

CANADA / JUDGMENT

B.M.S. v. M.D.

2026 BCSC 9

COURT

Supreme Court of British Columbia

DECIDED

7 January 2026

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2026 BCSC 9 B.M.S. v. M.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.M.S. v. M.D.,

2026 BCSC 9

Date: 20260107

Docket: E69961

Registry: New Westminster

Between:

B.M.S.

Claimant

And

M.D. and B.J.S.

Respondents

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Claimant:

K. McNeilly

No further appearances

Place and Date of Hearing:

New Westminster, B.C.

August 21, 2025

Place and Date of Judgment:

New Westminster, B.C.

January 7, 2026

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Introduction

- [1] These are reasons on the claimant B.M.S.'s summary trial application in this family law case. The claimant and the respondent M.D. were in a marriage-like relationship. The respondent B.J.S. is the father of the claimant and is no longer a party to this action. When I refer to the respondent in the remainder of these reasons, I refer to M.D.
- [2] The main issues to be determined are:
- a) Issue 1: Suitability for Summary Trial. Is this matter suitable for determination by way of summary trial?

- b) Issue 2: Dates of Marriage-Like Relationship. What are the commencement and termination dates of the marriage-like relationship?
- c) Issue 2: Property and Debt Division. What is the family property and debt, and how should they be divided? The claimant identifies the net proceeds from the sale of the former family home (the "McBride Property") as the only family property and debt to be divided. She seeks equal division of the net proceeds (\$207,011.52 less the trust administration fee), which are currently held in her counsel's trust account.
- d) Issue 3: Guidelines incomes. What are the parties' Guidelines incomes?
- e) Issue 5: Parenting Arrangements. What parenting arrangements should be ordered? The claimant seeks orders that she have all the parental responsibilities for the parties' child KSD, age 3, including the ability to obtain a passport and travel without the respondent's consent or signature. Further, that the respondent will have parenting time with KSD as determined by the claimant to be in KSD's best interests including imposing restrictions such as supervision and location.
- f) Issue 6: Child Support. The respondent has not paid any child support. The claimant seeks monthly retroactive child support commencing from separation and continuing thereafter until further court order, and initially payable from the respondent's share of the net sale proceeds of the McBride Property. Further, that s.7 special and extraordinary expenses of KSD be paid in proportion to hers and the respondent's respective Guidelines incomes.
- g) Issue 7: Spousal Support. Is the claimant entitled to spousal support, and if so, what is the quantum and duration? Should the court order that spousal support be paid as a lump sum? The claimant seeks \$60,000 lump sum support.
- h) Issue 8: Security for Support and Other Payments. The claimant seeks orders that from the respondent's share of the net sale proceeds of the McBride Property that the following be paid:
 - i. \$60,000 to the claimant as lump sum spousal support;
 - ii. costs ordered at a judicial case conference ("JCC") payable forthwith by the respondent to the claimant in the amount of \$1,100, and to B.J.S. in the amount of \$1,000;
 - iii. costs of this application to the claimant; and
 - iv. the balance be paid to the claimant as retroactive and prospective child support commencing January 2024. This was clarified in the hearing to be payment from the funds for retroactive child support owing, and that the remainder of the funds be held as security for future child support.
- [3] Before addressing the issues, I will review the background facts and procedural history, and the respondent's failure to respond to this action or attend this hearing.

Background Facts and Procedural History

- [4] The parties had a short marriage-like relationship of three years ending in January 2024. They have a son, KSD, who is three years old. During the parties' relationship, the respondent was involved in litigation with his former common-law partner A.B. (the "A.B. Litigation") and has a son from that relationship, KBD, who is six years old. As will be discussed, the settlement of the property issues and the parenting arrangements regarding KBD in the A.B. Litigation played a role in the property issues and parenting arrangements in this case.
- [5] The notice of family claim was filed on April 25, 2024, seeking child support, parenting arrangement orders, spousal support, and division of family property and debt. The only claim against the former respondent B.J.S. was that he held his interest in the McBride Property in trust for the claimant. B.J.S. filed a response to family claim in September 2024, admitting that fact.
- [6] The respondent was served with the notice of civil claim on June 18, 2024, by alternate method pursuant to a court order. The respondent has not filed a response to family claim, nor has he provided any financial disclosure or documents.
- [7] A judicial case conference was held on October 31, 2024 (the "JCC"). The respondent was given notice of the JCC but did not attend. Both the claimant and B.J.S. attended the JCC and were awarded costs of attending. At the JCC, B.J.S. agreed that he was a trustee for the claimant's interest in the family home and was "removed" as a party.

Respondent Did Not Attend Hearing

- [8] As the respondent has not filed a response to family claim, he is not a party or respondent as those terms are defined in Rule 1-1 of the Supreme Court Family Rules, BC Reg 169/2009 [SCFR]. Further, he is not entitled to receive notice of any part of this family law case including any court appearance, hearing, conference or trial: Rule 4-3(2).
- [9] Despite this, claimant's counsel forwarded a letter and a copy of this notice of application and supporting affidavits to the respondent at his email address on July 30, 2025. The claimant also provided the respondent with the same documents via Facebook Messenger, and correspondence between them shows that he received the materials. The respondent was copied on emails with Court Scheduling advising of the place and date of this hearing, and the claimant also advised him of this by Facebook Messenger the day prior to the hearing and he responded to her. The respondent was paged on the day of the hearing. He did not attend. I was satisfied that the respondent was given notice of this hearing even though he was not entitled to notice. The court therefore proceeded in his absence.

Issue 1: Suitability for Summary Trial

[10] Pursuant to Rule 11-3(15) of the SCFR, the court may grant judgment on an issue or generally, on the hearing of a summary trial application, unless:

(i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or

(ii) the court is of the opinion that it would be unjust to decide the issues on the application,

[11] Factors relevant to whether it is unjust to decide the issues include: the amount involved; the complexity of the matter; any urgency or prejudice from delay; the time and cost of a conventional trial in relation to the amount involved and the time and cost of a summary trial; the course of the proceedings; whether credibility is a significant issue; and whether the summary trial would introduce unnecessary complexity to the dispute or result in litigation in slices: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 219, 36 C.P.C. (2d) 199 at 216 (C.A.); *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 28-31.

[12] I conclude that I am able to find the facts necessary to determine the issues of fact and law, and that it would not be unjust to decide them on this application. Credibility is not a significant issue. There is no conflicting evidence filed by the respondent. He has chosen not to defend this action. This is not a complex case. This was a short relationship, and the financial amounts in issue are modest. There is one child, but none of the orders sought will preclude the respondent from seeking parenting orders in the future if there is a change in circumstances. The respondent has not paid any child or spousal support and orders need to be put in place for those. Both the procedural history and the time and cost of a conventional trial is not proportionate to the amount involved and the nature of the issues.

Issue 2: Dates of Marriage-Like Relationship

[13] The claimant states, and I find, that the parties' marriage-like relationship commenced in January 2021 and ended on January 4, 2024. The claimant was not any more precise with respect to the commencement date.

Issue 3: Property and Debt Division

[14] Section 81 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], provides the general rule that spouses are both entitled to family property regardless of their respective use or contribution. Upon separation, each spouse is presumptively entitled to an undivided half interest in all family property as a tenant in common.

[15] Section 84 of the FLA defines family property. It includes all property that on the date of separation is owned or beneficially owned by at least one spouse, but not "excluded" property: s. 84(1)(a).

- [16] Sections 1 and 85 of the FLA define excluded property which, subject to s. 96, is not divided. This includes property acquired by a spouse before the relationship began; an inheritance; a gift from a third party; and property derived from the disposition of excluded property: ss. 85(1)(a), (b), (b.1), and (g). The spouse claiming that property is excluded property bears the burden of proof on a balance of probabilities: s. 85(2); *Pisarski v. Piesik*, 2019 BCCA 129 at para. 24; *Shih v. Shih*, 2017 BCCA 37 at paras. 42-44. While mathematical precision is not required to establish excluded property, there must be clear and cogent evidence: *Shih* at paras. 40, 43.
- [17] Section 87 of the FLA provides the general rule that, unless an agreement or order otherwise provides, the value of family property must be based on its fair market value as of the date of the trial. In this case, since the sole family property in issue has been sold and the money is in trust, its value has been determined.
- [18] Although the presumptive rule is for equal division of family property and debt, s. 95 of the FLA states that a court may order unequal division if it would be "significantly unfair" to divide family property and debt equally. In this case, the claimant does not seek unequal division.
- [19] The only property for which the claimant seeks division is the net proceeds of the sale of the McBride Property. Her F8 financial statement, sworn on August 20, 2024, states that her assets are a 2013 Kia purchased in 2020 prior to the relationship. It is therefore excluded property. She also lists a small amount of funds in a chequing account which was in existence for many years prior to the relationship, and credit card debt that exceeds that by about a thousand dollars. She lists a joint Vancity account ending in 3127, held with the respondent, with \$225.41 as of February 2023. In summary, these are either excluded or very small amounts of family property or debt that she does not seek to divide.
- [20] There is no financial disclosure from the respondent. I conclude that he has at least one bank account, as his pay stubs the claimant was able to produce show that his employment income was being deposited to an account. However, the claimant does not make a claim with respect to this.
- [21] The McBride Property was originally owned by A.B. and the respondent and was the subject of property division in the A.B. Litigation. The claimant and her father, B.J.S., provided evidence of how B.J.S. came to be registered on title as a 50% tenant in common owner of the McBride Property with the respondent.
- [22] B.J.S. states that he and his wife had set aside funds to help their two children. They had already provided \$125,000 to their son to help purchase a home, and they intended to do the same for the claimant when she was ready to purchase. This was referred to as the "house money".

- [23] In September 2022, after the birth of KSD, the claimant and respondent discussed the possibility of buying A.B.'s interest in the McBride Property and keeping it as their family home. The claimant spoke with B.J.S., who offered to help her buy a family home with a \$125,000 down payment. However, the claimant and respondent were informed by a realtor that they did not have enough funds or income to qualify to purchase the McBride Property. Later, in September 2022, the claimant asked B.J.S. if he could provide them with \$50,000 of the "house money" to help with the respondent's legal bills incurred in the A.B. Litigation. On September 26 and October 3, 2023, B.J.S. deposited a total of \$50,000 to the claimant's account. This is supported by bank statements. The claimant states that she and the respondent discussed that once the McBride Property was sold in the A.B. Litigation, they would put the proceeds and additional funds from her father toward a home equally owned between them.
- [24] In February 2023, after the rental accommodation where the claimant and respondent were living suffered a flood, they moved into the McBride Property, which at that time was sitting empty and had not yet sold in the A.B. Litigation. By the summer of 2023, the claimant and respondent revisited the idea of buying A.B.'s interest in the McBride Property. The claimant states that hers and the respondent's combined income and credit still was not sufficient to obtain a mortgage by themselves. Eventually, B.J.S. agreed to go on title and co-sign a mortgage so that the purchase could take place. B.J.S. provided another \$50,000 and \$15,000 to the claimant. This is supported by bank statements. The total gifted by B.J.S. to the claimant was therefore \$115,000. He was also liable on the mortgage.
- [25] B.J.S. states that during the refinancing process, he reviewed the numbers provided by the TD mortgage specialist and determined that the residual equity in the home, after discharging the respondent's and A.B.'s previous mortgage and line of credit, was approximately \$277,000. This was based on the bank's appraised value of \$1,177,000 less the mortgage of \$900,000. He concluded that half of this number was close to the amount the claimant put into their family via his "house money" contributions, and he was satisfied that his 50% co-ownership and trust agreement protected the claimant's equity in the property. He attaches the trust agreement between him and the claimant concerning the McBride Property dated August 19, 2023. He states that he agreed to co-sign the mortgage to protect the claimant's equity in the home earned through his contributions, although not all were directly applied to the home.
- [26] The McBride Property was transferred to the respondent and B.J.S. each as to an undivided 50/100 interest on August 28, 2023. It was subject to a \$900,000 mortgage.
- [27] The McBride Property was sold in July of 2024, and the net sale proceeds of \$207,011.52 are being held in trust with claimant's counsel.
- [28] I find that the net sale proceeds are family property and that they should be equally divided. As the respondent has not filed a response to civil claim, he has not claimed an exclusion with respect to any equity he held in the McBride Property, nor has he claimed unequal

division. The claimant has also not claimed an exclusion for the "house money" she contributed, and seeks the presumptive equal division in s. 81 of the FLA. I therefore do not find any excluded property. I note that although it is not clear what any such exclusions might have been, on the claimant's and B.J.S.'s evidence, the parties apparently agreed that he would become a 50% tenant in common owner with the respondent. The parties would not have been able to purchase the McBride Property without B.J.S. contributing funds and co-signing on the mortgage. In the circumstances, it would not be significantly unfair to divide the net proceeds of the sale equally.

Issue 4: Guidelines Incomes

- [29] The Federal Child Support Guidelines, SOR/97-175 [Guidelines] provide the framework for determining income for the purpose of spousal support. The relevant provisions are set out in ss. 16 to 20 of the Guidelines. Pursuant to s. 16, the calculation commences with a spouse's total income from line 15000 of their personal tax return and is adjusted in accordance with Schedule III: *Brown v. Brown*, 2014 BCCA 152 at para. 16; *Vincent v. Vincent*, 2012 BCCA 186 at para. 35. The court must then consider if the circumstances in ss. 17 to 20 are present and whether there should be an adjustment to arrive at the fairest determination of income available for support.
- [30] The claimant seeks to impute income to the respondent on the basis of his failure to make financial disclosure. Section 19(1)(f) of the Guidelines allows a court to impute income where a spouse has failed to provide income information when under a legal obligation to do so.

Claimant's Income

- [31] The claimant was self-employed as a contract administrative assistant for the same business for several years. She produced her notices of assessment and/or tax returns for 2021 to 2023. I find her part-time pre-separation Guidelines income to be:
- a) 2021 - \$19,000 (reported as EI and other benefits);
 - b) 2022 - \$24,900 (\$6,000 EI plus \$18,900 net business income on revenue of \$20,800); and
 - c) 2023 - \$22,800 (net business income).
- [32] The claimant's F8 financial statement sworn August 20, 2024, reports part-time net business income of \$22,800. In her affidavit sworn July 18, 2025, she states that as of May 1, 2025, she began working full-time as an administrative coordinator for the same employer at a salary of \$60,000 per year. She is able to work from home at this job. I therefore find the claimant's post-separation Guidelines income to be:
- a) 2024 - \$22,800;

- b) 2025 - \$45,700 ($\$22,800/4 \text{ months} = \$5,700 \text{ per month}$) + ($\$5,000 \text{ per month} \times 8 \text{ months} = \$40,000$); and
- c) \$60,000 moving forward.

Respondent's Income

- [33] The claimant submits that \$120,000 of annual income should be imputed to the respondent. The claimant states, and I accept, that the respondent is a red seal plumber who works on large development projects. He works as a foreman. He also operates a side business doing plumbing work.
- [34] The respondent has not provided any financial disclosure or documents. However, the claimant produced the respondent's notices of assessment for 2021 and 2022. They show line 15000 income as follows:
- a) 2021 - \$31,105; and
 - b) 2022 - \$80,206.
- [35] The claimant also provided a copy of the respondent's pay stubs from his employer for May to June 2023. During this time, the respondent's pay rate was increased from \$45.13 per hour to \$51.45 per hour, consistent with the claimant's evidence of the respondent's promotion to foreman about that time. The year-to-date income as of June 10, 2023, was \$51,250.40. This is an annualized income of at least \$116,187, as the first five months of 2023 were paid at the lower hourly rate. The claimant also provided a July 18, 2023, invoice from the respondent's side business. This invoice was for a job in Prince George. The total invoice was \$64,555.25, but that amount is made up of "accommodations, vehicle allowance, living out allowance, equipment rental, material cost, direct labour and indirect labour." There is no way of discerning from this invoice how much the respondent and his partner were paid. However, I conclude that the respondent was likely paid something for the work.
- [36] Finally, A.B. provides an affidavit and appends the entered trial order of Justice Riley, then of this court, dated November 25, 2021, in the A.B. Litigation. In that order, Justice Riley imputes the following income to the respondent: \$87,600 for 2020; \$90,000 for the first 11 months of 2021; and \$95,000 prospectively. Based on the latter figure, he ordered that the respondent pay \$903 per month child support for KBD moving forward. I conclude that at the trial before Justice Riley, he had access to evidence of income beyond what was disclosed in the respondent's tax assessments for 2021 and 2022. The trial order also orders the parties to exchange annual updated financial information. In an entered order dated June 9, 2025, in the A.B. Litigation, Justice Coval fined the respondent \$750 for failing to provide his 2023 financial information by June 1, 2024.

[37] Based on all the above, particularly the respondent's pay stubs from his employer, I impute \$120,000 annual post-separation Guidelines income to the respondent from 2024 to date and prospectively.

Issue 5: Parenting Arrangements

[38] When making orders for parenting arrangements, the court must consider the best interests of the child only: FLA s. 37(1). All the child's needs and circumstances must be considered, including the factors set out in s. 37(2). Those factors are:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

[39] As the claimant makes allegations of family violence, s. 38 of the FLA is also relevant. It sets out the factors a court must consider when assessing family violence. Family violence is defined in s. 1 of the FLA. It includes physical abuse or attempts at physical abuse of a family member; psychological or emotional abuse of a family member including intimidation, harassment or threats respecting persons or property; intentional damage to property; and in the case of a child, direct or indirect exposure to family violence.

[40] An order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: FLA, s. 37(3). In making a parenting order, the court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor: FLA, s. 37(4).

- [41] The claimant describes a volatile relationship in which the respondent yelled and swore at her, threw and broke items, and physically assaulted her up to December 2021, which is prior to the birth of KSD. She describes incidents of being hit in the face, and one where the respondent tried to choke her. She appends to her affidavit pictures of her injuries and broken items.
- [42] In the November 2021 trial order in the A.B. Litigation, Justice Riley ordered that the respondent have supervised parenting time with a professional or agreed upon supervisor for longer parenting times. For shorter times, no supervisor was ordered. Justice Riley also ordered that the respondent attend anger management counselling, abstain from alcohol while he has parenting time of KBD, and not abuse alcohol generally.
- [43] The claimant states that after December 2021, the respondent was no longer physically violent toward her, but he continued to yell and swear at her including in the presence of KSD once he was born, and KBD. He also continued to express his anger by throwing objects and food. She does not allege that the respondent has ever directed violence toward KSD, but she is fearful of the respondent's failure to control his anger, and lack of patience, and therefore his ability to parent. The claimant states that the respondent had limited involvement in raising KSD when they were together. She was the primary caregiver.
- [44] The claimant describes an event in February 2022 when she received a phone call from the respondent after he had begun to yell and swear at a professional supervisor during his parenting time with KBD. The supervisor terminated the visit. The respondent did not have any further parenting time with KBD until the end of July 2022 after their own son KSD was born.
- [45] In July 2022, in the A.B. Litigation, Justice Riley varied the trial order with respect to parenting time of KBD, so that it was supervised either by the claimant in this action if she agreed, or a professional supervisor. As a result, the claimant, who agreed to that order, had to be personally present when the respondent had parenting time of his other son KBD.
- [46] The claimant describes a deterioration in the respondent's conduct and their relationship beginning in February 2023, after they moved into the McBride Property. The respondent's anger, yelling and swearing became worse, including in front of KSD and KBD. She describes several incidents. When her parents attempted to help them with the move to the McBride Property, the respondent yelled at her father and was insulting to him. In the Spring of 2023, the respondent was promoted to foreman and appeared overwhelmed. He would almost always have a beer in the morning before work and would roll joints of marijuana and tobacco to take to work. After work, he would sit outside smoking and drinking until he went to bed instead of engaging with the claimant, KSD, and KBD if he was with them.
- [47] The claimant states that from September to December 2023, the respondent's drinking increased. She refused to let him drive the children anywhere. The respondent's behaviour became increasingly aggressive toward her. He often threw objects or food in fits of anger. The claimant describes an incident when KSD was not sleeping well, and the respondent lost

his temper and was yelling and swearing because he was trying to sleep. The respondent got out of bed and started shaking KSD's crib, but at the time the claimant was holding KSD. The claimant is concerned that the respondent does not have the patience to deal with an inconsolable child. She has only ever left KSD in the respondent's care for a maximum of a few hours once or twice, and usually when KSD was napping, and she would make sure KSD was fed and changed before she left.

- [48] After an incident in November 2023, the claimant began taking steps to end the relationship. She claims that the respondent threatened to kill her during the November incident. In text messages, the respondent denies this. By the end of November 2023, the claimant had made a down payment on a basement suite. The claimant informed A.B. of her plans to leave the respondent. She states that on December 15, 2023, the respondent's parenting time with KBD was revoked in the A.B. Litigation, although that is not clear from the entered order. Since that time, she and A.B. have worked together to maintain a relationship between the two boys.
- [49] On January 4, 2024, the claimant told the respondent that she was going to her aunt's house to go over files for work. She was in fact leaving the relationship. This was the last time the respondent has seen KSD in person, and the last time she has spoken to the respondent in person. She ended the relationship with the respondent over the phone that day.
- [50] The claimant states that since separation, she has encouraged the respondent to have video calls with KSD. It appeared that the respondent was only interested in a relationship with KSD if she would get back together with him. She made it clear she had no interest in doing that. The respondent has turned down numerous requests to speak to KSD. In total, he has spoken to KSD about 20 times on the phone. The respondent did not speak to KSD between December 2024 and May 2025. In March and December 2024, at the respondent's request, the claimant offered to meet with him in a public place so that he could see KSD, but on the condition that a third person was present. The respondent refused. The claimant has refused to tell the respondent where she lives because she is concerned that the respondent will stalk her.
- [51] The claimant attaches about 100 pages of text messages with the respondent. I would characterize these as the respondent persistently requesting the claimant to get back together with him, denying that he was abusive or threatened her, and pleading with her to have parenting time with KSD. At times he swears and is rude. At other times he says he loves the claimant. The claimant consistently either does not reply or when she does, states that she has no interest in resuming her relationship with the respondent, and that she will facilitate parenting time, but with a supervisor.

- [52] B.J.S.'s affidavit details his interactions with the respondent. His observations, although limited, are that the respondent took little responsibility for caring for the two boys when they were present. He also described the respondent's inappropriate angry outbursts at the claimant, him and his wife, and third persons at the conveyancing lawyer's office when they purchased the McBride Property.
- [53] A.B.'s affidavit attaches several of the orders and a set of unpublished reasons in the A.B. Litigation. In the latter reasons dated June 16, 2023, Justice Riley noted that some limited professionally supervised parenting time had taken place since the June 2022 order, with positive reports of the respondent being a loving, encouraging, affectionate, and attentive parent for up to the 4.5 hours he had KBD, and that otherwise the respondent's parenting time with KBD was with the claimant supervising. Justice Riley also noted that the respondent had attended counselling sessions to address his anger management issues with positive results. He commented that the respondent's relationship with the claimant in this action was a stabilizing factor in his life. Based on the supervisor's reports for shorter-duration parenting sessions, the respondent's parenting history with KSD, the role the claimant played in the respondent's life, and the respondent's continued attendance at anger management counselling, Justice Riley was satisfied that it was in KBD's best interest that there be a progression in the respondent's parenting time. He ordered a variation of the parenting time, resulting in a small increase in parenting time, but all of which must be under the supervision of the claimant, if she agreed. For 2024, Justice Riley ordered a further increase in parenting time, and it was no longer required to be supervised. Other orders were for continued anger management counselling and for the respondent to not consume alcohol during parenting time with KBD.
- [54] A.B. states that given the separation of the claimant and respondent, she brought another application on December 15, 2023, to address parenting time. She brought another application on June 9, 2025, after the respondent refused to hire a parenting coordinator or professional supervisor for his parenting time, and his general lack of involvement in KBD's life for nearly 1.5 years. The respondent did not attend court for that hearing. That entered order, before Justice Coval, ordered that A.B. have all s. 41 of the FLA parenting responsibilities allocated to her, that KBD will reside with her, and she will have all parenting time but may provide parenting time to the respondent. as "she determines is in [KBD's] best interest, including imposing restrictions such as supervision, limits on location, and the like". The claimant in this action seeks the same order.
- [55] Having reviewed the above evidence, I turn to the orders sought by the claimant and the determination of what is in KSD's best interests. The claimant seeks all parental responsibilities be allocated to her, and that she has all parenting time, but may provide parenting time for the respondent as determined by the claimant to be in KSD's best interests including imposing restrictions such as supervision and location.

- [56] The first concern identified by the claimant is the respondent's historical at least, lack of ability to control his anger, lack of patience, and the resulting family violence that has occurred in front of KSD. The second concern is the respondent's ability to parent because of these same factors, and his possible abuse of alcohol or drugs.
- [57] Turning to the factors under s. 37 of the FLA:
- a) KSD's health and emotional well-being will be negatively impacted by an environment where the respondent cannot control his anger toward the claimant or be patient with a child. However, if the respondent can control his anger and be patient, KSD would benefit from the presence of another parent who loves and can support him.
 - b) KSD is too young to consider his views.
 - c) KSD has spent almost all his life in the company of the claimant, and his relationship with her will be the strongest. KSD was less than two years old when the parties separated. The respondent has not seen KSD in person since that time and has spoken to him by video call about 20 times in the past two years.
 - d) The claimant was KSD's primary caregiver since he was born until separation, and his sole caregiver since then. There is nothing in the evidence to suggest that she is anything but a loving parent who is appropriately exercising her parenting responsibilities. The respondent has not had any involvement in KSD's care for the past two years.
 - e) KSD is of an age where he needs stability, and any parenting time by the respondent would have to be introduced gradually for short periods.
 - f) The respondent's historical, at least, lack of ability to control his anger and lack of patience, and possibly his use of alcohol or drugs, will affect his ability to exercise parental responsibilities appropriately. I assume this is why supervised parenting orders were made in the A.B. Litigation. However, if these were resolved, there is nothing in the evidence to suggest that the respondent could not exercise or learn to exercise parental responsibilities appropriately, although the claimant complains that once the respondent did not realize that a slide at a playground was too tall for KSD to go down.
 - g) There is no evidence that family violence was ever directed toward KSD, although the incident of the respondent losing control and shaking KSD's crib (although he was not in it) after KSD would not go to sleep demonstrates a serious lack of appropriate patience and behaviour. KSD was very young when his parents separated, and there is no evidence that KSD was aware of what took place between his parents and has been affected by it, but I do not discount the potential impact on KSD of any future similar conduct directed towards the claimant in the presence of KSD. There has been no family violence since separation, but that may be because the claimant and respondent have not seen each other. There is no evidence on this application of what anger management counselling the respondent has taken. There is also no evidence regarding his use of alcohol or drugs since separation. This is concerning, as KSD is very young and would be unable to relay concerns if there were any.

- h) Apart from the lack of anger management, lack of patience, and possibly of alcohol and drug use, there are no other factors identified that would indicate the respondent is impaired in his ability to care for KSD.
 - i) The claimant is fearful of the respondent, and given the history between the parties, cooperating on a parenting time schedule will be difficult but not impossible. Any abusive behaviour at exchanges risks the safety, security, and well-being of KSD.
- [58] Considering all of the above, and given that the respondent did not respond to this action, did not appear on this summary trial, and has provided no evidence of his current situation, in all the circumstances, I find that the orders that are in the best interests of KSD and which protect, to the greatest extent possible, his physical, psychological and emotional safety, security, and well-being, are as follows:
- a) The claimant is allocated all the parenting responsibilities in s. 41 of the FLA. However, I order that upon request, the claimant must provide the respondent with information concerning KSD's education and health, and if there is any emergency health situation concerning KSD, she must immediately inform the respondent. The claimant may obtain a passport for KSD and travel with KSD without the respondent's consent or signature; and
 - b) KSD will live with the claimant with parenting time for the respondent to be on reasonable terms the claimant determines that are in the best interests of KSD, such as supervision and location. I have put the term "reasonable" in the order to reinforce that this must be a reasoned justifiable determination, however, I have no concerns at this time that the claimant will not appropriately assess a request from the respondent for parenting time.
- [59] For the future, if the respondent feels he has evidence to meet the threshold to vary the parenting arrangements orders, or if he feels the claimant is unreasonably limiting or unreasonably putting conditions on his parenting time with KSD, it is always open to him to apply to vary these orders. However, for now, these are the orders that must be made in the best interests of KSD.

Issue 6: Child Support

- [60] The respondent has paid no child support since separation. Based on the imputed income of \$120,000 per year, the monthly amount of child support is \$1,133 for 2024 and \$1,133 for 2025 and moving forward. In calculating this amount, I have factored in that the respondent is paying \$903 per month (the latest information available) to A.B. for the support of KBD.
- [61] I conclude that the child support order should be retroactive to January 2024, the date of separation. The four factors to be considered on an application for retroactive child support as set out in *D.B.S. v. S.R.G.*, 2006 SCC 37 support that such an order should be made. Those are:
- a) the reason for the recipient parent's delay (if any) in seeking child support;

- b) the conduct of the payor parent, and whether that parent engaged in blameworthy conduct;
- c) the past and present circumstances of the child, and their needs at the time the support should have been paid; and
- d) whether the retroactive award would be a hardship to the payor.

[62] The claimant filed the notice family claim seeking child support in April 2024, soon after separation. She did not apply for an interim child support order prior to this summary trial. I do not consider this significant delay, particularly concerning her limited means. The respondent gives no reason for his lack of support. In the absence of any explanation, I consider this blameworthy conduct. Child support is the right of the child. Until recently, the claimant was earning less than \$25,000 per year, so child support was needed. Given the imputed income of the respondent, there is no evidence that a retroactive award would cause hardship. There is a fund of money sitting in trust from which the arrears can be paid. Although that will reduce the amount of property the respondent will receive, I do not consider that undue hardship.

[63] The amount of retroactive child support owing by the respondent to the claimant for 2024 is \$13,356 (12 x \$1,113) and for 2025 is \$13,596 (12 x \$1,133), for a total of \$26,952. The monthly child support payment going forward, is \$1,133.

[64] The claimant seeks an order that s. 7 special and extraordinary expenses be paid by the parties in proportion to their incomes. There are no past s. 7 expenses. Prospectively the parties shall share the cost of s. 7 expenses in proportion to their incomes which is currently 67% to be paid by the respondent, and 33% to be paid by the claimant.

Issue 7: Spousal Support

[65] In determining whether there is entitlement to spousal support, the court must consider the objectives of spousal support in s. 161 of the FLA. That section states:

- s. 161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:
 - (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

- [66] If entitlement is established, in determining the amount and duration of support, the court must also consider the factors in s. 162 of the FLA. That section states:
- s. 162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:
- (a) the length of time the spouses lived together;
 - (b) the functions performed by each spouse during the period they lived together;
 - (c) an agreement between the spouses, or an order, relating to the support of either spouse.
- [67] There are three bases upon which a spousal support award may be made: compensatory, which is based on economic advantage or disadvantage resulting from the marriage or its breakdown; non-compensatory, which is needs-based; and contractual: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paras. 15, 49, 1999 CanLII 715. In determining if there is entitlement to support, the court begins with the objectives of spousal support. No objective is paramount, and all must be considered: *Bracklow* at paras. 35; *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-852, 1992 CanLII 25. In this case, there is no contractual basis for support.
- [68] Compensatory support is intended to provide for an equitable sharing of the economic consequences of the relationship or its breakdown. Both economic advantage and disadvantage are considered. The longer the relationship, the greater the presumptive claim to an equal standard of living upon its breakdown: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-52, leave to appeal to SCC ref'd, 33002 (28 May 2009); *Bracklow* at paras. 34, 39; *Moge* at 861-863, 870.
- [69] Non-compensatory support is intended to provide needs-based support where compensatory principles do not apply. Its goal is to narrow the gap between the needs and means of spouses upon marital breakdown. Need is a relative concept which goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship: *Chutter* at paras. 54-59; *Bracklow* at paras. 36, 41.
- [70] The claimant states that she attended SFU for three years but did not complete a degree due to unidentified health reasons. When she met the respondent, she was working part-time as an administrative assistant for her present employer and bartending in the evenings. During the COVID-19 pandemic, the bar closed. After their marriage-like relationship began in January 2021, she continued to work part-time as an administrative assistant, including when pregnant with KSD and after KSD was born.
- [71] The claimant states that during the relationship, she was the primary caregiver for KSD, and for KBD when the respondent had parenting time with KBD. The claimant refused to put KSD in daycare and told the claimant that he would prefer she stay home with the children while he made money for the family. The claimant states that she discussed the possibility of

her going back to bartending in the evenings when the respondent was home from work and could care for KSD, but the respondent refused. However, after the claimant saw how incapable the respondent was of caring for KSD, she did not pursue this further. From the claimant's perspective, she sacrificed her ability to make more money to care for not only KSD, but also KBD.

- [72] The claimant states that her options for work are limited as she takes care of KSD full time. She is limited to working during daycare hours when she has childcare. As of May 1, 2025, she began working full-time as an administrative coordinator for the same employer at a salary of \$60,000 per year. She can work from home at this job.
- [73] In my view, the claimant has established entitlement to spousal support on a moderate but not strong compensatory basis. She also had a needs-based entitlement up until recently when she secured a full-time job. The claimant is continuing to bear all the economic consequences of caring for KSD full time. Particularly while KSD is young, she is less available for work hours, while the respondent is free to pursue his career. The claimant worked during the relationship, just less than she would have done without children. She does not claim that she had other career plans that she did not pursue, or that she contributed to the respondent's career. An order for spousal support will also promote economic self-sufficiency by allowing the claimant to transition to other more lucrative employment, for example, by taking training if that opportunity arises.
- [74] As for quantum, I have considered the factors discussed in chapter 9 of the Spousal Support Advisory Guidelines: The Revised User's Guide (Ottawa: Department of Justice, 2016). The non-exhaustive list includes: the strength of any compensatory claim; the payee's needs; the needs and ability of the payor to pay; the work incentives of the payor; the amount of the parties' assets; and self-sufficiency incentives for the payee. The claimant has a moderate compensatory claim, based primarily on childcare responsibilities, but there is no evidence that her career goals were otherwise changed by the relationship. The claimant appears to be motivated to work, and there is no suggestion that the respondent is not motivated to work. The parties have modest assets.
- [75] As for duration, the Spousal Support Advisory Guidelines [SSAG] provide two duration tests for with-child support formulas, being the length-of-marriage test and the age-of-children test. The former is one-half to one year per year of the relationship. The latter test ends when the youngest child finishes high school. These result in a large range of duration since separation of between 1.5 and 17 years. Considering the short length of the relationship, the moderate claim for compensatory support, and that the claimant is now working full time, I determine the duration to be six years from separation, ending on December 31, 2029, four years from now. By then KSD will be grade 2. In setting this duration, I have also considered that under the parties' Guidelines incomes in 2025 and prospectively, the spousal support is quite low, or not payable at all, resulting in little or no compensation to the claimant.

- [76] As the claimant is seeking a retroactive award, I must also consider whether it is appropriate to make such an award prior to the date of formal notice. Generally, when a retroactive spousal support award is made, it commences on the date of formal notice. In *Kerr v. Baranow*, 2011 SCC 10 at paras. 207-212, the Court adopted the four factors in *D.B.S.* (which concerned retroactive child support) as being applicable to determining the date of retroactive spousal support. The factors are considered in light of the legal principles and objectives that underpin spousal support. Notice, delay, and misconduct generally carry more weight for claims of spousal support than claims of child support: *Kerr* at para. 208.
- [77] For reasons similar to those for retroactive child support, I find it is appropriate to make an order for retroactive spousal support to the date of separation, which is only three months prior to the date of formal notice. At the time of separation, the claimant fled the McBride Property and had much less earning capacity because she had a very young child. She was in obvious need of support.
- [78] Based on the parties' Guidelines incomes for 2024 and 2025, DivorceMate calculations, which include the child support obligation to KSD, produce the following ranges for spousal support:
- a) 2024: \$534 to \$1,252 per month with a mid-range of \$864, with the mid-range producing very close to equal net disposable income ("NDI") for each household. The mid-point after-tax mid-range amount is \$679;
 - b) 2025: \$0 to \$639 per month with a mid-range of \$205, with the low range producing very close to equal NDI. The mid-point after-tax mid-range amount is \$130; and
 - c) Prospectively, at incomes of \$60,000 for the claimant and \$120,000 for the respondent, no spousal support is payable at the low and mid ranges, and it is \$213 per month at the high range. Even with no spousal support being paid, the claimant would have 6% more NDI than the respondent.
- [79] Considering all the above, I find that retroactive spousal support owing for 2024 and 2025 should be paid in the mid-range. As the retroactive support for 2024 and 2025 will be paid as a lump sum, I have used the mid-point after-tax figures to account for the tax deduction that the respondent otherwise would have had, and the taxes the claimant would otherwise have had to pay.
- [80] The amount of retroactive spousal support owing by the respondent to the claimant for 2024 is \$8,148 (12 x \$679) and for 2025 is \$1,560 (12 x \$130), for a total of \$9,708. To be clear, this is lump sum retroactive spousal support and not a periodic monthly amount.
- [81] Prospectively, I find the claimant has established entitlement to spousal support, but on the parties' current incomes, the amount payable is \$0.

[82] The claimant seeks lump sum spousal support of \$60,000. This was intended to encompass both past and future spousal support and was based on calculations that did not include the prior child support obligation. I have already made an order for retroactive support. Given my conclusions above, a lump sum award for future spousal support cannot be made. The DivorceMate after-tax mid-point present value calculations for spousal support in the ranges above, produce figures far below the \$60,000 claimed, and on the current incomes of the parties no monthly spousal support is payable. Had I found that future monthly spousal was payable at this time, I would have considered the factors in *Parton v. Parton*, 2018 BCCA 273 at para. 47, in determining whether such an order should be made.

Issue 8: Security for Support and Other Payments

[83] The claimant seeks orders that the respondent's share of the net funds from the sale of the McBride Property be used to pay: (i) retroactive child and spousal support owing; (ii) costs previously ordered to be paid for the JCC; (iii) costs of this application; (iv) lump sum future spousal support of \$60,000 (which claim I have already dismissed); and (v) that any remaining funds be held as security for the payment of future child support, and from which the claimant can draw down monthly funds.

[84] In my view, the first three orders should be made. The retroactive child and spousal support and costs from the JCC are owing by the respondent. The claimant will be entitled to her costs of this application, which I summarily assess at \$2,250 including taxes and disbursements.

[85] The fourth order cannot be made as I dismissed the claim for future spousal support being paid as a lump sum.

[86] As for the remaining funds from the respondent's share, as KSD is only three years old, and assuming the current monthly child support amount stays the same and KSD continues to reside with the claimant, future child support is just over \$200,000 before discounting to present value. That is far more than the respondent's remaining share of the net sale proceeds of the McBride Property.

[87] Section 170 of the FLA addresses orders the court may make to secure support payments. The relevant portions of that section states:

- s. 170 In an order respecting child support or spousal support, the court may provide for one or more of the following:
 - (c) that payment of a lump sum be made, directly or in trust;
 - (d) that a charge be registered against specific property to secure payment;

[88] Section 12 of the Guidelines also provides the court with authority to order that child support payments be secured.

[89] Security for child support is normally limited to circumstances where a party has in the past ignored previous orders or is likely to ignore future orders: *M.E.L. v. B.G.L.*, 2012 BCSC 1841; *Kollmuss v. Kollmuss*, 2012 BCSC 709 at para. 102;; *Zhang v. Sun*, 2016 BCSC 1418 at para. 281; and *K.A.L. v. K.J.L.*, 2017 BCSC 651 at paras. 167-179.

[90] I have considered the following factors:

- a) The respondent has not responded to the notice of family claim or given any reason why he has not paid child support for KSD.
- b) There is no previous child support order with respect to KSD, so the respondent is not in breach of an order. However, child support is the right of a child and ideally should be paid without the court having to make an order. Further, the respondent has not paid the two costs orders already made in this action.
- c) A.B. states that after Justice Riley's trial order was made, she filed with the Family Maintenance Enforcement Program ("FMEP") to enforce the respondent's child support payments. The respondent paid regularly up until April 2024. Since then, A.B. states the respondent has only made sporadic payments in varying amounts and has not paid his portion of special expenses. He is about \$2,200 in arrears. I have reviewed the print-out from the FMEP and while the monthly payments are not on schedule, they are paid about monthly.
- d) KSD is only three years old, and the respondent will have at least another 15 years of payments.
- e) Since the amount of potential future child support is far more than the respondent's remaining share of the net sale proceeds, such an order will result in the respondent not retaining any property from the relationship.

[91] Considering all the above, I conclude that it is appropriate to make an order securing child support. I conclude there is a significant risk the respondent will not pay child support regularly as required. This order secures only about a quarter of the future child support payable. While this will result in the respondent not having access to capital from property division, he has not claimed that he needs those funds for another purpose, and I weigh the child's right to adequate support as being more important.

Orders

[92] The marriage-like relationship commenced in January 2021 and terminated on January 4, 2024.

- [93] The parties' family property and family debt shall be equally divided by equally dividing the net sale proceeds from the McBride Property (approximately \$207,011.52 less trust administration fees) which currently are held in the claimant's lawyer's trust account. The claimant shall be paid her 50% share of the funds. From the respondent's share, the following funds shall be paid to the claimant:
- a) retroactive child support owing to December 31, 2025, in the amount of \$26,952;
 - b) retroactive spousal support owing to December 31, 2025, in the amount of \$9,708. This is a lump sum retroactive spousal support payment and not a periodic monthly amount;
 - c) costs ordered at the JCC payable forthwith by the respondent to the claimant in the amount of \$1,100, and to B.J.S. in the amount of \$1,000, which the claimant shall in turn pay to B.J.S.;
 - d) the costs and disbursement of this application which have been set at \$2,250;
 - e) the balance of the funds, to be held in an interest-earning bank account from which the claimant may draw down on the first of each month the amount of \$1,133 in child support, or such other amount agreed upon by the claimant and respondent, or ordered, for the support of KSD. The claimant must provide to the respondent twice yearly by July 1 and December 31, an accounting along with a copy of the bank statements for the funds until those funds are exhausted.
- [94] The parties shall keep all other family property currently in their possession without claim of the other.
- [95] As between themselves, the parties are each responsible for any debt in their own names, without a claim to the other for the payment.
- [96] The claimant's Guidelines income for 2024 is \$22,800, for 2025 is \$45,700, and prospectively is \$60,000, until further order of the court or agreement of the parties.
- [97] The respondent's imputed Guidelines income for 2024 and 2025 is \$120,000 each year, and prospectively is \$120,000 until further order of the court or agreement of the parties.
- [98] Retroactive child support to December 31, 2025, owing by the respondent to the claimant is \$26,952, which shall be paid from the respondent's share of the net sale proceeds of the McBride Property, as above.
- [99] Retroactive spousal support to December 31, 2025, owing by the respondent to the claimant is \$9,708, which shall be paid from the respondent's share of the net sale proceeds of the McBride Property, as above.

- [100] Commencing January 1, 2026, and on the first of each month thereafter for so long as KSD is a child of the marriage, the respondent shall pay to the claimant child support in the amount of \$1,133 per month, which, until the fund set out above is exhausted, may be paid by the claimant drawing down those funds from the respondent's share of the net sale proceeds.
- [101] For so long as KSD is a child for the purposes of child support, by May 31 of each year, the claimant and respondent shall provide to each other a copy of the past year's tax return with all attachments and notices of assessment/reassessment, and shall review and revise child support payable as of June 1 each year, in accordance with the Guidelines.
- [102] For so long as KSD is a child for the purposes of child support, the claimant and respondent shall share s. 7 of the Guidelines expenses, in proportion to their Guidelines incomes. The current proportionate sharing of s. 7 expenses is 67% to be paid by the respondent, and 33% to be paid by the claimant.
- [103] The claimant is entitled to spousal support at the mid-range, but the current monthly amount owing is \$0. Spousal support shall terminate on December 31, 2029. By June 1 of each year up until the termination date, the parties shall review and revise spousal support payable as of June 1 each year, in accordance with the SSAG, and the determinations above.
- [104] Pursuant to s. 45 of the FLA, the claimant is allocated all the parenting responsibilities in s. 41 of the FLA [counsel may insert the responsibilities in the entered order].
- [105] Upon request, the claimant shall provide the respondent with information concerning KSD's education and health. If there is any emergency health situation concerning KSD, the claimant shall immediately inform the respondent. The claimant may obtain a passport for KSD and travel with KSD without the respondent's consent or signature.
- [106] Pursuant to s. 45 of the FLA, KSD will live with the claimant, with parenting time for the respondent to be as reasonably determined by the claimant to be in KSD's best interests, including imposing restrictions such as supervision and location.
- [107] The respondent shall pay to the claimant her costs of this application which is summarily set at \$2,250 inclusive of taxes and disbursement, which shall be paid from the respondent's share of the net sale proceeds of the McBride Property, as above.
- [108] All other claims in the notice of family claim are dismissed.

"Norell J."

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