

CANADA / JUDGMENT

Velisek v. Velisek

2002 BCSC 305

COURT

Supreme Court of British Columbia

DECIDED

1 March 2002

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

Source record

2002BCSC0305

Citation: Velisek v. Velisek Date:

20020301

2002 BCSC 305 Docket:

8461

Registry: Nelson

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

IVAN VELISEK
PLAINTIFF

AND:

IVANA VELISEK
DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE T.M. MCEWAN

Counsel for the Plaintiff: W.A. Morrow

Counsel for the Defendant: P. Gartner

Date and Place of Hearing/Trial: February 5 and 6, 2002

Nelson, BC

- [1] In this case the court is called upon to divide assets pursuant to the Family Relations Act over ten years after the separation of the parties.

- [2] Both were born in Czechoslovakia and came to Canada as a consequence of the Soviet invasion of 1968. They lived together in this country for a few months before marrying on May 27, 1970. Materially they started with nothing, although they both had the benefit of good educations. After briefly working in Trail, Mr. Velisek obtained work in Vancouver as a consulting engineer. Mrs. Velisek worked for a time as a chambermaid.
- [3] At the end of 1971 the parties moved to Kitimat where Mr. Velisek obtained employment as a designer/draftsman and later as an engineer. Mrs. Velisek worked in the drafting field as well, taking time off as required when their three children were born: David on January 16, 1972; Tanya on December 20, 1974; and Peter on May 23, 1977.
- [4] In 1979 the family moved to Slocan Park, near Nelson, British Columbia, where they had purchased property. They built a home there using money from their savings and from the proceeds of the sale of their Kitimat house. For a period of at least a year the family lived in rather spartan circumstances in a one room unserviced cabin while Mr. Velisek worked on the house. Despite these privations, Mrs. Velisek testified that she found "living close to the land" during that time rewarding in its own way. By 1981 the parties had reached a point where they were living in their own home mortgage free.
- [5] In 1981 Mrs. Velisek obtained employment with the Ministry of Forests. She has continued to work there ever since. Mr. Velisek obtained employment at the Ministry of Environment in 1982 and remained there until he was laid off in 1986. He has not since worked in any form of continuous employment.
- [6] Mr. Velisek apparently had time for outside pursuits. He became interested in karate and took two trips to Japan in 1985 and 1987. There were other trips to Montreal, France and Czechoslovakia, some parts of which were, according to Mr. Velisek, to explore business opportunities.
- [7] In March 1991 Mrs. Velisek advised Mr. Velisek, while he was on a European trip, that when he came home she wanted him out of the Slocan Park residence. This was not, on the evidence, precipitous, but recognized a situation that had been developing for some time. Mr. Velisek did move out until July of 1991 when the parties purchased a house on Baker Street in Nelson. Mrs. Velisek and the children then moved into that house, while Mr. Velisek moved back into the Slocan Park house.
- [8] Things remained this way until July 2, 1996 when Mr. Velisek moved out of the Slocan Park property and into a home he bought on Stanley Street in Nelson. The parties' son Peter moved into the Slocan Park house for about a year, sharing it with a renter. Since that time the parties have participated in the rents to varying degrees. Initially the rents went to Mr. Velisek, then for a time he took the bulk of the rents while paying a "fee" to Mrs. Velisek to look after things for him, then for quite some time they were shared equally. Lately Mrs. Velisek has rented the property to friends and taken the rents.
- [9] The parties have or have had the following family assets:

- a) The Slocan Park property;
- b) The Baker Street property;
- c) RRSPs worth \$16,532.00;
- d) A Merrill Lynch investment account;
- e) Mrs. Velisek's public service pension
- f) Bank accounts and miscellaneous chattels.

- [10] The matter of when the parties actually separated was in issue until a declaration by this court, following a hearing, established the date to be March 31, 1991. Except that it marks the point in time from which the parties no longer had a mutual intention to remain together as man and wife, nothing specific was done then or has been done to the present time, to settle the assets of the marriage. As of the date of separation, the Merrill Lynch investment account which Mr. Velisek controlled had some \$73,000 in it. A few months later, when the parties purchased the Baker Street house into which Mrs. Velisek moved, that account stood at some \$93,000. The additional deposits were from proceeds Mr. Velisek derived from growing and selling marihuana, something he had done since 1985. Although the evidence is not precise, I have no difficulty inferring that a significant part of the plaintiff's income came from this source throughout the periods of time material to this case.
- [11] The Slocan Park house was acquired and paid for while the parties were together and is clearly a family asset.
- [12] The Baker Street house was paid for largely out of money in the investment account held by the parties during the marriage. The structure of the purchase was unusual inasmuch as the parties had enough money to pay the entire \$77,500 purchase price, and the plaintiff was willing to do so. For her own reasons, apparently having to do with establishing a credit rating, the defendant wanted the purchase to be structured such that \$52,945 was paid leaving a \$26,000 mortgage. The defendant paid this mortgage monthly out of her earnings for the initial three year term, after which it was paid out for \$21,381 from funds the plaintiff controlled. The property has been mortgage free since 1994.
- [13] The appreciation of some \$20,000 in the Merrill Lynch account between the time of separation and the date the Baker Street house was purchased, is, I infer on the evidence, largely due to revenue from the plaintiff's agricultural activities while the parties were still together. It is difficult to identify a definite triggering event because, despite their intention to separate in March of 1991, the parties continued to function as something like joint venturers in at least the Baker Street and Slocan Park properties.

- [14] I think the appropriate way to deal with the Merrill Lynch account is to declare the value at the time of the Baker Street house purchase (that is, about \$93,000) to be the amount accountable as a family asset. Half of that sum, and any income accrued on that half up to the July 1994 pay out of the Baker Street mortgage must be accounted for by Mr. Velisek. After July 1994 the sum owing must be reduced by \$21,301 (the amount used to pay out the mortgage) in calculating a final distribution.
- [15] When the plaintiff bought the house on Stanley Street on on October 7, 1994, he used the entire Merrill Lynch account then in his possession. Except to the extent necessary to "trace" the money he then had for the purpose of adjusting that account as I have indicated, I do not think this Stanley Street transaction has any place in this litigation. Mr. Velisek bought the property, derived some rental income from it, and sold it, apparently for a small loss, after the parties had, except for the specific assets in which the retained a joint or combined interest, gone their separate ways.
- [16] It seems clear that the parties should each keep the benefit of their "earnings" from and after the date of separation. This means, of course, that the relevant period for the so-called "Rutherford" calculation of Mrs. Velisek's pension both parties expect ends on March 31, 1991. I think the complex accounting the defendant urges respecting each of the Baker Street and Slocan Park properties is quite unnecessary: each party had the benefit of one of the properties and took on the responsibility for its maintenance. As I have already noted, the mortgage the defendant paid on the Baker Street house was her choice. I do not see any reason why those payments or the payments over the years for house insurance and water and sewer ought to be matters of accounting between the parties.
- [17] Respecting Slocan Park, I similarly do not see why there should be such an accounting. When Mr. Velisek moved out of the Slocan Park property (incurring living expenses elsewhere) I would not necessarily have found his collection of the rents unfair or inequitable given that each party had the benefit of one of the properties. The fact that Mr. Velisek may have converted his "enjoyment" into a quantifiable advantage in rental income would not in or of itself necessarily call for an adjustment. In this case, as I have observed, however, there were times Mr. Velisek paid a portion of the rents to Mrs. Velisek, times he split them with her and a period of time since last October when Mrs. Velisek has collected all the rents on the Slocan Park property. The overall difference the defendant claims is due on a 50-50 accounting of these adjustments is, in any case, less than \$6,000. Given the fact that Mr. Velisek has chosen to share these revenues to the extent he has I see no need now to make any further adjustment.

- [18] Each party has, without any particular agreement of the other, and without keeping any accurate accounting, spent money and put some effort into improvements on each property. The defendant estimates that she has spent something in the order of \$7,000, while the plaintiff submits that he has spent over \$20,000 on Slocan Park. They each claim there should be some consideration given these expenditures in adjusting the equities between the parties.
- [19] I do not think that is appropriate or necessary. The parties had no agreement with respect to these expenditures and paid for them either to enhance their own enjoyment of property they possessed or to enhance the value of properties they knew were jointly owned. There is nothing in the circumstances from which I can infer that there is anything particularly unfair about this that requires adjustment. The parties' casual and rather independent approach to such expenditures does not now leave the court with any duty to retroactively supervise a strict accounting on what is obviously approximate, if not unreliable, evidence. I think, rather, that I am left in a position where it is fair to infer that if the parties did not think it important enough to document what they were doing at the time, it must not have seemed substantially unfair that they incurred the expenses they did.
- [20] I take a similar approach to the defendant's claim to "compensation" for child support. She puts the argument in these terms:

From 1991 until 1995, Ms. Velisek supported the children solely from her own financial resources without any assistance from Mr. Velisek. At the same time, she was paying a mortgage against the Baker Street property while Mr. Velisek was living rent free in the Slocan Park property. It is our submission that Ms. Velisek should receive some compensation for the many years that she supported the children solely on her own. *Gossett v. Gossett*, (1998) 38 B.C.L.R. (3d) 289 (BSCS). Alternatively, we would request the Court to consider reapportionment of the Baker Street property in favour of Ms. Velisek on the principles outlined in *Watts v. Watts*, (1996) 17603 Prince George Reg. (BSCS) and *Baker v. Barker* [sic], 2000 BCSC 0305.

- [21] To begin with the evidence is not that she supported the children entirely on her own. The plaintiff actively assisted with expenses, particularly with the costs of ski racing, which some of the children avidly pursued. The defendant conceded that ski racing was expensive. She acknowledged in cross-examination that Mr. Velisek did not carry "all" of the ski racing expenses, which I took to be a clear concession that he had paid the substantial part of those expenses. It was evident, moreover, that in a number of informal ways the plaintiff made contributions to the support of the children and to funding their activities. In the absence of any demand on the part of the defendant, or any application to court in the more than ten years since the parties separated, it is difficult now to infer that the arrangement between the parties was unsatisfactory, or to infer that the contribution made by the plaintiff must have been inadequate because it was undocumented. There is no suggestion that the plaintiff ever resisted paying or that anything about him made getting money from him daunting or difficult. While the defendant, at one point, appeared to suggest that she was reluctant to participate in money obtained by means of the plaintiff's illicit activities, her

fastidiousness in this regard must be assessed in light of her acknowledgement that, for her part, she never reported her rental income for tax purposes. I also accept that the defendant would sometimes intimate to the plaintiff that his activities might, in some fashion, be brought to light, and that this contributed somewhat to the rather casual manner in which money was handled, including the way money he might have received - I am thinking specifically of the rents - has gone to the defendant without complaint.

- [22] In summary, I find that the two properties at Baker Street and at Slocan Park are family assets to which each party is entitled in equal shares. Counsel have advised that the parties' intention is to list and sell Slocan Park and to set off those proceeds insofar as it is possible against a current appraised value of the Baker Street house so that the defendant can retain it in her name. In accordance with my findings, I make no order setting off or adjusting the expenses, improvements or rents on any other basis than the distribution that has occurred to date. The rents on Slocan Park from and after March 1, 2002 shall be to the account of the plaintiff, on the basis in that he shall be responsible for the expenses on the property until it is sold.
- [23] The Merrill Lynch account shall be divided as set out herein on the basis that court order interest shall be paid on the amount left in Mr. Velisek's hands but properly accountable to Mrs. Velisek after the mortgage pay out in 1994, at court order interest rates.
- [24] The bank account as of the date of separation, March 31, 1991, shall be equally divided. The sums are apparently nominal and shall not be subject to court order interest.
- [25] The defendant's pension shall be divided in accordance with the provisions of the Family Relations Act as of March 31, 1991.
- [26] The RRSPs held by the parties as of the date of separation shall be divided equally. This will require a rollover to Mr. Velisek of some \$5,751 on the evidence. That sum shall be paid to Mr. Velisek together with court order interest from March 31, 1991.
- [27] The household chattels and property in each parties' possession shall, by consent, remain the property of the party currently in possession.
- [28] The parties are at liberty to set-off the sums due and owing by each to the other to simplify calculation.
- [29] There shall be liberty to apply respecting the implementation of this order, or any issue of calculation arising out of the approximations used in this judgment.
- [30] There shall be no order for "compensation" relative to child or spousal support.
- [31] There shall be no order as to costs.

"T.M. McEwan, J."

The Honourable Mr. Justice T.M. McEwan

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/02/03/2002bcsc0305.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/velisek-v-velisek-2002>

Prepared on 29 October 2026 · Esheria