IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Hobbis* v. *Hobbis,* 2003 YKSC 2

Date: 20030115
Docket No.: 00-D3290
Registry: Whitehorse

Between:

Russell Dale Hobbis

Petitioner

And:

Valerie Marie Hobbis

Respondent

Appearances:
Mr. Shayne Fairman — Counsel for the Petitioner
Ms. Stacy Hennings — Co-counsel for the Petitioner
Mr. Michael Cozens — Counsel for the Respondent

Before: Mr. Justice R.E. Hudson

REASONS FOR JUDGMENT

[1] This is a hearing of a petition for divorce. The petitioner seeks the following relief: a divorce, custody, child support, costs, a non-removal order from the Yukon Territory with respect to the child, an equal division of family assets, exclusive possession of the family home.

[2] By answer and counter-petition, the respondent agrees to the relief of divorce and equal division of family assets. She specifically contests issues:

a) custody and maintenance or support of the child;

b) non-removal order with respect to the child;

c) order for exclusive possession of the family home;

d) costs under the *Divorce Act*, R.S.C. 1985, c.3, or the *Family and Property Support Act*, R.S.Y. 1986, c.63 of the Yukon.

[3] The respondent also specifically seeks custody of the child, child support, spousal support, financial disclosure, costs, a declaration that half of the petitioner's business is held in trust for the respondent and an order restraining the petitioner from disposing of assets.

[4] There is therefore no issue with respect to divorce or equal division of family assets.

[5] The principal and most time-consuming issue at the hearing was the issue of custody of the child, Chase, born November 14, 1996.

Spousal Support, Division of Family Assets and Debts, Costs:

[6] These parties met in 1985 in Victoria, British Columbia, and shortly after the meeting developed a serious relationship. At that time, the petitioner was 18 years of age and the respondent was 26.

[7] In 1986, the parties moved together to the Yukon Territory and stayed there until 1992. During that period, both parties were employed, with the respondent being more regularly employed than the petitioner. The respondent had a government job which paid her approximately $40,000 per year, while the petitioner held various jobs,

including volunteer work, from 1986-92. Therefore, the parties lived in the Yukon jointly meeting the expenses of day-to-day living, participating in community affairs and generally conducting a relationship as a family of two.

[8] In 1992, for whatever reason, the parties agreed to separate and, according to the evidence, readily came to a fair division of assets on what was apparently an amicable basis.

[9] Upon separation, the petitioner moved to Williams Lake to be work and be near his extended family, and the respondent, apparently for the same several reasons, moved to Victoria.

[10] The evidence discloses that shortly thereafter the petitioner engaged in letter-writing, disclosing an interest to resume co-habitation. He moved to Victoria, and from 1992-96, the parties had an “on again-off again” relationship, which by 1996 was more “on” than “off”. During that period, the respondent visited the petitioner in Williams Lake until he moved to Victoria in 1994.

[11] In 1996, the parties agreed to reunite and proceeded to move back to the Yukon Territory. At about this time, the parties learned that the respondent was pregnant with the petitioner’s child.

[12] The parties were married in Whitehorse on August 31, 1996 and, as previously stated, the child, Chase Jack Hobbis, was born on November 14, 1996.

[13] The petitioner secured part-time employment as a security guard with the Government of Yukon, and the respondent gained employment at Stanley & Associates, a surveying firm, for a few months prior to the birth of the baby.

[14] The petitioner and respondent moved into property at 119 Ponderosa Drive in Whitehorse, in the month of June 1996, entering into a “rent to own” agreement with respect to the property.

[15] In August 1997, the property is placed in the names of the petitioner and respondent as joint tenants, and a formal agreement for sale is entered into.

[16] According to the evidence, shortly after the birth of Chase, difficulties arose in the relationship. In the petitioner’s evidence, he described the assertions by the respondent that he was having an affair with the tenant in the house they occupied, which fact he denied. These allegations were made incessantly, he says, and the petitioner was frequently awakened in the middle of the night by the respondent so that she could direct these accusations at him for lengthy periods of time.

[17] The petitioner also described the assertions by the respondent that he was having an affair with a co-worker at the Whitehorse Correctional Centre, which he also denied, and these assertions were made repeatedly. The petitioner described a circumstance where the respondent controlled his activities and movements, or at least attempted to.

[18] The petitioner’s evidence indicated that:

a) the respondent told him that he should not go to the basement and stoke the fire because the apartment of the woman with whom she was alleging he had had an affair with was there, and he could not go to the basement;

b) she applied Scotch tape to the doorways to trace his movements;

c) she accused him of altering her clothes;

d) she described to him phone calls from some woman asking for her black panties back;

e) she described her suspicions that the petitioner's brother, who had lived with them briefly, was spying on them;

f) she made continuous allegations of physical abuse on the part of the petitioner, which he denied, and she further indicated that she would tell the police or would move to the women's transition home and tell them that physical violence was taking place.

In her testimony, the respondent neither confirmed nor denied these facts, but tended to vacillate in her answers.

[19] During this time, the respondent had apparently started to seek help from medical professionals, but did not wholly involve the petitioner in these consultations. Evidence shows that in the winter of 1996-97, the respondent had seen Dr. Mitchell, a general practitioner, who had referred her to Dr. Jamie Smith, a psychiatrist, in July 1997.

[20] I shall deal with the medical evidence later in these reasons.

[21] According to the petitioner, the respondent's conduct became more unnerving, or upsetting, and her attitude towards him became more frustrating. He described it as being a culmination of being accused of things he hadn't done, with constant anguish being caused by false accusations. He said he simply couldn't deal with it, so he left the home in July 2000. This is discussed in a letter from Dr. Mitchell, which is referred to later in these reasons.

[22] Approaching 2000 and the millennium, the respondent had started to save water and had the petitioner purchase a generator which, in his view, would not be required.

[23] The petitioner provided as evidence copies of notes he found in the home, which are in the handwriting of the respondent and which deal with religious matters and which indicate a predilection to relate to religion to explain her view of the world. He described that she called the water she was storing in four-litre containers — maybe 30 of them — as being "holy water". Some of these notes are Exhibit 1 in these proceedings.

[24] After the petitioner separated, leaving the respondent and Chase in the house, he described on his visits, when he would be having access or would be performing repairs or concluding some renovations, he would find the house in a state of untidiness, which was totally uncharacteristic of the respondent, who was a compulsive cleaner.

[25] With respect to this evidence, the respondent, while not denying that she made the threats and accusations, tended to continue to assert the truth of them and to

explain or justify much of her conduct. I will deal later with her evidence with respect to her medical consultations and her mental health.

[26] From July to October 2000, the petitioner lived outside the home with other members of his family and visited the home frequently to complete renovations and, at the same time, to visit with his son Chase. He described one incident during this period when he was working at the home with some of his crew. The respondent came out of the home and spoke to him, saying that he would never get a divorce, and that her father would come up and assert that the petitioner was a loser and that he wouldn't get custody. All of this was done in the presence of Chase and the crew members.

[27] On another occasion, knowing that the petitioner was buying a snowsuit for the child, the respondent purchased a similar but unneeded garment. On this occasion, the respondent with Chase in her arms, said, "Never mind, Chase, you and I will soon be with God." There was no explanation for this and it concerned the petitioner greatly.

[28] By this time, the petitioner had commenced his own tree service business, which consisted of cutting down dangerous trees or organizing the treatment of landscaping trees. He combined this with snow removal in the winter and other services for financial gain.

[29] In September 2000, the respondent's mother came to Whitehorse and moved in with the respondent and Chase. In early October, the petitioner planned to take Chase camping and had informed the respondent accordingly. She indicated that she would refuse him access, and he took the position that she couldn't refuse him — that he would arrive at the home at 9:30 a.m. to take his son camping. On that day, he received

an urgent call from his neighbour saying that the respondent had come and asked him to look after the house because she was going away for approximately three months. This led to a confrontation with the respondent and her mother at the airport involving the police, who indicated they were powerless to act, and the respondent left with the child for Victoria.

[30] It is the evidence of the respondent's mother that during this confrontation at the airport, she was informed by a police officer that upon arriving in British Columbia, the respondent should go to the courts and seek an order for custody of the child. No police officer was called to testify to confirm this.

[31] In a continuing description of the circumstances as found by the petitioner, he described the new habit of the respondent to dress in all black and to use very heavy make-up in the short period prior to her leaving.

[32] Upon the respondent leaving with the child, the petitioner moved back into the family home, which he found in total disarray, with moldy food in the refrigerator, dirty bathrooms and the notes in Ms. Hobbis' handwriting previously referred to. All of this is in comparison to her earlier compulsive cleaning of the house, where the petitioner described that the respondent would sometimes clean the house twice a day. He described discovering the storage of water in huge amounts. He estimated there were approximately 30 four-litre bottles.

[33] With respect to the notes found, they deal mostly with religious subjects, although there are references to legal advice relating to divorce and custody. A typical one reads:

> God removed you from the house so Chase and I can have Jesus here and for all eternity.

[34] Therefore, the child having been removed from the territory without the consent of the father, the father brought these proceedings and made application for an order for the return of the child to the Yukon. This order was made and was never the subject of an application to be overturned.

[35] The child was returned forthwith and from that point, early October 2000, to the present time, the petitioner lived with his son Chase in the family home, and until August 2002, the respondent resided in Victoria with her parents and later on in premises arranged by her parents.

[36] It is central to this matter to examine the evidence relating to the mental health of the respondent. No expert medical witnesses were called to testify, but letters and reports from doctors were filed in evidence by consent and present a picture.

[37] The evidence indicates that the respondent suffers from a mental disorder, which requires treatment. The letter from Dr. Mitchell of July 15, 1997 described his attendances upon her. In part, he says:

> In the last trimester of her pregnancy, due to financial reasons, they were forced to take in a border [*sic*] who was a young woman and Valerie [the petitioner] has convinced herself that her husband had an affair with this woman during that time. She has put together a whole series of incidents which convince her this affair occurred in spite of the fact that her husband maintains that there was no relationship between he and this other woman and he is seeing himself gradually being driven nuts by her paranoia. He states this is a problem since he got into the relationship and in fact Valerie sees this as a problem for her as well. Valerie states that her grandmother's family was totally ruined by grandfather's infidelity although further questions reveal there was alcohol and other problems involved. She has catastrophized what happened to her grandmother's

> children, namely her mother, aunts and uncles. Ruined lives — to include that of her own and her child should this infidelity be occurring. In spite of her husband's exhaustive statements that nothing happened with this other woman, she continues to be very suspicious and ruminates excessively such that she has essentially withdrawn all sexual intercourse unless there is protection involved as she is sure she is going to get an STD of some sort, and I think she recognizes that if she continues in this tack, that the relationship will break down permanently.
>
> She also placed her husband in the untenable situation whereby if he was to in fact admit that a relationship occurred, from her point of view their marriage and hence any discussion was obviously an impossibility. In spite of this, he continues to maintain his innocence and she continues to live in a climate of excessive rumination. I tried her on Haldol after a discussion with Paula Pasquali [a psychologist]. Paula had been seeing her and felt that Valerie had a personality disorder which puts her into the schizo effective category. Certainly Valerie has trouble organizing and controlling her thoughts, she has intrusive concerns.

[38] In concluding this letter to refer the matter to Dr. Smith, he says:

> Your help would be appreciated RE: the diagnosis and medication management. Certainly if she continues on her current tack, she will be a single mother as she will drive her husband away.

[39] A week later, Dr. Smith wrote a report letter dated July 23, 1997. Under the heading of "differential diagnosis" he states:

> First on my list would be what she is being treated for, namely OBSESSIVE COMPULSIVE DISORDER, but the pressured speech raises the issue of an incipient episode of mood elevation in an individual with a BIPOLAR AFFECTIVE DISORDER. The inability to finish tasks she starts is more suggestive of an ATTENTION DEFICIT DISORDER. It should be noted that none of these are mutually exclusive and moreover she could well have a PERSONALITY DISORDER as a characterological substrate.

[40] On January 20, 1998, Dr. Smith writes:

> The picture today is suggestive of hypomania, with rapid and pressured speech, flight of ideas, and labile affect. The mood elevation is not

accompanied by decreased need for sleep which makes it somewhat atypical in presentation.

She has stopped the fluvoxamine which was given for her obsessional thoughts of husband's infidelity. I have started her on risperidone 1 mgm bid for two days then 2 mgms bid for another four days, and will see her again in six days. At that time I may add on valproate as a mood stabilizing agent, but the first task must be to help her control her mood elevation.

[41] And on January 26, 1998:

This patient was seen again today. She remains hypomanic, and says that she has had severe headache since starting the risperidone six days ago, so I told her to stop it and have given her chlorpromazine 50 mgms bid + 100 mgms @ hs for the next week.

She certainly presents with a plethora of psychopathology, though the obsessive and hypomanic features are the most prominent at this time. The diagnosis is unclear and I am trying to treat her symptomatically at best, so far with not very much result.

[42] On February 2, 1998, he states:

She remains somewhat hypomanic in presentation, though not *floridly* manic as seen in acute bipolar disease.

And further:

In any event I agree that a mood stabilizer should now be instituted and I started her on lithium carbonate 300 mgms tid and ordered a blood level for February 9th.

[43] On October 9, 1998, this is recorded:

This lady was last seen in early August, and at that time appeared stable and said she was compliant with medication for Bipolar Disorder, lithium carbonate 300 mgms qid. Her last lithium level was in April this year, and was 1.1 mmol/L which was therapeutic. I asked her to get a repeat level done in September, but she told me she hadn't got around to doing this.

[44] On January 24, 2000, Dr. Smith writes:

> This lady with Bipolar Affective Disorder and obsessive personality traits was seen this morning at my office.
>
> . . .
>
> She is being maintained on lithium carbonate 1200 mgms daily, her blood level was documented in the mid therapeutic range at 1.0 mmol/L on October 20, 1999, and I renewed the agent today for another sixty days.
>
> . . .
>
> Her speech is rapid but with no flight of ideas and insight is present. She does exhibit some unusual ideas such as not being able to drink water, and says her fluid intake is low.

[45] There are further medical reports from Dr. Lydon, wherein he says:

> 1. I question the diagnosis of a bipolar disorder but would agree with the diagnosis of obsessional disorder with marked anxiety features.
>
> 2. It is difficult to question a diagnosis from a presentation that was made over two years ago but I doubt if her condition requires long-term use of a substance …

[46] Custody and access reports have been prepared by Mr. Geoffrey Powter. His opinion evidence was accepted without objection from the respondent. Mr. Powter is a consulting clinical psychologist, practicing out of Alberta and working throughout western Canada. His curriculum vitae is filed as Exhibit 55. He has prepared 61 custody and access reports pursuant to orders of the Supreme Court of Yukon, and this is his second time testifying in this court. He prepared two reports and visited Ms. Hobbis twice — once in her apartment in Victoria and once in Whitehorse. Chase was present on both occasions.

[47] He spent some time dealing with the mental health of the respondent and, in conclusion, opined that it is mandatory to the best interests of the child, Chase, that the respondent seek further and continued treatment and that she comply with the directions of the medical people treating her, in terms of medication and other therapeutic regimes.

[48] It is Mr. Powter's view expressed in evidence before me that custody of the child, Chase, should be with the petitioner and that the respondent — because contact with her is in the best interest of Chase — be granted access on a continuing and increasing basis. His evidence with respect to whether or not supervised access is called for was, in my view, indefinite.

Post-Separation Evidence:

[49] In July 2000, the petitioner, because of the emotional strain and stress he felt arising from the behaviour of the respondent, left the home and went to live with his parents in Whitehorse. At the time, the petitioner, in addition to working part-time as a corrections officer, was conducting his tree service business under the name of Bilsten Creek Tree Service, which apparently encompassed a general handyman service, as well as specialization in tree planting and care.

[50] As such, having been in the process, he would visit the home from time to time to complete renovations that were underway. He describes the conduct of the respondent as continuing to be bizarre, as previously described.

[51] In late September 2000, the petitioner indicated to the respondent a desire to take the child, Chase, on a camping trip and received uncertain or negative responses. At this time, the respondent took the child to the airport, as previously indicated.

[52] Following the return of the child to Whitehorse, the petitioner moved into the family home with the child, and within two months had set up a home with a new partner, with whom he has had a child born one month before the trial. The petitioner and respondent were divorced on August 17, 2001, and the petitioner married Jennifer Wondga on October 2, 2001.

[53] The respondent resided in Victoria, as indicated, and enjoyed sporadic access with the son, Chase, as follows. In Victoria:

- December 9, 2000 to January 1, 2001
- May 17-26, 2001
- July 9, 2001 to August 4, 2001

These visits were all unsupervised and, with one exception, were at the expense of the respondent or her family.

- In Whitehorse, from December 9-22, 2001
- January 14-24, 2002

Further, in Victoria:

- March 16-27, 2002

- June 21, 2002 to July 12, 2002

[54] The respondent came to Whitehorse on August 20, 2002 and stayed there until the trial, receiving the following access:

- Tuesday, August 27, 2002, from 4:00-7:00 p.m.
- Thursday, August 29, 2002, from 4:00-7:00 p.m.
- Tuesday, September 3, 2002, from 4:00-7:00 p.m.
- Tuesday, September 10, 2002, from 4:00-7:00 p.m.
- Saturday, September 14, 2002, from 12:00 p.m. to Sunday, September 15, 2002 at 9:30 a.m.
- Sunday, September 15, 2002, from 11:00 a.m. to 5:00 p.m.
- Tuesday, September 17, 2002, from 4:00-7:00 p.m.
- Tuesday, September 24, 2002, from 4:00-7:00 p.m.
- Saturday, September 28, 2002, from 1:30 p.m. to Sunday, September 29, 2002 at 6:45 a.m.
- Sunday, September 29, 2002, from 8:00 a.m. to 5:00 p.m.

[55] During October and November 2002, the respondent had access to the child on Friday evenings until Sunday evenings on alternate weekends and every Wednesday,

with the exception of Wednesday, November 27, 2002 and the weekend commencing Friday, November 29, 2002.

[56] Notwithstanding the matter of parent cooperation in the matter of access, the evidence is that relations between the petitioner and the respondent have not improved and a substantial degree of animosity remains.

[57] It was the respondent's evidence based on conversations with Chase during visits that he was being psychologically abused, if not physically abused, while residing in the home of the petitioner and his new spouse. By her evidence, she describes his experience as "horror" and "terror".

[58] The respondent alleged that the continued residence of Chase at the home of the petitioner and his new wife, Jennifer, was damaging, and additionally, he was now being second-rated to the interests of the child born to the petitioner and Jennifer in November 2002.

[59] The petitioner denies all of these allegations, and although Jennifer was not called as a witness, the evidence of Mr. Powter indicates that he saw no support for the allegations made by the respondent in this regard. It is, however, apparent from the evidence that the respondent feels at liberty to discuss with Chase the difficulties in the relationship between the petitioner and respondent and the ongoing litigation proceedings, even to the extent of telling him on his visits to Victoria where he will be living in Victoria when these proceedings are concluded.

[60] The evidence of Mr. Powter, teachers and others is to the effect that Chase is essentially unaffected by the negativity between his parents.

[61] The witness, Susan Park, was called. She was an educational assistant and was very familiar with the child, Chase. She described him as six years old, going on seven, and a bright, healthy young boy. He was one of the youngest in the class, but you would never know it; that you never see him sad, withdrawn or unhappy. He is a very good student, very popular and well-liked, with no apparent problems. If someone is rough with him, he smooths it over. She went on to testify that Mr. Hobbis, the petitioner, is very involved in Chase's school activities and that his stepmother, Jennifer, appears to be suitably involved.

[62] Progress reports from the school have been entered, indicating that the child, Chase, enjoyed a high degree of respect from his teachers. These reports deal with kindergarten and grade 1. Some of the comments were "He gets along well with his peers, and follows instructions without difficulty."

[63] The balance of the reports is shown as follows:

> "He tends to forget about classroom rules when he is caught up in an activity. Chase continues to work at making better choices when it comes to following the rules."
>
> "Chase is actively involved in all of our group discussions. Although he enjoys books and stories, Chase continues to work at listening well and at remaining focused during story time and other group work."
>
> "Chase is a very curious student and asks many wonderful questions."

[64] In grade 1, the following comments are made:

> "Chase has adjusted to the routines of grade 1."
>
> "Chase has improved in his ability to stay on task and to make decisions for himself."

His report indicates no inability to meet expectations.

[65] Chase is also involved in sports, particularly hockey, camping and fishing, all of which are supported by his father, the petitioner and, where possible, are also supported by the respondent. What the court finds from this evidence is that there is no objective evidence in the performance of Chase to support the assertions that he is in any way suffering at the hands of the petitioner and his wife in their home on Ponderosa Drive.

[66] At the time of separation, the parties owned the family home, valued at $176,000, and a mortgage against the value of $142,800; four vehicles of varying values; china, crystal and other contents of the home; the value of the Bilsten Creek business; $1,300 in a savings account and $5,000 in the respondent's personal account. Debts involved Visa and Mastercard, in the total amount of $14,000.

[67] Generally speaking, the extra financial support for the petitioner would come from his new wife, with some uncertain support of that nature from his extended family.

[68] With respect to the respondent, until she is back on her feet, it would clearly come from her extended family in Victoria, Vancouver and Calgary.

[69] However, with respect to their immediate financial situations, there is very little financial resource attaching to either party.

[70] I now propose to review the issues with my conclusions.

Custody:

[71] The reports of Mr. Powter and the medical evidence, which I accept as being determinative, lead only to the conclusion that, in the best interests of Chase, the father should have an order for permanent custody. The present reports on the welfare of Chase indicates he is being well-served at the home of Russell and Jennifer Hobbis and that he is bonding with his new half-brother.

[72] On the other hand, the best interests of Chase are shown not to be served by granting custody to the respondent because of the said health concerns at this time. Mr. Powter, in his latest report (November 2002), states:

> I am concerned that Ms. Hobbis is adjusting less well. It is my opinion that her mental state has deteriorated since the last time I saw her, particularly when under the pressure of having to present herself individually to me. While she continues to be very obviously affectively connected to her son (and Chase clearly appears to love her very much and profit from contact with her), I continue to worry about her ability to offer him structure and guidance in any consistent and long-term way. Although she interacts with him well in a supportive play situation, I have to question whether she would function so well facing the demands of more permanent parenting. At the most basic level, providing instrumentally for the child, she seems to have very few plans in place, and questionable ability to actualize any plans. Indeed, she spent much of her time with me describing quite ungrounded, if not fanciful, plans for their possible future together. I cannot in good conscience recommend that the custody situation change at this point in time.
>
> I continue to feel, however, that Chase does receive a great deal of nurturance and support from Ms. Hobbis, and I would strongly endorse any efforts to ensure that visitation and access between the two be facilitated.

[73] The question of joint custody is not supported by any of the evidence but, in particular, is substantially negated by the lack of cooperative communication between the two parents.

[74] There are two other concerns arising out of a consideration of mental health which impact on overnight visits and the risk of flight.

[75] First, it appears that the respondent seriously believes that Chase is in danger at 119 Ponderosa. If this is so, she might readily abscond with Chase in the belief that it is the only way to save him.

[76] Second, since November 2000, the respondent might very well have been accommodating the wishes of the petitioner regarding the return of Chase after an access visit, having the absolute opinion that at trial she would be given custody. If that is not the result and she is not granted custody, her attitude and conduct may change, and flight might appear to her to be a satisfactory option.

[77] Having considered all of the provisions of the *Children's Act*, R.S.Y. 1986, c.22, and the authorities provided regarding custody of children, and upon reviewing the evidence, I am fully satisfied that the best interests of the child are served by granting custody of the child Chase to the petitioner.

Access:

[78] Most of the evidence was dedicated to this issue.

[79] The issue of access is also one to be decided on the basis of the best interests of the child. The fact that the respondent's mental health may militate against lengthy periods of access should not prevent the best interests of the child from being viewed as primary. No element of fault is considered in this decision.

[80] The case of *Miller* v. *Miller*, [1998] A.J. No. 1191 (Alta Q.B.)(Q.L.) contains remarkably similar fact circumstances and provides some guidance in this consideration, but being a trial court, is not binding upon this court.

[81] It is my understanding from the evidence that if the respondent is not granted custody of Chase that she will remain in the Yukon and exercise a right to access as may be granted by the court. For this reason, I do not address the possibility that access be exercised in Victoria, British Columbia. Such a question will have to be addressed when any intention on the part of the respondent to reside in Victoria, British Columbia becomes clear. I am persuaded that to make orders regarding access in Victoria at this time would be entirely speculative.

[82] I am also of the view that it is in Chase's best interests, both in the short- and long-terms, that his mother undergo evaluation for her mental and emotional conditions and secure confirmation that whatever treatment the evaluation indicates is underway. When written proof of such can be provided to the court, then a broader order with respect to access can be ordered. If it is in the best interests of Chase, it will be considered to be a material change of circumstance, changing from the uncertainty which now addresses this aspect of the matter.

[83] It is clear, both from the written testimony, the report of Mr. Powter, and the oral testimony by the petitioner and respondent, that the respondent is not addressing these difficulties at this time, and the suggestion of bipolar disorder, or the diagnosis thereof, needs to be addressed forthwith.

[84] Until such time, the court is of the view that discontinuance of unsupervised overnight access is necessary because it is entirely possible that the successful overnight access in the past has been in order to present the best face on the matter for the upcoming trial. There is a concern that the refusal of an order of custody to the respondent could trigger an inappropriate reaction involving flight.

[85] Taking into consideration all of the evidence and authorities, it is the court's decision that access will be as follows:

a) Telephone Access – Every second day, when another form of access is not being enjoyed, by a call from the respondent to the child's home to last no more than 15 minutes. Such call is to be unmonitored by the petitioner and to be between the hours of 7:00-8:00 p.m., unless otherwise agreed upon to suit Chase's schedule of activities.

b) Other Access – Every Wednesday or Thursday, at the choice of Chase, to be visited between the hours of 3:30-8:00 p.m., unsupervised, which access, if it coincides with a sporting activity, will be exercised during such activity.

c) Weekend Access – Every second weekend, from Saturday at 1:00 p.m. to Sunday at 3:00 p.m., to be supervised by a person approved by the petitioner.

Access, of course, may be agreed to by the parties at any additional times. The respondent is to have the right to have access reviewed every third month.

[86] The child is not to be removed from the Yukon Territory by the respondent without the approval, in writing, of the petitioner and is to be for the day only and not to include overnights.

[87] In considering access, the court has dedicated itself to a consideration of the best interests of the child. While the provisions of this order would seem to be harsh, they will be made more agreeable to the position of the respondent when the evaluation referred to above has been provided. Upon proof of the completion of such evaluation and acceptance of the medical regime recommended, access will, on application, be re-visited.

Child Support:

[88] The quantum of child support to be payable by a non-custodial parent in a divorce case is determined principally by application of the guidelines issued by regulation pursuant to the *Divorce Act*. Presently, the income of the respondent is minimal and falls under the level of income at which the obligation to pay child support starts.

[89] The respondent has, in the past, earned as much income as $45,000 annually in jobs involving clerical functions involving, in turn, considerable responsibility. However, since October 2000, she has limited herself to housecleaning jobs, on a part-time basis, paying close to the minimum wage. Considering only her current situation and the possibility of imputing an income to her but declining to do so, the court decides that on the minimal income presently being earned, no award for child support can be made.

Spousal Support:

[90] Entitlement to spousal support is covered by two statutory provisions, neither of which is exhaustive in the consideration of the issue. These are s. 31 and s. 33(5) of the *Family Property and Support Act, supra*. Section 31 reads:

> Every spouse has an obligation to provide support for himself and the other spouse in accordance with need to the extent that he is capable of doing so.

The material parts of s. 33(5) are:

> (5) In determining the amount, if any, of support for a spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including
>
> a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity,
> b) the capacity of the dependant to provide for his own support,
> c) the capacity of the respondent to provide support,
> d) the age and the physical and mental health of the dependant and of the respondent,
> e) the length of time the dependant and respondent cohabited,
> f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together,
> g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures,
> h) the legal obligation of the respondent to provide support for any other person,
>
> . . .
>
> o) where the dependant is a spouse, any housekeeping, child care or other domestic service performed by the spouse for the family

[91] Section 15.2(4) of the *Divorce Act*, *supra,* as amended, also provides that:

> In making a spousal support order the court:

shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

a) length of time the parties cohabited

b) the function performed by each spouse during cohabitation; and

c) N/A

It is also provided in s. 15.2(6) that such an order should:

a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown

b) N/A

c) relieve any economic hardships of the spouses arising from the breakdown of the marriage;

d) insofar as practicable promote the economic self-sufficiency of each spouse within a reasonable time.

[92] In the case at bar, I do not take into consideration the time period from 1986-92. There were periods of co-habitation, but in examining all of the evidence with respect thereto, it is clear that not only is the evidence weak to suggest that determining entitlement to spousal support for the relationship under consideration, but the parties agree that in 1992 separation was mutually agreeable and that they amicably divided their assets at the time. There is absolutely no evidence to support consideration of that period of time in determining entitlement to spousal support. In fact, if the matter were to be considered having regard to the income of the respondent at that time, there might even be a claim for spousal support favouring the petitioner. However, that is not before me.

[93] A consideration of entitlement to spousal support would commence in 1996, when the parties re-established a relationship. As stated in *Bracklow* v. *Bracklow*, [1999]

B.C.J. No. 3028 (B.C.S.C.) (Q.L.), (Smith J.) when determining the quantum of support pursuant to the order of the Supreme Court of Canada, *Bracklow* v. *Bracklow*, [1999] 1 S.C.R. 420, and quoting McLachlin J., as she then was:

> The real issue is what support, if any, should be awarded in the situation before the judge on the factors set out in the statutes. For practical purposes, however, it may be useful to proceed by establishing entitlement first and then effecting necessary adjustments through quantum.

[94] The parties moved to Whitehorse in 1996, as Mr. Hobbis finds working in the Yukon preferable to the Vancouver/Victoria area. The respondent, at some time, disclosed her pregnancy, and I find that that was a considerable motivation for a move to Whitehorse, and indeed the subsequent marriage of the parties on August 31, 1996. The parties moved into a home in Whitehorse, and entered into agreements regarding the rental of it, and subsequently the purchase of it.

[95] The respondent worked at a survey company for a few months prior to the birth of Chase. After the birth of Chase, she stayed home, kept house, tried for a short while to run a daycare and, for periods of time, assisted the petitioner in the running of his business, Bilsten Creek Tree Services. This business was run part-time, while the petitioner worked as an employee of Mel Enterprises as a security officer and a corrections officer at the Whitehorse Correctional Centre. In February 2002, the operation of Bilsten Creek Tree Services became a sole source of income. There was evidence that not only did the respondent keep house for the petitioner, she probably overdid it. I have considered the judgments of Smith J. in *Bracklow* v. *Bracklow*, *supra,* and Wright J. in *Squitti* v. *Squitti,* [1999] O.J. No. 4514 (Ont. Sup. Ct. Jus.)(Q.L.).

[96] Considering all of the above matters, I am satisfied that although the respondent in October 2000 voluntarily gave up residence in the family home and voluntarily began to travel to and from Victoria from time to time, in the period from 1996-2000, the housekeeping efforts of the respondent and the time taken off work and the development of a career to care for the child, Chase, and to assist the petitioner's business from the couple's home, there is an entitlement to spousal support.

[97] The quantum of this support, however, is not to be very substantial.

[98] Since the break-up of the marriage, the respondent has voluntarily moved to a place where, it appears, she was only able to get somewhat lower-paying work. It would, however, appear to enable her to support herself, as it appears it could, if continued, exceed $20,000 per year. Since August 2002, she testified that a job paying $40,000 per year could be available to her, and I give this consideration.

[99] Upon the respondent's return to Whitehorse in 1996, then on to the separation in 2000, the respondent has made little effort to return to the income-earning level she had in Whitehorse from 1986-92. Exhibits are filed, indicating that the respondent has qualities which are impressive, and would be impressive, to an employer looking for a person to provide responsible, perhaps confidential, and reliable services, which the respondent succeeded in doing during the period 1986-92. I see no reason why she could not have secured employment at an early time after the separation, thereby becoming self-sufficient in short order.

[100] I set the quantum of spousal support at the sum of $450 monthly, commencing on September 1, 2002, when she returned to Whitehorse. These payments to be for one year only, the last of which is to be on August 1, 2003. I have no doubt that the respondent will be able to achieve self-sufficiency by that time, or at least a standard that would have been had the marriage not ended.

Division of Property:

[101] In his petition, the petitioner seeks an order for the equal division of family assets. In her answer and counter-petition, the respondent makes the same claim.

[102] It is provided by the *Family Property and Support Act*, *supra*, that the court may determine any matter between spouses respecting "the division of family assets or other property where a marriage breakdown has occurred." There is no issue but that a marriage breakdown has occurred, "and the court may make such orders as are necessary or reasonable to give effect to its determination."

[103] The assets in question deal with the family home, family home contents, motor vehicles, cash in the bank and interest in a business.

[104] The petitioner has filed, in support of his submissions, a table which is set out as follows:

Assets	Separation Value	Valerie Hobbis	Russ Hobbis
1. Family Home			
119 Ponderosa	$176,000.00		
(Less Commission)	($9,416.00)		
Family Home Mortgage	($142,863.36)		
Balance of Equity	$23,720.64		$23,720.64
2. Vehicles			

Assets	Separation Value	Valerie Hobbis	Russ Hobbis
1988 Jeep YJ (Val)	$9,000.00	$9,000.00	
1990 Ford 1-ton	$4,000.00		$4,000.00
1987 Chev 1-ton	$5,700.00		$5,700.00
1976 Ford 1-ton	$3,000.00		$3,000.00
3. Contents of Family Home	$10,300.00		
China/ crystal/ other contents	$2,000.00		
Balance of contents	$8,300.00		
(CitiFinancial)	($4,300.00)		
Net Family home contents	$6,000.00	$2,000.00	$4,000.00
4. Bilsten Creek assets	$36,000.00		
(Bilsten Creek Debt)	($28,000.00)		
Net Bilsten Creek assets	$8,000.00		$8,000.00
5. Bank Savings	$1,305.86	$1,305.86	
Valerie-Chequing account	$5,000.00	$5,000.00	
6. Debts			
Visa	($8,848.89)		($8,848.89)
Mastercard	($5,347.66)		($5,347.66)
Total Assets Retained by Each party (less debts)	$51,529.95	$17,305.86	$34,224.09
Russ Hobbis owes:			$8, 459.12

[105] I have perused this table, reviewed the evidence with respect to it, and find that there is some evidence to support each item therein contained. Exhibit 19 is a slightly different table, without dealing with any proposed attribution or distribution. It reads as follows:

Asset	Separation Value
Family Home – 119 Ponderosa	$176,000.00
Vehicles:	
1988 Jeep YJ (Val)	9,000.00
1990 Ford 1-ton	4,000.00
1987 Chev 1-ton	5,700.00

1976 Ford 1-ton	3,000.00
RRSP (trust for Chase)	11,454.44
RRSP (Val)	Unknown
Bank Savings	6,000.00
Contents of Family Home:	
China/Crystal	2,000.00
Balance of Contents	8,300.00
Bilsten Creek Assets	36,000.00
Debts:	
Family Home Mortgage	$142,863.36
Bilsten Creek	28,000.00
VISA	8,848.89
Mastercard	5,347.66
CitiFinancial	4,300.00

[106] There is reference to Canada Plus frequent flyer points in the name of the petitioner, but there is no evidence whatsoever as to valuation, transferability or nature of the value of these items, and I do not consider them.

[107] Dealing, then, with the above table in the order in which the items are mentioned, I agree that the family home should show $176,000, with a mortgage balance of $142,893.36. I do not agree with the deduction of the commission. There is no evidence as to an intention to sell, and there is no evidence that the house would not sell without the aid of an agent. It is simply too much supposition to make that deduction.

[108] The vehicles are, in my view, on the basis of the evidence heard, properly represented in the statement.

[109] With respect to the contents of the family home, a controversy exists over the treatment of the contents, which are claimed by the respondent. It may be that the

petitioner was less than helpful in failing to arrange the delivery of the matters claimed, but they are apparently still intact and available. It also seems to me that the respondent has not been diligent in attending to take inventory, and I would not alter the manner in which this has been presented.

[110] With respect to Bilsten Creek assets, no evidence was called to independently appraise the assets of this corporation. Looking at the payables and other indicia — the supporting documents to the income tax returns — I don't disagree with the valuation indicated. In fact, I am of the opinion that it is eminently fair, as the company seems to be financed, in part, on credit card debt.

[111] On the evidence before me, the bank savings and chequing accounts have been treated fairly, and I would not change those, nor would I change the credit card amounts, which are established by documentary evidence.

[112] There is no substantive evidence with respect to the RRSP, which stands in the name of the petitioner. He claims that it is being held in trust for his son, Chase, notwithstanding that some withdrawal occurred to assist in the payment of debts. But it was a gift and is in the nature of a bequest. It is not, in my view, a family asset. It is, in fact, the property of Chase. To invest it as an RRSP may be wrong, but does not change its character. There is not sufficient evidence to declare this a family asset.

[113] In conclusion, the total value of assets retained by the parties is $60,945.95. The amount retained by Valerie Hobbis remains the same, and the amount retained by Russ Hobbis is increased by the sum of $9,416.00. In the result, therefore, the half-interest

would be $30,472.98, leaving an obligation of the petitioner to the respondent of $13,167.12.

[114] The petitioner has indicated in his submissions that a new mortgage will be obtained to finance the obligation of the petitioner hereunder in exchange for a transfer of the undivided half-interest presently held.

[115] Taking the five months in which the support payments are now in arrears there is a total of $15,417.12 owing.

The following table shows how this is arrived at:

Assets	Separation Value	Valerie Hobbis	Russ Hobbis
1. Family Home			
119 Ponderosa	$176,000.00		
Family Home Mortgage	($142,863.36)		
Balance of Equity	$33,136.64		$33,136.64
2. Vehicles			
1988 Jeep YJ (Val)	$9,000.00	$9,000.00	
1990 Ford 1-ton	$4,000.00		$4,000.00
1987 Chev 1-ton	$5,700.00		$5,700.00
1976 Ford 1-ton	$3,000.00		$3,000.00
3. Contents of Family Home	$10,300.00		
China/ crystal/ other contents	$2,000.00		
Balance of contents	$8,300.00		
(CitiFinancial)	($4,300.00)		
Net Family home contents	$6,000.00	$2,000.00	$4,000.00
4. Bilsten Creek assets	$36,000.00		
(Bilsten Creek Debt)	($28,000.00)		
Net Bilsten Creek assets	$8,000.00		$8,000.00
5. Bank Savings	$1,305.86	$1,305.86	
Valerie-Chequing account	$5,000.00	$5,000.00	
6. Debts			
Visa	($8,848.89)		($8,848.89)

Assets	Separation Value	Valerie Hobbis	Russ Hobbis
Mastercard	($5,347.66)		($5,347.66)
Total Assets Retained by Each party (less debts)	$60,945.95	$17,305.86	$43,640.09

The petitioner owes on division of assets	$13,167.12
Plus 5 months at $450.00	$2,250.00
For a total of	$15,417.12

[116] The respondent filed some claims based on her living expenses since October 2000, including those incurred from living in a hotel in Whitehorse since September 1, 2002. They are not property items for which the petitioner should be held responsible. The respondent left Whitehorse of her own volition and has not diligently sought suitable employment to support herself. The conduct of the petitioner between July and October of 2000, in allowing continued unrestricted access to the joint bank account and his continued payment of the mortgage obligations are also relevant. Considering all the evidence on the point, including the petitioner's needs, I make no order with respect to these sums claimed. This is not to say that some of them might not be properly claimed as costs.

[117] In the result, the following orders are made:

- Custody of the child, Chase, to the petitioner with access to the respondent as previously set out in para. 85 of this judgment;
- No order for child support is made;
- Petitioner to pay spousal support in the sum of $450 per month, commencing on the 1st day of September, 2002 for one year ending August 1, 2003;

- Property division results in delivery of goods in storage and payment of the sum of $13,167.12. Respondent to transfer to petitioner upon payment;
- Sums owing to be secured against equity in 119 Ponderosa.

[118] Counsel have asked me to reserve any decision on costs and I do so.

_____
Hudson J.