

CANADA / JUDGMENT

A.R. v. J.R.

2023 BCSC 2266

COURT

Supreme Court of British Columbia

DECIDED

22 December 2023

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2023 BCSC 2266 A.R. v. J.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.R. v. J.R.,

2023 BCSC 2266

Date: 20231222

Docket: E17309

Registry: Chilliwack

Between:

A.R.

Claimant

And

J.R.

Respondent

Before: The Honourable Justice Walkem

Reasons for Judgment

Counsel for the Claimant:

D.K. Smith

N. Chauhan (Articled student)

The Respondent, appearing on his own behalf:

J.R.

Place and Dates of Trial/Hearing:

Chilliwack, B.C.

October 24-26, 2023

Place and Date of Judgment:

Chilliwack, B.C.

December 22, 2023

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INTRODUCTION

- [1] The claimant mother, A.R., and the respondent father, J.R., were married in May 2004, and separated in March 2014. The parties have three children: T.R., born [D.O.B.], 2008; B.R., born [D.O.B.], 2010; and C.R., born [D.O.B.], 2012 (the "Children"). The Children have lived exclusively with the claimant since July 2014.
- [2] The Children are generally doing well and are involved in activities with their schools and faith group. T.R. struggles with anxiety and has plans to join a trades program through university. B.R. has been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and has difficulty with sleeping. C.R. has been diagnosed with ADHD and a learning disability, and requires supports at home and school.
- [3] The claimant is very involved in the lives of the Children, and supports them in their school and extra-curricular activities.
- [4] The claimant and the Children maintain a relationship with the Children's maternal and paternal extended families.
- [5] The claimant works as a cleaner during the week, when the Children are at school. The claimant and the Children have a shared office cleaning job every Saturday. The claimant has re-partnered, and intends to re-marry after the divorce in this matter is finalized.

- [6] The respondent is a supervisor at Canada Post. In addition, he operates an unincorporated home-based greenhouse business, ("AGS"). Through AGS, the respondent sells greenhouses and associated supplies over the internet.
- [7] At the time of trial, the respondent has had little to no parenting time with the Children for approximately two years.
- [8] In recent years, the respondent has traveled extensively, including to Vietnam, Bali, Dubai, and Saudi Arabia. In the year prior to the trial, the respondent traveled to Saudi Arabia, for one month and to Dubai, for a week. The respondent claimed that these trips were paid for by others. For the Dubai trip, the respondent says he investigated business opportunities while there, and so the trip was partially for business purposes.

ISSUES AND POSITION OF THE PARTIES

1. Custody and Primary Residence

- [9] The claimant proposes that she have sole custody and primary residence of the Children per s. 45(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Section 37 of the FLA directs that when making orders about "guardianship, parenting arrangements or contact with a child", the sole consideration must be the best interests of the child. Section 37(2) directs that the following factors, among others, must be considered to determine what is in the best interests of the child:
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members.
- [10] The respondent agreed that the claimant should have primary residence of the Children, but disagreed about custody, as he sought a degree of the decision-making, as discussed below.

2. Guardianship

- [11] Both parties agree that they remain joint guardians of the Children.

3. Parental Responsibilities

- [12] The claimant proposes that she will have all parenting responsibilities as set out in s. 41 of the FLA. The respondent proposes that the parties jointly share decision-making, except if they cannot agree on parenting time, in which case the respondent proposed that he have ultimate decision-making authority on that issue, under s. 16.1(4) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA].

4. Parenting Time

[13] The claimant proposes that the respondent have parenting time, as agreed upon between them, in writing, per s. 45 of the FLA. The respondent would like to have a set parenting time schedule. He suggests that his parenting time initially be supervised by his mother (the Children's paternal grandmother). Over time, he proposes that his parenting time be expanded to include unsupervised overnight visits as the Children become more comfortable with him again.

5. Child Support and Section 7 Expenses

[14] The claimant is asking for child support as per the Federal Child Support Guidelines, SOR/97-175 (the "Guidelines") for all three Children, and that the court impute income to the respondent under s. 19(1)(g) of the Guidelines, for unreasonably deducted business expenses. The respondent agrees that he should pay child support per the Guidelines, and a proportional share of s. 7 expenses, but disputes that he unreasonably deducted business expenses.

6. Asset Division

[15] Both parties are asking for an interest in the other party's pensions, savings, and RRSPs. I understood that they had settled other asset division issues between them earlier.

7. Protection Order

[16] The claimant asks for a protection order pursuant to s. 183 of the FLA, prohibiting the respondent from entering or going near her residence.

9. Divorce

[17] Both parties seek an order for divorce.

10. Relocation

[18] The respondent asks for an order prohibiting the parties from relocating the Children outside of the Lower Mainland without prior consent or court order.

PRELIMINARY ISSUE

[19] The respondent was self-represented, and this impacted his case significantly. The Canadian Judicial Council's Statement of Principles on Self-represented Litigants and Accused Persons, provides direction to judges on how to ensure access to justice for all parties where one or more parties is self-represented. These principles include the following:

1. Judges should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.
2. Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.

- .
4. Depending on the circumstances and nature of the case, the presiding judge may:
 - (a) explain the process;
 - (d) provide information about the law and evidentiary requirements;
 - (e) modify the traditional order of taking evidence.
- [20] The words of the Saskatchewan Court of Queen's Bench, in *Banilevic v. Cairney*, 2020 SKQB 25, reflect the conundrum that courts must grapple with when faced with increasing numbers of self-represented litigants:
- [27] At the end of the day, the court must be mindful this is the parties' litigation. They know the issues and they know the position they seek to advance before the court. And, they know the position each of them takes having been participants in the entire litigation. The further comments from Ryan-Froslic J. [in *Bird v. Bird*, 2013 SKQB 157] are therefore instructive:
- [44] [Party A] chose to represent herself in these proceedings. Whether that choice was made freely or was foisted upon her as a result of financial limitations is a subject of hot debate. Whatever the reason, in assuming the role of representing herself, [Party A] assumed the responsibility for preparing and presenting her case which includes following the Rules. While great latitude is given self-represented litigants, in the final analysis a judge must maintain their neutrality. They cannot enter the fray. They can canvass the issues, explain procedure and in a general way describe what evidence may be required but they cannot tell a self-represented litigant what evidence they must call or what they need to do.
- [21] The goal of the court where litigants are self-represented is to ensure that no party is prejudiced simply because they do not have a lawyer, or do not understand court procedure or rules. Cases should be decided on their merits, based on the evidence presented, and not on a party's lack of procedural understanding. Judges must be prepared to be actively involved in ensuring, as far as they are able, a level playing field, while not advocating for any party. This can often mean, as it did in this case, taking steps to explain evidentiary rules and the court process, or offering other guidance to a self-represented litigant.
- [22] At the end of the day, self-represented litigants remain responsible for the conduct of their case. They decide what evidence to present, what issues to raise, how to present their legal arguments, and how to cross-examine the other party's witnesses. The respondent argued that he could not afford legal representation. However, the respondent's income from his business and employment is not insignificant. There was also evidence that the respondent traveled extensively internationally over the past several years. The respondent argued, without providing supporting evidence of this assertion, that other parties paid for this travel. No matter what the reason, the respondent's self-represented status impacted his case. The respondent presented limited evidence and legal argument on his own behalf. The cross-examination of the claimant's witnesses by the respondent was nearly non-existent.

Assessing Witness Testimonies

- [23] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, as including "the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides". Specific factors include: a witness' "ability and opportunity to observe events, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness' testimony seems unreasonable, impossible, or unlikely, and whether a witness has a motive to lie". In *Farnya v. Chorny*, [1952] 2 D.L.R. 354 at p. 357, the Court of Appeal noted that: "the real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."
- [24] I apply these principles to my assessment of the evidence presented at trial, as set out below.

Relationship Breakdown and Family Violence

- [25] The parties' shared faith was an important part of the family's life. Their divergence of views on matters of faith played a significant role in the breakdown of their marriage. The claimant alleges that the respondent began to proclaim that he was a prophet of God, protected by God against injury, or death; able to read signs to predict the end times; and, chosen to fight with God in the final battle against Satan. The claimant says that conflict arose because she did not share, and challenged, these beliefs. The respondent denied these allegations. Specifically, he denied that he is a prophet of God with the ability to predict the end times, incapable of being harmed. The respondent argued that he should not be punished for his differing beliefs and knowledge.

Claimant's Account

- [26] The claimant says that the respondent would get angry with her when she challenged his assertions about being a prophet of God, capable of predicting the end times. The claimant said that the respondent's expression of these beliefs was amplified after he attended an event at Bethel Church in Redding, California, in or around October 2013.
- [27] The claimant characterized the next six or so months as marked by escalating levels of verbal and psychological abuse, with the respondent alleging that she had demons within her and worshipped Satan. The claimant testified that the respondent would often get into a rage, yelling things such as "get behind me Satan" at the claimant, and say that they needed to pray the demons out of her. At times, the claimant would call the respondent's parents in an attempt to try to get him to settle down when she became afraid for her safety.

[28] Over time, the confrontations escalated. The respondent would pursue the claimant, and block her exit while he harangued her about his beliefs. The claimant reported times when she would try to leave or lock herself in a bedroom to get away from the respondent. The claimant testified that during this period she became increasingly concerned for her safety, afraid that the worsening verbal attacks could escalate to a physical attack.

[29] The claimant described the six months before the couple separated as follows:

They were probably the most tumultuous months of our marriage where I was most afraid

It got to the next level of spiritual abuse and [with the respondent] saying I had demons in me, saying that I worship Satan, and it got to the level where I felt like something physical was going to start happening because if he so believed demons were in me, he wanted to get them out. And the rages happened more often, and were getting worse where he would call me worse names for longer periods of time.

[30] The claimant testified about one instance, around January 2014, where the respondent pursued and yelled at her until and she curled up on the floor in a fetal position, unable to get away. B.R. and T.R., then approximately 5 and 3, stepped in front of their mom and yelled at their dad to stop. The claimant testified that this was a turning point for her, because her young children were trying to protect her and she realized it was her duty to protect them.

[31] During the same period, the claimant reports that the respondent became unpredictable and would go into rages, often in the presence of the Children. The respondent engaged in name-calling and demeaning behavior. He called the claimant "stupid", "a fucking loser", "shit for brains", "a fucking cunt of a woman", said that she should have her "vagina sewn shut" so she did not ruin anyone else's life, "no good to anyone," "a white trash woman", and "a demonic woman".

[32] The claimant testified that the respondent's angry and unpredictable outbursts also happened during parenting time between the respondent and the Children post-separation. The claimant's testimony was that there were times when the Children returned home from parenting time with the respondent in tears or upset because he had become angry with them.

[33] The claimant testified that the Children requested that parenting time with the respondent occur closer to home, such as at a basketball court in their housing complex, because they wanted the ability to come home, if they felt uncomfortable, or if the respondent became angry with them.

- [34] The respondent's last parenting time occurred on C.R.'s birthday in 2020, when the two boys went fishing with the respondent. The claimant reports that when T.R. and C.R. returned home, each of the boys were upset and each had been crying because of the respondent's behaviour. The Children have seen the respondent briefly at a park near their home a few times since the last scheduled parenting time.
- [35] I found the claimant to be a credible witness who provided a clear account. Overall, I accept her testimony and prefer it over that of the respondent in cases of conflict, except where noted.

Supporting Accounts

- [36] A.G. is married to the respondent's sister, J.G., and they have two children. Their family sees the claimant and the Children once or twice a month. Though I did not accept A.G.'s reporting of the hearsay evidence of the Children's views (for reasons discussed below), I accept his evidence on the relationship of his own family with the respondent.
- [37] A.G.'s testimony was that he and his wife do not allow the respondent to have a relationship with their children because they have determined that maintaining a relationship with the respondent would be unsafe. A.G. testified that he has heard the respondent express that he is a prophet of a God, cannot be harmed, and can predict dates of the end times. A.G. testified that in his experience, the respondent is "very volatile" and prone to angry outbursts; and that, "you never know which version [of the respondent] you are going to get".
- [38] A.G.'s testimony was brief. I find his evidence on the relationship between his family and the respondent, and the reasons that he and his wife have chosen not allow their children contact with the respondent, to be credible. I have accepted and rely on it here.
- [39] R.W., a teacher at T.R.'s high school, testified about an incident when the respondent attended at the school to drop off T.R.'s BC ID card. When R.W. informed T.R. that the respondent was at the front desk, he observed that T.R. looked shocked, turned pale and appeared to freeze. At T.R.'s request, R.W. accompanied T.R. to meet with the respondent and remained nearby, though far enough away so that he could not hear what they were saying. After the approximately ten-minute conversation, T.R. appeared to be visually shaken and was in tears. R.W. brought T.R. to a private place where he could recover himself before returning to class. I found R.W. to be a credible and forthright witness. Given that the content of the conversation was not known, I can draw limited inference from R.W.'s account of witnessing it from a distance. The meeting could have been emotional for any number of reasons. However, it is telling that T.R. requested a teacher be nearby when he went to meet with the respondent. This supports the claimant's assertion that the Children are uncomfortable with the respondent due to his angry outbursts.

Respondent's Account

- [40] The respondent testified as his only witness, and sought to explain the disagreement between himself and the claimant as being one of different beliefs. He argued he should not be penalized for holding different beliefs.
- [41] The respondent admitted that there were arguments which the Children witnessed, but denied that they rose to the level of family violence. The respondent testified that he had been ousted from the family, and the church that the family attended, as a result of his beliefs.
- [42] On cross-examination, the respondent denied that he was a prophet and instead asserted that he studies history, and has "intellectual knowledge". He denied that he can predict the end times, or that he believes that he cannot die, be harmed, or killed.
- [43] The respondent denied that he had yelled at or pursued the claimant to the point where she was curled on the floor in a fetal position. He also denied any recollection of a situation where B.R. and T.R. intervened to stop him from yelling at the claimant.
- [44] The respondent generally said that he did not call B.R. a brat, but rather said that she was acting like a brat, responding to one instance raised by the claimant in her testimony. The respondent denied the claimant's testimony that he told the Children that he wished they did not happen, as the Children are the greatest thing that happened in his life. I accept the respondent's account of the two events. However, the finding I make below on family violence did not rely on these two examples.
- [45] The respondent testified that he has been denied access to the Children, and suggested that he was the victim of parental alienation. The respondent challenged the claimant's submission about the turmoil of the Children's time with him, and disputed that the Children returned from parenting time with him traumatized or upset. The respondent introduced a set of pictures which he said showed his parenting times with the Children were happy, and not as portrayed by the claimant.
- [46] The respondent testified to his belief that conflict between the parties occurred because there was no set parenting time schedule after separation, but rather, that his parenting time was at the claimant's behest. The respondent says that the lack of set parenting time created a disconnect between him and the Children that has worsened over time. The respondent said that his time with the Children was further curtailed due to the claimant's concerns about COVID-19, and belief that his employment exposed him to the virus, and therefore potentially put the Children at risk. The respondent said that as a result of not seeing the Children very often, he feels as though he does not know the Children anymore. This is not a situation he wants, as he would like to be part of the Children's lives.
- [47] The respondent denied or downplayed any angry or unpredictable outbursts, aimed at, or witnessed by, the Children.

- [48] The part of the respondent's testimony that I accept unequivocally is that he loves the Children. Given conflicting accounts of his angry outbursts offered by the claimant, A.G., and supported (albeit to a limited extent) from the observations of R.W., I do not accept the respondent's evidence on these points. There was a clear breakdown in the family relationships; and, on the evidence before me, it flowed from the respondent's own behavior. I do not accept his denial of the actions outlined by the claimant that, as I have found below, constitute family violence.

Respondent's Non-Adherence to Existing Court Orders

- [49] There are a number of court orders that the respondent, to varying degrees, has not followed.
- [50] The claimant sought a protection order stemming from the respondent repeatedly coming to her home, and contacting her, in 2020 and 2021. On July 4, 2022, Master Krentz ordered a protection order that restrained the respondent from "attending at, nearing or entering within 100 m of the claimant's residence", under s. 183 of the FLA. That order expired on July 25, 2022.
- [51] On July 25, 2022, Justice Taylor issued a conduct order, by consent, that "the respondent shall not attend within 100 metres of or enter the claimant's residence", per s. 222 of the FLA. This order is still in place and has not expired.
- [52] On July 25, 2022, Justice Taylor ordered that all communication between the parties be through the Our Family Wizard ("OFW") application. The respondent last logged into OFW on October 22, 2022, and has generally refused to communicate through it. The respondent testified that he could not figure out how to use OFW. The respondent runs an online business and works in a supervisory capacity in his other employment-each of those positions require a degree of aptitude with computers. The respondent's position does not have an air of reality in terms of OFW being something the respondent could not figure out if he wanted to. Many families successfully use the OFW application. I am not satisfied that the respondent could not figure out how to use OFW, or could not have sought assistance and support to figure it out, if he were committed to communicating through OFW.
- [53] Despite the existing conduct order, the respondent has attempted to communicate outside of OFW. He has called the claimant's house. While sending child support by e-transfer, the respondent included messages to the effect of, "if you want more money drop the lawyers".
- [54] On February 6, 2023, Master Robertson ordered that the respondent pay the costs of a non-evaluative views of the child report (approximately \$3,000), and that allocation of the cost between the parties would be determined at trial. The focus of the report was to be "what parenting time [the Children] would like to have with [their] parents". The respondent refused to pay for this report, claiming he could not afford to. As a result, the report was not done.

- [55] Despite an order to file and provide his income tax information, and repeated requests for disclosure in this Court proceeding, the respondent has refused to provide full financial disclosure. The respondent has not filed his income taxes for the past year, and has not provided financial information for his AGS business, including invoices, receipts for expenses, and financial statements.
- [56] The respondent's routine disregard of court orders suggests a lack of respect for the court process. The interests of the Children should not be prejudiced by the respondent's refusal to adhere to the direction of this Court.

VIEWS OF THE CHILDREN

- [57] Family law conflict is often an area of incredible vulnerability for all parties. Children's lives may be drastically impacted by legal disputes, and yet often children are left without any voice in legal proceedings. Children are not pawns on a legal boardgame to be moved about according to the will of the adults involved in a dispute about how they will be cared for, where they will live, and how decisions will be made about their lives. The law has increasingly evolved to recognize that children have the right to have their voice heard in matters which impact their lives.
- [58] Children, in the words of the Supreme Court of Canada in *Michel v. Graydon*, 2020 SCC 24, at para. 77 [Graydon], are "full rights bearers". There is a corresponding responsibility on the part of courts to guard children's interests, an important aspect of which can include ensuring that their voices are heard. Where a child has the ability to form and express an opinion on matters related to their own lives, their voices should be heard, considered and reflected in decisions. Listening to the voices of children in decisions made about their lives honours their essential human dignity.
- [59] The right of a child to be heard in legal matters affecting them is articulated in the United Nations Convention on the Rights of the Child ("UNCRC"), November 20, 1989, Can T.S. 1992 No. 3, ratified by Canada on December 13, 1991. Article 12 requires contracting states to provide children "the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body". The Supreme Court of Canada has affirmed the presumption that domestic statutes are presumed, absent clear evidence to the contrary, to conform with a state's international legal obligations: *R. v. Hape*, 2007 SCC 26 at para. 53.
- [60] Justice Martinson in *B.J.G. v. D.L.G.*, 2010 YKSC 44 [B.J.G.], described features of a child's right to be heard, as reflected in the UNCRC, as including: "the right to express their views so long as they are capable of forming their own views", as well as "the right to have those views given due weight in accordance with their age and maturity", (para. 10). A child's right to be heard encompasses both procedural and substantive elements:

- [47] More than just lip service must be paid to children's legal rights to be heard. Because of the importance of children's participation to the quality of the decision and to their short and long term best interests, the participation must be meaningful; children should:
1. be informed, at the beginning of the process, of their legal rights to be heard;
 2. be given the opportunity to fully participate early and throughout the process, including being involved in judicial family case conferences, settlement conferences, and court hearings or trials;
 3. have a say in the manner in which they participate so that they do so in a way that works effectively for them;
 4. have their views considered in a substantive way; and
 5. be informed of both the result reached and the way in which their views have been taken into account.
- [61] A child's right to have their voice heard is reflected in federal and provincial legislation at s. 16(3)(e) of the DA and s. 37(2)(b) of the FLA.
- [62] Courts have an independent obligation to ensure that the best interests of a child guide decisions about matters such as parenting time, residence and decision-making: including FLA s. 37 and DA s. 16(1). This can pose unique challenges where one or more parties are self-represented and face struggles in presenting their case in a way that fully canvases a child's (or children's) best interests. In such circumstances, the question of how a child's voice is heard in the proceeding may be of heightened importance. The objective is to ensure that the best interests of the child, and right of a child to have their voices heard, are not merely concepts on paper, but are given meaning in practice, and in the ways that decisions are made.
- [63] Determining the views of the child, and considering that input in coming to a reasoned decision, is an important part of the best interests of the child analysis: *L.E.G. v. A.G.*, 2002 BCSC 1455. The need to consider the views of a child increase with their age and level of maturity: *K.M.H. v. P.S.W.*, 2018 BCSC 1318 at para. 40. However, a child's voice should not be disregarded simply because they are young. A young child may be quite capable of reasonably considering matters, and formulating and articulating their own views. Whether a child's views were unduly influenced by someone else is an important part of the consideration: See *A.M.V. v. J.R.M.*, 2020 BCPC 35 at para. 154. The existence of family violence, high conflict between the parents, or allegations of parental alienation do not vitiate a child's right to be heard: *N.J.K. v. R.W.F.*, 2011 BCSC 1666 at paras. 200-202.
- [64] There are real and practical costs to children, to families, and to our shared society, of dictating resolutions where the voice of children is not heard. Failing to listen to the voice of children risks potential "loss of closeness in parent-child relationships; continuing resentment if living arrangements don't meet their needs in time or structure; less

satisfaction with parenting plans, less compliance, more 'voting with their feet'; and longing for more or less time with the non-resident parent": B.J.G. at para. 24; See also: O'Connell v. McIndoe (1998), 56 B.C.L.R. (3d) 292 (C.A) at para. 13; H.M.H. v. J.E., 2023 BCSC 922 at para. 25. Orders which contradict the expressed wishes of children, or attempt to force children to act against their will, risk doing more harm than good.

- [65] There is a presumption that parents represent the best interests of children. Where parents cannot do so, due to incapacity or conflict within the family; where a child's views are not adequately represented by a parent, or parent-designate, such as in child welfare proceedings; or for other reasons, there are different avenues through which a child's views may come before the courts. Ways in which a child's views may be heard include: hearsay evidence, under s. 202 of the FLA; a s. 211 of the FLA needs or views of the child report, which can also be used when parents are able to represent children's best interest as an aid to the decision maker; legal representation, such as under s. 203 of the FLA; direct evidence from the child themselves; judicial interviews; or, potentially mechanisms available through Indigenous laws as recognized in An Act respecting First Nations, Inuit and Métis children, youth and families, S.C. 2019, c. 24.
- [66] A court may order a lawyer be appointed for a child under s. 203(1) of the FLA, where a court finds that: "(a) the degree of conflict between the parties is so severe that it significantly impairs the capacity of the parties to act in the best interests of the child, and (b) it is necessary to protect the best interests of the child."
- [67] Judicial interviews create an opportunity for the judge to have a conversation with the child about their views and wishes. See C.J.J. v. A.J., 2016 BCSC 676 [C.J.J.] at paras. 324-325, and Lisa Carol Rogers in "Child Custody: The Judicial Interview of the Child" (1986-1987) 47 La. L. Rev. 559, for a general discussion.
- [68] In L.C.T. v. R.K., 2016 BCSC 417, at para. 16, Justice G.P. Weatherill outlined advantages of judicial interviews, including:
- (1) The children will be able to express their respective views to the person who is responsible for making the decision that will affect them.
 - (2) It will facilitate a better decision that will be in the children's best interests.
 - (3) The children will benefit from expressing their views in private and in confidence.
 - (4) It will ensure their wishes are correctly interpreted and not through the sanitization or buffer of their parents and others.
 - (5) It would likely put their apparent distress, meltdowns and acting out into context.
 - (6) Their views, expressed in private, may play a significant role in my determination of whether or not a stay should be granted.

- [69] In *D.M. v. C.R.*, 2021 BCPC 318, Judge Vandor discussed judicial interviews as a way of fulfilling the obligation to consider the voice of children in proceedings involving family violence:
- [371] [J]udges have a legal responsibility to ensure that children are heard and that their views are properly weighed in most family violence cases. Relevant information is required to properly assess risk and to reach just and sustainable outcomes. Obtaining relevant information from children in family violence cases involves recognizing children as full rights bearers. In [Graydon], children are described as full rights bearers, and "courts are not to be discouraged from defending the rights of children when they have the opportunity to do that": para. 87. This includes the right to be free from violence and right to be heard and right to have their views taken seriously in court proceedings.
- [372] Such an interpretation of the [FLA] is consistent with children's human rights and Canada's obligations under international law. Article 1 of the Convention defines the child. Article 19 protects the child from all forms of violence when they are in care. Article 12(1) provides all children with two rights: the right to express their views and the right to have those views given due weight in accordance with the child's age and maturity. Article 12(2) says the right to be heard specifically applies to any judicial proceeding affecting the child, which includes family violence cases. The General Comments created by the UN Committee on the Rights of the Child may not be binding, but I have found them highly persuasive.
- [Emphasis Added]
- [70] In *C.J.J.*, Justice Blok outlined drawbacks of judicial interviews, at para. 332, and noted that "a child's meeting with a judge is not to gather evidence or to have the child provide information about a factual matter in dispute between the parties" but rather to involve children in decision making about their lives, and to have them understand the legal process through which decisions are being made.

Views of the Children in this Case

- [71] A child's hearsay evidence may be admitted under s. 202 of the FLA, as a principled exception to the hearsay rule. See, for example, *R. v. Khan*, [1990] 2 S.C.R. 531; *Sahi v. Sahi*, 2023 BCSC 736; *D.A.M. v. D.M.T.*, 2013 BCSC 359 [D.A.M.]. As set out in *D.A.M.*:
- [23] This exception requires that the evidence is both necessary and reliable. Children do not normally testify in proceedings of this nature, particularly young children, as to do so may be very harmful to them. For this reason, the hearsay evidence meets the necessity requirement
- [24] Reliability for the purpose of admissibility, or threshold reliability, is aimed at identifying circumstances where the inability to test the hearsay evidence is sufficiently overcome to justify receiving it as an exception to the general exclusionary rule. This requirement may

be met by showing that sufficient trust can be put in the truth and accuracy of the statement because of the way in which it came about, or by showing that in the circumstances the judge will be able to sufficiently assess its worth. The presence of corroborating or conflicting evidence may also be considered ...

[Citations omitted.]

- [72] The claimant proffered the evidence of A.G., who purported to introduce hearsay evidence of the Children's views. I found that the Children's hearsay evidence introduced through A.G. is not admissible because it did not meet the threshold requirements as outlined in Khan and D.A.M. It was clear that there was a divide in the family; and in that context, for the sake of accurately reporting or sharing the views of the Children, I did not consider A.G. to be a neutral party. I had concerns about the reliability of the Children's hearsay evidence reported through him, and of the circumstances in which the interviews occurred.
- [73] In this case, given the absence of a views of the child report, and finding that the Children's hearsay evidence proffered through A.G. was not reliable, I canvassed with both parties their position on judicial interviews with the Children. There was consent by both parties that this would be an appropriate way of ensuring that the voices of the Children were heard.
- [74] I contemplated appointing legal counsel for the Children, per s. 203(1) of the FLA. Given the delay that this would require, and because both parents consented to a judicial interview, I elected to proceed with judicial interviews. In the event that the interviews with the Children disclosed that there were more complex issues which were not canvassed by either of the parties, or that the views of the Children (or any of them) could not be adequately considered or reflected on the basis of a judicial interview, I would have adjourned the matter and appointed counsel for the Children.
- [75] I determined that the interviews should occur with each Child separately; and with their parents not present in, or around the location, so that the Children did not have to pass or see them in the process of coming to, or from the interview. The interviews were recorded, and I ordered the recordings sealed. The interviews occurred in the courtroom, with the law clerk present. I was in civilian clothes, and did not do the interview from the bench. I advised the parties, and Children themselves, that I would report the results of the interview, by way of very broad summary points, to the parties.
- [76] The interviews were very brief. The interviews centered on the issue of the Children's views of parenting time. The purpose of a judicial interview is to allow the court to hear from the Children about their views and wishes. Judicial interviews are not meant to be evidence gathering activities.

Judicial Interview Summary

- [77] The Children generally expressed that they feel safe and secure with the claimant. Each of the Children separately indicated that their time with the respondent could be unpredictable, with the possibility that he would get angry at them with little warning. The result of this was a situation in which the Children each expressed that they did not feel comfortable spending time with the respondent.
- [78] The Children indicated that they might like to be in control of the choice to reach out to their father if they wanted to, but to have control of that possibility, and not be compelled to spend parenting time with him.

LAW OF FAMILY VIOLENCE

- [79] Federal and provincial legislation directs that the presence of family violence must be considered when deciding family law matters, including when determining a child's best interests. The FLA defines family violence as including psychological and emotional abuse, and recognizes that exposure to the violence inflicted on another person is also a form of violence, at s. 1:

"family violence" includes, with or without an intent to harm a family member,

- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- (e) in the case of a child, direct or indirect exposure to family violence.

- [80] Section 38 of the FLA provides further clarification on how the presence of family violence in determining the best interests of a child is to be taken into account, and directs that a court must consider:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;

- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
 - (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
 - (i) any other relevant matter.
- [81] The DA provisions mirror the necessity of addressing family violence in determining a child's best interests, at s. 16(3)(j).
- [82] Section 16(1) of the DA directs that the court "shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order" and in ss. 16(3):
- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
 - (i) any family violence and its impact on, among other things,
 - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child
- [83] Justice Majawa in *K.R.W. v. P.M.M.*, 2023 BCSC 981, discussed non-physical family violence, as follows:
- [67] As is evident from the statutory provisions, one need not be physically violent in order to have engaged in family violence given that the definition of family violence includes psychological abuse, harassment, financial abuse, and threats of various kinds. I am mindful that the Court must be careful not to label conduct as family violence where there is no evidence that the child has suffered harm, be it physical or psychological, as a result of the parties' conduct: *C.L.M. v. M.J.S.*, 2017 BCSC 799 at para. 365 [C.L.M.].
- [68] Demeaning remarks about the other parent in the children's presence is family violence and causes emotional harm: *K.W. v. L.H.*, 2018 BCCA 204, citing *K.R. v. J.D.*, 2017 BCSC 182 at para. 17.

ANALYSIS

- [84] I grappled with how to assess the evidence about the respondent's behaviour. The respondent denied, or said he could not recall, the instances the claimant testified to. There was nearly non-existent cross-examination of the claimant and A.G.

- [85] I find on a balance of probabilities, based on the evidence before me, that the evidence supports the claimant's allegations. The Children themselves expressed that they do not feel safe with the respondent, and made reference to his angry outbursts and unpredictable behaviour. A.G. and his spouse have determined that the respondent is not safe to spend time with their own Children. The evidence of R.W. indirectly supports these accounts.
- [86] I agree that the respondent argued he should not be penalized for holding different beliefs. However, the situations described by the claimant stretch far beyond differing religious or spiritual beliefs between the parties. I find that the respondent engaged in conduct that constitutes family violence, per the meaning of family violence for both the FLA and DA. The family violence was in the form of abusive interpersonal communication, involving emotional and psychological abuse, which included name-calling and threats. Though there is no allegation that the respondent physically struck the claimant, the abuse had physical elements in that there were times when she was essentially cornered and prohibited from leaving. The Children were exposed to their mother being subject to verbal abuse and name calling. The Children's witnessing of these acts is itself a form of family violence experienced by the Children.
- [87] The presence of family violence, against both the claimant and the Children, must be reflected in considering the best interest of the Children, and reflected in decisions about parenting time and parenting responsibilities, as discussed below.

CUSTODY

- [88] Custody is the language previously used under the DA. The current language in the DA refers to "parenting time" and "decision making responsibility" (also referred to as "parental responsibilities" under the FLA). I took submissions of the parties regarding custody to mean that the respondent consented to the claimant having the majority of the parenting time. Given that he argued for joint decision-making, with him having ultimate decision-making authority if the parties could not agree on parenting time, the respondent clearly sought some aspects of "custody".

Parenting Responsibilities

- [89] The allocation of parenting responsibilities is made under s. 41 of the FLA. Parenting responsibilities may be allocated to one parent entirely, shared equally between both parents, or allocated in various ways to each parent. The equivalent in the DA is decision-making responsibility under s. 16.

When there is a significant ongoing conflict between the parents, courts may assign the decision-making authority outlined in s. 41 of the FLA to one of the parents. This may be found to be necessary so that the parties do not have to apply to the court to determine every parenting decision that they do not agree upon.

- [90] The behaviours of the respondent described by the Children and claimant speak to the respondent's ability to make reasoned decisions and ability to care for the Children. Having found that the parents would be unable to co-operate in jointly making decisions, that the respondent has less knowledge of the Children's needs, and given that the respondent's past conduct amounts to family violence, I order that the claimant have sole authority to exercise parenting responsibilities for the Children, in accordance with s. 41 of the FLA.
- [91] I order that the claimant provide monthly updates through OFW to the respondent at the end of each month, about the Children, including their activities, achievements and other points of interest regarding their lives. The claimant will notify the respondent through OFW of significant parenting decisions regarding the Children, including about their health and education, during the monthly updates.

PARENTING TIME

- [92] As outlined earlier, the best interests of the children must guide determinations of parenting time. No particular parenting arrangement is presumed to be in the best interest of the child as per s. 40(4) of the FLA.
- [93] The respondent asserts that the Children's resistance to parenting time with him reflects parental alienation by the claimant. This was not part of his pleadings. The claimant argues it should not be addressed, as it was not pled.
- [94] In *D.S.W. v. D.A.W.*, 2012 BCSC 1522, at para. 64, this Court referred to parental alienation as occurring when a "child's decision to refuse to have a relationship with the targeted parent is without justification or without convincing reason". In *Williamson v. Williamson*, 2016 BCCA 87, the Court of Appeal described parental alienation, at para. 39, as "a breakdown in the relationship between a child and one of the separated parents", which "can occur as an unfortunate side-effect of the breakdown of a relationship, but can also occur because of deliberate actions, both direct and indirect, on the part of a parent." Conversely, parental estrangement "occurs when the child understandably refuses contact with a parent because of that parent's behaviour, and there is a logical and rational reason for the child's rejection of the parent": *Williamson* at para. 41. Where a child's relationship with a parent has broken down due to valid or reasonable reasons, which could include family violence or a parent's own behaviour, then this cannot be said to be parental alienation.
- [95] The Children witnessed the respondent's berating and name calling of their mother, and his angry outbursts, and unpredictable behaviour in his time with them. I have found that behavior to constitute family violence. This understandably influenced the Children's views about parenting time. On the evidence before me, the Children's estrangement from the respondent flows from the respondent's own conduct.

- [96] There was no argument before me that the respondent suffers from any sort of untreated mental health issue which may have contributed to the behaviour that ultimately lead to his parenting time being restricted, including the angry outbursts, name-calling, or other behaviours described by the claimant and supporting witness, A.G. There was no evidence before me that adequate steps have been taken to address the family violence that occurred, and the resulting fracture in the relationship between the Children and the respondent.
- [97] The claimant has expressed concerns, valid on the record before me, of the respondent's behaviour. In her testimony, the claimant expressed that she believes it is in the Children's best interest to have a relationship and parenting time with the respondent where that can occur in a manner that is safe and healthy for the Children. The parties disagreed about whether, given the current circumstances, parenting time with the respondent was safe or healthy for the Children.
- [98] The respondent argued that initial parenting time could be supervised, with a gradual transition to unsupervised parenting time and overnight stays. Beyond that, there was no plan or exploration of any steps that would be required to ensure a phased reintroduction of parenting time for the respondent, or how that could happen in a manner that safeguarded the Children's well-being.
- [99] Given the nature of the family violence that I have found, the fact that it was not addressed, the respondent's refusal to take steps to communicate with the claimant in a respectful way (for example, his refusal to use OFW, which may have allowed the parties to discuss parenting time), and the absence of evidence that he has taken accountability for the family violence I have found. Based on the evidence presented; I am left with unresolved concerns for how in-person parenting time with the respondent could occur in a manner that is in the Children's best interests.
- [100] I find the respondent should have parenting time as follows:
- a) Each Child should be free to initiate telephone or text contact with the respondent, at their own choice. He should not initiate any contact. The claimant must facilitate contact that the Children choose to pursue with the respondent, by the claimant explaining the respondent's parenting time with the Children to Children, and, providing the Children with the phone number of the respondent and an appropriate device to call or text him with.
 - b) If the Children (or any of them) requests parenting time with the respondent, the claimant will facilitate that parenting time through OFW. Any parenting-time is to be supervised by a member of the respondent's family, or another third party as proposed by the respondent and agreed upon by the claimant. Unsupervised parenting time with the respondent may only occur if the claimant agrees.

- [101] Given the unresolved issues about family violence, if the respondent wishes to propose to undertake counselling to repair his relationship with the Children (or any of them that agrees to do so) then, if the Children (or any one of them) each consent, that should occur. If the respondent wishes to do this, he is directed to make that proposal through OFW. If such counselling were to be undertaken it could result in a material change of circumstances, which might justify a variation of the respondent's parenting time.

Child Support

- [102] Both parties agree that the respondent should pay child support, and his proportional share of the Children's s. 7 expenses, commensurate with his income pursuant to the Guidelines, to the claimant. The parties disagree on how the respondent's income should be determined.
- [103] In submissions, the claimant sought a retroactive increase in child support from January 2022 to the time of trial.
- [104] Pursuant to an Order Made at Judicial Case Conference (JCC), by consent, on April 14, 2021, the respondent has paid child support based on a agreed-upon income of \$62,074, paying \$583 every two weeks. The order made at the JCC also addressed the parties interests in real properties and entitlement to spousal support, it also provided that there would be no retroactive child support owing by the respondent to the claimant to that time.
- [105] In total for 2022, the respondent paid (\$583 x 26) \$15,158 in child support. This amount has not been adjusted to reflect increases in the respondent's Canada Post employment income, nor does it reflect income he earns from AGS.
- [106] The claimant seeks to have the respondent's income imputed based on the argument the respondent has unreasonably deducted expenses from AGS. In total, the claimant argues that the respondent's income should be imputed at around \$300,000. There was wholly inadequate disclosure on the part of the respondent. He has not filed and served on the claimant his T1 for 2022, or any notices of assessments for the purpose of identifying his income. The respondent has not provided disclosure of financial documents related to AGS, this includes tax returns, corporate books, invoices for sales, receipts for expenses, and so forth.
- [107] Based on limited disclosure provided, the respondent's Canada Post income has risen. It was approximately \$76,000 in 2022. For 2023, the claimant argues that pay stubs for year to date suggest his employment income is \$88,000.

- [108] The respondent argues that he has not filed a tax return for the most recent tax year because he does not owe taxes. The respondent further argues AGS is not doing well financially and is losing money; therefore he cannot afford to file a tax return, or even to remit outstanding PST and GST that he has collected through AGS. The respondent introduced credit card statements showing he owes money, and further argues that he cannot make truck payments.
- [109] The respondent said that when he does file taxes, he anticipates writing off significant losses for AGS, including approximately \$60,000 for purchase of a vehicle that he says was used for AGS, such that AGS's profits will be nominal, at best. The respondent's evidence was that AGS usually nets \$65,000 per year, with actual expenses of \$10,000 to \$20,000 per year. However, for income tax purposes, greater amounts are written off to reduce taxes payable.
- [110] The claimant is asking that the court impute income under s. 19(1)(g) of the Guidelines, to account for the respondent's unreasonably deducted business expenses for AGS. In the respondent's 2021 T1, he claimed \$99,096.40 in business expenses. There was no claim of a retroactive child support for 2021, but this does illustrate the flexibility of corporate income and impact of choosing to write items off as expenses. Expenses capable of being written off to reduce a company's profit for business purposes do not necessarily reflect the money available to the payor parent for payment of child support.

LAW AND ANALYSIS

- [111] In *Graydon*, the Supreme Court of Canada discussed child support as being the right of a child, adopting the following statements from *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.], at para. 10:
- Child support is the right of the child, which right cannot be bargained away by the parents, and survives the breakdown of the relationship of the child's parents (para. 38);
 - Child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together (para. 38);
 - The child support owed will vary based upon the income of the payor parent, and is not confined to furnishing the "necessities of life" (paras. 38-45).
 - Retroactive awards are not truly "retroactive", since they merely hold payors to the legal obligation they always had to pay support commensurate with their income (para. 2);
 - Retroactive awards are not confined to "exceptional circumstances" or "rare cases" (para. 5); and

- In determining whether to make a retroactive award, the payor parent's interest in certainty in his/her obligations must be balanced with the need for "fairness and flexibility". A court should consider whether the recipient parent's delay in seeking retroactive support was reasonable in the circumstances, the conduct of the payor parent, the circumstances of the child, and the hardship the retroactive award might entail (para. 133).

[112] Considering obligations to provide ongoing financial disclosure, so that the objectives of child support can be met, at para. 59 in *D.B.S., Bastarache J.* observed that:

While the payor parent does not shoulder the burden of automatically adjusting payments, or automatically disclosing income increases, this does not mean that (s)he will satisfy his/her child support obligation by doing nothing. If his/her income rises and the amount of child support paid does not, there will remain an unfulfilled obligation that could later merit enforcement by a court.

[113] The Supreme Court of Canada, in *Graydon* at para. 33, noted that:

[33] Failure to disclose material information is the cancer of family law litigation (*Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), at para. 9, quoted in *Leskun v. Leskun*, 2006 SCC 25, [2006] 1 S.C.R. 920, at para. 34). And yet, payor parents are typically well aware of their obligation as a parent to support their children, and are subject to a duty of full and honest disclosure ... The payor parent's obligation to disclose changes in income protects the integrity and certainty afforded by an existing order or agreement respecting child support. Absent full and honest disclosure, the recipient parent - and the child - are vulnerable to the payor parent's non disclosure.

[114] Blameworthy conduct, on the part of a payor parent tends to support a retroactive child support award, and is characterized in *D.B.S.* as "anything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support", (para. 106). Retroactive child support awards may be appropriate and necessary where one parent has failed to disclose their income: "Put simply, a payor parent who knowingly avoids or diminishes his/her support obligation to his/her children should not be allowed to profit from such conduct", (para. 107).

[115] Courts have recognized the need to "look beyond the corporate veil" in determining corporate income for child support purposes: *Baum v. Baum*, (1999), 182 D.L.R. (4th) 715 (B.C.S.C.) at para. 28. In *Wiebe v. Treissman*, 2017 BCSC 1523 paras. Justice Kent observed:

[88] Section 18 of the Guidelines addresses situations where a spouse is a shareholder, director or officer of a corporation. If such a spouse's annual income as determined under s. 16 (i.e., [their] line 150 income, as adjusted) "does not fairly reflect all the money available to the spouse of the payment of child support", the court can review corporate pre-tax income and impute all or part of that income to the spouse for child support purposes.

- [89] Section 21 of the Guidelines requires a spouse who controls a corporation to disclose the financial statements of the corporation and its subsidiaries as well as a "statement" of all amounts or benefits paid to persons who were not "at arm's length" to the corporation. Section 18(2) of the Guidelines requires all such non-arm's-length payments to be added back to corporate pre-tax income unless the spouse "establishes that the payments were reasonable in the circumstances".
- [90] One of the "benefits" enjoyed by a spouse who is able to structure [their] financial affairs through a wholly-owned corporation is the ability not only to "income-split" with third parties, and to distribute income by way of a mixture of salary and dividends, but also to have what are essentially personal expenses paid by the corporation. To the extent such expenses are personal and not bona fide corporate expenses, they are properly "added back" to the corporation's pre-tax income, all or part of which can then be imputed to the spouse for Guideline income purposes.
- [94] The burden of proving the reasonableness of deductions from business income, whether in the context of self-employment or within a wholly-owned corporation, lies with the spouse making the deduction. It is the obligation of that spouse to fully disclose the financial information and documentation relied upon to justify the deduction of each expense. It is not the other party's responsibility to hire, nor is it the court's obligation to appoint, an accountant or other professional to assess and challenge the reasonableness of the deduction, although of course both are at liberty to do so in appropriate circumstances.
- [116] In *M.T. v. J.S.*, 2023 BCCA 64, at para. 15, the Court of Appeal outlined the concern to properly quantify business income and to scrutinize amounts written off as business expenses as follows:
- [15] The legitimacy of an expense deduction under the Income Tax Act is a relevant consideration in the sense that a deduction that is not recognized as a valid business expense under the Income Tax Act is unlikely to be a reasonable business expense under the Guidelines. However, that is not the end of the inquiry. The question under the Guidelines is whether the business deductions include expenses which provide a personal benefit or constitute an ordinary living expense that would normally be paid from a party's employment income--expenses which would not be deducted from a salaried party's income and should equally not be deducted when income flows through a corporation: *Ursel* at para. 27; *Reis v. Bucholz*, 2008 BCSC 1156 *aff'd* 2010 BCCA 115. Typical examples include meals, entertainment, telephones, Internet and vehicle expenses.
- [117] Section 18 of the Guidelines allows, but does not require, inclusion of all pre-tax income of a corporation. There can be legitimate corporate needs requiring funds to be retained for the ongoing success of the company. The court will not second guess bona fide business decisions of the company, or "kill the goose who lays the golden eggs": *Kowalewich v. Kowalewich*, 2001 BCCA 450 at para. 58; *McKenzie v. McKenzie*, 2014 BCCA 381.

- [118] The onus is on the payor to provide the necessary evidence that the corporation's pre-tax income is not available to the payor: *Hausmann v. Klukas*, 2009 BCCA 32, at paras. 51-52. This principle was outlined by Justice D. MacDonald in *M.D. v. B.D.*, 2022 BCSC 1707, as follows:
- [91] Where the court finds it difficult to determine a party's income due to that party's inadequate financial disclosure, the non-disclosing party must bear the consequences. As Justice Abrioux (as he then was) stated in *S.K.R. v. K.S.R.*, 2015 BCSC 914 at para. 55, it is not the court's role to "ferret out" the necessary information in the face of inadequate and confusing disclosure.
- [92] The court is not bound to accept a party's declared income for income tax purposes as the income on which to determine support obligations. A party's T1 statement may not be a true indication of their available income. Where a party owns or controls a corporation, they can artificially reduce their income and, if they do so, their income should be adjusted: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 121. The "...task of the court is to determine what money is fairly available to support the children of the marriage": *Younger v. Younger*, 2017 BCSC 363 at para. 25.
- [95] Section 19 of the Guidelines permits the court to impute income to a spouse in circumstances where the court is of the opinion that the spouse's disclosed income does not reflect the income available to them for support purposes. Section 19 contains a list of circumstances in which it would be appropriate to impute income, but the list is not exhaustive: *Riel v. Holland* (2003), 67 O.R. (3d) 417, 232 D.L.R. (4th) 264 (C.A.) at para. 36. These circumstances include: where the spouse is intentionally unemployed or under-employed (s. 19(1)(a)); where the spouse has failed to disclose financial information (s. 19(1)(f)); and where the spouse unreasonably deducts expenses from income (s. 19(1)(g)).
- [96] These statutory authorities allow the court to use all available evidence, including circumstantial evidence, to impute income to a non-disclosing party at an amount it considers appropriate. The Court may do so even where there is little evidence from which to assess the party's income. [Citing the Court of Appeal in *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453 at paras. 23-25.]
- [119] Through the claimant's work as a self-employed cleaner, she makes approximately \$24,455.77 per year. The respondent suggested she may have a source of pension income, but this was not in evidence before me. There is a significant discrepancy in the financial wherewithal of the parties. As the claimant has primary residence of the children, there is no off-setting of child support amounts under the Guidelines. However, the discrepancy of the parties' incomes highlights the vulnerability of the children. Here, given the absence of adequate financial disclosure by the respondent for both his personal and business income, a court can draw adverse inferences based on the lack of disclosure. The circumstantial evidence was that the respondent had the resources to travel extensively internationally in the past years. The respondent provided no evidence that his travel was free, and funded by

an unnamed wealthy benefactor. Likewise, he provided no disclosure about the financial situation of AGS.

[120] It is important that the lack of disclosure not privilege the payor respondent's interests over his children's right to an appropriate amount of support (per D.B.S.).

[121] In 2021, the respondent claimed that his employment income was \$2,917.96 every two weeks, or \$75,867.22 annually. For 2021, the respondent declared that he generated \$73,574.85 gross from AGS. The respondent asserts that expenses are usually in the range of \$10,000-\$20,000 per year, and that \$63,000 is a good assessment of his business income for 2021. These figures are different from the amounts claimed on income tax where it appears that expenses were added to the AGS accounts so as to reduce the income on which taxes were payable.

[122] The child support claim before me is from January 2022 onward. The 2021 figures provide some guidance for imputing the respondent's income.

[123] For 2023, the respondent claimed that his AGS business is failing. He says he anticipates writing off the value of a vehicle, such that the profits will be negligible. As noted earlier, none of the required financial disclosure was provided, nor was there evidence provided which would corroborate the assertions made by the respondent. In such circumstances, the respondent must bear the consequences of his inadequate disclosure, and not the Children.

[124] For 2022, for purposes of determining Guideline child support that the respondent will pay to the claimant for the Children, the respondent's income is imputed as follows: \$76,000 for employment income, and \$65,000 for income generated from AGS. Based on the Guidelines, child support the respondent owes the claimant for the Children for 2022 is \$2,661 per month, or \$31,932 per year. Based on these calculations, the respondent owes \$16,774 in child support arrears for 2022.

[125] For 2023, for purposes of determining Guideline child support that the respondent will pay to the claimant for the Children, the respondent's income is imputed as follows: \$88,000 for employment income, and \$65,000 for income generated from his AGS business. Based on the Guidelines, child support the respondent owes the claimant for 2023 for the Children is \$2,849 per month or \$34,188 per year. The respondent owes the claimant arrears for 2023 of \$20,196, which is the difference between the child support I have determined he owes (including two missed payments) and what he paid.

[126] For 2024, the amounts I have imputed as income will remain in place. The respondent will pay the amount of child support on a bi-weekly basis (prorated over the year) as he has been doing.

Section 7 Expenses

- [127] The respondent is employed by Canada Post, and has extended health benefits through his employment, which the Children are registered under. Some s. 7 expenses may be claimed through Canada Post. I understand that it is possible for either party to submit a request for reimbursement. The respondent will fill out any necessary forms, or provide any necessary permissions, to allow the claimant to seek reimbursement directly through any health or dental or other benefit plans that the Children are eligible for under his plan with the respondent's employer.
- [128] Going forward, any health or dental costs, or other s. 7 costs not covered by the respondent's benefit plan that are over \$50 will be borne by the parties, 20% by the claimant and 80% by the respondent.
- [129] The claimant asks for a proportionate share of \$3,294.02 in s. 7 expenses, which include payments she made for counselling, chiropractic, dental and optical fees.
- [130] The claimant will submit those receipts to the respondent's benefit plan, after the above process has been undertaken (after the respondent takes whatever steps are necessary to allow her to submit those receipts and be reimbursed directly) and notify him of any amounts not covered. The respondent will pay 80% of costs not covered.
- [131] The claimant shall advise the respondent of the Children's extra-curricular activities and other s. 7 expenses, and their expense through OFW at the end of each month when providing the update outlined above, and the respondent will reimburse his share of those expenses within three weeks. If the respondent feels that an expense is unreasonable, he may ask the claimant to reconsider the expense through OFW. If the parties are unable to agree whether an expense is reasonable and should therefore be covered through the 80/20 split I have ordered, the respondent may apply to court for a determination of the reasonableness of that expense.

PROTECTION ORDER

- [132] The claimant asks for an FLA s. 183 protection order against the respondent, prohibiting him from entering or going near her residence. *Williams v. Williams*, 2022 BCSC 517, discussed factors to be considered in making a protection order:
- [84] Considerations for this court in making a protection order are set out in s. 184. An assessment of a whole series of risk factors is required, including a history of family violence; whether family violence is repetitive or escalating; whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive or controlling behaviour directed at the at-risk family member; and, the current status of the relationship between the family member against whom the order is made and the at-risk family member, including any recent separation or intention to separate. There is a requirement on the court to look at the situation at the particular time, and to consider the at-risk family

member's perception of the risk to their own safety and security.

[133] Here, I decline to make the protection order sought. I do not find the situation merits such an order, there is no evidence before me that the respondent has continued to attend at the claimant's house or poses a risk at this time. There is a consent conduct order in place preventing the respondent from attending at the claimant's house. The consent order shall be incorporated into the final order and continue to be in force.

DIVORCE

[134] Subject to s. 12 of the DA, the claimant, A.R., and the respondent, J.R., who were married at Abbotsford, B.C. on May 1, 2004, are divorced from each other. The divorce to take effect on the 31st day after the date of this order.

Relocation

[135] The respondent's request for an order prohibiting the claimant from relocating the Children outside of the lower mainland was not argued, and is dismissed. I note that such an order is premature as the claimant has not proposed to relocate with the Children. If she does there are legal requirements that she must follow regarding providing notice to other guardians, who may then object.

Pension and Asset Division

[136] The respondent's pension with Canada Post is subject to division under Part 6 of the FLA, based on a marriage date of May 1, 2004 and separation date of March 11, 2014. I order that the parties' respective Canada Pension Plan credits accrued between May 1, 2004 and March 11, 2014 be divided equally.

[137] Information provided about other assets or debts was incomplete. The parties appear to have settled most of these issues prior to the trial. Parties have leave to appear before me to address any remaining asset or debt division issues. They must apply to do so within 30 days of the release of these reasons. Absent such application, each party is to retain all assets and debts (including vehicles) currently held in their name.

Costs

[138] The plaintiff is entitled to her costs in this proceeding.

"A. Walkem J."

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Prepared on 28 October 2026 · Esheria