

1994 CarswellAlta 786, [1994] A.W.L.D. 989, [1994] W.D.F.L. 1791

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Paterson v. Paterson

Lawrence Ralph Paterson, Plaintiff and Maria Rosario Duque Paterson, Defendant

Alberta Court of Queen's Bench

Waite J.

Judgment: November 4, 1994

Docket: Calgary 9301-11194

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Counsel: *Ms. L.J. McMurchie* for Plaintiff.

Ms. D.P. Castle for Defendant.

Subject: Family

Mr. Justice J.H. Waite:

- 1 The parties are before the Court for judgment pursuant to the provisions of the *Matrimonial Property Act*.
- 2 They were married July 31st, 1971, separated on July 22nd, 1992, and divorced by a judgment of this Court granted on March 17th, 1994.
- 3 The only outstanding issue from the divorce proceedings is the question of corollary relief for the son who was born October 20th, 1974, and for whom the wife advances a claim for maintenance for the period from July 1st, 1993 to judgment.
- 4 The parties reached substantial agreement on a variety of issues involving the matrimonial property. Regrettably, some issues could not be resolved and a trial was necessary. It is proposed to resolve hereunder the issues that were beyond settlement and then apply the results of that determination to the matters that were resolved by agreement, and thereby determine all issues under the *Matrimonial Property Act* as well as the outstanding corollary relief matter.
- 5 These are the issues upon which the parties could not agree:
 1. Exemptions claimed by the wife.
 2. Exemptions claimed by the husband.
 3. The claim by the wife for maintenance for the son as and from July 1st, 1993. In essence, this is a claim for retro-

active maintenance since as of July 1st, 1973, there was no outstanding agreement for maintenance and no interim order.

4. Claim by the wife for a contribution by the husband for payments made by the wife on the matrimonial home, including mortgage payments, municipal taxes and house insurance. The wife was in occupation of the matrimonial home since the date of separation.

5. The question of interest on two outstanding claims jointly owed by husband and wife, one such claim being in favour of the wife's mother and the other such claim being in favour of the son of the marriage.

6. Valuation of the shares in 266852 Alberta Ltd., a holding company jointly owned by husband and wife.

7. Valuation of the contents of the garage at the matrimonial home.

6 A distribution of property under the statute depends upon the resolution of those issues.

Exemptions Claimed by the Wife

7 This claim is itemized on Exhibit 7 and includes the sum of \$5,000.00 claimed by the wife as a pre-marital gift to her by her father, the sum of \$265.00 for pre-marital property still in existence and in her possession, and \$3,475.00 as "heirlooms" in the possession of the wife.

8 All claims fail except that for the sum of \$265.00.

9 The claim for \$5,000.00 fails, apart from any other reason, because that cash amount cannot be traced to matrimonial property in existence at the present time.

10 The claim for \$3,475.00 as "heirlooms" fails because the three items of property included in that valuation were property purchased by the parties after marriage. The designation "heirlooms" is a characterization by the wife of those assets on the ground that she wants those assets given to the son. Such a gift is not sanctioned by the provisions of the *Matrimonial Property Act*.

11 Accordingly, the wife's claim for exemptions is allowed in the sum of \$265.00 and is fulfilled by granting to her four items of property named in paragraph 2 of Exhibit 7.

Exemptions Claimed by the Husband

12 His claim for exemptions is specified on Exhibit 5 and has a valuation of \$985.00.

13 That claim is established by the evidence. Indeed, there was no serious challenge by the wife to that claim. The items specified on Exhibit 5 will become the sole property of the husband in satisfaction of his claim for exemptions and will reduce the total value of the contents of his apartment from the sum of \$7,372.00 to the sum of \$6,387.00.

The Wife's Claim for Maintenance for the Son

14 This claim is in the sum of \$8,000.00 calculated at \$1,000.00 a month for the 8 months from July 1st, 1993 to the month of February 1994, both months inclusive.

15 There had been a maintenance agreement which terminated at the end of June 1993. There are no arrears under that

agreement.

16 During the 8 months claimed, the son had been but a part-time student and had otherwise been remuneratively employed. During that same period, the husband had made to or for the son a variety of payments totalling approximately \$1,800.00.

17 This is not a case in which a claim for retroactive maintenance for an adult and part-time student has any legitimacy. This claim is disallowed.

The Wife's Claim for Contributions to Taxes, House Insurance, Mortgage Payments, etc.

18 This claim is itemized in paragraphs 1-8 inclusive on Exhibit 8 for the total sum of \$7,966.20.

19 The wife has been in occupation of the matrimonial premises since separation on July 22nd, 1992. During that period the husband gratuitously paid all outstanding household accounts and made a variety of other gratuitous payments to or on behalf of the wife, full particulars of which are contained on Exhibit 3.

20 This is not a case in which these various matters should result in a "cash register accounting" between husband and wife.

21 This claim by the wife is disallowed.

The Wife's Claim for Interest on Debts owed to Mother and Son

22 On June 28th, 1990, the parties borrowed \$10,000.00 from the wife's mother. The repayment of that amount is a debt jointly owed by the husband and wife.

23 On Exhibit 9, the wife claims the sum of \$12,319.40 due to her mother being the principal amount of \$10,000.00 and interest thereon to October 5th, 1994 in the sum of \$2,319.40.

24 There is no evidence of any agreement to pay interest. There is no evidence of any demand by the mother for interest.

25 The claim for interest is disallowed. Pursuant to the agreement between the parties set forth in Exhibit 1, the sum of \$10,000.00 will be paid to the wife's mother from the sale proceeds of the matrimonial home.

26 The wife claims that the sum of \$7,479.00 is to be repaid to the son. That amount includes the sum of \$5,860.00 borrowed from the son's trust funds together with interest from October 5, 1989 calculated at 5% for a total interest amount of \$1,619.00 as more particularly shown on Exhibit 10.

27 This is a legitimate claim for interest. The funds were borrowed by the parents when they were guardians of the son who was an infant at the time. Those funds should have been earning interest for the son since the date of their allocation by the guardians to property improvement. Justice requires that the amount be repaid with interest.

28 Accordingly, the sum of \$7,479.00 will be paid to the son from the sale proceeds of the matrimonial home.

Valuation of Shares in 266852 Alberta Ltd.

29 This is a holding company owned jointly by husband and wife.

30 Its assets consist of shares in another company with whom the husband is employed as a landscape architect, together with a 1955 Austin Healey motor vehicle.

31 That company is obligated to repay to Mr. and Mrs. Paterson, jointly, a shareholders loan of \$16,479.00.

32 Mr. Werner Haag, a chartered accountant, familiar professionally with both companies, valued the shares in the private company at \$37,273.00. That is a realistic and reliable valuation by a professional accountant familiar with all aspects of the company.

33 There is no other professional evidence of value.

34 The valuation of \$37,273.00 is accepted.

Valuation of Garage Contents

35 The contents of the garage include a vast number of parts removed from the 1955 Austin Healey motor vehicle owned by the numbered company, during the course of the reconstruction and restoration of that motor vehicle by the husband, with the assistance of the son, as well as component parts from three other motor vehicles, and one further motor vehicle in possession but not in running condition.

36 The valuation of those parts varied from the husband's estimate of value of \$6,000.00 to the sum of \$21,918.59 which is the evaluation of an expert in the field and is more particularly itemized and valued in Exhibit 4. The evaluation in Exhibit 4 is reliable. Furthermore, the wife agrees with it and indicated in her testimony that she would accept those parts at that valuation.

Evaluation of Matrimonial Property

37 The evaluation that follows does not include R.R.S.Ps. owned by the parties, nor the matrimonial home. The parties have reached agreement on the disposition of those assets, and further reference will be made to them in due course.

38 Having regard to the matrimonial property described in paragraph 6 of Exhibit 1, and adjusting the evaluation in accordance with the findings aforesaid, the matrimonial property is described in value as follows:

	Description -----	Valuation -----
(a)	266852 Alberta Ltd.	\$ 37,273.00
(b)	Shareholders Loan due from 266852 Alberta Ltd.	\$ 16,479.00
(c)	Contents of matrimonial home (\$9,950.00- \$265.00 exemptions)	\$ 9,685.00
(d)	Contents of husband's apartment (\$7,342.00 less exemptions of \$985.00)	\$ 6,397.00
(e)	Tools in possession of Mr. Paterson	\$ 798.00
(f)	Contents of garage	\$ 21,918.59
(g)	Cash surrender value of husband's life	

insurance	\$ 372.70
(h) Wife's Canada Savings Bonds	\$ 2,000.00

	\$ 94,923.29

39 Continuing to exclude values for the matrimonial home and the R.R.S.Ps., and recognizing the agreement between the parties that the matrimonial property should be equally divided, each party is entitled to a distributive share in the sum of \$47,461.65.

40 If the husband's share includes a transfer and delivery to him of the property described in (a), (d), (e) and (g) above, together with a one-half interest in the shareholders loan, he would receive matrimonial property of a total value of \$53,080.20 or the sum of \$5,618.55 over and above his fair distributive share. If the wife should have transferred or paid to her the property described in (c), (f), and (h) above, together with the sum of \$8,239.50, as one-half of the shareholders loan from the numbered company, she would receive matrimonial property of the value of \$41,843.09 or the sum of \$5,618.55, less than her distributive share.

41 In the result, that method of distribution would require a cash payment from the husband to the wife of the sum of \$13,858.05, representing one-half of the shareholders loan, together with the amount required to equalize the distributive shares as aforesaid.

42 As to the R.R.S.Ps. and the matrimonial home, the parties have agreed to a distribution of those assets in the following terms, as described in paragraphs 7 and 9 of Exhibit 1:

The parties have agreed that the matrimonial home will be listed for sale and sold as soon as possible. Either party shall have leave to apply to the court for directions with respect to the sale if necessary. Both parties will cooperate to facilitate a sale including maintaining the home, making it available.

The parties' RRSPs had the following values as at December 31, 1993:

11. Larry Paterson: \$43,652.08

12. Maria Paterson: \$5,268.07 + \$17,412.89 = \$22,680.96.

The parties have agreed that their RRSP's will be equalized by a rollover of \$10,485.58 from Mr. Paterson to Mrs. Paterson.

Distribution of Matrimonial Property

43 An order will issue in the following terms:

1. The interest of the wife in 266852 Alberta Ltd., including her portion of the shareholders loan, shall be transferred to the husband and shall become his sole property.

2. The contents of the husband's apartment, the tools in his possession, the life insurance policies, and the \$40.00 value painting of the Austin Healey shall become the sole and exclusive property of the husband.

3. The contents of the matrimonial home, including the contents of the garage, and the wife's Canada Savings Bonds, shall become the sole and exclusive property of the wife.

4. The husband shall forthwith take such steps as are necessary, which with such co-operation from the wife as may be required, to achieve the equalization of the parties R.R.S.Ps. in accordance with the agreement in paragraph 9 of Exhibit 1.

5. The parties shall take such steps forthwith as are necessary to list the matrimonial home for sale and to achieve a sale of that property. Both parties shall co-operate as required in the normal course of affairs to facilitate the sale. Until required to deliver vacant possession to a purchaser, the wife is entitled to maintain her occupancy of the home and she shall be required to maintain it until vacant possession, such maintenance to include mortgage payments, municipal taxes and house insurance.

44 From the net proceeds, there shall be paid to the mother of the wife the sum of \$10,000.00, and to the son of the parties the sum of \$7,479.00. The balance remaining shall be divided into two equal shares. From the husband's share, there shall be paid to the wife the sum of \$13,858.05. Payment shall be made to the wife and to the husband accordingly.

45 That either party is at liberty to apply to the Court for directions with respect to the sale of the home in the event that they are unable to agree with respect to the choice of a realtor, list price, acceptance of any offers or any other terms and conditions.

6. Costs may be spoken to on the application, in private chambers, of either party.

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