

SUPREME COURT OF YUKON

Citation: *Murphy v Szulinszky*,
2016 YKSC 18

Date: 20160309
S.C. No. 14-B0112
Registry: Whitehorse

Between:

JOANNE MURPHY

Plaintiff

And

JOSEPH SZULINSZKY

Defendant

Before Mr. Justice L.F. Gower

Appearances:

Celia J. Petter
Joseph Szulinszky

Counsel for the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application for a summary trial under Rule 19 of the *Rules of Court* seeking a final judgment in the form of a declaration that the plaintiff, Ms. Murphy, is entitled to an unequal division (i.e. 100%) of jointly titled real property, known as Lot 43 Mendenhall subdivision (“Lot 43”), approximately 80 kilometres west of Whitehorse. Ms. Murphy also seeks a declaration that the defendant, Mr. Szulinszky, holds no beneficial interest in any of Ms. Murphy’s assets. Finally, Ms. Murphy seeks an order restraining Mr. Szulinszky from trespassing on Lot 43 and from causing mischief to any of her assets.

[2] The argument for the unequal division of the jointly titled property is that Mr. Szulinszky has been unjustly enriched by Ms. Murphy's contributions to the property and that this entitles her to a proprietary remedy, i.e. an order that the title to Lot 43 be transferred from the joint names of the parties to Ms. Murphy alone.

[3] Mr. Szulinszky is representing himself in opposing the application. He has filed no statement of defence to the statement of claim (filed March 19, 2015, and amended January 13, 2016), no response to the notice of application, no financial statement, nor any affidavit material. The only document Mr. Szulinszky filed is an appearance. He did not seek to adjourn this application.

[4] The matter came on for a hearing on February 19, 2016. For reasons which will become apparent, regarding the awkward domestic situation between the parties, I considered time to be of the essence in coming to a decision. Accordingly I issued brief oral reasons on that day, granting Ms. Murphy's application, and indicating that my written reasons would follow. These are those reasons.

FACTS

[5] Ms. Murphy relies upon her second affidavit and an affidavit of documents, both filed January 28, 2016. The second affidavit makes reference to a booklet of photographs of Lot 43 filed separately as Exhibit 1 of Schedule A.

[6] Because Mr. Szulinszky has filed nothing in response to Ms. Murphy's evidence, her evidence is uncontradicted and supports the following findings of fact.

Relationship

[7] The parties began a common-law relationship in 1996. The couple had no children, although Ms. Murphy has four adult children from a previous relationship, and nine grandchildren ranging from two years old to 19 years old.

[8] Between 1996 and 2000, Mr. Szulinszky had trouble finding work, so he asked Ms. Murphy for assistance to start his own firewood business. Between 1997 and 2004, Ms. Murphy did so, but the business was ultimately a failure, as set out below.

[9] In 2001, the couple moved into a mobile home on Lot 43.

[10] Except for a period of employment between 2006 and 2009 at the Minto Mine, Mr. Szulinszky has either been unemployed or only able to earn sporadic income through odd jobs or by bartering. He has considered himself as retired since he lost his job at the mine in 2009.

[11] Throughout the vast majority of the relationship, Ms. Murphy has been the sole financial provider. She agreed to take on this responsibility in exchange for the promise by Mr. Szulinszky, upon moving on to Lot 43, that he would build the couple a home there within two years. That did not happen.

[12] The living conditions in the mobile home, which was supposed to be a temporary residence, have become deplorable. There is no running water or toilet. The couple have to use an outhouse. The mobile home is heated by wood stove and is poorly insulated. The floors are damaged and the windows are cracked and taped.

[13] Ms. Murphy became increasingly frustrated by the failure of Mr. Szulinszky to contribute constructively to the relationship. The couple stopped being intimate in 2012

and each party has been living and sleeping in separate areas of the mobile home since then.

[14] Mr. Szulinszky has been rude and abusive to Ms. Murphy's visiting family members.

[15] In February 2014, Ms. Murphy informed Mr. Szulinszky that she considered the relationship to be over and that she intended to go to court to settle the matter of the division of their joint property. She has considered herself to be separated from Mr. Szulinszky since that time.

[16] At another time in 2014, Mr. Szulinszky told a mutual friend that if Ms. Murphy left him he would burn everything to the ground.

[17] Beginning in September 2015, Mr. Szulinszky stopped using the outhouse and instead relieved himself in the mobile home in bags that he threw into the wood stove, causing an intolerable smell.

[18] Ms. Murphy's mental and physical health has suffered since the relationship broke down. In particular, over the last five years, she has experienced anxiety attacks and has, as of September 2015, been prescribed antidepressants by her doctor.

[19] In the six weeks prior to Ms. Murphy swearing her second affidavit on January 27, 2016, she alleges that Mr. Szulinszky told family members and acquaintances that he plans to bash her head in with a baseball bat and to harm their animals. Ms. Murphy is in the process of reporting those latest threats to the RCMP.

[20] Ms. Murphy has tried to discuss settlement with Mr. Szulinszky, but he has refused.

[21] Mr. Szulinszky has committed various acts of mischief and damage to the couple's property, including:

- dismantling various pieces of the firewood equipment (discussed below) to prevent it from being sold;
- cutting holes in the walls of the mobile home;
- removing exterior siding from the mobile home;
- the moving half of an exterior porch from the mobile home;
- damaging and destroying some of Ms. Murphy's personal belongings, clothing, books and documents;
- causing damage to kitchen appliances;
- using the kitchen stove to heat the mobile home; and
- unplugging the freezer so that the meat in it rotted.

[22] People in the Mendenhall subdivision, as well as work colleagues and friends, have offered to help Ms. Murphy with restoring Lot 43. However, no one is willing to contribute any help or labour as long as Mr. Szulinszky is still living on the property.

[23] In the fall of 2014, Ms. Murphy received a telephone call regarding potential employment for Mr. Szulinszky in the communities of Kelowna and Prince George, British Columbia. Although she offered to pay for a bus ticket for him to travel to BC for that purpose, Mr. Szulinszky declined to take advantage of the opportunity.

[24] Mr. Szulinszky has family in both Prince George and Kelowna, British Columbia who have offered to have him come and live with them. In particular, Ms. Murphy spoke to Mr. Szulinszky's brother in August 2015 and confirmed this.

Firewood Business

[25] As stated above, at Mr. Szulinszky's request, Ms. Murphy attempted to help him establish a firewood business. In 1997, Ms. Murphy purchased a 1980 Chevrolet five-ton truck for \$6000 for this purpose.

[26] After a period of time establishing his firewood business, Mr. Szulinszky asked Ms. Murphy for more financial assistance to build up the business. Ms. Murphy agreed to do so and over the period between 1997 and 2004, she purchased the following additional items for Mr. Szulinszky's business:

- a new engine, and other replacement equipment for the five-ton truck, for \$4000;
- a skidder for \$6000;
- skidder parts for \$3000;
- a hydraulic wood splitter for \$2500;
- a 1978 holiday trailer for \$2500; and
- a used tractor-trailer for \$6000.

[27] The total of these purchases, together with the five-ton truck, cost Ms. Murphy \$30,000.

[28] Initially, Mr. Szulinszky was able to secure a number of contracts for the supply and sale of firewood, but eventually lost them, as he was not filling orders. The above equipment was either never used by him, or was intentionally disassembled, or damaged by him. All of the equipment remains on Lot 43 and much of it has simply been left to rust.

Development of Lot 43

[29] In 1999, the parties entered into a land lottery hoping to acquire property in the Mendenhall subdivision. Each party entered, hoping that one of them would win. Mr. Szulinszky was successful. Accordingly, the couple agreed to purchase Lot 43 from Yukon Housing Corporation for \$20,230.98. The agreement required them to have a dwelling clad to weather on the lot within five years. The original agreement for sale only listed Mr. Szulinszky as the purchaser, presumably because he was the winner of the land lottery. However, my copy of the document shows Ms. Murphy was added as a purchaser under the agreement at some point, and the two were described there as “joint tenants”.

[30] The only contribution Mr. Szulinszky made to the purchase of Lot 43 was an initial payment of \$2500. Ms. Murphy made all the other payments toward the acquisition of the property. These included annual payments of \$3973.78, until the original \$20,230.98 was paid in full, plus total fees and interest of \$5184.34.

[31] In 2001, the couple moved on to Lot 43 and resided in a mobile home which Ms. Murphy purchased for \$1700, and had moved to the property at a cost of a further \$2000. The intention of the parties was only to live in the mobile home temporarily, as Mr. Szulinszky had promised Ms. Murphy that he would build the couple a home on the property within two years.

[32] Mr. Szulinszky did begin to construct a home in 2001 or 2002, but today it is limited to an unfinished framed-in wooden structure, with a roof partially clad to weather and walls partially clad with plywood sheets. The structure includes an unfinished

basement, however the basement walls have since collapsed. One such wall has been fixed, but the rest require repair.

[33] Ms. Murphy purchased various building materials over the years, including lumber, floor joists, roof trusses, drywall, cement and tin roofing. She estimates that she spent approximately \$50,000 on these materials.

[34] Ms. Murphy is prepared to credit Mr. Szulinszky with having contributed approximately \$5000 to the cost of building supplies, despite feeling that this is an overestimate.

[35] Ms. Murphy also paid \$9000 to have a well dug by Double D Drilling Ltd. However, the well has never been connected to either the mobile home or the unfinished home building. Her counsel explained at the hearing that Ms. Murphy expected Mr. Szulinszky to do that work, but he has failed to do so.

[36] Following the digging of the well, Ms. Murphy estimates that she paid \$3000 for fence building equipment.

[37] When the certificate of title was raised on September 13, 2005, both parties were listed on the title as joint tenants.

[38] In 2013, Ms. Murphy purchased a septic tank for \$5092.50, along with septic rock for \$2307.38. She arranged for Castle Rock Enterprises to install the septic system and dig the necessary septic field on the property. However, she was required to be away from Lot 43 during the summer of 2013, in connection with her firefighting work with the Yukon Government. During that time, without Ms. Murphy's knowledge, Mr. Szulinszky negotiated a verbal agreement with a neighbour to dig the hole for the septic system instead. The hole was improperly dug and Castle Rock have since informed Ms. Murphy

that they will now have to charge a great deal more money to go in and correct the work that has been improperly done.

[39] Finally, Ms. Murphy put many of her personal belongings in storage in 2001, after a couple moved to Lot 43, on the basis of Mr. Szulinszky's promise that he would build her a home and that she would only have her belongings in storage for two years at the very most. Since then, Ms. Murphy has paid a total of \$22,680 in storage fees.

[40] Ms. Murphy estimates that her financial contributions to Lot 43 and its development over the years amount to approximately \$96,015.20.¹ She estimates that Mr. Szulinszky's financial contributions are no more than \$7500. In her second affidavit she set out the following table to explain the respective contributions of the parties:

Plaintiff Contribution	Defendant Contribution	Purchase	Date Purchased	Purchase Price	Issues Impacting Present Value
\$22,915.32	\$2,500.00	Lot 43, Mendenall, joint title	1999 and paid in full in 2005	\$20,230.98 Fees, GST & interest @ 7.25% = \$5,184.34	Appraised by Jim Yamada for \$124,000 due to structures having no value & junk detracting from bare land value
\$1,700.00		Mobile Home	2001	\$1,700.00	Negligible value due to poor condition
\$2,000.00		Mobile transportation to Lot 43	2001	\$2,000.00	
\$50,000.00	I estimate that any financial contributions to supplies are not more than \$5,000	Building and construction supplies	2001-present	\$55,000.00 (estimate)	Improper construction by Defendant needs to be fixed or completely redone. All building permits expired.
\$9,000.00		Well dug	2004	\$9,000.00	Never hooked up

¹ In her second affidavit, Ms. Murphy actually estimated this number to be \$118,695.20, but this incorrectly, in my view, included her storage charges of \$22,680, which did not contribute to the development of the property.

Plaintiff Contribution	Defendant Contribution	Purchase	Date Purchased	Purchase Price	Issues Impacting Present Value
\$3,000.00		Auger & fence building equipment	2008 ?	\$3,000.00	Damaged and used for improper purposes by Defendant
\$5,092.50		Septic tank	2013	\$5,092.50	Hole improperly dug and will need to be corrected. Permit to install now expired
\$2,307.38		Septic rock	2013	\$2,307.38	
TOTAL	TOTAL			TOTAL	
\$96,015.20	\$7,500.00			\$103,515.20	

[41] Lot 43 was appraised as of April 27, 2015 at a value of \$124,000 “as is”. No value was assigned to the unfinished framed-in structure and only “nominal” value for the mobile home. The appraiser also expressed concern about possible contamination from the several older motor vehicles on the property, which is further described below.

Couple’s Financial Arrangements

[42] After the parties began living together, Ms. Murphy took on the responsibility of paying for their living expenses, such as food and utilities, in addition to supporting Mr. Szulinszky’s firewood business. Mr. Szulinszky made only minimal financial contributions towards these expenses. He rarely had any money and was extremely reticent about sharing any of it with Ms. Murphy.

[43] Ms. Murphy also paid for all of Mr. Szulinszky’s clothing, medical expenses and dental work. In addition, she paid for the insurance and the fuel for the vehicles which the parties drove throughout their relationship.

[44] The couple also raised chickens and turkeys on Lot 43 for food. Ms. Murphy paid for all the feed and veterinary bills for those animals as well as for the feeding and care of their eight dogs and three cats.

[45] Finally, Ms. Murphy has paid all of the property taxes and associated insurance and maintenance fees relating to Lot 43.

[46] As of February 2014, the couple's joint debt, representing their living expenses and purchases of building supplies, was about \$13,500.

Parties' Employment Patterns

[47] Before meeting Ms. Murphy, Mr. Szulinszky worked in the logging business and ran heavy equipment. When the couple met, he was working as a painter and Ms. Murphy was working as a taxi dispatcher and driver. She was also taking courses at Yukon College to complete her grade 12. She eventually got her high school diploma.

[48] Following the failure of Mr. Szulinszky's firewood business, Ms. Murphy regularly asked him about looking for work. The response she received was that Mr. Szulinszky said his "job" was to build them a house. For this reason, this Murphy felt that she could justify providing for the couple financially, as she expected Mr. Szulinszky to reciprocate with sweat equity by building them a home. This did not happen.

[49] Mr. Szulinszky has taken on odd jobs (e.g. snow removal in the winter) and bartered over the years, but has never done anything to contribute to the couple's collective financial obligations for household expenses. He always viewed the money that he earned as his own spending money.

[50] Beginning in 2001, Mr. Szulinszky began moving used automobiles on to Lot 43, with the intention of rebuilding them and reselling them. However, this did not happen and there are now six or seven such vehicles on the property falling into increasing states of disrepair.

[51] In 2006, Mr. Szulinszky got full-time work at Minto Mine. He was employed there in the maintenance department until he was fired in 2009. During that period of time, despite receiving a net income of approximately \$2500 per month, he contributed none of that money to joint household expenses. Since losing the job, Mr. Szulinszky has held himself out to people as being retired.

[52] After working an assortment of jobs, Ms. Murphy began working at Home Hardware around 2001. That continued until 2004, when she began working for the Yukon Government in their Fire Management Department, where she has worked seasonally ever since.

Bobcat Purchase

[53] In 2008, while Mr. Szulinszky was employed at the Minto Mine, the couple agreed to purchase a new Bobcat Skid Steer Loader, as they expected it would be very useful in the construction of the home on Lot 43. The purchase price was \$50,866.82. Mr. Szulinszky contributed a down payment of \$10,000, plus six subsequent payments of \$973.02, for a total contribution of \$15,838.12. Ms. Murphy paid for the balance of the purchase price, i.e. 35 monthly payments totalling \$35,028.70. In addition, she paid for a new bucket, which cost \$2000 and used forks, which cost \$800. Ms. Murphy is the registered owner of the Bobcat.

[54] Following the separation, Mr. Szulinszky used the Bobcat for improper purposes, such as logging, which caused damage to it. Ms. Murphy has since placed the Bobcat in secure storage.

ISSUES

[55] There are essentially four issues in this summary trial application:

- 1) Is this matter appropriate for hearing by a summary trial?
- 2) Has Mr. Szulinszky been unjustly enriched by Ms. Murphy?
- 3) If so, is the proper remedy a proprietary award by way of a remedial constructive trust?
- 4) Is there a basis for the restraining orders sought by Ms. Murphy?

ANALYSIS

1) *Summary Trial?*

[56] Rule 19 of the *Rules of Court* sets out the procedure for a summary trial application. A party may apply to the court for judgment in a contested family law proceeding, which this matter is. Unless the court orders otherwise, evidence on the application may be adduced by affidavit, which is the case here. On the hearing of the application, the court may grant judgment in favour of a party, unless:

- i. the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
- ii. the court is of the opinion that it would be unjust to decide the issues on the application...

[57] I agree with the submission of Ms. Murphy's counsel that in a case such as this, where final orders are sought in the division of communal property issues in dispute, and where there is no prospect of settlement, summary trial is an appropriate and cost-effective means to seek a remedy: see also *Hryniak v Mauldin*, 2014 SCC 7. Further, I am satisfied that the main facts to be determined with respect to the issue of unjust enrichment can be resolved on the basis of Ms. Murphy's evidence as a whole. There is sufficient documentary and affidavit evidence before me to determine the main issue

and the proper remedy. Accordingly, I am satisfied that this matter is appropriate for a hearing by way of a summary trial.

2) Unjust Enrichment?

[58] One of the leading case on unjust enrichment is *Kerr v. Baranow*, 2011 SCC 10 (“*Kerr*”). This case confirms that a claim for unjust enrichment is made out, and recovery is permitted, when the following three conditions are satisfied:

- 1) an enrichment of or benefit to the defendant;
- 2) a corresponding deprivation to the plaintiff; and
- 3) the absence of a juristic reason for the enrichment.²

The Supreme Court further stated, and I paraphrase, that at the heart of this doctrine lies the notion of restoring a benefit to the plaintiff, which justice does not permit the defendant to retain.³

Is there an enrichment or benefit to the defendant?

[59] The first stage of the inquiry is to determine whether the defendant has been enriched by the plaintiff. Did Ms. Murphy give something to Mr. Szulinszky that he received and retained and was the benefit tangible? In my view, the answer is undeniably yes.

[60] The total of the quantifiable financial benefits conferred by Ms. Murphy upon Mr. Szulinszky is \$163,843.90. This total is achieved by adding the \$30,000 that Ms. Murphy contributed to this to Szulinszky’s firewood business, the \$96,015.20 which Ms. Murphy contributed to the development of Lot 43, and the \$37,828.70 which Ms. Murphy contributed to the purchase of the Bobcat.

² Para. 32

³ Para. 31

[61] Further, Ms. Murphy made less readily quantifiable financial contributions to the relationship, which Mr. Szulinszky benefited from, including the payment of ordinary living expenses such as:

- utilities;
- annual property taxes and insurance;
- annual vehicle insurance;
- gas for automobiles;
- groceries;
- medical and dental bills;
- animal feed and veterinary bills; and
- clothing.

Assuming that Mr. Szulinszky had paid his fair share of these living expenses, one can fairly estimate that, at a minimum, he would have contributed at least \$500 per month, or \$6000 per year. However, he did not. Rather, Ms. Murphy covered his share of these expenses over a period of 20 years. Therefore, it is reasonable to conclude that Mr. Szulinszky received a benefit in that regard of another \$120,000 (\$6000/yr. x 20 yrs.).

[62] Thus, the total of the quantifiable benefits and the less readily quantifiable benefits conferred by Ms. Murphy upon Mr. Szulinszky is \$283,843.90 (\$163,843.90 + \$120,000).

[63] It must also be remembered that this amount does not in any way account for the non-readily quantifiable in non-financial contributions made by Ms. Murphy in the form of domestic services over the duration of the common law relationship.

Is there a corresponding deprivation to the plaintiff?

[64] The next stage of the inquiry into a potential unjust enrichment is to determine whether Ms. Murphy suffered a corresponding deprivation by enriching Mr. Szulinszky with these benefits.

[65] As a general rule, if it is found that a defendant has been enriched by the efforts of the plaintiff, there will, almost as a matter of course, also be a deprivation suffered by the plaintiff: *Kerr*, at para. 108.

[66] In the case at bar, Ms. Murphy's evidence demonstrates that she has transferred wealth to Mr. Szulinszky, and in doing so, lost the benefit of retaining this wealth for herself. This transfer of wealth was for the purposes of buying Lot 43, buying materials to construct a home on the property, paying for routine household expenses, and supporting Mr. Szulinszky's firewood business. Ms. Murphy has not been compensated financially for those transfers of wealth, nor has the home she invested in ever materialized.

[67] As stated above, the total of the combined quantifiable and less readily quantifiable benefits conferred by Ms. Murphy upon Mr. Szulinszky is \$283,843.90, not accounting for non-financial contributions such as domestic services.

[68] In addition to that sum, Ms. Murphy suffered a deprivation in the form of a financial loss for having to keep her personal belongings in storage since 2001, because Mr. Szulinszky breached his promise to construct a home on Lot 43 within two years of moving on to the property. The total storage costs to date amount to \$22,680. As well, Ms. Murphy incurred a further deprivation as a result of being responsible for the repayment of a total debt of approximately \$13,500, as of the month of separation,

February 2014, which money was used to cover various daily household expenditures such as groceries and utilities. Thus, the total additional deprivation from these expenses is \$36,180 (\$22,680 + \$13,500).

Is there a juristic reason for the enrichment?

[69] The third stage of the unjust enrichment analysis is to determine whether there is a juristic reason for the enrichment. This involves a two-part inquiry.

[70] The first part of the inquiry places the onus on the plaintiff to demonstrate that no reason exists within established legal categories to justify the enrichment. These categories can include: contract, gift, disposition by law, or any other equitable, statutory or common law obligation to deny recovery. If the plaintiff can demonstrate that no such reason exists to deny recovery, then he or she has made out a *prima facie*, or presumptive, case.

[71] *Kerr* makes it clear that natural love and affection existing between spouses does not give rise to a “donative intent”, nor do spousal relationships create contractual justifications for retaining enrichments (paras. 41 to 45).

[72] The second part of the inquiry shifts the evidentiary burden to the defendant to rebut the presumptive case established by the plaintiff: *Kerr*, at paras. 40 to 45.

[73] In the case at bar, dealing with the first part of the juristic reason inquiry, Ms. Murphy’s evidence as a whole reveals that she had no written contract with Mr. Szulinszky obliging her to provide any transfers of wealth to him, nor did she intend to gift him with the wealth, without some reciprocal exchange, i.e. the construction of home on Lot 43. Rather, Ms. Murphy relied on promises made by Mr. Szulinszky to her detriment, which have remained almost entirely unfulfilled. Most significantly, no home

was ever constructed on Lot 43 by Mr. Szulinszky, despite repeated representations by him that this was his principal role in their common-law relationship. Thus, Ms. Murphy has satisfied me, on a balance of probabilities, that she has a *prima facie* case, and that there is no juristic reason to prevent her from recovering from Mr. Szulinszky, or to characterize the enrichment as “just”.

[74] As for the second part of the juristic reason inquiry, Mr. Szulinszky has adduced no evidence to rebut the *prima facie* case established by Ms. Murphy.

[75] Accordingly, I am satisfied that Mr. Szulinszky has been unjustly enriched by Ms. Murphy as set out above

3. Proper Remedy?

[76] Remedies for unjust enrichment can take the form of a monetary or a proprietary award. The first remedy to consider is always a monetary award. However, in some cases, when a monetary award is inappropriate or insufficient, a proprietary remedy may be required: *Kerr*, paras. 47 to 50:

... Where the plaintiff can demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour....(para. 50)

The extent of the constructive trust interest should be proportionate to the plaintiff's contributions. Where the contributions are unequal, the shares will be unequal. In the result, the Court must assess the contributions made by each spouse, and make a fair and equitable distribution of the property, having regard to those respective contributions: *Kerr*, at para. 53.

[77] In the case at bar, a monetary remedy is not appropriate, because the evidence demonstrates that Mr. Szulinszky simply could not pay any amount of a monetary award. Mr. Szulinszky confirmed that the hearing that he has been in dire financial circumstances of late, which was one of the reasons why he was unable to retain counsel to assist him in responding to the application.

[78] Ms. Murphy's evidence regarding the purchase and maintenance of Lot 43 support the required nexus between her enrichment of Mr. Szulinszky through her contributions and the property in question. Accordingly, a proprietary award by way of a remedial constructive trust is appropriate in all of the circumstances.

[79] What then should be the quantum of the monetary award?

[80] The appraised value of Lot 43 is \$124,000, and Ms. Murphy is presumptively entitled to one-half of that value as a joint tenant on the certificate of title, i.e. \$62,000.

[81] On the other hand, the total quantified financial benefits referred to above as \$283,843.90, when added to the additional deprivations suffered by Ms. Murphy for storage of goods and debt incurred for household expenses, i.e. \$36,180, results in a grand total of \$320,023.90.

[82] Thus, if Ms. Murphy is notionally credited with receiving half the value of Lot 43, i.e. \$62,000, and this sum is subtracted from the total amount of her financial deprivation, i.e. \$320,023.90, this would still leave her saddled with a deprivation of \$258,023.90.

[83] Further, if Mr. Szulinszky is notionally credited with all of his financial contributions over the years:

- \$2500 - down payment on Lot 43;

- \$5000 - imputed amount of his contribution towards construction materials; and
- \$15,838.12 - his share of contributions towards the purchase of the Bobcat,

then the total credit to him would be \$23,338.12.

[84] Finally, if Mr. Szulinszky's total credits, i.e. \$23,338.12, are subtracted from the remaining amount of Ms. Murphy's deprivation referred to in para. 81 above, i.e.

\$258,023.90, there would still be an amount outstanding of **\$234,685.78**. This sum would represent the disproportionate benefits conferred upon Mr. Szulinszky by Ms. Murphy.

[85] Mr. Szulinszky has adduced no evidence to "set off" these benefits.

[86] Thus, it would appear to be fair and equitable to also credit Ms. Murphy with Mr. Szulinszky's notional one-half share of the value of Lot 43, i.e. \$62,000. This will be achieved by a declaration of remedial constructive trust over the joint property, such that Mr. Szulinszky is held to be holding his one-half share in trust for Ms. Murphy. In practical terms this will also require a transfer of his legal interest to her by way of the Registrar of Land Titles conveying the property from joint title in the names of both parties to title in the name of Ms. Murphy only.

[87] However, I also think it is fair and equitable to give Mr. Szulinszky an opportunity to recover the value of the firewood equipment and the abandoned vehicles remaining on the property for three reasons:

- 1) this would recognize his total financial contributions during the common-law relationship of \$23,338.12;
- 2) the abandoned equipment and vehicles are currently a detriment to the value of Lot 43; and

- 3) the opportunity to recover these items and any residual value there may be in them may be an incentive to Mr. Szulinszky to do so, which would save Ms. Murphy the cost of having to remove the items herself.

[88] Accordingly, I order that Mr. Szulinszky shall be given the opportunity to remove from Lot 43, no later than 30 days from the date of this judgment:

- a) the 1980 five-ton truck;
- b) the replacement engine for the five-ton truck;
- c) the skidder and the skidder parts;
- d) the hydraulic wood splitter;
- e) a 1978 travel trailer;
- f) the tractor-trailer; and
- g) the remaining abandoned motor vehicles.

In the event that Mr. Szulinszky fails to comply with this order, he shall no longer have any beneficial interest in the above items, and the property in them shall remain entirely with Ms. Murphy, who may dispose, sell or otherwise do with them what she sees fit.

4. Restraining Orders?

[89] In my view, there is adequate evidence on the record in this summary trial to justify the restraining orders sought by Ms. Murphy. I refer here to the mischief and damage, both intentionally and recklessly, caused by Mr. Szulinszky to various items of property on Lot 43, not the least of which was to the mobile home in which the parties have lived in for the last 15 years. As well, there is evidence to support Ms. Murphy's claim that Mr. Szulinszky has acted towards her and members of her family with cruelty and abuse, to the extent that Ms. Murphy has had to seek medical treatment for her

anxiety and depression. Finally, it appears that Mr. Szulinszky may have criminally threatened Ms. Murphy.

[90] Accordingly, I order that Mr. Szulinszky:

- 1) not attend at Lot 43 without the prior written permission of Ms. Murphy;
- 2) not harass, molest or annoy Ms. Murphy; and
- 3) not attend at Ms. Murphy's place of work.

[91] There will also be an RCMP assist clause in the usual form.

CONCLUSION

[92] I declare that Mr. Szulinszky is holding his one-half beneficial interest in Lot 43 on behalf of Ms. Murphy. I further declare that Mr. Szulinszky holds no beneficial interest in any of the assets registered in Ms. Murphy's name, with the exception of those items specifically identified in para. 88 above, and subject to the order I made there.

[93] The Registrar of Land Titles shall convey Lot 43 from joint title in the name of both parties to title in the name of Ms. Murphy only.

[94] Mr. Szulinszky shall vacate Lot 43 forthwith, subject to an opportunity to attend on the property within 30 days of the date of this judgment, in the company of the RCMP, for the express purpose of retrieving his personal belongings.

[95] Mr. Szulinszky shall not attend at Lot 43 without her prior written permission, or Ms. Murphy's workplace, and he shall not harass, molest, or annoy her.

[96] Costs may be spoken to by Ms. Murphy's counsel, if considered advisable.