

CANADA / JUDGMENT

A.N.K. v. E.K.

2025 BCSC 1854

COURT

Supreme Court of British Columbia

DECIDED

24 September 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1854 A.N.K. v. E.K.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.N.K. v. E.K.,

2025 BCSC 1854

Date: 20250924

Docket: E182730

Registry: Vancouver

Between:

A.N.K.

Claimant

And

E.K., K. Family 2017 Trust, Confidex Holdings Ltd., Certus Enterprises Ltd., Igenius Incorporated,
West Quay Offices Inc. a.k.a Butcherson Investments Inc.

Respondent

And

N.O.

Respondent

Before: The Honourable Justice Ahmad

Supplementary Reasons to A.N.K. v. E.K., 2024 BCSC 1391

Reasons for Judgment

The Claimant, appearing on her own behalf:

A.N.K.

Counsel for the Respondent, E.K.:

N. Nasser

Counsel for the Respondent, N.O.:

F. Wu

Representative for the Respondents Certus Enterprises Ltd., Confidex Holdings Ltd., Igenius Incorporated, West Quay Offices Inc., and K. Family 2017 Trust:

E.K.

Place and Date of Hearing:

Vancouver, B.C.

December 13, 2024

January 24 and February 21, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 24, 2025

Table of Contents

I. Introduction.. 4

II. Legal Framework.. 4

III. Requests for Clarifications or Reconsideration.. 5

A. Calculation of the claimant's award for division of family assets. 5

B. Value of family assets and debts. 6

1. Bank and investment accounts. 7

2. Personal property. 8

3. iGenius and West Quay (adjustment for distributive taxes) 10

4. Loan from N.O. 13

5. Conclusion. 14

C. Set-offs from the compensation payment owing from the respondent to the claimant 14

1. BMW motorbike. 15
2. Spousal loan account 15
3. Post-separation payments made by the respondent for or on behalf of the claimant 17
4. Payments made on account of support obligations. 19
5. Conclusion. 21

D. Payment terms. 22

IV. Application to Re-word the Spousal Support Order.. 22

V. Applications for Other Orders. 26

A. Applications relating to M. 26

B. Application for Conduct Order 27

VI. Costs. 28

Schedule "A" - Summary of Orders. 29

I. Introduction

- [1] The trial of this family action took place over 58 days commencing in April 2022 and ending in June 2023, after which the parties submitted lengthy written submissions. No oral submissions were made. In reasons for judgment dated August 1, 2024, indexed at 2024 BCSC 1391 ("Trial Reasons"), I made various findings and orders including in respect of the valuation and division of family assets and debts, the amount of retroactive and prospective support payments owing, and for set-offs to be made from the amount owing to the claimant for those items.
- [2] The final order has not yet been entered. Before that is done, both parties seek clarification and a reconsideration of my decision in respect of those issues as well as other orders relating to M., the child of the marriage.[1]
- [3] In addition, both individual respondents have applied for double costs. They seek an order that those costs be set-off against the amounts owing to the claimant. The application for costs was adjourned generally.
- [4] These supplemental reasons for judgment address the requests for clarification and reconsideration, as well as the applications not relating to costs.

II. Legal Framework

[5] The authority to clarify, reconsider, correct, or otherwise make further orders with respect to the decision is derived from three sources.

[6] First, at para. 570 of the Trial Reasons, I expressly provided that:

The parties are at liberty to make arrangements with Supreme Court Scheduling for a hearing before me for clarification, or to correct any mathematical errors, of the above orders or with respect to any ancillary orders that may be required or matters that have not been addressed.

[7] Second, s. 97 of the Family Law Act, SBC 2011, c. 25 provides:

Giving effect to property division

97(1) For the purposes of giving effect to a division of property or family debt under this Part or Part 6 [Pension Division], the Supreme Court may

- (a) determine any matter respecting the ownership, right of possession, or division of the property or family debt, and
- (b) despite sections 94 (2) [orders respecting property division] and 215 (2) [changing, suspending or terminating orders generally], and subject to subsection (3) of this section, make any order that is necessary, reasonable or ancillary to give effect to the division.

[Added emphasis.]

[8] Finally, pursuant to its inherent jurisdiction, before a final order is entered, the court retains discretion to reconsider a judgment that has been pronounced following a trial. The power to do so should be exercised sparingly but can properly be invoked in order to avoid a miscarriage of justice, such as where the original judgment is in error because it overlooks or misconstrues material evidence, or where the original judgment as expressed leads to uncertainty and confusion. It has also been held that the discretion is appropriately exercised where a relatively discreet error in math or some mechanical consideration of the evidence is clearly in error: *Sew Cozzi Ventures Inc. v. Apex Outdoor Innovations Corp.*, 2017 BCSC 1500 at paras. 3-4, quoting from *United States of America v. Boyachek*, 2013 BCSC 1560 at para. 55, and *Moradkhan v. Mofidi*, 2013 BCCA 132 at para. 31 [Moradkhan].

[9] However, reconsideration and clarification of a decision does not give rise to a party's right to "re-argue, re-cast, or re-state" the case that was argued at trial: *Moradkhan* at para. 31. Nor is it intended to be an alternative method of appeal: *Kemp v. Wittenberg*, 1999 CanLII 5269 at para. 5.

III. Requests for Clarifications or Reconsideration

A. Calculation of the claimant's award for division of family assets

[10] Regarding division of family assets, the following findings are relevant:

- a) at para. 313 of the Trial Reasons, I determined the total value of the family assets was \$4,957,840; and
- b) at para. 342, I found it was appropriate to divide the (net) family assets on a 75% / 25% basis[2] in favour of the respondent.

[11] In order to calculate the claimant's monetary entitlement to the family assets, I should have applied the claimant's percentage entitlement (25%) to the total value of the family assets (\$4,957,840). Instead, by inadvertence, I multiplied the claimant's percentage entitlement (25%) by what her entitlement would have been if the value of the family assets was equally divided. That error resulted in an award for division of family assets of \$619,730 (before deductions): Trial Reasons, paras. 544, 545, 564, and 565. That is half of the claimant's entitlement properly calculated in accordance with the intent of the reasons.

[12] The significant miscalculation was clearly an error. The interests of justice dictate that the claimant's entitlement to the family assets reflects the true intention of the Court, that is, that her 25% entitlement be based on the total (net) value of family assets.

[13] I turn now to the respondent's submissions regarding that value.

B. Value of family assets and debts

[14] The family assets are comprised of several categories of assets, being bank and investment accounts, personal property, the Biddesden Home (the former family home), and the respondent's interest in related entities. Those assets are summarized on the table set out at para. 313 of the Trial Reasons (the "Table of Family Assets"). With the exception of the Biddesden Home, the respondent requests that adjustments be made to the value attributed to each of those categories of family assets.

1. Bank and investment accounts

a) Turkish bank accounts

[15] The bank and investment accounts total includes \$211,399 held in two Turkish bank accounts.

[16] Those accounts are described in the Trial Reasons:

[284] As of the date of separation, \$697,061 remained in those bank accounts. Since then, the respondent has used \$485,662 for payment of various expenses, including for the payment for various of the claimant's expenses. The remaining balance, roughly \$215,000 (\$697,061 - \$485,662 = \$211,399), is a family asset.

[17] Applying the provisions of the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA] to the property issues, I noted that pursuant to s. 58(2), "family assets" include "[p]roperty owned by one or both spouses and ordinarily used by a spouse or a minor child of either spouse for a family purpose": Trial Reasons at para. 257(a).

- [18] On this application, the respondent referred to evidence that was submitted at trial to show that he only used one of the two Turkish bank accounts - an HSBC account - during the marriage. He argues no transactions occurred in the other account - a Yapi Kredi Bank ("YKB") account - until after separation. It was only after separation that he withdrew funds from the YKB account in order to pay for various expenses, including for the mortgage on the Biddesden Home and the claimant's expenses. Including the balance of the YKB account as a family asset misconstrues that evidence.
- [19] As the YKB account was not used for a family purpose during the relationship, it should not have been included as a family asset subject to division.
- [20] The value of the Turkish bank account set out in the Table of Family Assets should be amended to reflect only the balance in the HSBC Turkey account.
- b) Credit card debt
- [21] To obtain the net value of the bank and investment accounts, I deducted the amount owing on three credit cards. As the respondent correctly notes, the amount of the credit card debt was incorrectly calculated. In fact, the amount owing on the credit cards was \$36,450 (\$14,513 + \$15,685 + \$6,252); not the \$23,946 noted on the Table of Family Assets.
- [22] The mathematical error in the Table of Family Assets should be corrected to reflect credit card debt of \$36,450.
2. Personal property
- a) BMW motorbike
- [23] The Table of Family Assets includes a BMW motorbike which was valued at \$15,000. However, the claimant sold the motorbike for \$15,500. The value of the motorbike should be corrected to reflect the actual sale price of \$15,500.
- b) Bentley and Range Rover
- [24] Also include on the Table of Family Assets are two vehicles: a Bentley and a Range Rover, valued at \$160,000 and \$82,500, respectively. The basis of those values is set out in the Trial Reasons at para. 263:
- [263] The only evidence regarding the value of the vehicles is list prices for similar vehicles and the parties' own estimates. Doing the best I can, I value each of the vehicles at the mid-point of the values offered by the parties. They are:
- a) Bentley (currently used by the respondent): \$160,000
- b) Range Rover (currently used by the claimant): \$82,500

- [25] The respondent notes that the value assigned to the Bentley appears to be higher than the value assigned to that asset in either of the parties' financial statements, including the claimant's highest estimate of \$150,000 (Form F8 Financial Statement of the claimant dated November 10, 2020). It is also more than the list prices ranging from \$88,888 to \$119,800, relied on by the claimant at trial. Given that evidence, the respondent seeks clarification of the basis on which the Bentley was valued at \$160,000.
- [26] As noted in Trial Reasons, a 'rough and ready' value was assigned to the Bentley, however stated to be based on the evidence that was available. As the respondent notes, nothing in the evidence (including that of the claimant) suggested that the value was as high as \$160,000. The value assigned to the Bentley misconstrues the evidence. The interests of justice dictate that the Bentley be valued in accordance with the evidence, however imperfect, that was before the Court.
- [27] In his most recent financial statements, the respondent estimated that the Bentley was valued at \$120,000, "based on the average of 3 similar cars [he] found in autotrader.ca" (Form F8 Financial Statement of the respondent dated June 14, 2023, page 3), less repair costs. That is consistent with at least one of the listings relied on by the claimant for \$119,800.
- [28] Valuing the Bentley at \$120,000 is consistent with that evidence. The value of the Bentley should be corrected to \$120,000 to reflect that evidence.
- [29] In addition, noting the respondent's trial evidence that the Bentley required repairs of approximately \$71,000, the respondent argues the cost of those repairs should be deducted from any value that is attributed to the Bentley. That same argument was made at trial. In my view, the argument goes beyond a mere reconsideration or recalculation. It amounts to the respondent's attempt to re-argue the issue. I decline to consider that argument.
- [30] In addition, at this hearing, the respondent submitted affidavit evidence in respect of a claims history and repairs that were required for the Range Rover. In the interests of providing some finality to this long-outstanding dispute, I decline to admit that evidence for the purpose of recalculating the value of the Range Rover.
- [31] Finally, the respondent suggests that rather than valuing either the Bentley or the Range Rover, both be sold and the proceeds divided in accordance with the 75% / 25% apportionment ordered at trial. That argument was not made at trial. I decline to consider it now.
3. iGenius and West Quay (adjustment for distributive taxes)
- [32] The Table of Family Assets includes the respondent's interest in two related entities - iGenius and West Quay - as family assets that are subject to the division of property.

- [33] Both entities were the subject of a business valuation report dated January 15, 2021 prepared by Kiumars Ghanavizchian (the "Business Valuation Report"). As of the date of the report, iGenius was valued at \$272,000 and West Quay was valued at \$121,000: Trial Reasons at paras. 265 and 280.
- [34] At trial, the respondent took the position that the circumstances had changed since the date of the report, such that iGenius' value was then closer to \$85,000. I rejected that submission: Trial Reasons at paras. 267 -268.
- [35] On this application, the respondent suggests that, rather than awarding the claimant compensation based on the value of iGenius, he sell iGenius and divide the sales proceeds in accordance with the 75% / 25% apportionment ordered at trial. He did not take that position at trial. I decline it consider it now.
- [36] In the alternative, the respondent suggests that the value of both iGenius and West Quay be adjusted to account for "distributive taxes" that he would personally incur, but the respondent would not, should there be a requirement to distribute assets or otherwise dissolve those entities in order to make the compensation payment required by the Trial Reasons. That argument was made at trial, but not implemented in the Trial Reasons. Nonetheless, I am satisfied that it is an appropriate adjustment to make now.
- [37] The Court of Appeal has considered the implication of distributive taxes in the family law context, concluding that it is an error in principle to "fail to allow for the distributive tax burden [a party] will face" to ensure that the parties obtain "equality of treatment" and to bring parity to the division of family assets: *Sanai v. Mahmoud*, 2017 BCCA 155 at paras. 35 and 38 [Sinai].
- [38] In the Sinai decision, having considered the issue, the trial judge ordered the appellant to pay a sum that equalized the gross value of the family assets, but did not make any general allowance for the "divergent net values" that result. As the Court of Appeal described it, "the respondent received apples and the appellant received oranges": *Sanai* at para. 28. It overturned the trial judge's failure to make the allowance.
- [39] In *Drinkall v. Drinkall*, 2020 BCSC 964 [Drinkall], this Court considered an applicant's (Mr. Drinkall's) post-trial request to reconsider an order that he pay his former spouse (Ms. Baldwin) \$600,000 in satisfaction of her interest in his related company. On the reconsideration hearing, Mr. Drinkall advised the Court that he was unable to raise the funds required to make the compensation payment. He asked that the compensation order be cancelled and replaced with an award to Ms. Baldwin for shares in specie or, alternatively, that the Court consider the tax consequences to him of drawing funds out of the company to purchase Ms. Baldwin's interest. Neither position was raised at trial.
- [40] In respect of the alternative argument, Mr. Drinkall argued:

- [9] though the court determined family property should be divided equally between the spouses, the compensation order, as it stands, results in Ms. Baldwin receiving more than the 50% value of the shares once they are converted to cash. Therefore, he says, the compensation order must be adjusted to reflect a truly equal division of family property.
- [41] Maintaining that the compensation order was appropriate to give effect to the division of property, the Court declined to award Ms. Baldwin shares in specie instead. However, referring to the decisions in *Maguire v. Maguire*, 2016 BCCA 431 and *Sanai*, it held:
- [34] In my view it is appropriate that I reconsider my decision with respect to my order that Mr. Drinkall compensate Ms. Baldwin for \$600,000 for the shares that he holds in Drinkall Ranches Ltd. There may be a miscarriage of justice if the tax implications are not taken into consideration.
- [42] In that case, Mr. Drinkall did not lead evidence at trial either that the sale of the shares was likely or of the tax consequences from a potential share sale or payment of dividends. The failure to lead that evidence was not an impediment to the Court's reconsideration: Drinkall at para. 39. On the limited information before it, the Court was unable to say what the "likely" tax consequences would be other than it would be somewhere between 0 and 25%: Drinkall at para. 40.
- [43] The Court concluded:
- [40] Based on the decision of the Court of Appeal in *Sanai*, it would appear appropriate that I permit Mr. Drinkall an opportunity to provide me with a more precise opinion with respect to the distributive taxes on the sale of shares that he holds in DRL. These tax consequences may be significant and I am satisfied the test for reopening is met: per the considerations set out in *Grewal*, ignoring these tax consequences could lead to a miscarriage of justice and a consideration of the tax consequences could lead to a different result.
- [44] The Court provided Mr. Drinkall with 30 days within which to provide an opinion as to the likely distributive taxes.
- [45] Unlike the circumstances in *Drinkall*, the respondent does not suggest that he intends to draw money out, or sell shares, of either iGenius or West Quay to make a compensation payment to the claimant. In fact, at trial, he argued that neither company had any significant value. However, as the Court finds in *Sanai*, "the law, correctly understood, does not limit the requirement of an allowance for distributive taxes to cases in which the asset must be sold to allow the non-owning spouse to realize his or her interest in the asset": at para. 33.
- [46] In this case, in the Business Valuation Report, Mr. Ghanavizchian notes that his valuations of iGenius and West Quay "do not reflect any personal income taxes that may be incurred should there be a requirement to distribute any assets out the [related] Entities in order to make a compensation payment with respect to a division of assets". He also notes:

Distributive income taxes are usually not recognized in the determination of fair market value of a business interest but may be recognized in the determination of net worth or for the purposes of dividing assets subsequent to a marital breakdown.

[47] And further:

We make mention of this issue to highlight the fact that, due to differing tax treatments that are afforded to certain assets, assets having equivalent before-tax values may not have equivalent after-tax values

[Added emphasis.]

[48] Mr. Ghanavizchian suggests that may be the case where family assets to be divided include a principal residence and business assets. He did not provide any further evidence of how that the differing tax treatments may affect the value of the business assets in this case.

[49] However, on the basis of the decisions in Sinai (and the cases it considers) and Drinkall, I am satisfied that it is appropriate to allow the respondent to provide a precise opinion with respect to the effect of those tax treatments, including the effect of distributive taxes. I share the view of the Court in Drinkall that ignoring the potential tax consequences could lead to a miscarriage of justice.

[50] In making this order, I am cognizant of the amount of time that has passed since the commencement of this action and, indeed, since the date on which the parties provided their final submissions in respect of these matters. Accordingly, there will be a relatively short timeline by which the opinion must be provided:

- a) the respondent will have 30 days from the date of these reasons in which to obtain and serve an opinion to address the amount of distributive taxes and the effect on the value of iGenius and West Quay;
- b) the claimant will have 30 days from receipt of any such report to provide a response; and
- c) the parties will make arrangements with Supreme Court Scheduling to set a date for hearing before me in respect to the valuation of these assets.

4. Loan from N.O.

[51] At trial, the respondent led evidence regarding a post-separation loan he received from N.O., which he used primarily for the purpose of paying down the mortgage on the Biddesden Home. On this application, he seeks to have that loan included as family debt, subject to division with the claimant.

[52] However, the respondent's post-separation payments on the mortgage were a significant factor in the conclusion that an equal division of assets would be unfair to the respondent: Trial Reasons at para. 333. In that way, the loan proceeds have already been accounted for to the claimant's disadvantage.

[53] I decline to include the loan from N.O. as a family debt.

5. Conclusion

[54] I acknowledge that the reconsideration and recalculation of the value attributed to the family assets will result in less value available to the claimant than as contemplated in the Trial Reasons.

[55] In making corrections that I have, I have considered the claimant's argument that this hearing, and my reconsideration of the issues, is nothing more than a re-hearing or appeal of matters heard at the trial. I do not accept that characterization. Some of the calculations set out in the Trial Reasons misconstrue the evidence and argument (for which I did not have the benefit of oral submissions). Moreover, at para. 570 of the Trial Reasons, I expressly contemplated that some matters (such as the distributive tax issue) may not have been addressed.

[56] In my view, the corrections and additional submissions I have allowed are necessary to ensure a fair and just outcome for both parties. It is in the interests of justice that they are made.

C. Set-offs from the compensation payment owing from the respondent to the claimant

[57] At para. 543-545 of the Trial Reasons, I summarized the total amount owing by the respondent to the claimant. That amount is comprised of what I had calculated to be (a) the combined child and spousal support owing by the respondent to the claimant; and (b) the value of the claimant's 25% interest in the family assets. At paras. 546-563, I set out various amounts to be set-off against the amounts owing by the respondent.

[58] Under this category of requests for clarification or reconsideration, the respondent argues that the amount of set-off is understated and results in the claimant being overcompensated.

1. BMW motorbike

[59] Through the division of family assets, the claimant is entitled to a 25% share of \$15,500, the value of the BMW motorbike listed on the Table of Family Assets. However, when the claimant sold the motorbike, she retained the full amount of the \$15,500 sales proceeds. Only half of the sales proceeds (\$7,750) was set off against the amount owing to her: Trial Reasons at para. 546(c). I accept that set-off results in overcompensation to the claimant.

[60] The claimant's 25% of the motorbike results in her entitlement to \$3,875 (\$15,500 x 25%). Setting off only half of the sales proceeds results in her retaining 50% of those proceeds in addition to the 25% awarded to her for her share of the motorbike as a family asset.

- [61] To ensure that the claimant does not recover more 25% of the value of the BMW motorbike, the full amount of the sales proceeds retained by the claimant (\$15,500) should be set off against the amount owing to her by the respondent.
2. Spousal loan account
- [62] The same analysis applies in respect of the "spousal loan account" included in the Table of Family Assets as a family asset. As of the date of separation, that account was valued at \$597,372: Trial Reasons at paras. 271-272, 313, 342. The claimant is entitled to \$149,343 ($\$597,372 \times 25\%$) for this account.
- [63] On the basis that the claimant had accessed funds from the spousal loan account after separation, I had set-off a total of \$185,000 against the amount owing to her: Trial Reasons at paras. 549-557.
- [64] However, I accept, as the respondent argues, that the claimant used more than the \$185,000 that was set-off in the Trial Reasons. I also accept that the failure to set-off the amount of all funds used from the spousal loan account by, or on behalf of, the claimant results in an overcompensation to her: not only did she have use of funds from the account, by the division of property she will also receive 25% of the full value of the account.
- [65] In response, the claimant argues that the respondent also had the benefit of funds from the spousal loan account post-separation. However, the respondent's use is not directly relevant in determining if the claimant's post-separation expenditures from the account results in her receiving more than the 25% of the value to which she is entitled.
- [66] I conclude that it does. To rectify that unintended result, it is appropriate to reconsider the full amount of the funds that that claimant used from the spousal loan account post-separation. Having conducted that reconsideration, I have determined that pursuant to various court orders and other withdrawals, the claimant has received a total of \$377,062 from the account, calculated as follows:

Withdrawal or payment made on behalf of the claimant

Amount

Payment made pursuant to the Consent Order of Associate Judge Cameron dated November 27, 2020 (paras. 1 and 3)

\$ 30,000

Payments made pursuant to the Order of Associate Judge Cameron dated December 11, 2020:

· Para. 19.a

· Para. 16

\$ 2,500

\$ 86,541

Cash withdrawals made by the claimant:

- Trial Reasons at para. 552
- Trial Reasons at paras. 550, 554 [3]

\$ 85,000

\$ 23,121

Payment made pursuant to the Consent Order of Associate Judge Muir dated October 11, 2019 (para. 7) [4]

\$50,000

Payment made for legal expenses pursuant to the Consent Order of Associate Judge Cameron dated February 28, 2020 (para. 8)

\$100,000

Total Disbursements to the claimant from the spousal loan account

\$ 377,062

[67] The \$377,062 the claimant actually used from the spousal loan account exceeds the \$149,343 (\$597,372 x 25%) to which she is entitled. To allow her both the \$377,062 she used and 25% of the full value of the account results in a significant overcompensation for family assets that does not reflect the intention of the award.

[68] To ensure that the claimant does not recover more than 25% of the value of the spousal loan account, the full amount of the claimant's post-separation withdrawals from the spousal loan account (\$377,062) must be deducted from the amount payable by the respondent to the claimant. All references to \$185,000 in the Trial Reasons for this set-off (including at paras. 557 and para. 564) should be replaced with \$377,062.

3. Post-separation payments made by the respondent for or on behalf of the claimant

[69] In addition to the spousal loan account, the Table of Family Assets includes three other bank accounts: an HSBC savings account, an HSBC investment account, and the Turkish bank accounts. As of the separation date, the total value of those accounts was \$541,103 (\$127,711 + \$201,993 + \$211,399): Trial Reasons at para. 313[5]. Through the division of property, the claimant was awarded \$135,275.75 (\$541,103 x 25%) as her share of these family assets.

[70] After separation, the respondent continued to pay numerous of the claimant's living expenses. I found:

[553] After separation, the respondent continued to pay numerous of the claimant's expenses including BC Hydro, Fortis BC, car insurance, Shaw cable and streaming subscriptions, and the claimant's credit card expenses. In the period after separation to the end of 2020, he paid approximately \$110,000. Of that amount, approximately \$75,000 was for the payment of her credit card. The respondent was also making all payments on account of the mortgage and other expenses relating to the Biddesden Home in which the claimant was residing.

[Added emphasis.]

See also: Trial Reasons at para. 563.

[71] Despite that finding, I did not accept that any set-off should be made in respect of those post-separation payments:

[563] As set out above, after separation, the respondent continued to pay numerous of the claimant's living expenses. Those payments have been accounted for in respect of the \$85,000 set-off detailed above. There will be no additional set-off for these payments.

[72] That conclusion results in an overcompensation to the claimant: She had the benefit of payments of approximately \$110,000 for post-separation expenses in addition to the \$135,275.75 she has been awarded as her 25% of the accounts. However, in any event, regardless of the claimant's entitlement to the accounts, the post-separation payments made to the claimant, must be accounted for. That is true regardless of the source of the payments.

[73] The sum of \$110,000, being the amount that the respondent paid for the claimant's post-separation expenses, must be included as a set-off from the amount owing by the respondent to the claimant.

[74] Before turning from this issue, I note that the respondent also seeks to set off his post-separation payments totaling \$705,278 on the Biddesden Home mortgage. The claimant notes that she made payments toward the mortgage as well. However, those net mortgage payments were a significant factor in the conclusion that an equal division of assets would be unfair to the respondent: Trial Reasons at para. 333. The mortgage payment have been accounted for in that way. No further set-off is allowed for those payments.

4. Payments made on account of support obligations

[75] To the date of trial, the total amount of retroactive child and spousal support payable by the respondent to the claimant was \$210,932: Trial Reasons at paras. 482, 532, and 543. That amount is included in the total amount owing by the respondent to the claimant: Trial Reasons at para. 545.

[76] As of July 31, 2024, the claimant had received support payments totalling \$285,132 from funds held by British Columbia Family Maintenance Agency ("FMEP"): Trial Reasons at para. 546(b)(ii). That amount was set off from the amounts owing by the respondent to the claimant.

[77] The respondent argues that, in addition to those payments from FMEP, he made other payments of spousal support that were not considered in the Trial Reasons and that also should have been set off:

- a) first, payments totaling \$82,500 (the "iGenius Payments") comprised of salary paid to the claimant by iGenius in 2018 to 2021, a period in which she did not provide employment services.
- b) second, payments totaling \$9,597 made to the claimant, through FMEP or otherwise (the "Other Support Payments"), as follows:

Date

Amount

Nov. 29, 2021

\$ 1,060

Dec. 3, 2021

\$ 2,000

March 28, 2022

\$ 500

March 29, 2022

\$ 4,000

April 4, 2022

\$ 1,000

2022 - various dates

\$ 1,037

Total Other Support Payments

\$ 9,597

- c) third, the claimant received the sum of \$7,000 for the month of August 2024, which was \$4,775 more than the spousal support payment contemplated by the Trial Reasons (the "August 2024 Overpayment"); and

- d) fourth, payments of interest totaling \$1,091.22 (the "Support Interest") made in respect of overdue support payments.
- [78] Collectively, the iGenius Payments, the Other Support Payments, the August 2023 Overpayment, and the Support Interest total \$97,963. The respondent says that amount should also be set off against the amount that he otherwise owes to the claimant.
- [79] Of those amounts, I accept that the Other Support Payments (\$9,597) and the August 2024 Overpayment (\$4,775) totaling \$14,372 have been paid to the claimant on account of the support payments to which she is entitled. Her receipt of those payments, in addition to the support award, results in double recovery and overcompensates her for support. To ensure that claimant is not overcompensated for support, the sum of \$14,372 should be offset against the amount owing by the respondent to the claimant.
- [80] I do not accept that the iGenius Payments or the Support Interest should be included in the set-off amounts.
- [81] While I accept that the Support Interest was paid, there is no corresponding award against which to set off that amount. Simply put, the payment of Support Interest does not result in an overpayment to the claimant.
- [82] Finally, as the respondent asserts, the iGenius Payments were made at a time that the claimant did not provide any employment services. Nonetheless, those payments were included in her income for the purposes of calculating the support payments payable: Trial Reasons at paras. 470, 482, and 532. That inclusion in income resulted in lower support payable than would have been the case had her income in those years been recorded as nil.
- [83] Attributing the iGenius Payments to the claimant as income and counting them toward support payments would result in the claimant being undercompensated for support. I decline to include the iGenius Payments as a set-off from the amounts due to the claimant.
- [84] As a final matter with respect to spousal support, para. 541 of the Trial Reasons provides:
- [541] Commencing on August 1, 2024 and ending on September 30, 2026, the respondent shall pay to the claimant monthly spousal support in the amount of \$2,225, payable on the first day of each month.
- [85] In fact, as calculated, spousal support for that period is \$2,222 per month: Trial Reasons at para. 532. The reference in para. 541 to \$2,225 should be changed to \$2,222 to reflect the actual monthly spousal support payable.

5. Conclusion

- [86] I acknowledge that the recalculation of the set-offs results in a significant reduction in the compensation payments contemplated in the Trial Reasons. However, as I have explained, some of the calculations set out in the Trial Reasons misconstrue the evidence and argument that, if not corrected, will result in a significant overcompensation to the claimant for family assets and support that does not reflect the intention of the award.
- [87] In my view, the corrections to the Trial Reasons as contemplated in these reasons are necessary to ensure a fair and just outcome. It is in the interests of justice that they are made.

D. Payment terms

- [88] At para. 565 of the Trial Reasons, I ordered that the respondent pay the amount then calculated to be due to the claimant within 45 days of the reasons. However, given the recalculation to be conducted, both as set out in these supplementary reasons and in respect of the valuation of iGenius and West Quay, that order is vacated.
- [89] I will re-assess payment terms on the final calculation of the amounts owing.

IV. Application to Re-word the Spousal Support Order

- [90] Based on the monthly and yearly calculations set out in the table at para. 532 (the "Spousal Support Table"), the claimant was awarded retroactive spousal support totaling \$180,050: Trial Reasons at paras. 532.
- [91] The order for retroactive spousal support, set out at para. 22 of Schedule "A" to the Trial Reasons, is expressed in as a lump sum. It provides:
- [22] For the period October 1, 2018 to July 31, 2024, the respondent owes the claimant spousal support of \$180,050.
- [92] The respondent does not dispute the amount of retroactive spousal support payable, nor does he dispute the basis on which that amount was calculated. However, he notes that the order for a lump sum payment does not allow him to deduct the retroactive spousal support as is contemplated by the relevant CRA guidelines. As spousal support is intended to be deductible by the payor (and taxable by the payee), he says that without the tax deduction, he is, in effect, paying more, and the claimant receiving more, spousal support than was ordered.
- [93] He asks that the Court re-word the order to reflect the monthly periodic payments of spousal support on which the total retroactive award was based, as set out in the Spousal Support Table.

- [94] Like the respondent, the claimant does not dispute either the calculation of, or the total amount payable for, retroactive spousal support. However, she opposes re-wording the order to allow for the tax deduction, arguing that the respondent did not actually pay spousal support when it was due.
- [95] I accept the respondent's position on this issue.
- [96] As similar situation arose in *Linklater v Mardukhi*, 2025 BCSC 631 [Linklater]. As is the case here, in that case, the Court made an award for the payment of lump sum retroactive spousal support. The parties were not able to agree on the more specific terms of that order, that is, "[w]hether the payment of retroactive spousal support is a non-taxable lump sum, or whether it is taxable in the hands of the claimant (and deductible by the respondent) in respect of the years the payments relate to": Linklater at para. 6.
- [97] In respect of that issue, at paras. 13-24 the Court engages in a detailed discussion of the legal context regarding tax implications of retroactive spousal support. Having done so, the Court concluded:
- [25] In my view, given that the SSAG formulas were used to calculate the retroactive payment, the award is premised on the amounts calculated being tax-deductible to the respondent (and taxable to the claimant) in the years to which they relate. It is thus appropriate to proceed in this case on the basis that all reasonable steps should be taken to present the payment as such .
- [Added emphasis.]
- [98] In accordance with its review of the applicable legal principles, the Court noted that the "usual course of action in dealing with a retroactive award of this nature" would be to require the parties to follow the procedure to allow for the deduction of the award or to decrease the amount of the support payment to reflect that it is being paid on a non-taxable basis: Linklater at para. 26.
- [99] Nonetheless, the Court also accepted that it is within the discretion of the court to order that spousal support payments be presented as non-deductible lump sums. The Court declined to exercise that discretion in the circumstances of that case.
- [100] The analysis and decision in Linklater are instructive.
- [101] As provided in the Trial Reasons, the retroactive payment of spousal support is based on the Spousal Support Advisory Guidelines, July 2008 ("SSAG"): Trial Reasons at paras. 507 and 527. That being the case, the award is necessarily premised on being tax-deductible to the respondent (and taxable to the claimant) in the years to which they relate. Prima facie, the order should be re-worded to reflect that premise.
- [102] I do not accept, as the claimant argues, that the respondent should be denied the tax deduction on the basis that he did not pay spousal support in the retroactive period. First, as noted at para. 553 of the Trial Reasons, in the period after separation to the end of 2020,

the respondent continued to pay numerous of the claimant's expenses including for BC Hydro, Fortis BC, car insurance, Shaw cable, streaming subscriptions, and the claimant's credit card expenses. While those payments, totalling approximately \$110,000, were not expressly paid as "spousal support", they served the same purpose.

- [103] Second, pursuant to the Order of Associate Judge Scarth dated November 25, 2021, the respondent did pay spousal support. However, because the amount payable was combined with child support, the respondent was unable to deduct those amounts at the time.
- [104] In any event, regardless of those payments, the claimant's objection ignores that the amount payable was calculated on the premise that it is tax-deductible to the respondent and taxable to the claimant. Re-wording the order to allow the respondent the tax deduction simply gives effect to that premise.
- [105] Although not raised at trial, now that the respondent has raised the issue, it would be an error not to consider the tax consequences of retroactive lump sum spousal support versus periodic spousal support paid as an allowance for the on-going maintenance of the recipient: *Samoilova v. Mahnic*, 2014 ABCA 65 at para. 28.
- [106] Accordingly, para. 22 of Schedule "A" to the Trial Reasons shall amended to read as follows:
- a) commencing October 1, 2018, and on the first day of the month thereafter until and including December 1, 2018, the respondent shall pay spousal support to the claimant in the sum of \$7,273;
 - b) commencing January 1, 2019, and on the first day of the month thereafter until and including September 1, 2019, the respondent shall pay spousal support to the claimant in the sum of \$3,168;
 - c) commencing October 1, 2019, and on the first day of the month thereafter until and including December 1, 2019, the respondent shall pay spousal support to the claimant in the sum of \$1,342;
 - d) commencing January 1, 2020, and on the first day of the month thereafter until and including December 1, 2020, the respondent shall pay spousal support to the claimant in the sum of \$680;
 - e) commencing January 1, 2021, and on the first day of the month thereafter until and including May 1, 2021, the respondent shall pay spousal support to the claimant in the sum of \$686;
 - f) commencing June 1, 2021, and on the first day of the month thereafter until and including December 1, 2021, the respondent shall pay spousal support to the claimant in the sum of \$1,870;

- g) commencing January 1, 2022, and on the first day of the month thereafter until and including October 1, 2022, the respondent shall pay spousal support to the claimant in the sum of \$5,433;
- h) commencing November 1, 2022, and on the first day of the month thereafter until and including December 1, 2022, the respondent shall pay spousal support to the claimant in the sum of \$2,222;
- i) commencing January 1, 2023, and on the first day of the month thereafter until and including September 1, 2026, the respondent shall pay spousal support to the claimant in the sum of \$2,222;
- j) each of the above spousal support payments is taxable in the hands of the claimant and tax deductible by the respondent.

[107] The above order is made on the basis that it will be accepted by CRA to allow the respondent the tax deduction for the payment of spousal support. However, if CRA refuses to accept this tax treatment of the payments, then the parties have liberty to apply to adjust the amounts.

[108] Finally, I anticipate that the effect of this order may create a liability for the claimant for interest and penalty owing to CRA for the retroactive payment amounts. If so, in my view, it is appropriate that the respondent should indemnify the claimant for those amounts owing. I make that order. However, the obligation to indemnify will be limited to the interest and penalty due to the date that is six months after the respondent files any amended tax returns to claim the deductions to which he is entitled.

V. Applications for Other Orders

A. Applications relating to M.

[109] In addition to the requests for reconsideration or correction, the respondent seeks several orders relating to the parties' conduct with respect to M., the child of the marriage. The claimant has agreed to all of those orders.

[110] Accordingly, by consent, I order as follows:

- a) as long as M. is a child of the marriage, if the parties' phone number changes, they are to provide their new phone number to the other parent;
- b) if a parent travels with M. outside of Metro Vancouver Area, the traveling parent must provide a reliable phone number to the other parent to contact M. in addition to M.'s cell phone number; and
- c) if either parent chooses to take M. outside of Canada or British Columbia that parent must provide the itinerary of the trip to include flight details, hotel reservations, or the address of accommodation at least 48 hours in advance of the travel.

B. Application for Conduct Order

[111] At Part 1, para. 6 of the respondent's notice of application, he seeks an order that "the [c]laimant shall not leave bad reviews about the [r]espondent's businesses". The factual basis on which the application is based is broader. At Part 2, para. 2 of the notice of application, the respondent states:

On March 16, 2022, a conduct order was made, among other others, that neither party is to write negative reviews regarding any businesses or professional[s] who are involved with the parties and their children on issues that are raised in the family case

[112] The respondent argues that the order, granted by Associate Judge Bilawich, was not varied at trial. He seeks to have it included in the final order for clarity.

[113] As the claimant explained, the March 16, 2022 order was made in response to the claimant having published a bad internet review in respect of a service professional retained to improve the Biddesden Home for sale. There was no evidence, or even an allegation, on this application that the claimant has continued to engage in that practice. I see no basis on which to include the same term in this order.

[114] However, at the hearing of this application, the claimant agreed to an order that she would not leave any negative reviews of the respondent's business - that being the specific order sought in the notice of application. However, she was concerned, likely rightfully so, about consenting to an order that would restrict her from leaving a bad review about a business that she may not know is owned by the respondent. She suggested that the order be limited to businesses for which the respondent's ownership is "publicly known".

[115] In my view, the claimant's suggestion does nothing to provide the respondent with any certainty about the restriction. It is difficult to imagine that the "public" knows about the ownership of all private businesses with which they conduct business. On the other hand, as I have said, I am reluctant to grant an order that the claimant could breach simply because she does not know what businesses the respondent owns.

[116] Given the claimant's consent in principle, and what appears to be the continued acrimony between the parties, I order that the claimant shall not leave bad reviews about any of the respondent's businesses about which she is aware.

VI. Costs

[117] As noted, the clarifications and reconsiderations resulting in the orders made in these supplemental reasons were necessary in the interests of justice to ensure a fair and equitable outcome for all parties. In the circumstances, no costs are payable by any of the parties.

"Ahmad J."

Schedule "A" - Summary of Orders

- [1] For clarification, the claimant's entitlement to the 25% of the net value of family assets as set out at para. 342 of the Trial Reasons is based on the total (net) value of family assets, as further recalculated in accordance with these supplemental reasons.
- [2] The Table of Family Assets set out at para. 313 of the Trial Reasons, and all other related references throughout the Trial Reasons, shall be corrected as follows:
 - a) to revise the value of the Turkish bank accounts to reflect only the balance in the HSBC Turkey account (not the YKB account);
 - b) to revise the amount of the credit debt from \$23,946 to \$36,450;
 - c) to revise the value of the BMW motorbike from \$15,000 to \$15,500;
 - d) to revise the value of the Bentley from \$160,000 to \$120,000; and
 - e) to revise the total value of net family assets to reflect those revisions set out above.
- [3] With respect to the valuation of iGenius and West Quay as set out in the Table of Family Assets set out at para. 313 of the Trial Reasons:
 - a) the respondent will have 45 days from the date of these reasons in which to obtain and serve an opinion to address the amount of distributive taxes and the effect on the value of iGenius and West Quay;
 - b) the claimant will have 30 days from receipt of any such report to provide a response;
 - c) the parties will make arrangements with Supreme Court Scheduling to set a date for hearing before me in respect of the values to be attributed to those assets.
- [4] The amount of the set-offs from the amount owing by the respondent to the claimant shall be corrected as follows:
 - a) at para. 546(c) and para. 564 of the Trial Reasons, the set-off for the proceeds of the BMW motorbike shall be revised from \$15,000 to \$15,500;
 - b) the total set-off for the spousal loan account set out at paras. 549-557 and 564 shall be revised from \$185,000 to \$377,062;
 - c) the sum of \$110,000 is to be included in the table set out at para. 564 as a set-off for post-separation payments made by the respondent to or on behalf of the claimant;
 - d) the sum of \$14,372 is to be included in the table set out at para. 564 as a set-off for support payments made by the respondent to the claimant.
- [5] All other related references in the Trial Reasons to the amounts set out in para. 4 of this Schedule "A" shall be revised to reflect the corrections set out in para. 4.

- [6] The reference in para. 541 to \$2,225 as the amount owing for monthly spousal support payable for the period commencing on August 1, 2024 and ending on September 30, 2026 shall be replaced with \$2,222.
- [7] The order at para. 565 of the Trial Reasons requiring payment of any amounts due pursuant to the reasons is vacated.
- [8] Paragraph 22 of Schedule "A" to the Trial Reasons shall be replaced with the following:
- a) commencing October 1, 2018, and on the first day of the month thereafter until and including December 1, 2018, the respondent shall pay spousal support to the claimant in the sum of \$7,273;
 - b) commencing January 1, 2019, and on the first day of the month thereafter until and including September 1, 2019, the respondent shall pay spousal support to the claimant in the sum of \$3,168;
 - c) commencing October 1, 2019, and on the first day of the month thereafter until and including December 1, 2019, the respondent shall pay spousal support to the claimant in the sum of \$1,342;
 - d) commencing January 1, 2020, and on the first day of the month thereafter until and including December 1, 2020, the respondent shall pay spousal support to the claimant in the sum of \$680;
 - e) commencing January 1, 2021, and on the first day of the month thereafter until and including May 1, 2021, the respondent shall pay spousal support to the claimant in the sum of \$686;
 - f) commencing June 1, 2021, and on the first day of the month thereafter until and including December 1, 2021, the respondent shall pay spousal support to the claimant in the sum of \$1,870;
 - g) commencing January 1, 2022, and on the first day of the month thereafter until and including October 1, 2022, the respondent shall pay spousal support to the claimant in the sum of \$5,433;
 - h) commencing November 1, 2022, and on the first day of the month thereafter until and including December 1, 2022, the respondent shall pay spousal support to the claimant in the sum of \$2,222;
 - i) commencing January 1, 2023, and on the first day of the month thereafter until and including September 1, 2026, the respondent shall pay spousal support to the claimant in the sum of \$2,222;
 - j) each of the above spousal support payments is taxable in the hands of the claimant and tax deductible by the respondent.

- [9] In the case that CRA refuses to allow the respondent tax deductions for the payment of retroactive spousal support, the parties have liberty to apply to adjust the amount payable for retroactive spousal support.
- [10] The respondent shall indemnify the claimant for any liability she may incur for interest and penalty owing to CRA in respect of the retroactive payment amounts. The obligation to indemnify will be limited to the interest and penalty due to the date that is six months after the respondent files any amended tax returns to claim the deductions to which he is entitled.
- [11] By consent:
- a) as long as M. is a child of the marriage, if the parties' phone number changes, they are to provide their new phone number to the other parent;
 - b) if a parent travels with M. outside of Metro Vancouver Area, the traveling parent must provide a reliable phone number to the other parent to contact M. in addition to M.'s cell phone number; and
 - c) if either parent chooses to take M. outside of Canada or British Columbia that parent must provide the itinerary of the trip to include flight details, hotel reservations, or the address of accommodation at least 48 hours in advance of the travel.
- [12] The claimant shall not leave bad reviews about any of the respondent's businesses about which she is aware.
- [13] No costs of this application are payable by any of the parties.
- [1] As I did in the Trial Reasons, I have anonymized the names of the parties and M. to protect the child's privacy.
- [2] Subject to the deduction of interim payments and other distributions that have been made.
- [3] The clamant initially withdrew \$297,144 from the spousal loan account. Of that amount, \$274,023.02 was transferred to her second lawyer's trust account: Trial Reasons at para. 550. The difference is \$23,121. The calculation of \$97,144 at para. 554 of the Trial Reasons in in error.
- [4] Although the Order contemplated the payment of \$200,000 for the payment of various reports and professional supervision services, only \$100,000 was used for that purpose. In the Trial Reasons at paras. 550-551, I determined that those expenses were to be split between the parties on a 50% / 50% basis.
- [5] The value of the bank and investment accounts has since been corrected as set out in these supplementary reasons.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/18/2025BCSC1854.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/a-n-k-v-e-k-2025>

Prepared on 29 October 2026 · Esheria