

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: **J.A.F. v. A.A.F.**,
2003 BCSC 899

Date: 20030609
Docket: E020103
Registry: Vancouver

Between:

J.A.F.

Plaintiff

And

A.A.F.

Defendant

Before: The Honourable Mr. Justice Cole

Reasons for Judgment

Counsel for Plaintiff

J. Schuman

Counsel for Defendant

A. Thiele

Date and Place of Trial/Hearing:

May 13, 2003
Vancouver, B.C.

[1] Plaintiff wife, 44 years of age, and the defendant husband, 47 years of age, began living together in September of 1980. They were married March 26, 1988 and separated on October 21, 2001. They have five children aged four to thirteen.

[2] There was an order on August 20, 2002 by Master Donaldson. The defendant was found to have a guideline income of \$180,000, and was ordered to pay interim child support of \$3,504 per month and interim spousal support of \$3,100 per month.

[3] Since the separation, the plaintiff has been residing in the former matrimonial home with the children. The defendant is residing in a three bedroom rented townhouse and has been seeing the children on a frequent basis. Parties agree that there should be an order for joint custody and guardianship of the children, with reasonable and generous access to the defendant. The primary residence would be with the plaintiff.

[4] I am satisfied that the parties have been living separate and apart for one year and I grant a divorce.

[5] The outstanding issues are:

- 1) value of the family assets;

- 2) the plaintiff's application for reapportionment of the assets under s. 65 of the **Family Relations Act**;
- 3) the guideline income of the defendant, and;
- 4) the amount and duration of spousal support.

[6] The plaintiff and defendant met when they were students at the University of Victoria. He graduated from law school in [...] and she completed her bachelor of education in [...]. He obtained articles in Prince George, and she moved to Prince George when she completed her undergraduate degree. She was a substitute teacher in Prince George. They moved to the lower mainland in November of 1983. She began teaching part-time in January 1984, and in the fall of 1984 he joined L.[...], a Vancouver law firm. The plaintiff worked part-time as a school teacher until the birth of their first child in June of 1989. They agreed that she would stay at home and raise the family. The defendant wanted to have six children and she was happy to have the children one at a time.

[7] The parties rented property from the defendant's mother until they purchased a home on [...] in Vancouver in December 1994. Due to some poor business ventures and the marriage running into some difficulties, they sold the home and moved to a new home in Surrey where the plaintiff and the children

still reside. The parties separated in February 2000 and reconciled in September 2000. The final separation took place on the October 21, 2001.

[8] In August 2000, the defendant left his law firm and became a partner with O.[...].

[9] The children are all accomplished athletes. They are involved in hockey, and some of them have goals to be in the Olympics. The children are involved in other extracurricular activities and the plaintiff has had the primary responsibility for the children and their activities. The defendant is an exceedingly hard working individual who has built up a successful law practice due to his work ethic and his ability to attract and service institutional clients.

Value of Assets

[10] The parties agree that all assets are family assets. The asset that is really in dispute is the defendant's personal law corporation ("P.L.C."). The plaintiff is of the view that the defendant's P.L.C. is worth approximately \$268,000 gross or \$160,000 net. This includes some \$70,000 that represents the defendant's capital account from his former law firm. That however, I am satisfied, has little value. The defendant took his files from his former law firm and has made a decision based on professional advice that his chances of

collecting the \$70,000 are not great and, in any event, the economics does not warrant spending any further money to try to collect on that account. The after tax value of the P.L.C., I am satisfied, is approximately \$110,000.

[11] The balance of the assets are as follows:

- 1) equity in the matrimonial home of \$193,500;
- 2) electronics and entertainment equipment of \$14,500;
- 3) arts and prints of \$3,200;
- 4) GMC van, net of \$15,000;
- 5) RRSPs approximately \$100,000.
- 6) Accounts receivable from Anna Ligouri \$28,947.44 rounded to \$29,000;
- 7) horse trailer - \$15,000.

Total Assets: \$480,200

[12] There are some trust accounts set up for the children, and the parties have agreed that those will continue to be held in trust for the benefit of the children. There is also a mantle clock, some silverware that was received from the defendant's parents upon their marriage, and a few items of computer equipment in the matrimonial home. The defendant has asked for those items and I think he is entitled to them,

especially when you consider the fact that the plaintiff is receiving the balance of the chattels in the matrimonial home.

[13] The plaintiff and defendant each claim that they have \$27 to \$28,000 worth of debt. The defendant's debt was accumulated prior to separation, and the plaintiff's debt was accumulated after the separation. The defendant takes the position that the plaintiff's debts are not family debts because they were accumulated after the separation. I am satisfied that those debts are family debts because the plaintiff acquired that debt to support herself and the children.

Reapportionment

[14] Under s. 65 of the **Family Relations Act**, the court is not authorized to interfere with an equal division of family assets unless an equal division would be unfair having regard to the criteria that is set out in s. 65 which states:

- 65 (1) If the provisions for division of property between spouses under section 56, Part 6 of their marriage agreement, as the case may be, would be unfair having regard to
 - (a) the duration of the marriage,
 - (b) the duration of the period during which the spouses have lived separate and apart,
 - (c) the date when property was acquired or disposed of,

- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[15] The onus is on the party that is seeking reapportionment to establish that an equal division would be unfair having regard to the factors remunerated in s. 65: **Toth v. Toth** (1995), 13 B.C.L.R. (3d) 1 (C.A.), [1995] 17 F.L.R. (4th) 55 (B.C.C.A.).

[16] This has been a marriage of long duration and that militates in favour of an equal division. They have not lived separate and apart for a significant period of time. The fact that the property was acquired during the marriage again militates in favour of an equal division. The property was not acquired by one spouse through a gift or inheritance so that is a neutral factor, the needs of each spouse to become economically independent and self-sufficient militates in favour of an unequal division.

[17] The plaintiff has suffered a significant capital loss during the marriage. She stayed at home and cared for the children, and was not able to pursue her career as a teacher. In my view, she could very well have been in an administrative capacity at this stage of her life if they did not have children or if the responsibility of raising the children was shared equally. The plaintiff has an aptitude for administration, and the ability to obtain administrative positions in the school system is, to a great extent, based on one's experience. Her experience was cut off when the parties decided to have the children and she would stay home and raise them. In order to compensate her, I am satisfied that the matrimonial home and the R.R.S.P.s should be transferred into her name. She will keep her van, half the art and prints, and all electronic and entertainment equipment. This will provide her with some security and a familiar place for the children to continue to live. This division amounts to a split of the family assets at a 67/33 ratio in favour of the plaintiff.

Child Support

[18] The defendant submits that child support should be determined based on the income of the respondent of \$200,000 per year. This is roughly the average of his last three years income and, it is submitted, his income for 2002, was \$266,885

and includes non-recurring items such as an \$80,000 bonus and an \$18,000 referral fee. I am not satisfied that the defendant will not receive the bonus or referral fees in the following years. Certainly his work ethic would suggest that he would continue to maintain that income, including both bonuses and referral fees.

[19] After considering the nature and pattern of the defendant's income and considering *Wallace v. Wallace*, 2000 BCCA 81 and *Bell v. Bell* (1999), 1 R.F.L. (5th) 1 (B.C.C.A.), 1999 BCCA 497 (B.C.C.A.). I am of the view that the defendant's salary should be fixed on the basis of the amount actually earned. Rounding the defendant's 2002 income to \$265,000, translated into guideline support with five children is \$4,949.00 per month.

[20] There are extraordinary expenses for the childrens' hockey, but the parties have agreed that that would be shared. The monthly fee for the A.[...] Club of \$200.00 will also be shared if the defendant elects to use the club. Otherwise the plaintiff will be responsible for that monthly fee. The hockey expenses of \$300.00 per month will be paid monthly by the defendant in the amount of \$150.00 per month.

[21] The plaintiff's expenses are \$10,997.50 per month. Those, I am satisfied, can be reduced somewhat because she no

longer has lawn maintenance at \$65.00 monthly, housecleaner at \$240.00, her dental has been reduced by \$75.00 and the defendant may contribute \$100.00 towards the A.[...] Club fees.

[22] The defendant's monthly expenses total some \$14,558. That includes RRSPs at \$1,120 per month. The payment of debts of \$884.00, transportation costs of some \$1,045 per month, after the P.L.C. has picked up approximately 45% of those costs. There is a cost for horses of \$350.00. This is an expense that I don't think the defendant can afford. Without the horses he can dispose of his horse trailer and obtain transportation that is more suitable to transporting children than it is to hauling horses. In the final analysis he has greater latitude in reducing his expenses than the plaintiff does.

[23] In this particular marriage, the parties lived far beyond their means. However, I am satisfied that it was the defendant that controlled the family finances and he was the one that made the decisions in respect to discretionary expenses.

[24] The spousal support of \$3,500 per month would provide the plaintiff with a net income of \$2,937 and would leave the defendant with a net income of \$5,705.19 . In addition, the

plaintiff would be entitled to receive a child tax benefit of \$400. Therefore, her total net income would be \$8,286.00.

The Duration of the Spousal Support

[25] The defendant argues that the spousal support for the plaintiff should be reduced by \$500.00 per month commencing September 1, 2004 and reduced at the rate of \$500.00 per year until 2006.

[26] I am satisfied that the plaintiff is going to find it difficult to find any extra time until the youngest child is in grade one, and then she is going to either have to retrain in a new career or upgrade her skills in education. At the present time, she is not satisfied that an educational career is one she wishes to pursue, due, at least in part, to a lack of discipline in children and a lack of values which make teaching a very challenging profession. In any event, it is unrealistic to expect that the plaintiff, after being out of the work force for sixteen years, go back to work by September of 2004. In my view, the plaintiff is entitled to look for an alternate career and to upgrade her skills in order to make her more employable. Because of the extracurricular activities of the children and the time she has been out of the work force, I am satisfied that it is unlikely that she will have meaningful employment until 2006. Therefore, there

will, in any event, be a review of the support by September 15, 2007. The plaintiff is entitled to her costs.

"F.W. Cole, J."

The Honourable Mr. Justice F.W. Cole