

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** Fleet v. Fleet, 2005 NSSC 69

**Date:** 20050405

**Docket:** 1201-057857

**Registry:** Halifax

**Between:**

Joseph Edward Fleet

Petitioner

v.

Darlene Emma Fleet

Respondent

v.

Ora Fleet

Third Party

**Judge:**

The Honourable Justice Mona M. Lynch

**Heard:**

June 8 & 9, 2004

February 14, 15 & 17, 2005, in Halifax, Nova Scotia

**Counsel:**

Nicolle Snow, for the Petitioner

Shelley Hounsell, for the Respondent

**By the Court:**

**BACKGROUND:**

[1] The Petitioner, Joseph Fleet, and the Respondent, Darlene Fleet, met in 1995 when Joseph Fleet was living with his mother, Ora Fleet, in Elmsdale and Darlene lived in an apartment in Dartmouth. In the Spring/Summer of 1996 Darlene Fleet moved in with Joseph Fleet at the home of Ora Fleet on Percy's Lane in Elmsdale, Nova Scotia. During this time Ora Fleet went to live in her cottage in Ecum Secum. A new home was constructed on the land belonging to Ora Fleet which the couple moved into in October 1996. Their first child, Cody, was born on August 28, 1996 and their second child, Kyle, was born on January 16, 1998. The couple married on September 4, 1999 and separated on June 29, 2003.

[2] During the relationship Joseph Fleet worked as a seasonal worker with the Department of Highways and for a landscaping company. When not employed he

collected employment insurance. Darlene Fleet did not work outside the home and provided child care for other children in her home.

[3] On June 29, 2003, Darlene Fleet and the two children moved out of the home which the couple had lived in during the marriage. They moved into a rented home in Elmsdale. Darlene Fleet's 25 year old son, Mark, from a previous relationship, lives with Darlene and the two boys. Joseph Fleet continues to reside in the home shared by the couple during the marriage.

[4] An application by Darlene Fleet under the *Maintenance and Custody Act* resulted in an interim order, dated July 30, 2003, which provided for joint custody of the children, with the children in the care of Darlene Fleet from Monday at 12:00 noon until Friday at 5:00 p.m. and with Joseph Fleet from Friday at 5:00 p.m. through to Monday at 12:00 noon. Joseph Fleet's annual income was found to be \$24,500.00 and he was ordered to pay \$354.00 a month in child support commencing August 1, 2003.

[5] Joseph Fleet petitioned for divorce on July 10, 2003 and Darlene Fleet filed an Answer and Counter-Petition on July 30, 2003. Trial in the matter began on June 8, 2004 with two witnesses called. On June 9, 2004 counsel indicated that there was agreement as to joint custody of the children but other parenting arrangements were in dispute and Darlene Fleet was not pursuing her claim for spousal support. On June 9, 2004 Darlene Fleet was directed to add Ora Fleet as a party to the proceeding as her property rights could be affected by a decision in the divorce proceeding and the matter was adjourned for service on Ora Fleet. Ora Fleet was added as a party to the proceeding by order dated June 29, 2004. Ora Fleet was served with the documents on July 1, 2004. The matter returned to court on July 6, 2004 for an organizational pre-trial. Ora Fleet did not appear on that date and counsel for Joseph Fleet indicated she would likely not be responding. The trial continued on February 14, 15, and 17, 2005. Ora Fleet did not participate in the trial.

**ISSUES:**

[6] The issues to be decided are:

- (a) Custody and access – Joseph and Darlene agree that they will share joint custody but parenting time and primary residence are in dispute;
- (b) Child Support – who should pay and quantum;
- (c) Division of Property – classification of property as matrimonial and division of that property.

## **ANALYSIS:**

### **Custody and Access**

[7] Cody and Kyle currently reside with their mother approximately sixty percent of the time and with their father forty percent of the time. Joseph and Darlene Fleet have the mirror opposite positions with regard to parenting arrangements. Both want the primary care of the boys and the other parent to have the children every second weekend, one evening after school on the first week and two evenings a week during the second week. There is agreement that each parent have one week of uninterrupted time with the children. Christmas and other parenting times are also to be decided.

[8] The factors that I must look at in deciding the best parenting plan for these children are included in the *Divorce Act* and in the case law. As always, the primary consideration is the best interests of the children looking at the condition, means, needs and other circumstances of the children. I must also give effect to the principle that the children should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, I must take into consideration the willingness of the person for whom custody is sought to facilitate such contact. *Foley v. Foley* (1993), 124 N.S.R. (2d) 198 sets out further factors to consider in deciding custody issues.

[9] It is clear that for most of the boys' lives Darlene Fleet was the primary care-giver. Joseph Fleet described the marriage as traditional in the sense that Darlene Fleet was home to care for the children and he provided the financial support. Joseph worked long hours, 80 to 90 hours a week – six days a week, particularly during his employment with Elmsdale Landscaping from 1996 to 2001. The employment with Elmsdale Landscaping was for seven months of the year and during the winter months he was a spare at the Department of Highways for plowing. From 2001 to the present time Joseph Fleet has worked fewer hours.

Darlene Fleet was primarily responsible for cooking meals for the children, buying them clothes, taking them to medical appointments and meeting with teachers about the boys' education.

[10] Both parents can and do provide adequate physical environments for the boys, no discipline problems were reported. Both parents clearly love the boys. I was not left with any concerns about either parent as a role model to the boys.

Darlene is available on a more consistent basis for the boys as she provides child care to other children in her home and does not work outside of the home. The evidence from Joseph Fleet and his sister, Margaret Logan, was that on school days Margaret Logan would assist in getting the boys ready for school by going to Joseph's home or having the boys spend the night at her home.

[11] Joseph Fleet expressed concern that the boys were being told not to provide information from Darlene's home. This is not a major concern to me as it would be inappropriate to ask the boys questions about their lives at Darlene's home.

Joseph also expressed concern that the boys had to be quiet when the children

being cared for by Darlene are present and napping. He also expressed concern about the time that Darlene has for the boys given that other children are present in her home on a daily basis. The children cared for by Darlene are there for a limited time after school with the boys. I do not find a problem with Darlene spending time with the boys or with the boys being constrained by the presence of the other children. Heather Fletcher testified to an incident where she found her child unsupervised when she went to pick him up although he was supposed to be in Darlene's care. Darlene had gone to the end of the road to meet one of the boys at the bus. This incident was cause for some concern but I accept that it was for a short period of time.

[12] Joseph Fleet lives in very close proximity to both his sister, Margaret, and his mother, Ora. This allows the boys to spend lots of time with extended family, particularly with Margaret Logan and her family next door. Darlene Fleet testified that when the children are with her that they spend time with her sister who lives ten minutes away.



[13] Darlene Fleet expressed concern that she has not had the children with her for a weekend since July of 2003. She indicated that she requested weekends with the boys but Joseph Fleet always refused.

[14] When asked about the requests from Darlene for weekends with the boys, Joseph Fleet's response was that it was not his decision. On each occasion he would ask the boys, with Darlene present, whether they would rather be with their mom or dad and the boys always said that they would rather be with him. Joseph Fleet's response to this question caused me great concern. It indicated to me that Joseph Fleet was not willing to facilitate contact between Darlene and the boys. It also indicated to me that he has little understanding of the effect of separation on children. He placed the children in the middle of the dispute between the parents. Joseph Fleet testified that he had not attended the mandatory Parent Education program through the Supreme Court of Nova Scotia (Family Division). It is unfortunate that he did not attend the program as he would have learned not to place the children in the middle of the adult disputes. I have further concern that his response is not at all child focussed. Even without parent education, a child

focussed parent would know that asking children to choose between their parents is not good for their emotional well-being.

[15] I also had concern over Joseph Fleet's assertions that the boys have indicated that they want to live with him. The children in this case are eight and seven years old and I can give little weight to their wishes. However, I am left with a concern that Joseph Fleet asked the boys to choose between parents on a more permanent basis as he has asked them to choose between parents on weekends.

[16] Darlene Fleet has allowed extra parenting time for Joseph Fleet on a number of occasions when it was requested. She is the parent more willing to facilitate contact between the boys and the other parent.

[17] Based on all of the information provided, I am satisfied that both parents would provide adequate primary residences for the children and they both have close and loving relationships with the boys. I do find that Darlene Fleet has

always been the parent who primarily cared for the boys and is still the parent who is in the best position to provide that primary care. She is the parent who works at home and has more time for the boys, she is the more child-focussed of the two parents. The primary residence of the boys shall be with Darlene Fleet.

[18] With regard to parenting time with Joseph Fleet, I accept that Darlene Fleet needs some parenting time on the weekends as that is her only free time.

Therefore, Joseph Fleet shall have parenting time with the children every second weekend from Friday at 5:00 p.m. until the children go to school on Monday morning. If Monday falls on a school holiday, the children will be returned to Darlene Fleet at 5:00 p.m. on Monday.

[19] Darlene Fleet has expressed concern over the children having overnight visits during the weekdays. She indicated that she wanted a regular and structured routine for the children, particularly for Cody as she finds that he is easily distracted. She also expressed concern that one of the boys forgot his snow pants after spending Sunday night with Joseph Fleet. These concerns have to be balanced with the principle of maximizing the time with each parent and

maintaining strong bonds between the boys and Joseph Fleet. On the evidence, I cannot be satisfied that Cody's distraction would be made worse by spending time with Joseph Fleet during the week. Unless it is shown that overnight time with their dad will adversely affect their school work I cannot make that assumption. On the weeks that Joseph Fleet will have the boys on the weekend he will have the boys from 5:00 p.m. on Wednesday until they go to school on Thursday. On the weeks after he has had the boys on the weekend he will have the boys overnight on Tuesday and Thursday from 5:00 p.m. to school the next morning.

[20] Each parent will have one uninterrupted week of parenting time with the boys each summer. Each parent should make the request for the week on or before May 1 of each year.

[21] Joseph and Darlene shall share the Christmas vacation with the children. One parent shall have the children from noon on Christmas Eve until noon on Christmas Day and the other parent will have the children from noon on Christmas Day until noon on Boxing Day. This will alternate on a yearly basis and the parent who did not have the children on Christmas morning in 2004 will have the boys

for Christmas morning in 2005. The rest of the Christmas vacation will be shared evenly.

[22] Each Father's Day the boys shall be with Joseph Fleet and each Mother's Day they shall be with Darlene Fleet. Additional parenting time shall be as agreed between Joseph and Darlene Fleet.

### **Child Support**

[23] Joseph Fleet's income is difficult to determine. When the trial started in June of 2004 the income information from Joseph Fleet was not adequate. A statement of financial information was filed on September 13, 2004. On February 15, 2005 Mr. Fleet filed information for 2004. From those documents Joseph Fleet's income for 2004 appears to have been \$24,731.28. Joseph Fleet's income tax return for 2003 shows line 150 income of \$20,787.22 and his 2002 return shows line 150 income of \$24,498.86.

[24] As Joseph Fleet changed employment in 2004, I will use the most recent information of \$24,731.28 as his annual income. Joseph Fleet shall pay to Darlene Fleet \$357.00 a month in child support, payable on the first day of each month beginning April 1, 2005. The payments shall be made to Darlene Fleet through the Maintenance Enforcement Program. On or before June 1 of each year Joseph and Darlene shall exchange income tax returns, even if not filed, and Notices of Assessment.

### **Division of Property**

#### 17 Percy's Lane

[25] The most contentious issue in relation to property between these parties is the status of the home the family lived in from 1996 until separation. It is clear that Ora Fleet, mother to Joseph Fleet, holds the title to the land on which the house was constructed. In 1995 inquiries were made about subdividing Ora Fleet's lot on Percy's Lane. The information from the Municipality at the time was that the land could not be subdivided.

[26] Joseph Fleet indicates that when he discovered that the land could not be subdivided he began looking at other properties in Elmsdale to rent or own.

Joseph indicates that his mother offered to build a home on her property where he could reside provided that he covered the mortgage and expenses associated with the home. He indicates that his mother arranged the financing but needed a guarantor and Joseph Fleet offered to be the guarantor on the mortgage for his mother. He looked after the details of the building of the house as his mother was not interested in the details. It is Joseph Fleet's position that the house was always and continues to be his mother's house where he simply resides and rents.

Ora Fleet continues to pay the taxes on the whole piece of property which includes both the home in which she resides and what was the family residence of Joseph and Darlene Fleet.

[27] Darlene Fleet's evidence was that in the Spring of 1996 she and Joseph discussed constructing a home. They eventually decided to build a home on the property of Ora Fleet. She understood that the piece of land on which the house was to be constructed was to be transferred from Ora Fleet to Joseph Fleet.

Darlene attended at the bank with Joseph Fleet on the first occasion when a

mortgage was discussed but after that first meeting only Joseph and Ora attended at the bank. Darlene and Joseph met with Brent Keyes who was hired to construct the home and during construction Darlene and Joseph met with Mr. Keyes many times. The standard house plan was changed as a result of requests from Darlene Fleet. All decisions about the construction of the house were made jointly by Darlene and Joseph without any input from Ora Fleet. The couple moved into the house on October 5, 1996 and Darlene left that house at the end of June 2003. The mortgage payments came out of Joseph and Darlene's joint account and although the taxes were in Ora Fleet's name, Joseph and Darlene ensured they were paid. The first time it was mentioned that the home was not Darlene and Joseph's was after the couple had discussed separating.

[28] Ora Fleet did not participate in trial and did not testify in relation to the property at 17 Percy's Lane, Elmsdale, N.S.

[29] The *Matrimonial Property Act* in s. 3(1) defines the "matrimonial home" as:



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

It is clear that 17 Percy's Lane was occupied by Joseph and Darlene Fleet and their children as their family residence from 1996 until 2003. I must determine whether either or both of the couple have a property interest in 17 Percy's Lane other than a leasehold interest.

[30] Darlene and Joseph have very different interpretations of how they came to live in 17 Percy's Lane and whether the home was to be their home. In deciding between the two versions of events and interpretations I would have to consider the credibility of both Darlene and Joseph. Joseph Fleet asked that I consider Darlene Fleet's untruthfulness with regard to her income both as filed in relation to income taxes and as filed with the court. Darlene Fleet only claimed a portion of her income in her sworn statement of financial information. She freely admitted in direct testimony that she had not been truthful in the statement filed with the court. If the only evidence before the court was the evidence of Joseph and Darlene in relation to 17 Percy's Lane, I would have to seriously consider Darlene

Fleet's credibility. However there is independent evidence from the time the house was built and the mortgage negotiated in 1996.

[31] Joseph Fleet's evidence was that Ora Fleet arranged the financing but she needed a guarantor and he agreed to be the guarantor. The documents from the bank and the evidence of the bank officer, Kelly Curtis, tell a different story. Kelly Curtis represented the bank in 1996 for the mortgage on the home being built at 17 Percy's Lane. She testified the purpose of the mortgage was to build a house for Joseph Fleet and the mortgage was in Ora Fleet's name as the land was in Ora Fleet's name. Joseph Fleet was the guarantor, however Joseph Fleet's income information was used to obtain the mortgage and not Ora Fleet's income. If Joseph was simply renting the house, as he testified, his income would not have been considered in the mortgage application. The mortgage granted was a 95% mortgage and to qualify for that mortgage the client had to be a first-time home buyer. Joseph qualified as a first-time home buyer, Ora did not.

[32] A letter from Kelly Curtis to Joseph Fleet dated February 11, 1997 confirms that “the mortgage was registered in your name and Mrs. Ora Fleet’s name due to a problem with subdividing the lot that your home sits on.” The letter goes on: “We confirm that the mortgage funds were advanced to you through your lawyer for construction of your home. Mrs. Ora Fleet’s name is registered on this mortgage as the lot is still registered in her name and this was required for the bank to have valid security on your home.” The bank required that Ora Fleet get independent legal advice in relation to the mortgage, a requirement when a person was pledging something and not receiving any benefit. Kelly Curtis was asked whether it was possible that Ora Fleet was the principal borrower, was having the house built, that Joseph was going to live in the house and pay the mortgage but that the home would not be Joseph’s. Kelly Curtis answered that under those circumstances the bank would not have allowed a 95% mortgage as it would not have complied with the Canada Mortgage and Housing Insurance rules.

[33] The evidence from the bank documents and Kelly Curtis are not the only independent evidence of the intention in 1996. The construction contract was between Kel-Greg Enterprises Limited as Contractor and Joseph Fleet as Owner.

Joseph Fleet received a Goods and Services Tax rebate for a new house. The Atlantic New Home Warranty Corporation Certificate of Possession shows Joseph Fleet as the purchaser of the home at 17 Percy's Lane. The Permit for Occupancy from the Municipality of the District of East Hants dated September 6, 1996 shows Joseph Fleet as the owner.

[34] Joseph Fleet asked me to find that if Ora Fleet wanted Joseph to be the owner of this property she would have deeded it to Joseph Fleet. However, the evidence from Joseph Fleet and from Kelly Curtis was that the land could not be deeded to Joseph as sub-division was not possible. Joseph Fleet also asked me to find that Ora Fleet's money must have been used for the down payment as Joseph Fleet indicated that none of his own money went to the construction of the home. There was no evidence that the down payment came from Ora Fleet.

[35] All of the independent evidence supports the position of Darlene Fleet that the arrangements were as they were because the lot could not be sub-divided but that the home was built for Joseph and Darlene as their matrimonial home. The property could not be conveyed to the couple as it could not be sub-divided. They

built the matrimonial home on the property and lived there during the marriage. It was agreed that sub-division of the lot is now possible and so it is possible to sell 17 Percy's Lane with the agreement of Ora Fleet.

[36] In *Walsh v. Fraser* (1987), 80 N.S.R. (2d) 91 (N.S.S.C.A.D.) the couple constructed a cottage on a lot adjoining the wife's family farm property. They never received a deed to the cottage lot which was still in the father's name. With regard to the issue of the cottage property at paragraph 20:

While it is true that there is no deed to the property it has been occupied for some 13 years. With the concurrence of Mr. Fraser the respondent would be in a position to sell this asset. In my view it must be valued as a matrimonial asset particularly having regard to the fact that the appellant spent some four to five thousand dollars on the premises exclusive of his labour. The property was appraised at \$9,500 and I would accept that figure as a fair valuation. I would allow this ground of appeal.

In the present case Darlene and Joseph Fleet built a home on the property which they resided in as a family from 1996 to 2003. They made the arrangements for the construction and the mortgage was paid from their joint bank account during the relationship.

[37] I do find that Joseph and Darlene Fleet have a property interest other than a leasehold interest in the home at 17 Percy's Lane, Elmsdale, N.S. The independent evidence does not support that Joseph and Darlene were simply renting the house of Ora Fleet. The home at 17 Percy's Lane is a matrimonial asset as in *Walsh v. Fraser*.

[38] There was an appraisal done on September, 9, 2004 which I find to accurately reflect the market value as \$138,000.00. The appraisal was conservative as the appraiser assumed a minimum lot size.

[39] There was evidence from Richard Logan, the husband of Joseph Fleet's sister, that he installed laminate flooring, painted, fixed walls and replaced casings and baseboards after Darlene moved out. The supplies for this he indicated were \$2,795.00 but no receipts or verification for the costs of those supplies was provided. Richard Logan also offered an opinion as to the increase in market value of the house as a result of his work of \$6,000.00 but readily admitted that he did not have any expertise in appraisal values of property. As I do not have evidence

that I accept on the increase in value of the property from improvements made after the date of separation, I will not adjust for those improvements.

[40] Joseph Fleet asked me to include the costs of subdivision of the lot and I agree that would be a proper deduction, however, I was not provided any evidence in relation to those costs and they were not agreed to by Darlene Fleet. Joseph Fleet asked me to consider the payments made on the mortgage by him since the time of separation but I find that this amount would be offset by occupational rent that he would owe to Darlene Fleet. As in *Simmons v. Simmons* (2001), 196 N.S.R. (2d) 140 (N.S.S.C.F.D.) at paragraph 50 – the couples' finances are sufficiently intermingled so that the mortgage at division date is appropriate and both spouses share in the pay down of the mortgage.

[41] Although I did not allow the improvements or the sub-division costs, I will consider sale disposition costs although sale of the property appears unlikely. From the value of the property would come the principal balance of mortgage with interest as of February 1, 2005 of \$79,328.27. I have not deducted the penalty on

the mortgage as there is no evidence that the property will be sold during the time that the penalty will apply. Also deducted will be real estate fees of 6%, \$8,280.00, tax on the real estate fees, \$1,242.00, legal fees of \$500.00, migration fees of \$800.00 and tax on the legal and migration fees of \$195.00. The value of the matrimonial home to be equally shared by Joseph and Darlene Fleet is \$47,654.73.

#### Ecum Secum Properties

[42] Joseph Fleet was given two properties in Ecum Secum by deed from Ora Fleet prior to the marriage in 1991 shortly after his father's death. The assessed values of these lands were \$2,400.00 and \$1,800.00 in 2003. It is the position of Joseph Fleet that these properties were never used by the family. It is the position of Darlene Fleet that she went to these lands five or six times over eight years and walked around them with Joseph, usually when they went to visit Ora Fleet at her cottage which is in the same area. Darlene testified that there was discussion about putting a family cottage on these lands. There is evidence that the taxes were paid from the couples' joint bank account.



[43] Section 4(1)(a) of the *Matrimonial Property Act* reads:

In this Act “matrimonial assets” means the matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during the marriage, with the exception of  
(a) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children;

In the present case the extent that these lands were used for the benefit of both spouses or the children was so minimal that I find it to be trifling or insignificant. (*Fisher v. Fisher*, 2001 NSCA 18). The taxes for both properties in 2003 amounted to \$35.28 so even the extent that family resources were used for the properties in *Ecum Secum* was minimal and a few occasions walking around the property is insignificant. The onus is on the person who is asserting that an asset is not a matrimonial asset and I find that Joseph Fleet has met that burden. I do not find the *Ecum Secum* properties to be matrimonial assets.

### Contents of Home

[44] Joseph Fleet provided a list of items that were left in Percy’s Lane and items that were now in Darlene Fleet’s possession. Darlene Fleet prepared a list of items

that she would like back which in her view would make the division of the contents of the house equal, she testified that she did not necessarily want these items but felt that she had to make a list. I will order that she receive the items that have a sentimental value to her and items she was the primary user of such as gardening tools. Therefore, Joseph Fleet shall give to Darlene Fleet: (a) two monogrammed wooden bears on the boys' bedroom doors which were made by Darlene Fleet's aunt; (b) the picnic table made by Darlene Fleet's father; (c) the whipper snipper; and (d) the wheel barrow.

#### Loans From Richard Logan

[45] It is clear that the onus to show that there is a legally enforceable debt owed to Richard Logan is on the party who alleges the existence of the debt, in this case Joseph Fleet.

[46] Four documents were entered as exhibits in the trial. All of the exhibits are small pieces of paper. One signed by Rick Logan and dated May 10, 2003 indicated that he was paid in full \$2,000.00 from Joey. One is not dated as to a

year but reads April 27, is signed by Rick Logan and says that \$1,000.00 was received from Joe. A third is dated July 11, 2003 and signed by Rick Logan which says that he received in full from Joe the sum of \$5,000.00 to pay off his promisory (sic) note and reads Paid in Full. The fourth piece of paper is dated February 8, 2002, appears to be signed by both Joseph Fleet and Rick Logan and indicates that Rick Logan loaned Joe \$5,000.00 to rebuild his 1987 GMC Truck and the promisory (sic) note to be paid in full when truck is sold. Richard Logan in his testimony was very vague about the details surrounding these loans. There is no documentation to confirm the debts for the \$1,000.00 and the \$2,000.00 except that money was paid to Richard Logan. I find that Joseph Fleet has not satisfied the onus to show that these were debts capable of legal enforcement.

[47] The paper in relation to the \$5,000.00 was to rebuild a truck and I am not satisfied that Darlene Fleet was aware of this loan and I am not satisfied that the funds from the loan were used for the benefit of the family as in *Selbstaedt v. Selbstaedt* (2004), NSSF 110 (NSSC) at paragraph 47. I am therefore not satisfied that this was a matrimonial debt.

Automobiles

[48] Joseph Fleet had a hobby of purchasing automobiles, fixing them up and selling them. His evidence was that sometimes he made a profit and sometimes he did not. He testified that he would purchase a vehicle, the family would use the vehicle for awhile and then he would sell the vehicle. At the time of separation there were six such vehicles excluding the children's ATV. Values of these vehicles were introduced at trial as well as the debt incurred in order to purchase these vehicles. I find that all but one of those vehicles which would have been driven by Joseph Fleet were not matrimonial property, they were business assets. The vehicles were purchased to be fixed and sold. While the evidence was not clear as to which vehicle Joseph Fleet was using at the time of separation, I have to assume it was the 1998 Pontiac Convertible. The value of this vehicle I find to be \$12,500.00 at the time of separation as it was sold a week after separation for that amount.

[49] Darlene Fleet drove a 1990 Camry which was purchased for \$2,160.00 in 2001. I find that the value for division purposes would be the value at the time of

separation or approximately \$2,000.00. She also has a 1984 Camper Trailer which I value at \$1,750.00 which splits the difference between the values given by the couple.

### Other Debts

[50] The debts other than the mortgage and the ones owed Richard Logan include two visa cards, a bank loan and a Zellers' card. In relation to the Visa cards, the amount owing on Darlene Fleet's Visa on the date of separation was \$7,993.74 which both parties have agreed is a matrimonial debt.

[51] The amount owing on Joseph Fleet's Visa was \$9,334.58 deducted from which must be the amount for any vehicle purchases and cash advances to pay back Richard Logan as I have found that these debts are not matrimonial. In his testimony Joseph Fleet attributed at least \$6,250.00 in advances and charges on his Visa to parts for the vehicles, purchases of vehicles and repayment of monies to Richard Logan. I find the amount of Joseph Fleet's Visa which is a matrimonial

debt is \$3,000.00. The Zellers' card balance at the time of separation was \$826.34 and is a matrimonial debt.

[52] I accept that Joseph Fleet provided confirmation of the loan which was used to purchase the 1998 Pontiac Convertible and the amount to pay off that loan on July 8, 2003, the time of separation, was \$7,555.07. This was a matrimonial debt.

Other

[53] The bank account balance in Darlene Fleet's bank account at the time of separation was \$647.66. There was no evidence provided as to the bank account balance of Joseph Fleet. The joint account had a closing entry on June 2, 2003. I am going to assume that the balances of the bank accounts were even.

Matrimonial Asset Division

[54] ASSET	DARLENE	JOSEPH
17 Percy's Lane (\$138,000 - (\$8,280 + \$1242 + \$500 + \$800 + 195) =		\$126,983.00
1998 Pontiac Conv		\$ 12,500.00
1990 Toyota Camry	\$2,000.00	
1984 Camper Trailer	\$1,750.00	
<b>TOTAL ASSETS</b>	<b>\$3,750.00</b>	<b>\$139,483.00</b>

**DEBT**

Visa	\$7,993.74	\$3,000.00
Zellers Card	\$ 826.34	
Mortgage		\$79,328.27
Bank Loan		\$ 7,555.07
<b>TOTALS DEBTS</b>	<b>\$8,820.08</b>	<b>\$89,883.34</b>
<b>NET ASSETS</b>	<b>(\$5,070.08)</b>	<b>\$49,599.66</b>
<b>TO BALANCE</b>	<b>\$27,334.87</b>	<b>(\$27,334.87)</b>

Joseph Fleet shall pay to Darlene Fleet the amount of \$27,334.87 by way of certified cheque on or before May 1, 2005.

[55] **CONCLUSION**

(a) The couple will have joint custody of the two boys and the primary residence of the boys will be with Darlene Fleet. Joseph Fleet will have the boys every second weekend, overnight Wednesday one week and overnight Tuesday and Thursday in the second week. The couple shall have one

uninterrupted week each summer. Darlene will have the boys on Mother's Day and Joseph will have the boys on Father's Day. The couple shall alternate Christmas Eve and Christmas Day each year. There will be such further parenting time as the couple agree.

(b) Joseph Fleet's income for child support purposes is \$24,731.28 and he shall pay child support to Darlene Fleet in the amount of \$357.00 a month payable on the first of the month beginning April 1, 2005.

(c) I find that the property at 17 Percy's Lane in Elmsdale is a matrimonial asset and the net value of that asset should be evenly divided between the couple. Joseph Fleet shall pay to Darlene Fleet \$27,334.87 on or before May 1, 2005.

Mona M. Lynch, J.