
CANADA / JUDGMENT

B.P.E. v. A.E.

2015 BCSC 2416

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 2416 B.P.E. v. A.E.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.P.E. v. A.E.,

2015 BCSC 2416

Date: 20151221

Docket: E123309

Registry: Vancouver

Between:

B.P.E.

Claimant

And

A.E.

Respondent

Before: The Honourable Madam Justice Russell

Reasons for Judgment

Counsel for the Claimant:

S.L. Booth

Counsel for the Respondent:

M.R. Ellis, Q.C.

Place and Date of Hearing:

Vancouver, B.C.

November 29, 2015

Place and Date of Judgment:

Vancouver, B.C.

December 21, 2015

Introduction

[1] In this family matter, this application is brought by the respondent, seeking a variety of orders against the claimant. During the course of the application proceedings the parties consented to the following:

- a) that the claimant pay to the respondent \$574.50 for 50% of the extended health premiums paid by the respondent for the benefit of the children of the marriage, for the period from October 31, 2013 to December 31, 2014, inclusive; and
- b) that the claimant pay to the respondent \$716.71 for 86.3% of the extended health premiums paid by the respondent for the benefit of the children of the marriage, for the period from January 1, 2015 to October 31, 2015, inclusive.

[2] The remaining relief sought is as follows:

- a) that the claimant pay to the respondent \$11,440 in monthly child support for the children of the marriage, commencing January 1, 2015;
- b) that the claimant pay to the respondent the sum of \$12,000 as 50% of the childcare expenses for the years 2012 to 2014, inclusive;
- c) that the claimant pay to the respondent \$8,284.80 for his proportionate share of childcare expenses for 2015;
- d) that commencing September 1, 2015, the claimant pay to the respondent 84% of the special and extraordinary expenses of the children of the marriage;
- e) that the claimant deliver to the respondent his T-1 tax return and attached documents no later than April 30 each year that any child remains a child of the marriage; and
- f) costs.

Background

[3] The parties were married on August 4, 2001 in Tofino, BC. There are three children of the marriage: M.E., born July 22, 2003; N.E., born March 20, 2005; and C.E., born September 29, 2006 (collectively the "Children").

- [4] The claimant is employed as an investment advisor and the respondent is employed as an executive assistant. She has had this position since the summer of 2013; prior to this she had been in an administrative role.
- [5] The parties separated in April 2011 and their divorce was finalized as of February 23, 2013.
- [6] Upon separation, the parties entered into a Separation Agreement, dated August 27, 2012 (the "Agreement"), to resolve the issues between them, including guardianship, custody and access, child and spousal support, and division of family property. Specifically, the Agreement provided that the parties would have joint custody and that the Children would spend approximately equal time with each parent.
- [7] The Agreement also provided for basic child support of \$7,900 per month up to and including December 2014, with a provision for reviewing child support after April 20, 2015 and in April each year thereafter, unless otherwise agreed. The relevant provision of the Agreement dealing with child support states:

For the purpose of this Agreement, [B.] and [A.] have agreed to an amount of child support of \$7,900 per month. This amount shall be payable to [A.] by [B.] until December, 2014 as provided for in this Agreement. [B.] and [A.] did not agree on whether it was appropriate to average [B.]'s income for purposes of calculating child support or whether child support should be based on [B.]'s annual income. When the child support is reviewed in April, 2015, [B.] and [A.] are each at liberty to fully argue this issue, and the fact that they agreed to child support in the amount of \$7,900 per month for this period of time shall not be used against either party.

- [8] The Agreement further provides that each of the parties will pay 50% of the special and extraordinary expenses for the Children, stipulating that neither child support payments, nor those for special and extraordinary expenses were eligible for variation until after January 1, 2015.
- [9] Pursuant to the Agreement, the claimant also paid to the respondent a sum of \$390,000 as lump sum spousal support, to reflect spousal support payments for a 10-year-period.
- [10] Since separation both parties have remarried.
- [11] The respondent and her new husband, T.B., purchased a home in July 2013 and moved in together in August. The home is roughly 3,500 square feet and the home was purchased for \$1,655,000. The Children live with the respondent and Mr. B. Wednesdays and Thursdays and every other Friday, Saturday and Sunday, as well as for half of the holidays. Mr. B. also has a daughter from his previous marriage and she lives with them half the time, the same days as the Children. Mr. B. is employed full-time.
- [12] The claimant remarried in March of 2013 to H.E. At the time, she was living and working out of the country, and now she is currently transitioning in her career. She became a permanent resident of Canada in January 2014. She has had no income since moving to Canada. She has no children from any prior relationships. The two currently rent the top

two floors of a four bedroom home; their living area totals approximately 4,000 square feet. The home is 30 years old. In October 2015, the claimant purchased a new property for \$1.793 million.

- [13] R.C. (whose married name is now R.W.) worked as a nanny for the parties before they separated. Initially, upon separation, she travelled back and forth between the two homes, but ultimately resigned in 2012. Later, in September of that same year, Ms. C. returned to work for the respondent. Since she is a teacher's aide at the Children's school, on the days she worked, she would bring the Children home from school and stay with them until the respondent returned home from work, and a workout, typically around 6:30 p.m.
- [14] When the respondent started her new position as executive assistant, Ms. C. began attending the home at 7:00 a.m., so the respondent could work out before work; after work, the respondent and Ms. C. each took the Children to their different activities. Ms. C. was also responsible for some cleaning of the home, and some laundry.
- [15] Ms. C. earned \$800 cash every month to look after the Children. This amount increased to \$1,000 per month in 2014, and to \$1,200 per month in 2015. The respondent seeks reimbursement for 50% of the costs of Ms. C. because she submits they are childcare costs which the parties have agreed to share.
- [16] The claimant acknowledges the agreement to share childcare costs, and says he did know that Ms. C. was working for the respondent; however, he asserts he was never presented with a bill for her services until July 2015. In addition, he says he has not been provided with a breakdown as to what portion of her services was for the Children, what portion is related to caring for the respondent's household and what portion of her services can be attributed to Mr. B.'s daughter.
- [17] The respondent arranges all of the Children's extra-curricular activities and the claimant reimburses her for his 50% share of the expenses. Both parties assert that they have been responsible for the Children's medical and dental appointments.
- [18] It is the respondent's position, that there is a significant difference in the standard of living between the parties' homes. She asserts that the Children travel more with their father on holidays; the Children eat out more frequently with the claimant; they ski more frequently with the claimant; they each have their own bedroom, with an ensuite bathroom, at the home the claimant is renting; the claimant is intending to build a new home; and the Children have been asked for their room preferences in this new home.
- [19] The respondent asserts that if she had more child support she would be able to do more activities away from the home with the Children, including going to restaurants, going skiing, enjoying weekends away, purchasing more new clothes for them, attending sporting events and other similar activities.

- [20] The claimant asserts that the parties came to the terms of the Agreement based in part on the fact that they shared care of the Children approximately equally and because the monthly support amount set out in the Agreement well exceeded the level of expenses that they had budgeted for the Children during their marriage.
- [21] The claimant also asserts that at the time of separation, he used the majority of his share of the equity of the former family residence to pay lump sum spousal support to the respondent. He asserts that due to that payment, he now rents his home because he has yet to replenish the equity used for that payment.
- [22] The claimant admits that he recently purchased the new property, but he says the home is approximately 61 years old, and was financed entirely with debt. He used \$20,000 from his chequing account, borrowed \$80,000 and \$200,000 from his mother and sister, respectively; borrowed \$60,000 from a friend; has a loan for \$211,647.94 from his mortgage broker; and has a \$1,259,000 mortgage.
- [23] The claimant submitted the assessment roll for the respondent's home which indicates that she and her husband purchased it for \$1,655,000 in July 2013. He submits that the respondent contributed to the purchase of this home with money from the lump sum spousal support payment. He asserts that values in the area have gone up since that time. In addition, he asserts that she has done renovations to the home, which will also have increased its value.
- [24] The claimant points out that the Children were given some preferences with regard to their rooms during the respondent's renovations. He also asserts that there were/are renters in the basement of the respondent's home, and that she has not reported the income from this rental. The respondent admitted that the suite has been rented for the last 18 months at a rate between \$1,000 and \$1,500 paid in cash, per month. She has not provided an exact figure for the rental income she has received.
- [25] The claimant also says that he has requested the income information for Mr. B., but that he has not yet received it. However, based on the respondent's 2014 T1 General Income Tax Return, Mr. B.'s net income for 2014 was \$379,656.50.
- [26] The claimant submits that he questions whether the respondent's standard of living is below his own. He says that while he does travel with the Children, the trips are not extravagant and he asserts that the respondent takes the Children on multiple vacations as well. He also submits that the respondent and her husband have traveled first class on vacations without the Children. He says he does not intend to build a new home, but does plan to renovate the one he purchased if he is able to consummate a significant business deal, which he asserts will benefit both him and the respondent.

[27] Overall, the claimant agrees that there should not be a big disparity in the standard of living between the two homes; however, he asserts that he does not need to pay the full table amount of child support to achieve this; it is his view that a larger support payment is not necessitated by the best interests of the Children.

Analysis

Child Support

[28] Based on the Agreement, the claimant currently pays \$7,900 per month to the respondent for child support.

[29] The respondent seeks to vary this amount, and submits that the court should apply the set-off amount of the parties' Guideline support figures. She submits that there is a shortfall of \$130,000 between her current income and the expenses she incurs on behalf of herself and the children.

[30] Using the claimant's T-4 income of \$790,514 and allowing a deduction for his employment expenses of \$15,365, the Guideline support amount for the claimant is \$12,605. Using the respondent's employment income of \$58,593, her Guideline support amount is \$1,165. The set-off figure that the respondent seeks to receive based on these calculations, is \$11,440 per month.

[31] The respondent also points to s. 4 of the Guidelines which applies where the income of a spouse is over \$150,000. Section 4 follows:

4. Where the income of the spouse against whom a child support order is sought is over \$150,000, the amount of a child support order is
 - (a) the amount determined under section 3; or
 - (b) if the court considers that amount to be inappropriate,
 - (i) in respect of the first \$150,000 of the spouse's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates;
 - (ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children; and
 - (iii) the amount, if any, determined under section 7.

[32] The claimant and the respondent are in agreement as to the incomes to use in calculating Guideline support amounts, however, the claimant argues that the court has discretion under s. 9 of the Guidelines to vary the table amounts in shared custody situations. He submits that s. 9 is its own regime, and therefore there is no need to consider s. 4. In the alternative, he submits that he has met the burden under s. 4 of displacing the presumption

in favour of the Guidelines amount, such that he should not be obligated for the higher figure sought by the respondent. He submits that the figure reached in the Agreement represents an amount that fairly considers, and exceeds the reasonable expenses and needs of the Children.

[33] Section 9 reads as follows:

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
- (a) the amounts set out in the applicable tables for each of the spouses;
 - (b) the increased costs of shared custody arrangements; and
 - (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[34] The respondent submits that as per the discussion of the court in *C.L.L. v. S.W.J.*, 2013 BCSC 917 at paras. 22 to 29, there is a high burden on a payor parent to sustain a conclusion that the Guidelines amount is inappropriate.

[35] I agree with the respondent that this is the case for relief under s. 4 of the Guidelines, however, the claimant has urged that s. 9 is the sole provision for consideration in this case and he has not sought relief under s. 4 in his submissions, except in the alternative as a response to the respondent's submissions.

[36] In many cases where ss. 4 and 9 have both been relevant, the courts begin by recognizing that both provisions are merely examples of discretionary exemptions to the table amounts payable under the Guidelines: *L.M.R. v. J.F.R.*, 2010 BCSC 363 at para. 73; *Madrugá v. Madrugá*, 2015 BCSC 1605 at para. 47; and *R.A.C. v. V.L.C.*, 2009 BCSC 1417 at paras. 24 and 30.

[37] As a starting point to this issue, the Supreme Court of Canada in *Contino v. Leonelli-Contino*, 2005 SCC 63 made the following comments about s. 9 at para. 3:

These shared custodial arrangements required the application of an entirely different formula, one that is not designed with the same guiding principles. Guidelines amounts applicable to the former non-custodial parent or to the highest income earner in the case of a first application cannot therefore be considered to be presumptively applicable. Shared custody arrangements are not a simple variation of the general regime; they constitute by themselves a complete system.

[38] While the respondent correctly argued that s. 4 places a high burden on the payor parent to justify deviating from the presumption of the Guidelines amount, s. 9 requires its own set of considerations separate and apart from the factors normally considered when determining child support under the Guidelines, and independent of any presumptions.

- [39] The claimant has not put forward an argument in relation to s. 4, and I find it would not be appropriate to require him to rebut the presumptions in place under s. 4. Section 9 lists the mandatory factors to be considered for determination of child support in the shared custody situation this family has in place, and requires the court to consider a different regime. I must weigh the circumstances fully in relation to the factors laid out in s. 9(a) to (c).
- [40] In L.M.R. at para. 73, the court, applying Contino, held that the wording of s. 9 was "imperative", such that in cases of shared custody there is no presumption that Guideline amounts are payable. Specifically, the court referred to para. 24 of Contino where the Court said:

The court "must" determine the amount of child support in accordance with the three listed factors once the 40 percent threshold is met. There is no discretion as to when the section is to be applied: discretion exists only in relation to the quantification of child support (J.D. Payne and M.A. Payne, *Child Support Guidelines in Canada 2004* (2004), at p. 254).

- [41] In the case at bar the parties are in agreement that s. 9 applies due to the fact that custody is shared. Since there is no presumption under s. 9 I find there is no higher burden of proof on one party over the other. I must exercise my discretion based on the totality of the evidence before me and by weighing the s. 9 factors.
- [42] In completing this analysis, the Court in Contino emphasized at para. 39 that courts should not use a formulaic approach to the application of s. 9. The approach should be flexible and fair, acknowledging the overall situation of the parents and the needs of the children, such that the weight of each factor will vary with the facts of each case.

Section 9(a): the amounts set out in the applicable tables

- [43] According to Contino at para. 40, the first factor requires the court to consider the financial situation of both parents, as opposed to the sole income of the spouse against whom the order is sought. The most often applied approach to s. 9(a) is to use the simple set-off approach of s. 8 of the Guidelines: Contino at para. 49; L.M.R. at para. 76; Madruga at para. 52.
- [44] The respondent has provided the set-off figure as the full amount that she is seeking from the claimant; this figure is \$11,440 (as per the discussion above). I find this is the appropriate starting point for the s. 9 analysis. As the cases state, there is no presumption in favour of this amount; I must go on to consider s. 9(b) and (c) to determine if I should depart from this amount, and ultimately maintain payments at \$7,900 per month as the claimant submits.

Section 9(b): the increased costs of shared custody arrangements

[45] According to Contino, s. 9(b) does not refer merely to the expenses assumed by the payor parent as a result of the increase in access time from less than 40 percent to more than 40 percent. This is because orders under s. 9 are not often sought to reflect a change in custody arrangements, and also because table amounts do not assume that the payor parent pays for housing, food, or any other expense for the child. In Contino, at para. 52, the Court held that:

The Tables are based on the amount needed to provide a reasonable standard of living for a single custodial parent (see Formula for the Table of Amounts Contained in the Federal Child Support Guidelines: A Technical Report, at p. 2). This Court cannot be blind to this reality and must simply conclude that s. 9(b) recognizes that the total cost of raising children in shared custody situations may be greater than in situations where there is sole custody [citations omitted]. Consequently, all of the payor parent's costs should be considered under s. 9(b) it means that the court will generally be called upon to examine the budgets and actual expenditures of both parents in addressing the needs of the children and to determine whether shared custody has in effect resulted in increased costs globally.

[46] In applying these principles the Court in Contino considered whether the evidence showed a decrease in the mother's costs as a result of the shared custody arrangement, and similarly, whether there had been an increase to the father's expenses. Since there is no change in the custody arrangement between these parties I must look instead to the relative expenses incurred by the parties.

[47] The respondent has submitted her support payments should be increased from the amount stipulated in the Agreement because there is a \$130,000 annual shortfall between her income and the expenses she incurred on her and the Children's behalf.

[48] However, the claimant submits that when the \$7,900 was agreed upon (although without prejudice) at the time the Agreement was entered into, the full needs and reasonable expenses of the Children were taken into consideration. He also said that because this amount was more than enough to cover their costs, they agreed that the respondent would be primarily responsible for buying the Children's clothing.

[49] He submits that the needs of the Children do not require an increase in support over and above what was agreed to in the Agreement. He also submits that in calculating the shortfall between her income and expenses, the respondent failed to factor in any income in respect of spousal support that would be coming to her on a monthly basis, but for the lump sum award, and that the expenses she listed do not reflect his 50% contribution toward special expenses.

[50] In looking at the figures submitted by the parties, it appears that the respondent's expenses listed do not reflect the 50% contributed by the claimant for special and extraordinary expenses.

- [51] Aside from this, when reviewing the expense figures presented by the parties, I find that the \$7,900 sufficiently covers the expenses that can be reasonably attributable to the Children, especially in light of the fact that the highest expense, which relates to the Children, does not credit the claimant's 50% contribution to the special expenses listed. For example, the respondent listed as part of the \$4,126.30 claimed for monthly expenses related to the Children, \$829.84 for activities and lessons, \$550 for school fees and supplies, and \$1,200 for childcare (including day camps), to name a few, all of which are considered to be special and extraordinary expenses as per the Agreement.
- [52] In short, the respondent pays only 50% of these and similar amounts.
- [53] To summarize the passage from Contino above, the analysis it prescribes means that the court will generally be called upon to examine the budgets and actual expenditures of both parents in addressing the needs of the children. I find that this factor supports the position of the claimant because the respondent is able to meet the reasonable needs of the Children with the support amount currently paid at \$7,900. That this is the case becomes even clearer if a figure is assigned allocating monthly spousal support to reflect the lump sum amount paid to the respondent.

Section 9(c): the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought

- [54] In Contino, at para. 68, the Court said the following about the application of s. 9(c):

It will be important to keep in mind the objectives of the Guidelines mentioned earlier, requiring a fair standard of support for the child and fair contributions from both parents. The court will be especially concerned here with the standard of living of the child in each household and the ability of each parent to absorb the costs required to maintain the appropriate standard of living in the circumstances.

- [55] At para. 69, the Court went on to say that some factors to consider in this analysis include the ability of each parent to bear the increased costs of shared custody (including consideration of assets, liabilities, income levels and disparities) and the standard of living for the children in each household.
- [56] The parties are in disagreement about the comparative living standards between their homes. The respondent submits that the disparity warrants the set-off support amount, while the claimant submits that there is no real disparity in the standards of living at each home.
- [57] The bulk of the respondent's argument centres on wanting to be able to enjoy more trips, excursions and meals outside the home with the Children. She also points to the fact that the claimant is intending to build or renovate a home in the near future.

- [58] The claimant claims that the respondent is currently able to enjoy many activities with the Children. Further, he submits that none of the respondent's submissions reflects her husband's income, which increases their household income by \$379,656, according to her 2014 income tax return. Additionally, he submits that she has not reported the rental income from the basement suite, which is providing her with an additional tax-free income of between \$1,000 and \$1,500 per month.
- [59] The respondent admitted that the suite has been rented for the past 18 months, and that she did not claim it or include it in her Form F8. The claimant submits that both of these factors should be considered.
- [60] At this stage of the analysis, courts have considered the incomes of spouses by looking at the household income that is available to support the children: *Franke v. Franke*, 2008 BCSC 1145 at paras. 59-60; *M.D.H. v. M.N.H.*, 2013 BCSC 248 at para. 40. Thus, it is clear that Mr. B.'s income is relevant for the purposes of assessing s. 9(c).
- [61] In determining how to consider the rental income from the basement suite, I find the cases of *Ortynski v. Ortynski*, 2014 BCSC 73 and *J.L.B. v. M.D.O.*, 2012 BCSC 1107 to be of assistance.
- [62] In *Ortynski*, the court was tasked with imputing incomes to the parties in the proceeding, in order to come up with a starting point for child support payments. One of the matters addressed in the decision was the existence of various unreported cash transactions done through the business. In grappling with this issue, the court rejected the assertion that all cash transactions were properly recorded in the books of account and so at para. 40 it imputed an amount to Mr. Ortynski to reflect the transactions.
- [63] In *J.L.B.*, unreported rental income from a lease was considered under s. 9(c). The court acknowledged that while the income should have been reported, the claimant would have been permitted to write off some expenses associated with the rental. However, it held at para. 37 that the rent receipts were relevant for the calculation of income for shared custody support calculations and to the apportionment of special and extraordinary expenses. Further, at para. 45 the court held that the rental revenue was relevant because the court "can consider all the financial resources of the claimant that . . . [were not] included in the calculation of her Guideline income" under s. 9(c).
- [64] Thus, it is also relevant to consider that the rental income from the suite is extra income that is available to the respondent.
- [65] To complete the s. 9(c) analysis, I find that some of the principles for consideration under s. 4 can also be helpful. Though the s. 9 analysis is distinct from an analysis under s. 4, as the court stated in *S.R.M. v. N.G.T.M.*, 2014 BCSC 442 at para. 116, the main consideration under both provisions is the "conditions, means, needs and other circumstances" of the children.

[66] In the leading case on s. 4, *Francis v. Baker*, [1999] 3 S.C.R. 250, the Court enumerated a helpful principle for consideration of s. 9. In *R.A.C.* at para. 34, the court summarized this principle from *Francis* as follows:

In situations where the table amount is so excessive in comparison to the reasonable needs of the children that support under the table is no longer just child support but a de facto wealth transfer or spousal support, the table amount should be reduced. This is in keeping with s. 26.1(2) of the Divorce Act which dictates that maintenance of children, rather than household equalization or spousal support, is the object of support payments.

[67] In *M.D.H.*, at para. 61, under s. 9(c) the court considered a de facto wealth transfer to completely terminate ongoing child support, because when the income of the mother's new husband was considered it was found that the child enjoyed a higher standard of living with the mother than with the father, such that requiring continued child support would effectively be a transfer of income that would exacerbate the unequal standard of living that the child experienced in each home. Thus, the court departed from the Guidelines and relieved the father of any ongoing child support obligations, even though his income was higher than the mother's.

[68] Given the high level of incomes in each household, I find this principle to be worthy of consideration.

[69] In assessing all of the circumstances affecting the analysis under s. 9(c), I find that the Children are well cared for in the homes of both of their parents. While there may be some difference in household incomes, I find that the Children enjoy comfortable homes, vacations, outings and high standards of living at each of their parent's homes. While the claimant may be considering renovations in the future, there has been evidence that the respondent herself, recently completed renovations on her home.

[70] Considering the analysis completed under s. 9(b), where I found that the \$7,900 per month that is currently paid is sufficient to meet the reasonable needs and expenses of the Children, I find that any amount above this would effectively be a transfer of wealth as between the two parties, or additional spousal support. To reiterate what the Court said in *Francis*, the goal of support payments is for maintenance of the Children and not for household equalization. For these reasons, I find justification in departing from the set-off amount. I find that \$7,900 is an appropriate amount of child support and should continue to be paid by the claimant to the respondent each month.

Childcare Expenses

[71] The respondent submits that the claimant should pay 50% of the childcare expenses for the years from 2012 to 2015. This amount, she submits, is \$20,284.80.

- [72] The claimant acknowledges his obligation under the Agreement to pay for 50% of the mutually agreed upon childcare expenses that are required to permit either party to work. However, the claimant submits that a portion of the services provided to the respondent included cleaning and caring for her home, and were not necessitated by the respondent's work schedule. He submits that no particulars have been presented to demonstrate what portion of these expenses relates to childcare during work hours. He submits that he will contribute to these expenses when particulars have been provided.
- [73] The respondent has given evidence that Ms. C. arrives early enough in the morning so that the respondent can work out before she goes to work; Ms. C. helps around the house, although she submits she mostly cleans up after the Children and helps to launder their school uniforms. She has said on occasion Ms. C. will come on weekends to help the Children clean their bathrooms, but when this happens her assistance is unpaid.
- [74] I agree with the respondent that she is entitled, as per the Agreement, to 50% of the childcare expenses required to permit her to work. However, I find based on the evidence that not all of Ms. C.'s time can be attributed to childcare during work hours. As noted, the respondent admitted that Ms. C. comes early enough to permit her to work out, and I find that some of the housework done is for the benefit of the household and not solely attributable to the Children.
- [75] I have not been provided with a breakdown of the hours worked by Ms. C., nor whether any of this time can be attributable to the care of Mr. B.'s daughter. I find that the claimant should be responsible only for 50% of the portion of those costs that relate to the Children.
- [76] As such, I order the respondent to provide the claimant with particulars and a breakdown of the monthly costs the respondent incurred as a result of Ms. C.'s services. This breakdown should highlight the childcare services she provided for the Children, as opposed to those services that might be attributable to Mr. B.'s daughter or the respondent's household generally.
- [77] Once these particulars have been provided, the claimant is to pay to the respondent 50% of the amount that is attributable to childcare for the Children, for his share of the childcare costs.
- [78] Since the claimant is willing to pay 50% of the portion attributable to the Children, the parties should be able to reach an agreement when this information is shared. If the parties are unable to reach agreement on their own, they may apply to the court for a determination.

Section 7 Expenses

- [79] Under the current Agreement, the claimant pays 50% of the special and extraordinary expenses for the Children. The respondent is seeking to vary this figure, such that the claimant will be responsible for 84% of the special and extraordinary expenses from September 1, 2015 and ongoing.
- [80] Both parties have submitted calculations showing that the split based on apportioning the parties' incomes is 83.6% to 16.4%; since there appears to be agreement on this figure I grant the respondent's request.
- [81] The claimant will pay 84% of the special and extraordinary expenses from September 1, 2015 forward.

Tax Returns

- [82] The respondent seeks an order that the claimant delivers to the respondent his T-1 tax return and attached documents no later than April 30 of each year so long as any child remains a child of the marriage.
- [83] I order that both parties exchange these documents by April 30 of each year that any child remains a child of the marriage.

Conclusion

- [84] The respondent's application for increased child support is dismissed. The claimant is to continue to pay child support to the respondent in the amount of \$7,900 per month.
- [85] The claimant is responsible for 50% of the childcare costs for the Children; however, he is entitled to a breakdown of the services being provided by Ms. C.
- [86] As of September 1, 2015 forward, the claimant is responsible for 84% of the special and extraordinary expenses for the Children.
- [87] Each party is responsible for delivering their tax returns and attached documents to one another by April 30 of each year, so long as there remains a child of the marriage.
- [88] The claimant was successful on the major issue in this application, and is therefore entitled to his costs.

"L.D. Russell J."

The Honourable Madam Justice Russell

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