

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Berriman v. Berriman, 2008 NSSC 370

Date: 20080219

Docket: 1205-002653 (050749)

Registry: Pictou

Between:

Clifford Edward Berriman

Petitioner

v.

Tanya Diane Berriman

Respondent

DECISION

Judge: The Honourable Justice Ted E. Scanlan

Heard: February 19, 2008, in Pictou, Nova Scotia

Written Decision: December 8, 2008

Counsel: Mark Wiseman, for the Petitioner
E. Anne MacDonald, for the Respondent

By the Court:

[1] The parties were married September 14, 2002. There is a dispute in regards to the date cohabitation ceased. In the Petition for Divorce it suggests it was July 1st, 2005. That is the date Mr. Berriman suggests the separation occurred. Ms. Berriman did not agree with that.

[2] She indicated a number of things. She said in relation to Mr. Berriman's decision to sleep in the basement, it was motivated as much by the fact there was no light going into the basement. He could sleep because of his odd shifts and not be disturbed by the light coming into the basement. She said, for example, sexual relationships continued for quite a number of months after he moved to the basement. I am satisfied given the fact they were married it was more than casual sex as between roommates, it was a continuation of the relationship as husband and wife. So the sexual relationships continued. Not everything turns on sex but that is one of the indicators. It is clear that between the time Mr. Berriman moved to the basement and sometime in 2006 the marriage was going downhill. By the time May 2006 came around, Ms. Berriman said, and I agree with her, they were roommates rather than lovers. Again, I am talking about more than sex. I am talking about the fact that by May, 2006, it was clear they were not living as

husband and wife anymore. Mr. Berriman, in his mind, had made the decision the marriage was over but for Ms. Berriman it did not come quite as quick. I suppose that is why she says she continued with the sexual relationships perhaps as much as three times a month.

[3] Certainly, I am satisfied that by May of 2006 the parties, although living in the same house, were living separate and apart. They had their own lives. They hardly met one another except coming and going in relation to the children. They each were doing their own thing in terms of their own relationships outside of the marriage. I say that without ascribing any particular relationship to Ms. Berriman, but certainly Mr. Berriman seems to have been doing his own thing. In fact I would suggest he was probably doing his own thing long before May of 2006 but not necessarily fessing up to it. Ms. Berriman said she thought that as regards to Ms. Royals there was something going on long before May of 2006. She really did not open her eyes to it, she simply trusted him. Then there started to be unexplained absences and the cell phone turned off, etc. She said she did wake up to that sooner or later. I am satisfied that by the end of May 2006 the parties were indeed living separate and apart although they lived in the same residence. I do not take much from the consent orders, or the orders that were signed as between the

parties dealing with the issue of spousal maintenance and payment of the mortgage. That was simply an agreement as between the parties. It does not do much to help me establish the actual date of separation.

[4] I am going to turn to the divorce before I turn to the corollary issues. In terms of the divorce, I indicated earlier the parties were married September 14, 2002. I have just indicated they were separated effective the end of May, 2006. All jurisdictional grounds have been proven. I am satisfied there is no possibility of reconciliation. The parties should be divorced.

[5] In terms of the corollary issues, it is clear the parties actually began a relationship in the spring of 1997. Mr. Berriman had been in Ontario and met Ms. Berriman there in Belleville. She moved down in the spring of 1997 and although Pearl Berriman did not find out right away that the relationship began, I think it really had started when Ms. Berriman was still living at Tonya Berriman's house. Within a short time they moved into an apartment with a third roommate and started their common-law relationship. The parties had two children and continue to have "two children of the marriage".

[6] The first born was Haley Jordan Berriman, born March 2, 2000. The second child was Savannah Rae Berriman, born April 17, 2004. Haley was born prior to the marriage and Savannah during the marriage.

[7] It is interesting in terms of this case, one of the issues is whether or not Ms. Berriman is underemployed. I am satisfied that both of these parties took themselves from a place which was not too promising in terms of careers to a point where they both have fairly promising careers. Mr. Berriman is earning in excess of \$80,000.00, now a full-time member with the R.C.M.P. Ms. Berriman, although she is not making an awful lot of money with Convergys now, has steady employment in the local area. It allows her to meet her obligations in terms of child care responsibilities and also to “keep the wolf away from the door” in terms of paying the bills.

[8] There has been an awful lot said by the petitioner, Mr. Berriman, suggesting that Ms. Berriman was underemployed. I am not at all satisfied that she is underemployed. She went well beyond what I see in many cases in this court in terms of efforts to train herself, to get herself schooled. She was pregnant when she was finishing up her degree and had Haley. She was the go to person in terms

of child care for Haley and she is the go to person now in terms of child care of Savannah as well. In other words, she works five days a week whether it is from nine to five or eight forty-five to four forty-five whatever the times are. If Mr. Berriman is working she is the one that has to take the children to daycare. She is the one who picks the children up. Mr. Berriman said, look at all the accommodations he has made within his schedule in terms of the children. I have to give him credit. He has accommodated these children's needs on a regular basis but at the end of the day she has always been the go to person. If he had to go to Depot which was in Regina, he left her behind with Haley.

[9] She borrowed money to basically put food on the table, student loans. He borrowed money to come home and see her and see Haley, to buy Christmas gifts, etc. She was the one that stayed behind. They criticised one another a little bit in terms of the money and in terms of student loans, etc. They ask for example: did you need them? Did you spend them wisely? She got a computer with her student loan. It should be hers. They had separate bank accounts, all that stuff. I did not hear for one moment that even though they had separate bank accounts, they were not putting all of their money into this marriage looking after themselves and their children to the best of their financial ability. That is what happened throughout

the marriage. There were separate bank accounts. Ms. Berriman went out and got credit cards in joint names in some cases because Mr. Berriman had just gone through a bankruptcy and could not get them. They spent the money to support themselves and the children to best of their joint ability, even without joint bank accounts. That continues to today. They still support themselves and the children to the best of their financial ability and they are spending every cent they have to keep themselves alive and to provide a roof overhead for the children.

[10] I do not for a minute doubt that these are two very, very loving parents. Two very, very capable parents. Two very dedicated parents. That does not say there have not been some problems. In terms of parenting, this is about as close as I have ever seen without the Court ordering on a very specific basis shared parenting. Ms. Berriman said in reality, without counting every minute, she spends about 40 percent of the time with the children, he spends about 40 percent of the time with the children and the children are in daycare or are actually physically in school for the rest of the time. There was no stop watch on either one of these children and there is no stop watch on Mr. Berriman. My sense of it is that may well be close to the real number. Even though Mr. Berriman drops into the school or drops into the daycare, picks them up a little bit early some days either from

school or from daycare, it does not put him over the 50 percent or 60 percent. Like I said, there is no stop watch on it. There is in fact a joint parenting arrangement in place in this case and there are some difficulties with it, but for the most part it is working.

[11] Mr. Berriman says, wreck that. He wants primary care and have her come on the weekends and the odd day through the week. Not every weekend by the way, just some weekends. Ms. Berriman said no she would like to keep it as a shared parenting arrangement. It is her first choice. Why? Because Mr. Berriman is a very loving, caring, capable father. He is good for the children and he does a lot with the children. Why would I want to interrupt that and upset the apple cart? Even for the period they lived in the same house and they were not living as man and wife, they were still doing shared parenting. I did not hear anything from either one of them suggesting they were not doing a good job in terms of the parenting. So in terms of the status quo, even without the stop watch, it really does not matter if he got a few hours more or a few hours less. I would say that whether Ms. Berriman had more time with the children, a few hours more each week, or whether he had them a few hours more each week. I accept Ms. Berriman's evidence that he always pulled up his socks a little bit just before the

court dates and made a little more effort through the weeks when he was on N1 or N2, either one of the night shifts. It does not matter. Even if he was more regular than Ms. Berriman suggests, and it was not just before the court dates, it was still an effective shared parenting arrangement.

[12] Do I now say that we upset that and do as Mr. Berriman says and give him primary care and have Ms. Berriman become the weekend visitor, or do I accept one of Ms. Berriman's two alternatives? That is to leave it as it is basically, or to make Mr. Berriman the weekend warrior where he comes in a few days a week, or a few days a month, to see the children. That is basically the three options or, alternatively, cut the children in half and give them each half. That would do no good for anyone.

[13] I am satisfied the status quo should be maintained as much as possible. I said there were a few problems. I think I can fix some of those problems.

[14] As I listen to both Mr. and Ms. Berriman, perhaps the most telltale phrase of all of their evidence was when Ms. Berriman said, "he's a good dad, he just has to back off a little bit." As I listen to all the evidence I think that is true, Mr.

Berriman is an extremely good dad. As good as I have seen coming into this Court in terms of the effort he puts into it and the benefits the children are receiving from his involvement. Just back off with mom a little bit. Ms. Berriman said he has not been calling 14 times a day now. That is good. If he was he probably would not get near the access that I am going to give him. I am using the wrong term when I say access. I think the shared parenting arrangement is what is going to continue. If Mr. Berriman becomes too intrusive in Ms. Berriman's life or even in the children's lives, he jeopardizes the shared parenting arrangement.

[15] What I am going to do is to allow the rotation to continue so that when Mr. Berriman is on a day off he has the children, unless it is on Ms. Berriman's days off.

[16] In terms of the children and the pick ups at the daycare, I am concerned for Savannah. It is important to her in terms of her socializing with other children, or in terms of seeing other people. She is at home I know with her caregiver now. It is important that she have something fairly regular. I would not expect Mr. Berriman drop in every day that he can and pick her up early. I suggest that in each of the five day rotations through the week if he wants to drop in for one day

and pick her up early and take her with him that is fine. Above and beyond that, however, it will have to be Ms. Berriman's request. I am not saying he can keep after her, keep asking her to do that. If she says why don't you pick Savannah up early on Monday and Wednesday, or Monday, Wednesday, Thursday, or Monday through Friday, that is up to her. I want to give her a little bit of control so that it accommodates the best interest of Savannah. So that Savannah knows she is going to daycare and that is where she is going to be. It gives mom some say in that. It is not going to take much away from Mr. Berriman in terms of the amount of time he is going to spend with Savannah. He will still end up with just about the same amount of time as Ms. Berriman has with Savannah. I am satisfied it is a problem when he goes every day, unannounced and unexpected. So there is some certainty in these children's lives, I am not going to stop him from going to school at Haley's lunch hour, or lunch program. That is part of his job. That is part of his desire. That is part of his parenting, that type of thing.

[17] In terms of Haley, if she is getting off school and he wants to pick her up and he is available, I am not going to interfere with that. That is not a situation where she is with a caregiver and he is taking her out of that routine unannounced on an irregular basis. So, unless Ms. Berriman objects to that down the road; and if

she objects to it listen to her, hear her out. I am not going to give her the final say on that part of it. I am simply saying just listen to one another in terms of the concerns you have.

[18] It is going to continue as a shared parenting arrangement. About the only thing that controls the shared parenting arrangement is Mr. Berriman's time off and then his time off on the weekends.

[19] I did not hear much in terms of the arrangements that were made for Christmas, or New Year's, or vacations, extended vacations through the summer. What I would suggest is it is not at all unreasonable where you have two capable parents—which really either one could be the sole primary caregiver for these children because both have the ability—I would suggest that you accommodate the needs and desires of the other parent when it comes to extended vacations so that each parent has a couple of weeks in the summer where there are no interruptions. That is to be a time where dad does not come by at mom's place. If mom is away to a cottage or has a new person in her life she has that time where she knows she is not going to be interrupted. That does not mean that she cannot allow the children to call dad when they want to. It does mean that dad will have

to understand for a couple of weeks that the phone calls will be coming out, not going in. The same goes for Mom. If dad wants to take the children for a couple of weeks, in the summertime during the school break, then so be it he just has to give some reasonable notice. I am not going to impose what reasonable notice is in this case because so far it seems to be working out. I would expect that it would only be fair that as much notice as possible be given if you want an extended summer vacation so that you can arrange your vacations with work. Both, I assume, have to let their employer know when they want time off. Just do it as soon as you reasonably can.

[20] For Christmas, Easter, March Break, and Birthdays, those types of things, I assume they have been working them out. I hope they can continue to work them out. The only suggestion I would make is try to accommodate the children's needs as well. I expect that for Christmas they would want to share some of that time with dad and his family and some with mom and her family or friends. I know mom said she is from Belleville, Ontario.

[21] I would say as well that if Ms. Berriman wants to travel with these children for a week or two a year outside the province, she does not have to get Mr.

Berriman's permission. Just notify him in advance where she is going and perhaps a contact number in case of emergency. I assume her cell phone would work when she is away. The same for Mr. Berriman, if he wants to take the children and maybe go to Florida some time, take them to Disneyland, maybe he would want to go to Halifax and see his mother, or someplace else and see some other relative. Just make sure it is on his time and reasonably arranged. Let her know where he is going and how he can be reached because there may well be emergencies.

[22] The same with medical stuff. Mom said they were "healthy as horses". If there are any problems in terms of medical, you have to let the other parent know. If there are concerns, even if they have not been identified or diagnosed by a doctor, just let them know so that you keep the other side informed. You would not want something to come up where dad did not realize the children were sick when he took them, and mom when the children come back.

[23] Whatever the arrangement has been in terms of the parenting, the only fine tuning I was wanting to do was to limit the number of times dad was going to the daycare provider. So that he could do it once a week, let mom know which day it

is. Otherwise, she can limit it. So whatever the arrangement was in terms of the weekends, I am not interfering with it.

[24] It continues to be a joint custody, shared parenting arrangement where they are both involved in terms of major decisions, whether it is health care, education, etc. Mom said that she is going to be moving to Fairview Avenue in New Glasgow. She said she is going to continue to keep the children in the A.G. Bailey School. That is good for this year but that does not mean that I am in any way suggesting that is where they have to go next year. There is only one of them in school right now. I do not understand there to be any great significant difference between one school in New Glasgow and another. I would simply say whatever is best for the children, the parents can decide upon it themselves. The shorter the drive for the children the better.

[25] There were a number of corollary issues that were agreed upon in terms of Visa cards, water bills all those things. I am not going to go through those. You said you would determine them once I fixed the date of separation and I have.

[26] In terms of child support, I think the Court has to take into account the shared parenting arrangement and the amount of time that Mr. Berriman has with the children and the amount of time that Ms. Berriman has. It is not appropriate to simply apply the tables in this case and say that Mr. Berriman has to pay in accordance with the tables. I say that because he has to make provisions for these children and he has ongoing expenses in terms of clothing, in terms of heat, lights, the size of the house that he has, etc. Even though he has the higher income it is not enough to simply say that the tables apply.

[27] There probably is an advantage to mom claiming for the Child Care Allowance and the Child Tax Credit because she has the lower income. Even though it is a shared parenting arrangement I am going to order that she is entitled to claim that if legislatively permitted. I am going to require her to give back to Mr. Berriman 24 percent of that on a tax-free basis, because he is going to have the children with him close to half the time. When I say close to half the time you cannot, unless I put a stop watch on, say they are in school so who has them? Is it who dropped them off, and who picked them up. In this case one person drops them off, the other one picks them up, we never know which day it is. So mom will simply give back 24 percent of the child tax credit and the child care

allowance to dad and she will do that on a monthly basis. That is separate from everything else I do and it is based on the percentages of their respective incomes. It will be adjusted from time to time.

[28] In terms of the tables, what I am proposing we do is to take his income, which I understand to be now \$82,700.00, and if you were to apply the table amount for two children that is \$1,140.00. Mr. Berriman will have an ongoing obligation to disclose his income to Ms. Berriman and the adjustments will have to be made accordingly.

[29] Ms. Berriman's current income is \$25,750.00. She would normally have to pay \$383.00 a month to Mr. Berriman if he had the children full time. The difference is \$557.00 and that is what Mr. Berriman should pay to Ms. Berriman for child support per month.

[30] Mr. Berriman will also be required to pay 76 percent on a go forward basis of the child care expenses. I do not expect that Mr. Berriman should be allowed to delay that in any way, shape, or form. At the end of the month Ms. Berriman will give him a receipt showing what the child care expense was for the month and

within one week after that he will reimburse her 76 percent. That is important because when she has to buy groceries, or pay the power bill, or pay for the oil in the house, and she has to take the money and pay for child care expenses, his share instead, that is not fair to the children and it is certainly not fair to her. He is a long way behind already.

[31] In terms of the retroactive child care expenses, I understand it is agreed it is 74 percent of the amounts actually incurred to date. Those amounts are agreed on as well. It is atrocious that he would wait a year to pay that. Like I said, she has had to go without, on a substantially lower income to do that. I say to Mr. Berriman, I do not want to short change you. When I looked at the respective incomes of the houses, considering the amount of money that Mr. Berriman was paying in both child support, the mortgage, some of the other expenses in relation to the house above and beyond the mortgage, Ms. Berriman was getting the Child Tax Credit and the Child Care Allowance and her salary. In terms of disposal income in the two homes, the difference was not as great as you think. I think hers was coming up to around \$2,300.00 and his was down to about \$2,800.00 a month. All that discretionary income he had was being used up by paying a fairly substantial amount in what was deemed as spousal support. Counsel have

suggested on a go forward basis \$600.00 per month. He was paying a lot more than that with the mortgage payment, etc., plus he was paying child maintenance. I have indicated, when I suggest it was atrocious he would go that long without paying the child care expenses, I do give Mr. Berriman credit for the fact he was paying very substantial payments up to this date as well. I think it is important to understand, although this has taken longer than expected, I really do not think either one has been terribly unfair to the other side during this process. I would have liked to have seen it resolved a lot earlier as well. I dealt with this file as soon as it came to me. That is all I can say to you.

[32] Pensions are divided at source. Again, it is one of those things I said I am not going to go into details on but you now have the date of separation that I have fixed. Mr. Berriman's pension will be divided up to that date and if she had any pension during the marriage up to that date it will be divided as well.

[33] Canada Pension I do not control, it is divided automatically. I could not prevent or interfere with that division. I say automatically, it is divided upon application. It is not automatic. Ms. Berriman will want to let Canada Pension know that she wants a division at source and that the date of separation was the end

of May 2006. I suspect that the adjustment will not be great because Mr. Berriman was not making a lot of money before that. The effective date in terms of the start date for the division would be, and I am going to pick an arbitrary date, May 1st of 1998. I know the parties were living together starting in the spring of 1997 but they really would not acquire common law status for a year after that at best. So I fix the start date for division of Canada Pension at the earlier date, not the later date. So that may be of assistance and save a dispute down the road as well.

[34] I think it is important as well that Dad understand that as regards mom, it is not unreasonable for her to make decisions about whether the children can ride on a scooter with a helmet on. He cannot be going into her yard or anybody else's yard if she is the one that makes that decision. Some people would say, for example, it might not be a good idea to drive children around in a police vehicle because maybe somebody would be shooting at it or something. I know that is not much of a risk, but maybe driving around on a scooter is not either. In other words when Mom has the children unless it is something pretty drastic, do not interfere. It will have to be substantially out of the norm before you can interfere. Mom gets the same direction. Do not interfere unless it is substantially out of the norm.

[35] I would encourage both parties to talk to their child care provider in relation to Savannah, by the way, and say: “look every study there has been in the last 30 years suggests you should not be smoking around the children.” Because second-hand smoke is a killer. For two parents who love their children as much as you guys do, you might not want to take that risk. Just say to your child care provider, “if you smoke, you do it when she is not with you or you do it outside.” That should be your rule not hers.

[36] Workers’ Compensation now will not let people work in a bar and cover them in terms of compensation without possibly suing the employer because of second-hand smoke. I cannot image why as parents you would want to work in that environment and tell that to Savannah. Those might be the terms you have to explain and you can tell the caregiver that the Court is concerned about it.

[37] I am not going to require that Ms. Berriman be the designated beneficiary. I am going to make an order that says that if she is not the designated beneficiary the monies will be in trust on the condition that they can be accessed for the purpose of maintenance and support of the children. If Mr. Berriman is not prepared to make

that a condition of the trust, then Ms. Berriman will be the beneficiary. That gives protection to the children so that if something happens to Mr. Berriman, Tonya Berriman, cannot simply say she is going to hold the money until the children are 19 and Ms. Berriman will have to support them on her own. I did not think that is what he was intending.

[38] Spousal support I indicated, as I was talking about the children, the fact that Ms. Berriman is the go to person and always has been. When Mr. Berriman was off to Depot, she looked after the children, she stayed home when he was trying to transfer here to get work in New Glasgow. She came to New Glasgow and when he was working all those long hours in the first year, she was the one who stayed home for quite a few months with the children. In fact, she mentioned at one time there was a stretch of 18 months that she was at home with the children. That does not in any way minimize Mr. Berriman's involvement but it speaks to one of the consequences of the marriage. One of the consequences of the marriage is that Ms. Berriman is now in a situation where in spite of her best efforts, she is in a situation where she is the go to person for the children. I suppose if Ms. Berriman went to Calgary as an I.T. person she might get a job that paid an awful lot more than she would by staying here in Nova Scotia. Then Mr. Berriman could not see

his children as much and that would not be fair to him or the children, maybe not even in their best interest. I do not know. I do not want to prejudge that in case she decides she wants to move to Calgary. Even though she is not underemployed in this part of the province, or this part of the country, it is a consequence of the marriage that they have children. As a consequence, she is responsible to look after these children and is not free to leave at the drop of a hat and seek opportunities elsewhere. In fact, she indicates that because of a combination of her workload, her child care obligations, money—and I suppose in many ways money is related to child care obligations as well—she cannot retrain in this area. She said she simply has not had time. To say she will have any more time now that these proceedings are over, on a go forward basis, or not, I do not know. For the time being, at least, she is not able to retrain. I am satisfied she would have to have a lot of additional certifications to get some of the jobs that Mr. Berriman thinks that she can get, certainly in this area.

[39] There are some lingering, and will be some lingering, consequences of the marriage. I indicated even though they were married in 2002, the relationship was a lot longer than that. Even the child care responsibilities existed well before

the marriage. Haley was born in 2000. In effect, this was a marriage or a relationship of some nine years as opposed to a marriage of four years.

[40] I am satisfied considering all of the things that I must take into account under the **Divorce Act** there should be some ongoing spousal support in this case. The question is how much and how long? I am satisfied this is not a case where I should determine the how long at this juncture. I do not know how this is going to unfold in terms of Ms. Berriman and her ability to get higher paying jobs. She said she looks almost every day in terms of what is available and has not been able to find something that pays better. Certainly geographically, as I said, she is limited to this area, or confined, substantially because of the children and the ties to the Petitioner. I am satisfied it is appropriate to order spousal support. I am going to order it in the amount of \$500.00 per month on a go forward basis. It is not for a definite term. Mr. Berriman should understand that continues to be deductible. I am not going to require, however, that Mr. Berriman pay the income tax portion that is consequent to the payment of the spousal support on a go forward basis. That has been a requirement to date where he has to reimburse her for the income tax as a consequence of paying the spousal support. I am simply ordering it is \$500.00 a month on a go forward basis. After a couple of years I

suppose you could make application to have it reviewed if the circumstances have changed. But that does not mean it is automatic.

[41] There is an obligation on Ms. Berriman to become self-sufficient in every way. Do not expect, given the length of the relationship she will get spousal support indefinitely. It is a stop-gap measure. I say the **Divorce Act** requires that she become self-sufficient as soon as reasonably possible given the circumstances of the case. As I have indicated to Mr. Berriman already, he does not have to pay the income tax on that \$500.00 a month now. So Ms. Berriman should be prepared to pay the income tax on it herself at the end of the year. If she is not prepared, she will have a problem. The income taxes to date are payable by Mr. Berriman.

[42] With this duration of a relationship and given the circumstances of the parties, just the mere passage of time, I suggest is a change in circumstances. That does not preclude another judge from saying, no it is not. I am simply saying she has an obligation under the **Divorce Act**. She is a person who is in the prime of her life in terms of career and seems to be advancing quite well within the organization she is in. It is just that she will reach a glass ceiling within the

organization pretty soon at Convergys. I do not know how many \$60,000.00 a year people they have there. Probably not a lot from what I hear, but that is not evidence and I am no expert. I am not going to put a review date on it. I am simply saying that I am making it very clear to her she has an obligation to become self-sufficient. I expect within two to three years, maybe sooner, she will have either made that breakthrough or it becomes hopeless because of what she is doing.

[43] There are many other things that could change the circumstances as well. For example, she may get into a new relationship where her dependency may end. That does not suggest a new relationship automatically eliminates Mr. Berriman's need to pay spousal support . The law is quite clear on that. It does not end sometimes even with re-marriage. That might be the exception but we have already seen an exception in this case where they were separated long before they stopped living under the same roof. I am simply saying there are many things that could bring about a change in the circumstances. That deals with spousal support.

Comments Re: Matrimonial Home

[44] I say to Ms. Berriman there better not be anything wrecked between now and the time Mr. Berriman goes in there. I know I knocked a couple of hundred dollars off of spousal support but I assume she is pretty close to making it with the house that she is trying to buy. What is reasonable? Can you get it done in six weeks? Her closing date is the 29th of February. I do not expect everything moved by the 1st of March. Can we say by the 7th of March. Mr. Berriman has a place to live right now. If Ms. Berriman just gets the house on the 29th she does not have \$10,000.00 to pay movers to go in and move everything out in a couple of hours. I assume a lot of this is going to be her doing her own moving. I am simply giving an extra week or so. Well I said the 8th. You might have a closing on the 10th because you are not going to close on the 8th, it is a Saturday. I do not imagine Ms. MacDonald going to work on the Saturday. So a closing on the 10th. Ms. Berriman would sign the Quit Claim Deed to Mr. Berriman. I understand as well it is implicit in the Agreements that Mr. Berriman will be having her name released from the existing mortgage and he will be paying her all this other money as well. Because otherwise she is going to be in a real bind in terms of money.

[45] It is incumbent on Ms. MacDonald to get the things like the Visa statement, the Canadian Tire statement effective the first day of June or the 30th of May,

whatever the date is that was closest to the actual separation date because it allows you to calculate what his share of the matrimonial debt was. I understand with the Royal Bank the approval was contingent upon payment of a Wells Fargo loan. I assume that money is coming from Mr. Berriman in terms of what he owes Ms. Berriman. He is not having to pay it himself but Ms. Berriman needs his money. That one is hers. Because there was one during the marriage as well. I am simply saying she needs Mr. Berriman's money to do the closing.

[46] I am satisfied that certainly the major sticking point as between the parties was in fact the child care arrangement and that as we proceeded along almost everything else is agreed except for the separation date. Most of the collateral issues were agreed to by the parties as we went along, other than the one issue which I had to deal with and that was the spousal support. The vast majority of the time was spent on the child care arrangements that were going to go in place. I take into account the comments made in terms of Mr. Berriman and the monies that he has paid all along. I suppose but for that I would make an award which was a little bit greater. Certainly the last two days an awful lot of it has been spent on the child care arrangements. Basically what I ordered was close to what I understood Ms. Berriman to be asking for. She had to fight for two days basically

to keep her children. I say keep her children, I mean fight not to lose them in terms of primary care going to Mr. Berriman. I am prepared to make an order which says that Mr. Berriman, in addition to the other amounts, will pay \$1,500.00 in costs. It could have been substantially more.

[47] Some of the numbers I hear in terms of legal fees for divorces on a contested basis are scaring me these days. It is not a full reimbursement by any stretch of the imagination.

[48] I do wish Mr. and Mrs. Berriman all the best. The only thing I say to Mr. Berriman is just back off and cool it a little bit. You are going to do fine and you are going to have a good relationship with your children. I say to Ms. Berriman it seems to me there is not much that is going to knock you down and keep you down either. It looks good for these children and both of you. That is the most important thing. So I wish you well. There are no winners or losers here today. You both have won. Good luck.

J.

12/04/08