

CANADA / JUDGMENT

Stobo v. Cohoon

2023 BCSC 12

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Supreme Court of British Columbia

DECIDED

5 January 2023

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2023 BCSC 12 Stobo v. Cohoon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stobo v. Cohoon,

2023 BCSC 12

Date: 20230105

Docket: E191361

Registry: Vancouver

Between:

Aleka Jennifer Stobo

Claimant

And

Reid Gordon Cohoon

Respondent

Before: The Honourable Justice Francis

Reasons for Judgment

Counsel for the Claimant:

J. Cudmore

Counsel for the Respondent:

A. Ouellet

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 7, 2022

Place and Date of Judgment:

Vancouver, B.C.

January 5, 2023

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Introduction

[1] This matter came before me as an eight-day family law trial in February and March 2022. My reasons for judgment (the "Reasons") were issued on May 17, 2022 and they are indexed as 2022 BCSC 817. In the Reasons, I gave the parties leave to come back before the Court on a fairly limited basis to make submissions about certain items of family property which were mentioned in the evidence, but about which I did not receive sufficient submissions to discern each parties' position. Specifically, both parties referred in their testimony to jewelry, vehicles, and bank accounts, but it was not clear from the submissions whether disputes remained between the parties as to how these specific items should be divided or valued. As such I made the following direction:

- [51] If there are issues relating to any of the family property not expressly dealt with in this judgment, and the parties are unable to agree, they have leave to appear before me to speak to those remaining issues.
- [2] The parties came back before me on November 7, 2022. The respondent, Mr. Cohoon, seeks a number of orders from the Court which he says fall within the scope of the leave I granted. The claimant, Ms. Stobo, submits that by virtue of the relief he seeks, Mr. Cohoon is seeking a re-opening of the trial on issues that have already been determined by the Court. She says that, with the exception of some discrete division of property issues, most of the relief sought by Mr. Cohoon should be denied on the basis that it amounts to a re-casting of submissions already made at trial. Additionally, Ms. Stobo seeks orders and directions with respect to the sale of the family home.
- [3] Mr. Cohoon seeks the following declarations and orders (I note parenthetically that item 5(a) below appears to contain a calculation error, and the amount sought should be \$26,290.81, which is 50% of \$52,581.61, which is the sum of subparagraphs 5(a)(i) -(v); nevertheless, I have reproduced the amounts sought by Mr. Cohoon as they are stated in his written argument):
1. A declaration that the "without prejudice" advances and credit card payments the Respondent paid to the Claimant or for her benefit totalling \$68,478 constitute advances to her on account of property that the Claimant must account for in the property division.
 2. Further to or in the alternative to item 1, an order that the Claimant account for or repay to the Respondent \$68,478 from her share of the equity in the Family Residence.
 3. Should the Claimant not be required to account for the \$68,478 (or at least the \$55,500 portion of same that constituted without prejudice, uncharacterized payments), an order that the Claimant pay the Respondent occupational rent for the 29 month period that she occupied the Family Residence (February 1, 2019 through June 30, 2021) at a rate of at least \$2,700 per month.
 4. Should the court not require the Claimant to account for the \$68,478, an order making the related payments from the Respondent to the Claimant retroactive spousal support for income tax purposes.
 5. An order and determination that the Claimant is to account to the Respondent in the division of family property for the following additional amounts:
 - a. \$23,463.42 which is 50% of the \$46,926.83 the Respondent paid for expenses for the Family Residence since separation as follows:
 - i. 2019 property taxes paid by the Respondent post-separation (on or around January 7, 2019) in the amount of \$8,000.

- ii. Property Tax arrears paid by the Respondent post-separation (on or around September 24, 2021) in the amount of \$5,258.76.
- iii. Property insurance paid the Respondent post-separation in the amount of \$5,628.16 (until June 30, 2021)
- iv. Utilities paid by the Respondent during the Claimant's occupation of the home in the amount of \$4,017.99 (until May 1, 2021 Payment) and
 - v. interest on the Line of Credit paid by the Respondent since separation in the amount of \$29,676.70 (up to June 30, 2021)
- b. \$8,775 which is 50% of the cost of the Blair McKay Mynett Report;
- c. \$6,250 which is 50% of the cost of the Pearson Equipment Appraisal Report.
- 6. An order and declaration that the parties will be equally responsible for the following amounts from the sale proceeds of their family residence:
 - a. Any outstanding property taxes inclusive of any interest or fines due at the time of the sale, estimated to be \$13,617.00;
 - b. The overdraft on the parties' joint account estimated to be \$5,000 after adjusting for any additional amounts drawn by the Claimant;
 - c. Any bills outstanding the gardener, regardless of who was residing in the home when those charges were incurred.
- 7. An order and declaration that the parties' accounts, jewelry, and vehicles will be equalized as follows:
 - a. The parties personal accounts to be divided or for which they are equally responsible to repay are as follows:
 - i. Joint RBC VIP Banking "4183": overdraft of (\$4,228.41) as at June 23, 2021 and thereafter (currently) approximately (\$5,000);
 - ii. Claimant's RBC TFSA "9929" with a value of approximately \$875.13;
 - iii. Respondent's Great West Life RRSP with a balance of approximately \$2,597.592;
 - iv. Respondent RBC Savings "4894": \$8.59 (nominal- no equalization required)
- b. The Claimant will pay \$3,000 to the Respondent to equalize the values of the parties' respective vehicles out of her share of the proceeds from the Family Residence; and
- c. The Claimant will pay \$29,119.50 to the Respondent to equalize the values of the parties' respective jewelry out of her share of the proceeds from the Family Residence.

[Emphasis in original; footnotes omitted.]

- [4] The broad scope of relief sought by Mr. Cohoon on this post-trial appearance goes far beyond the discrete property division issues that the parties were given leave to re-appear on. The relief sought by Mr. Cohoon would significantly change the financial outcome of the trial for both parties.
- [5] Of the items of relief sought by Mr. Cohoon, items 1-5 do not relate to specific items of family property not addressed at trial. Items 6 and 7 are properly the subject matter of the re-appearance I invited the parties to make, and with the exception of the value of the jewelry and the vehicles, they are consented to by Ms. Stobo.
- [6] As such, I will first consider Mr. Cohoon's application with respect to items 1-5. Specifically, I will consider whether Mr. Cohoon has met the test for re-opening a trial after judgment has been rendered. If he has, I will consider the appropriate outcome in the circumstances. Next, I will consider the remaining matters in controversy between the parties with respect to specific family property, namely the appropriate valuation and equalization of the jewelry and vehicles that are family property, and the sale of the parties' family home (the "Family Home").

Application to Re-open

- [7] In *A.D.J. v. F.J.*, 2022 BCSC 1974, I recently summarized the authorities with respect to re-opening a matter after trial in the context of a lengthy, multi-issue family law trial:
- [4] A judge of this Court has jurisdiction to re-open a trial after the conclusion of argument but before entry of the order. This discretion should be exercised rarely and only when the interests of justice clearly require prolonging the litigation in order to avoid a miscarriage of justice: *Bajwa v. Habib*, 2020 BCCA 230 at para. 48.
- [5] The fundamental consideration in exercising the discretion to re-open a trial is whether a miscarriage of justice would occur if the trial were not re-opened: *Stevens v. Plachta*, 2006 BCCA 479 at para. 15, citing *Bell v. Bell*, 2001 BCCA 148.
- [6] A judge should address two primary considerations in deciding whether to re-open: first, is it probable that a miscarriage of justice would occur without re-opening and, second, would a re-hearing probably change the result? In general, a party should not be permitted to re-open if the sole purpose is to re-argue or re-cast its case: *Grewal v. Grewal*, 2016 BCCA 237 at para. 71.
- [7] In *Moradkhan v. Mofidi*, 2013 BCCA 132, Madam Justice Garson listed the principles applicable on an application to re-open and noted at para. 31:

I would add to this list that a judge may reasonably exercise such discretion where a relatively discreet error in math or some mechanical consideration of the evidence is clearly in error. Finally, the overarching consideration is whether it is in the interests of justice that the court reopen the case. (See also *Brown v. Douglas*, 2011 BCCA 521, 314 B.C.A.C. 143.)

- [8] One of the reasons why the authorities have laid out a relatively strict test for re-opening a trial, is that to do so creates risks to the finality of judgments, and risks a party being given an opportunity to make their case twice, which distorts the trial process: *Spoor v. Nicholls*, 2001 BCCA 426.
- [9] In *Hansra v. Hansra*, 2017 BCCA 199, the Court of Appeal considered the above noted authorities, as well as the Supreme Court of Canada's decision in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59 and, citing *Mehedi v. 2057161 Ontario Inc.*, 2015 ONCA 670, it held at para. 59 that the following additional factors are relevant to determining whether it would be in the interests of justice to allow a matter to be re-opened:

considerations of finality, the apparent cogency of the evidence, delay, fairness and prejudice.

- [8] I add this: in high-conflict family litigation, re-opening applications are all too common. This is not surprising given the intensely emotional nature of such disputes. But the trial process is undermined when parties regularly seek a "second kick at the can" before the trial judge when they disagree with the trial judge's decision in a case. In my view, the principle of finality bears particular consideration in high-conflict family disputes such as this one.

Issues on Re-Opening

- [9] The issues Mr. Cohoon raises before the Court on his re-opening application relate to two broad categories of expenses that he submits should be offset against Ms. Stobo's equal division of family property:
- a) \$68,478, which consists of \$55,500 of without prejudice, uncharacterized interim monthly payments from Mr. Cohoon to Ms. Stobo made pursuant to an agreement between the parties between separation and trial (the "Advances"), as well as payments made by Mr. Cohoon on Ms. Stobo's Visa card post-separation in the amount of \$12,978.72 (the "Visa Payments"); and
 - b) 50% of \$52,554.99, which consists of property taxes, insurance, utilities and interest on a secured line of credit paid by Mr. Cohoon during the post-separation period of time that Ms. Stobo was living in the family home (the "Home Payments").

What Was Argued at Trial

The Advances and the Visa Payments

- [10] At trial, Ms. Stobo sought equal division of family property and ongoing, but not retrospective, spousal support. Mr. Cohoon's primary argument at trial with respect to family property was that family property should be divided unequally on the basis of significant unfairness. His primary argument with respect to spousal support was that Ms. Stobo had not established an entitlement, on a compensatory or a non-compensatory basis, to ongoing spousal support.

- [11] In this application, Mr. Cohoon points out that he raised a number of alternate scenarios in argument at trial that were not expressly discussed in the Reasons. Specifically, he notes that in his written submissions, he submitted that the court may consider the Advances and the Visa Payments as an advance on family property pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Also, in his written submissions, he raised the alternative scenario that the Advances and Visa Payments could be treated as interim spousal support for the period between separation and trial.
- [12] The manner in which Mr. Cohoon argued his case at trial raises concerns with respect to fairness of the trial process if this matter is re-opened to enable Mr. Cohoon to submit that the Advances and the Visa Payments should be treated as an advance on family property or, alternatively, interim spousal support. At trial, Mr. Cohoon's counsel raised a number of alternate scenarios and sought a multiplicity of alternative orders, depending on how the court was inclined to rule on various points. Arguing alternative positions is not in and of itself problematic, however it does not assist in the fair resolution of a dispute for a party to provide a lengthy "laundry list" of alternative orders that the court may make, without taking a firm position. The way in which Mr. Cohoon's submissions were structured resulted in there being no clear analytical path for the claimant to respond to, or for the Court to address.
- [13] As I understood Mr. Cohoon's submissions at trial, the fact that Mr. Cohoon made the Advances and the Visa Payments was a factor weighing in favour of a finding of significant unfairness if family property were divided equally. This was the context in which the Court analyzed the Advances and the Visa Payments.
- [14] On this application, Mr. Cohoon points out that he advanced other alternative scenarios for how the court should deal with the Advances and the Visa Payments, which are not expressly discussed in the Reasons. He points to his written submissions from trial which include the following passage:
28. It is open to the court to determine that the [Advances] and all amounts paid to her credit cards were advances on account of family property to the Claimant pursuant to s. 89 of the Family Law Act and the Respondent's position is that would be a just and fair result.
29. Alternatively, the court will need to determine that the payments of \$68,478 are periodic spousal support (in which case the parties are entitled to refile tax returns and realize the associated tax consequences/ benefits) or are effectively "lump sum" support in which case they are to be grossed up in consideration of the fact that there are not tax consequences arising.

30. It is the Respondent's submission that the Claimant should therefore account to the Respondent out of her share of property for the full \$68,478 as based upon the similarity of the parties' Guideline Incomes (particularly after imputation arguments) and the lack of her entitlement to spousal support given the lack of a compensatory basis these amounts should not be considered interim or transitional spousal support.
- [15] Mr. Cohoon's oral submissions on the Advances and Visa Payments were brief. At one point in his oral submissions, his counsel argued that the Advances should be repaid to Mr. Cohoon. In the alternative, Mr. Cohoon's counsel argued that the without prejudice payments should be "taken into account as support already received."

The Home Payments

- [16] Mr. Cohoon submits on this re-opening application that the Court failed to deal with his claim for Home Expenses and that a miscarriage of justice would result if this portion of his claim were not adjudicated.
- [17] At trial, Mr. Cohoon sought \$57,090 from Ms. Stobo for the Home Payments, which was her equal share of \$114,180. The \$114,180 consisted of:
- a) \$8,000 property tax payment made January 2019;
 - b) \$5,232.14 property tax payment made September 2021;
 - c) \$4,743.27 property insurance payments made January 2019 to June 2021;
 - d) \$42,205.32 in payments on the secured line of credit from February 1, 2019 to January 31, 2022; and
 - e) \$54,000 in rent paid by the respondent during the first two years of separation.
- [18] In his written submissions at trial, Mr. Cohoon stated as follows:

The above totals \$114,180. If the Claimant is obligated to contribute to the shared debt/ ownership costs in the post-separation period, the Respondent should receive a further credit of \$57,090. If she is not, that benefit to her must be considered in relation to her spousal support claim.

- [19] On the re-opening application, Mr. Cohoon advances different amounts for the Home Payments. He no longer seeks contribution for the rent he paid in the first two years of separation and the values proposed for property tax paid in September 2021 (now \$5,258.76), property insurance paid in September 2021 (now \$5,628.16), and interest on the line of credit (now \$29,676.70) are different from what he submitted in his written submissions at trial. The total amount he now seeks is "\$23,463.42 which is 50% of the \$46,926.83 the Respondent paid for expenses for the Family [Home] since separation." This is different that the actual sum of the amounts he claims, which should be \$26,290.81, or 50% of \$52,581.61. No submissions were made by Mr. Stobo's counsel to explain the changes in the amounts claimed.

Determination at Trial

[20] Ultimately, I found that family property should be equally divided and I made an order for prospective spousal support. I disagreed with Mr. Cohoon's position that significant unfairness would arise if family property were divided equally, notwithstanding the Advances, the Visa Payments, the Home Payments, and the other factors that Mr. Cohoon raised in support of his argument for unequal division of property. In all the circumstances, including the length of the marriage and the circumstances of the parties, I found that a fair balancing of interests at the end of this long marriage requires family property to be equally shared. Since retroactive spousal support was not sought by either party, I was not persuaded by Mr. Cohoon's argument that the Advances and Visa Payments should be treated as interim spousal support.

Analysis

- [21] On this application, which, like Mr. Cohoon's position at trial, was argued on the basis of multiple alternative scenarios, Mr. Cohoon seeks the following:
- a) To have the Advances and Visa Payments treated as advances on account of family property;
 - b) In the alternative, an order that the Advances and Visa Payments are payable by Ms. Stobo from her share of the equity in the family home;
 - c) In the further alternative, if the Advances and Visa Payments are not accounted for in the division of family property, that Ms. Stobo pay occupation rent on the family home for the period of time she lived there, post-separation;
 - d) In the further, further alternative, that the Advances and Visa Payments be treated as retroactive spousal support for income tax purposes; and
 - e) In addition to the above, Mr. Cohoon seeks an order that the Home Payments should be accounted for by Ms. Stobo in the division of family property in the amount of \$23,463.42, which is half of the \$46,926.83 which, on this application, Mr. Cohoon says is the amount he paid in property taxes, home insurance, utilities, and interest on the line of credit in the post separation period.

Advance on Family Property

[22] Much of Mr. Cohoon's argument on this re-opening application focussed significant unfairness and asked me to revisit my determination that family property should be divided equally. Any attempt by Mr. Cohoon to re-argue the equal division of property on the basis of significant unfairness is, in my view, an attempt to re-argue and recast the case. To the extent that Mr. Cohoon asks me, in this re-opening application, to reconsider the equal division of family property, I decline to do so.

- [23] However, on this application, Mr. Cohoon also raises a separate issue which was raised in his written submissions but not expressly discussed in the Reasons: whether this Court ought to treat without prejudice payments made by one party to another during the period between separation and trial as advances on property pursuant to s. 89 of the FLA.
- [24] In this case, to the extent that Mr. Cohoon argued that the Advances, Visa Payments and Home Payments should be treated as an advance on family property under s. 89, or otherwise, that argument appears to have been insufficiently prominent for Ms. Stobo to have addressed it in her reply submissions. No submissions were made by Ms. Stobo on this issue at trial.
- [25] Nevertheless, if Mr. Cohoon made an argument at trial, irrespective of whether the Court and Ms. Stobo appreciated the significance of that argument, fairness could dictate re-opening the trial for consideration of that point, if a miscarriage of justice would occur absent re-opening.
- [26] I have considered whether the outcome of this case would be different if the court expressly considered the question of whether the Advances, the Visa Payments and the Home Payments should be treated as advances of family property for which Ms. Stobo is liable to account.
- [27] Mr. Cohoon submits that funds paid to a spouse in the interim period between separation and trial may be characterized as advances of family property under s. 89 of the FLA. Section 89 of the FLA states:
- 89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund
- (a) family dispute resolution,
 - (b) all or part of a proceeding under this Act, or
 - (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.
- [28] There is no evidence in this case that the Advances were made for the purpose of funding this litigation. The Advances were negotiated amongst the parties and their counsel, post separation, and expressly agreed to be without prejudice and uncharacterized. As such, I am satisfied that s. 89 has no application in this case.
- [29] In oral submissions, when pressed on the applicability of s. 89, counsel for Mr. Cohoon submitted that it is open to the court, and indeed common, for the court at trial to order that uncharacterized without prejudice interim payments should be characterized at trial as advances on Property. The Court asked counsel whether there was precedent for the Court treating periodic interim payments as an advance on property absent the agreement of the parties. Neither counsel was aware of any case law in this regard. I gave the parties leave to

submit further case authorities on this point to me via trial scheduling if they wished. This resulted in case law, as well as further written argument (which the Court did not invite) being submitted by both parties.

- [30] In initial submissions, counsel for Mr. Cohoon submitted three cases to the court's attention: *S.L.C. v. J.R.C.*, 2020 BCSC 463, *Small v. Small*, 2020 BCSC 707, and *Negus v. Yehia*, 2018 BCSC 2319. In reply submissions, *Devathasan v. Devathasan*, 2017 BCSC 1010 was added.
- [31] In *S.L.C.*, the Court ordered that periodic without prejudice payments made by the respondent to the claimant should be deducted against a retroactive spousal support order. In this case, no retroactive support was sought by Ms. Stobo, nor did the Court make any kind of spousal support order for the period between separation and trial. I therefore find *S.L.C.* unhelpful on the issue of whether without prejudice interim payments should be treated by the court as advances on family property.
- [32] In *Small*, the Court ordered an adjustment and repayment of interim spousal support that was paid on a without prejudice basis pursuant to an interim order. This case is also not helpful on the issue of whether interim payments should be treated by the court as advances on property.
- [33] *Negus* considers a series of pre-trial orders that were expressly characterized as advances of family property. Further orders were made for pre-trial advances of funds that were not characterized. The Court held that the quantum of pre-trial advances was almost equal to the amount the respondent owed the claimant in retroactive spousal and child support. Because there was outstanding spousal and child support payable by the respondent, the advances on account of property did not give rise to an unequal division of property between the parties.
- [34] It is not clear to me that *Devathasan* bears on the subject matter of the Court's inquiry at all.
- [35] Of critical import in this case, as distinct from *S.L.C.*, *Small*, and *Negus*, is the fact that neither party sought spousal support for the pre-trial period. There is no retroactive spousal support order against which the Advances, the Visa Payments, or the Home Payments may be offset. Instead, Mr. Cohoon asks the Court to treat them as an advance on Ms. Stobo's equal division of family property, that she must now repay from her share of the proceeds of sale of the Family Home.
- [36] The difficulty I have with Mr. Cohoon's submission is that if the Advances, Visa Payments, and Home Payments are, post-trial, characterized as advances of property, the equal division of property is undermined. Having already considered and rejected all of Mr. Cohoon's arguments about unequal division of family property, and finding no significant unfairness that would justify departing from equal division of family property, I find it would upset the fair balance between the parties to order that the Advances, the Visa Payments, and 50% of the Home Payments be paid by Ms. Stobo to Mr. Cohoon from her

share of the sale of the family home.

- [37] Consequently, had the Court considered Mr. Cohoon's arguments with respect to treating the Advances, the Visa Payments, and the Home Payments as an advance on family property, either under s. 89 of the FLA or otherwise, the result would not change.

Interim Support

- [38] One of Mr. Cohoon's further alternative arguments is that the court should recharacterize the Advances and Visa Payments as retroactive spousal support so he can obtain the associated tax deduction.
- [39] Ms. Stobo did not seek retroactive spousal support at trial; her support claim was limited to prospective spousal support. Because of this, the Court was only asked to adjudicate the current Guideline income of Mr. Cohoon and Ms. Stobo. While evidence was led about the historical Guideline income for each party, this was in the context of setting each party's Guideline income for prospective spousal support purposes. No analysis was asked for by the parties, or undertaken by the Court, to determine what interim spousal support ought to have been payable to Ms. Stobo for the post-separation period in advance of trial.
- [40] While it is correct that Mr. Cohoon made an alternative argument in his written submissions at trial that the Advances and Visa Payments should be deemed to be interim spousal support, he did not accompany this argument with any submissions about how retroactive spousal support should be calculated and whether the Advances and Visa Payments complied with the SSAG. In this re-opening application, he does make such submissions, proposing a new analysis for calculating the adjusted incomes of the parties during the post-separation period, and a method for determining what the interim spousal support ought to have been, including SSAG calculations. In doing so, Mr. Cohoon splits his case on this issue, giving rise to significant trial fairness concerns.
- [41] At trial, Ms. Stobo did not make submissions to justify the quantum of the Advances or the Visa Payments in accordance with the SSAG. This is because neither her entitlement to retroactive spousal support, nor the appropriate quantum of retroactive spousal support, were in issue before me. Had these matters been in issue, she may well have chosen to marshal the evidence and arguments to support her entitlement to retroactive spousal support in the amount, or a greater amount, than what she received by way of the Advances and the Visa Payments. However, not having claimed retroactive spousal support, and therefore presumably believing that retroactive spousal support was not an issue in the trial, she did not address it at all.

[42] In my view, it would create an unfairness in the trial process if Mr. Cohoon were able to re-open the trial to argue that the Advances and Visa Payments should be treated as interim spousal support in the absence of any retroactive claim for support by Ms. Stobo at trial. Therefore, I am not persuaded that justice would be served by re-opening the trial on this issue.

Occupation Rent

[43] With respect to his claim for occupation rent, Mr. Cohoon's counsel concedes that this was not argued at trial. In fact, in Mr. Cohoon's counterclaim, he only sought occupation rent in the event that the claimant sought retroactive spousal support, which she did not. Therefore, occupation rent was raised for the first time on this re-opening application. In the circumstances, I decline to exercise my discretion to consider Mr. Cohoon's claim for occupation rent.

Conclusion on Re-opening Application

[44] I do not find that Mr. Cohoon has met the required threshold of demonstrating that a miscarriage of justice would occur if the matter is not re-opened and as such I decline to exercise my discretion to re-open the case to consider his further arguments with respect to the Advances, the Visa Payments, the Home Payments, or occupation rent.

Additional Family Property Issues

[45] The parties have agreed on the division of the Claimant's RRSP and TFSA and some other specific family property issues, such as return of a Thule roof rack. The parties also agree on division of family debt, specifically outstanding property taxes on the Family Home, the overdraft in the parties' joint account, the balance on the secured line of credit, and outstanding bills payable to the gardener.

[46] The only matters in controversy between the parties with respect to remaining items of property are the jewelry and vehicles.

[47] Over the course of the re-opening hearing, Mr. Cohoon's position on the jewelry shifted. In his written submissions he sought an equalization payment on the basis that Ms. Stobo had jewelry that was family property worth \$58,239 and Mr. Cohoon's family property jewelry was worth \$8,600. The highest value item ascribed to Ms. Stobo was a Rolex with an appraised value of \$34,350. Over the course of the hearing, Mr. Cohoon's counsel admitted that the \$34,350 Rolex belonged to Mr. Cohoon, not Ms. Stobo. It was a gift from his father and therefore excluded property. Nevertheless, Mr. Cohoon seeks an equalization payment for what he submits is the greater value of jewelry that ended up in the hands of Ms. Stobo.

- [48] The evidence at trial on the value of the jewelry was not sufficient for the Court to fairly determine its current fair market value. As such, the only means to reach a fair division of property is for the jewelry that is family property to be sold and the proceeds divided equally between the parties. Therefore, unless the parties agree on an equalization amount, the jewelry must be sold and the proceeds divided between the claimant and the respondent.
- [49] The parties disagree about the value of their respective vehicles. No evidence was proffered as to the value of the vehicles, other than what each party said in their respective Form F8. Mr. Cohoon seeks an equalization payment on the basis that Ms. Stobo has a higher value vehicle. I have no reliable evidence on which to adjudicate this issue. Therefore, if the parties cannot agree on this issue, both vehicles must be sold and the proceeds divided between the parties.

Sale of Family Home

- [50] Ms. Stobo seeks an order that the Family Home be sold. The equity in the Family Home is the only family property of significant value and it is in the interests of both parties that they be able to access the proceeds as soon as possible. As such, I make the following orders:
- a) The parties will have joint conduct of sale;
 - b) Within 21 days of the date of this decision, the parties will retain a realtor. The parties must make best efforts to agree upon a realtor to jointly retain, however, if they are unable to agree, they each must retain their own realtor within 21 days for the purposes of co-listing the property;
 - c) The parties will list the Family Home for sale within 14 days of retaining a realtor, or realtors, as the case may be;
 - d) The parties will follow the recommendations of the realtor or the realtors regarding list price and will cooperate with any recommended repairs or staging for the purposes of selling the Family Home;
 - e) Until the Family Home is sold, Mr. Cohoon may have sole occupancy but must cooperate and do all things necessary to permit prospective purchasers to view the home and to maintain the home in a clean and presentable condition;
 - f) If an offer is made on the Family Home that Ms. Stobo is willing to accept, Mr. Cohoon will have the opportunity to beat the offer by \$500.00 within five business days; and
 - i. Should that occur, Mr. Cohoon will pay the realtor any commission due to them pursuant to the terms of the listing contract; or
 - ii. If Mr. Cohoon is unable to beat the offer, the Family Home will be sold to the third party and the parties will pay the realtor any commission from the sale proceeds.

"Francis J."

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Prepared on 29 October 2026 · Esheria