
CANADA / JUDGMENT

T.D.R. v. S.W.R.

2010 BCSC 1450

COURT

Supreme Court of British Columbia

DECIDED

18 October 2010

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2010 BCSC 1450 T.D.R. v. S.W.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.D.R. v. S.W.R.,

2010 BCSC 1450

Date: 20101018

Docket: 78157

Registry: Kelowna

Between:

T.D.R.

Plaintiff

And

S.W.R.

Defendant

Before: The Honourable Mr. Justice Brooke

Reasons for Judgment

Counsel for the Plaintiff:

R.J. Smith

Counsel for the Defendant:

N.J. McDougall

Place and Date of Trial/Hearing:

Kelowna, B.C.

March 24, 2010

Place and Date of Judgment:

Kelowna, B.C.

October 18, 2010

- [1] The parties in this high conflict proceeding seek orders for custody and access, child support and spousal support, and the division of assets.
- [2] On September 18, 2009 (after the notices of motion had been filed and delivered), two orders were made by consent. The first order addresses, in a comprehensive way, custody, guardianship and access.
- [3] The order provides for recourse to the Family Justice Centre for mediation if difficulties arise in the implementation of the order.
- [4] The second order of September 18, 2009 sees the parties, by consent, restrained in a broad and inclusive way from molesting or communicating with the other party or with the child in that party's custody; and, in each case, there is proviso for police enforcement.

Child Custody and Access

Background

- [5] The parties commenced cohabitation in May 1994, were married on February 10, 1996 and separated on September 5, 2007. The plaintiff is 41 years of age; the defendant is 47. There are two children of the marriage: J.M.R., born June 28, 1994 and B.A.R., born September 3, 1999. Since January 2008, B has resided with the plaintiff wife and J has resided with the defendant husband.
- [6] S.C.T., born January 19, 1990, is the plaintiff's child from an earlier relationship, and the plaintiff says she has been a child of the marriage since the parties commenced living together. The plaintiff received financial support from S's biological father in the amount of \$420 a month until June 2009 (when she had achieved the age of 19). No claim has been made, as I understand it, for child support for S against the defendant, who does not refer to her as a child of the marriage.
- [7] The evidence filed on this application reveals an over-heated and acrimonious relationship between the parties, particularly as it relates to their children.

- [8] The plaintiff contends that the defendant's behaviour, both before and after the separation, has been damaging to the well-being of J and B. She describes him as being extremely jealous, which has manifested in his being abusive to her in front of the children and making damaging allegations about her to the children in an attempt to alienate them from her. She also accuses the defendant of using J as a weapon in punishing her for what he perceives to be her misbehaviour. She says that both children are deeply conflicted and affected by the defendant's behaviour.
- [9] Although the defendant concedes that he was extremely upset at the breakdown of the marriage and at times conducted himself inappropriately, he denies alienating the children and says that the plaintiff has never taken responsibility for any of her own conduct which has had a negative impact on both children. He expresses particular concern with respect to her withdrawing his contact with B.
- [10] In the fall of 2008, the parties commissioned a s. 15 report from registered psychologist, Dr. Gordon Davidson. Dr. Davidson interviewed both parties, and undertook psychological and parenting testing with them. He also interviewed both children, conducted home visits, and had telephone interviews with family members, friends and professionals who had dealings with the parties.
- [11] In sum, Dr. Davidson noted extreme discrepancies in the information related by the parties. Their descriptions of virtually every event were diametrically opposed with reciprocal blaming and no personal accountability for their mistakes. He pointed out the stress and confusion that drastically divergent information from parents can have on children over time, and said that the parties' children are at risk in this regard. Information from the mental health professionals suggests that the defendant has more psychological issues than the plaintiff. However, testing suggests some personality issues on her part as well, including suspiciousness, inflated self-esteem, a tendency to blame others rather than taking personal accountability, and attention-seeking. References from friends and relatives regarding parenting capacity were for the most part glowing for both parents, with both being seen as highly committed and dedicated.
- [12] Dr. Davidson summarized the evidence of the mental health professionals, stating that the defendant's therapists for the most suggest that while he is very sincere and has a willingness to seek advice and make personal changes, his personality is characterized by considerable anxiety and obsessiveness, insecurity, jealousy, and impulsivity, which conspire to produce some difficulty in problem-solving and anger management. Dr. Davidson's own clinical impressions, albeit based on only one major interview, were that neither party had significant mental health issues. He noted the unreliability of self-reporting but said that the self-reporting of the parties suggest each is relatively stable and, for the most part, make good parenting choices with the best interests of their children at heart.

- [13] With respect to parenting capacity, clinical references from other therapists suggested that the defendant likely engaged in some undermining of the relationship of both children with their mother. However, they believed this to have likely been inadvertent rather than calculated, in part through indiscretions in terms of the children being exposed to conversations he was having with others about the plaintiff and making critical statements to her in front of the children.
- [14] With respect to B, Dr. Davidson said his interviews with her indicated a clear preference for living with the defendant up to half-time. He also noted that J indicated to him that B had told him this was her wish. Dr. Davidson stated that her unwillingness to tell her mother is perhaps because she does not wish to upset her. The benefits of B spending more time with the defendant include satisfying her expressed need to do so and facilitating a more normal relationship with her brother. Risks include the possibility that she will be drawn into the conflict between her parents and between her father and brother. On balance, Dr. Davidson concluded that a part-time living arrangement with her father was warranted, as the possible benefits were likely to outweigh the risks.
- [15] As for J, Dr. Davidson wrote that his interview with J suggested he got along well with the defendant but that the home visit and opinions of others suggested he dominates and manipulates his father significantly. J indicated he would like to have more time away from his father and would like to eventually reconcile with his mother. Dr. Davidson expressed his view that J should be encouraged to spend more time with his mother, perhaps on nights his father is working.
- [16] Dr. Davidson provided a summary of his major recommendations, as follows:
1. It is suggested that [B] spend two consecutive days and nights with Mr. [R] during his four days off. In addition, it is also suggested that she have another daytime visit with her father during the week.
 2. If [B] spends more time with her father than the present arrangement, that she see a child specialist regularly to monitor her well being. If the therapist has concerns about her adjustment, these issues must be addressed immediately.
 3. [J] be encouraged to spend more time with his mother, perhaps on evenings that his father is working.
 4. Parallel parenting arrangement where communication between parents is kept to an absolute minimum.
 5. A local mediator, perhaps a family court counsellor, be resourced, who could address conflict issues and decisions about holidays etc. that would be deemed unwise for the parents to address themselves.
 6. Treatment wise, that Mr. and Ms. [R] continue with therapy with their respective therapists, [J] and his father resume treatment and that [J] and his mother seek therapy.

- [17] Despite Dr. Davidson's recommendations, the plaintiff has not permitted the defendant access to B as suggested. She explains that she disagrees with Dr. Davidson's conclusions, as his report misses the devastating impact the defendant's personality difficulties has had on her and the children, both before and after separation. She points out that Dr. Davidson noted what other professionals said about the defendant - for example, that he is somewhat obsessive compulsive, has issues around his temper related to his problem-solving skills, is emotionally overwhelmed and driven by extreme jealousy - and did not question these conclusions. However, he appeared to ignore their consequences and was unconcerned about them in his overall parenting recommendations. In her affidavit #3, the plaintiff details incidents which illustrate her concerns with the report.
- [18] The defendant says that Dr. Davidson's report is extensive and clearly sets out the views of the children.
- [19] In April 2009, the defendant applied for a parenting plan with J having principal residence with him and B having principal residence with the plaintiff. The plan also provided for a highly structured communications scheme involving a parenting coordinator.
- [20] Following extensive discussions between their counsel, the parties entered into two consent orders on September 18, 2009. One was a reciprocal restraining order. It restrained the defendant from communicating with the plaintiff or with B, except as ordered by the Court from time to time or as agreed to in writing between the parties. The plaintiff was restrained from communicating with the defendant or with J on the same terms.
- [21] The second consent order addressed custody and access. It provided, in its entirety, as follows:
1. The Plaintiff shall have sole custody and sole guardianship of the child of the marriage, namely, [B.A.R.], born September 3, 1999, (hereinafter referred to as "[B]") and she shall have the principal residence of that child.
 2. The Plaintiff shall ensure that [B] will continue in counselling with a qualified counselling professional through the Kelowna Family and Children Services.
 3. At such time as that professional determines that it is in [B's] interest to have contact with the Defendant, that professional will be asked to prepare a report for the parties setting out the terms of that access and the Plaintiff will agree to access on those terms. The Defendant shall have the right, through a family doctor, psychologist, or social worker, to have that person contact the above professional to determine what progress has been made with [B], and when there might be a report setting out a plan for access by the Defendant to [B].
 4. Apart from the direction set out in paragraph 3 above, the Defendant shall have no access to [B], except as is initiated by [B] from time to time.

5. The Defendant shall instruct the child of the marriage, [J.M.R.], born June 28, 1994, not to have any access to [B], except when [B] or the Plaintiff initiates the access. This includes telephone access. The Defendant will explain to [J] that telephone calls must be initiated by [B] or the Plaintiff, and that [J] is not to make any calls to [B] on his own initiation.
6. The Defendant shall have sole custody and sole guardianship of the child of the marriage, namely, [J.M.R.], born June 28, 1994, and have the principal residence of that child with access to the Plaintiff as follows:
 - a. The Plaintiff shall have access to [J] on the two nights per week that the Defendant is working, such access to take place from after school and overnight until the next morning when the Plaintiff shall take [J] to school.
 - b. If access is on a date that falls on a weekend, then the Plaintiff shall have access to [J] from the time the Defendant goes to work until 10:00 am the next morning, unless the Defendant is working for two consecutive weekend days in which case the Plaintiff shall have access to [J] from the time the Defendant commences work until the morning after he finishes his last shift.
 - c. If [J], through his counselor at a particular time, determines that he does not wish to visit the Plaintiff, then his wishes will be honoured.
7. The Defendant shall provide the Plaintiff with his shift schedule at least two months in advance on a continuous basis, so that access can be worked out pursuant to the above schedule.
8. The Plaintiff and Defendant will take all necessary steps and cooperate with one another to ensure that [J] attends regularly and participates in counselling with Terry Dunn or another qualified children's counselor. Provided, however, if Terry Dunn or another counselor expresses an opinion that [J] does not require further counselling, then their opinion will be honoured.
9. Subject to the recommendations of the child care counselor as set out above, each of the parents will be entitled to one-half of Christmas holidays with both children, with Christmas Day and Christmas Eve to be divided in such a way that both children are with each parent from Christmas Eve through to one-half of Christmas Day, and then from the other half of Christmas Day through Boxing Day on alternating years. During Christmas of 2009, the children shall be with the Plaintiff from Christmas Eve through one-half of Christmas Day, and with the Defendant from the other half of Christmas Day through Boxing Day, and that schedule will alternate the next year. The above access schedule shall also be subject to the Defendant's work schedule over the Christmas season.

10. Neither parent will attempt to call the children when they are in the care of the other parent, except as set out above, or except to return a call initiated by one of the children requesting a return telephone call. This section applies to calls to the children at the babysitters, at their schools, at their daycares, or at their caregivers.
 11. School contact by the parent who is the non-custodial parent of the child shall be limited to regularly scheduled parent-teacher interviews, school concerts, and scheduled special events, and then only with the knowledge of the custodial parent, and consent of the custodial parent, which consent will not be unreasonably withheld. Each party will inform the other of regularly scheduled parent-teacher interviews, their location, date and time, and will tell the other party the names of all the child's teachers, so that each of the parents will know which teachers to talk to at the scheduled parent-teacher interview night.
 12. Both parents will exchange immediately with the other parent all school records, report cards, and other notes by way of emailing them to the other party.
 13. The Plaintiff will inform the Defendant as to any doctors appointments, dental appointments, or other health care professional appointments that she schedules for [B], and will inform him as to the outcome of those appointments promptly after the appointment has taken place, by way of an email.
 14. Both parties will inform the other as to any holidays that they will be taking with the children in excess of 3 days, and provide the other party with a contact number where they can be reached. Notice will be at least 2 weeks before the holiday takes place.
 15. Neither parent will attend on the residence of the other parent without the specific written invitation, and any such uninvited attendance will be considered a breach of a Court Order.
 16. If the parties are unable to agree to any of the details around implementing this Order, then they will refer that disagreement to the Family Justice Centre for mediation. If the parties cannot reach agreement through mediation, there shall be a parenting coordinator appointed to assist the parties in reaching agreement.
- [22] The plaintiff seeks to have this order stand. The defendant seeks some modifications. Specifically, he wishes access to B in accordance with Dr. Davidson's report, or alternatively he seeks an order that the plaintiff provide the names of all counsellors that B has seen since the date of the consent order, and that she instruct all counsellors that they are at liberty to discuss B with Dr. John Dorward or his designate to determine B's wishes with respect to access.

- [23] The defendant deposes of his concern that B's wishes and emotions are being communicated by the plaintiff. For this reason, he recommended that Dr. Dorward correspond with B's counsellors as contemplated by the order. Dr. Dorward confirms he was provided with the September 18, 2009 consent order, and was asked by the defendant to act as a contact person to determine what progress had been made with B and when there might be a report setting out a plan for his access to B.
- [24] Dr. Dorward contacted Ms. Smith in mid-January 2010. She advised him that she had not seen B since early November 2009, and that B had been referred to ARC for further counselling. She said she was not aware that reconciliation between B and the defendant was a goal of the counselling. She also advised that the plaintiff had refused consent to have counselling for B include the promotion of appropriate access to B by her father.
- [25] The defendant says that in his dealing with the Ministry of Children and Family Development, the social workers involved have always indicated that B wants to have more access with the defendant, which is consistent with her reports to Dr. Davidson.
- [26] The plaintiff says that B has experienced emotional distress as a result of the situation between her parents, including depression, anxiety, emotional outbursts, and difficulty going to school. In the spring of 2009, she began to display extreme anger and aggression in her moods. A pediatrician arranged for B to go to Child and Youth Mental Health ("CYMH") in May 2009, where she continued counselling with Leanne Smith until approximately October 2009. She was referred to the ACR program in Kelowna, and a counsellor now comes to the home twice a week to work with B. The plaintiff says B has ongoing anxiety and separation issues.
- [27] The plaintiff deposes that she brought the September 2009 consent order to Ms. Smith's attention. She says Ms. Smith made it clear her role was to counsel B to deal with her emotional issues before taking any steps to address reconciliation with the defendant. The plaintiff shares this view. She says that B is adamant she does not wish to resume visits with her father at this time, and the plaintiff is concerned that forcing those visits would cause more damage by undoing the work accomplished to this point. She says, as well, that Dr. Dorward is the defendant's psychologist and she believes he sees himself as an advocate of the defendant, not an advocate of B or the children.
- [28] Terry Dunn, a family therapist and clinical counsellor, provided an affidavit sworn March 23, 2010 to which is exhibited a letter "To Whom It May Concern", of the same date, in which she refers to very complicated family dynamics, having met with the plaintiff and the defendant, as well as J and B. He notes that the plaintiff is observed as calm and patient with the children, yet setting limits, and that her efforts to build a relationship with J have not been successful and as observed by Mr. Dunn J has little demonstrated respect for his mother.
- [29] The first order of September 18, 2009 clearly contemplates that B will continue in counselling, and at such time as that counsellor determines it is in her interests to have contact with the defendant, then that counsellor will be asked to provide a report setting out

the terms of that access, to which the plaintiff agrees she will accept. Moreover, the defendant in the same paragraph 3 is accorded the right through a family doctor, psychologist or social worker to contact the counsellor to determine the progress that has been made, and when there might be a report setting out a plan for access by the defendant. The consent order was drafted by able and experienced counsel, after careful consideration. It was designed to remove the risks of open conflict by separating the parties behind legal walls, including the companion non-molestation order and police enforcement. But, the order also contains a process to move the parties and their children with professional help to the kind of frequent and regular access that is seen to be in the best interests of the child. Unfortunately, while the first aspect of the consent order has reduced conflict, the second aspect has been frustrated. Thus, it is plain to me, that the order contemplates continuing counselling with a view to the restoration of access. I am not convinced that access should be ordered without respecting the concerns expressed in the order. There will be an order that the plaintiff provide to the defendant the names of all counsellors that B has seen since September 18, 2009 and that she instruct those counsellors that they are at liberty to discuss B and her access to her father with Dr. John Dorward or his designate to determine B's wishes and to develop a plan for that access to be introduced. Such an order will move the full implementation of the order of September 18, 2009 forward.

Assets and Support

[30] The plaintiff seeks the following relief:

- a) The defendant convey to her his one-half interest in the matrimonial home, together with all furniture and furnishings, which is appraised at \$370,000;
- b) The plaintiff receive all chattels and personal effects currently in her possession or registered in her name, with certain exceptions set out in paragraph 63 of her affidavit #1;
- c) The plaintiff assume responsibility for the Bank of Nova Scotia mortgage with an estimated amount owing of \$158,250.00. The defendant is not opposed;
- d) The plaintiff assume responsibility for the Scotia Bank Line of Credit in the current amount of approximately \$17,570 and the VISA Gold account in the current amount of approximately \$1,415. The defendant is not opposed;
- e) The plaintiff pay the defendant an equalization payment of \$24,954. The defendant does not accept this;
- f) The defendant pay the plaintiff for the support of B.A.R. the amount of \$430 per month commencing the first month following the date of the Court's order, together with a 72 percent share of B's extraordinary expenses. The defendant does not oppose payment of child support for B in the amount of \$430. However, he seeks to have the Court determine the division of the extraordinary expenses on the income of the parties and, in particular, on the imputed income of the plaintiff;

- g) The defendant's municipal pension be declared a family asset and that the plaintiff be declared a limited member of the plan for the period the parties commenced cohabitation, May 1, 1994, to the date of the Court's order. The defendant is not opposed; and
- h) The parties' CPP credits be equalized pursuant to the provisions of the Canada Pension Plan Act and Regulations. The defendant is not opposed.

Matrimonial Home and Chattels

- [31] The matrimonial home is located in Winfield, British Columbia. As of November 2009, it had an assessed value of \$342,000 and a mortgage of approximately \$155,000. An appraisal of the property earlier in June 2009 put its value at approximately \$370,000.
- [32] The plaintiff says there are substantial structural defects in the roof and foundation of the house which require repair. She attaches estimates for the costs of those repairs; \$20,000 for the foundation or \$2,100 for a lesser repair, and between \$6,270 and \$7,917 for the roof. The plaintiff says there is a substantial crack in the foundation of the home that will require repair at an estimated cost of \$4,500. I am not sure which number is most accurate. The defendant has filed a quote for repairs to the foundation in the amount of \$2,350.
- [33] The plaintiff seeks to have the defendant convey his one-half interest in the home to her. The defendant does not oppose her claim on the basis that he receive his share of the equity in the property based on the appraised value of \$370,000 and on an equal division of the net equity. He submits that he requires his share of the equity in order to provide stable accommodation for himself and J, as well as for B when she stays over. Alternatively, if the plaintiff is unable to pay the defendant his share of the equity, he submits that the property should be listed for sale with the parties to have joint conduct of the sale.
- [34] On this last point, the plaintiff's position is that it is not in her best interests or that of the children that the home be sold. She is currently able to meet the mortgage payments, which, according to her most recent financial statement, are \$1,450 per month. Were she required to move, her rent would exceed that amount.
- [35] I address the matrimonial home further below in my discussion of the equalization payment.
- [36] With respect to the chattels, the defendant submits that since separation, he has requested the plaintiff to return various assets from the home but that she has refused to do so until this matter is settled. He has listed those assets. The plaintiff has marked those items on the list she does not wish the defendant to have, as well as those she says they can divide.

Equalization Payment

- [37] The plaintiff wishes to make an equalization payment to the defendant in the amount of \$24,954 in exchange for his transfer of his one-half interest in the matrimonial home to her.

- [38] The defendant is employed full-time as a firefighter with the Kelowna Fire Department. His financial statement dated November 4, 2009 indicates his income for the purposes of child support and special expenses to be \$74,447.13. His income tax returns for 2008 and 2007 record his line 150 income at \$77,494.43 and \$78,147.22 respectively.
- [39] The plaintiff was employed at Costco earlier in the marriage. She was more recently employed as a manager of a children's recreation complex, and earned \$4,200 per month between July and December 2008. She was on a medical leave of absence for a period beginning in early April 2009, earning \$1,400 per month in employment insurance. The plaintiff was released from her employment at the recreation complex in June 2009 as a result of a shortage of work.
- [40] The plaintiff is also a distributor for Monavie, a multi-level marketing company. She says the benefit is that it permits flexible hours which facilitate her availability for B. The plaintiff deposes that during much of 2009, she was home with B, who was having difficulty coping with the altered family dynamics. As a consequence, she is unable to work a traditional 9-5 week.
- [41] The plaintiff's financial statement of November 4, 2009 lists her guideline income for basic child support as \$22,443.22 and \$27,050.58 for a spousal support claim. Her income tax returns for 2008, 2007 and 2006 indicated line 150 income of \$29,749, \$27,416.67 and \$18,773.03 respectively.
- [42] The defendant expresses concern that the plaintiff has not disclosed her entire earnings, as her 2009 T1 income tax form indicates she had net earnings of \$520.34 on sales exceeding \$15,000. He deposes that he has always understood her sales to be much higher than she has indicated, and that she may be putting her sales through a third party so as to not show any income. In this regard, he relates that J advised him that the plaintiff discussed with him the possibility of his becoming a Monavie distributor. As he is not old enough, she indicated that she would put his sales through his grandmother's account, as she had joined the program at some point. The defendant also points out that in an earlier financial statement sworn February 21, 2008, the plaintiff claimed that she earned \$18,214.
- [43] The plaintiff has attached a printout of all her earnings from Monavie since she started working for the company in November 2006 to February 26, 2010. She states that deductions, such as product and sales tools, are made from those earnings.
- [44] The plaintiff submits that when the parties first separated, the defendant agreed to pay one-half of the mortgage on the matrimonial home. The mortgage is \$1,487 per month; one-half is \$743. The defendant paid his share for four months until April 2008 and then ceased. She says that he did not pay any child or spousal support, extraordinary expenses or contribute in any way to the home until September 1, 2009, when he started paying \$494 per month in child support.

- [45] I note, however, that the defendant deposes that he made mortgage payment in full from September 2007 to mid-February 2008. He then made half-payments towards the mortgage until mid-May 2008, at which time the plaintiff commenced making the payments.
- [46] The plaintiff calculates the equalization payment of \$24,954 in the following manner.
- [47] The appraised value of the matrimonial home is \$370,000. Its net value, once the mortgage of \$154,199 is deducted, is \$215,801. Deducting from that amount the \$17,000 line of credit and \$1,400 Visa Gold account to be assumed by the plaintiff leaves \$197,401 as the net value to be distributed. The defendant's one-half share is therefore \$98,700. From that amount, says the plaintiff, arrears of child and spousal support, extraordinary expenses and lump sum spousal support should be deducted.
- [48] The plaintiff calculates the arrears in child support for 2008 and 2009 in this way. In 2008, the defendant had a net income of \$76,131 (his line 150 income minus union dues). The plaintiff's line 150 income was \$29,749. Based on these incomes and with one child with each party, child support was \$430 per month, \$5,160 for the year.
- [49] In 2009, the plaintiff's line 150 income was \$24,282.56. As some of that was from self-employed earnings, she says the total available income was \$28,037. The defendant has sworn in his financial statement of November 4, 2009 that his income for the purposes of child support is \$75,186. On the basis of these incomes, child support should have been \$438 per month, \$5,256 for the year. As the defendant has paid child support since September 2009, \$1,976 (\$494 per month for four months) should be deducted, leaving arrears of \$3,280 for 2009. The total arrears of child support for 2008 and 2009 is therefore \$8,440.
- [50] With respect to the arrears of spousal support, the plaintiff submits that spousal support should be paid at the maximum rate. Both parties have one child, and the plaintiff continues to care for S. The plaintiff says she will also continue to earn in the range that she has for the past three years, while the defendant will continue earning considerable income in his civil service job. Based on the parties' incomes in 2009 as discussed above, she submits that he should have been paying her \$943 per month. Thus, her spousal arrears for that year are \$11,316. Using \$600 per month for 2008 (the range being \$332, \$430 and \$784), the arrears are \$7,200. From this amount, she deducts \$2,974, being one half of the mortgage payments the defendant made in 2008, leaving \$4,226. She calculates support for the first three months of 2010 at \$2,829. The total amount in spousal support arrears she claims is \$18,371.
- [51] The plaintiff also claims various additional expenses. She claims extraordinary expenses to April 2009 of \$1054, consisting primarily of athletic memberships and equipment, as well as immunization shots for both children. From the total of \$1,465, she calculates the defendant's 72 percent share at \$1,054. The plaintiff further claims medical costs of \$790 and \$420 for repairs to the hot water tank, which she says the defendant agreed to pay.

- [52] The plaintiff additionally seeks a lump-sum settlement of spousal support. She submits this is necessary because of the high conflict nature of this matter, and the fact that it is important that all ties between the parties, except as with respect to the children, be settled by this order. In the alternative, she seeks an unequal division of the matrimonial home, as the amount she seeks as a compensation payment is what she can afford to pay in order to keep herself and the children in the home.
- [53] The plaintiff claims an appropriate amount in this regard would fall between \$697 and \$943 per month for 7 years, approximately \$47,000.
- [54] When the foregoing amounts are deducted from the defendant's one-half share in the matrimonial home, the result is a net amount payable by the plaintiff of \$24,954.
- [55] The defendant states that he has made every child support payment without protest since the time the parties agreed to child support. He says that if ordered to pay spousal support, he will similarly make the payments as required.
- [56] The defendant says that at the time the plaintiff first broached the issue of spousal support, she was earning \$4,000 per month as a manager at the children's recreation facility, in addition to her Monavie earnings. Based on the Spousal Support Advisory Guidelines and the child support she was receiving, no spousal support was payable.

Child Support

- [57] The defendant does not oppose paying child support in the amount of \$430 per month. However, he seeks to have the Court determine the division of extraordinary expenses on the income of the parties; in particular, the imputed income of the plaintiff.

Decision

- [58] I find that the plaintiff's guideline income is \$28,037 and that the defendant's guideline income is \$75,186.
- [59] There will be an order that the defendant pay child support for B in the guideline amount, together with his pro rata share of special or extraordinary expenses. For 2008 I find the arrears to be \$5,160. For 2009 the support should have been \$438 per month, or \$5,256. The defendant paid \$1,976, with the result that there are arrears of \$8,440.
- [60] I find that the expenses incurred by the plaintiff of \$1,465 for athletic related expenses and immunization to April 2009 are special or extraordinary expenses and the defendant's share amounts to \$1,054.
- [61] I am satisfied that the plaintiff is entitled to spousal support at the mid-range of the Spousal Support Advisory Guidelines for a period of 7 years from May 1, 1999. On my reading of the Guidelines, that amounts to \$697 per month for 8 months in 2009 and for 10 months in 2010, or \$12,546.

- [62] I decline to make an order for the payment of lump-sum rather than periodic support in accordance with the Guidelines. There will be an order that the parties exchange their tax returns on or before May 1 in each year and any notices of assessment within 30 days of their receipt.
- [63] While I accept that if the plaintiff were able to retain the home that would afford some additional security to B, I am not convinced that her resources are sufficient to pay out the defendant. I am satisfied that there is nothing unfair about an equal division of the net proceeds of sale, pursuant to s. 56 of the Family Relations Act. The parties had agreed that the value of the home is \$370,000; that the plaintiff may assume the mortgage, as well as the line of credit and a VISA bill; and that the plaintiff would seek further financing to purchase the defendant's one-half interest. If this remains a prospect available to the plaintiff, then she may deduct from the defendant's half interest the arrears of child and spousal support. If this is not an option, then there will be an order that the house be sold and that from the net proceeds the arrears of child and spousal support be deducted and paid to the plaintiff.
- [64] There will be a declaration that the defendant's municipal pension plan is a family asset, and the plaintiff is a limited member of the plan for the period from May 1, 1994 to the date of this order.
- [65] There will be an order that the Canada Pension Plan credits of the parties be equalized, pursuant to the Canada Pension Plan Act and Regulations.
- [66] The only issue regarding the division of personal property concerns those items listed by the plaintiff she does not wish the defendant to have. With regard to those items, if the parties cannot agree, there will be a reference to the registrar.
- [67] Unless there are matters counsel wish to bring to my attention, each party will bear his or her own costs.

"T.R. Brooke J."

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