

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Werner v. Werner, 2012 NSSC 230

**Date:** 20120614  
**Docket:** S.T. 1207-003556(073977)  
**Registry:** Truro

**Between:**

Yvonne Werner

Petitioner

v.

Thomas Rolf Werner

Respondent

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**DECISION**

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**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** October 26, 27, November 9, 10, 16, 18, 24, 2011 &  
March 30, 2012, in Truro, Nova Scotia

**Counsel:** Yvonne Werner, Applicant, self-represented  
Kenzie MacKinnon, Solicitor for the Respondent,  
Thomas Werner

**By the Court:**

[1] This decision deals with the issue of division of property and child maintenance. The case is rooted in an almost incredible set of circumstances that enveloped first the Petitioner and now the child of the marriage. I refer to those circumstances as part of dealing with the issues of child support and division of matrimonial assets.

[2] I am satisfied the Respondent has the capacity, though not the desire to support the child of the marriage. I am also convinced, beyond all doubt, the Respondent has done just about everything possible to impoverish the Petitioner. He has secreted all his property, much of which is properly categorized as matrimonial assets, out of Canada so as to prevent her, and indirectly the child of the marriage, from ever benefitting from any of those assets. He has also removed some of the Petitioner's personal property including a violin. In this decision I order both the return of the Petitioner's property and division of the matrimonial assets.

[3] The story begins with a young 28 year old, quasi professional female working in Switzerland posting her profile on the internet. The Petitioner's profile

included both her German nationality and her income range. Her internet profile was noticed by the Respondent and he immediately started chatting on line with the Petitioner. Mr. Werner portrayed himself as a wealthy, somewhat retired, German gentleman who has just found a perfect mate with whom to emigrate to an idyllic foreign land (Canada) to live on a country estate where he would support her using his savings and pension. Eventually the plan included the Petitioner having a child. They were all to live together happily ever after.

[4] That was an overly brief summary of the story with which the Respondent, then about 57 years old captivated the attention of the young insurance worker. The Respondent invited her to his home in Bavaria. Ms. Werner described the first several days of sex, then the Respondent took her for a walk in the woods, bowed to one knee, promised to care for her forever and proposed marriage. The parties were married on February 29, 2008, about four weeks after the initial internet chats. The parties separated on November 11, 2009.

[5] The Respondent told the Petitioner that, as a couple they could travel to Canada to look for a farm in Nova Scotia. He would purchase a farm and they

could retire to live there. The move to Nova Scotia included the Respondent's son from an earlier marriage and their, as yet, unborn child.

[6] The Respondent did not disclose to the Petitioner the extent of his assets, or, more accurately put, the lack thereof. He just explained it in vague terms as having enough for them to retire to an idyllic life of long walks in the country side in Canada. What savings he did have were in part used by the couple to support themselves, Mr. Werner's son, Maximilian and their new born son, Clemens.

[7] The Respondent says he represented to the Canadian Government that he had \$800,000.00 Canadian. That was the amount required to allow him to qualify to immigrate into Canada. Some of that was in the form of a house he retained in Germany. That house apparently did not sell until after the parties had separated and the Respondent returned to Germany.

[8] It is not accurate to suggest the parties lived off the Respondent's savings in Canada. The Petitioner had a somewhat substantial severance pay and income through government and employer programs in both Germany and Switzerland. Her income stream continued for many months after they came to Canada.

[9] Although the parties expended a lot of time and energy traveling in Nova Scotia, supposedly looking for a farm, they did not purchase one. They ended up renting a house near Debert. They lived there along with the Respondent's son, Maximilian Werner. Maximilian eventually moved to Halifax to attend Dalhousie University.

[10] At trial the Respondent portrayed himself as something of a victim. He attempted to portray the Petitioner as wasteful and demanding, spending his retirement fund. I am convinced he is more properly described, in perhaps overly generous terms, as a predator. The fairy tale romance and short marriage all came to a crashing end at or about the same time the Petitioner's income from Europe dried up. So long as her income of about \$5,000.00 per month continued the Petitioner was tolerated by the Respondent although not without some problems as between her and the Respondent's son Maximilian. An example of the problems is when Maximilian had gone so far as to throw the Petitioner into the Danube River. That incident brought into question the issue of whether the Petitioner would even come to Canada.

[11] At about the same time the Petitioner's income stream from Europe was about to end, the Respondent violently assaulted the Petitioner. She fled the rural home they rented, on foot, at night, running to a neighbors to seek help. She left her still nursing infant in the house. The next day the RCMP went to the house and removed that infant and turned the child over to the Petitioner who was by then staying in a shelter.

[12] Since July, 2010, the Petitioner and Clemens have lived on Social Assistance in Nova Scotia. The Respondent, in early 2010, started paying \$300.00 per month in support.

[13] The Respondent said he could not understand how the Petitioner could have spent or wasted all her European income. She explained that when it came to buying things it was always her money used. His money never seemed to materialize. One example of this is when their baby Clemens was born the family had not yet qualified for MSI. It was her money that was used to pay \$10,000.00 for the medical care. I am satisfied that all of her income and severance was used by the parties as a couple. I accept the evidence of Ms. Werner that Mr. Werner required that Ms. Werner spend her money to the extent that she was left with no

cash or assets. Mr. Werner had bank accounts with balances well in excess of \$100,000.00.

[14] The Respondent said he did not assault the Petitioner on the night she fled. He said the cuts and bruises on her face were self inflicted by her, as she banged her head on the floor. The bruises on her arms were the result, he said, of him trying to restrain the Petitioner so she would not hurt either herself or him. I have no hesitation in saying that portrayal by the Respondent is an outright lie. (When she tried to call for help he pulled the phone cord from the wall. Ms. Werner then threw the phone at him.) I said as much in an earlier oral decision wherein I dealt with the interim issue of child custody and access.

[15] I wish to make it clear that when it comes to the issue of telling the truth, I am satisfied the Respondent is only vaguely familiar with the concept in the sense that there was, at best, only a thread of truth to the stories he created. This includes his plan of coming to Canada to live the idyllic life he described to his young bride. Although Mr. Werner never did disclose to Ms. Werner the amount of the fortune upon which they were supposed to retire, it really did not exist. What assets the Respondent had would never have been sufficient for him to retire, let alone

retire with his son, Maximilian together with his new wife and infant son in Canada. To make the story of retiring on his savings even less credible, Mr. Werner said that, of the assets he had, \$300,000.00 was pledged to his son, Maximilian, in the form of a trust for Maximilian's education.

[16] Since the marriage breakdown the Respondent has been expending huge portions of the matrimonial assets in trying to force the Petitioner back to Germany with their child Clemens. The Respondent says the law in Germany is quite cut and dried. If he can force the Petitioner to return to Germany the child Clemens will be turned over to him. The Petitioner will be told to go back to work in Germany, Switzerland, or wherever. She will be forced to financially support both him and the child of the marriage.

[17] I consider this evidence together with the fact that Mr. Werner never did have enough money to buy a farm and retire in Canada. The only way his dream of retirement made any sense, in terms of being achievable, is if he could force Ms. Werner to work and pay support.



[18] That may well have been the retirement plan the Respondent had in mind from the day he first reviewed the Petitioner's internet profile, or from the day he knelt on bended knee and proposed to her. It may explain why, in spite of spending a month or more supposedly searching for a farm in Nova Scotia, none could be found and they could only rent. It is difficult to tell for sure what the Respondent was thinking when he proposed and then married the Respondent. It is not necessary to speculate on those issues in this decision.

[19] The Respondent did admit, in relation to Maximilian, that after the Respondent and his first wife split up he sued for and obtained custody. In spite of access provisions having been in place it turned out that Maximilian did not have any access or contact with his mother until recent years. In those recent years Maximilian and the Respondent have joined forces to now sue his biological mother for past due support. As I understand the process, the Respondent is attempting, along with Maximilian, to secure payment of a large sum of cash from Mr. Werner's first wife under threat of imprisonment. It is perhaps only a coincidence that the Respondent rebuked any efforts by his adopted daughter from that first marriage to obtain support. Maximilian is only now joining forces with

his father to get cash, now that the Respondent is no longer liable to support that adopted daughter.

[20] While the facts surrounding the Respondent's earlier wife are somewhat unclear, I am not convinced they are irrelevant in terms of explaining how the Respondent has operated.

[21] So far as Maximilian is concerned his involvement in the present case goes well beyond a mere bystander. Maximilian has been intricately involved in an attempt to secret and remove all cash the Respondent had, or will likely have in the future, beyond the reach of the Petitioner. Maximilian and the Respondent say that before the parties got married Maximilian and the Respondent signed a contract wherein the Respondent pledged \$300,000.00 to Maximilian in the form of a guaranteed education fund. They went so far as to suggest the Petitioner was present at the time that agreement was signed.

[22] On the issue of credibility, I am not convinced Maximilian has any more than the same vague familiarity with the truth that his father possesses. In this case I am convinced the apple did not fall far from the tree. Maximilian is intricately

involved in a scheme that attempts to protect all of the Respondent's assets for the use of Maximilian and the Respondent only.

[23] I digress for a moment to show how far the Respondent may be prepared to stretch the truth both in Canadian and German Courts. As part of my earlier oral decision on the issue of custody and access, I noted that I was concerned for the safety of the child of the marriage, and the Petitioner. This concern was based on the beating the Respondent had inflicted upon Mrs. Werner. I ordered that in addition to having a psychiatric assessment, the Respondent, Mr. Werner, should enroll in an anger management program. I asked the Respondent's counsel to draft the order resulting from that decision. I did not realize that the order had mistakenly referred to the Petitioner and not the Respondent in relation to the anger management. I accept Mr. MacKinnon did not notice the error either. Counsel noted the error and agreed that he had made the error but suggested that it was clear what was intended saying that it was of no consequence. The Petitioner then produced a transcript of recent German Court proceedings wherein the Respondent is said to have advised that German Court that I was so concerned about the Petitioner and her anger control that I ordered her to take anger management. That would be a complete and utter misrepresentation of what this Court said and

intended in terms of anger management. The German Court referred to the fact I had supposedly ordered Mrs. Werner to enroll in anger management. I assume out of concern for the safety of the child, that Court then ordered the Petitioner return to Germany to have the matter dealt with.

[24] If the Respondent were correct in his assertions about the German law, he would have full custody of Clemens and the Petitioner would be immediately forced to return to work and support both him and the child. A retirement plan for him indeed. He just has to get by the Canadian Courts to cooperate in sending the Petitioner and Clemens to Germany to have that plan come to fruition.

[25] I said this in the earlier oral decision, Clemens was born in Canada. He is a Canadian citizen. The parties both agreed to have the issue of the divorce dealt with in Canada and by agreement they were divorced in Canada. The assets that I am dealing with were all in Canada at the time the parties separated. The parties lawfully immigrated to Canada and are lawfully entitled to remain in this country. Maximilian Werner is getting the benefit of an education at a Canadian University although it appears he will be returning to Germany to work and pay taxes there once he has the benefit of a Canadian university degree subsidized by Canadian

taxpayers. The social support system in Canada has been supporting the Petitioner and the child of the marriage while the Respondent has removed all the money from Canadian bank accounts. He is spending much, if not most of it, on legal fees in trying to make the Petitioner return to Germany where he says she will have to work to support him.

[26] I turn to the issue of child support. The Respondent says he is retired and has no income with which to pay support. He told the Petitioner he had a career as a high level executive in both Europe and the United States. His income as I understand it was several hundreds of thousands of dollars per year. I further understand that his work, to a large extent, involved corporate rationalization, going from one company to another. The Respondent objected to me referring to him as something of a hired gun going in to fire people. I accept that corporate restructuring is more than just that. I accept that he must have been good at it in order to command the salary he is said to have received.

[27] The Respondent says that he has been out of that job market for a number of years and as such is no longer able to get that type of work. There was some discussion about one job opportunity. Mr. Werner said he turned that opportunity

down due to the fact he felt the prospective employer had ties to the Israeli government or the Israeli government spy agency. His concern was that they would be expecting him to spy on his own country. It is not clear as to whether this assertion was based on fact or Mr. Werner's imagination. He said that is the reason he turned down that supposed job opportunity. He could have earned, he said, \$500,000.00 per year in that position.

[28] I queried the Respondent on his other job prospects and he suggested he had no desire or ability to return to work even if it meant that his wife and child were to be left to live on social assistance as they are now. He said in effect that if I would just send the Petitioner and the child of the marriage to Germany, the Petitioner could work and he could live with Clemens in a cottage his friends would supply. 'Not in one of those cottages like we use in Canada but a real nice cottage befitting of him and Clemens.'

[29] I do not accept the Respondent has passed his best before date or that he has no ability to earn income from which to support the child of the marriage. I am satisfied the Respondent is intentionally under-employed. The Respondent referenced a bad back but appears otherwise healthy. During the marriage he had

the ability to care for the family horse. His evidence was that the barn work, to care for the horse, consumed several hours of each day of him. As I noted earlier, his stated plan was to retire to a farm in rural Nova Scotia. There is no evidence other than the Respondent himself saying he had bad back problems. I am not convinced that his physical limitations now prevent him from working.

[30] I am not fully convinced that Mr. Werner cannot regain entry to the circle of executives that rationalizes companies around the world. If he does not try to obtain that type of job, failure is a certainty. I am satisfied that Mr. Werner has some shelf life left and that he has some marketable skills. This may even be in some occupation other than what he had been engaged in the past. I am convinced that there is some employment available which is befitting of a man of Mr. Werner's status.

[31] Mr. Werner suggests that the pension rules in Germany had changed after he had stopped work. He asserts that he expected his pensions would be in pay by now. I am satisfied the rules have changed and that Mr. Werner's pensions are not available to him at this time. The Petitioner asserted the only reason the Respondent is not now receiving his pension is because he chooses not to apply for

it at this time. Although I have grave reservations about everything the Respondent tells me, I have no clear evidence to convince me that the Respondent is presently entitled to his pension even if he applied.

[32] I am convinced the Respondent's stated plan of a gentlemanly retirement on a farm in Nova Scotia could not have been a viable option in the absence of a pension. Given Mr. Werner's work experience and training as an engineer, I am not convinced that he would have opted for a life of poverty for his new bride and infant child while he sat and watched them go without. At the very least, that was not part of any plan about which he informed the Petitioner.

[33] I am satisfied this is an appropriate case in which I should attribute an income to the Respondent for purposes of calculating an appropriate amount of child support. In doing so I appreciate that it may not be possible for the Respondent to regain immediate re-entry into the executive circles he traveled in before his early retirement. I have little doubt that if he really tried the Respondent could find employment that would be well into the six figure income bracket, perhaps just not the half million dollar per year job the Petitioner said he already turned down.



[34] For purposes of determining the issue of child support, I am using an amount that equates to the pension the Petitioner says the Respondent had expected. That is approximately \$70,000.00 per year. Using that \$70,000.00 income figure I calculate the Respondent's child support obligation is \$592.00 per month. This is an amount that should properly have been paid since separation. I will order that amount to have been paid from the date of the filing of the divorce order.

[35] I referred earlier to a scheme wherein both Maximilian and the Respondent were suggesting that a contract had been drawn as between Maximilian and the Respondent. The Respondent is said to have guaranteed \$300,000.00 to Maximilian for his education. While I have grave doubts as to the existence of that agreement prior to the marriage, I have absolutely no doubt that it does not achieve what the Respondent says it now means. The Respondent is asserting that all of his cash assets including withdrawals from his Canadian bank account ( one withdrawal alone was for \$100,000.00) is, and was, trust money that was held for Maximilian. That so called "trust" does not appear to have been funded until after the parties separated. It appears that out of that trust Maximilian has received perhaps on average \$3,000.00 per month. The Respondent appears able to

withdraw amounts as he pleases for his own use. He says this is a loan from the trust which he says is managed by his friends in the United States.

[36] I asked for documents, other than the supposed agreement between Thomas Werner and Maximilian Werner, showing there was indeed a trust. None were provided. I am convinced that at best there is an account held in the name of Mr. Werner's friends and they forward amounts, as directed by Thomas Werner to Maximilian Werner. Out of the approximate \$3,000.00 per month Maximilian, receives he forwards \$300.00 per month to Ms. Werner for the support of Clemens. The rest of Clemens needs are provided through Canadian social service programs.

[37] I am satisfied that Mr. Werner has the option of drawing on those same funds to support his son Clemens. The monies are trust monies in name only. The trust is part of a sham created after the marriage breakdown to deny Ms. Werner, and Clemens, from ever receiving support from Mr. Werner. There is enough money in those accounts to pay the child support at the levels I have directed even if Mr. Thomas Werner chooses not to work.

[38] Those trust monies, so called, are also relevant to the issue of division of matrimonial assets. “Matrimonial assets” are defined by the **Matrimonial**

**Property Act** as:

4 (1) In this Act, “matrimonial assets” means the matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage, with the exception of

- (a) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children;
- (b) an award or settlement of damages in court in favour of one spouse;
- (c) money paid or payable to one spouse under an insurance policy;
- (d) reasonable personal effect of one spouse;
- (e) business assets;
- (f) property exempted under a marriage contract or separation agreement;
- (g) real and personal property acquired after separation unless the spouses resume cohabitation.

The **Act** refers to a number of exceptions, most of which are irrelevant to this decision.

[39] Prior to the marriage the Respondent represented to the Petitioner he had funds for them to live on in Canada and to buy a farm. Implicit, or expressed, in this plan was the fact that it was enough money for them to live on until the Respondent's pension came into pay. Clearly the parties intended, if Mr. Werner ever intended to be true to his words, that Mr. Werner's savings and assets were to be used by the parties. Mr. Werner in fact suggested they were using his savings to support the family while in Canada. There was a balance of just over \$168,000.00 in the Scotia Bank just shortly prior to separation. Mr. Werner removed those monies. Ms. Werner had no supplemental savings as all of her monies had been used during the marriage paying daily living expenses. Mr. Werner even complained at trial that the Petitioner's lavish lifestyle depleted his savings faster than he intended. Although he appears to have given Ms. Werner less credit that she deserved in terms of her contribution to the finances, as I noted earlier, it was her money that paid the cost of the medicare during child birth and she was maxing out her credit cards at Mr. Werner's insistence. The bottom line is the savings accounts were used to contribute to the support of the family, as was intended. I do not accept that it would be now appropriate that those savings account assets be reserved solely for the use of Mr. Werner and Maximilian.

Those were matrimonial assets within the definition of the **Matrimonial Property Act**.

[40] Although the savings were money brought into the marriage by Mr. Werner, it is clear that he required Ms. Werner to deplete all the income and benefits she received during the marriage for the use of the family, that allowed him to further protect the bank accounts he now claims. That is the money he promised the Respondent was sufficient to allow them to retire on a farm in Canada and raise their child. I find that Mr. Werner had not told Ms. Werner that prior to the marriage, or before coming to Canada, he had signed a contract with his son promising to give him \$300,000.00 for his education. Even were this true there should have been about \$500,000.00 remaining in cash and property. This is assuming Mr. Werner did not misrepresent the extent of his wealth to the Canadian Government.

[41] The evidence is clear Mr. Werner had to certify to Canadian authorities that he had \$800,000.00 in assets, in order to obtain permission for his family to come to Canada. A portion of that was in the form of a home he retained in Germany. That home apparently sold for less than he expected. Ms. Werner said he had to do

work on that home to have it sold. He said it had been on the market for some time and had not moved. The cost of improvement he says was substantial. From the Courts perspective I found the numbers and items suspect. Mr. Werner provided no documentation. If the home sold for less than he represented to immigration authorities and renovations were required, the \$800,000.00 figure would have been reduced by the decreased sale price and the cost of renovation.

[42] There was the cost of coming to Canada, living in hotels for a month and purchasing a number of items all to set up a house, as well as purchasing a vehicle or two. The costs of moving no doubt were substantial. This would have been expected whether the parties stayed in Canada, together or apart. The part that did not add up was the part about having enough money to move to Canada, buy a farm, retire, and give Maximilian \$300,000.00 out of a mere \$800,000.00. When I refer to the cost of the move to Canada it must not be understated as it included not just personal items, it included a horse and a landrover. (The landrover has since been shipped back to Germany by Mr. Werner together with a violin that Ms. Werner had purchased and which I have ordered returned to her).

[43] As I said, the money does not in any way add up to explain how Mr. Werner could have promised, or expected, to do all the things he promised the Petitioner and pay Maximilian the \$300,000.00.

[44] Mr. Werner has been accessing the savings and the money in the so called trust account saying he can do so because he is promising to pay it back. When I asked him about how that money would be paid back he was vague at best, perhaps evasive or misleading. Similarly, I also asked him how he intended to provide for Clemens if he were to be returned to Germany as Mr. Werner was demanding. There was a vague reference to some lady benefactor whom he refused to name or explain. On all these points he was vague, evasive, or perhaps misleading.

[45] I return to the issue of division of matrimonial assets. After Ms. Werner fled the matrimonial home, Mr. Werner attempted to obtain custody of Clemens. He purchased a new car and offered it to Ms. Werner in return for her turning over custody. As I stated in the oral decision, Ms. Werner made it clear, Clemens was not for sale. Mr. Werner has since turned that vehicle over to Maximilian and it is still being driven by Maximilian and by Mr. Werner when he is in Canada. I am

satisfied that was a matrimonial asset. I am satisfied the vehicle was put in Maximilian's name to deprive Ms. Werner of that asset. I am prepared to order an immediate return of that vehicle to Ms. Werner subject only to Maximilian's right to be heard by this Court as to why the transfer should not occur. Any such application would have to be on notice to Ms. Werner and Thomas Werner. If that application is not made within 20 days of delivery to Maximilian Werner of an Order requiring delivery of the vehicle to Ms. Werner then she may have the Sheriff seize the vehicle. I would direct the Registry of Motor Vehicles register the vehicle in her name.

[46] There were additional matrimonial assets Mr. Werner turned over to Mr. Rupp to sell. From the sale of those assets Mr. Rupp delivered \$20,000.00 to Maximilian Werner. Those assets and the monies derived therefrom were matrimonial assets. Mr. Werner made every effort to try and ensure Ms. Werner did not obtain any benefit from those assets. The assets were primarily household effects and the family truck which were clearly matrimonial assets. The only asset Ms. Werner was able to secure was a washer. She discovered that washer was for sale on Kijij. I ordered it turned over to her instead of being sold.



[47] This Court has no way of knowing, with any degree of certainty, how much money Mr. Werner removed from Canada nor where it has all gone. The documents the Court requested as related to the so called “trust account” was nothing more than a list of numbers put together by an unidentified person. There were no supporting documents. Given Mr. Werner’s credibility, or lack thereof, I simply say it is difficult to determine how much money was deposited into that US account, or other accounts Mr. Werner may have held.

[48] I am satisfied that even if Mr. Werner had signed a contract with Maximilian, no formal trust was entered into and that money has been used as a cash reserve for both Maximilian and the Respondent. At best the Respondent has a contractual obligation to help Maximilian through university. In Canada he has a legal and moral obligation to provide for Ms. Werner and his son Clemens. The money on deposit in the US account was, and remains as, a matrimonial asset.

[49] There were other smaller accounts the Court has become aware of that Mr. Werner has but he has failed or refused to provide source documents to verify those account balances. Clearly they were all accounts which he had assured the Petitioner were part of their dream retirement fund.

[50] There are a number of considerations that I take into account in terms of deciding how to divide the matrimonial assets including the monies Mr. Werner has retained. I take into account the source of those funds. Clearly they were monies Mr. Werner had earned before he had ever met the Petitioner. They were, at least in part preserved as a result of the fact the Petitioner depleted all of her income to pay family related expenses after the parties moved to Canada. Clearly Ms. Werner is entitled to at least a portion of those assets. Section 13 of the **Matrimonial Property Act** sets out a number of factors to be taken into account when making a division of matrimonial assets. It provides as follows:

**Factors considered on division**

- 13 Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:
- (a) the unreasonable impoverishment by either spouse of the matrimonial assets;
  - (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;
  - (c) a marriage contract or separation agreement between the spouses;

- (d) the length of time that the spouses have cohabited with each other during their marriage;
- (e) the date and manner of acquisition of the assets;
- (f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;
- (g) the contribution by one spouse to the education or career potential of the other spouse;
- (h) the needs of a child who has not attained the age of majority;
- (I) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
- (j) whether the value of the assets substantially appreciated during the marriage;
- (k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse;
- (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;
- (m) all taxation consequences of the division of matrimonial assets. R.S., c. 275, s. 13; revision corrected 1998;

[51] Ms. Werner's life has been severely impacted by the consequences of the marriage, the breakdown of the marriage and the actions of Mr. Werner post marriage. Mr. Werner's actions have impacted her ability to return to Germany and to earn an income in Europe or in Canada. In saying that I refer to the fact the Court has in no uncertain terms been advised by Mr. Werner that if Clemens is

returned to Germany it is he who will have custody and Ms. Werner will be forced to return to work as I have already noted. The Court has grave concerns as to the safety and welfare of Clemens being with Mr. Werner unless, or until, a psychological assessment can be completed. This is the person who I have determined beat the Petitioner's head leaving swelling marks on her face and arms. The beating was severe enough that the shelter workers described Ms. Werner's swelling to be so extensive that her head was "cone shaped" when she first came to "Transition House". Ms. Werner would be unreasonably impoverished if Mr. Werner were permitted to keep all the assets. Any debts remaining at the end of the marriage were solely in Ms. Werner's name. The existence of, or validity of a marriage contract is disputed. However, even if it did exist I would not condone Mr. Werner retaining all the matrimonial assets to the exclusion of Ms. Werner given what has transpired since the couple wed and moved to Canada. To deny Ms. Werner a share of matrimonial assets would be harsh and unconscionable in the extreme. It was those very assets that were pledged to her as a source of support if she would quit her job and move to Canada with the Respondent. That pledge of support superceded and overrode any marriage contract even if it did exist. Even though Mr. Werner acquired those assets pre marriage it was only the

use of all Ms. Werner's assets and income that enabled Mr. Werner to retain as much as he did after the marriage.

[52] Even if Mr. Werner for a moment were given the benefit of doubt in terms of the injuries sustained by Ms. Werner (I have no such doubt) what he has done since the marriage has come to an end is nothing short of economic warfare. He has displayed a callous disregard for Ms. Werner and his son Clemens to whom he has professed such enduring love. Ms. Werner and Clemens have been left to fend for themselves in a country that was at the time of the marriage breakdown completely foreign to her. The kindness of a growing circle of friends and resources of the state are the only things truly providing for Ms. Werner and Clemens. The \$300.00 per month that comes from Mr. Werner does not provide more than a token contribution to their overall expenses. It is certainly nowhere close to what is going to Maximilian on a monthly basis. In fact that \$300.00 may even be deducted from what Social Services pays Ms. Werner. The evidence on that point is not clear.

[53] If Ms. Werner were reasonably able to return to Germany it is possible that she may be able to earn a living for her and Clemens. I am not satisfied that it

would be safe for Clemens to return to Germany, or Switzerland, at this time especially in the absence of the psychological testing I referred to above for Mr. Werner. Although Ms. Werner was able to earn a very good income in Europe the training and education she obtained are not readily transferrable to the Canadian job market. Ms. Werner has, with the financial support of Canadian government programs, returned to school. I understand that her re-education will take somewhat longer due to the financial limitation of government programs and her child care responsibilities related to Clemens. I have absolutely no doubt as to the abilities and desire of Ms. Werner in terms of re-educating herself. I do not expect Mr. Werner will be any more cooperative in assisting her and Clemens than he has been to date.

[54] I had warned Ms. Werner repeatedly throughout these proceedings that it is one thing for this Court to order Mr. Werner to pay her money, it is another issue when it comes to collecting money that has been secreted away around the world in instruments such as phoney trust accounts. The Court is aware of monies now being in at least two foreign countries, the US and Germany.

[55] I am satisfied that Ms. Werner has been financially devastated as a result of Mr. Werner's actions. If she can recover any portion of the matrimonial assets which I will order divided, it will not be anywhere near enough to give her what she had been promised by Mr. Werner. The fairy tale promises have turned into a nightmare for both Ms. Werner and now their infant son, Clemens.

[56] I am only able to identify with any degree of certainty the following matrimonial assets:

1. The car now in Maximilian's name.
2. The \$163,000.00 in the Scotia bank account since withdrawn by Mr. Werner.
3. The \$20,000.00 the Rupps paid to Maximilian.
4. The house in Germany which I am unable to say what it netted after repairs and expenses.
5. The container load of personal property shipped back to Germany together with, or including a rather dated Landrover.

[57] I intend to deal with the division of assets at the same time as I deal with the issue of spousal support.

[58] The relevant provisions of the **Divorce Act** related to the issue of spousal support are as follows:

### **Spousal support order**

**15.2(1)** A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and period sums, as the court thinks reasonable for the support of the other spouse. ...

### **Factors**

**(4)** In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse. ...

### **Objectives of spousal support order**

**(6)** An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and



(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[59] Ms. Werner has asked for spousal support, keeping in mind the fact that Ms. Werner had bought into a promise to live a leisurely retired life with her retired gentleman husband living off his vast wealth. Many of the factors which are relevant to the division of matrimonial assets are the same factors relevant to the issue of spousal support. If Ms. Werner is able to recover a share of the matrimonial assets she may be able to support herself to a limited degree as she retrains. I am keenly aware of the short duration of this marriage. I take into account the future potential of Ms. Werner in terms of retraining and employment, even while she alone may be burdened with the task of raising Clemens.

[60] Based on all the facts I referred to above, I am satisfied Mr. Werner could earn a respectable income if he decided to try. Ms. Werner will require some time to readjust and retrain so she can support herself. She finds herself in her present situation, not just because of the marriage and the marriage breakdown, but because of Mr. Werner's actions post breakdown. I am satisfied it would be appropriate in the present circumstances to order a lump sum spousal maintenance award in the

amount of \$125,000.00. If paid this will assist Ms. Werner in attaining self sufficiency in a more reasonable time frame. In making that award I note it would most likely have to be paid out of matrimonial assets, not income Mr. Werner is currently earning. It would be unfair to double dip in terms of those assets and require a further payment to effect a division of matrimonial assets. Many of the factors considered in dividing assets are the same factors considered in spousal support awards. The \$125,000.00 represents both a lump sum spousal support award and an unequal division of matrimonial assets in favour of Mr. Werner. The unequal division, while unequal in Mr. Werner's favour, takes into account the source of the assets.

[61] On the issue of costs, I note Ms. Werner represented herself throughout these proceedings. It is obvious that very substantial amounts of time were expended in preparation. Even though she was self representing, this is a situation where the time and resources involved cries out for an award of costs. Most of that time and effort was required simply because of the scorched earth approach adopted by Mr. Werner beginning almost immediately after he assaulted Ms. Werner in their home and she fled to a neighbors. It was obvious to the Court that Ms. Werner expended many hundreds of hours in preparation and appearances on

this matter. The time no doubt took away from her education and family. Costs in the amount of \$10,000.00 are awarded to Ms. Werner.

[62] In addition to these costs, Ms. Werner referred at times to having to spend monies she could not afford on disbursement. I would ask that she prepare a list of disbursements supported by affidavit and receipts. Counsel for the Respondent should be given a copy of all those disbursement records. If they cannot agree that they were actual and reasonable disbursements, I will hear from them and determine what disbursements are payable in addition to the costs I have awarded.

[63] When Ms. Werner gets the car from Maximilian it should be appraised. To the extent its present value exceeds one half the original purchase price, that excess will be applied to what is otherwise owed by Mr. Werner. If it appraises for less than one-half the original purchase price then the deficiency will remain as an amount owing by Mr. Werner.

[64] Given the unique circumstances of the parties in this case, I find the Spousal Support Advisory Guidelines are of little assistance in the present case.

**J.**

06/13/12