

Separation

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

Facts:

In this case, there was a publication ban on the names of the parties or any other identifying information about the parties or their children.

The parties were married July 6th, 1996. The husband was a farmer and the wife did some work each summer mapping the spread of disease in Canola. When she wasn't doing this, she was primarily responsible for the care of the children when the farm was busy. In 2005 the couple applied for funding for the wife to return to university. In 2006 she attended the spring term at Brandon University. She commuted two days a week from the farm to Brandon. In the fall term, she attended full time and commuted daily. Their youngest child went to day care at the university.

In May and June of 2007 the wife enrolled at the University of Manitoba in Winnipeg. Because of the distance, she lived in the university residence and she returned home every weekend. At the end of June, the wife returned home for the month of July. She went back to the University of Manitoba for three weeks in August of 2007 and then again for the fall term starting September 7th, 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 telephoned 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 husband said the date of separation was May 12th, 2007. The wife said the date of separation was October 20th, 2007. The date of separation was relevant to establish that they had been separated for a year in order to get a divorce. The date of separation was also relevant regarding property division, in deciding which assets and liabilities to include.

Issue:

When did the spouses form an intention to live separate and apart?

Discussion Questions:

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

Relevant Law:

The Family Property Act

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 cohabitated with each other; ...

Online Resources:

You can read the entire case at:

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

Decision:

For a marriage to be ended at law, it is necessary for one of the spouses to 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* when giving reasons for its decision. In *Field*, the court 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 coming to the decision it did. One 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 parties placed considerable emphasis on their sex life. The spouses were very sexually active and it was understood that partners outside of the marriage were okay as long as the other spouse knew about them.

The spouses each put forward a date they said was their date of separation. The husband said it was May 12, 2007. He said this was the date he confronted his wife about meeting another man that she never told him about. He then became concerned about his farm if they were to separate. The wife suggested they enter into a "post-nuptial agreement" in order to protect his assets. The husband says after this the trust was gone in their marriage. The wife said they separated on October 20th, 2007. She said she asked her husband if she could return to the family farm to live and he didn't reply. For some reason, she put the date of separation as July 26th, 2007 in the court documents, but the court believed the marriage was over before the conversation on October 20th, 2007.

The parties also agreed not to have sexual contact during September and October 2007. The wife cancelled a joint credit card on October 6, 2007. The husband had gone to see a lawyer for advice in July 2007 and in September the wife also saw a lawyer for legal advice. The husband and wife also testified that the wife began counseling in the fall of 2007. The wife was no longer returning to the farm on a regular basis. The parties were no longer having sexual relations, which in this marriage was a major change in their relationship.

The court chose the date of September 7th, 2007 as the date the parties formed the intention to live separate and apart. This was based on the date that the wife returned to Winnipeg to resume her studies. The court felt that by the time the wife moved back to Winnipeg in early September 2007 the parties had formed the intention to live separate and apart.