SUPREME COURT OF YUKON

Citation: *LK v DWD*, 2023 YKSC 48

Date: 20230822
S.C. No. 18-B0064
Registry: Whitehorse

BETWEEN:

L.K.

PLAINTIFF

AND

D.W.D.

DEFENDANT

Before Justice K. Wenckebach

Counsel for the Plaintiff — Kathleen M. Kinchen

Appearing on his own behalf — D.W.D.

REASONS FOR DECISION

Introduction

[1] The plaintiff, L.K., and the defendant, D.D., were in a common-law relationship between March 30, 2010, and October 8, 2018. They have two children of the relationship: P.D. ("P."), currently 10 years old, and Y.D. ("Y."), currently 9 years old.

[2] Both parties filed Notices of Application, and then agreed to proceed by way of summary trial. During the summary trial, the parties addressed issues related to care of the children and division of assets. Spousal support and child support were set aside until later.

[3] Since separation, the children have lived equally with both parties, and the parties have shared custody. This arrangement has been highly conflictual, however.

Both allege that the other speaks inappropriately to them and involve the children in their conflict. Both now seek custody.

[4] The parties also own several properties, including the family home (the "Red House"), an income generating property (the "Yellow House"), and the property at which D.D. resides (the "V.R. property"). Additionally, the parties own several other assets, and L.K. owns assets in the Czech Republic. The parties are seeking a determination about whether, and how, the assets should be divided.

[5] At the conclusion of the summary trial, both parties expressed that they had not had enough time to make submissions. I suggested that the hearing could be extended. D.D. agreed, but L.K. did not. I told the parties that if I needed further submissions I would contact them. In the end, I needed clarification only about the parties' business, and the recent valuation of the V.R. property.

[6] I will first address the issues about the children and will then determine how the assets should be divided.

Issues

Assessment of Credibility

A. How is credibility assessed?

Children

B. What custodial arrangement is in the best interests of the children?

C. What should the children's residential schedule be?

D. What contact should the children have with the non-residential parent?

E. How should the parties communicate with each other?

F. How should holidays be structured?

G. How should travel be structured?

Assets

H. How should the Red House be divided?

I. How should the Yellow House be divided?

J. How should the V.R. property be divided?

K. Are the assets from the Czech Republic a family asset?

L. How should the business be divided?

M. How should the remaining assets be divided?

Analysis

Assessment of Credibility

A. How is credibility assessed?

[7] Credibility has two aspects to it: credibility and reliability. Credibility is about the veracity of the witness' testimony. Reliability is about how accurate a witness' testimony is and is based on the witness' ability to remember and relate the evidence. A witness can seek to tell the truth, but still provide inaccurate testimony. The witness is, in that case, credible, but not reliable. On the other hand, a witness cannot provide accurate testimony if they do not seek to tell the truth. They cannot be reliable if they are not credible.

[8] In this case, D.D. points to inconsistencies in L.K.'s evidence and asks me to find that she is not credible. There are times when L.K. is inconsistent in her evidence, but there are also inconsistencies in D.D.'s evidence. Not all inconsistencies are significant. If an inconsistency is about an immaterial matter, I may not use it to assess credibility. However, if it is about a material issue, it can affect my assessment of the party's

credibility and reliability. Additionally, I may find a party to be credible on one issue, but not on another. In this case, I have not made a finding about the parties' credibility overall but have assessed it on an issue-by-issue basis.

Children

B. What custodial arrangement is in the best interests of the children?

[9] Counsel to L.K. submits that the parties cannot communicate and co-operate, nor is it likely that the parties will be able to communicate and co-operate in the future. She submits that D.D. does not have regard for the children's best interests in making decisions. D.D. makes similar submissions about L.K. Both are therefore seeking custody of the children.

[10] The best interests of the children are my only concern in determining custody. The *Children's Law Act*, RSY 2002, c 31 at s. 30, sets out factors that the court shall consider in determining the best interests of the children. As applied to this case, the relevant factors are: the length of time the children have been living with the current arrangement; whether there is family violence; and the ability of the parties to provide the children "guidance, education [and] the necessities of life".

The Length of Time the Children Have been Living with the Current Arrangement

[11] The children have been living in a joint custodial arrangement since the parties separated in October 2018. Both parties are involved parents and have taken part in decision-making. On the other hand, it is apparent that joint custody is not working. Neither party is content with the *status quo* and, as will be explored more fully below, there is a great deal of discord and dysfunction. In this case, the length of time the

children have been living in the current arrangement is not indicative that it should continue.

Whether There has Been Domestic Violence

[12] Both parties submit that the other has been abusive to them.

[13] Domestic violence is defined as:

> … [A] situation where an adult intimate or former intimate partner attempts by psychological, physical, financial or sexual means to coerce, dominate or control the other. This violence reveals a pattern of conduct that may be verbal, physical or sexual. The conduct targets another person's self-esteem and emotional well-being. It can include humiliating, belittling, denigrating, intimidating, controlling or isolating behaviour. … [*MAB v LAB*, 2013 NSSC 89 at para. 12]

[14] It is not only abuse of children that has an impact on decisions about custody. Abuse of a current or former partner is also an important factor in determining custody. Domestic violence can have an affect on a party's ability to be an effective parent. Moreover, children that are exposed, directly or indirectly, to domestic violence can be harmed emotionally and psychologically. In the Yukon, it has long been recognized that psychological abuse by one parent of another is a factor in determining custody (*CMK v BJM*, 2009 YKSC 79 at para. 22).

[15] I will first address L.K.'s allegations that D.D. is psychologically abusive to her. L.K. provides D.D.'s text and email messages which, she states, are abusive. They include the following statements:

- "I would rather slit my own throat than have to ever look at you, hear your voice, or have to deal with you ever again."
- "You are literally the most evil person I have ever had the unfortunate experience of coming across in my life. PURE

> EVIL runs through your veins and I am worried for the safety of my children."
>
> - "I didn't ever think it was possible to hate anyone as much as I do you. You are straight up evil and you can burn in hell for eternity. …"
>
> - "you stupid, entitled, soul sucking miserable excuse of a woman…Fuck off".

[16] D.D. admits that he has used abusive language but argues he did so at particularly heightened moments of their separation, and that the instances in which they occurred were few. He is vehement that he was not, and is not, abusive.

[17] However, in addition to the statements above, there are other emails and texts, written between 2019-2022, in which D.D. belittles or criticizes L.K. These are often in response to innocuous questions or statements made by L.K. I conclude that D.D. has been abusive to L.K.

[18] I also conclude that D.D. is exposing the children to this abuse. For instance, in a text message to P., D.D. said that he was sorry if L.K. was taking P.'s phone, blocking calls, and not allowing contact between him and D.D. He then said: "That is wrong and completely unacceptable. It will be dealt with when I return home and am making a promise that it will absolutely never ever, never happen again."

[19] Additionally, in one of his affidavits D.D. attached messages between the parties in which they argue about packages that were being delivered to L.K.'s address in D.D.'s name. In one of the messages he says "Yes you are angry and spiteful and I will clearly explain that to the children when you return stuff I purchased for them." Thus, I conclude that D.D. is abusive to L.K., and the children are exposed to it.

[20] For his part, D.D. argues that L.K. is abusive in her communications with him, involves the children in their conflict, and has invaded his privacy by accessing his financial information.

[21] D.D. has provided emails and texts from L.K., which, he submits, show that she is abusive to him. I find that L.K. can be sarcastic and angry in her communications with D.D. In those instances, she should not have communicated to D.D. as she did. It is also evident that she is unhappy with the way their relationship unfolded and blames D.D. for it. There are also occasions where she continues to contact D.D. when he has asked her stop. That, as well, is not helpful.

[22] However, the conduct of the two parties is not equivalent. L.K. can be argumentative and has pushed issues further than she should have. At worst, the communications are of a former partner who is hurt and frustrated, and who, when issues are not addressed, persists even when doing so is not in anyone's best interests. D.D.'s communications, on the other hand, are simple and pure attacks on L.K. personally: he is humiliating, belittling, and denigrating toward her. L.K. is not abusive when she speaks to D.D., while D.D. is.

[23] D.D. also submits that L.K. has outbursts in front of the children. He provides some examples of this, particularly in texts and emails he has attached to his affidavits. However, L.K. flatly denies that she causes scenes in front of the children. There is insufficient evidence to find that L.K. exposes the children to the parties' conflicts in this way.

[24] Finally, D.D. argues that L.K. accessed his private financial information post-separation. He attests that he did not provide her any of the information required to access his accounts. He submits that this, too, constitutes abusive behaviour.

[25] In response L.K. provided emails and texts from D.D. from August 24-25, 2020, in which he says that he will provide her access to his financial records. He tells L.K. that he will be opening a new business and new bank account. He will provide her with access to the bank accounts, credit cards, and stocks for the current company and affairs. He states that he will give her: "literally every piece of paper I have." In a subsequent text he states that he will hold off on starting a new business but that L.K. will, going forward, be the bookkeeper and office manager.

[26] L.K. also filed an email from D.D. to the parties' accountant. In it D.D. states:

> … I am resigning immediately from any duties regarding anything financial. I am hand delivering every financial article and document, and forwarding every email generated for the past 12 years to L.K. I have surrendered all credit cards, Bank accounts, investment accounts to [L.K.] as well.

[27] L.K. attests that D.D. sent her over 25 emails with financial details, including who he owed money to and what bills needed to be paid, and a document with all the passwords to accounts. L.K. attests that she accessed the accounts because D.D. left her to deal with the finances.

[28] In reply, D.D. notes that one of the documents filed by L.K., which contains D.D.'s account information, was written by her. I agree with D.D. that is curious, and L.K. should have clarified why that was. However, D.D. provides no evidence disputing L.K.'s evidence. The evidence before me is that D.D. told L.K. that he was giving her access to his financial information and was responsible for settling his financial affairs in

the company; and an email to the parties' accountant confirming he did provide his financial information to L.K. L.K. accessed D.D.'s financial information at his specific request. He cannot now claim that was a violation of his privacy.

[29] I therefore conclude that D.D. has been abusive to L.K. I also conclude that L.K. has not been abusive to D.D.

The Ability of the Parties to Provide the Children Education, Guidance, and the Necessities of Life

[30] This factor includes not only the parent's ability to meet the child's day-to-day needs, but also to nurture the child's psychological and moral well being.

[31] L.K. argues that D.D. has involved the children in their conflict. She attests that Y. informed her that D.D. told her to lie to L.K. about who was taking care of her when D.D. was unavailable. Y. was very upset about being asked to lie. D.D. does not deny that he told the children to lie.

[32] She also attests that, on another occasion, when she told P. that he did not need to be the messenger between her and D.D., he started sobbing and told her he did not want to pass on messages from his father.

[33] L.K. also provides another example in which D.D. involved the children in the conflict between the parties. Since the parties stopped living together, the children have taken their sports equipment, such as skis and bicycles, back and forth between houses. Recently, however, D.D. decided that the children should no longer take the equipment that he purchased to L.K.'s house. The reason communicated to L.K. and her counsel for doing this was to prevent contact between him and L.K. when transporting the children back and forth, as L.K. assists the children in bringing their

equipment from D.D.'s car to her house when he drops the children off. If the children no longer have equipment to bring back and forth the between homes, they could go to the house themselves, and the parties would have no contact.

[34] D.D. made this decision shortly before the children were to go to L.K.'s home for the second week of March break. In messages to her he suggested that L.K. rent equipment so that the children could take part in their recreational activities. L.K. told D.D. that she could not find appropriate ski boots for P. and would not rent skis when he had his own.

[35] L.K. attests that the children, who are active and use their sports equipment, were left without that equipment during March break. They could not take part in activities, such as down hill skiing, with their friends. P. in particular expressed distress about this.

[36] The facts about this incident are not in dispute. What is in dispute is whether this was an appropriate step to take. I agree with D.D. that it is better if the parties have limited contact. The parties could have discussed whether stopping trading sports equipment back and forth could reduce some of their conflicts. The problem, though, is that D.D. did not discuss this option with L.K. Instead, he made a precipitous and unilateral decision, leaving L.K. to deal with the fall out over March break. The way D.D. went about the decision, moreover, had the effect of pulling the children into the conflict. In the end, D.D.'s decision both stoked the conflict between the parties, and negatively affected the children.

[37] D.D. submits that it is L.K. that involves the children in the conflict. The evidence does not support this position. The examples he points to include instances in which

L.K. describes her responses when D.D. himself put the children into the conflict. Additionally, children often speak spontaneously about a parent to the other. The conversations L.K. discusses in her affidavits in which she and the children speak about D.D. appear to be such instances. In contrast, there is direct evidence that D.D. draws the children into the parties' conflict, including in D.D.'s own materials.

[38] L.K. also provides evidence of ways in which D.D. makes it difficult for L.K. to parent. She attests, for instance, that he will propose activities to the children that will happen during the time they will be residing with L.K. Either he, his partner, or the children will then ask L.K. about whether they can take part in the activity. This puts L.K. in an awkward position: she either looks like the "bad guy" by saying no, or must give up time or plans she had for herself and the children.

[39] Again, D.D. agrees that this occurs. He submits, however, that it permits the children agency over their lives. He believes that the children should have the option to make decisions in their lives. He also submits that he is simply providing information, and not making promises about whether the children will be taking part in these activities.

[40] I find that these actions are damaging to the children and their relationship with L.K. They send the message to the children and L.K. that her authority is disrespected. It suggests that her time with the children is not as valuable as D.D.'s time with them. D.D. does not consider the impact presenting these possibilities to children, who are nine and ten, will have. No matter how mature they are, they will not simply believe that their father is providing them information: they will want and hope to take part in the activities; they will be disappointed if they cannot.

[41] D.D. also argues that parents sometimes say no, and it is their role to set limits and boundaries. However, this is not simply a situation in which children encounter obstacles and disappointments as a natural part of growing up, which their parents can assist with. Rather, D.D. is creating the circumstances in which L.K. will be perceived as causing that disappointment, or she will have to forego the opportunity of spending time with the children herself. The effect is to undermine the relationship between L.K. and the children.

[42] It is trite to state children should not be caught in the middle of their parents' conflict. It is also trite to state that their relationships with both parents are precious and should be fostered. By pulling the children into the parties' conflicts, and in acting in ways that could interfere with L.K.'s relationship with the children, D.D. demonstrates that, in some ways, he has difficulty providing for the children's emotional and psychological needs.

[43] Taking into account all the factors, I conclude that it is in the best interests of the children that L.K. have custody. I order that L.K. have custody of the children. As requested by L.K., I also order that she consult with D.D. when making custodial decisions, and that each parent shall have the ability to make day-to-day decisions for the children when they are in his or her care.

[44] I am also ordering that neither party make plans for the children during the other party's parenting time without first obtaining consent from the other party.

[45] D.D. has asked for several grounds of relief in his Amended Notice of Application, filed April 5, 2023 – paras. 13-16 – that would involve the children in issues about the parties' decision-making and communications. I cannot stress enough that it

is inappropriate to include the children in discussions about how the parties communicate with one another or their issues around decision-making. My order will be that communication regarding the children shall be between the parties and not through the children.

[46] I have spent some time in exploring the relationship of the parties, and its effect on the children. In doing so, I have particularly noted some of D.D.'s decisions. I do not seek to punish or shame D.D. Parenting is hard. Co-parenting after separation is especially difficult. However, I am concerned that, if nothing changes, the children will suffer the consequences. Part of the reason I have gone into detail in my decision on these issues is because, perhaps, with the assistance of professionals with experience in post-separation parenting, the parties can find a new way to interact, and which will be beneficial for the children.

C. What should the children's residential schedule be?

[47] Commendably, the parties are in general agreement about the children's residential schedule. They agree that the children will live on an alternating, week on/ week off schedule with the parties, and the exchange date will be Mondays. They also agree that the children will have a visit with the non-residential parent on Wednesdays, overnight, except during school holidays.

[48] D.D. is also seeking that the mid-week visit be subject to the children's wishes. He moreover seeks that every July the parties re-negotiate the mid-week visits, and that they be subject to the children's wishes. As the children have been drawn into the parental conflict, I am concerned that the children will feel they are once again being placed between their parents. I conclude that it is not in their best interests to include

these terms in the order. I also deny D.D.'s request that there be no shared equipment between the parties.

[49] I therefore order the residential schedule as agreed to by the parties. I also order that the parties not have contact with each other when exchanging the children, as it is preferrable for these parties to have minimal in-person contact. If the parties cannot come to agreement about how that will occur, it can be brought to a case management conference.

D. What contact should the children have with the non-residential parent?

[50] L.K. is seeking that the parties have the right of first refusal to care for the children if they are not available for eight hours or more, when the residential parent children is not available. She is also seeking to have telephone contact with the children at least twice per week, and that the children be permitted to contact her when they are with D.D. When the children are outside of cell phone range, she seeks that she have contact with them once a day. D.D. is seeking that the children have the right to speak with the non-residential parent, and that they be permitted to do so on their own cell phone.

Right of First Refusal

[51] I have decided not to order that the parties have the right of first refusal to care for the children. While contact between the parties is inevitable, it is better that it be limited. Giving the parties the right of first refusal to care for the children will increase the parties' contact, and the potential for conflict.

Telephone Contact

[52] The parties are in general agreement about telephone contact with the children. I order that the children have contact with the parties at least twice per week and that they be permitted to contact the parent at other times. However, the non-residential parent must respect any rules the other parent has about the children's cell phone use.

[53] L.K. seeks to have daily contact with the children when they are camping in the wilderness and do not have cell phone access. D.D. submits that this level of contact interferes with the children's experience, and L.K. has previously overreacted before when they did not check in as planned. There is some merit to both the parties' positions. I order that if D.D. takes the children outside cell phone range, he shall ensure that the children check in with L.K. every two days.

E. How should the parties communicate with each other?

[54] The parties are in substantial agreement that telephone contact should be limited to emergencies. They also agree to communicate respectfully with each other. They disagree about the extent and mode of communication they should have.

[55] Based on the parties' agreement, the parties will only have telephone contact in the event of an emergency. I also order that, in the case of a health emergency involving the children, the parent who has care and control of the children shall do everything necessary to provide for such health care and advise the other parent of the emergency promptly and no later than two hours after the emergency happens. Because it is important for the parties to contact each other in emergency situations, I will order that they not block the other party from their cell phone.

[56] I will also order that the parties communicate with each other in a respectful manner and not disparage each other in front of their children.

[57] Turning to the areas of disagreement, D.D. submits that the parties should only communicate through Our Family Wizard, and that communication should only be about planning and logistics. L.K., on the other hand, seeks that the parties' communications be less restricted.

[58] There is merit in having one principal channel for communications. I will therefore order that communications occur through Our Family Wizard. However, if there are issues concerning the children requiring consultation and decision-making, rather than simple logistics, then communications can occur by email. I will also order the communications must be responded to within 48 hours.

[59] D.D.'s request that discussions be only about planning and logistics is not workable over the long term. Because the children live equally with both parties, and this is not a parallel parenting arrangement, more detailed discussions will be required. However, I will order that after the assets and liabilities are divided, communications between the parties should only concern the children. I will not order that the parties not use the children's cell phones to contact each other, however, I do note the children's cell phones should not be used for parental discussions.

F. How should holidays be structured?

[60] L.K. has provided a proposal for the division of holiday time. D.D. did not oppose the proposal. I therefore order that holiday time with the children shall occur as follows:

- for Christmas, if it falls on D.D.'s week, L.K. shall have access with the children from December 22, at 3:00 p.m. to December 25, at 10:00 a.m. If

Christmas falls on L.K.'s week, D.D. shall have access with the children from December 24, at 10:00 p.m. to December 27, at noon;

- for New Year's Eve, L.K. shall have the children from December 31, at noon until January 1, on even numbered years and D.D. shall have the children from December 31 at noon to January 1, on odd numbered years;
- for Easter, L.K. shall have the children on even numbered years and D.D. shall have the children on odd numbered years;
- for Father's Day, D.D. shall have the children from 10:00 a.m. to 7:00 p.m.;
- for Mother's Day, L.K. shall have the children from 10:00 a.m. to 7:00 p.m.;
- for the children's birthdays, the parent who does not have the child in their care on their birthday shall be able to spend up to three hours with them on their birthday.

G. How should travel be structured?

[61] On this issue, as well, the parties are in general agreement about travel within Canada and to Alaska, although they disagree about details. They also disagree about the details of L.K.'s request to travel to the Czech Republic with the children; and about how the children's passports should be obtained and who should hold them.

Travel within Canada and to Alaska

[62] The parties agree that they should be permitted to travel within Canada and to Alaska without seeking permission of the other party when the travel occurs during their parenting time. L.K. also seeks that the parties provide notice to each other, while D.D.

is not in favour of that provision. I will require that the parties provide notice to each other when they will be traveling with the children for longer than 48 hours. This will allow the parties flexibility when deciding to travel for short periods, while permitting them to have information about where their children are for longer periods of time.

International Travel and Extended Travel

[63] Again, the parties are largely in agreement. To ensure clarity about travel, I will order that international travel and any travel during the other parent's parenting time will require the consent of the other party, and the other party is not to unreasonably withhold consent. I also order that the parties provide one month's notice of the intended travel to the other party, and a detailed itinerary be provided two weeks ahead of travel. The other party shall provide any required consent letter two weeks before travel.

[64] The parties disagree about L.K.'s requests for travel to the Czech Republic. She would like to travel with the children for up to five weeks during the summer holidays with the children when they are going to the Czech Republic. L.K. is from the Czech Republic and has family there. She submits that it is beneficial for the children to be immersed in the language and culture. D.D. says that that is too long for the children to be away from him.

[65] I agree with L.K. that it would be good for the children to have extended exposure to the language, and culture, and to spend time with their family. I also note that the L.K. has, in the past, travelled five or six weeks with the children to the Czech Republic without D.D. I therefore see no impediment to such travel in the future.

[66] At the same time, summers in the Yukon are short and both parties should have the opportunity to enjoy them with the children. I therefore will allow L.K. to take the children every two years to the Czech Republic for up to five weeks during the summer holidays without requiring D.D.'s consent. L.K. has also agreed that D.D. can have remedial time with the children to compensate for the time missing with the children. This shall also form part of the order.

[67] L.K. also seeks that the parties be able to holiday with the children for three weeks during the summer in years that she does not travel with the children to the Czech Republic. D.D. takes no position. I will therefore include this in the order.

Passports

[68] L.K. is seeking to be able to apply for passports for the children without requiring D.D.'s permission, and to retain them. D.D. opposes this. He seeks that the passports be placed in a neutral third location.

[69] L.K. attests that D.D. refused to sign P.'s Canadian passport application in May 2021. D.D. told L.K. that it would make her deal with the separation paperwork faster. Eventually, he did sign the passport application. However, because he did not do so when L.K. asked, P. did not have a passport when L.K.'s father passed away, and the children were not able to travel with her to the Czech Republic to attend her father's funeral. D.D. does not deny this.

[70] It was in P.'s interest that he have a passport. D.D. used P.'s interest as a pawn for his own ends. I permit L.K. to apply for the children's passports without requiring D.D.'s consent.

[71] I also permit L.K. to hold the passports. D.D. opposes L.K.'s request because he says he is afraid she will abscond with the children, possibly back to the Czech Republic. In support of his position he notes that L.K. has assets in the Czech Republic, and that her banking information includes her Czech address. L.K. attests that she does not know why the bank did this, and has tried to get this changed.

[72] Since separation, L.K. has traveled with the children to the Czech Republic without D.D. She returned without issue. There have been no concerns about L.K. overholding the children, or traveling with them without D.D.'s permission. I do not see a risk in permitting L.K. to hold the passports.

Assets

[73] The assets at issue include three real properties located in Canada, chattels, and other assets. The three Canadian real properties are: the Red House, the Yellow House, and the V.R. Property. The chattels and assets include: vehicles, outdoor gear, RRSPs, and others. Furthermore, L.K. owns assets, including real property, in the Czech Republic.

[74] The parties agree that some of the assets should be divided between them. They do not agree, however, that all the assets should be divided between them, and in some instances, do not agree about whether the assets should be divided equally or unequally. D.D. submits that two of the Canadian properties should not be divided equally, and that the division should reflect the differences in the money and labour each put into the properties. L.K., in turn, submits that D.D. should not be entitled to her property in the Czech Republic.

[75] The parties have proceeded by addressing entitlement and the proportion of division of the assets on an asset-by-asset and category-by-category basis. This approach is different than the framework established by the Supreme Court of Canada in *Kerr v Baranow*, 2011 SCC 10 ("*Kerr*") as the *Kerr* approach involves determining the parties' contributions to the family wealth overall, and then dividing the assets on a global basis (at para. 87).

[76] However, the principles in *Kerr* are flexible and can be adapted to the lived realities in each case. Determining entitlement and distribution of assets on a global basis is not a requirement (*Ibbotson v Fung*, 2013 BCCA 171 at para. 56). Here, the acquisition and maintenance of some of the properties have unique features. One of the properties was purchased when the parties were together, but renovations were done on it after the parties separated. Another property was purchased post-separation. The Czech properties were also not regularly used by the parties. In this case then, assessing the entitlement and division of the properties on a case-by-case basis is appropriate.

H. How should the Red House be divided?

[77] The parties are in general agreement that the Red House should be divided equally, although they disagree about its value.

[78] The Red House was the family home. L.K. continues to live there. L.K. has provided valuations from real estate agents from July 2021, and a more recent valuation. In July 2021, the house was valued at $670,000. A market evaluation was done and suggested a selling price of $769,000. Recently, another market valuation was done, with a suggested selling range of $755,000 to $765,000. D.D. values the

house at $1,200,000, based on a property listing of another home through the real estate site “Property Guys”. I accept Ms. Kacelrova’s recent valuation, as it was provided by a neutral third party who works in the industry. D.D.’s information is based on a very limited pool. Moreover, as Property Guys is essentially a site for the private sale of homes, I do not put any weight on the listing. The value of the house is therefore set at $760,000, being its market current value.

[79] There is a home line of credit (“HLOC”) for the home, and the amount outstanding as of November 25, 2022, was $276,507.96.

[80] Additionally, D.D. withdrew roughly $20,854 from the HLOC in December 2022, without notice to or agreement from L.K. He is therefore responsible for re-payment of that money.

[81] Turning to the division of the asset, I have determined that the value is $760,000. Although the outstanding debt is not completely current, it is sufficiently accurate. I will fix it at $276,507.96. However, D.D. is responsible for the $20,854 he withdrew from the HLOC. L.K. shall have exclusive possession of the Red House, and D.D. is entitled to half the equity.

I. How should the Yellow House be divided?

[82] The Yellow House is behind the Red House. The parties bought it in 2017. They used it as rental housing until May or June 2019, at which point, D.D. moved into the house. He did renovations on the house both while the parties were together, and after he moved into the house. D.D. did not live in the house for long, however. He moved out, and the house was sold in December 2021. D.D. asked that the proceeds, which were being held in trust, be paid out to L.K. They were paid out in two portions, which

L.K. received in December 2021 and February 2022. She used the funds to pay off what she alleges is a debt to her father's estate.

[83] There are two issues here. First, is whether L.K. should have given the proceeds of the Yellow House to her father's estate. Second, D.D. seeks that the proceeds from the house be divided unequally.

Payment to Father's Estate

[84] Both parties agree that L.K.'s father gave them money. L.K. submits the money was a loan, and she used the proceeds from the Yellow House to pay the money back to her father's estate. D.D. submits the money was a gift, and L.K. improperly gave the proceeds from the Yellow House to her father's estate.

[85] The parties agree on the following: L.K.'s father gave the parties a total of $660,000; the first portion of money, $100,000, was provided in 2012 as a gift; and, later, he gave the parties $50,000 for the children's RESPs. This was also a gift.

[86] The dispute is about the remaining $510,000. In April 2013, L.K.'s father gave the parties $400,000, which they invested in a residential construction company. In February 2014, L.K.'s father provided them with an additional $110,000. This was used to pay off the mortgage on the Red House.

[87] L.K. submits that the $510,000 was a loan. L.K. also attests that her father suffered economic losses in 2017. He began to press the parties to pay him back sometime after that. The parties could not pay him, however, as the money was tied up in investments. In 2022, upon receiving the proceeds from the Yellow House, L.K. was in a position to pay her father back. Unfortunately, he passed away suddenly. The money, therefore, went into her father's estate.

[88] D.D. attests that the money was a gift, but that L.K.'s father began asking the parties to repay the money when he suffered economic losses. D.D. resisted paying the money back, but eventually agreed to call it a loan because he hoped it would end the harassment he was enduring.

[89] Because L.K. gave the proceeds from the Yellow House (along with money from the investment in the residential construction company) to her father's estate, she will owe D.D. a portion of the proceeds from the Yellow House and the investment if I find the money was a gift. D.D. also submits that L.K. should be liable for the interest that would have been saved had the money been used to pay of the parties' debts.

[90] In support of her position that the money was a loan, L.K. filed emails she sent to her father when they were discussing the initial investment for the residential construction company, as well as translations of the emails, which are written in Czech. In the emails she refers to the money as a loan.

[91] In addition, she has filed emails in which D.D. either discusses how to pay L.K.'s father back or acknowledges that at least $400,000 given to them was a loan. L.K. also defends giving the money to her father's estate without D.D.'s explicit consent.

[92] D.D., for his part, points to statements in his communications with L.K. in which he talks about wanting to deal with the parties' assets and liabilities so that he can get some peace in support of his position that the money was a gift.

[93] L.K.'s evidence is persuasive. The communications between L.K. and her father are clear that the money is a loan. D.D. takes issue with this evidence. He points out, for instance, that the wire sending the $400,000 identifies the money as a gift. However, in one of L.K.'s emails to her father when they are arranging matters, she tells him that he

should label it a gift to avoid legal complications. In the same email she recognizes the money is actually a loan.

[94] D.D. also submits that the translations of the emails are not to be trusted. D.D. filed his own, which is done through Google translate. I am not clear on what D.D.'s issues are with the translation. I also do not see how the Google translation would affect my analysis.

[95] The evidence also shows that D.D. knew the money was a loan. In an email to D.D. dated November 26, 2019, L.K discusses the money. In his reply, D.D. suggests selling both the Red House and the Yellow House, stating: "Your dad can get his money back plus remainder of interest …" In the second email L.K. questions how the parties will pay her father back $510,000. In reply, he states: "Your dad is owed $400K plus interest. Period."

[96] D.D.'s statement that he agreed the money was a loan only to buy peace is not convincing. For the most part, the evidence he points to in support of his position are general statements about wanting to deal with post-separation finances. When he refers specifically to the money L.K.'s father gave to them he refers to it as a loan or discusses how to pay it back.

[97] There is, however, one exception. In one email D.D. states:

> your [as written] dad will be sent back $422,000 upon the completion of the sale.
> I will not be engaging in this bullshit conversation about how minds suddenly got changed after your father realized he was ripped off. not [as written] my problem, [as written] people lose money everyday of bad investments and that is on them…

[98] The statement that “minds suddenly got changed” could refer to D.D.’s contention that L.K.’s father decided the money was not a gift, but a loan, after he lost money. However, the paragraph is, at best, ambiguous. Reading the entirety of it, D.D. could have been saying that he was not bound by L.K.’s father’s timelines, but that he and L.K. would pay him back when they were able.

[99] The parties communicated extensively through email and text about finances. It is improbable that there would be no written communication from D.D. in which there is clear evidence he believes the money to be a gift, that he was then accepting to pay the money back simply to stop arguing about the issue, or that he changed his mind, and would be treating the money as a gift again.

[100] Moreover, D.D.’s statements about other issues related to repayment of the money to L.K.’s father is also contradicted by the evidence. D.D. submits that L.K. only treated repayment of the loan as pressing when he moved forward to sell the Yellow House. The documentary evidence shows, however, that L.K. was concerned about repaying her father in 2019, well before the house was sold, and when the parties were still discussing whether to sell the house.

[101] Lastly, D.D.’s argues that L.K. should have paid off the line of credit with the proceeds of the house, and that she knew this was his expectation. This, too, is contradicted by the evidence. In an email in 2019, D.D. suggested that the houses be sold, with the proceeds being used to pay the debt to L.K.’s father, and his father. L.K. attests that after the house sold, the parties could not agree about what to do with the proceeds. In the end, however, D.D. sent L.K. an email in which he declared his intention to have the proceeds released to L.K. At the end of the email, he states: “NO

NEED TO REPLY, I WILL NOT BE RESPONDING TO ANY FURTHER COMMUNICATION." D.D. then had the funds released to L.K. There is no evidence that he asked or implied at that point that L.K. should use the money for other debts.

[102] Overall, D.D.'s evidence is not reliable on this issue. I find that L.K.'s position is amply supported by the documentary evidence. I find that the money L.K.'s father gave to the parties was a loan. I also do not fault L.K. for deciding that she should pay off the loan to her father's estate. I conclude that L.K. did nothing improper in using the proceeds as she did.

Division of the Property

[103] D.D. argues that he should receive a larger share of the equity in the Yellow House than L.K. He concedes that the Yellow House was purchased as part of the joint family venture. He submits, however, that he renovated the house, which increased its value. L.K., he submits, contributed nothing. He argues that L.K. was unjustly enriched by his efforts, and he should receive a remedy in constructive trust.

[104] L.K. submits that the intention of the parties was that they share the house equally. She submits that, as the parties owned the house as joint tenants, the presumption is that it will be divided equally.

[105] D.D. did some of the renovations while the parties were together, and some after. The question then is whether there should be a different analysis for the period before separation, and after.

[106] In my opinion, the core analysis remains the same. The questions to be determined, for property owned when the parties were in a common-law relationship are: whether the parties are in a joint family venture; and whether one of the parties was

unjustly enriched after the dissolution of the relationship. D.D. concedes that there was a joint family venture. For the period the parties were common-law, then, the issue is whether L.K. was unjustly enriched.

[107] Post-separation, the issue is the same. In determining the parties' interest in a property held in joint tenancy, the presumption is that the parties owned the property equally and have equal interest in it. However, a party may rebut the presumption. In this case, D.D. argues that L.K. was unjustly enriched and seeks a remedy in constructive trust. Again, then, the question post-separation is whether L.K. was unjustly enriched.

[108] In both instances, D.D. must prove:

- that L.K. was enriched;
- that D.D. was correspondingly deprived; and
- the absence of a juristic reason for the enrichment.

D.D. has the onus of proof.

[109] There may be some differences in the application of the test for unjust enrichment, pre- and post-separation. For instance, the evidence used to establish unjust enrichment may be different. The remedies may also be different. In this case, however, it is possible to perform one analysis, while taking into account different evidence during the different periods.

[110] It is uncontested that D.D. did renovations and worked on the Yellow House. The difficulty is determining the value of that work.

[111] In one affidavit D.D. does attach a table which lists the cost of materials and his labour. However, he does not fully explain how he arrived at these figures, nor has he provided any receipts. He puts a dollar figure to his labour but does not explain how he

arrived at that number. I also do not know whether D.D. used money from family accounts to pay for some or all of the renovations. At the hearing, D.D. offered to collect receipts to prove his expenses if I needed them. Fairness dictates that the parties file all their evidence in advance of a summary trial, not after it.

[112] While the parties were common-law, as well, there was a mutual conferral of benefits. D.D. did work on the Yellow House. However, L.K. also worked by tending to the family home and children. This gave D.D. the time to make the changes he did to the Yellow House. Domestic services are valuable and form part of the contributions assessed when determining if there has been unjust enrichment (*Kerr* at para. 42). Thus, D.D. contributed through his work on the Yellow House, while L.K. contributed by providing domestic work.

[113] D.D. therefore has not been able to show that the work he performed benefited L.K., or that he was correspondingly deprived. For the work done while the parties were in a common-law relationship, there was also a mutual conferral of benefits.

[114] I therefore conclude that each party was entitled to half the proceeds of the Yellow House. L.K. does not owe any money to D.D. from the proceeds.

J. How should the V.R. Property be divided?

[115] The parties bought the V.R. Property in 2019 and obtained possession of it on July 1, 2019. The purchase price was about $450,000. L.K. contributed $126,975, from a combination of a dividend payout from the parties' corporation and money she could pull together on her own. D.D. contributed the rest of the money. Sometime in 2019 D.D. moved onto the property. He attests that he has put considerable work into the property, including renovating the buildings and removing refuse from the property. An

appraisal provided in June 2020, valued the property at $960,000. A real estate agent provided a further valuation on April 5, 2023, valuing the house's market value at between $800,000-$819,000.

[116] D.D. submits that L.K. should receive the money she put into the property, plus interest. L.K. submits that she should receive half the value of the property. The two issues to be resolved, therefore, are whether the property should be divided equally or unequally, and the valuation date of the property.

Division of Property

[117] As the parties had separated when they bought the property, the principles from *Kerr* do not apply. The parties hold the property in joint tenancy. Again, then, the presumption is that they have an equal interest in the property. D.D. submits that he cleaned up and renovated the property. His contributions have unjustly enriched L.K. He should, therefore, receive more than half the value of the property. I find that, unfortunately, as with the Yellow House, D.D. has not provided adequate proof to support his claim.

[118] D.D. has provided a chart outlining the cost of his labour and materials for the renovations to the V.R. Property. If anything, it is less detailed than the information provided for the Yellow House. He gives figures for the purchase of "materials", "ground work", and "equipment", for instance, without more information. As with the Yellow House, he provides no explanation about how he arrived at the figures, nor any receipts. He also provides a dollar figure for his labour, without explaining how he arrived at that amount.

[119] Additionally, there is independent evidence that seems inconsistent with D.D.'s evidence. D.D. attests that it took four years to remove all the refuse that had been dumped on the property. Thus, in accordance with his evidence, there would have been refuse on the property from the time the parties obtained possession, on July 1, 2019, until sometime in 2023.

[120] However, an appraisal report of the property suggests something different. In 2020, D.D. obtained an appraisal of the property. The appraiser conducted a site visit on March 24, 2020. The report is detailed and provides a great deal of information about the site. It does not, however, mention any refuse left on the site. The report, furthermore, includes pictures, but none show the disarray described by D.D. in his affidavit.

[121] There may be an explanation for this omission from the report. In combination with the weakness of the other evidence, however, I cannot determine what renovations D.D. undertook, nor their impact on the value of the property.

[122] The parties' intentions are not a factor in determining whether there was a constructive trust, but, as the parties discussed their intentions, I will briefly address the issue. D.D. attests that he wanted to live on the property. He also submits that he did the honourable thing by making L.K. a joint tenant. L.K. submits that the parties discussed the purchase as an investment opportunity for both, and that D.D. did not say he wanted to live on the property. Rather, he was opposed to the idea.

[123] D.D. does not explain why he agreed to hold the property as joint tenants if his intention was to own it himself. He does not explain why, legally, he would be required to own the property in joint tenancy with L.K. Practically, he could have proceeded

without L.K.'s assistance. He could have asked for a loan from her. They could have owned the property as tenants-in-common. I find that D.D.'s agreement to own the property in joint tenancy reflects his stated intention to L.K. that they would be equal owners of the property. The V.R. Property will, therefore, be divided equally.

Value

[124] L.K. seeks to use the valuation of June 24, 2020. D.D. seeks to use the valuation from April 5, 2023.

[125] L.K. opposes using the valuation from April 5, 2023, because, she submits, it was disclosed very late. D.D. filed and delivered the affidavit containing the valuation from April 5, 2023, also on April 5, 2023. That day was the Wednesday before the Easter long weekend. The summary trial was heard on the Tuesday following the Easter long weekend. L.K. therefore had one day to review and respond to the new evidence. L.K. essentially submits that relying on the April 5 valuation would be prejudicial to her.

[126] D.D. submits that he provided his valuation as a response to L.K.'s own updated valuation of the Red House. Fairness requires that valuations from the same timeframe be used.

[127] I am not convinced by D.D.'s submissions. L.K.'s valuation was in response to his concerns about a previous valuation the parties had received for the Red House, and his own valuation of the Red House. She also was not taking any issue with the valuation of the V.R. Property. D.D.'s evidence was not a response to her evidence.

[128] Moreover, L.K. filed her affidavit on March 13, 2023. While that did not leave D.D. with a long time to respond, providing the additional evidence two business days before the hearing was prejudicial to L.K. The V.R. Property valuation date will, therefore, be

June 24, 2020. On that date, the property was valued at $960,000. D.D. is entitled to half the value, and so is L.K. D.D. shall retain the V.R. Property.

K. Are the assets from the Czech Republic a family asset?

[129] L.K. is the registered owner of an apartment and has two bank accounts in her name in the Czech Republic. D.D. submits that these assets are family assets and are divisible between them. L.K. submits that they are not family assets.

[130] D.D. attests that when the family visited the Czech Republic, they would stay in L.K.'s apartment, and used the funds from her Czech accounts to pay for items during their stay there. He argues that the assets should therefore be divided between the parties.

[131] L.K. attests that the family did not stay in the apartment registered in her name, as her father lived there. Instead, the family stayed with her mother. She also attests that the family did not often access her Czech bank accounts when they visited the Czech Republic. She would use it sometimes, but mainly for herself.

[132] As I understand him, D.D. is not arguing that his contributions enriched L.K.'s Czech assets. Rather, he seems to be arguing that he is entitled to a portion of her Czech assets because the family used them. This is not a basis upon which a right to an asset can be established. I therefore reject D.D.'s submission that he should receive a portion of L.K.'s Czech assets.

L. How should the business be divided?

[133] The parties are both shareholders of a company, through which D.D. conducts his tile setting business. L.K. received income from the company, as I understand it, as

a part of income splitting for tax purposes. L.K. has not been involved in the business since 2020.

[134] Initially, L.K. sought an appraisal of the company. She now seeks to be removed as shareholder, and to not be responsible for the company's debts, including the $60,000 owed to Canada Revenue Agency. She also seeks disclosure about the expenses being run through the company and assets purchased by the company.

[135] D.D. seeks that the company be divided equally, including the liabilities. He submits that L.K. changed her position after the hearing and he would be prejudiced if she were allowed to present a new position.

[136] The principal difficulty is that there is no information about the value of the company, the assets, and the liabilities, including why the liabilities were incurred. While L.K. is a shareholder and entitled to the same information as D.D., D.D. is the operating mind of the company. He would therefore be in the best position to provide financial information about the company. He has provided his own figures about what the company is worth, and its liabilities. However, that is simply insufficient evidence. In the end, I do not have evidence upon which I can assess the value of the company or its liabilities. Finality is an important goal in this instance, and it cannot be achieved if there are continuing issues to be dealt with related to the company. I therefore order that L.K. be removed as shareholder from the business. She will not receive any of the value of the company, nor be liable for its expenses.

[137] I am not clear about why L.K. seeks additional disclosure about the company. I will not order further disclosure about the business, except in relation to child support, if required.

M. How should the remaining assets be divided?

[138] The parties are in substantial agreement about many of the other assets and liabilities. The main issue the parties disagree on is the valuation of some of the assets and liabilities. For the purposes of clarity, I obtained L.K.'s values of the assets from her Affidavit #2 and D.D.'s assessment of the values of the assets from Exhibit B of his Affidavit #6. I will address each asset and liability in turn.

Toyota Rav 4

[139] L.K. retained the Toyota Rav 4. The parties agree that the current value is $25,000. L.K. will, therefore, retain the Toyota Rav 4 upon providing D.D. with $12,500.

Toyota Tacoma

[140] D.D. retained the Toyota Tacoma. Both parties value it at $15,000. D.D. will retain the Toyota Tacoma upon providing L.K. with $7,500.

Truck and Camper

[141] The parties have been jointly using their truck and camper. Both parties value the two assets jointly at $45,000. Based on my understanding from counsel's submissions, L.K. does not want the truck and camper. D.D. may retain the truck and camper and pay L.K. $22,500 or, alternatively, the parties may sell the assets and divide the proceeds equally.

Boat

[142] D.D. has retained the boat. L.K. values the boat at $60,000. She bases this valuation on D.D.'s own assessment of the value of the boat, as he states in one text that it is worth $60,000 and, in another, that she can get $50-55,000 if she wanted to sell it quickly. D.D. values the boat at $25,000. D.D. explains how he came to his

valuation but does not explain why it is so different from his text and email to L.K. The email in which D.D. stated that L.K. could sell the boat for about $55,000 was sent in 2020. Including depreciation since then, a valuation of $40,000 seems appropriate.

[143] D.D. is at liberty to retain the boat and will pay L.K. for half its value.

2015 Ram Pro-Master

[144] L.K. attests that D.D. retained the Ram Pro-Master after the parties separated, but that she believes he sold it. D.D. does not provide any evidence about this vehicle. As it was an asset the parties owned at the date of separation, it is included in the divisible assets. I value the asset at $22,000. D.D. will pay L.K. $11,000 for her share of it.

L.K.'s RRSP

[145] L.K. attests that her RRSP had a value of $18,575.68 at the date of separation. Her financial statement, filed February 17, 2023, values the RRSP at $20,713.77. D.D. seeks that the value be set at its current date. I will set the valuation date at the date of separation. Rounding up to the nearest dollar, L.K. therefore owes D.D. $9,288.00.

Investment Accounts

[146] L.K. has filed a bank statement from D.D.'s accounts from September 2020, which includes three "Investorline" accounts. At that point, they had a total value of $151,063. D.D. has also filed one page from a bank document, called "Portfolio Summary", dated February 15, which presumably is February 15, 2023. It appears that the bank statement and the Portfolio Summary refer to the same accounts: D.D.'s RRSP (account 221-xxxxx), a TFSA (account 229-xxxxx), and an "individual" account (account 230-xxxxx).

[147] L.K. values D.D.'s RRSP at $158,676 at the date of separation, and at $148,030 on March 23, 2021. The statement from September 2020 states that there is $128,262.68 in D.D.'s RRSP. She submits that she did not receive adequate disclosure from D.D., and notes that his income tax returns indicate he has withdrawn money from his RRSP.

[148] D.D. states that he has provided sufficient information. Records indicate that the current value of his RRSP is $64,427.22 and acknowledges that he withdrew $10,000 from it. He does not address L.K.'s concerns that he withdrew more money from it.

[149] I find that D.D. has not provided sufficient information. The Portfolio Summary provides the barest of details: he should have provided evidence about the value of the RRSP at the date of separation; and he should have explained why the RRSP, which is a family asset, is so depleted. There is no reason to set the valuation date as of the date of trial, especially given that D.D. has been withdrawing money from his RRSP since separation for his own use. I can use the figures provided by L.K., as D.D. has not contested them. However, I would prefer to divide the asset based on its actual value. D.D. will, therefore, have 30 days from the filing of these reasons to provide L.K.'s counsel with a bank statement from October 2018, that states the value of the RRSP. To be clear, the "Portfolio Summary" provided in his evidence would be insufficient to prove the value of the RRSP. If he does not do so, D.D.'s RRSP will be valued at $158,676. L.K. is entitled to half the value of the RRSP.

[150] L.K. attests that D.D. has $4,965.80 in his TFSA. This figure is again drawn from the information D.D. gave her in an email, written on March 23, 2021. The bank statement L.K. filed states that, in September 2020, there was $3,160.06 in the TFSA.

D.D.'s Portfolio Summary states that he has $2,680.68 in his TFSA. As it appears that the TFSA has never been worth much, and the amount in it has not changed greatly, I will simply fix the amount for the TFSA at $3,160, being the date closest to the date of separation. L.K. is entitled to half.

[151] The "individual" account had $20,340 in it in September 2020. It now has $6,014. D.D. provides no other evidence about the account. Again, I would prefer to make an order based on the actual value of the assets at the date of separation. D.D. therefore has 30 days from the date of the filing of the order to provide a bank statement to L.K.'s counsel with the value of the individual account in October 2018. If he does not do so, the value of the accounts will be assessed at $20,340. L.K. is entitled to half the value of the account.

[152] L.K. also attests that on September 8, 2020, the parties had an investment account with $10,000 in it. The money, however, had been placed there to pay for taxes. I will make no order about that investment account.

Bank Accounts

[153] D.D. attests that he has not received information about L.K.'s CIBC bank account, however, L.K. attests that she closed it in 2011. She has also filed a bank statement showing her current accounts with CIBC, which are a credit card and a line of credit. She has also filed a bank statement with her accounts from another bank. She accounts for those amounts in her affidavit. I have no reason to disbelieve her evidence.

[154] The parties also have a chequing account, which, as of September 8, 2020, had $490.80. I have no information about the amount of money in the account at the date of

separation or currently. I will order the current amount in the account be divided between the parties.

Gold and Silver

[155] L.K. seeks to divide the gold and silver D.D. has retained. D.D. attests that he bought the silver and gold for his children. I accept D.D.'s evidence and find that the gold and silver should not be divided.

Personal Line of Credit

[156] D.D. has a personal line of credit ("PLOC") which, he attests, was used for the family. He has filed account statements, and, as of December 2018, the amount outstanding was $69,951.13. Accepting that the PLOC was likely used for the family for some time after the parties separated, I use December 2018, as the valuation date. Rounding down, I find that each party is responsible for $34,975.50. L.K. therefore owes D.D. that amount.

Family Master Card

[157] The parties agree that L.K. used a Master Card that was in D.D.'s name. L.K. no longer had access to the credit card after March 2020. She has provided evidence that it had a balance of $9,213.10 as of September 2020. D.D. has provided no evidence about any amounts owing on the card. I therefore find that the debt owing is $9,213.10. Rounding down to the nearest dollar, L.K. owes D.D. $4,606.

Business Master Card

[158] L.K. attests that D.D. has a business Master Card, which had a balance of $6,515.16 on it. D.D. provides no evidence about this credit card. I therefore conclude that it was not used for the family and is not divisible.

CONCLUSION

[159] Custody: I conclude that L.K. should have custody of the children, but that she will consult with D.D. before making any major decisions about the children. Each party will make day-to-day decisions for the children when they are in his or her care. Incidental orders are as stated in the reasons.

[160] Assets:

- Red House: the value of the house is fixed at $760,000, and the debt at $276,508. The equity in the Red House shall be divided equally, but D.D. will re-pay $20,854 withdrawn from the HLOC. L.K. shall retain the Red House;
- Yellow House: I find that L.K. did nothing improper in using the proceeds of the Yellow House to pay the debt owed to her father's estate. I find that the parties were each entitled to half the proceeds from the Yellow House. There shall be no payments related to the Yellow House;
- V.R. Property: the value of the V.R. Property is fixed at $960,000 and shall be divided equally, and D.D. shall retain the property;
- Czech Assets: I find they are not family assets and not divisible;
- Business: L.K. shall be removed as shareholder of the company. She is not entitled to any of the value of the company, nor is she responsible for the liabilities; and
- Other assets and liabilities are to be divided equally, unless otherwise specified in the reasons.

[161] L.K.’s counsel should draft the order and provide it to D.D. for review. As it is detailed, he will have one week from the date the order is delivered to him to review it. If, at the end of the week, if he does not reply, or if there is disagreement about the order, L.K.’s counsel will be at liberty to file the order for my review.

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WENCKEBACH J.