For earlier Reasons for Judgment on this Action, see 0757.95.Date of Release: 21 August 1995

No. A9302025

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)	
)	
WILLIAM ANTHONY PEVECZ)	REASONS FOR JUDGMENT
)	
PLAINTIFF)	
AND:)	OF THE HONOURABLE
)	
LINDA LILLIAN PEVECZ)	
)	MR. JUSTICE SMITH
)	
DEFENDANT)	
Counsel for the Plaintiff:	F.G. Potts
	Heather L. MacKenzie
Counsel for the Defendant	Karen F. Nordlinger, Q.C.
Place and Date of Hearing:	Vancouver, B.C.
	August 17, 1995

1 The applications presently before me arise out of reasons for judgment I pronounced on May 25, 1995, following a trial of this action. The plaintiff has drafted a judgment based on those reasons and applies to settle its terms. He also applied to settle the terms of an order I made at a post-trial hearing on June 9, 1995. However, during submissions counsel agreed on the form of that order so a formal settlement is unnecessary.

2 The defendant applies for a stay of the plaintiff's application to settle the judgment. Alternatively, she seeks to have the judgment settled in terms that differ from the plaintiff's draft and asks for a further order that execution on the judgment be stayed pursuant to s. 14 of the ***Family Relations Act***, R.S.B.C. 1979, c. 121 pending an appeal she initiated on June 19, 1995.

3 The threshold issue in relation to all of the applications before me is whether a judgment can be drawn up from my reasons. A judgment is the formal record of the final determination on the merits of the rights of the parties to an action: *Ex parte* Moore (1885), 14 Q.B.D. 627, per the Earl of

Selborne L.C. at p. 632. It is the plaintiff's position that I have made such final determinations with respect to some matters and that he may enter judgment for those matters finally adjudicated.

4 The trial was concerned solely with the division of matrimonial property between the parties pursuant to Part 3 of the ***Family Relations Act***. So far as it is relevant the prayer for relief in the statement of claim asked for:

B. A determination of family assets pursuant to Section 43 of the Family Relations Act, R.S.B.C. 1979, Chapter 121 and amending acts thereto;

C. A declaration pursuant to s. 51 of the Family Relations Act, R.S.B.C. 1979 c. 121 that the certain Separation Agreement dated September 12, 1991 is unfair;

D. A Declaration of ownership and possession of such family assets as may be appropriate under the circumstances pursuant to the provisions of Sections 51 and 52 of the Family Relations Act, R.S.B.C. 1979, Chapter 121 and amending acts thereto upon such terms as to the transfer of property or properties or the fixing of a monetary sum to be paid by the Defendant, Linda L. Pevecz, to the Plaintiff as compensation for the purpose of adjusting the division of property as to this Honourable Court may seem just;

. . .

5 In my reasons I found the separation agreement to be unfair, I reapportioned and fixed the parties' shares in the property, and I dealt with an award of compensation to the plaintiff to adjust the division of property, which was necessary because possession of and title to the family assets had already been assigned by the parties and some family assets had been disposed of. I fixed the value of some of the components of the compensatory award, but I was unable to fix a value for the necessary adjustment with respect to the pensions. In that regard, I said:

The actuaries used a discount factor of 10.5% per annum in calculating the pension values as of September 12, 1991. Those values are significantly higher now. Fairness requires that the pensions be divided at their trial date values: Stark v. Stark, *supra*. That can be achieved by reversing the discounting process. I will leave that calculation to be done by counsel with the assistance of their respective actuaries. If no agreement can be reached, the matter may be spoken to.

In reapportioning the pensions I have made lump-sum awards to Mr. Pevecz. The values on which I base such awards were not reduced for income tax liability. The experts did not thoroughly canvass this issue and I leave this calculation to counsel and their actuaries as well. Again, if no agreement can be reached, this matter may be spoken to.

6 Before the conclusions expressed in my reasons can be recorded in a judgment the calculations necessary to quantify the adjustment with respect to the pensions must be done. That conclusion flows from an examination of the statutory authority for the judgment.

7 Section 51 authorizes the court to order "that the property covered by . . . the marriage agreement . . . be divided into shares fixed by the court." It is clear from the definition of "family asset" in s. 45(2) that "family assets" are a subset of "property". The final sentence of s. 51 authorizes the court to make orders concerning property other than family assets. Thus, "property" is used in its generic sense in s. 51 and the section is concerned with the global division of property between the parties. It follows that the compensation authorized by s. 52(2)(c) to adjust the division of property is intended to be a comprehensive payment, not a series of payments relating to discrete family assets, and a judgment cannot be drawn up and

entered until the amount of the payment is finally ascertained.

8 There is another reason, arising from the reopening of the trial, why judgment cannot now be taken. Counsel for the plaintiff applied on June 9, 1995, to reopen. He wishes to recall his client and to call expert evidence directed to the issue of whether there should be a tax gross-up on the pension component of the compensation order. No evidence was led and no submissions were made in this regard during the trial. I granted the application to reopen and I understand the matter is set to be heard later this year. Counsel advised that the result could have a substantial effect on the size of the compensation payment. If that is so, it is conceivable that the division of property should be reconsidered in the light of s. 51(e), that is, the needs of the parties to remain economically independent and self sufficient. Accordingly, the rights of the parties have not yet been finally determined.

9 In the result all of the applications are dismissed. Counsel may speak to costs if necessary.

21 August 1995

Vancouver, B.C. "K.J. SMITH J."