 - pre-relationship value of Glacier View

- \$122,239 - pre-relationship investments
- \$15,491 - excluded portion of severance payment
- \$9,000 - post-separation TFSA contributions
- \$99,536 - excluded portion of inheritance funds.

Equal or Unequal Division of Family Assets?

[53] The starting point for this question is s. 81 of the FLA, which reads:

Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[54] D.D. submits that there should be unequal apportionment of family property in her favour. Her primary position was based on the oral agreement she says existed, which claim I have already dismissed. However, D.D. also submitted that because she was a "saver" and S.A. was a "liver", I should apportion the greater share of family property to D.D. To do otherwise, says D.D., would be substantially unfair. I disagree.

[55] If I were to divide family property unequally in D.D.'s favour, after giving effect to the excluded property claims, the result would be substantially unfair to S.A. Absent an agreement to keep assets separate, this case is similar to most, in which the parties were together for many years, building a life and raising a family. Each made sacrifices for the family unit. There was ample evidence of sacrifices made by S.A. to permit D.D. to advance her career in the RCMP.

[56] D.D. complained of S.A.'s expenditures on equipment for her fitness pursuits, including triathlon training, but those expenses were all borne by S.A., not divided between the parties. Conversely, D.D. acknowledged that the joint Visa card was used to purchase appliances for Glacier View, and the cost borne in part by S.A. Similarly, S.A. contributed to the purchase cost of various power tools for D.D.'s renovation projects. All those items are now owned and exclusively enjoyed by D.D. S.A. left the family home, at D.D.'s request, with only those personal belongings that D.D. permitted her to take.

[57] As for the discrepancy in savings, I note that, apart from the first three years of the relationship, D.D.'s income was significantly higher than that of S.A., generally about 20-25% more. It is thus no surprise that D.D. was able to save more money than S.A. D.D. also kept the entire amount of the child tax benefit for herself, by 2020 an amount in excess of \$400 per month.

- [58] The original arrangement between the parties was that D.D. wished to pay off the Glacier View mortgage on her own, but S.A. would contribute to household expenses such as utilities. S.A. said she solely paid those expenses. D.D. said that S.A. did not pay all such expenses, but did concede that S.A.'s contribution over time was greater than 50%. D.D. acknowledged that S.A. paid some of those expenses directly at the bank. That practice continued long after D.D. paid off the Glacier View mortgage, and thus S.A.'s monthly fixed expenses were greater than those of D.D.
- [59] For the foregoing reasons, I decline to depart from the regime of equal division of family property, the default pursuant to the FLA. All family property, subject to the adjustments I am about to make, shall be divided equally.

Retroactive Child Support

- [60] Each of the parties submits that the other should pay some amount of retroactive child support. D.D.'s claim is based on her assertion that, immediately after the dissolution of the relationship, S.A. did not have 40% parenting time. S.A.'s claim is premised on essentially equal parenting time, with D.D. having a greater income, and thus responsibility to her for some child support.
- [61] I do not accept D.D.'s submission that from March 2020-February 2022, S.A. had less than 40% parenting time. Rather, I accept S.A.'s evidence that at all times post-separation, the parties engaged in a shared parenting regime, with more or less equal time. I also note that D.D., through her actions, made it very difficult for S.A. to enjoy equal parenting time with the children. Those actions included: insisting that S.A. leave the guest home at Glacier View; cancelling a joint line of credit; refusing to sell Malaview; twice placing a certificate of pending litigation on the alternate accommodation that S.A. purchased on Cook Avenue; and insisting on more than 50% of weekend parenting time, in spite of the fact D.D. was not working.
- [62] D.D. has not presented any concrete evidence nor detailed testimony that S.A. ever had less than 40% parenting time with the children, and I accept S.A.'s evidence in that regard.
- [63] That being so, D.D. owes S.A. some amount of retroactive child support, based on her greater income during the relevant time period.
- [64] S.A.'s income for 2020 was approximately \$100,000; for 2021 approximately \$94,000; and for 2022 approximately \$95,000.
- [65] D.D.'s approximate income for those same years was \$114,000; \$108,000; and \$125,000.
- [66] Assuming the same incomes for 2023 as 2022, the set-off amount for child support is approximately \$188 per month for 2020, \$184 per month for 2021, and \$394 per month for 2022 and 2023.

[67] The total amount of retroactive child support thus payable from D.D. to S.A. is \$10,034. That figure is based on the period from July 2020, when S.A. purchased the Cook Avenue home, through May 2023, when the trial concluded.

Other Financial Reconciliations

[68] There remain three minor matters to resolve.

[69] First, S.A. submits that D.D. should reimburse S.A. for 50% of expenses incurred by S.A. post-separation in relation to Malaview. Those expenses consist of the cost of having the house painted and the amounts needed to make up the shortfall between rental income and mortgage payments. The total amount is \$5,054. D.D.'s position on the mortgage shortfall is that, because S.A. rejected D.D.'s desire to raise the rent some time ago, D.D. is not responsible. I disagree. The costs associated with Malaview should be borne equally by the parties. D.D. owes S.A. \$2,527 for those expenses.

[70] Secondly, S.A. submits that D.D. should pay to her half of the child tax benefit that D.D. has collected post-separation. I agree, subject to adjusting the proposed dates. My understanding is that, since July 2022, the child tax benefit has been split equally. Thus, D.D. owes S.A. for the time period beginning April 2020 through to June 2022, totalling 27 months. That amount is \$5,400 for the child tax benefit.

[71] Finally, the parties disagree about the characterization of some retroactive pay received by D.D. from the RCMP, post-separation, totalling \$21,052. I agree with S.A. that the retroactive pay, earned during the currency of the marriage-like relationship, is a family asset. Thus, D.D. owes S.A. \$10,526.

Conclusion

[72] The parties agreed to list the Malaview home for sale, and to split the proceeds equally, with the exception of a line of credit balance, which is the sole responsibility of S.A. S.A. has also agreed to pay D.D. \$15,000 for a jointly owned automobile.

[73] The total amount of D.D.'s excluded property claim is \$483,266. The amounts noted above, which D.D. owes S.A. for Malaview expenses, child support, the child tax benefit and retroactive pay, should be deducted from that figure, and then a final calculation made as to the equalization payment which D.D. owes S.A. I would ask counsel to agree on the amount, and draft the final order. If counsel are unable to do so, or if I have omitted anything which needed to be calculated, counsel should arrange to appear before me to clarify matters. Otherwise, I leave it to counsel to draft the final order with the appropriate figures.

[74] S.A. has been substantially successful, and is entitled to costs. I heard no submissions for costs at a scale other than Scale B, and my nascent view is that costs should be at Scale B. If there are matters about which I am unaware, or if either counsel wishes to address any ancillary issue as to costs, they may arrange to speak to the matter through Trial Scheduling. Otherwise, the order should reflect costs of these proceedings awarded to S.A. at Scale B.

"Tammen J."

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