

SUPREME COURT OF YUKON

Citation: *A.J.F. v. M.L.F.*,
2017 YKSC 21

Date: 20170303
S.C. No.: 13-D4592
Registry: Whitehorse

BETWEEN:

A.J.F.

PLAINTIFF

AND

M.L.F.
LIVINGSTONE PLACERS LTD.
CONSTELLATION MINES INC. and
TROY EQUIPMENT LEASING LLC

DEFENDANTS

Before Mr. Justice L.F. Gower

Appearances:
Amy Steele
M.L.F.

Counsel for the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] GOWER J. (Oral): Mr. F., I am dismissing your application for the recusal of Justice Groves because it is academic, as he is no longer seized of this matter.

[2] I am dismissing your application for an order respecting ongoing child support for R. because Ms. F.'s income is below the threshold limit under the *Child Support Guidelines*.

[3] Further, I am dismissing your application to have this matter set down for trial because doing so is premature, given that we still have a pending application by Ms. F., the one that was filed November 21, 2016, which is set to be argued May 12, 2017,

before myself. That application is for the production of various financial documents relating to the companies that you have been involved with over the years, as well as for advanced legal costs. Until that matter of production is resolved, it is premature to have the issue of the family asset division being set down for trial.

[4] I am, however, prepared to make some further orders on my own motion.

[5] The first is to grant a divorce judgment. I recognize that Ms. F. is not consenting to that, but I am not persuaded that her reasons for doing so are valid. This is without prejudice to Ms. F.'s ability to argue fully the issue of the division of family assets. I am cognizant of s. 15(2) of the *Family Property and Support Act* and direct that a copy of these brief reasons be transcribed and be available for any other judge, if it is another judge who eventually does the trial of the issue of family assets, so that my position is clear and on the record. This divorce judgment is based on the separation of the parties for over one year.

[6] I am further prepared to make an order on my own motion that the money that is presently being held in trust from the sale of the family home, which according to the court record is \$40,693.12, be paid out in part. From that sum, I direct that the amount that Mr. F. presently owes Ms. F. for spousal support arrears, \$17,170.18, be paid to her forthwith through Maintenance Enforcement. The balance of the funds shall remain in court until the parties have had an opportunity to either try or settle their outstanding dispute regarding the division of family assets.

[7] I acknowledge, for the record, as part of these reasons, that Ms. F. has indicated in principle her agreement to pay one half of the upcoming dental bills for their child, R., who is age 17, if provided with receipts in that regard from Mr. F.

[8] I would lastly say to the parties, and particularly to Ms. F., to give serious consideration to the information that has already been provided by Mr. F. in his recent affidavits regarding his financial status and his income at the present time.

[9] As to whether there is eventually a need for a trial on the issue of the division of family assets, I appreciate that Ms. F. may want to obtain her order first, based on her application filed November 21, 2016. However, it appears that there is precious little in terms of family property on either side and that the parties should give serious consideration to the proportionality rule.

[10] I will ask you to draft that order, Ms. Steele, and I will dispense with Mr. F.'s signature.

GOWER J.