
CANADA / JUDGMENT

Stonehouse v. Stonehouse

2014 BCSC 1057

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 1057 Stonehouse v. Stonehouse

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stonehouse v. Stonehouse,

2014 BCSC 1057

Date: 20140612

Docket: E37603

Registry: New Westminster

Between:

Allen Lloyd Stonehouse

Claimant

And

Lisa Lorine Stonehouse

Respondent

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Counsel for the Claimant:

C. Heslinga

Appearing on her own behalf:

The Respondent, L. Williams

Place and Dates of Trial:

New Westminster, B.C.

April 23-25, 2014

Place and Date of Judgment:

New Westminster, B.C.

June 12, 2014

I. Introduction

[1] This is a family law case. The issues are:

1. division of assets, and compensation in respect of assets;
2. spousal support, retroactive and in future; and
3. child support, retroactive and in future.

II. Background Facts

- [2] The parties were married March 6, 1993 in Cranbrook, B.C. They separated July 29, 2010. They were divorced March 6, 2013, precisely 20 years after the marriage. The divorce order also provided for the respondent's surname to revert to Williams. Therefore in these reasons I will refer to her as Ms. Williams, or the mother. I will refer to the claimant as Mr. Stonehouse, or the father.
- [3] The parties have two sons, Trent, now 21, and Troy, now 15. Both children currently reside with Mr. Stonehouse. The parties agree that Trent resided with Ms. Williams for three to four months from September to December 2010 and then returned to live with Mr. Stonehouse. The parties agree that Troy resided with Mr. Stonehouse from the time of separation to January 2012, and that he has resided with Mr. Stonehouse since January 2014. They agree that he resided with Ms. Williams for a period of time during 2012 and 2013; however the parties disagree as to the length of time Troy resided with his mother. Mr. Stonehouse says it was only three or four months, while Ms. Williams says it was 24 months. The matter goes to the past child support issue.
- [4] Mr. Stonehouse contends that Trent remains a child of the marriage for child support purposes under the Divorce Act, R.S.C. 1985, c. 3 (2d Supp.).
- [5] The parties cohabited for a period of time before the marriage. They disagree as to the length of time they cohabited pre-marriage. Mr. Stonehouse says it was about a year. Ms. Williams says it was five years.

- [6] Mr. Stonehouse is a longshoreman. His employer is the B.C. Maritime Employers Association. He has been a longshoreman since about 10 years prior to separation. He is now 47 years of age. He earned gross pay of \$133,564 in 2013. He works a great deal of overtime. He expects his 2014 income to be similar to the amount he earned in 2013. He contends, however, that he cannot sustain his current work pace for much longer.
- [7] Ms. Williams did not work outside the home after marriage, until 2005 or 2006, when she began to work as a car salesperson. Currently she works for a group of four car dealers. She no longer works directly in vehicle sales. She is responsible for preparing and posting on-line vehicle advertisements. In 2013 she earned \$20,741. Mr. Stonehouse submits that she is capable of earning a higher income, and that income of \$40,000 per annum should be imputed to her.
- [8] In July 2000, Ms. Williams' father (Mr. Williams) purchased a bare land lot in Point Roberts, Washington, for \$12,000 US. In April 2002 he placed the title in joint tenancy together with his daughter. She paid no consideration. Mr. Stonehouse contends that Ms. Williams' interest in the Point Roberts lot is a family asset and that Ms. Stonehouse should compensate him for half of the value of her interest in the land. The assessed value of the lot for tax purposes in 2013 was \$25,000 US. Mr. Williams contends that the actual current market value of the land is much lower than that. I could not give any weight to such evidence even if it were admissible. There is no appraisal evidence.

III. Analysis

A. Property Division

- [9] As these proceedings were commenced before the Family Law Act, S.B.C. 2011, c. 25 [FLA], came into force on March 18, 2013, the former Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], continues to apply to the division of property issues: FLA s. 252(2).
- [10] A declaration pursuant to s. 57 of the FRA that there was no prospect of reconciliation was made at a Judicial Case Conference on May 30, 2011.
- [11] The parties had no significant assets at separation. They were renting accommodation in North Delta, B.C. They had substantial debts.
- [12] They disagree with respect to the division of some personal property at separation.
1. Point Roberts Property
- [13] The major property issue is in relation to the Point Roberts property.
- [14] Mr. Stonehouse contends that when the property was purchased in July 2000, he and Ms. Williams bought it together with Mr. Williams, primarily as an investment. He testified that he and Ms. Williams contributed \$6,000, as one-half of the purchase price, which they financed by borrowing the funds from their line of credit. He testified that although the title was put in Mr. Williams' name alone, the three of them prepared a written agreement which

documented the joint ownership. He did not know why only Mr. Williams was on title initially.

- [15] Mr. Stonehouse testified that the property was put into joint tenancy with Mr. Williams and Ms. Williams in 2002 because he and Ms. Williams thought that it would be advisable to do so in case of Mr. Williams' death. He was never able to find the agreement that he referred to. He suggests that Ms. Williams must have taken it when they separated on July 29, 2010. He contends that Mr. Williams paid the entirety of the annual taxes on the property because he was living with them at the time, and not paying rent, so his payment of the taxes was a sort of in kind payment towards the household expenses.
- [16] Mr. Williams testified that he bought the property solely with his own funds in 2000. He had been terminated from his employment in Cranbrook and received about \$16,000 as severance. His sister was a real estate agent working in Point Roberts, and she suggested that he should invest in a lot in Point Roberts. He testified that, with the exchange rate at the time, he paid about \$16,000 Canadian for the property. He put the property into joint tenancy with his daughter in 2002, at his sister's suggestion, only to simplify the inheritance. He denies that he was residing with his daughter and son-in-law in 2000. He says he moved in with them in 2004.
- [17] Ms. Williams denies the property was purchased jointly with her father. She agrees with her father's evidence about the matter. She denies there was any written agreement. She contends that the evidence of Mr. Stonehouse about this matter is a complete fabrication.
- [18] On this issue, I accept the evidence of Mr. Williams and Ms. Williams, and I reject the evidence of Mr. Stonehouse.
- [19] The sparse documentary evidence shows that the purchase price was in fact \$12,000 US. Due to the exchange rates in effect at the time, the \$6,000 payment Mr. Stonehouse testified about would not have been sufficient for a one-half interest.
- [20] There is no documentary evidence to show that Mr. Stonehouse or Ms. Williams was involved in the purchase or in financing it. There is no documentary evidence that they ever paid anything towards the property.
- [21] Mr. Stonehouse's evidence as to how the property was purchased and why it was not put into their joint names in the first place was unpersuasive. In contrast, Mr. Williams' evidence concerning the acquisition of the property and the reasons he put it into joint tenancy with his daughter makes sense and is persuasive. The fact that Mr. Williams had a modest sum of money to invest is not denied. It seems unlikely that Mr. Stonehouse and Ms. Williams had any funds to invest, borrowed or otherwise, at the time. They had a home in Cranbrook that was lost in foreclosure in the mid-1990's. They continued to be responsible for mortgage debt in relation to that property afterwards. Mr. Stonehouse was in bankruptcy at some point in time. I accept Mr. Stonehouse's evidence that during their relationship the parties always lived beyond their means. Mr. Williams paid the taxes on the property. I do not

accept that he did so on the understanding that these payments were in lieu of rent or as a contribution to the household expenses. Although the dates he resided with Mr. Stonehouse and Ms. Williams are not clear, I find that he was not residing with them in July 2000 when the property was purchased.

- [22] I do not accept that there was a written agreement that has disappeared without a trace. It seems highly unlikely that these parties would bother to write such an agreement. At separation Ms. Williams left the home in a hurry. I do not accept that she would have had the presence of mind and the foresight to take the only copy of the agreement with her, and then destroy it, in anticipation of a claim by Mr. Stonehouse. She had more pressing concerns on her mind at the time. She would not likely foresee that Mr. Stonehouse would claim an interest in the property.
- [23] The parties agree that the property was not actively used for any family purpose. They may have visited the property once or twice.
- [24] I conclude that Ms. Williams has no beneficial ownership interest in the Point Roberts property, which is not a family asset.

2. Pension division

- [25] Although this matter was not addressed in the evidence or in the submissions, there is no evidence before me that the forms prescribed by the FRA were delivered to an administrator before the relevant date, March 18, 2013, therefore the FLA applies to pension division: FLA s. 253.
- [26] Under s. 84(2)(e) of the FLA, pensions are family property, subject to equal division under s. 81. Mr. Stonehouse has a pension through his current employment. There is no documentary evidence of the pension's value. Mr. Stonehouse concedes that his pension must be divided. Similarly, their respective Canada Pension Plan entitlements must be shared. There is no evidence of when the Canadian Pension Plan entitlements began accruing.
- [27] The FLA's Division of Pensions Regulation, B.C. Reg. 348/2012, s. 1 defines the "entitlement date" as the date in a Part 6 FLA order on which the spouse became entitled under s. 81(b) of the FLA to an interest in the member's benefits under the plan. Under s. 81(b) of the FLA, the entitlement of each spouse to an undivided half interest in the other's pension arises on separation.
- [28] The benefits accrued under the parties' respective Canadian Pension Plan entitlements will be divided equally in accordance with Part 6 of the FLA from the date of cohabitation or the date the pension began accruing, whichever is later, to the date of separation, July 29, 2010. The benefits that accrued under Mr. Stonehouse's pension entitlement from the date the benefits began accruing until the date of separation shall be divided equally between the parties in accordance with Part 6 of the FLA.

3. Personal Possessions

- [29] Ms. Williams claims that there are a number of household furnishing and personal belongings that she has not been given or would like to have. She produced a list of 29 items at trial. Her father Mr. Williams helped her make up the list of items. It lists things such as items of furniture, kitchen utensils, artwork, photographs, camping gear, books, and ornaments. There is no suggestion that any of the items have substantial market value but some of them would have sentimental value at least.
- [30] Mr. Stonehouse says that following the separation Ms. Williams took what she wanted of their household possessions. He says that he put what she wanted on the driveway one day for her to remove. Mr. Williams testified that what Mr. Stonehouse put out on the driveway was "garbage" and that he kept the more valuable goods for himself. Mr. Stonehouse says that he has boxed some items and they are still sitting in his garage waiting for Ms. Williams to take them away. He says that she took all but a handful of their photographs. He denies any knowledge of some of the items on the list. He says that she can have some items on the list, but others such as certain items of furniture she cannot have because he and his family continue to need them. Since early 2012 he has cohabited with Ms. Steer and her two children, who moved in with him and his family, consisting of him, his sons, and his mother.
- [31] Of course it is impossible to sort all of this out properly in the circumstances.
- [32] I order that Mr. Stonehouse provide to Ms. Williams those items on her list that he acknowledged she can take, or that he says are waiting for her to pick up. They are items 1, 2, 5, 12, 18, 22, and 23 on the list. In addition in my view Mr. Stonehouse has received more than his fair share of the household items and should make a compensatory payment to Ms. Williams in the amount of \$1,000.

B. Spousal Support

- [33] In determining whether Ms. Williams is entitled to support in order to achieve a fair and equitable distribution of resources, I must consider the objectives set out in s. 15.2(6) of the Divorce Act, as well as the factors in s. 15.2(4). Considering these objectives and factors, which I will discuss in the following sections, I find that Ms. Williams is entitled to spousal support on both compensatory and non-compensatory bases.
- ### 1. Length of the Relationship
- [34] Ms. Williams testified that the parties cohabited from 1988, when Mr. Stonehouse moved into her mother's house in Cranbrook. Ms. Williams would have been 17 or 18 years of age at that time. She testified that in the spring of 1989 they moved to Surrey, where they lived together in a basement suite. As noted they were married in Cranbrook on March 6, 1993, very shortly after their first child was born.

- [35] Mr. Stonehouse was generally vague on dates, and acknowledged that he is not good with dates. He agreed that they had cohabited for about one year prior to the marriage. Ms. Williams's father Mr. Williams testified that the parties began cohabiting in 1988 when Mr. Stonehouse moved into his former wife's residence in Cranbrook. However Mr. Williams too was generally vague and unsure about dates. In my view he holds a strong animus against Mr. Stonehouse, and is strongly biased in favour of his daughter.
- [36] Neither party adduced any documentation or other independent reliable evidence as to when they began cohabiting in a marriage like relationship. In my view the relationship began not later than two years prior to marriage. Thus the length of the relationship prior to separation in July 2010 was in excess of 19 years.

2. Incomes of the Parties

- [37] Ms. Williams left high school in 1987 after finishing Grade 11. She did not complete her high school education and has had no further formal education. Other than a home-based party business which did not earn anything, she did not work in paid employment until 2005 or 2006 when she went into automobile sales. In 2007 she earned \$56,000 in auto sales, but has been unable to repeat that level of income since then. Since separation in July 2010 she has worked for many different car dealers and has had some periods of unemployment. In June 2013 she changed the nature of her occupation, moving from vehicle sales to vehicle photography and advertising. She uploads the vehicle photographs to vehicle sales websites and writes the accompanying vehicle descriptions. As of November 2013 her employer hired the parties' son Trent to do the vehicle photography, so Ms. Williams now continues to write the descriptions and upload the information and photographs.
- [38] Mr. Stonehouse's income is well documented and clear. His paycheque record for December 28, 2013 shows year to date gross pay of \$133,564. He expects his 2014 income to be similar. The current income of Ms. Williams is less clear. She testified that in her current employment she earns net pay of \$1,000 every two weeks. She guessed that her gross pay was approximately \$1,200 to \$1,300 every two weeks. However her bank records show payroll deposits twice monthly, not every two weeks. She adduced no 2014 income records. In her recent (February 20, 2014) Form F8 she declared her employment income to be \$13,425.41. This is clearly inaccurate. The recent F8 does not attach the required income documentation, although an F8 dated April 22, 2013 attaches documentation. Two T4s attached to that F8 relate to the 2013 calendar year. They add to \$20,741.80. Their date of issuance is unknown. Doing the best I can on the evidence, I conclude that her 2013 employment income was \$20,741, and her current income for child support and spousal support purposes is \$30,000 (\$1,250 times 24).
- [39] In summary, on the information available, the parties' incomes since 2009 has been as follows:

Mr. Stonehouse

Ms. Williams

2014

\$133,000

\$30,000

2013

\$133,864

\$20,741.80

2012

\$118,679

\$12,814

2011

\$130,394

\$26,592

2010

\$127,580

\$19,688

2009

\$116,855

\$10,967

3. Imputation of Income to Ms. Williams

[40] Mr. Stonehouse does not dispute that Ms. Williams is entitled to spousal support. Mr. Stonehouse argues that income should be imputed to Ms. Williams of \$40,000 per annum, for purposes of both past and future spousal support and child support. He argues that she is capable of earning more than she currently earns, and that she has unexplained sources of income available to her. He also argues that there should be offsets against any retroactive spousal support payable for Ms. Williams' share of debts in existence at separation, which he had to service and pay, and for retroactive child support she should pay.

[41] The applicable purposes and principles relating to spousal support, including imputation of income for both spousal support and child support were reviewed recently by the Court of Appeal in *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 31-38. It is unnecessary that I repeat those passages here.

- [42] The party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding: Marquez at para. 36.
- [43] Mr. Stonehouse argues that Ms. Williams has not been working full-time hours. I do not accept that. I accept her testimony that she attends one of the dealerships where the vehicle photo booth is located daily from about 10:30 a.m. to at least 5:00 p.m., with their son Trent, who takes the photos. However she is responsible for uploading the photos and writing the descriptions, and maintaining the website or websites. I accept her evidence corroborated by her father that she works long hours doing this part of the work, largely from home on her own computer. I am satisfied on the evidence that she works full time by any reasonable measure.
- [44] Mr. Stonehouse argues that he could earn more money by working in car sales, as she did before, including one year (2007) when she was able to earn \$56,000. However I accept Ms. Williams' evidence that her earnings that year (now well in the past) were exceptional, and were due to an unusual but temporary confluence of factors. I accept her evidence as to the difficulties she has faced in earning an income in car sales, including variability in the economy and low commission rates. I am satisfied that if she could have continued to earn a better income in car sales than she earns presently, she would have done so. I accept as well that she has a limited education and limited skills in the job market. Her skills are limited to the field of vehicle marketing and sales. I accept that as she testified she does not presently intend to return to vehicle sales. I accept her evidence that this does not appear to be a viable career option for her. She says the earnings are only about \$150 to \$300 per vehicle sold. However she expresses some optimism that her skills in the automotive marketing website field will lead to greater prosperity for her in future. She has no plans for re-training. She is now 43 years of age.
- [45] Ms. Williams argued that Mr. Stonehouse's harassment of her after separation forced her to repeatedly change jobs and made it difficult for her to earn a living. On the evidence available I am unable to make findings about this. However it is not necessary for me to do so, as in any event Mr. Stonehouse has not met the burden of establishing that income should be imputed to Ms. Williams on any basis.
- [46] Mr. Stonehouse further argues that a close examination of Ms. Williams' bank records over the past few years reveals deposits that in some cases significantly exceed her income. He argues that there is a discrepancy of as much as \$10,000 in some years. No credible basis for the source of the alleged extra funds is in evidence or even suggested. Ms. Williams disagrees with his figures. She has produced a comprehensive review of her bank statement over the past several years showing the source of the vast majority of her deposits. The matter is impossible to sort out completely on the evidence and it is not necessary that I do so. Ms. Williams acknowledges that she has received some funds as gifts from her father, from time to time, in order to assist her with living expenses. He now resides with her and has a low income himself. He is retired. Nevertheless he provided her with at least \$15,375 from 2010 to 2012. This explains at least part of the discrepancy Mr. Stonehouse alleges.

[47] In general terms, I am not satisfied that Mr. Stonehouse has established that Ms. Williams has a secret source of income of some sort. The evidence does not support that conclusion. Beyond the financial records, there is no evidence, for example, of living standards that are not in keeping with Ms. Williams' stated income. The evidence is to the opposite effect.

[48] I therefore do not impute extra income to Ms. Williams beyond her actual current earnings, which I find to be \$30,000 per annum. I would also not impute an income to her for prior years in excess of her actual earnings for those years, as set out above.

4. Evidence of Age and Health

[49] Ms. Williams contends that she has or will have difficulties with her health that interfere or will interfere with her ability to earn an income.

[50] She testified that she injured her back in a sledding accident at Burnaby Mountain when she was 18 years of age. She hit a tree. She states that she has had very bad back pain since 2012. Her father gave the same evidence. She states that she discontinued taking the vehicle photos for her job in June 2013 because getting in and out of the cars caused too much back pain. As noted her son Trent was hired to do that part of the job in November 2013. However the change in her work did not result in a reduction in her income.

[51] There are no medical opinions in evidence concerning her spinal condition. At trial Ms. Williams produced a one sentence letter from her doctor stating that she has degenerative arthritis of her spine and has difficulty carrying weight for any distance. She also produced an x-ray report indicating that she has some malalignment and degenerative changes in her thoracic spine, and in her lumbar spine she has slight scoliosis, disc narrowing, and a spina bifida occulta neural arch defect at S1. Mr. Stonehouse quite properly objected to the introduction of these documents into evidence as they are not in proper form and no notice was given as required. As I observed during argument, even if they had been admitted into evidence they do not suggest that Ms. Williams currently suffers from debilitating spinal problems at present, nor is there any hint of a prognosis.

[52] Ms. Williams also testified that her younger sister died of a heart condition in 2001, when her sister was 26 years of age, and that she has the same heart condition, which she described as hereditary in nature. No further information or evidence was provided.

[53] On the evidence I do not conclude that her health is a significant limiting factor in her ability to earn an income at present, and the question of whether her health might affect her ability to earn an income in future is completely unknown.

[54] Similarly, Mr. Stonehouse argues that as he ages his health may not permit him to sustain his present work level. He works many shifts, often seven days per week, and much overtime, in order to make his current level of earnings. He also argues that he should not be expected to continue to work at this present level over the long term. He does not allege that he suffers from any particular health condition. There is no medical evidence of any health issues. His typical paid shift length is six and one-half hours. Lunch break of one-half

hour is unpaid. His final paycheque statement for 2013 shows that he worked 1,780 regular hours and 144 overtime hours to that point in the year. These figures and the documents adduced support his evidence that he often works extra shifts and overtime. However on the state of the evidence I am not able to make findings as to whether Mr. Stonehouse might suffer a reduction in pay at some point in the future. I am satisfied that at present he has the ability to continue to earn at his present level of earnings of \$133,000 per annum.

5. Retroactive Spousal Support

[55] Ms. Williams's counterclaim filed April 19, 2011 included a claim for spousal support. She applied for interim spousal support retroactive to the date of the separation in an application filed with the court January 14, 2013. An order for interim spousal support was made by Mr. Justice Blok on April 12, 2013, in the amount of \$2,100 per month, commencing May 1, 2013. Blok J. described this amount as being at the lowest end of the range under the Spousal Support Advisory Guidelines [SSAG]. Mr. Stonehouse has only partially complied with the order. His arrears of spousal support under the order stand at \$9,386 as at April 2, 2014.

[56] The factors for whether to award retroactive child support from *D.B.S. v. S.R.G.*, [2006] 2 S.C.R. 231, have been applied to considering the appropriateness of retroactive spousal support: *Reis v. Bucholtz*, 2010 BCCA 115. The factors are: whether there is a reasonable excuse why support was not sought earlier; the conduct of the payor; and hardship occasioned by a retroactive award. I am satisfied that Ms. Williams sought support within a reasonable time in the circumstances. There is little hardship occasioned by an award of retroactive support as effective notice was one year after separation when Ms. Williams filed her counterclaim. An award of retroactive support commencing on May 1, 2012, one year before interim support commenced, appropriately recognizes Ms. Williams' entitlement to support and also minimizes the hardship on Mr. Stonehouse that would result from a lump sum award dating back to separation. The hardship on Mr. Stonehouse created by retroactive spousal support from May 1, 2012 is minimal as there was interim support ordered and partially paid, and there is no immediate, large burden on Mr. Stonehouse because, as noted below, this amount will be offset by his payment of the family debt, and there is little retroactive child support owed.

[57] While the SSAG ranges fluctuate somewhat based on the parties' incomes and the extent of child support obligations, the mid-range amount for 2014 is just and reasonable for retroactive support in these circumstances. Ms. Williams has proven entitlement to spousal support of \$2,250 per month from May 1, 2012, less any interim support already paid. The parties will be at liberty to apply in the event that they cannot agree on the amount owing.

6. Future Spousal Support

[58] Based on the parties' incomes set out above, the SSAG recommend an award between \$1,943 and \$2,590, for a period from nine and one-half to 18 years from the date of separation. In my view, the mid-range amount of \$2,250 monthly is appropriate in the circumstances of

this case. The relationship was in excess of 19 years, the parties began cohabiting when Ms. Williams was approximately twenty years old, and Ms. Williams was primarily responsible for childcare and did not work outside of the home until 2005 or 2006. She has limited education and skills. On the other hand, she began working outside of the home approximately four or five years before the marriage ended, and has managed to gain some skills and establish a career in automotive sales and marketing which gives her an income, albeit a modest one. Ms. Williams has no plans for retraining, but expects greater prosperity from her career in automotive marketing in the future. However it seems unlikely to me that she will ever make the kind of earnings that Mr. Stonehouse does, and that he will likely continue to earn for the foreseeable future. In light of Ms. Williams' uncertain career prospects, she should receive spousal support for a total of 12 years. This duration also properly recognizes the economic disadvantages Ms. Williams suffered as a result of her role in the marriage. This amount of time should be sufficient for Ms. Williams to increase her earnings from her current field of work, or perhaps to re-train or find other more remunerative work.

[59] Therefore I order that Mr. Stonehouse pay Ms. Williams \$2,250 per month commencing July 1, 2014, until May 1, 2024, 12 years after she began receiving support.

[60] For as long as the obligation to pay spousal support continues, the parties shall exchange copies of their most recent income tax returns and notices of assessment, within thirty days of demand of either party. Demand may not be made more than once in any calendar year.

7. Joint Debts

[61] Mr. Stonehouse argues that when Ms. Williams departed in July 2010 he was left solely responsible for servicing the parties' substantial accumulated joint debts as well as providing for their two children, without financial assistance from Ms. Williams. He argues that the amounts he has had to pay should be offset against the retroactive spousal support he owes. Ms. Williams has paid no child support. Mr. Stonehouse argues that she should pay retroactive child support, which should be offset against his financial obligations to her. He argues that future spousal support should be at the low end of the SSAG ranges due to his financial circumstances which he says are partly due to the debts he has had to service and the child care expense which he has incurred without assistance from Ms. Williams.

[62] Mr. Stonehouse contends that he made a total of \$35,326 in payments towards joint debts since separation, and that Ms. Williams should be responsible for one half of this amount, or \$17,663.

[63] As noted, at the time of separation the parties had no significant financial assets, but had significant joint debt, on credit cards, and car loans. The total amount of this debt is not clear on the evidence. As far as I can discern on the evidence, this debt was approximately \$25,000 in total. However of this \$11,581 was owing on a 2005 Acura. The vehicle was sold to Ms. Williams' aunt for \$16,000 in 2010 prior to separation. Mr. Stonehouse alleges that Ms. Williams took the proceeds of sale and has not accounted for the money. Ms. Williams

denies this and says that Mr. Stonehouse took the proceeds and failed to account for them. She says she thought this car loan was paid off prior to separation. She contends that he deposited the money in a Bank of Nova Scotia account which he has kept hidden from her. In my view I do not have full information about this transaction, and the evidence is conflicting. However on the evidence the loan was in existence at the time of separation. Mr. Stonehouse paid off this loan in January 2012.

- [64] The parties purchased a house in Cranbrook in the mid 1990's. The details are not in evidence. The property was lost in foreclosure. At separation \$8,866 remained owing to CMHC on the mortgage. Ms. Williams paid this amount after separation. Mr. Stonehouse went into bankruptcy at some point prior to separation, leaving Ms. Williams solely responsible for the CMHC debt.
- [65] In overall terms, the evidence concerning the joint debts of the parties at separation is incomplete and is conflicting in some significant areas. Doing the best I can on the evidence, I find that the parties had joint debt of \$33,866 at the time of separation, of which Mr. Stonehouse has subsequently paid off \$25,000 and Ms. Williams has subsequently paid off \$8,866. Thus, Mr. Stonehouse paid \$16,134 more towards the joint debt than has Ms. Williams subsequent to separation.
- [66] Under s. 12 of the SSAG, an exception can be made to applying the spousal support ranges where family debt cannot be adequately accounted for in property division because the couple's debts are greater than their assets. As noted, in this case the total family debts exceeded the total family assets, Mr. Stonehouse, the payor, has been required to pay a disproportionate share of the family debts, and the debt payments were excessive given Mr. Stonehouse's financial circumstances and support obligations between separation and trial. I am satisfied that it is appropriate to subtract the extra \$16,134 that Mr. Stonehouse paid towards the family debts from the retroactive spousal support award that he owes. Mr. Stonehouse must therefore pay Ms. Williams a lump sum to account for retroactive spousal support, against which he may offset her share of the family debts.

C. Child Support

- [67] There are two factual issues bearing upon the child support issues. First, whether the parties' eldest son, Trent, remains a child of the marriage for purposes of s. 2(1) of the Divorce Act. Second, the place of residence of the younger son, Troy, since separation.
- [68] Trent turned 19 years of age February 1, 2012. He has mostly resided with Mr. Stonehouse since the separation. The exception is 3.5 months in late 2010, when he resided with Ms. Williams. Following high school graduation he attended Douglas College for a year. When the year ended is not clear on the evidence. He took a fitness program of some kind but was not able to obtain work in that field, according to Mr. Stonehouse. Mr. Stonehouse testified that he paid the tuition which was \$5,000. There are no receipts, but I note that Mr. Stonehouse's 2012 tax return refers to a tuition deduction for Douglas College in the amount

of \$1,400. (For some reason this is shown as a deduction for Mr. Stonehouse himself rather than as an unused tuition fee deduction transferred from the child.)

- [69] For a few months Trent worked at a steel plant. As noted, since November 2013, Trent has worked with his mother at the car dealership, where he takes the photographs of the vehicles. The parties agree that he works limited hours in that job. He works four days per week there, from Monday to Thursday. I accept Ms. Williams' evidence that she picks him up from his home at about 10 a.m. and he finishes work at about 5 p.m. Ms. Williams contends that he spends much of the remainder of his time as a professional computer gamer. His father says he earns little or nothing in that endeavour. Although on the first day of the short trial Mr. Stonehouse indicated that he would obtain a pay advice cheque stub from Trent, no such document was produced at the trial. No income records are in evidence. Mr. Stonehouse guessed that he earns \$1,000 every two weeks. Whether this is gross or net was not made clear. Ms. Williams testified that Trent earns \$12.50 per hour and works 6 hours per day, four days per week. This is the best evidence as to his earnings. On that basis he currently earns about \$15,600 per annum at the car dealership job. He pays no rent and does not contribute to household expenses. Mr. Stonehouse says that he does not earn enough to contribute to the expenses, and he would like him to save his money. However there is no evidence as to any savings being accumulated or any specific purpose for saving, as in, for example, further education of some kind. There is no evidence as to Trent's career plans.
- [70] Pursuant to s. 2(1) of the Divorce Act, in the case of a child who is over the age of majority, "child of the marriage" means a child who, at the material time, remains under the charge of the spouses or former spouses and who is unable, by reason of illness, disability or other cause, to withdraw from their charge, or to obtain the necessities of life. The definition is disjunctive, in that there are two separate bases upon which it may be concluded that a child remains a child of the marriage: (1) the child is unable by reason of illness, disability or other cause to withdraw from the charge of the parents, or (2) the child is unable to obtain the necessities of life: *Briard v. Briard*, 2010 BCCA 431 at paras. 8-9.
- [71] The onus of establishing that the adult child remains a child of the marriage is on the party so asserting: *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406, [1997] B.C.J. No. 2534 (C.A.) at para. 15; and *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, [1993] B.C.J. No. 1315 (S.C.). In this case Mr. Stonehouse asserts that Trent remains a child of the marriage. On the evidence he has not satisfied that onus. Although the phrase "other cause" is interpreted liberally, in this case no specific cause is alleged to support a conclusion that Trent remains a child of the marriage. His income appears to be modest but that appears to be in part due to his choice to work part-time. He is not engaged in post-secondary education and there is no evidence of any such plans.
- [72] I conclude that Trent ceased to be a child of the marriage February 1, 2012.

- [73] Ms. Williams contends that the younger son Troy resided with her from June or July 2012 until mid-January 2014, when he returned to live with Mr. Stonehouse. Her evidence is supported by that of her father, Mr. Williams. Mr. Stonehouse testified that Troy lived with him at all times except for a period of about three or four months from September to December 2013. His evidence is supported in that respect by the evidence of Ms. Steers. There is no reliable or independent corroborative evidence one way or another. Ms. Williams and her father acknowledge that as of June 2012 when they say Troy began to live with them, they were sharing a two bedroom apartment so there would have been no bedroom for Troy. Mr. Williams testified he began residing with his daughter at about the same time, June 2012. They moved into a three bedroom apartment in June 2013.
- [74] Mr. Stonehouse acknowledges that there was a period of time of a month or two prior to Troy's move in September when he was shuttling back and forth between the two residences.
- [75] Ms. Williams adduced a Student Registration & Information Form for Trent's high school which shows that as of September 2013 Ms. Williams advised the school that Troy's address was her address, and the relevant contacts were her and her father. This is some evidence that no such advice was given to the school in September 2012, which would have been expected had Troy been residing with Ms. Williams since June 2012 as she contends.
- [76] The parties currently live in relatively close proximity to each other in North Delta. In the circumstances it is possible for there to be some ambiguity as to where Troy resides at any given time.
- [77] Doing the best I can on the limited and unsatisfactory evidence available, I accept that Troy in some formal sense moved to his mother's residence primarily as of September 2013, and returned to live with his father in late December 2013. He was residing in both homes for two months prior to September 2013, thus for that two month period his custody was shared. For purposes of determining child support under the Federal Child Support Guidelines, SOR/97-175 [FCSG], I find that Troy was in the custody of his mother for five months in 2013.
- [78] Based on the above findings and applying the FCSG, Ms. Williams must pay Mr. Stonehouse \$269 per month in child support until Troy ceases to be a child of the marriage. Payment at this amount should begin on July 1, 2014, and payments must be made on the first day of each month.
- [79] In determining whether an award of retroactive child support is appropriate, I must consider: the circumstances surrounding the delay, the payor parent's conduct, the child's circumstances, and any hardship caused by a retroactive award: D.B.S. Both parents seek child support, and both delayed approximately the same amount of time in seeking it. An award of retroactive child support does not cause hardship to either parent in this case, especially because the amounts involved are relatively balanced and minimal. I am satisfied that this is an appropriate case in which to order retroactive child support.

[80] Applying the table amounts from the FCSG to the above findings including the months during 2010 and 2013 that Ms. Williams had custody of one child, Mr. Stonehouse owes Ms. Williams \$296 in satisfaction of retroactive child support, on an overall net basis. This is broken down as follows: (a) for the first six months of 2014 Ms. Williams owes Mr. Stonehouse \$1,614; (b) for 2013 Mr. Stonehouse owes Ms. Williams \$4,725; (c) for 2012 Ms. Williams owes Mr. Stonehouse \$774; (d) for 2011 Ms. Williams owes Mr. Stonehouse \$4,980; and (e) for 2010 Mr. Stonehouse owes Ms. Williams \$2,939.

IV. Summary

[81] To summarize, I have made the following orders regarding property, joint debt, and retroactive support:

1. Mr. Stonehouse must provide to Ms. Williams items 1, 2, 5, 12, 18, 22, and 23 on the list she provided and make a compensatory payment of \$1,000 to Ms. Williams for her share of the household items;
2. Mr. Stonehouse shall pay Ms. Williams a lump sum to account for retroactive spousal support, from which he may set off the sum of \$16,134 as her share of the family debts; and
3. Mr. Stonehouse shall pay Ms. Williams \$296 in satisfaction of retroactive child support.

[82] Mr. Stonehouse must pay the amounts that he owes within 12 months.

[83] The parties will be at liberty to apply in the event that they are unable to agree on the final calculations.

[84] I have also made the following orders regarding future child and spousal support:

1. Mr. Stonehouse shall pay Ms. Williams spousal support of \$2,250 per month commencing July 1, 2014, until May 1, 2024; and
2. Ms. Williams shall pay Mr. Stonehouse \$269 per month in child support on the first day of each month, commencing in July 2014, until Troy ceases to be a child of the marriage.

[85] I also order that for as long as the obligation to pay spousal support continues, the parties shall exchange copies of their most recent income tax returns and notices of assessment, within thirty days of demand of either party. Demand may not be made more than once in any calendar year.

[86] This is not an appropriate case to award costs. Success has been divided, and this dispute was prolonged and complicated by unreasonable positions taken by both parties and inadequate financial disclosure on both sides.

"Verhoeven J."

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