
CANADA / JUDGMENT

B.L.S. v. E.J.S.

2014 BCSC 1549

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2014 BCSC 1549 B.L.S. v. E.J.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.L.S. v. E.J.S.,

2014 BCSC 1549

Date: 20140814

Docket: E3553

Registry: Chilliwack

Between:

B.L.S.

Claimant

And

E.J.S.

Respondent

Before: The Honourable Mr. Justice N. Brown

Reasons for Judgment

Counsel for the Claimant:

M.D. Metzner

Counsel for the Respondent:

K.K. Seikhon

Place and Date Hearing:

Chilliwack, B.C.

March 19-20, 2014

June 27, 2014

Place and Date of Judgment:

Chilliwack, B.C.

August 14, 2014

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A. Overview

[1] The respondent father, E.J.S., is the applicant and the claimant mother, B.L.S. (now known as B.H.), is the respondent to the father's application. She brings her own application. Although the parties are divorced, for ease of reference I will refer to the parties as the "mother" and the "father."

1 Parties' background, & prior orders

[2] The parties married on May 21, 1990; separated on October 21, 2002; and divorced on February 6, 2004.

[3] When the parties separated on October 21, 2002, there were three children of the marriage: J., born [DOB], 1991; E., born [DOB], 1993; and B., born [DOB], 2001.

[4] The father's income comes from his employment as a shop labourer. His current income is approximately \$44,550. This represents a roughly \$3,500 increase from his \$41,023 income at the time of the March 23, 2009 order.

[5] Since the divorce, he has entered into a common-law relationship with a woman, "Ms. X", who developed Alzheimer's in 2007, making it impossible for her to continue working. She receives a monthly Canada pension Plan Disability Pension of \$926.78, annually, \$11,121.36.

[6] At para. 48 of his September 3, 2013 affidavit, the husband states:

I have been the sole provider in our household since [Ms. X]'s diagnosis and primarily responsible for her care. [She] cannot drive and I have to take time off from work to drive her to medical appointments. I anticipate that there will be extensive future medical and care costs as [Ms. X]'s illness worsens. [Ms. X] will be turning 55 this November, so we will only be able to contribute to the Registered Disability Savings Plan for four years.

- [7] The mother's total annual income, exclusive of child support, is \$26,283. Of that total, \$12,438.96 comes from non-taxable disability insurance, the balance from taxable pension income of \$13,844. In addition, she receives \$628 monthly child support from the father, \$7536 annually, for two children, plus a child tax benefit of \$3604.32, which in total had been producing a total annual income of \$37,423.
- [8] She worked as nurse until 2004, when she went on long-term disability. I understand she has a specific medical condition, but the evidence does explain why she is unable to return to her former or other form of employment.
- [9] The original February 6, 2004 consent order set the husband's Federal Child Support Guidelines, SOR/97-175 (the "Guidelines") income at \$36,300, the wife's at \$24,490. Based on these figures, the husband was required to pay \$685 monthly child support, and his proportionate share of s. 7 expenses.
- [10] A March 23, 2009 order, granted following the mother's application for an increase in child support and payment of arrears, was based on Guidelines income for the father of \$41,203. It also provided for:
- a) an increase in child support to \$825 monthly, based on the husband's Guidelines income of \$41,203;
 - b) payment of arrears for 2007, 2008 in 2009; and
 - c) the father paying \$50 monthly for the children's extra-curricular expenses, namely, in B.'s case, for ice hockey; and in E.'s case, for volleyball.
- [11] Child support for J. ceased effective November 2010; after he turned 19, on [DOB], 2010. Support for E. and B. remained payable at \$628 monthly.
- [12] November 2, 2010, the wife enrolled with FMEP, at that time claiming arrears of \$7,420.83.

B. Orders sought by the parties

1 Variations of terms in the March 23, 2009 order

- a) Both parties seek a variation of the March 23 2009 order, the father the following orders, effective September 1, 2012: cessation of child support for E., born [DOB], 1993; and reimbursement of child support payments he has made for E. since September 1, 2012;
- b) effective January 1, 2012, cessation of the obligation to pay special and extraordinary expenses of \$50 monthly and reimbursement of payments made towards that expense since January 1, 2012;
- c) termination of the \$50 monthly extracurricular expense ordered in March 23, 2009 effective January 1, 2012;

- d) a requirement the mother add the children to such extended health and dental plan as she has, or may have in the future, and that E.'s health and dental expenses be remitted through her Student Union Society Health and Dental Plan before she forwards it to the father for coverage under his plan; and
- e) an order that proportionate sharing of s. 7 expenses remain at \$61.77% to the father and 38.33% to the mother.

[13] The father seeks this last order because, he asserts, the mother has not fully and transparently provided current financial information and has not disclosed all her sources of income.

[14] I will dispose of item (d) now. That variation is an appropriate one. The father has repeatedly requested information from the mother and E. on the coverages available to them, under their respective plans. The mother advised the father that E. had opted out of her student plan, which was incorrect; opting out of the plan is not possible. The mother may not have a plan, but she has not provided documentation from the disability insurer confirming this. It is in the interests of both parties, and E., that the mother add the children to whatever plan she might have and that E. first remit expenses through her own student plan. This widens the range of recoverable expenses for E. and maximizes the recoverable amount.

[15] For her part, the mother seeks an order to vary the words of the current order by deleting the words "per illness or event" from para. 7(c) of the February 6, 2004 order.

2 Financial orders sought by the mother

[16] The mother seeks the following additional orders.

.1 Arrears in child support

[17] Based on the father's Guidelines income of \$45,156 for 2011; and for the years of 2012, 2013, 2014, Guidelines income of \$45,029.25, the wife claims total arrears of child support, calculated to March 2014, of \$2,219.94. The father challenges the amount and claims a set off against any balance found by the court.

.2 Health care costs

[18] With respect to s. 7 expenses, the wife seeks recovery of \$2,454.44 for health care costs allegedly incurred and not reimbursed. Based on the husband's having received reimbursement of 90% of those expenses, his proportionate share of the unrecovered portion would leave him allegedly liable for a total of \$2,365.10, which represents the total of the insured portion the husband recovered, plus his proportionate share of the unrecovered portion. In addition, she claims \$321 for other alleged medical expenses not covered by extended health, total \$2,686.10. The father challenges this claim on various grounds.

.3 Post-secondary expenses

[19] For E.'s post-secondary school costs, the mother claims reimbursement of the father's proportionate share of tuition costs she allegedly paid, \$5,635.52, leaving his proportionate share at \$3,582.91. The father disputes the mother's claim she paid all the tuition amounts she claims she paid. She also claims reimbursement of schoolbooks the wife allegedly paid, totalling \$2295.43, less \$535.70, the husband's contribution, leaving the husband allegedly owing the wife \$924.19 for his proportionate share.

[20] The grand total of these claimed items comes to \$9,413.

3 Credits, deductions and reimbursements the father seeks

[21] The father seeks a rather lengthy list of adjustments and deductions, some small, some large, encompassing:

§ a credit of \$2,984.01, in response to the mother's neglect in failing to correct the FMEP record to reflect payments made between January 1, 2004 and March 1, 2005;

§ a \$100 credit for his overpayment of unaccredited support payments he made in November 2010, (not contested by the mother);

§ a credit of \$1,044 for the mother's allegedly false day care expenses;

§ a credit of \$326.88 for the mother's failure to pay her proportionate share of the premium the father must pay to cover the children's portion of the plan;

§ assuming the court grants an order to retroactively terminate the \$50 monthly amount for extraordinary and special expenses effective January 1, 2012; a credit of \$1,350 against child support payments to reflect the father's overpayments;

§ assuming the court terminates the father's obligation to pay child support for E., effective September 1, 2012; a credit of \$4,179 against the father's current child support obligations; and

§ assuming the mother did not pay some of E.'s tuition and school book as she represented to the father; \$3,284.76 reimbursement for his contribution to E.'s post-secondary expenses for tuition and books; alternatively, an order that the father is liable to pay only \$2,396 for E.'s post-secondary expenses, being his proportionate share of receipted expenses the mother has presented.

[22] The mother claimant opposes all the orders sought by the father.

C. Overview of the hearing process and document production

[23] Not enough time had been scheduled for the first hearing date. The claimant had counsel then. She advised she did not have sufficient time to prepare affidavits in response to the respondent's materials. I granted leave to call the claimant and E. to testify orally. They were both cross-examined. At the continuation of the applications, intended to allow for further submissions and reply, the claimant appeared without counsel. Her materials were in decent order and she represented herself adequately enough that the court understood each

side's positions. In my view, the flaws in some of the mother's position originate from her not having fully disclosed documents, especially those repeatedly requested by the father and providing requested information. It was obvious from the earlier hearing that the father was still requesting documents, such as all the mother's MasterCard statements, and that he was challenging both the truth of her assertions that she had paid all of E.'s post-secondary expenses and of her denials that E. had not reimbursed them. The mother complained the father was relentless in his accusations and pursuit of documents, making her feel overwhelmed at times. At the continuation, she continued to advise the court that she had answered all the father's document and information requests; but the husband's counsel denied ever having received a number of them still material to the issues the father has raised; and the claimant failed to produce proof of delivery.

[24] At para. 53 of his September 3, 2013 affidavit, the father stated:

While I fully intend to honour my obligations to my Children, and have done so to date, I cannot afford to allow the Claimant to continue to use the Orders of February 6, 2004 and March 23, 2009 to hold me responsible for expenses that she has not actually incurred.

[25] That statement sets out the essence of his position.

[26] At the hearings, counsel for the father reviewed in great detail documents that generally supported the husband's positions on the key points at issue. I will not review all the documents presented at the hearing, nor recount all the points counsel made about them at the hearing. Most of counsel's assertions on the husband's claims were persuasive, supported by documents presented and, in some instances, by the absence of documents and of responses from the claimant for information reasonably requested of her.

[27] In overview, the most significant matters in this case turned out to be E.'s post-secondary education expenses and the question of whether she continues to satisfy the definition of a child of the marriage under s. 146 of the Family Law Act, S.B.C. 2011 c. 25 [FLA]; s. 2(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]; and s. 3(2) of the Guidelines. Since that issue that drew most of the parties' attention, I will dispose of it first.

[28] Section 146 of the FLA states:

Definitions

146 In this Part and section 247 [regulations respecting child support]:

"child" includes a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians;

"guardian" does not include a guardian

(a) who is not a parent, and

(b) whose only parental responsibility is respecting the child's legal and financial interests;

"parent" includes a stepparent, if the stepparent has a duty to provide for the child under section 147 (4) [duty to provide support for child];

"stepparent" means a person who is a spouse of the child's parent and lived with the child's parent and the child during the child's life.

[29] Section 2(1) of the DA states:

Definitions

2.(1) In this Act,

"age of majority"

"age of majority", in respect of a child, means the age of majority as determined by the laws of the province where the child ordinarily resides, or, if the child ordinarily resides outside of Canada, eighteen years of age;

"child of the marriage"

"child of the marriage" means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

[30] Section 3(2) of the Federal Child Support Guidelines states:

Child the age of majority or over

3.(2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[31] *Farden v. Farden*, [1993] B.C.J. 1315 (S.C.) [*Farden*], the oft-cited 1993 decision of Joyce J. on some of the basic questions a judge ought to consider when they have to decide whether a child's pursuit of a post-secondary education justifies their retaining of the status of a child of the marriage, is a leading case. Before turning to the principles, I will first note what I stated at the hearing: neither party's incomes afford them financial means to fund E.'s post-secondary expenses to the extent they have been doing. In circumstances where the parties have modest income and other support obligations, expectations of a child become greater,

particularly when it comes to the child's career plans, financial contributions, course load, and academic performance. A child is not automatically entitled to their parent's financial support because they are engaged in a course of post-secondary studies. As a matter of common sense, the less are the parent's means and ability, the greater are the academic commitments and contributions expected of the child looking to them for support.

[32] The Farden questions are:

§ Is the child actually enrolled in a course of studies, and if so, are they part-time or part-time?

§ Has the child applied or eligible for student loans or other financial assistance?

§ Are the child's career plans reasonable and appropriate?

§ Does the child have the ability to contribute to their own support through part-time employment?

§ What is the child's age?

§ Is the child demonstrating success in their studies?

§ Did the parents make plans, during their cohabitation especially, for the child's education?

§ Has the child unilaterally terminated a relationship with the parent from whom they are seeking support?

[33] As provided by s. 3(2) of the Guidelines, the financial ability of each spouse to contribute to the support of the child is the prominent practical consideration. The higher the parental income and the marital standard of living, the greater the call on the parent's resources, assuming the child is entitled to support. The lower the parental income and the marital standard of living, the lesser the call on them. Entitlement to parental support arises when all the circumstances, considered in their totality, justify it.

[34] Additional considerations seen in 3(2) of the Guidelines include the child's conditions, needs and circumstances, which would include their place of residence.

[35] These principles and considerations obligate the child and the parent seeking support to produce transcripts and other academic records, grant and scholarship applications, employment records, a budget setting out proposed necessary and reasonable expenses, and any other documents that show the child cannot financially manage independent their parent's support: *Heubach v. Heubach*, 2011 ONSC 1057 at para. 38; *Smith v. Smith*, 2010 SKQB 2 at para. 39.

D. E.'s Status as a Child of the Marriage

1 Enrollment in post-secondary studies and academic performance

- [36] E. is still enrolled in the Criminal Justice Program she started in September 2011. The university she attends defines full-time studies as a minimum of three courses each semester. Her highest credit hours were in the winter 2013 and fall of 2013, when she had 12 credit hours weekly. In the summer of 2013, she had only two credit hours; in all the remaining terms, nine credit hours. She has never achieved a full course load of 15 credit hours weekly. The father estimates that with E.'s current rate course enrollment to date, it will take a minimum of six years for her to complete a four-year degree, completed in 2016. Her grades are good, showing a cumulative GPA to March 2014 of 3.18.
- [37] As for career paths, E. has not yet set herself on one. Although she says she is interested in becoming a licensed private investigator, neither a degree nor a diploma are prerequisites for obtaining the license.
- [38] The father submits that E. has performed an excessive number of volunteer hours while attending college. In January 2014, for example, she performed 34.5 hours; about 10 hours weekly in November, December, and January 2013. She is now down to 15 hours a month, for the months of March, April, and May 2014. She is also employed 15 to 20 hours weekly.
- [39] E. explained that if she were to take more courses than she has been, her grades would drop. But the number of volunteer hours previously performed appears excessive, considering her circumstances. I accept the program expects some volunteering of students, but not to the level E. has been engaged in. In circumstances where the parents have ample means, taking five or six years to complete a four-year program would not be of much concern; but those are not the parents' circumstances in this case.

2 Availability of student financial assistance

- [40] The father complains that despite his having twice asked E. to provide her applications for student loans, she refused to provide them. Neither would she discuss her student loans or provide copies of her applications. She is eligible for a student loan, and she has confirmed how much she has borrowed. I note that as her parents are divorced, the plan requires only one parent's financial information, needed to calculate financial need. In this case, it is the mother's income that is determinative; and it was the mother who assisted E. in obtaining student loans.
- [41] Applicants for a loan have to sign a declaration stating that the purpose of financial assistance is to cover academic costs first, then other education costs, and then living costs directly related to the applicant's studies. These declarations guard against abuse of the loan program.
- [42] Up to and inclusive of the fall 2013 term, E. has received \$8,793 in student loans and \$5,200 in grants. She received additional financial assistance in the form of two scholarships from high school, \$600, and a Passport to Education grant of \$250.

- [43] E., thus far, has therefore received a total of \$15,443 in financial assistance, with \$8,793 of that amount repayable. As discussed later in these reasons, it appears that the combination of financial assistance E. has received, plus her employment income, covers all of her tuition, other academic expenses such as books, and living expenses.
- [44] The father complains that he has asked E. to produce her bank records to determine when she received the funds and to which of the student loan categories she applied them against; but E. would not discuss it with him. E. may see this as an irritable and intrusive request, but in the circumstances, it is a reasonable one because the information could tend to confirm or disaffirm whether she needs parental assistance; and if so, to what extent to meet her academic and daily living expenses.

3 Employment income

- [45] E. has earned considerable income from part-time earnings. She has worked part-time since age 15. In tax year 2012, she earned \$13,276. 58. As for her current circumstances, the mother states, at para. 34 of her March 6, 2014 affidavit, that E. had recently started to work for a large retail pharmacy, no more than 12 hours weekly. However, the mother did not provide any evidence of her earnings, or the number of weekly hours and rate of pay.

4 E.'s post-secondary education expenses

- [46] To date, E.'s post-secondary tuition costs equal \$10,722, book expenses, \$2,256.08. These total \$12,978 for post-secondary expenses.
- [47] The father submits E.'s student loans, grants, scholarships, and passport to education grant, in total, have covered her entire post-secondary education expenses and left her with funds of at least \$2,464 year-end, exclusive of student loans or grants she would have received for the winter 2014 semester.
- [48] The father further points out that, despite E.'s having received her student loans and grants, the mother claims she paid E.'s entire post-secondary expenses for tuition and books. The documents reviewed at the hearing strongly suggest that while the mother may have paid some tuition and book expenses, E. reimbursed her for some of these. Therefore, they were not expenses the mother actually incurred. Accordingly, the father submits, she ought not to have submitted them to FMEP and he should not be required to pay a proportionate share of them.
- [49] The mother produced documents to evidence her having paid \$9,197 for tuition and books between the fall 2011 and the winter 2014 term. The actual provenance of some of the receipts the mother presented and the actual amounts involved are, however, questionable. For example, the claimant deposes that she paid some expenses using a MasterCard, but the account numbers on the copy of the statement are not legible in some cases, and the name of the account owner does not show. The mother explained her credit card was stolen or lost several times and she had to keep replacing them, thus the reason she had so many different accounts. However, the court had no information about the other MasterCard accounts, or

statements for them, leaving it with no way to see which numbered card was used to pay expenses and who the designated owner was at the time.

- [50] Despite an October 22, 2013 letter signed by E. stating that the mother reimbursed her \$1,014.32 for summer 2013 tuition, I cannot find on the balance of probabilities that this occurred. As the respondent points out at para. 22 of his March 12, 2014 affidavit, "This letter was signed and provided well in advance of the date shown on the cheque and the cheque being deposited." He further deposes that he is concerned the claimant had E. write the letter to "cover up the fact that the Claimant [was] not paying the entire post-secondary expense which she seeks to be reimbursed for."
- [51] Good faith and transparency is required of both payors and recipients of support, a duty that extends to adult children seeking support from a parent for their post-secondary education.
- [52] E. presents as an intelligent, pleasant young woman. It is regrettable when a child enters into the thicket of the parent's family litigation. I understand she is upset about what has occurred in her relationship with her father and with his questioning; but the best way to avoid misunderstanding is to cooperate, provide the information requested, and to communicate regularly.
- [53] In sum, while it is not possible to be definitive, it appears E. has reimbursed the claimant for some expenses that she initially paid and then claimed as her own, presenting them as such to FMEP. Whether this was deliberate, or out of carelessness, the result is the same.
- [54] The husband points out that the claimant produced receipts for only \$5,681 of the amount she claims to have paid for E.'s tuition and books, and that E. reimbursed her for some of these. Since fall 2011, the respondent has paid a total of \$3,284.76.
- [55] Without the financial records the father has been requesting, it is not possible to accurately determine how much the mother is actually out of pocket.

5 Has there been a termination of the relationship?

- [56] Though communication has been poor between E. and her father, there are not sufficient grounds to find that she has terminated the relationship. It is in the interests of both E. and the father to renew communications and restore their relationship, putting their differences behind them.

6 Financial means and circumstances of the parties

- [57] The husband's Form 8 expenses total \$53,468, exceeding his income. The mother's annual expenses, \$43,993, also exceed her income. Included in the mother's expenses is \$375 for the children's expenses. This includes post-secondary expenses of \$185 monthly for E.
- [58] As mentioned earlier in these reasons for judgment, in my view, neither party is in a sound enough financial position to provide further support for E.'s post-secondary education expenses, certainly not to the degree they so far have done.

7 Conclusion on E.'s status as child of the marriage

- [59] Considering s. 3(2) of the Guidelines, the Farden principles, and the evidence presented, I find E. no longer qualifies as a child of the marriage and is no longer entitled to a contribution from the respondent towards her post-secondary education expenses, effective June 1, 2014. Any FMEP arrears in that regard are cancelled.
- [60] If E. continues to reside with her mother while attending university, however, the father shall continue to pay child support to the mother for both children at current levels until December 30, 2014. Thereafter, child support, covering only B. shall remain payable, reduced to \$406 monthly. If E. chooses, before December 30, 2014, to no longer live with her mother, child support immediately shall be reduced to \$406. This amount is based on Guidelines income for the father of \$45,000.

E. OTHER ADJUSTMENTS AND CREDITS THE FATHER SEEKS

1 Funds the mother owes the father pursuant to para. 15 of the February 6, 2004 order

- [61] The FMEP program record of payments shows that between January 1, 2004 and March 1, 2005, the father paid \$485 monthly. This is what the claimant reported to FMEP. However, she failed to report to FMEP that the amount was \$200 less than the required amount to set out a debt she owed the respondent.
- [62] At para. 5 of the claimant's March 17, 2014 affidavit, responding to the respondent's claim for interest on the amounts overpaid, she states that she was "asked by FMEP to include what was being paid by the respondent; and [assumed] FMEP would refer to the order in calculating arrears." She goes on to say that it was not for some time she realized they were treating the lesser payment as a default, and that it was accumulating as arrears each month. The claimant also points out that she did not seek interest on arrears when she brought her May 2009 application for an increase in monthly support and payment of arrears. The father points out, however, that the mother made no effort to return the funds to him and that FMEP has been recording them ever since as arrears. Accordingly, he seeks to have the amount of \$2,984, plus interest, calculated from November 22, 2010, credited to his child support payments. I find he is entitled to credit to \$2,984, plus interest of \$275 = \$3,259.

2 Overpayment of child support, November 2010

- [63] As noted earlier, the father is entitled to a \$100 credit to his child support payments that was not properly recorded. The mother agrees to this credit.

3 Unwarranted day care expenses

- [64] This issue relates to the mother's submission to FMEP of certain day care expenses for B. These covered every alternating weekend from February 14, 2010 to August 1, 2010, and accounted for \$1,044 out of the total FMEP arrears when the mother enrolled. The mother she incurred these costs herself, when the father did not exercise his parenting time with B.

and she was not able to do so. The father maintains, however, that this occurred when the mother had denied his parenting time. He refers to threats the mother's boyfriend made to him on one occasion at the claimant's home. The father refers to other questionable day care receipts as well, where the dates on the receipts do not correspond with the dates of the mother's alleged alternate weekends. In addition, he points out that some of the receipts were for care purportedly provided by the mother's boyfriend, who was residing with her during that period; that she had a friend she could have called on, and that J. and E. could have cared for B., if necessary, on those alleged occasions. Further, the father points out that if the claimant incurred a child care expense, her income qualifies her for subsidized child care; and that she has failed to produce documentation for the subsidy, assuming she has applied for it. The respondent's counsel compared in detail the parenting time calendar to the relevant daycare receipts, and pointed out the dates on them.

[65] Considering the evidence presented and the parties' submissions, I find the claimant has not shown she is entitled to recover child care expenses totaling \$1,044, and he father is entitled to a credit.

4 The father's extended health and dental premium

[66] The father submits the March 23, 2009 order's provision requiring him to provide medical and dental insurance coverage for the children so long as his employment provides it, did not negative the claimant's obligation to contribute her proportionate share towards the extra premium the father must pay to keep the children on his health plan, as provided for in the original order. He is entitled to a credit of \$326, the mother's proportionate share of the additional premium of \$852 he has to pay. Further, FMEP should be accounting for the mother's obligation to pay her proportionate share on an ongoing basis.

5 Extra-curricular expenses

[67] Now the mother's applications.

[68] As we saw earlier, the March 23, 2009 order covered B.'s hockey expenses and E.'s volleyball expenses. The \$50 monthly amount was based on [tab 5] para. 14 of the March 2, 2009 affidavit the mother provided to FMEP. The affidavit states:

Based on my guideline income of \$25,502 and the other party's guideline income of \$41,230.13, I am applying to change special or extraordinary expenses as follows:

Defendant provided his portion of the children's extra-curricular expenses throughout the year for [E.] and [B.]. Please see attached Receipts for Ice Hockey and Volleyball for [E.] based on an average cost of these extra-curricular activities including extra fees for tournaments and equipment. I propose the Defendant to pay a monthly fee of \$50, in addition to the standard child support for a total of \$875 per month.

[69] The father now seeks an order terminating the s. 7 obligation, effective January 1, 2012. He bases this on the fact that E. has not played volleyball since 2010, and that B. has not played ice hockey since 2011.

[70] At para. 10 of the mother's March 2014 affidavit, she deposes that B. enrolled in lacrosse and soccer in 2012, "which may have cost me about \$500." She further deposes that E. remained in volleyball, which she played twice weekly, for approximately six months. She further states, "I recall contributing about \$20 towards her team outfit and volleyball she used."

[71] At para. 11, she deposes, (at tab 7 of the binder) para. 11:

Since then I have not been able to afford activities since the Respondent has not reimbursed me for the health related expense and university fees. Therefore, the children are not currently enrolled in activities however; I hope to enroll [B.] in karate, volleyball or basketball when these financial issues are settled. [B.] is 12 years old, and enjoys sports. Although the children were only 2 [B.] and 10 [E.], when we separated the Respondent always supported enrolling the children in activities when we were together.

[72] The father, responding to these comments, points out the mother did not disclose the details of those activities or the associated expenses to him, despite the fact that para. 7 of the February 6, 2004 order requires the parties to agree on extra-curricular activities, a provision not varied by the March 2009 order. Accordingly, the father seeks an order varying para. 3 of the March 23, 2009 order, to now provide that special and extraordinary payments of \$50 monthly cease, effective January 1, 2012. The father is entitled to a credit of \$675 against the amount claimed for extra-curricular expenses.

[73] Going forward, I find it would be unfair to B. to terminate the \$50 monthly s.7 payment for extra-curricular activities, formerly payable for both children. Both parents should encourage B.'s participation in extra-curricular activities, sports particularly, and remove financial obstacles to his participation, to the extent their financial means permit. The father's contribution of \$50 monthly for extra-curricular activities for a teenage boy B.'s age is reasonable and within his means. However, the mother must provide receipts for costs directly related to extra-curricular activities in which B. participates. If the mother seeks a further contribution for an additional activity, she must first obtain the father's consent. If the mother does not provide proof of registration, however, and produce, every three months, receipts for expenses equivalent to the \$50 monthly amount the father pays, each month he may deduct \$50 monthly until the amount he has already paid for extra-curricular expenses is accounted for.

F. THE MOTHER'S APPLICATIONS

1 Health expenses

[74] The mother claims \$2,686 in arrears for health care expenses. She produced receipts totalling \$1,749.80. Of these, the father submits only \$1,089 are for valid health-related expenses. He argues they are not recoverable expenses under the terms of the original order

because the mother failed to give the father the receipts within the 15-month limitation period his health plan requires. Further, some of the expenses are not medical expenses, according to the February 6, 2004 order. Therefore, the receipts for counselling services May 2011 and April 10, 2011 and March 10, 2011, totalling \$360 were given to the father too late to put in to the father's health plan. For the \$109.98 vision care expense, the father paid his proportionate share of that \$67.93 expense on February 21, 2011.

- [75] Further, the father put in \$979 to his insurer and the plan reimbursed him \$723.69. FMEP added \$266.88 to his account effective April 14, 2011 and August 10, 2011, but has not enforced the remaining balance of \$524.74 yet.
- [76] The father further submits that none of the expenses meet the terms of the February 6, 2004, order because they do not exceed \$100 annually, "per illness or event" after insurance reimbursement", thus leaving no amount owing over above what the insurance has covered.
- [77] As for the mother's application to vary section 7(c) in the February 6, 2004 order, i.e. that the parties share in proportion to their incomes "health related expenses that exceed insurance reimbursement by at least \$100.00 annually per illness or event" be varied to exclude the words, "per illness or event", the father opposes removal of that phrase, arguing the parties, both represented by counsel, agreed to include it in the order; and they did so was after s. 7 of the Guidelines had been amended on November 1, 2000 to remove that phrase words, "per illness or event".
- [78] The mother asks for the change because, she says, FMEP will not enforce health related expenses not covered by insurance unless the words, "per illness or event" are removed from the February 6, 2004 order.
- [79] As matters stand for the expenses the claimant has presented, those health-related expenses that are valid did not exceed what insurance has refunded by at least \$100 a year. The mother has not included any information from FMEP to support her claim that FMEP will not seek to recover health expenses under the terms of the existing order. I will grant leave to both parties to get information from FMEP on their position and confirmation of what language they want, and why, to recover health-related expenses from the father. If the existing order needs clarification, I am prepared to consider a variation in terms of the existing order, to the extent of excluding the words that purportedly cause difficulty. One can see the current language might become unwieldy and prevent timely recovery of legitimate medical expenses. For now, however, there is insufficient evidence of a material change to vary the existing terms. Further, considering some of the existing expenses are not for health related expenses, others the mother sent too late, and some the father has already put into the plan, I see no reason to find the father currently in arrears of s. 7 medical expenses - leaving aside those already in process with the FMEP.

2 Arrears of Child support

- [80] The mother further seeks an order for payment of \$2,210.94 alleged arrears of child support. She calculates arrears of \$2,219.94, accumulated in the period 2011 to March 2014. The father is not in arrears based on the Guidelines income in the 2009 order. Under it, he has been paying \$628 for child support and \$50 special and extraordinary expenses. The mother bases her claims for arrears on the father's increased income: \$45,156 in 2011; \$45,029, in 2012; and \$44,550 in 2013. His anticipated income going forward in 2014 is \$44,550.
- [81] The father's income in 2010 was less than the Guidelines amount in the 2009 order. He therefore overpaid support that year by \$60. With an order terminating E.'s child support effective September 1, 2012, the father is seeking, he would effectively have overpaid child support and the mother would owe him \$1,947.82.

G. Conclusion

- [82] Between scholarships, grants, student loans and employment income, I find E. has been able to fund her own post-secondary education and to accumulate a modest surplus at the end of term. As seen earlier, she has been able to reimburse the mother for some post-secondary expenses, some of which the mother had claimed as own for s. 7 purposes. E.'s not having to pay rent has made it easier for her to fund her educational expenses and to pay her daily living expenses through her own means resources. She has traded in her car on a newer one that uses less gas, so has safe transportation.
- [83] When all the allowable adjustments, overpayments, and corrections the father seeks are factored in and set up against those claims of the mother that are legitimate, the parties' current accounts come fairly near to balancing one another out - assuming E.'s status as a child of the marriage is not terminated effective September 1, 2012; in which case, the mother would owe the father about \$3,000.
- [84] Practically speaking, when parties have limited incomes, financial resources, and other persons to support, the ability of the court to rectify a situation where the payor spouse has overpaid s. 7 expenses, or their support obligation, the court's options are often hemmed in. Children may be the ones most to suffer if the recipient parent has to repay large sums. This underlines the importance of good communication, full document production, and transparent disclosure, to prevent the parties from ending up in these expensive hearings, arguing about questions that full disclosure and good-faith discussions could have resolved.
- [85] E.'s lack of full cooperation in producing information the father needed and the mother's lack of complete transparency and incomplete production has sowed the seeds of this recent litigation, which neither party can afford.
- [86] I have instructed myself on the principles applicable to variation of existing orders and the parties' burden of showing a material change of circumstances, as lately discussed in *Powell v. Levesque*, 2014 BCCA 33. I note, however, that an accounting of the parties' compliance with their obligations under the existing orders occupies most of these reasons.

- [87] I am also mindful of the mother's limited disability income and any negative indirect impact on B.'s needs. Considering my findings, and mindful of the parties' means and circumstances, I make the following declarations, directions, and orders:
- a) The father is not in arrears of child support. I direct the FMEP to cancel any arrears, interest, and penalties.
 - b) I direct FMEP to enforce the mother's obligation to pay her proportionate share of the premium on the father's policy for maintaining the children on his medical plan. The father shall maintain E. on the plan, until June 1, 2015.
 - c) The father's Guidelines income for child support purposes is \$45,000.
 - d) The mother's Guidelines income for s. 7 purposes is set at \$26,300.
 - e) The father shall adjust child support for B. on an annual basis in accord with his actual income in the preceding year. On the 1st day of June each year, the parties shall exchange financial information.
 - f) Effective June 1, 2014, E. no longer has the status of a child of the marriage for support purposes; and the father is not obliged to contribute further amounts to her post-secondary educational expenses, apart from such assistance as he decides to contribute in his discretion.
 - g) If E. continues to reside with her mother while attending university, however, the father shall continue to pay child support to the mother for both children at current levels until December 30, 2014. Thereafter, child support, covering only B. shall remain payable, reduced to \$406 monthly. If E. chooses, before December 30, 2014, to no longer live with her mother, child support immediately shall be reduced to \$406. This amount is based on Guidelines income for the father of \$45,000.
 - h) The father shall contribute \$50 monthly towards B.'s extra-curricular activities. The mother shall confer by email with the father to seek his consent before enrolling him in an extra-curricular activity for which she intends to seek proportionate support from the father over and above the \$50.
 - i) The mother shall forward to the father all receipts for extra-curricular activities in which B. is enrolled. If she does not provide the receipts within fourteen days of the father's request, the father is not obliged to pay the \$50 monthly amount, and is entitled to a credit against child support for any overpayments preceding.
 - j) The mother shall pay the father's costs of the hearings, set at \$1,200, with six months to pay.
 - k) The parties shall mediate before bringing further applications to the court. Notwithstanding any confidentiality agreement, if the mediation is unsuccessful, the mediator shall provide the parties with a brief one or two page summary of the parties' positions at mediation, which either party may submit to the court on further applications.

"N. Brown J."

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