
CANADA / JUDGMENT

Trif v. Trif

2008 BCSC 781

COURT

Supreme Court of British Columbia

DECIDED

17 June 2008

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2008 BCSC 781 Trif v. Trif

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Trif v. Trif,

2008 BCSC 781

Date: 20080617

Docket: E052845

Registry: Vancouver

Between:

Remus-Pompiliu Trif

Plaintiff

And:

Daniela-Pompilia Trif

Defendant

Before: The Honourable Madam Justice Morrison

Reasons for Judgment

The Plaintiff

Appearing in Person

Counsel for the Defendant

Jane Anderson

Date and Place of Trial:

June 2-6 and 9-12, 2008

Vancouver, B.C.

Authorities Considered:

Gordon v. Goertz, [1996] 2 S.C.R. 27

Orring v. Orring, 2006 BCCA 523

Liggett v. Liggett, 2007 BCSC 1301

Wong v. Wong, [1985] B.C.J. No. 2664 (S.C.)

Laurence v. Laurence, [1991] B.C.J. No. 3054 (C.A.)

Boudreau v. Boudreau, 2005 BCSC 1592

Mallen v. Mallen, [1992] B.C.J. No. 648 (C.A.)

- [1] This is a matrimonial dispute which centers mainly around the issue of custody and access of the couple's 9 ½ year old daughter, Vanessa Ioana Trif, born December 19, 1998.
- [2] The plaintiff father, Remus-Pompiliu Trif, born January 1, 1970, is 38 years of age. The defendant wife, Daniela-Pompilia Trif, born April 24, 1970, is also 38. Born and raised in Romania, they met while attending university there.
- [3] The parties began cohabiting in September 1993, and were married in Romania on June 17, 1995. They separated July 1, 2005.
- [4] Both parties now seek a divorce. The husband wishes joint custody and joint guardianship based on the Joyce model, with principal residence to remain with him. In the event that the defendant lives in the Lower Mainland area, the plaintiff advocates Vanessa spending alternate weeks with each parent.
- [5] A 50-50 division of the family assets and family debts is sought by both parties. The husband also wants an order that Vanessa not leave the Lower Mainland without the written consent of both parties or a court order.
- [6] The defendant wife, Dr. Trif, seeks sole custody and joint guardianship. She recently achieved her medical licence to practice as a doctor in British Columbia, and will commence a new job with a medical clinic in Comox on June 23. She wishes to have sole custody of Vanessa so that Vanessa can move to Comox with her. She is prepared to give generous access, including the majority of holiday times to the father.

- [7] Most of the family assets are in Romania, five pieces of real property, four of which are in the joint names of the parties, and one of which is in the name of the husband's company in Romania. Counsel for the wife acknowledges that this court has no jurisdiction over property in Romania.
- [8] Child support is also sought by the wife, based on Guideline income, but also taking into consideration the cost of travel in the event that Vanessa should be living in Comox with her.

Background

- [9] The parties are both highly intelligent and well educated. They immigrated to Canada in 1997, and Vanessa was born a year later. Prior to separation, they lived together for 12 years, 10 of which were in their marriage.
- [10] Mr. Trif is a software engineer, employed by Nokia in Richmond. Dr. Trif, the defendant, faced the problems that foreign trained doctors do when they come to Canada, and it took her a number of years to achieve her medical licence to practice here.
- [11] Since their separation, the parties have been to court on many occasions, usually involving problems of custody and access. By order of Mr. Justice Cohen on January 6, 2006, a s. 57 declaration was made that there was no hope of reconciliation. That date will be used as the triggering event with regard to valuation of family debts and assets within the jurisdiction of British Columbia. Justice Cohen also made an order on a without prejudice basis that there be an equal division of the parties' RRSPs, with Dr. Trif receiving \$25,000 by way of a spousal rollover. Mr. Trif was ordered to pay child support to his wife in the amount of \$728 a month, commencing February 1, 2006.
- [12] Two months later, the parties were before the court again. Mr. Justice Cohen, on March 3, 2006, ordered interim sole custody and primary residence of Vanessa to be with the mother, Dr. Trif. The parties were to share interim joint guardianship under the Joyce model. Access for the father was one full week, plus two weekends each month. Mr. Trif was to pay interim spousal support of \$925 a month commencing in March 2006, in addition to the interim child support of \$728 a month. There was a further order for \$103 a month toward special expenses for Vanessa. The order specified arrears of spousal support in the amount of \$7,400, and arrears of child support in the amount of \$4,096, for a total of \$11,496. Payment of those arrears was suspended until a division of family assets.

Property in Romania

- [13] There are five properties in issue, all in Romania:

- (1) A one bedroom condo in Romania, purchased in May 2004. According to the husband's financial statement of November 4, 2005, the value was \$43,000. In his subsequent financial statement of May 9, 2008, the value was \$75,000. The wife's financial statement of November 2, 2005 gave a value of \$40,000. Her subsequent financial statement of May 21, 2008 provides no valuations for this or the other four properties in Romania.
 - (2) A two bedroom condo in Romania, purchased in July 1995. The husband's 2005 financial statement shows a value of \$57,000, and in May 2008, his financial statement indicates a value of \$85,500. The wife's 2005 financial statement shows a value of \$45,000.
 - (3) A lot in Romania, purchased in July 2003. In 2005, the husband showed a value of \$57,500, and in May 2008, a value of \$71,500. The wife's 2005 financial statement indicates a value of \$60,000.
 - (4) A house in Ludos, Romania, purchased in 2002 or 2003. According to the husband's 2005 financial statement, this had a value of \$4,000 then, and in May 2008, a value of \$6,000. The wife's 2005 financial statement indicates a value of \$7,500.
 - (5) The husband has owned a company in Romania called Lacerta Comimpex Ltd. since 1993. He began this with a partner, and now owns it solely. Apparently the only asset owned by the company is a three bedroom apartment. The wife's financial statements show unknown valuation for this property. The husband's 2005 financial statement indicates a value of \$60,000, and in May 2008, a value of \$95,500.
- [14] It is clear that the first four properties, all held in joint tenancy are family assets, all purchased after the marriage. The company in Romania, Lacerta and its shares of ownership would also be considered family assets, in my view. Its only asset is the property possibly worth \$95,500.
- [15] This court has no jurisdiction to order any valuations or disposition or division of these properties. They are not within the jurisdiction of this court. The same would go for the company.
- [16] Counsel for the wife has made the point that there have been no proper appraisals or valuations of the properties, and certainly there is no evidence before me of such valuations.
- [17] However, I encourage the parties to divide the properties, so that they become sole owners of two or three properties each, as the case may be, and they are then free to sell or rent the properties as they see fit. This would also enable them to pay off their individual family debts, including the existing family debts.

[18] I indicated to the parties that I was prepared to make a suggestion with regard to division of the Romanian properties, if it would be of any assistance to them. For that purpose, I have taken the highest valuations available. In each case, with the exception of the house in Romania, those figures have been provided by Mr. Trif. I have taken Dr. Trif's estimate of the house at \$7,500, rather than Mr. Trif's estimate of \$6,000. Using those figures, I would suggest the following division:

1.

One bedroom apartment

\$75,000

2.

Two bedroom apartment

\$85,500

3.

Lot

\$71,500

4.

House

\$ 7,500

5.

Company property

\$95,500

Total

Divided by 2 =

\$335,000

\$167,500 each

[19] If Mr. Trif were to take properties 1 and 5, that would give him properties of a value of \$170,500. If Dr. Trif were to take properties 2, 3 and 4, those properties would have a total value of \$164,500. The parties would sign ownership over to each other accordingly.

[20] That leaves a difference of \$6,000, which could be remedied by Mr. Trif giving Dr. Trif \$3,000. That would result in the following:

Mr. Trif - \$170,500 - \$3,000 = \$167,500

Dr. Trif - \$164,500 + \$3,000 = \$167,500.

[21] Conversely, Dr. Trif could have properties 1 and 5, with Mr. Trif taking properties 2, 3 and 4, and he would then receive the additional \$3,000 to equalize value. Because Mr. Trif's company apparently owns the fifth property, it may be easier, and less costly, for him to retain 1 and 5.

[22] My concern is that the parties may spend additional months and years of time, cost and trauma in trying to resolve who gets what with regard to these properties, and what their exact values may be. I would urge them to try and make some division at this point in time, so they each can walk away and control their own properties, thereby removing another source of conflict between the two of them. Then they individually can decide whether to keep or sell their individual properties.

Assets and Debts in British Columbia

[23] There has already been an equal division of the parties' RRSPs which was accomplished by Dr. Trif receiving \$25,000 by way of spousal rollover. This was on a without prejudice basis; there will be an order confirming that this has been an appropriate and equal division of the RRSPs.

[24] At the time of separation, there was a 1999 Toyota in the name of Mr. Trif, purchased in March 1999. Mr. Trif's November 2005 financial statement values this vehicle at \$13,000. That would have been the valuation as of January 6, 2006, the date of the triggering event as well. There was a VanCity savings account term deposit in joint names of \$2,100, and an investment account of Mr. Trif valued at \$1,139 as of the triggering event. Those assets are family assets and should be divided equally between the parties.

[25] The joint debts as of the triggering date of January 6, 2006 were as follows:

Liabilities

Particulars

Amount

Paid By

1

BMO MasterCard

Joint names

11/4/05 \$ 9,237

(current \$10,000)

Plaintiff

2

MNBA Visa

Joint names

11/4/05 \$ 8,400

(current \$20,335)

Plaintiff

3

RBC Visa

Joint names

11/4/05 \$ 6,296

(current \$16,146)

Plaintiff

4

CIBC Visa

Joint names

11/4/05 \$14,814

(current \$13,000)

Defendant

5

TD Line of Credit

Joint names

11/4/05 \$20,900

(current \$9,499)

Defendant

[26] The parties agreed, on a without prejudice basis, that the first three debts would be paid by the plaintiff, totalling \$23,933. Dr. Trif would pay the last two debts, which totalled \$35,714 as of the triggering event. Those two amounts total \$59,647. To equalize the debts, there should be a payment of \$5,890 to Dr. Trif by the plaintiff.

- [27] Any debts that either party has acquired since the date of the s. 57 order, that is January 6, 2006, will be borne by that individual party. Any assets acquired by either party after that date belong solely to that party.

Custody and Guardianship of Vanessa

- [28] From all accounts and evidence, including many photographs, Vanessa is a beautiful, bright, happy and enchanting child. Both parents deserve a great deal of credit for raising such a daughter. She adores both parents, and it is obviously mutual.
- [29] Vanessa attends the Vancouver Montessori School in Vancouver and is doing well scholastically. She has been attending that school since kindergarten. It was a mutual decision by the parents to choose the Montessori School, and they have been pleased with the school, its teachers, the small classes, and the results that they have seen with Vanessa. At the end of March of this year, Dr. Trif enrolled Vanessa for the September 2008 to June 2009 school year at Montessori, even though Dr. Trif knew by that time she would be moving to Comox. Dr. Trif has been paying all school fees since the time of separation. Although Mr. Trif was in total agreement with the school, he said he could not afford the school fees in addition to the spousal and child support payments, so Dr. Trif has paid them.
- [30] The classes are very small at the Montessori School. Possibly six to eight children in Grade 4, five in Grades 5 and 6, and three or four in Grade 7. The classes appear to be combined and the teachers encourage the children to move at their own pace. So there can be 20 to 25 in the same space, Grades 4 to 6 or 7.
- [31] Vanessa has many interests and extracurricular activities. In addition to taking French classes at school, she also takes outside of school, violin and piano lessons, and voice lessons and performs at festivals with great success. She sings with the Junior Bach Choir as well. At the instance of her father, but against the wishes of her mother, Vanessa was enrolled in the John Robert Powers Modelling School and has thus had some acting lessons and modelling, along with other lessons in that school.
- [32] Her other activities and sports include the following: karate, rock climbing, ballroom dancing, snow tubing, ski lessons, swimming, ballet, tennis, biking, ice skating and painting. She also goes to birthday parties of her friends, and attends church with her father, as well as Sunday school at the Orthodox Romanian Church in the Lower Mainland.
- [33] This is a friendly and outgoing child who meets people easily and makes friends readily. Her parents believe in exposing her to a lot of interests, but they do not always agree on which activities. Mr. Trif feels it is important that Vanessa keeps up her interests in music and choir, as well as her other activities, and that she remain at the Montessori School. He is also enthusiastic about the John Robert Powers School, in spite of the expenses. Involvement in that school entails significant time of both the child and one or the other parent; it also entails significant money, sometimes travel out of Canada, and possible auditions. It has the potential to interfere with an access parent's time with Vanessa.

- [34] Because the program is an expensive and time-consuming one, and there is no parental agreement, I am making an order that Vanessa not be enrolled in any further activities with the John Robert Powers School unless it is with the written consent of both parties.
- [35] As for the other activities, Dr. Trif believes that there should be some cutting back on some of the activities, and I am inclined to agree with that. On the other hand, Dr. Elterman, the clinical psychologist expert who has prepared two reports for court on Vanessa and the family, indicated that it is important that a child be exposed to a number of activities, and this has certainly happened with regard to Vanessa.
- [36] Vanessa has no passport. Mr. Trif has not agreed to cooperate in obtaining a passport, as he has feared that Dr. Trif might return to Romania with Vanessa. I am going to make an order that a passport be obtained forthwith, that that application be made by both parents, as required. The passport will remain with the parent who has principal residence. It will be given immediately to the other parent upon request, provided details of any future trip are provided, including daily contact numbers and locations.
- [37] There will be an order that neither party will take Vanessa out of the jurisdiction of British Columbia for any period longer than three days without the written permission of both parents or court order.
- [38] The mother's move to Comox this month poses a very serious problem with regard to custody, guardianship and access of Vanessa. Dr. Elterman prepared two reports, one dated October 4, 2006 and the other January 4, 2008. For the second report, he interviewed Vanessa and her parents in November 2007. Dr. Elterman had no knowledge at the time of his reports that there was going to be a move to Comox by Dr. Trif and her boyfriend, Dr. Alfredo Tura.
- [39] In the October 2006 report, Dr. Elterman recommended joint custody and joint guardianship, where Vanessa would spend alternate weeks in each home. In his second report, Dr. Elterman stated, "My difficulty in making a recommendation is that I frankly don't trust what I have been told." He then made alternative suggestions. His recommendation was that if Dr. Trif's parents left Canada and returned to Romania permanently, and Dr. Trif worked daily only until 2:00 p.m., then he would recommend a continuation of the status quo which had been ordered by Justice Cohen, custody to the mother. Then Vanessa would be spending more time with her mother, as Vanessa had missed the presence of her mother while Dr. Trif was studying and at work. In the event that Dr. Trif's parents remained in Vancouver, and would be the ones looking after Vanessa, Dr. Elterman recommended that it be joint custody and alternate weeks.
- [40] Dr. Elterman had no hint there was going to be a significant move to Vancouver Island. Nor did he have any opportunity to interview Dr. Alfredo Tura, although he requested of Dr. Trif in 2006 to meet with Dr. Tura. That never occurred.
- [41] In this case, geography has become the enemy.

- [42] According to Dr. Elterman and evidence from others, including the parents, Vanessa is afraid of losing either parent. She is also afraid of disappointing either parent or saying something that she knows the other parent would not want to hear. Both parents as well as Dr. Elterman seem to recognize that this is a bright child who will basically say to either parent what she feels that parent wants to hear. But her wishes seem to come across that she wants to spend equal time with both parents, and to be fair to both parents.
- [43] The arrangements that Dr. Trif testified to with regard to Comox are that she will begin work at a medical clinical with nine doctors in Comox on June 23. She has made a firm commitment to this, although she could produce no documentary evidence setting out what the terms of her employment or engagement are to be. She indicates she will be working part time, only in the mornings, doing no shift work, and she will basically have the afternoons free for Vanessa. She and Dr. Tura will be living in a four bedroom home at no cost. The home belongs to the parents of Dr. Tura. Dr. Tura testified that Dr. Trif's parents will not be living with them at that home. Dr. Tura would be looking after Vanessa in the mornings apparently and Dr. Trif in the afternoons and evenings.
- [44] Dr. Trif testified that there was an excellent elementary public school a few minutes away from their new home. However, she was surprised when Mr. Trif produced a press release from the school district in Comox which indicated that the Comox Elementary School, the one she said Vanessa would be going to, was closing in June 2008. And indeed that appears to be the case. In the middle of her testimony, Dr. Trif made a telephone call to the principal of that school, and was told that all the students and the teachers would be moving to another school. This other school is one Dr. Trif has not seen or inspected.
- [45] The Fraser Institute school performance literature on the Comox Elementary School, taken off the internet, was placed in evidence by Dr. Trif. It shows a Grade 4 enrollment of 33 students, 8% of which were ESL, and 15.3% of which were special needs.
- [46] Dr. Trif believed that there were music teachers in the Comox area for Vanessa, although there were no names or details of availability given in evidence.
- [47] Comox appears to have been chosen because of the roots that Dr. Tura has had there for the last 10 or 12 years. Dr. Tura is 36 years of age, and is just completing his residency at St. Paul's Hospital. At the end of June, he will commence full time practice as a family doctor at the same nine member medical clinic in Comox.
- [48] Dr. Tura immigrated to Comox approximately 12 years ago, and has lived in and around that area for quite some time. He prefers a rural medical practice to a city practice. Although he was qualified as a doctor in Italy when he immigrated, it has taken him this long to become qualified to practice in British Columbia, the same problem experienced by Dr. Trif and many other foreign trained doctors.

- [49] Dr. Tura is married with three children, a daughter age 13, another daughter age 11 and a son age 9. The children live in Italy with their mother, and Dr. Tura has not seen the children since the summer of 2003 when they visited in Canada. He keeps in close contact by phone and internet apparently. He hopes that his older daughter Katarina will come and visit this summer, but he is uncertain if that will occur. He is not yet divorced from his wife, but hopes that that divorce will be finalized before the end of this year.
- [50] Dr. Trif and Dr. Tura hope to marry and begin a family. Dr. Tura worked as a nurse when he came to Canada, and practiced in the rural part of B.C. for some time. He is also an auxiliary member of the Royal Canadian Mounted Police, and continues to volunteer about 160 hours a year doing that. His evidence is that he has been unable, on doctor's advice, to make a long plane trip to Italy to see his children, due to back problems.
- [51] Dr. Tura is obviously very fond of Vanessa, and is ready to be a stepfather to her. He intends to make a home with Dr. Trif, and support Dr. Trif in her goal to work only part time, so she can spend more time with Vanessa.
- [52] Mr. Trif also has a partner. Last summer he met a young woman from Korea, Jeannie Bhang, 28 years of age. Ms. Bhang took her university in Korea, then worked for five years in Japan as an interpreter in the Korean and Japanese languages. She chose to come to Vancouver last summer, speaking no English. She testified in English at the trial; her English was surprisingly good. She is here on a visa, but hopes to make Vancouver her home. She began living with Mr. Trif and his mother, Mrs. Minerva Trif and Vanessa at the end of November 2007.
- [53] It is obvious that Ms. Bhang and Vanessa enjoy a joyous relationship. Vanessa is helping Ms. Bhang with her English, and Ms. Bhang is teaching Vanessa some Japanese and Korean. Ms. Bhang's enthusiasm and affection for Vanessa were apparent and almost contagious in the courtroom. She impressed me as a very bright, compassionate and sensible woman who is deeply fond of Vanessa.
- [54] Dr. Tura was more reserved in his evidence, but his affection and pride in Vanessa were also obvious. Vanessa is going to have a stepfather who will probably teach her some Italian, and a stepmother who is already teaching her some Japanese and Korean. Besides the language skills, both these stepparents bring all their other admirable qualities into the homes in which they will be living. I was impressed by both Ms. Bhang and Dr. Tura, and see them as only positive influences on Vanessa.
- [55] The question of which parent should have custody of Vanessa is a very difficult one. If both parties lived in the Vancouver area, or the Lower Mainland area, I would not hesitate to follow the recommendation of Dr. Elterman, and award joint custody and joint guardianship, with alternate weeks with each parent. But the move to Comox has made that impossible. In the event that Dr. Trif should ever move back to the Lower Mainland, then it would be my order that that alternate week parenting schedule would immediately take effect. However, that does not appear to be the case.

- [56] I am therefore going to make an unusual order, and that is that Vanessa shall live with each parent for one year, to alternate. She will spend this coming school year with her father in Vancouver, and continue to attend the Montessori School. She will then spend the next year, including the school year with her mother in Comox. The year following that, she will return to live with her father for that next year, and so on.
- [57] Both parents have indicated they are prepared to do anything to give generous access to the parent who does not have principal residence. My order will be that there be an order of joint custody and joint guardianship, with principal residence to alternate, the first year with the father, the next year with the mother.
- [58] For this summer, because Vanessa will be spending the majority of the coming year with her father, she will spend at least six weeks of the summer vacation with her mother, but in any event will spend the last week before school commences with her father. Next summer, 2009, Vanessa will spend six weeks during summer vacation with her father, the last week before school to be with her mother, and so on each alternate summer.
- [59] The parent who does not have principal residence in a particular year will have Vanessa for all long weekends, at least ten days over Christmas, all of Spring Break and Easter, and all long weekends. In addition, there will be at least two weekends a month.
- [60] Each party will set up a land line in Vanessa's bedroom in their home with an answering machine, so Vanessa will have her own telephone to contact the other parent as frequently as she wishes, and the parent can contact her at will, and there is to be no interference or monitoring of any phone calls.
- [61] There can also be a webcam set up so that Vanessa can contact the other parent easily. I believe the parents are agreed that there must be some restrictions with regard to internet access for Vanessa, given the dangers that lurk on the internet.
- [62] It seems apparent that when Vanessa is with Dad, she will receive more religious instruction than she will with her mother. That is a matter of individual choice for each parent. Neither parent can or must dictate what Vanessa will do when she is with the other parent. Nor should either parent set up an activity that demands the other parent participate or have to ensure Vanessa does that activity.
- [63] When Vanessa is with her father, she can do whatever activities that he sets up for her, and he will pay any costs, with the exception of the John Robert Powers School. When Vanessa is with her mother, the same will apply. Any activities she does with her mother will be at the direction of her mother and at the cost of her mother. Hopefully the parents will keep one another up to date with Vanessa's progress in her different activities. If there is to be a concert or a music recital or other special day activity, the other parent must have ample advance notice of such an event so that they can attend, if at all possible.

- [64] Both parents have a full right to communicate with Vanessa's school and teachers, whether Vanessa is living with that parent or not.
- [65] There will be no child maintenance ordered. Rather, the parent who does not have principal residence will be responsible for the travel costs of Vanessa between Comox and Vancouver. So during the first year, when Vanessa is living with her father, Dr. Trif will pay all costs of transportation for Vanessa. And vice versa when Vanessa is living with her mother the following year.
- [66] If Vanessa is to be taken on a vacation, or on a trip even for one or two days away from the home in which she is living, then the other parent must be advised at all times where Vanessa and the parent will be, in the event of any emergency in either home.
- [67] Dr. Trif has had a tendency to be secretive and to ignore certain requests with regard to scheduling. That is not appropriate, and should not occur. Both parents have a tendency to be very controlling. I am hoping that this arrangement for custody will lessen some of that need to be controlling. In dealing with one another, they will have to realize that what goes around will come around. In my view, it is important these two parents be on an equal footing. Dr. Trif had a tendency to dictate when she was in control. Mr. Trif showed the same tendency, although to a lesser degree.
- [68] It is also hoped that both parents will encourage Vanessa to talk enthusiastically of what she has been doing while she has been with the other parent and stepparent. This is a child who wants to share, and should not be afraid to speak glowingly of her mother and Dr. Tura when she is with her father and Jeannie, and vice versa. Vanessa has been dancing a fine line between both parents, hesitant to talk about one parent to the other, hesitant to see her father in the company with Dr. Tura. That should end.
- [69] With regard to the reports of Dr. Elterman, normally, reports like these are very helpful. They give an independent picture of the parties and the child. And in many respects, Dr. Elterman's two reports have given some valuable insights into both parties as well as Vanessa.
- [70] However, when Dr. Trif moved the goalposts, shortly after the second report came out, by putting in place the move to Comox, these reports lost much of their impact. Dr. Tura clearly intended to move to Comox where a doctor who has mentored and encouraged him practises, and with whom he will be practising. Dr. Trif has decided that she also wants to move there with Dr. Tura, where they plan to marry, settle down and start a family. This relationship began before the summer of 2005, and it has remained constant ever since. However, they have not cohabited. That is about to begin.

- [71] One of the reasons that the order specifies Vanessa will spend the first year with her father is that there are still a number of unknowns as far as the arrangements in Comox are concerned. There really is no firm evidence about the schooling, music lessons available, where Dr. Trif's parents are going to eventually reside, what her work schedule will be. Dr. Trif is beginning a new life, with a new marital partner, in a new home, in a new town, with new work colleagues and friends, new stepchildren and new in-laws.
- [72] I believe the best interests of Vanessa at this time will be served by her remaining in the Lower Mainland, in close contact with her father, as she always has been, attending the same Montessori School, being with a teacher that she knows and likes, being with her same friends, and being with her paternal grandmother who has, in my view, been a very beneficial influence on Vanessa. Also, the excellence of the Montessori School, chosen by her parents, is an important factor. The Comox school pales by comparison. Schooling for both these parents is obviously very important. The parents themselves may decide to leave Vanessa at the Montessori School for more than just the next year. And they can obviously agree to vary this order without coming back to the court.
- [73] The important thing is that these parents do not engage in a continuing campaign to try and convince Vanessa that she should live with either her mother or her father, to the exclusion of the other. She has made it plain that she wants to be with both parents. In his final argument, Mr. Trif suggested that it would be a gamble, Vanessa going to Comox at this time. It is my hope that it will be much less of a gamble one year from now.
- [74] Mr. Trif's mother, Mrs. Minerva Trif, a very young looking 66 year old, testified at the trial. Minerva Trif first came to Canada in March 2001, and has come back and forth a few times. But she last came in September 2003 and has stayed since that time. She stayed to help the family with Vanessa, while both Mr. Trif and Dr. Trif were working.
- [75] Minerva Trif is in good health, and has an impressive background. She had two children, Mr. Trif and his sister. She was a teacher in Romania, a professor of psychology. She also went to medical school and is a nurse and has been on faculty at a university in Romania. She administered a school for children with mental handicaps and was promoted to school inspector. When her husband became ill with cancer, she stayed at home and retired in 1998. In December 2000, her husband died.
- [76] This grandmother has been a constant in Vanessa's life, and they are obviously very close. She intends to remain and help as long as she is needed. She speaks Romanian with Vanessa, and also French. The other grandparents did not testify. I remain uncertain about their future plans.
- [77] When the issue of family assets and debts has been resolved, Mr. Trif hopes to move to larger accommodation to accommodate his family.

- [78] As stated, one of the concerns that I have had in deciding the issue of custody and principal residence is trying to prevent the tendency of each parent to try and control. Dr. Trif has been in control to a greater extent since the separation, as she has had interim sole custody. In looking over the emails that have been placed in evidence, it has been my impression that she has not been generous with access, and has been secretive, as I have said. She has been the one to decide which weekends her husband would see Vanessa; that would concern me if she were to continue with sole custody. I therefore think it is important that these parties share custody and guardianship, hoping that the generosity of one in one year will be returned by the other the next year, when Vanessa's principal residence changes.
- [79] Vanessa may well adapt eventually, with enthusiasm, to public school in Comox, but there are so many changes in her mother's life at this present time, that adding Vanessa to this brand new mix would not be in her best interests, in my view.
- [80] Dr. Trif testified that travel between Vancouver and Comox has been made much easier with the introduction of harbour to harbour float plane schedules three times daily. The cost is \$150 each way, \$300 for a round trip. There are also airport to airport flights, Comox to Vancouver. And then there is also the ferry, with Comox being just under a two hour drive to Nanaimo, and then the ferry ride Nanaimo to Horseshoe Bay. Vanessa will be moving into two new homes, the larger accommodation that her father intends to obtain in Vancouver, where she will have her own bedroom as usual. And then her mother and Dr. Tura's new home in Comox, where she will also have her own bedroom. I hope that the parents will become comfortable enough with one another again to invite one another into their new homes, and let Vanessa show her parent and new stepparent her bedroom in the other home. The sooner the parents can normalize friendly relations between themselves, the happier this child will be.
- [81] Dr. Trif has moved twice now to accommodate her needs, not the needs of Vanessa. First she moved from the Marpole area to downtown Vancouver, so she could be close to St. Paul's Hospital, and probably not so coincidentally, one block from Dr. Tura's apartment. Again, she is moving from Vancouver to Comox, in tandem with Dr. Tura.
- [82] It is important that Dr. Trif find a professional level that is comfortable and lucrative for her, and Comox may well be the appropriate location. But in the meantime, there is a need for stability for Vanessa, given all the changes that are occurring in her life at this time. It is also important for Vanessa to know that there be fairness, that she will be spending equal time with each parent, but rather than on a week on and week off basis, on a more long term basis. She knows that both parents love her, and she will, in fact, be living with both parents. In my view, the disruption for Vanessa will be much less next year when she moves to Comox to be with her mother for that year, than it would be now. And in the meantime, she will be spending a great deal of time with her mother, regardless.

- [83] Dr. Trif is not seeking an order with regard to Mr. Trif paying one-half of the school fees for the Montessori School since the date of separation. Mr. Trif has offered to pay that, but no order will be made for retroactive school fees prior to this year. However, it seems fair that Mr. Trif pay for the Montessori School fees for 2008/2009. There will be an order that he reimburse Dr. Trif for the current Montessori School fees.
- [84] Counsel for Dr. Trif referred me to the leading case of *Gordon v. Goertz*, [1996] 2 S.C.R. 27. At page 49 of that decision, the court set out the factors that a court should consider when one parent is making an application for a change in custody or access. In that case the mother wished to move to Australia and move the child's residence from Saskatchewan to Australia. In the case before me, the change is certainly not that dramatic nor does the move involve such a distance, but the factors set out in the case are helpful, as always. But in the end, it comes down to the ultimate question of what is best for the child, given all the circumstances.

Summary

[85] I make the following orders:

- (1) There will be an order for divorce, to take effect 31 days from the date of this judgment.
- (2) The parties' RRSPs will be divided equally, confirming the without prejudice order previously made, where \$25,000 of the husband's RRSP was rolled over to the wife.
- (3) There will be an equalization of three family assets existing in British Columbia as of the date of the s. 57 order, January 6, 2006: 1999 Toyota - \$13,000, VanCity savings account - \$2,100, and husband's investment account - \$1,139, totalling \$16,239.
- (4) Family debts are to be divided on the basis of the amounts existing as of January 6, 2006: the parties agreed on a without prejudice basis, on that 50-50 split, and that is now confirmed by this order. The plaintiff is responsible for the BMO MasterCard - \$9,237, MNBA Visa - \$8,400, and RBC Visa - \$6,296, totalling \$23,933. Dr. Trif is responsible for the CIBC Visa - \$14,814 and TD Line of Credit - \$20,900, totalling \$35,714. To equalize, Mr. Trif will pay to Dr. Trif, \$5,890.
- (5) Vanessa is not to be enrolled in any further activities with the John Robert Powers School, unless it is with the written consent of both parties.
- (6) The parties are to obtain a passport for Vanessa forthwith. The passport is to remain with the parent who has principal residence. The passport will be given immediately to the other parent upon request, provided that details of any future trip are provided to the other parent, including daily contact numbers and locations.
- (7) Neither party may take Vanessa out of the jurisdiction of British Columbia for longer than three days without the written permission of both parties or court order.

- (8) There will be an order of joint custody and joint guardianship, with the Joyce model of joint guardianship to be instituted. Vanessa is to live alternate years with each parent. Beginning now, and for this coming year, Vanessa will live with her father in Vancouver, and she will continue to attend the Vancouver Montessori School. Vanessa will then live with her mother for the next year, in Comox, for the school year September 2009 to the end of June 2010. And the years will then alternate.
- (9) For the summer 2008, Vanessa will spend six weeks with her mother, and then six weeks with her father in 2009 and so on, alternately. Vanessa will spend at least the final week of her summer vacation with the parent who will have her for the school year.
- (10) The parent who does not have principal residence in a year will have Vanessa for ten days over Christmas, all of Easter and Spring Break, all long weekends, with a minimum of two weekends a month in any event.
- (11) A land line phone will be provided for Vanessa in her bedroom in each of her homes, with answering machine facilities.
- (12) There will be a webcam set up for Vanessa in each home.
- (13) Neither parent will interfere with or dictate to the other parent with regard to Vanessa's activities outside school. Each parent will pay for any activities while Vanessa is in their care, either for weekends, or for the full year.
- (14) There will be no child maintenance payable. The parent who does not have principal residence in that year will pay all travel costs between Comox and Vancouver.
- (15) Mr. Trif will repay Dr. Trif for the Montessori School fees for 2008/2009.
- (16) Each party will pay their own costs of this action, with the exception of the total fees for Dr. Elterman. Dr. Elterman's fees are to be shared equally, for his reports and his court appearance, each party paying 50% of those costs.

"Morrison J."

Madam Justice Morrison

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Prepared on 30 October 2026 · Esheria