Court of Queen's Bench of Alberta

Citation: Wright v Lemoine, 2017 ABQB 395

Date: 20170623
Docket: FL01 23950
Registry: Calgary

Between:

Catherine Wright

Plaintiff

- and -

Terry Lemoine

Defendant

Reasons for Judgment

of the

Honourable Madam Justice K.D. Nixon

Introduction

[1] Ms. Wright seeks partner support from Mr. Lemoine pursuant to s. 57-58 of the *Family Law Act*, SA 2003, c F-4.5 [*FLA*], on the basis that they were in an adult interdependent partnership.

[2] The parties were never married. They have no children together. They agree that they met in August 2011 and began a conjugal relationship that Fall. The relationship ended on December 15, 2015. Ms. Wright is currently 52 years of age. Mr. Lemoine is 49.

[3] To qualify as an adult interdependent partner, the onus is on Ms. Wright to establish that she lived with Mr. Lemoine in a relationship of interdependence for a continuous period of not less than three years: s 3 the *Adult Interdependent Relationships Act*, SA 2002 c A-4.5 [*AIRA*].

[4] What constitutes a relationship of interdependence is defined in s1(f) of the *AIRA* as a relationship outside marriage in which any two persons:

(i) share one another's lives,

(ii) are emotionally committed to one another, and

(iii) function as an economic and domestic unit.

[5] Mr. Lemoine denies that the parties were in a relationship of interdependence. While he agrees that he and Ms. Wright shared one another's lives and were emotionally committed to each other, he denies that they functioned as an economic and domestic unit. Further, he denies that he lived with Ms. Wright for a continuous period of not less than three years. He says they did not cohabit in the same residence and, even if they did, they did not do so for a continuous period of at least three years. Lastly, Mr. Lemoine submits that even if he and Ms. Wright were in an adult interdependent partnership, she is not entitled to support.

Issues

1. Did the parties live together for a continuous period of at least three years in a relationship of interdependence?
2. If so, is Ms. Wright entitled to support from Mr. Lemoine?

Analysis

1. Did the parties live together in a relationship of interdependence for a continuous period of at least three years?

[6] At the time the parties met in August 2011, Mr. Lemoine was employed as a pipeline foreman and working in the area of Olds, Alberta. He travelled regularly for work throughout Alberta and British Columbia, and from time to time, in the North West Territories. He worked three weeks on and one week off. He owned a house in Saskatchewan, where he spent time during the holidays, but lived in hotels or at work camps while working. Ms. Wright, who was then living in Ontario, was in Olds attending to a coupon business she operated in the area. She was employed in Ontario as a Director of Sales for a phonebook company, but came to Olds every three months for her coupon business. While in Olds, she lived with her mother at her mother's house.

[7] The parties remained in contact after their initial meeting. They began a conjugal relationship in the Fall of 2011. In December 2011, Ms. Wright decided not to return to Ontario but to remain in Olds to pursue a relationship with Mr. Lemoine. I accept her evidence that Mr. Lemoine made this request of her. Their relationship had quickly developed into a serious one by late 2011. By December 2011, they were spending every night together in Mr. Lemoine's hotel.

He told her that he loved her. He gave her a substantial Christmas gift (a snow blower). He paid for plane tickets for her to join him at his house in Saskatchewan over the Christmas holidays.

[8] The parties' evidence diverged with respect to the frequency they spent time with each other during the course of their relationship. Mr. Lemoine kept a work diary in which he recorded where and when he was working, but not whether or when he saw Ms. Wright. I found Ms. Wright to be more credible than Mr. Lemoine with respect to the time the parties spent together. Mr. Lemoine repeatedly downplayed the time he spent with Ms. Lemoine in his direct examination. His evidence was successfully challenged in cross-examination when he was shown text messages between the parties. He also downplayed the nature of his relationship with Ms. Wright. For example, he described her in December 2011 as being merely "an acquaintance," though by that time the relationship was serious and he had asked her to move from Ontario.

[9] In early 2012, the parties continued to stay together in his hotel when Mr. Lemoine was working in the Olds area. When not with Mr. Lemoine, Ms. Wright stayed with her mother.

[10] In March 2012, the parties discussed finding a house in Olds to live in together, as it was anticipated that Mr. Lemoine would be working in the area for the following five years. As that work plan changed, Ms. Wright suggested that he purchase a trailer he could travel with that was large enough for both of them to live in. Mr. Lemoine agreed that a trailer would be more convenient than staying in hotels. Ms. Wright located a suitable trailer, which Mr. Lemoine purchased in April 2012. That month they spent three weeks living together.

[11] The parties continued to spend Mr. Lemoine's week off together in the Olds area in the trailer or, if he did not return to Olds with the trailer for his days off, in a hotel. Ms. Wright also travelled to Mr. Lemoine's work location to stay with him from time to time. When not with Mr. Lemoine, Ms. Wright continued to stay at her mother's house. They also spent several weeks together in August and in October 2012, and that December the parties went on holidays together in Mexico.

[12] The parties' pattern of staying together when he worked in the Olds area, and on his weeks off when he worked further afield, continued into 2013. That April they took another trip together to Saskatchewan where they stayed in Mr. Lemoine's house. They also spent longer periods of time together: a period of approximately five weeks from late May to early July when Mr. Lemoine was working in the Sundre area, and another four weeks in November to December when he was working in the Olds area, and attending a conference in Calgary. They also spent a 10 day vacation together that Christmas.

[13] As the first trailer was too cramped for the two of them, Mr. Lemoine purchased a larger one in June 2013. As was the case with the first trailer, it was Ms. Wright who looked for and found a suitable trailer. When not staying with Mr. Lemoine, Ms. Wright continued to stay at her mother's house in 2013, as she had done in 2012.

[14] The parties' pattern of living arrangements continued in 2014 and 2015 being governed generally by Mr. Lemoine's work location. In addition, they stayed together during Mr. Lemoine's holidays in April 2014, and took a holiday together over the Christmas break that year to Jamaica. From early May to mid-June 2015, Ms. Wright stayed with Mr. Lemoine frequently as he was working close to Olds. During the summer of 2015 they vacationed together at Mr. Lemoine's house in Saskatchewan. In the fall of 2015, while Mr. Lemoine was working further

north, the time they spent together was less frequent than it had been. A Christmas vacation for the two of them in 2015 was paid for by Mr. Lemoine, but Ms. Wright went alone as the parties separated just before.

[15] The longest stretch of time the parties did not see each other, from early March 2012 to the end of their relationship in December 2015, was 26 days. Throughout the relationship, the parties spent as much time together as they could. Mr. Lemoine asked Ms. Wright to travel with him while he worked, but she did not do so because of her work commitments at her coupon business. Their breaks between staying together were largely a function of Mr. Lemoine's work schedule. If he was working some distance from Olds the parties spent his off week together. If he was working closer to Olds, the parties stayed together more frequently.

[16] The parties' relationship ended on December 15, 2015.

[17] Ms. Wright submits that the parties lived together for a continuous period of three years. Mr. Lemoine disagrees. He submits that Ms. Wright lived with her mother, as that was the place she declared as her address on her tax returns, and was where she maintained her documents and most of her possessions. Further, he submits that, even if they did live together, it was not for a continuous period of three years.

a) Did the parties live together for a continuous period of three years?

[18] At issue is the meaning of "living together in a relationship of interdependence for a continuous period of not less than three years," and whether the arrangement between Mr. Lemoine and Ms. Wright fits within the relationships contemplated by the *AIRA*.

[19] What it means to "live together for a continuous period" has been the subject of discussion in the case law. Mr. Lemoine relies on the decision of Justice Bielby (as she then was) in *Henschel Estate*, 2008 ABQB 406, 461 AR 369, who concluded that "living together" requires cohabitation under the same roof. Ms. Wright relies on a series of cases where the courts have held that cohabitation does not require that parties live continuously under one roof, and that gaps in living in the same residence do not disqualify parties as interdependent partners.

[20] At issue in *Henschel Estate* was whether the applicant, who owned her own home and stayed with the respondent in his home only on weekends, met the requirement in s. 3 of the *AIRA* that parties live together for a continuous period of at least three years. Justice Bielby held at para 22 that three separate prerequisites must be met to qualify as an adult interdependent partner:

i. the person has lived with the other person

ii. they lived together in a relationship of interdependence

iii. that relationship continued for a period of not less than 3 years.

[21] Justice Bielby concluded that living together required cohabitation under the same roof. She found that the parties had never cohabited under the same roof. In coming to her conclusion, she examined excerpts from Hansard during the time the *AIRA* was debated and the Minister responsible for the legislation, Minister Hancock, was questioned about the meaning of "living with." He replied that "... I think there's a good understanding of who lives together and who doesn't live together." He gave two examples where parties who did not live under the same roof would not be living apart: a senior who lived separately from the other person because he or she was in care and a student who had left home for school. Justice Bielby concluded at para 40 that

it did not appear that Minister Hancock considered two individuals who never lived together to be adult interdependent partners. She expressed the concern that extending the financial consequences of adult interdependent partnership to those who had never cohabited would dramatically change the legal landscape, and dating relationships could suddenly create financial consequences neither party had anticipated.

[22] Associate Chief Justice Wittman (as he then was) addressed a similar issue in *Howard v Sandau*, 2008 ABQB 34, 439 AR 379. He rejected the contention that a woman in that case was an adult interdependent partner. The longest she had lived in the man's home was one year. Although she had stayed with him for other periods of time in four other years, Justice Wittman concluded that she had not met the requirement of continuous cohabitation for three years. Justice Bielby drew the following inferences at paras 30-31 from Justice Wittman's decision:

> By implication he considered the fact that they lived together "under the same roof" to be fundamental. He stated at paras. 82-83:
>
> > Relevant to whether a relationship of interdependence exists, is its length. Whether s. 3(1)(a)(i) is complied with or not, a relationship where the parties live under the same roof, which is punctuated by the absence of one party for some periods of time, must be woven into the other factors...
> >
> > The...chronology also compels me to conclude there was no continuous period of three years upon which to base a relationship of interdependence even if I otherwise found that a relationship of interdependency existed within the meaning of the AIRA. I find it did not.
>
> Therefore, to the extent that caselaw is of assistance at all, it supports the Applicants' contention that cohabitation "under the same roof" is needed to establish an adult interdependent partnership.

[23] Although not addressing whether cohabitation requires that parties live under the same roof, the Alberta Court of Appeal in *Nelson v Balachandran*, 2015 ABCA 155, 600 AR 223, confirmed that s 3(1)(a) of the *AIRA* requires that each of the three criteria set out in *Henschel Estate* must be met.

[24] Ms. Wright submits that *Henschel Estate* is distinguishable on the facts. She relies on a series of cases where courts in Alberta, as well as in British Columbia and Ontario, have found parties to be in an adult interdependent partnership despite periods where they did not stay together under the same roof. In those cases, there was no dispute that the parties had lived together under the same roof. In dispute was whether, because of periods of living in separate residences, the statutory requirement for continuous cohabitation for the requisite number of years had been met.

[25] The issue that arises in the present case is whether the intermittent staying together in the same accommodation (the trailers, hotels, and Mr. Lemoine's house in Saskatchewan) constituted cohabitation at all and, if it did, whether the cohabitation was continuous for at least three years.

[26] In considering the requirements of cohabitation, and in particular whether it requires living under the same roof, it is useful to begin with the analysis by the Supreme Court of

Canada in *Hodge v Canada*, 2004 SCC 65, [2004] 3 SCR 357, a case relied on by a number of courts in determining whether parties were in a relationship of interdependence.

[27] At issue in *Hodge* was the nature of a common law relationship in the context of entitlement to a survivor's pension under the Canada Pension Plan.

[28] In concluding that the applicant was not entitled to the pension because she had terminated cohabitation, the Court stated at para 42:

> "Cohabitation" in this context is not synonymous with co-residence. Two people can cohabit even though they do not live under the same roof, and conversely, they may not be cohabiting in the relevant sense even if they are living under the same roof. Such periods of physical separation as the respondent and deceased experienced in 1993 did not end the common law relationship if there was a mutual intention to continue.

[29] Whether the parties lived together continuously for three years despite physical separation has been considered in a number of Alberta cases.

[30] Separations to attend school were found not to interrupt the period of cohabitation in *Rockey v Hartwell*, 2016 ABQB 438, 86 RFL (7th) 395. The applicant had moved into the respondent's home in Sylvan Lake in June 2006, but moved away to attend university in the fall of 2007, returning to Sylvan Lake for the summer breaks in 2008 and 2010, although not in 2009 as the parties had separated for a period of time. She spent the majority of her school breaks and weekends living at the respondent's house. When the applicant returned to university in September 2010 she continued her studies through August 2011 to finish her degree at the request of the respondent, in order that she could move back to Sylvan Lake to live with him full time. Although she moved her belongings back to the respondent's home in October 2011, she continued to travel between Sylvan Lake and Calgary until December to work.

[31] In September 2014, the parties agreed to end their relationship. It became important to establish whether the parties had been cohabiting at least since September 2011 to meet the three year requirement. Although finding that the applicant had moved back to the respondent's home in Sylvan Lake in October 2011, Justice Campbell concluded that the parties had cohabited continuously since 2006.

[32] Justice Campbell concluded that maintaining separate residences does not necessarily mean that an adult interdependent partnership has not continued. In determining whether the period of cohabitation was continuous, she considered the nature of the relationship during the periods the parties lived apart. Maintenance of a separate residence by the applicant while attending university did not affect the continuation of the parties' personal relationship. Their relationship of interdependence continued despite the periods of physical separation. Justice Campbell noted that the applicant spent most weekends and school breaks with the respondent in his house in Sylvan Lake, the parties continued to have a sexual relationship, eat together, bought each other gifts and cards, and spent much of their free time together. Further, the applicant had kept some of her personal belongings in the Sylvan Lake home throughout. She continued to purchase groceries and assist with some household duties, the parties celebrated special occasions together, visited each other's families and friends, and were seen as a couple.

[33] Justice Campbell concluded at para 114:

> Although they kept their financial affairs separate and maintained separate residences during the school year until [the applicant] moved to Sylvan Lake permanently in 2011, I am satisfied on the evidence before me that [the respondent and the applicant] lived together continuously from June of 2006, which was a period of eight years.

[34] Similarly, in *Racz Estate (Re)*, 2013 ABQB 668, 574 AR 272 (*sub nom Tait v Westphal*). Justice Gates found that the parties were adult interdependent partners despite maintaining two homes. The parties had lived in the applicant's home for two years before they purchased a home together. During an eight month separation the deceased kept the home the parties had purchased. After the parties resumed their relationship, the deceased lived in the applicant's home where she provided care for him. When he was feeling well he would spend time alone in the other home they had purchased. Justice Gates found that despite maintaining the two homes, the parties functioned as an economic and domestic unit, sharing financial obligations and holding themselves out to others as a couple. He found the parties lived together in a relationship of interdependence for a continuous period in excess of 3 years.

[35] In *Riley Estate (Re)*, 2014 ABQB 725, 603 AR 1, Justice Schutz considered the same issue. After a period of living together with the applicant in the same house for 22 years, the respondent built a house in which he lived alone from time to time for another 14 years. During the 14 years, the fundamentals of the parties' relationship did not change with the exception of five to seven days a month when the respondent, to get away from the activities in the home he shared with the applicant, would go alone to the other house.

[36] The question to be answered in *Riley Estate* was whether the parties continued to cohabit after the respondent built his own house. Justice Schutz found that the cohabitation did continue. She distinguished *Henschel Estate* on the basis that the parties in that case had never lived under the same roof whereas the parties before her had.

[37] In coming to this decision, Justice Schutz found the case of *Charles v Young*, 2013 ABQB 632, 573 AR 144, rev'd on other grounds 2014 ABCA 200, 577 AR 54, to be instructive. In *Charles*, Justice Sulyma found that brief periods of physical separation or cooling off did not bring cohabitation to an end. The relationship of the parties before her had been a "turbulent one, characterized with regular physical violence and verbal attacks," at para 3. After their serious disagreements, the parties would live alone for brief periods of time. Justice Sulyma considered the nature of the relationship between the parties during the periods they were not staying in the same home. She found that despite periods during which the deceased had slept away from the trailer where the parties lived together, he often returned to the trailer after the bouts of disagreement. She found that these brief cooling off periods did not end the relationship.

[38] In other cases a period of separation has been found to interrupt the period of cohabitation, especially when the separation is acrimonious and the parties see the relationship as at an end, see *Chatten v Fricker*, 2005 ABQB 972, 390 AR 111. There is no suggestion that the periods of separation in Ms. Wright and Mr. Lemoine's case were due to disharmony or that they saw their relationship as at an end during those periods.

[39] Turning to B.C., the British Columbia Court of Appeal took a similar approach to the Alberta cases in determining the length of cohabitation in *Roach v Dutra*, 2010 BCCA 264, 5 BCLR (5th) 95, aff'g 2009 BCSC 229, [2009] BCJ No 353 (QL), where legislation similar to the *AIRA* was examined. The parties had lived together with their children from previous

relationships in one home, first a trailer and then a house for two and a half years, before agreeing to live temporarily in separate homes because of the strain between the applicant's daughter and the respondent. The applicant and her children moved to another house that the parties purchased together. The relationship ended approximately three years later.

[40] The trial judge in *Roach* examined the nature of the relationship between the parties during the period they lived in separate residences. He did not agree with the defendant's position that "the mere fact that the parties began to live in separate residences in these circumstances changed the fundamental nature of [the parties] relationship from marriage-like to non-marriage like", at para 14(BCCA decision).

[41] In upholding the trial decision at the British Columbia Court of Appeal, Justice Prowse at para 17 endorsed the following reasons of Master Groves (as he then was) in *McColl v Scott*, 2001 BCSC 1109, upon which the trial judge had relied:

> ... Clearly the words, "live together" must be read in the context of the entire section where it talks earlier about living with another person in a marriage-like relationship for a period of two years. To suggest that if parties are by reasons of, say, health, hospitalization, overseas attendance in the military or for general work purposes, as is the case here, temporarily separate that the "spousal definition clock", for lack of a better term, then starts running, would result in numerous couples essentially ceasing to be spouses as a result of this temporary separation. The legislature in my view would have to make that intention clear.
>
> If for all purposes mere physical separation ends a "marriage-like" relationship, clear wording to that effect would be required. The general purpose of the *Family Relations Act* is to recognize spouses who make a commitment to one another and to apportion support consequences of that commitment between them upon relationship breakdown. The legislation requires that they live in a marriage-like relationship of at least two years. To say that all marriage-like relationships involve continuous cohabitation, that a temporary interruption for health or work reasons in that continuous cohabitation ends a spousal relationship, is not in my view what the legislature intended.

[42] The intention of the parties has not only been considered by the courts in determining whether the interdependent relationship has ended, but also when it started. The Ontario Court of Appeal in *Stephen v Stawecki* (2006), 32 RFL (6th) 282, 213 OAC 199, aff'g 32 RFL (6th) 273, 2005 CanLII 25118 (Ont SC) was called upon to determine whether the respondent was a spouse under the *Family Law Act*, RSO 1990 c F-3, and thus entitled to claim damages from a fatal accident. The legislation in issue defined "spouse" to include parties who "cohabited continuously for a period of not less than three years." It defined "cohabit" as "live together in a conjugal relationship, whether within or outside marriage."

[43] Although they had lived in separate residences until April 2001, the trial judge found that the parties had formed the intent to cohabit before May 2000, the date by which cohabitation had to have started to entitle the respondent to a claim, because they had taken ski holidays as a couple and looked at open houses together. Looking at the nature of the relationship between the parties and the parties' intent to cohabit, the trial judge at para 30 stated:

> The necessary intent to cohabit in a conjugal relationship was formed by the parties before May 6, 2000 although perhaps it was not documented until later. Their relationship was an exclusive one, neither party being unfaithful. They slept, shopped, gardened, cooked, cleaned, socialized, and lived together as a couple and were treated as such by their friends, family and neighbours. While they may not have finalized any joint financial arrangements and continued to maintain separate residences, they lived together under the same roof.

[44] In dismissing the appeal, the Court of Appeal at para 4 emphasized the importance of a flexible approach to determining whether parties live together in a conjugal relationship:

> The appellant submits that we should impose a bright line test and conclude that as the respondent had not "moved in" with the deceased as of May 6, they were not living together at that time. We disagree. In our view, "moving in" would add no precision to the meaning of "live together" and it would not provide the clear and definitive test sought by the appellant. The case law recognizes that given the variety of relationships and living arrangements, a mechanical bright line test is simply not possible. In our view, to accept the appellant's argument would be inconsistent with the flexible approach taken by the Supreme Court of Canada in *M. v. H.*, [1999] 2 S.C.R. 3 (S.C.C.) in this area. We agree with the respondent that the jurisprudence interprets "live together in a conjugal relationship" as a unitary concept, and that the specific arrangements made for shelter are properly treated as only one of several factors in assessing whether or not the parties are cohabiting. The fact that one party continues to maintain a separate residence does not preclude a finding that the parties are living together in a conjugal relationship" see *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.); *Thauvette v. Malyon*, [1996] O.J. No. 1356 (Ont. Gen. Div.); *Campbell v. Szoke*, [2003] O.J. No. 3471 (Ont. S.C.J.).

[45] As noted earlier in these Reasons, the Supreme Court of Canada in *Hodge* made clear cohabitation is a necessary requirement for a common law relationship, but cohabitation is not the same as co-residence. As seen in the cases referred to earlier in these Reasons, physical separation of parties and maintenance of separate residences does not necessarily interrupt the period of cohabitation.

[46] Given the many ways parties may structure their living arrangements, it is important to take a flexible approach and to consider the intentions of the parties in determining whether they have cohabited for the requisite period of time in order that the purpose of the *AIRA* is met. Section 10 of the *Interpretation Act*, RSA 2000 c I-8, requires that "[a]n enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects."

[47] The facts of the present case are distinguishable from *Henschel Estate*. Unlike the parties in that case, who merely stayed together on weekends, the parties in the present case spent considerably longer periods of time together in the same accommodation, whether that was the trailers, hotels, or Mr. Lemoine's house in Saskatchewan.

[48] Justice Bielby's decision must be understood in the context of the particular facts of that case. She was concerned that interpreting the *AIRA* too broadly would result in parties being liable to provide financial support when they did not intend such a consequence. The underlying

reason for her decision is not violated by a flexible approach and focus on the parties' intentions in the context of the purpose of the *AIRA*. The *AIRA* is not so inflexible that it cannot include the type of living arrangements that occurred here. On the facts in *Henschel Estate* and in *Howard*, on which Justice Bielby relied, it would be difficult to conclude that the parties formed the intention to cohabit for the requisite period. Ms. Wright, unlike the applicant in *Herschel Estate*, did not have her own separate residence which she maintained, she merely stayed at her mother's when it was not possible or practicable to stay with Mr. Lemoine. Nor did Ms. Wright leave Mr. Lemoine numerous times to live elsewhere for extended periods, like the applicant in *Howard*.

[49] I find that Ms. Wright and Mr. Lemoine formed the intention to cohabit in March 2012, when they began to look for a house to live in together, and certainly no later than April 2012, when the first trailer was purchased and readied for them to live in it. They began to live together no later than April 2012. While Mr. Lemoine took the trailer with him to his work sites to save money, the purpose of the trailer was to provide a home for the two of them. The periods apart, which arose from the nature of Mr. Lemoine's unique work commitments and not the parties' intention to live apart, did not interrupt the period of continuous cohabitation, which only ended when the parties separated on December 15, 2015.

b) Did the parties live in a relationship of interdependence?

[50] There is no dispute between the parties that two of the three criteria in s 1(f) of the *AIRA* required to establish a relationship of interdependence were met. They agree that they shared one another's lives and were emotionally committed to each other. In dispute is whether the third criteria was met, which requires that the parties functioned as an economic and domestic unit.

[51] To determine whether two people functioned as an economic and domestic unit, s 1(2) of the *AIRA* provides that all of the circumstances of the relationship must be taken into account, including such of the following matters as may be relevant:

a) whether or not the persons have a conjugal relationship;

b) the degree of exclusivity of the relationship;

c) the conduct and habits of the persons in respect of household activities and living arrangements;

d) the degree to which the persons hold themselves out to others as an economic and domestic unit;

e) the degree to which the persons formalize their legal obligations, intentions and responsibilities toward one another;

f) the extent to which direct and indirect contributions have been made by either person to the other or to their mutual well-being;

g) the degree of financial dependence or interdependence and any arrangements for financial support between the persons;

h) the care and support of children;

i) the ownership, use and acquisition of property.

[52] The court must look at the facts of each case as a whole and consider all the circumstances of the relationship: *Kiernan v Stach Estate*, 2009 ABQB 150, 465 AR 261. No one factor carries more weight than another.

a) Conjugal relationship

[53] The parties slept together and had sexual relations throughout their relationship. They admit that they had a conjugal relationship from the Fall of 2011 until mid-December 2015.

[54] The definition of "conjugal" relationship was discussed by Justice Yamauchi in *Stach Estate* at para 45. Referring to the case law, Justice Yamauchi observed that the definitions "speak of something more than a physical or sexual relationship." Rather, they "speak more to dependence, permanence and commitment similar to that of a marriage or a common law relationship." He noted that the Tax Court of Canada gave the following definition of conjugal relationship in *Sigouin c R*, [2002] 1 CTC 2596, 2001 CarswellNat1000 (TCC):

> The tests for a conjugal relationship are normally cohabitation and conjugal conduct. That conduct may be determined through sexual relationships, emotional and intellectual exchange, financial support and common knowledge.

[55] As Mr. Lemoine disputes that the parties cohabited, I do not take the admission that the parties were in a conjugal relationship to include an admission that they cohabited. In this case, the parties' admission of a conjugal relationship refers to the sexual nature of the relationship. The evidence, however, clearly establishes that the parties had a relationship that was more than physical. They were emotionally committed to each other. Their relationship had the permanence and commitment of a common-law or marriage-like relationship.

b) Exclusivity of the relationship

[56] The relationship between the parties was intended to be exclusive. Except for the infidelity on the part of Mr. Lemoine, which brought the relationship to an end, the relationship was exclusive on the part of and to the knowledge of Ms. Wright.

c) Conduct and habits in respect of household activities and living arrangements

[57] Ms. Wright searched for the two trailers and readied them to be used as a home. The trailers were used exclusively by the parties. While the parties were together, they shared domestic duties. Ms. Wright bought groceries and did most of the cooking and cleaning. In addition, she did Mr. Lemoine's laundry and performed minor repairs on the trailer.

d) The degree to which the persons hold themselves out to others as an economic and domestic unit

[58] The parties kept separate bank accounts and did not acquire joint property. Mr. Lemoine, however, permitted Ms. Wright use of his credit card and debit card. They attended family functions as a couple and Mr. Lemoine received a family discount at two businesses owned by Ms. Wright's sister. The parties socialized with Ms. Wright's sister. Ms. Wright was close to Mr. Lemoine's mother and had a relationship with his daughter. Mr. Lemoine held out Ms. Wright as his partner to his employer by adding her to his employment benefits plan as his spouse.

[59] Ms. Wright declared her status as common law on her tax returns. Mr. Lemoine did not.

e) Formalizing of legal obligations, intentions, and responsibilities

[60] The parties did not enter into formal documentation of their legal obligation.

f) Direct and indirect contributions to each other and their mutual well-being

[61] In addition to providing domestic duties, Ms. Wright assisted Mr. Lemoine to set up his consulting company. The parties were emotionally supportive of each other.

g) Financial dependence or interdependence and arrangements for financial support

[62] Mr. Lemoine paid for most expenses including food when they were together. He contributed to Ms. Wright's gas expenses, gave her money for clothing, and provided her with gifts. He did not, however, contribute to Ms. Wright's living expenses when she stayed with her mother. Ms. Wright's basic needs were met by her own modest income and her free accommodation at her mother's house. All costs associated with their holiday trips, including their vacations in Mexico, Cuba, and Saskatchewan, were paid for by Mr. Lemoine. By adding her to his employment benefits plan, Mr. Lemoine assisted Ms. Wright with her considerable medication costs. As her financial means were limited, Ms. Wright was unable to contribute financially to Mr. Lemoine, although she did purchase some items for the trailer for the benefit of them both.

h) Care and support of children

[63] This is not applicable here.

i) Ownership, use, and acquisition of property

[64] The parties did not own any property together. Mr. Lemoine purchased the trailer but they shared its use. Mr. Lemoine also permitted Ms. Wright use of one of his vehicles.

j) Other

[65] The parties shared a storage locker. Ms. Wright kept most of her clothes at her mother's. This was a function of the small size of the trailer and because Mr. Lemoine took the trailer to his work sites.

[66] Considering all of the circumstances of their relationship, and recognizing that no factor carries more weight than any other, I find that the parties did function as an economic and domestic unit and that they were in a relationship of interdependence from at least April 2012 continuing until December 15, 2015.

[67] As the parties lived together in a relationship of interdependence for a continuous period of at least three years, Ms. Wright was an adult interdependent partner entitling her to make a claim for support.

2. Is Ms. Wright entitled to support from Mr. Lemoine?

[68] Ms. Wright seeks support both on a compensatory and non-compensatory basis. She claims compensatory support on the basis of two things: first, she relocated from Ontario, leaving her job there to pursue a relationship with Mr. Lemoine at his request; and, second, she provided services to Mr. Lemoine that allowed him to further his career. She claims non-compensatory support on the basis of her level of need and Mr. Lemoine's ability to pay.

[69] As noted by Justice Kenny in *Medora v Kohn*, 2003 ABQB 700, 336 AR 163 at para 30, in assessing support for adult interdependent partners, the Court considers the same four objectives for support in s 15.2(6) of the *Divorce Act*, RSC 1985, c 3 (2nd Supp):

> a. recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
>
> b. apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
>
> c. relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
>
> d. in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Compensatory Support

[70] I accept Ms. Wright's evidence that, at Mr. Lemoine's request, she left her job in Ontario and moved to Olds. In leaving her job in Ontario, she lost her second source of income. However, there was little evidence about Ms. Wright's income earned prior to 2012, aside from her evidence that she lost a bonus because she left before the advertising canvas she was working on was completed. She testified that she would have received two percent of the total value of the canvas of $1,000,000. There was no documentation to confirm this. None of Ms. Wright's income tax returns for years prior to 2012 were in evidence.

[71] I accept Ms. Wright's evidence that she did the bulk of the parties' domestic chores, including deep cleaning of the trailer as well as cleaning Mr. Lemoine's house in Saskatchewan when they spent holiday time there. I also accept her evidence that she did Mr. Lemoine's laundry, and that when they stayed together in the trailer, she cooked for him.

[72] I also accept her evidence that she provided other services, including looking for the trailers, repairs to the trailer, and assistance in setting up Mr. Lemoine's consulting business. Mr. Lemoine, who worked long hours, did benefit from Ms. Wright's services. In 2013, to accommodate Mr. Lemoine's request that she spend more time looking after him, Ms. Wright and her sister made arrangements for a government-paid caregiver to look after Ms. Wright's aged and ill mother. After the separation, Mr. Lemoine acknowledged to Ms. Wright's sister that Ms. Wright had helped him a lot and promised that he would look after her.

[73] I do not agree with Ms. Wright that, as a result of the attention she paid to the parties' relationship, she did not have the ability to pursue self-sufficiency in Olds. Rather, it was not necessary that she do so because her expenses were limited. She had free accommodation at her mother's and Mr. Lemoine not only paid for all costs for their vacations, he gave her gifts, and assisted her with her expenses.

[74] As she left her Ontario employment to pursue the relationship with Mr. Lemoine, and did provide some benefits to him by way of services, she has established an entitlement to support on a compensatory basis.

Non-Compensatory Support

[75] In *Bracklow v Bracklow*, [1999] 1 SCR 420 at paras 36, 40, 169 DLR (4th) 577, the Supreme Court of Canada held:

> . . . "in cases where it is not possible to determine the extent of the economic loss of a disadvantaged spouse ... the court will consider need and standard of living as the primary criteria together with the ability to pay of the other party" (citing *Ross v Ross* (1995), 168 NBR (2d) 147 (NB CA)).
>
> . . . Even if a spouse has foregone no career opportunities or has not otherwise been handicapped by the marriage, the court is required to consider that spouse's actual ability to fend for himself or herself and the effort that has been made to do so, including efforts after the marriage breakdown.

[76] Section 58 of the *FLA* sets out the following factors to be considered in making an order for support:

> a) the conditions, means, needs and the other circumstances of each spouse or adult interdependent partner, including
>
> i. the length of time the spouses or adult interdependent partners lived together,
>
> ii. the functions performed by each spouse or adult interdependent partner during the period they lived together, and
>
> iii. any order or arrangement relating to the support of the spouses or adult interdependent partners.
>
> b) any legal obligation of the spouse or adult interdependent partner having the support obligation under the order to provide support for any other person,
>
> c) the extent to which any other person who is living with the spouse or adult interdependent partner having the support obligation under the order contributes towards household expenses and thereby increases the ability of that spouse or adult interdependent partner to provide support, and
>
> d) the extent to which any other person who is living with the spouse or adult interdependent partner who is to receive support under the order contributes towards household expenses and thereby reduces the financial needs of that spouse or adult interdependent partner.

[77] With regard to Ms. Wright's need for support, her average income from her 2012 to 2015 tax returns was $16,125.00. This net income reflects the management salary of $17,000 she pays herself annually from her coupon business. In considering support in this case, consideration must be given to two other matters. First, what business expenses claimed include a personal

benefit and must be added back to her income? Second, in the absence of documentary disclosure with respect to 2016, what is her expected income for that year and going forward?

[78] The corporate income tax returns for Ms. Wright's coupon business for 2013 to 2015 show gross income between $40,000 to 50,000 per year. The business expenses claimed, exclusive of the $17,000 salary she paid herself, were $20,000 to $32,000 in 2013 to 2015.

[79] At least one of these expenses, rent of $3,000 per year, was not actually incurred, as she runs her business out of her mother's home where she has been living rent-free. Another expense is also questionable. She claimed approximately $3,600 to $3,700 per year for meals and entertainment. There was no evidence what component of this was for business expenses, such as entertaining clients or meals with clients, and what was for her own personal expenses.

[80] I find that a more appropriate income that was available to her through her coupon business in the years 2013 to 2015 was at least $24,000. As discussed below, this would leave her with a $6,000 monthly shortfall of expenses if rent for her own apartment were included.

[81] At the time of trial, Ms. Wright had not filed her business income tax return for 2016. She did testify, however, that the gross income was significantly less in 2016 than in prior years as a result of the downturn in the Alberta economy. She testified that, as a result of the downturn, she began charging 40 to 50 percent less for her advertisements. No documentation was in evidence to support this. If she is charging 40 to 50 percent less for her advertising, the question is raised whether the business is viable.

[82] If Ms. Wright is charging 40 percent less for ads, and assuming all of the revenue from the business comes from ads and the number of ads remains the same as prior years, the business would have gross revenue at most of $30,000 per year. Aside from the $17,000 salary she pays herself annually, the business claimed $20,000 to $30,000 of expenses a year in 2013 to 2015. Setting aside the claimed expenses for rent, meals, and entertainment of approximately $7,000 per year, the business has expenses of $13,000 to $23,000 per year before she pays herself a salary. If the business can only generate $30,000 in gross income and expenses are at least $13,000 to $23,000, her income earning potential is $7,000 to $17,000 per year.

[83] Since separating from Mr. Lemoine, Ms. Wright has not increased the time she spends with the coupon business. She asserts that she has significant health issues that interfere with her ability to do so. In 2000, well before meeting Mr. Lemoine, she was diagnosed with Grave's disease. This condition causes her to have shortness of breath after walking a block, as well as concentration and memory issues. Since surgery for ovarian cancer in 2007, she has suffered from bladder urgency. It is not clear from the evidence the extent to which her condition affected her ability to work before she met Mr. Lemoine, but she was able to run both her coupon business in Olds as well as work at her position in Ontario.

[84] I accept the evidence of Ms. Wright and her sister that after the separation Ms. Wright went through a difficult period. She became depressed, lost a lot of weight, and suffered severe hand tremors. In addition, her skin changed colour and her hair started to fall out. I accept that this would have had an impact on her ability to increase her income to compensate for the loss in revenue from the downturn in the economy, at least for a period of time following the separation.

[85] Revenue Canada found Ms. Wright to be eligible for a Disability Tax Credit. I do not find this to be probative evidence with respect to Ms. Wright's ability to work. The Disability Tax Credit Certificate completed by a physician describes Ms. Wright as disabled since 2007.

The description of Ms. Wright's abilities on the Certificate is not consistent with her actual abilities. For example, the physician states that Ms. Wright is markedly restricted in walking all or substantially all of the time (at least 90% of the time). Examples of "markedly restricted" in the Certificate with respect to mobility include being reliant on a wheelchair outside the home even for short distances, ability to walk one city block but only by taking an inordinate amount of time, and stopping because of shortness of breath or because of pain all or substantially all of the time.

[86] As a further example, the physician states that Ms. Wright is markedly restricted in performing mental functions necessary for everyday life at least 90% of the time. None of the examples of marked restrictions of mental function in the Certificate accurately describe Ms. Wright's functioning, such as an inability to leave the house; requiring daily support and supervision due to an inability to accurately interpret her environment; or being incapable of making common, simple transactions, such as a purchase at the grocery store.

[87] There was no medical evidence at trial regarding Ms. Wright's medical status, her disabilities, or how they affect her ability to work.

[88] Based on the evidence I heard at trial regarding Ms. Wright's lifestyle and ability to function, it does not appear that Ms. Wright's physical or mental functioning was or is currently limited in the way the physician described on the Certificate. I do not accept she is unable to work due to disability.

[89] Ms. Wright submits that, given her modest income from the coupon business, her experience limited to advertising, and her current health problems, the prospect of self-sufficiency is "guarded at best." I agree that her income-earning capacity was compromised by her health particularly for a period of time after the separation. While she may now be able to increase her income to compensate for the loss of revenue from the downturn in the Alberta economy, it seems doubtful she would be able to increase it substantially.

[90] With regard to her expenses, Ms. Wright submitted a budget with expenses totalling $2,530 per month (approximately $30,000 per year). Although she currently lives with her elderly mother rent free, Ms. Wright's budget includes the cost for her to rent her own apartment. The accommodation at her mother's is not ideal. Her brother also lives with her mother, using an air mattress in the computer room. Her mother has asked Ms. Wright on several occasions to move out. In the circumstances, it is not unreasonable that Ms. Wright's budget include the cost for her own apartment. Assuming an annual salary of $24,000, the shortfall in Ms. Wright's budget is $6,000. However, as noted above, there is some doubt about the amount of income available to her from the business. If the business now generates less gross income than it did in 2012 to 2015, her shortfall is significantly more.

[91] Mr. Lemoine submits that any support he is required to pay should be for no more than two years and should be just enough to meet her basic needs. He submits that any award should be at the low end of the *Spousal Support Advisory Guidelines*.

[92] In contrast to Ms. Wright, Mr. Lemoine earns a much more substantial income, although it was reduced starting in 2015 when, as a result of loss of his employment, he became a consultant.

[93] In 2013, Mr. Lemoine earned line 150 income of $242,246. In 2014, he earned $293,405. In 2015, his income comprised employment income of $61,758.64, before he lost his job, plus

dividends of $47,200.00 from his consulting company, for a total line 150 income of $109,570.73. Neither his personal income tax return nor that of his consulting company for the 2016 year end was in evidence.

[94] Despite testifying that he pays himself dividends from the company every month, and has done so since it was incorporated, Mr. Lemoine claimed he did not know the amount of dividend income he was receiving. I found Mr. Lemoine disingenuous in this regard. It is not believable that he does not know what he pays himself every month. Financial Statements for the July 31, 2015 year end of Mr. Lemoine's consulting company were produced and provide some information from which his 2016 and future expected income can be estimated.

[95] Mr. Lemoine's consulting business billed an average of $25,470.57 per month between March 18, 2015 and April 15, 2016. This would yield $305,646.84 of revenue per year. The company's Financial Statements for the year ending July 31, 2015 show expenses of $38,398 on revenue of $132,852. For this partial year, expenses were approximately 29 percent of revenue. Applying 29 percent to $305,646 would yield a net income of approximately $217,000 per year. The extent to which any of the expenses claimed by his corporation have a personal benefit, and ought to be added back to his income for support purposes, is unclear. His income-earning capacity, therefore, may be more than the estimated $217,000 per year.

[96] Mr. Lemoine's financial position is relatively good. He has significant assets, including RRSPs, a tax free savings account of approximately $140,000, bank accounts in the amount of $60,000, other assets of $240,000 in Scotiabank, and his house in Saskatchewan. He has no debts.

[97] The budget prepared by Mr. Lemoine estimates approximately $9,600 per month in expenses. This includes $1,000 per month he pays to his fiancé. The evidence did not disclose what this payment is for. Also included in his budget is $1,500 per month for entertainment, recreation, and vacations.

[98] In considering partner support, the condition, means, needs, and other circumstances of each of the parties must be considered including the economic consequences of marriage breakdown on a partner with health issues, and whether those issues are causally connected to the marriage: *Bracklow*; *Moge v Moge*, [1992] 3 SCR 813, 99 DLR (4th) 456. However, in considering the obligation to provide support, the length of the marriage must also be taken into account: see Justice McLachlin (as she was then) in *Bracklow* at para 53, where she made specific note that s 15.2(4)(a) of the *Divorce Act*, which articulates the factors a court must consider in determining entitlement as well as amount and duration of support, requires consideration of the length of time the parties cohabited.

[99] I am satisfied that Ms. Wright has established an entitlement to support on both a compensatory and a non-compensatory basis. In determining an appropriate award, the same factors relevant to entitlement, must be considered: *Bracklow* at para 50. Factors to be considered are also set out in s. 58 of the *FLA*.

[100] Ms. Wright seeks partner support of $3,000 per month for four years. In support, she points to a number of factors: a relationship of interdependence for 3.5 to 4 years, which she anticipated would be a long-term relationship; the role she fulfilled as a supporting partner to Mr. Lemoine; her focus on their relationship, rather than seeking to become self-sufficient as her

coupon business was declining; her health challenges; and her limited education and work experience.

[101] Taking all factors into consideration, I am of the view that the appropriate support is $1800 per month for a period of two years commencing January 1, 2016. This was a relatively short relationship. However, Ms. Wright moved to Olds at Mr. Lemoine's request and her ability to earn an income and her limited means justify this award.

[102] The judgment will also include the standard Maintenance Enforcement Clause.

[103] Entitlement to costs may be spoken to within 30 days.

Heard on the 23rd and 24th day of March, 2017
Dated at the City of Calgary, Alberta this 23rd day of June, 2017

K.D. Nixon
J.C.Q.B.A.

Appearances:

Daniel Wilson
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Philippe Shink
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