

CANADA / JUDGMENT

Van Andel v. Schroeder

2018 BCSC 120

COURT

Supreme Court of British Columbia

DECIDED

25 January 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 120 Van Andel v. Schroeder IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Van Andel v. Schroeder, 2018 BCSC 120 Date: 20180125 Docket: E27044 Registry:

Cranbrook Between: Evelyn Pauline Van Andel Claimant And Gerhard Curt Schroeder

Respondent Before: The Honourable Mr. Justice D.M. Masuhara Reasons for Judgment Counsel for Claimant: Murielle A. Matthews The Respondent, Gerhard Schroeder: In Person Place and Date of Trial: Cranbrook, B.C. October 25-27, 2017 January 8-9, 2018 Place and Date of Judgment: Cranbrook, B.C. January 25, 2018 I. Introduction

- [1] These reasons deal with a family action. Ms. Van Andel seeks spousal support and an unequal division over certain family property and debt. She takes the position that her relationship with Mr. Schroeder became marriage-like in July 1997 where the two were sharing accommodations in a rental house in Calgary.
- [2] Mr. Schroeder does not contest Ms. Van Andel's entitlement to spousal support; rather, his focus is the level of support and duration. He takes the position that she is capable of earning some income. He also takes the position that their relationship did not become marriage-like until they moved to Cranbrook in October 2002. In terms of family property, there is little of value, except Mr. Schroeder's pensions. His position on division of the pensions is driven by his view of when the relationship came into existence.
- [3] It is agreed that the parties separated on October 1, 2016.
- [4] Key questions to be determined in this case include:
- (a) When did the marriage-like relationship arise;
 - (b) Should there be an unequal division of certain family property in favour of Ms. Van Alden;
 - (c) Should there be a greater apportionment of debts to Mr. Schroeder;
 - (d) What is the annual income of Mr. Schroeder for spousal support purposes; and
 - (e) Should there be income imputed to Ms. Van Andel for spousal support purposes. II. Background

- [5] Ms. Van Andel at the time of trial was 59 years old. She is unmarried and does not have children. She has not been employed since about 2001. She has had a limited work history. She worked as a courier in the Calgary area and delivered newspapers for the Calgary Herald and Calgary Sun in a joint effort with Mr. Schroeder. Prior to the parties meeting, Ms. Van Andel had been in three motor vehicle accidents. She has various ailments including: fibromyalgia, degenerative joint disease, and chronic myofascial pain syndrome. She also has had surgery for breast cancer. She also suffers from anxiety and depression. All of which affect her ability to find gainful employment.
- [6] She met Mr. Schroeder in September 1996 in Calgary when she rented a room in the house which he was leasing. He sub-rented rooms to other tenants. Ms. Van Andel and other tenants lived on the main floor. Mr. Schroeder lived in the basement suite. He shared joint custody with his two daughters and had access on alternating weekends. The relationship between the parties became sexual sometime after Ms. Van Andel moved in. In the fall of 1997, Mr. Schroeder moved from the basement suite up to a bedroom on the main floor. Ms. Van Andel kept her room and kept her personal items in it. The parties continued having a sexual relationship.
- [7] While the parties resided in Calgary, Ms. Van Andel was working on obtaining benefits for disabled persons under an Alberta government program called AISH. She moved to Cranbrook, B.C. shortly after Mr. Schroeder moved there for work in October 2002. Shortly after separation Ms. Van Andel began to receive disability benefits from the Province of British Columbia but this ended upon her obtaining an interim order for support from Mr. Schroeder on January 18, 2017. The application was filed December 16, 2016. Justice Verhoeven ordered interim spousal support for Ms. Van Andel of \$1,250 per month. He also ordered interim exclusive occupation of the family home on Ermacora Road, a mobile home, to Ms. Van Andel. The order does not indicate the incomes used by the court for the support order. Counsel for Ms. Van Andel submitted that with no income imputed to Ms. Van Andel, the implied income for Mr. Schroeder would be about \$57,000.
- [8] Mr. Schroeder is presently 56 years old. He is a rail car mechanic and has worked with Canadian Pacific Railway ("CPR") for a long time. He has pensionable service years of 36.5 years under the CPR pension and was entitled to a full pension in 2015, when he reached the service plus age sum of 85. Mr. Schroeder is divorced and has two daughters now adults. He had a co-parenting arrangement of alternating weekends.
- [9] In terms of health, Mr. Schroeder is a Type 2 Diabetic. He does not require insulin. He controls his condition through a proper diet. He also has a partially ruptured bicep, a hernia, and irritable bowel syndrome. None of these conditions affect his ability to do his job.
- [10] Mr. Schroeder has been laid off and recalled for work several times at CPR. In May 2002 he was laid off. A few months later in October 2002 he learned of a job posting in Cranbrook. He got the job and was required to move there immediately. He terminated his Calgary rental

agreement and left. Ms. Van Andel remained in Calgary. She says that she was close to being approved for long term disability benefits under AISH. After a few weeks, the two discussed their circumstances. Mr. Schroeder told her that he had purchased a mobile home from his brother. The mobile home was located on Ermacora Road in Cranbrook and he told her the two could have a life together there. Ms. Van Andel though torn about abandoning the AISH claim decided to move there and did so in December 2002. The two resided in the mobile home together until the separation.

- [11] Mr. Schroeder was last laid off in June 2016. He was recalled back to work for October 30, 2017. He has worked continuously since.
- [12] On August 9, 2017, Mr. Schroeder filed to be assigned into bankruptcy. Ms. Van Andel received the notice of bankruptcy and impending automatic discharge about a month after the filing. The notice indicated that Mr. Schroeder would be discharged after 21 months of making payments. The monthly payments to be made was \$457.38. The discharge occurs in about May 2019. Except for his car loan and RBC loan, his other debts will be extinguished.
- [13] It is apparent that after some time in Cranbrook, about two years, the relationship evolved to each living their own lives. Ms. Van Andel told Mr. Schroeder that she needed to sleep alone and moved elsewhere in the home. Communications were limited. Intimacy became non-existent. They had no social life. Mr. Schroeder simply went to work. Ms. Van Andel went about doing her own activities. I am sure both felt an emptiness.
- [14] In 2012, Mr. Schroeder met Ms. Grange in an online site called Second Life. At the time she was living in Oregon. They met in person in December 2013 in Calgary. He lent her \$7,000 in September 2014 for a down payment on a mobile home she had decided to purchase in Balfour, B.C. She repaid the loan a few months later. Their relationship since meeting has included sexual intimacy. Mr. Schroeder has brought gifts including jewellery for her. Ms. Van Andel learned of this relationship from Mr. Schroeder's sister in around September 2016. She then confronted Mr. Schroeder about it. He acknowledged the relationship and stated that it was time for each to move on. Ms. Van Andel changed the locks on the home and refused Mr. Schroeder entry. Mr. Schroeder subsequently took up residence with Ms. Grange in Balfour, B.C., paying her rent of \$600/month and helping around her home and contributing to the food bill. More recently, he has moved back to Cranbrook to be closer to work and took out a one year lease, November 2017 to the end of October 2018. He says that he still sees Ms. Grange but only occasionally.
- [15] I now turn to the issues. III. When did the marriage-like relationship start?
- [16] Ms. Van Andel says that the parties entered into a marriage-like relationship in July 1997 when Mr. Schroeder moved to the main floor of the house in which the two rented. Mr. Schroeder says that a marriage-like relationship arose in 2002 when he invited Ms. Van Andel to start a life with him in Cranbrook.

- [17] Ms. Van Andel produced a number of notes, birthday cards, anniversary cards, Christmas cards, Valentines cards, and other such cards written by Mr. Schroeder to her that contained notes evidencing a close relationship. They are undated but Ms. Van Andel says that they were packed up into a file cabinet while in Calgary and recently found them in the cabinet. She candidly concedes that she has guessed at the dates the cards were given to her; however, she is convinced that she received them while in Calgary. She also testified to going on outings with Mr. Schroeder and his children; sewing items for his children; repairing some of Mr. Schroeder's work clothes; receiving greeting cards from friends which were written to both Ms. Van Andel and Mr. Schroeder; camping trips together; attending events in Mr. Schroeder's family; staying in Mr. Schroeder's parents home in the same bedroom; her calling Mr. Schroeder her boyfriend or her "guy" to others; working together in delivering newspapers; and his mentioning the topic of marriage. All of which occurred while the two resided together in Calgary.
- [18] Mr. Schroeder says that the parties did not enter into a marriage-like relationship until 2002 when he and Ms. Van Andel moved to Cranbrook. Mr. Schroeder had accepted a position with his employer in Cranbrook and had left Calgary. No discussion was ever had with Ms. Van Andel about his taking the job. They did not share finances and he did not support Ms. Van Andel financially. He notes that the two maintained separate finances. It is only when he felt Ms. Van Andel was in turmoil at having been left behind that he proposed to her that she come to Cranbrook and start a new life together with him. He denies any prior discussion or mentioning of marriage. He agrees that the two would take his children on outings, but that he invited Ms. Van Andel to join them as she had little to do. As to his move from the basement suite he testified that he did so because of flooding in the basement and that he hoped to get more rent from the basement suite because it was furnished and had its own bathroom.
- [19] Mr. Schroeder also points to Ms. Van Andel's statements given to an assessor in May 2000 regarding a vocational evaluation report to support for claim for disability benefits that she was a single female with no dependants. He also points to her applications for social benefits which indicated that she was living alone during her time in Cranbrook. He also says while in Calgary they kept their finances separate. Only in Cranbrook did they open a joint bank account and that he included her under his benefits plan with CPR.
- [20] All of the foregoing he says supports his position on when the relationship was established.
- [21] There is no issue that the parties cohabited in a marriage-like relationship from some point and that it lasted until September 30, 2016.
- [22] In the recent case of *Kneller v. Greenwood*, 2015 BCSC 1410, Justice G.C. Weatherill listed various factors which are indicators of a marriage-like relationship such as: living and sleeping arrangements, sexual and personal behaviour towards each other, services provided to each other or for the relationship, social life, views of the parties relationship in the community, and financial support and arrangements.

- [23] In *Austin v. Goerz*, 2007 BCCA 586, Frankel J.A. at para. 58 cited with approval the following passage from *Yakiwchuk v. Oaks*, 2003 SKQB 124 at para. 10 which is helpful to this case:
- [10] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. In some relationships there is a complete blending of finances and property - in others, spouses keep their property and finances totally separate and in still others one spouse may totally control those aspects of the relationship with the other spouse having little or no knowledge or input. For some couples, sexual relations are very important - for others, that aspect may take a back seat to companionship. Some spouses do not share the same bed. There may be a variety of reasons for this such as health or personal choice. Some people are affectionate and demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together - others do nothing together. Some "spouses" vacation together and some spend their holidays apart. Some "spouses" have children - others do not. It is this variation in the way human beings structure their relationships that make the determination of when a "spousal relationship" exists difficult to determine. With married couples, the relationship is easy to establish. The marriage ceremony is a public declaration of their commitment and intent. Relationships outside marriage are much more difficult to ascertain. Rarely is there any type of "public" declaration of intent. Often people begin cohabiting with little forethought or planning. Their motivation is often nothing more than wanting to "be together". Some individuals have chosen to enter relationships outside marriage because they did not want the legal obligations imposed by that status. Some individuals have simply given no thought as to how their relationship would operate. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist. [Emphasis in *Austin*]
- [24] There was an "easing" into a marriage-like relationship which arose in my view in 2000. As to an earlier date, as discussed during closing submission, I have considered certain limitations on Ms. Van Andel's reliability. I have taken into consideration the weaknesses in the testimony of Mr. Schroeder who, at many points regarding this topic, would retreat to simply not having a recall of things in the relationship. I have also taken into consideration the circumstances when Mr. Schroeder was accepted for a job posting in Cranbrook and his concern for Ms. Van Andel because of her condition and limited means. That event does not negate that a relationship had arisen; rather, in some ways it support its existence.

- [25] There are many factors to be recognized in the consideration of when a marriage-like relationship began. The absence of various identifying factors is not conclusive of non-existence; and the presence of various identifying factors does not necessarily indicate its existence. The exercise of the court is to view all of the circumstances wholistically. Doing what I can with the evidence, I find that a marriage-like relationship came to be on June 1, 2000. IV. Family Property, Debts and Division
- [26] Ms. Van Andel takes the following position in respect to the property and debts that she should get a greater share of family property based on waste of assets by Mr. Schroeder. She seeks 100% of the family home (the mobile trailer home); and 50% of the share of Mr. Schroeder's CPR pension and Canada Pension Plan proportioned to the period of their relationship.
- [27] In terms of his pensions, Mr. Schroeder does not take issue with the equal division argued for by Ms. Van Andel. His issue relates to the period of the marriage-like relationship which then factors in the total pension entitlement. In terms of the mobile home, Mr. Schroeder says its value is greater than set out in the financial statements of both parties of \$11,700. He produced no independent evidence. He has no interest in living in it or purchasing it. A. Assets
- [28] At the start of trial, the assets in question were: Family Home 1969 Glendale mobile home Vehicles 2012 Nissan Sentra 1996 Chevrolet Blazer 1993 Mazda truck 1990 Chevrolet Van 1986 Toyota Van Boat (aluminum) and trailer Household Contents Furniture & Jewelry Toy "Hot Wheels" Collection Pensions: Canada Pension Plan (for each party) CPR Pension Plan Solium Capital CPR Employee Share Purchase Plan Financial Assets: RBC joint account RBC TSA account RBC account
- [29] Ms. Van Andel claims that the following assets she holds are exempt: TD Chequing account \$2,105.00 BMO Chequing account \$27,522.00 BMO Chequing account \$5,776.00
- [30] Ms. Van Andel testified that these amounts are what is left of a \$50,000 inheritance she received from her father's estate in October 2014. She never told Mr. Schroeder of her inheritance or that her father had died. The balance is now \$6,000. B. Debts
- [31] The family debts in question are: · RBC joint LOC · Nissan Sentra Financing · RBC Visa · TD Visa · BMO C. Determination of Division
- [32] At the end of closing arguments, I requested the parties to discuss whether certain family property items raised could be settled. Following a short adjournment, the parties collectively advised me of the following: · that both had searched without success for a service award ring Mr. Schroeder had received from CPR. If Ms. Van Andel finds the ring she will advise and provide the ring to Mr. Schroeder. She makes no claim to the ring or its value; · the Mattel "Hot Wheels" collection will be divided in equal shares. The parties agree they will meet and divide the collection between them on or before September 1, 2018; · that Mr. Schroeder will transfer the Mazda, Chevrolet van, and Toyota van, the aluminium boat

and trailer to Ms. Van Anandel; · that Mr. Schroeder will be provided the oak dresser which he inherited from his parents; · that Mr. Schroeder will be provided to him the rauter table that he made; · that Mr. Schroeder will be provided the night table; · that Mr. Schroeder will be provided the blue dresser; · the compact disks will be divided in equal shares. The parties will meet to divide the CD's between them and will do so before September 1, 2018; · that the fire pit made by Mr. Schroeder will be retained by Ms. Van Anandel; · that Mr. Schroeder will be provided the meat smoker; · that Mr. Schroeder will be provided the uninstalled French doors; · that Mr. Schroeder will be provided the Kenwood stereo unit; · that Mr. Schroeder will be provided the carpet cleaner; · that Ms. Van Anandel will retain the Dyson vacuum cleaner; · that Mr. Schroeder will be provided any tools remaining at the mobile home that are not Ms. Van Anandel's; and · Mr. Schroeder's mountain bike is not at the mobile home. Mr. Schroeder did not take issue with this.

[33] All of the above is by consent.

[34] I also take from Ms. Van Anandel's closing argument that Mr. Schroeder will keep the Nissan Sentra and Ms. Van Anandel will keep the Chevy Blazer.

[35] I turn now to the question of the remaining items in dispute.

[36] In my view the assets claimed by Ms. Van Anandel are excluded. They are as a result of an inheritance and the funds were maintained separate and unknown to Mr. Schroeder. They qualify as excluded from division.

[37] With respect to Mr. Schroeder's CPR pension and his Canada Pension Plan, Ms. Van Anandel shall have an entitlement to both equal to 50% of the service earned by Mr. Schroeder during the marriage-like relationship June 1, 2000 to and including October 1, 2016. I am assuming here that this is consistent with the terms under both plans. If not, further submissions may be needed.

[38] With respect to the Solium Capital Account. The evidence indicates the account was used as a forced savings account and accessed annually to pay the car insurance or other home expenses. The balance as at the date of separation is to be divided equally.

[39] With respect to the RBC joint account, the balance is now negative. This in my view was caused by Mr. Schroeder's post-separation spending. This debt is the responsibility of Mr. Schroeder. To the extent RBC seeks payment from Mr. Van Anandel, such amount will be added to the spousal support due from Mr. Schroeder. The same goes for Mr. Schroeder's portion of the RBC joint line of credit of \$6,520.00.

[40] With respect to his RBC TFSA account, the amount of \$140.00 is to be divided equally. As is his RBC business account of \$450.00.

[41] Ms. Van Anandel's debts on her RBC Visa, TD Visa and BMO credit card accounts will remain her sole responsibility.

- [42] Mr. Schroeder's obligations under the Nissan Sentra loan, which is the vehicle he owns and uses is his sole responsibility.
- [43] With respect to the mobile home on Ermacora Road, Cranbrook, Ms. Van Andel is entitled to the entirety of the interest in it. Mr. Schroeder has no interest in purchasing it or residing in it. Ms. Van Andel will be required to pay Mr. Schroeder for his one-half interest of \$5,850. Payment may be amortized over three years - \$243.75, which Mr. Schroeder can deduct from his monthly support payments. V. Spousal Support
- [44] In terms of spousal support, entitlement is not an issue; rather the parties dispute the amount of support to be paid and the duration. Ms. Van Andel also seeks retroactive spousal support.
- [45] Mr. Schroeder says that had always been his intention to retire at the age of 55 years, which was in November 2016. He has Type 2 Diabetes and has a ruptured bicep. He testified that he finds his work with CPR very demanding and has difficulty. He is presently working because he is uncertain of what this court's decision will be. Interestingly however, Mr. Schroeder also testified at one point that he intends to continue to work at CPR but that he does not intend to work past age 60. He at present has entitlement to a full pension without reduction. He can retire anytime. He also testified that if he were to retire that he would consider engaging in other work to supplement his income and that he had a conversation with a prospective employer who was interested in the skills he has as a rail car mechanic. He mentioned at one point that it was an offer.
- [46] Mr. Schroeder's terms of employment are quite attractive. In regard, to when laid off, he receives in addition to Employment Insurance benefits, weekly payments from CPR supplementing his income loss.
- [47] At present, Mr. Schroeder has committed himself to work for at least one more year as he has taken out a one year lease in Cranbrook.
- [48] The evidence leads me to conclude that Mr. Schroeder is capable of working for a period beyond retiring from CPR and so intends. I recognize that he has some health issues and that his line of work is labour intensive. However, his health does not prevent him from doing his job. I also recognize Mr. Schroeder testified that he has co-workers who are in their late 60's. Mr. Schroeder has also indicated an intention upon retirement to seek out other work to earn income, such as consulting on railcar maintenance and repair. Mr. Schroeder also testified that there is no mandatory retirement age applicable to him at CPR. Retirement from CPR is not the end of his intended work life.
- [49] I have taken into consideration *Powell v. Leveque*, 2014 BCCA 33, where Madam Justice D. Smith writing for the court held that "the law does not require payor spouses to maintain spousal support at a level that forces them to continue to work after becoming eligible for full retirement benefits". In the present case, it is my view that Mr. Schroeder intends to continue to work at CPR and in any event will work after retirement from CPR.

- [50] My view is that his income for spousal support should be based at the level of income as a railcar mechanic until he reaches the age of 59 years, at which point there is to be a review of spousal support.
- [51] I turn next to whether Ms. Van Andel is able to earn some income.
- [52] Mr. Schroeder argues that Ms. Van Andel is capable of earning some income. He notes that she is independent, gardens, and loves to drive. His testimony on her ability to work was however stated as his hope.
- [53] In my view, the long history of Ms. Van Andel not working along with her history of ailments, medication, and eligibility for disability benefits establishes that she is not able to earn income. I also note she qualified for and received disability benefits in British Columbia. Her age, gender, and disabilities also serve as barriers to employment. I think however, she should try as it could provide her a sense of making a contribution. I note her application for disability pension was denied on the basis that she was not disabled under the terms of the Canada Pension Plan.
- [54] The determination that next follows then is that of Mr. Schroeder's income for spousal support purposes.
- [55] Ms. Van Andel argues that annual income for Mr. Schroeder should be imputed at \$91,501. This figure is the highest amount earned by Mr. Schroeder. This was achieved in 2014. This amount includes overtime pay. It is not contested that Mr. Schroeder has earned overtime in each of the years reviewed that he worked. Mr. Schroeder stated that overtime was a regular feature of his job.
- [56] His annual incomes then are: 2017 - \$88,367 (estimated); 2016 - \$64,240; 2015 - \$82,922; and 2014 - \$91,503.
- [57] Mr. Schroeder did not specifically mention an income amount in his closing argument, however, from his comments throughout the proceedings, I have taken it that his annual income should be based on his base income which excludes overtime. This then amounts to an annual income of approximately \$72,000.
- [58] In my view, Ms. Van Andel's figure is too high because it has been achieved only once and Mr. Schroeder's figure is too low as it does not reflect the reality that he consistently earns overtime.
- [59] In the circumstances, I have considered income earned over the past four years, which includes a pro rata estimate for 2017, and have estimated a mid-range (not the average) with an adjustment for layoff. I come to the annual amount of \$85,000. This amount is to be used in determining spousal support effective January 1, 2018. For the retroactive aspect of Ms. Van Andel's claim, spousal support will be calculated on an annual income of \$88,367 from January 1, 2017 and \$64,240 effective October 1, 2016. Ms. Van Andel's income is to take into effect her disability income. Terms for repayment of retroactive support would include a set-

off for the interest in the mobile home awarded.

- [60] In my view, the annual income of \$85,000 should remain in effect for spousal support purposes until Mr. Schroeder reaches the age of 59 years. At that point, a review of spousal support is to be conducted; including the issue of double-recovery and reduced income through retirement as identified in *Boston v. Boston*, 2001 SCC 43, as well as, the extent to which Mr. Schroeder's monthly pension increment which is not related to division can be used for spousal support. Ms. Van Andel's sources of income at that time are also to be taken into account.
- [61] For the purpose of determining present spousal support, there were few details provided regarding the terms of Mr. Schroeder's pensions. It seems to me that with the division of his pensions as decided above, Ms. Van Andel could be entitled to receive a pension income. If so, the amount would be provided by the administrators of the pension plans. This income would then be imputed into the SSAG to determine the range of support. If this is the case, then further submissions should be made. I am open to written submissions on this point.
- [62] If Ms. Van Andel is not entitled to a pension until Mr. Schroeder retires, then the spousal support will be based on the income for Mr. Schroeder identified above and the income for Ms. Van Andel set at zero subject to her entitlement under Mr. Schroeder's Canada Pension Plan. The SSAG sets the range as: Low - \$1,700; Mid - \$1,983 and High - \$2,267 for an indefinite period. In my view, the \$1,983 per month support is appropriate on an indefinite basis, subject to the review or material change in circumstances and any adjustment for Canada Pension Plan income. The Honourable Mr. Justice Masuhara

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/01/2018BCSC0120.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/van-andel-v-schroeder-2018>

Prepared on 28 October 2026 · Esheria