

SUPREME COURT OF NOVA SCOTIA

Citation: Willison v. Willison, 2010 NSSC 411

Date: 20101108

Docket: Tru. No. 1207-0030405
(066673)

Registry: Truro

Between:

Krista Danielle Willison (Brown)

Petitioner

v.

Matthew Ernest Willison

Respondent

Judge:

The Honourable Justice Cindy A. Bourgeois

Heard:

September 13, 2010, in Truro, Nova Scotia

Counsel:

Sheena McCarthy, for the Petitioner
Jill Graham-Scanlan, for the Respondent

By the Court:

INTRODUCTION

[1] This matter came before the Court on September 13, 2010 for divorce hearing, as well as corollary issues pertaining to child custody, support and matrimonial property division. At the conclusion of the hearing, this Court gave an oral decision granting the divorce and addressing child custody and support. The Court's determination with respect to the matrimonial property division was reserved. This decision addresses that remaining issue.

[2] The parties were married on March 8, 1997 and separated on March 24, 2009. They have three children ranging in age from 11 to 4. They have a shared parenting arrangement by virtue of this Court's earlier determination. The bulk of the evidence presented to the Court either by way of affidavit or *viva voce* evidence related to the parties' respective views surrounding their children's living arrangements and the resulting financial ramifications. Quite frankly, to some extent the evidence relating to property and debt issues was lacking. However, the Court has been asked to make certain determinations, and it will based on what evidence was placed before it. The parties agree that the remaining matrimonial

assets and debts should be divided equally between them. They differ however, on how some assets and debts should be valued and characterized.

DIVISION OF ASSETS

[3] ***Matrimonial home:*** The matrimonial home was sold March 31, 2010. There was a shortfall of \$25,498.68 between the sale price and the mortgage payout and sale expenses. Both parties made arrangements to split and be equally responsible for the payment of the resulting liability.

[4] ***Vehicles:*** At the date of separation the parties owned outright a 2005 Dodge Caravan and a 2005 Jeep Cherokee, retained by Ms. Willison and Mr. Willison respectively. Mr. Willison asserts that such should be considered an equal trade. In her pre-trial written submissions, Ms. Willison's Counsel suggested the van should be valued at \$4500.00 and the Jeep valued at \$8000.00, with her receiving a credit for the difference.

[5] This Court was presented with no evidence relating to the fair market value of either vehicle, other than the view expressed by Ms. Willison. I am not

convinced, on a balance of probabilities, that there is a difference in value with respect to these vehicles which would entitle Ms. Willison to a credit in terms of the matrimonial property division.

[6] ***Matrimonial Contents:*** Following the separation, the parties divided the contents of the matrimonial home. Mr. Willison asserts that the division was unequal, with Ms. Willison receiving the items of greatest value.

[7] Ms. Willison asserts that the parties agreed the division was equal, with two exceptions. She asserts that Mr. Willison retained very expensive stereo equipment which she values at \$2000.00. She seeks a credit for this item, as well as the value of a piano sold by Mr. Willison.

[8] There was no evidence presented to the Court to document the value of the contents retained by either party. It is impossible for the Court to determine the assets were divided unfavourably to either party. Further, there was no evidence presented to support the value of the stereo. Both parties have fallen short of the required standard of proof in relation to these claims. Each will be entitled to keep the items of household property currently in their possession. There will be no

claim for contribution by either, except for the piano as Mr. Willison agreed to divide the sale proceeds of \$300.00 with Ms. Willison.

[9] **4 Wheeler and Travel Trailer:** These items were sold post-separation by Mr. Willison. I accept his evidence that these items were sold to a third party for \$2200.00 and \$4500.00 respectively. The funds generated from the sale are subject to equal division.

[10] **Pension and Investments:** Despite there being no documentation submitted into evidence to establish the values of the above assets, I am prepared to accept the value acknowledged by Ms. Willison for her pension, as well as the value claimed in relation to Mr. Willison's RRSP, which is \$3,045.46. Despite there being no documentation before the Court to confirm the above values, based on the acknowledgment of the parties, I am prepared to accept the same and find them to be matrimonial assets. Given the nature of the investments, I view it as appropriate to deduct 30 percent of the stated values to reflect tax consequences.

DEBTS

[11] ***Debt Owning to Mr. Willison's Parents:*** Mr. Willison testified that during the marriage his parents advanced monies to him and his wife for a number of reasons. In his *viva voce* evidence, he submits that the value of these purported loans was somewhere between \$12,000 and \$15,000. In his affidavit sworn May 17, 2010, and entered as an exhibit in the proceedings, he asserted the amount owing to his parents was \$10,000.

[12] Advanced at different times during the marriage, Mr. Willison testified that his parents have only sought repayment following the marital breakdown. Ms. Willison acknowledges that her former in-laws provided money from time to time to assist the couple financially, but there was never any expectation of repayment.

[13] I found Mr. Willison to be vague as to the amount now claimed by his parents, and when and why it was advanced. I cannot find, on a balance of probabilities, that these funds should be considered a matrimonial debt.

[14] *BMO Line of Credit and MasterCard:* The parties have a joint line of credit with the Bank of Montreal and Mr. Willison has a MasterCard in his own name which are in dispute. Ms. Willison asserts that neither of these debts, which together total approximately \$16,000.00, should be considered matrimonial debts. She asserts that both of these instruments were utilized by Mr. Willison in the course of his former employment for the purchase of goods and services solely related to his employment. He would then be reimbursed by this employer. Ms. Willison asserts that neither the credit card or line of credit was used for family purposes.

[15] Mr. Willison does not significantly refute the evidence of Ms. Willison regarding the usage of these accounts, but asserts that these debts were "tools to his employment" and as such should be considered matrimonial debt. I must reject that view. I accept that these two accounts were not used for family purposes, but were rather a means of conveniently incurring business expenses which were the ultimate responsibility of Mr. Willison's employer. Unfortunately, Mr. Willison was terminated from his position at a time when the expenses were still outstanding. Mr. Willison testified that he has commenced action against his

former employer seeking reimbursement of these debts. I am not satisfied on a balance of probabilities that the claimed amount is a matrimonial debt.

[16] ***St. Francis Xavier Tuition:*** Ms. Willison claims against Mr. Willison tuition expense in relation to her attendance for university summer courses in 2010. She asserts he agreed to pay for half of this expense.

[17] Mr. Willison entered into evidence a CIBC Visa statement showing a payment in August of 2010 to St. Francis Xavier University. Mr. Willison retained responsibility for this debt, having removed Ms. Willison's name from the account. Ms. Willison has not proven this debt is owing.

[18] ***2008 Notice of Re-Assessment:*** Mr. Willison entered into evidence a Notice of Re-Assessment from the Canada Revenue Agency relating to the 2008 taxation year. He owes \$1045.67 arising from the re-assessment and I find this amount to be a matrimonial debt.

[19] ***Other Debts:*** In both her affidavit and *viva voce* evidence, Ms. Willison referenced several other debts which she claims should be considered as part of the

matrimonial property division. Most notably, this includes student loans from previous years studies. There was nothing submitted into evidence to establish the nature or amount of these debts and as such, the Court will not consider same as matrimonial debts subject to division.

SUMMARY

[20] The above findings, in terms of an overall property and debt division can be summarized as follows:

	<u><i>Ms. Willison</i></u>	<u><i>Mr. Willison</i></u>
<u><i>Assets</i></u>		
Piano		\$300.00
4-Wheeler		\$2,200.00
Travel Trailer		\$4,500.00
Pension (\$8714.14-30%)	\$6,099.90	
RRSP (\$3045.46 - 30%)	_____	<u>\$2,131.82</u>
<u><i>Assets Total</i></u>	\$6,099.90	\$9,131.82
<u><i>Debts</i></u>		
2008 Taxes	_____	<u>\$1,045.67</u>
<u><i>Net</i></u>	\$6,099.90	\$8,086.15

To equalize $\$6,099.90 + 8,086.15 = \$14,186.05$
 $\$8,086.15 - 7,093.03 = \993.12 payable to Ms. Willison

[21] Based on the above, I direct that Mr. Willison pay to Ms. Willison the sum of \$993.12 by way of an equalization payment.

[22] Should either party wish to address the issue of costs, Counsel should advise the Court accordingly.

J.