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"A Complicated Business:" MBQB

Whether in the first instance or on a variation or review of a consent order, sorting out the issues surrounding the breakdown of a marriage is "a complicated business" as the court notes in two recent decisions, [*Cleven v. Cleven*](#), 2010 MBQB 279 and [*K.E.K. v. L.E.L.*](#), 2010 MBQB 266. In *Cleven* the court reviews the spousal and child support obligations contained in a consent final order made in 2003, with mixed results. In *K.E.K.*, a case complicated by the fact that one of the parties is unrepresented, the court looks at ongoing and retroactive spousal and child support claims, including issues of income determination for both parties. Both judgments exceed 200 paragraphs in length, as the judges detail the factual background grounding their exercise of discretion. While they don't break any new ground legally, the decisions are instructive reading for the window they provide into how judges view evidence and assess credibility in high conflict cases. Justice Little comments on the reliability of the evidence as follows:

Each side's evidence requires some filtering for perceptions, but ultimately not much turns on credibility. Each has at times overstated their own involvement or contributions while minimizing or paying lip service to the other's. Most of what I was told, in spite of occasional sarcasm or pejorative commentary, is by now a sincerely enough held synoptic account of perceptions, subjectively shaped or reshaped through a veil of hurt feelings, disappointment and frustration.

Emotions count for so little in the end when it comes to the adjudication of the legal issues....

The result here is driven less by what each had to say and more by a series of

circumstances and factors that are in the main indisputable. Not the least of these are the length of the marriage, Ms. Cleven's dependency at the time of the marriage breakdown, Mr. Cleven's comparatively sizable income then and now, Ms. Cleven's inability to become self-sufficient through employment or other means, and her failure to reasonably balance or prioritize her needs, having reasonable regard for the level of support she receives under the current Order (paras. 95, 97, 98).

In contrast, assessment of credibility plays a central role in *K.E.K.*, due to the inappropriate conduct of the unrepresented party and in the absence of testimony from independent witnesses (see paras. 18 to 59).

Father-in-law Denied Standing in **FPA** Reference: MBQB

In [Stanze v. Stanze](#), 2010 MBQB 247 the court denied standing on a family property accounting to the father-in-law of the petitioner, finding that he had no identifiable interest in the reference and that the participation of a third party is not consistent with, or contemplated by, the accounting scheme established by *The Family Property Act*. During the marriage the parties farmed land jointly owned and subsequently sold by the husband and his father, both German residents. The father-in-law had previously been added as a respondent to the family proceedings in order to appeal an interim preservation order against the land sale proceeds. That [appeal](#) was unsuccessful. At the reference the wife dropped her claim for a share in the appreciation in value of the land jointly owned by the husband and his father. The court found that no equalization payment was owed to her as her assets (including the home property which was in her name alone) exceeded those of the husband.

Token Fine Imposed in IRSS Case: MBQB

In [Daniels v. Daniels](#), 2010 MBQB 264, the case currently [on appeal](#) to the Court of Appeal on the issue of whether monies payable under the court-ordered Indian Residential Schools Settlement may be accessed by the Enforcement Branch to satisfy child support arrears, Master Ring disposes of the three year old summons for wilful default by finding Mr. Daniels in default for taking the first common experience funding and imposing a fine of \$1.

Quebec Decision on Rights of Common Law Couples to be Appealed

According to this recent [Slaw post](#), the Quebec government has announced its intention to appeal the November 2010 [decision](#) of the Quebec Court of Appeal that the province's *Civil Code* discriminates against common law couples by denying them recourse to the support rights and obligations of married couples. This Court of Appeal decision was mentioned in our last eLaw for its tangential connection to our Court of Appeal decision in [Lei v. Kwan](#), 2010 MBCA 108.

Recommended Reading

These Practice Points articles (although written for B.C. practitioners) contain some useful tips on preparing for discovery and trial in family law cases:

- [Examination for Discovery in Family Law Cases:](#)
- [Trial Preparation: Tips, Tricks and Tactics for Winning Your Trial.](#)

The Unhappy Union of Tax and Family Law: Suggestions for Change

The recent CBA (Family Law section) submission [Tax Issues in Family Law](#) outlines the results of a member survey concerning tax law on family breakdown and makes recommendations for change in seven key areas: proof of separation; deduction of legal fees; receipts; proof of child

support payments; spousal support arrears; splitting pension benefits and attribution rules; and application of child tax benefit. Family law lawyers will find the 9-page summary of the intersection of tax and family law a worthwhile read.

Annual Joint Family Law Program: Putting Children First

Professor Rollie Thompson and psychologist Dr. Joan Kelly will examine the latest research on children's adjustment after separation and divorce, parenting plans, child alienation and mobility issues in the upcoming Annual Joint Family Law program [Getting to 20/20 Refining Our Focus: Putting Children First](#). The program is jointly sponsored by the Law Society of Manitoba, the Court of Queen's Bench Family Division judges and the Manitoba Bar Association, Family Law section. It takes place on March 11, 2011, from 9:00 a.m. - 4:30 p.m. at the Fort Garry Hotel. [Register](#) by January 31, 2011 to take advantage of the early bird discount.

Call for Papers: 2012 National Family Law Program

Organizers of the Federation of Law Societies' 2012 National Family Law Program, to be held July 16-19, 2012 in Halifax, N.S., are [accepting proposals](#) for conference papers/presentations. Submissions must be received no later than May 30, 2011.

Upcoming MBA Family Law Section Meeting

The Family Law section of the Manitoba Bar Association is presenting the program [Improving your Practice - Tips from both sides of the Bench](#) on February 28, 2011, from 12:00 noon - 1:30 p.m. at the Law Society of Manitoba classroom. The Honourable Madam Justice Goldberg and Lawrence Pinsky will present. Contact the MBA for further details or to register.

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