

CANADA / JUDGMENT

Skawski v. Peters

2023 BCSC 2244

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Supreme Court of British Columbia

DECIDED

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2023 BCSC 2244 Skawski v. Peters

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Skawski v. Peters,

2023 BCSC 2244

Date: 20231220

Docket: E18190

Registry: Chilliwack

Between:

James Robert Skawski

Claimant

And

Cheryl Lynn Peters

Respondent

Before: The Honourable Justice Fitzpatrick

Reasons for Judgment

Counsel for the Claimant:

E. Duerr

Counsel for the Respondent:

K. Dhahan

A. Mihailovic

Place and Dates of Trial:

Chilliwack, B.C.

September 25-29,

October 23-24, 2023

Place and Date of Judgment:

Chilliwack, B.C.

December 20, 2023

INTRODUCTION

- [1] In May 2022, this contested family proceeding began. The claimant, James Skawski, seeks various relief including spousal support and unequal division of family property. The issues raised by Mr. Skawski was grounded in the allegation that he and the respondent, Cheryl Peters, were in a marriage-like relationship from 2014/2015 to their date of their separation in February 2022.
- [2] Ms. Peters denies the above allegation. She says that she began a long-distance dating relationship with Mr. Skawski in 2014. She also says that they later lived together from September 15, 2019-September 10, 2021, although she denies that they were in a common-law relationship during that time. Ms. Peters says that, if they were in a "marriage-like" relationship between September 2019-September 2021, it was for less than two years. As such, she denies that Mr. Skawski comes within the definition of "spouse" under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Further, Ms. Peters says the parties were in a partnership or business relationship that does not engage family law.
- [3] By agreement of the parties, the trial has been bifurcated. The sole issue at this stage is a determination of the preliminary family law issue that affects all others--namely, whether the parties were ever in any marriage-like relationship and, if so, for how long.
- [4] For the reasons set out below, I find that the parties were not in a marriage-like relationship at any time or, alternatively, even if they were, it did not exceed two years. Mr. Skawski is not a "spouse" as defined by the FLA and his claims under the FLA must be dismissed.

BACKGROUND FACTS

- [5] There are few facts that are not in dispute as both parties significantly disagree on the course of their relationship and the nature of their relationship over the period of 2014-2022.
- [6] The facts not in dispute are as follows.
- [7] Mr. Skawski is presently 60 years of age (as of November 2023). He lives in Calgary, Alberta.

- [8] Mr. Skawski was previously married. He and his former wife have two children, Eric Skawski, who lives in the U.K. and Andrea Skawski, who lives in Calgary. Mr. Skawski has two sisters, including Faye Skawski.
- [9] Since 2012, Mr. Skawski has owned and operated his own consulting company, JRS Solutions Inc. ("JRS") which continues in business now. Mr. Skawski describes his current occupation as an IT consultant.
- [10] Ms. Peters is also 60 years of age. She was also previously married. Ms. Peters has a large extended family, including her three adult children: Michael Duret (married to Ashley and who have two children); Lyndsay Domijan (married to Alex and who have two children); and Bradley Peters (partner Amy). Ms. Peters also has a sister, Danielle Kemble, and brother, Scott Perrault.
- [11] For ease of reference, I will use the first names of the various Peters and Skawski family members, meaning no disrespect.
- [12] From April 2013, Ms. Peters owned and operated RYSE Supportive Services Inc. ("RYSE"). RYSE is in the business of supporting autistic children who are in the care of the Ministry of Child and Family Development. At present, Ms. Peters is a shareholder of RYSE and she no longer manages the business.
- [13] In December 2013, Mr. Skawski met Lyndsay on an airplane flight. Lyndsay thought that Mr. Skawski and her mother might be a match and she put them in touch with each other.
- [14] In January 2014, the parties met and began dating. When the parties met, Mr. Skawski was living in Calgary where he owned a home (the "Calgary Home") and he was operating JRS to generate income.
- [15] When the parties met, Ms. Peters was living at her home in Abbotsford which she had acquired in 2013 with Bradley as a joint tenants ("Maclure Road"). She also owned a home on Signal Court in Abbotsford ("Signal Court"). She was operating RYSE at the time.
- [16] In addition, Ms. Peters owned an interest in a rural cabin property on Pinantan Lake ("Pinantan Lake"). She later acquired full title in 2015 after buying out her ex-husband.
- [17] Shortly after they met, the parties began a relationship that was intimate. They began regularly dating, with each party travelling back and forth from Abbotsford and Calgary at various times. They took some vacations together. Mr. Skawski and his children attended various Peters family events.
- [18] Throughout the parties' relationship (2014-2022), they were either both or separately involved in a number of properties in BC, Alberta, New Brunswick and Nicaragua, which are summarized as follows:
- a) 2014: Ms. Peters purchased a house on Lefevre Road in Abbotsford ("Lefevre Road");

- b) January 2016: the parties acquired property on Knight Road in Chilliwack ("Knight Road") as tenants in common. Initially, Mr. Skawski was on title and he paid the down payment. Later, Ms. Peters was put on title and repaid him her share of the purchase price;
 - c) 2016: Ms. Peters and Bradley sold McClure Road;
 - d) 2017: Ms. Peters sold Lefevre Road;
 - e) March 2018: the parties acquired property in Nicaragua as tenants in common (the "Nicaragua Property"). They equally contributed to the purchase;
 - f) July 2018: the parties acquired a farm property on Giesbrecht Road in Chilliwack (the "Farm") as tenants in common and they began substantial renovations to the Farm until they moved in in mid-September 2019;
 - g) January 2020: Mr. Skawski sold his Calgary Home;
 - h) November 2020: Ms. Peters sold Signal Court;
 - i) 2021:
 - i. January 2021: Ms. Peters and Michael acquired two strata apartments in Abbotsford as joint tenants;
 - ii. February 2021: Ms. Peters acquired a house in Boiestown, New Brunswick (the "NB House");
 - iii. March 2021: acquired restaurant property in Boiestown, by NB Trail Holding Inc. (shareholders are the parties and John Thomas) ("The Topsy Oyster");
 - iv. Spring 2021: Ms. Peters acquired a house on 106 Street NW in Edmonton. In addition, Ms. Peters and Scott acquired a house on 61 Avenue NW in Edmonton;
 - v. May 2021: property is acquired in Priceville, New Brunswick by Eddie and Sandra Palmer (the "Priceville House"). The parties hold a \$55,000 mortgage against title;
 - vi. June 2021: Ms. Peters acquired a house in Mission (the "Mission House");
 - vii. August 2021: the parties sold Knight Road; and
 - viii. August 2021: purchase of a property in Barrière, BC by Amanda and Jesse Jeffers (50%), Mr. Skawski (25%) and Ms. Peters (25%). Title is currently held by Ms. Peters (75%) and Mr. Skawski (25%) (the "Barrière Property").
- [19] In September 2019, the parties moved into the Farm and began living together.
- [20] In September 2021, the parties had a disagreement, although the outcome of that disagreement is very much in dispute.
- [21] Sometime in early February 2022, Mr. Skawski moved out of the house on the Farm and into a trailer on the property. Some time after, he moved away from the Farm altogether and relocated back to Calgary.

[22] The parties have no children together.

[23] Ms. Peters continues to live on the Farm at present, with her current husband.

LEGAL PRINCIPLES

[24] The central issue is whether the parties were "spouses" within the meaning of the FLA. Under s. 1 of the FLA, "spouse" has the meaning set out in s. 3 of the FLA. The relevant portions of s. 3 of the FLA provide:

3(1) A person is a spouse for the purposes of this Act if the person

(b) has lived with another person in a marriage-like relationship, and

(i) has done so for a continuous period of at least 2 years,

(3) A relationship between spouses begins on the earlier of the following:

(a) the date on which they began to live together in a marriage-like relationship;

(b) the date of their marriage.

[25] The parties agree that Mr. Skawski bears the onus of establishing that the parties were "spouses" or, in other words, that they were in a marriage-like relationship for at least two years, on a balance of probabilities: *Ashton v. Hales*, 2017 BCSC 1928 at para. 30.

CREDIBILITY OF WITNESSES

[26] The evidence of the parties is directly conflicting in most respects, and certainly with respect to the central facts that inform the issues to be addressed at this juncture of the proceedings.

[27] I have considered the credibility and reliability of the parties and other witnesses in accordance with the approach set out in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187 and the authorities referred to in those paragraphs.

[28] Generally speaking, as I will explain below, I prefer the evidence of Ms. Peters as being more credible and internally consistent and consistent with the overall body of evidence presented at this trial, including the evidence from her family members.

[29] In the latter respect, I have considered the inherent potential bias that might have been present in respect of Ms. Peters' children's given their support of their mother. However, on balance, I found the children's evidence to have been put forward in a measured and fair manner, including in relation to Mr. Skawski. In particular, Bradley and Michael gave his evidence in a careful and impartial manner, and without any animus toward Mr. Skawski, despite the difficult circumstances relating to him and their mother's relationship with Mr. Skawski, as I will discuss below.

- [30] Lyndsay had the most potential to be less than straightforward in respect of Mr. Skawski, given her substantial conflicts with him over the years leading to 2021. However, I found her evidence also to be credible, particularly as it was consistent with that of other family members.
- [31] I acknowledge that Scott displayed a less objective attitude toward the facts and Mr. Skawski, no doubt borne of his love and protection of his sister who has been a big part of his life. Nevertheless, his evidence is also consistent with other Peters family members to a large degree.
- [32] Unfortunately, Mr. Skawski presented himself with a largely self-serving scripted narrative that was lacking in detail and support from any other source. He had a tendency, when describing his various contributions to Ms. Peters, to exaggerate and boast. This aspect of his personality would be shown, through the evidence, to be consistent with his behavior more generally. In many respects, Mr. Skawski's evidence was largely implausible in light of other facts, particularly as to dates when the "marriage" began and also the date of separation.
- [33] In support of his case, Mr. Skawski called his friend, Ashley Burns, and Eric and Faye. I consider that Mr. Burns, Eric and Faye gave credible evidence, however, their knowledge of Mr. Skawski's day-to-day life and his relationship with Ms. Peters was limited. To a large extent, their evidence was based on Mr. Skawski's statements to them, which I have found to a problematic source. I place little weight on the evidence of Mr. Burns, Eric and Faye and, to the extent that it conflicts with the evidence of the Peters family members, I reject their evidence.
- [34] In the result, where the evidence presented by Ms. Peters and Mr. Skawski conflicts, I have accepted Ms. Peters' evidence.

MR. SKAWSKI'S POSITION

- [35] Mr. Skawski says that his "marriage-like" relationship with Ms. Peters began between June 2014 and June 2015. He described the relationship as being committed, romantic and sexual, and one that involved considerable financial intertwining and plans for the future. He describes that these plans involved their respective business interests in JRS and RYSE. In addition to his involvement in the purchase of various properties listed above, he described his substantial involvement and contributions to all of the properties, including those owned solely by Ms. Peters, as evidence of his commitment to the relationship.
- [36] Mr. Skawski describes himself as full ensconced as a Peters family member who was fully involved and participated in various family events.

- [37] Mr. Skawski acknowledges that the parties had a dispute in September 2021, however, he says that nothing came of it. He says that he and Ms. Peters continued living at the Farm as a "marriage-like" couple until about February 2022, when he moved out of the home after the breakdown of the relationship was clear only at that time. He left the Farm around May 2022.

MS. PETERS' POSITION

- [38] Ms. Peters says that, from January 2014-September 15, 2019, the parties maintained a long-distance romantic relationship that involved weekend visits. She says the parties saw each other about 6-8 times a month.
- [39] Ms. Peters acknowledges that the parties purchased properties together, although she describes them as investment properties (such as Knight Road, the Nicaragua Property and the Farm).
- [40] Ms. Peters says that the parties began living together on September 15, 2019, when they moved into the Farm and Mr. Skawski moved his belongings from Calgary. Ms. Peters asserts that they separated on September 10, 2021 after a dispute. She acknowledges that Mr. Skawski remained living at the Farm, although she denies that their romantic or any relationship continued. She states that she was then attempting to have Mr. Skawski vacate the Farm, although he refused for some months until May 2022.

CASE AUTHORITIES re "MARRIAGE-LIKE" RELATIONSHIPS

- [41] It has long been established that, in considering whether the parties are in a "marriage-like" relationship, the Court must determine the parties' mutual and subjective intentions. In that exercise, the Court may have regard to objective factors that are relevant to that issue toward determining the parties' intentions: *Takacs v. Gallo*, 1998 CanLII 6429 at paras. 53-58, 48 B.C.L.R. (3d) 265 (B.C.C.A.), citing *Gostlin v. Kergin*, [1986] 3 B.C.L.R. (2d) 264, [1986] 5 W.W.R. 1 (B.C.C.A.).
- [42] The list of objective factors considered by the Court is often referred to as the "Molodowich" factors, as set out in *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376, 1980 CanLII 1537 (O.N.S.C.).
- [43] The question requires a largely fact-driven analysis: *Carlson v. Shay*, 2023 BCSC 222 at para. 29. The case authorities support that no one factor--whether present or absent--will be determinative and that a "holistic" approach must be taken to the entirety of the parties' relationship toward discerning their intentions: *Austin v. Goerz*, 2007 BCCA 586 at para. 58.
- [44] For example, the fact that they lived together in the same residence is not determinative: *Takacs* at paras. 54-55; *Jones v. Davidson*, 2022 BCCA 31 at paras. 19-20. The fact that the parties may discuss possible future plans together is not determinative: *Takacs* at paras. 57-58. Similarly, the fact that the parties' financial affairs are not intertwined and there is no financial dependence is not determinative: *Austin* at para. 62.

- [45] The above principles were ably summarized by Justice Schultes in *Dey v. Blackett*, 2018 BCSC 244 at paras. 192-196. Justice Schultes also noted:
- [204] It is also important to keep in mind that every relationship is unique and that one must apply a flexible approach within the context of that relationship when deciding if it was marriage-like: *J.J.G. v. K.M.A.*, 2009 BCSC 1056 at para. 37.
- [46] In *Dey* at paras. 207-209, Schultes J. also discussed at some length the matter of discerning the parties' intentions. He stated that the objective indicators are only to be used toward discerning whether the couple truly saw themselves in a committed, long-term relationship. In *Dey*, the Court stated:
- [210] In short, counsel says the authorities are clear that it is only when the subjective intentions of the parties cannot be gleaned that it is necessary to examine objective indications.
- [235] ... While an intention to enter into a relationship similar to marriage - of an indeterminate, lengthy duration - is the essential requirement for finding a marriage-like relationship, a consideration of objective indicators are helpful as a means of testing the parties' professed intentions (or lack of intentions) in that regard, and may also form the basis of inferences as to what their intentions were. Put another way, while intention is the key, a partner who claims or disavows such an intention may not be believed if all of the surrounding circumstances strongly imply the contrary. All of that said, Takacs offers the reminder that relationships can fulfill many of the accepted indicators without the couple "intending or in fact entering the kind of psychological and emotional union that one associates with marriage."
- [47] The approach in *Dey* was later affirmed in *Jones* when the court stated:
- [24] The upshot of these cases, as explained in *Austin* and *Weber*, is that the characterization of a relationship as marriage-like is contextual. It involves the subjective intentions of the parties and objective evidence, and the subjective intentions, where there is evidence of such, may be tested by reference to the objective evidence. In turn, that objective evidence may address a wide assortment of characteristics or indicia for which there is no definitive classification system to determine the ultimate characterization of the relationship. That answer must be given by the judge, understanding the concept and fully considering the evidence.
- [48] Other case authorities referred to by the parties and which I have considered include: *S.V.A. v. D.M.D.*, 2023 BCSC 1258; and *Kroetsch v. Rahmany*, 2023 BCSC 1433 (which lists the *Molodowich* factors at para. 8).

WAS THERE A "MARRIAGE-LIKE" RELATIONSHIP?

- [49] The evidence as to the parties' relationship can be examined within two separate timeframes, as follows (although the later time period is informed by events in the first):

- a) January 2014-September 15, 2019; and
- b) September 15, 2019-September 10, 2021.

[50] For the parties' benefit, I wish to emphasize that I have not mentioned all of the evidence that was presented at the trial and which I have considered in crafting these reasons. There was much minutia of the parties' lives presented at this trial. The facts below are intended to be a summary of what I consider to be the more important facts and include my findings of fact.

January 2014-September 15, 2019

[51] Mr. Skawski's evidence was that the couple progressed quickly in their relationship. By June 2014, the couple was talking about their long-term plans in terms of what would happen with their companies. By at least mid-2015, they were living together and in a long-term committed relationship. He says that, in 2016, the couple talked about him selling the Calgary Home; in 2016, Mr. Skawski listed the property although it did not sell; and, later, they began doing certain renovations to ready it for sale.

Separate Residences

[52] Mr. Skawski asserts that the couple split their time between Calgary and Abbotsford. As before, Mr. Skawski's evidence as to when he moved to BC has been a bit of a moving target and I found his evidence to be very vague.

[53] Mr. Skawski asserts that he spent significant time in BC in the first years of their relationship: 167 days in 2015; 146 days in 2016. He purports to have arrived at these figures based on his review of gas receipts and bank statements, which have not been produced. In addition, Mr. Skawski said that he prepared a spreadsheet to support these specific numbers, but he has failed to produce it, to the extent that it might have in independent record, which is questionable.

[54] By 2017, he "lost track" of the time he spent in BC although he says that he was "almost always" here. He acknowledged making many trips back and forth between BC and Alberta and that Ms. Peters was on many trips back to Calgary.

[55] I do not accept Mr. Skawski's evidence that he had moved to BC in the 2014/2015 timeframe as credible in the overall circumstances. He has produced no support for that proposition beyond that he has pictures of some work he did at Ms. Peters' properties during that time, either at Signal Court or Maclure Road.

[56] Eric confirmed in his evidence that he understood that his father only began living in BC in mid-2018, and not from 2014 as Mr. Skawski claims. He had little involvement with his father in terms of observing his-day-to-day life in BC and Alberta during the entirety of Mr. Skawski's relationship with Ms. Peters.

- [57] Faye's evidence was limited as supporting her brother's case. She also had limited involvement in the parties' lives in 2014-2021. Her evidence largely involved relaying what Mr. Skawski had told her and her personal observations on the few occasions when she would get together with them for visits. At one point, Faye stated that Mr. Skawski was "visiting" BC a lot.
- [58] I also do not accept that Mr. Burns' evidence can be considered as supportive for Mr. Skawski. Mr. Burns only saw the couple together in the 2015/2016 timeframe and, by all accounts, he received positive news from Mr. Skawski about what he was told were the couple's plans. This was certainly the times of heady and exciting days of the relationship. Mr. Burns had only very limited discussions with Ms. Peters about her view of the nature of the relationship.
- [59] I acknowledge that a couple may live apart and still be considered as in a "marriage-like" relationship, although usually an explanation for that will be advanced, such as was discussed in Carlson at para. 34. However, Mr. Skawski has framed his argument and evidence to the point of suggesting that he had commenced something other than a long-distance dating relationship with Ms. Peters that involved his more permanent presence in BC and his participation in Ms. Peters' life in BC. He says that he moved to BC when their relationship was "serious".
- [60] To the contrary, I accept Ms. Peters' evidence that, until late 2019, the parties were in a long-distance dating and sexual relationship where they travelled to each others' residence about two times per month, alternating who would travel. They saw each other about 6-8 days per month.
- [61] As Ms. Peters describes, she was living at Maclure Road when they met and later, in 2016, she moved to Signal Court. She denies that Mr. Skawski moved in with her at all during the time between January 2014-September 15, 2019.
- [62] Mr. Skawski says that each of the parties cleared out areas in their respective homes for the other, indicative of them living together. I accept that Mr. Skawski cleared out some bedroom closet space in his Calgary Home for Ms. Peters when she would visit. However, in my view, this evidence is hardly persuasive. I also accept Ms. Peters' evidence that she did not clear out any area in her homes for Mr. Skawski and that he arrived and left with a small duffel bag. In any event, such actions in relation to the visits are hardly determinative to support that the parties were even living together, let alone being in a "marriage-like" relationship.
- [63] The Peters family is tight-knit and the various members lived in the same community (Abbotsford/Chilliwack) and often in the same household for extended periods of time. Ms. Peters had close relationships with all of her children who she spoke to, communicated with and saw very frequently.

- [64] Ms. Peters' evidence as to the living arrangements in the January 2014-September 15, 2019 timeframe is supported by all her family members who testified. Bradley was living with her at Maclure Road in 2015/16 and at Signal Court from May-August 2018. He described that Mr. Skawski "visited" Ms. Peters at her Abbotsford homes in that timeframe. Scott also lived at Signal Court from late 2018-early January 2019, and describes that Mr. Skawski did not live there and that he only saw him about once a month when he visited. Michael and Ashley moved in with Ms. Peters for two years from spring 2015-2017; Maclure Road first and then Signal Court. Michael denies that Mr. Skawski lived with his mother and says that Mr. Skawski lived in Calgary at that time and that he visited every 2-3 months.
- [65] Lyndsay said that Mr. Skawski was not living at either Maclure Road or Signal Court (the latter being where she was working for RYSE starting in summer 2018). Lyndsay had many interactions with Mr. Skawski when they were both working for RYSE and she says that Mr. Skawski would work remotely from Calgary at times and he would be present in Abbotsford only when he was visiting Ms. Peters.
- [66] I find as a fact that during the period of 2014/2015 and September 2021, the parties did not live together, but maintained separate residences for which each remained responsible, including financially.

Parties' Relationship

- [67] I accept that the parties' relationship throughout 2014-2021 was a sexual one when they did see each other. Nevertheless, at least from Ms. Peters' point of view, it was not understood as a monogamous one when she had another sexual encounter while on vacation. When Mr. Skawski suggested that he may have had an encounter with a woman in Calgary when he was inebriated, Ms. Peters was not concerned.
- [68] Mr. Skawski describes that he and Ms. Peters were using loving language with each other, including in front of others, such as referring to each as "babe" and stating "I love you". He says that they introduced themselves as "life partners". These types of argument are reminiscent of arguments presented in motor vehicle accident cases where snapshots of people smiling are said to be evidence that they are not injured. Neither are particularly persuasive as independent proof of anything. In my view, Ms. Peters' explanation is one more in accord with the overall circumstances in describing the early days of a new relationship and the exuberance and excitement that comes with it. I accept Ms. Peters' evidence that she landed on the term "partner" because she considered that it was juvenile to call Mr. Skawski her "boyfriend" given their age.

- [69] Mr. Skawski also says that he was very involved with the Peters family, in terms of Ms. Peters' parents and her grandchildren, and that he was referred to as the parents' "son" and "Grandpa JJ". I also accept Ms. Peters' evidence that the personalized names that some members of her family gave to Mr. Skawski are nothing more than the family trying to find a natural and "nice" means of describing his status within the family, including by her young grandchildren.
- [70] Further, I accept Ms. Peters evidence that, at some point, the "fun" in their relationship waned and it began to devolve into something that was often fractious and unhealthy. She described a lot of fighting and tension in their relationship. Ms. Peters says that her relationship with Mr. Skawski was rocky and tumultuous most of the time and that they fought often, with screaming and yelling. She says that they broke up often in the period leading up to September 2019. Mr. Skawski denies this saying that they had "rough patches" but they never broke up.
- [71] Bradley also describes that the couple had frequent fights and broke up. He describes that was "toxic" and "contentious" and that Ms. Peters was very unhappy. Many of Ms. Peters' family members were more and more concerned for Ms. Peters, as they saw her become increasingly unhappy. However, the fighting was not simply between Ms. Peters and Mr. Skawski but also marred Mr. Skawski's relationships with other members of the family, such as Lyndsay, Amy and Danielle.
- [72] The evidence of Michael, Lyndsay, Bradley and Scott was consistent as to how they described Mr. Skawski's behavior and how he affected not only Ms. Peters, but their family more generally.
- [73] Bradley says that, from the start, Mr. Skawski's presence in their lives came with much chaos. Bradley describes Mr. Skawski as "argumentative, belittling, belligerent, rude and condescending" and that Mr. Skawski was often inebriated. He describes that he and Amy did not have any relationship with Mr. Skawski and that they simply tolerated him for Ms. Peters' sake.
- [74] Scott and Michael had the same observations of the couple's relationship. Michael also described lots of fighting and yelling in the open and that Mr. Skawski's involvement in the Peters family was a "disaster" and "insanity". Scott observed fighting and tension. Michael said that Mr. Skawski was a "very challenging person to be around".
- [75] Lyndsay shared her brother's and uncle's view of Mr. Skawski's personality and its effect upon the family's dynamics. Lyndsay describes that Mr. Skawski often acted in a manner to try to "split the family apart" and that he was "poison to our family". By Lyndsay's account, Mr. Skawski's behavior was also present in his working relationship with RYSE staff, which Lyndsay described as "aggressive, arrogant, belittling and condescending".

- [76] In the January 2014-September 15, 2019 timeframe, the parties listed their marital status on their tax returns as "single" and declared their respective residences as their principle residence. Mr. Skawski says that was done on the advice of his accountant for tax purposes.
- [77] Mr. Skawski also suggests that the ring Ms. Peters gave him in December 2016 has special significance to their relationship. However, I accept Ms. Peters' evidence that she bought jewellery while she was in Bali and gave it to her family as gifts and that this included the ring she gave to Mr. Skawski. Both parties agree that no mention of marriage accompanied the ring.

Financial Arrangements

- [78] Beginning in 2017, JRS's revenue began declining. It is not entirely clear why although Mr. Skawski confirms that he wasn't spending much time on company matters, since he was busy in BC, including working for RYSE. Mr. Skawski confirms that he alone made the business decisions relating to JRS. I accept Ms. Peters' evidence that she never asked Mr. Skawski to disregard his interests and activities in JRS for her benefit.
- [79] Ms. Peters decided to purchase the Farm in spring 2018. The initial intention was to use the Farm as an investment property in RYSE's business. This purchase was in addition to the other property purchases by the parties that were for investment purposes, being Knight Road, the Nicaragua Property, The Topsy Oyster, the Priceville House mortgage and the Barrière Property. Mr. Skawski was initially supposed to be an owner of the investment property on Lefevre Road, but Ms. Peters alone decided to purchase it herself in 2014 since they were only dating at that time and she wasn't sure where the relationship was going.
- [80] However, the decision as it related to RYSE using the Farm did not pan out and Ms. Peters decided to keep the Farm herself and renovate it. She says that the purchase was in their joint names as an investment and with the idea that their dating relationship would advance to the point where they lived together at the Farm. They began doing renovations after the purchase closed in July 2018.
- [81] Mr. Skawski describes that he did various work at the Farm for the renovations. I accept that he did some work and participated in some decisions; however, that is perfectly understandable since he was a part owner of the Farm. Nevertheless, I accept the evidence of Ms. Peters that she covered all of the expenses for the purchase, and Mr. Skawski said he would repay her when the Calgary House was sold. In addition, Ms. Peters hired a contractor, Jared Kulmatycki, and later Bradley, to work on the renovations and that she made all significant decisions regarding the renovations, as confirmed by both Mr. Kulmatycki and Bradley. Ms. Peters also paid for all of the costs of the renovation to the Farm.

- [82] I find that Mr. Skawski's assertions as to the extent of his involvement in the Farm renovations, as with his other assistance on various projects and properties, is an exaggeration. Frankly, the same can be said for Mr. Skawski's contributions to the other properties that they purchased together, in Barrière, Nicaragua and the New Brunswick property and interests.
- [83] Mr. Skawski makes much of the fact that he also contributed to Ms. Peters' solely owned properties, such as Pinantan Lake, Maclure Road, Mission House and Signal Court, and Ms. Peters' parents' property in Logan Lake. He also assisted various Peters family members in fixing their vehicles. However, I do not see that his voluntary contributions to these renovations and efforts amount to anything more than what many people informally do for others, including while they are in a dating relationship. The evidence is that formal contracting arrangements were in place for most of the renovations; in addition, many other people assisted informally with the various renovations of the properties, including Signal Court.
- [84] Mr. Skawski emphasizes that he was not paid for all this work. I agree that is the case, but one would not normally expect that type of transaction in these circumstances where people are simply helping others in their lives and are happy to do so.
- [85] It is clear that Ms. Peters also did many things for Mr. Skawski for which she did not demand compensation, such as helping him in respect of his renovations of the Calgary Home and in discussing business issues relating to JRS.
- [86] At all times, despite this type of assistance, the parties' finances remained separate in that Ms. Peters paid for all of her expenses (including for renovations) and Mr. Skawski did likewise, save for some minor costs.
- [87] The parties took separate vacations. Ms. Peters in particular took many international vacations. Mr. Skawski says that he was invited to come along but he often could not afford it. Ms. Peters says that she preferred to travel alone or with her family and not Mr. Skawski, particularly after she considered he had made racist comments to the locals in Bali during one such visit.
- [88] When the parties did travel or vacation together, both ensured that the costs were specifically allocated and paid for by each party with precision to the penny.
- [89] The same rationale applies to the work that Mr. Skawski did for RYSE. I acknowledge that Mr. Skawski did assist RYSE on IT matters. He and Ms. Peters talked about some business matters about RYSE from time to time. However, in late 2017, he requested compensation for his services through JRS and Ms. Peters agreed that was appropriate. In other words, Mr. Skawski's voluntary contributions stopped and a commercial relationship began by agreement of the parties until Mr. Skawski was fired by Lyndsay on behalf of RYSE in late April 2021.

- [90] At bottom, Mr. Skawski's contributions in this timeframe cannot be characterized as anything more than his willing involvement and assistance in completing various work required on the properties they owned together and also, the property that Ms. Peters solely owned.
- [91] In April 2018, when the parties' offer to buy the Farm was accepted, Ms. Peters was clearly aware that their joint purchase of the Farm and their intention in living together there would raise the stakes of their relationship to include more intertwining of their lives and finances.
- [92] Beginning in June 2018, Ms. Peters began indicating to Mr. Skawski that she wanted a co-habitation agreement in place before they advanced their relationship beyond a long-distance dating arrangement. Specifically:
- a) In June 2018, she presented Mr. Skawski with a draft that she had prepared without legal advice and that she obtained from "Legal Depot". That draft provided that "the Parties' common-law relationship began or would begin on approximately September 1, 2018". I accept Ms. Peters' explanation that this was before she decided to do the renovations at the Farm and was the anticipated time for both of them to move in. In substance, the agreement provided that their separately owned property and debts would remain separate and that the jointly owned property would be owned in accordance with their respective investment. Both parties waived any right to support. Ms. Peters anticipated that each of them would take the document to their respective lawyers and have a proper document prepared.

Mr. Skawski acknowledges that he was aware that Ms. Peters wanted to protect her assets. Mr. Skawski says that he told her that it was not necessary and that it was "too late" since he had assisted with all of the properties and "sacrificed" his business in JRS. He said he discarded the agreement;

- b) In March 2019, Ms. Peters again raised the matter of a co-habitation agreement. The draft agreement referred to the parties having commenced a "common-law relationship" that began or would begin on approximately June 1, 2019. Again, this date was based on when Ms. Peters anticipated the renovations at the Farm being completed so that they could move in. This time, Mr. Skawski said he would sign it, but he never did; and
 - c) Finally, in July 2019, Ms. Peters presented a co-habitation agreement to Mr. Skawski in anticipation of moving into the Farm. Again, Mr. Skawski refused to sign.
- [93] I find the presentation of these co-habitation agreements by Ms. Peters as supportive of her evidence that she had no intention of entering into a committed long-term relationship with Mr. Skawski without this financial protection in place.
- [94] At all times in this period of time, the parties kept their personal finances separate, save for one joint credit card which was cancelled in January 2020. For example, proceeds from sales of properties were placed in their separate bank accounts, and were later dealt with solely by that party. This included the proceeds that Mr. Skawski received in the sale of the Calgary Home, which he used to pay his own debts. Ms. Peters made her own financial decisions

regarding the properties in her name and dealt with those properties and any proceeds without any consultation or agreement of Mr. Skawski. Ms. Peters and Bradley sold Maclure Road in 2016 and she made this decision without consultation with Mr. Skawski. She alone received and dealt with her share of the proceeds. This aspect of their relationship is indicative of the nature of their relationship as non-"marriage-like": Dey at para. 237.

- [95] Both of the parties were solely responsible for the expenses relating to their separate homes during this time.
- [96] The parties maintained a joint bank account to address revenue and expenses for their jointly owned investment properties, such as Knight Road, the New Brunswick properties and the Priceville House mortgage.
- [97] There were other exchanges of monies between the parties from time to time, also indicative of the separation of their financial interests. At certain times, RYSE would borrow money from Mr. Skawski for payroll, although the funds were always repaid. Mr. Skawski also paid for the down payment on Knight Road and the Nicaragua Property, which Ms. Peters later repaid.
- [98] Mr. Skawski's evidence as to the amounts he advanced for Ms. Peters' benefit was, at times, infused with comments suggestive of him having made such "sacrifices" for Ms. Peters' benefit. His self-serving remarks--for example, about not being paid interest or losing out on investment opportunities regarding the Nicaragua Property--stand in distinction to the fact that he had substantially benefitted financially from Ms. Peters' largesse without his mention and without similar sentiments being advanced by her, at least yet. This is particularly so in relation to the Farm, as I will discuss below.
- [99] I cannot conclude that Mr. Skawski's assistance to Ms. Peters, whether financial or otherwise, is supportive of the couple being in a "marriage-like" relationship.
- [100] The parties never held any joint investment accounts together. The parties never had joint wills. The parties never engaged in any estate planning together.

Moving into the Farm

- [101] The circumstances relating to the moving in at the Farm are also in dispute.
- [102] Mr. Skawski says that the renovations inside of the house at the Farm were completed in June 2019 and the parties moved in after that time. Ms. Peters denies this and says that they did not move in until September 15, 2019. This is supported by pictures of the interior as of August 2019 which shows no working kitchen. Mr. Kulmatycki confirms that, when he left the Farm in June 2019, no one was living there and significant work, including in the kitchen, was still to be done. Bradley, who was assisting with the renovations into early/mid-September 2019 also confirms that no one was living there and that the kitchen was only finished just before the parties moved in in mid-September 2019.

[103] I also do not accept Mr. Skawski's evidence that the parties moved into the Farm at an earlier time, as it is inconsistent with when Mr. Skawski began moving his personal possessions from Calgary. Mr. Skawski did not begin moving his furniture to the Farm until September 2019. The last trailer of those possessions arrived at the Farm in January 2020, coincidental with the sale of the Calgary Home.

[104] I find as a fact that the parties did not move into the Farm until September 15, 2019, consistent with Ms. Peters' evidence as to when the renovations were completed and the move-in could be done.

Summary Discussion

[105] I have considered all of the above facts, although none is determinative of the question before me.

[106] In considering the matter holistically, as required, I conclude that the parties' relationship up to September 15, 2021 was that as alleged by Ms. Peters: namely, that the couple were engaged in a long-distance dating relationship that involved a sexual relationship. Both parties moved between their respective homes in Calgary and Abbotsford from time to time to visit each other. Their joint lives--both social and in terms of their efforts on behalf of each other--were centered around the time when these visits took place.

[107] Otherwise, they maintained their independent lives, particularly from a financial point of view. I acknowledge that the parties purchased and invested in some property together--i.e., Knight Road, the Nicaragua Property and in New Brunswick--although I conclude that their joint intention in doing so was for investment purposes and not indicative of anything more.

[108] I agree that the parties were talking during this period about future plans, including that they were to move into the Farm when the renovations were complete. This is not unusual in my view and is not determinative. Clearly, the parties thought that there was a possibility that their relationship might develop into something more. In that respect, the comments in Takacs at para. 57 are apt, where Justice Newbury discussed that future plans do not equate with reality, stating:

All of this evidence is consistent with the type of relationship many couples have while attending school and considering marriage eventually. They may discuss their future lives together, but one can surely have such discussions and make such "plans" without their becoming a reality.

[109] During this interim period (July 2018-September 2019), I cannot discern any change or evolution in the pattern of the parties' relationship. I cannot discern any intention by either party to advance their relationship to a "marriage-like" relationship that involved the level of commitment one expects of such a long-term relationship.

- [110] Despite the parties' purchase of the Farm in July 2018, I find that their relationship did not change in terms of moving toward a "marriage-like" relationship. Ms. Peters made the decision to retain the Farm for her own use, rather than use it in RYSE's business. She invested all the funds for the purchase and made all the decisions, and paid all the costs of the ensuing renovations over the next year or so.
- [111] All of Ms. Peters' children described the Farm as her property, consistent with Ms. Peters being the driving force behind the purchase and the renovations.
- [112] Ms. Peters says that she decided that she would proceed with the purchase of the Farm with Mr. Skawski as a venue for them living together so as to see if it would lead to a long-term committed relationship. This was the case despite the friction in their relationship and her concerns about Mr. Skawski. Another of her concerns was the difficult, if not non-existent, relationships between Mr. Skawski and her family members, which was an element of disharmony in what was otherwise a close knit and cohesive family group.
- [113] I accept Ms. Peters' evidence that she was hesitant about moving into the Farm with Mr. Skawski but felt that was the only way that they could see if they were truly compatible to the point of them reaching a mutual decision to continue in a committed long-term relationship that would include marriage. She states that she was aware of issues arising from them living together. She understood that the time during which they lived together was significant in terms of the two-year provision in the FLA (which she arrived at without legal advice and now acknowledges is not the legal test) and she wanted to ensure that she was not going beyond that date so as to expose her assets to sharing with Mr. Skawski. She considered she had two years to decide whether she had a future with Mr. Skawski.
- [114] This evidence of Ms. Peters rings true given my observations of her as a person on the stand. She very much wanted a long-term relationship so that she could grow old with a companion in her life. In that respect, I find that Ms. Peters overlooked many of the increasing difficulties in the couple's relationship, which is a not uncommon human failing.
- [115] In short, Ms. Peters thought she had to give the relationship a chance by moving to a living arrangement with Mr. Skawski that would truly reveal whether there was a possibility of the couple moving to a long-term committed relationship that she knew, at least from her perspective, had to lead to marriage.

September 15, 2019-September 10, 2021

- [116] Despite Ms. Peters' hopes for the future, after they moved into the Farm, her concerns about the relationship with Mr. Skawski only increased.

Refusing to Share Costs

- [117] As was the case with their previous sharing of the costs of their joint investments, it was always the intention that the couple would also jointly share the expenses relating to the Farm. However, despite Mr. Skawski moving into the Farm and acquiring half of the title, his contributions did not arrive, which was a point of friction between the parties.
- [118] Ms. Skawski did not contribute to the down payment of \$440,782 which Ms. Peters paid entirely. As would be confirmed in Ms. Peters' later September 12, 2021 email. Mr. Skawski initially did not pay any bills, including for the mortgage and food. I accept Ms. Peters' evidence that Mr. Skawski only started paying \$2,300 per month toward the mortgage in late 2020 when she threatened to break up with him. Further, Mr. Skawski only paid Ms. Peters \$60,000 when the Calgary Home sold, not the half of the down payment that he owed her. When Ms. Peters asked about the rest, he yelled at her, stating that was all she was going to get and then, he stormed off. In addition, almost the entirety of the costs of the extensive renovations to the Farm (\$270,000) were paid by Ms. Peters. Mr. Skawski refused to pay for half of those expenses.
- [119] The parties continued to deal with their separate property as they and they alone wished. For example, Ms. Peters sold Signal Court in late 2020 without any consultation with Mr. Skawski since she considered it her own personal affair. She dealt with the same sale proceeds in the same manner. In addition, as before, the parties paid the expenses relating to their own properties.

Growing Rift

- [120] In this period from September 15, 2019-September 10, 2021, the tumultuous and rocky nature of their relationship and Mr. Skawski's behavior toward Ms. Peters continued, if not escalated, again including as observed by Ms. Peters' family members, such as Bradley, Michael, Lyndsay and Scott. Ms. Peters says that she confided her concerns to her children and brother.
- [121] I accept Ms. Peters' evidence that the scales did not begin to fall from her eyes about the true nature of the couple's relationship until after the parties have moved into the Farm. By that time, there had been an increase in the intertwining of their financial matters in respect of their joint investments, which only increased the potential difficulty of severing those connections.
- [122] Ms. Peters says that Mr. Skawski was increasingly and often dismissive or critical of her personal and business decisions, including in front of others, which she found denigrating. She describes being depressed and having waning self-esteem. Ms. Peters says that on three occasions, she was fearful of Mr. Skawski given his volatility anger and aggressive speech. No physical violence did occur, however.

- [123] Ms. Peters' description of the state of her relationship with Mr. Skawski has some support in emails that she wrote. On February 12, 2019, she prepared an email (that was not sent) describing their "ongoing conflict" and "tension" and that Mr. Skawski was quick to "attack" her. She referred to their relationship ending. The fact that this email was not sent is indicative of her change of heart to continue.
- [124] Ms. Peters says that, despite their volatile and deteriorating relationship into late 2019, she was "stuck" because the COVID-19 pandemic hit and her options were limited in terms of dealing with the situation. It was only in mid-2021 when restrictions eased. She was paralyzed to a degree by the fact that they had shared financial interests that would take some effort to disentangle.
- [125] Mr. Skawski's personal relationship with Ms. Peters' family members during the September 15, 2019-September 10, 2021 timeframe also continued to be strained.
- [126] Mr. Skawski's difficult behavior in relation to RYSE continued. In one incident in July 2020, Mr. Skawski called staff members "fucking idiots".
- [127] The events in late April-May 2021 were significant and a time of great upset in the entire Peters family.
- [128] Firstly, a rift developed between Ms. Peters and Lyndsay, who fired Mr. Skawski as a result of what she described as his unacceptable email to Danielle which caused her to quit her role at RYSE. Ms. Peters asked Lyndsay to apologize to him, describing him as her "partner". Lyndsay accommodated her mother in extending this apology, including telling Mr. Skawski that he was "grandpa to my babies", which says she did to "lay it on thick" for her mother's sake. Secondly, a rift developed between Ms. Peters and her sister, Danielle, after Danielle resigned from RYSE as a result of her friction with Mr. Skawski.
- [129] On May 5, 2021, Mr. Skawski emailed Ms. Peters with a diatribe about him being considered an "outsider" of the family, following his firing from RYSE.
- [130] Ms. Peters was distressed by all this conflict, which was affecting her loving relationships with her family members.
- [131] All of these exchanges between the parties, including the constant fighting and unhappiness in the relationship, support to some degree that there were serious questions in both parties' minds about their level of commitment and their long-term future: Kroetsch at paras. 61-65.
- [132] After May 2021, Ms. Peters confided to Lyndsay that she wanted to end the relationship, however, she wanted to get a co-habitation agreement signed by the parties to buy herself "more time" to sort out things with Mr. Skawski. Lyndsay confirms being advised by her mother to this effect.

[133] On June 17, 2019, Mr. Skawski sent Ms. Peters an email referring to "something is wrong with us".

Co-habitation Agreement

[134] In summer 2021, Ms. Peters knew that the two-year deadline per the FLA (which she equated to living together) was coming up in September 2021. At that time, Ms. Peters says that her romantic or sexual relationship with Mr. Skawski was also waning. She decided that she would only proceed with the relationship if she had a co-habitation agreement in place, just as she had tried to secure one in 2018 and 2019. Her children were made aware of her plans.

[135] In July 2021, Ms. Peters again discussed the latest draft of the co-habitation agreement with Mr. Skawski, which was updated to reflect property transactions since mid-July 2019. This draft includes the "Background" statement that the parties were:

"presently resid[ing] in a common-law relationship, although there is no present intention to marry.

[136] Ms. Peters describes that this language was used given her conflation of living together with the concept of a common-law relationship. I accept her evidence and nothing turns on her use of "common-law relationship".

[137] I find as a fact that Mr. Skawski agreed at that time to discuss the matter of the co-habitation agreement in September 2021. Ms. Peters accepted that suggestion. In truth, Mr. Skawski had no intention of signing any such agreement and, as he had done before, he was simply trying to put Ms. Peters off the topic.

[138] Around the time of Ms. Peters' birthday (August 17, 2021), Ms. Peters told her children that she was separating from Mr. Skawski. Bradley, Lyndsay and Michael confirm this advice from their mother.

[139] This remained the state of affairs until September 10, 2021.

[140] In considering the entire background and various circumstances relevant to the period of September 15, 2019-September 10, 2021, I conclude that the couple's relationship at the Farm was simply as a couple living together, and neither had any intention to consider it as a "marriage-like" relationship. While the parties' living arrangements had changed when they moved into the Farm, essentially the circumstances of their relationship had remained the same, particularly as to their financial affairs: Dey at para. 237.

[141] In summary, after they began living on the Farm, the parties' mutual intentions as to their relationship had not moved on to any higher level of commitment.

[142] This was particularly so from Ms. Peters' point of view who, from 2018 (when the Farm was purchased), had serious concerns about the future of the relationship. Those concerns were magnified in the months, if not years, leading to spring 2021. By August 2021, Ms. Peters' had given up. She decided that she would only continue in her relationship with Mr. Skawski with a co-habitation agreement in place, while she figured out a strategy to disentangle herself from him.

[143] I find that the comments in Dey resonate with the facts here:

[239] ... I have kept in mind the number of potential indicators of a marriage-like relationship that have been checked off by the evidence on Ms. Dey's behalf, especially in the domestic realm, but I remain unconvinced that their mutual intentions during the relevant period were necessarily the same as their future plans, and care must be taken not to conflate the two.

[240] For these reasons, I am unable to find that a marriage-like relationship existed between the parties at any point. I think that Ms. Dey became the sort of live-in girlfriend that Mr. Blackett described, with plenty of hope for the future, but that the intention to live in a relationship similar to marriage, of lengthy, indefinite duration was never reached.

[144] In that event, I find that the parties' were not in a "marriage-like" relationship from the time they moved into the Farm on September 15, 2019 until matters came to a head on September 10, 2021.

ISSUE RE DATE OF SEPARATION

[145] The parties significantly disagree on the date of their separation.

Law and Case Authorities re Date of Separation

[146] Section 3(4) of the FLA provides:

- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[147] In *Gupta v. Kumar*, 2023 BCCA 106, the court summarized the legal test to determine the date of separation, as follows:

[13] Whether parties to a marriage-like relationship have separated is a question of mixed fact and law. It requires the application of the legal test to the facts as found by the trial judge: *Der Woon v. Zadorozny*, 2020 BCCA 95 at para. 11. The legal test for separation under the FLA requires consideration of a range of factors, including whether the generally accepted characteristics of marriage continue following a physical separation: *Nearing v. Sauer*, 2015 BCSC 58 at para. 56. Generally, if the parties have physically separated and at least one of the parties has evinced the intention of living separate and apart and has taken steps consistent with that intention, separation for the purposes of the FLA will be established: *Dhillon v. Dhillon*, [1998] B.C.J. No 823 (C.A.), affirming the trial decision of Bauman J., as he then was. It is not necessary that both parties agree to separate, as long as at least one of the parties has demonstrated their intention to separate by word or action: *Cole v. Cole*, 2016 BCSC 716 at para. 30, citing *Dhillon* at paras. 6-8; *Nearing* at para. 54. Spouses may be separated despite living in the same residence: FLA, s. 3(4).

Discussion

[148] This issue requires some examination of the events leading up to September 10, 2021, as set out above, and the events between the parties between early September 2021 and May 2022.

[149] I will not repeat what is already stated above. In substance, by summer 2021, Ms. Peters had formed the intention to separate from Mr. Skawski and she only intended to delay the matter if she secured a co-habitation agreement that would protect her assets.

[150] On September 10, 2021, the parties had a discussion about the co-habitation agreement, as they had agreed to do in July 2021. Mr. Skawski then read the document. He refused to sign it and he ripped it up. A heated discussion ensued, with the parties stating to each other words to the effect that they were "done".

[151] Ms. Peters then called a lawyer for legal advice about what to do. That advice included that she should record the events of September 10, 2021, including their mutual agreement to end the relationship and that Mr. Skawski was free to pursue other relationships as he wished.

[152] As a result of receiving that legal advice, on September 12, 2021, Ms. Peter sent an email to Mr. Skawski. She stated:

I don't know how to start this letter, it's one that I have written many times before but never sent. Jamie, I wrote an agreement when we moved in together and revamped it months ago and redid it weeks ago, printed it off and left it for you. You refused to read or regard it as anything. On Friday the 10th, you read the proposed co-habitation agreement and you ripped it up and said it was over. You said "I'm done," which I replied "ok, were [sic] done".

You stated that you wanted us to be kind until your family left and I agreed. They are leaving tomorrow morning and I want you to know that I agree, we are done relationally.

You ripping up the agreement was an aggressive act letting me know that you have no intention on keeping to your word. You agreed two years ago that you would sign an agreement and then one year ago you promised and then in June we casually agreed that September was the month to complete it. I do believe you were placating me and trying to push me off, I see now that you have zero intention on agreeing to anything.

I am asking you to move out asap and we must terminate our mutual accounts and determine the splitting of assets.

We have many investments that are enmeshed and need to be divided as well as others that are divided already as a partnership.

Jamie, as of now you are free to pursue another relationship and establish your life as an independent individual. This saddens me, but it is the only outcome that I see as viable as you have made it clear that you have no intention on signing or negotiating any agreement.

I wish you well and hope you find your way in wellness.

[Emphasis added.]

[153] Mr. Skawski says that the reference in the email to him being "done" was in relation to the co-habitation agreement. In the overall circumstances, even accepting his evidence, which I do not, Mr. Skawski's intention in saying "I'm done" is not determinative. The necessary intention need not be mutual or shared between the parties: Gupta at para. 13, citing Cole v. Cole, 2016 BCSC 716 at para. 30.

[154] In considering all of the above circumstances, in my view, the only reasonable conclusion is that, upon Mr. Skawski again refusing to sign a co-habitation agreement, Ms. Peters acted on her earlier stated intention and she ended the relationship on September 10, 2021. This conclusion supports that at least one party (Ms. Peters) formed the intention to separate as confirmed in her later email. This satisfies this aspect of the test.

[155] I also find that the words spoken by Ms. Peters on September 10, 2021, as confirmed and later emphasized in her email stand as a "clear statement" or communication to Mr. Skawski of her intention, similar to the facts considered in Nearing v. Sauer, 2015 BCSC 58 at paras. 44-45, 56 and 59.

[156] Mr. Skawski does not deny the discussion on September 10, 2021, nor that he received the September 12, 2021 email. However, he says that they talked about the email in the morning and that Ms. Peters said that she sent it when she was tired and angry. Mr. Skawski says that Ms. Peters then said he could forget about it, confirming that she had decided not to break up with him after all. Mr. Skawski denies that anything came of their discussion about the co-habitation agreement and the email.

- [157] Ms. Peters' denies that she "walked back" her intention to separate as stated in her email and that she agreed to continue in the relationship. To the contrary, she says she accepted that the relationship was over, just as she stated in the email, and that she acted accordingly.
- [158] All of the authorities confirm that, after having communicated an intention to separate, the party doing so must take acts or steps consistent with that intention: Gupta at para. 13, citing Cole at para. 30. In Nearing, Justice Fleming discussed what actions might represent a continuation of an intention to separate:
- [56] In Sachdeva v. Sachdeva, 2013 BCSC 313 [Sachdeva], this Court took a similar approach, relying primarily on Rose v. Guiguet, 2008 BCSC 1225, where Madam Justice Dorgan looked at both the husband's intention to live separate and apart and his actions. Typically when the parties dispute the date of separation, the court's analysis focuses on the generally accepted characteristics of marriage including the intention to remain married, having sexual involvement, carrying on activities in public, sharing financial resources and sharing significant family events: Sachdeva at para. 87. The court will also consider a range of other factors, including a clear statement by one of the parties of his or her desire to terminate the relationship. Sexual involvement, or lack thereof, is not conclusive: Newth v. Booth, 2011 BCSC 317 at para. 17.
- [159] Mr. Skawski relies on Y.T.C. v. J.V.C., 2018 BCSC 773, where Justice Murray also gave examples of indicators to support a cessation of a relationship, including: the parties not socializing together; not being intimate; one of the parties attending important events on his own; dating other people; one person sleeping on the couch for one; communicating that decision to others; and, leaving the house and not returning until the other person had moved out: paras. 34-41.
- [160] More recently, this approach to considering the various circumstances of the parties lives after the alleged date of separation was confirmed in Der Woon v. Zadorozny, 2019 BCSC 2004 at paras. 18-20, aff'd Der Woon v. Zadorozny, 2020 BCCA 95 at paras. 8-10.
- [161] Mr. Skawski denies that Ms. Peters asked him to leave the home. Ms. Peters says that she asked Mr. Skawski to leave, and he refused, stating it was "his home". Ms. Peter also refused to leave because it was "her home" and on the advice of her lawyer.
- [162] The law is clear that it is not necessary for the parties to have physically separated to still be considered as separated. In S.A.H. v. I.B.L., 2018 BCSC 544, Justice Shergill stated:
- [49] A physical separation is not necessary; parties can live in the same residence and still be considered separated. To determine the date of separation, the court may look at the pre- and post-separation behaviour of the parties: see Rose v. Guiguet, 2008 BCSC 1225; Velisek v. Velisek, 2000 BCSC 557; Greaves v. Greaves (2004), 4 R.F.L. (6th) 1, [2004] O.J. No. 2522 (Ont. S.C.J.); and Campbell v. Campbell, 2007 ABQB 637.

- [163] Bradley and Lyndsay stated that, in summer 2021, they spoke with their mother about her intention to separate. Lyndsay later confirmed to Bradley in early September 2021 that it had occurred, as her mother had advised. Scott also learned from Ms. Peters that the couple had separated.
- [164] Bradley confirms that he was aware that Mr. Skawski was not physically moving away from the Farm, despite his mother's request. He described that the situation at the Farm was "not good" for the remainder of 2021 and into 2022. Bradley describes seeing Mr. Skawski there and feeling very uncomfortable. Michael, Lyndsay and Scott had the same experience.
- [165] Ms. Peters says that she stopped cooking for Mr. Skawski.
- [166] The parties' evidence pertaining to their sex life post-September 2021 is also in dispute.
- [167] Ms. Peters describes that they continued to share the same bed, but only because there was only one decent bed in the house and each refused to decamp to the spare uncomfortable bed. However, Ms. Peters says that she put a blanket or barrier in the middle of the bed to indicate that she was not interested in continuing to have any physical or sexual contact with Mr. Skawski.
- [168] Mr. Skawski says the couple continued to live at the Farm together and they shared their bedroom and continued to engage in sexual intercourse until about January 2022, when the sex stopped because of his medical conditions. Ms. Peters denies that is the case.
- [169] Ms. Peters confirms that post-September 10, 2021, they had sexual intercourse on two occasions: firstly, when she gave in to his continued insistence that they have sex; and, secondly, when Mr. Skawski forced himself on her despite her clear refusal to have sex and her verbal communication to him to the effect of "No".
- [170] I accept that these two, and only two, sexual encounters took place. However, the fact that a couple continues to have sexual intercourse, even on a regular basis, is not determinative that their relationship is continuing: S.A.H. at para. 50; S.C.A. v. W.C.C., 2023 BCSC 557 at para. 71(b). It is also beyond dispute that a party forcing himself on another party to have sex cannot be taken to be indicative of the latter party having agreed to a return to a normal relationship.
- [171] Mr. Skawski refers to various communications between the parties post-September 12, 2021 which he says confirms that their relationship was still ongoing. In many of those communications, Ms. Peters does not evince any animosity or hostility toward Mr. Skawski and she continued to refer to him in loving terms. Text messages from December 12-13, 2021 are in evidence, that include Ms. Peters saying "love you" and Mr. Skawski calling her "babe".

- [172] This evidence must be considered in the context of the history of the parties' relationship, particularly after September 15, 2019. Based on the evidence of Ms. Peters and her witnesses, Mr. Skawski was described as an angry, aggressive, self-involved individual, who was disparaging and verbally abusive towards Ms. Peters and many others throughout the years.
- [173] I have considered all these post-September 10, 2021 communications and conclude that Ms. Peters' statements were nothing more than her trying to maintain a calm atmosphere while she navigated a tense and difficult co-existence with Mr. Skawski while she was trying to get Mr. Skawski to leave the Farm. The evidence at this trial well confirms that Mr. Skawski's character is one of anger, volatility and acting out, and that Ms. Peters had been on the receiving end of that behavior for some years. She was fearful of what Mr. Skawski might do arising from her ending of the relationship and considered that there was the possibility of Mr. Skawski reacting in a hostile manner, just as he had done many times before.
- [174] I accept Ms. Peters' evidence that she was doing her best to act personably toward Mr. Skawski so as not to trigger that anger and volatile behavior, that would have made their co-existence even more strained. Her reaction must be viewed through the lens of her experience with Mr. Skawski in what was a very difficult situation, as was noted in S.C.A.:
- [64] The actions of a party who has been subjected to physical or emotional abuse should be viewed through the lens of the abuse that has occurred, since the law recognizes that there is no typical behaviour for a party that has experienced abuse: *L.M. v. K.M.*, 2022 BCSC 689 at para. 280.
- [175] There is also evidence that the parties ceased socializing together post-September 10, 2021. Ms. Peters says that when other family members (including Faye) were about to come over to the Farm immediately after the break-up, Mr. Skawski asked her not to say anything about it and pretend that everything was alright. She agreed to keep the peace.
- [176] In November/December 2021, Ms. Peters went on a family holiday in Mexico; Mr. Skawski was not invited.
- [177] Mr. Skawski asserts that he spent Christmas 2021 at the Farm with the Peters family. The only independent evidence in support is Mr. Skawski's reference to a photograph of Ms. Peters with one of her granddaughters, although it is undated.
- [178] Ms. Peters denies that Mr. Skawski spent Christmas 2021 with her. She says she spent Christmas 2021 at the Farm with her family. As with many aspects of Mr. Skawski's evidence, Michael, Lyndsay and Bradley all confirmed their mother's evidence that Mr. Skawski was not present. Michael said that the family discussed the matter and they all agreed that Mr. Skawski was not welcome.

- [179] Mr. Skawski says that Ms. Peters only asked him to leave the Farm around February 22, 2022 after they spent time together on Valentine's Day. He had purchased a bouquet of flowers and a card for her, which she did not open and which ended up in the trash. Ms. Peters bought nothing for him.
- [180] I have considered the totality of the evidence and find that Ms. Peters' evidence is to be preferred. I accept her evidence and the evidence of Michael, Lyndsay and Bradley which supports that evidence. I reject Mr. Skawski's evidence as to the aftermath of his discussion with Ms. Peters on September 10, 2021, as being implausible and not in accordance with the entire body of evidence before the Court.
- [181] I find that the actions of Ms. Peters are entirely consistent with acting upon her earlier stated intention and decision to separate from Mr. Skawski. She repeatedly asked him to move out of the Farm. She staked out separate zones in their bedroom and bed when it was clear that he would not leave and that he refused to leave their bed. There was only one time when they had consensual sexual relations. Ms. Peters' communicated her decision to her family members that the relationship was over and her children well understood from those discussions and their own observations at the Farm that she was continuing throughout fall 2021 and into 2022 to get Mr. Skawski to leave the Farm. Finally, socialization by the parties with other persons stopped. Ms. Peters did not celebrate Mr. Skawski's birthday in November 2021, she went on vacation without him to Mexico in November/December 2021 and she spent Christmas 2021 with her family only.
- [182] Mr. Skawski's actions throughout fall 2021 and into 2022 appear to be largely based on his continued denial as to state of the couple's relationship. This behavior is consistent with Mr. Skawski's previous behavior in attempting to appease Ms. Peters in the moment, but having no intention of respecting her wishes and simply ignoring her requests in the hopes she would not raise the matter again. It appears that Mr. Skawski only finally realized that Ms. Peters was firm in her decision and he gave up hope given Ms. Peters' reaction to his Valentine's Day presents.
- [183] I find as a fact that the parties ended their relationship on September 10, 2021.

CONCLUSION

- [184] Mr. Skawski has not met his burden in proving, on a balance of probabilities, that he and Ms. Peters were ever in a "marriage-like" relationship.
- [185] In the alternative, at best Mr. Skawski's evidence (which I rejected) would have suggested (not proven) such a relationship sometime after they moved into the Farm after mid-September 2019, although the relationship ended no later than September 10, 2021 (and short of the two-year period under s. 3(1)(b) of the FLA).
- [186] As such, at no time can Mr. Skawski be considered as having been a "spouse" within the meaning of the FLA.

[187] As sought by Ms. Peters, the following consequential procedural orders are granted:

- a) Mr. Skawski's notice of family claim is dismissed;
- b) Ms. Peters' counterclaim is converted to a notice of civil claim ("NOCC") with leave to amend the same within 30 days of the date of the order. This is necessary given that, in that pleading, Ms. Peters seeks various orders concerning the ownership interests in the various properties owned by the parties together and other relief; and
- c) After the timeframe for any amendment of the NOCC, Mr. Skawski may file a response to civil claim in the usual manner and on the usual timelines set out in the Supreme Court Civil Rules.

[188] Ms. Peters is awarded her costs payable by Mr. Skawski in respect of this action to date on the basis of ordinary difficulty.

"Fitzpatrick J."

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