SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Chisholm v. Chisholm*, 2016 NSSC 245

Date: 2016-09-22
Docket: *SFSND* No. 1206-6808
Registry: Sydney

Between:

Patricia Chisholm

Petitioner

v.

David Blair Chisholm

Respondent

and

Daren Chisholm

Intervenor

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	May 9, 10 and 11; June 17; and July 7, 2016, in Sydney, Nova Scotia
Written Release:	September 22, 2016
Counsel:	Alisha Brown-Fagan for the Petitioner David Blair Chisholm, Self-Represented Daren Chisholm, Self-Represented

By the Court:

INTRODUCTION

[1] This case involves the usual claims for a division of assets and child support, but it also involves allegations of fraud and chicanery.

[2] At issue is the home shared by the parties before their separation in 2011. Ms. Chisholm seeks a declaration that she has an interest in the home, and asks the court to overturn a deed from the original owner to her brother-in-law, which was recorded in 2014. She says that title was transferred fraudulently, and that the home should be classified as a matrimonial asset. She seeks to have its value divided. Mr. Chisholm and his brother, who was added as an Intervenor, both contest her claim to the home.

BACKGROUND

[3] Blair Chisholm and Patricia Chisholm were married on May 29, 2004 after living together for several years. They have one child together. D.J. is almost sixteen years old.

[4] They rented a home together at 34 Margaret Street, North Sydney, Nova Scotia. The home was owned by Audrey Laffin. They approached her to sell, and ultimately agreed on a lease with an option to purchase. The lease and option were signed, and they lived in the home as a family until 2011.

[5] Blair Chisholm and Patricia Chisholm separated on February 13, 2011. Mr. Chisholm was charged with assault, and left the home on an undertaking which allowed no contact with Ms. Chisholm. The undertaking was varied, so Mr. Chisholm was able to return to the property with Ms. Chisholm's permission. In late October, 2011, Mr. Chisholm was arrested and questioned in relation to contraband cigarettes which police seized from the barn on the property. They also took a vehicle and trailer as part of their investigation.

[6] Before police could charge him, Mr. Chisholm left Cape Breton. He stayed in Ontario for a week before travelling to Alberta. He sent Ms. Chisholm money on an irregular basis, but the amount of support paid is disputed. He returned to North Sydney in April, 2014. Shortly after his return, a deed to the home from

Audrey Laffin to Daren Chisholm was executed. Blair Chisholm then turned himself in to police and was released on a bond. His brother used the home to secure his release.

[7] In late May, 2014, Daren Chisholm presented Patricia Chisholm with a notice to vacate the home. Ms. Chisholm refused to vacate, and the dispute ended up before the Residential Tenancies Board. At a hearing with the board, Patricia Chisholm's position was upheld. The board found no landlord / tenant relationship existed between Ms. Chisholm and her brother-in-law. That decision was upheld on appeal to the Small Claims Court.

[8] The dispute over ownership of the home continued. They disagreed about who should pay the municipal water bill, so Daren Chisholm had the water shut off in January, 2015. Court intervention saw the water issue addressed, and Ms. Chisholm stayed in the home. She says the home is a matrimonial asset, which she wishes to retain. Daren Chisholm says he owns the home. He wants Ms. Chisholm to vacate. Blair Chisholm supports his brother's position.

[9] The parties are agreed that Ms. Chisholm will retain primary care of the dependent child, and that Mr. Chisholm will have access in accordance with D.J.'s wishes. He may communicate with D.J. by email or otherwise. Ms. Chisholm will keep Mr. Chisholm advised of any major milestones or health issues in D.J.'s life.

ISSUES

1. Divorce
2. Classification of assets

(a) What is the onus to be met?

(b) Is the home at 34 Margaret Street in North Sydney a matrimonial home?

(c) Was there a fraudulent transfer of title to the home?

(d) If the home is classified as matrimonial and the Deed is set aside, what is the appropriate division of its value?

3. Division of other assets and debts
4. Child support

(a) arrears / retroactive

(b) prospective

Issue 1 – Divorce

[10] All procedural and jurisdictional requirements of the **Divorce Act**, R.S.C. 1985, c. 3 (2nd Supp.) have been met, and I grant the Divorce. Ms. Chisholm's change of name is also granted.

Issue 2(a) – What is the onus to be met?

[11] This is a civil case. The Supreme Court of Canada was clear in the case of **F.H. v. McDougall (**2008) S.C.J. No. 54 that there is only one civil onus of proof in Canada, namely the balance of probabilities. That onus applies in civil cases even where there are allegations of fraud, such as here. Ms. Chisholm seeks the protection of the **Matrimonial Property Act**, R.S.N.S. 1989 c. 275 in declaring the deed invalid. The onus is therefore on her to establish, on a balance of probabilities, that the conveyance in question was improper.

Issue 2(b) – Is the home at 34 Margaret Street in North Sydney a matrimonial home?

[12] The **Matrimonial Property Act of Nova Scotia,** R.S.N.S. 1989 c. 275 defines matrimonial home at section 3 as follows:

> "matrimonial home" defined
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> 3 (1) In this Act, "matrimonial home" means the dwelling and real property occupied by a person and that persons spouse as their family residence and in which either or both of them have a property interest other than a leasehold interest.

[13] The court is granted certain powers under the **Act** to deal with property interests:

> Powers of court
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> 10 (1) The court may by order, on the application of a spouse or any other person having an interest in property,
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> (a) determine if all or part of the property is a matrimonial home;
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> …

(e) direct the setting aside of any disposition or encumbrance of an interest in a matrimonial home and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

Determination of question between spouses

16 (1) Either spouse may apply to the court for the determination of any question between the spouses as to

(a) the ownership or right to possession of any particular property;

(b) whether property is a matrimonial asset or a business asset,

[14] The lease identifies the property, located at 34 Margaret Street, North Sydney. It sets out the monthly rent of $400.00 and what is included in (and excluded from) the rental charge.

[15] A separate option to purchase was signed. It references the property at 34 Margaret Street and provides that:

- The purchase price is $40,500.00;
- A portion of the monthly rent shall be credited to the purchaser upon closing, if the option is exercised;
- A payment of $4,500.00 is required for the granting of the option;
- The option to purchase must be exercised by April 30, 2008;
- If the option is not exercised by that date, the option is null and void;
- If the option is not exercised, the vendor will be entitled to retain any sums paid for the grant of the option;
- The sale was to be completed by June 1, 2008.

[16] A number of cases have considered leases with an option to purchase in the context of the **Act**. In **Beaman v. Beaman** (1984) 62 N.S.R. (2d) 351 (TD), Justice Burchell considered the status of a home occupied by the spouses under a lease / purchase program with the Nova Scotia Department of Housing. He found that the option in that case created a property interest "other than" a mere leasehold interest. He further held that the lease and the option must be interpreted together, and in the context of the government program, which gave the transaction some of the attributes of an agreement for sale. Justice Burchell held that the property formerly occupied by the spouses was a matrimonial home subject to division, and for which an order for exclusive possession by one of the spouses could be issued.

[17] Justice Carver in the case of **Grandy v. Grandy** (1993) 128 N.S.R. (2d) 330 came to a similar conclusion. In that case, the home was leased to the spouses by the Canada Housing and Mortgage Corporation under a special program for people with disabilities and low incomes. The lease contained an option to purchase which created a property interest more than a "mere leasehold interest" as contemplated by the **Act**. Justice Carver held the home to be a matrimonial home for which exclusive possession could be granted to the wife.

[18] In this case, the lease and the option are separate documents, but the option clearly references the corresponding lease. The two must be read as complementary documents. The option required payment of $4,500.00 to secure the right to purchase. That money was paid. The right to purchase a rented home is not ordinarily available to "mere leaseholders". I am satisfied that the option created a property right in the home, and that the home at 34 Margaret Street, North Sydney, meets the definition of a matrimonial home under the **Matrimonial Property Act.**

[19] The question arises whether the failure to purchase by the deadline to exercise the option in 2008 nullifies the home's status as a matrimonial home? In other words, did it simply become a regular lease at that point, with the tenants having no rights above that of a "mere leaseholder"? I find it did not.

[20] The **Statute of Frauds**, R.S.N.S. 1989, c.442 (as amended) requires that transfers of real property rights be in writing. The original option was in writing, though the extension was not. However, Ms. Laffin honoured the verbal agreement reached with Blair Chisholm by executing a deed to convey title when the full purchase price was paid in 2014. So there was performance of the agreement which takes it outside the **Statute of Frauds**: see **101252 PEI Inc. v. Brekka**, 2013 NSSC 289; upheld 2015 NSCA 73). The fact that the extension was not in writing does not nullify the home's status as a matrimonial home.

Issue 2(c) – Was there a fraudulent transfer of title to the home?

[21] Most decisions dealing with attempts to set aside conveyances reference the **Statute of Elizabeth (The Fraudulent Conveyance Act)**, 1571 (13 Eliz 1) c 5. That ancient English legislation continues to apply in Nova Scotia today. In **Bank of Montreal v. Crowell and Crowell** (1980), 37 N.S.R. (2d) 292 (TD) Justice Hallett (as he then was) reviewed the history of the **Statute of Elizabeth.** He concluded that in order to be successful under it, a plaintiff need only prove three facts:

> "1. The conveyance was without valuable consideration. It may not be sufficient if the plaintiff proves only that the consideration was somewhat inadequate (Leighton v. Muir, supra); in that case, there was inadequate consideration and although the Court held the conveyance could not be set aside under the Statute of Elizabeth, it was set aside under the Assignment and Preferences Act. The consideration must be "good consideration"; so-called meritorious consideration, that is, love and affection, is not valuable consideration and therefore not consideration within the meaning of the Statute of Elizabeth. (Cromwell v. Comeau (1957), 8 D.L.R.(2d) 676, at p. 684..)
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> 2. The grantor had the intention to delay or defeat his creditors. It is not necessary that the creditor exist at the time of the conveyance (Traders Group Ltd. v. Mason et al., supra.). However, the Court will impute the intention if the creditors exist at the time of the conveyance provided the conveyance is without consideration and denudes the grantor debtor of substantially all his property that would otherwise be available [*page304] to satisfy the debt (Sun Life v. Elliott, supra). Apart from that situation, intention to delay or defeat creditors is a question of fact. The Court must look at all the circumstances surrounding the conveyance. The Court is entitled to draw reasonable inference from the proven facts to ascertain the intention of the grantor in making the conveyance. Suspicious circumstances surrounding the conveyance require an explanation by the grantor.
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> 3. That the conveyance had the effect of delaying or defeating the creditors. This too is a question of fact. The plaintiff must first obtain a judgment against the debtor prior to commencement of proceedings to set aside the conveyance under the Statute of Elizabeth and must on the application to set aside adduce sufficient evidence to enable the court to make a finding that the conveyance had the effect of delaying or defeating the creditors."
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> [emphasis added]

[22] In K**oziol v. Smith** (1997) 160 N.S.R. (2d) 227 (SC) Justice J. Michael MacDonald (as he then was) set aside a conveyance in which a former common-law spouse conveyed a home, which he had shared with his partner, to his parents after separation. He did this despite a cohabitation agreement which gave the former partner a share in the proceeds of the home. The former partner applied under the **Statute of Elizabeth** to have the conveyance set aside. She argued that the home was conveyed without consideration, with the intention of defeating her claim as a creditor. The court agreed.

[23] Justice Goodfellow in **Gale v. Gale** (2008) NSSC 177 set aside a deed in similar circumstances to the case before me. In that case, the parties lived in a home they purchased from family friends. The parties agreed that the purchasers would receive a deed when they had paid $50,000.00 towards a total purchase price of $80,000.00. The husband paid $1,000.00 per month as required by the agreement, but after separation the family friends and the wife executed a deed in favour of the wife's daughter and her boyfriend. In the deed, the wife swore an affidavit that she and her husband had never lived in the property. The court set

aside the conveyance, and classified the home as a matrimonial asset, the value of which was divisible.

[24] Ms. Chisholm says the conveyance between Ms. Laffin and Daren Chisholm was made without valuable consideration. She says that after she and Blair Chisholm separated, he assured her that he would continue to make the rent payments as child support. She was never told Daren Chisholm had taken over the payments, nor that a deed was signed conveying title to him.

[25] Blair Chisholm says that he told Ms. Chisholm he could no longer afford to pay her rent, along with his own living expenses, and that he asked if she wanted to assume responsibility for the payments in October, 2011. When she declined, he says he asked his brother if he was interested in completing the transaction.

[26] Daren Chisholm says that he agreed to make the monthly payments after October, 2011 in order to receive the deed when the purchase price was paid in full. He says he agreed to allow Ms. Chisholm and D.J. to remain in the home until he received the deed. He says that his payments constitute valuable consideration for the home, and that the deed should not be overturned.

[27] The question of who paid the rent after separation is pivotal, and in order to decide that issue, I must assess the credibility of the various parties. As Justice Forgeron noted in **Baker-Warren v Denault**, 2009 NSSC 59:

> "… credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" **R. v. Gagnon** 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" **R. v. R.E.M.** 2008 SCC 51, para. 49.
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> …
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> **20** … I have also adopted the following rule, succinctly paraphrased by Warner J. in **Re: Novak Estate**, *supra*, at para 37:
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> There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See **R. v. D.R.**, [1996] 2 S.C.R. 291 at 93 and **R. v. J.H.**, [2005] O.J. No. 39, *supra*).

[28] In this case there are allegations of fraud, tampering with documents, criminal activity, and misleading government agencies. All of the parties have a

motive to deceive, as they all have a vested interest in the outcome. I have considered the various versions advanced by the parties and the inconsistencies in their stories. I formed my own impressions of each witness' candour as they testified. I have considered the totality of the evidence in reaching my decision, as well as the arguments advanced by each party.

[29] I accept some of each party's evidence, but not all of it. For example, I don't accept Blair Chisholm's suggestion that he paid the rent through his RBC account on behalf of his brother because he was ashamed and embarrassed for Ms. Laffin to know he'd lost the house. He wasn't embarrassed to call Ms. Laffin about an extension to the option when he couldn't pay off the home in 2008, so that explanation does not seem credible.

[30] There are numerous other examples where Patricia Chisholm and Daren Chisholm lacked credibility as well. Daren Chisholm claimed he did not realize Ms. Chisholm had a matrimonial interest in the property. However, when he and his common-law partner applied to be added as Intervenors, their joint affidavit says "**We** are the owner and entitled to have possession of **our** property" (my emphasis). This statement reflects their understanding that Ms. Ashford has an interest in the property, as Daren Chisholm's common-law spouse. Yet Daren Chisholm denies that Ms. Chisholm has any interest in the home as Blair Chisholm's legal spouse.

[31] From the question of how Ms. Chisholm's signature came to appear on copies of the lease and option, to why she didn't remember Blair Chisholm's bank transfers to her account after separation, she was not entirely believable either. In short, the truth of this situation is buried beneath layers of half-truths, vague recollections, and self-serving claims. None of the parties was entirely forthcoming and credible.

[32] The next question in **Crowell** (*supra*) is whether the deed was conveyed to defeat the claims of creditors. According to Justice MacDonald in **Koziol** *(supra*), creditors need not have a recorded judgment at the time the deed was signed, but must have been in a position to advance a valid claim.

[33] I have found that the home is a matrimonial home under the **Act**. In 2014 the parties were separated. As a separated spouse, Ms. Chisholm had a valid a claim to an interest in the home under the **Act**. Her claim exists despite Blair Chisholm's argument that she waived an interest by refusing to sign the option and lease. Yet Blair Chisholm effectively says he waived his rights under the option

and gifted any equity in the home to his brother after separation. In doing so, Mr. Chisholm robbed Ms. Chisholm of any claim to the home.

[34] The crown was a creditor too. After Blair Chisholm was charged and found guilty of dealing in illegal cigarettes, a substantial fine was imposed and the crown took a judgment against him. That judgment was recorded in 2015. It would have created a lien on the home, had title been in the name of Blair Chisholm at the time.

[35] There need not be direct evidence of an intention to defeat a creditor's claim (**Koziol**, supra). This can be inferred from established facts. I am prepared to draw an inference, based on the facts before me, that the deed to Daren Chisholm was intended to defeat the claims of creditors.

[36] I am mindful of the Court of Appeal's caution in **Hurst v. Gill** (2011) NSCA 100 where a judge's power to set aside conveyances or encumbrances was canvassed. The court held that "although s.10(1)(d) captures more than a breach of s. 8 of the **MPA**, it is not a license to rearrange the property interests of third parties, absent of breach of the Act, inequitable conduct or other wrongdoing."

[37] I am satisfied that there is a "breach of the Act, inequitable conduct or other wrongdoing." The conveyance has a number of "badges of fraud" (**Prodigy Graphics Group Inc. v. Fitz-Andrews,** [2000] O.J. No. 1203) , including:

- The deed went to a non-arm's length person;
- It left Ms. Chisholm with no claim for the home;
- It left the crown with no claim to Blair Chisholm's share of the home, and no property against which to execute with its judgment;
- The recipient of the deed knew that the home was worth more than he says he paid in rent between 2011 – 2014;
- Ms. Chisholm was not advised a deed had been signed;
- The vendor was not advised of the arrangement;
- The deed was arranged just before Blair Chisholm was criminally charged.

[38] Blair Chisholm strongly rejects the claim that the transaction was fraudulent. He says he could not afford the payments, so his brother took over the payments and received the deed. It's as simple as that. His brother agrees.

[39] The problem is that I don't accept Blair Chisholm's explanation for why his brother was deeded title to the home. He testified that in October, 2011 he and his brother agreed that Daren Chisholm would take over the rent payments, and acquire the deed to the home when the purchase price was paid in full. Blair Chisholm says that his brother gave him $8,000.00 to pay the rent on his behalf. He testified that he asked Daren Chisholm to allow his wife and son to remain in the home until the purchase price was paid, which was agreed.

[40] There is no evidence that Blair or Daren Chisholm ever approached Ms. Laffin to seek approval of the deal, or to inquire into the balance owing. There is no explanation for why Daren Chisholm would agree to allow Ms. Chisholm to live in the home without paying rent. And neither Ms. Chisholm nor Ms. Laffin knew about the deal with Daren Chisholm.

[41] Blair Chisholm testified that he paid the rent on behalf of his brother, by way of a bank to bank transfer. This is the same method as before separation. However, he made the payments through his new RBC account, rather than his wife's account. This led Ms. Laffin to believe there had been no change, and had Ms. Chisholm inquired, Ms. Lafin would have assured her the lease was being paid as usual.

[42] Mr. Chisholm testified that he used the rest of his brother's money to buy illegal cigarettes, which he planned to sell at a profit. However, when the police discovered and confiscated the cigarettes, he lost his "investment". Instead of staying to fact the charges, Blair Chisholm left Cape Breton and went out west. He stayed in Alberta until 2014, when he says Daren Chisholm convinced him to come back to Nova Scotia to face the charges and deal with the deed. He returned to Cape Breton and turned himself in to police. However, before he turned himself in, Blair Chisholm accompanied his brother to Mike Tobin's office and directed that a deed to the home should be issued in Daren Chisholm's name.

[43] After that visit, Blair Chisholm dealt with his outstanding assault charge against Patricia Chisholm, which was dismissed. He also pled guilty to one charge of dealing in illegal cigarettes. He was fined the substantial sum of $586,768.00 on February 25, 2015.

[44] By the time that fine was imposed, Daren Chisholm held title to the home at 34 Margaret Street, North Sydney. The judgment taken out by the crown against Blair Chisholm did not attach to any real property, because he holds none in his name. When Ms. Chisholm filed a Petition for divorce and requested a division of assets on February 9, 2015, the home was in Daren Chisholm's name.

[45] Daren Chisholm claims that he paid $30,000.00 towards the purchase of the home. I reject that assertion. If I accept that Daren Chisholm paid $400.00 per month from October, 2011 until approximately November, 2014, that equates to no more than $15,200.00. Blair Chisholm claims that, in addition to the rent, his brother sent larger sums towards the end because Ms. Laffin wanted to "get it done", but Ms. Laffin did not confirm this in her evidence, and there are no documents to support that claim. To the contrary, the documents in Elliot Fraser's file show a balance owing on October 31, 2011 of only $16,129.16. So if Daren Chisholm sent his brother more money, it was not for rent.

[46] The sum of $4,500.00 was paid to acquire the option. According to Blair Chisholm, his brother Daren Chisholm loaned him that money. Daren Chisholm confirms this. Between the date the option and lease were signed (April, 2003) and September, 2011 the amount of $45,200 was paid in rent. Part of those rent payments was credited to the purchase price. It seems incredible that Blair Chisholm would waive any interest in a home valued at $42,000.00, for which he'd paid 2/3 of the purchase price already, and which he had renovated and improved with new windows, flooring and new roof.

[47] I find the more likely scenario is that Blair Chisholm borrowed $8,000.00 from his brother to buy illegal cigarettes, from which he expected to turn a profit. When police confiscated the cigarettes and he lost his "investment", Blair Chisholm asked his brother for more money and was given another $8,000.00 which he used to leave Cape Breton.

[48] When Blair Chisholm moved out west, it would have been easier for Daren Chisholm to pay Ms. Laffin directly, if he was the one paying the rent. Instead, Blair Chisholm opened an RBC account and sent the rent money to Ms. Laffin. Ms. Laffin never met Daren Chisholm, and she testified that she was not aware Daren Chisholm was paying the rent. She was never notified of any changes by either Blair Chisholm or his brother.

[49] All of this evidence supports my conclusion that Blair Chisholm borrowed this money from his brother. There was never an agreement between

him and his brother that Daren Chisholm would assume the rent payments. Instead, the idea to place the deed in Daren Chisholm's name arose when Blair Chisholm decided to move back to Cape Breton, because:

- He planned to deal with the criminal charges against him, and faced possible forfeiture of the home or a significant fine which would attach to any real property in his name;
- He faced a claim for a share of the home from his wife, who did not know the deed had been conveyed to Daren Chisholm;
- He owed his brother at least $16,000.00 (and perhaps as much as $20,500.00 if the money for the option was never repaid) and he had no way to repay him.

[50] The third question to be addressed under **Crowell** (*supra*) is whether the conveyance had the effect of delaying or defeating the claims of creditors. In the case of Ms. Chisholm it has done so. The home can be sold at any time without her consent. She is not legally entitled to any compensation for its sale. She is effectively a tenant in possession of the home from month to month.

[51] The inequity of the situation is clear. Ms. Chisholm lived in the home with Blair Chisholm and their family for eight years, during which time the rent-to-own payments were made. She thought the home would be theirs eventually. Although there was much evidence on which of them actually paid the rent before separation, the point is moot. They were married and both had income. Even though Ms. Chisholm's name wasn't on the final lease and option, she had an interest that crystalized when the parties separated.

[52] Ms. Chisholm expected that when the option was paid, Ms. Laffin would sign over the home to them. She denies a conversation in 2011 in which Mr. Chisholm asked if she wanted to assume the rent payments, because he could not afford it. He says when she refused, he told her he'd see about having someone take over the payments, to which she replied "I don't care what you do". This would be a surprising reply from someone who was living in the home with her child, who had a vested interest in the home, and who would have to move if the rent wasn't paid.

[53] I accept Ms. Chisholm's version, which is that when he left in 2011, Mr. Chisholm agreed to pay the rent as child support for their son. I accept that she was never told her that the alternative was for his brother to make the payments

and receive the deed. I accept that she was unaware that a deed had been issued to her brother-in-law until he served her with a notice to vacate in May 30, 2014.

[54] As Justice Goodfellow noted in ***Gale*** (supra): "At the very least, equity and fairness dictated that [the husband] ought to have been given notice that the new arrangement was going to be entered into by [his wife and the family friends]". And as Justice MacDonald noted in ***Koziol*** (supra), keeping the existence of such a deed silent leads to the "inescapable" conclusion that the intention was to defeat a valid claim.

[55] I conclude that the deed conveying title to the matrimonial home at 34 Margaret Street, North Sydney, Nova Scotia was obtained by fraud, and that it should be overturned in accordance with s.10(1)(d) of the **Matrimonial Property Act.** An order shall be recorded reflecting this fact and vesting title in the name of Patricia Chisholm. Preparation and recording of the order will be at the expense of the Petitioner.

[56] Blair Chisholm will be responsible to repay his brother any sums borrowed from by Daren Chisholm, including the $16,000.00 advanced in October, 2011 as well as any monies paid by Daren Chisholm to maintain the home since October, 2011. Ms. Chisholm will be responsible for the taxes, water, insurance and all related costs of the home effective immediately.

Issue 2(d) – If the home is classified as matrimonial and the deed is set aside, what is the appropriate division of its value?

[57] That leaves a division of the home's value. At the time of separation, the home was valued at $42,000.00, but its value declined in the following year to $38,000.00. There is no appraisal for 2014, when the purchase price was paid and the deed was originally conveyed. For purposes of the division I exercise my discretion in using the value of $38,000.00 less notional disposition costs of 5% realty commission plus HST and legal fees of $400 plus HST. The net value to be divided is $34,895.00.

[58] Ms. Chisholm will have sixty days to arrange financing to purchase Mr. Chisholm's share, of the assets (the total of which includes the adjustments set out below). Should she be unable or unwilling to obtain financing, the home shall be listed for sale and sold at the best price available on the open market, with the net proceeds being divided equally. Ms. Chisholm shall cooperate with listing,

showing and selling the home as soon as a reasonable offer is received. I reserve the right to deal with any issues arising from the sale of the home, if necessary.

Issue 3 – Division of other assets and debts

[59] The parties each filed a statement of property in which they listed other assets and debts. Both statements reference furniture and household items which Ms. Chisholm retained with the house. There is no appraisal, but their values are only $100 apart, so I exercise my discretion in splitting the difference. I value the furniture and contents retained by Ms. Chisholm at $1,175.00.

[60] Ms. Chisholm testified that Blair Chisholm sent a friend to empty the barn after separation. A number of tools and equipment were removed. There is no appraisal for the barn contents, though Ms. Chisholm suggests the value is $6,000.00. Mr. Chisholm did not list these items in his statement. In his closing submission he suggests a value of $600.00. I find that figure too low, and exercise my discretion in setting a value of $1,000.00 for the items listed by Ms. Chisholm, that were removed on behalf of Mr. Chisholm.

[61] Ms. Chisholm lists five vehicles and two ATVs in her statement of property, but she also attached a list which included a boat, a motorcycle, a travel trailer and Iroc car. Mr. Chisholm says the Cheyenne was confiscated by police in 2011, the Ram was given to a friend in 2010, the Crown Victoria was sold before separation and the proceeds put towards the Echo, and the two ATVs were sold in 2010. He only lists the 1997 Iroc and the Caravan in his statement. He values the Iroc at $1,700.00 and the Caravan at $1,000.00.

[62] Ms. Chisholm disputes Mr. Chisholm's evidence on the disposition of some of the vehicles. She says Mr. Chisholm gave the Ram to a friend in November, 2011; the Crown Victoria was sold after separation for $2,000.00, and the two ATVs were sold in November, 2011. She says Mr. Chisholm kept all sale proceeds.

[63] In her statement she says that she sold two of the listed vehicles - the Echo for $150.00 and the Caravan for $200.00. She acknowledges the Cheyenne was confiscated by police, along with a trailer that was not listed on Blair Chisholm's statement.

[64] Ms. Chisholm values all vehicles at $41,500.00. There were no appraisals tendered. All I have is the sale prices listed by each party, which differ

considerably. There are no receipts or documentary evidence to back up the sale prices or the date of sale. Mr. Chisholm argues that Ms. Chisholm's values are excessive given that she depended on income assistance and he had sporadic work. Despite this, they owned an impressive list of vehicles. Given that I found Mr. Chisholm arranged the deed to avoid creditor claims, I find he likely arranged his other affairs the same way. It's likely he sold most of the vehicles before he left Cape Breton, after separation.

[65] Mr. Chisholm retained vehicles at $2,700.00. Ms. Chisholm says she retained and sold two vehicles. However, her statement of affairs in bankruptcy signed February 28, 2012 places values of $2,131.00 and $500.00 on those vehicles, which I accept as more accurate.

[66] In addition, I find that it's likely Mr. Chisholm sold both ATV's at a price of $300.00 each. The Cheyenne which Mr. Chisholm values at $1,000.00 was confiscated, along with the trailer for which no value was given. I attribute a value of $500.00 to that. So Mr. Chisholm owes Ms. Chisholm a further $1,084.50 to equalize those assets.

[67] Ms. Chisholm also lists an employment pension for Blair Chisholm, but there was no evidence that he had or has an employment pension. No order is made for a division of a pension.

[68] In his oral submissions, Mr. Chisholm acknowledged that the Provincial Court fine of $586,768.00 is not a matrimonial debt. In later written submissions he claims it is matrimonial. I find that since it was incurred post-separation, it is not a matrimonial debt subject to division.

[69] Ms. Chisholm says the Capital One Mastercard, Sears card and line of credit were all incurred prior to separation and were used for family purposes. Mr. Chisholm did not dispute that, but did question the amounts. No statements showing the balance at separation were made available. Ms. Chisholm included the Mastercard, the Sears card and the line of credit in her bankruptcy filing in 2012. She was required to pay $2,000.00 towards total debt of $21,413.00, the majority of which was matrimonial debt. She has now been discharged from bankruptcy. Mr. Chisholm will repay her half the amount she paid ($1,000.00) as a division of the those debts.

[70] Mr. Chisholm mentioned a debt he owes to Revenue Canada that predates separation, but he did not provide evidence on its value. I make no order for a division of that debt.

[71] Mr. Chisholm provided a copy of his Equifax printout showing a vehicle loan which is current, as well as two credit cards, one of which is in collection and an other account which is closed. The Capital One Mastercard appears to be a different card than the one claimed by Ms. Chisholm. I make no order for a division of these debts as the evidence is not clear that they are matrimonial, and there are no statements showing balances owing as of separation.

Issue 4 – Child Support

(a) Arrears / retroactive

[72] Ms. Chisholm has had primary care of D.J. since the parties separated. Mr. Chisholm left Cape Breton in October, 2011 and lived in Alberta until April, 2014. His child support obligations will be calculated under the Alberta table for the time he lived there. I have included in the amount paid any monies sent to Ms. Chisholm by bank transfer, for which Mr. Chisholm produced a receipt.

[73] Mr. Chisholm has paid $252.00 per month since June 5, 2015 under an Interim Order. That order based the table amount payable on an income of $30,000.00. Mr. Chisholm was employed at the time at a local business.

[74] Ms. Chisholm seeks child support retroactive to January 1, 2012. Since 2012, this is Mr. Chisholm's income and payments:

YEAR	REPORTED INCOME	SUPPORT PAYABLE	SUPPORT PAID
2012	$33,096.00	12 X $262 (ALTA)= $3,144.00	$500 X 12 = $6,000 + $1,080.00 (transfers)
2013	$51,100.00	12 X $416 (ALTA)= $4,992.00	$500 X 12 = $6,000.00 + $1,260.00 (transfers)
2014	$20,161.00	4 X $177 (ALTA) + 8 X $140 (NS) = $1,828.00	$500 X 11 (To Nov) = $5,500.00 + $160.00 (transfers)

2015	$23,118.00	6 X $175 (NS) + 6 x $252 = $2,562.00	$252 x 6 = $1512.00
2016	$30,000.00	9 X $252 = $2,268.00	$252 x 9 = $2,268.00
		OWED - $14,794.00	PAID $23,780.00

[75] Mr. Chisholm's 2016 year-to-date income is unknown, but he testified that he was laid off work in August, 2015 and collected Worker's Compensation benefits and E.I. after that. He was still collecting E.I. benefits at the time of trial in the amount of $644.00 bi-weekly.

(b) prospective child support

[76] For purposes of prospective child support, I set Mr. Chisholm's 2016 income at $30,000.00 which includes E.I. benefits to the end of July, and employment income thereafter. Mr. Chisholm has many skills and has worked a number of jobs. There is no evidence that he is unable to work. If he is not employed now, it is by choice.

[77] Mr. Chisholm's prospective child support obligation is $252.00 per month under the Nova Scotia table for one dependent child, effective October 1, 2016. However, Mr. Chisholm overpaid child support by $8,986.00. He will therefore be credited with that sum for purposes of the Maintenance Enforcement program. When that credit runs out, he will resume monthly payments to Ms. Chisholm in the amount determined by the recalculation clerk for that year. Both parties agree to a recalculation clause being included in the order.

[78] Mr. Chisholm must file (and send to Ms. Chisholm) a copy of his completed tax return with all schedules and slips, and his notice of assessment (and any reassessments) by May 30 of each year, starting in 2017.

Conclusion

[79] The home at 34 Margaret Street, North Sydney is a matrimonial home. The deed conveying title to Daren Chisholm is set aside. Title will vest with Ms. Chisholm. The value of the home, along with other matrimonial assets and debts,

will be divided equally between the spouses. Ms. Chisholm will be responsible for the cost of preparing and recording the order affecting title to the home.

[80] The parties may make written submissions on costs. The Petitioner's submissions are due by October 26, 2016, and any response submissions are due by November 4, 2016. The Petitioner's counsel will prepare the order(s).

MacLeod-Archer, J.