

SUPREME COURT OF YUKON

Citation: *V.M.R v. S.G.*, 2015 YKSC 16

Date: 20150408
S.C. No.: 13-B0016
Registry: Whitehorse

BETWEEN:

V.M.R.

PLAINTIFF

AND

S.G.

DEFENDANT

Before the Honourable Mr. Justice L.F. Gower

Appearances:
Kelly McGill
S.G.

Counsel for the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] GOWER J. (Oral): I have heard the submissions of Ms. McGill and I have heard what Mr. G. has said on his own behalf.

[2] A good deal of what Mr. G. has said today involves disputes about evidence. Unfortunately, Mr. G. has not filed any affidavit material of his own, other than his first affidavit which was filed several years ago in this proceeding. Since then, he has not had counsel and has not filed any material on his own behalf, which is not the way that things need to be done. In order to get evidence before the Court, it is not permissible

for Mr. G. to just simply contact the Court by phone and tell his side of the story. He needs to put that story in the form of sworn evidence in the form of an affidavit, or show up here and be sworn under oath and testify from the witness box. He has not done that.

[3] An example of such a dispute in the evidence is the allegation by Ms. R. that Mr. G. intentionally wrecked certain things inside the house while he was overstaying his right to occupy the house. And I am referring now to Ms. R.'s affidavit no. 5 where she said at para. 5:

The sale to Ms. Buyck...

[4] -- who is the ultimate purchaser --

...did not happen because Ms. Buyck did not remove the insurance and inspection conditions on the contract of purchase and sale. I spoke to Ms. Buyck and asked her why she did not remove these conditions. She informed me that she was aware that the Defendant had hosted a "house wrecking party" at the Family Home the weekend prior to the condition removal date and that she was not prepared to remove the conditions given those circumstances.

[5] Now Mr. G. disputes that.

[6] But, in corroboration of that allegation, Ms. R. has appended to her affidavit filed March 6, 2015, numerous photographs of the interior of the home. These include one showing the removal of the kitchen stove and fridge from the kitchen, which would normally be considered fixtures and things that should have remained in the home.

[7] I am satisfied that these pictures tell a thousand words and that they belie Mr. G.'s version of the facts, which was simply that this was normal wear and tear. This is far, far more than normal wear and tear in my view and supports the claim by Ms. R. for the repairs to be compensated.

[8] In terms of the issue of the legal fees, Mr. G. says that this matter could have been settled long ago out of court. The fact is it was not.

[9] I have been the presiding judge on a number of the previous applications, on at least three of the previous orders, plus today's application. I am familiar with the background and my memory of the background is that Mr. G. has been difficult to deal with throughout. I am referring here to para. 16 of Ms. R.'s affidavit of March 6, 2015:

I am also seeking the costs of my court application. This matter has been ongoing for several years. I have had no cooperation from the defendant at all and have had to obtain numerous court orders to get him to take any action. I have exhausted myself financially and emotionally simply trying to deal with the Family Home and get my fair share of this family asset.

[10] I view that as an understatement of the reality of this tortuous, long-drawn-out ordeal from the point of view of Ms. R. I am satisfied that her application for lump sum costs in the amount of \$6,075.90 is an appropriate application.

[11] In terms of the future lump sum child support, Mr. G. says that his work situation has changed in the last few months and that he intends to bring an application to vary the amount of child support ordered by the Court on December 3, 2013, which was \$418 monthly, based on his then income of \$48,000.

[12] He may well do that -- and that may affect his ongoing responsibilities regarding his 16, almost 17-year-old child -- but that does not amount to a good reason not to make an order compelling him to pay a lump sum to the Maintenance Enforcement Program. I assume those monies will be held in an interest-bearing account for the parties' mutual benefit -- and ultimately, for the benefit of the child -- and those monies can be credited against any future variation of the monthly amount.

[13] I think the simple fact of the matter that Mr. G. has been in arrears for some 18

months, according to the most recent information from the Maintenance Enforcement Program, together with the extent of the enforcement action that they have had to take, is the best indicator of Mr. G.'s future prospects of complying with his ongoing child support obligations. It is in the best interests of the child to have those monies on deposit so that they can be paid out on a regular basis.

[14] I recognize that there is some authority for the lump sum order regarding child support, in the case of *Aubry v. Thurber*, 2008 BCSC 1060. I have taken that case into account, as well as the authority of the Court under ss. 38(1)(b) and (d) of the *Family Property and Support Act*.

[15] Now to Mr. G.'s credit, he has agreed to a number of the requests made by Ms. R.

[16] Firstly, he has agreed that the mortgage arrears and costs, which were paid by Ms. R. for the time period when Mr. G. was ordered to pay those costs, but failed to do so, in the amount of \$1,850, should be paid out of his share of the sale proceeds. I credit him for acknowledging that responsibility.

[17] I did not hear any dispute about Mr. G.'s one-half share of the costs in para. 15(iii) of Ms. R.'s most recent affidavit, which is in the amount of \$2,245.65, those being half of all the costs associated with the family home since she took possession, after deducting rental income. As I say, I did not hear any objection from Mr. G. to those coming out of his share of the sale proceeds, and I credit him for that as well.

[18] In fact, Mr. G. agreed that the arrears of child support as of the date of this order -- and that amount may vary from what is in Ms. R.'s last affidavit, given that certain monies have been received by Maintenance Enforcement since then, but it will

be very easy to confirm whether the amount is \$6,541.43, as Mr. G. says, or some other amount as of today's date -- that that sum be paid to Ms. R. for the benefit of the child out of Mr. G.'s portion of the sale proceeds.

[19] Again, I credit him for stepping up and acknowledging his responsibility for those matters.

[20] In terms of the costs to repair the family home, given my earlier comments about the apparently intentional damage to the home, I am satisfied that those should be repaid to Ms. R., as set out in para. 15(ii), out of Mr. G.'s share of the sale proceeds in the amount of \$3,980.50.

[21] Regarding future lump sum child support, that would be based on the existing order, which is \$418 monthly for a period of 31 months, resulting in a total of \$12,958. I agree that that is appropriate to be paid to Maintenance Enforcement for the reasons I have said earlier. That will come out of Mr. G.'s share of the sale proceeds as well.

[22] I think I already dealt with costs, Ms. McGill?

[23] MS. MCGILL: You did, Your Honour.

[24] THE COURT: All right.

[25] MS. MCGILL: Just one final thing that -- I believe we need the Court to order that the sale transaction come out of the proceeds --

[26] THE COURT: The legal fees for the sale?

[27] MS. MCGILL: Yes.

[28] THE COURT: Yes, those can be deducted from the net sale proceeds.

[29] So, in fact, what is happening there is that each party is sharing equally in the legal costs for the sale of the home. That will result in net sale proceeds of \$61,306.56.

Those proceeds will be divided equally on a notional basis, but subject to the orders that I have just made, a number of further costs will be coming out of Mr. G.'s equal share of those sale proceeds.

[30] The last thing I will say is I will dispense with the signature of Mr. G. approving the form of the order, but I will direct that it come up to me for personal review before it is issued.

[31] Anything else, Ms. McGill?

[32] MS. MCGILL: Your Honour, I can also include in the order, as has been previously ordered, that a copy of the order be forwarded to Mr. G. at his email address, which seems to be the most efficient way to get --

[33] THE COURT: So ordered.

[34] MS. MCGILL: I can also mail him an order.

[35] THE COURT: Thank you for participating, Mr. G.

GOWER J.