

SUPREME COURT OF YUKON

Citation: *V.L.W. v. C.A.W.*, 2014 YKSC 63

Date: 20141120
S.C. No. 13-D4600
Registry: Whitehorse

Between:

V.L.W.

Plaintiff

And

C.A.W.

Defendant

Before: Mr. Justice R.S. Veale

Appearances:

V.L.W.

Appearing on her own behalf

C.A.W.

Appearing on her own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] This trial took place on November 10 and 12, 2014. V. and C. are self-represented.

[2] When V. filed the Statement of Claim, both V. and C. were represented by counsel up until the order of this Court dated May 27, 2014, which ordered, among other things, that:

1. C. shall have interim custody and primary residence of her child, C.M.S., born July 21, 2004 (the "Child");
2. V. shall pay interim interim child support to C. for the Child in the amount of \$532 per month commencing May 27, 2014, based on an interim

interim determination of V.'s income in the amount of \$60,000 plus 80% of special expenses agreed to by the parties;

[3] From May 27, 2014, V. and C. have attempted, without success, to resolve their dispute over the family home, C.'s spousal support claim and C.'s constructive trust claim on V.'s restaurant business.

[4] A great deal of the evidence focussed upon whether there should be a sale or a subdivision and sale of the family home, legally described as Lot 134, Plan 68723, Golden Horn Subdivision, Yukon (the "Family Home"). The Family Home is a 14.78-acre property located just outside the City of Whitehorse boundary near the Carcross Cutoff. It has the potential to be subdivided into a 9.78-acre property, which has the family home and some outbuildings, and a 5-acre parcel, which is bare land. The subdivision proposal is submitted by C. so that the sale of the 5-acre parcel could occur first, giving her some financial support to make a credit application and assume the mortgage on the family home in order to retain it.

[5] According to a real estate agent, the 9.78-acre property would sell for approximately \$275,000 to \$290,000 subject to an outstanding mortgage of approximately \$257,000. The 5-acre parcel is valued at \$140,000 to \$150,000 and requires an easement on the existing access road. It is C.'s position that she receive the 9.78-acre parcel with the family home and that the 5-acre parcel be split equally upon sale.

[6] The difficulty with the subdivision proposal is that it requires C. to assume the Royal Bank of Canada mortgage, which she has been unable to accomplish. It also requires a survey to be completed and paid for before a sale can take place. Hence, V. seeks a sale of the Family Home as a complete 14.78-acre property which has an

approximate value of \$319,000 to \$329,000. V. would also like to have the right to purchase the Family Home.

[7] A representative of the Royal Bank of Canada testified about the prospect of C. being able to assume the mortgage of approximately \$257,000 on the Family Home. He said that C. has not made a formal credit application. However, on the information that she has provided in various meetings and telephone calls, it is unlikely that C. will meet the requirements of the branch, much less the credit adjudication centre in Vancouver, because of the condition of a 40% limit on her total debt service in proportion to her income. He advised that the branch manager did not approve the informal credit application and he saw little likelihood of success after subdivision as it would not change C.'s total debt service requirement.

[8] The parties began living together in V.'s home in Whitehorse in 2006. They married on August 11, 2007. V. had a substantial property settlement from a previous marriage that paid her \$75,000 per year for 10 years. I find that this income supported the marriage to August 2014, when V. stopped paying the mortgage, having first left the Family Home in May 2012 and with the final separation in August 2012. V.'s \$75,000 a year property settlement came to an end in November 2014. Without the \$75,000 annual contribution by V., V. and C. would never have been able to support themselves and their children.

[9] Using her financial settlement, V. was able to sell her Whitehorse property, buy a property in Tagish in her and C.'s names, later sell that property and purchase the Family Home in September 2010, which is also jointly held. During this period, V. has started several businesses. None were successful until her present restaurant business, which she owns in partnership with a third party.

[10] In March 2012, V. and her business partner each paid \$75,000 for the restaurant. It pays V. a steady income of \$60,000 a year, so long as it remains viable. It does well in the summer but is more challenging during the winter. V. took \$10,000 from a joint line of credit to assist in the purchase of the restaurant. It was made abundantly clear to C. that she was not a partner in the restaurant business, particularly as both V. and C. realized the marriage was about to break up. C. was asked to fabricate tables and chairs for the restaurant but was unable to complete the job and was paid for the work she did. As V.'s restaurant business was started at the time when the marriage was breaking up, I find that C. has no claim on it by constructive trust or otherwise. C. was certainly a joint debtor on the line of credit which provided the \$10,000 advance to V. for the restaurant. However, V. has made all the payments on the line of credit and has continued to pay her bank loan and the mortgage while C. lives in the Family Home since the separation in May 2012 without paying occupation rent.

[11] C. is a handy person and she has contributed by doing work on their various houses and property. She and her daughter have a dog team and a significant portion of her work has been for the dog team. C. has also assisted from time to time in the various less successful businesses ventures pursued by V. However, the various business ventures were short term leases and did not result in equity positions for anyone.

[12] I find that V. has brought all the assets into the five-year marriage. V. left the Family Home in May 2012, although there were unsuccessful attempts at reconciliation until the final separation in August 2012.

[13] V. has paid the mortgage on the Family Home in the total amount of \$33,000, while C. contributed \$4,500 to the mortgage and her improvements. V. stopped paying

the mortgage in August 2014. It is now three months in arrears. C. says she earns about \$2,300 net a month as a school bus driver. She is called a "park-out" because she keeps the bus at her residence, one of the reasons she wishes to retain the Family Home. The upshot of this is that C. has not been able to assume or pay the mortgage and the Family Home is now in jeopardy of foreclosure. At the same time, V.'s generosity of sharing her settlement income has ended because the settlement has been paid in full.

[14] I find that an equal division of the Family Home would be inequitable based upon their respective contributions and the relatively short marriage. I order that V. should receive 60% of the equity in the Family Home and C. should receive 40%. V. has undoubtedly made a great financial contribution by willingly sharing the proceeds of her property settlement and granting C. a joint interest in the Family Home.

[15] I see no option but to order the sale of the Family Home without subdivision and the proceeds to be split 60% for V. and 40% for C. after payment of:

1. legal fees and disbursements;
2. the outstanding mortgage balance;
3. a \$27,000 line of credit for which \$17,000 will be paid from the sale proceeds and \$10,000 by V. (which she used to purchase her business);
and
4. a further \$21,000 line of credit that V. had to access to pay her income tax in 2013, while she continued to pay the mortgage.

[16] The Family Home shall not be listed for sale until March 1, 2015, to give C. time to arrange for a move to new premises. Both V. and C. may submit sealed bids for the Family Home accompanied by a pre-approved mortgage or assumption of mortgage

letter from the Royal Bank of Canada or other banking institution. The sealed bids shall be for the market value or greater as established by a qualified appraiser to be retained and paid for by V. with the cost recoverable from the sale proceeds. The sealed bids and mortgage approval shall be filed in this action prior to 4 p.m., Friday, February 27, 2015. The sealed bids shall be opened at 9:30 a.m. on Monday, March 2, 2015, in Court. The highest bid with mortgage approval shall be accepted.

[17] As to spousal support, there is a case for short term support for C. as she becomes financially independent. However, she has already had the benefit of V.'s continued mortgage payment without paying occupation rent for 2 ½ years. I therefore order that V. pay spousal support to C. for a period of 12 months at \$500 per month commencing December 1, 2014, and ending with a payment of \$500 on November 1, 2015. I also order that the child support of \$532 shall continue. Both the spousal support of \$500 and child support payments may be satisfied by paying the \$1,032 against the mortgage on the Family Home each month until such time as the mortgage is paid out on a sale, at which time child support and any remaining spousal support should be paid directly to C.

[18] C. will continue to have custody of her child with reasonable access to V.

[19] I was disturbed to hear that C. has refused to allow access to V. in order that the Child can visit with V.'s children. V. made no specific application for access to the Child at trial.

[20] To summarize, I order the following:

1. Both V. and C. may file sealed bids and pre-approved mortgage or assumption of mortgage approval at the Court Registry before 4:00 p.m., Friday, February 27, 2015;

2. Any bids so filed will be opened in Court on Monday, March 2, 2015, at 9:30 a.m. or so soon thereafter as the Court may order;
3. In the event neither V. nor C. purchases the Family Home, it shall be listed for sale on March 2, 2015, with real estate agent Karla DesRosiers, or if she does not wish to act then real estate agent Marj Eschak. The Family Home shall be listed to June 1, 2015, with a further three-month period, if it has not been sold.
4. The list price shall be established through the appraisal by a certified appraiser to be retained and paid for by V., with the cost recoverable from the sale proceeds.
5. The real estate agent is at liberty to present an offer or offers to the Court for approval.
6. Upon the sale of the Family Home, V. shall receive 60% and the C. 40% of the net proceeds after payment of the following debts:
 - a) Real estate commission;
 - b) Legal fees and disbursements;
 - c) Royal Bank of Canada line of credit in the amount of \$17,000 of the total outstanding balance of approximately \$27,000, with the balance of approximately \$10,000 being repaid by V. from her portion of the sale proceeds;
 - d) The \$21,000 bank loan of V.
7. C. shall have custody and primary residence of the Child,
8. C. shall be permitted to travel with the Child outside of the Yukon and Canada without obtaining the V.'s consent;

9. C. shall be able to apply for a passport for the Child without obtaining the V.'s permission;
10. Based upon the V.'s annual income of \$60,000 per year, V. shall pay child support to C. for the Child commencing May 27, 2014, as follows:
 - a) \$532 per month; and
 - b) 80% of special expenses as agreed by the parties;
11. That V. pay spousal support in the amount of \$500 per month commencing December 1, 2014 and ending with the last payment on November 1, 2015.

[21] Costs may be spoken to, if necessary, and either party may apply for directions to ensure the completion of the sale of the Family Home.

VEALE J.