

CANADA / JUDGMENT

Tucker v. Moore

2024 BCSC 427

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 427 Tucker v. Moore

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tucker v. Moore,

2024 BCSC 427

Date: 20240313

Docket: E212020

Registry: Vancouver

Between:

Karen Tania Tucker

Claimant

And

Scott Paul Moore

Respondent

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Claimant:

B. Sandhu

Counsel for Respondent:

R. McQueen

A. Tiplady

Place and Date of Trial:

Vancouver, B.C.

July 24-28 and 31, 2023

August 3, 2023

Place and Date of Judgment:

Vancouver, B.C.

March 13, 2024

Table of Contents

Introduction.. 3

Background facts. 3

Issues. 3

Length of relationship. 3

Are the parties entitled to a divorce?. 5

What are the family assets and debts, and how are they to be divided?. 5

Debt 5

Bank accounts. 6

RRSPs. 7

213th Street house. 7

85th Street house. 10

Port Coquitlam townhouse. 12

196th Street house. 12

Should the family assets be divided unequally?. 20

What are the current incomes of the parties. 23

Mr. Moore. 23

Ms. Tucker 23

Is Mr. Moore required to pay child support?. 23

Child support 23

Special expenses. 26

Is Mr. Moore required to pay spousal support to Ms. Tucker 28

Disposition. 33

Introduction

- [1] This case arises out of the end of a long-term marriage. The issues before the court are divorce, child support, spousal support, and division of family assets and debt.

Background facts

- [2] The parties met in 2001. At the time, both parties had recently ended previous relationships. Both were employed, and both owned their own homes.
- [3] In 1998 Ms. Tucker had been diagnosed and treated for breast cancer. She had been confirmed as free of cancer just before she met Mr. Moore. Shortly after they began their relationship, Ms. Tucker became pregnant. On February 12, 2002, the parties' daughter, K, was born. In 2010, Ms. Tucker was diagnosed again with breast cancer, and began intensive treatment. She has been on disability benefits ever since.

Issues

Length of relationship

- [4] Ms. Tucker says they began living together in February 2002, and Mr. Moore says they began living together in the late fall of 2001.
- [5] Ms. Godin, a friend of Ms. Tucker, had a distinct recollection of visiting Ms. Tucker in December 2001, and testified that Mr. Moore was not living with Ms. Tucker at that time. She recalled Mr. Moore moving in with Mr. Moore just around the time K was born.
- [6] Mr. Burmachuck, a friend of Mr. Moore's, testified that he helped Mr. Moore moved into the 213 Street house before K was born. However, Mr. Burmachuck also testified that the only house he had been to was the one across from a school. The 213 Street house was not across from a school, but the 85th Street house, purchased many years after K was born, was located across from a school. I find Mr. Burmachuck's memory of when Mr. Moore moved in with Ms. Tucker to be unreliable.
- [7] On balance, I prefer the evidence of Ms. Tucker as to the date the parties began cohabiting. I find that the parties started living together in a marriage like relationship in February 2002.
- [8] Ms. Tucker says the parties separated in March 2017, following an incident where Mr. Moore slammed K's head into the kitchen floor. Mr. Moore disagrees that he hurt K. Mr. Moore agrees that K hurt her head in 2017 by falling to the floor, and agrees that following that incident he left the family home for a period of three weeks.

- [9] Mr. Moore says that the parties reconciled and continued to live together until May 2020. Ms. Tucker agrees that Mr. Moore moved back into the house, but says that they were living separate and apart in the home until May 2020 when she says there was an altercation between them. She says Mr. Moore tried to choke her, the police became involved, and Mr. Moore left the home and did not return after that point. As a result of this incident, and Ms. Tucker's discovery of Mr. Moore's repeated infidelities disclosed at the same time, the parties ceased living together.
- [10] There is no dispute that as of May 2020 the parties were no longer living together in a marriage like relationship. The only question is whether their separation actually happened as early as 2017.
- [11] K testified that she remembered her father leaving for a couple of weeks in 2017. When he came back, she said things were not the same. However, she agreed that they continued to go on family vacations, and her parents shared a bed on those vacations.
- [12] Ms. Tucker agreed that, in 2017 when Mr. Moore returned to the family home, by September he had moved back into their shared bedroom. Ms. Tucker said they did not have sex after he returned in 2017, but she agreed they did share a bed. Ms. Tucker continued to cook for the family. They went for walks together, went out together sometimes, and coached soccer together. She agreed that in 2017 they went on a cruise together and all stayed in the same cabin. She agreed that they went on short trips together to the USA after he returned. Ms. Tucker agreed that she continued to be on Mr. Moore's health care plan until 2020. After March 2017 Mr. Moore remained on Ms. Tucker's Scotiabank account, and continued to deposit into that account to pay for household expenses. After May 2020, Mr. Moore stopped depositing his pay cheques into the joint account, and Ms. Tucker removed Mr. Moore from her bank account.
- [13] While things may have been difficult between them after 2017, I am satisfied that Ms. Tucker has not established an intention to live separate and apart beginning in 2017. On the whole of the evidence, I am satisfied that while Mr. Moore left the family home in March 2017, he returned three weeks later and the marriage continued until May 2020. As of May 2020, the parties were separated.

Are the parties entitled to a divorce?

- [14] Both parties seek a divorce, and I am satisfied the statutory preconditions for divorce have been met.

What are the family assets and debts, and how are they to be divided?

Debt

- [15] In June 2020, Ms. Tucker held a line of credit in the amount of \$62,888.64 which was registered against the 85th Street house, the outstanding principal on the mortgage on the property was \$15,030.73, and her VISA balance was \$3,800. At the date of trial, the mortgage was \$188,234.42, and the line of credit was \$156,307.
- [16] Ms. Tucker testified that after May 2020, Mr. Moore contributed nothing to the house or expenses of the family (other than nine months of child support until K reached 19 years old). Ms. Tucker has paid for various household repairs, including fixing leaks, doing drainage on the property, repairing vapour barriers and repainting after a flood, and doing ceiling repairs. She has paid property taxes each year, totalling \$23,929 since 2020, and house insurance in the total amount of approximately \$8,124 since 2020. She has paid for utilities and other expenses associated with the home. Including mortgage payments since 2020, Ms. Tucker has incurred debt of approximately \$90,000 in relation to the 85th Street house. This increase in debt is reflected in the increase in the mortgage balance.
- [17] Following Mr. Moore's departure in May 2020, Ms. Tucker became responsible for payment of all expenses relating to the family home with no contribution for Mr. Moore. I am satisfied that the bulk of the increase in the mortgage is directly tied to the 85th Street house and expenses associated with it, which Ms. Tucker has borne on her own. I am satisfied that \$105,000 of the mortgage on the 85th Street house (being the balance in June 2020 plus an additional \$90,000), and \$62,888 of the line of credit (being the balance in June 2020), are family debts totalling \$ 167,888 for which both parties are responsible.
- [18] At the date of trial, Mr. Moore held \$19,800 in unsecured debt in relation to a VISA card and a personal loan. It was not clear from the evidence what these debts related to. This debt is not a family asset.

Bank accounts

- [19] Ms. Tucker testified that when they started living together, they each had their own bank accounts. In 2015 Ms. Tucker added Mr. Moore to her Scotiabank account, so he could assist her with bill payments while she went through chemotherapy. Mr. Moore retained his own accounts at RBC and TD bank throughout the marriage.
- [20] While Mr. Moore testified that throughout the relationship they shared their finances completely, he tendered no evidence to corroborate this statement. The only corroborative evidence that they shared a bank account came from Ms. Tucker who produced the bank statement from the month she added him to the account.
- [21] After May 2020, Ms. Tucker took Mr. Moore off her account. At trial, the balance in her two accounts at Scotiabank totalled \$529.
- [22] Mr. Moore held a RBC chequing account at the date of trial, with a balance of \$100.

[23] None of the bank accounts held by the parties at trial are family assets.

RRSPs

[24] In January 2002, Ms. Tucker held an RRSP/LIRA account with Manulife, valued at \$97,038.33, which value is an excluded asset. At the date of trial, this account was valued at \$213,504.66. The net amount of the Manulife account which is a family asset is \$116,466.33.

213th Street house

[25] In October 2000 Ms. Tucker purchased her home at 213th Street, Langley BC for \$228,000. She purchased this house before she met Mr. Moore. At the time he met Ms. Tucker, Mr. Moore owned a townhouse with his ex-wife, which was rented out.

[26] In February 2002, the parties entered into a written agreement addressing cohabitation. Ms. Tucker testified that before Mr. Moore moved in, the parties had a number of discussions where they agreed that her assets would stay her own. Ms. Tucker drafted the agreement, which contained the following relevant terms:

- a) Mr. Moore would make monthly payments of \$700 to cover costs of his rent and utilities,
- b) Ms. Tucker would be liable for all relevant bills, including utilities and property taxes,
- c) "The monthly rental payments by the second party shall in no way shape or form be considered or counted as payments towards any mortgage, nor shall these monthly payments convey nor create any potential nor future credits nor any equity on the house and property located at: 8568 213 Street, Langley, British Columbia.",
- d) "This agreement shall be valid for a period of 5 years, and renewable at the sole option of the 1st party [Ms. Tucker]. Both parties have the right to cancel the [rental] agreement upon 3 months notice or in place of notice, payment of \$2100.00 by the party wishing to exit this rental agreement."
- e) "This rental arrangement and any option periods granted thereafter shall endure and not be upset or modified in the event of one of the [parties] death or infirmness nor be altered by marriage."
- f) "The 2nd party [Mr. Moore] specifically agrees for valuable considerations received will make no claims whatsoever against the 1st party [Ms. Tucker] nor her property based on any rights or privileges that he may have or acquire based on palimony or matrimonial considerations, regardless if common or at law."
- g) "The intent of this agreement is to provide the second party a place to rent at a below market price, and to secure the first party in her previously bought home, which was purchased using 100% of her money, to guarantee her 100% of the equity, now, and in the future."

- [27] The agreement also included terms about the payment of child support if the parties separated.
- [28] The agreement was witnessed by a lawyer who, while he did not advise either of them on the agreement, did recommend to both of the parties that they seek independent legal advice.
- [29] In testimony, Mr. Moore downplayed this agreement. He stated he forgot about the agreement, and he stated it was really about ensuring Ms. Tucker had child support if they broke up. Mr. Moore denied they spoke about it before Ms. Tucker drafted it. He said he signed it because it made sense to have something in place to look after Ms. Tucker if they split up.
- [30] Ms. Tucker testified that Mr. Moore usually paid her the \$700 in cash each month, although one time he bought a new lawnmower for her in lieu of a payment. Mr. Moore testified that he never paid her rent in accordance with the agreement, and they never lived by the agreement.
- [31] I find Mr. Moore's testimony about the agreement is not credible. The agreement is two pages long. The entire first page and half the second page are devoted to the 213 house, including Ms. Tucker's retention of the house as her sole property, Mr. Moore's rental obligations, and the payment of various household expenses. In three separate paragraphs, Ms. Tucker's continuing and sole ownership of the 213 house is repeated. The parties signed the agreement before a lawyer. This was not a document drawn on the back of an envelope and signed without witnesses. I find it was intended by the parties to have legal effect.
- [32] I find that Mr. Moore made cash payments to Ms. Tucker each month, consistent with the agreement, and that Ms. Tucker made all payments towards the mortgage and utilities, consistent with the agreement.
- [33] I find that the agreement is persuasive evidence of the intention of the parties in 2002 that the 213 home would remain the sole asset of Ms. Tucker.
- [34] At the time the agreement was signed, the parties had a relatively new relationship and it makes sense that Ms. Tucker would want to protect her assets and support of the child she was pregnant with in the face of this new relationship. The agreement was not indefinite on its face. The continuation of the agreement required a renewal by Ms. Tucker.
- [35] Ms. Tucker testified that she renewed the agreement after 5 years, in 2007. However, I am not satisfied that Ms. Tucker has proven the agreement was renewed. By 2007 the parties had been married for one year. While Ms. Tucker testified that Mr. Moore continued to pay her, and she continued to maintain all the expenses on the house, I do not find she led compelling evidence that the parties turned their minds to the agreement in 2007, or that Ms. Tucker notified Mr. Moore of her intention to renew it. I find that Ms. Tucker did not renew the agreement, as she had the sole right to do. Beginning in February 2007, in the face of the non-renewal of the agreement, I find the 213 became a family asset, such that Mr. Moore is entitled to share in the increase in value of the asset from that point onwards.

- [36] There was limited evidence at trial of the value of the 213 house in 2007. A 2008 BC property assessment valued the 213 house at \$460,000 as of July 1, 2007. While BC property assessments are sometimes not reliable indicators of market value, the assessed value of the property in 2002 shows a reasonable correlation with the purchase price two years earlier (showing a modest increase in value of \$5,000). This gives me some confidence that the assessed value in 2007 is a reasonable estimate of market value. I find that \$460,000 is excluded property in favour of Ms. Tucker.
- [37] In March 2010, Ms. Tucker's mother moved into the 213 home after her husband died. After that, the family looked to buy a new house with an in-law suite for Ms. Tucker's mother.
- [38] Ms. Tucker sold the home at 213th Street for \$522,000 in October 2010, with a possession date of January 15, 2011.

85th Street house

- [39] Ms. Tucker purchased a new house at 85th Ave, Langley with the proceeds of sale from 213th St, and \$204,533 from Ms. Tucker's mother, Delise Tucker. Mr. Moore testified that they did all the planning for the sale and new purchase together. Mr. Moore testified that he was the one who found the house on 85th Street, after they had looked at many houses. Ms. Tucker's evidence was that she was the primary driver in the house search, but she allowed that Mr. Moore was involved in viewing properties.
- [40] Mr. Moore acknowledged that the \$204,533 provided by Ms. Tucker's mother was excluded property. In addition, Mr. Moore agreed that Ms. Tucker's mother gave Ms. Tucker \$20,000 which was paid towards the mortgage principal in 2013, and \$40,000 after the purchase of the home, which was used for renovations, both of which amounts are excluded property. Together with the excluded \$460,000 from the sale of the 213 house, a total of \$724,533 in relation to the 85th Street house is excluded property in favour of Ms. Tucker.
- [41] Ms. Tucker obtained appraisals of the 85th Street house as of May 2020 and as of the date of trial. The market value of the 85th Street house as of May 2020 was \$1,350,000. The market value of the 85th Street house as of the date of trial was \$2,025,000.
- [42] Ms. Tucker argues that, while s. 87 of the Family Law Act, SBC 2011, c. 25 (the FLA) states that family property must be valued at the date of trial, nevertheless there is authority for valuing property at the date of separation in certain circumstances. There must be compelling evidence to depart from the date of trial as a valuation date. The courts have held that a any departure from the presumptive valuation date is effectively an unequal division of family property, within the meaning of s. 95 of the FLA, and is guided by the considerations set out in s. 95: *Banh v. Chrysler*, 2022 BCCA 74 at para. 25-29.
- [43] While there are cases where the separation date is used as the valuation date, I am not satisfied that such cases are applicable in the case before me. There is only three years between the date of separation and the date of trial. While Ms. Tucker has given evidence of repairs she has done, she has not established that the repairs or work she did on the house

contributed to the increase in value. Rather, the increase in value is most likely attributable to the rising market in the region. As such, I am not satisfied that the circumstances of this case require a valuation at the date of separation in order to do fairness between the parties.

- [44] I am satisfied that it is appropriate to value the 85th Street property as of the date of trial, and to address whether any unequal division of family assets ought to be made pursuant to s. 95 of the FLA. The value of the 85th Street home, net of excluded property in the amount of \$724,533, is \$1,300,467.

Port Coquitlam townhouse

- [45] Mr. Moore owned a townhouse in Port Coquitlam with his first wife when he met Ms. Tucker. That townhouse was rented out. Mr. Moore was very evasive about this property. He stated that he could not remember if he received a share of the rental income from the townhouse. He stated that the rents just covered the mortgage. While he could remember what he paid for the townhouse, he was evasive about what it sold for. Mr. Moore agreed the house was sold after he started living with Ms. Tucker. However, he testified that he did not remember when the house sold, and he said all he got out of the townhouse was about \$5,000, which he says he gave to Ms. Tucker. Mr. Moore produced no documents relating to the Port Coquitlam townhouse
- [46] Mr. Moore's evidence is inconsistent with the evidence of Ms. Tucker, who testified she was not involved in the sale of the townhouse. Ms. Tucker testified she believed the townhouse sold in 2003. She said she knew he sold it, but did not know what the proceeds were, as it was his house and she was not really concerned with it.
- [47] As will be discussed later in this decision, I am skeptical of the evidence Mr. Moore as it relates to the financial issues between the parties. I do not accept that Mr. Moore has no memory of the sale of the townhouse, or that he gave the proceeds of sale to Ms. Tucker. I prefer the evidence of Ms. Tucker.
- [48] Insufficient evidence was led for me to decide whether the proceeds of sale of the Port Coquitlam townhouse should be considered to be a family asset.

196th Street house

- [49] In 2004, Mr. Moore purchased property at 196th Street, Surrey. Mr. Moore's evidence regarding the purchase, use and sale of this property strains credulity.
- [50] Mr. Moore testified that he never went to the house, but simply agreed the house could be purchased in his name. He said that Ms. Tucker's brother Richard Tucker organized the purchase.

- [51] Mr. Moore testified he was introduced to a person named Conrad through Richard Tucker. Conrad owned the 196th Street house, which was registered in his mother's name, and he wanted it transferred into Mr. Moore's name. Mr. Moore said he met with Conrad once, along with Ms. Tucker, in their living room. At that time, they drew up the paper work, and Conrad gave Mr. Moore \$5,000 towards the down payment on the house. Conrad organized for \$5,000 at a time to be delivered to Mr. Moore, until he had a \$50,000 down payment.
- [52] Ms. Tucker testified that Mr. Moore discussed the property with her, and told her he was going to buy it as a revenue property. She had no idea where the funds for the house came from and was not involved in the purchase in any way. She never met someone called Conrad.
- [53] Mr. Moore said Conrad organized the mortgage on the house, and gave Mr. Moore the entire \$50,000 needed for the down payment. After the first meeting, Conrad interacted with Mr. Moore through a person using the alias "Pharm". Pharm gave Mr. Moore the funds needed to pay the mortgage. Mr. Moore testified that every quarter Pharm would give him 6 envelopes, each containing \$2,600 in cash. Mr. Moore was to use three of these batches to pay the mortgage for three months, and then Mr. Moore and Ms. Tucker were allowed to keep the other three batches for themselves. Mr. Moore referred to the funds they were allowed to keep as "grease".
- [54] Mr. Moore testified that when he received the cash, he would put the money in a shoebox under the bed, and then each month he would take one batch to the bank to pay the mortgage.
- [55] Mr. Moore testified that he would keep a \$300-\$400 for himself out each batch of the grease, and would give the remainder to Ms. Tucker. He said Ms. Tucker used the cash to pay for groceries and other expenses, such as credit cards and trips. Mr. Moore testified that he didn't know where Ms. Tucker put the money, but he thought she put it in the bank.
- [56] Ms. Tucker denied knowing that Mr. Moore received \$2,600 each month in addition to the funds used to pay the mortgage. She agreed that one time he gave her \$2,600 in cash to deposit in his TD account. She had no memory of any other times she deposited funds for him. Ms. Tucker said she only heard about the alleged shoebox full of money under their bed during the course of this litigation.
- [57] Mr. Moore's TD bank account shows deposits of approximately \$2,600 each month, and mortgage payments of approximately \$2,600 each month. A tenancy agreement for the 196th Street house was produced in evidence. It showed Mr. Moore as landlord renting to a Dave Nelson for \$3,200/month. Mr. Moore recognized it as a rental agreement for the property. Mr. Moore agreed the tenancy agreement had his handwriting on it, and agreed that there was at least one other tenancy agreement. He testified he believed Ms. Tucker and him came up with the form. However, Mr. Moore denied collecting rent from Mr. Nelson or any tenant. He testified Conrad told him to create some tenancy agreements, and this was repeated by Pharm after a few years. They told him to always have a tenancy agreement on hand in case

something happened. But Mr. Moore said Pharm is the person who always dealt with the tenants.

- [58] Mr. Moore cross examined Ms. Tucker about various trips taken during the marriage, and various goods purchased. The suggestion was made that the trips and goods were funded by these cash payments from Pharm each month. I am not prepared to outline all of Ms. Tucker's responses to the various suggestions. Suffice it to say, I found Ms. Tucker to be entirely credible. She was able to give reasonable and credible answers to all questions, identifying what trips were paid for on her credit cards, what trips were paid for by other people, such as her mother, what trips were paid for after the 196th Street house had been sold, etc. I reject entirely the suggestion of Mr. Moore that Ms. Tucker received over \$2,000 each month in cash from Mr. Moore which had been provided by Pharm.
- [59] I find Mr. Moore's evidence about the receipt of cash from Pharm is not credible. I find that Mr. Moore rented the house to tenants for at least \$3,200/month, \$2,600 of which he used to pay the mortgage and remainder he gave to Ms. Tucker in cash to assist in paying for household expenses.
- [60] In 2015, Mr. Moore said he got a call from Pharm who told him that there had been a fire in the house, and to not talk to the police if they called. Mr. Moore said Richard Tucker then called and told Ms. Tucker that Mr. Moore should not talk to the police.
- [61] Ms. Tucker testified that Mr. Moore was watching TV and saw the house burning down on the news. When they talked about the fire, Mr. Moore told her that a tenant had a heater in the kitchen or living room, and it caught on fire. Ms. Tucker agreed that Mr. Moore had her answer the phone when the RCMP called.
- [62] The proposition that Ms. Tucker's brother told her that Mr. Moore should not talk to the police was not put to Ms. Tucker at trial. I place no weight on Mr. Moore's evidence in this respect.
- [63] At trial Mr. Moore could not give a straight answer about insurance on the house, or what happened to the house after the fire. First, Mr. Moore testified that after the fire, the house was demolished, and Conrad looked after the demolition costs and looking after the property on-site. Mr. Moore said he and Ms. Tucker had nothing to do with it. Mr. Moore said the house was insured, through funds provided by Pharm. Mr. Moore said there was an insurance payout, but he did not receive any of the insurance funds; he just signed the funds over to "the people" in the presence of Ms. Tucker. Later he said he wasn't sure if there was insurance, then he agreed that if there was insurance it would be in his name. On discovery he denied having house insurance, and then said he didn't know if there was insurance, and then said he thought there must have been insurance, and then said he could not remember if the insurance was in his name. At trial he agreed that if there was insurance, it would be in his name. He was asked at discovery to obtain insurance documents, but he did not make inquiries with any insurance company to obtain records - his reason being that the house was not his.

- [64] At trial, Mr. Moore said he had nothing to do with the demolition, and it was all handled by Conrad/Pharm. On discovery, Mr. Moore said he retained a company named Onsite to assist with the demolition and cleanup, and he thought he had a receipt from them. Mr. Moore was asked to obtain documents relating to Onsite. At trial he confirmed that he made no efforts to contact Onsite, even though he knew the company's address. He stated, somewhat confusingly, that Onsite would not have his name as owner, as he only had his name on the house.
- [65] I find Mr. Moore's evidence regarding the fire, the demolition and remediation of the property, and insurance proceeds to be not credible. His inability to provide straight answers underscores his general lack of credibility, and the unreliability of his evidence.
- [66] In December 2015, Mr. Moore engaged a law firm to assist him in dealing with the Surrey RCMP during their investigation into a grow operation at the property. An invoice from this engagement was tendered at trial. At discovery in 2023, Mr. Moore denied knowing that the house was used for a grow operation. At trial, Mr. Moore testified that after the fire happened, the police talked to Ms. Tucker and through the police they learned the house had been used as a marijuana grow operation.
- [67] Ms. Tucker testified she knew nothing about Mr. Moore retaining a law firm to deal with the investigation into a grow operation until she listed documents for trial. She said she simply listed all documents she could find in the house, whether they were hers or Mr. Moore's. The first time she saw the invoice referencing a grow operation was when she listed the document.
- [68] In 2016 the house sold for \$751,000, with a closing date of March 29, 2016. The transfer of the property for \$751,000 on March 29, 2016 was confirmed in a BC assessment roll report which was entered into evidence at trial. No statement of adjustment for the sale was entered into evidence. However, Mr. Moore's TD bank account shows a deposit of \$604,700 on March 29, 2016. No mortgage documents for 196 were entered into evidence, so it is not clear if the difference between the sale price and deposit into Mr. Moore's account represented the sale proceeds net of the mortgage, or net of some other undisclosed payment.
- [69] Mr. Moore said he was not involved in listing the property for sale, and the realtor, Amy, came to the house and met with him and Ms. Tucker. Mr. Moore said he just signed where she told him to sign. Mr. Moore said the realtor was working for Conrad.
- [70] The proposition that Ms. Tucker met with Amy at their home regarding the sale of the property was not put to Ms. Tucker at trial. I place no weight on Mr. Moore's evidence in this respect.

- [71] Ms. Tucker testified she was not involved in the sale of the property in any way. She knew the land was cleared and sold for land value. She only saw the contract of sale during this proceeding. She did not know what happened to the proceeds of sale. She knew Mr. Moore had funds to pay capital gains, but she assumed the remaining proceeds went into his bank account. She did not learn of any offers, had no input on the listing price, and had no idea who the realtors were who he dealt with.
- [72] On March 31, 2016 Mr. Moore wrote a cheque in favour of a person named Tara-Leigh Payne in the amount of \$450,000. He said he did not know who Ms. Payne was, but was told to write the cheque to her by Conrad. On April 11, 2016, Mr. Moore wrote another cheque to Ms. Payne in the amount of \$80,717.66. Again, Mr. Moore testified that he was only doing what Conrad told him to do, and he did not know who she was.
- [73] On April 11, 2016, Mr. Moore also wrote a cheque to himself from his TD bank account in the amount of \$71,130.37. He first testified that Conrad did the calculation of capital gains on the house, and instructed Mr. Moore to pay himself that amount to cover the capital gains. Later in his testimony, he said he assumed Conrad did the calculation of capital gains and he didn't think it was something "we would have worked out". Later still he said it might have been the realtor who worked out the capital gain number.
- [74] Ms. Tucker testified that Mr. Moore had her contact the accountants about capital gains. The accountants did work for both Mr. Moore and Ms. Tucker, and they filed their taxes together. Ms. Tucker was shown an email she sent to their accountant in April 2016. This email sets out a number of expenses relating to both the demolition and remediation of the property, and the sale of the property, which expenses totalled \$117,115.57. The expenses included real estate fees of \$24,199.51, demolition expenses of \$47,998.17, charges from City of Surrey of \$26,642.89, legal fees regarding both the demolition and the sale in the amount of \$9,000, "Onsite" expense of \$500, and gas settlement of \$8,875. In this email, which was copied to Mr. Moore, Ms. Tucker asked the accountant what the capital gain was likely to be, after taking into account the various expenses.
- [75] In this email, Ms. Tucker advises the accountants of various upgrades made to the property, and the fact that the tenants did not insure the property. She also states that Mr. Moore did not insure the property.
- [76] Ms. Tucker testified that Mr. Moore gave her the information regarding the 196th Street property, to forward to the accountant, as she had no way of knowing any of that information. Ms. Tucker testified she did not suspect anything untoward as all the expenses related to the demolition and sale of the property.
- [77] I find that Mr. Moore was fully engaged in the management of the property, and had full knowledge of the insurance situation, and the costs of work done on the property, both before and after the fire. Mr. Moore did not rely on Conrad or the realtor to determine the capital gains owing. Rather, Mr. Moore had Ms. Tucker provide all the information needed to his own accountant, including all relevant expenses to be considered, and his own

accountant determined the capital gains owing. I find Mr. Moore was not truthful in his evidence relating to the work done on the property after the fire, the insurance on the property, or the process for determining the capital gains.

- [78] Mr. Moore said he gave the cheque in the amount of \$71,130.37 to Ms. Tucker to deposit, and she decided to deposit it in K's bank account. Ms. Tucker agreed that Mr. Moore gave her a cheque to save the funds for him as he was anticipating capital gains. Ms. Tucker agreed that she deposited the \$71,130.37 cheque into K's account for safekeeping, while Mr. Moore waited to find out the amount of capital gains owing. She said Mr. Moore did not have access to K's account, which is why she deposited it there - to stop him from spending it. Ms. Tucker agreed that he needed approximately \$63,000 to pay capital gains, and testified that she did not know what happened to the remaining funds Mr. Moore had given her to look after. She said she either returned the funds to him, or the funds were used for something else. Mr. Moore testified that capital gains were \$63,000 and he did not know what happened to the excess funds, which he assumed had been placed in their joint account.
- [79] Mr. Moore testified he used to have a number for Pharm, but got rid of it so could not call him as a witness at trial. Richard passed away before trial, so he could not be called to corroborate Mr. Moore's testimony. Mr. Moore testified he had no way to contact Conrad, and only met him four times. Mr. Moore did not call the realtor, Amy, as a witness at trial, although Mr. Moore agreed she was easy to find and knew Conrad.
- [80] Ms. Tucker was not questioned at trial about Pharm. She was not given an opportunity to respond to the allegation that she knew about Pharm and the money he was allegedly giving Mr. Moore. As such, I place no weight on Mr. Moore's evidence that Ms. Tucker knew about Pharm and the alleged scheme.
- [81] I find the whole of Mr. Moore's evidence regarding the 196th Street property to be not reliable or credible, other than the fact that he purchased it in his own name in 2004, and sold it in 2016.
- [82] I find that the 196th Street property was a family asset, purchased and sold during the marriage to the benefit of Mr. Moore solely.

Should the family assets be divided unequally?

- [83] Ms. Tucker seeks an unequal division of assets in her favour, pursuant to s. 95 FLA, on the basis that an equal division would be significantly unfair. Mr. Moore seeks to have the 85th Street house sold, and the proceeds shared equally.

- [84] The starting point of the analysis is to identify and value the family assets and debts. In this case, the only remaining family assets are the 85th Street house and the Manulife RRSP/LIRA account. The value of the 85th Street house, net of excluded property, is \$1,300,467 at the date of trial. The value of the Manulife account, net of excluded property, is \$116,466.33 at the date of trial. The total value of family assets at the date of trial is \$1,416,933. An equal share of these assets is \$708,466.
- [85] The family debt in the amount of \$167,888 must be shared by both parties. An equal share of the debt is \$83,944.
- [86] As Ms. Tucker has borne the family debt alone, Mr. Moore's share of the debt will be added to Ms. Tucker's share of the family assets, and deducted from Mr. Moore's share of the family assets. Therefore, if the family assets and debts were to be shared equally, Mr. Moore would be entitled to \$624,522 and Ms. Tucker would be entitled to \$792,410.
- [87] I turn next to the most significant issue which supports Ms. Tucker's claim for unequal division of family assets. This is the 196th Street house, and Mr. Moore's failure to provide full disclosure in this case. In *Cunha v Cunha* (1994), 99 BCLR (2d) 93 the court held:

Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done. Non-disclosure also has a tendency to deprive children of proper support.

It is not enough to respond to non-disclosure by an award of costs. Nor is it enough, in a case like this one, to deal only with what is known. Either of these approaches, or both together, may still reward the non-disclosing litigant for his conduct, depending whether his concealment has been successful.

I conclude that where there has been concealment of assets, it ordinarily should be held that the concealment is ongoing, that there are assets still undisclosed, and that the division of assets should be affected accordingly. I am not sure whether it is of consequence whether this is characterized as an assumption, a rebuttable presumption or an inference of fact. The result is the same. Such a holding may be avoided if the trial judge is satisfied by the conclusion of the trial that full disclosure has by then been made.

- [88] I do not accept Mr. Moore's evidence in relation to the 196th Street property to be credible. He failed to make proper disclosure regarding the origin of the \$50,000 used as a down payment, the rent received over the course of ownership, the insurance proceeds received after the fire, if any, and the proceeds of sale. He created a story about people named Conrad, Pharm and Tara-Leigh Payne who were apparently behind the purchase and sale of the property. He made no effort to locate these people, even after being requested to do so during discovery. He failed to make reasonable efforts to obtain documents relating to any

insurance payout, or the contractors used in demolition of the house.

- [89] Mr. Moore has not accounted for the proceeds of sale. While \$530,000 from the sale proceeds were transferred to Ms. Payne, he has not established why this transfer was made, or to whose benefit this transfer was made. I am unable to accept that Mr. Moore transferred the proceeds to a third party as a gift, and I do not accept the story he told in court about purchasing the house with funds from a third party, and transferring the proceeds back to that third party when it sold. On balance, I am satisfied that Mr. Moore has concealed his assets arising from the sale of the 196th Street property.
- [90] Because of Mr. Moore's non-disclosure of his assets, I am satisfied that there should be an unequal distribution of family assets.
- [91] I find that Mr. Moore received net proceeds from the sale of 196th Street in the amount of \$604,700, and out of that paid he \$63,000 in capital gains tax. The bulk of the proceeds, some \$530,000, was transferred by Mr. Moore to a person named Tara Leigh Payne. I find that Mr. Moore has not established on the evidence that the proceeds of the property, bought and sold during the marriage-like relationship, are not family assets. I find that Ms. Tucker is entitled to share in the \$530,000 of proceeds which Mr. Moore unilaterally transferred to a third party. Ms. Tucker's share of the proceeds is \$265,000. Mr. Moore will have to account to Ms. Tucker for her share of the proceeds.
- [92] Mr. Moore's share of the family assets will be adjusted to reflect that he either dissipated of the proceeds of sale of the 196th Street house, or transferred the proceeds to a third party for his own benefit, during the marriage. His share of family assets will be reduced to \$359,522, and Ms. Tucker's share of the family assets is increased to \$1,057,410.
- [93] Ms. Tucker submits that there should be a further adjustment in each party's share of the family assets, to reflect the fact that when the parties separated in May 2020, the value of the 85th Street house was \$1,350,000. At the time of trial, the house had increased in value to \$2,025,000, an increase of some \$675,000 attributed solely to the market. The gain in the 85th Street house over three years was an increase of 50%. Ms. Tucker argues this would be an unearned windfall to Mr. Moore. Ms. Tucker also submits that Mr. Moore has not accounted for the proceeds of sale of the 196th Street property, and has not accounted for any growth on such proceeds he might have received since 2016.
- [94] While I have determined that the appropriate date of valuation for 85th Street is the date of trial, I am satisfied that a substantial unfairness will result if only the gain in 85th Street is recognized. I have determined that Mr. Moore failed to disclose and account for the proceeds of sale of 196th Street. It is reasonable to assume that there would also be a gain on the proceeds of sale of 196th Street since 2016. I find that I can reasonably infer that a return on investment of the amount of \$530,000 since 2016 would be \$265,000. This represents a 50% return over 7 years, a substantially lower rate of return than that the return on the 85th Street house over three years. This inferred growth in Mr. Moore's undisclosed asset must be shared with Ms. Tucker. I find that Ms. Tucker's share of the family assets will be increased

by \$132,500, and Mr. Moore's share will be reduced by the same amount.

[95] Ms. Tucker is entitled to an unequal division of family assets. The value of Ms. Tucker's share in the total family assets is \$1,189,910. The value of Mr. Moore's share of the total family assets is \$227,022.

What are the current incomes of the parties

Mr. Moore

[96] At trial, Mr. Moore was employed by Van Gogh Designs as a plant manager, earning \$80,000. In 2022, Mr. Moore earned \$80,498. In 2021 Mr. Moore earned \$75,176. In 2020 Mr. Moore earned \$70,081.

Ms. Tucker

[97] At trial, Ms. Tucker was receiving annual disability benefits in the total amount of \$42,894. In 2022, Ms. Tucker received benefits totalling \$42,894. In 2021, Ms. Tucker received benefits totalling \$42,455. In 2020, Ms. Tucker received benefits totalling \$42,074.

Is Mr. Moore required to pay child support?

Child support

[98] Ms. Tucker seeks child support retroactive to February 2021, when K turned 19 years old. Prior to that date, Mr. Moore did pay child support for K. Mr. Moore agrees that if K is in school, she would be a child of the marriage and child support would be payable provided he was given proof that K was attending post-secondary school and was able to view her grades. Initially, Mr. Moore took the position that for the period from the time she turned 19 years old to the date she begins her studies, K was employable but failed or refused to work. At trial, Mr. Moore conceded that K remained a child of the marriage from the time she turned 19 until the date of trial, and he agreed to pay child support for this period.

[99] K testified that she relies on her mother for her accommodation, food, contact lenses, medications, glasses, dental care and counselling.

[100] Evidence was presented of numerous mental health diagnoses from which K suffers. Both K and Ms. Tucker testified to her mental health conditions. These include anxiety, PTSD, and depression. In addition, evidence was led as to a number of concussions K has suffered in her life, received from playing soccer and from several incidents where she hit her head. No expert evidence was led as to the different diagnoses, although medical records were tendered which tended to corroborate the evidence of K and Ms. Tucker. Mr. Moore did not dispute that K suffered from concussions, and has been accessing mental health supports since she was young child.

- [101] K testified that she experienced a number of incidents which were traumatizing for her. These include an incident where she says her father slammed her head into the ground, an incident where she says her father threw a ball at her head hard enough to knock her over, and an incident where she saw her father physically assault her mother. Mr. Moore denies all of these incidents. He says she tripped and hit her head, he threw a ball at her but did not intend to hit her, and denies he assaulted Ms. Tucker.
- [102] The ball throwing incident was witnessed by K's friend, HB. HB confirmed that Mr. Moore came in the garage and without warning aggressively threw the ball at K knocking her off her feet. K complained of pain in her head following this incident and was in bed for 3-4 days after complaining of head pain. Ms. Tucker witnessed Mr. Moore grabbing K by the hair and slamming her head into the floor. Both K and Ms. Tucker testified that Ms. Tucker and Mr. Moore were struggling over Mr. Moore's phone, and Mr. Moore squeezed Ms. Tucker's throat in the crook of his elbow. Ms. Tucker testified he squeezed her throat so hard that she started to lose consciousness. Ultimately, the police became involved and Mr. Moore agreed to a s. 810 recognizance (no contact order) for a period of one year. I am satisfied, on a balance of probabilities, that K did suffer the physical traumas and witnessed the physical traumas as she described.
- [103] In addition to the physical trauma she experienced or witnessed, K had a very difficult time with her mother's diagnoses of cancer. She testified that her father told her that she stressed her mother out so much that her mother got cancer. K testified that her father told her this repeatedly when she was between 8 and 10 years old. She said her father told her that her mother never wanted a child. K testified that her relationship with her mother has improved since her father moved out, but she says she has been treated for anxiety, PTSD and parent-child disorder.
- [104] When K was in high school, she was sexually assaulted by a boy in a class who reached under the table and touched her inappropriately. This was very upsetting for her and caused her to fear going to class.
- [105] In May 2020, K opened Mr. Moore's phone, and a number of messages, photos, websites and videos which disclosed Mr. Moore engaged in numerous behaviors that she found extremely traumatizing. This incident then led to the physical assault on her mother, and the end of her parents' marriage.
- [106] K testified that from spring 2020 when she graduated from high school until she got a job in March 2023, she mostly stayed home, went to therapy, assisted her mother with her grandmother, and slept a lot. She testified she attended numerous trauma related therapies, in an attempt to cope with the trauma she experienced in her life. While K has seen different counsellors over the years, she has continued in counselling since April or May 2020 until the present.

- [107] I am satisfied that K suffered from a number of serious mental health issues which resulted in her remaining dependent on her mother after her 19th birthday. In addition to the concession made by Mr. Moore at trial, I find on the facts that K remained a child of the marriage up to the date of trial.
- [108] With respect to adult children, the court has the discretion to order Guideline child support, or to order a different amount if the Guideline support is not appropriate. In making his concession at trial, Mr. Moore stated that he would pay child support based on \$70,000 each year, which represented his income prior to his new job at Van Gogh Designs. However, this concession understated his actual income in the years before trial. Based on Mr. Moore's true income of \$75,176 in 2021, Mr. Moore would pay Guideline support of \$718/month. In 2022, based on his income of \$80,498, Mr. Moore would pay Guideline support of \$769. I have considered the Guideline support and K's likely living expenses, and I am satisfied that, in this case, Guideline support remains the appropriate measure for retroactive child support.
- [109] Mr. Moore will pay retroactive child support from February 2021 through July 2023 in the total amount of \$21,791.
- [110] Going forward, Mr. Moore will pay Guideline support commencing August 2023, for the first four years K is in school full time, such support to continue over the summer months if she is returning to full time school in the fall. If further support is required at the conclusion of four years of schooling, Ms. Tucker has liberty to reapply to the court for a continuation of child support.
- [111] Mr. Moore's obligation to pay child support is not contingent on K providing her grades or course information to Mr. Moore. I make no order that K must provide such information to Mr. Moore.

Special expenses

- [112] Ms. Tucker seeks special expenses to cover counseling for K prior to K turning 19 years old. She also seeks special expenses post age 19, including tuition and educational costs. Ms. Tucker produced evidence of payments she made between May 2020 and June 2021, totalling \$8,116.68 for counselling, contact lenses, prescriptions, "ICBC driver services", computer expenses, and dental expenses. With the exception of the \$30 in ICBC driver services, I am satisfied that these expenses are proper special expenses incurred between May 2020 and June 2021, to which Mr. Moore ought to contribute. I order Mr. Moore to pay 60% of these special expenses, in the amount of \$4,870.

- [113] K testified that early in 2023 she began seeing a counsellor, at \$150/session, and she goes 1-2 times each week. She takes Adderall, a prescribed medication, which costs \$300/month, and which she has been taking since 2018. She produced two receipts for contact lenses, one issued in September 2021 for \$398.75, and one issued in February 2022 for \$389.15. K testified that her mother still pays for her contact lenses.
- [114] K testified that she planned to start Kwantlen University in the fall of 2023. She produced an offer of acceptance, and proof of payment of \$250 accepting the offer. K testified she expected tuition to be in the range of \$7,000 - \$10,000. She testified she would not be able to pay tuition on her own.
- [115] K testified that she expected that she would continue working during school up between 16-20 hours each week. She had saved approximately \$2,000 towards her school expenses. She also expected to work in the summers, earning between \$5,000 and \$7,000.
- [116] Mr. Moore agreed at trial that he would be prepared to contribute to K's ongoing counselling to age 25, regardless of whether she was in school. He also stated he would contribute to her prescriptions, medical, dental and eye care expenses while she was in school and covered by his insurance, and would contribute to her educational expenses.
- [117] I am satisfied that expenses for K's eyecare, including glasses and contact lenses, dental work (including dental surgery to remove her wisdom teeth), and her prescriptions are all proper special expenses up to September 2023, and while she is in full time school. Mr. Moore may be able to access insurance with respect to these costs, but his obligation to contribute to these expenses is not contingent on them being covered by his insurance. I accept Mr. Moore's agreement to contribute to K's counselling as a special expense until age 25.
- [118] I also find that K's tuition, books, and computer expenses are proper special expenses. However, I also find that K has an obligation to contribute to her own post-secondary expenses. K must make her own best efforts to contribute to her tuition, books, and computer expenses. The amounts which remain after K's contributions will be shared by her parents as special expenses.
- [119] Payment of special expenses from July 2021 until the date of these reasons will be made by Mr. Moore, proportionate to his income, within 30 days of delivery to him or his counsel of the appropriate receipts, such payment to be made out of Mr. Moore's share of the family assets.
- [120] For future special expenses, Ms. Tucker will provide Mr. Moore with an estimate of anticipated monthly expenses in advance, and will provide Mr. Moore with receipts once the expenses have been incurred. The parties will communicate by email. Within 30 days following delivery of the receipts, Mr. Moore will provide Ms. Tucker with reimbursement. The expenses will be shared, proportionate to their incomes.

Is Mr. Moore required to pay spousal support to Ms. Tucker

[121] Ms. Tucker seeks indefinite spousal support, retroactive to May 2020, payable in a lump sum, pursuant to both the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and the FLA. Both Acts set out analogous provisions with respect to support.

[122] Entitlement to spousal support is determined through considerations of the factors and objectives set out in s. 15.2(1) of the Divorce Act. Pursuant to subsection (4), the court must consider:

the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[123] Pursuant to subsection (6), in making a support order the court must:

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[124] No single objective set out in section 15.2(6) is paramount, and all must be considered by the court: *Moge v. Moge*, [1992] S.C.R. 813 at 850-853. The first two objectives relate to compensatory support, and the last two objectives relate to non-compensatory support. A court is not required to decide one basis of support to the exclusion of the others, and the doctrine of equitable sharing is the overarching principle to be focussed on by the court: *Chutter v. Chutter*, 2008 BCCA 507 at para. 49.

[125] Ms. Tucker claims both compensatory support and non-compensatory support.

[126] Dealing first with compensatory support, where a recipient spouse made efforts which conferred economic benefits or advantages on the payor spouse during the marriage, this may be recognized with an order for compensatory support. Compensatory support principles recognize compensation for losses caused by the marriage or its breakup, and recognize that a recipient spouse made sacrifices in assuming primary childcare and household responsibilities during the marriage resulting in a lower earning potential. The doctrine of equitable sharing recognizes both the disadvantages suffered by one and the

advantages enjoyed by the other: Chutter at paras. 50-51. Compensatory support also addresses economic advantages and disadvantages on marriage breakdown.

- [127] Non-compensatory support focusses on the needs and means of each spouse, the length and nature of the marriage, and "the idea that spouses, by virtue of marriage, have some ongoing responsibility to care for one another": *Zacharias v. Zacharias*, 2015 BCCA 376 at para. 27, Chutter at para. 54. Further, the needs of the parties goes beyond subsistence needs. The court must consider any disparity between the incomes of the parties after separation, and the standard of living during the marriage: Chutter at paras. 55-59.
- [128] In this case, the parties lived in a marriage like relationship for 18 years. This is a lengthy relationship.
- [129] During the marriage, initially both parties were employed. Ms. Tucker worked at Titan Steel, which then became Bekeart Canada Ltd. Mr. Moore initially worked at Van Gogh Designs, then moved to Budget Rent-a-car, and finally moved to Western Railco Products Ltd./Railcraft where he worked for the last 10 years of their relationship. Just before trial, Mr. Moore returned to Van Gogh Designs.
- [130] In 2000, Ms. Tucker earned approximately \$50,400/year. By 2010 she was a project manager and was earning \$66,648.
- [131] In 2010, Ms. Tucker was diagnosed with breast cancer. As a result of her cancer, Ms. Tucker was forced to retire and has been on long term disability ever since. She receives benefits from her private insurer, and the Canada Pension Plan.
- [132] In 2004, Mr. Moore was earning \$66,000 at Railcraft. By the date of trial, his yearly income had increased to \$80,000.
- [133] While both parents were involved in the care of K, after Ms. Tucker received her cancer diagnosis and stopped working, she took on the majority of the household responsibilities and childcare. K confirmed that her mother was primarily responsible for looking after her.
- [134] Before their separation, Mr. Moore contributed to the household expenses. In 2015 he began depositing his paycheque into their joint Scotiabank account. Before that time, Mr. Moore gave Ms. Tucker cash each month. I accept the evidence of Ms. Tucker that Mr. Moore gave her approximately \$700 in cash each month. I find that the money was paid initially pursuant to their agreement, and after that agreement ended, Mr. Moore continued to give Ms. Tucker cash, likely from his rental of the 196th Street property.
- [135] When Mr. Moore moved out of the house in May 2020, he stopped making any contributions to the household expenses. Mr. Moore paid child support until February 2021. After February 2021, the sole source of income to Ms. Tucker has been her disability payments in the annual amount of \$42,000. She has gone into debt while attempting to maintain the house and pay for K's expenses, all with no support from Mr. Moore.

- [136] The expenses for K have been high, due to her needs for counselling, medication, dental expenses, contact lenses, and prescriptions. She has been dependent on her mother.
- [137] When Ms. Tucker turns 65 in June, 2029, she will no longer receive a private pension. Presently, her private pension provides her with an annual income of just over \$26,000. When she reaches age 65, she will only receive her Canada Pension, roughly \$16,000/year at present. She will also receive a modest amount from her RRSP/LIRA.
- [138] Mr. Moore, on the other hand, has earned a steady, and increasing income, now \$80,000/year, and has only been responsible for his own expenses.
- [139] There is no question that Ms. Tucker has suffered an economic disadvantage due to the breakdown of the marriage.
- [140] Mr. Moore submits that Ms. Tucker can go back to work and earn a living. I do not accept this as a tenable position.
- [141] Ms. Tucker is on permanent disability and cannot return to her previous employment. When Ms. Tucker was diagnosed with breast cancer in 2010, it was stage 4 cancer. She had a very aggressive treatment, that required chemotherapy and surgeries over a number of years. Her treatment caused her body to go into menopause. She developed cognitive problems, vestibular problems, and problems with the nerves in her hands and feet. Ms. Tucker had carpal tunnel syndrome in both hands, making it highly unlikely she would be able to perform any tasks which require repetitive actions with her hands, such as typing. She has had two surgeries for carpal tunnel syndrome. She has had a hysterectomy, skin grafts, and ongoing medical investigations.
- [142] I am not persuaded that, in the circumstances of this case, Ms. Tucker was required to adduce expert evidence as to her non-employability, as suggested by Mr. Moore. Mr. Moore also relies on *Jendruck v Jendruck*, 2014 BCCA 320 and other authorities in support of the proposition that this is a case where Ms. Tucker is simply choosing not to work, and income should be imputed to her. I disagree. I accept Ms. Tucker's evidence as to her disabilities and her inability to work.
- [143] I am satisfied that Ms. Tucker will not be able gain remunerative work at this point in her life. She will not reach self sufficiency, and will require spousal support into the future.
- [144] I find that Ms. Tucker is entitled to both compensatory and non-compensatory support
- [145] Ms. Tucker seeks a lump sum amount of spousal support. While Mr. Moore disagrees that any spousal support is required, he also submits that if an order for spousal support is made, it should be a lump sum payment.
- [146] Ms. Tucker seeks support at the high end. I am not satisfied that is appropriate in this case. I order spousal support at the mid range, pursuant to the Guidelines.

- [147] From June 2020 to July 2023, Mr. Moore's spousal support obligations, taking into account his child support obligations, are \$242/month in 2020, \$386/month in 2021, \$515/month in 2022, and \$485/month from January to July 2023.
- [148] Retroactive spousal support until the date of trial (July 2023) is payable by Mr. Moore in the lump sum amount of \$15,901.
- [149] With respect to future spousal support, at trial Mr. Moore was 52 years old. He will reach age 65 in May 2036. Based on the evidence at trial, it is reasonable to assume that Mr. Moore will pay child support until April 2027. Using the parties' present incomes as a basis for a lump sum calculation, Mr. Moore's spousal support obligations until April 2027 would be \$21,340. From May 2027 until May 2036, when Mr. Moore is no longer paying child support, Mr. Moore's spousal support obligations would increase to \$986/mon, for a total of \$106,488.
- [150] For the purposes of determining a lump sum future spousal support award, I find that Mr. Moore's spousal support obligations are \$127,828.

Disposition

- [151] Further to my reasons expressed above, I make the following orders:
- a) Subject to s. 12 of the Divorce Act, the claimant Karen Tucker and the respondent Scott Moore, who were married on September 6, 2006, are divorced from each other. The divorce is to take effect on the 31st day after the date of these Reasons for Judgment.
 - b) The family assets will be divided unequally, with Ms. Tucker receiving a share in the amount of \$1,189,910, and Mr. Moore receiving a share in the amount of \$227,022.
 - c) Mr. Moore will pay Ms. Tucker retroactive child support in the amount of \$21,791, and retroactive special expenses to June 2021 in the amount of \$4,870. These retroactive payments will be made out of Mr. Moore's share of the family assets.
 - d) Mr. Moore will pay to Ms. Tucker special expenses incurred between July 2021 and the date of these reasons, proportionate to his income, out of his share of the family assets.
 - e) Mr. Moore will pay child support to Ms. Tucker in accordance with the Federal Child Support Guidelines in August 2023, and for the first four years K is in post secondary school. Any child support owing between August 2023 and the date of these reasons for judgment will be paid out of Mr. Moore's share of the family assets.
 - f) The following special expenses will be paid by Mr. Moore and Ms. Tucker proportionate to their income, for the first four years K is in post secondary school, inclusive of August 2023: eyecare, including glasses and contact lenses, dental work (including dental surgery to remove her wisdom teeth), and prescriptions.
 - g) Mr. Moore and Ms. Tucker will contribute to the cost of K's counselling until she reaches the age of 25, as a special expense, proportionate to their income.

- h) K's educational expenses, including K's tuition, books, and computer expenses, are special expenses to be paid by Mr. Moore and Ms. Tucker proportionate to their income, for the first four years K is in post secondary school. However, the parties are only obligated to pay those educational expenses net of K's best efforts to provide her own contribution to these expenses.
- i) Ms. Tucker will provide Mr. Moore with an estimate of anticipated monthly special expenses in advance, and will provide Mr. Moore with receipts once the expenses have been incurred. The parties will communicate by email. Within 30 days following delivery of the receipts, Mr. Moore will provide Ms. Tucker with reimbursement.
- j) Ms. Tucker has liberty to apply for further child support or special expenses following the completion of the first four years K is in post secondary school, should K remain a child of the marriage at that time.
- k) Ms. Tucker is entitled to both compensatory and non-compensatory support from Mr. Moore until he reaches the age of 65.
- l) Mr. Moore will pay Ms. Tucker retroactive spousal support in the amount of \$15,901, and such retroactive payment will be made out of Mr. Moore's share of the family assets.
- m) Mr. Moore will pay Ms. Tucker lump sum future spousal support award in the amount of \$127,828. Such payment will be made out of Mr. Moore's share of the family assets.
- n) After accounting for all deductions from Mr. Moore's share of the family assets, Ms. Tucker will pay Mr. Moore for his remaining share of the family assets.

[152] The parties have leave to make submissions on costs.

"W.A. Baker J."

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