
CANADA / JUDGMENT

Trudeau v. Panter

2013 BCSC 706

COURT

Supreme Court of British Columbia

DECIDED

23 April 2013

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2013 BCSC 706 Trudeau v. Panter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Trudeau v. Panter,

2013 BCSC 706

Date: 20130423

Docket: 35341

Registry: Penticton

Between:

Darla Christine Trudeau

Claimant

And

Keith Joseph Panter

Respondent

Before: The Honourable Mr. Justice Rogers

Reasons for Judgment

Appearing on her own behalf:

D.C. Trudeau

Counsel for the Respondent:

C.L. Albas

Place and Date of Trial/Hearing:

Penticton, B.C.

April 5, 2013

Place and Date of Judgment:

Penticton, B.C.

April 23, 2013

Introduction

- [1] This family proceeding centers on two issues: firstly, whether the unmarried parties were spouses within the meaning of the Family Relations Act or the Family Law Act, and whether the claimant is entitled to spousal support from the respondent; and, secondly, whether the claimant is, pursuant to the principles of unjust enrichment, entitled to a monetary remedy for her contribution to the construction of a mobile home.

The Facts

- [2] The claimant is 48 years old. She is a grade 12 graduate. In 1990 she earned a certificate as a home support worker. The claimant's first marriage ended in or around 1995. In or around 2005 the claimant moved from Victoria to Keremeos.
- [3] In Keremeos the claimant worked the night shift as a support worker at a home for the elderly. That was a full-time job and it paid her \$12 per hour. For two years the claimant lived in a rented house. In or around the fall of 2007 the claimant ended her employment at the old folk's home. She gave up her rented house and travelled to Dawson Creek. Her purpose was to visit friends there and to assess whether she wanted to live in the north. After a month or so in Dawson Creek, the claimant decided to return to Keremeos. Having no other place to stay, the claimant took up residence at her friend Mr. Sawchuck's place. She lived in a recreational vehicle that was parked next to Mr. Sawchuck's house. Some short time later, the claimant moved in with the respondent in the respondent's fifth-wheel trailer.
- [4] The respondent is 54 years old. He gave little evidence of his education or of his history before meeting the claimant in 2007. The respondent made passing reference to having been married in the past and of working as an orchardist. He has an adult son by his first marriage. The respondent makes his living as a carpenter. Given the respondent's evidence about how the mobile home which lies at the center of the parties' dispute was constructed, I infer that he is not a journeyman carpenter. The respondent possesses very few business records. It has been many years since he has filed an income tax return.

- [5] The parties have very different recollections of how their relationship started, how it developed, and what it meant to them. According to the claimant, while she was living in Mr. Sawchuck's recreational vehicle the respondent chased after her. He did this because, according to the claimant, the respondent was falling in love with her. She testified that at the end of October 2007 the respondent asked her to live with him in his fifth-wheel trailer.
- [6] The respondent's recollection of the start of their relationship is different. He testified that although he knew of the claimant by going to social gatherings at Mr. Sawchuck's place, he had no romantic feelings toward her. Then, sometime in the fall of 2007, the claimant appeared at the door of his fifth-wheel trailer and proposed that he and she should commence sexual relations. He said that he agreed to her proposition and that a short time later the claimant moved into his trailer with him.
- [7] The parties lived together from November 2007 to mid-October 2011. According to the respondent, they shared living quarters but their relationship did not get past the boyfriend/girlfriend stage. He testified that he had no interest in becoming involved in another marriage. The people who testified on the respondent's behalf all said that they did not see signs that the parties were committed to one another's welfare. They said that the parties' relationship struck them as being "friends with benefits". I infer that benefits, in this case, meant sexual relations.
- [8] The claimant, on the other hand, testified that the parties treated one another as husband and wife. In support of that assertion, the claimant produced several notes she said the respondent wrote to her over the course of their relationship. Those notes express love to the claimant from "Your Hunk" and contain many "xoxo"s (notations conventionally interpreted to mean hugs and kisses).
- [9] The respondent said that these notes were a joke, as was his relationship with the claimant.
- [10] The parties agreed that in 2007 and 2008 the claimant occasionally worked for the respondent doing clean-up at various job sites, and they agreed that the respondent paid the claimant \$17 per hour for her work. They agreed that these payments, like all of the respondent's transactions, were made in cash. By that I assume that these payments were not recorded anywhere and that neither party reported the payments on their income tax returns.
- [11] In or around the end of November 2007, the respondent began to construct what the parties referred to as a "Park Model" mobile home. The respondent explained that a mobile home below a certain size - the mobile in issue here has a footprint of about 560 square feet - is called a Park Model. The parties' stories about the mobile's construction are different. The claimant maintains that using her own money she purchased roughly \$4,200 worth of construction materials for the mobile. She says that she participated in many construction tasks such as scraping and painting the mobile's bare frame, passing roof sheeting up to the roofing crew, steadying windows as they were installed in their frames, and designing the floor plan.

- [12] The respondent, his son, and three other witnesses, Mr. McClean, Mr. Love, and Mr. Enright, testified that they worked on construction of the mobile. They said that the claimant was often on site taking photographs and drinking beer, but that she never participated as part of the construction crew.
- [13] The respondent agreed that the claimant used about \$1,000 of own money to buy some boards for an outdoor deck and shingles for the roof of a shed that the respondent converted to the claimant's use as a craft shop. The respondent said that the claimant used her credit card to buy the other materials she specified in her evidence. The respondent testified that he used cash to reimburse the claimant for those other materials. The respondent maintains that in the result, other than the deck boards and roof shingles, he acquired all of the building materials for the mobile home.
- [14] Construction of the mobile took about two years. While the mobile was building, the parties lived in the respondent's fifth-wheel trailer. When the mobile was finished, the parties moved into it. Neither party adduced evidence that the claimant contributed to the upkeep or maintenance - other than house cleaning - of the fifth-wheel trailer.
- [15] As noted, the respondent does not report his income and most of the jobs he does, he does for cash. Officialdom, bureaucracy, and regulatory authority do not play a large role in the respondent's life. In keeping with that philosophy, the respondent did not trouble building inspectors to certify that the mobile home complied with the Building Code. In particular, the mobile home's electrical system has not been certified. The practical consequences of that fact are that insurance underwriters will not issue a policy insuring the mobile against loss, the mobile would be unwelcome in a conventional mobile home park, and it cannot be registered as a mobile home thus limiting a lender's options for registering security against its title. In short, while the mobile suits the respondent, who continues to live in it, the market for its resale is very limited.
- [16] For the reasons noted above, the court cannot look at a certificate to determine who owns legal title to the mobile home. This turned out not to be a problem; the parties proceeded on the basis that the respondent owns the mobile home.
- [17] The claimant did not rejoin the regular workforce until February 2009 when she began to work as a cook and cleaner at a Naramata bed and breakfast. In April 2009 the claimant either quit or was fired from that job. She quickly found work as night security at a rehabilitation facility in Keremeos. The facility was called the Portage. The claimant had full-time work at the Portage and earned \$12.50 per hour. The claimant worked at the Portage from April 2009 to November 2011.

- [18] In August 2010, the claimant suffered a stroke. The claimant was off work for a year following her stroke. She collected the disability benefits that were available to her through her employment contract. Other than a brief medical consultation note in which the author referred to the respondent as the claimant's "husband", no evidence at trial suggested that the respondent supported the claimant after her stroke, that he assisted in her rehabilitation, or that he in any way provided succor to the claimant during her recovery.
- [19] Messers. Love, McClean, and Enright testified that from time to time they socialized with the claimant and respondent. I accept their evidence that claimant regularly drank to excess and that when she did, she tended to meanness, particularly toward the respondent. When she was in her cups, the claimant would say unkind things to the respondent and would strike out at him. I also accept the evidence of the respondent and his son that it was not unusual for the claimant to take personal trips on short or no notice, leaving no indication of when she would return. The claimant acknowledged that she often took trips on her own.
- [20] On the other hand, I accept the claimant's evidence, denied by the respondent, that at least one time the parties vacationed together. They travelled to Vancouver Island and then they visited several casinos in the northwestern U.S.
- [21] The parties' relationship ended in mid-October 2011. The parties did not attribute their breakup to any one event. Based on all of the evidence before me, I infer that the breakup happened because the respondent decided to no longer tolerate the claimant's drinking and erratic behavior.
- [22] The claimant left the mobile and took up residence elsewhere. Sometime later she broke into the mobile and took possession of some items that she says she owned and some items belonging to the respondent. She testified that she intends to hold the respondent's property (a T.V. and V.C.R.) hostage pending the respondent's delivery to her of a rocking chair and some other minor chattels.
- [23] In November 2011 the claimant either quit or was fired from her night job at the rehabilitation facility. She moved to Kelowna. She got a job caring for a disabled person. She works an average of 22 hours per week and is paid \$18 per hour. The claimant has decided to quit that job at the end of April 2013. She testified that she will then move to Burns Lake, B.C. and that there she will take the full-time job at \$22 per hour that has been offered to her.
- [24] The respondent continues to live in the mobile home. He continues to do carpentry for cash. The respondent testified that he has no idea how much money he earns on an annual basis. The claimant's evidence of her analysis of the respondent's receipt books suggests that the respondent's gross income is on the order of \$100,000 per year. The statement of income and expenses that the respondent filed in these proceedings estimated his income at \$30,000 per year.

- [25] Throughout the parties' relationship, the respondent paid the \$275 per month rent for the site on which the mobile home is parked. The parties contributed roughly equally to the cost of the groceries that they consumed. The claimant did the majority of the cooking and often looked after the laundry. They did not have children together.
- [26] The mobile home has been appraised twice. One appraisal noted that the mobile home cannot be registered, moved into a conventional mobile home park, or insured. That appraisal put the unit's value at nil. The other appraisal assumed that the unit complied with all relevant Building Code regulations. That second appraisal put the unit's value at \$58,000.

The Parties' Positions

- [27] The claimant says that she and the respondent were spouses within the meaning of the Family Relations Act. She seeks an order for ongoing, but not retroactive, spousal support of \$200 per month.
- [28] The claimant asserts that she is entitled to one-half of the value of the mobile home. The claimant grounds her claim on the principle of unjust enrichment. She says that the respondent was enriched by her contribution of money and labour to the construction of the mobile and by her four-year service as the respondent's common-law spouse. She says that she was correspondingly deprived by those contributions and that there is no juristic reason for the respondent to keep those contributions without compensating her for them.
- [29] The claimant wants the court to order that the mobile home be certified so that it can be registered, insured, and, if necessary, sold to a third party.
- [30] Finally, the claimant seeks an order that the respondent deliver to her various items of personal property she says she left in the mobile home when she departed.
- [31] The respondent maintains that the claimant made no meaningful contribution to the construction of the mobile home, and that the principles of unjust enrichment do not apply to this case. He argues that the parties did not share a commitment to a long-term and permanent relationship and that they were not, therefore, spouses within the meaning of the Act. He says that he has delivered to the claimant all of the personal items that she brought into the relationship, and seeks an order that the claimant return to him the T.V., the V.C.R., and the business records upon which she based her analysis of his income.

Discussion

- [32] The point of departure for the analysis of this case is whether the parties were spouses within the meaning of the relevant Provincial legislation. Under the now repealed Family Relations Act, spouse was defined in s. 1(1) thus:

- (b) except under Parts 5 and 6, lived with another person in a marriage-like relationship for a period of at least 2 years if the application under this Act is made within one year after they ceased to live together and, for the purposes of this Act, the marriage-like relationship may be between persons of the same gender;

[33] Under the current Family Law Act, s. 3(1), the definition of spouse is this:

3 (1) A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

[34] The common element of those definitions relevant to the present case is that the parties must have lived in a marriage-like relationship for at least two years.

[35] It is for the claimant to prove that she fits within the definition: see *Haensgen v. Karpuchin*, [1999] B.C.J. No. 1391 at para. 17 (S.C.).

[36] In *Gostlin v. Kergin* (1986), 3 B.C.L.R. (2d) 264 at 267 Lambert J.A., in speaking for the court, said this:

In deciding whether a couple lived together as husband and wife, I would be guided by the scheme and intention of the Act itself. The purpose of the legislative scheme is to impose on an unmarried couple the same obligations under s. 57 as are voluntarily undertaken by a married couple. So I would ask whether the unmarried couple's relationship was like the relationship of the married couple in that the unmarried couple have shown that they have voluntarily embraced the permanent support obligations of s. 57. If each partner had been asked, at any time during the relevant period of more than two years, whether, if their partner were to be suddenly disabled for life, would they consider themselves committed to life-long financial and moral support of that partner, and the answer of both of them would have been "Yes", then they are living together as husband and wife. If the answer would have been "No", then they may be living together, but not as husband and wife.

Of course, in the particular circumstances of any case, the answer to that question may prove elusive. If that is so, then other more objective indicators may show the way. Did the couple refer to themselves, when talking to their friends, as husband and wife, or as spouses, or in some equivalent way that recognized a long-term commitment? Did they share the legal rights to their living accommodation? Did they share their property? Did they share their finances and their bank accounts? Did they share their vacations? In short, did they share their lives? And, perhaps most important of all, did one of them surrender financial independence and become economically dependent on the other, in accordance with a mutual arrangement?

All those questions, and no doubt others, may properly be considered as tending to show whether a couple who lived together for more than two years have done so with the permanent mutual support commitment that, in the relevant sense of the Family Relations legislation, constitutes living together as husband and wife.

- [37] The parties in this case did not mingle their finances, they did not share legal rights to their accommodation, and neither surrendered economic independence to the other so as to become dependent on the other. While the parties undoubtedly shared living accommodation, the evidence does not support the proposition that they were committed to a permanent relationship. I have reached that conclusion on the strength of this proposition: if they had felt such a commitment, it would have manifested itself in 2010 by the respondent providing care for the claimant while she recovered from her stroke. Neither party adduced evidence that the respondent did anything to support the claimant during her time of need. In my view, on this critical issue, that gap in the evidence speaks strongly against the notion that the parties were in a marriage-like relationship.
- [38] In the result, I am compelled to conclude that the parties were not spouses within the meaning of that term under either the old or the new Act. The claimant's claim for spousal support must therefore be dismissed.
- [39] My finding that the parties were not spouses provides a part answer to the claimant's unjust enrichment claim. That is because the parties, not being spouses, were not involved in the kind of "family enterprise" that, according to the Supreme Court of Canada's decision in *Kerr v. Baranow*, 2011 SCC 10, may provide the foundation for an unjust enrichment claim.
- [40] In any event, viewing the evidence most favourably for the claimant, I have to conclude that her contribution to the construction of the mobile home was minimal. Further, the claimant adduced no evidence to show that in the course of the parties' relationship she did anything to maintain or improve the mobile home.
- [41] I find that the claimant's contribution to the construction of the mobile home was not as she said it was. I have come to that conclusion because the claimant was not earning much money during the construction phase - it was not until February when she got part-time work at the Naramata bed and breakfast, and it was only in April 2009 that she started earning a regular paycheque at the rehabilitation facility. By then the mobile home was a year and a half into its two year construction. Before February 2009, the claimant's only income was cash that the respondent paid her for doing occasional jobs around the respondent's job sites. I find it very unlikely that she would have spent as much as \$4,200 of her meager income on construction materials.
- [42] I find that it is more likely than not that the claimant used her credit card to buy materials as the respondent directed, and that the respondent gave the claimant cash to cover those purchases. That pattern of behaviour makes sense because the respondent would have been acquiring construction materials at times when he was working on the mobile home, i.e.: not working on other jobs. At such times he would not have had cash in hand to pay for

those materials. The respondent did not have credit cards of his own. It seems sensible that the respondent would make use of the claimant's credit to bridge the period between his needing construction materials and his working on jobs which would generate cash to pay for those materials.

- [43] For these reasons I find that the claimant's contribution to the construction of the mobile home was limited to about \$1,000. That is a minimal contribution and, even coupled with whatever value the claimant's homemaking bestowed on the respondent, it was more than offset by the benefit she received by living rent-free in the mobile home. The claimant's claim for compensation arising from the respondent's unjust enrichment must be dismissed.
- [44] Having decided that the claimant's claim for unjust enrichment cannot succeed, it is not strictly necessary for me to assess the value of the mobile home. However, for the sake of completeness, I will address that question.
- [45] I cannot give much weight to the \$58,000 appraisal upon which the claimant relies. That is because the claimant did not prove the critical assumption upon which the appraisal was based, viz: that the mobile home complied with all relevant Codes and was appropriately certified. As noted earlier, the mobile home's electrical system has not been certified. Due to that lack, the mobile home cannot be registered in B.C., no security can be registered against its title, it would not be welcome in a conventional mobile home park, and it cannot be insured. Those failings would certainly diminish its marketability.
- [46] On the other hand, I cannot give much weight to the appraisal upon which the respondent relies. That appraisal recognized the unit's failings and assigned a value of nil to the home because of those failings. The difficulty with that conclusion is that if the unit was in fact worthless, the respondent would not have retained a lawyer and fought the claimant's claim through to trial. The mobile home must, therefore, have some value.
- [47] In my view, the mobile home could be put on the market, but the cohort of persons willing to buy it would be very, very small. A willing buyer would have to be prepared to pay cash or be able to borrow money from a lender who did not need to register security against the unit. This hypothetical purchaser would have to put the mobile home on a piece of land where it would not have to comply with conventional trailer park standards and rules. Finally, this buyer would have to be willing to forego insuring the mobile home against the risk of damage due to fire, theft, vandalism, or other hazards. How much, then, would such a buyer be willing to pay for the unit? I think that a buyer would be looking to discount the value of the unit by at least 75 percent. If the value of the mobile home in proper condition is \$58,000, then the fair market value of the mobile home in its current condition is \$14,500.
- [48] This court has no capacity to order that the mobile home receive the certifications necessary to make it insurable, saleable, and suitable for registration. That aspect of the claimant's claim for relief must be dismissed.

[49] The parties' competing claims for return of personal property were the subject of an earlier order in these proceedings by Barrow, J. That order remains in effect. I see no reason to vary, rescind or reiterate the terms of that order.

[50] The respondent has succeeded in this matter. He is entitled to his costs on Scale B.

"P.J. Rogers J."

The Honourable Mr. Justice Rogers

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