SUPREME COURT OF NOVA SCOTIA
Citation: *KS v. DS*, 2025 NSSC 198

Date: 20250612
Docket: SFHPSA HFD No. 126165
Registry: Halifax

Between:

KS

Applicant

v.

DS

Respondent

Restriction on Publication: Pursuant to subsection 94(1) of the *Children and Family Services Act*, S.N.S. 1990, c. 5, there is a ban on disclosing information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Judge:	The Honourable Justice C. LouAnn Chiasson
Heard:	September 3 and 4; October 1 and 2; December 11 and 12, 2024; March 31, 2025, in Halifax, Nova Scotia
Final Written Submissions:	April 10, 2025
Counsel:	KS, self-represented Kelsey Hudson for the Respondent, DS

By the Court:

Introduction

[1] The parties were in a common law relationship from May, 2008 until January 1, 2021. They have one child. There has been extensive litigation between these parties related to issues of parenting and property division. The complexities in the present matter are only partially evident by the pleadings.

[2] In June of 2022, DS made an application to address issues of parenting and child support. He also requested KS remove her personal items from their former residence.

[3] This application was amended in December, 2022, to include a claim for division of common law property pursuant to "unjust enrichment/ joint family venture and the Laws of Equity."

[4] A further motion was made by DS in April 2023 requesting the court set aside the "Cohabitation Agreements" filed in this matter. KS asserts there are two valid agreements signed by the parties: one in 2010 and another in 2020 addressing parenting and property issues.

[5] DS also applied to have exclusive possession of the residence of the parties. That residence not only housed the parties and their child prior to separation, but also had rental units. That motion was granted and DS has had exclusive possession of the home since February 15, 2023.

[6] The matter related to the division of property is complex. Similarly, the parenting arrangements were conflictual and litigious. The parenting matter was further complicated as a result of the involvement of the Department of Community Services ("DCS").

[7] An application was made to court by DCS and the child was in the care of the father, DS with supervised parenting time to the mother, KS. The significant event that led to intervention by DCS was outlined by DS in his affidavit of April 17, 2024. There were allegations of alcohol abuse and inappropriate supervision of the child by KS.

[8] Following the conclusion of the child protection matter, the parties participated in a settlement conference. The child remained in the care of the

father with parenting time to the mother under certain conditions (including levels of supervision as deemed appropriate by DS). The settlement conference resulted in a Consent Order related to Parenting issued June 9, 2023.

[9] The parties were operating under the terms of the Consent Order and parenting time with KS was expanding somewhat. The parenting expanded to two days per week (one weekday and one weekend day). This changed in the summer of 2023 when the father alleged the mother began drinking again, affecting her ability to parent.

[10] As a result of this allegation, the mother did not have any significant parenting time from the summer of 2023 until early 2024. For a period of weeks in late 2023, the mother left the province and spent time in Alberta and Cuba.

[11] The mother applied in February 2024 seeking to amend the parenting arrangements set out in the Consent Order.

[12] The hearing of the applications was held over a number of days with final submissions received from the mother, KS, on April 9, 2025.

[13] ISSUES:

1. Are the Cohabitation Agreements valid?
2. If the Agreements are invalid, what is the appropriate division of property?
3. What is the appropriate parenting arrangement for the parties' child?

ISSUE #1

[14] Are the Cohabitation Agreements valid?

[15] KS asserts that there are two Cohabitation Agreements. She testified that one agreement was signed in July 2010 and a second agreement was signed in December 2020.

[16] DS acknowledges signing a "Separation Agreement" in 2020 but cannot verify that the document provided by DS is the one he signed. The agreement provided by KS specifies terms of "custody" related to their child. Any such term in an agreement is invalid and unenforceable. The agreement also specifies how

the equity in the properties are to be divided: both the current residence (N) and former residence (H).

[17] The 2010 agreement specified that KS retains the (H) property without claim by DS. It also specifies that DS is to repay $11,500 to KS to compensate for debts of DS that were paid out. DS denies he signed any agreement in 2010.

[18] DS testified that KS would ask him to sign documentation on occasion when he was too busy working to review the documents. He also asserted that she would sometimes ask him to sign blank documents that she would then fill in later.

[19] The most recent Supreme Court of Canada case addressing issues of validity of separation agreements is the case of Anderson v Anderson, 2023 SCC 13. As noted in that decision, the first step in any analysis is an examination of the context of the negotiation between the parties. As noted at paragraph 8:

> "The court must first assess the agreement for its procedural integrity, where such concerns are raised. By examining the integrity of the bargaining process for undue pressure, or exploitation of a power imbalance or other vulnerability, the judge can determine whether the parties executed the agreement freely and understanding its meaning and consequences."

[20] It is clear that the parties did not have independent legal advice. The evidence shows that KS was responsible for the finances of the parties and so the level of DS's understanding of the financial situation in 2010 and 2020 is unknown.

[21] There is no evidence before me that the parties both executed the 2010 agreement voluntarily understanding the consequences of signing. KS testified that both parties willingly signed the agreement. DS denies signing the agreement. The agreement cannot be said to have been negotiated by two well informed individuals fully appreciating the consequences of that agreement as I well detail below.

[22] The consequences of the 2010 agreement could lead to significant unfairness to DS. The agreement prohibited any claim by DS to the (H) property regardless of any contribution he may have made. Subsequent contributions of DS included placing the property in his name and taking the mortgage out solely in his name. There is no reasonable explanation as to why he would assume the entire financial liability for the mortgage if he had no proprietary claim to the property whatsoever.

[23] Evidence was provided by DS as to the extensive work done on the (H) property. His father, Paul, also testified that they did extensive renovations. He testified that he and his son, DS: repainted the entire house multiple times (after each tenant left), installed new showers, taps and flooring, along with other work. Paul also testified that after all the pipes froze in the (H) property, he and DS replaced every pipe and valve in the home along with two water damaged ceilings.

[24] Paul testified that there were significant deficiencies noted by the HRM bylaw officer in August 2018. These deficiencies were to be remedied by September 7, 2018. He testified that he and DS undertook all the necessary work to remedy the deficiencies so that the parties could continue to rent to tenants.

[25] As with the 2010 agreement, there is a lack of evidence in relation to the procedural integrity of the 2020 agreement. DS recalls signing a document in 2020 but cannot recall the specific terms and does not believe the document provided by KS is the document he signed.

[26] The parties were clearly unaware of the legal consequences of the "custody" provision in the agreement as the provision is completely unenforceable. There are other flaws in the agreement. The amount of DS' debts to be repaid differs between the two documents. The provision related to interest is likewise unenforceable as it purports to increase the amount of interest payable to KS by 1% for "every issue of disagreement." This provision is too vague to be enforceable.

[27] The agreements of 2010 and 2020 do not meet the threshold test of procedural integrity. As such neither agreement is valid.

ISSUE #2- Property Division

[28] The parties cohabited and were not married. There is no statutory framework for the division of property. The division of property must be analyzed using the common law framework of unjust enrichment/ joint family venture.

[29] Unjust enrichment arises where:

1. there is an enrichment of one party;
2. there is corresponding deprivation of the other party; and
3. there is an absence of a juristic reason for the enrichment.

[30] As noted in *Hiltz v. Armstrong*, 2024 NSCA 91, the first stage of the analysis is to determine if there has been an enrichment. The enrichment must have monetary value and be tangible.

[31] As both properties (H) and (N) were in the sole name of DS, any claim related to unjust enrichment would relate to KS. I find that a claim related to unjust enrichment/ joint family venture has been made out in the circumstances of this case. Were DS to dispose of the properties without compensation to KS and retain the funds, he would clearly be unjustly enriched. I make this finding based on the following:

1. The (H) property was owned by KS and her former spouse prior to her relationship with DS.
2. The (N) property was purchased in part with funds available from the mortgage of the (H) property.
3. As a result of the change in title to (H) and placing the (N) property solely in the name of DS, KS is potentially deprived of any equity in the property.
4. There is no evidence of a juristic reason for the enrichment.

[32] It is believed that DS concedes there is a valid unjust enrichment claim owing to KS. His position is that KS is entitled to half of the equity from both properties less adjustments owed to him by KS.

[33] As noted in the case of *Hiltz v. Armstrong*, 2024 NSCA 91 at paragraph 12:

> "The law recognizes two bases of quantification of an unjust enrichment claim. One calculation is founded on the value of services provided, sometimes called "valued received". The second depends on the value retained by the defendant known as "value survived", typically representing the value of property."

[34] It is clear that the "value survived" approach is appropriate in the present case. KS is entitled to receive value based on the value retained by DS.

[35] Having found unjust enrichment, I then consider the appropriate remedy. One consideration for the court is the presence of joint family venture. This concept was referenced by Justice Cromwell (as he then was) in the case of *Kerr v. Barranow,* 2011 SCC 10, at paragraph 85:

> "I conclude, therefore, that the common law of unjust enrichment should recognize and respond to the reality that there are unmarried domestic arrangements that are partnerships; the remedy in such cases should address the disproportionate retention of assets acquired through joint efforts with another person. This sort of sharing, of course, should not be presumed, nor will it be presumed that wealth acquired by mutual effort will be shared equally. Cohabitation does not, in itself, under the common law of unjust enrichment, entitle one party to a share of the other's property or any other relief. However, where wealth is accumulated as a result of joint effort, as evidenced by the nature of the parties' relationship and their dealings with each other, the law of unjust enrichment should reflect that reality."

[36] As noted in the *Kerr* decision, *supra*, there are four main factors to consider: mutual effort, economic integration, actual intent and priority of the family.

[37] The evidence is clear that all four factors were present in the relationship between DS and KS. I will not review every piece of evidence in support of these factors, but will highlight the more salient points:

1. DS and KS both worked in different capacities in both properties. The properties were operated, in part, as rental properties.
2. Prior to separation, the parties resided in one unit in each of the properties.
3. DS was primarily responsible for maintenance and upkeep and KS was primarily responsible for marketing, booking, and some assistance to DS with renovations.
4. DS and KS maintained integrated bank accounts for the properties. Both had signing authority and had capacity to bank. DS was the sole mortgage holder, but both parties recognized that this resulted from KS's lack of credit, and not as a result of DS's sole proprietary interest.
5. Both parties worked on the properties to develop a family stream of income and to build financial stability.
6. Both parties were focused on providing for their family, including their child.

[38] In quantifying the entitlement, the court must address the relative contribution of the claimant spouse. Each case will turn on the particular facts acknowledging that cohabiting couples are not a homogeneous group with each party automatically entitled to an equal share of the acquisition of property.

[39] In the present case, the evidence shows that both parties worked diligently to develop and sustain the rental properties. Barring other circumstances, it would be appropriate to simply divided the net equity in the properties equally. There are, however, appropriate adjustments to be made to such a calculation between KS and DS.

[40] At the time the parties cohabited, KS had previously owned the (H) property with her former spouse. She was running a business out of the home and rented rooms in the home as well. Her initial equity in the property should have been quantified. It was not.

[41] Although DS asserts that he paid KS to have the (H) property solely in his name, there is no evidence to support this. The evidence of DS is that KS's spouse was paid out with the mortgage funds in his own name. Again, there is no evidence to support this.

[42] Inevitably, any amount owing to KS's former spouse would include an equalization payment related to all of their matrimonial property. Unfortunately, none of this financial information was provided. There was no value provided for (H) at the time DS moved in. There is no confirmation of mortgage owing at the time DS moved in. There is therefore no reliable way to quantify the equity of KS in the (H) property at the time DS moved into the property.

[43] KS asserts that debts of DS were paid from the refinance of the (H) property in 2010. KS has quantified those debts between $11,000 - $11,500 and $12,000. The documentation from the solicitor handling the re-finance should include the specific figure. This amount should be added to the equity owing to KS. If the value of DS' debts cannot be ascertained through documentation, the court retains jurisdiction to establish the value of debts repaid through the re-finance.

[44] It is irrelevant as to whether the debts of DS were rolled into the mortgage (as asserted by DS) or paid by KS (as asserted by KS). What is relevant is that DS's debts were repaid and an adjustment should be made for that repayment.

[45] The net equity received on the sale of the (H) property in February 2022 was $78,178. The entire equity was paid out to DS. KS was entitled to 50% of those funds. Additionally, KS is entitled to recover the debt repayment of KS which was potentially rolled into the mortgage. As noted above, the court reserves the right to

establish the amount of these debts should the parties not have documentation or reach agreement on the quantum of debts repaid.

[46] Therefore, the amount owing to KS related to the (H) property is $39,089 plus the amount of DS's debt repayment.

[47] Optimally, a further adjustment ought to be made related to KS's equity in the property predating the parties cohabitation. No evidence was presented on this point. As there is no evidentiary basis, the court is unable to quantify any further adjustment to KS's entitlement to the (H) proceeds of sale.

[48] As it relates to the Northumberland property, the parties confirm that the equity ought to be divided equally between them but differ on the amounts owing.

[49] KS is seeking the following adjustments from DS:

1. Return of 50% of the "downpayment" on the (N) property from the (H) property. Both parties are equally sharing in the equity from both properties- (H) and (N). The "downpayment" for (N) came from the (H) property. I have indicated that both parties were equally entitled to the equity of that property with some adjustments. The majority of the equity in (H) came from the joint efforts of the parties. No adjustment will be made for the "downpayment" to (N).
2. Adjustments related to personal and "business" property remaining at (N) following exclusive possession to DS:
    a. "Business inventory studio"- $3,000. KS had previously operated a beauty business from the (H) property. There was no evidence that this business operated out of the (N) property. There is no evidence as to the value of any such "business inventory" left. DS indicated that any personal or "business" items had no value resulting from damage, mold, pests, etc. There will be no allowance made for "business inventory- studio".
    b. "Business inventory B & B"- Again, there is no specification as to how KS has valued the B & B inventory at $10,000. Without further specification, and allowing two opportunities for KS to retrieve items she wished from the (N) property, no

further adjustment will be made regarding the B & B "inventory".

c. KS requests a $4,000 adjustment related to her personal belongings. Again, no value is provided. Opportunities were provided for KS to retrieve her belongings. She has provided no specific list regarding these items nor did she make any meaningful attempt to retrieve any items. There will be no adjustment made in relation to KS' personal belongings.

d. Request to recover RRSP withdrawals during relationship as well as the" loss" related to the sale of shares. KS quantifies these adjustments at $15,000 and $14,179.53 respectively. The statements related to RRSP withdrawals were provided post trial. There is no evidence as to the use of the funds. Further, there was no appropriate evidence related to the "loss" related to the sale of shares. Both requests for adjustment are denied.

KS utilized some of the post separation RRSP's for her income. That is not an appropriate adjustment related to a claim for unjust enrichment. Any such quantification would relate to support issues- not proprietary claims.

KS asserts that other RRSP's were withdrawn post separation for "house expenses and renovations." The difficulty with this request is that KS also testified that she had a number of tenants paying rent. She indicated that her business was viable and that it could be self supporting. I am not considering the tenants' rental income, nor am I considering any additional expense/ renovation not covered by such income. Further, some of the expenses relate to expenses that DS asserts he had to pay (i.e. NS Power).

[50] DS is seeking the following adjustments from KS:

1. Payment of junk removal for personal property left by KS. The junk removal cost was $3,500 plus HST ($4,025). It is unknown if all property removed was solely the property of DS. It is clear that KS left many of her belongings at the (N) property despite being provided opportunities to retrieve it. There would presumably have been items related to tenants as well as to the family (including DS)

prior to separation. I will allow 50% of this cost and permit an adjustment of $2,012.50.

2. Payment of credit cards and loans owing by DS. These amounts are not allowed to be deducted from the equity of KS. The loan purportedly owing to DS's mother in law was not in evidence. She was not called to testify. The amount of credit cards accumulated in the name of DS were not provided at the time of trial. There will be no allowance for these amounts. DS will be responsibility for his personal debt (credit cards) as KS will be responsible for her personal debt.

3. KS had tenants in the home that needed to be removed following the granting of exclusive possession to DS. The cost to remove the tenants and have vacant possession was $800. At the time the tenants were in the home, the mortgage fell into arrears. If rent was being received, it was not going to pay the mortgage. DS asserts that the tenants posed significant difficulties in relation to payment of rent and damage to property. I find as fact that this occurred and allow the $800 paid to tenants of KS to have them removed from the property.

4. DS is seeking an adjustment of $3,620 in relation to other maintenance/ repair expenses. Both parties did maintenance and repair work to (N) when each had possession. For example, KS testified to renovation work (including tiling) in the front entryway. I am not prepared to allow any adjustment related to maintenance and repair as each party did some work to the property.

[51] DS did not seek an adjustment in relation to mortgage payments made by each of the parties. There was evidence that KS did not pay all mortgage payments as they fell due and that DS had to repay some mortgage arrears. If there is any differential owed in relation to mortgage payments, there is no adjustment owing by KS. Any equity of KS in the (H) property would be more than sufficient to meet any such mortgage differential.

[52] The (N) property will be immediately listed for sale. The request of DS to have further work done to maximize the equity in the property is denied. Given the contentious nature of the relationship between DS and KS, the property will be sold as is.

[53] Net equally will be divided equally between the parties. The only adjustment to the net equity of the property is the amount of $2,812.50 deducted from KS's proceeds of sale (related to junk removal, and monies paid to former tenants).

ISSUE #3: Parenting arrangements

[54] KS filed a variation application in February 2024. She is seeking joint decision making and shared parenting time.

[55] DS opposes her request. He would like to reduce KS's parenting time. He is also seeking further restrictions including request that KS's parenting time be supervised by Veith House. DS is also requesting KS provide proof of treatment programs related to allegations of mental health issues and alcohol addiction.

[56] KS denies any difficulty with her mental health other than her sadness and frustration related to limited contact with their child. She further indicates that the allegation of alcohol addiction is completely fabricated by DS.

[57] KS testified that she has significant support from her aunt in Poland. She readily acknowledged that she often feels very isolated here in that she has no family and few friends.

[58] KS testified that she has volunteered with a charitable organization. She testified that she secured housing. Her request was to continue to work in the bed and breakfast the parties' ran prior to separation.

[59] Despite the denial of issues by KS, she made comments during the course of the trial that were very concerning. The court is mindful that court proceedings are stressful, particularly for self represented litigants. Emotional reactions are common place, particularly when the issues relate to parenting.

[60] KS's demeanour and her comments during the course of the trial were concerning. On occasion she made comments related to suicide, stating she had nothing to live for. She indicated that her mental health was negatively impacted by virtue of her lack of significant time with her child.

[61] She referenced various persons providing mental health support to her but no proper evidence was tendered. No reports were prepared and no affidavits were tendered by any third party.

[62] On two occasions, the court hearing was not able to proceed because KS attended the courthouse intoxicated. On the first occasion on October 1, 2024, sheriff services advised that KS was significantly under the influence and it would be inappropriate to have KS attend court. Accordingly, the hearing scheduled for that day did not proceed. Court reconvened the following day, October 2nd.

[63] The sheriff dealing with KS at the courthouse was subpoenaed to provide evidence as KS denied she was intoxicated. The sheriff provided evidence that KS was swaying uncontrollably and unsteady on her feet when she got to the court house. She could not stand without support. He also noted that she had bloodshot eyes and her speech was very slurred. When she was advised that court was not proceeding given her condition, she refused to leave the building and became escalated.

[64] KS testified on October 2, 2025, that she took prescription medication from a friend who drove her to the courthouse. She testified that any alcohol smell from her was the result of non alcoholic drinks she had consumed the night before.

[65] I find as a fact that KS was intoxicated on October 1, 2024 when she attended the courthouse.

[66] On March 31, 2025, the parties were scheduled to proceed to closing arguments. Sheriff services again advised that KS had attended the courthouse and was believed to be under the influence. Because of her previous denial, I directed that the matter was to commence as scheduled. I observed KS to be unsteady on her feet, slurring her words, smelling of liquor and uttering profanities on occasion.

[67] I find as a fact that KS was intoxicated on March 31, 2025 when she attended the courthouse.

[68] I am mindful of the legislative framework set out in s. 18 of the *Parenting and Support Act*. In particular, the factors listed in s. 18(6) must be considered by the court in assessing the best interests of the child.

[69] The child has been in the primary care of DS since 2021. KS's parenting time has been fully supervised at times as a result of concerns related to her mental health and alcohol addiction. Those concerns remain.

[70] Based on these facts, I would not find it in the child's best interests to increase parenting time with KS at the present time. Her addiction continue. For her child's sake, she must receive the appropriate counselling.

[71] KS loves her child and has much to offer her. As noted by her, she is able to provide unique opportunities to the child related to her cultural upbringing. She is able to provide her guidance related to educational opportunities. She has spent many happy hours enjoying activities with the child.

[72] The evidence is clear that the child loves KS. Both child and mother need to spend time in a safe, nurturing, loving environment. That can happen if KS gets the help she desperately needs.

[73] There were other matters of concern that would also weigh against increasing the parenting time for KS at the present time. At the time of trial, her evidence was that she had secured accommodations with a male but was unable to recall his last name. She had no form of income although testified that she was financially stable given her savings and assistance from family abroad.

[74] During the hearing, KS was arrested at a lunch break as a result of charges of driving under the influence. Part of her parenting plan involved her transporting the child in a vehicle driven by her. It is unknown as to whether KS currently has a valid drivers' license.

[75] DS has not always acted in a child focussed manner. He bears responsibility for his lack of adherence to the Consent Order. The Order specified that KS had parenting time in the community a minimum of once per week. The Order also included supervision of KS's parenting time with the caveat that this supervision could be decreased. Partial supervision could be appropriate if the supervisor confirmed KS's sobriety and mental health status at the beginning of the visit.

[76] The Consent Order had safety mechanisms built in to address the possibility of KS being under the influence or mentally unwell. It was not up to DS to unilaterally terminate all such parenting time and to fail to make any court application for months. If he believed that all parenting time was not in the child's best interest, he ought to have made a court application to vary the order as well as making a referral to DCS (as directed by the Order).

[77] The application of KS for increased parenting time is dismissed. The current Consent Order remains in effect. I am not prepared to mandate a period of

supervision through Veith House as requested by DS. According to the terms of the Consent Order, the visits are to be in the community and may be fully or partially supervised at the discretion of DS. I find this parenting arrangement to be in the best interest of the child.

[78] There is one minor amendment to the Order that will provide clarity in relation to the timing of KS's parenting. In paragraph 3 of the Consent Order, the parties must communicate weekly in regards to the parenting time. The Consent Order does not specify when this communication must take place. As such, the Order will be varied such that the parties must confirm by Wednesday at 7 pm each week the parenting time for KS the following week. For greater clarity, the following week is defined as commencing Monday at 9 am.

[79] Similarly, there should be specified times related to the electronic communication between KS and the child. It should occur at least once per week. The scheduling of the electronic communication can occur at the same time as the face to face parenting time (i.e. by Wednesday at 7 pm each week for the following week.

CONCLUSION

[80] From the (H) property, DS owes KS $39,089 plus the amount of DS's debt repayment made in 2010.

[81] The (N) property will be immediately listed for sale. The net proceeds will be divided equally between the parties with KS owing DS $2,812.50 from her share of the proceeds.

[82] The parenting arrangement set out in the Consent Order will be varied such that:

1. The parenting time of KS will be specified by Wednesday at 7 pm each week to take place the following week.
2. The electronic communication between KS and the child will occur at least once per week. The timing of that communication may be specified by Wednesday at 7 pm each week.

Chiasson, J.