

CANADA / JUDGMENT

Stromquist v. Stromquist

2020 BCSC 1556

COURT

Supreme Court of British Columbia

DECIDED

23 October 2020

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2020 BCSC 1556 Stromquist v. Stromquist

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stromquist v. Stromquist,

2020 BCSC 1556

Date: 20201023

Docket: E112750

Registry: Kelowna

Between:

Debra Marie Stromquist

also known as Debra Marie Stronquist

Claimant

And

Gregory Gordon Stromquist

also known as Gregory Gordon Stronquist

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraph [152] on October 27, 2020.

Before: The Honourable Mr. Justice Wilson

Reasons for Judgment

Counsel for the Claimant:

L.H. Thomson

The Respondent on his own behalf:

G.G. Stromquist

Place and Date of Trial/Hearing:

Kelowna, B.C.

September 8 - 11, 14 - 17, 2020

Place and Date of Judgment:

Kelowna, B.C.

October 23, 2020

Background

- [1] In this family action, the claimant seeks a divorce and orders for division of family property and spousal support. In addition, both parties advance an excluded property claim and seek adjustments to the equal division of the net sale proceeds from the family home. I will address each of these claims in turn, after detailing the parties' marriage and separation.

The parties

- [2] The parties commenced a common-law relationship in 1985, were married on December 5, 1987, and separated on April 15, 2016. This was a 31-year relationship. The parties have four children, Mandy, Mitchell, Courtney, and Karlin, all of whom are now adults. At the time of trial, the claimant was 59 and the respondent was 57 years of age.
- [3] The claimant grew up in Dawson Creek. She was her parents' fourth child. Unfortunately, her father died in an airplane crash when she was only three months old. Her mother remarried, but that marriage ended in divorce. After graduating high school, the claimant moved to Kelowna with a view to enrolling in the nursing program. However, there was a long wait and she returned to Dawson Creek where she apprenticed to a hairdresser. The parties' relationship started after she returned to Dawson Creek.
- [4] The respondent is also from Dawson Creek. He has worked primarily in the pipeline industry, as did his father. Although he has done other work, the pipeline industry has been the respondent's primary source of income since he was in his late teens. He is a side boom operator, and is particularly skilled in the operation of machinery that uses mechanical as opposed to hydraulic components. There are very few mechanical side booms remaining, most of them some fifty years old, and there are few experienced operators.

- [5] When the parties moved to Kelowna from Dawson Creek, the claimant did hairdressing work, while the respondent continued pipeline work in various remote locations. The claimant gave up working when Mitchell was born, and was a stay-at-home mother for many years. She described that she always wanted to be a mother and a wife, and that she enjoyed the role. Regardless, outside employment would have proven very difficult because the parties had four children, all with their various activities and interests, the family had a home, and the respondent was away, sometimes for months at a time, working on the pipelines.
- [6] Mr. Stromquist testified that he made a decision at age 27 to make changes in his life and to pursue a Christian lifestyle. In 1992, the parties visited the International House of Prayer in Kansas City ("IHOPKC"), and the parties, especially the respondent, found the experience inspiring. The parties later began to explore the idea of missionary work, and they attended a mission program through Youth With A Mission, known as YWAM. They initially received some training at a program in Kona, Hawaii, for three months, followed by mission trips to the Philippines and then Japan. One of the children was born during this time.
- [7] The family made many trips to Kansas City to visit the IHOPKC throughout the years.

The marriage

- [8] In addition to the pipeline work, the respondent also took a carpentry course and built a home in Coldstream with a partner. The parties also built a couple of homes as well. They bought a double lot with a wartime home straddling the lot line, which was then demolished. They then built a four-plex with two suites (a total of six suites). The respondent did much of the work himself and hired trades people as needed. The claimant was actively involved in doing physical labour in addition to doing some Excel bookkeeping. Those properties were sold.
- [9] They subsequently pursued another project on Springfield Road. There was a lot on the side of the property. The claimant was not sure whether it was stratified, but another home was built on the other lot. There was therefore a house and a carriage house. This property was sold as well.
- [10] The parties bought a vacant lot on Torrey Pines Drive in the Sunset Ranch area of Kelowna, where they built their family home. They occupied the home as a family for several years, and it was where they lived at separation.
- [11] In 2008 or 2009, shortly after the collapse of the real estate market, the respondent started to consider buying a property in Kansas City for investment purposes. The respondent met Mr. Aaron Leatherdale, who was involved in the IHOPKC and coincidentally also came from British Columbia. Discussions led to a decision to proceed with a joint investment project, which was to purchase and then renovate a house in the Kansas City area.

- [12] The respondent testified that on one of their last trips to Kansas City, the parties had a discussion on the drive back about relocating to live in Kansas City permanently. The respondent says that the claimant expressed a willingness to live in Kansas City. She did not deny saying this on cross-examination, albeit she described moving to Kansas City to be involved in IHOPKC as the respondent's dream, but not her dream.
- [13] The Torrey Pines property was sold in 2020 and the net sale proceeds are in trust pending trial.

Separation

- [14] The marriage was punctuated with frequent disputes and many separations. On several occasions, the claimant moved out of the family home only to return and to reconcile with the respondent some days, weeks, and in some instances months later. The claimant described the respondent as controlling and sometimes violent, and she recounted numerous examples in her examination-in-chief. She described the relationship as tumultuous and stated there was peace as long as she did what the respondent wanted her to do.
- [15] The respondent had a different view of many of the incidents but agreed there were confrontations that both regretted. It is neither helpful nor necessary for me to address the parties' differing versions of their disagreements through the years of their marriage, and I accept the claimant's description of the marriage as being tumultuous as apt.
- [16] Following the separation, there was initially a restraining order against the respondent. A protection order was made in Provincial Court. This was extended, and subsequently replaced with a conduct order made by consent of both parties.
- [17] The parties held a mediation in late 2019, and certain issues were resolved. The RRSPs were divided and the parties agreed that the house would be sold. The pensions were divided, as were the net sale proceeds from the sale of the family's investment property in Kansas City. The parties also agreed that the claimant would be primarily responsible for the costs associated with the house, which the respondent had previously paid almost exclusively until that time.

Issues

- [18] Division of the parties' property is in issue. There is no disagreement that the division of the family property, which is now limited to the net sale proceeds from the sale of the Torrey Pines home, should be divided equally, although each party advances an excluded property claim. What remains in issue are adjustments that each party seeks to make to an equal division.

- [19] The claimant seeks spousal support, payable both on a prospective and retroactive basis. The respondent has not paid spousal support since the parties separated in April 2016. However, he paid virtually all of the expenses associated with the former family home until November 30, 2019, when the parties agreed that the claimant would be responsible for the majority of the expenses. The parties agreed that the respondent is entitled to credit for expenses he paid to maintain the home, which would be offset against his retroactive support obligations.
- [20] The determination of both prospective and retroactive support involves a determination of the parties' incomes, which is an area of controversy between the parties.

Division of Property

- [21] The presumption under the Family Law Act, S.B.C. 2011, c. 25 [FLA] is that the parties have an equal entitlement to the family assets and are equally responsible for the family debts:

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

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

- [22] Section 95(1) of the FLA provides that the court may order an unequal division of family property if an equal division would be significantly unfair. Section 95(2) enumerates factors the court may consider, with (f) being the operative clause in this case, because the respondent argues that the claimant caused the Kansas City property to be sold at an inopportune time resulting in a loss:

95(1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;

- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- [23] The parties agree that the family property should be divided equally, subject to excluded property arguments and some other adjustments. Those other adjustments include certain bank accounts and debts as of the date of separation.

Kansas City Investment Property

- [24] There are also two issues arising out of the parties' investment in Kansas City. The claimant says the respondent has failed to disclose a bank account in the United States, and the respondent argues that the claimant worked with Mr. Leatherdale to sell the property to his prejudice.
- [25] For the reasons that follow, I reject both of these arguments.

Kansas City property

- [26] The respondent argues that the claimant conspired to cause the sale of the Kansas City property for a significant financial loss, and suggests that he ought to be compensated by the claimant.
- [27] The Kansas City property was intended to be an investment with Mr. Leatherdale intended to be a partner. At some point, it became apparent that Mr. Leatherdale was not able to contribute as much financially as had been anticipated, and it was agreed that they would enter into a tenancy relationship whereby Mr. Leatherdale's family would pay rent for the home to the respondent. Title to the Kansas City property was always in Mr. Leatherdale's name - unlike the Stromquists, he was legally permitted to live in the United States, and he

was therefore eligible for, or it was at least easier for him to obtain, a mortgage. At the time the mortgage was obtained, a bank account was opened at the Wells Fargo Bank, also in Mr. Leatherdale's name, into which Mr. Leatherdale paid the rent and from which expenses, including the mortgage payments, were taken.

- [28] The Kansas City property was renovated substantially through the years, with a lot of the work done by the Stromquist family personally.
- [29] In September 2017, Mr. Leatherdale sold the Kansas City property and after deducting some expenses, he transferred the net sale proceeds to the claimant's lawyer who continues to hold the funds in her trust account. The respondent was not involved in the sale process. He suggests that the claimant and Mr. Leatherdale worked together to cause him a loss. I did not hear from Mr. Leatherdale and therefore do not have his version of events. The documents in evidence included certain emails between the respondent and Mr. Leatherdale, which set out Mr. Leatherdale's version of events including a summary of a conversation he had with the claimant.
- [30] I do not accept that there was any scheme or plan between the claimant and Mr. Leatherdale to dispose of the property to the detriment of the respondent.
- [31] In May 2016, only a couple of weeks after the parties separated, the respondent went to Kansas City to do more work on the property. At some point thereafter, the claimant called Mr. Leatherdale and advised him that she did not want to invest any more money into the Kansas City property. Mr. Leatherdale then told the respondent he did not want to get caught in the middle of the parties' dispute, and he wanted the property sold or at least transferred out of his name. Mr. Leatherdale also wanted to buy his own property and was unsure whether the mortgage would impact on his ability to get his own mortgage.
- [32] The respondent agreed that he would buy the property from Mr. Leatherdale in March 2017, but that he wanted some time to get things in order. As part of this arrangement, he paid \$4,000 to Mr. Leatherdale. Mr. Stromquist's recollection is that his conversations with Mr. Leatherdale happened in May 2016, whereas Mr. Leatherdale's email suggests the fall of 2016. The respondent was not certain, and I conclude that they happened in the fall of 2016, although, not a lot turns on it.
- [33] Mr. Stromquist gave evidence about his discussions with Mr. Leatherdale, whether in May or the fall of 2016, whereby he understood that Mr. Leatherdale no longer wanted to be involved in the property and needed to take his name off the mortgage. The respondent then denied having given that evidence. Be that as it may, I accept his initial evidence of this conversation and that Mr. Leatherdale agreed that he would stay on title until March 2017 at the respondent's request and upon payment of the \$4,000.

- [34] Some time after March 2017, Mr. Leatherdale called the claimant. He told her that he had been trying to reach the respondent but had not been successful, either by text or email. Although Mr. Stromquist denies that Mr. Leatherdale ever tried to contact him and says that Mr. Leatherdale should have also tried to contact Mitchell Stromquist, who was also a partner in the venture, I do not accept his evidence.
- [35] The respondent was going to arrange to buy the property from Mr. Leatherdale. He needed to arrange for the transfer. He needed to arrange for a mortgage. However, he did not do any of the things required to effect the transfer.
- [36] The reason he gave at trial for not making the required arrangements to take title from Mr. Leatherdale was that he still had ongoing litigation with the claimant; nonetheless, he made no effort to contact Mr. Leatherdale even though he had agreed to take the property over by March 2017.
- [37] Because the property was registered solely in Mr. Leatherdale's name, Mr. Stromquist was at the mercy of Mr. Leatherdale as to what might happen. Eventually, it would appear that Mr. Leatherdale felt that he was left with little choice but to dispose of the property and clear off the mortgage in order that he could move on with his life. The respondent took no steps to protect himself from what the respondent, without evidence, believes was an untimely or improvident sale. He left himself at the mercy of Mr. Leatherdale and by failing to communicate with Mr. Leatherdale, what followed was entirely predictable.
- [38] The respondent has no one but himself to blame for the circumstances that resulted in the sale of the Kansas City property.

Undisclosed bank account

- [39] The claimant argues that the respondent has a bank account in the United States that he has failed to disclose, notwithstanding two court orders requiring that all accounts be disclosed. She says that the rent, together with some funds remaining from a refinancing of the Kansas City property were deposited in a Wells Fargo account in the respondent's name.
- [40] The primary source of the claimant's concern is the previously referenced chain of emails between Mr. Leatherdale and the respondent that includes a reference by Mr. Leatherdale to "your" account when writing to the respondent. The respondent agreed that at one point he had online access to the Wells Fargo bank account and that the \$6,000 from the refinancing was put into that account, but says the account, like the mortgage and the property, were always in Mr. Leatherdale's name. He denied that the account was in his name, and he points to his email communications with Mr. Leatherdale where the respondent is requesting account details and Mr. Leatherdale denies that he is able access the account because the account has been closed.

- [41] I accept that the account was in Mr. Leatherdale's name and it was the account into which the Leatherdales paid rent, and from which all of the mortgage and utility costs were paid. As a matter of law, it would appear that Mr. Leatherdale may have held the Wells Fargo bank account in trust for the respondent based upon the respondent's evidence about the relationship.
- [42] All of that said, I am satisfied from the evidence that there is no other US account, and that there was never a Wells Fargo account in the respondent's name. I accept that the account was diminished and eroded over time such that the account was closed.
- [43] It follows therefore that there is no hidden money.

Excluded property claims

- [44] Section 85(1) of the FLA provides that gifts and inheritances to a spouse from a third party are excluded from family property. The onus of proving the exclusion is on the party claiming it: FLA, s. 85(2).
- [45] In *Shih v. Shih*, 2017 BCCA 37, the Court of Appeal held that an exclusion under s. 85(2) must be proven on a balance of probabilities and that clear and cogent evidence must be provided. However, the Court in *Shih* went on to say that where documentary evidence is not available, the court may draw reasonable inferences from evidence that is less than certain or precise and that mathematical certainty or precision is not required: *Shih* at paras. 41 - 44.

Claimant's inheritance

- [46] In April 2010, the claimant received \$54,751.22 from her mother's estate. She signed the money over to the respondent and does not know what became of the money. The claimant does not specifically allege that the funds were misdirected or that the respondent did anything untoward with the funds. The respondent for his part recalls that the claimant received an inheritance but has no recollection of what came of the money.
- [47] Although the claimant surmises that it may have gone into the construction of the home they were building on Torrey Pines Court, there is no evidence to support this suggestion, and the family clearly had other projects and ventures during that time. The family income fluctuated greatly through the years.
- [48] In *Polard v. Polard*, 2017 BCSC 1963, Justice McKenzie concluded that the wife had failed to prove her excluded property claim regarding pre-relationship savings. He nonetheless reapportioned the family property in her favour on account of the husband's financial circumstances that included his beneficial interest in a family trust. I have reviewed the circumstances in *Polard*, but I do not find they are of assistance to the claimant here.

- [49] The respondent has no property, excluded or otherwise, that is equivalent to the family trust in Polard, and there is no evidence that the respondent's family is wealthy such that the parties made decisions not to save for retirement in anticipation of money from the parents of one of the parties. Indeed, the respondent's description of his working conditions when doing pipeline work leaves me in no doubt that he does the pipeline work out of necessity.
- [50] The claimant has the onus of proving her excluded property claim, and the evidence does not establish that the inheritance was used for any particular purpose or that it can be traced into an existing asset. The claim for this exclusion fails.

Respondent's life insurance policy

- [51] The respondent's parents bought a life insurance policy for him in 1968 when he was child. While I accept that the policy was bought before the relationship commenced, the parties have continued to pay the premiums from family money. I have no evidence of its value at the time the relationship commenced. Its value is negligible, even now.
- [52] The respondent has not met his burden to prove the exclusion.

Other adjustments

- [53] There are some other adjustments to be made to the division of property, primarily to reflect certain assets and liabilities as at the date of separation.
- [54] The respondent received an income tax refund for 2015 that arrived after separation, and also a large refund for 2016. The claimant suggests, and I agree, that one-third of the 2016 income tax refund should be considered family property to reflect that separation occurred in April, roughly one-third of the way through the year.
- [55] For her part, the claimant deposited a jointly issued cheque which was a refund for their home warranty. Although the cheque was received some years after separation, the warranty was family property.
- [56] The following spreadsheet reflects the appropriate division of family property and debt. There was evidence, by way of oral testimony, documentary evidence or both, to support the various adjustments that are listed:

Property/Debt

Value

Claimant

Respondent

Net proceeds of Family Home

\$325,954.00

\$162,977.00

\$162,977.00

Claimant's bank accounts as at separation

\$16,263.00

\$16,263.00

Respondent's bank accounts as at separation

\$11,338.00

\$11,338.00

National Home Warranty cheque

\$15,000.00

\$15,000.00

Claimant's Mazda vehicle

\$3,000.00

\$3,000.00

Respondent's 1997 GMC truck

\$2,500.00

\$2,500.00

Cash withdrawn by Claimant on April 15, 2016

\$2,600.00

\$2,600.00

CLAC pension

\$835.00

\$835.00

Cash value of Manulife insurance policy less outstanding loan

\$4,111.00

\$4,111.00

GS - 2015 income tax refund

\$3,545.00

\$3,545.00

GS's One-third of 2016 income tax refund attributed to pre-separation

\$6,792.00

\$6,792.00

Claimant's credit card debt at separation

(\$1,016.00)

(\$1,016.00)

Respondent's credit card debt at separation

(\$29,018.00)

(\$29,018.00)

Totals:

\$361,904.00

\$198,824.00

\$163,080.00

Equal division:

\$180,952.00

(\$17,872.00)

\$17,872.00

Division of Net Sale Proceeds:

\$145,105.00

\$180,849.00

Spousal support

Legal framework

[57] The claimant seeks spousal support pursuant to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.). The relevant statutory provisions are as follows:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Terms and conditions

- (3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.
- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
 - (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.
- ...
- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [58] The parties agree that the claimant is entitled to spousal support. However, they disagree as to whether her entitlement should include a compensatory component.
- [59] Compensatory support is intended to provide redress to a spouse who suffers an economic disadvantage arising from the marriage. It recognizes the sacrifices made by a spouse whose non-financial contributions to the marriage resulted in a lower earning capacity and more limited economic opportunities.
- [60] The leading case on compensatory support principles is the Supreme Court of Canada's decision in *Moge v. Moge*, [1992] 3 S.C.R. 813, in which the Court stated the following at 870:
- [84] Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement (see *Mullin v. Mullin* (1991), *supra*, and *Linton v. Linton*, *supra*). Furthermore, great disparities in the standard of living that would be

experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the role assumed by one party. As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution (see Rogerson, "Judicial Interpretation of the Spousal and Child Support Provisions of the Divorce Act, 1985 (Part I)", *supra*, at pp. 174-75).

- [61] In *W. v. W.*, 2005 BCSC 1010, Justice Martinson observed the following about the interpretation of *Moge* in British Columbia jurisprudence at paras. 11 and 12:
- [11] In British Columbia this comment in *Moge* has been interpreted to mean that in long marriages the result will likely be a rough equivalency of standards of living. Doing so recognizes that the longer a marriage lasts, the more intertwined the economic and non-economic lives of the spouses become.
- [12] Throughout the marriage, each spouse makes decisions that accommodate the economic and non-economic needs of the other. The decisions include the way in which child care and other family responsibilities will be handled and the way careers will develop. These decisions can have a significant impact upon the income earning ability of each at the time of separation. Yet it is not easy to determine exactly the relationship between these decisions and the consequent benefits and detriments to each spouse. The rough equivalency of standard of living approach has operated as a workable substitute to assess compensatory claims. See for example, *Dithurbide v. Dithurbide* (1996), 23 R.F.L. (4th) 127 (B.C.S.C.); *Rattenbury v. Rattenbury*, [2000] B.C.J. No. 889, 2000 BCSC 722; *Rinfret v. Rinfret*, [1999] B.C.J. No. 2945 (S.C.); *O'Neill v. Wolfe* (2001), 14 R.F.L. (5th) 155 (B.C.S.C.); *Walton v. Walton*, [1997] B.C.J. No. 1089 (S.C.); *Ulrich v. Ulrich*, [2003] B.C.J. No. 836, 2003 BCSC 192; and *Carr v. Carr* (1993), 46 R.F.L. (3d) 326 (B.C.S.C.).
- [62] If support is payable based upon compensatory principles, the quantum of support will tend to be at the higher end of the range. By contrast, non-compensatory support focuses more on the means and needs of the parties, albeit with reference to the standard of living enjoyed by the parties prior to separation.

Positions of the parties

- [63] The claimant argues that she is entitled to spousal support based upon both compensatory and non-compensatory bases. She argues the duration of the marriage, the roles of the parties during the marriage, and their relative incomes suggests support at the high end of the range.
- [64] The respondent argues that the claimant is capable of supporting herself and that her efforts to become self-sufficient since separation fall short of what is appropriate. He argues that his goal for the past dozen years or so was to move into missionary work, and that it was always his intention to get out of pipeline work.

Discussion

- [65] When the parties moved to Kelowna, the claimant took a job at a hairdressing salon. She then moved to a different salon where she remained until the parties' first child together, Mitchell, was born. She did not return to hairdressing until all four children were older.
- [66] She described enjoying her role as the primary caregiver for the children and being a stay-at-home mother responsible for the house. The respondent often had work that took him out of town, and she would therefore be at home with the four children for extended periods. Her efforts to work outside the home were short term because it was simply not feasible for her to work while also looking after the home and the children.
- [67] Although she described the respondent as discouraging her from working, there were a couple of attempts to work when the youngest child was in elementary school. Those attempts were not fruitful, and I expect it was primarily because of the fact that she was solely responsible for the children while the respondent worked away.
- [68] In 2011, she saw a posting for a job at a flower shop. She had previously discussed with the respondent the fact that she would like to do that kind of work, and was looking at enrolling in a florist course. An additional motivation for the claimant to work outside the home is that the respondent was working for himself in the construction industry and there was a lot of bookkeeping and other types of paperwork that he expected her to do. She did not like that work, and was looking for something else she would like better. When she responded to an advertisement for the job at a flower shop, she was offered a position that would involve her doing 40 hours of free work with training, followed by minimum-wage work. She accepted gladly, and enjoyed it. She worked three or four days per week, and more during the busy periods. She gave up the job when she moved away during one of the parties' separations.
- [69] The parties' marriage was a traditional one. The claimant was primarily responsible to care for the home and the children, while the respondent was the person responsible for making the money the family needed. While the claimant assisted as best she could with the family business ventures, and the respondent was involved and a devoted father, there is no question that the claimant abandoned her career for the benefit of the family while the respondent was able to maintain and improve his very varied skills and talents for which he is able to be well compensated financially.
- [70] I am satisfied that the claimant has established a claim for support based on both compensatory and non-compensatory principles.

Retroactive spousal support

Claimant's employment after separation

- [71] Following separation, the claimant attempted to start a small business dealing with floral and succulent gardens. She bought a van, and opened a business. It was not overly successful, neither making nor losing money. By the end of October 2016, she had shelved that plan and instead got a job working at a local nursery three to four days a week, plus overtime when they were busier. She had been there for 2.5 years or so when she had an accident, slipping and falling on some gravel while at work and breaking her ankle. She went on WCB and was out of work until approximately February 2019. The job had paid her \$17 per hour.
- [72] After returning to work at the nursery, she decided that the commute was too far and got a job as a chambermaid at a place called Vista Villa Couples Retreat. She worked there from June until August but then was told to quit by her doctor as she was continuing to have flare-ups of pain in her neck and back subsequent to the accident at the nursery.
- [73] In approximately 2018, she decided to supplement her income by creating a separation between the upper and lower floors of the home and then renting the basement out. She had a student for the first year who paid \$750 per month. She took a break from renters for a while and then got another tenant, or more particularly, a couple, in September 2019. The rent was originally \$1,500, but was subsequently reduced to \$1,000 on the understanding that the tenants would assist with work around the house.
- [74] The claimant was hired to work as a production assistant for a local movie company, a job that started in March 2020, but the job ended after only two days due to the Covid-19 pandemic. The job paid minimum wage. She did some occasional other work in 2020, including putting on a workshop for succulent gardens, and also took a small job assisting someone with landscaping. The claimant has not had full-time employment since October 2019.

The respondent's employment after separation

- [75] The respondent described massive fluctuations in the amount of available work in the pipeline industry. If he is able to work, he can make a large amount of money in a short period of time. However, there are often very lengthy periods of unemployment.
- [76] In 2016, he had 9.5 weeks of work just before the separation, followed by 12 weeks in the summer and a further three weeks in October. His gross income from these jobs was approximately \$95,000 and he worked 1,544 hours.
- [77] The side boom that he operates is a piece of equipment that is used to pick up pipes for pipeline work. Most modern equipment uses hydraulics, and very little skill or training is required to operate those machines. He is trained to use an older piece of equipment that is mechanical rather than hydraulic. This requires a great deal of skill, which is why he tends to get hired if there is work.

- [78] The work itself, however, is very uncomfortable. The older equipment that he operates is over 50 years old. He sits on a seat on the equipment but there is no enclosed cab. There is no heat, other than the heat that is generated by reversing the airflow over the engine. He said a lot of the work is done at minus thirty degrees, and the wind is blowing. He said his feet freeze but his upper body is hot from the air blowing from the engine. His lunch freezes. Most of the work is camp work. He referred to a couple of paystubs that confirm that he can sometimes work six or seven days per week and up to 15 hours per day.
- [79] He gave evidence about pain in his low back and his knees when sitting for so long in bad weather. He receives massage treatments and has had IMS needles. While there is no medical evidence to support an inability to work, I accept that sitting for that length of time and in those conditions would be extremely uncomfortable.
- [80] Determining the respondent's income for the purposes of his support obligations is difficult for a number of reasons. His record-keeping is imperfect. His pipeline work is out of town and in most instances, he receives a living-out allowance ("LOA"). An LOA is generally a per diem amount that is intended to cover the cost of food and accommodations while working. The amount of an LOA differs between employers. The LOA is non-taxable, and therefore does not show on either a record of employment or on a T4 slip. It is not included in line 150 income.
- [81] Not all of the respondent's work includes an LOA. In some instances, the workers are housed and fed in a work camp. In those cases, there is no LOA because the food and accommodations are provided by the employer in the camp.
- [82] An LOA is significant when determining income for support purposes because it is a common practice for workers to obtain food and lodging at a daily cost substantially lower than the LOA. The T4 slips provided by an employer therefore may not tell the full story of the workers' incomes because they are entitled to keep the difference.
- [83] There are also a variety of arrangements regarding travel costs. In some instances, the employer pays for travel to and from the job site. In others, employees must make their own arrangements and at their own cost. On occasion, the respondent has also been paid a fee for use of his vehicle which is also not taxable.

Living out allowance and its impact on income for support purposes

- [84] This Court considered the impact of LOA on income for support purposes in *Webster v. Webster*, 2014 BCSC 730. In *Webster*, the Court held that an LOA could be considered income for support purposes when it was not used for its intended purposes, and the employee had no significant costs associated with working at the remote location. Webster turned on the fact that the husband, while working at a remote dam site near Trail, BC, was living with his girlfriend and paying only \$700 in monthly rent to her. He had only modest travel and meal costs associated with the worksite. At the time, the parties had separated and the husband was not making payments on the mortgage owed on the matrimonial home.

- [85] The Court in Webster set out the following principles regarding living-out allowances and income at para. 37:
- a) generally, a living-out allowance paid for the recovery of work-related travel and living expenses will not be treated as income under the Guidelines;
 - b) living-out allowances are intended to compensate the recipient spouse for the extra costs associated with working away from home;
 - c) in all the cases where courts have excluded living-out allowances from the recipient spouse's Guideline income, there has been some evidence that the recipient actually incurred extra costs associated with working away from home, although the recipient was not required to account for the whole amount of the allowance; and
 - d) under s. 19(1) of the Guidelines, the court has a broad discretion to impute such amount of income to a spouse as it considers appropriate in the circumstances.
- [86] The Court decided to impute one-half of the LOA to the husband's income for the time he was working at the dam site near Trail, but declined to impute income from earlier allowances, which were used for legitimate working expenses.
- [87] This Court came to a similar conclusion in *Nustad v. Nustad*, 2020 BCSC 534, where the evidence established that the husband did not use the entire LOA for its intended purpose, because his receipts showed that his purchases included expenses he would have incurred regardless of where he was working. The Court in *Nustad* added approximately one-half of the LOA into the husband's income. Imputed income from the unused portion of an LOA is subject to gross up because it is not taxable: *McGrail v. McGrail*, 2016 BCSC 104.

Deduction of expenses from income by respondent

- [88] The final aspect of the respondent's circumstances that creates a challenge for determining his effective income is his aggressive use of business deductions to lower his income. As examples, he has deducted camping site fees as a business expense because the travel trailer that he will use for work from time to time is stored there. He also continued to deduct expenses associated with the home office at the Torrey Pines Court property during the years after the separation, even though he did not go in the home for years.
- [89] In 2017, the respondent incorporated Wildstone Ventures Inc. because it made it easier for him to get some of the jobs he was seeking. Although Wildstone Ventures has only had a couple of relatively small projects aside from the pipeline jobs that were subcontracted through the corporation, the respondent has claimed significant deductions that have created a business loss that is then deducted from his personal income. His expenses include his cell phone and his vehicle expenses, which include both personal use and business use components.

- [90] I am satisfied that the vast majority of the respondent's expenses are deducted from his income in one manner or another, whether they are business expenses, expenses that include both a business and personal component, and in some cases expenses that would be characterized as primarily personal in nature.

Discussion

- [91] It follows from the above that I do not accept the respondent's submission that I ought to simply use his line 150 income from his tax returns and his notices of assessment as an accurate statement of his income. To do so would fail to take into account the effect of the LOA and also the deduction of personal expenses from business income, however legitimate many of those deductions may be for income tax purposes.
- [92] The claimant's counsel, Ms. Thomson, has undertaken calculations with the intention of trying to form a more accurate estimate of the respondent's income. For each of the years since separation for which a tax return has been filed, she has started with the respondent's T4 income, but without deducting the various business losses which are generated primarily by an aggregation of expenses that are a combination of business and personal expenses but primarily the latter.
- [93] The claimant has then added an estimate of the non-taxable LOA amounts, a task that is made more difficult by the lack of relevant information or evidence. A few weeks before the trial, the claimant applied for and was granted an order compelling disclosure of the last paystub for each employer during each year since separation. I am satisfied that the respondent endeavored to do so, and an affidavit with approximately 90 pages of exhibits resulted.
- [94] In some cases, the last paystub from an employer includes year-to-date totals for the LOA. However, the format of some of the paystubs does not provide that information. In those instances, counsel has determined a ratio or multiplier based upon the gross pay on the one available paystub in relation to the gross pay for the year to date, which information is available. She has then multiplied the LOA on the one paystub by the multiplier, the effect of which is to endeavour to calculate an equivalent of the per diem. While the respondent gave evidence about his LOA amounts, which range from \$150 to \$175 per day, there was no evidence about the number of days he worked per year. Even if there were such evidence, the daily LOA is paid while at the location, even if the worker has a day off.
- [95] Rather than attempting to determine what portion of the non-taxable LOA would have been spent on food, accommodations and travel, counsel has simply elected to disregard those portions of the plaintiff's income that were derived through Wildstone Ventures in their entirety, thus allowing the respondent to notionally deduct expenses to the point where the income in Wildstone is wholly eliminated. For the purposes of determining income, the claimant has then grossed up the LOA and then added it to the T4 income.

- [96] Counsel acknowledges her approach is not precisely accurate, but says it is the best that can be done with limited information. I agree that her approach is not unreasonable, albeit I propose to adjust some of the values included in the calculations. In particular, I am satisfied that the respondent has deducted all of his actual out-of-pocket expenses associated with working out of town, whether through deductions from his self-employed business income, or as expenses of Wildstone Ventures following its incorporation, and therefore I need not estimate a percentage of the LOA to include as income as the Court did in Nustad and Webster. Since I am satisfied that the respondent's actual expenses have all been deducted from his pre-tax income, the LOA should all be included as income.
- [97] I will now address the parties' incomes since separation.

Incomes for retroactive support purposes

- [98] Following separation, the claimant explored self-employment before eventually concluding that she needed to obtain employment. Her income for that year pertains to employment she took on in the fall of 2016.
- [99] The respondent suggests that the claimant ought to have looked for work earlier. That may be so; however, the respondent made several trips to Kansas City during 2016 after separation when he arguably could have either been looking for work, or pursuing self-employment income. I accept the parties' actual incomes during 2016 without imputing anything additional to either party.
- [100] For 2016, the claimant suggests that \$13,382 of non-taxable benefits be added and grossed up in addition to the respondent's T4 income of \$98,105. Her DivorceMate calculations would attribute \$119,552 of income to the respondent. She proposes her actual income of \$6,326 be used.
- [101] However, the respondent earned a significant portion of his 2016 annual income prior to separation, with \$41,634.95 earned by March 15. Since a substantial portion of those funds had already been spent prior to separation and the claimant had paid off some credit cards and saved \$15,000 in an account about which the respondent knew nothing, it would be inappropriate to determine the respondent's retroactive support obligations for 2016 utilizing his income for the entire year.
- [102] Deducting pre-separation earnings and utilizing the claimant's calculation for the respondent's LOA, the respondent's income was \$56,470 and the claimant's income \$6,326.
- [103] The year 2017 was the respondent's best year for earnings. In 2017, he had a very busy year. He worked 2,572 hours, and his gross income was over \$165,000. He described 2017 as an anomaly, and that the work continued into the spring break-up, which seldom happens. After Wildstone Ventures was incorporated, some of his income was earned through the corporation, while other employers hired him personally as a T4 employee.

- [104] His employment income was \$164,307 and his non-taxable income, based on Ms. Thomson's calculations but adjusting for a double-counting that only became apparent during submissions, was \$30,500. He is entitled to a deduction for union dues in the amount of \$3,874. The claimant's income was \$28,932.
- [105] In 2018, the respondent's employment income was \$118,647. During this year, he worked 1,786 hours, which was slightly more work than in 2016, but a lot less than he had in 2017. He paid union dues of \$2,936, which must be deducted from his income. He also took on a small fencing contract during 2018. In the income calculations provided by Ms. Thomson, she has not taken that income into account, but instead has left the entire amount to absorb some of his business deductions. However, she seeks to add \$5,000 for the personal portion of his cell phone and vehicle expenses.
- [106] In 2018 and indeed in other years, the respondent claimed a business expense deduction for rent, which was an amount he paid himself to reimburse a portion of his personal rent. Mr. Stromquist rents a room from a friend where he also keeps some of his office paperwork. I accept that the respondent would likely have to rent storage somewhere for his business, whether it be office supplies and paperwork or his tools. Even if he need not have a home in any particular place when he is working away for long periods, deducting his entire rent for his residence is not necessarily justifiable. However, the claimant also derived rental income from time to time by way of a suite in the Torrey Pines home. She too was able to deduct household expenses in order to reduce the taxable amount to a negligible sum. I make no adjustments to the incomes of either party on account of rental income. The claimant's income in 2018 was \$28,932.
- [107] In 2019, the respondent's income from employment was only \$57,483. 2019 was a slower year and he worked only 1,005 hours, his lowest total since 2015. He testified that some of the work he took in late 2019 and early 2020 was essentially entry-level work, but he felt he had no choice but to take it. I accept that the respondent took whatever work he could find and I reject the claimant's suggestion that he sought to lower his income on account of the litigation.
- [108] Ms. Thomson has undertaken the process discussed before with regard to determining a prorating of his LOA and those total \$14,465. Consistent with her prior approach, Ms. Thomson has not included work done through and invoiced through Wildstone Ventures but has left that amount for deductions of the respondent's other expenses. She seeks to add \$5,000 for the personal portion of cell phone and truck usage, less a deduction of \$1,504 for union dues.
- [109] The claimant's income in 2019 was \$21,792, which reflects the fact that she was on employment insurance following her work-related injury.

[110] The claimant has negligible income in 2020 up to the date of trial. For his part, the respondent worked earlier in the year and was working up to the date of trial, but given how much the respondent can make in a short period of time on the one hand and how quickly and unexpectedly the layoffs can arise on the other, a calculation based upon prorating over the course of the calendar year would be inappropriate.

Conclusion for retroactive support

[111] The respondent's obligation for retroactive spousal support is set out in the table that follows, and is based on the conclusions regarding the parties' incomes in the years since separation. The DivorceMate software provides for a lump sum amount for each of the prior years based on the recipient's after tax benefits and the payor's after-tax cost, and then provides a midpoint between the two amounts. The midpoint, based upon support payable by the respondent at the high end of the range, provides for a fair determination of retroactive spousal support, and the amounts since separation are as follows:

Respondent's Guideline income

Recipient's

Guideline income

Midpoint

lump sum

2016 (8 months only)

\$55,725

\$ 6,326

\$12,338

2017

\$215,509

\$28,932

\$57,662

2018

\$176,101

\$28,932

\$46,694

2019

\$80,302

\$21,792

\$20,954

TOTAL

\$137,648

[112] The respondent also owes retroactive support for the present year, based on \$4,600 per month since January 1, 2020.

[113] The parties agreed in the mediation that certain RRSPs and a LIRA would be transferred to the claimant by way of spousal rollover, and that the respondent's one-half share in those funds would be characterized as an interim spousal support payment. The amount of the credit is \$21,308, which amount is to be deducted from the respondent's retroactive spousal support obligation, resulting in an amount owing to the claimant of \$116,340 up to and including December 31, 2019.

Prospective spousal support

The claimant's income for prospective support

[114] The claimant suggests that the respondent's income be determined based upon an average and that the claimant's income be imputed based upon what might be realistic in her circumstances. Claimant's counsel has provided scenarios based upon the claimant's income at \$25,000, \$30,000, and \$35,000 per year.

[115] The claimant agreed that she is not currently searching for work. Her understanding was that the production assistant job could have involved up to 60 hours per week, but she said she did not want to work that many hours because she has a grandchild and another one due late this year, she has four children, and family is her number one priority. Her evidence was that given her age, she does not want to work 12 hour days, five days a week, and she said on cross-examination that she does not want to spend her latter days working her life away.

[116] A medical-legal report from her general practitioner Dr. Green opines that she ought not to be doing heavy work that involves working with her arms extended. This would not, from my review of the report, preclude her from doing floral work, but would likely prevent a return to her former career as a hairdresser. I also accept the claimant's evidence that her skills are very outdated in terms of hairdressing.

[117] While the claimant admitted that she would prefer not to work long hours and would instead prefer to spend her time with her family, this is simply not realistic given the fact that the parties are now separated, even though that may well have been her wish. Similarly, while I accept that the respondent would have preferred to move into ministry

work and avoid the harsh realities of pipeline work, the fact is that circumstances have changed and this goal is not attainable or appropriate in the parties' current financial circumstance.

[118] The claimant's apparent lack of work over the recent months could likely be explained by the pandemic; however, she concedes that she is not looking for work and has not looked for work much over the past year. As such, the Court is not in a position to do anything other than look at her circumstances and impute an income. In 2017 and 2018, her income was approximately \$29,000. She earned \$17 an hour at her nursery job, and I can see no reason why she could not resume that kind of work and earn similar income. She was working three or four days a week plus overtime when earning that annual income.

[119] The respondent argues that the claimant could return to working as a hairdresser and could make \$40,000 to \$60,000 per year. I accept that her skills are dated and that she would be physically precluded from that work. Moreover, hairdressers earning that kind of income have established clientele. This is not a realistic determination of her ability to earn income.

[120] Based on what she made at the nursery job working less than full-time, I conclude that \$32,000 per year represents a reasonable and attainable income for the claimant.

The respondent's income for prospective support

[121] The respondent's income is more difficult to predict.

[122] I am satisfied on the evidence that the respondent has actively pursued work and has accepted those positions offered to him. Mr. Stromquist was cross-examined on the Trans Mountain Pipeline Expansion Project ("TMEP"), which is currently where he is working. It is a matter of public record that there have been protests that have interfered with work on the TMEP.

[123] However, the fact that the project is expected to take over two years does not mean that the respondent will be employed for that length of time. He explained that the initial preparation work of the various rights-of-way areas is not work that he would ever be involved with, nor is the restoration and remediation work once the pipeline has been laid.

[124] The portion of the project where he is currently working, which is near Clearwater, BC, involves 74 to 77 km. However, less than 1 km has been prepared by what he referred to as the "grade crew". The grade crew contours the lands within the rights-of-way in order to prepare it for the laying of pipe. Because the terrain is very difficult, the repair of the landscape could take a year or a year and a half, according to the respondent, and he is involved in neither the grade crew nor landscape repair work.

[125] The respondent testified that the majority of his work is through his union. The union operates across the country, but members are affiliated with one province. They are entitled to work in other provinces and the respondent has often worked elsewhere.

However, working in another province involves what he described as a "travel ticket", and only a percentage of workers on a site will generally be working with a travel ticket because priority is given to those who are registered in the province. Due to the economic challenges in Alberta, he says his chances of obtaining work in Alberta are more limited because there are only 120 members of his unit in BC, but 3,500 in Alberta.

- [126] He recounted that earlier this year, the work went in fits and starts. He would be promised a job and travel to a new location, only to find there was very little work. At one point, he travelled for a job that was supposed to last two weeks only to be laid off almost immediately and then re-hired two hours later. He was then told there was going to be work for two years on the TMEP, only to be laid off after 10 days of work.
- [127] In all of the circumstances, I conclude that the most reasonable method of estimating the respondent's income on a go forward basis is with reference to his previous years. While the claimant may suggest that the respondent is presenting an overly pessimistic view of future income prospects, and that he will likely be working consistently for at least the next two years, I do not agree that the claimant's optimism provides for a legitimate method of determining income.
- [128] I have concluded that the fairest method of determining the respondent's income for support purposes is to use an average. Although the income information for the respondent is available for over 10 years, I am satisfied that the years prior to separation are of limited value, both because the family unit was together and made decisions that were not focused primarily on maximizing income and also because they elected to pursue other business ventures such as property development that have not been a part of their recent history and may not be so in the future.
- [129] In the circumstances, I conclude that taking an average of four years of income, from 2016 to 2019 inclusive, presents the fairest estimate of the respondent's income. The four-year average of the respondent's annual Guidelines income since separation is \$147,866. I round this average to \$150,000 to take into account his personal use of his cellphone and vehicle that he is able to deduct for business purposes.

Review Order

- [130] The respondent is entitled to apply for a review of his spousal support obligations after five years upon a change of his financial circumstances due to unavailability of pipeline work or his inability to complete it for medical reasons. This does not preclude either party from applying for a variation to the order under s. 17(1)(a) of the Divorce Act if there is a material change of circumstances in the interim.
- [131] The jurisdictional basis for a review of spousal support obligations comes from s. 15.2(3) of the Divorce Act. In *Leskun v. Leskun*, 2006 SCC 25, the Supreme Court of Canada endorsed the use of such orders when there is a genuine and material uncertainty at the time of the initial order with respect to a contingency that may have a significant effect on support:

Leskun at para. 37. In Leskun, there was true uncertainty as to the financial prospects of the wife and what level of support she would need in the future. Though Leskun focused on the recipient spouse's financial prospects, this Court has subsequently ordered review of spousal support orders when there is a material uncertainty as to the payor spouse's future earning capacity: Booth v. Booth, 2011 BCSC 508 at para. 32; Hathaway v. Hathaway, 2015 BCSC 1485 at para. 102.

[132] At the same time, the Court in Leskun was careful to note that review orders are the exception to the typical process for variation. Binnie J. directed that review orders should be tightly prescribed so as to avoid the parties re-litigating the same issues: Leskun at paras. 36-40.

[133] I am satisfied that the respondent's future income, given the physically grueling and intermittent nature of his pipeline work, is a genuine and material uncertainty of the kind identified in Leskun. In particular, there is uncertainty as to the respondent's level of involvement with the TMEP, and economic challenges to the industry generally. Further, while there was no medical evidence to suggest the respondent is unable to perform the side boom work, its physically grueling nature means that it may not be sustainable into his later years. These uncertainties mean that the respondent's financial situation may be different in the coming years.

Security for spousal support

[134] The claimant seeks an order that the respondent secure his spousal support obligations by way of an irrevocable designation on his life insurance policy in the amount of \$400,000. The respondent previously had a policy in this amount on which the claimant was the beneficiary.

[135] However, there is no evidence that the respondent will not comply with orders of the court. This is also not a case where the claimant is in what the court has described as "extremely necessitous circumstances" or that the payor is in "relatively affluent circumstances": Jackh v. Jackh (1980), [1981] 1 W.W.R. 481 (B.C.S.C.), cited with approval in Waters v. Conrod, 2007 BCCA 230.

[136] The claim for an order that the respondent secure his future spousal support obligations is dismissed.

Conclusion

[137] Based upon the claimant's income of \$32,000 and the respondent's income at \$150,000, the Spousal Support Advisory Guidelines generate the following: low range \$3,688; midrange \$4,302; high \$4,833.

[138] Spousal support should be towards the higher end of the range, and I therefore order spousal support payable by the respondent to the claimant in the amount of \$4,600 per month, commencing January 1, 2020.

[139] Because of the duration of the relationship, support is payable for an indefinite period. However, the respondent shall be entitled to apply for a review of his obligations after five years, on the grounds described above.

Other adjustments

[140] There are a series of other adjustments to be made to the division of property.

Household chattels

[141] When the Torrey Pines home was sold, the household contents needed to be divided. The claimant had some reservations about dealing directly with the respondent and suggested that a friend of hers, Ms. Amanda Stewart, was willing to supervise or mediate the process. Ms. Stewart testified at the trial. The parties went room by room, and through the garage, identifying the items they wanted. At some point, Ms. Stewart noticed that some large pieces of artwork had been removed from the wall. She confronted the claimant because it was contrary to what had been agreed in terms of the process. The claimant's evidence was that she was not happy that she was confronted by Ms. Stewart, and terminated the process and Ms. Stewart's supervision of it.

[142] A few days before possession was to be turned over, the claimant left a key under the mat so that the respondent could go into the property. Ms. Stewart went to supervise as she had agreed, and both noted that the claimant had taken the majority of the contents. The respondent testified that the majority of what remained was of limited value. He disposed of much of it. The respondent seeks compensation for the unequal division of chattels.

[143] The difficulty in dividing chattels is the absence of any evidence of value. As such, while I have no hesitation in accepting Ms. Stewart's evidence, together with the respondent's evidence, that the claimant took the majority of the valuable contents, there is little in the way of evidentiary basis to determine appropriate compensation. However, it would also seem unfair to allow the claimant to usurp the process she agreed to. I award the respondent \$5,000 as compensation for the unequal division of chattels, which is reflected in the schedule below.

Torrey Pines repairs

[144] When the parties sold the Torrey Pines home, the purchaser wanted certain repairs done, or alternatively wanted a \$2,500 credit from the purchase price following the home inspection. The respondent decided that he would rather do the work than adjust the price.

[145] Unbeknownst to the respondent and I assume also the claimant, a heat pump needed to be replaced. As such, the repairs cost more than \$2,500. The respondent's out-of-pocket expenses for all of the repairs was \$4,770.79, of which the heat pump repair was \$2,598.75. Because the heat pump repair was not anticipated, it is reasonable that the cost be shared equally. Had the repair not been done, the parties would have been obligated to fix it under the sale contract. The respondent is therefore entitled to reimbursement of one-half of the heat pump repair cost, or \$1,299.

Occupational Rent

[146] The respondent argues he is entitled to occupational rent because the claimant remained in the former family home while he made all of the mortgage payments and paid most of the other expenses associated with the home.

[147] I conclude this is not a case where occupational rent is applicable. Although occupational rent is frequently claimed in family law proceedings, it has been found in this province to be "an exceptional remedy and should be used cautiously": *Bishop v. Wang*, 2018 BCSC 781. It is generally employed to address what would otherwise be an unfair outcome.

[148] The claimant was entitled to spousal support from the respondent upon separation, which amount has been determined earlier in these reasons. The respondent is entitled to credit for the expenses he paid to maintain the home that the claimant occupied prior to the sale. The amount of the respondent's credit is discussed in the following paragraphs. There is therefore no unfairness that needs to be addressed by way of an allowance for occupational rent.

Post-separation expenses related to Torrey Pines

[149] The respondent paid the vast majority of the expenses associated with the Torrey Pines property following separation, including the mortgage, the interest payments on the secured line of credit, property taxes, most of the utilities and various other expenses. He prepared spreadsheets and summaries that he put into evidence outlining what he claimed to have paid, but without receipts.

[150] The difficulty with the respondent's summaries was that they were imperfect in a number of ways - they included expenses before separation, expenses that were paid by the claimant, such as her car insurance, money paid to the children but without discussion with the claimant. That said, the claimant agrees that the respondent paid a significant portion of the expenses associated with the home for which he is entitled to credit.

[151] Below is a schedule of the expenses paid by the respondent after separation, together with a couple of other post-separation adjustments, for which the respondent is entitled to credit and serve to offset against the respondent's obligations for the arrears of spousal support.

Item

Credits to Respondent (Claimant)

100% of mortgage to Nov 2019

\$49,212.00

1/2 of interest on LOC to Nov 2019

\$14,522.00

Fortis Electric to June 2020

\$5,879.00

Telus internet/phone

\$1,893.00

RDCO

\$4,836.00

1/2 of property taxes not incl penalties

\$2,688.00

1/2 of RDCO account paid by conveyancer

\$336.00

1/2 of RDCO account on Adjustments Stmt

\$156.00

Credit for 1/2 of strata fees

(\$8.00)

1/2 of accrued interest on LOC at sale

634.00

1/2 of house insurance

\$3,930.00

1/2 credit - heat pump repair

\$1,299.00

Chattels - unequal division

\$5,000.00

Extra mortgage payment made by DS to GS in 2020

(\$1,103.00)

Adjustment in favour of respondent:

\$89,274.00

Conclusion

[152] Based upon the above, the division of the net sale proceeds from the sale of the Torrey Pines home, adjusted for retroactive spousal support up to and including December 31, 2019 and for post-separation expenses, is as follows:

Claimant

Respondent

Division of Net Sale Proceeds

\$145,105.00

\$180,849.00

Retroactive spousal support to Dec/19

\$116,340.00

(\$116,340.00)

Adjustment for post-separation expenses etc.

(\$89,274.00)

\$89,274.00

Final division of Net Sale Proceeds

\$172,171.00

\$153,783.00

[153] This does not include the respondent's obligation to pay spousal support in 2020, which I have determined is in the amount of \$4,600 per month.

[154] The respondent will pay spousal support to the claimant in the amount of \$4,600 per month. The respondent may apply for a review of his spousal support obligations after five years from the date of these reasons, upon a change of his financial circumstances due to unavailability of pipeline work or his inability to complete it on medical grounds.

[155] I grant the order for divorce, such order to take effect 31 days after the date of these reasons.

- [156] The respondent is also ordered to maintain, or reinstate if necessary, the claimant on his medical and dental benefits for as long as those benefits are available: L.G.N. v. L.L.N., 2014 BCSC 2662 at para. 72; Hyde v. Hyde, 2013 BCSC 2037 at para. 120.
- [157] By agreement, the respondent's IUOE pension will be divided, with the cost of such division to be shared equally by the parties.

Costs

- [158] If either party wishes to address the question of costs, they may contact Supreme Court Scheduling within 21 days of the date of these reasons to arrange to speak to the matter.

"Wilson J."

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