IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Thompson v. Grant, 2009 NSSC 219

Date: 20090713
Docket: 1207-003114(055795)
Registry: Truro

Between:

Amy Melissa (Grant) Thompson

Petitioner

- and -

David Cox Grant

Respondent

DECISION

Judge: The Honourable Justice J. E. Scanlan

Heard: April 28, 29, 30 and May 1, 2009 at Truro, Nova Scotia

Counsel: Ms. Leigh Davis, Solicitor for the Petitioner
Ms. LouAnn Chiasson, Solicitor for the Respondent

By the Court:

[1] The parties were married on April 29, 2000. They have two children, Nicholas Donald Grant, born July 21, 2002 and Alexander David Grant, born September 10, 2004. The parties separated in September, 2007. When the parties originally separated they lived together in the matrimonial home until David Grant left the matrimonial home in December 2007. For some time after that Amy Thompson remained in the matrimonial home with the children of the marriage. There was shared parenting during that time until April 2008. Mr. Grant has been the primary care giver since April 2008 and Ms. Thompson has had access.

[2] In this trial there are a number of issues including access, custody, child support, spousal support and division of matrimonial property. As regards the matrimonial home there is a dispute over the valuation. In addition, there is a dispute on the issue of whether some assets are business assets or matrimonial assets and whether there should be a division of those assets as a result of the Petitioner's alleged contribution to those assets.

[3] There have been a number of interim applications prior to this hearing. Most notably perhaps related to child custody. The applications began when Ms. Thompson unilaterally moved the children from the Province of Nova

Scotia in January 2008. I want to make it clear that on all the applications that I have dealt with I have not on any occasion found that Mr. Grant was unreasonable in asking for court assistance or intervention, nor have I found him to be unreasonable in the position he has taken before the court.

Custody and Access

[4] I held an interim hearing on April 29, 2008. At the conclusion of that hearing I rendered a decision whereby the Respondent, David Grant, was given interim custody of the children and interim exclusive possession of the matrimonial home. I had dismissed the Petitioner's application for interim spousal support. I did not order any interim child support to be paid by the Petitioner at that time. Since then the Respondent has born the vast majority of child care costs with no direct contribution from the Petitioner.

[5] That decision was appealed to the Nova Scotia Court of Appeal, **Grant v. Grant,** [2008] N.S.J. No. 241. The appeal was dismissed. In my decision **Grant v. Grant,** 2008 NSSC 147, I had expressed a number of concerns in relation to the Petitioner and her actions in relation to the children. At the time I was especially concerned in relation to things she had done in an attempt to restrict the Respondent's access to the children. As noted she had

removed the children from Nova Scotia prior to that hearing requiring court intervention to have them returned. In addition she had written letters to employers for two individuals who were attempting to assist in the exchange of the children during access. In those letters she made vague suggestions that the persons who were assisting in the exchange of the children were somehow inappropriately touching the children of the marriage. I found then, and I continue to be satisfied, there was absolutely no basis to suggest there was any inappropriate conduct by the two individuals who were assisting in the exchange of the children. In fact the Petitioner's counsel now suggests that those letters were inappropriate and unjustified and the Petitioner now regrets having sent them. I am satisfied those letters were simply a baseless attempt to limit the Respondent's access to the children at that time at any cost. This was a scorched earth approach by the Petitioner whereby she intended to not only limit the Respondent's access but to destroy both the Respondent and any persons who might assist him in getting access to the children.

[6] Since the April, 2008 hearing the Respondent has continued to obtain the assistance of third parties to witness the exchange of the children. Still the exchanges have not all gone smoothly in the sense that I am satisfied Ms.

Thompson has continued to make baseless allegations of wrongdoing by those assisting in the exchanges. The Petitioner at trial has suggested that one of those third parties who have assisted in the exchange of the children, for no apparent reason, uttered profanity towards her and made inappropriate gestures towards her during one of those exchanges. That is vehemently denied by both the Respondent and that individual. I am satisfied the Petitioner is simply not to be believed on this issue. It is but a continuation of her attempts to make the Respondent and those who might assist him look bad.

[7] Issues of credibility arise and affect many aspects of this case. At one point during the evidence, counsel for the Petitioner suggested the Respondent and all of the Respondent's family and associates were lying, because if their lies were believed the Respondent and, indirectly his family, co-workers, and business partners, stood to gain substantial amounts of money. The suggestion that others were not credible extended to include day care workers who, according to the Petitioner, were supposed to have been untruthful or at least incorrect as regards an incident at the day care centre one of the children was attending. In this regard the Petitioner suggests it is only her that has told the truth and the numerous witnesses who are blood

relatives, acquaintances, employees, friends, or daycare workers, have all lied to assist the Respondent in obtaining unjustified financial gain and custody of the children. This argument failed to recognize that the Petitioner has every bit as much to gain as does the Respondent.

[8] I am satisfied in every aspect of this decision, where the issue is credibility of the Petitioner versus the Respondent and/or any other non-party witnesses, the Respondent or non-party witness is to be accepted. There were two other witnesses, Ms. Thompson's mother and a Mr. Gilby, who testified. Where their evidence differs from that of other witnesses, I accept the evidence of those other witnesses. I will go into greater detail in this regard as I review the various issues. For now I return to the issue of the third party who assisted in the exchange of the children from time to time since April, 2008. Dr. Lawson is the individual who Ms. Thompson said was uttering profanity during an exchange that occurred since April, 2008. This was alleged to have occurred at the Tim Horton's in Elmsdale. Both Mr. David Grant and Dr. Lawson deny anything untoward occurred during that exchange. Dr. Lawson is one of the individuals Ms. Thompson wrote a letter about on the earlier dates and, now through counsel, admits the letter was wrong and ill advised. I am satisfied and accept the evidence of Dr.

Lawson that he was simply present for the exchange. The exchange went without incident and he made no profane utterances or inappropriate gestures to the Petitioner during that exchange. There was nothing about the exchange that would have even prompted any action by Dr. Lawson.

[9] At the conclusion of the trial, I rendered an oral decision on the issue of custody and access only. I indicated the Respondent would continue to be the primary caregiver for the children of the marriage. I simply confirm my comments made at that time and say I am satisfied that it is in the best interests of the children that the Respondent continue to be the primary care giver. I am extremely concerned with the actions of the Petitioner in relation to the children of the marriage. The incident which was alleged to have occurred in relation to Dr. Lawson suggests that Ms. Thompson is prepared to continue in her efforts to destroy the person and the careers of those who may be prepared to assist in doing nothing more than facilitating an access exchange for the children. Without repeating all of the reasons I expressed in the decision of April, 2008, or in the oral decision which I had rendered on May 1, 2009, after the hearing, I am satisfied the concerns that I expressed in those earlier decisions remain.

[10] I am not satisfied Ms. Thompson is prepared to put the best interests of the children ahead of her desire to destroy the Respondent and anyone who may get in her way. She is prepared to continue down that path of destruction even if it is contrary to the best interest of the children. I am concerned the actions of the Petitioner may suggest underlying problems which have yet to be fully identified and/or addressed. This may affect her ability to put the best interests of the children ahead of her own self-interest.

[11] I have other concerns in relation to Ms. Thompson arising out of some of the decisions she has made more recently and which may well have long term effects in terms of her ability to care for the children, or even to contribute to their maintenance. Specifically, the Petitioner has been unemployed or underemployed for a substantial period of time since the marriage break-down. Although the Petitioner presented evidence of job search efforts, I am not satisfied that she has been reasonable in terms of taking employment that may have been available. The Petitioner worked during the marriage at the Staple's Call Centre on a full time basis. In the year prior to the separation she quit that job, looking for her "dream job" and began working for a company called Town and Country. There she worked erratic hours and travelled for several days at a time to places like Moncton, Prince Edward

Island, Montreal, and Toronto. Some of the Petitioner's actions may have imperiled the jobs she had or could have had just prior to and since the marriage breakdown. For example, she and a friend appeared to have been planning to go into direct competition with her employer and actively were pursuing that plan during their employment, hence imperiling her job.

[12] There are jobs at call centres for which she is qualified. Instead of taking those jobs she has decided to retrain. Perhaps of greatest concern is the fact that in spite of this underemployment, or lack of employment, the Petitioner has incurred substantial debt with the assistance of her parents. It would appear she now owes approximately $170,000.00, most of which appears to be due by October of 2009. She has little or no income to pay that debt. It is not clear how Ms. Thompson would ever be able to repay these monies or continue to maintain a home for herself let alone for the children.

[13] Ms. Thompson's current plans, as expressed to the Court, are to return to school and take a paralegal course. There is no clear plan as to how she would provide for the children of the marriage during this period of re-education. In saying this, I note that one of her suggestions is the Respondent would provide both child and spousal support to her so she

could go to school for this paralegal course. It is to be noted in this regard the Respondent's income is approximately $48,000.00 per annum. He has been saddled with substantial matrimonial debts including the mortgage on the matrimonial home where he and the children reside. I would not expect he would be able to maintain the Petitioner, the children, and himself, while she returns to school. Certainly he would never be able to maintain her at a level whereby she would be able to service the $170,000.00 she now owes. I will return to the issue of the Respondent's income again as I discuss the division of property.

[14] Since April, 2008, the children have been with Mr. Grant and they have flourished. He has made appropriate arrangements in terms of child care using both professional daycare providers and his family. My main areas of concern in relation to the children since April, 2008, all surround the actions of the Petitioner. Some of the conduct of the Petitioner during the exchange of the children has been questionable at best. For example, I am concerned that the Petitioner continues to be extremely vocal and abrupt at least on some occasions. I refer for example to the exchange for Halloween in October, 2008. During that exchange Mr. Grant had asked Ms. Thompson to indicate what time she would be returning the children as she had

previously refused to give him assurance as to what time they would be returned. Mr. Grant was giving Ms. Thompson additional time on that Halloween eve so that she could enjoy some of the celebrations with the children. Ms. Thompson refused to confirm or agree to take the children back at a specified time. Mr. Grant had prepared a paper with times he was prepared to agree to and asked her to sign the paper to confirm the time. Instead of simply signing the paper there was an upset in the presence of the children. She went so far as to start to pull one of the children out of his car. In the end, Mr. Grant simply let the children go with Ms. Thompson without getting the assurance he was requesting. He did this in an effort to minimize the upset in front of the children. Given problems Mr. Grant had on other occasions, I do not find it unreasonable that he be given some assurance of return times when he gives extra access. Ms. Thompson was even refusing to advise Mr. Grant where she lived and he had concerns about when they were coming back.

[15] Ms. Thompson has abused access return times on other occasions where I find it inexcusable. For example failing to return the children at an agreed time so Mr. Grant could attend his grandmothers funeral. On another

occasion she insisted on extra extended access and a Grant family birthday party had to be changed so the children could attend the party.

[16] Ms. Thompson has repeatedly denied any wrongdoing or inappropriate behaviour and continues to suggest that everybody lies about how she behaves. In this regard, I refer to an event in April of 2008 after my initial decision. Ms. Thompson suggested a number of daycare workers employed at Elmwood Day Care Centre, who were called to give evidence, had lied about her actions and comments following that decision. Her counsel suggests the Court not give a lot of weight to her actions considering Ms. Thompson would be extremely upset after she lost primary care of the children in April, 2008. The difficulty I have in that regard is that while it is understandable that she would have been extremely emotionally upset after the decision in April, 2008, she has had a substantial period of time to reflect on what occurred at that time. She has come to Court in 2009 suggesting that the daycare providers who gave evidence as to what occurred on that date were now misleading the Court.

[17] I am satisfied the daycare providers who did give evidence testified accurately and truthfully as to what occurred. Where their evidence contradicts that of Ms. Thompson, I accept the evidence of the daycare

providers. The day care in question is a large operation with more than one location. The actions of Ms. Thompson caused the workers to be concerned to the point that, in their judgment, it was necessary to ban Ms. Thompson from attending at the daycare centre. In saying this, I note the daycare providers indicated that although they have a fairly large operation they have never before, or since that time, banned any other parent or guardian from the daycare centre. Ms. Thompson stands alone in being barred from the daycare centre in question.

[18] Ms. Thompson says she alone is telling the truth in terms of what occurred at the daycare centre and that all those independent witness are not correct in their evidence as to what occurred at the day care centre. Ms. Thompson's mother says she was present at the daycare on the date Ms. Thompson is alleged to have said she would "get revenge" and that no such words were uttered by the Petitioner. I have already indicated that I accept the evidence of the daycare workers.

[19] Another difficulty in relation to access since April, 2008, relates to the approach the Petitioner has taken in relation to access time over and above the specific access that was granted. Ms. Thompson complains she does not get enough additional access. I am satisfied there was substantial and

appropriate additional access afforded to Ms. Thompson. A concern I have relates to situations where Ms. Thompson makes a request for additional access. Those requests come often and she is relentless in the pursuit of that additional time. Ms. Thompson has also made it clear she is not prepared to accept that Mr. Grant can have time alone with the children. In this regard I refer specifically to a boy scout or beaver event one of the children was to attend. Mr. Grant had enrolled the child in beavers and wanted to attend the Remembrance Day ceremony with his children alone. In saying this, I note that in almost every aspect of the children's schooling, sporting events, or extra curricular activities, Mr. Grant has always welcomed Ms. Thompson to those events with open arms. In relation to the Remembrance Day event Ms. Thompson insisted on being involved and continued to pursue this point with Mr. Grant until he eventually relented. I am satisfied that Mr. Grant relents on a regular basis because of Ms. Thompson's persistence. It is clear this is a capitulation by Mr. Grant not simply a negotiated outcome. I am satisfied that something must be done to end the continuous negotiation so as to allow Mr. Grant and the children a degree of peace and certainty. To that end, I had set specific access periods in my oral decision. Those access times afforded additional time for Ms. Thompson to be with the

children, beyond what was provided for in my earlier decision. It is also clearly intended to limit her right to request and negotiate additional times.

[20] During my oral decision I referred to Ms. Thompson as being a very dominate person in the relationship and that Mr. Grant was very much a submissive partner. This went so far as Ms. Thompson insisting that Mr. Grant had to leave the matrimonial home while she and a Mr. Gilby supposedly discussed a potential business venture they were suppose to have been pursuing. It appears nothing came of those discussions, but for many, many months Mr. Grant was told that he was to vacate the matrimonial home and was not allowed to return until late each evening. He often spent time with friends but the time in exile was so substantial that he felt he could not impose on his friends that much. He would therefore simply park on the side of the road waiting to be allowed home again. One evening he dared to call and say he was coming home early with coffee for Ms. Thompson and Mr. Gilby. Ms. Thompson later made it clear that it was not acceptable that Mr. Grant come home until he was allowed by her.

[21] I might also say it is not clear what the relationship was as between Ms. Thompson and Mr. Gilby. He seems to have been around a lot more than can be explained by the fruitless business discussions between Mr. Gilby

and Ms. Thompson. I would characterize Mr. Gilby as something of an extra spoke in the marriage. After the marriage ended Ms. Thompson at one time asked for extra time with the children so she could visit her family in PEI. Mr. Grant later found out that she took them camping with Mr. Gilby. He also showed up intermittently when the exchanges took place at the Elmsdale Tim Horton's, or when Mr. Grant went to get the children at the matrimonial home. On one occasion he even came to the Grant home with his wife when Mr. Grant and Ms. Thompson had a dispute in the early hours of the morning or vary late evening.

[22] It will be relevant later as I discuss the issue of business assets and pursuit of careers but I point out here, because I am discussing Mr. Gilby and Ms. Thompson, Mr. Grant's evidence is that throughout the marriage Ms. Thompson made it clear that she had her own goals and ambitions in terms of her career. There was nothing she did in terms of the marriage that appears to have negatively affected her career or employment opportunities. The negative consequences in terms of career, appear to have been the result of bad choices she made herself. This includes the substantial time and resources, even family resources, expended while she and Mr. Gilby allegedly pursued a joint business venture that went nowhere.

[23] Mr. Grant is entitled to make child care arrangements for the children as he deems appropriate. These arrangements are not to be interfered on a regular basis by Ms. Thompson.

[24] Ms. Thompson has requested joint custody including the right to be involved in major developmental issues. I expect Mr. Grant to keep her informed on major issues but I am not satisfied that it would be in the best interest of the children that there be joint custody. Ms. Thompson has misled Mr. Grant on a number of child care issues, for example saying she was going to PEI with the children and instead went camping with Mr. Gilby. She removed the children from the province requiring court intervention to have them returned. On occasion she has changed medical appointments to exclude Mr. Grant. She has attempted, in a malicious way, to undermine Mr. Grant and those who chose to assist the children in seeing the other parent. I could go on to list a number of other inappropriate actions by Ms. Thompson. I cannot imagine that Mr. Grant would be able to discuss major issues and go forward in a joint custody arrangement with the threat of unfounded allegations hanging over him. I am satisfied that joint custody is not a viable option at this time. Mr. Grant will have sole custody subject only to access as set out by the court in my oral decision.

[25] I advised the parties during the oral decision that Ms. Thompson was to pay child support based on table amounts for the two children. That amount is to be based on her Employment Insurance benefit amounts. I understood counsel were able to agree on what Ms. Thompson's income was at the time of the hearing. Unless or until varied, child support will be based on the employment insurance amounts Ms. Thompson was receiving at the time of trial.

Matrimonial Home

[26] The matrimonial home was acquired by the parties during the marriage. After separation they had agreed to have the property appraised, and agreed on an appraiser. That was Mr. Keith MacInnis, a certified real estate appraiser with Weatherby Appraisals. It was the opinion of Mr. MacInnis that the market value for the matrimonial home was $89,000.00. Mr. Grant's position, in his pre-trial memorandum and at trial, was that he was prepared to divide the matrimonial property, assets and debts, using a value of $110,000.00 as opposed to the $89,000.00 as suggested by Mr. MacInnis.

[27] Ms. Thompson was not prepared to accept the value of $89,000.00 or $110,000.00 as being appropriate. She retained another real estate appraiser;

Mr. Paul Young. He suggested the property was worth $160,000.00. This valuation however assumed that there were substantial repairs and renovations to be made prior to a sale. There were quotes for some, but not all, of the cost of the renovations and repair. I find the true value of the home is closer to that as opined by Mr. MacInnis than the amount as suggested by Mr. Young. As I have already mentioned, Mr. Young acknowledged a number of repairs that were required to the matrimonial home including installation of a new oil furnace and oil tank. Mr. Young did not appear to be aware of the fact that in addition to the oil tank and oil furnace a new chimney and flue liner would also have to be installed. Mr. Young also assumed repairs to the laundry room would be completed. He did not cost any of the repairs nor was there evidence at trial as to the cost of all required repairs.

[28] In addition, there are a number of issues in relation to the property that Mr. Young either did not mention in his report, take into account, or perhaps was not aware of at the time he prepared the report. These included the fact there was no road frontage for the property. The property is serviced by a driveway over which the parties have a right-of-way. The area over which the right-of-way crosses is owned by a landscaping company and used by

that company. It also services adjacent farmland. From time to time there is substantial damage to the driveway. I agree with Mr. MacInnes, some buyers may be deterred by the lack of road frontage or a driveway which they would not own.

[29] There are a number of deficiencies in the property which, according to Mr. MacInnes affect the value. I note, for example, the fact the well freezes in the winter and the water must be left running to prevent freezing at the well head.

[30] As noted by Mr. MacInnis, after the couple purchased the home in 2004 they did a substantial amount of renovation. There are a number of new windows, but a number of old windows remain in the matrimonial home and need replacing. In addition, there are areas where the siding does not join up to the windows because the original windows were replaced with different size windows. It would appear that once all of the windows are replaced there will have to be new siding installed.

[31] I agree with Mr. MacInnis that the heating system and repairs that I refer to above would be of grave concern I would expect for just about any prospective purchaser. The only heating system in the matrimonial home at

this time is an exterior " wood doctor" furnace which requires constant attendance. If there is no one home to put wood in that external furnace there is no alternative heat. It was noted by Mr. MacInnis, demand for this type of property in that area is not good. In summary, this is an older home that needs fairly substantial renovations in a remote location with no private driveway and no automatic heating system. All of these things effect the value of the home.

[32] The subject property is not in or near a subdivision or a subdivision neighbourhood. I am satisfied Mr. Young inappropriately used a value based on the subject property being located in an area which was fifty percent built up. In fact, as noted by Mr. MacInnis in his appraisal, this property is in a rural location which has very few houses around it. Mr. MacInnis used a figure of less than twenty-five percent built up. It is more appropriate than the figure of fifty percent as used by Mr. Young.

[33] I also accept the evidence of Mr. MacInnis that the cost approach is more relevant to newer homes. In fact real estate appraisers are advised by their insurers that a cost approach should not be used on houses that are over ten years old. I accept Mr MacInnes' evidence that it is a tool that is not sophisticated enough to use on houses that are 100 years old or more. The

result is that the cost approach used by Mr. Young, to supposedly verify his comparative approach, is of little assistance or relevance.

[34] As I considered the comparison approach as referred to in the two appraisals, there are some difficulties with Mr. Young's comparables. For example, he referred to a property in the Belnan area which is much closer to Elmsdale than the subject property. Elmsdale is a relatively built up area with shopping centres and a number of services. Mr. Young adjusted that Belnan property up so as to make it equivalent to the subject property. I am satisfied there are a number of things which suggest that subject property in fact was a lower value. For example, the Belnan property included fridge, stove, washer, dryer, dishwasher, and a hot tub. That property had been substantially renovated. As I listened to the evidence of Mr. MacInnis, I accepted his evidence that the Belnan property was in fact superior to the subject property and not inferior as suggested by Mr. Young.

[35] Mr. Young, in his report, refers to the subject property as being above average. As suggested by Mr. MacInnis, I am satisfied that the subject property is average or below.

[36] In summary I conclude this aspect of the case by indicating that I am satisfied the matrimonial home is more accurately valued in the appraisal as

prepared by Mr. MacInnis as opposed to that as prepared by Mr. Young. Having said that, I am prepared to accept the $110,000.00 valuation as indicated by Mr. Grant as being the basis upon which he is prepared to divide matrimonial property, assets and debts.

[37] Subject to a determination on the issue of costs, division of matrimonial property shall be as set out in Schedule "A" to the Respondent's brief dated April 20, 2009 as annexed hereto.

Grant Farm Property

[38] Ms. Thompson suggests she is entitled to a division or share of the Grant Family dairy operation. She suggests she is entitled to this division under various provisions of the **Matrimonial Property Act**. She suggests Mr. Grant acquired his interest in the farm property as a result of her indirect contribution and efforts. Also, Ms. Thompson in her evidence testified that throughout the years of the marriage she worked extensively on the Grant family farm doing things, including assisting in the milking of the cows, cleaning stalls and assisting in the making of hay, receiving and delivering fax and telephone messages. This evidence is in stark contradiction to the evidence of David Grant and many others. The evidence of David Grant's

father, other farm workers, and other members of the Grant family, is that Ms. Thompson did attend at the farm on a regular basis with the children of the marriage but that she did not regularly work at the farm. The evidence is that over the period of the marriage, by any account, other than the evidence of Ms. Thompson, Ms. Thompson would have done no more than a few hours work, in total, on the farm.

[39] In addition, Ms. Thompson suggested that she regularly took phone calls and arranged for feed samples and feed sample reports. I accept the evidence of those witnesses who challenged Ms. Thompson on these points. Most farm faxes were sent or received at alternate locations away from the parties home. These locations included a local farm equipment sales outlet and the local co-op. There were relatively few faxes sent or received from David Grant's house. In addition, I accept the evidence of David Grant that, at most, if a fax did come to his house on their home fax machine it was simply a matter of Ms. Thompson taking a piece of paper from the fax machine to place it someplace in the matrimonial home for him to pick up later. As to the feed reports the vast majority were prepared and delivered by an employee of the feed supplier. I am also satisfied the vast majority of

phone calls that were made in relation to the farm operation went to Mr. Grant's parent's house. Very few went to David Grant's house.

[40] Ms. Thompson also suggested she assisted in searching out grants for summer employment, etc., in relation to the farm. I accept the evidence of all the owners and co-owners of the Grant farm property that they never did have summer employees. In addition, I am satisfied the particulars of the "Grant farm milk quota" was something that Ms. Thompson could not access without security codes which she never had. If she did view any milk quotas online, it was the public information which could be viewed by anyone wanting to do so. It was out of her own curiosity or interest as opposed to doing it as part of any of the Grant farm operations.

[41] On many occasions Ms. Thompson would go to the farm to see Mr Grant and take the young children. On the very rare occasion she may have put a few shavings in the calf stalls or do something else minor. Most often she was just there with the children for a visit. Many of those visits occurred when she was dressed in business attire and just stopping by on the way home from work.

[42] In conclusion, I do not accept any of the evidence of Ms. Thompson in relation to the work she suggests she did in the Grant farm operations unless

it was confirmed by someone else. I accept the evidence of Mr. David Grant and others that Ms. Thompson's involvement was notional or nominal at best. It was so insignificant that it could not be said to contribute in any meaningful way to the farm operations prior to, or since, Mr. David Grant acquired an interest in the Grant farm corporations. In other words, I simply do not believe the evidence of Ms. Thompson in this regard. Her evidence as to contribution is **grossly** exaggerated. The contributions were not such that they could have earned her an interest in the farm business.

[43] Having said that, I am satisfied it is necessary to still examine the nature of that farm operation and determine whether the shares in the corporations could be said to be matrimonial assets and subject to division. One important fact to be noted is in relation to any allegation Ms. Thompson makes in terms of her alleged contribution to the farm is that for the vast majority of the marriage Mr. Grant was simply an employee of the Grant family farm corporation. He worked for a salary as any other employee. That employment did not entitle him to any shares or interest in the farm operations. His only entitlement, according to his evidence, and even the evidence of Ms. Thompson, was that he earned a salary. Even if Ms. Thompson were doing some of the things that she suggests, prior to the

formation of the Grant farm corporation and the acquisition of shares by the Respondent, it would not be earning her or Mr. Grant any interest in the farm operation. It was only after the formal restructuring occurred a few months before the parties separated, that the Respondent acquired an interest in the farm. The share acquisition and new corporations were set up in such a way that in reality David Grant will be working and paying for those shares over a period of at least 18 years. In the meantime, I am satisfied his shares and the companies are business assets as referred to in section 4(1)(a) of the **Matrimonial Property Act.** That is, they constitute property primarily used or held for, or in connection with, commercial, business, investment, or other income-producing or profit-producing purposes. The shares and share structure have not resulted in any windfall to Mr. Grant. His acquisition is, at best, contingent on being able to pay the very substantial liability attached to the shares over a period of 18 years from the time of acquisition. That means the acquisition of the assets is subject to the risks and uncertainties associated with farming. The acquisition was not financed using matrimonial assets of the parties. If the shares are not paid for in the next 18 years (now just under 17 years) Mr. Grant will have nothing. Mr. Grant did not earn the right to acquire the shares as a result of

the work he, or Ms. Thompson, did prior to separation. It was only because of the fact that he was a member of the Grant family, and the owners of the farm wanted the operation to remain in the family that they reorganized the corporate structures in a way that allowed David Grant and his brother to acquire a part interest in the corporations over a period of 18 years.

[44] A couple of years prior to the marriage break-down Mr. David Grant and Mr. Grant's uncles and father, along with Mr. Grant's brother, started discussing a possible means to transfer the farm so that it could be maintained in the Grant family. Some of the farm lands have been in the Grant family since the 1700's. The desire to retain the farm in the Grant family appears to have been a very substantial, if not the main goal, in the restructuring process. Approximately seven months prior to the parties separating, there was a complex corporate arrangement whereby Mr. Grant and his brother acquired shares in the farm corporation. That farm corporation is a means for David Grant and his brother to acquire the farm over a period of 18 years from the period of the initial corporate re-organization. Very little of that, if any, was acquired during the marriage.

[45] Ms. Thompson now asserts she is entitled to a division (one half) of the shares of Mr. David Grant in spite of the fact that he will only truly own the shares 18 years from the initial date of restructuring. Ms. Thompson's request is, in essence, that David Grant forfeit half of that 18 years of work to her immediately.

[46] Alternatively, Ms. Thompson, through counsel, suggests that there is a present value in the farm of approximately 1.7 million dollars of which Mr. Grant, the Respondent, is entitled to half. Ms. Thompson has asked that the Court immediately order that she be entitled to one-half of Mr. Grant's present interest in the farm property.

[47] I am not satisfied there is reliable evidence as to the true value of the company in question. The 1.7 million dollar figure is based substantially on the evidence of Mr. Horwich who testified on Ms. Thompson's behalf. He is a Chartered Accountant. In arriving at the 1.7 million dollar figure Mr. Horwich did not take into account any disposition costs, nor did he take into account tax implications. In addition, Mr. Horwich used book values for the equipment. He did not appear to be aware of, nor take into account the fact, that the book values included a worthless robotic milking system that was still on the books of a value of approximately half a million dollars.

That robotic milking equipment became worthless when the manufacturer/distributor went into receivership. The robotics can no longer be serviced so it is now a completely worthless piece of equipment.

[48] The corporation, as I have indicated, was established so as to allow for a succession within the Grant family. This was important to the entire Grant family as witnessed by the fact that the initial meeting to discuss the transfer into this corporation was attended by all Grant relatives. It had to be held at a local Church hall because it was the only venue in the area that would accommodate all of the Grant relatives. One of the most important aspects of the transfer mechanism was the property would remain in the Grant family. As part of the restructuring there is an agreement which requires in the future that the property be maintained in the Grant family. Shares are subject to rights of first refusal for other members of the Grant family should either David Grant or his brother decide they wish to dispose of their interest.

[49] I am not satisfied it was appropriate for Mr. Horwich to use a fair market value selling into a free and open market the corporate arrangement and structure. The agreements in place essentially limit the right to sell into the free market. In addition, the valuation as placed on the equipment assumes

an orderly liquidation but it does not appear to take into account the fact this farm operation represents approximately ten percent of the entire milk quota for the Province of Nova Scotia. I understand this operation may be the second largest dairy operation in the Province of Nova Scotia. An infusion of that much milk quota into the market may well have a very drastic impact on milk quota value in the Province. As such, I am not satisfied it is anything other than speculation by Mr. Horwich that the milk quota values, as represented by historic value quotations he relied upon, would in fact apply if this operation was sold into the dairy market in Nova Scotia. In addition, Mr. Horwich agreed in his evidence that there would be a question as to whether or not, even with an orderly disposition, the operation could maintain itself as it disposed of milk quota in the open market.

[50] The end result is that I am not satisfied the figures as suggested by Mr. Horwich are indeed proof of the value of the shares at this time. Perhaps the best and only indicator as to market value is what Mr. David Grant and his brother were prepared to pay to obtain the operation and what two of Mr. Grant's uncles were prepared to sell for. I refer to the fact that Mr. David grant indicated to the Court they are paying as much as they feel the corporation can afford, to acquire the shares of the uncles who are disposing

of their interest. It will take them 18 years to acquire their uncles interest. Mr. Horwich placed a value on the common shares of Grant Holdings 1983 Limited at 1.775 million dollars as of September 1, 2007. I have already noted the fact that he referred to the book value in relation to the valuation of the assets. Mr. Horwich referred to the fact there is an obligation on the company to pay 6.073 million dollars over 18 years to redeem shares of Peter Grant, Donald Grant and Wilfred Grant. As I noted, Donald Grant's shares were not being redeemed.

[51] Fair market value is defined in the Horwich report as:

> The highest price available in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act, expressed in terms of money.

[52] As noted at page 9 of the report as prepared by Mr. Horwich:

> Our estimate of a fair market value in a notional market must be differentiated from the concept of price. Actual transaction prices for a particular business asset can vary due to such things as different negotiating strengths, unequal motivation to transact and the purchase consideration being other than cash. As a result, the price at which a sale of the business might take place may be higher or lower than the notional fair market value estimated herein.

[53] I acknowledge the point Mr. Horwich was making when distinguishing as between the notion of price versus fair market value. The problem for Mr. David Grant is the sellers in this case, his uncles, imposed upon him, (and he agreed to) a scheme which now limits the price he could expect to obtain through a sale. In other words, the fair market value must take into account the terms attached to the shares in the collateral agreements. In accordance with the terms of the applicable agreements the shares cannot be sold into an open market.

[54] I have already noted that in the present case the entire share structuring and transfer was predicated upon keeping the Grant farm holdings in the Grant family. To that end there was an option, assignment, and acknowledgment, agreement made on February 15, 2007. The objective of the parties in that agreement was to ensure the farm stayed in the Grant family. This was important to the entire Grant family. It was noted by Mr. Grant that some of the lands which make up the farm have been in the Grant family since the original Crown grants in the 1700's.

[55] There appears to be another major problem with the valuation. It assumes that Donald Grant’s interest in the farm is being acquired over the 18 year period the same as the interest of the two uncles. The Grant farm was owned

by Donald Grant and his two brothers prior to the restructuring. Mr. Donald Grant was clear and unequivocal in his evidence, his interest is not being acquired by the Respondent and his brother. Mr. Horwich was not able to give evidence as to the particulars of the preferred shares held by Donald Grant in the restructuring. According to my understanding of the evidence, as noted at page 17 of the Petitioner's pretrial brief of April 7, 2009, they assumed Donald Grant's interest was being acquired at this time. The evidence of Donald Grant was clear and emphatic, under the restructuring scheme he is not being paid and he retains his interest in the farm operations through the preferred share arrangement.

[56] At best, it is not clear this was something that was taken into account by Mr. Horwich. At worst he appears to have overlooked a one third interest in the entire operations. This would not appear to have been a matter of oversight but instead, the result of him offering a valuation without know the full details in terms of the share structure arrangements. Mr. Horwich did not appear to have had all of the particulars as regards the nature of the preferred shares held by Donald Grant and the effect those shares might have on the value of David Grant, or his brother's shares, or the value of the corporations themselves.

[57] In conclusion, I am not satisfied the evidence of Mr. Horwich assists the court in determining the fair market value of the shares held by David Grant.

[58] I am satisfied the shares Mr. David Grant holds in the farm corporations are business assets. Ms. Thompson's counsel suggests Ms. Thompson should now be entitled to fifty percent of all of the shares, or half the value of all shares, held by David Grant in those corporations. As I have already noted, I am unable to ascertain the value of the shares held at separation. In addition, if I were to agree that would mean Mr. David Grant would have to work for the next eighteen years to pay for those shares and acquire his half of those shares knowing full well that he was working in large part for Ms. Thompson, not himself. As noted in **Young v. Young**, 2003 NSCA 63 paragraph 15:

> There is no presumption that business assets be divided equally, or at all. Under s. 18 the division of a business asset is made solely in accordance with the contribution of the non-owning spouse to the business asset, ignoring the relationship of the parties."

[59] I have already noted that, contrary to Ms. Thompson's suggestion, she did virtually no work and made no contribution directly, or indirectly, to the farm operations. Ms. Thompson even grossly exaggerated the role she played in the restructuring process itself. While she would have the court believe that she was an essential cog in this complex process, I am satisfied that she was simply kept informed by David Grant as the restructuring continued. She knew it was occurring but not much more. The one meeting called to deal with her was when the restructuring advisor wanted to meet with David Grant, his brother, and their respective spouses, to discuss a possible post nuptial agreement. I accept that at the meeting David Grant said in effect he did not need such an agreement and that Ms. Thompson said she would not be seeking an interest in the farm should their marriage fail. The matter was never dealt with.

[60] In terms of the farm operations, throughout the vast majority of the marriage and relationship, the best that can be said is that Ms. Thompson enabled Mr. Grant to continue his work on the farm **as an employee only** by assuming some of the child rearing duties at home. In reality the only relevant period is from the date of restructuring to the date of separation, a period of some seven months or so. Her contributions to the farm operations

in that period were no more than in the years before and are best described as nominal. It would be unfair **in the extreme** to now order that Ms. Thompson be awarded a 50% interest in the farm corporations based on that nominal contribution over a few months. This is especially true in view of the fact that Mr. Grant will have to work for almost 18 full years post marriage to pay for that asset.

[61] This is not a case such as **Mood v Mood**, [1997] N.S.J. No. 531 where the wife made a substantial contribution towards the day to day operations of the company and hence earned a 12.5% interest in the value of the operation. Here the contribution was so small as to be almost immeasurable when compared to what Mr. Grand did and will have to do over 17 years or so.

[62] I note that Mr. Grant's evidence is, and I accept his evidence, that throughout the marriage he also played a very active role in the rearing of these children. This allowed Ms. Thompson to pursue her career. Throughout the entire marriage, even after Mr. Grant became a co-owner of Grant Holdings 1983 Limited, Ms. Thompson pursued her chosen career. She basically decided where and when she wanted to work. She pursued potential business opportunities with Mr. Gilby. I have already referred to the fact Ms. Thompson was very insistent in some of the things that she

would do in relation to Mr. Gilby and their business aspirations. For instance, it was demanded by Ms. Thompson that Mr. Grant leave the matrimonial home on a regular basis so that Ms. Thompson and Mr. Gilby could supposedly work towards developing a home sales business. He described one incident wherein he called and said he was going home early and brought Mr. Gilby and Ms. Thompson coffee. He went on to explain that Ms. Thompson was extremely upset that he would dare to come home early and interrupt their meeting.

[63] Clearly this is not a case where Ms. Thompson earned a share in the corporation by virtue of her contribution. Alternatively, the role she assumed in the marriage did not enable Mr. Grant to further his career at Ms. Thompson's expense. There is no justification under any provision of the **Matrimonial Property Act** for allowing Ms. Thompson to acquire any share of this business or any amount of money related to the value of the shares held by Mr. David Grant, even if a value could be established.

Spousal Support

[64] I am not convinced that Ms. Thompson is entitled to any spousal support. I say this for a number of reasons. Mr. Grant has custody of the children of the marriage. That is his primary responsibility. Based on Ms. Thompson's

actions to date it would not appear the financial support of the children has been a priority for her. In the immediate future the major burden in terms of costs of raising the children will fall to Mr. Grant. That has been the case since the separation. His income is less than $50,000 per annum. He has been servicing the vast majority of matrimonial debt including the matrimonial home. Mr. Grant simply has no ability to pay spousal support while he is raising the children.

[65] Even if he had the ability to pay, I am not satisfied this is a case where spousal support would be appropriate. Ms. Thompson has made a number of career choices during the marriage and since the separation. Her career appears to have been affected more by her choices rather than the role she assumed during the marriage. Ms. Thompson worked throughout the marriage other than two years maternity leave. She did not become unemployed until after the marriage breakdown. There has been economic hardship for both parties as a consequence of the breakdown of the marriage. Mr. Grant, however, appears to have born the brunt of the bill paying and expenses since the separation. Mr. Grant is not to now be burdened with the cost of Ms. Thompson’s bad choices.

[66] During the marriage Mr. Grant worked on the farm, often working long hours in certain seasons but a trade off was that he was more available in other seasons and he had flexibility in terms of child care not enjoyed by Ms. Thompson. In the slower farm seasons he assumed a large part of the parenting duties during the marriage. Certainly he has made the children his priority since the marriage breakdown. Ms. Thompson did not make substantial career sacrifices for Mr. Grant's career or acquisition of the farm corporations during or since the marriage. Ms. Thompson grossly exaggerated her work and involvement in the creation and acquisition of the farm corporations. What she did was more in the nature of attending information meetings. Neither materially interfered with nor furthered the others dream careers. What Ms. Thompson did by way of contribution, direct or indirect, was at least offset by what Mr. Grant did in terms of contribution to the family, Ms. Thompson and her career. As I have noted, Ms. Thomson's career appears to suffer more from the bad choices she has made, as opposed to the impact of the marriage and the roles she and Mr. Grant assumed therein. There is no spousal support payable by either party.

Costs

[67] Counsel have asked that I reserve on the issue of costs and implementation of the division of matrimonial property until after they have viewed my decision. I agree that is an appropriate request. I will hear from the parties by written briefs if they cannot agree on costs. Briefs on costs will be filed within one month of the date of this decision.

J.