

CANADA / JUDGMENT

Bordignon v. Bordignon

2025 BCSC 1113

COURT

Supreme Court of British Columbia

DECIDED

17 June 2025

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2025 BCSC 1113 Bordignon v. Bordignon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bordignon v. Bordignon,

2025 BCSC 1113

Date: 20250617

Docket: E127941

Registry: Kelowna

Between:

Lucille Bordignon also know as Lucille Puglisi

Claimant

And

Mark Angelo Bordignon, Giovanni Bordignon, Rebo Beton Pumping Ltd., 461334 B.C. Ltd. and
Rebo Beton Pumping Placing Finishing Ltd.

Respondents

Before: The Honourable Justice Hardwick

Reasons for Judgment

The Claimant appearing on her own behalf:

L. Bordignon

Counsel for the Respondents, Mark Angelo Bordignon, Rebo Beton Pumping Ltd.:

D.M. King

No other appearances

Place and Date of Hearing:

Kelowna, B.C.

May 20, 2025

Place and Date of Judgment:

Kelowna, B.C.

June 17, 2025

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Introduction

- [1] These reasons for judgment address a post-trial application filed by the claimant, Lucille Bordignon also known as Lucille Puglisi, on April 4, 2025 (the "April 2025 Application"). I shall refer to the claimant as Lucille with no disrespect.
- [2] The relief sought in Part 1 of the April 2025 Application is reproduced in its entirety as Schedule "1" hereto.
- [3] As set out at Schedule "1", the April 2025 Application primarily seeks to address the determination of Guideline income for the respondent, Mark Angelo Bordignon (who again I refer to by his first name with no disrespect), and the consequential adjustment to both child and spousal support for the years commencing July 1, 2024 and July 1, 2025. There are also certain ancillary orders sought which I will address at the conclusion of these reasons.

- [4] The April 2025 Application is opposed in its entirety by Mark.
- [5] Paragraph 10(f) of the April 2025 Application is opposed by the other respondents, Giovanni Bordignon (Mark's father), 461334 B.C. Ltd. and Rebo Beton Pumping Placement Finishing Ltd. (collectively, the "Other Respondents") on the basis the order sought is res judicata and an abuse of process. The Other Respondents seek special costs against Lucille. The Other Respondents, however, take no position on the remaining relief sought by Lucille in the April 2025 Application and did not appear at the hearing on May 20, 2025.

Litigation Overview

- [6] This family law action proceeded to a 20-day trial before Mr. Justice Betton commencing on December 11, 2023 and ultimately completing on March 1, 2024. Throughout the trial, all parties had counsel. Mark and the Other Respondents still have counsel. Lucille is now, again, self-represented.
- [7] The reasons for judgment resulting from the trial were released on July 10, 2024 and are indexed at 2024 BCSC 1226 (the "Trial Reasons"). The Trial Reasons are 77 pages in length.
- [8] Between the completion of the trial and the release of the Trial Reasons, Justice Betton retired from this court.
- [9] On November 4, 2024, I was appointed the ex mero muto trial judge in place of Justice Betton and thereafter have been case managing this action. By virtue of my case management and related involvement, I have reviewed the Trial Reasons in detail on multiple occasions.
- [10] The April 2025 Application is, however, the first contested hearing I have presided over in this action.

Summary of Background Facts

- [11] In the Trial Reasons, Justice Betton described the litigation very accurately as follows at paragraph 1:
- [1] The parties seek a full spectrum of orders in this high-conflict family law case. There is virtually no common ground on any of the issues or the underlying factors that should determine them. This extends to such base issues as the date of the commencement of their relationship and their separation date.
- [12] To briefly summarize other necessary facts, some of which are set out in greater detail in the Trial Reasons:
- a) Lucille and Mark married on August 6, 2005;
 - b) Lucille and Mark have two daughters, S. born in 2009 and A. born in 2011;

- c) Lucille was born in 1977. Lucille is employed by Al Stober Construction Ltd ("Stober Construction"). She holds a full-time position with supervisory responsibilities and is a T4'ed employee;
- d) Mark was born in 1974. Mark is the sole shareholder and operating mind of the respondent, Rebo Beton Pumping Ltd. ("Pumping"). Pumping is in the concrete industry. Mark holds the position of manager for which he is paid a salary by Pumping. Mark has also received dividends from Pumping;
- e) Family law proceedings were commenced by Lucille on June 26, 2020. The parties to the action were initially only Lucille and Mark. On May 2, 2022, the Other Respondents were added as parties. Numerous additional claims were plead, including allegations of conspiracy and a derivative claim for unjust enrichment;
- f) Parenting was unfortunately highly contentious following separation and there was extensive professional intervention in accordance with multiple court orders. By the time of the trial, the parties were sharing parenting time of A. and S. on an alternating week on week off schedule;
- g) Lucille and Mark continue to share parenting of A. and S. on an alternating week on week off schedule pursuant to the final order made by Justice Betton (the "Final Order") but there continues to be challenges; albeit ones not requiring further court orders since the Trial Reasons;
- h) A. and S. attend private school in Kelowna and have done so since prior to separation. There is tuition associated with their attendance. Mark continues to pay this tuition (which is partially tax deductible given that the school is religiously affiliated). Lucille is not opposed to A. and S. attending this school but maintains she has no ability to contribute based upon their respective financial positions and having regard to the other expenses she pays for A. and S.;
- i) Mark has had exclusive occupancy of the former family residence located on Trevor Drive in West Kelowna (the "Former Family Home") since July 2020;
- j) Pursuant to the terms of Minutes of Settlement (the "Minutes") negotiated in the context of a judicial settlement conference which I presided over with the express consent of all parties in March 2025, the Former Family Home was listed for sale with the parties having joint conduct of sale with the listing agent being the agent proposed by Lucille; and
- k) No offers had been received on the Former Family Home as of May 20, 2025, and the appropriateness of its current list price is a point of dispute between the parties. I do not have before me, however, an application for directions regarding the sale of the Former Family Home. As contemplated in the Minutes, such an application may be brought before another presider, including an associate judge, if I am unavailable.

Provisions in the Trial Reasons Regarding Income Determination and Support

[13] By the time the trial before Justice Betton commenced there had been several interim orders made regarding payment of support, including orders made by consent. The chronology of those orders is as follows:

- a) August 20, 2020: consent order that Mark pay Lucille interim without prejudice child support of \$1,000 per month and interim without prejudice spousal support in the amount of \$2,500 per month commencing on August 1, 2020;
- b) November 27, 2020: consent order increasing the interim without prejudice spousal support to \$3,500 per month commencing December 1, 2020;
- c) July 26, 2021: interim without prejudice order following a contested hearing imputing Mark's Guideline income at \$250,000 per annum and adjusting the interim without prejudice spousal support payable to Lucille to \$3,823 per month commencing August 1, 2021. This was the midrange of support under the Spousal Support Advisory Guidelines ("SSAG") based upon S. and A. residing primarily with Mark;
- d) January 27, 2023: interim order following a contested application including the following terms:
 - i. Mark's application to vary or reduce his Guideline income and spousal support pursuant to the July 16, 2021 order is dismissed;
 - ii. Lucille's Guideline income is imputed at \$35,000 per annum pending trial;
 - iii. Mark's Guideline income is imputed at \$250,000 per annum pending trial; and
 - iv. Interim spousal support is varied to \$3,104 per month.
- e) February 13, 2023: further corrective order confirming Mark's obligation to pay Lucille interim spousal support in the amount of \$3,104 per month.

[14] At trial, Mark sought a recalculation and corresponding credit for an alleged overpayment of support. The overpayment, according to the written closing arguments I have before me in the record, was in the range of \$105,000. This claim was based, to Justice Betton's understanding, on Mark's submission that it was appropriate utilize a Guideline income of \$125,000 throughout the material time during which interim support was payable. At para. 330 of the Trial Reasons, Justice Betton held as follows:

[330] In his argument, MB [Mark] seeks a recalculation and credit for a spousal support overpayment. Although not entirely clear, I understand this to be a request to recalculated based on \$125,000 income throughout. He focuses on the fact the order of July 16, 2021 was made on a without prejudice basis suggesting that opens the door to his position. The difficulty is that the January 27, 2023 order followed a contested hearing where MB sought the same result as he seeks here, that is to reduce the support obligation. There is insufficient evidence before me to warrant a variation of that order. It does not indicate

what it is a without prejudice order and I am not prepared to revisit that order.

- [15] Although Mark did file a notice of appeal on August 14, 2024, Mark did not appeal the dismissal of his claim for a recalculation of his support payments to Lucille pending trial. The status of this appeal and Lucille's cross-appeal can, for simplicity sake, be described as inactive.
- [16] In terms of determining prospective Guideline income, the situation before Justice Betton in late 2023/early 2024 was markedly similar to what it is presently. Mark was the manager of Pumping and receiving a salary from Pumping. There was no question that this salary formed part of his Guideline income. The amounts declared by Mark as T4 employment income from Pumping for the years 2020 to 2022 inclusive were \$128,836, \$124,984 and \$124,977 per annum respectively.
- [17] Rather, the dispute concerned the argument advanced by Lucille's counsel that the amount of shareholder loans that Mark took from Pumping since May 10, 2021, should be included in determining his Guideline income. Mark's argument was that those funds were used to pay significant disbursements associated with the counselling, various expert assessments and to maintain the family over three-and-one-half years of litigation and should not be included in his Guideline income.
- [18] In considering the parties' arguments, Justice Betton concluded as follows at para. 334:
- [334] Shareholder loans are a balance sheet item, an amount owing to the company. Ms. Brunton [the joint business valuator] testified that shareholder loans are not income and remain owing to the company as a receivable. The claimant argues, however, that it is reasonable to anticipate those amounts will not be repaid and that they will appear in MB's income after trial. I am unable to determine if in fact that will be the case but it is neither necessary nor, in my view, appropriate to do so. If and when the loans are in fact designated as income, that will impact MB's support obligations. (emphasis added)
- [19] Continuing his analysis at paras. 335 - 337, Justice Betton ultimately set Mark's Guideline income at \$125,000 per annum:
- [337] As indicated, I will not be varying the orders that have been in place to the date of trial. In each of fiscal years 2022 and 2023 Pumping generated losses, so I find no basis to add corporate income to the salary amount he says should be used to determine support obligations. For calculation of support, MB's income for support is \$125,000.
- [20] By virtue of the shared parenting arrangement and the conceded entitlement to spousal support, it was also necessary to determine Lucille's Guideline income. Justice Betton imputed Lucille a Guideline income of \$51,000 per annum: see para. 340.

- [21] In terms of the actual support orders, in light of Justice Betton's retirement and at the suggestion of Mark's counsel, the Trial Reasons did not calculate the actual quantum of support payable. That was left to counsel to include in the Final Order. Further, Justice Betton set forth a protocol going forward under which:
- a) The parties are to exchange income tax returns and notices of assessment and, for Mark, corporate financial statements, on or before June 15 of each year;
 - b) Both child support and spousal support is to be recalculated annually on the basis of the above financial information with any adjusted amounts payable to commence July 1 of each year commencing in 2024;
 - c) Child support is premised upon there being shared parenting of S. and A. and calculated on an "offset basis";
 - d) Spousal support is placed at the midpoint of the range provided for under the SSAG; and
 - e) Duration of support of spousal support is set for 8 years with a review of entitlement to occur at that time.
- [22] An important takeaway from the foregoing which might not be readily apparent is that the Trial Reasons were released on July 10, 2024. Accordingly, the recalculation of child and spousal support for the period commencing July 1, 2024, was already overdue to have occurred. Given this reality and for litigation efficiency, the parties consented to my conducting the July 1, 2024 and July 1, 2025 support reviews concurrently.
- [23] Finally, before leaving the Trial Reasons, connected to the above discussed issue of Mark's shareholder loans owing to Pumping, was the issue of litigation related expenses (other than legal fees). Justice Betton dealt with Mark's claims in this regard at paras. 346-350. The ultimate result being that some expenses were ordered to be shared equally, some expenses were ordered to be shared proportionately and some expenses were ordered to be born by Mark alone.

Determination of Mark's 2024 and 2025 Guideline Income

- [24] As I indicated in the overview, central to addressing the relief sought in the April 2025 Application is determining Mark's Guideline income for the years commencing July 1, 2024 and July 1, 2025.
- [25] As a starting point, the last income taxation documentation that Mark had disclosed prior to the conclusion of the trial was for 2022. This makes sense because Mark's 2023 T1 Personal Income Tax Return was not due to be filed until April 30, 2024, some approximately six weeks after the trial concluded. Similarly, the financial year end for Pumping is March 31.

- [26] By virtue of some voluntary compliance with the Final Order and certain case management orders/directions, I had before me the necessary financial disclosure for 2023 and 2024 from both parties at the hearing of the April 2025 Application.
- [27] In his 2023 T1 Personal Income Tax Return, Mark claimed a Line 15000 income of \$208,947.88, consisting of:
- a) Employment Income - \$124,490.88; and
 - b) Taxable amount of dividends from a Canadian corporation (Pumping) - \$84,456.00.
- [28] The actual amount of the dividend declared to Mark by Pumping was \$61,200.
- [29] In his 2024 T1 Personal Income Tax Return, Mark claimed a Line 15000 income of \$277,391.45 consisting of:
- a) Employment Income - \$128,361.45; and
 - b) Taxable amount of dividends from a Canadian corporation (Pumping) - \$149,040.00.
- [30] The actual amount of the dividend declared to Mark by Pumping was \$108,000.
- [31] The basis for the declaration of dividends to Mark in 2023 and 2024 is simple. Given Mark did not repay his shareholder loans owing to Pumping within the two years of taking the draws, Mark had no choice but to take those monies into his personal income in accordance with the Income Tax Act. This was done through the declaration of dividends.
- [32] This is specifically confirmed in the emails from Eva Tone, a chartered professional accountant and chartered accountant who is a partner at MNP LLP, dated October 23, 2024 and May 16, 2025 (the "Tone Emails"). The Tone Emails were tendered by Mark into evidence in his Affidavit #25.
- [33] Under s. 16 of the Guidelines, the sources of a spouse's annual income included in "total income" on the spouse's tax return are the basis for determining income, subject to ss. 17-20 and Schedule III: see *Kopp v. Kopp*, 2012 BCCA 140 at paras. 64-68.
- [34] Mark's argument continues to be that the deemed dividends declared by Pumping should not be included as part of his Guideline income because they represent monies used during the course of this litigation for family debts, expenses and expert fees and not money he currently has available to pay support. Rather, Mark submits that his Guideline income shall be limited to his T4 income from Pumping: namely \$124,490.88 for the period commencing July 1, 2024 and \$128,351.00 for the period commencing July 1, 2025.
- [35] The fundamental flaw in Mark's argument, I find, is that what actually happened is exactly what Justice Betton contemplated might likely happen: see para. 334 quoted above at para. 18.

- [36] Further, Mark's argument regarding what the monies included in the deemed dividends were historically utilized for was, in my view, already effectively considered by Justice Betton at trial:
- a) First, Justice Betton expressly addressed Mark's claims for contribution by Lucille to litigation expenses and made certain orders in this regard. The fact that Mark has not yet collected payment from Lucille for her share of these expenses relates to the overall status of the litigation, including but not limited to the fact that the lingering issue of costs in this action generally is finally coming on for hearing before me later this month and the reality that the Former Family Home has not sold. However, Mark has the benefit of an order that Lucille contribute to certain of these expenses (using her after tax dollars) and she has no obligation to contribute, directly or indirectly, to any other of these expenses regardless of how Mark funded them; and
 - b) Secondly, Justice Betton rejected Mark's claim to obtain a credit for his alleged overpayment of his interim spousal and child support obligations. Consistent with same, Justice Betton dismissed Lucille's claim for occupational rent on the basis that Mark paid for the expenses associated with the Former Family Home since obtaining exclusive occupancy in July 2020: see paras. 313 and 314. Now Mark effectively wants to go back to that same pre-trial period and assert that since some of the draws he took from Pumping allegedly went to service family debts the court should ignore the fact that he elected to take the draws into income in lieu of repaying the shareholders loans as he was permitted to do under the Income Tax Act.
- [37] Moreover, while I accept the argument made by Mark's counsel as to the appropriateness in certain cases of using the "current circumstances" approach when making a prospective support obligation versus reliance on historical performance, the authority cited by the claimant, *A.R.J. v. Z.S.J.*, 2009 BCSC 1662 discusses both approaches and ultimately only makes an interim order for support.
- [38] By contrast, I am making a final order for support for the relevant time periods after a lengthy trial based, in part, upon factual findings made by Justice Betton and the framework for annually reviewing support he put into place in the Final Order which is entirely consistent with s. 16 of the Guidelines.
- [39] As a final comment in this regard, I expressly reject Lucille's argument that Mark's Guideline income for 2024 should be determined to be \$411,026. This was based on a very undeveloped argument relating to the attribution of pre-tax income of Pumping to Mark after the adding back of professional fees.
- [40] To be clear, s. 18 of the Guidelines clearly may be applicable for future prospective support reviews. Section 16 is, as noted above, subject to s. 18. In this regard, the application of s. 18 was considered at trial and rejected by Justice Betton on the basis that Pumping was operating at a loss. That continues to be the case. Specifically, according to the T2 Corporate Tax Return filed for the financial year ending March 31, 2024, Pumping was operating at a net loss of \$524,362. This is an improvement from the prior financial year when Pumping

was operating at a net loss of \$628,884. Lucille's arguments regarding her strong skepticism about the bona fides of these losses are substantially the same as were made before Justice Betton by her former counsel other than that I did not have benefit of observing the cross-examination on this point (which is described in Mark's application response as "withering").

Lucille's Guideline Income

- [41] In 2023, Lucille's Line 15000 income was \$115,605.65. \$37,248 of this was spousal support received from Mark. Her employment income from Stober Construction was \$78,357.65.
- [42] 2023 was anomalous for Lucille as Stober Construction paid Lucille income over and above what she was normally entitled to for additional services provided and in partial recognition of the financial burdens Lucille was under as a result of the litigation.
- [43] Whilst not identical, Lucille's circumstances in 2023 are somewhat analogous to Mark's. The amount that Lucille received from Stober Construction was non-recurring and, accepting her evidence, partially tied to the generosity of her employer in recognizing her need to service costs associated with this litigation. It was still, however, income received in Lucille's hands during the 2023 taxation year and must, in my view, be included in her Guideline income in accordance s. 16 of the Guidelines.
- [44] In 2024, Lucille's Line 15000 income was \$87,074.34. Of this, \$27,093.00 was spousal support received from Mark. Lucille's employment income from Stober Construction was \$59,981.34. Lucille received no anomalous payments in 2024 and her actual employment income exceeds the \$51,000 that was imputed to her by Justice Betton. Accordingly, there is no basis for concluding that Lucille is underemployed and should be imputed additional income under s. 19 of the Guidelines.

2024 Support Calculations

- [45] Based upon Mark having a Guideline income of \$208,946.88, including taxable dividends of \$84,456.00/actual dividends of \$61,200, Lucille having a Guideline income of \$78,357.65 and the parties having shared parenting of S. and A.:
- a) Mark owes Lucille child support of \$2,580 per month;
 - b) Lucille owes Mark child support of \$1,215 per month;
 - c) Utilizing the set-off method under s. 9 of the Guidelines, Mark owes Lucille child support of \$1,365 per month; and
 - d) Based upon the above child support arrangements and using the mid-point of the range provided for under the SSAG, Mark owes Lucille spousal support of \$2,269 per month.
- [46] A copy of the 2024 DivorceMate support calculations are attached as Schedule "2" using both the actual dividends as per Schedule III(5) and the taxable amount of dividends.

[47] My orders are accordingly:

- a) Commencing July 1, 2024 and continuing on the 1st of each month through to and including June 1, 2025, Mark shall pay to Lucille child support for S. and A. in the amount of \$1,365 per month;
- b) Commencing July 1, 2024 and continuing on the 1st of each month through to and including June 1, 2025, Mark shall pay to Lucille spousal support in the amount of \$2,269 per month;
- c) Any amounts owing by Mark to Lucille between the support Mark paid between July 1, 2024 and June 30, 2025, and the support owing pursuant to this Order shall be paid to Lucille by no later than September 30, 2025; and
- d) Mark and Lucille must both refile their 2024 tax returns to reflect the adjusted amount of spousal support paid by Mark and received by Lucille.

2025 Support Calculations

[48] Based upon Mark having a Guideline income of \$277,391.45, including taxable dividends of \$149,040.00/actual dividends of \$108,000.00, Lucille having a Guideline income of \$59,981.34 and the parties having shared parenting of S. and A.:

- a) Mark owes Lucille child support of \$3,178 per month;
- b) Lucille owes Mark child support of \$925 per month;
- c) Utilizing the set-off method under s. 9 of the Guidelines, Mark owes Lucille child support of \$2,253 per month; and
- d) Based upon the above child support arrangements and using the mid-point of the range provided for under the SSAG, Mark owes Lucille spousal support of \$4,612 per month.

[49] A copy of the 2025 DivorceMate support calculations are attached as Schedule "3" using both the actual dividends as per Schedule III(5) and the taxable amount of dividends.

[50] My orders are accordingly:

- a) Commencing July 1, 2025 and continuing on the 1st of each month until further court order or written agreement and subject to the annual review provided for in the Final Order, Mark shall pay to Lucille child support for S. and A. in the amount of \$2,253 per month; and
- b) Commencing July 1, 2025 and continuing on the 1st of each month until further court order or written agreement and subject to the annual review provided for in the Final Order, Mark shall pay to Lucille spousal support in the amount of \$4,612 per month.

Special and Extraordinary Expenses

[51] The Trial Reasons, despite their length, do not address the issue of special and extraordinary expenses under s. 7 of the Guidelines.

- [52] Accordingly, all I presently have before me is para. 9 of the April 2025 Application seeking determination of the parties' proportionate sharing of the s. 7 expenses.
- [53] Based upon the parties' Guideline incomes as determined herein and based upon the quantum of child and spousal as ordered herein, for the period commencing July 1, 2024 through to and including June 30, 2025, s. 7 expenses for S. and A. shall be allocated 60% to Mark and 40% to Lucille.
- [54] Based upon the parties' Guideline incomes as determined herein and based upon the quantum of child and spousal as ordered herein, for the period commencing July 1, 2025 and continuing until further court order or written agreement, s. 7 expenses for S. and A. shall be allocated 61% to Mark and 39% to Lucille.
- [55] As the parties are certainly aware given the length of time this action has been actively litigated, s. 7 of the Guidelines provides that a child support order may include an additional amount to cover all or a portion of certain defined expenses, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and the family's spending pattern prior to the separation. The categories of expenses include, without limitation, health-related expenses that exceed insurance reimbursement by at least \$100 annually, extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs, expenses for post-secondary education, and extraordinary expenses for extracurricular activities (as defined in s. 7.11).
- [56] I would strongly urge Mark and Lucille to come to some agreement on what expenses fall prima facie within s. 7 of the Guidelines and are to be shared proportionately based on my above allocation net of any subsidies, benefits, income tax deductions or credits or contributions by the child and which expenses require further written agreement or court order to fall within the scope of s. 7.
- [57] Failing that, either party has liberty to bring on an application before me for determination of what expenses constitute s. 7 expenses upon proper notice under the Supreme Court Family Rules [Rules] to be heard upon a mutually agreeable date arranged through Supreme Court Scheduling.

Disclosure and other Ancillary Orders

- [58] The disclosure sought at paragraphs 10(a), (b) and (c) of the April 2025 Application is part of the core disclosure Justice Betton required be exchanged on an annual basis for the purposes of reviewing the quantum of support: see para. 342 of the Final Reasons. It was provided by Mark for the purposes of the April 2025 Application and should continue to be provided on an annual basis in accordance with the Final Order without need for an application. The same obligation exists for Lucille.

- [59] Paragraph 10(d) of the April 2025 Application seeks an order to prevent Mark from closing Pumping. What is effectively sought is akin to a mandatory injunction. When asked in the course of the hearing as to what legal basis existed for such an order in these circumstances, Lucille could identify none. That is because, in my view, there is none. Section 19 of the Guidelines allows for the imputation of income, including to payors of support, in certain circumstances for very valid reasons. One of the common grounds is unemployment and/or underemployment. The court does not, however, order payors of support to not quit their jobs or, in the case of self-employed persons, order them to continue to operate their business(es). This relief is thus dismissed.
- [60] Paragraph 10(e) of the April 2025 Application seeks an order for the production of the 2023 T3 Tax Return for the Mark Bordignon (2017) Family Trust (the "Trust") and the Trust's bank statements. There are several sub-issues arising from these requests and I shall break them down accordingly:
- a) There is no evidentiary basis provided by Lucille in the extensive materials before the court that would warrant an order that the Trust disclose its bank statements. That relief is dismissed;
 - b) The request for the 2023 T3 Income Tax Return for the Trust is unnecessary. I have, as sought by Lucille, determined Mark's Guideline income for the period commencing July 1, 2024 through to June 30, 2026. Any retroactive support claims up to the date of the Final Order were dismissed, as already outlined. This relief is accordingly also dismissed;
 - c) In the Final Order, Justice Betton did not make an order for production of any financial documentation relating to the Trust for the purposes of the annual support reviews. The Final Order is limited to disclosure of personal income tax information and corporate financial statements. However, s. 21(1)(g) of the Guidelines requires that "a spouse whose income information is necessary to determine the amount of the order" must, where the spouse is a beneficiary under a trust, "include a copy of the trust settlement agreement and copies of the trust's three most recent financial statements";
 - d) I do not interpret the Final Order as to purporting to limit the scope of production required under the Guidelines. That would be contrary to the general principle that child support is the right of the child and that payors of support have an obligation to make the necessary financial disclosure to properly determine their Guideline income: see *Follett v. Follett*, 2021 BCSC 1373 at para. 65; and
 - e) Accordingly, I consider it open to me to a complimentary order requiring that, commencing in 2026, the financial disclosure required by Mark for the purposes of the annual support reviews includes the most recent T3 Trust Income Tax Return for the Trust and, if available, the most recent financial statement for the Trust. Of importance, I am not ordering that the Trust prepare a financial statement. My reason for doing so is based upon a combination of both judicial notice and my understanding of the evidentiary record from the trial: see para. 300. Specifically, many family trusts, like the Trust, do not prepare financial statements as

there is no legal obligation to do so and the cost is often not warranted when there are minimal financial transactions to record during the fiscal year. There is, however, a legal obligation under the Income Tax Act to prepare and file a T3 Trust Income Tax Return. That is the minimum disclosure required by Mark and if circumstances change and financial statements for the Trust are prepared, Lucille is entitled to be provided with same as part of her annual disclosure package.

[61] Paragraph 10(f) of the April 2025 Application seeks an order for financial statements for Bordignon Family Holdings Ltd. ("Bordignon Holdings") from 2019 to present.

[62] To place this request into context, I refer to para. 299 of the Trial Reasons where in Justice Betton stated:

According to the testimony of GB [Mark's father], Bordignon Family Holdings Ltd. is a holding company that GB puts money into from 461 [461334 B.C. Ltd.] when he wants to give his children money. MB confirmed in cross-examination that he holds 1,200 voting shares in the company. There is nothing to contradict this. In her argument, the claimant complains about the lack of disclosure regarding this entity but does not develop an argument as to what if anything should result. On the limited evidence, the shares are family property and one half of MB's shares are to be held in trust for the claimant.

[63] On December 17, 2024, Lucille filed an application seeking various disclosure, including the financial statements for Bordignon Holdings for the last six years.

[64] That application was heard by Justice G.P. Weatherill with my consent due to my limited availability. On January 13, 2025, Justice G.P. Weatherill dismissed Lucille's application in its entirety and remitted the issue of costs to me.

[65] Lucille's evidentiary basis for seeking the financial statements for Bordignon Holdings in the April 2025 Application is essentially the same as in her December 17, 2024 application. The Other Respondents are thus correct that the document demand as against them is res judicata and is an abuse of process.

[66] With respect to the request that Mark produce these financial statements, I am not satisfied that it is appropriate to simply dismiss the relief sought on the basis of res judicata/abuse of process. The Final Order puts Mark in the position of a trustee of one-half of the shares of Bordignon Holdings for the benefit of Lucille. That is fundamentally different than the term of the Final Order dismissing all the claims against the Other Respondents: see para. 351(c) (3)(1) of the Trial Reasons. The term of the Final Order requiring Mark to hold one-half of his shares in trust does not, however, go any further. Said another way, there are no next steps contemplated in this action regarding the shares in Bordignon Holdings.

- [67] Given same, I am not satisfied that the financial statements for Bordignon Holdings are producible under Rule 9-1, even on a very broad interpretation of Rule 9-1(8) as a request under that provision of the Rules must still relate to a matter "in question" in a family law case. I thus dismiss the relief sought by Lucille on this basis.
- [68] My conclusion in this regard does not preclude Lucille from pursuing access to financial statements from Bordignon Holdings entirely. Mark is a shareholder of Bordignon Holdings. Bordignon Holdings is a company incorporated in British Columbia and is governed by the Business Corporations Act, S.B.C. 2002, c. 57 [BCA]. There is an obligation under the BCA to maintain certain records: see s. 42. Those records include financial statements: see s. 42(1)(p). There is a right to inspect these records by a shareholder "if and to the extent permitted by the articles" of the company: see s. 46(1)(b). I will not go further down this path of analysis for the very reason indicated above - there is no existing matter "in question" before me regarding Bordignon Holdings in this action. But the trustee/beneficiary relationship between Mark and Lucille created by the Final Order endures.

Costs

- [69] As I have indicated above, the overarching issue of costs in this action is scheduled to come on for hearing before me for a full day hearing later this month. Paragraph 4 of the April 2025 Application seeking "costs of the herein family law proceedings" is thus dismissed.
- [70] The April 2025 Application, however, is a stand-alone post-trial application and I must address the issue of costs accordingly.
- [71] Rule 16-1 and Appendix B of the Rules govern costs in family law cases. The general rule is that costs should follow the event; that is, they are awarded to the successful party unless the court otherwise orders: see R. 16-1(7).
- [72] In the event a party is not successful on all issues, the court may still award costs on a party's substantial success: see *Marquez v. Zapiola*, 2014 BCCA 35. This analysis is done while considering substantial success on the majority of issues of substance and not the number of issues: see *Rattenbury v. Rattenbury*, 2001 BCSC 593. Substantive success is an objective measure of the parties' relative success or failure on the issues: see, again, *Marquez*.
- [73] Within that framework, I have concluded that as between Lucille and Mark, Lucille was substantially successful. Much of the relief sought by Lucille as against Mark was dismissed. However, the most significant issue was the determination of Mark's Guideline income and Lucille was substantially successful in this regard. Lucille is accordingly entitled to her costs of the April 2025 Application as against Mark. Those costs shall be assessed pursuant to the Rules under the tariff as being a one-day application on the scale of ordinary difficulty.
- [74] As between Lucille and the Other Respondents, Lucille was not successful. The Other Respondents are clearly entitled to their costs from Lucille. Those costs also include, I find, the hearing before Justice G.P. Weatherill on January 13, 2025. In exercising my discretion, I

balance the fact that the Other Respondents did not attend at the hearing on May 20, 2025, as against the fact that Lucille continued to pursue the relief as against the Other Respondents in light of their clearly stated position in their application response filed May 6, 2025, that they were seeking special costs against her.

[75] Ultimately, I have concluded that Lucille's conduct in pursuing the disclosure from Bordignon Holdings does not meet the high standard required to warrant an order for special costs. Rather, I have chosen to exercise my discretion to order that the Other Respondents should be entitled to their costs fixed in the amount of \$3,000 inclusive of disbursements pursuant to Rule 16-1(14)(c). This is a cumulative costs order that covers responding to both the December 17, 2024 application and the April 2025 Application and the January 13, 2025 appearance before Justice G.P. Weatherill.

[76] The payment of costs pursuant to this order shall be deferred until the pronouncement of my order(s) regarding costs in this action generally.

"Hardwick J."

Schedule "1"

PART 1: ORDER(S) SOUGHT

1. For support purposes, Mark Angelo Bordignon's guideline income is 411,026 as of July 1, 2025 and Lucille Bordignon's guideline income is \$59,981 as of July 1, 2025.
2. Mark Angelo Bordignon shall pay spousal support at the midpoint in the amount of \$5,837 to \$8,513 per month commencing July 1, 2025 and continuing on the first day of each and every month thereafter and subject to review in accordance with the terms of the final order pronounced July 10, 2024
3. Mark Angelo Bordignon shall pay child support in the amount of \$7,362 per month to Lucille commencing July 1.
4. An order granting costs to the claimant, Lucille Bordignon also known as Lucille Puglisi, as against the respondent, Mark Angelo Bordignon, for the herein family law proceedings.
5. An order granting costs to the claimant, Lucille Bordignon also known as Lucille Puglisi, as against the respondent, Mark Angelo Bordignon.
6. For support purposes, Mark Angelo Bordignon's guideline income is \$244,260 as of July 1, 2024 and Lucille Bordignon's guideline income is \$78,357 as of July 1, 2024.
7. Mark Angelo Bordignon shall pay spousal support at the midpoint in the amount of \$2,943 per month, commencing July 1, 2024 and continuing on the first day of each and every month thereafter and subject to review in accordance with the terms of the Final Order pronounced July 10, 2024.

8. Mark Angelo Bordignon shall pay child support in the amount of \$3,271 per month to Lucille commencing July 1, 2024, and Lucille shall pay Mark child support of \$1,215 per month commencing July 1, 2024, for an offset amount payable by Mark to Lucille of \$2,056 per month
9. Commencing July 1, 2024, Mark shall pay 64.8% of the Children's Special and Extraordinary expenses and Lucille shall pay 35.2%.
10. That the Respondent, Mark Bordignon, shall provide forthwith the following documents and information.
 - a) All T slips for 2023
 - b) All notices of assessments and re-assessment for 2023
 - c) A copy of the most recent financial statements for Rebo Beton Pumping Ltd. March 31, 2024
 - d) An order to prevent Mark Bordignon to close Rebo Beton Pumping Ltd.
 - e) A copy of the 2023 Trust tax return and Bank Statements for the Mark Bordignon Family Trust
 - f) An order for financial Statements for Bordignon Family Holdings Ltd. 2019 to present
11. Such further and other relief as this honourable Court may deem fit

Schedule "2"

2024 Actual Dividends

2024 Grossed-up Dividends

Schedule "3"

2025 Actual Dividends

2025 Grossed-up Dividends

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Prepared on 28 October 2026 · Esheria