

CANADA / JUDGMENT

Buchanan v. Wight

2023 BCSC 1794

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Supreme Court of British Columbia

DECIDED

13 October 2023

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2023 BCSC 1794 Buchanan v. Wight

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Buchanan v. Wight,

2023 BCSC 1794

Date: 20231013

Docket: E5128

Registry: Chilliwack

Between:

Tracy Leigh Buchanan

Claimant

And

Timothy Randall Wight

Respondent

Before: The Honourable Mr. Justice Mayer

Reasons for Judgment

The plaintiff appearing on her own behalf:

T. Buchanan

Counsel for the Respondent:

W.L. Scott, K.C.

Place and Date of Hearing:

Chilliwack, B.C.

September 26, 2023

Place and Date of Judgment:

Chilliwack, B.C.

October 13, 2023

Introduction

- [1] This family law matter concerns claims for payment of child support and special or extraordinary childcare expenses.
- [2] In her notice of application filed February 6, 2023, the claimant Tracy Wight sought various relief including an order for delivery of an F8 Financial Statement and supporting documents by the respondent Timothy Wight, and an order varying the terms of a consent order made November 16, 2009 dealing with, amongst other things, payment of child support and special or extraordinary expenses for the child of the marriage (the "November 2009 Order"). Ms. Wight seeks an adjustment to these payments both retroactively and prospectively.
- [3] One of the issues arising from Ms. Wight's application concerns whether the child of the marriage (the "Child") retained this status when she turned 19 in February 2023. The question of whether the Child ceased to be a child of the marriage and when is the subject of a cross-application brought by Mr. Wight and filed on April 5, 2023.
- [4] At the commencement of the hearing before me, Ms. Wight acknowledged that she had not filed any evidence concerning the Child's current educational status in support of her position that the Child remains a child of the marriage. Mr. Wight concedes that the Child remained a child of the marriage until she turned 19 on February 9, 2023, but disputes that she retained this status afterwards. Ms. Wight agreed that her application with respect to prospective child support and the related relief should be adjourned generally with leave to file relevant additional materials. Her application will be heard at a later date along with Mr. Wight's cross-application.
- [5] Ms. Wight seeks an order that the style of cause be amended to reflect her current surname--Buchanan. Mr. Wight consents to this relief. This order is granted. As a result, in these reasons I will refer to Ms. Wight by her legal name, Ms. Buchanan.

Issues

- [6] The two primary issues before this Court in this application are the following:

- a) whether Ms. Buchanan is entitled to payment of additional retroactive child support and payment for Mr. Wight's proportionate share of special or extraordinary expenses prior to February 9, 2023 and, if so, for what period; and
 - b) if Ms. Buchanan is entitled to payment of retroactive child support and special or extraordinary expenses, what was Mr. Wight's income for the purposes of determining child support and what was his and Ms. Buchanan's incomes for the purpose of determining their proportionate share of special or extraordinary expenses pursuant to the Federal Child Support Guidelines, SOR/97-175 [Guidelines] during the relevant period?
- [7] In addition to these issues, this Court is to determine whether, as is sought by Ms. Buchanan, it is appropriate for this court file to be transferred from the Chilliwack registry to Abbotsford, closer to where Ms. Buchanan resides. Mr. Wight opposes this relief.

Background

- [8] Ms. Buchanan is currently 44 years old. She lives in Abbotsford and works as an elementary school teacher in Mission. Mr. Wight is currently 47 years old and works as a realtor in Chilliwack where he lives.
- [9] The parties began living in a common law relationship and were married on January 8, 2002. They separated on February 9, 2005 and were divorced in January 2007. They have one child together, born February 9, 2004.
- [10] Both Ms. Buchanan and Mr. Wight remarried after their divorce and had children with their new partners. Mr. Wight had four children with his new partner and Ms. Buchanan had one additional child. Ms. Buchanan separated from her new partner in 2020 and they divorced in 2022.
- [11] After Ms. Buchanan and Mr. Wight separated, by consent order made June 13, 2005, Mr. Wight was ordered to pay Ms. Buchanan child support of \$637 per month, based on a guideline income of \$80,000. In addition, Mr. Wight was ordered to provide Ms. Buchanan with copies of his income tax returns and corresponding notices of assessment each year once he received them so long as the Child remained a child of the marriage. This order was varied on several occasions, including by order of Justice Groberman on May 15, 2006 and Master Caldwell on October 29, 2007.
- [12] The last and therefore current order in place dealing with payment of child support and special or extraordinary expenses is the November 2009 Order. Pursuant to the terms of that order, Mr. Wight is required to pay Ms. Buchanan monthly child support in the amount of \$450 per month, based on a guideline income of \$45,899, and was required to pay \$200 per month for special or extraordinary expenses until June 1, 2010.
- [13] Neither party sought to vary the terms of the November 2009 Order until the present application was filed by Ms. Buchanan.

- [14] During the years following 2009, Mr. Wight provided copies of his notices of assessment to Ms. Buchanan. He did not, as required by the June 2005 Order, provide his income tax returns and did not do so until an order requiring their production was made in May 2023. In 2010 and the years following, Mr. Wight paid \$450 in monthly child support and in most years paid an additional lump sum. Mr. Wight submits that these lump sum amounts were paid with the intention that the total payment for the relevant year would approximate his obligations under the Guidelines.
- [15] The correspondence in evidence indicates that the parties negotiated the lump sum child support amounts for various years each year. Examples include the following:
- a) In August 2011, Ms. Buchanan wrote to Mr. Wight to negotiate an additional payment for child support stating that she agreed "that staying out of court would save money". She proposed that the parties draw up a new child support order, go to a mediator, or that Mr. Wight pay a lump sum amount of \$14,000 in addition to the monthly payment of \$450--which would continue--inclusive of special or extraordinary expenses. Mr. Wight paid a lump sum amount of \$12,000 in 2011.
 - b) In October 2012, Ms. Buchanan wrote to Mr. Wight and stated "if you would prefer a lump sum and keeping the original order, then the absolute lowest I would go is \$7,000" and Mr. Wight replied "I will agree to the \$7,000 for the year and will mail you the cheque". He paid this amount in 2012 and the same amount in 2013.
 - c) In early October 2014, Ms. Buchanan emailed Mr. Wight and proposed that the parties draw up a new order and the parties exchanged further emails discussing child support. In one email Mr. Wight expressed the view that with lump sum payments equivalent to approximately an additional \$1,000 per month, he was paying support "that may fit within the "guideline amount on the FMEP site based on [his] income". Later Ms. Buchanan responded that "I appreciate that you have tried to pay guideline amounts please understand that I have actually accepted less than what is regulated by law for several years." Ultimately, Mr. Wight paid Ms. Buchanan an additional lump sum child support of \$10,000.
 - d) In October 2015, Ms. Buchanan wrote to Mr. Wight thanking him for sending his notice of assessment and stating that although she thought it was time to update the November 2009 Order, that she did not want to incur the legal fees and stress involved. Ms. Buchanan stated that she "would definitely be willing to agree to a lump sum of \$10,000".
 - e) In September 2016, Mr. Wight provided his notice of assessment to Ms. Buchanan and offered to pay a lump sum amount of \$7,500. Ms. Buchanan accepted his offer in October 2016 and Mr. Wight paid this amount.
 - f) In October 2017, Ms. Buchanan proposed that Mr. Wight pay a lump sum amount of \$8,500 for child support and an additional \$1,000 for special or extraordinary expenses. Mr. Wight paid these amounts.

- g) In December 2018, Ms. Buchanan proposed that Mr. Wight pay a lump sum amount of \$8,000. Mr. Wight paid this amount.
 - h) In October 2019, Mr. Wight offered to pay a lump sum amount of \$7,500 for child support to Ms. Buchanan and \$1,000 to the Child for special or extraordinary expenses. Mr. Wight paid these amounts.
 - i) In October 2020, Ms. Buchanan proposed that Mr. Wight pay a lump sum amount of \$8,000 as a compromise of her assertion that Mr. Wight was required to pay an additional \$6,060 for child support and \$2,393 as a contribution towards special or extraordinary expenses. Mr. Wight paid this amount.
- [16] On October 26, 2021, Ms. Buchanan proposed that she and Mr. Wight attend at mediation or see a lawyer to have a new agreement drawn up with respect to payment of child support and special or extraordinary expenses. Mr. Wight initially replied that he did not think that mediation or a new order was necessary and proposed that the parties continue to negotiate the appropriate amount of child support each year.
- [17] On November 27, 2021, Ms. Buchanan wrote to Mr. Wight advising that, in her view, he should be prepared to provide her with the following: his new spouse's notices of assessment for the previous three years; his tax write-offs for the same period "so that an accountant can determine the taxable benefits that should have been added back to your income"; and information concerning rental income for the last three years. On December 2, 2021, Mr. Wight indicated that he was "open minded" about looking into mediation.

Analysis

Is Retroactive Child Support Payable?

- [18] Mr. Wight concedes that there was arguably a shortfall in his child support contributions made from 2009 up to and including December 31, 2022. Accordingly, there is no real dispute with respect to whether an order for retroactive child support and payment of special or extraordinary expenses should be made.
- [19] Mr. Wight deposes that he is not opposed to paying retroactive child support of \$22,950--the amount of the shortfall in child support he calculates for the period of 2009 to the end of 2022--but he says that paying this amount will result in hardship.
- [20] I am satisfied that a retroactive order with respect to child support and special or extraordinary expenses is appropriate in this case.
- [21] What is in dispute is the time period for which a retroactive order should be made and the amount of any shortfall for child support and special or extraordinary expenses which should reasonably be paid.

Period of Retroactive Adjustment

- [22] Once a court has established that a retroactive award is due, the court must determine the date to which the award should be retroactive. The choices include: the date when an application is heard; the date when formal notice was given (that is, the date on which an application for a retroactive award was filed and served); the date when effective notice of an intention to seek a retroactive award is given; and the date when the amount of child support should have increased. As a general rule, the date of effective notice is the default option: *D.B.S. v. S.R.G.*, 2006 SCC 37, at paras. 119 - 121.
- [23] In most cases, it is inappropriate to make an award retroactive to a date which is more than three years before formal notice is given to the payor parent: *D.B.S.* at para. 123.
- [24] A prolonged period of inactivity after effective notice is given may result in the effective date being postponed. This is because the payor parent's reasonable interest in certainty that they will not be required to pay retroactive support has returned and it is therefore inappropriate to reach too far into the past: *D.B.S.* at para. 123.
- [25] The default option of effective notice can be overridden, and an earlier date applied, when a payor parent has engaged in blameworthy conduct because the parent could not have reasonably believed that they were meeting their support obligations. Blameworthy conduct includes withholding information and failing to disclose a material change in circumstances, such as an increase in income, which would alter the amount of child support payable: *D.B.S.* at para. 124.
- [26] In this case Ms. Buchanan seeks retroactive child and spousal support back to 2015, three years prior to the date that she says she provided effective notice of her desire to seek an adjustment to the November 2009 Order with retroactive effect. In this respect she points to an email sent to Mr. Wight on October 2, 2018 where Ms. Buchanan stated as follows:
- Thanks for sending your NOA. I wanted to see if you would be willing to go to a mediator this year. My concern is the fact that our court order is so out of date. It still shows visitation rights, as well as joint custody and guardianship. [the child] is old enough now that she has started to ask questions about what would happen to her, if something were to happen to me
- [27] In my view, this email does not constitute effective notice that Ms. Buchanan was seeking a retroactive adjustment to child support or special or extraordinary expenses. It is more appropriately viewed as an assertion of Ms. Buchanan's guardianship concerns going forward.
- [28] I am satisfied that between approximately 2010 and December 2020 the parties negotiated additional lump sum payments for child support and special or extraordinary expenses on a year-by-year basis. The email exchanges between the parties indicates that each had compromised in their positions concerning payment of child support and special or extraordinary expenses in each of the years prior to 2021. These yearly negotiations would have provided a level of certainty to Mr. Wight that he was not going to be faced with a

request for retroactive support.

- [29] In my view, Ms. Buchanan did not provide effective notice that she intended to seek a retroactive adjustment until November 27, 2021--the date on which Ms. Buchanan wrote to Mr. Wight suggesting that he should obtain financial records for himself and his spouse for the preceding three years.
- [30] I find the default start date for the period of retroactivity in this case is November 27, 2021. Therefore, presumptively, Ms. Buchanan is entitled to a retroactive adjustment to child support and special or extraordinary expenses from that date until February 9, 2023, when the child turned 19. The issue of whether the Child retained child of the marriage status after February 9, 2023, and therefore whether the previous orders of this Court with respect to child support should be varied, will be the subject of further applications by the parties should they decide to bring them.
- [31] The next question is whether Mr. Wight committed blameworthy conduct which justifies extending the period of retroactivity back earlier than the date of effective notice.
- [32] Ms. Buchanan contends that Mr. Wight's failure to provide his income tax returns pursuant to the June 2005 Order constitutes blameworthy conduct. She contends that this failure prevented her from having the necessary information to determine Mr. Wight's guideline income and therefore the appropriate amount he should have paid for child support and special or extraordinary expenses.
- [33] In D.B.S. the Supreme Court of Canada explained that blameworthy conduct is any conduct that privileges the payor parent's own interests over the child's right to an appropriate amount of support. Examples of such conduct include hiding income increases from the recipient parent in the hopes of avoiding larger child support payments or intimidating the recipient parent to dissuade them from bringing an application for child support (or increased child support). It is blameworthy to mislead a recipient parent into believing that child support obligations are being met when the payor parent knows they are not: D.B.S. at para. 106.
- [34] A payor parent who does not increase support payments automatically is not necessarily engaging in blameworthy behaviour. Rather, whether they are doing so is a subjective question: D.B.S. at para. 108.
- [35] There is no suggestion of intimidation on the part of Mr. Wight. The question is whether Mr. Wight intended to hide his actual income to avoid paying more in child support.
- [36] Mr. Wight provided Ms. Buchanan with his notices of assessment, but not his complete income tax returns, nor his personal real estate corporation's financial statements. I am not satisfied that Mr. Wight failed to provide his income tax returns with the intention of hiding evidence of his income for child support purposes in order to avoid making larger child support payments. In any case, in my view, disclosing his returns would not have alerted Ms. Buchanan to the deductions from real estate commission income recorded in his personal

real estate corporation's financial statements, as this information would not be included on an income tax return.

- [37] Although Mr. Wight did not voluntarily provide financial statements for his personal real estate corporation there was no order that he do so. The correspondence suggests that Mr. Wight thought he was paying child support in accordance with the Guidelines and I am not satisfied that his failure to disclose corporate financial statements, and in particular the nature of deductions for donations and management salaries and benefits, was done with the intention of hiding income.
- [38] Mr. Wight and Ms. Buchanan negotiated additional lump sum payments for child support-- and, in some years, for special or extraordinary expenses-- almost every year between 2010 and 2020. It appears as though they did so with the object of avoiding the expense of court and in an effort to ensure that the child support paid approximated the amount payable under the Guidelines.
- [39] As stated by the Court of Appeal, "there is an obligation on both parents to ensure that their child is adequately supported, and that the appropriate amount of child support is paid and received": *Evanow v. Lannon*, 2018 BCCA 208, at para. 50. There is no evidence that Ms. Buchanan requested that Mr. Wight provide his income tax returns or other financial information until November 2021. Again, it appears that until 2021 both parties were generally satisfied that the Child's needs were being met. It appears that Ms. Buchanan was aware that she might be entitled to more child support, but decided not to pursue the matter.
- [40] Although I do not find that Mr. Wight's conduct prior to 2020 was blameworthy, this was not the case for 2021. In that year Mr. Wight did not provide a lump sum payment for child support and special or extraordinary expenses over and above his monthly payments of \$450 for that year. He had provided lump sum payments in previous years because he was aware that monthly child support payments were insufficient. He must have or should have known that he had underpaid child support for 2021. In my view, this constitutes blameworthy conduct justifying the period of retroactivity commencing on January 1, 2021.
- [41] I find that Mr. Wight is obligated to pay retroactive child support and to contribute proportionately towards the cost of the Child's special or extraordinary expenses for the period beginning January 1, 2021 and ending February 9, 2023 (the "Retroactive Period").
- [42] The next issue is to determine Mr. Wight's guideline income for the purposes of calculating what support he should have paid during the Retroactive Period.

Determination of Mr. Wight's Guideline Income

- [43] Mr. Wight earns real estate commissions that are paid to his personal real estate corporation. He is then paid a management salary and receives dividends from his corporation.

- [44] Ms. Buchanan submits that the financial statement for Mr. Wight's personal real estate corporation for 2021 includes deductions for donations (\$59,995) and management salaries and benefits (\$167,157) resulting in a net income before taxes--including other deductions which she does not object to--of \$242,861. She contends that the total amount deducted for donations, \$129,657 of the amount deducted for management salaries and benefits[1], \$4,976 for net rental income, and \$110 for investment income, should be added back to Mr. Wight's income for 2021 to determine his guideline income. As a result, she contends that Mr. Wight's guideline income for 2021 should be \$437,599.
- [45] Ms. Buchanan applies a similar methodology for determining Mr. Wight's guideline income for 2022. Mr. Wight's personal real estate corporation financial statement for 2022 includes deductions of \$37,920 for donations and \$155,403 for management salaries and benefits. Ms. Buchanan submits that Mr. Wight's guideline income for 2022 should be \$212,200.
- [46] In the hearing before me, Mr. Wight did not provide evidence nor did his counsel make any submissions as to whether these deductions were reasonable business expenses, and whether it is therefore appropriate to include the relevant amounts in his guideline income. Counsel for Mr. Wight submitted that Ms. Buchanan first itemized her concerns regarding the legitimacy of these expenses (and others) in written submissions handed up during the hearing on September 26, 2023. Counsel for Mr. Wight submitted that for this reason, it is not appropriate to include the amounts deducted for donations and management salaries and benefits in Mr. Wight's guideline income.
- [47] As was recently stated by the Court of Appeal, the spouse asserting that deductions should be added back to income must put that in issue in their pleadings by identifying the specific expenses being challenged. If pleaded properly, the onus shifts to the payor spouse to prove the reasonableness of the deductions from business income: *M.T. v. J.S.*, 2023 BCCA 64 at para. 8.
- [48] Ms. Buchanan did not plead what specific business expenses she was challenging in her notice of application. Under the heading Factual Basis, she pleaded, generally, that she "is recently aware of the numerous taxable benefits that need to be added back to the Respondent's income for child support calculation" and "the Respondent works as a realtor and has methods for not reporting all of his income". In my view, this pleading, when considered in isolation, does not constitute specifically identifying what business expenses Ms. Buchanan was challenging and therefore does not justify shifting the onus to Mr. Wight to prove the reasonableness of these expenses.
- [49] Although Ms. Buchanan's pleadings did not identify what business expenses she objected to, she served a notice to admit on September 10, 2023 in which she sought the following relevant admissions:
49. In 2021, you directed your PREC to make a charitable donation of \$59,995.

50. In 2021, some or all of the expense attributed to Management and Salaries was paid to [your spouse].
51. In 2021, [your spouse] did not work for your PREC.
52. In 2022, you directed your PREC to make a charitable donation of \$37,920.
53. In 2022, some or all of your expense attributed for Management and Salaries was paid to [your spouse].
- [50] On September 13, 2023, Mr. Wight responded to each of these requested admissions with the same stock answer: "Denied. This is outside the knowledge of the respondent at this time and the admission sought ought to be addressed at either an examination for discovery of the respondent or at trial."
- [51] In my view, the combined effect of Ms. Buchanan's generic pleading in her notice of application and her September 10, 2023 notice to admit alerted Mr. Wight that he should be prepared to demonstrate the reasonableness of the controversial business expenses. His awareness of this issue can be inferred from the fact that he filed an affidavit from his spouse dated September 14, 2023--the day after he provided the curt response to Ms. Buchanan's notice to admit. In the affidavit, his spouse set out evidence with respect to the nature of work she performed for Mr. Wight's personal real estate corporation and her earnings.
- [52] In my view, the onus shifted to Mr. Wight to demonstrate the reasonableness of the deductions for donations and management salaries and benefits for the relevant years - being 2021 forward. I will deal with each of those items in turn.

Deductibility of Business Expenses

[53] Section 18 of the Guidelines provides as follows:

18 (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

- (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year;

[54] As well, s. 19 provides that:

19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

- (g) the spouse unreasonably deducts expenses from income;
- [55] As I have stated above, the onus has shifted to Mr. Wight to justify the reasonableness of deducting the donations as a business expense, and, therefore, whether such deductions in 2021 and 2022 should be included in his guideline income.
- [56] Mr. Wight made significant donations through his personal real estate corporation in 2021 and 2022, equivalent to more than 10% of his total real estate commission earnings for each of those years.
- [57] Donations may be reasonable, but this does not change the fact that voluntary donations divert from the amount of income which would otherwise be available for support purposes. The right to support is the right of the child, and a parent cannot take steps to reduce income that have the corresponding effect of reducing financial support for their child: see *Zubek v. Nizol*, 2011 BCSC 776 at paras. 29 - 30.
- [58] Mr. Wight has not provided any evidence or submissions with respect to the nature of the donations and whether they were reasonable deductions for business expenses. Without any evidence to the contrary, I infer that these donations were voluntary and find that amount of the donations should properly be included in Mr. Wight's guideline income.
- [59] I consider that \$59,995 for 2021 and \$37,920 for 2022 should be added back to Mr. Wight's corporate income for those years for the purposes of determining the amount of child support and share of special or extraordinary expenses payable in those years.
- [60] As stated above, Ms. Buchanan submits that approximately \$129,657 and \$117,903 deducted from Mr. Wight's corporate earnings in 2021 and 2022, respectively, for management salary and benefits should be added back to determine Mr. Wight's guideline income. Ms. Buchanan's submission takes into consideration the \$37,500 per year that Ms. Buchanan contends --without the benefit of supporting evidence--should be accepted as a reasonable amount to be paid for the cost of administrative support for each of those years.
- [61] Mr. Wight's spouse provided some evidence about the nature of the services she provides to Mr. Wight's personal real estate corporation. She deposed that she provides Mr. Wight with general administrative support and manages his client database and social media accounts. She provided a copy of her 2022 T4 showing income of \$63,800.
- [62] I find that Mr. Wight has demonstrated that his spouse provided services to his personal real estate corporation in 2021 and 2022 and that it is appropriate to deduct the cost of these services and the cost of related employment benefits from the gross earnings for Mr. Wight's personal real estate corporation. Unfortunately, Mr. Wight has not provided evidence as to how much his personal real estate corporation paid his spouse in 2021 or the cost of employment related benefits.

- [63] For the purposes of determining, on a rough and ready basis, what deductions management salary and benefits deductions are reasonable, I assume that Mr. Wight's spouse was paid the same in 2021 as she was in 2022 and that the cost of providing her with benefits equalled approximately 10% of her annual salary. Accordingly, I find it is appropriate to deduct (as management salary and benefits) \$70,000 for each of 2020 and 2021 from Mr. Wight's personal real estate corporation's earnings.
- [64] With respect to the balance of the deductions for management salary and benefits in 2021 and 2022 (\$97,157 and \$85,403, respectively), Mr. Wight has not provided any evidence with respect to whether these amounts were paid to an arms length third party. I infer that these amounts were paid by Mr. Wight's personal real estate corporation to himself as income or alternatively were not paid to an arms length third party. As a result, these amounts should be added back for the purposes of determining his guideline income.

Conclusion on Mr. Wight's Guideline Income for 2021 and 2022

- [65] Section 16 of the Guidelines provides that the starting point to determine a spouse's guideline income is to use the income reported on the spouse's personal income tax return. But as set out above, s. 18 provides that where the court is of the opinion that it is not appropriate to apply the guideline income determined in accordance with s.16, because it would not fairly reflect all the money available for payment of child support, the court may include all or part of a spouse's pre-tax corporate income.
- [66] Mr. Wight earns real estate commissions that are paid to his personal real estate corporation. In my view, it is appropriate to use the pre-tax income of Mr. Wight's personal real estate corporation (minus reasonable business expenses) for the purposes of determining his guideline income and therefore calculating the amount of child support he should have paid in 2021, 2022 and until February 9, 2023.
- [67] I conclude that Mr. Wight's guideline income for 2021 was \$405,099 (\$242,861 for pre-tax corporate income + \$59,995 added back for donations + \$97,157 added back for management salaries and benefits costs + \$110 for investment income + \$4,976 for rental income).
- [68] I conclude that Mr. Wight's guideline income for 2022 was \$179,720 (\$56,307 for pre-tax corporate income + \$37,920 added back for donations + \$85,403 added back for management salaries and benefits costs + \$970 for rental income).

Calculation of Child Support for the Retroactive Period

- [69] Based on guideline income of \$405,099 for 2021, Mr. Wight should have paid monthly child support of \$3,345.77 per month that year, for a total of \$40,149.24. He paid \$5,400 (12 x \$450) and is therefore obliged to pay retroactive child support of \$34,749.24 for 2021.

- [70] Based on guideline income of \$179,720 for 2022, Mr. Wight should have paid monthly child support of \$1,587.82 per month that year for a total of \$19,053.84. He paid \$5,400 (12 x \$450) and is therefore obliged to pay retroactive child support of \$13,653.84 for 2022.
- [71] For the purposes of calculating retroactive child support for the period of January 1 to February 9, 2023, I have assumed that Mr. Wight's guideline income during this period remained the same as it was in 2022. Accordingly, for this period of time (equal to 11% of 2023,--Mr. Wight was obligated to pay child support of approximately \$2,095 (\$19,053.84 x .11). He paid approximately \$594 (\$5,400 x .11) and is therefore obliged to pay the shortfall for this period of \$1,501.
- [72] In total, I find that Mr. Wight is required to pay Ms. Buchanan retroactive child support for the Retroactive Period of \$49,904.08.

Special or Extraordinary Expenses

- [73] Given my findings above, Ms. Buchanan is only entitled to payment from Mr. Wight for his proportionate share of acceptable special or extraordinary expenses for the Retroactive Period.
- [74] Ms. Buchanan seeks contribution from Mr. Wight towards the cost of the Child's participation in a competitive cheerleading program on a team called the Vancouver Allstars, run through G Force Gym. For the period of January 1, 2021 to January 26, 2023, Ms. Buchanan paid G Force Gym \$6,872 for expenses that include tuition, competition fees and uniform fees. In addition, Ms. Buchanan paid travel and accommodation costs for the Child to travel to the Cheerleading Worlds Competition in Florida in April 2022--amounts of \$441 and \$1,226.88, respectively. In total, Ms. Buchanan incurred costs of \$8,539.88 for the Child's participation in a competitive cheerleading program.
- [75] Mr. Wight contends that the costs of the Child's participation in competitive cheerleading do not constitute special or extraordinary expense and, in any case, as he was never consulted before these costs were incurred and that it would be unfair to require him to contribute towards them.
- [76] Section 7(1.1)(b)(iii) of the Guidelines provides that in determining whether an expense is extraordinary the court may consider whether the expense is related to a special need or talent of a child. Ms. Buchanan has provided evidence that the Child is a talented cheerleader and has been recognized by the Canadian Government as an elite athlete. I am satisfied that the expenses incurred by Ms. Buchanan for participation of the Child in competitive cheerleading arise as a result of the Child's special talent. Nonetheless, the costs for which Ms. Buchanan seeks reimbursement are substantial, averaging \$4,250 in each of the last two years.

- [77] The subject of Mr. Wight's contribution towards the cost of the Child's participation in cheerleading arose in October 2017, when Ms. Buchanan requested that he contribute \$1,000 towards them and Mr. Wight contributed this amount. In 2019, Ms. Buchanan made another request that Mr. Wight contribute towards these costs and Mr. Wight contributed a further \$1,000.
- [78] In my view, the history of the parties' dealings with respect to cheerleading costs established a reasonable expectation that the costs would remain relatively consistent. In my view, it was incumbent upon Ms. Buchanan to provide some notice to Mr. Wight before incurring significantly higher costs for cheerleading with an expectation that he would contribute an amount proportionate to the parties' respective incomes.
- [79] I find that it is appropriate to cap the amount of the cheerleading expense to be apportioned between the parties as an extraordinary expense at \$2,000 for each of 2021 and 2022.
- [80] Ms. Buchanan also seeks contribution towards the Child's orthodontics costs that were not covered by her employment benefits plan. In total she submits that she paid \$1,700 for such costs. Ms. Buchanan has not provided evidence with respect to when this expense was incurred and accordingly, I am not able to determine whether this expense arose during 2021 or 2022.
- [81] Ms. Buchanan also seeks contribution towards the Child's healthcare costs, including naturopathic, dental and physiotherapy costs, which were not covered by her employment benefits plan. She has provided evidence that she paid \$1,256 out-of-pocket between July 2021 and September 2022. Mr. Wight concedes that these costs are appropriate for division as special or extraordinary expenses.
- [82] Ms. Buchanan also seeks contribution towards the \$400 cost of counselling for the Child incurred in May 2021, which she paid out-of-pocket. Mr. Wight concedes that this cost is appropriate for division as a special or extraordinary expense.
- [83] Ms. Buchanan also seeks contribution towards the Child's school fees paid to Mission Public Schools. Ms. Buchanan provided a transaction history from Mission Public Schools showing that she paid fees totalling \$630 for the period of January 15, 2021 to May 31, 2022. Mr. Wight concedes that this cost is appropriate for division as a special or extraordinary expense.
- [84] Ms. Buchanan also seeks contribution towards the Child's post-secondary education costs in the amount of \$2,147, incurred starting in September 2022. Mr. Wight concedes that this cost is appropriate for division as a special or extraordinary expense, but submits that a deduction should be made to reflect the contributions towards this cost from the child's RESP. The evidence indicates that Ms. Buchanan funded the child's RESP and therefore I find that the entire \$2,147 is a special expense, subject to apportionment between the parties.

[85] In summary, I find that the total amount of proven and reasonable special or extraordinary expenses for 2021 and 2022 to be \$8,433.

Apportionment of Special and Extraordinary Expenses

[86] As I found above, Mr. Wight's guideline income was \$405,099 for 2021 and \$179,720 for 2022.

[87] Ms. Buchanan's submits that her guideline income in 2021, including earnings through a crane company in which she has an interest, was \$124,652. She estimates that her guideline income for 2022 was \$90,000. I accept that these were Ms. Buchanan's earnings during 2021 and 2022.

[88] Accordingly, based on the parties' respective guideline incomes, special or extraordinary expenses are to be apportioned with Mr. Wight paying 77% in 2021 and 67% in 2022. I find it reasonable to apply the average of proportionate share payable by Mr. Wight in 2021 and 2022, which is 72%. As I found above, the total amount of expenses to be apportioned is \$8,433--72% of which is \$6,071.76.

[89] I find that Mr. Wight is required to pay Ms. Buchanan a total of \$6,071 as his proportionate share of the cost of the Child's special and extraordinary expenses for 2021 and 2022.

Hardship

[90] Mr. Wight asserts that having to pay retroactive child support will result in hardship. Hardship to the payor parent or the payor parent's other children that is occasioned by a retroactive award is a factor which may militate against making a retroactive award: D.B.S. at paras. 114-116.

[91] Although there is evidence that Mr. Wight has four additional children, he has not provided sufficient evidence on which I could conclude that having to pay a retroactive award of approximately \$56,000 would cause undue hardship. Mr. Wight's F8 Financial Statement shows that he has assets valued at \$2.59 million and debts of \$1.79 million. He lists annual expenses totalling \$195,461, which is approximately \$16,000 more than his guideline income in 2022 and approximately \$242,000 less than his guideline income in 2021. In addition, I note that Mr. Wight's personal real estate corporation had accumulated retained earnings of approximately \$230,000 by 2021.

Conclusion

[92] I am not satisfied that there is a sufficient reason to allow Ms. Buchanan's request to transfer this court file from Chilliwack to Abbotsford. Although Abbotsford is where Ms. Buchanan lives and is closer to where she works, she commenced this action in Chilliwack, where Mr. Wight resides. The application to transfer this file to Abbotsford is dismissed.

[93] The style of cause of this proceeding shall be changed to show the name of the claimant as Tracy Leigh Buchanan.

- [94] I order that Mr. Wight pay Ms. Buchanan retroactive child support for the period up to and including February 9, 2023 in the amount of \$49,904.08.
- [95] I order that Mr. Wight pay Ms. Buchanan \$6,071 for his proportionate share of the Child's special and extraordinary expenses in 2021 and 2022.
- [96] In my view, the issue of costs is appropriately dealt with after Ms. Buchanan's application for prospective child support and Mr. Wight's cross-application concerning whether the Child remained a child of the marriage after February 9, 2023 are heard. If the parties wish to address the issue of costs of the hearing before me they are at liberty to seek a hearing date from Supreme Court Scheduling.

"Mayer J."

- [1] This amount is calculated based on Ms. Wight's submission that at most \$37,500 should be deducted for management salaries and benefits. She contends that this is a reasonable amount for the salary of an office administrator.

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Prepared on 27 October 2026 · Esheria