

CANADA / JUDGMENT

Stang v. Stang

2001 BCSC 975

COURT

Supreme Court of British Columbia

DECIDED

29 June 2001

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Source record

2001BCSC0975

Citation: Stang v. Stang Date:

20010629

2001 BCSC 975 Docket:

17662

Registry:

Penticton

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LINDA MAY STANG

PLAINTIFF

AND:

MICHAEL TERENCE STANG

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE SATANOVE

Counsel for the Plaintiff: Mike F. Smith

Counsel for the Defendant: Kathryn J. Ginther

Dates and Place of Trial: June 4, 5, 6, 2001

Penticton, B.C.

- [1] This was a matrimonial action wherein the plaintiff, a wife of 17 years, sought a divorce, division of family assets and spousal maintenance.
- [2] The marriage could be described as a traditional one with the plaintiff shouldering the child rearing and housekeeping responsibilities while the defendant toiled to support the family financially. Neither party accused the other of not fulfilling their respective roles well.

- [3] Unfortunately, the defendant's drinking habits and altercations with the police led to the final break-up of the marriage on November 13, 1992. On that day, the plaintiff told the defendant she wished a divorce and he refused to leave their matrimonial home in Sparwood, B.C. The defendant was drunk and in possession of some hunting rifles. The plaintiff became afraid and left the home. The police arrived. There was a stand-off and ultimately, the defendant was arrested, charged and convicted of threatening bodily harm to a police officer.
- [4] The plaintiff continued to live in Sparwood with the two children of the marriage, then 14 and 16 years old, for another year. She and the children moved to Penticton in November 1993, where she has resided until today.
- [5] As I have said, the marriage was traditional and typical in many respects. When they married on July 26, 1975, the plaintiff was 19 years old with a grade 10 education and the defendant was 25 years old with a grade 12 education. The plaintiff had been working as a flag person at the mine where the defendant worked. This job paid quite well but the plaintiff gave it up when the couple moved to Vancouver so that the defendant could pursue employment as a ship builder. This did not work out and the couple eventually returned to the Sparwood area where the defendant returned to mining.
- [6] When the plaintiff became pregnant in 1977, she and the defendant decided that the plaintiff would stay home to raise the children. When the children reached school age, the plaintiff found work for minimum wage as a cook.
- [7] After the separation, the plaintiff lived off social assistance. In 1995, she found employment as a dietician in a retirement home. Her income tax returns indicated she continued to receive social assistance into 1997. By April 1997, she had secured full time employment with Cherry Hill Retirement Home.
- [8] On April 10, 1997, the plaintiff was injured in a motor vehicle accident. She was diagnosed with fibromyalgia and the prognosis was that she was unlikely to work at all in the near future. The long range prognosis was that she might be able to work part time under optimal conditions.
- [9] In April 2000, the plaintiff received \$186,000 as settlement for her injury claim. \$36,000 of this had already been advanced to her and after other deductions such as legal fees, the plaintiff was left with \$80,000. She spent this on a down payment for a house, payment of bills, restoration of her car and gifts to her children of \$5,000 each.
- [10] In the meantime, the defendant continued to work hard and move up the seniority ladder in his union. He is now a heavy equipment operator and has earned \$92,500 per annum, on average, over the last four years. He owns a house in Hillwood, Alberta where he resides alone.

- [11] Although their marriage, and to some extent their break-up, was typical in many respects there were some unusual aspects to this litigation. The parties had been separated since November 1992, yet neither one took any formal steps toward a divorce or corollary relief until the plaintiff commenced this action in May 1999. There was no separation agreement or any other triggering event in the nine years between separation and trial. Furthermore, the motor vehicle accident was an intervening, tortious event which rendered the plaintiff incapable of employment, perhaps permanently.
- [12] Defendant's counsel relied on these unusual aspects of the case in support of her submission that the defendant was entitled to a reapportionment of certain family assets and that the plaintiff was not entitled to any spousal maintenance.
- [13] The asset picture of this family was not complicated. At the time of separation, they each owned a car, some furniture and their respective CPP. The mobile home in which they lived was registered in the plaintiff's name. The defendant had a pension plan with his employer since 1982. They had four life insurance policies in each of their and the children's names.
- [14] By the time of trial, the mobile home had been sold for \$5,000, which the plaintiff kept along with some of the furniture, her car and her life insurance policy. All four life insurance policies had been converted into shares. The defendant sold the shares from the three policies which he retained after separation, for the sum of \$50,000. The plaintiff had retained the shares from her policy and they were valued at about \$20,000. The defendant continued to hold his pension for which there was no evidence before me as to value.
- [15] At the time of trial, the defendant was earning an approximate income of \$90,000 per annum and the plaintiff had been receiving social assistance for a Level II disability (unable to work full time) in the sum of \$786 per month.
- [16] The plaintiff submitted that the proceeds and shares from the insurance policies, and the defendant's CPP and pension plan should be divided equally in accordance with their value at the date of trial. In addition, the plaintiff sought \$2,500 per month maintenance.
- [17] The defendant agreed with the characterization of the nature of the family assets but submitted that he should keep his CPP and the plaintiff should keep hers. The plaintiff should be made a limited member of the defendant's pension plan as at November 1993, not the date of trial. The plaintiff should keep her shares from the life insurance policy and the defendant should keep the proceeds from the other three life insurance policies. This would be equivalent to a 70/30 division of the life insurance benefits in favour of the defendant. The defendant also submitted that the plaintiff was not entitled to periodic maintenance, but that I could award her \$15,000 of the defendant's share proceeds as lump sum maintenance.
- [18] Therefore, the issues are:
1. Date of valuation and apportionment of family assets; and
 2. Entitlement to and quantum of spousal maintenance.

1. Date of Valuation and Apportionment of Family Assets

- [19] Although the character of an asset as a family asset is determined as of the date of the triggering event, the valuation date may be different having regard to the factors in s. 65 of the Family Relations Act, R.S.B.C. 1996 c. 128. (*Gilpin v. Gilpin* (1990), 29 R.F.L. (3d) 250)
- [20] The court can look to occurrences between the time of separation and trial with a view to choosing the fairest valuation date (*Patrick v. Patrick* (1991), 35 R.F.L. (3d) 382).
- [21] Alternatively, the court can reapportion the parties' presumptively equal share in the asset based on a valuation as at trial. Justice Sinclair-Prowse did this in *Archibald v. Archibald* (2000) BCSC 1219 when she was faced with a sixteen year lapse between separation and divorce. She found that most of Mr. Archibald's contributions towards his pension were made after the parties separated from their eight year marriage. However, she balanced this factor against Mrs. Archibald's economic disadvantage occasioned by the marriage and her child rearing responsibilities.
- [22] In the case at bar, I do not find the same delay between separation and triggering event as existed in *Archibald*, supra. The marriage here lasted 17 years. The separation period was approximately one-half that time. The defendant's contributions to his pension and the life insurance plans after separation were easily balanced by the inability of the plaintiff to increase her working capacity while raising the children. I see no reason to depart from a 50/50 disposition of the defendant's CPP, pension plan and share proceeds. As a corollary of this, I see no reason to value the pension at a date other than the date of divorce which will be the date of this judgment. However, I find the proceeds of the mobile home were also family assets and the defendant is entitled to a credit of \$2,500.

2. Entitlement and Quantum of Maintenance

- [23] The defendant submitted that the plaintiff was not entitled to periodic maintenance on two grounds: 1) unreasonable delay in claiming it; or 2) any economic disadvantage suffered by the plaintiff was caused by the motor vehicle accident and not by the marriage breakdown.
- [24] The question of delay in the context of maintenance is different than in the context of reapportionment of assets. In reapportioning assets, the court is concerned with the fairness of evaluating an asset after a lengthy delay past separation, because any increase in value might be due to the sole effort of one spouse. In considering spousal maintenance, however, the court may deny an application if there has been an unreasonable delay by the claiming party (*Hillhouse v. Hillhouse*, [1992] B.C.J. No. 24009 (B.C.C.A.), *Olsson v. Olsson*, [1992] B.C.J. No. 2516 (B.C.S.C.), *Archibald v. Archibald*, supra). It appears from these cases that the determining factors are the explanation for the delay and the events which have transpired during the delay.

- [25] In the case at bar, the primary explanation proffered by the plaintiff for the delay was a fear of violence from the defendant. The defendant submitted that this was neither subjectively nor objectively reasonable, given the contact and communications with the defendant by the plaintiff during this period. I do not find it necessary to decide whether the plaintiff truly feared her husband or not, because there were sufficient undisputed facts to support another explanation.
- [26] Firstly, the defendant admitted he paid money to the plaintiff, although sporadically, until 1995. He continued voluntarily to provide the children with regular payments for groceries and household expenses. He knew the plaintiff was receiving social assistance and he knew any amounts received by her from him would only decrease those social assistance payments. In essence, they implicitly agreed it was to their mutual advantage for the plaintiff to receive money from social assistance instead of from the defendant. As counsel for the plaintiff submitted, both parties were morally culpable in reaching this arrangement.
- [27] The plaintiff did make attempts at self sufficiency and had just reached the stage of full time employment when she suffered the accident. It was unknown for some time what her final prognosis was. Doctor Offer gave his prognosis in February 2000, by which time she had commenced her action. She did not apply for interim maintenance, but the question of compensation for her past and future wage loss was not answered until April 2000.
- [28] In light of all these facts and the defendant's role in effectively endorsing her delay in seeking maintenance, I do not find the delay should preclude the plaintiff from receiving spousal maintenance if she would be otherwise entitled.
- [29] In determining spousal maintenance corollary to divorce, the court must have regard to the factors set out in s. 15.2(6) of the Divorce Act. The Supreme Court of Canada in *Moge v. Moge*, [1992] 3 S.C.R. 813 clearly directed trial judges that in meeting these objectives under the Divorce Act they should focus their inquiry on the effect of the marriage and its breakdown in either improving or impairing each spouse's economic prospects. Marriage is a joint endeavour and the longer it has lasted, the greater the entitlement to equal standards of living upon dissolution.
- [30] The court in *Moge* suggested that the most significant economic consequence of marriage or its breakdown arises from the birth of children. During marriage, there is the economic disadvantage visited on the spouse who is the primary caregiver. After break-up, there is an indirect cost to the custodial spouse in the form of restrictions on the ability to earn income and progress in the job market. So when the result of a broken down marriage is to leave a former spouse in a continuing disadvantage because of child rearing responsibilities in the past and into the future, while the other spouse continues to reap economic advantage, then the compensatory approach to spousal maintenance may require long term support or an alternate sharing of wealth.

- [31] Tempering this approach to relieving economic hardship arising from the marriage or its breakdown is the requirement of each spouse to become self sufficient. However, the court in *Moge*, supra, recognized that this may not be achievable after a long marriage.
- [32] In the case at bar, there was the complicating factor that the plaintiff's economic hardship, at least in part, arose from the motor vehicle accident, not from the marriage breakdown. In addition, the defendant submitted that the plaintiff had been compensated for her loss of earnings but had chosen to spend her money unwisely. The defendant also submitted that the plaintiff had made unsatisfactory efforts in the past and present to find suitable employment.
- [33] Counsel was not able to put before me any authorities dealing with the effect of an unexpected, intervening, tortious event which impacts on a spouse's earning capacity. There are cases such as *Archibald*, supra, or *Bracklow v. Bracklow*, [1999] S.C.J. No. 14, where illness contracted during the marriage or even after breakdown has rendered a spouse unemployable. In these non tortious examples, the affected spouse has no one to turn to for compensation. In the case at bar the plaintiff had a cause of action which she pursued and settled for \$186,000. There was no evidence before me of how this sum was arrived at, but the personal injury statement of claim included a claim for past and future income loss. I must infer that the settlement, at least in part, reasonably reflected compensation for earnings.
- [34] Therefore, when examining the needs and means of the plaintiff, I cannot assess her earnings as zero. The evidence indicated that if it were not for the motor vehicle accident, she would have been earning about \$2,000 per month as a full time aide in a retirement home. I find she has been compensated for her loss caused by the motor vehicle accident and I allocate this figure of \$2,000 per month as her earning capacity. I do not need to determine the sufficiency of her efforts to find employment or whether she has spent her settlement money wisely because I am proceeding on the presumption that she would have worked full time and would have received about \$2,000 per month. Her expenses exceeded this sum.
- [35] The defendant earned in excess of \$8,000 per month before tax. He also claimed his expenses exceeded this sum. However, he is a single man with no other family to support and I do not accept that he does not have the means to pay maintenance. Both parties appeared to continue supporting their children notwithstanding the children were well past the age of 19 and appeared to be self sufficient.
- [36] I am of the view that the disparity between the allocated income of the plaintiff and the actual income of the defendant was substantial and was a direct result of the marriage and its breakdown. When I balance all the factors set out in s. 15.2(6) of the Divorce Act, I arrive at a figure of \$2,000 per month as reasonable permanent maintenance. In setting this maintenance, I recognize it includes a degree of compensation to the plaintiff. However, in a situation like this, where there are no major assets but the paying spouse has a good cash

flow, then it appears to be the sounder means of reaching a level of equality in the lifestyle of both spouses.

[37] Finally, I am satisfied that there is no reasonable possibility of reconciliation between the plaintiff and the defendant and I grant the plaintiff a decree nisi of divorce.

[38] The plaintiff, having been largely successful in her claim, is entitled to her party/party costs of the trial.

"D.A. Satanove, J."

The Honourable Madam Justice D.A. Satanove

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Prepared on 28 October 2026 · Esheria