

SUPREME COURT OF YUKON

Citation: *Thelemann v. Kabanak and Kabanak*,
2010 YKSC 62

Date: 20101012
S.C. No. 09-D4199
Registry: Whitehorse

Between:

ANJA THELEMANN

Plaintiff

And

HARRY JOSEPH KABANAK AND TERRY KABANAK

Defendants

Before: Mr. Justice R.S. Veale

Appearances:

Anja Thelemann
Harry Kabanak
Terry Kabanak

Appearing on her own behalf
Appearing on his own behalf
Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] Anja Thelemann (“the wife”) files for divorce against Harry Joseph Kabanak (“the husband”) and claims for an unequal division of family property.

[2] The wife and husband are in their mid-forties and are self-represented. The relationship and marriage were less than a year in duration, and the major dispute is over a 2001 Mazda Tribute 4x4 (“the Mazda”) along with other claims for reimbursement.

BACKGROUND

[3] The wife and husband started to live together in November 2008. They married on January 11, 2009 and separated on October 24, 2009.

[4] The relationship has been short, unhappy, and violent on the part of the husband.

[5] The wife obtained an Emergency Intervention Order ("E.I.O.") on October 26, 2009. The husband has been convicted of two breaches of the E.I.O. and sentenced to 30 days consecutive on each count. The husband does not contest the allegations of violence.

[6] This court made a restraining order on January 29, 2010 prohibiting the husband from communicating or having any contact with the wife as the E.I.O. expired on December 30, 2009.

[7] The marriage has been short. Immediately following their wedding on January 11, 2009, the wife left for Germany and did not return until June 17, 2009.

[8] When the couple wed, the wife had a Honda Civic hatchback. It subsequently broke down and the husband replaced it with the Mazda. The wife has used the Mazda since July 2009, and it is presently in her possession. At the time it was purchased, she needed a vehicle for mobility as they lived in a cabin at the edge of Whitehorse. The wife says that the husband bought the Mazda on the understanding that it would be her sole property; the husband denies this. The wife claims an unequal division of property, which includes the Mazda and reimbursement of some expenses she incurred. The husband claims for an equal property division and admits to owing the wife \$500.

[9] The ownership of the Mazda is complicated by the fact that the husband purchased it from his brother, Terry Kabanak, for \$5,000 but never paid for it. The Mazda had been involved in a roll-over accident, and the brother repaired it.

[10] It is also a fact that the registration of the Mazda in the name of the husband was apparently obtained by inserting the first name of the husband on the transfer document to replace the first name of his brother. The husband did not pay his brother for the Mazda but the wife took possession and drove the vehicle. The wife alleges that the husband agreed to transfer the Mazda to her. The husband denies this.

[11] By a Consent Order on March 16, 2010, the Court made Terry Kabanak a party defendant. The Consent Order required the husband to pay Terry Kabanak \$5,000 and transfer the registration of the Mazda to him. However, as noted, the possession of the vehicle remains with the wife until the determination of her property claim.

[12] There is no evidence that the wife is employed and the husband is generally employed on a seasonal basis for good wages.

DECISION

[13] I am not going to detail the financial claims of the wife for various expenses she incurred, as I find them to be normal expenses incurred by married persons without expectation of any accounting in such a short relationship. The husband has acknowledged owing the wife \$500.

[14] The Mazda is a different matter. It does not appear to be a vehicle of great value as the husband has already incurred repair bills for \$1,040.29 and \$306.15 and he gave the wife a cheque for \$1,800.00 for parts. He has since cancelled the insurance on the Mazda.

[15] In taking into account this short but violent marriage, I order that the wife shall have judgment for \$3,500 against the husband in full satisfaction of her property and financial claims. The husband and wife shall retain all other property in their name or possession prior to the marriage.

[16] I order that the vehicle be released to Terry Kabanak as he may be able to obtain some salvage value to offset against the \$5,000 that I have ordered his brother to pay him. Should the brothers have outstanding issues with respect to the Mazda, they may contact the Trial Coordinator for a Judicial Settlement Conference with binding arbitration.

[17] The Restraining Order dated January 29, 2010 shall remain in place.

[18] I hereby grant a divorce of the marriage on the grounds of physical and mental cruelty.

[19] The husband shall pay \$500 in court costs to his wife.

VEALE J.