

CANADA / JUDGMENT

Bacso v. Vorobyova

2024 BCSC 1882

COURT

Supreme Court of British Columbia

DECIDED

18 September 2024

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2024 BCSC 1882 Bacso v. Vorobyova

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bacso v. Vorobyova,

2024 BCSC 1882

Date: 20240918

Docket: E136123

Registry: Kelowna

Between:

Mihaly Bacso

Claimant

And

Iryna Vorobyova and Maryna Vorobyova

Respondents

Before: The Honourable Madam Justice L. Hamilton

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant

appearing by videoconference:

J.C. Chandler

Counsel for the Respondent Iryna Vorobyova, appearing by videoconference:

B. Coyne

Place and Date of Trial/Hearing:

Kelowna, B.C.

August 22, 23,

September 12, 2024

Place and Date of Judgment:

Kelowna, B.C.

September 18, 2024

- [1] THE COURT (videoconference): Throughout these reasons, I will refer to the claimant as Mr. B. and the respondent as Ms. V. as shorthand for their names. I mean no disrespect in doing so.
- [2] Cross applications were brought before me on a family law file on August 22 and 23, 2024. Subsequently, counsel requested a further brief appearance to provide me with updated corrected DivorceMate SSAG calculations to ensure Mr. B.'s income was properly reflected as provincial Persons With Disability Funding as opposed to another form of disability income.
- [3] Mr. B., by way of his application filed June 27, 2024, seeks increased parenting time until it is equal parenting time as well as retroactive and ongoing interim spousal support from Ms. V. Ms. V., by way of her applications filed August 12, 2024, and July 26, 2024, seeks retroactive and ongoing child support for the parties' three children, a s. 91 asset restraining order, document production, and a fine pursuant to s. 30 of the FLA for late and inaccurate disclosure. She also sought orders relating to the sale of the former family residence on Broadview in Kelowna (the "Broadview Property") but upon further reflection chose not to proceed with that portion of her application. As such, paragraphs 1 through 5 of Ms. V.'s application filed August 12, 2024, are hereby adjourned generally.

Background

- [4] The parties married in November 2005. They have three children of their marriage, namely M. who turns 17 in a couple months, D. who is 15 and has autism spectrum disorder, and N. who is 10. Ms. V. says that the issue of divorce arose in 2019 and the parties separated in August of 2021. Mr. B. says they separated in January 2022 when Ms. V. moved out of the Broadview Property. The parties moved from Ontario to Kelowna, B.C., in around 2019. The children have lived with Ms. V. since separation. Mr. B. started the action in January 2023. Ms. V. filed a response and counterclaim in June 2023.

- [5] Mr. B. is 53 and receives B.C. government funding for Persons With Disability as a result of suffering two strokes, one in 2019 before separation and one on March 25, 2023, after separation and after these proceedings commenced, which stroke caused him to be hospitalized for three months. Mr. B.'s income has been nominal in the past several years and is currently \$21,108 from Persons With Disability funding which is a form of social assistance. He applied two months ago for CPP disability income, but that application is still pending. While initially there was some confusion, I am told by his counsel that any income he receives from other sources such as CPP or spousal support would reduce what he receives from provincial PWD funding. I am told by Ms. V.'s counsel that, subject to the claw-back issue, the PWD funding permits recipients to work and imposes a requirement to notify a funder if any employment income is received. Mr. B.'s evidence is that he is not currently able to work due to some ongoing symptoms as a result of his stroke including trouble speaking and depression which is consistent with the hospital discharge sheet after the three-month stay in the hospital, although at that time he needed assistance for even driving.
- [6] Ms. V. is a senior data analyst with Valens in Kelowna. In 2024, she will earn approximately \$89,000 including her base salary and discretionary bonus. In 2023, she earned approximately \$85,000 and, in 2022, she earned approximately \$80,000. Her bonus from Valens is based, at least in part, on company performance and is paid in the year following. When the parties lived in Ontario, her income was less, in the \$60,000 to \$70,000 range.
- [7] There has been no trial set in the proceedings yet. To their credit, the parties wish to avoid the costs of trial if possible. The issues in the proceedings include:
- (1) child support including issues regarding s. 7 expenses including who paid what and what was a proper s. 7 expense;
 - (2) Mr. B.'s claims for spousal support entitlement and quantum are at issue;
 - (3) a sub-issue of the support issues is the determination of the parties' incomes; and
 - (4) property division which is now complicated somewhat by the parties' post-separation spending. Both parties are going to need to account to each other for their spending of family property.
- [8] The parties owned a family residence in Ontario which was sold before they relocated to Kelowna. They received sale proceeds of nearly \$1.7 million which were deposited into Ms. V.'s account. The parties did not have a joint account. Ms. V. will have to account for these proceeds of sale which were subsequently used. While there are significant gaps in the materials before me, I understand that the proceeds were used for:
- (1) purchasing the Broadview Property in Kelowna for nearly \$500,000 in which property Mr. B. resides; it has been appraised at \$630,000;

- (2) nearly \$50,000 on a combination of moving costs, some travel and expenses, and on the family pet;
- (3) \$161,000 for investment in B.C. placed in a numbered company in Mr. B.'s control, the property has now been sold and Mr. B. has been using the proceeds to meet his expenses, (the "Investment Property Proceeds");
- (4) approximately \$100,000 for new vehicles for each of the parties;
- (5) then after separation, Ms. V. used approximately \$770,000 to purchase a townhome for her and the children to live in (the "New Townhome";
- (6) as well, after separation, Ms. V. also provided her mother with \$120,000 of the proceeds plus an additional \$30,000 from her line of credit to purchase a home for over \$400,000 for her mother to reside in (the "Hoyton Property"); Ms. V. and her mother are the registered owners of the Hoyton Property and the mother is also a respondent in these proceedings; Ms. V. maintains that she lent the monies to her mother and is on title for security for the loan.

Parenting Issues

- [9] Both parties are guardians pursuant to the Family Law Act, S.B.C., c. 25 [FLA]. In terms of parenting responsibilities, Ms. V. applied for sole parenting responsibilities. Mr. B. proposes that the parties shall share parenting responsibilities pursuant to the Joyce Model such that the parties shall discuss, which can include by email, any significant issues regarding the children and, if they cannot agree despite their best efforts, Ms. V. will have the final say subject to Mr. B.'s ability to apply to court pursuant to s. 49 of the FLA. I am of the view that Mr. B.'s proposal is in the best interests of the children. It strikes the right balance in the case of keeping both parents involved, but provides a tiebreaker, so to speak, in case they do not agree. Ms. V. has been more involved than Mr. B. in terms of organizing activities especially for D. who, as mentioned, has Autism Spectrum Disorder.
- [10] In terms of parenting time, the children have been residing primarily with their mother since separation. The parties consented to an interim without-prejudice order at the JCC on October 26, 2023, (the "JCC Order"). The JCC Order provides Mr. B. with interim without-prejudice parenting time on Sundays from 10:00 a.m. until 6:00 p.m., but no overnights. Notably, the JCC was a few months after Mr. B.'s hospitalization and he still needed help with driving.
- [11] Mr. B. says he has exercised his parenting time regularly and Ms. V. occasionally asked him to look after the children for a few days at a time when she goes away. For example, she asked him if he was planning to take the children for the February long weekend in 2023. She also asked Mr. B. to take the children from April 12 to 19, 2023. After the second stroke, she has also asked Mr. B. to take care of the children, for example, from March 24 to 31, 2024, and April 1 through 7, 2024. Ms. V.'s position is that, regardless of Mr. B. having had

overnights when she is away, she does not agree to increase his parenting time at this time until a Views of the Child report is done. She says the eldest and youngest children have expressed some concern about their stays at the father's home. She also expresses what I would consider relatively minor concerns that would not, in my view, prevent Mr. B. from having increased parenting time.

- [12] Mr. B. is opposed to a Views of the Child report because he considers it a delay tactic and, also because he says the children's actual wishes cannot fairly be ascertained when they spend such little time with him. He would be more open to a full s. 211 report except for such reports being cost-prohibitive. He does not want to wait for a report to have more time with the children. He says that if I increase his parenting time as long as Ms. V. encourages the children to go like she does when she goes away and wants him to "babysit," his word, they are good children and will go willingly and enjoy their time with him.
- [13] In my view, it is in the best interests of the children to spend more time with their father including overnights. I do not view it necessary to obtain a report first. I do not think it is in their best interests to move to such a drastic change such as equal parenting time sharing at this time or even in two or three months without having any input from the children or assessing how the overnights go. Increasing Mr. B.'s time with the children is one thing, but making it a 50-50 parenting regime is a rather drastic change. Ms. V. always had care of the children during the school week other than those short trips which is also when many of the activities take place. I am concerned that it would be disruptive to the children and, in particular, D. to disrupt their current school week routines.
- [14] As such, Mr. B. will have interim parenting time with the children as follows: Phase 1, which will continue for six weeks, it will be every other weekend on Sunday from 10:00 a.m. to 6:00 p.m. and every other weekend, from Saturday at 10:00 a.m. until Sunday at 6:00 p.m., followed by Phase 2.
- [15] Phase 2 will be also six weeks. In Phase 2, Mr. B. will have two weekends out of every three weekends from Friday at 6:00 p.m. until Sunday at 6:00 p.m. and the option to have dinner with the children on either a Wednesday, Thursday, or Friday before the weekend that is not his parenting time, with such weeknight to be chosen by the parties so as to minimize interfering with the children's regular activities, followed by Phase 3 which will continue on an interim basis indefinitely pending further order.
- [16] Phase 3 involves Mr. B. having two weekends out of every three weekends from Friday at 6:00 p.m. until Monday morning at school or until 6:00 p.m. if the Monday is a non-instructional day, and the option to have dinner with the children on a Wednesday, Thursday, or Friday before the weekend that is not his parenting time, with such weeknight to be chosen by the parties so as to minimize interfering with the children's regular activities.

- [17] In addition, the regular parenting schedule will be suspended to permit the parties to each have one-half of the Winter and Spring breaks from school and the parties to each have at least three weeks of holiday time with the children during the summer. If Mr. B. and Ms. V. cannot agree on a final parenting time arrangement, in my view, they should set a trial date and decide whether a full s. 211 report on parenting time or a Views of the Children report would be helpful. These reports can be expensive, as noted by the parties, but if either of these types of reports would assist the parties settle final parenting issues without a trial, a report is a more cost-effective route than a trial. Such reports are often helpful for the trial judge in the event a trial is needed.
- [18] In any event, I am adjourning generally Ms. V.'s application for a Views of the Children report. I agree with Mr. B. that for such a report to be most helpful, the parties could agree to such report after Phase 3 is in place. Alternatively, the parties may wish to pursue a more fulsome report if needed and, if so, I would not want to see the children being interviewed for two reports. That would not be in their best interests.

Section 91 Asset Restraining Order

- [19] Ms. V. seeks a restraining order preventing Mr. B. from disposing of any assets in issue in the proceedings including the balance of the sale proceeds of the Investment Property Proceeds. The affidavit materials contained evidence that Mr. B. has used approximately \$90,000 of the \$176,000 of proceeds towards his own expenses, including living expenses and legal fees. I understand that, since the affidavits were filed, more has been spent by Mr. B. Mr. B.'s position is that an asset restraining order is unnecessary in order to protect Ms. V.'s interest in the proceedings.

- [20] Section 91(1) of the FLA states:

On application by a spouse, the Supreme Court must make an order restraining the other spouse from disposing of any property at issue under this Part or Part 6 [Pension Division] until or unless the other spouse establishes that a claim made under this Part or Part 6 will not be defeated or adversely affected by the disposal of the property.

[Emphasis added.]

- [21] Hence, the onus is on Mr. B. to demonstrate that Ms. V.'s property claims will not be defeated or adversely affected if I do not make a restraining order. Here, I am satisfied that Mr. B. has discharged the onus that a restraining order is not necessary.
- [22] The presumption of the FLA is that family property is divided equally unless that would be significantly unfair. Here, the evidence is that the proceeds of sale of the parties' former family home in Ontario formed the vast majority of the family property. Those proceeds were deposited in Ms. V.'s account and largely controlled by her. The proceeds that were not spent on vehicles and family expenses were used to purchase real property, namely, the Broadview Property, the Investment Property, the New Townhome, and the Hoyton

Property.

- [23] The Investment Property was sold for \$176,000. The remaining properties purchased are still owned. The Broadview Property is appraised at \$630,000, is in joint names, and the parties can or have already filed CPLs against the property to prevent disposal or encumbrances. Ms. V's interest in the Broadview Property is therefore already protected. So is Mr. B's. So is the New Townhome which is worth \$770,000 which is in Ms. V's sole name. As well, the \$150,000 she provided her mother, i.e., \$120,000 from the proceeds of the former family home and the additional \$30,000 from her line of credit, is by Ms. V's own submissions secured as a loan as she is on title.
- [24] In other words, there is over \$1.5 million of real property that is already secured. This is likely approximately 80 percent of the family property, by my rough calculations. There is no need to secure the remaining balance of the \$176,000. Further, it strikes me as extremely one-sided to essentially permit one party, Ms. V., to use what amounts to approximately \$900,000 unilaterally post-separation to purchase her own home and lend her mother monies to purchase a home and not permit Mr. B. to use any funds.
- [25] Ms. V's application for an asset restraining order pursuant to s. 91 of the FLA is dismissed.

Support - Parties' Incomes for Child and Spousal Support Purposes

- [26] Now, I will turn to child and spousal support issues. First, I will address the parties' income for the purposes of support calculations. I find that Ms. V's income is currently \$89,186 which is also her anticipated income for the whole of 2024.
- [27] Mr. B's Guideline income is a little bit trickier to determine. Ms. V. says that I should impute income of \$35,000 to Mr. B. because he should be working currently or at least encouraged to become self-sufficient. She says that, if Mr. B. was permanently disabled from working, he would have applied for CPP disability income long ago as opposed to PWD funding which contemplates that recipients may return to work. Mr. B.'s evidence is that he is currently disabled from working. He only applied for CPP disability a couple of months ago. So the application is still pending. He did qualify for PWD funding due to his disability.
- [28] It is clear to me that Mr. B. suffered major consequences as a result of his second stroke. He was in the hospital for a long time and, when he was discharged, he had aphasia, depression, and initially could not even drive. His evidence, which I accept, is that he still suffers from aphasia and depression and says he is unable to work currently. Until it is known whether he is successful in his application for CPP, the best evidence of his income, in my view, is to use the \$21,108 he receives from PWD funding. In fact, his income in the past two years has been well under \$20,000. It is difficult to draw conclusions on affidavit evidence when it has not been tested under cross-examination. On the evidence before me, I find it unlikely that Mr. B. is capable of employment in the near future.

Child Support

- [29] The parenting schedule I have ordered is not a shared parenting schedule pursuant to the Child Support Guidelines. As such, Mr. B. must pay child support to Ms. V. for three children based on the income of \$21,108. As such, Mr. B. will pay Ms. V. \$418 per month child support for the three children commencing August 1, 2024, and continuing pending further order or written agreement of the parties.

Spousal Support

- [30] Ms. V. opposes Mr. B.'s entitlement to spousal support. An income difference alone is not enough to establish entitlement to spousal support. Spousal support must be based on at least one of three grounds: (1) contractual; (2) compensatory; or (3) needs based or non-compensatory grounds. In the alternative, Ms. V. submits that if I find entitlement to support, she seeks that I minimize any award of spousal support.
- [31] Counsel for both parties provided several different SSAG DivorceMate calculations. One fundamental difference in their respective calculations is the formulas they say apply to the case.
- [32] I have considered the objectives in s. 15.2(6) of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.). Self-sufficiency is only one factor considered and it is only a goal "in so far as practicable." In light of the evidence before me, I am satisfied that Mr. B. has established a prima facie case for entitlement to interim spousal support based on non-compensatory grounds. Mr. B. is currently unable to work and is unable to meet his reasonable needs within his PWD funding alone. He has suffered financially as a result of the breakdown of the marriage as he has lost the benefit of Ms. V.'s income in the household or the sharing of family expenses. Ms. V., on the other hand, is doing relatively well financially. Her income continues to be stable and, in fact, grows. She is earning more income since separation and since the parties' move from Ontario.
- [33] Mr. B.'s counsel provided me with an updated corrected SSAG calculation at the brief appearance on September 12, 2024, which corrected Mr. B.'s income to input that it was from PWD funding/social assistance as opposed to another form of disability income such as disability insurance or CPP disability income. This increases the numbers in the range of spousal support produced because any amount of spousal support received correspondently reduces the PWD funding. That is not the case with other forms of disability funding.
- [34] The new range provided by Mr. B.'s counsel is \$2,998 at the low end, roughly \$3,200 at the midrange, and nearly \$3,600 per month spousal support at the high end of the range using the custodial payor formula which assumes that Mr. B. pays Ms. V. \$418 per month for child support as I have ordered. Ms. V.'s counsel does not assume claw-back of PWD funding on receipt of spousal support and uses a different formula which produces a lower range of spousal support. He also submitted that Mr. B.'s counsel's numbers are higher than even the amount produced if the parties had the same incomes, but had no children, and here, Ms. V.

is being asked to pay more than that on her income but has three children to cover expenses for.

[35] In my view, the custodial parent payor formula is the correct formula to use and child support payable by Mr. B. is not to be overridden because Ms. V. seeks child support. Therefore, the SSAG range is \$2,998 to \$3,599. Normally, I would look to an amount towards the low to midrange given the grounds for support are non-compensatory grounds. However, in this case, there are some unique rather exceptional circumstances that lead me to award spousal support outside and below the range produced by the SSAG. These circumstances include the following:

- (1) Ms. V. pays substantial expenses for the children, some of which may be determined to be s. 7 expenses and some of which are not. For example, Ms. V. indicated that she spent \$22,000 on such expenses since January 2022 which, if she is correct, I estimate to being about \$1,200 per month for expenses for the children that are above room and board. These expenses are not taken into account in the calculations produced as a cashflow factor or s. 7 expenses or otherwise. In fact, there is not enough information, in my view, to actually do the refined calculations at this point, taking these expenses into account or whichever of these expenses are found to be legitimate.
- (2) Mr. B. has and will continue to have access to the Investment Property proceeds to help meet his needs as I have not restrained him from doing so.
- (3) Mr. B. does not have a mortgage or rent to pay, yet his monthly expenses are in excess of \$7,000 net per month for one person which seems inflated compared to his first financial statement or the marital standard of living. While reasonable needs are not bare-bones needs, they should bear some resemblance to the historical marital standard of living. Ms. V.'s income until recent years was only \$60,000 to \$70,000 when the parties lived in Ontario.
- (4) Mr. B. sought \$1,800 per month spousal support in his application. This figure was obviously based on his not realizing that his PWD funding would be clawed back by spousal support. However, had he applied for CPP disability in a more timely fashion, he may have been successful and already receiving CPP disability income instead of PWD funding and the CPP income would not have been clawed back for the receipt of spousal support, meaning the spousal support numbers in the SSAG calculations would likely be lower.

[36] Considering all the circumstances, I order Ms. V. to pay Mr. B. spousal support in the amount of \$1,800 per month commencing August 1, 2024, and continuing pending written agreement between the parties or court order.

Section 7 Expenses

[37] Commencing August 1, 2024, the parties will share s. 7 expenses for the children in proportion to income provided that they agree to such expenses in advance in writing or the court approves of the expenses.

Retroactive Support Claims

- [38] I am adjourning generally each of the parties' retroactive support claims including retroactive s. 7 expense claims. These claims cannot properly be addressed at this time, in my view, on an interim basis for several reasons including:
- (1) there is a dispute as to what contributions Mr. B. already made towards child support and s. 7 expenses which I cannot decide on the basis of the materials before me;
 - (2) there is no evidence before me as to whether the parties agreed to or whether the children have historically participated in certain activities and other costs being claimed as retroactive s. 7's by Ms. V., which evidence is necessary in the assessment of the reasonableness or necessity of certain categories of the s. 7 expenses she claims;
 - (3) there is no evidence before me regarding whether there is access to autism funding to cover some of the s. 7 expenses for D.;
 - (4) Mr. B.'s CPP application is still pending so it is unknown whether he will receive retroactive funds if the application is successful, for example; and
 - (5) Mr. B.'s entitlement to spousal support will continue to be, no doubt, a live issue for trial.
- [39] These retroactive claims are best addressed in a final resolution or by agreement or at trial with further information.

Consent Items

- [40] Counsel indicated their consent as to the relief claimed in the following paragraphs of the application filed August 12, 2024: paragraphs 10, 11, 17, and 18. So those items will go by consent.

Disclosure and Fine

- [41] Ms. V. applied for production of documents by way of her application filed July 26, 2024. Much of the documents sought were produced when there was notification of an impending application. At the hearing, there were submissions made regarding the remaining documents. I will use the same paragraph numbers used in the application filed July 26, 2024, to address the remaining documents.
- [42] Item 1(a): Mr. B. does not possess his original T1 General Income Tax Returns or their attachments. He agreed to produce assessment summaries which are available through the CRA website. By consent, Mr. B. will sign an authorization that H&R Block, TurboTax, and CRA produce income information to Ms. V.'s counsel. Mr. B. offered to do so and, in my view, that is sufficient to put to rest item 1(a).

- [43] Item 1(i): Mr. B. has produced the general ledger for his numbered company which should show the shareholders' loan accounts and balances. The company existed as a holding company for the Investment Property only. The Investment Property has now been sold. The GL is sufficient, in my view.
- [44] Item 1(j) Disability Documents: in addition to the PWD documents already produced, Mr. B. will produce all records relating to his CPP disability income if and when he receives CPP disability benefits.
- [45] Item 1(m): Ms. V. seeks details regarding how Mr. B. was paid and where those funds were placed. Mr. B. has indicated in his affidavit materials that he was a contractor. The rule Ms. V. relies on in the Supreme Court Family Rules, B.C. Reg. 169/2009, addresses production of documents and does not require Mr. B. to create documents. Mr. B. has indicated his willingness and, as such, I will order Mr. B. to sign an authorization authorizing Ms. V.'s counsel to seek records directly from Step Five with whom Mr. B. contracted. That is sufficient, in my view.
- [46] The balance of the relief in Ms. V.'s application of June 26, 2024, is dismissed.
- [47] Now, I will address the fine. I decline to impose a fine pursuant to s. 213(d) of the FLA or otherwise. While there was a delay in disclosure by Mr. B. in 2023 and into 2024, there was a flurry of disclosure leading up to the application being made. Furthermore, Mr. B. suffered cognitive impairment due to a stroke in 2023 which no doubt affected his ability to gather documents. As well, there were repeated requests made by Mr. B.'s counsel's paralegal to try to clarify what was, in fact, thought to be missing and that correspondence was largely substantially unanswered.

Costs

- [48] Each party shall bear their own costs of these applications.
- [49] Unless I have forgotten anything, those are my reasons.
- [50] CNSL J. CHANDLER: I --
- [51] THE COURT: I should --
- [52] CNSL J. CHANDLER: May I just read back what I heard you say about the parenting schedule?
- [53] THE COURT: Yes, let me bring that up again.
- [54] CNSL J. CHANDLER: Because I think that's -- I mean that was my client's biggest concern, so I just want to make sure I got the notes right.
- [55] THE COURT: I am just heading to that part, yes.

- [56] CNSL J. CHANDLER: Okay, Phase 1 for six weeks, it is every other weekend from Sunday at 10:00 a.m. to 6:00 p.m. and then every other weekend from 10:00 a.m. to Sunday at -- from Saturday at 10:00 to Sunday at 6:00 p.m. --
- [57] THE COURT: Yes.
- [58] CNSL J. CHANDLER: -- and then after that six weeks to Phase 2, it is two weekends out of every three weekends from Friday at 6:00 to Sunday at 6:00 p.m. and if it is not a weekend that Mr. B. is going to have the kids, he has the option to have dinner on Wednesday before the weekend that's not his weekend and that's --
- [59] THE COURT: Yes.
- [60] CNSL J. CHANDLER: -- [indiscernible/9:34:09] and then Phase 3, this is the indefinite one, it's two weekends out of every three from Friday morning at school --
- [61] THE COURT: From Friday at 6:00 p.m. in Phase 3 --
- [62] CNSL J. CHANDLER: Okay, from Friday at 6:00 to --
- [63] THE COURT: -- and --
- [64] CNSL J. CHANDLER: -- Monday morning at school. So he's going to do the drop-off at school on Monday or, if it's not an instructional day, he gets the kids until 6:00 p.m. and then he has the option to have dinner Wednesday, Thursday, or Friday on a weeknight for dinner that is before a weekend that is not his parenting time weekend?
- [65] THE COURT: Yes, the thought being that where he does not have weekend time, it would be a long time between the two weekends for him not -- for the children not to see him. So the idea being for him to see -- have the option to see them for a dinner and I have not selected the date -- a particular date. I am hoping that the parties will pick a particular -- unless they want it to change regularly, my suggestion would be for them to look at what option would be least disruptive for the children, particularly considering their activities during the week, and pick whether it be a Wednesday, Thursday, or Friday for the --
- [66] CNSL J. CHANDLER: Yes.
- [67] THE COURT: -- for that dinner.
- [68] CNSL J. CHANDLER: Thank you so much.
- [69] THE COURT: All right, anything else?
- [70] CNSL B. COYNE: Yeah, Justice, just clarity on the production of the CPP disability and I just want to -- I just want to be particularly clear that we're entitled to that application because that -- that emerged after the filing of some of these materials and, when I heard your reasons at 1(j), that that point, we are obviously seeking production of the Ministry of Social Development materials, but I know -- or the hearing delved into the CPP. So I don't want to limit it to what funds -- I think I heard you say "funds" that may accrue from that, but we

want the application and have a status on that, because as a market change and how things develop.

[71] THE COURT: What I have is, 1(j), Disability Documents: in addition to the PWD documents already produced --

[72] CNSL B. COYNE: Yes.

[73] THE COURT: -- Mr. B. will produce all records relating to his CPP disability income if and when he receives CPP disability benefits. It goes without saying that if the -- what I am contemplating is that there has been no discoveries and no trial date set. You will be asking continually, I am sure, whether or not he has received CPP disability and it goes without saying that he should update his financial statement and update his financial situation if he receives it and I will add that -- I had not thought of this, but there is a positive duty on Mr. B. to advise of the outcome of the CPP application regardless.

[74] CNSL B. COYNE: Very good, and as a final point, one of -- there was, obviously, much discussion talking about the Serbian company and records related to that and I haven't heard reference to that. That was in my client's affidavit related to production of that information, corporate -- I believe it belies that. Basically, the typical corporate information that would emerge from a closely-held company.

[75] CNSL J. CHANDLER: There was no request in the material for that information.

[76] CNSL B. COYNE: Well --

[77] THE COURT: There was a lot of discussion, but there was no particular request and, as I recall, there was nothing in the financial statements of Mr. B. saying that he continued to own an interest in there and that it was, in fact, Ms. V. who actually had possession of documents that may show that there -- or that showed there was this company and that showed some transfer of monies to that company and I recall Mr. B.'s answer to that was, "Well, hey, you had the documents. Now I remember, that was part of an inheritance adjustment," and so in my view, it is -- there is -- the request for document production is not specified in there and it did not -- like Mr. B. had any documents in his possession of control regarding the Serbian toilet paper company. Obviously, you have a chance to discover Mr. B. --

[78] CNSL B. COYNE: Yes.

[79] THE COURT: -- and that is probably the correct format to ask them questions about that and, obviously, that leads to that -- you can ask -- ask [sic, ask for] documents that are justified based on his answers to the examination for discovery questions.

"Hamilton J."

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Prepared on 26 October 2026 · Esheria