

Separation

J.L.L. v. G.A.L, 2010 MBQB 39 (CanLII)

Facts:

There was a publication ban on the names of the parties.

J. and G. were married July 6, 1996. The husband was a farmer. The wife worked each summer mapping the spread of disease in Canola. She was primarily responsible for caring for the children when the farm was busy. In 2005 they applied for funding so the wife could return to university. In 2006 she attended the spring term at Brandon University. She commuted two days a week. In the fall, she attended full time and commuted daily. The youngest child went to day care at the university.

In May and June of 2007 the wife attended the University of Manitoba in Winnipeg. Because of the distance, she lived in residence and returned home every weekend. She returned home for July. She went back to the University of Manitoba for three weeks in August of 2007 and then again for the fall term in September 2007. During the August term the wife did not return to the family farm for the entire three weeks of the course. During the fall term of 2007 she phoned home almost daily but only returned home one weekend a month.

The husband and wife agree they separated in 2007, but could not agree on the date. The date of separation was relevant to establish that they had been separated for a year in order to get a divorce and was also relevant for family property division.

The Decision:

For a marriage to be ended at law, one of the spouses must have formed the intention to live separate and apart. In this case, the court had to look at the spouses' behavior to decide if and when either of the spouses formed an intention to live separate and apart.

The court mentioned the case of *Field v. McLaren* in which it stated, "It is the difficulty inherent in determining intention that has led numerous judges to consider actions and behavior as relevant to the determination of whether there was an intention to separate. Behaviour ought to reflect a party's intention or how can a court objectively determine a date of separation?"

There were two things the court focused on in making its decision. One

Discussion Questions:

- 1) What do you think about how the court decided the date of separation?
- 2) Do you think there are cases where the court could be reading too much into a certain situation or action?

Relevant Law:

The Family Property Act section 16

16 In any accounting under section 15, the closing date for the inclusion of assets and liabilities in the accounting, and the valuation date for each asset and liability shall be as the spouses or common law partners may agree and, in the absence of agreement,

(a) the date when the spouses or common law partners last cohabited with each other;...

Resources:

You can read the entire case at:

<http://canlii.ca/t/28cms>

You can find *The Family Property Act* at:

<http://web2.gov.mb.ca/laws/>

[statutes/ccsm/f025e.php](http://web2.gov.mb.ca/laws/statutes/ccsm/f025e.php)

was the action of the spouses during the time when the wife went back to university. The other was the effect this had on their sex life. The court had to consider the latter because both spouses placed considerable emphasis on their sex life. They were very sexually active and partners outside the marriage were okay as long as the other partner knew about them.

The husband said the date of separation was May 12, 2007. He said this was the date he confronted his wife about meeting another man she never told him about. The wife said they separated on October 20, 2007. She asked her husband if she could return to the family farm to live and he did not reply.

The spouses agreed not to have sex during September and October 2007, which was a major change in their relationship. The husband went to see a lawyer in July 2007. The wife saw a lawyer in September. The wife began counseling in the fall of 2007. She was no longer returning to the farm on a regular basis.

The court chose September 7, 2007 as the date the spouses formed the intention to live separate and apart, as this was the date the wife returned to school in Winnipeg.