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S.L.G. v. D.P.P., 2005 BCSC 504 (CanLII)

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***S.L.G. v. D.P.P.***
2005 BCSC 504

Date: 20050405

Docket: E032154
Registry: Vancouver

Between:

S.L.G.

Plaintiff

And:

D.P.P.

Defendant

Before: The Honourable Mr. Justice Curtis

Reasons for Judgment

Counsel for the Plaintiff	Bruce A. Katz
Counsel for the Defendant	Michael G. Parent
Date and Place of Trial:	October 12-15, 2004 & January 31, February 1-4 & 7-10, 2005 Vancouver, B.C.

[1] S.L.G. seeks an order divorcing her from D.P.P., an order that she have sole custody and guardianship of their four-year-old daughter, an order setting child support for the daughter and division of family assets. Mr. D.P.P. does not oppose the claim for divorce, but has filed a counterclaim for joint custody and guardianship of the child, which was changed at trial to a claim for sole custody. He also claims access to the eight-year-old son of S.L.G..

[2] S.L.G. and D.P.P. met, and began dating in or about October 1995. In January 1996, she left a note, "We shouldn't see each other anymore...." and in April 1996, married Mr. Z., the father of K.1. However, in late 1996, Ms. S.L.G. contacted Mr. D.P.P.'s parents and arranged to meet him in a park. There, she gave him a long letter, explained that she was pregnant and their relationship began again. K.1 was born [...], 1996. They began living together in S.L.G.'s condominium about May of 1997 and married September 19, 1998.

[3] At the time of their marriage, S.L.G. was 29 and employed as a secretary in her father's business and Mr. D.P.P. was 26 and employed as a stocker at the R.[…]. Their daughter S.E.G.P. was born […], 2000. In May 2001, S.L.G. purchased a house on […] Street in Surrey with the help of her parents for $315,000. Title to the house was put in her name alone with a second mortgage to her parents. The parties separated May 13, 2003 when S.L.G. asked Mr. D.P.P. to leave. He moved out to his parents' house, into a basement suite for a while, then back with his parents where he currently lives.

[4] D.P.P. phoned the children regularly after he left the house and began to have weekly overnight visits with S.E.G.P. on his days off, which were initially Tuesdays and Wednesdays. He did not, however, continue to have regular visits with K.1 whom he has not had with him for a visit since about June 2003 and does not now see. He is currently paying $381 per month support for S.E.G.P. which was in the past in arrears on occasion, but is now current, but he has never paid support for K.1 and has never been asked to do so.

[5] Initially, access to S.E.G.P. went well, however, in the fall of 2003 a dispute arose about the pick-up and drop-off of S.E.G.P. for her access visits, (Mr. D.P.P. wanted S.L.G. to share the driving by picking S.E.G.P. up at the end of the visits, Ms. S.L.G. refused to do so), the end result of which was a consent order of May 15, 2003 that provided Mr. D.P.P. should have interim access to S.E.G.P. – picking her up from pre-school on Wednesdays, and returning her to Ms. S.L.G.'s residence on Thursdays at 7:00 p.m. The order also provided for Christmas access and reasonable telephone access. This schedule was followed until February 2004 when Mr. D.P.P.'s access to his daughter stopped on account of an allegation that he had sexually assaulted his daughter. It is this allegation that has resulted in the present position of the parties and 13 days of trial. Ms. S.L.G.'s position is that she believes what she says her daughter told her and others and insists access be supervised; while Mr. D.P.P. claims he never touched his daughter improperly and that S.L.G. is attempting to alienate S.E.G.P. from him.

[6] At trial, S.L.G. testified that in February 2004 S.E.G.P. came home from a visit. She was getting S.E.G.P. ready for a bath when S.E.G.P. said to her, "Stick your finger in my bum like daddy does." She asked her daughter, "Does he still do this?" and received the reply, "Always." This resulted in a letter dated February 24, 2004 being sent by Mr. Katz, S.L.G.'s lawyer to Michael Parent, D.P.P.'s lawyer which read as follows:

> **<u>Re: S.L.G. v. D.P.P. – SCBC Action No. E023154 – Our File No. 2573</u>**
>
> -
> S.E.G.P. has reported to her Mother an incident, which has occurred between S.E.G.P. and your client. This incident is in the process of being investigated. Our client's position is that until more information is gathered, access to your client should be suspended. Please communicate this to your client. We will be in further contact with your office regarding this matter.

[7] At trial, Ms. S.L.G.'s description of the disclosure had no more detail than given above, however, in her affidavit of February 27, 2004 filed in support of her application to suspend access, or alternatively, restrict it to supervised access, the following was alleged:

> 2. The Defendant and I are the parents of S.E.G.P., born […], 2000. S.E.G.P. is now 3 years, 8 months old.
>
> 3. I am making this Affidavit in support of my application to suspend the Defendant's contact to our daughter or alternatively for him to have supervised access to S.E.G.P..
> ...
>
> 10. Prior to our daughter making statements to me regarding the improper sexual conduct of the Defendant towards her, our daughter has been coming back from her contact with the Defendant tired, cranky and not wanting to sleep in her own bed at home. She has also recently been complaining of a lot of stomachaches when she returns from her father's home. S.E.G.P. has also been returning from her father's home moody and distant, not only to me but to my sister, J., and my Mother S.E.G.P.'s Grandmother). S.E.G.P. has always had a good relationship with my sister and my Mother. S.E.G.P. often plays with my sister's daughter, who is the same age as S.E.G.P.. Recently, S.E.G.P. won't talk to either my sister or my Mother for quite awhile until she is comfortably playing with K.2 (my sister's child).
>
> 11. Given our daughter's recent disclosure to me, I believe it is relevant to outline one of the "last straws" from my perspective prior to the Defendant and I ending our marriage by separating in May of 2003. A few weeks before we separated, I walked into the bathroom where the Defendant was in the shower with our daughter, S.E.G.P.. He often had showers with her as she was only two years old at the time. However, this time the Defendant had an erect penis and our daughter, S.E.G.P. was holding a cup under his penis and collecting the water running off his penis. I was shocked by this sight and asked the Defendant what he was doing. The Defendant told me that he often had an erect penis in the shower and tried to make the situation sound normal. It was subsequent to this incident that I told him he was not to shower anymore with our daughter, S.E.G.P.. Shortly after this incident our marriage was over and we separated.
>
> 12. S.E.G.P. began seeing her father on Wednesday overnight until Thursday. I told the Defendant not to shower with S.E.G.P. or give her a bath because I give her a bath on Wednesday before she goes to her father's home. The Defendant specifically told me that he would no longer shower with our daughter and that he would not give her a bath. Our daughter's access visits continued regularly with her father.
>
> 13. In December 2003 S.E.G.P. told me that she sleeps with her father in his bed when she is at his home. I questioned the Defendant about S.E.G.P.'s sleeping arrangements at this home and asked him if he needed a child's bed as I had an extra one I could provide to him. The Defendant told me that he had no room in his home for a bed for S.E.G.P. but that S.E.G.P. sleeps on the floor. The Defendant told me S.E.G.P. does cuddle with him in his bed and S.E.G.P. to this day still says that she sleeps with her father in his bed when she is at his home.
>
> 14. In our about February 4, 2004 I made a call to the Defendant's cellular telephone to speak to S.E.G.P. when she was in her father's care and she told me "I'm having a bath, Mom". When S.E.G.P. returned the phone to her father I asked the Defendant why he was giving her a bath given we had discussed this and S.E.G.P. didn't need a bath. The Defendant said "oh, well, she likes it – she's having fun".

> 15. On February 23, 2004 when I was about to give S.E.G.P. a bath she leaned over when I was standing behind her and said “Mommy, stick your finger up my bum like Daddy does”. I was shocked and said “what did you say?” S.E.G.P. repeated her comment to me again. I spoke with S.E.G.P. and asked her if Daddy still did this and she said “always”. S.E.G.P. said “Daddy sticks his finger up my bum and puts it in my mouth so I can kiss it”. S.E.G.P. also said to me “Don’t tell Daddy, he will be mad”.

[8] The application to suspend or restrict access was never heard as Mr. D.P.P., acting on the advice of a lawyer did not insist on access during the investigation.

[9] S.L.G. reported the disclosure to the Ministry of Children and Family Development and the police. Both the Ministry and police suggested to Ms. S.L.G. that S.E.G.P. not see her father. The police administered a polygraph test to Ms. S.L.G. which she reports she passed. Despite being advised by his lawyer not to speak to the police, Mr. D.P.P. made a statement to them, but on the advice of his lawyer declined to take a polygraph test administered by a police examiner, but rather attended one conducted by the National Polygraph Service in Calgary, which resulted in a report dated March 23, 2004 in which the examiner Gregg Martin, (retired from 25 years with the RCMP, seven of which he was in charge of the Calgary RCMP polygraph unit), expresses his opinion that Mr. D.P.P.’s denial of sexually assaulting his daughter was truthful. On the advice of his lawyer, Mr. D.P.P. declined to talk to the Ministry investigator.

[10] On the advice of the Ministry, Ms. S.L.G. attempted to get her daughter into counselling, however, the counselling service had such a back log, there was a long delay. Counselling was eventually arranged with Bonnie Mason, a psychologist with whom S.E.G.P. was continuing counselling at the time of the trial. Ms. Mason conducted an intake session with S.L.G. August 23, 2004, and commenced play therapy with S.E.G.P. August 30, 2004, six months after the first disclosure by the three year, eight-month-old S.E.G.P.. Ms. Mason reports that on the 15th of September 2004:

> During the beginning of this session S.E.G.P. without any direction or questions informed me I had forgotten to ask her about her Dad. I informed her that she could tell me whatever she wanted about her Dad. She went on to state “he stuck his finger in my bum but he isn’t doing it any more”. I did not ask her any questions allowing her to direct the conversation she continue to state “and dance naked”. This statement was difficult to hear as she was lowering her voice, to the best of my ability it is what I believe I heard her say. Her next statement was clearer than the previous one she stated “in the shower I used a cup to catch water from his ____ (regressed into small voice) but I only touched it a little. Her last statement was “I am mad at him”. S.E.G.P. stopped at this point and went directly to a doctor’s kit on the play shelve and began to play. According to the Law in British Columbia counsellors must report all disclosure to the Ministry of Children and Families and the Police.

[11] As a result of this disclosure, which could, of course, if true, only relate to something Mr. D.P.P. had done while still exercising access before February 24, 2004, Ms. Mason reported the matter to the Ministry and the police. Ms. Mason testified at trial she saw no evidence that S.E.G.P. had been coached by anyone to make her disclosure.

[12] Mr. D.P.P. had his counsel file an application for access and a Section 15 report by a psychologist July 16, 2004. He had consulted an access supervisor to try and arrange supervised access in September 2004, however, that was superceded by the new disclosure and the order of Martinson J. made September 22, 2004 for a Section 15 Custody and Access Report to be prepared by Dr. Monica Angus, and an order that Mr. D.P.P. “only have access to the infant child ... as required by Dr. Monica

Angus to prepare the Section 15 Custody and Access Report and that Dr. Monica Angus shall supervise all contact between the Defendant and the infant child...."

[13] Dr. Angus has filed a report and testified at trial.

[14] Mr. D.P.P. was never charged following the allegations. In a letter dated February 2, 2005, Crown Counsel, Sharon Greene advised:

> Further to our telephone conversation yesterday, I can confirm that the Surrey RCMP forwarded potential charges against the above named individual in relation to possible inappropriate touching of his daughter. The file was reviewed by my colleague Al Adlem who declined to approve charges as there was not a substantial likelihood of conviction on the available evidence and there was no chance of getting any further evidence.

[15] The videotape statement S.E.G.P. gave to the police was not put into evidence at trial, nor was there evidence of what Mr. D.P.P. said in his police statement.

[16] Mr. D.P.P. has had supervised access to S.E.G.P. November 4, 2004 when Ms. S.L.G. brought S.E.G.P. to Dr. Angus' office, (his first visit with her since February 2004), November 7, 2004 when Dr. Angus conducted a home visit with Mr. D.P.P. and S.E.G.P. at Mr. D.P.P.'s parents' home, and three supervised Christmas access visits, December 20th (two hours), December 24th (five hours), December 28th (five hours). At all of the visits, S.E.G.P. was obviously very happy to be with her father and displayed a close loving affection for him with no sign of fear or apprehension whatsoever.

[17] On September 22nd when the order was made for Dr. Angus to prepare the section 15 report, the trial in this matter was set to commence October 12, 2004. Obviously the full cooperation of the parties was necessary in order for the report to be ready for October 12th. Mr. D.P.P. cooperated in every way he could but Ms. S.L.G. was not cooperative and appears to have wanted to avoid having the report prepared. Dr. Angus sent a fax dated Friday, September 24 to both counsel with an appointment schedule beginning with a meeting from 9:00 – 12:30 p.m. Monday, September 27th with Ms. S.L.G.. Dr. Angus also phoned Ms. S.L.G. on the 24th, and left a message for Ms. S.L.G. to call her. Dr. Angus was unable to arrange any appointment with Ms. S.L.G. for the week of September 27th, despite the obvious urgency. Ms. S.L.G. said she did not receive notice of the Monday morning appointment, was available Friday of that week when Dr. Angus was not, and was otherwise too busy with social workers, police and work appointments to be available. Ms. S.L.G. refused to rearrange her schedule. Dr. Angus testified Ms. S.L.G. told her the children were in pre-school and swimming and she would not cancel those activities. She also told Dr. Angus that her mother who helped care for the children would not drive outside of Surrey. When Ms. S.L.G. did attend Dr. Angus' office Monday, October 4, it took half an hour and a phone call to her lawyer before she would sign the necessary consent form. When the matter came on for trial, Tuesday October 12th, just over one week later, Mr. D.P.P.'s counsel applied to adjourn the trial because, not surprisingly, Dr. Angus had not been able to complete the report. Ms. S.L.G.'s counsel opposed any adjournment and I directed that the trial proceed on the basis that Dr. Angus' report be received when completed. The natural inference from the foregoing is that S.L.G. did not want the court to have Dr. Angus' opinion.

[18] On the 4th of November 2004, S.L.G. drove with a friend of hers as a witness and the two children to the home of Mr. D.P.P.'s parents where Mr. D.P.P. was living so that Dr. Angus could see the children with Mr. D.P.P. in the home situation he lived in. This was S.E.G.P.'s first meeting with her father in eight months since the disclosure in February 2004. Ms. S.L.G. went to the door and said that neither of the children wanted to visit. Dr. Angus and Mr. D.P.P. walked out to the car. Ms. S.L.G. and her friend were

seated in the car in the front seat. Dr. Angus said Ms. S.L.G. sat in the front seat looking straight ahead, displaying what appeared to be an attitude of suppressed anger, while both the children sitting in the back appeared terrified. Ms. S.L.G. did nothing to assist. Mr. D.P.P. and Dr. Angus tried to get the children out of the van. K.1 refused to go and Mr. D.P.P. brought some presents out to him. He eventually succeeded with S.E.G.P. by lifting her out of the car seat and carrying her to the house. Dr. Angus has written in her report, "Once in the home S.E.G.P. became quite a different child. Her behaviour was spontaneous and cheerful. She was warm and accepting of her father and grandparents, was very happy in her father's company and did not want to end the visit. When told she had to, she asked her father to piggyback her out to the car." Dr. Angus reported "Again, Ms. S.L.G. presented as if she was repressing anger... did not look pleased at all that S.E.G.P. was having a good time with her father." S.E.G.P. said, "It was fun Mommy."

[19] The evidence of subsequent visits has clearly demonstrated that as Dr. Angus reports, S.E.G.P. is strongly bonded to her father, as she is to her mother.

[20] The evidence before me does not prove on the balance of probabilities that D.P.P. sexually assaulted his daughter S.E.G.P.. In February 2004, S.E.G.P. was three years and eight months old, and in Dr. Angus' opinion, not particularly articulate or mature for her age. Whatever happened to such a child would, to begin with, be very difficult to determine. A medical examination by her doctor revealed nothing.

[21] When Dr. Angus asked S.E.G.P. in the fall of 2004 what the difference was between boys and girls, S.E.G.P. did not display any precocious knowledge of sexual anatomy, rather she eventually said, "the hair". When asked how many times it happened by Dr. Angus, she held up one finger. The allegation as presented in Ms. S.L.G.'s affidavit is, it appears, that of digital penetration of the anus. Dr. Angus testified from her experience as a pediatric nurse, children find that painful, yet the disclosure Ms. S.L.G. alleges has S.E.G.P. asking her to repeat the conduct which in Dr. Angus' opinion, a child would be unlikely to request. In Dr. Angus' opinion, sexual assault of young children usually progresses from fondling with escalating incidents over time, which is not in evidence in this case. There is no evidence that Mr. D.P.P. was observed to have any unusual or improper interest in children. His daughter was warm and unafraid of him, despite what appears to have been her mother's anger at the situation in November 2004. Furthermore, Mr. D.P.P. denied any improper conduct and I find no reason not to accept his denial. He spoke to the police, he took a polygraph test and he was anxious to have Dr. Angus investigate the matter at considerable expense to himself. In the circumstances, therefore, I find it improbable that he sexually assaulted his daughter.

[22] Dr. Angus has recommended that custody of S.E.G.P. be transferred to the father because Ms. S.L.G. has or has attempted to alienate S.E.G.P. from her father. If the disclosure was genuine, then Ms. S.L.G.'s desire to terminate or restrict access was perfectly proper and her apparent anger at S.E.G.P. seeing her father at least understandable. The first disclosure was made in February 2004 soon after a judicial case conference, the second September 15th, 2004, a further statement alleging the same conduct, was made to Bonnie Mason just as Mr. D.P.P. was trying to arrange supervised access. Ms. S.L.G. was certainly not cooperative in arranging the interview with Dr. Angus and Dr. Angus' description of Ms. S.L.G.'s demeanour of suppressed anger at the November 4th visit, which I accept as accurate is cause for concern. Why would a mother with the best interest of her daughter in mind behave in such a way and put such stress on the children? It is not uncommon, however, for separated parents to want to be free of the complications of their ex spouse. The evidence does not establish that Ms. S.L.G. presented a false allegation. The two versions are inconsistent and all that can be said at this point is that it is not clear exactly what happened.

[23] I have considered Dr. Elterman's assessment of the method used by Dr. Angus in reaching her opinion, and I agree that the weight to be given to her report is affected by some of the factors he discussed, such as the lack of an interview with K.1, the limited time interviewing S.E.G.P. and the

absence of a home visit at Ms. S.L.G.'s residence. Those difficulties, however, were not created by Dr. Angus. Ms. S.L.G. said that K.1 did not want to speak to her and she would not make her children do something they didn't want to.

[24] The foundation of Dr. Angus' recommendation that custody of S.E.G.P. be changed to Mr. D.P.P. is her opinion that Ms. S.L.G. is alienating S.E.G.P. from her father. The fact of the matter is, however, that S.E.G.P. is not alienated from her father, rather she is strongly bonded with him. Furthermore, I sense that as a result of the evidence presented at trial, Ms. S.L.G.'s attitude to the children visiting with Mr. D.P.P. may have become more positive and she testified in February she was prepared to cooperate with counselling to enable Mr. D.P.P. to have access to K.1.

[25] S.E.G.P. is strongly bonded with her mother. Her mother has been her primary caregiver and she has lived with her mother since the separation in May of 2003. She is close to her brother K.1 who will be living with his mother. The evidence, including the pictures of S.E.G.P. reveals that despite all the trouble between her parents, she remains a happy, healthy child. Her mother has been the one taking her back and forth to pre-school and her activities and it is her mother that has the flexibility in her work schedule to be available to continue to look after S.E.G.P. as she has. I am persuaded that it is in S.E.G.P.'s best interest to remain in the sole custody of her mother with her parents being joint guardians of her along the lines of the terms for guardianship set out by Master Joyce as he then was. The evidence is in agreement that joint custody is not workable at the present time because of the absence of cooperation between the parents. Perhaps that may change as unquestionably each child needs responsible cooperation by his or her parents if that is possible. The consultation required by the terms of guardianship shall be by letter or e-mail unless otherwise agreed.

[26] I find no reason to require Mr. D.P.P.'s access to continue to be supervised – the evidence does not reveal him to be a sexual predator, or a danger to his daughter in that or any other way. He has Wednesday and Thursdays off. He should have reasonable access to his daughter which would include overnight access on Wednesday night to start, which should increase to overnight access Tuesday night and Wednesday nights after six months. The parties may apply for other directions concerning access if it is necessary to specify them and they cannot agree.

[27] Mr. D.P.P. is the only father that K.1 has known. Although Mr. Z. has recently applied for access, he has not set a hearing date for his application and it is not known whether he will actually establish a relationship with his son. The evidence indicates that Mr. D.P.P. had a generally good relationship with K.1 before the separation and it is likely that having a relationship with Mr. D.P.P. would benefit K.1 and for that matter S.E.G.P. as well. Ms. S.L.G. has indicated she is prepared to take part in counselling to re-establish Mr. D.P.P.'s relationship with K.1. There will be an order that Mr. D.P.P., Ms. S.L.G. and K.1 shall take part in a counselling program to re-establish K.1's relationship to Mr. D.P.P., and Mr. D.P.P. shall have such access to K.1 as is recommended by the counsellor, agreed on by the parties or as the court shall order upon application if that is necessary. The cost of counselling shall be paid for by both parties, from their family assets, or otherwise if so agreed.

[28] Mr. D.P.P. has been paying $381 per month as ***Guideline*** support for his daughter S.E.G.P. but nothing for K.1. Mr. D.P.P.'s ***Guideline*** income is $48,271.03. He shall pay the amount specified for that income for two children, less one half of the $300 Mr. Z. has been ordered to pay for K.1. Ms. S.L.G. has registered the order for $300 per month support against a house Mr. Z. has in British Columbia and should be able to enforce at least some payments if she chose to do so. These payments by Mr. D.P.P. will start April 1, 2005.

[29] S.E.G.P. and K.1 have been attending a M.[…] school at considerable extra expense. While the parties were living together, Mr. D.P.P. objected to the cost of M.[…] schooling. That cost has been paid to date by the maternal grandparents and it is my understanding they are prepared to continue that. There will be no order against Mr. D.P.P. for the cost of M.[…] schooling, however, he shall pay whatever his proportionate share of extraordinary expenses there are for the children from April 1, 2005 onward,

excluding the extra cost of M.[…] schooling.

[30] On the 11th of February 2004, a Section 57 declaration was made under the ***Family Relations Act***, R.S.B.C. 1996, c. 128 that there was no prospect of reconciliation of this marriage. The ***Family Relations Act*** provides:

> 56 (1) Subject to this Part and Part 6, each spouse is entitled to an interest in each family asset ... when
>
> (a) a separation agreement,
>
> (b) a declaratory judgment under section 57,
>
> (c) an order for dissolution of marriage or judicial separation, or
> (d) an order declaring the marriage null and void
>
> is first made.
>
> (2) The interest under subsection (1) is an undivided half interest in the family asset as a tenant in common.

[31] The Court has the jurisdiction to reapportion family assets pursuant to section 65(1) of the ***Act*** which provides:

> 65 (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to
>
> (a) the duration of the marriage,
>
> (b) the duration of the period during which the spouses have lived separate and apart,
>
> (c) the date when property was acquired or disposed of,
>
> (d) the extent to which property was acquired by one spouse through inheritance or gift,
>
> (e) the needs of each spouse to become or remain economically independent and self sufficient, or
>
> (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,
>
> the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[32] Mr. D.P.P. is currently earning $48,271.03 from his employment at R.[…]. S.L.G. earned $56,800 from her employment in 2004 and investment income of $3,069.36 giving her a total income of $59,869.36. There is no evidence that the income of either party went anywhere other than into normal family expenditures from the beginning of them living together in May 1997. They lived together for six years separating in May 2003 of which period of time they were married for almost five.

[33] S.L.G. is the owner of a life insurance policy her father purchased for her at birth. It is her father who pays the premium on this policy. The policy has a current value of $16,394. As I understand Mr D.P.P.'s counsel, once the particulars of this plan were obtained, no claim was made against it. In any

event, either the insurance is not a family asset as it has not been used for a family purpose or, alternatively, as it has been paid for by Mr. G. it should be reapportioned entirely to S.L.G. — Mr. D.P.P. has made no contributions to it whatsoever.

[34] S.L.G. now holds an RRSP having a value of $58,816.42 in September 2004. At the time of the marriage, she held approximately $30,000 in that RRSP. Mr. D.P.P. has a pension from his employment and as of October 2004, some $11,678.81 in an RRSP account. In light of the duration of the parties' relationship, I find that a fair distribution of these assets is to divide Mr. D.P.P.'s pension according to the provisions of Part 6 of the ***Family Relations Act*** and to order that the present value of the RRSPs less the value at the date of the marriage and any contributions since the separation be divided equally by spousal rollover.

[35] The parties believe they can agree on a division of their household furniture and other personal property. If they cannot agree to a division, then that property shall be sold and the proceeds divided equally between them.

[36] The condominium in which the parties first lived together was sold at a loss, hence S.L.G. did not bring any real estate asset of value into the marriage. The home at […] Street in Surrey, registered in the name of S.L.G. was purchased by S.L.G. in May 2001 with the financial assistance of her parents. The house was purchased for $315,000 with $182,750 coming from a first mortgage from the HSBC Bank and $127,057.60 from a second mortgage granted by Ms. S.L.G.'s parents. The deposit of $10,000 was also paid by Mr. G.. Mr. D.P.P. did not make any direct contribution to the purchase. From the date of the purchase, the house was occupied as the family home and it is therefore a family asset subject to division. Although Mr. D.P.P. did not put money into the purchase price like Ms. S.L.G., his income thereafter went to pay family expenses and he bore the financial cost of the house either directly or indirectly as did she until the separation.

[37] Mr. D.P.P. takes the position that the money Ms. S.L.G.'s parents put into the house was a gift and should not be recognized as a debt. His own evidence, however, contradicts this position as he testified the reason his name was not on the house was because his father-in-law insisted it not be. Furthermore, a promissory note and a mortgage were prepared evidencing a debt and the mortgage was duly registered against the property. Apparently, no payments have been made on the mortgage with the result that approximately $163,564.03 is now due and owing under it, however that lack of payments does not persuade me that the transaction is anything other than a loan as testified to by Ms. S.L.G. and her father.

[38] There is now a third mortgage in favour of Ms. S.L.G.'s parents on which the sum of $17,948.10 is owing. This mortgage was granted by S.L.G. after the separation to secure the advance of money made by her parents to make payments on the first mortgage. I see no reason from Ms. S.L.G.'s income and expenses that she could not have been making these payments on her own account. The third mortgage appears to have been intended simply to eat into the equity and thereby defeat Mr. D.P.P.'s claim to share in it should he succeed. The third mortgage is not a proper debt to be taken into account in calculating the equity of the parties in this property.

[39] The parties have agreed the house in Surrey had a value of $365,000 when they separated May 13, 2003 and a value of $410,000 October 8, 2003. Ms. S.L.G.'s position is that the house should be reapportioned entirely to her as Mr. D.P.P. contributed nothing to its purchase, and nothing to defray the expense of keeping it after the separation. The fact is, however, she asked him to leave the house and she has had the use of it since. She has not been paying the second mortgage which with its accumulation of over $30,000 in interest, when recognized as a charge against the equity results in Mr. D.P.P. paying one-half of the interest to date on that mortgage. If Ms. S.L.G.'s parents' contributions and the agreed upon interest thereon are recognized as a charge, the result is that Mr. D.P.P. and Ms. S.L.G. paid equally while they were together, and to the extent she has paid the first mortgage and expenses and taxes since she has had the use of it. The increase in value has been because of the rising market

value of real estate, not her contributions.

[40] Mr. D.P.P. is entitled to an equal share in the equity in the matrimonial home after deducting the amount properly owing on the second mortgage, the first mortgage and repayment of the $10,000 deposit paid by Ms. S.L.G.'s parents if that is not otherwise repaid or included. A rough calculation, assuming the accuracy of the figures is that the parties' equity is:

Market value	$410,000
First Mortgage	180,000
Second Mortgage	160,000
Deposit	10,000
Equity	$ 60,000

[41] Mr. D.P.P.'s interest on those numbers would be $30,000. Ms. S.L.G. shall pay to Mr. D.P.P. the amount equal to his interest to be calculated as set out, and shall be entitled to possession of and ownership of the matrimonial home free of any further claim by Mr. D.P.P. thereafter.

[42] The divorce is granted.

[43] It appears to me that the success in this case, particularly on the major issue which has been custody of S.E.G.P. and Mr. D.P.P.'s access has been divided and that the likely order for costs is that each party should bear their own, however, the issue of costs may be addressed if necessary.

"V.R. Curtis, J."
The Honourable Mr. Justice V.R. Curtis

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