

CANADA / JUDGMENT

Bajwa v. Bajwa

2024 BCSC 1428

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Supreme Court of British Columbia

DECIDED

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2024 BCSC 1428 Bajwa v. Bajwa

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bajwa v. Bajwa,

2024 BCSC 1428

Date: 20240807

Docket: E200626

Registry: Vancouver

Between:

Jamal Habib Bajwa

Claimant

And

Tayyaba Tariq Bajwa also known as Tayyaba Jamal Bajwa

Respondent

And

Habib Ullah Bajwa and Shamim Akhtar

Respondents by Counterclaim

Before: The Honourable Justice Lamb

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

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Place and Date of Judgment:

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August 7, 2024

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Introduction

- [1] This family law case arises from the marriage between the claimant, Jamal Bajwa, and the respondent, Dr. Tayyaba Bajwa. Jamal Bajwa's parents, Habib Bajwa and Shamim Bajwa (the "Parents"), are respondents by counterclaim.
- [2] The most contentious issue in this case is Dr. Bajwa's claim that a property at Surrey, BC, currently registered in the names of the Parents (the "Surrey Property") is family property for which she is entitled to an equal share of the increase in value over the course of the marriage. The Parents say they own and have always owned the property beneficially, even when Jamal Bajwa was on title for a period of time. Jamal Bajwa supports the Parents' position.

- [3] Jamal Bajwa and Dr. Bajwa (the "parties") married in April 2005 and separated in January 2020. They have two children, a daughter born in the summer of 2012 and a son born in the fall of 2014. The son has a serious medical condition that is terminal. The parties agree to share parenting time for the son equally. Parenting time for the daughter and child support are issues I must decide.
- [4] The other issues include division of family debt and Jamal Bajwa's claim for spousal support.
- [5] All of the statutory requirements for a divorce have been met. The divorce will take effect on the thirty-first day following the date of this judgment.
- [6] The family connections in this case go beyond those found in many family law cases. Jamal Bajwa and Dr. Bajwa are first cousins, which means they are nephew and niece to their respective parents-in-law. Further, Jamal Bajwa's older brother is married to Dr. Bajwa's older sister. The former testified at trial; the latter did not. The Parents and Jamal Bajwa's sister Saira Bajwa gave evidence at trial. Dr. Bajwa's parents (Tariq Bajwa and Azra Tariq) and brother also testified at trial. I heard evidence from former employees of Jamal Bajwa's immigration consulting firm, Dr. Bajwa's former business colleague (Dr. Christopher Kelly), a realtor involved in the purchase of the Surrey Property (Habib Bajwa's brother), the builder of the new home on the Surrey Property (Habib Bajwa's nephew), and a life insurance agent who sold a life insurance policy to Jamal Bajwa and Dr. Bajwa. A BMO loan officer who assisted the parties in late 2018 and early 2019 when they were looking for financing to buy a house in North Vancouver provided evidence in writing by consent.
- [7] Dr. Bajwa represented herself at trial, which was not an easy task in light of the complicated family property issue and the overlapping family connections. She was well prepared.
- [8] I will make some general comments on credibility and reliability before briefly reviewing some basic background facts, most of which are not contentious. I will then address the main issue at trial--whether the Surrey Property is family property subject to a property division claim by Dr. Bajwa--before turning to the issues of family debt, parenting time, child support and spousal support.

Credibility and reliability

- [9] In finding facts in this matter, I have weighed conflicting testimony and considered whether contemporaneous documentation corroborates or conflicts with a witness' version of events. Most of the testimony relevant to the Surrey Property issues came from interested parties. I have assessed the credibility of the witnesses and the reliability of their evidence by reference to the factors identified by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, leave to appeal to SCC *ref'd*, 35006 (7 March 2013) and Justice Mayer in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at para. 92, *aff'd* 2020 BCCA 130, leave to appeal to SCC *ref'd*, 39246 (21 January 2021).

[10] It was more difficult to use some of these time-tested factors to assess the credibility of Habib Bajwa because his evidence, both in direct and in cross-examination, was tendered by affidavit pursuant to a pre-trial order due to his medical condition. For all of the witnesses but especially for Habib Bajwa's evidence, I have applied the standard distilled by the Court of Appeal in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.):

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[11] I found Jamal Bajwa to be a credible and reliable witness: his evidence did not change on cross-examination; his evidence related to his business was consistent with that of his former employees; he made admissions about his business that were not particularly flattering to him; and he fairly and reasonably acknowledged the importance of Dr. Bajwa's role as mother to their daughter. With respect to the Surrey Property in particular, I found Jamal Bajwa's evidence to be reliable in that it was consistent with contemporaneous documentation, and he acknowledged when he did not remember certain details.

[12] Similarly, Habib Bajwa's evidence was largely corroborated by contemporaneous documents. I am satisfied his evidence is credible and reliable.

[13] I find Shamim Bajwa was a credible witness. Overall, Shamim Bajwa testified in a clear and consistent manner through her direct testimony, and her evidence did not change on cross-examination. Shamim Bajwa's evidence was consistent with her husband's account of how the Surrey Property was acquired and managed. Dr. Bajwa argues that Shamim Bajwa was not a credible witness because she swore an affidavit in which she said she did not know about the claim against the Surrey Property until November 2022, which Dr. Bajwa says is inconsistent with Jamal Bajwa's obtaining documents about the Surrey Property from the Parents in April 2020. I accept that Shamim Bajwa did not make a connection between the divorce action and a claim against the Parents for an interest in the Surrey Property until Dr. Bajwa said she intended to add the Parents as respondents by counterclaim.

[14] On the other hand, I am cautious about accepting Dr. Bajwa's evidence about the Surrey Property where such evidence is not admitted by Jamal Bajwa and the Parents or unless it is corroborated by contemporaneous documentation or reliable evidence from disinterested witnesses. When it came to ownership of the Surrey Property, much of Dr. Bajwa's evidence was unreasonable and defied common sense. Dr. Bajwa stubbornly refused to acknowledge that contemporaneous documentation overwhelmingly showed that Habib Bajwa, not her husband, was financially responsible for the Surrey Property. Instead, Dr. Bajwa focused on one or two home insurance payments (in lieu of basement rent foregone when the parties lived in the Surrey Property and preferred to have the house to themselves) and a property tax payment she made (for which she was more than reimbursed by Habib Bajwa) as evidence of her interest in the Surrey Property. She claimed to have paid \$18,000 for credit card debt in 2013 for construction expenses for the Surrey Property, but she was forced to

acknowledge in cross-examination that credit card statements show that the construction expenses were paid off by September 2011. She unreasonably failed to concede that the \$18,000 credit card debt arose from the parties' consumer spending despite credit card statements that confirm that fact.

- [15] Dr. Bajwa repeatedly described the Surrey Property as the parties' matrimonial home and highlighted her representations to others to that effect as evidence of her belief. Leaving aside the fact that her belief cannot create a beneficial interest where none exists, her complete disinterest in the Surrey Property from 2005 to 2011 and again from 2016 to 2020 belies her assertion that she always considered the Surrey Property to be the parties' matrimonial property. Notably, the parties went to the Surrey Property only once between 2005 and 2010 when Jamal Bajwa picked up a rent cheque (made out to Habib Bajwa) from the Surrey Property tenant. Once the parties moved out of the Surrey Property in August 2016, she did not discuss the Surrey Property with Jamal Bajwa until after they separated. Even when the parties' financial situation was precarious after she purchased the dental practice in 2018, Dr. Bajwa did not discuss with Jamal Bajwa the possibility of using the equity in the Surrey Property or selling it. I do not accept that Dr. Bajwa considered the Surrey Property to be the parties' matrimonial property during their marriage, and her repeated assertion that she did undermines her credibility and renders her evidence about the Surrey Property unreliable.
- [16] More generally, when giving evidence, Dr. Bajwa purported to have a clear recollection of a conversation from almost 20 years ago that would help her case, but she claimed to have a poor recollection of more recent conversations that did not help her position in the litigation. This type of incongruity of recall gives rise to concern about Dr. Bajwa's credibility, particularly as it relates to her evidence about the Surrey Property: *Sledin Estate v. Rusin*, 2011 BCSC 1207 at para. 85. Further, Dr. Bajwa showed her willingness to fabricate a story to explain events that did not fit her narrative about the Surrey Property. For example, Dr. Bajwa's testimony that the parties' attempted to buy a house in North Vancouver as a second property is simply not credible; the parties' dealings with the realtor and the bank, their circumstances at the time and their ultimate failure to come up with enough for a down payment are far more consistent with efforts to buy their first family home.
- [17] I have the same caution with respect to the evidence of Dr. Bajwa's parents, Tariq Bajwa and Azra Tariq. I found their evidence strongly favoured their daughter's position even where credible evidence suggested the opposite. For example, neither of Dr. Bajwa's parents was objective when it came to Jamal Bajwa's contributions to his family: they insisted Dr. Bajwa took on all responsibility for caring for the children and the household, which I simply do not accept given her role as primary breadwinner for the family and Jamal Bajwa's compelling testimony about his role as stay-at-home parent for many years.

- [18] Tariq Bajwa was not able to provide contextual details for an alleged visit to the Surrey Property with his sister Shamim Bajwa, which raises questions about his account in the face of Shamim Bajwa's clear denial that any such event occurred. I accept Shamim Bajwa's evidence that she visited the Surrey Property for the first time on the day the original house was torn down in 2010, and she did not go there in 2006 as Tariq Bajwa testified.
- [19] Dr. Bajwa and her parents say that the Parents boasted that Jamal Bajwa owned the Surrey Property at the parties' wedding celebration in December 2005, which (if true) might be evidence of a gift intention. However, I prefer the Parents' evidence that no such boast occurred, as such an assertion would have been inconsistent with Habib Bajwa's other words and action regarding the Surrey Property. Further, if such a conversation had occurred, I would have expected Tariq Bajwa to raise this with his sister Shamim Bajwa when he came to Canada to support Dr. Bajwa after she was forced out of the Surrey Property in August of 2016. This alleged wedding conversation was apparently not discussed again until this litigation. I am left to conclude that Dr. Bajwa and her parents concocted this wedding conversation in the belief it would help Dr. Bajwa's claim to an interest in the Surrey Property.
- [20] In short, I find the evidence of Jamal Bajwa, the Parents and Saira Bajwa regarding the Surrey Property to be reliable. I am cautious about accepting the evidence of Dr. Bajwa and her parents regarding the Surrey Property unless corroborated by reliable evidence.

Background facts

- [21] Jamal Bajwa is 46 years old. He completed a two-year associate degree in general arts from Capilano College between 1995 and 1998. He went on to major in history at Simon Fraser University from 1998 to 2003; however, he did not complete his degree. Jamal Bajwa found himself overwhelmed with the reading and writing assignments in fourth year, and he dropped out. He was eventually diagnosed with attention deficit disorder and generalized anxiety disorder. With his father's encouragement, Jamal Bajwa then completed a one-year diploma in immigration consulting. Jamal Bajwa started working as an office assistant at an immigration consulting firm in 2005, and he was subsequently promoted to immigration consultant.
- [22] Dr. Bajwa is 45 years old. She is a dentist by profession.
- [23] The parties were legally married on April 24, 2005 in Pakistan. Jamal Bajwa attended the marriage by proxy from North Vancouver. Jamal Bajwa and his family travelled to Pakistan in December 2005 for a formal wedding celebration.
- [24] In early 2006, Jamal Bajwa sponsored Dr. Bajwa's immigration to Canada. The parties moved in and lived rent-free with the Parents at their home on Mahon Avenue in North Vancouver.

- [25] In October 2006, Jamal Bajwa launched his own immigration consulting business, All Points Immigration Ltd. ("All Points"). Habib Bajwa, a retired Service Canada officer, joined All Points as an immigration consultant to help Jamal Bajwa build his business. Two of the assistants who worked at All Points testified at trial.
- [26] Before moving to Canada, Dr. Bajwa had studied and qualified to practice dentistry in Pakistan in 2003. With the support of Jamal Bajwa and his family, Dr. Bajwa secured student loans and admission to the dentistry program at New York University. Dr. Bajwa lived in New York from May 2007 until she graduated in 2010, while Jamal Bajwa continued to work as an immigration consultant and live rent-free with his parents in North Vancouver.
- [27] After qualifying as a dentist in BC, Dr. Bajwa worked in various dental clinics in the fall of 2010. In January 2011, she was hired as an associate dentist for three to four days per week at a clinic in Chilliwack. The parties rented an apartment in Chilliwack from March 1, 2011 to July 31, 2011 and continued to spend time at the Parents' home in North Vancouver. During this period, Jamal Bajwa drove Dr. Bajwa to and from work, as she did not obtain a driver's license until 2014. He continued to work at the All Points office in Surrey.
- [28] In 2010, the original rancher on the Surrey Property was torn down and a new house was built. I will have more to say about that project later in these reasons for judgment.
- [29] The parties moved into the new house at the Surrey Property in September 2011. They continued to reside there for approximately 18 months, during which time the basement suite remained unoccupied because the parties preferred to have the house to themselves.
- [30] In the summer of 2012, the parties' daughter was born. Dr. Bajwa took maternity leave for nine months.
- [31] In April 2013, the parties and their infant daughter moved to Red Deer, Alberta, where Dr. Bajwa had secured a position as an associate dentist at a clinic. Dr. Bajwa was able to earn a higher income in Alberta at that time. The parties rented a home in Red Deer.
- [32] When the parties moved to Red Deer, Habib Bajwa continued to run All Points. Saira Bajwa (Jamal Bajwa's sister) joined All Points in 2014 as an assistant.
- [33] While the parties lived in Alberta, Jamal Bajwa stayed home to look after the parties' daughter and essentially stopped working as an immigration consultant. His income tax returns reflect limited earnings during that period, and Dr. Bajwa's contemporaneous correspondence to her accountant demonstrates she was aware of his limited earnings. Dr. Bajwa's mother arrived for a six month stay at the parties' home in Red Deer shortly before their son was born in the fall of 2014.
- [34] Jamal Bajwa continued to stay home with the children when Dr. Bajwa returned to work a few weeks after their son was born, consistent with their agreement that he would support her career.

- [35] Dr. Bajwa continued to work as a dentist in Red Deer until the family moved back to BC in mid-June 2016. The parties moved back to BC to address their son's medical condition, which was manifest by then. They also found it difficult to get ahead financially with only one family income.
- [36] In June 2016, the parties and their two children moved into the Surrey Property with the Parents, Saira Bajwa and her family. In the summer of 2016, there was a shouting match between Dr. Bajwa and Shamim Bajwa. This led to Dr. Bajwa and Jamal Bajwa moving to a house on West 24th Street in North Vancouver, owned by the Parents, in mid-August 2016. I will have more to say about what was said during that shouting match.
- [37] In the summer of 2017, Habib Bajwa retired from working at All Points.
- [38] In June 2018, Dr. Bajwa acquired a dental practice in Squamish, BC and entered into a cost-sharing arrangement with another dentist, Dr. Christopher Kelly. Dr. Bajwa sold the dental practice to Dr. Kelly shortly after the parties separated.
- [39] In 2018, the parties started looking for a house to buy in North Vancouver. In December 2018, Dr. Bajwa contacted the bank about financing. Between January and April 2019, Dr. Bajwa provided various documents to the bank in an attempt to qualify for mortgage financing. The parties made two offers on a house on Fromme Road in North Vancouver, but neither offer was accepted.
- [40] In the summer of 2019, the parties and their two children moved from the 24th Street house (where they had been living rent-free) to a rented dwelling on Greentree Lane in North Vancouver.
- [41] After the parties separated on January 20, 2020, they continued to share household expenses until February 2021, and they continued to live in the Greentree Lane residence until September 2021.
- [42] As of the trial date, Jamal Bajwa was off work for what he described as mental health reasons. He has not worked since All Points closed in September 2022.
- [43] Dr. Bajwa works part-time at a dental clinic as an associate dentist, earning income based on 35% of her billings.
- [44] I will now turn to the most contentious issue in this case.

The Surrey Property

- [45] Family property is all real and personal property that is, as of the date of separation, owned by at least one spouse or in which at least one spouse has a beneficial interest: Family Law Act, S.B.C. 2011, c. 25, s. 84.

- [46] The only significant asset to which Dr. Bajwa lays claim is the Surrey Property. As of January 20, 2020, the Parents were the registered owners of the Surrey Property, which means the Surrey Property is family property subject to division only if Jamal Bajwa or Dr. Bajwa has a beneficial interest in the Surrey Property or if Jamal Bajwa improperly transferred his ownership interest to the Parents.
- [47] Dr. Bajwa's counterclaim (filed when she was represented by counsel) identifies two main issues. Dr. Bajwa says Jamal Bajwa's transfer of the Surrey Property to the Parents for \$1 in December 2016 (the "Transfer") (Ex 21, Tab 139) should be set aside as a fraudulent conveyance. Dr. Bajwa spent a great deal of time at trial trying to show that the Surrey Property was always considered to be her and Jamal Bajwa's "matrimonial home", i.e. that Jamal Bajwa had a beneficial and legal interest in the Surrey Property.
- [48] Alternatively, Dr. Bajwa says she has a trust interest in the Surrey Property based on her contributions to the preservation and maintenance of the Surrey Property.
- [49] For the reasons that follow, I find that the Parents have proven on a balance of probabilities that Jamal Bajwa did not hold a beneficial interest in the Surrey Property at any point in time, including when he transferred legal title to the Surrey Property to the Parents in December 2016. At all material times, Jamal Bajwa held his interest in the Surrey Property by way of an express trust (or alternatively a resulting trust) in favour of Habib Bajwa. There are no grounds upon which to set aside the Transfer as a fraudulent conveyance
- [50] Dr. Bajwa has failed to prove she or Jamal Bajwa had a beneficial interest in the Surrey Property pursuant to a trust.

History of the acquisition of the Surrey Property

- [51] On March 30, 2005, Jamal Bajwa became the registered owner of the Surrey Property by purchasing it from Maher Zayden (the "Original Purchase"). However, in the lead-up to the Original Purchase, Habib Bajwa took all the steps required to complete the Original Purchase, as he
- found the real estate listing for the Surrey Property;
 - negotiated the contract of purchase and sale with Mr. Zayden;
 - paid the deposit of \$2000 and down payment of approximately \$90,000; and
 - negotiated the mortgage of approximately \$134,000 in Jamal Bajwa's name required to complete the Original Purchase.
- [52] After finding the Surrey Property and before the Original Purchase completed, Habib Bajwa had a conversation with Jamal Bajwa about the Surrey Property (the "Conversation") and told him the following: Habib Aff #3: paragraph 13:
- Habib Bajwa would be buying an investment property;

- b) Habib Bajwa wanted to put the investment property in Jamal Bajwa's name to help build his credit score;
- c) the investment property would belong to Habib Bajwa because he would pay the down payment and mortgage payments;
- d) he was thinking about redeveloping the property at some point in the future; and
- e) at some point in the future, Habib Bajwa wanted the investment property to be returned to him.

[53] Jamal Bajwa was content with this arrangement, as long as he was not responsible for any of the costs related to the proposed investment property. Habib Bajwa promised to pay all expenses related to the Surrey Property (which he did for the most part).

[54] I accept that Habib Bajwa paid the down payment and had the Conversation because this version of events is in harmony with the preponderance of the probabilities based on the following circumstances:

- a) in early 2005 when the Original Purchase happened, Jamal Bajwa was working part time as an immigration consultant with limited earnings, living in the Parents' home and financially dependent on the Parents;
- b) Jamal Bajwa had no history of earnings or other source of funds that would have given him the financial resources to pay the \$90,000 down payment;
- c) Habib Bajwa had previously helped his two older children build their credit score in a similar way by placing them on title to an investment property;
- d) Amjad Bajwa, a realtor and Habib Bajwa's brother, confirmed that Habib Bajwa sought his advice in 2005 before buying the Surrey Property; and
- e) Habib Bajwa was identified as the purchaser of the Surrey Property in a news story about Mr. Zayden that aired in 2005.

[55] Dr. Bajwa says I should be skeptical that Habib Bajwa paid the down payment of approximately \$90,000 because the Parents were not able to produce documents to substantiate that payment even though they produced a copy of the \$2000 deposit paid toward the Original Purchase. I accept the down payment records were no longer available (despite reasonable efforts by Jamal Bajwa and the Parents to produce them) due to the passage of time. The missing document is not enough to displace the finding that it is more likely than not that Habib Bajwa paid the deposit: Jamal Bajwa simply had no source of funds from which to pay \$90,000 in March 2005.

Did Habib Bajwa own the Surrey Property beneficially by virtue of an express trust?

- [56] As a starting point, land title registration provides "conclusive evidence at law and in equity" that Jamal Bajwa owned the Property from March 30, 2005 to December 2016: s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250; *Virk v. Pannu*, 2006 BCSC 921 at para. 11, aff'd *Bajwa v. Pannu*, 2007 BCCA 260. However, the presumption of indefeasible title can be rebutted by operation of a resulting trust, an express trust or a constructive trust: *Suen v. Suen*, 2013 BCCA 313 at para. 34. The onus is on the party seeking to rebut the presumption of indefeasible title to adduce evidence capable of displacing the presumption: *Bajwa* at paras. 9, 12-14.
- [57] Whether Jamal Bajwa held his ownership interest in the Surrey Property beneficially or in trust in favour of Habib Bajwa lies at the heart of this dispute.
- [58] To establish an express trust, there must be certainty of intention to create a trust, certainty of subject-matter or trust property, and certainty of object or beneficiary of the trust: *Waters' Law of Trusts in Canada*, 4th ed., by Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith (Toronto: Carswell, 2012) at 140. To establish certainty of intention, the settlor of the trust must demonstrate through words or actions that the settlor intended the trustee to hold the trust property in trust, though no specific or technical words are required to create a trust: *Larochelle v. Soucie Estate*, 2019 BCSC 1329 at para. 183. The onus of proof to establish the existence of a valid trust lies on the person asserting it: *Larochelle* at para. 176.
- [59] I find that the Conversation between Habib Bajwa and Jamal Bajwa was sufficient to establish an express trust in favour of Habib Bajwa, as it included the three certainties required to establish an express trust:
- a) the Surrey Property was clearly identified as the trust property or subject of the trust;
 - b) Habib Bajwa was clearly identified as the object or beneficiary of the trust; and
 - c) Habib Bajwa (as settlor of the trust) clearly expressed that he intended Jamal Bajwa would hold the Surrey Property in trust for Habib Bajwa (as beneficiary of the trust).
- [60] In short, the Parents have proven on a balance of probabilities that Jamal Bajwa held the Surrey Property pursuant to an express trust in favour of Habib Bajwa, thus rebutting the presumption of indefeasible title. Despite being the registered owner of the Surrey Property from March 2005 to December 2016, Jamal Bajwa was not the beneficial owner.
- Did Habib Bajwa own the Surrey Property beneficially by virtue of a resulting trust or did he gift the Surrey Property to Jamal Bajwa?
- [61] Even if Habib Bajwa had not proven the express trust (which I find he has), I am satisfied that Jamal Bajwa held the Surrey Property on a purchase money resulting trust. I will review this alternative trust finding briefly.

- [62] Where a party advances funds for the purchase of a property without taking legal title, a purchase money resulting trust arises: *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 at para. 21. A purchase money resulting trust is presumed in this case because Habib Bajwa paid the deposit and down payment to facilitate the Original Purchase without taking legal title.
- [63] More generally, a resulting trust is presumed where property is transferred gratuitously: *Pecore v. Pecore*, 2007 SCC 17 at para. 24. The onus of proof is on the person seeking to rebut the presumption of a resulting trust to prove on a balance of probabilities that a gift was intended: *Pecore* at paras. 22-24, 43-44. The court will only rely on the legal presumption of resulting trust if the court is unable to determine the transferor's actual intention at the time of the transfer: *Pecore* at paras. 22-23, 44; *Creyke v. Creyke*, 2016 BCCA 499 at para. 53. Evidence as to the degree of dependency of an adult transferee child on the transferor parent may provide strong evidence to rebut the presumption of a resulting trust: *Pecore* at para. 41.
- [64] The Supreme Court of Canada in *Pecore* at para. 55 confirmed that all relevant evidence that might establish the transferor's intention as of the time of transfer should be weighed. Depending on the facts of the case, reliable evidence of intention at the time of the transfer may be contemporaneous or subsequent to the transfer itself: *Pecore* at para. 59. Relevant evidence may include documents pertaining to the asset, declarations and conduct contemporaneous to the transfer, conduct subsequent to the transfer, subsequent control and use of the property, and tax treatment of the property: *Pecore* at paras. 55-70. Control and use of the property after the transfer by the transferor may not be conclusive, as it may not be inconsistent with a gift: *Pecore* at paras. 62-66; *Schouten Estate v. Swagerman-Schouten*, 2014 BCSC 2320 at para. 5. Courts may consider the quality of the relationship between the transferor and transferee in order to determine whether the presumption of resulting trust has been rebutted (i.e., father/son): *Pecore* at para. 37.
- [65] Pursuant to the legal test in *Pecore*, the onus is on Dr. Bajwa to prove on a balance of probabilities that, at the time of the Original Purchase, Habib Bajwa intended to gift the Surrey Property to Jamal Bajwa. I find Dr. Bajwa has not met that burden. Although not conclusive on its own, the degree of control exercised by Habib Bajwa from 2005 to 2016 is a strong factor militating against a finding of gift.
- [66] For the purpose of analyzing whether the presumption of resulting trust has been rebutted, I will ignore the Conversation giving rise to the express trust.
- [67] In terms of evidence of contemporaneous intention, there is no evidence that Habib Bajwa told Jamal Bajwa or anyone else that he intended to gift the Surrey Property to Jamal Bajwa prior to or at the time of the Original Purchase. Jamal Bajwa specifically denies there was any indication from the Parents that the Surrey Property was a gift to him or Dr. Bajwa. There is no evidence that when Habib Bajwa spoke to his realtor brother Amjad Bajwa about buying the Surrey Property, Habib Bajwa said he was gifting it to Jamal Bajwa. Dr. Bajwa did not suggest Habib Bajwa intended to gift the Surrey Property to Jamal Bajwa because she

insisted that Jamal Bajwa paid the \$90,000 down payment himself, which I have found is not the case.

- [68] I recognize that the Parents and Jamal Bajwa are interested parties, and it is no surprise that they disclaim a contemporaneous intention on the part of the Parents to gift the Surrey Property to Jamal Bajwa. I am inclined to accept their evidence, however, as it is consistent with Habib Bajwa's control of and financial responsibility for the Surrey Property, from the time of the Original Purchase to present. Further, as noted, I found Jamal Bajwa in particular to be a credible witness.
- [69] Since the Original Purchase, Habib Bajwa has controlled the Surrey Property by renting it out, redeveloping it and deciding who would live in it--all without seeking Jamal Bajwa's consent or permission. Habib Bajwa has paid almost all the expenses related to the Surrey Property. I am satisfied the limited financial contributions the parties made to the Surrey Property were done for a specific purpose that did not imply they owned the Surrey Property. For example, the parties bought higher end appliances for the new house in 2011 when they were going to move into it (rent-free) because they did not like the standard appliances Habib Bajwa was prepared to buy for a house he intended to sell. The same applied to nicer blinds that the parties preferred. Overall, the financial support the parties received from the Parents by way of free rent otherwise exceeded any financial contribution the parties made to the Surrey Property.
- [70] For the first five years after the Original Purchase, Habib Bajwa controlled the Surrey Property without consulting Jamal Bajwa. On two occasions (in 2005 and again 2009), Habib Bajwa listed the Surrey Property for sale without advising Jamal Bajwa that he was doing so. Habib Bajwa rented out the Surrey Property. He collected and retained all the rental income. Habib Bajwa arranged and paid for repairs of the Surrey Property without consulting Jamal Bajwa. During this time, Habib Bajwa continued to pay all of the costs and expenses related to the Surrey Property, including the mortgage payments, house insurance, property taxes and utilities. Habib Bajwa regularly transferred funds or gave cheques to Jamal Bajwa for mortgage payments that automatically came out of the parties' joint bank account.
- [71] In 2010, Habib Bajwa decided to build a new house on the Surrey Property with a view to selling the redeveloped property. In August 2010, Habib Bajwa arranged for a construction line of credit in Jamal Bajwa's name (as he was still the registered owner). The existing house on the Surrey Property was torn down in the fall of 2010 and a new house was largely completed by September 2011. Habib Bajwa principally oversaw and managed the construction project at the Surrey Property. Some of the construction costs were paid initially using a credit card in Jamal Bajwa's name; however, Habib Bajwa provided the funds to pay off the credit card, either directly or from the construction line of credit.

- [72] In January 2011, Habib Bajwa arranged for a larger mortgage to complete the construction project, which he used to pay off the construction line of credit and previous mortgage. From that point onward, the pre-construction pattern for paying the mortgage resumed: Habib Bajwa transferred funds into Jamal Bajwa's account or gave him a cheque to deposit, and the mortgage payment was automatically withdrawn from the parties' joint account.
- [73] Jamal Bajwa and Dr. Bajwa had some limited involvement in the construction of the new home at the Surrey Property. Jamal Bajwa visited the building site once per month for the first few months on Habib Bajwa's encouragement to learn about building houses. When the builder needed instructions on the construction project and could not track down Habib Bajwa, the builder would speak to Jamal Bajwa instead. When the project reached the finishing stage, Jamal Bajwa and Dr. Bajwa chose options for some of the finishings such as tiles, hardwood floors and kitchen cabinets to discuss with Habib Bajwa when the builder could not reach Habib Bajwa directly.
- [74] In 2010, Dr. Bajwa did tell prospective employers that the parties were building a house in Surrey when she was looking for a position at dental clinics in the Fraser Valley. She drafted these emails with Jamal Bajwa's assistance. I accept Jamal Bajwa's explanation that these white lies were intended to make her more attractive to prospective employers.
- [75] When the new house was completed in 2011, Habib Bajwa allowed Jamal Bajwa and Dr. Bajwa to move in rather than renting to a third party. The parties asked Habib Bajwa to keep the basement suite empty, in part to give them privacy, which Habib Bajwa agreed to do.
- [76] After moving into the Surrey Property in 2011, Jamal and Dr. Bajwa still did not pay the mortgage from their own resources nor did they pay rent to Habib Bajwa.
- [77] Dr. Bajwa did represent that the parties had equity in the Surrey Property when they first applied for life insurance in 2013. At the time, they were living in the Surrey Property, and Jamal Bajwa was the registered owner on title. Dr. Bajwa acknowledged that Jamal Bajwa told the insurance agent that the Surrey Property was not his property, but the agent encouraged the parties to calculate their personal net worth based on equity in the Surrey Property. Although Dr. Bajwa placed a great deal of emphasis on this event at trial, there is a real possibility that her memory of this conversation was reconstructed with assistance from the life insurance agent who testified at trial on her behalf. In any event, even on Dr. Bajwa's account, Jamal Bajwa did not assert an ownership interest in the Surrey Property, confirming that he did not believe the Surrey Property had been gifted to him by the Parents.

- [78] When the parties moved to Red Deer in April 2013, they did not manage tenants, receive rent or pay the mortgage from their own resources for the Surrey Property. At Jamal Bajwa's insistence, the parties paid the 2014 home insurance payment for the Surrey Property because Jamal Bajwa felt guilty that Habib Bajwa did not receive rent for the basement suite when the parties had lived there. Contrary to Dr. Bajwa's assertions, in this context, payment of one or two home insurance payments does not imply home ownership.
- [79] Jamal Bajwa reported rental income for the Surrey Property on his taxes in 2013 - 15 after Dr. Bajwa's then accountant requested information about the Surrey Property, which Jamal Bajwa obtained from Habib Bajwa.
- [80] In November 2015, the Parents and Saira Bajwa moved into the Surrey Property. By that time, Habib Bajwa had some health issues that made the commute from their North Vancouver home to the All Points office in Surrey difficult. The Surrey Property was much closer.
- [81] In 2015, Habib Bajwa received some estate planning advice, which included advice he should have registered ownership of the Surrey Property to match his beneficial interest. Saira Bajwa discussed estate planning with her father, and she urged Habib Bajwa to put the Surrey Property into his and Shamim Bajwa's names to simplify their estates.
- [82] In summer of 2016, the parties and their children came back to BC and moved into the Surrey Property with the Parents, Saira Bajwa and her family. Consistent with his estate planning, Habib Bajwa told Jamal Bajwa that it was time to transfer the Surrey Property to the Parents shortly after the parties moved back to BC in June 2016. I find that Dr. Bajwa was present at the Surrey Property for this family discussion; I prefer the evidence of Jamal Bajwa and Shamim Bajwa over that of Dr. Bajwa on this point.
- [83] Before the parties moved back to BC, the Parents started renovating a house they owned on West 24th Street in North Vancouver to make it suitable for the parties and their children to live in. Dr. Bajwa considered the North Vancouver house to be small, and she preferred the newer house at the Surrey Property, which is what led to the previously referenced shouting match in the summer of 2016 between Dr. Bajwa and Shamim Bajwa.
- [84] The shouting match was witnessed in part by Jamal Bajwa and Saira Bajwa. Shamim Bajwa told Dr. Bajwa that she and her family needed to leave as requested because the Surrey Property belonged to the Parents, not the parties. At the time, Jamal Bajwa told Dr. Bajwa that they had to leave because the Surrey Property belonged to the Parents, even though he was the registered owner. Shortly thereafter, the parties and their children moved to the West 24th Street property in North Vancouver.
- [85] The parties moving out of the Surrey Property in August 2016 was consistent with the Parents' owning the Surrey Property and inconsistent with the Surrey Property having been gifted to Jamal Bajwa. Similarly, the Transfer was consistent with the Parents' owning of the Surrey Property and inconsistent with the Surrey Property having been gifted to Jamal

Bajwa. Dr. Bajwa did not suggest the Transfer was done to frustrate her future potential family law claim. In any event, there is no evidence that either Jamal Bajwa or Dr. Bajwa anticipated their separation more than three years later when the Transfer occurred in December 2016.

- [86] After moving out of the Surrey Property in August 2016, Dr. Bajwa says she did not discuss the Surrey Property with Jamal Bajwa again before the parties separated in January 2020. Dr. Bajwa did not offer any explanation for her disinterest in the Surrey Property after they moved out. I am satisfied that Dr. Bajwa recognized and accepted as of August 2016 and continuing to the date of separation that the Surrey Property belonged to the Parents.
- [87] Dr. Bajwa demonstrated in other ways that she recognized and accepted that the Surrey Property belonged to the Parents. Most significantly, starting in 2018, the parties took steps to buy their own home in North Vancouver. As noted, I do not accept Dr. Bajwa's story that they were looking to buy a "second home" while owning the Surrey Property as their "matrimonial property". This simply makes no sense in light of the following:
- a) when they started looking for a home in North Vancouver, they were not living in the Surrey Property but rather in the Parents' home in North Vancouver;
 - b) Dr. Bajwa did not include the Surrey Property as an asset on her personal financial statement (which included financial information about both parties) prepared in support of her dental practice loan application; and
 - c) when they had difficulty coming up with a down payment for a house in North Vancouver, Dr. Bajwa did not discuss with Jamal Bajwa the possibility of using some of the equity in the Surrey Property.
- [88] There was no evidence at trial nor any theory advanced by Dr. Bajwa as to why the Parents would gift the Surrey Property to Jamal Bajwa. There was no evidence, for example, that the Parents had made similar gifts to their other three children or that the Parents could afford to gift a property that Dr. Bajwa submitted was worth close to \$2M to one of their four children. I accept Shamim Bajwa's evidence that the Parents intended all four of their children to share their estate equally. Jamal Bajwa was not dependent on his parents to such a degree that the presumption of resulting trust might be rebutted: he was capable of earning an income.
- [89] In my view, Dr. Bajwa has failed to prove it is more likely than not that the Parents gifted the Surrey Property to Jamal Bajwa. The preponderance of the documentary and credible testamentary evidence shows that the Parents and in particular Habib Bajwa treated the Surrey Property as his own from the outset: he made unilateral decisions about its use, and he was financially responsible for the Surrey Property. Long before there was any hint the parties might separate, Jamal Bajwa made it clear to Dr. Bajwa that the Surrey Property belonged to the Parents; she accepted that reality at the time and took steps to buy their own family home. Even if I had not found an express trust, I would find that Jamal Bajwa held

legal title to the Surrey Property from 2005 to 2016 pursuant to a purchase money resulting trust in favour of Habib Bajwa.

Was the Transfer a fraudulent conveyance?

- [90] Dr. Bajwa takes issue with the Transfer, which made the Parents the registered owners of the Surrey Property. She says the Transfer occurred without her knowledge and that she would never have agreed to transfer the parties' only "matrimonial asset" to the Parents for one dollar. Despite her denial, I am satisfied that Dr. Bajwa was aware the Transfer was going to happen. More significantly, the legal threshold for finding a fraudulent conveyance is not met in this case.
- [91] A disposition of property is void and of no effect against a person whose rights and obligations are or might be disturbed, hindered, delayed or defrauded: Fraudulent Conveyance Act, R.S.B.C. 1996, c. 163, s. 1. There can be no fraudulent conveyance where property is disposed of for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, had no notice or knowledge of collusion or fraud: Fraudulent Conveyance Act, s. 2.
- [92] The Fraudulent Conveyance Act only applies to the Transfer if I find Jamal Bajwa had a beneficial interest in the Surrey Property at the time the Transfer occurred: *Rohani v. Rohani*, [1999] B.C.J. No. 2059 at para. 14, 1999 CanLII 6744, rev'd on other grounds 2002 BCCA 253. As outlined, I have found that Jamal Bajwa did not have a beneficial interest in the Surrey Property as of December 2016; he held the Surrey Property as trustee for Habib Bajwa. In effecting the Transfer, Jamal Bajwa did not actually dispose of property.
- [93] Further, at the time of the Transfer in December 2016, Dr. Bajwa was not a "creditor" or "others" as identified in s. 1 of the Fraudulent Conveyance Act. This is not a situation where one spouse transferred property after the spouses had separated or were on the verge of separating, giving rise to a potential fraudulent conveyance: *Olk v. Olk*, 2023 BCSC 591 at paras. 235-237; *Iacobelli v. Iacobelli*, 2020 ONSC 3625 at para. 193. In the case at bar, Dr. Bajwa and Jamal Bajwa continued to live as a married couple for more than three years after the Transfer occurred, and Dr. Bajwa was surprised when the parties separated. Jamal Bajwa testified that he and Dr. Bajwa started to examine their marriage in March 2019 and realized by January 2020 that their efforts to improve their relationship were not succeeding. I am not convinced that the Transfer had anything to do with interfering with Dr. Bajwa's uncrystallised potential future Family Law Act property claim or that she fell into the category of "creditor" or "others" for the purposes of s. 1 of the Fraudulent Conveyance Act.
- [94] Finally, the Parents provided consideration for the Transfer:
- a) Habib Bajwa paid the costs required for the Original Purchase;
 - b) Habib Bajwa paid almost all of the ongoing mortgage and other expenses for the Surrey Property from March 2005 to December 2016; and

- c) the Parents assumed the outstanding mortgage debt in Jamal Bajwa's name of approximately \$485,000.

[95] Whether Dr. Bajwa knew about the Transfer is irrelevant to whether it was a fraudulent conveyance. That said, I accept that Dr. Bajwa was present for a family conversation in the summer of 2016 where Habib Bajwa instructed Jamal Bajwa to transfer the Surrey Property to the Parents.

Is there another basis on which to find the Surrey Property is family property subject to division?

- [96] Dr. Bajwa has failed to prove any other basis on which to rebut the presumption of indefeasible title the Parents now hold in the Surrey Property.
- [97] There is no evidence that an express trust was created when the Surrey Property was transferred from Jamal Bajwa to the Parents. The Parents intended to transfer title of property that Habib Bajwa owned beneficially.
- [98] There is no presumption of resulting trust. As outlined at para. 92 above, the Surrey Property was transferred to the Parents in December 2016 for consideration.
- [99] There is no evidence to support a finding of constructive trust. In particular, the Parents were not unjustly enriched by the one or two house insurance payments and the cost incurred by the parties for a few appliances and blinds. There is no evidence--and it was not argued by Dr. Bajwa--that these payments exceeded the market rent for the Surrey Property for the 20 months the parties lived there rent-free. Further, there is no evidence the parties paid anything toward the Surrey Property after it was transferred to the Parents in December 2016. Since the Transfer, the Parents took over the mortgage, and mortgage payments were no longer automatically withdrawn from the parties' joint account.
- [100] In short, Dr. Bajwa has failed to establish any other legal basis upon which to find the Surrey Property is the parties' family property.

Family property and family debt

- [101] Family assets and debts are to be divided in accordance with Part 5 of the Family Law Act.
- [102] The parties have few remaining family assets: two vehicles they share and small bank balances. The parties intend to continue to share use of the two vehicles and neither sought an order regarding ownership of the vehicles.
- [103] In her schedule of assets, Dr. Bajwa lists an RRSP and an RESP in her name with a total value of less than \$1500 and three bank accounts in Jamal Bajwa's name with a total value of less than \$2000. Given the small difference in values, I am not inclined to order a division of these assets. I note that the value of the RRSP in Dr. Bajwa's name decreased in value by \$2000 from 2020 to 2023; Jamal Bajwa did not raise this as an issue, and I make no order on that account.

- [104] As of the date of separation, Dr. Bajwa owned a dental practice in Squamish, which would be included in the s. 84 definition of "family property". Shortly after the parties separated, Dr. Bajwa sold the practice to Dr. Kelly without consulting Jamal Bajwa. Dr. Bajwa seeks to divide equally the debt of \$44,350.28 resulting from a loss on the sale (after the outstanding practice loan and closing costs were paid). Jamal Bajwa objects to sharing this debt. However, I am satisfied it was reasonable to sell the dental practice to Dr. Kelly and the loss should be shared. From the time she purchased the practice in June 2018, Dr. Bajwa struggled to manage it. Even before separation, the parties were corresponding with Dr. Kelly in January 2020 regarding his possible purchase of the practice. At that time, Jamal Bajwa told Dr. Bajwa he thought they should continue with the practice, but he told her it was ultimately her decision. Although Dr. Bajwa had hired new staff to replace those who resigned, the practice was not going well. Dr. Bajwa reasonably decided to sell the practice to avoid the risk her billings would continue to decline, which would have further devalued the practice and potentially resulted in defaulting on her large practice loan. Dr. Bajwa reasonably concluded that she was better suited, at least in the short term, to working as an associate at a dental clinic, where she would have greater control over her earnings.
- [105] Jamal Bajwa suggests that Dr. Bajwa could have sold the practice to someone else or to Dr. Kelly for a higher price. In my view, that is speculative and lacks an evidentiary foundation. Jamal Bajwa called Dr. Kelly as a witness but did not ask him about his willingness to pay more. Further, Dr. Kelly paid Dr. Bajwa the price she had paid for the practice two years earlier, even though the previous dentist had been able to generate higher billings than Dr. Bajwa did. Finally, Dr. Kelly had a right of first refusal to buy the practice, and he was well aware of the difficulties Dr. Bajwa had had with staff and patients.
- [106] In short, I am satisfied that the loss from the sale of the dental practice is a family debt to be divided between the parties.
- [107] The parties agree that the following family debts (which total \$167,283.88) should be equally divided between Jamal Bajwa and Dr. Bajwa:
- a) Dr. Bajwa's student line of credit: \$96,938.95
 - b) Nissan Murano loan in Dr. Bajwa's name: \$6183.48;
 - c) CIBC LOC in Jamal Bajwa's name: \$4732.78;
 - d) CIBC Visa in Jamal Bajwa's name: \$36,870.20; and
 - e) Jamal Bajwa's CRA tax arrears: \$22,558.47.
- [108] Jamal Bajwa and Dr. Bajwa agree that Jamal Bajwa should reimburse Dr. Bajwa the following amounts for his share of loan and insurance payments she has made since separation:
- a) Car payments for Nissan Murano: \$16,000;

- b) Car insurance for Nissan Murano: \$3391;
- c) Car payments for Toyota Sienna: \$7620; and
- d) Car insurance for Toyota Sienna: \$3375.

- [109] Since separation, Dr. Bajwa has continued to pay \$359.00 monthly for life insurance policies for her and Jamal Bajwa, for a total of \$18,309.00. Jamal Bajwa acknowledges that he should pay the premiums for his policy, but the evidence is unclear as to how the monthly amount should be allocated between each policy. Unless the parties agree otherwise, Jamal Bajwa shall pay \$9154.50 to reimburse Dr. Bajwa for his share of life insurance premiums.
- [110] Jamal Bajwa paid the entire monthly rent of \$3600 for the final seven months the parties lived in the same house after separation. Dr. Bajwa secured another rental property as of February 1, 2021, but she understandably did not move out right away because the parties did not have a parenting schedule in place. The parties agreed to a parenting schedule in March 2021, but Dr. Bajwa did not move out until September 2021. Dr. Bajwa did not explain this delay in moving. In these circumstances, Dr. Bajwa shall pay half the rent from April to September 2021 (i.e. \$9000) to Jamal Bajwa to reimburse him for that expense.
- [111] Dr. Bajwa also seeks reimbursement for half of the interest-only payments she has made toward her student line of credit since January 2020. However, Jamal Bajwa has paid interest on the CIBC line of credit and CIBC Visa card since the parties separated. The parties' respective interest payments on these debts basically cancel each other out, and there will be no order for reimbursement for these interest payments in respect of either party.
- [112] As a result, Jamal Bajwa shall pay Dr. Bajwa \$72,196.13 to divide family debt and to equalize post-separation expenses that should be shared. Jamal Bajwa shall be responsible for paying the CIBC LOC, the CIBC Visa and the CRA tax arrears. Dr. Bajwa shall be responsible for paying her student line of credit and the Nissan Murano loan.

Parenting time

- [113] The parties agree to an equal parenting time schedule for their 9-year-old son. Dr. Bajwa seeks a flexible parenting order for the parties' 11-year-old daughter in recognition of her mental health conditions. I am satisfied for the reasons that follow that the parties should continue to have equal parenting time with both children.
- [114] When making orders for parenting arrangements pursuant to s. 16 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) the court must consider the best interests of the child only, based on the child's circumstances, including the factors listed in s. 16(3) of the Divorce Act. The court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being: Divorce Act, s. 16(2).

- [115] I do not question the parties' devotion to their children. Their son's health issues are significant, and his care needs are high. Their daughter has had mental health challenges that continue. Both parents have demonstrated that they are attentive to and prioritize their children's needs.
- [116] No medical opinion evidence was tendered at trial. Consult reports were admitted as evidence of information gathered by treating health professionals and the fact that certain diagnoses were made, not as evidence to prove the diagnoses. On that basis, I accept the parties' daughter has been diagnosed with anxiety and depression. A diagnosis of attention deficit hyperactive disorder has been considered by her treating doctors. The daughter has received counselling and tried medication. More recently, the daughter was assessed and found to have symptoms of autism spectrum disorder. As of the trial date, the parties had not found a way to discuss the autism spectrum disorder diagnosis with their daughter nor was she aware of her brother's prognosis.
- [117] The daughter's mental health issues have interfered with her schooling: she is often reluctant to go to school, and she has difficulty getting there on time when she does go.
- [118] Both parties have been very involved in caring for their daughter, and both have a strong relationship with her. Jamal Bajwa clearly has empathy and understanding for his daughter's mental health challenges, and he has developed strategies for accommodating her special needs. The daughter trusts her father enough to share personal information about a recent health issue she had while she was at Dr. Bajwa's home. Jamal Bajwa shows interest in his daughter's interests.
- [119] The daughter has a close relationship with other extended family members. The daughter describes her first cousin, Saira Bajwa's daughter, as her best friend. Jamal Bajwa and his sister Saira Bajwa get the girls together regularly during his parenting time. The daughter sees Jamal Bajwa's parents for family events. In May 2023, Dr. Bajwa's parents came to live with Dr. Bajwa.
- [120] In March 2021, after mediation, the parties agreed to the following parenting schedule for both children ("the March 2021 parenting schedule"):

Week one:

Sunday at 12:00 p.m. to Thursday at 9:30 a.m. with Dr. Bajwa

Thursday at 9:30 a.m. to Monday at 9:30 a.m. with Jamal Bajwa

Week two:

Monday at 9:30 a.m. to Thursday at 9:30 a.m. with Dr. Bajwa

Thursday at 9:30 a.m. to Sunday at 12:00 p.m. with Jamal Bajwa.

- [121] The parties continued to follow the March 2021 parenting schedule until a few months before trial, when Dr. Bajwa started telling Jamal Bajwa that their daughter did not want to go to his home. Prior to that, when the parties exchanged the children, they also exchanged vehicles: the party with the children would get the wheelchair-accessible van the son requires, and the other party would take the other family vehicle. In the four to five months leading up to the trial, the daughter would often not be in the van when the parties exchanged the children and vehicles. When Jamal Bajwa spoke to his daughter by telephone, she would tell him that she did not want to go with him because he was not a fit parent nor was he financially secure. Jamal Bajwa has not discussed his finances with his daughter.
- [122] In the past, the daughter had resisted transferring from one parent to another, preferring instead to stay in one place; however, Jamal Bajwa was able to distract his daughter from these concerns and smooth the transition.
- [123] Dr. Bajwa recognizes that it is important for the daughter to have a close relationship with Jamal Bajwa. However, Dr. Bajwa testified that the daughter was reluctant to go to her father's home because she went without food for an extended period of time when she was there. I accept the daughter may have reported this to Dr. Bajwa, in part because the daughter said something similar to Jamal Bajwa about not wanting to go to Dr. Bajwa's home; however, I do not believe Jamal Bajwa deprived the daughter of food. In my view, it is more likely that the daughter was fabricating an issue to avoid change and perhaps in an effort to gain favour with Dr. Bajwa, consistent with her report to one doctor that she "wanted to make her parents happy".
- [124] The events leading up to the daughter's recent reluctance to go to Jamal Bajwa's home for parenting time include the following:
- a) in October 2022, Dr. Bajwa filed a trial brief in which she sought an order affirming the March 2021 parenting schedule;
 - b) on February 14, 2023, Justice Kirchner made an interim order of child support payable by Dr. Bajwa to Jamal Bajwa;
 - c) on February 23, 2023, Dr. Bajwa filed an application seeking to vary parenting time and other relief;
 - d) on March 29, 2023, Justice Marzari dismissed Dr. Bajwa's application to vary parenting time;
 - e) in May 2023, Dr. Bajwa's parents came to Canada to live with Dr. Bajwa under her sponsorship; and
 - f) in July 2023, the daughter was diagnosed with autism.

- [125] When the trial of this matter came on for hearing in October 2023, there was only enough time to conclude the anticipated oral testimony. There was insufficient time to address a document issue and to hear closing submissions. On an interim basis, I ordered parenting time in accordance with the March 2021 parenting schedule and made certain conduct orders pursuant to s. 225 of the Family Law Act. I also made an order by consent that the daughter resume counselling.
- [126] After these mid-trial interim orders were made, Dr. Bajwa applied to have me conduct a judicial interview of the daughter. I dismissed that application, in part because I was concerned that a judicial interview would be more harmful to the daughter than any results from such an interview could justify and because it might have interfered with the early positive results from her resumption of counselling. Further, I had evidence of the daughter's views from the parties and other family members.
- [127] I am satisfied that the daughter wants to spend time with both parents. She has a close relationship with both, as confirmed by family members who have observed her with her parents. As noted, she reported to her doctor that she wanted to make her parents happy. She did not report a preference for one parent over the other. The daughter has had difficulty adjusting to her parents' separation, which may be due in part to her mental health issues. More recently, the parties have demonstrated a renewed commitment to working together to ensure that the daughter has the counselling and health care she needs.
- [128] At some point, the daughter may benefit from a week-on, week-off schedule, which would afford fewer transitions. However, for the time being, it is preferable and makes sense to have both children on the same parenting schedule.
- [129] In my view, it is in the daughter's best interests to have a set parenting schedule that is predictable and that establishes expectations for the daughter and the parties. Leaving the parenting schedule flexible and dependant on the daughter's preference or mood would place too much pressure on the daughter to try to please her parents or at least one of them and may cause psychological harm to the daughter in the long run.
- [130] Dr. Bajwa submits that a less rigid schedule will help the daughter reduce her anxiety and depression. There was no admissible expert opinion available at trial to support Dr. Bajwa's position. A less rigid schedule in the months before trial resulted in the daughter not having regular parenting time with her father. There is no evidence that her anxiety and depression improved during that period or that her school attendance improved. Based on the daughter's desire to please both parents, there is a real risk that the daughter will choose to stay with whichever parent she is with if the schedule is flexible, which is what she has done recently. Unless her counsellor or other mental health professional advises otherwise, a predictable routine would benefit the children and the parties.

- [131] As a result, pursuant to s. 16.1 of the Divorce Act, I am ordering parenting time in accordance with the March 2021 parenting schedule, subject to additional vacation time as set out in Appendix A attached at the end of these reasons. The parties agreed to vacation and other parenting provisions when they set the March 2021 parenting schedule, and I find vacation and other parenting provisions in Appendix A are in the best interests of the children. Dr. Bajwa did not object to these additional parenting orders.
- [132] I am satisfied that the parties should share decision-making responsibility for both children and order that they do so pursuant to s. 16.3 of the Divorce Act.
- [133] Jamal Bajwa seeks the appointment of a parenting coordinator. There have been some issues where the parties have not agreed (including in respect of medication for the daughter) and there may be contentious decisions regarding medical treatment to be made for one or both of the children in the future. I agree that a parenting coordinator should be appointed for a period of two years to assist the parties when they cannot agree on a parenting decision. Pursuant to s. 17 of the Family Law Act, the parties will retain the services of a parenting coordinator, Fiona Beveridge if available, within 30 days of this order. If Fiona Beveridge is unable to act as parenting coordinator, the parties may choose an alternative individual by mutual agreement and are at liberty to apply to the court if they cannot agree. Neither party may terminate the appointment of the parenting coordinator unilaterally, and the cost should be shared in the same proportion as s. 7 expenses.

Child support and extraordinary expenses

- [134] Jamal Bajwa and Dr. Bajwa both seek an order for retroactive and ongoing child support based on shared parenting. Each of them seeks to impute income to the other based on under-employment.
- [135] Jamal Bajwa seeks a straight set-off of child support payable based on income of \$120,000 imputed to Dr. Bajwa and \$30,000 imputed to him. Dr. Bajwa seeks a straight set-off of child support payable based on income of \$100,000 imputed to Jamal Bajwa and her anticipated 2023 Line 15000 income of \$100,000.
- [136] Although the parties separated on January 20, 2020, they continued to reside in the same residence and share expenses until February 2021. Jamal Bajwa seeks a child support order retroactive to March 1, 2021.
- [137] Neither party paid child support until Kirchner J. ordered Dr. Bajwa to pay Jamal Bajwa child support of \$741 per month on an interim without prejudice basis on February 14, 2023. Justice Kirchner's child support order was based on an interim without prejudice imputation of income of \$100,000 to Dr. Bajwa and \$50,000 to Jamal Bajwa.

Legal framework

- [138] Child support is the right of the child. This right survives the breakdown of a marriage. Parents have a joint and ongoing legal obligation to support the children of the marriage, so that the children continue to benefit from the financial means of both parents just as they would if the parents were still together.
- [139] Section 15.1(3) of the Divorce Act provides that the calculation of child support is governed by the Federal Child Support Guidelines, SOR/97-175 [Guidelines]. In order to meet their child support obligation, each parent must earn what that parent is capable of earning within the context and circumstances of the family. This principle is reflected in s. 26.1(2) of the Divorce Act, which provides that the Guidelines are "based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation".
- [140] Because the parties have shared parenting, s. 9 of the Guidelines applies. Pursuant to s. 9 of the Guidelines, the amount of child support payable in a shared parenting situation must be determined by considering the amount set out in the applicable tables for each of the spouses (s. 9(a)); the increased costs of shared parenting time arrangements (s. 9(b)); and the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought (s. 9(c)). A set-off of the amount that each parent would otherwise pay the other based on the Guidelines table is the starting point but not the end of the inquiry: *Contino v. Leonelli-Contino*, 2005 SCC 63 at para. 49. The court must then consider whether an adjustment to the set-off amount is required to account for the factors identified in s. 9(b) and (c) of the Guidelines: *Contino* at para. 49. The court retains discretion to order child support that is more or less than the set-off amount "where, considering the financial realities of the parents, [the set-off amount] would lead to a significant variation in the standard of living experienced by the children as they move from one household to another": *Contino* at para. 51.

Parties' income for child support purposes

- [141] Turning to the first stage of the analysis required by s. 9 of the Guidelines, assessment of the set-off amount requires a determination of each spouse's income in order to determine the table amount of child support notionally payable by each spouse.
- [142] Sections 16-20 of the Guidelines prescribe how to determine income for child support purposes. Section 16 establishes that the starting point for determining a spouse's annual income is the "total income" set out in the spouse's T1 general form, that is line 15000 income, subject to adjustments prescribed by ss. 17-20 and Schedule III of the Guidelines. Section 19(1)(a) allows the court to impute income to a spouse where "the spouse is intentionally under employed or unemployed, other than where the under employment or unemployment is required by the needs of a child of the marriage".

[143] The party seeking to have income imputed to the other spouse bears the evidentiary burden for such a finding. The test for imputing income based on intentional unemployment or under-employment is one of reasonableness, having regard to a parent's capacity to earn income in light of the parent's age, education, health, work history and work availability: *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-37. A parent is intentionally under-employed if that parent chooses to earn less than he or she is capable of earning: *Melnyk v. Glynn*, 2012 BCSC 219 at para. 29.

[144] Dr. Bajwa works an average of 22 hours per week as an associate dentist, taking home 35% of her billings as her income. She works Friday, Saturday and every second Sunday when the children are with Mr. Bajwa for parenting time. More recently, when the daughter failed to go to Mr. Bajwa's home, Dr. Bajwa's parents stayed with the daughter. Her 2023 employment earnings were projected to be approximately \$100,000.

[145] Looking back historically, Dr. Bajwa's line 15000 income may be summarized as follows:

2017: \$90,000

2018: \$114,770

2019: \$132,250

2020: \$69,911

2021: \$65,908

2022: \$77,317

[146] Jamal Bajwa's income has always been relatively modest. More recently, his Line 15000 income peaked in 2019, before COVID-19 had an adverse impact on his business:

2017: \$35,282

2018: \$38,619

2019: \$44,289

2020: \$26,807

2021: \$5858

2022: \$11,491

[147] Jamal Bajwa stopped working in 2022 and was not working as of the trial date, which he said was due to stress and anxiety. Jamal Bajwa has been diagnosed with ADD and anxiety, and he testified that he has not been able to return to work because of anxiety and the increased stress related to financial strain and to this litigation. The Parents have been lending Jamal Bajwa money to cover his living expenses. While I accept that Jamal Bajwa has been told he has the conditions mentioned, there is no medical evidence to establish that he is currently not capable of working.

- [148] Jamal Bajwa acknowledges that income of \$30,000 should be imputed to him for purposes of determining child and spousal support and for allocation of s. 7 expenses. When he testified, Jamal Bajwa anticipated he would be able to return to working two and a half to three days per week (Monday to Wednesday when the children are with Dr. Bajwa) once the trial finished, which should allow him to generate earnings of \$30,000 based on historical earnings of \$44,000 to \$50,000. Jamal Bajwa says All Points does not have enough business to earn more even if he did not have childcare responsibilities. Based on the evidence of his last assistant, I accept this assessment is not unreasonable.
- [149] Dr. Bajwa says that income of \$100,000 should be imputed to Jamal Bajwa. She accuses him--without evidence--of hiding earnings from All Points. She says he is under-employed and intentionally allowed his income to drop post-separation in order to deprive her of child and spousal support. She says he could not possibly earn so little when he had such a successful immigration consulting business with so many clients. Dr. Bajwa says it is simply not believable that he would earn less in his role as immigration consultant and principal of the business than he paid his staff. The sad reality is that he did just that in 2022.
- [150] I accept that All Points was less profitable and less busy starting in 2020 than it had been in the past for a variety of reasons, including the impact of COVID-19 on All Points' clients and their need for immigration services, Habib Bajwa's retirement from the business in 2017, and Jamal Bajwa's prioritization of his children's needs over the demands of his business.
- [151] I accept that All Points was less successful after Habib Bajwa retired because he brought in a great deal of business. I accept that All Points lost clients when Jamal Bajwa was not in the office because he was first on call to respond to his son's medical needs. I accept that All Points struggled when COVID-19 resulted in fewer foreign worker applications, a mainstay of All Points' business. In addition, Jamal Bajwa was understandably vigilant about mask protocols given his son's medical condition, which not all his clients appreciated. Over time, All Points' clients went elsewhere for immigration services.
- [152] Dr. Bajwa may not be willing to accept the harsh reality evident in All Points' financial statements, but the decline in business was confirmed by two former employees who had no vested interest in the outcome of this litigation. I recognize that All Points rented office space in a building owned by Shamim Bajwa, which might raise some questions about that expense. However, there is no evidence that the rent charged was above market rates, and All Points' gross revenues was more than \$122,000 only once in the years 2018 to 2022. Even with modest rent, there was simply not enough gross revenue to generate income in the range of \$100,000 for Jamal Bajwa.
- [153] Dr. Bajwa relies on Iacobelli, a case where the spouse had a history of undeclared cash income, to argue that Jamal Bajwa's lifestyle suggests he is hiding income. I accept that the Parents have loaned Jamal Bajwa money to pay his living expenses. There is no evidence that Jamal Bajwa is earning income that he has failed to disclose.

- [154] Based on his historical earnings, his childcare responsibilities, and the decline in All Points' business for reasons beyond Jamal Bajwa's control, I accept it is reasonable to impute income of \$30,000 to Jamal Bajwa from March 1, 2021 to June 1, 2025, pursuant to s. 19(1)(a) of the Guidelines.
- [155] Jamal Bajwa says Dr. Bajwa ought to be able to work at least another half day per week based on the parenting schedule, which should result in earnings of \$120,000 per year. However, I am satisfied that the particular health care needs of the children do not make it feasible for Dr. Bajwa to take on additional shifts at the dental clinic where she works. The parties' son has nursing care, but the parents are often called upon when that care becomes unavailable, and there is a history of challenging transitions between households. I am not satisfied that it would be appropriate to impute additional income to Dr. Bajwa at this time or going back in time. There was no evidence that Dr. Bajwa's income was likely to increase in 2024. As a result, I find her Guidelines income for the period of January 1, 2023 to June 1, 2025 is \$100,000. For 2021 and 2022, her Guidelines income is equivalent to her Line 15000 income.
- [156] Neither party argued that child support should be adjusted from a straight set-off of child support that would be payable based on Guidelines income. The evidence at trial does not satisfy me that the set-off amount would result in a significant difference in standards of living for the children as between the parties' homes at this time.

Child support payable and allocation of s. 7 expenses

- [157] I accept that child support was payable from March 1, 2021. Based on my findings regarding Guidelines income, the monthly child support payable by each party and the monthly set-off amount payable by Dr. Bajwa to Jamal Bajwa is as follows:
- March 1, 2021 to December 31, 2021: Jamal Bajwa pays \$484; Dr. Bajwa pays \$1023; set-off amount of \$539;
 - January 1, 2022 to December 31, 2022: Jamal Bajwa pays \$484; Dr. Bajwa pays \$1200; set-off amount of \$716;
 - January 1, 2023 to July 1, 2024: Jamal Bajwa pays \$484; Dr. Bajwa pays \$1522; set-off amount of \$1038.
- [158] By my calculations, the amount of child support that ought to have been paid by Dr. Bajwa to Jamal Bajwa from March 1, 2021 to present is \$34,742. The amount paid pursuant to Kirchner J.'s order (assuming Dr. Bajwa has continued to pay as ordered) would be \$13,338. As a result, Dr. Bajwa shall pay Jamal Bajwa \$21,404 for retroactive child support.
- [159] In terms of ongoing support, Dr. Bajwa shall pay to Jamal Bajwa the sum of \$1522 per month for child support, and Jamal Bajwa shall pay to Dr. Bajwa the sum of \$484 per month for child support. To satisfy both parties' obligations to pay child support, Dr. Bajwa shall pay to Jamal Bajwa the net sum of \$1038 per month, commencing on September 1, 2024 and

continuing on the 1st day of each and every month. These payments will continue for as long as the children are eligible for support under the Divorce Act or until further agreement of the parties or court order.

[160] For as long as the children are eligible to receive child support, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than June 1 each year; and (b) copies of any Notice of Assessment or Reassessment provided to them by Canada Revenue Agency, immediately upon receipt.

[161] In terms of extraordinary expenses, the parties' son currently receives publicly-funded nursing care. The parties anticipate their daughter will be eligible for some autism spectrum funding. The parties shall share s. 7 extraordinary expenses that exceed such funding proportionally based on their income. Currently, Dr. Bajwa shall pay 77% of s. 7 extraordinary expenses and Jamal Bajwa shall pay 23%.

[162] Pursuant to s. 7(2) of the Guidelines, the following expenses are recognized as extraordinary expenses to be divided proportionally:

- a) counselling sessions for the daughter at a rate of \$169.50 per session;
- b) school field trips, math tuition fees and school-related expenses such as a laptop; and
- c) prescription medicines for both children.

[163] The parties shall conduct a review of child support and the children's special or extraordinary expenses on an annual basis and payments shall be adjusted as necessary by July 1 of every year. Jamal Bajwa's Guidelines income shall be \$30,000 or his actual Line 15000 income, whichever is greater, subject to agreement between the parties or court order.

Spousal support

[164] Jamal Bajwa seeks spousal support from March 1, 2021 (the date the parties stopped sharing expenses) at the mid-range for a minimum of 7.25 years and a maximum of 14.5 years from the date of separation, based on a minimum income of \$120,000 imputed to Dr. Bajwa and \$30,000 imputed to him. Based on DivorceMate calculations provided by Jamal Bajwa, the mid-range using these imputed incomes would result in spousal support of \$1465 (as long as the children remain children of the marriage).

[165] Dr. Bajwa says no spousal support is payable to Jamal Bajwa based on income she says should be imputed to him.

Legal framework

[166] Entitlement to spousal support is a threshold issue to any award for spousal support.

[167] Jamal Bajwa's claim for spousal support is made pursuant to the Divorce Act.

[168] Section 15.2(6) of the Divorce Act sets out the objectives for a spousal support order. Section 15.2(4) sets out a non-exhaustive list of factors to consider when assessing the spouses' condition, means, needs and other circumstances.

[169] The Supreme Court of Canada has identified that the purpose of spousal support "is to relieve economic hardship that results from 'marriage or its breakdown'": *Moge v. Moge*, [1992] 3 S.C.R. 813 at 848, 1992 CanLII 25 (emphasis in original). Marital partners "should expect and are entitled to share [the] financial benefits" that are generated from the marriage: *Moge* at 849. Those financial benefits can be equally distributed in many ways, including through spousal support and through division of assets: *Moge* at 849. The Court must consider "the respective advantages and disadvantages of the spouses as a result of their roles in the marriage": *Moge* at 849.

[170] The Supreme Court of Canada has identified three grounds for entitlement to spousal support:

1. compensatory support, which relates primarily to the first two objectives set out in s. 15.2(6) of the Divorce Act;
2. non-compensatory support, which relates primarily to the final two objectives set out in s. 15.2(6) of the Divorce Act; and
3. contractual support.

[171] Jamal Bajwa does not have a contractual claim for spousal support. I will review his claims for compensatory and non-compensatory support.

Is Jamal Bajwa entitled to compensatory spousal support?

[172] I am satisfied that Jamal Bajwa is entitled to spousal support on a compensatory basis.

[173] Justice Rowles summarized the purpose of compensatory spousal support as follows in *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal to SCC ref'd, 33002 (28 May 2009):

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (Bracklow, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success.

[174] Jamal Bajwa sacrificed his own career advancement to allow Dr. Bajwa to take advantage of professional opportunities by:

- a) taking time out of his workday to drive Dr. Bajwa to work in Chilliwack before she had a driver's license;
- b) pausing his career as an immigration consultant to move to Red Deer, Alberta so Dr. Bajwa could accept a higher-paying associate dentist position;
- c) staying home with the children and assuming primary household responsibilities while the parties lived in Red Deer; and
- d) acting as first responder for any health issue or gap in care for either child, but especially the parties' son, since the parties moved back to BC in the summer of 2016.

[175] Jamal Bajwa's career sacrifices are consistent with the parties' agreement prior to marriage that he would support her becoming a qualified dentist in Canada, subsequent to which she would be the primary breadwinner and he would look after the children. Both parties preferred to have their children cared for by a parent rather than other caregivers.

Is Jamal Bajwa entitled to spousal support on a non-compensatory basis?

[176] I am satisfied that Jamal Bajwa is entitled to spousal support on a non-compensatory basis.

[177] Justice Rowles summarized the purpose of non-compensatory spousal support as follows in Chutter:

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[178] While non-compensatory support does not guarantee either spouse the same standard of living as they had during the marriage, the longer the relationship and the greater their economic union, "the greater will be the presumptive claim to equal standards of living upon its dissolution": Moge at 870. That said, there is no presumption that a party is entitled to an equalization of income or to the same standard of living they enjoyed during the marriage: Lee v. Lee, 2014 BCCA 383 at paras. 60-61, 65.

[179] Where there is significant income disparity, non-compensatory spousal support "allows for transitional assistance to the lower-income earning spouse from the shared financial resources of the marriage to the financial realities of a single income": Kirton v. Mattie, 2014 BCCA 513 at para. 49. As noted by the Supreme Court of Canada in Moge at 861:

In cases where relatively few advantages have been conferred or disadvantages incurred, transitional support allowing for full and unimpaired reintegration back into the labour force might be all that is required to afford sufficient compensation.

[180] In this case, the duration of the parties' marriage and the degree of their economic interdependency are factors in favour of finding eligibility for non-compensatory support. The parties had close to a 15-year marriage. They kept separate bank accounts, but they shared expenses based roughly on their proportionate incomes. This degree of financial integration weighs in favour of compensatory support.

[181] I am satisfied on the evidence that Jamal Bajwa has suffered economically as a result of the breakdown of the marriage. He is meeting his financial needs only through loans from the Parents. Even if he was earning the Guidelines income I imputed to him for child support purposes, that income would not cover his expenses.

What is the appropriate award for spousal support in this case?

[182] Jamal Bajwa claimed spousal support in the notice of family claim filed March 12, 2000, which means that Dr. Bajwa had effective notice of the claim for spousal support from the outset of this litigation. That said, Jamal Bajwa seeks spousal support from March 1, 2021, the date the parties stopped sharing expenses. I am satisfied March 1, 2021 is an appropriate start date for spousal support in this case.

[183] Based on the parties' Guidelines income since 2021, the DivorceMate calculation results in the following ranges for monthly spousal support, using the with-child-support formula and based on Jamal Bajwa's claiming of the dependant credit:

- a) 2021: low \$0, mid \$0, high \$293;
- b) 2022: low \$0, mid \$243, high \$594;
- c) 2023: low \$410, mid \$826, high \$1230; and
- d) 2024: low \$410, mid \$826, high \$1230.

[184] The Spousal Support Advisory Guidelines: The Revised User's Guide English Edition (Ottawa: Department of Justice, 2016) at Chapter 9 suggests that in shared custody cases the default outcome in "bi-nuclear" situations (no new partners, no new children) should be the spousal support which generates a 50/50 split of net disposable income ("NDI"). In 2021 and 2022, the high end of the range results in close to a 50/50 split of NDI. In 2023 onward, the mid-range results in close to equal sharing of NDI.

[185] The Spousal Support Advisory Guidelines [SSAG] also recommend that spousal support in this case should continue for an indefinite duration, subject to variation and possible review, with a minimum of 7 years and a maximum of 14 years based on the length of the marriage.

- [186] The SSAG provide guidance in making appropriate spousal support awards; however, they do not "operate to displace the courts' reliance on decided authorities but [rather] to supplement them": *Yemchuk v. Yemchuk*, 2005 BCCA 406 at para. 64. That said, a departure from the SSAG requires an explanation: *Kerr v. Baranow*, 2009 BCCA 111 at para. 84, rev'd in part on other grounds 2011 SCC 10; *Lightle v. Kotar*, 2014 BCCA 69 at para. 63.
- [187] In this case to achieve equal division of NDI, I find that Dr. Bajwa should pay spousal support to Jamal Bajwa at the high end of the SSAG range from March 1, 2021 to December 31, 2022. Similarly, from January 1, 2023 onward, Dr. Bajwa should pay spousal support to Jamal Bajwa at the mid range. On that basis, Jamal Bajwa is entitled to an award of \$25,752 for pre-trial spousal support. On an ongoing basis, Dr. Bajwa shall pay spousal support of \$826 per month, which is mid-range with-children support based on her Guidelines income of \$100,000 and his Guidelines income of \$30,000.
- [188] In terms of duration, I order spousal support to be of indefinite duration but either party may, on or after August 1, 2029, apply for review of entitlement and quantum of support and to seek an end date to that support. There remains a certain degree of uncertainty regarding Jamal Bajwa's ability to become self-supporting as a result of his interrupted career. He says he is not working currently for mental health reasons, but there was no expert evidence to support an incapacity. There is also uncertainty regarding the impact of the children's health on both parties' earnings. There may be other changes in the parties' finances over the next few years that may affect Jamal Bajwa's entitlement based on need. Five years from the date of these reasons will be approximately nine and a half years after separation, a reasonable minimum period for spousal support given Jamal Bajwa's strong compensatory claim and the age of the children. In addition to a possible review after five years, the parties are obviously free to apply for variation of spousal support based upon a material change in circumstances, in accordance with s. 17 of the Divorce Act.

Conclusion

- [189] Dr. Bajwa's claim to an interest in the Surrey Property is dismissed.
- [190] Jamal Bajwa shall pay Dr. Bajwa \$72,196.13 to divide family debt and to equalize post-separation expenses that should be shared. The parties shall each be responsible for the outstanding debts in their own name.
- [191] Dr. Bajwa shall pay Jamal Bajwa \$21,107 for retroactive child support.
- [192] Based on Dr. Bajwa's Guidelines income of \$100,000 and Jamal Bajwa's Guidelines income of \$30,000, commencing on September 1, 2024 and continuing on the 1st day of each and every month, the parties shall pay child support as follows:
- a) Dr. Bajwa shall pay to Jamal Bajwa the sum of \$1522 per month;
 - b) Jamal Bajwa shall pay to Dr. Bajwa the sum of \$484 per month; and

- c) Dr. Bajwa shall pay to Jamal Bajwa the net sum of \$1038 per month to satisfy both parties' obligations to pay child support.

[193] The parties shall conduct a review of child support and the children's special or extraordinary expenses on an annual basis and payments shall be adjusted as necessary by July 1 of every year. Jamal Bajwa's Guidelines income shall be \$30,000 or his actual Line 15000 income, whichever is greater, subject to agreement between the parties or court order.

[194] Dr. Bajwa shall pay 77% of s. 7 extraordinary expenses and Jamal Bajwa shall pay 23%.

[195] Pursuant to s. 7(2) of the Guidelines, the following expenses are recognized as extraordinary expenses to be divided proportionally:

- a) counselling sessions for the daughter at a rate of \$169.50 per session;
- b) school field trips, math tuition fees and school-related expenses such as a laptop; and
- c) prescription medicines for both children.

[196] Jamal Bajwa is entitled to an award of \$25,752 for pre-trial spousal support.

[197] For an indefinite period, Dr. Bajwa shall pay spousal support of \$826 per month based on her Guidelines income of \$100,000 and his Guidelines income of \$30,000. Either party shall be at liberty to apply for review of spousal support after August 1, 2029.

[198] The parties have leave to make further submissions on costs. Any party seeking an order for costs must contact Supreme Court Scheduling within 30 days to schedule a hearing date.

"Lamb J."

Appendix A

Vacation parenting time

[1] Pursuant to s. 16.1 the Divorce Act, for every 12 months in a calendar year, each parent may schedule up to 21 consecutive days of vacation time that may include having the children or not with them during that period. Unless the parties otherwise agree, vacation with the daughter will take place when school is not in session. The 21 days of vacation time may be broken down into three segments.

[2] Pursuant to s. 16.1 of the Divorce Act, the parent wishing to schedule a vacation in accordance with para. 5:

- a) will inform the other parent of their plans at least three months in advance; and
- b) may give less than three months' notice of intended vacation time in cases of emergency (e.g. if a family member or friend passes away or there is a medical emergency).

[3] The parties may agree on additional vacation time.

- [4] The parent who is being asked to consent to additional days will not unreasonably withhold consent if there is a legitimate reason for needing to take the extra days.
- [5] Pursuant to s. 16.1 of the Divorce Act, both parties may schedule up to four weekends of vacation parenting time with the children yearly in addition to the other vacation time, from Friday after school to Monday at 8:30 a.m.
- [6] Pursuant to s. 16.1 of the Divorce Act, notice must be provided by January 1 of each year for two of the weekends and by July 1 of each year for the other two weekends.
- [7] Pursuant to s. 16.1 the Divorce Act, if a parent exercises vacation time, the other parent will have make-up parenting time for an equivalent number of days.
- [8] Pursuant to s. 16.1 of the Divorce Act, if a parent takes a vacation without the children, the children will remain in the non-vacationing parent's care for the duration of the other parent's vacation, unless the parties otherwise agree in writing.
- [9] Pursuant to the Divorce Act, the son will not travel outside the Lower Mainland for vacation in light of his medical condition, unless the parties otherwise agree in writing. He may travel for medical treatment that the parties agree upon in writing.
- [10] Pursuant to the Divorce Act, if the parent taking vacation wishes to travel internationally with the daughter and proper notice was given, the other parent will sign the travel consent and will not unreasonably withhold consent.

Children's birthdays

- [11] Pursuant to s. 16.1 of the Divorce Act, on the day of each child's birthday, the parent who does not have the children in their care will have parenting time with both children from 4:00 p.m. until 8:00 p.m.

Public holidays

- [12] Pursuant to the Divorce Act, the regular parenting time schedule will continue on public holidays.

Eid holiday

- [13] Pursuant to the Divorce Act, On the Eid holiday, the parent who does not have the children in their care will have parenting time from 4:00 p.m. and must return the children by no later than 11:00 p.m. It is up to the parent who has the children in the evening to use their discretion and determine the timing of the return, which will not be before 8:00 p.m.

Sharing of the son's wheelchair van and illness

- [14] Pursuant to the Divorce Act, if the son becomes too ill to change residences, the son will remain in the home with the parent that is with him at the time until the son is well enough to travel. The off-duty parent may visit the son at the on-duty parent's home.
- [15] Pursuant to s. 16.1 of the Divorce Act, when the son is too ill to change residences, the parties will arrange a one to two hour visitation window per day on weekdays and a three to four hour visitation window per day on weekends to allow the off-duty parent to visit the son at the on-duty parent's home.
- [16] Pursuant to s. 16.1 of the Divorce Act, the off-duty parent will have alone time with the son during visitation as per paragraph 19, and the on-duty parent will ask their family members not to be present during that visitation time.
- [17] Pursuant to s. 16.1 of the Divorce Act, the daughter will continue to follow the regular parenting schedule during the times the son is sick.

Communications

- [18] Pursuant to s.225 of the Family Law Act, the parties will use email rather than phone or text to communicate with each other, except in the case of emergency or difficulty or issues during the actual time of transfer of the children.
- [19] Pursuant to s. 16.1 the Divorce Act, the on-duty parent will allow the off-duty parent to video call the children at least once per day.
- [20] Pursuant to s. 16.1 the Divorce Act, at her request, the daughter will be able to contact the off-duty parent by phone or video call throughout the day.
- [21] Pursuant to the Family Law Act, if the daughter requests to see the off-duty parent in person as a result of an emergency, on any given day, the on-duty parent will use their discretion to decide whether to facilitate the in-person contact, which the on-duty parent will not unreasonably deny.

Conduct orders

- [22] Pursuant to s. 225 of the Family Law Act, the parties will:
 - a) put the best interests of the children before their own interests;
 - b) encourage the children to have a good relationship with the other parent and speak to the children about the other parent in a positive and respectful manner;
 - c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the children.

[23] Pursuant to s. 225 of the Family Law Act, the parties will encourage their respective families to refrain from any negative comments about the other parent and their extended family and from discussions in front of the children about family issues and litigation.

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