

CANADA / JUDGMENT

C.G. v. M.G.

2023 BCSC 1355

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1355 C.G. v. M.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.G. v. M.G.,

2023 BCSC 1355

Date: 20230804

Docket: E16957

Registry: Chilliwack

Between:

C.G.

Claimant

And

M.G.

Respondent

Before: The Honourable Justice Walkem

Reasons for Judgment

In Chambers

The Claimant, appearing on her own behalf:

C.G.

Counsel for the Respondent:

L.R. Nambiar

Place and Date of Hearing:

Chilliwack, B.C.

July 11, 13-14, 2023

Place and Date of Judgment:

Chilliwack, B.C.

August 4, 2023

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INTRODUCTION

- [1] This is an application brought by the claimant, C.G., for a set of orders concerning a retroactive increase to child and spousal support, and associated orders, following disclosure of M.G.'s income from 2011 through to the present. M.G. has paid spousal and child support based on an annual income of \$78,000 per the final decision of Justice Fisher, dated December 21, 2010. These amounts have not been adjusted to reflect M.G.'s increased income, nor has he provided ongoing annual financial disclosure as required by the Fisher Decision.
- [2] The orders for child support concern the parties' son, J.G., born [D.O.B.] 2001. J.G. has Treacher Collins Syndrome ("TCS"), a genetic condition which impacts his craniofacial development, and which has resulted in severe difficulties with breathing, swallowing, chewing, hearing and speech. Additionally, J.G. has been diagnosed with autism and suffers from anxiety. He requires a bone conduction hearing aid, a tracheostomy tube to assist with his breathing, and a gastric feeding tube. The tracheostomy and gastric tubes are at risk of infection, among other complications. Though the rest of his body and his intellect are not impacted by the TCS diagnosis, J.G. requires constant care. C.G. has been J.G.'s primary caregiver since birth.
- [3] In August 2020, J.G. received a designation as a person with a disability. He receives a Persons with Disability ("PWD") disability benefit of approximately \$1,410/month. Aside from the PWD benefit J.G. now collects, the child and spousal support provided by M.G. is the primary source of support for C.G. and J.G.
- [4] The couple separated in 2006. Following separation, M.G. began to withdraw from visits with J.G. He has not seen J.G. since 2011.
- [5] M.G. is now re-married to V.G. M.G.'s current spouse V.G. has suffered a number of health issues. She has experienced cancer in the past and is currently undergoing treatment again. M.G. had a heart attack in 2021.

ORDERS SOUGHT

- [6] C.G. seeks the following orders:
- pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA] s. 152(1), that child support be retroactively adjusted for the years 2011 to 2021, based upon M.G.'s actual employment income for these years;
 - pursuant to the Federal Child Support Guidelines, SOR/97-175 [Guidelines] s. 19(1), that gross additional income of \$60,000 per year be imputed to M.G. starting in 2014, which reflects one-half of the revenue received from the operation of Bearspaw Inn;
 - pursuant to the FLA, s. 149(1), that M.G. pay child support to C.G. for the ongoing support of the child, J.G.;

- d) pursuant to the Guidelines s. 7(1), that M.G. contribute an amount proportionate to his income to special or extraordinary expenses for J.G.; and, in particular, the cost of an updated security camera system, a new computer, an iPhone, and tuition fees for school courses;
- e) pursuant to the FLA, s. 167(1), that spousal support be retroactively adjusted based on M.G.'s actual income for the years 2011 to 2021, and his imputed income of an additional \$60,000 per year, beginning in 2014;
- f) pursuant to the FLA, s. 170(e), that M.G. have a contract for life insurance within the meaning of the Insurance Act, R.S.B.C. 2012, c. 1, and designate J.G. as an irrevocable beneficiary, pay all premiums on the policy, and provide yearly proof of same to C.G.;
- g) pursuant to the FLA, Section 170(g), that M.G.'s duty to pay child and spousal support to C.G. continues after death, and is a debt of M.G.'s estate, for a period fixed by the court;
- h) pursuant to the FLA, s. 230, that M.G. is to pay an amount not exceeding \$5,000 for the benefit of C.G. and J.G., whose interests were affected by M.G.'s non-disclosure of financial information or his incomplete, false or misleading disclosure from 2011 until 2022 for the purposes of adjusting child support;
- i) that M.G. be required to notify C.G. forthwith of any change to his current address, his telephone number, or his employer; and
- j) an order for special costs or, in the alternative, costs.

[7] M.G. consented, in limited measure, to some of the orders sought:

- Term a) on the following terms: The respondent will pay retroactive child support in an amount to be determined by the court after considering:

- o Sections 10(1) and 3(1) of the Guidelines for the period between January 2011 and August 31, 2020; and

- o Sections 10(1) and 3(2) of the Guidelines for the period between September 2020 and December 2021.

- Terms c) and d) on the following terms: The respondent will pay ongoing support for the child in an amount to be determined by the court after considering ss. 10(1) and 3(2)(b) of the Guidelines.

- Term e), in part, on the following terms: The respondent will pay ongoing spousal support in an amount to be determined by the court, subject to s. 10 of the Guidelines. He opposes an order for retroactive spousal support, and any order imputing income against him.

[8] M.G. opposed the orders listed under Terms b), f), g) and h).

· Term (b) (imputing income to him from the Bears paw Inn business), Term (f) (requirement to have a life insurance policy in J.G.'s name), and Term (g) (that his spousal support obligations continue as a debt on his estate) and Term (h) (fine for non-disclosure).

EARLY PROCEDURAL HISTORY

Fisher Decision

[9] In 2010, the parties appeared before Justice Fisher seeking orders for child support, spousal support and division of assets, among other things. The final order of Justice Fisher, indexed at 2010 BCSC 1835 (the "Fisher Decision"), was issued on December 21, 2010.

[10] The Fisher Decision ordered that:

- M.G. pay to C.G. child support in the amount of \$723/month, based on a Guideline income of \$78,000, effective January 1, 2011;
- the parties would exchange financial information on June 1 of every year, and any adjustments based on a material change of circumstances were to be made as of July 1 of each year;
- the parties were to share s. 7 expenses for nursing care for J.G. on a 70:30 basis, as required if C.G. was ill. C.G. was to provide receipts for any such expenses which were "allowed up to a maximum annual amount of \$360 per month" (para. 57);
- Proceeds from the sale of the former family home of just under \$65,000 were reapportioned 100% to C.G. This reapportionment "compensated [C.G.] to some extent for the economic disadvantages arising from the marriage and its breakdown, it is a modest amount when considered in relation to the enormous need in this case." (para. 67);
- Justice Fisher found that from 2007 to 2009 M.G. was paying support that was "overall considerably lower than Guideline levels" (para. 68);
- C.G. is entitled to receive compensatory and non-compensatory spousal support at the high end of the range to reflect the significant financial consequences she experiences in caring for the parties' child, J.G.; and
- spousal support of \$2,000 per month was awarded based on an imputed income to M.G. of \$78,000 and C.G.'s income of \$0.

[11] Justice Fisher imputed an annual income of \$78,000 to M.G., based on limited financial disclosure from him indicating he had earned approximately \$60,000 for 2010 at time of trial and a lack of documentation regarding additional small business income and reasonable expenses. At the time, M.G. indicated he expected to earn \$65,000 in 2011; however, Fisher J. did not accept this estimation after considering figures which had been provided and a finding that he was capable of earning an income of \$75,000. She further found his home business ventures had the potential to supplement his income with an additional \$3,000, thus coming to the \$78,000 figure.

- [12] In reapportioning the family home 100% in C.G.'s favour, in addition to the factors outlined above, Fisher J. considered the initial agreement of the parties that a 100% reapportionment was appropriate. It was not until trial before Fisher J. that M.G. instead sought an equal division of the family home.

Goepel Decision

- [13] In 2011, C.G. obtained orders before Justice Goepel making her the sole interim guardian of J.G., requiring M.G. to produce his 2010 financial information, work benefits, and to "pay special expenses of the maximum of \$500 per month". Though he had been served with notice of the hearing, M.G. did not appear.

FROM 2011-PRESENT

- [14] M.G. has paid spousal and child support in the amounts listed in the Fisher Decision. C.G. has produced her financial information each year, and has sought the same from M.G.; however, he has provided sporadic and incomplete financial information. M.G. provided copies of his tax return but not the notices of assessment or reassessment which listed his income as higher for a number of years between 2010 and 2014. In some cases, the difference was quite significant. After that, M.G. provided no financial disclosure at all. No upward adjustment of child support was ever made to reflect M.G.'s higher income.
- [15] No agreement was reached between the parties to increase support; and prior to this application, C.G. had not applied to increase the amounts.
- [16] C.G. has not known much about the circumstances of M.G.'s life since 2011. M.G. has been entirely uninvolved with J.G. for roughly the past 12 years.
- [17] The years since 2011 have been very challenging for C.G. and J.G. They have had to move seven times due to the high cost of living and the fact that C.G. cares for J.G. on a full-time basis. When J.G. attended public school, C.G. attended with him to care for his needs. J.G. left public school due to anxiety and was then homeschooled by C.G.
- [18] In or around 2018, C.G. did a Google search and found that M.G. and V.G. were living near Houston, BC and their names were associated with The Bearspaw Inn & Suites ("Bearspaw Inn"). This knowledge of potentially unknown income led C.G. to initiate this application in 2020. Initially, she did not proceed with it given increased concerns for J.G.'s health and well-being during the onset of the COVID-19 pandemic. On July 12, 2022, C.G. filed a notice of intention to proceed and mailed it to M.G.

ARGUMENTS OF M.G.

- [19] M.G. made submissions he had overpaid child and spousal support in 2010 based on an interim hearing in February of that year which imputed an annual income to him in the amount of \$110,000, in a year he had only made \$57,662; and that Fisher J. had erred in fact and law by calculating his income on income tax amounts net of taxes, and in finding he had

paid support "considerably below Guideline levels." No appeal or clarification of the Fisher Decision was ever sought. Despite that M.G. acknowledges he was not appealing (and indeed, could not appeal) the Fisher Decision at this juncture, his amended application response and oral argument focused on this alleged miscalculation.

- [20] M.G. argues that this Court should take this alleged error into account in determining any retroactive spousal or child support he may owe. He further argues the matter is not suitable for determination by summary trial and that a full trial is required to consider the alleged 2010 error and appropriate support given his and V.G.'s current circumstances.
- [21] The gist of M.G.'s argument was that due to these errors in calculations, and the reapportionment of the family home in C.G.'s favour, he ended up in significant arrears resulting in a lien against the home he had purchased in Parksville, which he says he had purchased to be closer to J.G. From 2011-2013, M.G. says he had to work in the oilsands to pay this debt off (arrears were paid off in September 2013), and that he was forced to work in "horrific" conditions, away from his new partner, in remote areas (including work camps), to make enough money to pay his arrears. M.G. argues his work to pay off arrears and the expense of saving to purchase a new home in Parkville amounts to "undue hardship".
- [22] M.G. further claims the court order, in effect, terminated his relationship with J.G. because he had to work out of town to pay the arrears and because C.G. was made interim sole guardian of J.G. His argument was that he could not parent J.G. as he was forced to work out of town to pay down these debts.
- [23] I reject M.G.'s arguments about his withdrawal from his role as a parent for J.G. For nearly 12 years, M.G. has made no effort to see or maintain a relationship with J.G. The responsibility for that abandoned relationship lies solely at his feet. I also reject M.G.'s arguments about undue hardship. As stated above, this application is not a review of the Fisher Decision, nor was one ever sought. M.G. also did not apply to reduce his arrears during those years.
- [24] M.G. argues the debts he had in 2011 must be factored into any consideration for retroactive child support. I note he made similar arguments before Fisher J., which are reflected in her reasons at paras. 35-37 and 44.
- [25] M.G. further argues although the Fisher Decision required the parties to provide updated yearly financial information, it nonetheless required they then either agree on any child support variation, or for C.G. to apply to the court to seek a variation based on the updated income amounts.

EVENTS AFTER THE NOTICE OF INTENTION TO PROCEED

- [26] After the Notice of Intention to Proceed was issued, there were a number of actions that occurred which C.G. argued were attempts on the part of M.G. to make it so that his income producing asset (Bears paw Inn) and income would be unavailable to satisfy his child and spousal support obligations.

- [27] In argument, C.G. said she only became aware of the extent of steps taken by M.G. after receiving his response materials and financial disclosure. She points out she is self-represented and did not initially know or consider whether she was required to amend her notice of family claim (or bring a new action) under the Fraudulent Conveyance Act, R.S.B.C. 1996, c. 163 [FCA] or that she should have served V.G. and Bearspaw Inn if she wished to advance a fraudulent conveyance argument.
- [28] The actions taken by M.G. that C.G. says were an intentional attempt to hide or dissipate income producing assets and income include:
1. Within several weeks of the notice of intention to proceed being issued, M.G. applied for medical leave due to anxiety and depression. He went on medical Employment Insurance in April 2023, and his income dropped significantly as a result.
 2. In September 2022, M.G.'s interest in Bearspaw Inn (which appears also to be where M.G. and V.G. live) was transferred to V.G.
 3. In November 2022, M.G. and V.G. entered into a post-nuptial marriage agreement. The post-nuptial agreement provides that:
 - a. M.G. only was put on title to the Bearspaw Inn building after V.G. had a dispute with her sister, whom she previously owned the property with and needed M.G.'s assistance in seeking financing;
 - b. M.G. loaned V.G. money and that he will be paid back to enable V.G. to purchase or finance Bearspaw Inn and a vehicle;
 - c. the Bearspaw Inn building (their family home) is currently listed for sale at \$899,000;
 - d. M.G. holds a "GMC Acadia" vehicle registered in his name which actually belongs to V.G; and
 - e. M.G. has a life insurance policy with V.G. as the beneficiary.
- [29] In essence, the post-nuptial agreement purports that the Bearspaw Inn building, the Bearspaw Inn business, and the GMC Acadia all belong to V.G. with M.G. having no interest in those assets. It also states that V.G. will pay \$82,000 (loan repayment) and \$18,000 (for his becoming a "joint borrower" to allow her to access financing).
- [30] The agreement stipulates that M.G.'s sole property is a chequing account of \$29,058; a savings account in the amount of \$5,474; and a 2007 truck worth \$15,000. It also lists debts in the amount of \$48,202.
- [31] An affidavit with accompanying exhibits containing the prenuptial agreement, mortgage for the Bearspaw Property and M.G.'s medical records was sworn by a legal assistant from the office of M.G.'s counsel and filed with his materials. An additional affidavit sworn by M.G. was also filed. M.G. submits that V.G. cannot swear an affidavit confirming these events due to heavy pain medication and further points out that she has not been served.

[32] These events occur in the context that J.G., the parties' child, remains a child of the marriage, unable to leave the charge of the parties, and will remain so for the remainder of his life due to his significant disability.

[33] The facts before me indicate a stark disparity in the relative financial situations of the parties. M.G. has benefitted from his larger amount of undisclosed income, while C.G. cares for their child near 24/7, with very restricted financial means. The circumstances of this case highlight the very real disparities that can exist in family law cases, particularly in situations such as this. C.G. has been entirely responsible for the day-to-day care of the parties' son, J.G. She experiences ongoing hardship and lives with restricted financial means. M.G. appears to have a far more comfortable life.

[34] In October 2022, C.G. sought financial disclosure. Master Keighley ordered M.G. to provide his tax returns and notices of assessment from 2011 onward, and an affidavit setting out particulars of any businesses he had a beneficial interest in.

[35] The disclosure revealed M.G.'s actual income was as follows:

2011

\$166,847

2012

\$144,638

2013

\$245,448

2014

\$184,814

2015

\$102,787

2016

\$130,175

2017

\$104,839

2018

\$132,884

2019

\$76,920

2020

\$277,611

2021

\$233,064

[36] The affidavit M.G. provided denied any beneficial interest in the Bearspaw Inn.

POSITION OF C.G.

[37] C.G. argues that M.G.'s post notice actions, and the failure to follow the terms of the Fisher Decision which required ongoing disclosure, amount to blameworthy conduct on the part of M.G. C.G. urges this Court to consider that M.G. owns Bearspaw Inn with V.G. and that a portion of the income from that business should also be used to calculate M.G.'s Guideline income.

[38] C.G. notes that M.G. and V.G. began to live together in the fall of 2007, married in September 2011 and entered the written "Marriage Agreement" in November 2022, approximately 15 years after cohabitation and 11 years after marriage. C.G. argues that these events represent efforts to avoid child and spousal support obligations.

[39] C.G. pointed out that evidence seemed to show that M.G. has taken steps which prima facie suggest the possibility of efforts to shield an income producing asset and potentially reduce his income in the immediate aftermath of C.G. filing her Notice of Intention to Proceed.

[40] In argument, C.G. raised the FCA, but this legal ground was not pled, and neither V.G. nor the Bearspaw Inn was served or added as a party. I am therefore unable to make any findings with respect to the FCA. A broader determination of whether the post-notice events fall within the ambit of the FCA, will await a future determination if C.G. decides to pursue this argument.

JUSTICE CALDWELL ORDER

[41] This matter was originally set on the chambers list for May 31, 2023 and the parties appeared before Justice Caldwell. An application was made to adjourn the application by counsel for M.G. Justice Caldwell ordered that:

- M.G. was to notify C.G. through counsel if he changes his residential address;
- subject to further order of the court, on hearing the application: that any existing or other support or costs orders are binding on the estate of M.G. in the event of his death; and
- M.G. was ordered to pay costs for the day fixed at \$2,000 and payable within seven days. The next date was made peremptory on M.G.

CHILD SUPPORT

Retroactive Child Support until August 2020

- [42] During discussions on the first day of hearing, the parties reached an interim and without prejudice agreement that M.G. would pay to C.G. the amount of \$45,812 within three months of July 11, 2023 (either in a lump sum or in three payments of \$15,270) towards retroactive child support. The parties agreed to proceed with the hearing, with the understanding this amount would not serve as a settlement for the amounts sought by C.G.
- [43] C.G. is seeking to retroactively vary the amount of child support ordered in the Fisher Decision to increase support from 2011-2021, based on M.G.'s actual income. As outlined above, M.G. opposes any retroactive order before 2013. He further argues that C.G.'s delay in applying to the court for a variation of the order must be considered in any order for retroactive support.
- [44] In *D.B.S. v. S.R.G.*, 2006 SCC 37, the Supreme Court of Canada set out several considerations when determining the date from which to make an order for retroactive child support:
- [124] The date when increased support should have been paid, however, will sometimes be a more appropriate date from which the retroactive order should start. This situation can most notably arise where the payor parent engages in blameworthy conduct. Once the payor parent engages in such conduct, there can be no claim that (s)he reasonably believed his/her child's support entitlement was being met. This will not only be the case where the payor parent intimidates and lies to the recipient parent, but also where (s)he withholds information. Not disclosing a material change in circumstances -- including an increase in income that one would expect to alter the amount of child support payable -- is itself blameworthy conduct. The presence of such blameworthy conduct will move the presumptive date of retroactivity back to the time when circumstances changed materially. A payor parent cannot use his/her informational advantage to justify his/her deficient child support payments.
- [125] The proper approach can therefore be summarized in the following way: payor parents will have their interest in certainty protected only up to the point when that interest becomes unreasonable. In the majority of circumstances, that interest will be reasonable up to the point when the recipient parent broaches the subject, up to three years in the past. However, in order to avoid having the presumptive date of retroactivity set prior to the date of effective notice, the payor parent must act responsibly: (s)he must disclose the material change in circumstances to the recipient parent. Where the payor parent does not do so, and thus engages in blameworthy behaviour, I see no reason to continue to protect his/her interest in certainty beyond the date when circumstances changed materially. A payor parent should not be permitted to profit from his/her wrongdoing.

[Emphasis added.]

- [45] From 2011 to now, C.G. has sought financial disclosure from M.G., to which he has not fully complied. It was not until the October 2022 order of Master Keighley that he finally complied with this obligation. C.G. raised a strong prima facie case that disclosure regarding M.G.'s business interests was incomplete. I find the ongoing and continuous conduct of M.G. in not disclosing his substantial increases to his income to be blameworthy conduct. This blameworthy conduct is amplified by the fact that J.G. is in a very vulnerable position. He is severely disabled and unable to leave the charge of C.G., and requires around the clock and continuous care. This care has been provided almost entirely by C.G., with minimal respite supports.
- [46] In addition, C.G. and J.G. have been forced to live with minimal and limited resources while M.G.'s income has been more than double that which was initially imputed to him by Fisher J. For example, while he argued before Fisher J. he only expected to make \$63,000 in 2011, his actual income was \$166,847. As I have already indicated, I do not accept M.G.'s arguments of undue hardship during this period. Particularly considering the actual hardship faced by C.G. and J.G. financially, and otherwise. The following para. from Michel v. Graydon, 2020 SCC 24 is relevant in emphasizing this point:
- [31] As to Mr. Graydon's conduct as the payor parent in this case, it is really this simple. When a payor parent fails to pay the appropriate amount of child support, the recipient parent is left to shoulder the burden. If the recipient parent does not have the means to provide their child reasonable support, the child suffers. Both the recipient parent and the child may experience hardship because of a payor parent's neglect. Seen in this light, it bears repeating that retroactive child support is not exceptional relief (D.B.S., at para. 5): there is nothing exceptional about judicial relief from the miserable consequences that can flow from payor parents' indifference to their child support obligations. This is not to say that hardship is required to ground an award for retroactive child support, as there is also nothing exceptional about relief that creates a systemic incentive for payor parents to meet their obligations in the first place. Just as an order of child support is intended to provide children with the same standard of living they enjoyed when their parents were together (D.B.S., at para. 38), an order of retroactive child support provides an (albeit imperfect) remedy where that does not occur. And as this Court recognized in D.B.S., "courts are not to be discouraged from defending the rights of children when they have the opportunity to do so" (para. 60).
- [Emphasis added.]
- [47] I accept that the substantial increase in M.G.'s income beyond what was imputed to him in the Fisher Decision constitutes a material change in circumstances, as described in s. 14(a) of the Guidelines, which reads:
- [48] (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof I find on the circumstances before

me, M.G.'s blameworthy conduct, his substantial increases in income since the Fisher Decision, and the hardship faced by C.G. and J.G. to justify the retroactive award as sought by C.G., with a material change in circumstances having occurred as of 2011. As per the Fisher Decision, this would have justified an increase in child support as of July 1, 2011.

[49] As outlined in the chart below, calculating amounts of child support retroactively, from July 1, 2011 until August 2020, the total amount M.G. should have paid in child support as per his Guidelines income is \$144,206.05. The amount he did pay under the existing child support order is \$78,807.00 leaving a difference of \$65,399.05. This amount does not account for anything post August 2020, when J.G. began receiving PWD benefits, and which I discuss below.

Year

Should have paid

Actually

Paid

Short

2011

$\$1,447.67/\text{mo} \times 6 = \$8,686.02$

\$4,338.00

\$4,348.02

2012

$\$1,281.72/\text{mo} \times 12 = \$15,380.64$

\$8,676.00

\$6,704.64

2013

$\$2,029.32/\text{mo} \times 12 = \$24,351.84$

\$8,676.00

\$15,675.84

2014

$\$1,580.62/\text{mo} \times 12 = \$18,967.44$

\$8,676.00

\$10,291.44

2015

$\$944.61/\text{mo} \times 12 = \$11,335.32$

\$8,676.00

\$2,659.32

2016

$\$1,168.40/\text{mo} \times 12 = \$14,020.80$

\$8,676.00

\$5,344.80

2017

$\$960.54 \times 11 + \$987.22 = \$11,553.16$

\$8,676.00

\$2,877.16

2018

$\$1,219.25/\text{mo} \times 12 = \$14,631.00$

\$8,676.00

\$5,955.00

2019

$\$735.02/\text{mo} \times 12 = \$8,820.24$

\$8,676.00

\$144.24

2020

$\$2,351.37/\text{mo} \times 7 = \$16,459.59$

\$5,061.00

\$11,398.59

TOTAL: \$144,206.05

\$78,807.00

\$65,399.05

- [50] I find C.G. is entitled to retroactive child support in the amount of \$65,399.05, which is aligned with M.G.'s child support obligations as per the Guidelines from July 2011 until July 2020, when J.G. began collecting PWD benefits. M.G. has agreed to pay an amount of \$45,812 on a without prejudice basis pending final determination of these issues. After that, the amount owing is \$19,587.05.

2020-2021 Retroactive Child Support

- [51] An adult child of the marriage in receipt of PWD benefits is a material change in circumstances which could give rise to a variation of the child support order, per s. 14 of the Guidelines: *Martin v Martin*, 2021 BCSC 2015 at para. 26; *Neuman v Neuman*, 2021 BCSC 873 at para. 66.
- [52] The parties agree that J.G. remains a child of the marriage due to his disabilities, and is unable to withdraw from the charge of his parents. M.G. argues that as per s. 3(2)(b) of the Guidelines, the court must consider the income J.G. receives from his PWD benefit in calculating child support owed by the payor parent. M.G. cites *James v. James*, 2022 BCSC 1402, where Justice Burke described the following process for calculating support:
- [32] In circumstances such as the present case, courts have assessed the child's reasonable living costs (typically from a budget provided by the child's primary caregiver) and where there is a shortfall in coverage for those expenses after the PWD benefits are applied, ordered that the gap be filled by the parents in proportion to their respective incomes.
- [53] Worth noting is that in para. 33 of *James*, Burke J. stated that where one parent "provides 'extraordinary care' to their adult child the court may properly account for this added value."
- [54] C.G. provided a modest budget indicating J.G.'s monthly expenses. M.G. argues the remaining shortfall, which proposes to be \$416 per month, should be divided between the parties in proportion to their respective incomes for the years 2020 and 2021 at a 70:30 split. He further argues he paid \$723/month in support during this period, and that this is an overpayment which must be taken into account.
- [55] I have reviewed the budget proposed by M.G, which was included in her materials about what the actual costs are. It is apparent that this budget reflects the restricted financial means available to C.G. and J.G., rather than the real and reasonable needs of J.G.: *Kollmus v. Kollmus*, 2015 BCSC 1101 at paras. 40-41.
- [56] The total amount C.G. has claimed for J.G.'s monthly expenses is \$2,285, with a number of items (totalling approximately \$460) to which M.G. does not agree. For example, C.G. lists \$50/month as savings for a new stove and hot water tank, an expense M.G. opposes. There are also minimal amounts claimed for housing and household expenses and for J.G.'s personal expenses and entertainment. These are all areas where M.G. suggests a lower amount be accepted by the court, taking the most issue with the amounts claimed for J.G.'s personal expenses and entertainment. C.G. has claimed \$350/month, and M.G. says this amount should be \$130/month. M.G.'s proposed amount in this area does not appear to

consider the benefit the activities and expenses outlined by C.G. may bring to J.G.'s life. I do not find the amount claimed to be unreasonable.

- [57] Overall, I find the amounts claimed by C.G. to be reasonable. I do not find this is a situation where the claimant has overestimated J.G.'s expenses. I find it more likely C.G. has underestimated J.G.'s expenses, and drafted a budget that is based on limited financial means they have become accustomed to living within.
- [58] In *Martin*, at paras. 72-75, Justice Kirchner considered the additional responsibility upon the primary caregiver parent in providing constant and live-in care to an adult child with disabilities. In that case, the primary caregiver parent was able to receive some respite throughout the month which allowed her to do things herself outside of the home, including to work. Justice Kirchner found it was necessary, and appropriate, to compensate the primary caregiver parent by adding a caregiver amount into the child's monthly expenses. He increased the monthly budget amount by \$350/month for 10 months of the year and \$700/month for the two months in the summer where the claimant was required to care for the child full-time and without respite (at para. 78).
- [59] Given that C.G. is J.G.'s primary, and only, caregiver, I find this is a situation where it is appropriate to add a caregiver amount to J.G.'s budget in the amount of \$700/month on an interim basis to recognize the added responsibility upon C.G. As Kirchner J. stated in *Martin* at para. 75, this amount is far below the true value of this role and the corresponding benefit M.G. has received in not having to do so. This additional caregiver expense will be added to J.G.'s monthly expenses on an interim basis, with liberty to the parties to provide submissions on this amount at a hearing of the remaining issues. This brings J.G.'s monthly budget to \$2,985. Subtracting the benefit he receives from PWD, the remaining difference is \$1,581, to be divided between the parties 70% to M.G. and 30% to C.G. M.G.'s child support obligations from August 2020 through 2021 are calculated at \$1,106.70/month for 17 months for a total of \$18,813.90.

January 2022 to Present Child Support

- [60] M.G. seeks a viva voce trial to adjust child support obligations based on his current income, which he asserts to be \$27,840/per annum from Employment Insurance benefits. As indicated above, I have concerns that the evidence suggests that there may have been an intentional dissipation of income producing assets. Although C.G. raised the issue of fraudulent conveyance during submissions, the FCA was not properly pled before me, nor were *Bearspaw Inn* and *V.G.* served, and as such, I am unable to make such a determination.
- [61] As per s. 19(1) of the Guidelines, the court may impute income to a payor parent under certain circumstances, including where:

- (a) 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 or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (f) the spouse has failed to provide income information when under a legal obligation to do so.

[62] From 2011 through to 2021, M.G.'s annual income was typically well above \$100,000 and in the last two years, over double that. The only exception to this appears to be 2019, when he made just under \$77,000. In the months following being served with the notice of intent to proceed, M.G. transferred his beneficial interest in the Bearspaw Inn (September 2022), transferred nearly all other assets to V.G. via the post-nuptial agreement (November 2022) and went on medical leave from work (March 2023). It is also worth noting that financial disclosure has been an ongoing issue.

[63] Further, though there were copies of M.G.'s application for medical Employment Insurance (for anxiety and depression) and hospital records related to his heart attack appended to an affidavit, there was no sworn statement from a doctor included in these materials, nor did his heart attack in 2021 appear to have impacted his annual income over time. This evidence, and lack thereof, brings into serious question the truthfulness in M.G.'s financial disclosure.

[64] There is broad judicial discretion in imputing income for the purposes of support calculations: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36. For the reasons outlined throughout these reasons, I find M.G. is intentionally unemployed, that income has been diverted, and that he has failed to provide full and frank financial disclosure despite being legally obligated to do so.

[65] Section 17 of the Guidelines sets out the typical process for determining income for the payor spouse, if it determines the annual income disclosed is not an accurate representation for the purposes of determining support obligations. The test for imputing income is "what is 'fair and reasonable', having regard to the payor's income in the preceding three years": *Harras v. Lhotka*, 2016 BCCA 246, citing *Marquez* at para. 53. However, in some circumstances, averaging the payors income over a five year period may be more appropriate "where it would more accurately reflect the income available to a payor spouse": *Harras* at para. 37.

[66] Given the fluctuations in M.G.'s income over the past several years, I find the approach in *Harras* to represent what is fair and reasonable in imputing income to him at this time. I have averaged M.G.'s income for the years 2017-2021, arriving at an imputed income of \$165,063.60. For purposes of determining child support in circumstances such as this-where the child of the marriage has reached the age of majority, and receives PWD benefits but

nonetheless cannot leave the charge of their parents-the amount of child support reflects their reasonable and actual need split proportionally between the parents: Martin; Neuman.

- [67] Accordingly, I order M.G. to pay \$1,106.07/month in child support from January 2022 onward, as per my calculations outlined above. This results in a retroactive amount due of \$22,121.40 calculated from January 1, 2022 until August 1, 2023, with ongoing support payable at this amount from that date forward.

Extraordinary Expenses

- [68] C.G. also asks that M.G. contribute toward extraordinary expenses for J.G. as she has paid all. The Fisher Decision set this amount at a maximum \$252/month, based on M.G. being 70% responsible. Justice Goepel increased this amount from 2012 onward to 70% of \$500 = \$350/mo. C.G. was to submit receipts for special expenses to M.G. I understand M.G. has paid no special expenses, however I do not find I am able to order this without proof of eligible expenses. C.G. is at liberty to bring this application on again should she provide further evidence of the special expenses.

LIFE INSURANCE

- [69] C.G. also seeks an order under s. 170(e) of the FLA that M.G. take out a life insurance policy and name J.G. as a beneficiary. C.G. argues she is concerned for the future well-being and security of J.G. should something happen to M.G. and there is no longer any financial support for him. Given J.G.'s significant needs, I find this to be a very real concern. Section 170(e) provides that:

In an order respecting child support or spousal support, the court may provide for one or more of the following:

- (e) that a person who has a contract of life insurance within the meaning of Part 3 of the Insurance Act

- (ii) to pay all premiums on the policy and to compensate the spouse for doing so

- [70] While s. 170(e) only permits the court to make such an order where that person already holds a life insurance policy, s. 12 of the Guidelines permits the court to make an order the payor be required to obtain new or additional life insurance: R.E.Q. v. G.J.K., 2019 BCSC 1116, aff'd 2020 BCCA 254, at paras. 137-139.

- [71] As noted above, M.G.'s list of disclosed assets and obligations indicates he currently holds a life insurance policy with his current spouse, V.G. named as a beneficiary. The face value of this policy is \$250,000. Section 170(e) of the FLA provides that I may order M.G. to also name J.G. as a beneficiary under this policy. I order that M.G. obtain and maintain life insurance in the amount of \$250,000 and name J.G. as the sole beneficiary. He may achieve this by transferring his existing policy or purchasing a new one. M.G. will provide C.G. with proof that this has been done within one month of the decision date, then annually thereafter.

SECURITY

- [72] I have serious concerns regarding M.G.'s apparent disposition of income producing assets following the filing of this family claim and lack of financial disclosure despite a court order requiring the same.
- [73] Section 12 of the Guidelines permits the court to order security for payment of child support: *Bennett v Bennett*, 2022 BCSC 1702 at para. 69; *D.P.R. v. L.L.R.*, 2015 BCSC 2317 at para. 72. Given these serious and significant concerns that M.G. may be attempting to avoid his responsibilities under this claim, I find it necessary that safeguards be put in place to protect the interests of C.G. and J.G. I find it appropriate to make an order for security under s. 12 of the Guidelines.
- [74] Pursuant to s. 12 of the Guidelines, I order a secured sum of \$53,121.60 be paid to the Director of Maintenance Enforcement under the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127 as security for payment of child support and extraordinary expenses (as ordered by the court, representing four years of support payments. The terms upon which the funds may released will be as follows:
- a) The Director is authorized to pay to the claimant any arrears of support from the funds held as security if there is default in payment extending beyond 30 days; and
 - b) if any funds remain on the termination and satisfaction of all child support obligations of the respondent, such funds will be paid to the respondent, on application by the respondent to the Director, or by further order of this Court.

FURTHER ORDERS

- [75] C.G. seeks a financial penalty under s. 213 of the FLA, which provides:

213 (1) This section applies if a person

- (a) fails to comply with

- (i) an order for disclosure made under section 212 [orders respecting disclosure], or

- (ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules,

within the time or in the manner required by the order or Rules, or

- (b) provides information that is incomplete, false or misleading.

- (2) In the circumstances set out in subsection (1), the court may do one or more of the following:

- (a) make an order under section 212;

- (b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;
 - (c) require a party to give security in any form that the court directs;
 - (d) make an order requiring the person described in subsection (1) to pay
 - (i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5 000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or
 - (iii) a fine not exceeding \$5 000;
 - (e) make any other order the court considers appropriate.
- [76] I find M.G. has failed over the course of years to comply with orders from the court to provide updated, and accurate financial disclosure. This was not an accidental oversight, but rather intentional action. As a result, I impose a fine payable to C.G. in the amount of \$1,000. In assessing this amount lower than the \$5000 fine sought by C.G., I have considered the submissions that M.G. agreed to pay \$5,000 toward C.G.'s legal fees, as outlined below.

CONCLUSION

- [77] M.G. is to pay C.G. a total of \$85,212.95 in retroactive child support. This is inclusive of the \$45,812.00 M.G. agreed to pay C.G. pursuant to the without prejudice agreement of the parties. Assuming that amount is paid, the remaining amount M.G. is ordered to pay is \$39,400.95 in retroactive child support.
- [78] M.G. shall pay \$1,106.07/month in child support to C.G. for J.G.
- [79] M.G. is further ordered to pay \$53,121.60 in security to the Director of Maintenance Enforcement, as per the order outlined above.
- [80] M.G. is ordered, pursuant to s. 12 of the Guidelines, to obtain life insurance in the amount of \$250,000 and to name J.G. as the sole beneficiary. He may do this through a new policy or by transferring his existing policy. M.G. will provide proof to C.G. that this has been done within one month of this decision. Thereafter, he will provide proof to C.G. annually that the policy has been renewed.
- [81] M.G. consented in submissions to pay C.G. an additional \$5,000 to support C.G. to seek and retain legal counsel in this matter, payable by the end of the month of July 2023.
- [82] A financial penalty is assessed against M.G. under s. 213 of the FLA, of \$1,000.

- [83] C.G.'s claims for retroactive and prospective spousal support, and extraordinary expenses are adjourned generally, with liberty of either party to bring on the application. M.G. will continue to pay C.G. \$2,000/month in spousal support as per the Fisher Decision.
- [84] M.G. is to provide full and frank financial disclosure, including his T1 General and Notices of Assessment before to C.G. by June 1 every year, or before any further hearing on these issues.
- [85] The order of Justice Caldwell, binding any existing or other support or costs orders on the estate of M.G., remains in place subject to further order of the court on hearing the application.
- [86] The parties are at liberty to set a further JCC before me, however I am not seized of the matter.
- [87] C.G. is to make best efforts to engage legal counsel and advise counsel for M.G. if she will pursue a fraudulent conveyance claim by the end of August 2023.

"A. Walkem J."

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