SUPREME COURT OF NOVA SCOTIA

Citation: *K.A.R. v. P.J.T.*, 2018 NSSC 4

Date: 2018-01-18
Docket: *Kentville*, No. 15244
Registry: Kentville

Between:

K. A. R.

Applicant

v.

P. J. T.

Respondent

Editorial Notice: Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Justice Pierre L. Muise, J

Heard: October 30, 2017, in Kentville, Nova Scotia

Counsel: Marion Hill, for the Applicant
Donald Urquhart, for the Respondent

INTRODUCTION

[1] The parties were in a nine year common-law relationship and owned, as joint tenants, the house they lived in. Ms. R. asks this Court to order the sale of the home and that she be paid, out of the proceeds, at least the $30,709 down payment she made at the time of the purchase of the home plus the $75,775 she spent to pay out the mortgage, as well as 50% of the remaining proceeds.

[2] In addition, she asks that Mr. T. be solely responsible for the portion of the Valley Credit Union loan in both of their names that paid the amounts owing on credit cards in his name only.

[3] If she obtains such an order she agrees to quit claim her interest in a piece of raw the land in Annapolis County that they also own as joint tenants.

[4] She says that Mr. T. should be barred from claiming any equitable relief in this matter because he: unilaterally prevented her from accessing the house after separation; refused to provide her the medical marijuana he was growing under her permit; and, withheld that permit.

[5] Further, she seeks an order requiring Mr. T. to deliver, to her, various items remaining in the house.

[6] Mr. T. acknowledges it makes sense that Ms. R. get credit for the $75,775 she spent to pay out the mortgage.

[7] He takes the position that the $30,709 down payment made by Ms. R. was more than offset by the amounts he spent to supply a motor vehicle for her use and they had agreed to such a trade-off.

[8] He submits that his credit cards which were paid off by the Valley Credit Union loan were used for family expenditures such that the entire amount of the loan is properly a joint debt.

[9] He asks for 60 days to secure the financing required to buy out Ms. R.'s interest in the house, considering the $75,775 payout amount and that she is responsible for half of the joint loan.

[10] He also challenges this Court's jurisdiction to make an order in relation to the household items requested.

ISSUES

1. Is Mr. T. barred from claiming any equitable relief based upon the clean hands doctrine?

2. Has Ms. R. rebutted the presumption of equal sharing that arises from joint tenancy?

3. Are there post-separation contributions which constitute an equitable allowance justifying an adjustment?

4. What is the impact on this application, if any, of the parties owning as joint tenants the Annapolis County land, considering that Mr. T. paid the entire purchase price?

5. What is the impact on this application, if any, of Mr. T. having retained the proceeds of sale of the camper and all hydroponic marijuana growing equipment?

6. How should the value or sale proceeds of the home be divided?

7. Should the house be ordered sold and, if so, how?

8. Does this Court have jurisdiction to make an order regarding household contents in this application?

9. If so, what, if any, order should be made in relation to the household contents?

LAW AND ANALYSIS

Preliminary Comments on Credibility and Reliability

[11] The parties disagree on numerous factual points.

[12] While testifying, they were very similar in their: demeanour; level of evasiveness; attitude on cross-examination; and, reluctance to make admissions against interest. As a general comment, I did not find one to be any more credible or reliable than the other.

[13] As a result, I have relied significantly on any corroborative evidence and on the sense of the evidence in making findings of fact.

Preliminary Comments on Objection to Admissibility of Evidence

[14] At the beginning of the hearing, Mr. T. objected to the admissibility of paragraph 5 of Ms. R.'s affidavit sworn October 3, 2017, based on the evidence having been presented orally at the interim hearing and on relevance.

[15] I did not preside over the interim hearing. Therefore, I had not heard that evidence. There was no transcript of that evidence. I refused to exclude paragraph 5 on the basis that it had already been presented orally at the interim hearing.

[16] Mr. T. argued that the relationship evidence was not relevant. I ruled that, since the parties had raised an unjust enrichment argument, which brought into play the question of a joint family venture and the mutual expectation of the parties, the relationship evidence generally was relevant, subject to Mr. T. being able to point to specific relationship evidence that was not relevant.

[17] The Court in ***Peters v Reginato***, 2016 NSSC 345, treated the inquiry into the equities, to which an equal division of a property under the *Partition Act* should be subject, as being an inquiry separate and distinct from the inquiry into whether the same property, or monies for a share in it, should revert to one party under a constructive or resulting trust as a remedy based on unjust enrichment.

[18] In the case at hand, the analysis argued by the parties incorporates the unjust enrichment analysis into the consideration of equities analysis. Following the approach in ***Peters v Reginato***, the inquiries ought not be intermingled. In addition, in my view, in the case at hand, it is unnecessary to enter into the unjust enrichment analysis. The respective equities can properly be considered in the partition analysis. Further, paragraph 5 of the affidavit in question contains more than relationship evidence. Therefore, I make the following additional comments in relation to the admissibility of the evidence in it.

[19] In my view, the evidence regarding payment of household expenses and raising of a child or children together is relevant to: contribution to the family unit; and, assessment of the benefits gained by each party from payments to run the household, both of which may impact the assessment of the equities which may support an unequal division.

[20] The evidence regarding the trip cancellation is relevant to the benefit gained by the respective parties from the expenditures for that last trip.

[21] The evidence regarding access and denial of access to the home is relevant to the respective benefits received from the home and thus to the equities.

[22] The evidence regarding ownership and retention of household contents is relevant to the request for an order requiring Mr. T. to provide items to Ms. R..

[23] The evidence regarding what was purchased with the credit card debt and whether there was agreement that Ms. R. would pay it off is relevant to the role of that debt in assessing whether there should be an unequal division.

[24] However, in my view, the only relevant evidence in "Response to 4" is the first sentence which deals with parenting of Mr. T.'s grandchild, who they had custody of, during the relationship. The remainder of that response is evidence of circumstances regarding that child following separation. In my view, that portion is not relevant.

[25] The relevance of "Response to 5" has not been established as it has not been connected to Mr. T.. It is not admissible.

[26] The "Response to 9 & 10" and the "Response to 29" are only relevant to the question of exclusive possession which was determined at the interim hearing. The parties have agreed that no further determination on that issue is required. Consequently, those responses are not relevant to what I need to decide and are inadmissible.

[27] Also, any evidence presented by Mr. T. in response to these inadmissible portions is also inadmissible.

[28] The remaining portions are admissible.

ISSUE 1: IS MR. T. BARRED FROM CLAIMING ANY EQUITABLE RELIEF BASED UPON THE CLEAN HANDS DOCTRINE?

[29] Ms. R. submits that Mr. T. should be barred from claiming equitable relief because he does not come to the Court with clean hands. She points to his relevant wrongdoings as being the disposal of her medical marijuana, withholding her production license and blocking her access to the home.

[30] In my view, Mr. T. is not claiming equitable relief. Except for his partial concession that it may be appropriate to credit Ms. R. for the mortgage payout amount, he is simply relying on the legal presumption of equal sharing that arises from joint ownership.

[31] Even if he was claiming equitable relief, in my view, for the reasons which follow, the impugned conduct would not bar such a claim.

[32] The Court in ***Turbide v. Moore***, 2006 NSSC 71, at paragraphs 68 to 74, dealt with the clean hands doctrine in the context of common law spouses. It stated that the "doctrine is not applied rigorously in family law proceedings" and

noted that if the equitable relief requested can be established without relying upon the misconduct in question it is not barred.

[33] Other authorities on the clean hands doctrine include: ***Pro Swing Inc. v Elta Golf Inc.***, 2006 SCC 52; ***Belliveau v Belliveau***, 2011 NSSC 397; ***Craiggs v. Owens***, 2012 BCSC 29; and, *Halsbury's Laws of Canada, Equitable Remedies: Estoppel* (2016 Re-Issue)(Toronto: Nexis Lexis, 2016).

[34] ***Turbide v. Moore*** and these other authorities state that the clean hands doctrine gives the court discretion to dismiss a claim based in equity were the misconduct in question has an "immediate and necessary relation" to the claim or its subject-matter. It is based on the principle that a person cannot use their own "illegal or immoral act" to found such a claim.

[35] Mr. T. is not relying on any of this impugned conduct to establish any claim. As such, it would not bar any equitable claim.

[36] Further, he provided explanations for his conduct which, in the circumstances, cannot be said to be so unreasonable as to warrant applying the clean hands doctrine in a family law context.

[37] Mr. T. and Ms. R. both had medical marijuana production licenses permitting them to grow marijuana at the house. On April 11, 2017, Mr. T.

informed Ms. R. that her portion of the medical marijuana had been disposed of. He has not allowed her to remove her half of the marijuana.

[38] Ms. R. attached text message exchanges between her and Mr. T. to her affidavit sworn June 14, 2017. On June 6, 2017, she sent him a text stating that he had 10 days to hand over her 20 marijuana plants and permit, failing which she would contact health Canada regarding her permit and misappropriation of her product. He responded: "Won't be ready, I will just cut them down now and save the hassle. Go ahead and cancel it." There were further text exchanges the next day in which Mr. T. told Ms. R. that her threats to report him to health Canada made it such that he had shredded her 20 plants because he did not want to risk losing his licence. He also informed her that he had put her permit in her mailbox.

[39] Mr. T. provided evidence that he did not provide half of the marijuana produced to Ms. R. because he would have been breaking the law in doing so. He deposed that his production license only allows him to grow 20 plants and to store 900 g of marijuana, all of which must be done at the house address. Growing or moving the marijuana elsewhere is a violation of the conditions of his permit. That, combined with her threats to contact Health Canada, created a risk that his permit would be revoked or he would be subject to some other sanction. He did not want to take that risk. He shredded her plants to remain in compliance.

[40] He added that, even though he provided Ms. R. her production permit, she needs a new permit to grow marijuana at another location. Therefore, withholding it caused her no prejudice.

[41] Ms. R. deposed that, on March 24, 2017, Mr. T. changed the locks on their home so that she could no longer access it. That was over two months after she returned from taking a trip by herself. She indicated she has not been able to access her belongings or those of her children. When she tried to enter the home on April 26 to retrieve her belongings he did not allow her to enter and called the police. He continues to remain in sole possession.

[42] Mr. T. deposed that Ms. R. had removed her personal belongings and those of her children prior to taking, by herself, the cruise they had booked to take together. She returned to the home after the cruise on February 2, 2017. However, they did not share a bed. In mid-February, she moved out of the home and in with her boyfriend. He said she continued to have access to the home until he changed the locks on March 24.

[43] He further deposed that he changed the locks after consulting with the RCMP and after discovering items missing from the home during times when he was absent.

[44] Mr. T. stated that the reason he changed the locks to prevent Ms. R. from accessing the home was to protect his items from being removed by Ms. R. and give himself some peace of mind. He also said that he was afraid that, in his absence, Ms. R. would come to the house and light fires in the wood stove and leave them unattended, creating a risk of burning the house down.

[45] He further deposed that she had come after him at the house holding a piece of wood with nails in it. He attached a photograph of that piece of wood. He stated that she admitted having done so at the hearing before Justice Warner on July 12, 2017. That caused him to have some concern for his safety.

[46] Ms. R. acknowledged that, at the time, she had not been sleeping in the home every night. She had only been visiting it through the day.

[47] Although Mr. T.'s conduct was not perfect, in my view, considering the circumstances and explanations, it was not such as to warrant barring equitable relief.

ISSUE 2: HAS MS. R. REBUTTED THE PRESUMPTION OF EQUAL SHARING THAT ARISES FROM JOINT TENANCY?

Law

[48] In ***Soubliere v. MacDonald***, 2011 NSSC 98, at paragraphs 21 to 24, the Court concluded that the strong presumption of equal sharing that arises when persons hold real property in joint tenancy had not been rebutted. It did so, even though the party attempting to rebut the presumption, Mr. MacDonald, had paid the down-payment and the majority of expenses because the other party was unable to afford to pay half. At the same time, it confirmed the principle outlined in prior jurisprudence that this entitlement to equal sharing is "subject to certain equities".

[49] In considering the equities, the Court made adjustments for the amounts paid post-separation in mortgage payments and property taxes. It noted these were "routinely considered". However, it did not make any adjustment for the down-payment, despite the parties having entered into a cohabitation agreement providing that, in the event of separation, the house would be sold to Mr. MacDonald and Ms. Soubliere would receive half of the equity after crediting the down-payment amount to Mr. MacDonald.

[50] At paragraph 26, it stated that pre-separation payments and contributions are considered in assessing whether the presumption of equal division has been rebutted, not in determining whether there should be equitable adjustments. In the

circumstances of that case, it found that they would have no impact on the equities of division in any event.

[51] In ***Peters v. Reginato***, *supra*, the Court rejected the request for unequal division because it found that "there was an approximately equal conferral of mutual benefits over the course of the relationship".

[52] At paragraph 128, it stated: "What comprises an equitable allowance is fact specific and based on the unique circumstances of each case." Unlike the Court in ***Soubliere v. MacDonald***, it did not make an equitable adjustment for post-separation payments on the mortgage and taxes when Mr. Peters was not paying child or spousal support and Ms. Reginato was primarily responsible for the children.

[53] In ***Braithwaite v. Turner***, 2015 NSSC 221, the Court found that the presumption of equal sharing had been rebutted because Mr. Turner's contribution to the property specifically, and to the family unit generally, had been significantly less than that of Ms. Braithwaite. It ordered a 70 / 30 split of the equity in the property.

[54] These cases involved separated common law partners. Those circumstances require consideration of the mutual benefits common law spouses confer upon each other and the family unit.

[55] The Court in ***Finanders v. Finanders***, 2005 NSSC 145, dealt with a property owned by two brothers. The Defendant brother built a cottage on the property. The Plaintiff, an electrician, provided labour and materials. He was permitted to use the cottage. He paid the insurance and the Defendant paid the taxes. The Court did not address whether the presumption of equal sharing had been rebutted. It only assessed whether equitable allowances should be made. It found that the Plaintiff had supplied services and materials "on a volunteer basis, brother to brother" and "without any expectation of compensation". Consequently, it did not make any equitable adjustment for that contribution. It ordered the property sold and the net proceeds divided "75 percent to the Defendants; 25 percent to the Plaintiff" based upon the cottage being "one-half the value of the land plus the cottage".

[56] In that case the fact that the parties were brothers influenced the assessment of the impact of the Plaintiff having provided labour and materials for free.

Down-payment

[57] On April 30, 2008, around the beginning of their common-law relationship, the parties purchased a home at […] Nova Scotia, in their joint names for $141,000.

[58] They agree that a down-payment in the amount of $30,709 was made for the purchase of the Home from the property settlement equalization payment Ms. R. had received following the breakdown of a prior relationship.

[59] The remainder of the purchase price was secured through a mortgage with the Valley Credit Union in the amount of $112,800.

[60] They agree that the home is now worth $165,000.

[61] Ms. R. submits she should be credited for the down-payment as part of an unequal division.

[62] Mr. T. provided evidence that there was an agreement between him and Ms. R. that she would make the down-payment in exchange for him supplying a motor vehicle for her use and that the amounts he spent supplying such motor vehicle exceeded the amount of the down-payment. He submits that there should be no credit for the down-payment as part of an unequal division.

[63] Ms. R. denies such an arrangement. However, she conceded that she used the vehicle supplied most often and that it was convenient in what she described as a household of seven.

[64] Mr. T.'s evidence, supported by documentation, is that he paid a total, with interest and fees, of $25,918 for a Kia Magentis which his ex-partner had refused to make payments on and he did not need. He only kept it because Ms. R. had no means of transportation and wanted to use it. When that vehicle became no longer reliable, he sold it for not much money. He did not recall how much. Then, he purchased a 2007 Dodge Caravan, paying a total, with interest and fees, of $13,331. When that became no longer reliable, he sold it for $1,500. He added that he put that $1,500 into the purchase of the next vehicle for Ms. R., a Dodge Nitro. Ms. R. disputes that. She says that she is the one who purchased the Nitro.

[65] She also deposed that she had no say in relation to Mr. T. keeping or purchasing the vehicles in question.

[66] However, irrespective of whether the $1,500 went on the Nitro, and irrespective of whose idea it was that Mr. T. would pay for the other vehicles, he did pay amounts to supply Ms. R. with a vehicle exceeding the amount of the down-payment she made on the house. Even though the vehicles were in his name,

she is the one who primarily used them. Those amounts must be considered in assessing whether Ms. R. has rebutted the presumption of equal division, irrespective of whether they had a quid pro quo agreement.

[67] In addition, as noted in the caselaw, payment of a down-payment does not, in itself, justify an unequal division.

[68] I must also consider who received the most benefit from the vehicles. Mr. T. testified that Ms. R. had no vehicle and had two children in hockey who she had to drive. In contrast, his children were not in sports and he drove them most of the time. Ms. R. agreed that she drove her own children from a prior relationship; but, added that she also drove his "some". She did not say that she used the vehicles equally for all children. There was evidence that her children resided primarily with them. However, there was no evidence his children did. It was only from 2013 that they had primary care of his grandson. More likely than not, the majority of her use of the vehicle was to transport her children or to run errands for the family as a whole. Therefore, though there was significant family benefit, there was also significant benefit related to her children from her prior relationship.

Sharing of Expenses

[69] Ms. R. testified that she paid the upkeep on the vehicles. However, she also offered that Mr. T. may have paid the insurance.

[70] She agreed they both paid on the mortgage and household expenses. She said she took care of the power, cable, telephone, Internet, home heating oil, payments to the American Express account used to purchase household items, and the majority of the groceries as well as the expenses related to her car and her children. In her view, she paid for the majority of the household expenses. She provided voluminous chequing account and High Interest Savings Account ("HISA") statements from the Valley Credit Union from March 2012 to March 2017. They are attached as Exhibit G to her affidavit sworn April 27, 2017. She also attached, as Exhibit H, a Nova Scotia Power statement summary from April 2010 to March 2017. Those documents show regular and frequent payments to Nova Scotia Power, grocery stores, gas/service stations, AMEX, Eastlink and, starting August 21, 2014, Eastlink Cable. That documentation provides some corroboration for her evidence of payments made by her starting March 2012.

[71] She deposed that she paid approximately $950 for their wood supply for 2016. Her chequing account statement has an entry for October 3, 2016 showing a "MemDir Interacct Wth" transaction in the amount of $700. She has hand-written in that entry "paid wood [something or someone starting with "B"] & his worker".

However, there is no way of knowing whether that transaction in fact related to paying for the wood.

[72] She indicated they took their turns paying the mortgage biweekly. At times, she would cover his payment. If they had to pay each other back, it was done by altering who was responsible for a specific mortgage payment.

[73] She indicated that she made some payments on an American Express Card (held by Mr. T.), which she paid back after receiving her accident settlement. Mr. T. confirmed having received $5,000 from Ms. R.'s accident settlement to repay the debt she had incurred on his American Express Card.

[74] Starting in May 2008, the parties effected extensive renovations to their home including a porch, two decks, a pool, redoing the basement, adding two bedrooms, and redoing multiple rooms and flooring in the home. Ms. R. deposed that she paid for the majority of the renovations from funds she retained as part of her previous divorce settlement. She estimates having spent roughly $29,000, plus an unknown amount paid in cash to R.S.. In corroboration, she provided a copy of a money order from her to First Choice Kitchens in the amount of $1,454 and an invoice from JC's Hot Tubs and Pools Kingston, marked paid, totaling $7,170, without any corresponding documentation to show the source of the payment.

[75] She deposed that: Mr. T. paid for the laminate flooring in the rec room and two downstairs bedrooms through his business; and, she would get money from the bank and give it to Mr. T. to pay contractors.

[76] She deposed that that she and Mr. T. took one trip per year for each of the last six years. Mr. T. paid for four of the trips. She paid for two. However, as they had already split up, she went on the last trip by herself, having cancelled Mr. T.'s portion. Therefore, in effect, her evidence is that she paid for one of five joint trips.

[77] Mr. T. provided the following evidence regarding sharing of expenses.

[78] He deposed that they shared all expenses and invested equally into the house. He said they had agreed to share housing and living expenses 50-50.

[79] He stated that Ms. R. had run up her Visa during her divorce and he had put money on that debt for her.

[80] He deposed that Ms. R. did "help with some household expenses, such as electricity, Internet, cable and groceries" while he paid the other household expenses including heat, insurance, vehicle payments, vehicle repairs, household maintenance and family entertainment, many of which were financed on his credit cards.

[81] He deposed that he carried out renovations on the home himself plus paid for renovations and yard improvements. He calculated the total he paid for renovations in the first few months that they owned the house as being $10,250. Like Ms. R. he provided a summary of those expenses. The documentary support he provided for amounts he spent on renovations includes his Visa Classic Credit Card and Choice Rewards MasterCard statements for May to July 2008 showing total cash advances of around $10,000, which he indicates were used for renovations, plus purchases from vendors supplying renovation-related material totaling over $7,100, which he also indicated were for renovations to the house. He said he made all of the payments on those cards.

[82] He acknowledged that both of them had paid contractors and materials. However, in his view, he paid the majority of those expenses. He indicated that the cash advances he took in July 2008 were used for that purpose.

[83] R.S., who was hired to effect renovations on the house, testified to the work that he did and also to seeing Mr. T. work on renovating the kitchen.

[84] Mr. T. agreed that he did put some of the materials for the house renovations on his business account. However, he did not expense it to the business. It would be accounted for and he would pay it from his personal monies. He stated that all

of the expenses he has advanced in this proceeding as having been spent on the house were paid by him personally, not his business.

[85] There is one of Mr. T.'s RBC Visa statements attached as Exhibit 1 to his affidavit of September 19, 2017. It shows a payment to Stewart & Turner in the amount of $1,605 on April 17, 2008. He presented that as evidence that he had paid the legal fees for the purchase of the house. However, Ms. R. deposed that they did not purchase the home until April 30, 2008 and the payment was for legal services related to an assault charge. It makes sense that legal fees for the purchase of a property would be paid out of the funds required for closing and would be paid to the firm who handled the closing for the purchasers. In addition, the statement of closing adjustments for the purchase of the property is dated April 30, 2008 and includes a legal account payable to Waterbury Newton in the amount of $943.55. Therefore, more likely than not, the payment of $1,605 to Stewart & Turner was for legal services other than the purchase of the house.

[86] It was suggested that Mr. T. had spent his money on things like all-terrain vehicles. He stated that he bought a couple of "4 Wheelers" for about $200 through […]for "the boys". He sold those years ago and bought Ms. R. one for $2,900. After she was injured in the accident he sold it for $1,000 and put the money on her Visa.

[87] Mr. T. testified that they both came from other relationships and agreed that, as part of the 50–50 sharing arrangement, if one paid expenses that were supposed to be paid by the other, they would pay each other back.

[88] The credit card and line of credit statements provided by Mr. T. provide some evidence to corroborate that he paid, in addition to renovation-related expenses, expenses which included groceries, home maintenance and furnishings, vehicle maintenance, insurance, home heating fuel, and vacation travel. I will go over those in additional detail later.

[89] Ms. R. deposed that Mr. T. made purchases on his credit cards for supplies he used in installing kitchens for others as part of his business. She also stated that the credit card statements at Exhibit 11 to his affidavit dated September 19, 2017 were credit cards he had for […]. She points to her initials being on the Visa Classic statements because she put them there while reconciling them with the books. However, her initials continue at least to the end of the 2011, which was after her accident which rendered her unable to work. Therefore, she was either working when she said she could not or her initials were inserted as part of looking after their personal finances. In addition, the address shown on the Visa Classic statements, as well as on the BMO statements, is the house civic address. The Visa classic statements also refer to PO Box […] in […], in combination with the civic

address, indicating that personal correspondence was also sent to that box. The statements for the Home Depot account, the Choice Rewards MasterCard, the Canadian Tire MasterCard and the personal line of credit also show the same […] address. That indicates they were personal accounts, not business accounts. On the other hand, the American Express Credit Card shows a […] address and refers to […]. That is indicative of a business account. However, it was Mr. T.'s evidence that any purchases on business accounts for personal items were ultimately charged to him personally and that the credit card purchases he presented were for the house, not his business.

[90] Mr. T. indicated that he paid for five cruise vacations costing approximately $5,000 each. However, he acknowledged that, even though he had paid for that fifth cruise, she had reimbursed him for the cost. Therefore, he confirmed Ms. R.'s evidence that she paid for the fifth cruise, albeit indirectly.

[91] So, Mr. T. paid about $20,000 for joint vacations with Ms. R. only having paid approximately $5,000.

[92] These points are supportive of a conclusion that, overall, there was a roughly equal contribution to living expenses. Given the evidence presented, it was impossible to conduct a precise calculation and, in the context of a common-law

relationship, the Court is to look at the general overall contributions of the parties and need not conduct a detailed weighing of financial contributions. Where the evidence allows, it is also to consider other types of contributions.

[93] It appears that both parties, to the extent permitted by their physical limitations, with the help of Ms. R.'s children, contributed to the yard work. The parties also did some renovation work, particularly Mr. T.. I will discuss sharing of responsibility for children later.

Respective Financial Abilities of the Parties

[94] Ms. R. testified that, in 2008 and 2009, she worked in […]. In 2010, she was in a motor vehicle accident which prevented her from continuing to work. Thereafter, she was only able to do some babysitting. Her sources of income were: child support from the father of her children from a prior relationship; the child tax credit; income from babysitting; and, RRSPs she withdrew.

[95] She testified that she withdrew $30,000-$40,000 from her RRSPs from 2010 until they were exhausted. They were RRSPs that she had received as part of the division of assets during the divorce from her previous marriage. She attached, as Exhibit D to her affidavit sworn October 3, 2017, a two-page printout purporting to show those amounts withdrawn from her RRSPs. From November 8, 2010 to June

17, 2013, it shows 25 withdrawals totaling about $32,500, which corroborates her evidence. So, during those approximately 2.5 years she withdrew about $13,000 per year.

[96] When asked whether Mr. T.'s income was greater than hers she responded, in my view evasively, that she did not see his income. It was later put to her in the form of a suggestion that he made more money than her during the relationship. She reluctantly conceded that it may have been the case.

[97] Mr. T. deposed that Ms. R. worked very little during the relationship and presented her 2014 notice of assessment showing a total income of $4,397 as being a typical year for her.

[98] On December 16, 2015, she received $96,975 as a net personal injury award related to the motor vehicle accident. From that amount, in January 2016, at the Valley Credit Union: she deposited $15,000 in her chequing account; paid $12,000 as a negotiated settlement of her Scotia Bank credit card debt; paid out another Scotia Bank credit card debt in the amount of $1,997; and, opened a HISA account with a deposit of $66,000.

[99] On March 15, 2016, $39,111 from Canada Pension Plan was deposited in her chequing account.

[100] Her chequing account statement also shows a transaction labelled "MemDir InterAcct Wth" in the amount of $5,000 on April 4, 2016. She deposed having paid Mr. T. that amount, on that day, "for household expenses including groceries and gas that [they] add incurred on his American Express credit card during [their] relationship". There was no corresponding deposit documentation to confirm that. However, Mr. T. acknowledged having received such a $5,000 repayment.

[101] Her income for 2016 was $29,127. That was because Service Canada determined she was entitled to a lump sum payment for CPP disability benefits also covering 2014 and 2015.

[102] Mr. T. deposed that Ms. R. came into the relationship with a $30,000 debt and continued to carry debt through the relationship.

[103] In contrast, he deposed that he came into the relationship with no debt and assets totaling $100,000 due to an insurance settlement of $180,000 which he had received a year or two before the relationship and because he had sold his home a few months before they moved in together. However, he testified that he did not put any of that on the house. He put it into […]. He testified that, going into the relationship, he owed $9,000 for a motorcycle; but, his credit cards were at zero

balance. Therefore, when he indicated he had no debt he likely meant no credit card debt.

[104] Ms. R. disputes that state of affairs. She indicates that she only acquired the $30,000 debt after paying all of the rent for the first 10 months of the relationship and her divorce lawyer with Visa cheques. In addition, she states that Mr. T. only had $8,000 after the sale of his home which he put in his business.

[105] In response, Mr. T. deposed that: those 10 months of rent were in relation to a residence she was renting while he paid rent for his own residence; and, Ms. R. had no knowledge of his personal financial situation when they met.

[106] It is impossible to determine the respective financial abilities of the parties with any degree of precision. However, until Ms. R. received her MVA settlement, more likely than not, his financial ability was greater than hers. Ms. R. appears to have reluctantly acknowledged that.

$42,705 Valley Credit Union Loan

[107] Ms. R. testified that the $42,705 loan from the Valley Credit Union Limited was incurred to amalgamate Mr. T.'s credit cards. She agreed that she had signed the application and agreement for the loan and a lawyer would have told her what

she was signing. She conceded that Mr. T. made all of the payments on the loan, adding that that was the agreement. She disagreed with the suggestion that the credit card debt had been incurred in paying household expenses. She deposed that: Mr. T. incurred his debts by purchasing, amongst other things, a dirt bike, 4-wheeler and camper, which he has sold; and, she did not incur any of the debt.

[108] She ultimately conceded that about $5,040 of the loan amount is joint debt because it paid off that amount remaining from a joint loan dated August 14, 2012 in the amount of $10,875 for an unspecified asset, which, for reasons discussed later, was, more likely than not, a camper.

[109] The house is security for the $42,705 loan. Therefore, it would have to be paid off on the sale of the home. Ms. R. submits that it should be paid off from any share Mr. T. may be entitled to. As such, she is essentially advancing the nature of that debt as further grounds for an unequal division.

[110] Mr. T. testified that the credit cards that were paid off with that loan were family debts because they were used to pay for things such as groceries, car registration and anything else they needed as a family and did not have the cash for. Ms. R. did not have any credit cards. Therefore, they had to put those expenditures on his.

[111] Mr. T. deposed that the roughly $42,000 in credit card debt paid from the loan represented less than one third of the total debt on the credit card that was incurred over the nine-year relationship and that it was for purchases for the house and living expenses for a family of five. He added that it had an interest rate of 19.9% and, over the years, he has made all of the payments on the credit debt himself, in addition to having made all the payments on the consolidation loan.

[112] The balance on the Loan at the time of hearing was about $37,000.

[113] Dwight Doherty, Manager with the Valley Credit Union confirmed that Mr. T. had made all of the payments on the Loan which were approximately $100 per week.

[114] The loan agreement relating to that loan is dated April 22, 2016. It is helpful to examine what credit debt was repaid other than through that loan. Using the Loan Agreement date as a reference point helps in that examination.

[115] Exhibit 11 to Mr. T.'s affidavit of September 19, 2017 is voluminous. It contains statements relating to credit cards and a line of credit of Mr. T.. There are gaps in the statements and they do not cover the entire timeframe of the relationship. Unfortunately, there was little evidence to assist in properly and fully understanding the nature of the purchase, cash advance or transfer transactions.

However, the statements do provide some insight into the purchases or payments made by Mr. T. and the timing of repayment of some of the credit advanced.

[116] The statements relating to Mr. T.'s Home Depot Card commence in December 2012 with a balance of approximately $1,600. They do not indicate that any of that debt was paid off from the Loan, even though the Home Depot Card is listed on the Loan Application as a debt owing. The outstanding amount goes down incrementally with monthly payments before and after the date of the loan. The statements reveal regular monthly payments ranging from $50-$100. It was essentially paid off by March 2014. In November 2014, the balance was once again up to $1,700. Then, there were monthly payments of $50-$700, with most payments being $100. It was once again paid off in January 2016. In March 2016, it was back up to $1,300, then paid down at a rate of $100 per month until the balance of approximately $500 was paid off in December 2016.

[117] The statements relating to his RBC Visa Classic Card commence in November 2009 with a balance of approximately $13,000. The subsequent entries are mostly payments on interest and principal. The most noteworthy additions to the debt are cash advances, including $1,800 on July 7, 2010 and $1,000 on December 22, 2014. It was paid down incrementally until a zero balance was reached in June 2015. On June 23, 2015, there was a cash advance of $11,000

followed by a further cash advance of $600 on June 25. On June 29, there was a purchase at a tire store in the amount of $728. That raised the balance to over $12,400. Other purchases were made, including from places where one would purchase home maintenance and furnishing items and some related to a cruise. There were also vendor names which are not commonly known and in relation to which there was no explanation evidence. By March 2016 the balance was up to approximately $13,500. A payment was made March 25. The remaining balance of approximately $13,100 was paid from the $42,000 loan.

[118] The statements relating to his Choice Rewards MasterCard commence in July 2008 with a previous balance of about $10,000. The transactions/purchases include those at Canadian tire, building supply stores, Air Canada, Scotia Gold, Walmart, Ardene, grocery and convenience stores, service stations, a home heating oil supplier, and, for a cruise. There are also cash advances, notably one of slightly over $7,000 on September 23, 2015. Incremental payments of $500-$600 per month did not keep up with the spending on the card. On April 22, 2016, $15,293.80 was paid from the loan, leaving a balance of only $16.50 which was paid off May 17.

[119] His American Express statements commence December 2009 with a previous balance of about $4,900. Incremental payments ranging from $120-$300,

mostly monthly, were made. The last statement dated November 2011 shows a balance of slightly over $1,300. This card is not listed as a debt on the Loan Application. Therefore, it was, more likely than not, paid off in some other way. Ms. R. provided evidence of having paid amounts on an AMEX card. However, that is an AMEX Platinum Card in relation to which Mr. T. was the principal card holder but which Ms. R. also had a card for. Statements related to that card are attached as Exhibit 15 to Mr. T.'s affidavit of September 19, 2017. I will discuss that Exhibit later.

[120] Mr. T.'s BMO Credit Card statements commence in September 2012 with an account balance of $4,071. The purchases and transactions include building supply stores, Canadian tire, service stations, grocery and convenience stores, auto parts stores, Walmart, a tire store, a cruise and cash advances, including a cash advance of $3,400. It is also noteworthy that they include a purchase of almost $6,500 from Bruce Chevrolet. Monthly payments range from $250 to $10,000 and included payments of $3,200 and $4,500. The $10,000 payment was in July 2015, bringing the balance almost to zero.

[121] His Canadian Tire Options MasterCard statements commence in January 2013 with a previous balance of almost $600. The purchases include travel, building supply stores, Canadian tire, Walmart, gas stations, insurance, grocery

stores, convenience stores, tire stores and auto parts stores. Payments were in the $100 to $1,500 range, with most being in the $100 to $200 range. In August and September 2014 payments of almost $8,000 were made to pay off the outstanding amount. On May 23, 2015, he bought a motorcycle for approximately $6,000. He also made purchases indicative of being household expenditures. He continued monthly payments of $500 and, in September and October 2015, paid off the balance of approximately $7,000. The next statement was in February 2016 showing a previous balance of zero. That was followed by purchases which include a cruise and purchases from the same type of house and household related vendors, including building supply stores. Payments in the $200 to $265 range continued to be made. A payment of approximately $1,600 was made in April of 2016, reducing the balance to zero. That last payment, more likely than not, came from the Loan. There was continued use of that card, with continued payments ranging from $350 to $500, and balances ranging from $1,000 to $2,000.

[122] The statements from his CIBC Personal Line of Credit commence August 2014 with a zero balance. By early September 2014 the balance was up to $9,000 due to purchases, Internet transfers and over $7,000 paid on his Canadian Tire MasterCard. However, it is noteworthy that the payment on that card is prior to Mr. T. having purchased a motorcycle on it. There are other transactions including

cheques and withdrawals on the line of credit. The payments ranged from $200 to $1,600. A payment on April 26, 2016, in the approximate amount of $5,500 brought the balance to zero. More likely than not, that came from the Loan.

[123] In my view, these statements show substantial transactions and purchases that appear, more likely than not, to have been for family purposes. There were some significant purchases which appeared, more likely than not, to have been personal purchases. However, the statements indicate that the balances on the respective sources of credit were reduced to zero following those significant personal purchases and prior to the credit balances that were ultimately paid off by the Loan having been accumulated. In addition, there was use of credit to pay off other credit, making it impossible to properly determine which, if any, portion of the debt paid off by the Loan continued to be personal as opposed to household.

[124] Further, even if a portion was personal, I cannot ignore the fact that Ms. R. has only corroborated payments made by her commencing in March 2012. By then, the parties had already been living together approximately four years. Mr. T.'s income was greater than hers. Therefore, more likely than not, out of necessity, he would have had to pay more than his share during those times that Ms. R. did not have the disposable income to pay her full share. That conclusion is

supported by her evidence that she paid amounts to Mr. T. to repay him for those periods of time when he did pay more than his share.

[125] In addition, the American Express Platinum Credit Card statements at Exhibit 15 of Mr. T.'s affidavit of September 19, 2017 were presented to show the amounts incurred by Ms. R. on that card in relation to which Mr. T. was the primary cardholder. It is demonstrative of her inability to obtain her own credit and the need to rely upon his. The great majority of the purchases on that card were made by Ms. R.. It is noteworthy that they are mostly for groceries and fuel. That is also supportive of her evidence that she paid for most of the groceries.

[126] There are gaps in the American Express Platinum Credit Card statements. I have compared the statements that were presented for the period from November 2012 to September 2014 with Ms. R.'s Valley Credit Union statements. They indicate that she made payments totaling approximately $5,500 on that card. The remaining payments on those American Express statements totalled $2,390. In addition, there was a further statement indicating that on May 4, 2016, a further $65 was paid on that card. More likely than not, those other payments were made by Mr. T.. Ms. R.'s Valley Credit Union statements indicate additional American Express payments of approximately $3,000 from November 2012 to September

2014. There were no corresponding American Express statements in the evidence. Nevertheless, they, more likely than not, were made.

Responsibility for Children

[127] During the relationship, Ms. R. had joint custody of two children from a prior relationship born in 1999 and 2002 respectively. They resided primarily with her and Mr. T..

[128] Mr. T. had joint custody and, until the spring of 2017, primary care of his grandson, T.K., born July […], 2012. Ms. R. testified that she was "a huge part of raising" T. from the age of 10 months and had "legal custody". Even following her separation from Mr. T., Ms. R. continues to have court ordered reasonable parenting time with T.. In addition, Ms. R. wrote cheques dated September 9 and 16, 2016 to […] Nursery School for T.. Ms. R. deposed that she had been sleeping on the couch since October 8, 2016. Therefore, more likely than not, they have been living separate and apart in the same home since then. Consequently, those cheques were written during the relationship. In addition, she wrote another cheque to the same nursery school on October 20, 2016, i.e. following separation. These points indicate that, more likely than not, she did play a significant role in parenting T. while she and Mr. T. were together.

[129] Such an arrangement is consistent with Mr. T.'s evidence that they were a family of five.

[130] The evidence regarding Ms. R. using the vehicles mostly to transport her children to their activities and regarding her children staying with their father instead of with Mr. T. while she was away indicates that she was likely the person who primarily took care of her children in their household. However, there is insufficient evidence to fully determine the respective parties' contributions to caring for her children.

Mortgage Payout

[131] From the $39,111 in CPP benefits deposited in her chequing account on March 15, 2016, Ms. R. transferred, on the same day, $33,000, then $4,000, to her HISA account, bringing the balance to $101,458. On March 28, she transferred $600, then $200, back to her chequing account, bringing the HISA balance to $100, 658. By April 1, 2016, interest had brought the HISA balance to $100,704. From that amount, $75,775 was paid by Ms. R. on April 4, 2016 to pay out the mortgage on the parties' home. Therefore, some of the monies used to pay out the mortgage came from her MVA settlement and some came from her lump sum

retroactive CPP benefits. However, she had received more than sufficient funds from the MVA settlement to pay out the mortgage balance.

[132] Having lived together in common-law relationship for nine years, the parties separated only six months after the mortgage payout.

[133] In my view, the payout was not part of a mutual conferral of benefits or roughly equal contribution to the extent of each party's ability. It was a grossly disproportionate contribution by Ms. R. which exhausted funds which would have provided some support or security for her future.

[134] Mr. T. deposed that they had discussed splitting the $80,000 that remained from her motor vehicle accident settlement after she paid her bills. Instead, because they had suffered financially for so long, they decided to pay off the mortgage. Ms. R. disputes that there was any discussion of splitting her settlement, and added that Mr. T. convinced her to use her settlement funds to pay off the mortgage. In my view, her version makes more sense and I accept it.

[135] In my view, considering the source and amount of the mortgage payout payment, the rapid disintegration of the relationship following the payment, and the way the parties otherwise shared expenses through the relationship, Ms. R. has rebutted the presumption of equal sharing.

Conclusion on Unequal Division

[136] The parties agree that the house, after deduction of the usual real estate commission plus HST, is worth approximately $155,500. There is approximately $37,000 owing on the loan secured by the house. Legal fees and disbursements, even if the property is sold to Mr. T., are likely to be in the $750 to $1,000 range. That leaves equity of about $117,500. About $76,000, or 65% of that equity was created by the grossly disproportionate contribution Ms. R. made near the end of the relationship. Equal division of the remaining 35% would provide each party with 17.5%. However, the uncertainties surrounding other respective contributions and, unless Mr. T. purchases the property, the ultimate purchase price, warrant a rounding off of that percentage. Consequently, in my view, the equity remaining, after paying out the secured loan and actual disposition costs such as legal fees, should be divided 80% to Ms. R. and 20% to Mr. T..

ISSUE 3: ARE THERE ANY POST-SEPARATION CONTRIBUTIONS WHICH CONSTITUTE AN EQUITABLE ALLOWANCE JUSTIFYING AN ADJUSTMENT?

[137] Mr. T. has been making all the payments on the secured loan following separation.

[138] However, he has also been the one in possession of the home and, until Justice Warner's interim order in July 2017, was not contributing to Ms. R.'s rental expenses. Since then, he has effectively been paying her occupational rent.

[139] There are gaps in financial information. Mr. T. paid off credit card debt with other credit cards. The April 2016 Loan was used to pay remnants of previous loans. Some of the contributions Mr. T. has advanced have been amounts purchased with credit. The outstanding credit debts have been paid down and built up again in repeated cycles. Some of the remaining credit debt was paid off from the Loan. Therefore, it is impossible to accurately assess Mr. T.'s actual contributions to household expenses.

[140] The April 2016 Loan will be paid out from the sale of the home.

[141] For these reasons, in my view, there should be no equitable allowance for the post-separation loan payments. The same applies to any other post-separation payments Mr. T. may have made for the house, including insurance and taxes.

[142] I have not been made aware of any post-separation payments by Ms. R. which would justify an equitable allowance.

ISSUE 4: WHAT IS THE IMPACT ON THIS APPLICATION, IF ANY, OF THE PARTIES OWNING AS JOINT TENANTS THE LAND

IN ANNAPOLIS COUNTY, CONSIDERING THAT MR. T. PAID THE ENTIRE PURCHASE PRICE?

[143] In October 2012, the parties purchased, as joint tenants, a piece of raw land at […], Annapolis County. Ms. R. acknowledges that Mr. T. paid for the land over a two-year period. She indicates that she helped to clear the land and that they stayed there in their camper on several occasions.

[144] Ms. R. stated that she was prepared to sign over her interest in the property to Mr. T. conditional upon her obtaining the relief she was requesting in this application. She has not obtained the full relief she requested. Therefore, she has not expressed an agreement to convey her half interest.

[145] However, none of the pleadings filed in this application request partition of that land. Therefore, I cannot make any partition order in relation to it.

[146] Further, it has not been established that any of the debt secured by the house was incurred for the purchase of the land in Annapolis County, and they are both presumptively entitled to half of that land in any event.

[147] Therefore, there is no justification for any adjustment relating to the partition of the house due to the purchase and ownership of the Annapolis County Land.

ISSUE 5: WHAT IS THE IMPACT ON THIS APPLICATION, IF ANY, OF MR. T. HAVING RETAINED THE PROCEEDS OF

SALE OF THE CAMPER AND ALL HYDROPONIC MARIJUANA GROWING EQUIPMENT?

[148] Ms. R. testified that the bank draft dated August 14, 2012, to B.B., in the amount of $10,875 was used to purchase their Keystone Outback Camper. It was sold and they upgraded to a Keystone Hornet Camper. Mr. T. sold the final camper, with the contents. She received no money from that sale. Mr. T. stated that it sold for $10,000, and that he had purchased all three campers during the relationship without any contribution from Ms. R.. D.D. testified that: there had been a joint loan to the parties on August 14, 2012, in the amount of $10,875 for the purchase of an unspecified asset; and, that the roughly $5,040 remaining owing on that joint loan was paid off from the April 2016 Loan. In my view, this evidence establishes that: the source of funds for the purchase of the initial camper was the August 2012 Loan; and, $5,040 of the April 2016 Loan is indirectly connected to the final camper sold by Mr. T.. Therefore, Mr. T.'s evidence that he paid for all of the campers is based upon him having made the loan payments, much like the other purchases he made on credit.

[149] It is agreed that he made all of the payments on the April 2016 Loan. I accept that he made all of the payments on the August 2012 Loan.

[150] The cyclical paying down and resurgence of debt has made it impossible to determine whether amounts which would have paid out the August 2012 Loan were disproportionately applied to household expenses. Also, Ms. R. acknowledged having benefited from the use of the various campers at various locations, including the Annapolis County Land.

[151] Therefore, in my view, no adjustment ought to be made to account for Mr. T. having retained the proceeds of sale of the camper.

[152] Ms. R. provided evidence that the marijuana grow room cost over $12,000 and that she contributed at least or about $6,000 towards it. She said she did so by reimbursing Mr. T. for supplies he had purchased and by purchasing supplies directly herself. As an example, she referred to her March 1, 2016 statement for her chequing account with the Valley Credit Union. It shows the following purchases on March 21, 2016: […]Nurseries, $106.75; Canadian Tire, $294.08; […] Hydroponics, $85; and, Dollarama, $41.40. The nursery and hydroponics store entries do appear to be related to a marijuana grow operation. Other than having been made on the same day, the other purchase entries do not stand out as being so related. She said she would pay him by transferring funds through her Visa. However, she said she did not have the statements to support that as it was too costly to obtain them from the bank. She said she also, on occasion, purchased

consumable materials for the operation such as seeds, soil and fertilizer, because Mr. T. did not have money.

[153] Her Valley Credit Union chequing account statement entry for March 15, 2016 shows a "Mbr Direct Transfer" debited from the account in the amount of $4,000. She hand-wrote in that entry the word "Room" which I infer was to indicate that it was money contributed to the grow room. However, when one compares it with her HISA statements, it is clear that the $4,000 amount was transferred to her HISA, not to Mr. T..

[154] Mr. T. denies that Ms. R. put $6,000 into the grow room. He stated that she did not contribute to any of the materials or equipment and indicated that the total cost of the material and equipment was less than $6,000. His evidence was that her contribution was limited to purchasing "consumable materials for her own medicine, such as seeds, fertilizer, bulbs and soil".

[155] In my view, the chequing account statement transactions appear to provide more support for purchase of consumable materials than permanent equipment.

[156] It may be that Ms. R. is correct in asserting that she contributed to items in the grow room other than consumable items. However: I have similar concerns regarding the credibility and reliability of both witnesses; Ms. R. has not provided

corroborative evidence; and, it does not necessarily make more sense that she would have contributed to the hydroponic equipment simply because product was being grown for her as well. Other purchases were made by Mr. T. that she used, such as the camper and an all-terrain vehicle. Therefore, I am left unable to determine that she, more likely than not, contributed to half of the grow room equipment. As a result, she has failed to establish that she paid for half of the equipment.

[157] Therefore, in my view, no adjustment should be made to account for Mr. T. having retained the hydroponic equipment.

ISSUE 6: HOW SHOULD THE VALUE OR SALE PROCEEDS OF THE HOME BE DIVIDED?

[158] As, and for reasons, already indicated, the balance of the April 2016 Loan should be paid from the proceeds of the sale of the home, along with any actual disposition costs. 80% of the remaining proceeds should go to Ms. R. and 20% should go to Mr. T..

[159] It has not been established that any other equitable allowances should be made to alter that division.

[160] In my view, there is no need to enter into a separate unjust enrichment analysis as all the contributions and equities revealed in the evidence have been considered in the unequal division and equitable allowance assessments.

ISSUE 7: SHOULD THE HOUSE BE ORDERED SOLD AND, IF SO, HOW?

[161] Ms. R. submits that Mr. T. does not have the ability to finance the purchase of the home; and, fears that, since he is residing in the home, he will interfere with the listing and showing of the property. Therefore, she is of the view that it should be sold at a sheriff's sale. She submitted there was no evidence that proceeding by way of sheriff's sale would detrimentally impact the selling price.

[162] Mr. T. is confident that he can obtain the financing for the purchase of the home, either by himself or with the assistance of family. He asks for 60 days to make the requisite arrangements to purchase the house. He argues that a sheriff's sale would result in a reduced selling price.

[163] As stated at paragraph 32 of ***Braithhwaite v. Turner***, section 28 of the ***Partition Act*** includes the option of ordering that the property be sold to one of the co-owners.

[164] D.D., Manager of the […] branch of the Valley Credit Union testified that he believes Mr. T. will be approved for a mortgage to purchase Ms. R.'s interest in the house. The only question is the amount that will be approved. It will depend upon verification of his income and other debts that he has. He made that comment knowing that Mr. T. is currently unable to work as a result of a workplace injury and in receipt of Worker's Compensation benefits. He indicated that Mr. T. had started the mortgage application process a couple of months before the hearing. The Credit Union has no concerns regarding his credit rating. The only concern is his level of income and the mortgage amount it can support.

[165] Mr. T. testified that he receives just under $1,200 every two weeks in Worker's Compensation benefits. He believes he can finance the purchase of Ms. R.'s share of the home on his own. There is no evidence regarding what level of income he would need to do so. However, he added that he has family who can assist him in the financing if necessary.

[166] As stated at paragraph 63 of ***Clark v. Kelly***, 2002 NSSF 33: "It would be obvious to the parties that a sheriff's sale will add to the expense and is most likely to promote a dramatically lower than market value sale price."

[167] Further, conditions can be put in place to ensure Mr. T. reasonably cooperates with the listing and showing of the house.

[168] For these reasons, in my view, it would not be appropriate to order a sheriff's sale in the circumstances of the case at hand.

[169] Further, in my view, giving Mr. T. 60 days to secure financing to purchase the property would create minimal prejudice to Ms. R., provided that he continue assisting her with her monthly rent and that he continue paying the loan, taxes, insurance and other expenses relating to the house until the transaction is completed.

[170] Therefore, he will be given 60 days to secure financing to purchase the property at a price of $165,000 less the usual 5% plus HST that would be paid to a realtor. Thus, the purchase price for him will be $155,512.

[171] If he is unable or unwilling to purchase the property, it shall be listed and sold as soon as reasonably practicable.

[172] I will also, at this juncture, comment on the "occupational rent" amount being paid and to be paid by Mr. T.. Justice Warner ordered him to pay Ms. R. $800 per month until final determination of the application. However, final determination does not end the *de facto* exclusive occupation enjoyed by Mr. T..

He is only paying about $400 per month in payments on the loan secured by the house. I do not have sufficient information to determine the cost of insurance, taxes and upkeep. I take the "occupational rent" value to be the $800 ordered by Justice Warner. However, now that the partition has been determined after considering the circumstances, contributions and equities, 80% of the continued payments on the loan will effectively serve to increase Ms. R.'s recovery until the house is sold and the April 2016 Loan is paid out. Therefore, Mr. T., by continuing to make the loan payments, will be providing her an extra benefit of about $320 per month. As such, though the "occupational rent" payments are to continue until the property is sold to Mr. T. or someone else, they are to be reduced to $480 per month to account for the additional $320 per month benefit to Ms. R..

ISSUE 8: DOES THIS COURT HAVE JURISDICTION TO MAKE AN ORDER REGARDING HOUSEHOLD CONTENTS IN THIS APPLICATION?

[173] Mr. T. questions this Court's jurisdiction to deal with household contents, pointing out that it is something normally dealt with under the *Matrimonial Property Act*, which ***Bona v. Walsh***, 2002 SCC 83, confirmed does not apply to common law spouses and is constitutionally valid.

[174] Ms. R. submits that it is "clear in law that the Supreme Court of Nova Scotia has inherent jurisdiction to deal with matters in the civil realm, having a superior

authority in terms of its ability to apply common-law, legislative and equitable remedies pursuant to such authority as is granted under the *Judicature Act* (NS)".

[175] Section 41 of the ***Judicature Act***, R.S.N.S. 1989, c. 240, provides, among other things, that:

> "In every proceeding commenced in the Court, law and equity shall be administered therein according to the following provisions:
>
> (a) if a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title, or claim whatsoever, asserted by a defendant in any such proceeding or to relief founded upon a legal right which before the first day of October, 1884, could only have been given by a court of equity, the Court shall give to the plaintiff the same relief as would have been given by the court of the Equity Judge or the High Court of Chancery in England when the same existed, in a suit or proceedings for the same or the like purpose properly instituted before the first day of October, 1884;
>
> ….
>
> (b) the Court shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any proceeding, in the same manner in which the court of equity judge, or the said Court of Chancery, would have recognized, and taken notice of the same, in any suit or proceeding duly instituted therein before the first day of October, 1884;
>
> ….
>
> (c) subject to the foregoing provisions for giving effect to equitable rights and other matters of equity, and to the other express provisions of this Act, the Court shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as the same would have been recognized and given effect to prior to the first day of October, 1884, by the Court either at law or in equity;

> (d) the Court, in the exercise of the jurisdiction vested in it in every proceeding pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to the Court seems just, all such remedies whatsoever as any of the parties thereto appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in the proceeding so that as far as possible all matters so in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided; … ."

[176] In my view, even though the *Matrimonial Property Act* does not apply, this Court still has jurisdiction to deal with division of personal property assets between separated common Law spouses under common law principles such as detinue and conversion, and under equitable principles such as constructive or resulting trusts and unjust enrichment.

[177] An example of a case which recognizes that jurisdiction is ***Clark v. Kelly***, 2002 NSSF 33. Even though it was decided after the Nova Scotia Court of Appeal decision and before the Supreme Court of Canada decision in ***Walsh v. Bona***, it assumed that the *Matrimonial Property Act* did not apply to common law spouses and was constitutional. Then, at paragraphs 55 to 65, it went on to assess division of personal property assets based upon principles applicable to constructive trusts/unjust enrichment. It ordered that the furniture be owned by the party who had purchased it and was in possession of it. The parties consented that a diamond ring was a gift, despite it being valued at almost $30,000, and that the jointly held

real property was to be sold with the proceeds divided equally under the *Partition Act*.

[178] Ms. R.'s Amended Notice of Application in Court pleads the following in relation to the household contents:

> "That the contents of the aforementioned property be divided between the parties in accordance with contribution, acquisition and ownership prior to and during the common-law relationship, returned in specie or momentary {sic} settlement."

[179] That is the extent of the pleadings regarding the household contents and the grounds for the requested relief are not outlined in the Notice of Application.

[180] It would have been preferable for the claim regarding the household contents to have been more clearly delineated and for the grounds supporting it to have been outlined. However, in my view, it is sufficient notice of Ms. R.'s claim for some of the personal property remaining in the house that this Court has jurisdiction to hear her claim.

[181] She is only requesting items that she purchased herself. Therefore, her claim is a legal one, not an equitable one.

ISSUE 9: IF SO, WHAT, IF ANY, ORDER SHOULD BE MADE IN RELATION TO THE HOUSEHOLD CONTENTS?

[182] Ms. R. has retrieved some of her belongings, which Mr. T. packed in boxes for her. She still requests the return of, or the ability to retrieve, the items listed in Exhibit E to her affidavit sworn June 14, 2017, also reproduced in Exhibit B to her affidavit sworn October 3, 2017.

[183] Mr. T. deposed that he had previously packed all of the items Ms. R. had requested and more. In relation to the items on the list, he agreed she could have the helmet, fish tank, water cooler, vacuum cleaner, holiday decorations and preserves, and, one freezer. He is opposed to releasing the remaining items for reasons which include that they: were purchased by him or replaced items he had purchased and she gave away; no longer exist; and/or are required at the home.

[184] Exhibit 18 of his affidavit of September 19, 2017 contains the invoices and receipts showing that he paid for the washer and dryer. However, Ms. R. deposed that the $5,000 she gave Mr. T. after her MVA settlement covered the balance on the American Express Card and the payments he had made on the washer and dryer. Given the uncertainty surrounding what such lump sum payments were actually meant to cover, I find the actual invoices and receipts supplied by Mr. T. more persuasive. I find that, more likely than not, the washer and dryer were purchased by him and belong to him.

[185] Ms. R. deposed that she had purchased the pot set from her settlement as a Christmas gift to herself. Mr. T. did not deny that. He merely stated that there was only one set of pots in the house. I find that the pot set belongs to Ms. R..

[186] Ms. R. deposed that the bed and dresser in T.'s room had been purchased by her for her sons when they were younger and that Mr. T. had sold the bunkbeds he had for his boys from a prior relationship. Mr. T. did not dispute that. I find that the bed and dresser, along with the multi-bin toy organizer with it, belong to Ms. R..

[187] She deposed that she purchased the microwave from Sears when they moved into the home. Mr. T. initially deposed that he paid for the microwave. Then he stated that he did not recall her having done so. That indicates some uncertainty on his part. She recalled the details of the location and timing of the purchase. Considering this evidence, I find that she, more likely than not, purchased it.

[188] Ms. R. provided evidence that she purchased the fridge with her tax refund about five years ago. Mr. T. simply listed it as one of the appliances that he had paid for and stated that it was required in the home. In light of the greater specificity provided by Ms. R., I find that, more likely than not, she purchased it and owns it.

[189] She deposed that she purchased T.'s fishing gear for him for Easter and that she wants it for him. The remaining fishing gear she indicates belongs to her and her sons. Mr. T. deposed that he already returned the fishing box and that he had purchased the fishing rods. I am left unable to determine who purchased which fishing gear. However, in my view, irrespective of who purchased it, if it was purchased for a particular child it should go to that child. That fishing gear belongs to the children. The gear belonging to Ms. R.'s children is to be returned to her for them.

[190] In relation to the curtains on the list, Mr. T. deposed that Ms. R. had already received all curtains requested. The only similar items remaining are the roller blinds that were there when they purchased the house and are affixed to the wall. I accept that evidence. Therefore, it appears that the transfer of that item has been resolved.

[191] The list also includes a request for half of any medical marijuana on hand. However, I accept that Mr. T. disposed of her 20 plants to remain in compliance with his production permit. Therefore, I will not make any order directing that he provide her any medical marijuana.

[192] Mr. T. shall be required to make available for pickup by Ms. R. the items he agreed to turn over and the items I have found belong to her. These items include the: fish tank; vacuum cleaner; bed, dresser and multi-bin toy organizer in T.'s room; microwave; fridge; water cooler; pot set; freezer; holiday decorations and preserves; helmet; and, fishing gear belonging to her children.

CONCLUSION

[193] Based on the points, and for the reasons, outlined, I conclude and order that which follows.

[194] Mr. T. will be given 60 days to secure financing to purchase the property at a price of $165,000 less the usual 5% plus HST that would be paid to a realtor, leaving a net purchase price of $155,512.

[195] If he is unable or unwilling to purchase the property, it shall, as soon as reasonably practicable, be listed for sale in accordance with the following directions and conditions:

1. The property shall be listed with a mutually acceptable realtor, knowledgeable of property values in the […] area, and at a listing

price set in conjunction with the realtor, following appropriate consultation with the realtor.

2. No reasonable offer shall be refused by either party. In the event that the parties cannot agree on what is a reasonable offer, either party may apply to the court, on abbreviated notice, for a determination of whether an offer is reasonable. Such application will be subject to the usual rules on costs.

3. Both parties shall cooperate in the listing and sale of the property, and in performing all actions required to give effect to this order and to any agreement of purchase and sale ultimately entered into.

[196] Irrespective of whether the property is purchased by Mr. T. or someone else, pending sale, Mr. T., since he occupies the property, must continue to pay the April 2016 Loan payments, taxes, insurance, reasonable maintenance and repair expenses in relation to the property, and $480 per month in “occupational rent” to Ms. R..

[197] The balance of the April 2016 Loan and any actual disposition costs shall be paid from the proceeds of the sale of the home.

[198] 80% of the remaining proceeds shall be paid to Ms. R. and 20% shall be paid to Mr. T., with the exception that, for reasons I will discuss shortly, $750 shall be deducted from Mr. T.'s 20% and paid over to Ms. R. to satisfy the interim costs award.

[199] If Mr. T. ends up purchasing the property and the parties can agree in advance on the applicable April 2016 Loan payout amount and actual disposition costs, they may distill the purchase price to the amount required to pay Ms. R. her interest in the property.

[200] Mr. T. shall, within 30 days of delivery of this decision to his lawyer, make available for pickup by Ms. R. the: fish tank; vacuum cleaner; bed, dresser and multi-bin toy organizer in T.'s room; microwave; fridge; water cooler; pot set; freezer; holiday decorations and preserves; helmet; and, fishing gear belonging to her children.

COSTS

[201] Following the interim hearing Justice Warner ordered Mr. T. to pay Ms. R. $750 in costs "in any event from his share of any settlement proceeds he may receive in the course of the final resolution of this proceeding". Therefore, those

costs shall be deducted from his 20% of the equity remaining after the secured loan and actual disposition costs have been paid.

[202] If the parties are unable to agree on the costs payable in this application they may provide me their submissions on costs by correspondence.

ORDER

[203] I ask counsel for Mr. T. to prepare the order arising from this application.

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MUISE, J