
CANADA / JUDGMENT

Younger v. Younger

2012 BCSC 432

COURT

Supreme Court of British Columbia

DECIDED

26 March 2012

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

2012 BCSC 432 Younger v. Younger

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Younger v. Younger,

2012 BCSC 432

Date: 20120326

Docket: E8401

Registry: Campbell River

Between:

Marnie Lynn Younger

Claimant

And

David Bruce Younger

Respondent

Before: The Honourable Madam Justice J.A. Power

Reasons for Judgment

Counsel for the Claimant:

G.W. Currie

Counsel for the Respondent:

R.C. Doell

Place and Date of Trial:

Campbell River, B.C.

February 15,16,17,18, 2011, and August 02,03,04,05, and 30, 2011

Place and Date of Judgment:

Campbell River, B.C.

March 26, 2012

- [1] "Our house is clean enough to be healthy and dirty enough to be happy." This is an old household quotation that comes to mind when considering the facts of this case. It appears to be an approach to housekeeping that the claimant Ms. Younger adopted. The respondent, Mr. Younger, wanted the family to maintain standards similar to "no trace camping." Ms. Younger was of the view that "no trace camping" was not realistic or possible for a busy family with two young sons.
- [2] The difference in their approach to household chores led to disagreements and eventually the breakdown of the marriage. The claimant is now seeking a divorce. At issue are: determination of and division of substantial family assets; whether or not there should be any reapportionment in favour of Mr. Younger; child support; and spousal support. As part of the determination in family assets, it must also be determined whether or not there was any agreement to keep separate the assets each brought into the ten-year marriage since Mr. Younger says he made such an agreement in order to protect the assets he brought into the marriage. The matters of custody of and access to the children have been dealt with by consent order prior to trial.
- [3] This matter proceeded to trial in Campbell River over seven days. Three witnesses were called on the trial: the claimant Ms. Younger, the respondent Mr. Younger, and the respondent's brother, Stuart Younger.

Background facts:

- [4] The claimant Ms. Younger is 46 years old and was born in Winnipeg, Manitoba. She graduated from the University of Manitoba and received her teaching designation in 1987. She was employed for ten years as a teacher when she met Mr. Younger on a vacation trip to visit a friend in 1997 to the then Queen Charlotte Islands (the "Haida Gwaii").
- [5] At the time that Ms. Younger met Mr. Younger she owned without any encumbrances an interest in a residential co-op where she resided in Manitoba, had a motor vehicle and Registered Retirement Savings Plans ("RRSPs"), and had accumulated ten years of pension with the Manitoba Teachers Pension Plan. At that time, she was living a comfortable lifestyle demonstrating a balanced and responsible approach to her career, investments and lifestyle including vacations.

- [6] Mr. Younger is 57 years of age and grew up in Calgary, Alberta. He graduated from the University of Alberta with a forestry degree in 1978. After he completed university, Mr. Younger moved to the Haida Gwaii. He moved to Victoria in the mid-1980s and formed a partnership with a Mr. Smith and purchased a piece of property in the Haida Gwaii referred to at trial as Rudd Island or District Lot 1506. Around the same time Mr. Younger applied for and obtained a woodlot in the Haida Gwaii. In order to have a woodlot registered in an individual's name, and in order to log that woodlot which is publicly owned, one had to own a piece of property which was "attached" to the woodlot.
- [7] In 1989, Mr. Younger formed a corporation, Younger Bros. Holdings Inc. ("Younger Bros."), which was involved in forestry and logging endeavours and which owns real property in relation to those endeavours. He transferred the beneficial ownership of the Rudd Island property to the corporation and maintained the legal ownership in his own name.
- [8] In the 1990s prior to meeting Ms. Younger, Mr. Younger purchased three other pieces of property: the north one-half and the south one-half of Section 4 and the Coho apartments, which were an apartment building in the Haida Gwaii containing six suites as well as a cabin. The cabin portion of the Coho apartments was subdivided off during the marriage and is now a separate real estate asset of the corporation. All of the properties were purchased through Younger Bros.
- [9] At the time Mr. Younger met Ms. Younger in 1997 he had substantial assets in Younger Bros. and a shareholder loan to the corporation in the sum of approximately \$700,000.00. Younger Bros. was Mr. Younger's primary source of income both prior to and during the marriage. Prior to the marriage, Mr. Younger also owned 200 class "A" voting shares in a corporation owned by his parents, A.H. Younger Engineering Inc. ("A.H. Younger"), and during the marriage received director's fees and dividends from that corporation. At the time of the marriage, Mr. Younger also had RRSPs.
- [10] Mr. Younger was living in the penthouse apartment of the Coho apartments when he met Ms. Younger and the parties lived in that apartment for more than half of their ten-year marriage.
- [11] After Ms. Younger met Mr. Younger in the summer of 1997, their initial friendship was followed by a long-distance courtship and the parties met again in Vancouver in October 1997. This was followed by Mr. Younger going to Winnipeg in November 1997 to meet Ms. Younger's family. The parties shared a vacation in the Caribbean in December 1997 and in February 1998 Ms. Younger flew to Calgary to meet Mr. Younger's family. From there she returned to the Haida Gwaii with Mr. Younger and began living with him in one of the Coho apartments.
- [12] In order to live with Mr. Younger, Ms. Younger took a leave of absence from her teaching job in Winnipeg and sublet her residence. At the time cohabitation commenced in February 1998, Ms. Younger was 32 and Mr. Younger was 44.

- [13] Initially, when the parties first began living together Ms. Younger took over some of the domestic chores in the household while Mr. Younger continued to work on his business interests. She took over the cooking and grocery shopping since Mr. Younger was not eating very well. Throughout the marriage she maintained primary responsibility for all of the cooking and grocery shopping. Ms. Younger initially took over the household cleaning and laundry chores and disagreements with respect to these tasks do not appear to have arisen until after the children arrived. Eventually Mr. Younger took over some of these tasks because of his views as to how they should be performed.
- [14] Shortly after she arrived, Ms. Younger obtained part-time employment at the Living and Learning School which was an independent school in the Haida Gwaii. Mr. Younger was happy to have Ms. Younger working only part-time since it allowed the couple more time to pursue their outdoor interests and to travel.
- [15] Ms. Younger also began assisting with Younger Bros.' corporate interests particularly by cleaning suites in the Coho apartments when tenants moved out, decorating and refurbishing the suites, and managing tenant issues on a day-to-day basis. She also answered the phone for related business calls and took a course on woodlots in order to better understand the nature of Mr. Younger's business. These efforts continued throughout the marriage, that is to say, she assisted with Younger Bros.' business interests in any manner that was required of her.
- [16] Early on in the relationship, Mr. Younger started to discuss with Ms. Younger the idea of having children. Initially Ms. Younger resisted the suggestion since her original life plan did not include having children. Ms. Younger worked with young primary school aged children all day in a learning environment (she was qualified to teach Grades 2 to 6) and she did not feel compelled to have her own children. However, since having children was important to Mr. Younger, the parties agreed to discuss the issue in a year or so once they determined how the relationship developed.
- [17] Mr. Younger raised the issue again before the year was up since he was anxious to have children and he was getting older. Ms. Younger indicated that, if she had children, she wanted to be a "stay at home" mother since, based on her professional experience as a teacher, there was, in her view, benefit to that approach. Accordingly, the couple agreed to start a family and agreed to a "traditional" marriage, with Ms. Younger staying at home and taking primary responsibility for the home and the children and with Mr. Younger pursuing his business interests. Ms. Younger continued to assist with the business in the manner described.
- [18] After they agreed to have children, the parties married on June 18, 1999, and had two sons in short succession, Thomas James Younger (born January 2, 2000) now age 12, and Cameron John Younger (born September 14, 2001) now age ten. Ms. Younger stopped her part-time teaching prior to the birth of her first child. Around that time, Ms. Younger sold her property interest in Manitoba for approximately \$35,000.00 and allowed her leave of absence

for her teaching job in Winnipeg to lapse since it was clear that she would not be returning to Manitoba.

- [19] Shortly after the births of their children, arguments began to occur around the parties' differing approaches to household chores. Although it was important to Ms. Younger to have things clean, she accepted that there was a certain amount of untidiness that came with young sons. Ms. Younger was comfortable with such a "lived-in look." Mr. Younger wanted the family to practice "no trace camping" and was not, in Ms. Younger's view, able to accept the natural disorder that came with having children.
- [20] However, notwithstanding the arguments about household chores, Ms. Younger remained committed to the marriage and attempting to make it work, right up until close to the time of separation in 2009. This is demonstrated for example by her willingness to use money in her bank accounts to assist with renovations to a house that the parties bought on Quadra Island prior to their separation.
- [21] In the late 1990s a friend of Mr. Younger's, Edward McFeely, purchased a piece of property which was referred to at trial as "Smith Island." The property was logged by Younger Bros. and after it was logged Mr. Younger encouraged Ms. Younger to invest the money that she had brought into the marriage by buying a one-half interest in Smith Island. She provided the funds to Mr. Younger on the understanding that eventually her name would go on title and that a woodlot license would be applied for. Ms. Younger never had any direct dealings with Mr. McFeely, and all of the financial dealings in respect of the transaction were handled by Mr. Younger. Ms. Younger trusted Mr. Younger completely in respect of the transaction and understood that she was advancing the financial interests of the family by her actions. Eventually, the interest in the Smith Island property was sold, and a substantial profit was realized and deposited into Ms. Younger's separate accounts.
- [22] In 2005, the family moved from the Haida Gwaii to Royston, British Columbia and purchased a home there. In keeping with the traditional approach to their marriage, this was a decision that was initiated by Mr. Younger. Ms. Younger would have preferred to remain in the Haida Gwaii. The Royston home was purchased in joint names with the bulk of the funds provided from Mr. Younger's business income in part from a dividend that he received from his parents' corporation and other funds from his own corporation, and with a \$35,000.00 contribution from funds that were kept in a separate account in the name of Ms. Younger.
- [23] The move from the Haida Gwaii took place at the time that the boys were reaching school age and they entered school in Royston. Ms. Younger continued to maintain primary responsibility for childcare and managing the school activities, and she managed the Coho apartments from Royston. At around this time, the Coho apartments were converted to summer rentals and one of Ms. Younger's primary responsibilities was managing them as summer rentals.

- [24] In 2004, Mr. Younger's father died and in 2006, he received a substantial inheritance of approximately \$750,000.00.
- [25] In 2007, the house in Royston was sold and a house was purchased in joint names on Pidcock Road on Quadra Island. Again, this move was initiated by Mr. Younger and he made the primary financial decisions respecting it. The proceeds from the Royston house, combined with other funds that Mr. Younger provided, were used to purchase the Pidcock Road home. Unfortunately, it appears to have been a poor financial decision: after moving in, it was determined that the house needed substantial repair and structural work and close to \$100,000.00 was required to resolve those issues. Ms. Younger contributed the bulk of the repair costs from the money representing the profit from Smith Island that was kept in a separate bank account. Some of the work was completed by Mr. Younger while other work was hired out.
- [26] After the family moved to the Pidcock Road house on Quadra Island, Mr. Younger purchased another house on waterfront with 75 acres which was called the "Stone House" during the trial. The house was purchased by Younger Bros. but is subject to a bare trust as tenant-in-common for one-half of the property to the benefit of Mr. Younger's mother, Marjorie Younger. The property was purchased with the idea that Marjorie Younger would use it as a summer vacation home and a place to stay when she was visiting the grandchildren and Mr. Younger would log the property as part of his business.
- [27] Shortly after moving to Quadra Island in November 2007, the couple, being of the view that they could not resolve their ongoing differences about household chores, decided that Ms. Younger should work outside the home. Ms. Younger applied for and was hired as an on-call substitute teacher in Campbell River School District 72. In September 2008, she was hired for a 0.4 term-position teaching kindergarten. At the time of the trial, she was substitute teaching in the school district and applying for term and permanent positions. She testified that in her experience it takes around four years to build the kind of seniority that will allow her to secure a more permanent position which is what she is seeking and which will allow her to become self-sufficient.

Claimant's Position

- [28] The claimant claims 50% of all assets listed in either party's financial statement, including the shares in Younger Bros., A.H. Younger, and in a contingent interest in a family trust with a respect to a lakefront property owned by Mr. Younger's mother, in Vernon, British Columbia. She takes the position that the interim payments of spousal and child maintenance she has been receiving, based on an imputed \$100,000.00 income for Mr. Younger, should continue. She recognizes that there would be income tax consequences as a result of the possible sale of corporate assets and therefore proposes a division that would encompass the transfer of the Pidcock Road home to her and a compensation payment.

Respondent's Position

[29] At trial, Mr. Younger took the position that the only asset that should be considered a family asset was the family residence at Pidcock Road and that should be reapportioned in favour of Mr. Younger based on his greater contribution to it and considering his age. He argues that the shares in Younger Bros. and A.H. Younger, as well as the contingent interest in the lakefront property, should not be considered family assets and should not be divided. He argues that the remaining assets should be kept by either party as representing assets that they brought into the marriage in keeping with the agreement he says was made prior to the marriage. In respect of maintenance, he took the position that he was living on borrowed funds and had no income because of a slowdown in the logging industry and as a result of health difficulties he was dealing with. He was no longer receiving dividend income from Younger Bros. because he had resigned that position in advance of trial. He argues that there should be no spousal maintenance for Ms. Younger and suggests that she is deliberately underemployed. He suggests that child maintenance should be ordered based on an income imputed to him of \$20,000.00 to \$40,000.00 and then reviewed annually.

Was there an agreement to keep assets each party brought into the marriage separate?

[30] During the marriage, the parties had an unusual approach to their household finances. Mr. Younger points to those unusual arrangements as proof that the parties intended to keep assets they brought into the marriage separate. However, in my view the financial affairs of the parties were very different from those set out in *K.K.G. v. D.P.S.G.*, 2010 BCSC 1243, at para. 133, cited by the respondent.

[31] Mr. Younger did not share a lot of information with Ms. Younger about their finances and his corporate interests. She knew that they did not have financial worries but did not have a lot of information about the details of their financial position. Notwithstanding her lack of knowledge, Ms. Younger managed her involvement in the family finances carefully, and did not spend lavishly. The prudent approach that she took to her own finances prior to marriage was continued upon the marriage of the parties and advanced the family financial interests, including Mr. Younger's ability to advance the interests of Younger Bros.

[32] Ms. Younger had separate accounts from the money she brought into the marriage and from an annual payment she was paid from Younger Bros. Ms. Younger would put household expenses on a joint Visa; at the end of the month Mr. Younger would require her to pay half of the monthly Visa bill from her separate account. There is inconsistent evidence from Mr. Younger as to the purpose of the annual payments. In affidavit evidence prepared for pre-trial matters, Mr. Younger suggested that they were for income-splitting and tax purposes. At trial, it was argued that those payments were proof of the couple's intention to keep their assets separate throughout the marriage. Ms. Younger denied any agreement to keep assets separate. She says that the separate accounts were for tax purposes and argues that this was a traditional marriage in which Ms. Younger completely trusted her husband and followed his advice and directions on financial issues.

- [33] There was no written pre-nuptial agreement and I find that there was no agreement prior to marriage for the parties to keep the assets that they brought into the marriage separate. Indeed, in light of the fact that Ms. Younger gave up her career and her financial independence in order to marry Mr. Younger and have his children, it simply does not make any sense that she would have made such an agreement. The lack of knowledge that Ms. Younger had about their financial affairs and the control that Mr. Younger exerted in respect of all major financial decisions of the couple exemplifies the traditional nature of this relationship. I conclude that the primary purpose of the separate accounts was for income-splitting and tax purposes.

Credibility

- [34] Before dealing with the specific property involved in this dispute and the division of it, as well as the issue of maintenance, I wish to comment generally about the issue of credibility. Overall, I found Ms. Younger to be a straightforward witness who gave her evidence directly and fairly, acknowledging Mr. Younger's important contribution to the family both as a provider and as a father to the boys. I find that her approach to her life following the breakdown of her marriage to be appropriate and she has been diligent in her efforts to become self-sufficient. For example, she described a four-year plan for obtaining full-time employment in Campbell River School District 72, where she has been employed both part-time and on-call since 2008. She described in her evidence that it takes about four years in order to build sufficient seniority in order to have a reasonable prospect at obtaining full-time employment. I accept Ms. Younger's evidence under cross-examination that she is better off building seniority in her school district rather than moving to another school district and starting over as was suggested to her in cross-examination that she should.
- [35] In contrast, I have credibility concerns about the evidence of Mr. Younger. I find that his evidence was directed at minimizing his income to reduce his obligation to pay any support, minimizing Ms. Younger's contribution to the marriage in order to preserve what he perceived as his corporation's assets, and, perhaps most absurdly, minimizing the length of the relationship in order to reduce his obligations and the proportion of assets to Ms. Younger. For example, with respect to the latter point, Mr. Younger's counsel suggested in argument that the marriage was over as early as 2005, when clearly the parties were engaged in joint endeavours in furtherance of their family goals, by, for example, renovating the family home on Pidcock Road, right up to the breakdown of the marriage in 2009.

Analysis

Legislation

[36] In argument, respondent's counsel made reference to the White Paper on proposed changes to the Family Relations Act, R.S.B.C. 1996, c. 128 ("FRA"). The new Family Law Act which followed the White Paper has been given Royal Assent but is not yet in force. Therefore the White Paper does not assist the court: I must be guided by the current FRA and interpretation of it.

[37] The relevant provisions of the FRA for the purpose of this analysis are contained in Part 5, headed "Matrimonial Property."

[38] The key provisions in this case are ss. 56 and 65 which provide, in part, as follows:

56(1) Subject to this Part [Matrimonial Property] and Part 6 [Division of Pension Entitlement], each spouse is entitled to an interest in each family asset on or after March 31, 1979 when

- a) a separation agreement,
- b) a declaratory judgment under section 57
- c) an order for dissolution of marriage or judicial separation, or
- d) an order declaring the marriage null and void

respecting the marriage is first made.

(2) The interest under subsection (1) is an undivided half interest in the family asset as a tenant in common.

(3) An interest under subsection (1) is subject to

- a) an order under this Part or Part 6, or
- b) a marriage agreement or a separation agreement.

...

Family assets defined

58(1) Subject to section 59, this section defines family asset for the purposes of this Act.

- (2) Property owned by one or both spouses and ordinarily used by a spouse or a minor child of either spouse for a family purpose is a family asset.
- (3) Without restricting subsection (2), the definition of family asset includes the following:
 - c) if a corporation or trust owns property that would be a family asset if owned by a spouse,
 - i. a share in the corporation, or

- ii. an interest in the trust owned by the spouse;
- d) if property would be a family asset if owned by a spouse, property
- iii. over which the spouse has, either alone or with another person, a power of appointment exercisable in favour of himself or herself, or
- iv. disposed of by the spouse but over which the spouse has, either alone or with another person a power to revoke the disposition or a power to use or dispose of the property;
- e) money of a spouse in an account with a savings institution if that account is ordinarily used for a family purpose;
- f) a right of a spouse under an annuity or a pension, home ownership or retirement savings plan;
- g) a right, share or an interest of a spouse in a venture to which money or money's worth was, directly or indirectly, contributed by or on behalf of the other spouse.
- (4) The definition of family asset applies to marriages entered into and property acquired before or after March 31, 1979.

Excluded business assets

59(1) If property is owned by one spouse to the exclusion of the other and is used primarily for business purposes and if the spouse who does not own the property made no direct or indirect contribution to the acquisition of the property by the other spouse or to the operation of the business, the property is not a family asset.

- (2) In section 58(3)(e) or subsection (1) of this section, an indirect contribution includes savings through effective management of household or child rearing responsibilities by the spouse who holds no interest in the property.

[39] As noted above, s. 58(2) of the FRA defines a family asset as "property owned by one or both spouses and ordinarily used by a spouse for a family purpose." What constitutes a family asset hinges on the words "ordinarily used for a family purpose." The nature of the use to which an asset is put is a finding of fact.

[40] The relevant provisions of the FRA with respect to the issues of reapportionment and compensation are ss. 65 and 66 which provide, in part, as follows:

Judicial reapportionment on basis of fairness

65(1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- a) the duration of the marriage,
- b) the duration of the period during which the spouses have lived separate and apart,

- c) the date when property was acquired or disposed of,
- d) the extent to which property was acquired by one spouse through inheritance or gift,
- e) the needs of each spouse to become or remain economically independent and self sufficient, or
- f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

- (2) Additionally or alternatively, the court may order that other property not covered by section 56, Part 6 or the marriage agreement, as the case may be, of one spouse be vested in the other spouse.

...

Determination of ownership, possession or division

66(1) In proceedings under this Part or Part 6 or on application, the Supreme Court may determine any matter respecting the ownership, right of possession or division of property under this Part, including the vesting of property under section 65, or under Part 6 and may make orders that are necessary, reasonable or ancillary to give effect to the determination.

- (2) Without limiting subsection (1), the court may do one or more of the following in an order under this section:
 - a) declare the ownership of or right of possession to property;
 - b) order that, on a division of property, title to a specified property granted to a spouse be transferred to, or held in trust for, or vested in the spouse either absolutely, for life or for a term of years;
 - c) order a spouse to pay compensation to the other spouse if property has been disposed of, or for the purpose of adjusting the division;
 - d) order partition or sale of property and payment to be made out of the proceeds of sale to one or both spouses in specified proportions or amounts;
 - e) order that property forming all or part of the share of either or both spouses be transferred to, or in trust for, or vested in a child;
 - f) order that a spouse give security for the performance of an obligation imposed by order under this section, including a charge on property and may order that the spouse waive or release in writing any right, benefit or protection given by section 23 of the Chattel Mortgage Act, R.S.B.C. 1979, c. 48, or section 19 of the Sale of Goods on Condition Act, R.S.B.C. 1979, c. 373;

- g) if property is owned by spouses as joint tenants, sever the joint tenancy.

...

- [41] Thus, under s. 56(2) of the FRA, each spouse is entitled to a presumptive one-half undivided interest in each family asset as a tenant in common upon one of the events set forth in s. 56(1), which are categorically known as "triggering events." In this case, the triggering event (s. 56(1)(b)) was the declaration by Kelleher J. on March 18, 2009, pursuant to s. 57 of the FRA, that the parties had no reasonable prospect of reconciliation.
- [42] The opening words of s. 56 make it clear that the presumptive one-half undivided interest under s. 56(2) is "Subject to this Part" (which includes s. 65); s. 56(3) also states that such an interest is "subject to (a) an order under this Part ... or (b) a marriage agreement or a separation agreement." Thus, the undivided one-half interest as a tenant in common to which a spouse is presumptively entitled upon the happening of a triggering event is then subject to an order for reapportionment under s. 65(1).
- [43] Further, where the court determines that an equal division of family assets would be unfair having regard to the factors set forth in s. 65(1), the court may make an order under s. 65(2) that other property of one spouse (in other words, property that is not a family asset), may be vested in the other spouse to address that unfairness. This provision has been interpreted in *Hefti v. Hefti* (1998), 40 R.F.L. (4th) 1, 57 B.C.L.R. (3d) 171 (C.A.), as also permitting a compensation order to be made to adjust for the unfairness.
- [44] Bearing a heavier financial burden for household expenses while parties are living together is not generally seen as a factor to be taken into account on reapportionment, any more than are a myriad of good and bad decisions parties make while they live together: *Girard v. Girard* (1983), 42 B.C.L.R. 305 (C.A.), *Newson v. Newson* (1986), 3 B.C.L.R. (2d) 1 (C.A.). However, a marked disparity in the contribution to the acquisition and maintenance of the family residence is generally thought to be of a different character. Unlike household expenses, such expenditures come within the factors to be considered under s. 65(1)(f).
- [45] Once the court has divided the family assets under Part 5 of the FRA, it must go on to consider the mechanism by which the division of property is to be achieved, pursuant to s. 66(1).
- [46] Having regard to this general legislative outline, it is helpful to examine the disputed assets by category in order to finalize the division of assets.

Pidcock Road House

- [47] This was the main family residence of the parties although they lived in it for only a short time before it became clear that substantial structural and renovation work was required and they moved into the Stone House while that work was completed. The property was owned in joint tenancy prior to the separation.

- [48] In January 2009, Ms. Younger advised the respondent that she wished to separate. In February 2009, Ms. Younger moved back to the Pidcock Road property and was followed shortly afterward by Mr. Younger. In March 2009, Mr. Justice Kelleher ordered that Ms. Younger have exclusive occupation of the Stone House. Accordingly, since then, Ms. Younger has been residing in the Stone House while Mr. Younger was residing in the Pidcock Road house. Mr. Younger has used the time he has been living in the house to continue to do repair and renovation work to that property.
- [49] The house is now worth less than the parties paid for it after expending significant renovation costs in excess of \$90,000.00 that came from Ms. Younger's account holding funds from the sale of Smith Island. However, the decision to purchase it was Mr. Younger's since he made all of the major financial decisions for the family. Ms. Younger queried whether the family could afford the house prior to the purchase.
- [50] The respondent concedes that the Pidcock Road house is a family asset but argues that it should be reapportioned in his favour having regard to the provisions of s. 65 of the FRA.
- [51] I find that the Pidcock Road house is a family asset in which each party is entitled to a 50% interest. Having regard to the factors in s. 65, I find that this eleven-year relationship (ten years of marriage) was of significant length, particularly when one considers the nature of those years and the fact that Ms. Younger gave up her independence, her own home in Manitoba, and her career, in order to marry Mr. Younger and have his children. The years of the marriage were significant career-building and wealth-building years for Ms. Younger and she gave up those opportunities in order to pursue the life that Mr. Younger wished in British Columbia. She gave up seniority in her profession and the income security that would flow from that seniority. An equal division is necessary in order to allow Ms. Younger the ability to rebuild her life and obtain financial independence.
- [52] I have considered that Mr. Younger contributed a far larger proportion of the funds required for the purchase of the Royston house. The funds from the Royston house were then used for the Pidcock Road house, and Mr. Younger likely made up the balance of the Pidcock Road house's purchase price by using income from his inheritance or from a capital dividend from his parents' corporation. I have also considered that Mr. Younger is older than Ms. Younger and will rely on his business assets and investments to fund his retirement.
- [53] Mr. Younger is financially independent and has shown himself to be a savvy businessman. To the extent that he has not been earning anything since separation, it is a result of a deliberate decision by him to reduce his income and asset position pending trial. He is capable of significant business success in his own corporation or as part of his mother's corporation when he decides to pursue the kind of business projects he has pursued in the past. It is my view that considering all of the factors in s. 65, an equal division of the Pidcock Road house is appropriate.

[54] The Pidcock Road Property is valued at the appraised value of \$675,000.00 for the purpose of this decision.

Younger Bros. Holdings Inc.

[55] I find that the shares and assets in Younger Bros. are family assets and are subject to equal division under the FRA and that, when all the factors are considered, there is no basis for reapportionment under s. 65 of the FRA.

[56] Younger Bros. was the main vehicle through which Mr. Younger raised the funds to support the family. The corporation held the main assets for the family including the family vehicles. Mr. Younger stopped contributing to his RRSPs since he viewed the corporation as his family's retirement vehicle. He paid himself a salary through Younger Bros., and paid a salary to the claimant in recognition of her efforts in the corporation and in order to engage in income-splitting.

[57] Ms. Younger provided both a direct and an indirect contribution to Younger Bros. She provided substantial assistance with the Coho apartments, in cleaning, decorating and furnishing them when they were long-term rentals and managing them when they were converted to summer rentals. She answered the phone and took a woodlot course in order to learn more about the nature of the business in order to assist with the larger business interests.

[58] Ms. Younger provided significant indirect assistance with her contribution of home making, meal preparation and child rearing. Her willingness to have Mr. Younger's children allowed him to fulfill his wish for children. I do not accept Mr. Younger's criticisms of Ms. Younger's contribution to the household or of her housekeeping. The idea that a busy family with young boys should practice no trace camping on a daily basis suggests that Mr. Younger's standards were unreasonable and could not be met by Ms. Younger.

[59] There is no suggestion in the evidence that Ms. Younger was anything other than a loving and committed mother who put the best interests of her family above all else. That is clear from all of the evidence including the family calendars which show her dedication in managing the children's activities and schedules. Her note to Mr. Younger in 2007 indicates that she was committed to making her marriage work notwithstanding the marital difficulties they were having. As I have indicated, she did not seek to live a lavish lifestyle, even though it was clear that the family was well off, and she contributed to the wealth building of the family and the corporation through her financial prudence. She was content with living a relatively austere lifestyle, and she was reluctant to leave the Haida Gwaii. She agreed to return to teaching when the children were school age in light of the continuing arguments about household chores. In short, she did everything possible to make her marriage work and to be a contributing partner.

- [60] The considerations that I have outlined in respect of the equal division of the Pidcock Road property apply as well to the equal division that I find with respect to Younger Bros. I have also considered the words of Lambert J.A. in *Murchie v. Murchie* (1984), 53 B.C.L.R. 157, 39 R.F.L. (2d) 385 (C.A.), to be helpful and instructive in this context. He states at paras. 29 through 32:
- [29] I refer to the judgment of this court in *Baird v. Baird*, 33 B.C.L.R. 77, 1981 CanLII 491 (BC CA), [1982] 2 W.W.R. 8, 25 R.F.L. 17, 130 D.L.R. (3d) 128. Seaton J.A., in giving the judgment of the court, said [p. 82]:

The court should not set aside s. 43 by substituting the division that in its view would be just. The court is not authorized to interfere unless equal division "would be unfair" and then only if it is "unfair having regard to" the criteria set out in s. 51. There is, in my view, no basis for finding unfairness in this case when one has regard to those provisions.

- [30] As I understand that passage, the trial court and this court ought not to be trying to settle on the distribution of assets that seems to the judges to be a just one. The Family Relations Act requires equality. It is only if there is real unfairness in equality that the court is justified in interfering. Interference can only come through a finding that equality would be unfair.
- [31] The trial judge in this case, in the passage which I have already read, makes a finding that an equal division of assets would, having regard to the criteria in s. 51, be unfair. In my opinion that was error on the part of the trial judge on the facts of this case. This was a marriage of two people in their forties which persisted, with them living together, for approximately 12 years and which has not yet been severed. In my opinion there is no reason in relation to the duration of the marriage why equality of division would be unfair.
- [32] The husband had significant assets at the start of this marriage, including most particularly his dental practice and the associated management of that practice. As the trial judge said, he was at that time a person of means. In a comparatively short marriage of one or two years the fact that the asset was brought into the marriage by one of the spouses and not created by the joint efforts of the spouses would be a reason why equality of distribution of that asset in that marriage would be unfair. But parties marry in contemplation of each other's assets and by entering marriage they give up other opportunities of doing other things. In my opinion, when two people in their forties marry and stay married for the length of time which the parties have stayed married in this case, it is not unfair that both spouses should share equally in the assets brought into the marriage by each of them.
- [61] Although Mr. Younger received inheritance funds from his father and corporate dividends from A.H. Younger, he channelled those into Younger Bros. and/or into the purchase of the Royston home and then the Pidcock Road home in a manner that makes it impossible to consider those funds separately from the family assets that they became a part of. The evidence is inconsistent in respect of where the inheritance funds went. In addition, a sufficient amount of time elapsed between the inheritance and the dissolution of the marriage. Significant family investment decisions were made since then, including the move

to Pidcock Road, so that judicial re-apportionment in favour of Mr. Younger should not occur. Finally, those inheritance contributions are offset by the factors that favour an equal division, including Ms. Younger's need to become self-sufficient in the wake of having lost teaching seniority and skills during her marriage and during the time at home with the children.

- [62] Accordingly, the shares in Younger Bros. are family assets and are subject to equal division.
- [63] I was not presented with any expert evidence with respect to the valuation of Younger Bros., so valuation represents some real challenges for the court in this case. Younger Bros. is constituted primarily of real property assets, some of which may have to be sold in order to satisfy a compensation payment which I will be ordering. I will be taking this approach assuming that Mr. Younger will go forward and continue to operate Younger Bros. as a going concern and that it is in the best interests of the parties that this occur.
- [64] Accordingly, at the conclusion of this portion of the judgment, I will be setting out a table with respective values, and I will be taking into account the real property values based on disposition value since there may be some need for disposition of some of the real property assets to occur in order to make the compensation payment. The attempts to sell the Coho Apartments in the Haida Gwaii--attempts which have been unsuccessful so far--demonstrate that disposition value is the correct valuation approach. Further, I will be making some assumptions in respect of tax consequences as both counsel suggested should be done. I recognize that this approach does not take into account the timber inventory on the property, but there is no evidence before me as to that value.

Shares in A.H. Younger

- [65] I am of the view that Mr. Younger's shares in A.H. Younger are not family assets and are not subject to division. In this regard, I have found helpful the decision of Sigurdson J. in *MacDonald v. MacDonald*, 2002 BCSC 1453, where he considered whether the wife's interest in two companies, namely Welcon Services Ltd. and Indian River Holdings Ltd., and her interest in a MacDonald family trust were family assets. In addition to outlining the general principles from the authorities, Sigurdson J. stated at para. 56:

The cases referred to by counsel illustrate that the determination of whether inherited assets, interests in trusts and private companies are family assets can be a difficult issue, the determination of which depends on the particular facts.

- [66] Mr. Younger received 200 Class "A" voting shares in 1995 from his father. He was a director of the corporation and during the marriage he received \$1,000.00 per month commencing in 2004 in director's fees which he channeled into family and Younger Bros. business purposes. He also received capital dividends from A.H. Younger.

- [67] Mr. Younger testified at trial that he did not know when he was made a director in A.H. Younger and, at the examination for discovery, that he did not know he was a director. I specifically reject his evidence in this regard. The evidence makes clear that he attended an annual directors' meeting which coincided with a family meeting during an annual Christmas trip the family made to Calgary. He also received monthly director's fees. However, I do accept his evidence that he had no meaningful role in the corporation, since all of the evidence suggests this.
- [68] There is no evidence to suggest that the time Mr. Younger spent pursuing business interests was spent pursuing A.H. Younger business interests or that Ms. Younger made any indirect contribution to A.H. Younger. This was his father's corporation and all of the evidence suggests that the dividend payments and the capital dividend, which Mr. Younger's brothers also received, were really just vehicles through which his father could provide monetary gifts to his sons. There is nothing in the evidence to satisfy me that this situation changed when Mr. Younger's father died and Mr. Younger's mother became the principal shareholder of the corporation.
- [69] During her testimony, Ms. Younger acknowledged that Mr. Younger's family was very generous to them during the marriage. In giving that evidence, I conclude that she was referring to the dividend payments and director's fees that the family received, and that she perceived them to be gifts as well.
- [70] While the director's fees and dividend payments did make their way into the family income stream, the family could not, and did not, count on any of those payments as part of an ongoing income stream and there is no evidence to show that they depended on those payments to fund their lifestyle, which as I have noted was modest considering their relative wealth, or that they used the capital interest in the corporation to make investment decisions.
- [71] In any event, the articles and memorandum of understanding of A.H. Younger show that the father and mother's shares in A.H. Younger have all the value and that there is no independent value attaching to Mr. Younger's and his brother's shares. Mr. Younger and his brothers could not demand a dividend, nor could they demand a winding-up of the corporation or purchase of the shares.
- [72] Accordingly, I am of the view that the A.H. Younger shares are not family assets and in any event have no independent value.

The Vernon Lakefront Property

- [73] Mr. Younger's parents, Andrew and Marjorie Younger, owned a property on 13522 Westkal Road, Vernon, British Columbia. This is a lakefront property on Kalamalka Lake used by various members of the extended family for vacation purposes.

- [74] In 1994, the property became subject to a trust agreement. In December 2007, the respondent's mother transferred to him a quarter interest in the lakefront property. His two brothers received a similar interest on title at the same time. He holds this property in trust pursuant to a trust document which was created by the respondent's father. At the time the trust was created, the respondent's father wrote a letter to each of the three sons regarding the purpose of the trust which was in essence to preserve the property for the sons as part of an estate planning tool.
- [75] The trust document declares that the parents (now the surviving mother), are trustees of the property and the trust document states at clause 2.02:

During the term of the Trust and while the Residence constitutes a part of the Trust Property, the Parents shall, during their joint lifetime, have the exclusive right to the use and enjoyment of the Residence and shall be responsible for the payment of all expenses associated with the maintenance, use and occupation of the Residence including, but not restricted to, payment of utilities, property taxes, proper insurance coverage and necessary repairs.

Following the death of the parents, the Sons shall have the co-existent right to the use and enjoyment of the Residence and shall have equal responsibility for the payment of all expenses associated with the maintenance, use and occupation of the Residence. In the event any of the sons do not pay their proportionate share of the expenses for the maintenance of the Residence for a period of three consecutive months they shall not be entitled to share in the use and enjoyment of the Residence until they reimburse the Trustees or other Beneficiaries who have paid those proportionate expenses, together with interest calculated from the date of payment until the date of repayment or reimbursement at a rate equal to the Bank of Montreal prime interest rate plus 2% per annum. The Sons respective rights to the use and occupation of the Residence is a personal right and may not be pledged, encumbered or assigned to or for the use and enjoyment of any other party.

At clause 2.05(b) the trust document goes on to read:

In the event any of our Sons is bankrupt, has any outstanding execution judgments or has attempted to assign or pledge all or a portion of any interest in the Residence or other Trust Property which he may otherwise be entitled to receive under the terms of this Trust, that Son shall be entirely excluded from receiving a portion of the Trust Property and the Trust Property shall be divided equally amongst our remaining Sons.

- [76] During the marriage, particularly in the early years before the boys were of school age, Mr. and Ms. Younger would vacation at this property for approximately two to three weeks per year. During the trial Ms. Younger gave evidence referencing a family calendar which was what she used to assist her in recollecting when the family visited the lakefront property. It is clear that when the boys reached school age, and the family moved to Vancouver Island, the visits to the property declined and the claimant has only stayed on the property one night since the quarter interest in the property was transferred to the respondent.

[77] Consistent with the trust document, Mr. Younger's parents have maintained the property and paid all costs associated with it. The parties never incurred any costs associated with it, nor did they pledge the interest in it to support any joint financial decisions. The parties would check with Mr. Younger's parents prior to using the property to ensure it was available for use.

[78] I am not satisfied that the claimant made any direct or indirect contribution to the property. The family rule for anyone who used the property was that it should be left in the same condition as when the parties arrived, so the only contribution that was made was in cleaning and closing the house on departure, which was merely the responsibility of a considerate houseguest.

[79] In all of the circumstances, I conclude that the lakefront property is not a family asset and is not subject to division

Assets Subject To Division

[80] As a result of my decision, I find that the following assets are subject to division on an equal basis:

Pidcock Road House

\$675,000.00

Younger Bros. asset values:

Port Clements South

30,500.00

Port Clements North

30,500.00

Coho Apartments

310,000.00

Cabin

167,000.00

Lot 501, DL 501 (revised value)

375,000.00

Dead Tree Point

145,606.00

Dead Tree Point Lot A

70,988.00

Dead Tree Point Lot B

71,832.00

Doreen Terrace

70,775.00

Rudd Island

106,000.00

Gowlland Harbour (Stone House half interest)

525,000.00

Kuboto Excavator

PJ Trailer

26,000.00

3,500.00

4 x 4 Dodge

19,000.00

2006 Ford Ranger

9,000.00

Hitachi

65,000.00

TOTAL YOUNGER BROS.

\$2,025,701.00

less 33% Tax Impact \$668,481.33

Available for Division: Younger Bros.

\$1,357,219.67

Claimant Asset Values

1998 Ford Station Wagon

\$ 1,200.00

TD Chequing Account

15,647.78

TD GIC Account (considering the Capital Gains on sale of Smith Island Property)

47,290.16

Dundee Cash Account

23,732. 25

TOTAL Assets of the Claimant

\$87,870.19

Respondent's Accounts

(based on date of S. 57 Order)

Canada Trust Account

108,088.54

Haywood Account

8,346.65

TOTAL Respondent's Account

\$116,435.19

Total for Division

\$2,236,524.80

[81] Based on these values I am rounding off and have determined that there is approximately \$2,236,000.00 in assets which must be equally divided between the parties. Based on the account values at the time of the s. 57 order, Ms. Younger had \$87,870.19 in her accounts (including the station wagon) and Mr. Younger had \$116,435.19. I have considered the \$30,000.00 that Ms. Younger received from the boat sale; however, I will not consider the sum that went into Younger Bros. as Mr. Younger's share since that sum was used as operating funds for the corporation.

[82] It is my view that in making a division, although I have made an allowance for income tax factors relating to Younger Bros., there are other factors such as selling costs that must be taken into account. I believe that I should take into account Mr. Younger's expenses to maintain Pidcock Road from the time of separation. It is not possible to quantify these costs with mathematical precision. As I have indicated, I am of the view that it is in the best interests of the parties that Mr. Younger retain all of the interest in Younger Bros. including the responsibility for any outstanding debts of the corporation. In order to achieve a final division and reduce the possibility of future litigation, I am of the view that Ms. Younger should receive assets in the approximate amount of \$1,050,000.00. In order to achieve this

division I order as follows:

- [83] Ms. Younger will retain her own bank accounts as will Mr. Younger. This is an effective amount of \$117,870.19 for Ms. Younger taking into account the \$30,000.00 she received from the boat sale.
- [84] The Pidcock Road House will be transferred to Ms. Younger (\$675,000.00).
- [85] Mr. Younger will make a compensation payment to Ms. Younger in the amount of \$260,000.00 by November 1, 2012. As a result of that payment all of the interest in Younger Bros. will remain with Mr. Younger.
- [86] This division, based on the above values, results in \$1,052,870.10 in assets to Ms. Younger.

Pension Assets

- [87] Mr. Younger holds \$185,836.96 in a Haywood RRSP. The claimant holds various RRSP accounts and teacher's pensions from Manitoba and British Columbia (the latter resulting from her part time work in School District 72). The Manitoba teacher's pension contribution amount is \$82,284.54; the British Columbia teacher's pension contribution amount is \$4,154.85. There was no expert valuation evidence placed before me as to the value of the teacher's pension plans and the claimant did not have any significant knowledge of the plans demonstrated in her evidence. Her total pension assets, including her RRSPs and assuming only the contribution amounts, total \$150,087.03. The claimant proposes that a payment of \$17,874.97 should be made to equalize the pension amounts. However, if the claimant keeps her pension in the pension funds, its total value is clearly more than the total contribution amount.
- [88] In all the circumstances, I order that each party retain their own pension assets and that there should not be any equalization payment.

Child Support

- [89] The issue of custody and access to the two boys was settled by consent order prior to the trial in this matter. The children reside with the claimant more than 60% of the time with generous access to the respondent.
- [90] On December 17, 2009, Butler J. made an interim order that the respondent was to pay interim child support in the amount of \$1,444.00 per month and interim spousal support in the amount of \$1,327.00 per month based on an imputed income of the respondent of \$100,000.00. As of the conclusion of submissions on the trial, there were no arrears outstanding on the order, although the respondent gave evidence that he has not had sufficient income to sustain his own expenses and his support obligations and that he had borrowed money in order to meet his obligations. An application to vary the interim order was adjourned generally awaiting the outcome at trial.

- [91] Mr. Younger gave evidence at trial that he was in effect unable to work because he was awaiting hip surgery, although there was no medical evidence placed before the Court. Further, it is clear that he has performed some physical work respecting the house on Pidcock Road and his evidence of that is inconsistent with his stated inability to work. In any event the evidence suggests that much of Mr. Younger's work is not physical in nature. Rather, it is desk work that relies on his business acumen and knowledge of the forest industry. Accordingly, his evidence surrounding his inability to work lacks credibility.
- [92] I conclude that Mr. Younger has been deliberately unemployed since the separation and in fact presents as an extreme case of deliberate unemployment. The court was presented with financial statements for 2009 and 2010 that suggest employment income of \$.12,000.00 and \$20,000.00 respectively, whereas his income combined with the income attributed to Ms. Younger was in excess of \$100,000.00 for most of the decade. This number does not include the many tax benefits that accrue as a result of the greater number of tax write-offs through Younger Bros., for example expenses related to the family vehicle.
- [93] I am urged by Mr. Younger's counsel to impute an income of \$20,000.00 to \$40,000.00 to Mr. Younger, although there is really no evidence before me that can support that figure. Mr. Younger asks the court to accept that his business difficulties and lack of earned income correspond coincidentally with the time of separation, which I do not. Even considering the general global economic downturn in late 2008, I do not accept Mr. Younger's evidence surrounding his income.
- [94] In my view, the words of Curtis J. in *Braich v. Braich*, [1997] B.C.J. No. 1764 (S.C.) at para. 68, apply here:

In my opinion Erwin Braich, with his experience, business acumen and business contacts, is capable of earning an annual income in the future in the range of \$150,000.00 and will probably re-establish himself financially, probably without going bankrupt. I am satisfied that while his present income may not allow him to pay maintenance, his future income will and he has the means of financial ability to meet an obligation to pay spousal and child maintenance at the present time, considering the totality of his financial resources.

- [95] Having considered all of the evidence, I am of the view that the interim imputed income figure for Mr. Younger established by Butler J. was in fact the correct one. Accordingly, I am imputing the income at \$100,000.00 for the purposes of child support. I will not be making any retroactive adjustment for the period from separation to the date of the interim order. The child support table amount is now \$1,478.00.
- [96] Special and extraordinary expenses for the children will be divided between the parties in proportion to income.
- [97] I order that the child support can be reviewed annually commencing in June 2013, and that the parties will exchange tax return information each June, commencing June 1, 2013.

Spousal Support

- [98] At the time of submissions, the claimant was a casual teacher on call in School District 72. She had previously had a 0.4 position in the school district teaching aboriginal kindergarten. She was actively looking for permanent employment at the time of trial and, as I have indicated earlier in this judgment, she has been diligent in her efforts to find employment and to become self sufficient.
- [99] I accept her evidence that in her view she needs to obtain about four years seniority in the school district as a teacher on call in order to position herself to obtain full time employment. The suggestion of the respondent that she should move in order to obtain employment lacks any understanding of the difficulties the claimant faces in re-establishing her career. The difficulties in the job market for teachers in this province as a result of declining enrollment and other challenges are well documented and support Ms. Younger's evidence and decision about what is best for her career. Further, another move at this stage would not be in the best interests of the children.
- [100] I am taking a compensatory approach to the entitlement to spousal support *Moge v. Moge*, [1992] 3 S.C.R. 813, and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420.
- [101] Accordingly, I am going to order spousal support based on an imputed income to Ms. Younger of \$20,000.00 and an imputed income to Mr. Younger of \$100,000.00. The spousal support will remain the same as in the interim order at \$1,327.00 per month, which is approximately the mid-range of the Spousal Support Advisory Guidelines.
- [102] The order for spousal support will terminate on February 1, 2013, which is approximately four years after separation.

Divorce

- [103] The claimant's application for a divorce is granted.

Costs

- [104] Costs may be spoken to if they are not agreed to by the parties.

"J.A. Power, J."

Madam Justice J.A. Power

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/12/04/2012BCSC0432.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/younger-v-younger-2012>

Prepared on 28 October 2026 · Esheria