
CANADA / JUDGMENT

Whitaker v. Whitaker

2007 BCSC 116

COURT

Supreme Court of British Columbia

DECIDED

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2007 BCSC 116 Whitaker v. Whitaker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Whitaker v. Whitaker,

2007 BCSC 116

Date: 20070125

Docket: E042939

Registry: Vancouver

Between:

Gynjer Maye Whitaker

Plaintiff

And

Desmond Patrick Whitaker

Defendant

Before: The Honourable Mr. Justice Parrett

Reasons for Judgment

Counsel for the plaintiff:

P.M. Daykin

Appearing for the defendant:

D.P. Whitaker, In Person

Date and Place of Trial:

January 30,31, February 1,2,3, 2006

Vancouver, B.C.

INTRODUCTION

- [1] This is a Family Relations Act proceeding in which the parties have agreed upon orders in relation to the care of the children. An order for divorce was not opposed and will be granted on the basis of one year's separation.
- [2] What remains in issue at this trial are:
- a) the division of property;
 - b) spousal support; and
 - c) child support.

BACKGROUND

- [3] The plaintiff is 32 years of age and was born on December 5, 1974. The defendant is 42 years of age and was born on May 28, 1964. They were married on April 28, 1994 at Grande Prairie, Alberta, after beginning cohabitation on March 22, 1991. They separated on June 10, 2004 ending a 10 year marriage and a 13 year period of cohabitation.
- [4] The couple has two children of the union, Tabytha Cristy Whitaker, born August 28, 1994 and Rybekah Audrey Whitaker, born November 14, 1999. The two children are 12 and 7 respectively, and both reside primarily with the plaintiff, with the parents sharing joint guardianship.
- [5] The present trial proceeding was complicated by issues of disclosure which lead the plaintiff to urge the court to draw inferences adverse to the defendant with respect to both his credibility and his evidence.

FINANCIAL DISCLOSURE ISSUES

- [6] The procedural history of this litigation is important to a consideration of the disclosure issue and the potential implications of the defendant's conduct, both prior to and during this trial.
- [7] The present action was commenced on September 10, 2004 and on October 7, 2004 Master Groves, as he then was, issued an order under s. 67 of the Family Relations Act that provided that:

... both the Plaintiff and the Defendant shall be restrained and enjoined from transferring, selling, dispensing of, encumbering, assigning, borrowing funds, or paying out funds or selling or purchasing assets or investments, or in any similar manner dealing with any family assets, or any assets in which the Plaintiff or the Defendant have, or may have, an interest, or other property at issue in this proceeding, without the express written consent of the other party or their counsel, or further Orders of the Court, pending final determination of this action.

[8] On March 8, 2005, on the plaintiff's application, Master Scarth made a series of orders including the following:

2. the Defendant, Desmond Patrick Whitaker, shall produce to counsel for the Plaintiff, within 7 days of the date of this Order, copies of the following documents:
 - a. documents setting out the particulars of the purchase by the parties of the property at 8479 Fairbanks Street, Mission, British Columbia, BY CONSENT
 - b. documents setting out the particulars of the sale, and the use of the proceeds of the sale, of the Defendant's property at 16257 88th Avenue, Surrey, British Columbia, BY CONSENT; and
 - c. copies of any bank or brokerage account statements into which the funds formerly held by the Defendant in Sora Group Account DC1-1118-C were deposited, from November 1, 2004;
3. the Defendant shall sign an Authorization permitting TD Canada Trust to produce to counsel for the Plaintiff monthly statements for the following bank accounts held by the Defendant, either alone or jointly with his late mother, Audrey Kelly:

i)

TD Canada Trust Account # 9276-3318848

ii)

TD Canada Trust Account # 9276-0154315

iii)

TD Canada Trust Account # 35-505300

iv)

TD Canada Trust Account # 170-103428

v)

TD Canada Trust Account # 34-512838

vi)

TD Canada Trust Account # 175-501864

vii)

TD Canada Trust Account # 175-502152

PROVIDED HOWEVER that:

- a. The Plaintiff's counsel shall provide to Defendant's counsel copies of any documents that are produced by TD Canada Trust; and
 - b. the cost of retrieving such documents shall be paid by the Plaintiff, BY CONSENT;
 4. each of the parties shall:
 - a. provide a sworn statement setting out any and all bank accounts which he or she has operated, either alone or jointly with others, from January 1, 2004 to date; and
 - b. provide a signed Authorization permitting counsel for the other party to obtain copies of any bank statements for such account directly from the financial institutions, PROVIDED THAT:
 - i) any documents so obtained shall be provided to counsel for the other party; and
 - ii) cost of retrieving such documents shall be borne by the party requesting same, BY CONSENT.
- [9] Despite the existence of the restraining order the defendant liquidated an account held with the Sora Group which, at the date of separation, had a balance of \$273,044.02 and disposed of the funds. After disposing of the funds he failed to comply with the order of Master Scarth to provide documents related to what became of those funds. In his evidence at trial he announced that he "... didn't care to do so".
- [10] A second example of this type of conduct emerges from the defendant's sale of the property at 16257 88th Avenue in Surrey. This property was purchased on April 11, 1997 for \$255,000. It was sold in 2002 for \$330,000 plus some nebulous rental credit. It is clear on the evidence that the defendant received \$80,000 as a down payment in April of 2001 and a further \$114,000 when the purchaser assumed the existing mortgage in the fall of 2002. It is clear that the defendant received no less than \$194,000 from the sale of this property and has completely failed to account for what became of those funds or to comply with the order of Master Scarth requiring him to produce documents setting out particulars of the sale and the use of the sale proceeds.
- [11] A third example relates to the death of the defendant's mother in September 1999. As a result of her death the defendant conceded that he received something in the order of \$140,000 which had been held in joint accounts in his and his mother's names. There is no accounting, documentation or explanation offered by the defendant as to what became of those funds.

- [12] These are but three areas of significant concern with respect to the defendant's evidence and actions. To place these concerns in context it is necessary to recognize that the defendant was ordered to provide authorizations for the production of statements from the three bank accounts he swore he had operated since January 1, 2004. Although he provided the authorizations, the banks advised that two of those accounts did not exist.
- [13] Ms. Whitaker, in her evidence, testified that the defendant derived income from three related sources - (a) an auto repair business; (b) an auto paint shop; and (c) from buying, restoring and selling cars. In his cross-examination Mr. Whitaker conceded that these businesses are how he made his income during the marriage. Despite these sources of income Mr. Whitaker has not filed nor produced tax returns from 2000 to the date of trial.
- [14] Mr. Daykin, in his carefully considered submissions, advised the court that it was not his submission that Mr. Whitaker has been untruthful in his evidence "but rather that he has erred by omission".
- [15] I have the greatest of respect for Mr. Daykin and the potential difficulties a different approach to this case may cause. In my view, however, it is not possible to gloss over obvious and compelling conclusions which flow from the evidence and the defendant's conduct -
1. It is clear that Mr. Whitaker has been employed in a variety of businesses which have the distinct advantage of generating significant volumes of cash without the difficult burden of substantial or indeed any apparent paperwork or documentation. These businesses included but were not limited to home-based automobile repair and restoration businesses as well as auto body repair and painting businesses.
 2. On or about May 18, 2000, the defendant and the plaintiff were arrested by members of the RCMP and charged with possession of a controlled substance for the purpose of trafficking. At the time the RCMP seized a variety of vehicles and recreational vehicles with values totalling something on the order of \$70,000 or more, as well as cash found on the defendant, in his bedroom and in a safety deposit box, totalling some \$30,000.
 3. On May 19, 2000, the day after the police search, he removed some \$68,546.73 from an account by way of bank draft. The partial financial records produced by the defendant show a significant number of bank accounts, most of which have substantial cash balances, at least one of which contained at one point in excess of \$100,000.
 4. The plaintiff described in her evidence the parties' separation. She described the defendant removing tools, vehicles and snowmobiles from the property as well as a "box" he had buried in the backyard which contained cash. She testified that at the time he removed the box in June of 2004 he gave her \$10,000 in cash to pay for her criminal defence lawyer. I accept the plaintiff's evidence with respect to these events.
 5. In 1999 and 2000 a series of banking transactions took place which has been less than satisfactorily explained or documented:

- a. As mentioned above, on May 19 2000 the day after the search and seizure by the RCMP, the defendant obtained a bank draft for \$68,546.73. The defendant explained that he "moved it" and 'backed the mortgage down a bit'. On May 19, 2000 the partial bank records produced show the deposit of that amount to the defendant's account #9276 with the Toronto Dominion Bank at Guildford Place in Surrey. The same record shows the withdrawal of \$76,000 on June 9, 2000;
- b. On September 27, 1999, records show that the defendant apparently closed an account, #512838, with Canada Trust by withdrawing \$22,034.05. On the same date a second account with Canada Trust, #505300, was closed by the withdrawal of \$39,832.98;
- c. A further bank account with Canada Trust, #170-103428, was operated by the defendant. Partial records covering the period from December 24, 1999 to June 9, 2000 show balances as high as \$67,155.57 and a series of transactions leading to the closing of the account on June 9, 2000 with the withdrawal of \$29,195.76;
- d. During 2000 the defendant operated investment accounts with Cartier Partners Securities Inc. in Vancouver which included both a small account in joint names, apparently in trust for Tabytha, and a much larger account in the defendant's name. The accounts held balances as at December 31, 2000 of \$6,672.69 and \$283,555.34 respectively, as well as a cash account of \$2,088.30. Sometime during 2004 the defendant withdrew \$273,044.02 from his account, leaving a balance of \$6.74.

In his evidence Mr. Whitaker acknowledged that at the time the withdrawal was made he was aware of the restraining order made by Master Groves but that he "already had the cheque in the works before the order was given". He went on to acknowledge that he has since disposed of that money.

- [16] These are but some examples of incidents and transactions which raise concerns about the defendant, his veracity and his failure to comply with his disclosure obligations. He appeared, in his evidence, to take the position that he would decide what were family assets.
- [17] In addition to his apparent disregard for the restraining order, the defendant also ignored the March 8, 2005 order of Master Scarth that he produce within 7 days a series of specified documents casually announcing in his evidence that 'I haven't done so and I don't care to do so'. I will at present touch on only two additional incidents in this litigation. On February 4, 2005 Mr. Whitaker attended his scheduled examination for discovery with his then counsel Ross Davidson. He refused to be sworn and no examination took place.
- [18] The final incident took place during these proceedings when Mr. Whitaker, who had been present and actively participating throughout the trial, sought to tender further selective documents during the course of his submissions and after he had completed his evidence, and been cross-examined.

[19] I am wholly unable to accept this or his other transgressions as being the result of his being a lay person seeking to represent himself in these proceedings. Mr. Whitaker lacks neither intelligence nor guile. He was represented through much of these proceedings by competent experienced counsel and is engaged in various other proceedings in which he is represented by counsel.

[20] It is obvious, in my view, that Mr. Whitaker, from an early stage, has taken the considered position that disclosure and candour were not in what he perceived to be his best interest. As a result, he ignored his disclosure obligations, ignored various court orders, moved and disposed of liquid assets without accounting for them and generally set out to frustrate this process.

[21] His approach is typified by a further specific example. On December 8, 2004, he apparently received, by way of cash withdrawal, \$246,000. When asked in cross-examination about that transaction, he acknowledged receiving it and suggested it was the net amount of his account with the SORA group. His explanation was that he had been told that Gynjer had been in jumping up and down and that she was probably going to seize it. He then went on to testify that 'having got the heads up I told him to cash it out'.

[22] One last example demonstrates yet another aspect of the defendant's actions. On March 21, 2005, the defendant swore an affidavit in these proceedings which contained the following:

2. I have had the following bank accounts which I have operated either alone or jointly with others from January 1, 2004 to date:

(a) Account at Prospera Credit Union, Ocean Point Branch, phone: 604-538-8200, Account #396606;

(b) TD Canada Trust, Guildford Branch, 15190 - 101st Avenue, Surrey, B.C., V3R 7V4, Account #0942-6275865; and

(c) Westminster Savings Credit Union, 50 - 7488 King George Highway, Surrey, B.C., V3W 0H9, phone: 604-507-7701; fax: 604-599-5919, Account #60242204.

3. These are all the accounts that I have had.

[23] Pursuant to an order of Master Scarth the defendant provided authorizations to allow plaintiff's counsel to obtain records related to these accounts.

[24] Mr. Daykin's correspondence to the Prospera Credit Union was acknowledged by correspondence dated May 10, 2005 which included the following:

We wish to inform you that Mr. Whitaker did not have any active accounts with Prospera Credit Union, including 396606 that were active during the time period stated . . .

His correspondence to the Westminster Savings Credit Union was returned endorsed:

May 4, 05 No such account

- [25] While these various replies were put to Mr. Whitaker, he indicated 'I believe I cancelled that account in the summer of 2004. I tried to protect my account as best I could'.
- [26] The evidence more than amply supports the conclusion that Mr. Whitaker is involved in business activities that provide him with substantial volumes of cash which he prefers to keep in readily accessible form. He has demonstrated by his actions a willingness to move those liquid assets without accounting for them and to conceal them when necessary for the express purpose of putting them out of reach of the plaintiff or this court. He has ignored various court orders and obligations preferring, apparently, to take steps he viewed as being in his personal interest. He has been involved in a series of real estate transactions where it is evident that the transactions were completed with associates or acquaintances and documented in ways that served to conceal the actual nature or value of the transactions.
- [27] None of this leads to a conclusion that Mr. Whitaker has been forthright and candid concerning his assets, his financial affairs or his actions. In general terms the evidence amply supports the plaintiff's submission that adverse inferences should be drawn in this case.
- [28] It is abundantly clear, both from the defendant's evidence at this trial and from the written submissions he provided as part of his closing submissions, that Mr. Whitaker preferred to make his own decisions as to what was or was not a family asset. When he decided something was not a family asset he took steps to conceal it and refused to disclose information or documents concerning it.

SPECIFIC FINDINGS

[29] I find that:

1. The defendant received no less than \$194,000 from the sale of 16257 88th Avenue in Surrey. This property was purchased on April 11, 1997 for \$255,000 with a \$50,000 mortgage. In 2000 a new mortgage of \$140,000 was placed on the property with the bulk of the proceeds being used to purchase the property at 8479 Fairbanks Street in Mission. The funds the defendant received from this transaction have not been accounted for by the defendant and he has failed to comply with the disclosure order made by Master Scarth.
2. The defendant did not respond to the plaintiff's evidence concerning a number of issues. These included her evidence, which I accept, that
 - a) the defendant disposed of 50,000 shares of Tahera stock with a value of \$17,500 and has failed to disclose what became of the proceeds;
 - b) the defendant removed from the Fairbanks property
 - i) a 1963 Chevy II convertible he had restored at a cost of some \$30,000;

- ii) a 1968 Beaumont with a value of some \$20,000;
- iii) two snowmobiles and a trailer I find to be worth some \$25,000;
- iv) a boat (Reg. #15K4504) worth some \$17,000;
- v) an undetermined amount of cash contained in the box unearthed from the back yard.

3. I find that the items seized by the RCMP including

i)

a 2000 Honda CRV valued at \$20,000

ii)

a 1999 Ford F150 valued at \$20,000

iii)

a 1968 Beaumont valued at \$10,000

iv)

Cash in the amount of \$30,000

v)

2 seadoos and trailer valued at \$15,000

vi)

3 snowmobiles and trailer valued at \$20,000

are family assets acquired and used by the parties during their marriage.

These items are subject to a Crown application for forfeiture. The plaintiff is entitled to an equal share of any of these items released.

4. I specifically find that at the time of the breakdown of the marriage the defendant had in his possession or control

i) some \$273,000 from the SORA Group Accounts DC1-1118-C;

ii) an extensive set of tools and automotive instruments and diagnostic equipment which he could apply to earn income;

iii) the 1968 Beaumont, 1963 Chevy II Convertible, snowmobiles and trailer, boat, proceeds of the sale of the Tahera shares as well as the undetermined amount of cash from the "box" buried in the back yard.

- [30] I find each of these items to be family assets which the defendant has retained possession of and put out of reach. I find the plaintiff is entitled to a 50% interest in those assets which I value at \$400,000.
- [31] The legislative scheme set out in Part 5 of the Family Relations Act creates, in s. 56 and 58, a presumptive equal division of family assets. The onus of proving that property was not ordinarily used for a family purpose is placed by s. 60 on the spouse opposing a claim advanced under s. 56.
- [32] The provisions of s. 65(1) and s. 66 give the court a broad discretion to reapportion family assets if an equal division would be unfair (s. 65) or to allocate assets in order to create a fair division (s. 66).
- [33] The SORA group account, in my view, is a family asset as it falls within the language of s. 58(3)(c) and (d) of the Act and the principles established by our Court of Appeal in Hefti v. Hefti (1998), 40 R.F.L. (4th) 1. The plaintiff, in her submissions, concedes that the defendant's interest in the residue of his mother's estate is an "other" asset as his entitlement to 40% of the residue arose in May of 2004. The authorities establish that such assets should be considered or taken into account in the division of the admitted family assets.

THE IDENTIFIED FAMILY ASSETS

8479 Fairbanks Street, Mission , jointly owned

\$ 354,000

32019 Trembath Avenue, Mission, in the defendant's name

Less mortgage

254,000

(123,000)

SORA Group Account proceeds, in the defendant's name

273,000

Proceeds of Tahera share sale, in the defendant's name

17,500

16257 88th Avenue, Surrey receipts, in the defendant's name

194,000

2003 Suzuki Vitara, in the plaintiff's name

17,000

TOTAL

\$986,500

[34] The plaintiff is entitled to 50% of these assets or \$493,250. In all the circumstances of this case, a fair division must begin within the principles stated above by allocating specific known assets to the plaintiff.

[35] The Fairbanks Street property and her vehicle will be allocated to the plaintiff and vested in her name. The Registrar is empowered to execute any necessary documents to achieve those transfers.

[36] After that allocation the balance of the identified assets distribution would be:

50% Interest

\$493,250

Less Fairbanks Street property

(354,000)

Less 2003 Suzuki

(17,000)

Net Compensation Owing

\$122,250

[37] The remaining assets are also relevant to the issue of compensation. I have earlier given the global valuation of those assets inclusive of the SORA account proceeds and the proceeds of the sale of the Tahera shares as \$400,000. Removing those two items and doing the best possible with the evidence, the remaining assets are valued at \$109,500. The plaintiff is also entitled to a compensation order for one-half of that amount or \$54,750 plus the balance from the previous category.

[38] There will be a compensation order in the plaintiff's favour for \$177,000.

[39] As set out above the plaintiff is entitled to receive one-half of any of the assets seized by the RCMP which are returned to the parties.

CHILD SUPPORT

[40] The Child Support Guidelines, in s. 19, provide a mechanism for imputing income to a spouse in appropriate circumstances. The legislation provides that:

Imputing Income

19.(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

[41] In the present case virtually every one of the enumerated factors comes into play -

1. The defendant has, throughout the marriage and since separation, operated an auto repair business and a paint shop, and aside from some vague reference to his doctor's opinion, has produced no evidence whatsoever as to whether he continues to operate such a business or why he is not capable of doing so;
2. He has in his possession all of the tools and equipment for him to operate such a business;
3. The defendant has had access to and either did or could have invested substantial funds to derive income. His failure to make full and proper disclosure makes it difficult to establish exactly what assets he had available but those assets included, for example, the \$273,000 he withdrew from the SORA Group account;
4. In addition, the defendant, while maintaining that he has been advised by his doctor not to work, asserts that his income is \$35,000 to \$40,000 and not the \$80,000 imputed to him by Master Scarth. Despite the alleged drop in income, the defendant, who is entitled to receive income of \$1,000 per month from his mother's estate as well as 40% of the residue of the capital of the estate or \$144,000 approximately, had as at the date of trial received none of those funds because 'I didn't need it so I left it there';

5. On September 28, 1999 the defendant completed a credit application with HSBC Bank of Canada (Exhibit 12, Tab 8). In that application he shows his 'gross monthly income' as \$80,000 before signing the usual declaration that the information is true and complete;
6. On March 27, 2000 the defendant applied for a cash or margin investment account with the Bank of Montreal (Exhibit 12, Tab 9). In the application he indicated his 'annual income from all sources' as \$80,000+ and his net worth at \$100,000+;
7. On March 8, 2005 Master Scarth imputed \$80,000 in annual income to the defendant as the basis for the order given on the date.

[42] In the face of the finding of Master Scarth the onus lay with the defendant to bring to the trial of this matter clear and cogent evidence concerning his income. He has completely failed to do so. I am persuaded that the defendant's income is, in fact, no less than \$80,000 per annum and that at the present time that finding imputing that income to the defendant should be continued.

[43] As Sachs J. expressed it in *J. v. J.*, [1955] 2 All E.R. 617:

In cases of this kind, where the duty of disclosure comes to lie on a husband, where a husband has, and his wife has not, detailed knowledge of his complex affairs, where a husband is fully capable of and has had an opportunity to explain those affairs, and where he seeks to minimize his wife's claim, that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap such that two alternative inferences may be drawn, the court will normally draw the less favourable inference.

[44] In *Young v. Young*, [1990] B.C.J. No. 2254, Cumming J.A. put it even more succinctly in commenting on a husband who had attempted to mislead the court by failing to disclose several very important financial matters. He observed that:

The seriousness of such a lack of candour can hardly be overstated. The conduct of litigation, and particularly matrimonial litigation, is difficult enough at the best of times; when it is rendered more so by such deliberate non-disclosure as has been exhibited in this case such misconduct ought not to be ignored.

[45] After citing with approval these authorities Drost J., in *Turpin v. Turpin*, [1991] B.C.J. No. 35, noted that:

These authorities clearly demonstrate that each party to a matrimonial proceeding, whether with respect to the division of assets or the payment of maintenance, has a duty, separate and apart from the requirements of Rule 60A, to make full financial disclosure to the other party and to the court. That duty is of particular significance, where, as here, one of the parties has relevant information unknown to the other.

[46] This passage, in my view, clearly captures the duty and obligations so obviously breached and ignored by the defendant in the present case. The interim order for child support of \$1,027 per month will continue through April 2006. Beginning on May 1, 2006 and on the first of each month thereafter that order will be increased to correspond to the new Federal Child Support Guidelines at \$1,186 per month.

EXTRAORDINARY EXPENSES

[47] The plaintiff has established the existence of two categories of expenses that fall within s. 7 of the Guidelines. These expenses include -

- a) Child care expenses of \$600 per month to enable her to pursue her retraining. Those expenses will be allowed until and including June of 2007; and
- b) Dental expenses of the children in the amount of \$1,322 plus ongoing expenses of \$80 per month.

[48] These expenses will be shared by the parties pro rata based on their respective incomes.

SPOUSAL MAINTENANCE

[49] Under the existing order of Master Scarth the defendant was ordered to pay to the plaintiff \$2,000 per month for her support.

[50] These parties began their relationship at a time when the plaintiff was 16 years of age and still in high school. The plaintiff left school and moved to Canada. Their relationship produced the first of their two children four years later in 1994 and their second child was born in 1999.

[51] The role the plaintiff assumed in this marriage entitles her to compensatory spousal support. Such an order is also justified, in my view, given the plaintiff's needs and the means of the defendant.

[52] The plaintiff has clearly, on the evidence, sought to achieve a level of independence. Since the parties' separation and while continuing to be primarily responsible for the children's care, she has completed her high school equivalency, sought career counselling, taken various computer, math and business management courses and set out to complete training as an esthetician.

[53] Given all the circumstances, a fixed term order is not appropriate. This is a case, given the level of the defendant's disclosure and uncertainties about the plaintiff's employment prospects where the present order for interim maintenance should be continued to allow the plaintiff to complete her training and establish employment. I therefore direct a review to take place after January 1, 2008 with interim spousal support of \$2,000 per month continuing until that review is completed.

THE INTERIM ORDER

- [54] The order of Ross J. on April 27, 2005 directed payment of the interim support payments be made in alternate months from amounts held in trust by the parties' respective counsel commencing May 1, 2005.
- [55] The funds in question were funds to which the parties were equally entitled and the plaintiff should be further credited with one-half of those payments as funds depleted in payment of the interim support she was entitled to receive from the defendant.
- [56] The plaintiff will be credited with a further \$16,648.50 representing one-half of the funds expended.

SECURITY FOR PAYMENTS

- [57] This is a case where, in my view, the defendant's conduct has been such as to warrant security being given for the orders made.
- [58] Regretfully, the passage of time may have affected the way in which that security may best be achieved. The plaintiff has liberty to address the issue of security.

COSTS

- [59] The plaintiff will recover her costs as against the defendant.

"W.G. Parrett, J."

The Honourable Mr. Justice W.G. Parrett

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