

CANADA / JUDGMENT

Anastacio v. Murray

2022 BCSC 897

COURT

Supreme Court of British Columbia

DECIDED

31 May 2022

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2022 BCSC 897 Anastacio v. Murray

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anastacio v. Murray,

2022 BCSC 897

Date: 20220531

Docket: E180828

Registry: Vancouver

Between:

Janette Arizala Anastacio

Claimant

And

Carter David Murray

Respondent

Before: Master Bilawich

Reasons for Judgment

Counsel for the claimant, by videoconference:

D. Sue-A-Quan

Counsel for the respondent, by videoconference:

H. Mathison

Place and Date of Hearing:

Vancouver, B.C.

March 10-11, 2022

Place and Date of Judgment:

Vancouver, B.C.

May 31, 2022

I. Introduction

- [1] This action arises out of an alleged marriage-like relationship between the parties. The parties disagree on many aspects of their relationship, including start and end dates, whether it was marriage-like and whether the respondent stood in the place of a parent in relation to the claimant's youngest child from a previous relationship.
- [2] The claimant commenced this action on March 20, 2018, but has delayed applying for interim relief. By application filed October 22, 2021, she applies for orders that:
- a) The respondent pay her interim child support for the child, [name redacted], born [date redacted], 2004 ("J.") pursuant to the Federal Child Support Guidelines (the "Guidelines"), retroactive to February 1, 2019;
 - b) The respondent pay her a proportionate share of J.'s special and extraordinary expenses pursuant to section 7 of the Guidelines, retroactive to February 1, 2019;
 - c) The respondent pay her interim spousal support pursuant to the Spousal Support Advisory Guidelines, retroactive to March 1, 2018;
 - d) The respondent pay her an interim distribution of property of \$200,000 to fund litigation expenses, pursuant to s. 89 of the Family Law Act ("FLA");
 - e) The certificate of pending litigation be removed temporarily so a mortgage for the interim distribution can be registered on title to the respondent's property at 11611 - 6th Avenue, Richmond, B.C. (the "6th Avenue Property").
- [3] The respondent denies the parties were in a marriage-like relationship and opposes all of the relief sought.

II. Background

- [4] The parties join issue regarding many aspects of their relationship. It is not possible to resolve the conflicting accounts on an interim application. Some areas are not controversial; I will indicate where the parties agree or disagree on significant issues.

A. The Beginning

- [5] The parties have known each other since they were both in grade 8, in 1976. They were friends through high school.
- [6] They each had previous marriages which ended in divorce. The claimant has two children from one prior relationship, namely [name redacted], born [date redacted], 1991 ("X.") and [name redacted], born [date redacted], 1993 ("S").
- [7] The parties dated briefly in spring 2003. This ended when the claimant informed the respondent she was seeing someone else. J. was born in the course of that subsequent relationship.
- [8] The respondent says in 2005, the claimant's sister Jayne informed him the claimant had a baby and that she and the father were addicted to "meth". Later that year, the claimant contacted the respondent to ask that he drive her to a rehab facility, which he did. The claimant then contacted the respondent to ask him to pick her up from the facility. He allowed her to sleep on his sofa for several weeks, after which the claimant went elsewhere.
- [9] In or about September 2007, the parties resumed dating. The claimant says their relationship quickly became serious and considered themselves a committed couple. The respondent says they were dating casually and partying together when he was back home from work.

B. Respondent's Work Schedule

- [10] The respondent's work schedule plays a significant role in the dynamic of the parties' relationship. In about 2005, the respondent began working with Ledcor Management Limited ("Ledcor") as a planner and scheduler. He initially provided services as an independent service provider, through his own company.
- [11] Throughout the parties' relationship, the respondent worked out of town. Initially he worked in and around Fort McMurray, Alberta. This involved a 14-day cycle, in which he worked 10 days out of town and returned home to Richmond, B.C. for 4 days.
- [12] In about 2015, he began working for Ledcor in Calgary, Alberta. His schedule changed such that he worked 5 days out of town and returned home for 2 days. The respondent says in 2015 he worked in Calgary for about 200 days and in 2016 for about 215 days.

C. Claimant's Legal Standing Regarding J.

- [13] The claimant states in her affidavit #2 made October 22, 2021 that J. occupied a bedroom on the second floor of the 6th Avenue Property during the time she and the respondent lived together in the master bedroom. The respondent disagrees. A complicating factor is the fact that the claimant did not have custody, guardianship or primary care of J. throughout the period relevant to the parties' relationship.

- [14] By order made August 3, 2006 (the "Custody Order") in the Provincial Court of British Columbia, Richmond Action No. 5365 (the "BCPC Action"), Judge Rae ordered that J.'s four maternal and paternal grandparents share joint custody and joint guardianship of him. This appears to have come about because of the claimant's substance abuse issues.
- [15] During the parties' relationship, the grandparents allowed the claimant generous access with J. On the evidence before me, it is not clear how much access she had at various relevant times. In her initial affidavit, the claimant indicated that J. lived with them but she did not disclose the Custody Order or the grandparents' involvement. The respondent says J. spent a substantial part of his time living with his paternal grandparents. Because the respondent's work schedule frequently took him out of town, it is also not clear how much time the respondent spent with J.
- [16] On August 23, 2018, after the claimant moved out of the 6th Avenue Property, a consent order was made varying the Custody Order to provide that the four grandparents thereafter shared parental guardianship of J. with the claimant, granting the claimant primary residence of J. and giving the grandparents parenting time with him at times and places to be agreed between the parties.

D. Start of Cohabitation

- [17] In 2008, the respondent purchased the 6th Avenue Property. It has four bedrooms.
- [18] The parties disagree about when the claimant moved in. The claimant says she clearly remembers it was September 2009. The respondent says it was around November 2010. The respondent attaches as Exhibit "A" to his affidavit #1 sworn December 3, 2021 a text message from the claimant dated August 1, 2010, in which the claimant says she had not talked to the respondent for so long and was not looking forward to having to find a place and move again.
- [19] The parties agree that the respondent initially had a male roommate after he bought the 6th Avenue Property. In late August 2010, that roommate bought his own property and moved out. The parties agree the claimant did not move in until sometime after the roommate moved out.
- [20] The respondent says when the claimant moved in, he gave her a list of house rules, including no smoking, no parties, others were not to use the hot tub, lock the doors and turn on the alarm when leaving, do not give anyone a key and do not bring strangers into the home.
- [21] As the claimant was moving into the 6th Avenue Property, concurrently, she also continued renting an apartment at 109 - 8651 Westminster Highway, Richmond, B.C. (the "Westminster Residence") and was receiving rental assistance benefits from BC Housing on the basis that it was her principal residence. The claimant says she did so to provide a home for X. and S. The respondent did not want them to move into the 6th Avenue Property unless they were prepared to follow his house rules. The claimant says that they were rebellious and poorly

behaved at the time, so they decided to remain at the Westminster Residence. This arrangement appears to have continued until about October 2013. The respondent raises as an issue where the claimant resided when he was away working.

E. 6th Avenue Property

- [22] The parties also join issue regarding the living arrangements in the 6th Avenue Property. The claimant says they shared the master bedroom throughout the relationship and the respondent cleared out half of the walk-in closet for her to use. She had additional clothes and belongings in the closet of one of the three other bedrooms in the home. She says they normally went to bed at the same time, because the respondent would get upset if she stayed up watching television downstairs.
- [23] The respondent denies they shared the master bedroom for significant periods relevant to this action. He says they rarely went to bed together and that most of the time the claimant occupied a guest bedroom on the second floor or slept on the couch in the living room. Starting in about 2014-2015, the claimant began working afternoons and nights at a casino. During that period, they did not see much of each other when he was home due to her work schedule.
- [24] The claimant says J. had a room at the 6th Avenue Property and that the respondent bought bedroom furnishings for it. The respondent acknowledges J. visited the claimant and spent time at the property on a part time basis between 2013 and November 2017, except during a period when the parties separated from May to November 2015. There was a bedroom J. normally slept in, but it had generic furnishings. He says when J. was unhappy while visiting, he would call his grandparents and they came to pick him up.

F. Intimacy

- [25] The parties agree they were sexually active, but they disagree about the details. The claimant says they regularly expressed affection towards each other both privately and publicly. The respondent says they rarely said "I love you" to each other, they fought all the time, they broke up numerous times and he asked her to move out on several occasions.
- [26] The parties agree their relationship was exclusive and they were faithful to one another. The claimant says that if either of them had started a relationship with someone else, theirs would have been over, as they both were prone to jealousy. They would get into fights over pictures she posted on Facebook if there were other men in the picture. She was also jealous of him if he paid attention to other women. The respondent denies being overly jealous but acknowledges objecting when the claimant and others became friends with J.'s father on social media.

G. Meals and Activities

- [27] The claimant says the parties ate meals together. Home cooked meals were important to the respondent, so she would prepare them and they ate together. They also ordered in or went out for dinner frequently, sometimes with friends and family. The respondent denies the claimant prepared home cooked meals for him. He did want that, but it did not happen. When he was home, he cooked for himself and ate out a lot. He acknowledges the claimant prepared traditional Filipino dishes when her family came over. He says they each bought their own food separately for the most part.
- [28] The claimant says the parties would do everything together when the respondent was home. If she stayed overnight with one of her sisters, it would end in a fight between the parties, even when the respondent was out of town. When he discovered she was not home, he would send messages complaining she had not told him she was going out.
- [29] The respondent denies they did everything together when he was in town. They initially did some things together as boyfriend-girlfriend. After the claimant started working at the casino in about 2014, they rarely saw each other. The claimant was still working at the casino when she moved out in early 2018. The claimant regularly stayed out late and did not return to the 6th Avenue Property. She would tell him she had gone to a sister's home or had stayed at the casino playing cards.

H. Mutual Support and Relationship with Family

- [30] The claimant says the parties supported each other physically and emotionally. The respondent would get a lot of headaches, so she made sure she had Advil and water ready. She was available to assist him with issues, whether he was in town or not. One example was helping his aging parents get groceries. She also visited his elderly mother in hospital.
- [31] The respondent denies the claimant assisted him or his parents. He says he asked her to cut his mother's hair on several occasions. The claimant worked as a hairdresser prior to her casino job. At the time, his mother could not walk and his father was blind. Weeks passed without the claimant helping. After about three months, the claimant finally cut her hair, but accepted payment from his father for doing so. He also asked her many times to call his father to ask if they needed any groceries. Eventually, on one occasion, she picked up some items for his parents from Safeway and made a fuss about having done so afterwards. His father paid her for the groceries.
- [32] The claimant says they occasionally went for Sunday dinner with the respondent's parents when he was in town. His parents were warm and welcoming to her. They also attended many of the claimant's family events as a couple, including birthday celebrations for her sisters and her parent's 55th wedding anniversary celebration. They attended their 30th anniversary high school reunion as a couple.

- [33] The respondent says the claimant attended very few of his family's Sunday dinners. His sister typically hosted those. He attended when he was in town. The claimant only went with him on two or three occasions. He says the claimant was not interested and commented that his family was boring. He acknowledges attending numerous of the claimant's family events. They hosted many parties and get-togethers at the 6th Avenue Property, which was referred to as "Cartopia".

I. Gifts

- [34] Claimant says the respondent provided her a 2003 Toyota Matrix for her personal use. Initially it was registered in his name. On April 14, 2017, he gifted the vehicle to her. She tendered the gift transfer form, signed by him, which has a handwritten entry referring to their relationship as "common law".
- [35] The respondent says the vehicle was a major source of conflict between them. He provided her access to the vehicle because she was unable to provide proper care or support to her children. The claimant had an accident with the vehicle, which adversely impacted his insurance premium. She also abused his trust by allowing certain of her children, who were unlicensed, to operate the vehicle, over his objections. He alleges the claimant berated him into transferring the vehicle to her and that he did so to avoid potential liability. He says he put "common law" on the transfer form because the insurance agent instructed him to do so.
- [36] The claimant says Christmas was a big deal for them. The respondent would tell her what he liked and she would buy him that, within her budget. He bought her various expensive gifts including a diamond ring, iPad, camera, leather jacket and other jewelry. Regarding the diamond ring, the claimant says it has three stones, which the respondent told her represented their past, present and future. He presented it to her in front of her family members for Christmas 2016. He also spent thousands of dollars on gifts for her children and other family members.
- [37] The respondent acknowledges he bought gifts. He says the diamond ring was not an engagement ring, it was just him fulfilling a request she made for a ring to fill a gap in her jewelry collection.

J. Domestic Services

- [38] The claimant says the parties divided the housework. The respondent washed his own clothes and she helped fold them and put them away. Before he left for the week, she would hang up what he had left in the dryer. She also washed their bedsheets weekly. The respondent disagrees. He says the claimant's untidiness was a source of contention. He describes her contribution as involving occasional vacuuming and cleaning two bathrooms. He cleaned his own bathroom and did his own laundry. He does not agree she folded his laundry. Until 2016, they both laundered the bedding. After 2016, he laundered his own.

- [39] The claimant says the respondent was responsible maintaining the exterior of the home and she maintained the interior. She estimates she spent 4 to 5 hours weekly on cleaning. She acknowledges they hired one of the respondent's friends to do some housecleaning, but says it was for things like dusting places she could not reach. The respondent denies the claimant was responsible for maintaining the interior of the home and denies she spent significant time cleaning. He hired and paid a friend named, "Becky", to do interior cleaning because the claimant failed to do so herself.

K. Accommodating Claimant's Family

- [40] Claimant says her brother, Jhake, stayed with them for a few months in 2015. Her parents stayed with them for a few months on two occasions. Her younger sister, Jenny, and her boyfriend were regular guests when the respondent was in town. The respondent acknowledges this, but says he was pressured into allowing family members to stay over. The parents did not have anywhere else to go. Jhake was dropped off at a homeless shelter on the downtown east side after returning from the Philippines and had nowhere else to live. The respondent did not think it was right to leave him in a shelter.

L. Presentation to Others

- [41] The claimant says she and the respondent loved each other very much. They showed and told each other that consistently. She pictured herself growing old with him and they discussed this on numerous occasions. They referred to each other as "babe", both privately and in front of others. She acknowledges they did not always have the best communications and frequently had misunderstandings, but they tried to make it work by diffusing their disagreements through texts and emails.
- [42] The respondent says they had conflict and disharmony throughout the relationship. The claimant has a history of anger management issues. She screamed at him, called him names, was disrespectful and refused to communicate with him at times. He believes she used him and his home to entertain and house her family and friends. He believes she took advantage of his kindness and good heart and used his home as a party venue. She ignored his house rules and hosted events without requesting his prior agreement.
- [43] The respondent says throughout the relationship they referred to each other as girlfriend and boyfriend. They presented themselves as a dating couple to friends and family. They did not refer to each other husband, wife, spouse or life partner. He admits he loved the claimant, however, due to the conflict and disharmony and his perception the claimant disrespected and took advantage of him, they never became more serious than that.

M. Financial Arrangements

- [44] The parties agree they maintained completely separate finances during the relationship. The claimant says they never made any official arrangements regarding who paid for what. This all just happened naturally. Her income was substantially lower than his. She purchased groceries and necessities for both of them and the respondent did the same. When they went shopping together, the respondent would pay for all of the groceries and other purchases. When she went shopping on her own, she would use her own funds to purchase for both of them. If she was short on cash, she would call the respondent and he would e-transfer funds. She says the respondent knew that she did not make very much money and never complained about paying for things during the relationship. She did not want to burden him, so she would not ask for money very often. When she did, he always sent money without question. He also paid for their recreational activities such as dinners and holidays.
- [45] The respondent says they did not make financial decisions together. They kept their finances completely separate throughout the relationship. They did not have any joint accounts or credit. He denies the claimant bought groceries for him. He acknowledges she bought groceries when they entertained her family. She did not contribute household expenses. All bills were in his name and the claimant had no access to them. She used her income for her own personal expenses. He did not disclose his finances to her and she did not disclose hers to him. There were occasions when the claimant asked to borrow money from him and he did e-transfer funds to her. On three or four occasions he asked the claimant to pick something up for him as a favour and he reimbursed her.
- [46] The respondent says he had no intention of providing for the claimant financially. With the benefit of hindsight, he believes his generosity towards the claimant is now being used against him. He tried to help the claimant where he could, because they were friends and so she would not "fall flat on her face".

N. Holidays

- [47] The claimant says the parties went on vacations together, which the respondent paid for. These include:
- a) July 2010 - Mexico;
 - b) May 2011 - Hawaii;
 - c) July 2012 - Nova Scotia, with respondent's sister and parents; and
 - d) March 2016 - Philippines, with the claimant's family.
- [48] The respondent acknowledges he paid for these trips. For the trip to the Philippines, he stayed two weeks and the claimant stayed four. She was supposed to pay him back, but only did so partially.

[49] The respondent says the claimant often travelled without him, including:

- a) 2013 - Philippines;
- b) 2014 - Philippines;
- c) 2015 - Los Angeles;
- d) 2017 - Las Vegas; and
- e) February 2018 - Caribbean cruise.

O. Reported Marital Status and Addresses

[50] The respondent says that during the relationship, the claimant continued to file her income tax returns and collect government benefits and assistance from BC Housing on the basis that she was single.

[51] The respondent produced copies of BC Family Bonus printouts in the claimant's name for the years 2007-2013. The printouts for 2008, 2009 and 2012 indicate the claimant's marital status was "single". The printout for 2010 includes a notice that "under a proposed legislative change, you must inform us of any change in your marital status." There is no indication the claimant reported a change in her marital status in subsequent years. The claimant's address on the 2007-2013 printouts indicate her address was 4980 Larkspur Avenue, Richmond, BC. This is her sister Joy's address.

[52] The respondent produced copies of the claimant's income tax return information printouts for 2007-2014. The marital status indicated on all of those is "single". The address the claimant used on her returns for those years was the Larkspur address.

[53] The respondent also produced a letter dated September 29, 2010 from BC Housing indicating that the rental assistance program required clients to re-establish eligibility and entitlement to the rent subsidy by reapplying each year. There is handwriting on the form indicating "sent residential tenancy agreement October 2010". As he and the claimant did not have a residential tenancy agreement, he suggests this must refer to the Westminster Residence.

[54] The respondent attaches a rental assistance program application form regarding the claimant. It lists her address as the Westminster Residence and rent to be \$1150 per month. It lists X., S. and J. as household members. The form specifically requests that she "list household members, including spouse, that are living with you."

[55] The respondent produced correspondence from Human Resources and Skills Development Canada with a statement of account for the claimant's Canada Student Loan dated March 23, 2013. This was sent to the Westminster Residence.

[56] The claimant says she used her sister's address on some documents because she had moved several times in preceding years and it was easier to have her mail directed to her sister. After moving in with the respondent, she continued to use the Larkspur address for tax

years up to 2012 out of convenience. She says she spoke to the respondent about using the 6th Avenue Property address for later years, but he told her she should not do that because he had already filed his income tax returns and could get into trouble if she said she was living there. She now says she was naïve at the time and obeyed his "directive" for her 2013 and 2014 returns, which she filed late, in 2017.

- [57] The claimant produced a June 9, 2017 text exchange she had with her sister Joy which includes the following exchange:

Claimant: "Im not sure what to do. Carter says he will get in trouble if i say ive been living here."

Joy: "Why? Cause he doesn't wanna claim you as a common law? Just be aware that if you do this and something happens down the road between the 2 of you, you are basically setting yourself up to get nothing because now you will have something documented that you never lived together, and therefore forfeit your rights to anything."

- [58] The claimant says she did say she was in a common law relationship on her income tax returns because she did not know she had to, plus she did not have access to the respondent's social insurance number and other financial information required to fill in required spousal portion.
- [59] The respondent produced copies of the claimant's income tax returns for 2015, 2016 and 2018. They indicate her marital status is "single" and list her address as the 6th Avenue Property.
- [60] The respondent produced a letter from BC Housing - Rental Assistance Program dated June 14, 2019 which encloses a list of benefits the claimant received for the period February 29, 2008 - October 31, 2013. This shows the claimant received benefits throughout this period. The respondent argues this was based on representations she made to BC Housing that she resided at the Westminster Residence.
- [61] The respondent produced copies of his income tax returns for 2015 and 2016. On both he listed himself as "single". He is working on obtaining copies of his returns for the period 2010-2014. He believes he indicated he was single on those as well. He says if he had considered himself to be in a common-law relationship, he would have been honest and indicated that on his income tax returns.

P. The Child, J.

- [62] The claimant says the respondent loved J. and treated him like his own son, while J. loved the respondent and treated him like a father. The respondent would buy J. presents, care for him, discipline him when necessary and act as a parental figure. She attaches Facebook photos and posts from the respondent's page tagging J. throughout the years of their relationship.

- [63] The respondent denies he stood in place of a parent to J. He acknowledges J. visited the claimant and spent time at the 6th Avenue Property on a part-time basis, a few days per week from 2013 to September 2017, except for May 2015 to November 2015, when the parties had separated. The claimant arranged for access to J. with J.'s paternal grandmother. He believes the claimant had J. about 50% of the time at most. It was not until August 23, 2018 that she was granted joint guardianship and primary residence of J.
- [64] The respondent says he was not involved in parenting decisions for J. such as medical appointments, dental appointments, where J. would live and who he would associate with or decisions concerning his education or religion. He did not discipline J. and was not involved in his instruction or education. He describes his role as being like a big brother. He did care for and try to help as best he could. He felt sorry that J. grew up without the claimant in his life for several years.
- [65] The respondent does make some references to J. in Facebook Messenger exchanges that are in evidence. In a message from May 2011, includes the respondent's request that the claimant schedule her time with J. during periods that he was not in town:

Respondent:

Jeanette, I can not handle these fights when I am working my [a*s] off and out of town. Do you even know or remember how this escalated to a fight this morning; I do. I said you should try to get as much time with [J.] as you can while I am up here. Your reply was something about the Calvos schedule and [J.] being no problem because he goes to bed early. I told you I work my [a*s] off and when I get home I want to be free to do whatever. YOU say Its MY choice to be up here. That infuriates me so [f*g] much Jeanette I feel like screaming! How dare you do that to me I sacrifice my [f*g] life to build the world I get to see for 4 days every 2 weeks. YOU stood right beside me, saying get it, when I made the commitment to buy that [f*g] house. My working up here is what pays for your dinners and your wine and your yagger and your car and insurance and license debt and the rest of the money I spend with you.

All I asked was for you to try to schedule to be with [J.] during the time I'm not there. Why is it you go to Jaynes restaurant or Party at Shawns or stay out till very late when I'm not there and want to have [J.] when I am there and make me feel like a piece of [s**t] for saying something?

- [66] The respondent says he has only seen J. once since 2018, in the summer of 2020. The claimant and J. attended at his residence to pick up the balance of the claimant's belongings. They do not have an ongoing relationship.

Q. Separations

- [67] The claimant acknowledges the parties had rocky times during the relationship. They would occasionally fight and use strong language. They are both emotional people and certain things would trigger each of them. Overall, their relationship was loving and they only fought occasionally.

- [68] The claimant says in about July 2015, she moved out of the 6th Avenue Property for several months. During that time, they were still in a relationship and communicating with each other. They attended couples counselling between September and October 2015. At the sessions they both expressed a desire to work on the relationship. She left most of her personal belongings at the 6th Avenue Property during this time. She would visit the respondent at the home and occasionally stay overnight. She says they remained sexually active during this period.
- [69] The claimant attaches copies of clinical records from their counselling sessions. On the forms they are described as "employee + spouse" and the forms are initialled by both parties.
- [70] The claimant says she did not consider that the parties had ended their relationship completely. They were upset with each other, but were able to work through their differences. The parties reconciled and she moved back in to the 6th Avenue Property in about early November 2015.
- [71] The respondent says the parties separated from about May to November 2015. During that period, the claimant lived with her sister, Joy. He did not see her, except on one occasion when she showed up at the 6th Avenue Property upset because she thought he had changed the locks. They began counselling in September 2015. The claimant moved back in about November 2015. He was working out of town when she did so.
- [72] The respondent says the parties separated again in May 2016, at which time the claimant promised she would move out, but needed time to do so. The respondent says the parties broke up and reconciled multiple times, but continued to live under the same roof. The May 2016 separation represented a turning point. The respondent felt the relationship was shattered. After May 2016, they continued to have parties in the home and socialize with friends, however, he no longer considered them to be boyfriend-girlfriend.
- [73] The claimant denies the parties separated between May 2016 to March 2018.
- [74] The respondent says by the end of January 2018, the claimant had significantly decreased the amount of time she was spending at the 6th Avenue Property. On January 10, 2018, the respondent's father was seriously injured and taken to hospital. The respondent did not see the claimant much after that. In February 2018, the claimant left on a Caribbean cruise. He says prior to the cruise, she was staying at sister Joy's home.
- [75] The claimant says she supported the respondent and joined him during hospital visits with his father. She supported him emotionally and physically as much as she could. She believes the stress of his father's illness and eventual death are what caused their relationship to end. The respondent denies the claimant visited his father in hospital and denies she supported him emotionally or physically during this period.

- [76] In February 2018, the respondent changed the locks at the 6th Avenue Property. Things began to disappear from the home when he was away. He considers January 2018 to be the last time he and the claimant lived under the same roof. The claimant says they continued living together until March 2018, at which time she moved out permanently and started this action.

R. Claimant's current financial circumstances

- [77] After the claimant moved out, the claimant moved into her sister's residence, where she says she and J. stayed from March 2018 until March 2021. Her sister has a three-bedroom home, so the claimant and J. took one bedroom each and her sister had the master bedroom. This arrangement was a significant burden on her sister.
- [78] In March 2021, the claimant began renting a two-bedroom suite for herself and J. in Richmond for \$1,650 per month.
- [79] The claimant was employed with a casino. Her employment income was about \$1,096.45 (net) every two weeks. She was laid off due to the COVID-19 pandemic causing the casino to shut down. She returned to work as a hairstylist full-time. Her income from that is about \$1,085.49 (net) every two weeks.
- [80] The claimant says the financial burden of having to pay for J. on her own while supporting herself on approximately \$28,000 annual income has been difficult. She has had to borrow from various sources, including banks and family, and has had to rely on assistance from family members.
- [81] The claimant currently has bank and credit card debt of \$23,000. She has borrowed about \$30,000 from family members. She also has a car loan of about \$33,000. Her total debt is thus about \$86,000.
- [82] The claimant's 2018 F8 Financial Statement indicates her income for support purposes was \$28,507.70 as of July 23, 2018.
- [83] The respondent points out that J. should be entitled to support from his biological father and notes all four grandparents are guardians and presumably obliged to help support him. It is not clear on the claimant's materials whether she has applied for child support from any of them.
- [84] The respondent notes the claimant has purchased a new vehicle and has continued taking vacations since she moved out of the 6th Avenue Property.

S. Respondent's current financial circumstances

- [85] The respondent owned two properties during the relationship. The second is a rental property at 18 - 6100 Tiffany Blvd. Richmond, B.C. (the "Tiffany Property").

- [86] The claimant suggests the respondent's income earning ability is at least \$250,000, based on amounts he previously earned. During the relationship, the respondent charged for his services through his company and was receiving gross income of approximately \$24,000 per month.
- [87] The respondent's 2018 F8 Financial Statement indicates his income for support purposes was \$148,802.64 as at August 27, 2018.
- [88] The respondent disagrees that his earning ability is "at least \$250,000". When he was working in Fort McMurray, his job was intense and involved long hours. He needed time to recuperate after a 10-day shift. That job is no longer available and he has since changed over to working as an employee.
- [89] He summarizes his income as follows:
- a) 2021 - year to date as at November 26, 2021 was \$148,156;
 - b) 2020 - \$186,832;
 - c) 2019 - \$183,911;
 - d) 2018 - \$101,839 + \$80,000;
 - e) 2017 - \$189,622;
 - f) 2016 - \$185,719;
 - g) 2015 - \$143,746.
- [90] The respondent says he is now 59 years of age and has a number of health problems, including type 2 diabetes, chronic obstructive pulmonary disease, osteoporosis and has a crushed vertebra. Since 2020 he has been working from home and has not been able to attend the worksite.

II. Procedural History

- [91] On March 20, 2018, the claimant filed her notice of family claim.
- [92] On May 31, 2018, the respondent filed a response to family claim.
- [93] On August 28, 2018, the respondent filed a counterclaim. It seeks dismissal of the claimant's action.
- [94] On October 1, 2018, a Judicial Case Conference was held before Justice Dardi. She ordered that that:
- a) A trial be scheduled for October 7, 2019 for 8 days;
 - b) The parties exchange a list of documents and the respondent to include 2015-2019 corporate tax returns and financial statements by October 19, 2018;

- c) Each side agreed to retrieve income tax returns for 2008 onwards; and
 - d) The parties were to exchange witness lists, names, contact information and a brief statement on the relationship by the end of January 2019.
- [95] On February 13, 2019, the claimant filed an amended notice of family claim.
- [96] On May 7, 2019, the respondent was examined for discovery. The respondent has not examined the claimant yet.
- [97] The claimant has changed counsel on two occasions. First was on February 21, 2020 and second was on December 21, 2020, when Mr. Sue-A-Quan assumed conduct.
- [98] On March 22, 2021, the claimant filed a notice of intention to proceed.
- [99] On October 22, 2021, the claimant filed the application currently before me. On December 17, 2021, the respondent filed his application response.
- [100] There is no trial scheduled. Both parties agree that trial will require about 15 days.

III. Marriage-Like Relationship

A. Applicable Law

- [101] A threshold issue in this action is whether the claimant and respondent were spouses, as defined in section 3(1)(b)(i) of the FLA. It provides that a person is a spouse for the purposes of the act if they have lived with another person in a marriage-like relationship for a continuous period of at least 2 years. Section 3(3)(a) provides that a relationship between spouses begins on the date on which they began to live together in a marriage-like relationship.
- [102] The claimant bears the burden of proving she fits within the definition of spouse: see *Trudeau v. Panter*, 2013 BCSC 706 at para. 35.
- [103] Determination of whether a relationship was marriage-like requires a holistic approach which considers all factors. No single factor is determinative. In *Austin v. Goerz*, 2007 BCCA 586 at para 58:

58 It is understandable that the presence or absence of any particular factor cannot be determinative of whether a relationship is marriage-like. This is because equally there is no checklist of characteristics that will invariably be found in all marriages. In this regard I respectfully agree with the following from the judgment of Ryan-Froslic J. in *Yakiwchuk v. Oaks*, 2003 SKQB 124:

- [101] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. In some relationships there is a complete blending of finances and property - in others, spouses keep their property and finances totally separate and in still others one spouse may totally control those aspects of the relationship with the other spouse having little or no knowledge or input. For some

couples, sexual relations are very important - for others, that aspect may take a back seat to companionship. Some spouses do not share the same bed. There may be a variety of reasons for this such as health or personal choice. Some people are affectionate and demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together - others do nothing together. Some "spouses" vacation together and some spend their holidays apart. Some "spouses" have children - others do not. It is this variation in the way human beings structure their relationships that make the determination of when a "spousal relationship" exists difficult to determine. With married couples, the relationship is easy to establish. The marriage ceremony is a public declaration of their commitment and intent. Relationships outside marriage are much more difficult to ascertain. Rarely is there any type of "public" declaration of intent. Often people begin cohabiting with little forethought or planning. Their motivation is often nothing more than wanting to "be together". Some individuals have chosen to enter relationships outside marriage because they did not want the legal obligations imposed by that status. Some individuals have simply given no thought as to how their relationship would operate. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist.

[Emphasis added]

[104] The assessment involves a consideration of both subjective and objective factors. In *Weber v. Leclerc*, 2015 BCCA 492 at paras. 22-25:

22 Austin establishes that the question of whether a cohabiting couple are in a "marriage-like relationship" is a question of mixed fact and law that requires a broad approach:

[62] The chambers judge properly took a holistic approach in finding that Ms. Goerz and Mr. Austin "were in a committed, marriage-like relationship for all purposes." She had regard to all aspects of their relationship, including that there was minimal sharing of expenses and no commingling of assets. Based on the evidence it was open to the chambers judge to reach the conclusion she did and there is no basis on which this Court can interfere: *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33 at para. 22.

23 The parties' intentions -- particularly the expectation that the relationship will be of lengthy, indeterminate duration -- may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.

24 The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".

25 Ms. Leclerc argues that approaches like that taken in *Molodowich v. Penttinen* are nothing more than "checklists", and do not adequately analyse the nature of a relationship. While I agree that a checklist approach is not appropriate, it is my view that cases like *Molodowich* are helpful as indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship.

[105] In *Molodowich v. Penttinen*, (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.) ["*Molodowich* "] the court provided a non-exhaustive list of factors to consider when assessing whether a marriage-like relationship existed. See para. 16:

(1) SHELTER:

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?

(2) SEXUAL AND PERSONAL BEHAVIOUR:

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

(3) SERVICES:

What was the conduct and habit of the parties in relation to:

- (a) Preparation of meals,
- (b) Washing and mending clothes,
- (c) Shopping,
- (d) Household maintenance,
- (e) Any other domestic services?

(4) SOCIAL:

- (a) Did they participate together or separately in neighbourhood and community activities?

- (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?

(5) SOCIETAL:

What was the attitude and conduct of the community towards each of them and as a couple?

(6) SUPPORT (ECONOMIC):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?
- (b) What were the arrangements concerning the acquisition and ownership of property?
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

(7) CHILDREN:

What was the attitude and conduct of the parties concerning children?

To the foregoing must be applied the following caveat of Mr. Justice Blair in the Warwick case (*supra*):

"The extent to which the different elements of the marriage relationship will be taken into account must vary with the circumstances of each case."

B. Interim Relief When Material Facts Are In Issue

[106] Where there is conflicting affidavit evidence on material aspects of the parties' relationship, this raises the question of whether the court should grant interim relief.

[107] In *I.F. v. R.J.R.*, ["I.F."] 2015 BCSC 793 at paras. 13-15, Justice Ballance commented regarding interim orders in cases involving contested issues:

13 This would seem a logical place to make some general remarks about interim orders. By their very nature, they are stop-gap orders. It is routinely the situation that parties embroiled in matrimonial litigation will have conflicting versions of the material facts. In the vast majority of cases, the evidence required for a complete exploration of the controversial issues is underdeveloped or not available.

14 It is commonplace for the chambers judge on an interim application to make preliminary findings based on the evidence as it then stands. Due to the interlocutory nature of the proceeding, it is understood that those findings are almost invariably drawn from a limited record. They are not intended to fetter the trial judge who will decide the issues on a broader and more developed body of evidence and, for that reason, may arrive at different conclusions. Appreciating that only when extensive evidence is adduced at trial can the disputed issues be fairly determined on their merits, does not mean that the court will necessarily be hamstrung on an interim application.

15 While the court is inclined to take a cautionary approach on most every interim application, it strives to ensure that it is not so overly cautious as to be timid.

[108] At paras. 170-172, Justice Ballance considered under what circumstances the court can grant interim support in a case where the applicant was party to a marriage agreement which provided the applicant was not entitled to any support:

170 It is within the court's discretion to make an interim order for spousal support despite the existence of a marriage agreement that purports to disentitle the applicant from support, provided the applicant is seeking to have the agreement set aside at trial: *Thompson v. Thompson*, [1987] B.C.J. No. 2339 (S.C.); *Ziniuk v. Ziniuk* (1986), 2 R.F.L. (3d) 398 (BCCA). The twin factors that typically dominate the analysis, beyond the applicant's financial need and the payor's financial means and ability to pay, are the strength of the applicant's case to set aside the agreement and his or her capacity to repay the amount awarded on an interim basis.

171 The respondent concedes that this Court has jurisdiction to make an interim support order in the face of the parties' marriage agreement. He asserts that the discretion should be exercised cautiously, with particular emphasis in this case on the claimant's ability to repay in the event that her claim to set aside the marriage agreement fails at trial. His position is that, with this in mind, the current level of support of \$2,500 per month is appropriate and perfectly adequate to meet the claimant's financial requirements on an interim basis.

172 Drawing on the authorities, and placing particular emphasis on the instructive analysis of the Saskatchewan Court of Appeal in *Evashenko v. Evashenko*, 2011 SKCA 22, it is my view that an applicant is not required to demonstrate a strong *prima facie* case or a likelihood or probability of success of impeaching the marriage agreement. Those standards pose too high a bar to meet at the interim stage. Rather, the test is whether the preliminary evidence is sufficient to raise a substantial question about the enforceability of the impugned agreement. Stated another way but to the same evidentiary effect, the applicable threshold test is whether the evidence shows there is a reasonable prospect of success in impeaching the marriage agreement at trial.

[109] Interim support has been ordered in cases where the applicant has established a *prima facie* case that the relationship was marriage-like. Master Muir reviewed the considerations in *Yake v. Chamberlain*, 2014 BCSC 1582 at paras. 43-47:

43 The respondent relies upon several decisions of this court for the proposition that in cases such as this, where there is a dispute as to whether the parties were spouses as defined in the Act and hence a dispute as to entitlement to spousal support, it is generally inappropriate to award interim spousal support and the matter should be left for determination at trial.

44 The respondent refers to *Kolia v. Kolia*, [1981] 5 W.W.R. 540, *Kyung v. Bowman*, 1998 CanLII 4697 (BCSC), *Newson v. Newson*, 1998 CanLII 6440 (BCCA), *Rogers v. Lowe*, 2001 BCSC 1563, and *L.G.B. v. M.A.C.M.*, 2005 BCSC 1786.

45 The law from other decisions is summarized in *L.G.B.*, as follows:

- [14] From the foregoing, four points may be distilled. First, given the limitations of both time and evidence which necessarily constrain interim applications, caution should be exercised before descending into the merits of an issue. The greater the need to resolve contested issues of fact, especially those going to a threshold issue as in this case, the more likely it is that the decision ought not to be made on an interim basis.
- [15] Second, the need for caution is all the greater when, as a result of an interim order, money will be paid and there is an issue as to whether it can be recovered following a trial if it is determined that the recipient is not entitled to the funds.
- [16] Third, and related to the first, where an interim issue requires a determination of credibility, there is a risk that such a finding may embarrass the trial judge when called upon to make findings of credibility in relation to the very same issue. When this is so, even greater circumspection is required before making such an order.
- [17] Finally, to minimize the mischief inherent in the first and third of these observations, interim decisions should only be made where it can be said that a prima facie case for entitlement has been made out.

...

- [28] I am satisfied, therefore, that the master was clearly wrong in ordering support in these circumstances. Before concluding, I simply wish to note that I share the observations of Cohen J. in *Rogers* where at para. 15 he noted:

This is not to say that certain circumstances might not give rise to a finding of such a prima facie entitlement, however, such circumstances were not present in the case at bar.

- [29] In this vein, reference can usefully be made to *McColl v. Scott*, 2001 BCSC 1109 [McColl], in which Master Groves (as he then was) found entitlement to spousal support in the face of a denial of a spousal relationship. I note two things about that case. First, as here, it does not appear to have been argued that a decision ought not to have been made on the basis of the evidence, and thus the master did not address the issue that is now before me.
- [30] Second, the case may well illustrate the kind of case foreshadowed by Cohen J. in the remarks noted above. In *McColl*, there was evidence in the form of the defendant's own correspondence to the effect that he viewed himself as a spouse within the applicable limitation period. It may well be that evidence of that kind in the context of that case amounted to prima facie evidence of entitlement.

46 I have also reviewed the decision of Master Young in *J.J.G. v. K.M.A.*, 2007 BCSC 1905, which is another decision where an award of interim spousal support was made in the face of conflicting evidence. The Master noted prima facie evidence was required:

[4] Prima facie evidence is good, sufficient evidence on its face such that it can establish a fact if not rebutted. If I do not find that the plaintiff has made a prima facie case that he was in a marriage-like relationship up until July of 2006, then I must refer this threshold issue to a trial judge to determine. ...

47 In J.J.G., similar to McColl referred to in L.G.B., above, Young, M. was able to rely on a statement in writing made by the application respondent in which she referred to the applicant as her husband. That, combined with other evidence indicative of a spousal relationship, was sufficient to establish a prima facie case and allow the interim award to be made.

[110] This passage was cited with approval in *Holmes v. Fedoruk*, 2021 BCSC 442 at para. 30. There, Justice Milman concluded that interim relief was appropriate despite there being disputed evidence before him. The factors he considered to be significant included (at paras. 40-43).:

- a) the claimant's belief the parties were in marriage-like relationship, which she expressed to the respondent during their relationship;
- b) the length of the relationship (16 years), which showed it was indeterminate in its duration and not merely transitory;
- c) the parties continued living together through two successive address changes;
- d) the relationship was sexual;
- e) they did at least some travelling together;
- f) the claimant provided at least some domestic services;
- g) the parties finances were at least partially mixed;
- h) the parties attended family events together, apparently as a couple;
- i) others viewed them as a couple.

C. Analysis

[111] The parties have conflicting accounts of whether they each viewed the relationship as marriage-like. The claimant insists it was a committed relationship from the outset. The respondent says it never evolved beyond a boyfriend-girlfriend relationship.

[112] There are some documents signed by the respondent which describe the relationship as common law (vehicle transfer form) or spousal (relationship counselling forms). Other documents have both parties self-describing as single (income tax returns, BC Housing forms).

- [113] The parties disagree regarding start and end dates for cohabitation at the 6th Avenue Property. There is conflicting evidence and ambiguity regarding the extent to which the claimant resided at the Westminster Residence between 2009 or 2010 and the end of 2013. They also disagree whether date of separation was in 2016 or 2018.
- [114] Throughout the time the claimant was at the 6th Avenue Property, the respondent did not charge her rent or require her to contribute to property-related expenses.
- [115] The parties agree their relationship was sexual and monogamous. They agree they at least occasionally slept in the same bed, albeit there is disagreement around how often and during which portions of the relationship.
- [116] There is a dispute regarding how much time the parties spent together at various stages of their relationship. This is complicated by both the respondent's and claimant's work schedules.
- [117] There is evidence the parties expressed affection for each other. They acknowledge they loved each other. Both expressed jealousy during the relationship. They attended counselling in an effort to improve their relationship.
- [118] There is a significant dispute about whether and to what extent they provided emotional and physical support to each other and assisted each other's extended family, prepared meals and shared groceries. They went out for meals together but the frequency is unclear. There is a dispute regarding whether and the extent to which other domestic services were provided. The respondent hired a cleaner, but the timeframe and frequency is unclear.
- [119] The parties did not mix their finances and did not consult one another regarding financial decisions.
- [120] The parties attended the claimant's family events as a couple. They disagree regarding attendance at respondent's family events. They hosted numerous parties and gatherings at the 6th Avenue Property with family and friends.
- [121] The parties vacationed together several times, at the respondent's expense. The claimant vacationed alone on a similar number of occasions.
- [122] The parties purchased gifts for each other and the respondent bought gifts for the claimant's children and extended family, particularly for birthdays and Christmas. Some of the respondent's gifts to the claimant were substantial. Gifts flowed in the other direction, but they were not described in detail for this application. The respondent arranged a vehicle for the claimant's use and eventually gifted it to her.
- [123] Neither party tendered admissible evidence regarding how the broader community viewed their relationship. This, despite the fact that both parties had identified numerous witnesses they intend to call at trial to speak to this issue.

[124] Most aspects of the respondent's relationship with J. are in dispute. It is a concern that the claimant did not proactively disclose the Custody Order in her initial application materials, as this is clearly an important part of the dynamic. She has also not addressed whether child support is available from other sources.

[125] The parties had a very complicated relationship. There are many areas of direct conflict in the parties' evidence, many significant gaps in the evidence and unanswered questions. In my view, the claimant has not made out a prima facie case that the parties were in a marriage-like relationship during the relevant period. This will have to be addressed at trial on a more complete evidentiary record.

[126] The claimant's application is dismissed. The respondent is entitled to costs of the application from the claimant, in the cause.

"Master Bilawich"

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