

CANADA / JUDGMENT

C.M.L. v. A.J.

2022 BCSC 1537

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Supreme Court of British Columbia

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2022 BCSC 1537 C.M.L. v. A.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.M.L. v. A.J.,

2022 BCSC 1537

Date: 20220831

Docket: E51874

Registry: Vernon

Between:

C.M.L.

Claimant

And

A.J.

Respondent

Before: The Honourable Mr. Justice M. Taylor

Reasons for Judgment

The Claimant Appearing in Person:

C.M.L.

The Respondent Appearing in Person:

A. J.

Place and Dates of Trial:

Vernon, B.C.

December 7-10, 2021

December 14-17, 2021

February 23, 2022

Place and Date of Judgment:

Vernon, B.C.

August 31, 2022

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I. Introduction

- [1] This was a family law trial involving two self-represented parents, Mr. C.M.L. ("Mr. L.") and Ms. A.J. ("Ms. J."), with an eight-year old child of the marriage, B.L.
- [2] At trial, the principal issues raised included guardianship and parental responsibilities, parenting time, child support, division of property and conduct orders.
- [3] While the parties are of course legally entitled to represent themselves at trial, the unfortunate result in this case is that the evidentiary record, and the level of documentary disclosure, were deficient in many important respects, particularly with respect to the numerous claims and allegations made by Mr. L. Although I gave both parties the opportunity to rectify this during the trial, they did not in many important respects. Thus,

while the findings I have made in these reasons were supported by the evidence, or legally justifiable inferences, I was unfortunately placed in a position of having to dismiss many of the specific arguments made by both parties, and Mr. L. in particular, due to a lack of available evidence and documentary support.

II. Background Facts

- [4] The parties met in Grand Prairie, Alberta in 2012 where they commenced a relationship. They relocated to Vernon, B.C. in July 2013, where they purchased a home at 5700 Ranch Road (the "Family Home"). Ms. J. had a female child from a prior relationship, C.C., who was ten years old at the date of the trial and who accompanied the parties to live in the Family Home. Ms. J. shares custody of C.C. with her former common law spouse, Mr. G.C.
- [5] Mr. L. and Ms. J. have one male child, B.L., who was eight years old at the date of the trial.
- [6] Mr. L. currently lives in a marriage-like relationship with C.G, who has two children from a prior marriage. Mr. L. and C.G. live in a house in Vernon along with one of her children and B.L. (when Mr. L. has parenting time with B. L.).
- [7] Mr. L is a helicopter pilot who has worked for a number of different helicopter operations in Alberta and British Columbia. Ms. J. is a vehicle finance manager and has worked in various car dealerships in Alberta and British Columbia in a finance capacity.
- [8] Prior to entering into the relationship, both parties owned property in Alberta. Ms. J. co-owned a rental property in Grand Prairie with her brother, R.J. (the "J. Property"), purchased in 2007 for \$283,500. The J. Property was sold to a third-party purchaser in 2019 for \$280,000. In 2013, Ms. J. transferred the property to the sole ownership of her brother. She testified that this was done because she and Mr. L. were attempting to purchase the Family Home at the time and could not obtain mortgage financing if her name was registered on another mortgaged property. Nevertheless, Ms. J. testified that she continued to make mortgage payments on the J. Property and to collect rental cheques using her joint bank account with Mr. L. (the "Joint Bank Account"). Ms. J. testified that all her employment income, and also the rental income and mortgage payments relating to the J. Property, were deposited and withdrawn solely from the Joint Bank Account.
- [9] Mr. L. testified under cross-examination that he also owned property, which he had purchased in 2007, and which he sold in 2018 for \$395,000 (the "L. Property"). Unfortunately, Mr. L. did not disclose the documents relating to the L. Property to Ms. J. and thus a record of the original purchase price and mortgage payments were not available for this Court at trial.
- [10] Further, Mr. L. admitted under cross-examination that he maintained a separate bank account throughout the marriage with the Alberta Treasury Branch (the "ATB Account"), which he stated he used to deposit income from his employment, to make personal purchases and purchases for his business and also to make mortgage payments on the L.

Property, a boat and a truck. Mr. L. failed to disclose the ATB Account records to Ms. J. prior to trial. At the outset of the trial, I asked Mr. L. to make full disclosure of the ATB Account records, which I considered to be highly relevant to the issues raised. Despite this request, Mr. L. failed or refused to disclose the ATB Account records, with the result that these were not available for the Court at trial.

- [11] After moving into the Family Home, the parties had financial difficulties relating in particular to servicing their considerable mortgage debt. Ms. J. testified that, as of 2017, the monthly amount payable on the mortgage was \$3,400 in addition to household expenses. She testified that the household expenses were also considerable, as the property was large and they had farm animals and farm equipment to care for and maintain.
- [12] Tensions and conflict grew between the parties, reaching a climax in 2017. Ms. J. alleged at trial that Mr. L. physically assaulted her on a trip they took to Cuba in February 2017, and adduced as evidence a complaint she made to the Canadian Embassy in Cuba to that effect at the time. Ms. J. also testified as to other instances of physical and mental abuse perpetrated by Mr. L. against her both before and after their separation. All these allegations were denied by Mr. L., who argued that she had previously made similar allegations against Mr. C.
- [13] Mr. L. and Ms. J. separated on June 2, 2017 (the "Separation Date") following an incident at the Family Home. On that day, following a verbal argument in the presence of C.C., and while B.L. was nearby in the Family Home, Mr. L. threw a pail of water onto Ms. J. Ms. J. stated words to the effect of "we are done", hurriedly collected C.C. into her car and sped off. Mr. L. alleged at trial that she drove over his foot while accelerating away, resulting in injury, but this was denied by Ms. J. No medical evidence of a foot injury was adduced by Mr. L. at trial.
- [14] Ms. J. filed an assault complaint with the RCMP, which resulted in a Provincial Court recognizance no contact order. Mr. L. was required to vacate the Family Home and was told by the RCMP to remove his personal possessions within 24 hours. Mr. L. was unable to remove all his personal possessions within the allotted time frame. After the Separation Date, his escalating demands for the return of his possessions, and his belief that Ms. J. was withholding the possessions, became a significant source of conflict and ill will between the parties.
- [15] During the period between the Separation Date and the Spring of 2018, Ms. J. continued to live in the Family Home with B. and C. while Mr. L. found separate accommodations. During that time, Mr. L. ceased making any payments toward the mortgage on the Family Home, with the result that Ms. J. struggled to make the payments on her own. Both parties testified that Mr. L. and his father, W.L., offered to make the mortgage payments, but only on the condition that Ms. J. vacate the Family Home to enable Mr. L. to live there. Ms. J. testified that she rejected that offer because she and the children had nowhere else to go and she considered it to be "blackmail".

- [16] Ultimately the Family Home went into foreclosure in the Spring of 2018 and was sold later that year. The proceeds from the sale of the Family Home, after deductions for legal fees and costs, were placed into a trust account with a law firm (the "Trust Account"). As of the date of trial, the balance in the Trust Account was \$36,369.18.
- [17] Ms. J. also alleged that, in breach of a court order and directions from the RCMP, Mr. L. continued to enter the Family Home property after the Separation Date for the purposes of harassing Ms. J. and the children, including removing the air conditioning module during the summer, padlocking the shop doors, changing the locks on the furnace room door, disconnecting the house phone by cutting the wires, and disconnecting the power to the garage main gate and washing machine.
- [18] Ms. J. also alleged that on two occasions in 2017, her vehicle was broken into, resulting in the theft of various possessions including her garage door opener, driver's license, credit card and a planner. On both occasions, Ms. J. filed police complaints and no evidence of forced entry was found. Ms. J. testified at trial that Mr. L. had retained a key fob to her vehicle, which led her to suspect he was involved.
- [19] All the above allegations were denied by Mr. L at trial.
- [20] However, following these incidents, and on the advice of the RCMP, Ms. J. installed a video camera at the Family Home. On the evening of December 2, 2017, while Ms. J. was away at a Christmas party, the shop in the Family Home was broken into and the incident was captured on the video camera. The videotape confirmed that it was Mr. L. who had broken in. Ms. J. handed the videotape to RCMP, who arrested Mr. L for a breach of his recognizance.
- [21] On February 28, 2018, Mr. L. was convicted for a breach of recognizance and sentenced to a conditional discharge, coupled with a victim surcharge and six-month probation order.
- [22] Mr. L. filed a notice of family claim on June 7, 2017, and Ms. J. filed a response to family claim and counterclaim on December 21, 2018.
- [23] Subsequently, the parties entered into a series of consent orders dealing principally with parenting time, Mr. L.'s access to his possessions, and conduct orders restricting Mr. L.'s access to Ms. J.
- [24] In particular, the parties have been sharing parenting time since April 10, 2018 in accordance with a consent order of Master Wilson (the "April 2018 Consent Order"), as modified by a subsequent order of July 30, 2020 (the "July 2020 Consent Order"). The April 2018 Consent Order stated as follows:
1. On the basis of the Claimant having a work schedule of two weeks on and two weeks off with his start date being Tuesday mornings and his end date being the Monday afternoons 14 days later, the Claimant shall have parenting time with the child B.L., born January 6, 2014 as follows:

- a. From 9:15 am on the first Tuesday following the end of his work shift to the following Tuesday at 5:00 pm; and
- b. From 5:00 pm on the following Friday to 5:00 pm on the following Monday.
2. All pick up and drop off of the child B.L. for the Claimant's parenting time shall be at the Active Beginnings Day Care for so long as they are willing or at such other place as the parties may agree.
3. The parties may vary by agreement in writing the pick-up and drop off times.
4. As exceptions to the no contact provisions of the Recognizance:
 - a. The Claimant may contact and communicate with the Respondent directly by email or text message solely for the purpose of arranging parenting time with B. or in the event of medical or other emergency in relation to B;
 - b. The Claimant may have indirect contact with the Respondent through realtors for the purposes of listing and selling the family home;
 - c. The Claimant may have indirect contact with the respondent through the operations of Active Beginnings Daycare in relation to the child B.;
 - d. The Claimant may place or retrieve calls from his phone to or from the Respondent's phone for the sole purpose of enabling B.L. to have telephone communication with the Claimant or the Respondent while in the other's care. All such calls shall be preceded by a text message from the caller to the recipient and a return text message indicating agreement to the call.

[25] The July 2020 Consent Order modified the April 2018 Consent Order in part as follows:

Neither party will arrange care for over 2.5 hours in duration or overnight care for the child, B.L. born January 6, 2014 with a third party without first notifying the other party and allowing the other party the opportunity to care for B.L.

[26] In an earlier consent order dated February 20, 2018 (the "February 2018 Order"), the parties had also agreed to the following conduct orders:

2. The parties will:
 - a. put the best interests of the children B.L. and C.C. before their own interests;
 - b. encourage B.L. and C.C. to have a good relationship with the other party and speak to B.L. and C.C. about the other parent in a positive and respectful manner;
 - c. make real effort to maintain polite, respectful communications with each other, refraining from all negative or hostile criticism, communication or argument in front of B.L. or C.C.
3. The parties will not:

- a. Question B.L. about the other parent or time spent with the other parent beyond simple, conversational questions;
 - b. Discuss with B.L. or C.C. any inappropriate adult, court or legal matters; and
 - c. Blame, criticize or disparage the other parent to B.L. or C.C.
- [27] Additionally, in the July 2020 Consent Order, Mr. L. agreed to pay child support in the sum of \$630 per month from March 1, 2020 to July 1, 2020 for the total amount of \$3,150 and to pay child support of \$630 per month commencing August 1, 2020 and continuing until further order of the court.
- [28] The July 2020 Consent Order further required that the following items be made available for pick-up by Mr. L. within 14 days:
- a) Tractor and attachments;
 - b) Fencing tools;
 - c) Cattle equipment;
 - d) Chains/boomers;
 - e) Helicopter nets/long lines;
 - f) Fuel tank and pumps;
 - g) One lawnmower;
 - h) One weed eater;
 - i) Grain shovels;
 - j) Hand tools; and
 - k) Antiques belonging to Mr. L.
- [29] Despite the July 2020 Consent Order, Mr. L. refused to make child support payments, taking the position that Ms. J. had failed to give him adequate access to the Family Home to retrieve his possessions. Ms. J. registered the Order with Family Maintenance Enforcement Program ("FMEP"). At the time of trial, Mr. L. was in arrears in child support payments in the amount of \$6,078.
- [30] Leading up to the sale of the Family Home, there was substantial conflict between the parties relating to Mr. L.'s possessions. Mr. L. testified that Ms. J. had failed to move all his possessions to the shed as previously agreed to and ordered and that he was given inadequate access to the Family Home to retrieve his possessions. Ms. J. testified that she made reasonable efforts to move the smaller items to the shed but was unable to move the larger items, such as the tractor, to the shed and therefore left them in the field on the property where he was free to pick them up.

- [31] Ms. J. alleged that Mr. L. had failed to make reasonable efforts to retrieve his property and, in fact, leading up to the date of the closing on the sale, this left her in the difficult position of having to dispose of or move items which the buyers did not want on the property. Accordingly, she testified that she made a decision to move the remaining items to a storage facility run by Grasshopper Storage, where the items remained until Mr. L. picked them up months later. By the time Mr. L. picked up the items, there was a bill outstanding to Grasshopper Storage in the amount of \$3,800 which Mr. L. refused to pay.
- [32] There has also been substantial subsequent conflict between the parties relating to the parenting time and parental responsibility arrangements set out in the April 2018 Consent Order, including conflict relating to choice of school, vaccination requirements, and holiday arrangements, among other things.

III. Issues

[33] The following issues were raised at trial:

1. Should the parties have joint guardianship?
2. How should parenting responsibilities be allocated?
3. How should parenting time be allocated?
4. Is child support payable?
5. How should family property be divided?
6. Should there be any conduct orders?

IV. Analysis

1. Guardianship

Positions of the Parties

[34] At trial both parents stated that they were agreeable to ongoing shared guardianship of B.L.

Analysis

- [35] Pursuant to s. 39 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], biological parents are presumptively guardians. In this case both Mr. L. and Ms. J. are biological parents and both have lived with B.L. since birth, in approximately equal amounts. There was also no compelling evidence adduced at trial that either parent's guardianship should be terminated, which would only be justified in the most extreme circumstances: *M.A.G. v. P.L.M.*, 2014 BCSC 126 at para. 44.
- [36] Accordingly, I order that both parents shall remain joint guardians of B.L.
2. Parenting Responsibilities

Positions of the Parties

- [37] Mr. L. took the position that he should have sole parental responsibility and final decision-making authority with respect to B.L.
- [38] Ms. J. took the position that there should be shared parental responsibilities but that she should have final decision-making authority on matters where the parents cannot agree.

Legal Principles

- [39] In *S.R.M. v. N.G.T.M.*, 2020 BCSC 468, at paras. 149-153, Justice Basran helpfully summarized the applicable legal principles with respect to parenting arrangements:
- [149] The parties and the court must consider only the best interests of the child in making an order under Part 4 [Care of and Time with Children] respecting parenting arrangements: s. 37(1) FLA. Likewise, under s. 16(8) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA], the court must only take into consideration the best interests of the child as determined by reference to the condition, means, needs, and other circumstances of the child in making an order under that section for custody or access. The court must not take into consideration the past conduct of any person unless it is relevant to that person's parenting ability: DA s. 16(9).
- [150] Subsection 37(2) of the FLA provides that all of the child's needs and circumstances must be considered in order to determine what is in their best interests, including the following (non-exhaustive) factors:
- a) the child's health and emotional well-being;
 - b) the child's views, unless it would be inappropriate to consider them;
 - c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - d) the history of the child's case;
 - e) the child's need for stability, given the child's age and stage of development;
 - f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;

- i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members; and
- j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[151] Division 2 of Part 4 of the FLA sets out the relevant principles for parenting arrangements. Although the general principle is that each child's guardian may exercise all parental responsibilities with respect to the child, parental responsibilities may be allocated under an order such that they may be exercised by one or more guardians only: s. 40(2) and (3). Similarly, s. 16(6) of the DA provides that the court may impose any terms, conditions, or restrictions in connection to a custody or access order.

[152] Subsection 40(4) of the FLA specifies that in making parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, it must not be presumed that parental responsibilities should be allocated equally among guardians or that decisions among guardians should be made separately or together. Although s. 40 of the FLA and s. 16 of the DA conflict with respect to whether or not there is a presumption that maximum contact with each parent is in the child's best interests, this is more relevant to parenting time than parenting decision making. In circumstances where the DA and the FLA conflict, and even where there is no difference in statutory approach, federal paramountcy rules dictate that the DA takes precedence: *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230 at para. 20.

[153] Parental responsibilities are set out in s. 41 of the FLA and are as follows:

- a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- b) making decisions respecting where the child will reside;
- c) making decisions respecting with whom the child will live and associate;
- d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- h) giving, refusing or withdrawing consent for the child, if consent is required;

- i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- j) requesting and receiving from third parties health, education or other information respecting the child;
- k) subject to any applicable provincial legislation,
 - i. starting, defending, compromising or settling any proceeding relating to the child, and
 - ii. identifying, advancing and protecting the child's legal and financial interests;
- l) exercising any other responsibilities reasonably necessary to nurture the child's development.

Analysis

- [40] This is a high-conflict case where the parents have had a great deal of difficulty communicating productively, or at all, about important decisions relating to B.L.'s best interests, including decisions relating to choice of school, vaccination status, medical testing and choice of extracurricular activities, among others. While both parents clearly believe that they have B.L.'s best interests at heart, the breakdown in communications and high level of animosity between the parents has led to a paralysis in parental decision-making which is clearly not in B.L.'s best interests.
- [41] This concern is clearly reflected in a Views of the Child Assessment report prepared at the request of both parties on August 19, 2020 by Brenda Forster, M. Ed., R.C.C., a registered clinical counsellor.
- [42] Following two interviews with B.L., Ms. Forster concluded that B.L. had not been alienated from either parent and opined that B.L. had a "positive relationship" with both parents. However, Ms. Forster qualified this conclusion by expressing great concern about the impact of the continued conflict between the parties on B.L.:

The most striking statement that B.L. volunteers throughout the interview process is that his parents 'hate each other now'. I have no knowledge of the history of the relationship between Mr. L. and Ms. J. All of this said, the patterns of B.L.'s words and behaviours that I observe throughout the interviews clearly indicate that he is suffering due to his parents' ongoing conflict. B.L.'s behaviours are extremely concerning and, if not checked, could result in a negative trajectory for his mental health and (his already concerning) coping mechanisms. While the scope of this report does not include recommendations, I will not be serving B.L. if I do not suggest to Ms. J. and Mr. L. that they consider their level of hatred toward B.L.'s other parent, relative to their love for B.L. If their love for B.L. trumps their hatred toward the other, then what they can do for B.L. is to seek professional support to process their feelings with regard to B.L.'s other parent. If they can find a way to negotiate their negative feelings toward the other parent, then they can freely encourage and support B.L. in having a positive relationship with both parents and also free him

from their conflict, so he can negotiate normal developmental milestones.

[43] As a preliminary matter, I note that during this lengthy trial involving two self-represented parties, I observed that the relationship between the parties remains hostile and strained. I also observed that Mr. L. in particular has great difficulties with anger management, often defaulting in open court to emotional outbursts and sarcasm, which did not assist the process.

[44] I must also pause here to summarize my findings on credibility, taking into the analysis set out in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296. In my view, Ms. J. was a more credible witness than Mr. L. In addition to Mr. L.'s difficulties in controlling his anger, which appeared to impede the rationality of his arguments at times, I emphasize that Mr. L. made at least three statements in open court which were demonstrably false:

- First, Mr. L. was confronted under cross-examination by Ms. J. with a bizarre transcript of a telephone call between an unnamed individual and a manager at the Toyota dealership where Ms. J. worked. In that transcript, the unnamed individual (putting himself forward as a customer) alleged that Ms. J. was under investigation by the RCMP for fraud and was fired from two previous dealerships and sought to have the manager investigate Ms. J. relating to these allegations. Initially Mr. L. denied outright in his testimony that the unnamed customer was him. The next day, Mr. L. recanted and admitted that the unnamed customer was in fact him, and further admitted at trial that none of the allegations he had made to the Toyota manager were true. This false testimony clearly illustrated that Mr. L. was prepared to lie under oath, and also that his level of hostility toward Ms. J. was such that he was willing to make up elaborate stories to inflict personal damage on Ms. J.

- Second, Mr. L. denied in his testimony that he was ever convicted of an offence relating to his breach of recognizance, implying that the charges were dropped against him. This was false on its face, as was evident from a probation order dated February 28, 2018 adduced into evidence by Ms. J., which clearly stated that Mr. L. was convicted under s. 811 of the Criminal Code, R.S.C. 1985, c. C-46.

- Third, Mr. L. and C.G. made an allegation about a situation where Mr. L. had refused to release B.L. to Ms. J. at the scheduled handover for parenting time and Ms. J. had attended at his residence with her nanny to remove B.L. Mr. L. and C.G. alleged that B.L. had been "crying and screaming" at that time, but Ms. J. produced a video from her phone which demonstrated that this was not true and that B.L. was in fact responding calmly.

[45] In addition, as I will address more fully below, Mr. L. failed to produce full documentation relating to his claims, despite a request from this Court during the trial that he do so, with the result that his claims often appeared to be based on selective or incomplete versions of the total documentary evidence.

- [46] By contrast, I found Ms. J.'s testimony, although certainly also open to some question, to be more calmly and rationally presented than Mr. L.'s and also found that her evidence was more consistent with the evidence of the other witnesses and the documents than Mr. L.'s. For example, Ms. J.'s evidence about the alleged assault by Mr. L. on the vacation in Cuba was presented in a very detailed and linear fashion and was consistent with testimony from another witness, Ms. C.T., who testified that Ms. J. had conveyed consistent details of the incident to her contemporaneously. Her evidence was also consistent with the fact that she filed an incident report with the Canadian consulate in Cuba at the time, which would have been highly unusual on a vacation if there were not some substance to it. By contrast, Mr. L.'s testimony on the incident was vague and evasive, often devolving into argument, and did not paint a convincing alternative narrative. While it was not strictly necessary for me to find at trial that the incident actually occurred, I find that it did at a minimum go to credibility.
- [47] Mr. L. pointed out fairly that Ms. J. had also raised allegations of domestic violence against Mr. C. after the breakdown of their earlier relationship, and these allegations were denied by Mr. C. in his testimony, which raises questions about the veracity of her allegations against Mr. L. I have taken this into account. However, it also true that these alleged events were not as detailed or numerous as those raised against Mr. L. and occurred many years before and may have faded in the recollection of Mr. C. I also cannot ignore the fact that Mr. C. testified that his co-parenting relationship with Ms. J. is now highly cooperative and what he described as "amazing, I could not ask for a better parenting partner".
- [48] Returning to the issue of parenting responsibility, I first observe that the failure of the parents to communicate productively on important matters, due to their ongoing conflict, has very important implications for B.L. A good example is the process of decision-making that arose after Ms. J. sought the consent of Mr. L. for a referral of B.L. by his family physician Dr. Coetzer for IHCAN testing relating to concerns Ms. J. had about possible autism. Ms. J. testified that she had observed B.L. has had problems with sensory input, obsession with details and repetitive body movements and she advised Dr. Coetzer of these concerns. On the basis of this report, Dr. Coetzer provided her professional opinion on May 12, 2020 that the IHCAN testing was a recommended course of action.
- [49] I note that the concerns identified by Ms. J. to Dr. Coetzer were also echoed in part by Ms. Forster in the Views of the Child report, where she made a point of identifying a range of noteworthy behaviours of B.L. she observed during her interviews, including moving about constantly, difficulty maintaining physical distance, distractibility, ending interviews prematurely and initiating conversations about many different topics.
- [50] Unfortunately, the communications between the parents after the recommendation by Dr. Coetzer were not productive. Ms. J. sent the consent forms and follow-up emails to Mr. L. but he refused to sign the forms or discuss the matter in a constructive fashion. After several months without a decision, Dr. Coetzer finally met with Mr. L. on July 9, 2020.

- [51] In her contemporaneous notes of the conversation with Mr. L., Dr. Coetzer stated that Mr. L. took the position that B.L. does not have autism (although he is of course not a doctor or expert), and that he was concerned about labelling B.L. with an autism diagnosis as he feels it would have a negative impact on his job options later in life. Mr. L. also testified at trial as to his view that the symptoms Ms. J. observed in B.L. were merely a symptom of her inferior parenting style (compared to his), and insisted that B.L. did not exhibit these symptoms when under his care. To the extent that this appeared to reflect Mr. L.'s view that the parenting relationship with Ms. J. is a competition rather than a cooperative enterprise, this is in my view a problematic approach to co-parenting.
- [52] Of even greater concern, from the perspective of the best interests of B.L., is that Dr. Coetzer's notes reflect Mr. L.'s further statement that he suspected Ms. J. wanted an autism diagnosis because she is "anti-vaccination" and wanted to "prove that vaccinations caused it and it is dad's fault". This statement clearly indicates that Mr. L. was processing this decision primarily in terms of his conflict with Ms. J. and not the best interests of B.L. It also indicates that he has great difficulty believing that Ms. J.'s actions are motivated by a good faith interest in protecting B.L.'s best interests, which does not bode well for his future parenting communications with Ms. J.
- [53] Dr. Coetzer's notes further state that she advised Mr. L. that she would not say for sure if B.L. has autism or not but that, if he does have autism, then being diagnosed with it is a very good thing for him as he will have access to a lot of help. She explained that with early intervention a lot of children with high functioning autism can adapt very well in the neurotypical world as adults and it should be no hindrance in finding jobs. Despite this explanation, Mr. L. continued to refuse to sign the consent to permit the testing to take place.
- [54] At trial I asked Mr. L. to clarify why he had continued to refuse to sign the consent and whether he would in the future and his answer was non-committal and shed little light on his rationale. While it is not the role of the court to second-guess a parent's decision as to whether to test for autism, I would have expected a parent acting in the best interest of the child to at least take the steps to inform himself further and make good faith enquiries about autism, including taking seriously the recommendations of a family doctor, rather than merely blocking the process largely due to hostility toward Ms. J., as did Mr. L. in this case.
- [55] That said, I note there was ample evidence at trial that both parents take an active interest in exercising parenting responsibilities on behalf of B.L., and both are fully capable of doing so in what they believe are in B.L.'s best interests. At trial, both parties called multiple character witnesses who attested to having observed both parties as parents in the presence of B.L., and confirmed that both are loving, active and responsible parents who care deeply for B.L. and his best interests. I found this evidence to be credible, consistent with the testimony of both parents, and I give it considerable weight. It is also apparent that both parents have the life skills and experience to manage the parental responsibilities are set out in s. 41 of the FLA.

[56] Accordingly, I am comfortable based on all the evidence that there should be shared parental responsibility. However, it is also apparent that, despite their mutual love for B.L., issues arise in this family when the parents cannot agree on important decisions, resulting in conflicts which are not in B.'s best interests.

[57] In *J.E.H. v. P.L.H.*, 2013 BCSC 752 [J.E.H.] at para. 58, Abrioux J. (as he then was) set out the summary of principles applicable to decision-making authority:

- there has been a general unwillingness to impose mandatory joint decision-making on parents who cannot get along and are unable to communicate. This is out of concern for the well-being of the children;
- the ability of the parents to communicate and cooperate remains an important factor when considering the best interests of a child:

Jordan v. Jordan, 2001 BCSC 1058 at para. 20

- joint guardianship with no ultimate decision-maker may not be appropriate on the basis that the cost and delay of applying to court each time the parents cannot agree is not warranted. Ultimately a decision has to be made. In such circumstances, the primary caregiver is best able to make the decision after making an effort to seek a consensus with the other parent:

Andrew-Reed v. Reed, 2002 BCSC 513 at paras. 17-18

- a particular parent's understanding of the general and special needs of a child, such as autism spectrum disorders, is a factor which can be taken into account with respect to custody, guardianship, where the primary residence should be and which parent should have the ultimate decision-making power:

M.H.K.J. v. K.J.J., 2011 BCSC 1673 at paras. 78-82

- final decision-making authority can be ordered in situations to avoid continuing conflict due to the level of acrimony between the parents:

S.M.M. v. J.P.H., 2011 BCSC 1084 at para. 227

- the Joyce model of guardianship may well be appropriate if the court is satisfied the primary custodial parent will in fact consult and seek the input of the other parent prior to making major decisions:

Chin v. Frass, 2011 BCSC 272 at para. 29

[58] Taking into account the principles applicable to decision making authority cited from J.E.H. above, it is my conclusion that in circumstances where the parents cannot agree with respect to decisions concerning B.L., Ms. J. should have final decision-making authority. As noted in J.E.H., there has been a general unwillingness by the courts, out of concern for the well-being of the children, to impose mandatory joint decision making on parents who cannot get along and are unable to communicate, which is clearly the case here.

[59] In determining that Ms. J. should have final decision-making authority, I have taken into account the following factors:

- Ms. J. has displayed a greater willingness to seek an understanding of the general and special needs of B.L., and to defer to expert guidance where appropriate, on medical matters such as the autism spectrum issue identified above. A separate but similar and equally concerning issue arose on one occasion (referenced briefly above) where, upon learning that Ms. J. had contracted COVID-19, Mr. L. refused to allow B.L. to leave his residence to commence his court-ordered parenting time with Ms. J. on the required day. Mr. L., in defiance of a prior court order on parenting time, advised Ms. J. that he would not release B.L. into her care until she provided evidence of a negative COVID test even though Ms. J. had advised him that: (1) she had completed the mandatory quarantine period mandated by provincial health guidelines by that time; (2) she was symptom-free; and (3) there was information on the provincial health website advising that persons who have contracted COVID-19 may test positive even after they are symptom-free. Mr. L. could have sought a court order to vary the prior interim order but instead chose to proceed unilaterally. This is my view is consistent with Mr. L.'s approach to the advice of Dr. Coetzer, which is to prioritize his own views over those of medical experts, public health officials and the courts.

- I find that Ms. J. has a better and more productive approach to conflict resolution than Mr. L. For example, in the first Consent Order, Ms. J. was agreeable to structuring parenting time around Mr. L.'s two weeks on/two weeks off work schedule. By contrast, Mr. L. has displayed less willingness to compromise and has on at least one occasion by his own admission resorted to family violence. In this regard, I note that Mr. L. admitted at trial that, following a verbal dispute between Mr. L and Ms. J. at the family home on June 2, 2017, Mr. L. threw a pail of water on Ms. J. in the presence of her daughter C. and while B. was present at the Family Home, resulting in Mr. L. being arrested for assault. Following his arrest, Mr. L was subject to a no contact order and peace bond. However, Mr. L. did not apparently learn from this mistake. Instead, on December 2, 2017, in violation of these orders, Mr. L was captured on video breaking onto Ms. J.'s property (where she was living with B. and C, at the time), apparently for the purpose of retrieving certain personal possessions, but also apparently unconcerned about the fact that these actions could prove terrifying for the children living on the property at the time.

· I also find that Mr. L's positional stance at trial on obtaining sole parental responsibility (as distinct from Ms. J.'s expressed willingness at trial to accept and work with joint parental responsibility), in addition to his general approach at trial (which included multiple attacks on the character of Ms. J. and several outbursts of anger directed at Ms. J. in open court), demonstrates that he has allowed his strong animus toward Ms. J. to cloud his perception of B.L.'s best interests. He has not dealt rationally with Ms. J. concerning B.L. Specifically, it is my conclusion from his testimony that, in his desire to win at trial and to wrest all control from Ms. J. with respect to B.L., he has lost sight of whether that result would truly be in B.L.'s best interests. In my view, the opposite is true and it is in the best interests of B.L. that the parents share responsibility but make greater efforts to work together cooperatively and to manage and subdue their anger for B.L.'s sake.

· I also cannot ignore the attempt by Mr. L. described above to contact a manager at the Toyota dealership where Ms. J. was working at the time and accuse her anonymously of fraud and being fired from previous jobs. To the extent that Mr. L.'s apparent intent was to have Ms. J. fired from her job, it is difficult to understand how Mr. L. could have seen himself as acting in the best interests of B.L., since the income from that job was what Ms. J. was using to support B.L. with food and shelter.

· By contrast, there is no evidence of Ms. J. resorting to family violence and a review of the correspondence between the parents reveals that she has made better attempts to resolve conflicts and find common ground than Mr. L. In this respect, I note that the father of Ms. J.'s first child, Mr. C., testified that they have a very cooperative and productive parenting relationship. This indicates that parental confrontation with a separated spouse is not necessarily Ms. J.'s default style, while I have no similar evidence with respect to Mr. L.

[60] Mr. L. raised a number of arguments in favour of his obtaining sole parental responsibility, include the following:

- That Ms. J. is against vaccines and refuses to allow B.L. to be vaccinated;
- That Ms. J. was not truthful with the school division when enrolling B.L. for school because she marked down an outdated address;
- That Ms. J. had B.L. insured under Alberta health care and failed to enroll him in British Columbia coverage when he changed residency;
- That Ms. J. refuses to take B.L. to activities that Mr. L. has enrolled him in and paid for;
- That Ms. J.'s child care expenses are too large;
- That Ms. J. does not offer a stable home environment for B.L. because she cannot afford a home and is renting from her brother; and
- That Ms. J. fails to follow court orders.

[61] I find that the foregoing arguments were either not supported by the facts at trial or are not relevant to the legal criteria that must be applied (in particular with regard to the best interests of B.L.). Specifically:

- Contrary to Mr. L.'s assertion, the evidence was that B.L. has in fact been vaccinated for COVID-19, although it took longer than he wanted due to some reticence by Ms. J. Ms. J. testified that she is not against vaccines, and did not oppose B.L. being vaccinated for COVID-19 but is merely cautious about the health implications and wanted to ensure she was fully informed. Taken alone I cannot conclude that this demonstrated that Ms. J. did not have B.L.'s best interests as a priority, but merely that she wanted to fully inform herself to make sure they were making the best decision for B.L.;
- With respect to the school application, Ms. J. explained that she wanted B.L. enrolled in that school because it was in their old neighborhood and the same school where her other child C.C. attended, and that she had only recently made the decision to move. She felt attending that school was in the best interests of B.L. because he has a close relationship with C.C. I cannot conclude that she was not acting in B.L.'s best interests in that respect.
- The issue of Alberta health care appears to me to be largely tangential to the issues at hand, as the evidence was both parents moved from Alberta to B.C. together in 2013 and had a joint responsibility to take the steps necessary to ensure B.L. was insured in B.C. It is difficult to understand how Mr. L. can lay that blame for a failure to properly register B.L. under the B.C. health system solely at the feet of Ms. J.;
- With respect to extracurricular activities, Ms. J explained that she is not against extracurricular activities, or even facilitating activities scheduled by Mr. L. However, Ms. J. also explained that Mr. L had failed to communicate with her about the activities he was signing B.L. up for, particularly whether they conflict with other activities she has planned during her parenting time. This is clearly a communication issue between the parties and not an issue of parenting capability;
- The issue of child care expenses does not appear relevant to me on this issue. Ms. J explained that she is single and works to earn a living and therefore requires child care. Mr. L. has a spouse who stays at home and therefore does not require child care. This in my view does not pertain to the issue of decision-making responsibility;
- The evidence was that Ms. J. lives in a comfortable home with her children. There was no evidence that her living arrangements are not in the best interests of B.L. The mere fact that she is living in a rental property, rather than a position of ownership, is of no moment (in particular taking into account the fact that Mr. L. is himself in arrears on his child support payments);
- Mr. L's allegations of breaches of courts orders by Ms. J. (mostly relating to allegations about retrieval of his possessions) were relatively minor in my view, do not relate to B.L. specifically, and must also be contrasted with his own admitted breaches of a no contact order and peace bond.

[62] On the basis of all the foregoing, Mr. L's request for sole parenting responsibility and decision-making authority is denied. The parties shall have joint parenting responsibility. In the event that they are unable to agree on specific parenting decisions, Ms. J. shall have final decision-making authority and Mr. L. shall have the right to apply to court if he believes that Ms. J.'s decision on a particular issue is not in the best interests of B.L.

3. Parenting Time

Positions of the Parties

[63] Ms. J. wants the framework for parenting time agreed under the April 2018 Order, as modified by the July 2020 Order, to continue subject to being revised for additional clarity and court direction concerning parenting time during vacations.

[64] Mr. L. seeks a new arrangement whereby B.L. spends the majority of his time with Mr. L., but spends every second weekend with Ms. J. from Friday after school to Monday morning, with no exception to allow missing pre-arranged sports or events B.L. is registered in. Mr. L. also seeks alternate Christmas holidays (having the first half in odd year and the second half in even years) and two weeks at the start of summer vacation for Mr. L. and two weeks at the end of the summer for Ms. J.

Analysis

[65] As noted above, the sole question to be considered in allocating parenting time is the best interest of B.L.

[66] Ms. J. argues that, with the exception of disputes between the parents relating to vacation scheduling, the existing consent arrangement has worked relatively well for a period of three years and has the value of providing continuity and stability to B.L. I agree. The Views of the Child Report (there was unfortunately no s. 211 report in this case) indicates that B.L. appears equally comfortable with both parents and confirms that there is no issue of alienation in this case. My assessment based on all the evidence, as discussed above, is that both parents are good parents who genuinely care for B.L.'s best interests, although they clearly have very different parenting styles and personalities. I see no reason to depart from a schedule that provides continuity for B.L. while ensuring maximum contact with both parents.

[67] For the same reason, and for the reasons I have already outlined above with respect to parenting responsibilities, I reject Mr. L's argument that the parenting schedule should be drastically revised so that B.L. would spend the majority of his time with Mr. L. This would be destabilizing for B.L. and not in his best interest.

[68] However, it is clear on the evidence that the parties have a greater need for clarity with respect to scheduling during vacation times, as they have been unable to communicate and agree between themselves on a mutually acceptable schedule.

- [69] I accept the principle, accepted by both parties, that parenting time during Christmas, Spring Break and summer vacation time should be split 50/50 between the parents. The Christmas and Spring Break vacations will be split with one week for each parent. Mr. L. will get the first week of Christmas in 2022 and Ms. J. the second (with the reverse to apply in 2023 and alternating thereafter). Ms. J. will have the first week of Spring Break in 2023 and Mr. L. the second (with the reverse to apply in 2024 and alternating thereafter).
- [70] Each parent will have an uninterrupted 14-day block of Parenting Time with B.L. every summer. Mr. L. will have the first choice of the 2-week block during summer vacation in 2023 (with the reverse to apply in 2024 and alternating thereafter), with the remaining summer weeks to be split 50/50. If the parties are unable to split the summer weeks in a particular year 50/50, then the parent who receives less days of parenting time in that summer will receive that number of days as compensatory parenting time in the following calendar year summer.

4. Child Support

- [71] Each of Mr. L. and Ms. J. seeks child support. Both parties argue that I should impute income to the other.
- [72] In *P.W. v. G.Z.* 2022 BCSC 1323 at paras. 45-49, Justice Murray summarized the applicable principles on child support and imputing income as follows:
- [45] Three fundamental principles apply to all child support applications:
- a) parents have a joint and ongoing legal obligation to support their children;
 - b) the children, not the custodial parent, have the right to support; and
 - c) support payments are based on earning capacity and not only on what a parent actually earns; as a result a parent has a legal obligation to earn as much as he or she is reasonably capable of earning.

(*M.A.G. v. P.L.M.*, 2014 BCSC 126, at para. 52)

- [46] As stated above, P.W. seeks an order for child support for N.Z. based on G.Z. having an \$150,000 annual income imputed to him. P.W. further seeks an order for lump sum child support as she maintains that G.Z. will never voluntarily pay support as evidenced by his failure to do so following the parties' separation. G.Z. argues that the income that P.W. seeks to have imputed to him is unrealistically high and says that his income should be based on the \$45,000 he makes as a delivery driver: his sole source of income.
- [47] Section 19 of the Child Support Guidelines allows the court to impute income in a number of situations including where the spouse is intentionally under-employed.
- [48] The test for imputing income is set out by our Court of Appeal in *Marquez v. Zapiola*, 2013 BCCA 433:

[36] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

[37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.

[Emphasis added.]

[49] Circumstances to be considered include:

- 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;
- b) it appears that income has been diverted which would affect the level of child support to be determined under the Guidelines;
- c) the spouse has failed to provide income information when under a legal obligation to do so; and
- d) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax: s. 19(1).

[73] The employment income for both parties for the last four years was as follows:

· Mr. L. (Employment Income):

2020 \$58,890

2019 \$69,628

2018 \$57,752

2017 \$49,968

Average last three years: \$59,495

Average last four years: \$59,059

· Ms. J. (Employment Income)

2020 \$31,790

2019 \$87,813

2018 \$79,552

2017 \$88,230

Average last three years: \$66,385

Average last four years: \$71,846.25

Average for 2017-2019: \$85,198

- [74] Ms. J. testified that she was off work for six months in 2020 due to the COVID-19 pandemic and accordingly, her income for that year is not a true reflection of her earning capacity. Now that the COVID-19 pandemic has subsided, I am satisfied that a fair reflection of her earning capacity is the average of her income for the years 2017-2019 (the full earning years before COVID), which is \$85,198, assuming she is once again working full-time. Mr. L. adduced no evidence that Ms. J. has the capacity to earn more than this amount, given her skills, experience and earnings history, so I am not prepared to impute a higher income than this.
- [75] Mr. L.'s average income the last three years is \$59,495. He testified that his 2017 income was impacted due to the issues with his access to the Family Home, where he had previously landed his helicopter but then was precluded from doing so by court order. Accordingly, I conclude that his 2017 income should be excluded from the average as it was not a fair reflection of his earning capacity.
- [76] However, the matter does not end there. I must take into account the fact that Mr. L., by his own admission, has made a choice to work on a two weeks on/two weeks off schedule. This admission was reflected in the first paragraph of the April 2018 Consent Order, which starts with the words: "On the basis of the Claimant having a work schedule of two weeks on and two weeks off " It was also reflected in his testimony at trial where Mr. L. testified that this half-time schedule gives him the opportunity to spend time with B.L. and his stepchildren and also to engage in various leisure activities that he enjoys such as jet skiing.
- [77] However, the reasons provided by Mr. L at trial for working half-time are not sufficient to satisfy the legal test, which requires the choice to be justified by the needs of B.L. As noted in by Dardi J. in *Yeung v. Silva*, 2016 BCSC 1682 at paras. 47(e) and 48:
- [47] (e) A parent who chooses to work less than full time must justify that choice by the needs of the children. (*Mahannah v. Mahannah*, 2012 BCSC 403 at paras. 122-123; *McCaffrey v. Paleolog*, 2011 BCCA 378 at para. 49).

- [48] The appellate authorities establish that, in the absence of a child's special needs, a parent's desire to be available for the children before and after school is not a sufficient reason to justify under-employment: *Llewellyn v. Llewellyn*, 2002 BCCA 182; McCaffrey at para. 49.
- [78] Mr. L. did not testify at all at trial that B.L. has special needs that justify his working less than full-time. Instead, his decision appears to be motivated entirely by a desire to be available for the B.L. and the other children before and after school and also to pursue leisure activities. Accordingly, Mr. L has not met the legal standard described in *Yeung*.
- [79] By virtue of Mr. L.'s admission, Ms. J. has in my view therefore met her evidentiary burden of proving that Mr. L. is intentionally underemployed, as he testified that he is only working halftime by choice. Mr. L. did make the statement in passing in his testimony that his two weeks on/two weeks off schedule is mandated by Transport Canada regulations relating to helicopter pilots but adduced no evidence of this requirement at trial. I also note that Ms. J. testified that in her recollection Mr. L worked more often than halftime as a pilot when they were living in Alberta, which would appear to put Mr. L.'s assertion about the regulatory requirements in some doubt.
- [80] However, even if I were to accept that regulatory requirements limit Mr. L.'s ability to fly more often than two weeks out of every four as a helicopter pilot, I note these requirements certainly do not limit his ability to take on other and different work during the periods when he is not flying. For example, Mr. L. could give flight lessons or work with a helicopter operation in a variety of capacities on the ground. Mr. L. also testified as to his considerable skills with shop and farm equipment, his prior experience in oil and gas, and also his experience as a manager. Thus, even if no work were available with a helicopter company, I find that Mr. L., given his skills and experience, would have a range of good employment options available to him.
- [81] I am not prepared to impute the full amount he is earning as a helicopter pilot (i.e. to double his income) as I am not convinced on the evidence that it is reasonable to assume that piloting work is available to him full time, or that the other available work is equally remunerative. In my view, a fair number for imputation purposes is half his three-year average annual income, which amounts to \$29,747.50. I note that he could earn this amount by working one additional week out of every four as a pilot or earning just over double the minimum wage in any number of skilled labour or managerial positions, which I believe is realistic given his skills. When added to his three-year average, this produces an imputed income of \$89,242.50.
- [82] The Child Support Guidelines indicate that, based upon the above income levels of \$85,198 and \$89,242.50, Mr. L. should be making support payments to Ms. J. in the amount of \$38 monthly.

[83] Given the variations in income due to the Covid-19 pandemic, and the recent variability in income of both parties, I also give the parties the right to a review of child support levels commencing after September 1, 2023. The parties will exchange income tax returns annually for that purpose.

5. Division of Property

Positions of the Parties

[84] Following the sale of the Family Home, and after legal expenses and fees on the sale, there remains \$36,369.18 held in the Trust Account. The parties currently own no other real property.

[85] According to their respective Form F8s, Mr. L currently owns a Ford F150 (acquired in 2016) and a 2015 Polaris RMK (acquired in December 2015). Ms. J. owns a Lexus SUV (acquired in 2019). The parties both claim ownership over a recreational vehicle (acquired in 2012), a Kubota tractor (acquired in 2013) and a Husqvarna lawn mower. Mr. L. also apparently owned a boat, which is claimed as a joint asset by Ms. J. in her Form F8, but not listed on Mr. L.'s Form F8. Mr. L stated in closing argument that the boat had been stolen but adduced no evidence of that assertion at trial.

[86] Ms. J. takes the position that the amount in the Trust Account is a family asset to be equally divided, subject to a deduction for child support arrears owed by Mr. L. and any costs arising from this trial.

[87] Mr. L. does not agree that the amount in the Trust Account should be equally divided, and instead makes a variety of arguments with respect to amounts he claims that should be deducted from the Trust Account or otherwise payable by Ms. J. to him, including:

- \$80,000 that Mr. L. alleges Ms. J. transferred from the Joint Bank Account to pay the mortgage on the J. Property or otherwise used to pay personal debt or credit cards, prior to the Separation Date;
- \$33,440 used to purchase a Lincoln Navigator and removed from the Joint Bank Account prior to the Separation Date;
- \$3,800 in storage fees for personal possession items he claims should have been returned prior to the sale of the Family Home;
- Half the cost of \$37,500 for the foreclosure proceedings in respect of the Family Home, which Mr. L claimed were the fault of Ms. J.;
- Indemnification for all taxes owing by Mr. L's company, C.L. Contracting Ltd. ("C.L."), relating to paycheques from Ms. J.'s employment that he alleges she deposited without his knowledge;
- \$34,600 to be paid to his father W.L. for loans he allegedly made to the couple;

- \$1,400 to his brother J.L. for the sale of two cows; and
- The alleged cost of repairing damaged equipment returned to Mr. L and the cost of unreturned equipment.

Applicable Law

[88] In *McManus v. McManus*, 2019 BCSC 123, at para. 26, Madam Justice Fleming summarized the applicable principles on division of property and debt after separation:

[26] Part 5 of the FLA governs the division of property and debt after separation, based on an excluded property regime that defines property as family property or excluded property. The relevant principles are:

1. Spouses are entitled to family property and responsible for family debt regardless of their respective use or contribution (s. 81(a)).
2. On separation, each spouse has a presumptive right to an undivided half interest in all family property as a tenant in common and is equally responsible for family debt.
3. Any real or personal property owned by at least one spouse at separation is family property, subject to s. 85 which lists property excluded from family property (s. 84).
4. Family property includes a spouse's entitlement under a pension and the increase in value of excluded property since the relationship began (ss. 84(2)(e) and (g)).
5. Excluded property, or property excluded from family property, includes property acquired by a spouse before the relationship began (s. 85(1)(a)), a settlement to a spouse as compensation for injury or loss, unless it represents compensation for loss to both spouses or lost income of a spouse (s. 85(1)(c)), and property derived from property or the disposition of property referred to in ss. 85(1)(a) to (f) (s. 85(1)(g)).
6. The spouse claiming property is excluded bears the onus of proof (s. 85(2)).
7. The court may order an unequal division of family property if it would be significantly unfair to divide it equally (s. 95(1)).
8. The court is not permitted to order the division of excluded property unless it would be significantly unfair not to divide it (s. 96).
9. Significant unfairness is determined based on prescribed considerations set out in ss. 95(2) and (3) and s. 96(b), respectively.

Analysis

[89] Mr. L. makes a number of different arguments on division of property, which I will address in turn.

Payments out of the Joint Bank Account

- [90] Mr. L. alleges that Ms. J. transferred \$80,000 out of the Joint Bank Account during the marriage and prior to the Separation Date to pay the mortgage on the J. Property and also to pay personal debt or credit cards, and that she should repay that amount. I note that Mr. L.'s position on this changed during the course of the trial as he originally claimed \$70,000 in his opening statement.
- [91] Before I address this argument, I must emphasize that, at an early stage in the trial, I explained to Mr. L. that if he was going to make claims about unauthorized net withdrawals from accounts, he would need to provide the court with specific evidence of the withdrawals and deposits from the relevant accounts and a summary in his closing argument (in the nature of a very basic accounting) of his calculations. I also requested that Mr. L make full disclosure of the account records from his own separate ATB Account, on the basis that he could not be making allegations about withdrawals being made by Ms. J. without also making full disclosure of the sums he was receiving into, and paying out of, his own personal account during the marriage. Despite my clear instructions to Mr. L., he failed to provide either a detailed breakdown or even an explanation of his allegations about net withdrawals by Ms. J. and also failed to disclose the records for the ATB Account.
- [92] The courts have stated on many occasions that non-disclosure or delayed disclosure of financial information is a costly impediment to the timely and just disposition of family disputes. It has been described as the "cancer of matrimonial property litigation": *Cunha v. Cunha* (1994), 1994 CanLII 3195 (BC SC), 99 B.C.L.R. (2d) 93 at para. 9. In my view, Mr. L.'s non-disclosure of the records from the ATB Account was a clear impediment to the disposition of the arguments that he was raising as against Ms. J. because he admitted under cross-examination that he was depositing his employment income, loans and gifts from his father, and other sums into the ATB Account during the marriage (rather than the Joint Bank Account where Ms. J. deposited her income), and also that he was making personal purchases of items such as his truck and boat out of the ATB Account. To the extent that he was depositing employment income into the ATB Account, that account clearly contained family property and yet he failed to disclose the information necessary to effect a fair division of the balance of that account. Therefore, in addressing his arguments, I will make the necessary adverse inferences where justified and appropriate: *S.K. v. S.M.*, 2021 BCSC 241 at para. 20.
- [93] Proceeding to the argument itself (and although Mr. L. did not characterize it this way), this appears to be a "significant unfairness" argument under s. 95 of the FLA and in particular under s. 95(g)(2) concerning conversion of family property.
- [94] I note in the first place that courts have made it clear that the general rule of equal division of property prevails failing evidence of something objectively unjust, unreasonable or unfair in an important or substantial sense: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 41-42.

[95] My view is that this argument must fail for a number of reasons:

- Mr. L. failed to adduce any specific evidence about how the sum of \$80,000 (or \$70,000 as he stated in his opening) was calculated. This was a number at large which he merely asserted in argument without a breakdown in terms of referencing specific deposits and withdrawals;
- Mr. L failed to adduce specific evidence about the exact amounts he alleged Ms. J. was paying toward the mortgage on the J. Property or other alleged inappropriate payments, or to differentiate these payments from payments made for regular living expenses in the ordinary course of the marriage. In this regard, it is important to keep in mind that the Joint Bank Account was the only bank account being used by Ms. J. during the marriage and also where she deposited her employment income and made withdrawals for legitimate personal and family expense purposes;
- Mr. L. alleged that Ms. J. used the Joint Bank Account to make mortgage payments on the J. Property. This was admitted by Ms. J. but Ms. J. also testified that: (1) she was also depositing rental income from the J. Property into the Joint Bank Account which exceeded the amount of the mortgage payments; and (2) Mr. L. was aware throughout the marriage of the payments and rental income. Mr. L. adduced no evidence to contradict Ms. J's testimony that the cash flow into the Joint Bank Account from the J. Property was a net positive during the marriage.
- Ms. J. testified that at all material times, Mr. L. had full access to the Joint Bank Account and the related account books and that Mr. L was aware of the payments she was making but never raised an issue. If Mr. L. had objections to the arrangement, he had years to raise this before the Separation Date;
- Mr. L denied he was aware and explained that he never looked at the Joint Bank Account statements during the marriage, which I do not find credible;
- During the marriage, Ms. J. was consistently earning more salary than Mr. L., and therefore was contributing more money to the Joint Bank Account than was Mr. L. She testified that all the money she earned went into the Joint Bank Account and that she had no other account.
- The J. Property was sold for less than the original purchase price, and thus there was no capital growth during the marriage in which Mr. L could potentially claim a share.

[96] Further, I note the following:

- Although Mr. L. alleged that Ms. J. was making inappropriate withdrawals from the Joint Bank Account, the evidence is clear that he was doing the very same thing from a different account. For example, he admitted under cross-examination that he was depositing his own employment income and other sums into the ATB Account (as opposed to the Joint Bank Account) and using that separate account (to which Ms. J. had no access) to purchase valuable items for his own personal use which he continues to own. For example, he admitted that he used the ATB Account to purchase the Ford F150 truck in 2016 which he currently owns and values at \$42,000 in his Form F8, a snowmobile purchased in 2015 valued at \$3,500 and a boat which he alleges was stolen

and not covered by insurance (and yet he adduced no evidence of the purchase or insurance documentation at trial). As such, this Court was never presented with a full picture of the sums that Mr. L. was depositing and spending for his personal benefit, rather than for the purposes of family property.

· Mr. L. admitted under cross-examination that he also owned the L. Property in Alberta which he purchased in 2007 and sold in 2018. He further admitted that he was making mortgage payments out of the ATB Account in relation to that property, and yet he failed to provide any documentation or accounting at trial with respect to those amounts, or as to whether he had made money on the sale of the property.

[97] Ms. J. did not seek an equalization at trial with respect to the items purchased by Mr. L. using the ATB Account or the L. Property, so I will go no further. However, the foregoing is sufficient in my view to dismiss Mr. L.'s argument. I am comfortable on the evidence finding as an adverse inference that the amounts that Mr. L. diverted from family property to the ATB Account easily matched, and possibly exceeded, any amounts that Ms. J. withdrew from the Joint Bank Account.

Purchase of Lincoln Navigator

[98] Mr. L. alleges that Ms. J. used \$33,440 from the Joint Bank Account during the marriage to purchase a Lincoln Navigator. She admitted to this in her evidence and also explained that, after separation, she traded in the Navigator, which was malfunctioning, for a Lexus.

[99] It is clear that the vehicle purchased by Ms. J. was family property. However, Mr. L. appears to neglect the fact that the Ford F150 that he purchased in 2016 using the ATB Account, and is currently valued at \$42,000 by how own admission, is also family property, in addition to the other items he purchased, including the boat, the snowmobile and the tractor, which is valued at \$10,000. I consider the two vehicles to be essentially offsetting in value and I note that Ms. J. is not seeking an order for a redistribution of value in respect of the vehicles.

[100] Mr. L. alleges that the boat was stolen and not covered by insurance and the snowmobile is broken and worthless (although again provides no supporting documents). Accordingly, I have insufficient facts to make a ruling on the value of these items. However, given that Mr. L. admits that the tractor is worth \$10,000, and is currently in his possession, I conclude that Ms. J. should receive \$5,000 from the Trust Account to account for the value that Mr. L. has received by keeping the tractor.

Costs of Foreclosure

[101] Mr. L. seeks a payment of \$18,500 from Ms. J. on the basis of the argument that Ms. J. allegedly "caused" the foreclosure of the Family Home, which includes legal and banking costs associated with the foreclosure.

[102] This argument is completely without merit for two reasons. First, Mr. L. did not present the court with a cause of action in a family context which supports this claim (which appears to be a form of negligence claim although was not pleaded in that manner). Second, even if this were a valid cause of action, I find that it is completely unsupported by the facts at trial which, to the contrary, strongly indicate that Mr. L. himself, and not Ms. J., was primarily instrumental in bringing about the foreclosure. The key facts were as follows:

- Mr. L. and Ms. J. were jointly liable under the mortgage for the Family Home;
- Mr. L. was required by court order and the RCMP to leave the Family Home following his assault charge against Ms. J. and his breach of the no contact and bail orders;
- Upon leaving the Family Home, Mr. L. unilaterally ceased paying any money toward the mortgage or expenses, leaving Ms. J. with the burden of paying the full amount of the mortgage in addition to all the housing expenses. Mr. L. also refused to pay child support;
- Mr. L. and his father later offered to resume payments on the mortgage and Family Home expenses but only on the condition that Ms. J. vacate the premises. Ms. J. was not able to agree to those terms because she had nowhere else to go to live with the two children. As a result, Mr. L. continued to refuse to resume payments and was content to see the parties fall further into debt;
- The parties each retained real estate agents for the purposes of selling the family home, which indicates that Ms. J. was taking active steps to mitigate the situation, and she testified that she was making every effort to do so;
- An agreement of purchase and sale was entered into with a potential purchaser but the purchaser sought an extension of the closing date because they were unable to secure insurance in time. It was Mr. L., not Ms. J., who refused to sign off on the extension, which resulted in the sale being delayed and additional costs.

[103] Accordingly, this claim is dismissed.

The payments to C.L. Contracting

[104] Mr. L. asks this Court to hold Ms. J. solely responsible for any taxes arising from invoices from C.L. to Vernon Dodge and Vernon Kia on account of work that Ms. J. was performing at those dealerships at the time. At trial, Mr. L. alleged that Ms. J. unilaterally and without his knowledge concocted a scheme to use C.L. letterhead to create these invoices.

[105] Ms. J. denied this allegation in her testimony, testifying that it was Mr. L.'s idea to invoice the car dealerships for Ms. J.'s work for the purposes of creating a tax advantage.

[106] I prefer Ms. J.'s testimony to Mr. L.'s on this issue, and indeed find that Mr. L.'s version of events is completely lacking in credibility for a number of reasons:

- Since Mr. L. controlled the books and the bank accounts for C.L., it is difficult to believe that he would not have been aware at the time that these invoices were being issued;

- Ms. C.T., a financial advisor at Scotiabank and friend of both parties, testified that she had multiple conversations with Mr. L responding to questions about his books and about the tax advantages of billing work at the dealerships to C.L.;
- Mr. L. did not explain what advantage Ms. J. would gain from implementing this scheme without his knowledge; and
- As I found above in my credibility analysis, Mr. L. made at least three other statements in his testimony which were patently false. It is not therefore not difficult to conclude that he was also untruthful about this.

[107] This claim is dismissed.

Storage Costs

- [108] Mr. L claims the cost of storage fees of \$3,800 and legal fees to obtain items which he alleges should have been stored by Ms. J. in the storage shed, pursuant to court order.
- [109] Mr. L. alleged that Ms. J. failed to return all his items to the shed. Ms. J. testified that she made every effort to return the smaller items, and gave Mr. L. access to the property, but that she was unable to move the tractor and attachments, the lawnmower and other larger items, which she advised Mr. L. could have, and yet Mr. L. did not assist her or retrieve them himself. Ms. J also testified that, in advance of the sale of the house, she was rushing to dispose of larger items such as the hot tub, which the buyers did not want, and Mr. L. refused to help. Ultimately, she testified, it was necessary to remove the other items to storage since Mr. L. had not removed them and the buyers were occupying the property.
- [110] I prefer Ms. J.'s testimony on this issue, which I found to be more credible and also simply makes more sense. For example, Mr. L. played a video at trial which showed him and a friend accessing the Family Home, clearly with Ms. J.'s permission, for the purposes of removing his possessions. It is not clear to me why he did not use this opportunity to remove the larger possessions, such as the tractor, which were clearly sitting in the field at the time.
- [111] I also note that Ms. J. did not attempt to retain possession of any of the items sought by Mr. L., which is evidence that she was not seeking to withhold them. She put them into storage because the Family Home had been sold, she had an obligation under the purchase and sale agreement to remove them, and Mr. L. had not made a sufficient effort to retrieve them. I also note that Mr. L. ultimately did take possession of all the items in storage, including the tractor and lawn mower, and also refused to pay the storage bill.
- [112] In my view, under the circumstances, it is fair that the parties split the outstanding storage bill, as they share responsibility for the failure to clear the property before the sale. This money should be paid out of the Trust Account.

Loans from W.L.

- [113] Mr. L. alleges that his father W.L. made \$34,600 in loans to the parties during the marriage and seeks repayment of these loans from the Trust Account.
- [114] In *Byrne v. Byrne*, 2015 BCSC 318 at paras. 41- 49 [Byrne], Justice Armstrong helpfully set out the law with regard to payments from parents to adult children, and applied those facts in the context of that case:
- [41] Payments from a parent to an adult child are generally not presumed to be gifts; they are presumed to form a resulting trust in which the parent keeps an interest in the property. However it is open to a party claiming the transfer is a gift to rebut the presumption of a resulting trust by providing evidence to that effect: *Pecore v. Pecore*, 2007 SCC 17.
- [42] In *Pecore*, the Supreme Court of Canada addressed how the presumptions operate in the context of transfers from a parent to an adult child:
- (a) the focus in any dispute over a gratuitous transfer is the actual intention of the transferor at the time of the transfer (para. 5);
 - (b) When the transferor's intent is unavailable or unpersuasive, the presumptions of advancement (a gift) and resulting trust are useful guides and will apply (para. 23);
 - (c) gifts from parents to independent adult children are not presumed to be gifts; rather the presumption of a resulting trust applies (para. 36);
 - (d) there may be circumstances where a transfer between a parent and an adult child was intended to be a gift and it is open to the party claiming that the transfer is a gift to rebut the presumption of resulting trust by bringing evidence to support that claim (para. 41);
 - (e) the burden on the party claiming a gift was made is proof on a balance of probabilities (para. 43).
- [43] Several factors can be examined to distinguish between loans and gifts in the family context. These were addressed in *Kuo v. Chu*, 2009 BCCA 405 at para. 9 where the Court of Appeal adopted the factors described in *Locke v. Locke*, 2000 BCSC 1300 as applicable to the question of whether a loan or gift was intended:
- (a) Whether there were any contemporaneous documents evidencing a loan;
 - (b) Whether the manner for repayment is specified;
 - (c) Whether there is security held for the loan;
 - (d) Whether there are advances to one child and not others, or advances of unequal amounts to various children;
 - (e) Whether there has been any demand for payment before the separation of the parties;
 - (f) Whether there has been any partial repayment; and,

(g) Whether there was any expectation, or likelihood, of repayment.

[44] In *M.F.R. v. B.P.R.*, 2010 BCSC 1063, the court concluded that no loan was made in circumstances where there were no contemporaneous documents or promissory notes produced to explain why money had been advanced. In *M.F.R.* repayment was never discussed with the wife. No security was given, no demand was made before separation, and no money was repaid to the husband's father.

[45] In the case at bar, the respondent submits that the money Mr. and Mrs. Byrne paid to the claimant was a gift. The respondent knew that the claimant was receiving money from his parents but did not understand there was any agreement he was obliged to repay them. The indicia supporting her argument are as follows:

- (a) There was no evidence of a discussion about a loan or a promissory note and no details regarding the interest payable or the term of the alleged loan;
- (b) There is no information regarding the timing or manner for repayment of the alleged loan before the Court;
- (c) There was no security held for the alleged loan;
- (d) There is no evidence regarding advances or loans to other children;
- (e) There was no demand for repayment before or after the parties separated; and,
- (f) There was never a repayment in whole or in part during or after the marriage.

[46] I accept the uncontradicted evidence that Mr. and Mrs. Byrne borrowed money against a line of credit to assist their son. They seem to have no doubt that they were lending the money to the claimant, Although the presumption of resulting trust would usually operate to constitute these payments as a loan since it was made by parents to their adult child, there is a paucity of evidence to the effect that corroborates their contention that this was indeed a loan. No other evidence corroborates the claimant's assertion or that of his parents, that this was money he is agreed to repay his parents.

[47] I do not accept the claimant's assertion that the respondent was made aware of this loan and affirmed their obligation to repay his parents. However, that factor is not determinative of the question of whether a loan was made.

[48] On the balance of probabilities and in the absence of evidence described in *Kuo* concerning parental loans, I am satisfied that the claimant's parents advanced this money without expectation of repayment of principal or interest and that their current desire for repayment was more likely triggered by the separation of the parties.

[49] As a result, I conclude that the money paid by the Byrnes to their son is not a family debt as described in s. 86 of the FLA.

[115] In my view, the reasoning in Byrne is persuasive with respect to the facts of this case. W.L. testified at trial that he made a \$34,600 loan to the parties jointly in addition to other payments which he admitted were gifts, although he provided no documentary support for this claim. Based upon his testimony, and his own admissions, I conclude the following:

- a) There were no contemporaneous documents evidencing a loan;
- b) The manner for repayment was never specified;
- c) There was no security held for the loan;
- d) There was never any demand for payment before the separation of the parties;
- e) There has never been a partial repayment; and
- f) Although W.L. stated that he had an expectation of repayment, he also admitted that there was no set date for repayment and that it could be paid back "any time".

[116] In addition, I note that Ms. J. testified that she had no recollection of any discussions with W.L. about the alleged loan or any terms associated with the loan, nor did she ever affirm the terms of the loan. This, in my view, puts the facts of this case in an analogous situation to the facts in Byrne, where the presumptions were rebutted.

[117] However, there are two additional facts in this case which in my view are also highly persuasive, even setting aside the above considerations. First, counsel for Ms. J. made it clear prior to trial that, if Mr. L. was going to assert a loan from W.L, he would need to produce the supporting documentation. In a letter dated October 7, 2021, counsel for Ms. J. stated as follows:

Further to this matter, if you intend to put forth a claim at Trial for reimbursement of any alleged funds owing to Mr. W.L., we ask that you please provide banking records and any other alleged documentation evidencing the transfer of funds from Mr. L. as well as any documentation showing how the money was used. We would specifically request any and all bank records from the time for accounts where the money was placed. This would include statements for months where a deposit was not necessarily received but that showed how the funds were disbursed or spent. Our client advises that she does not object to paying back Mr. L. for any money received that was used for family purposes.

[118] I note that none of the documentation requested in advance of trial was produced at trial by either Mr. L. or W.L., whose testimony at trial was entirely based on his own subjective recollections and not supported by any underlying documents.

[119] Second, and perhaps more importantly, both Mr. L. and W.L. admitted in their testimony that the alleged loan payments were made to Mr. L. directly by e-transfer and that Mr. L. deposited those amounts into his ATB Account. Significantly in my view, there was no evidence adduced by either Mr. L. or W.L. that any of the transfers from W.L. were ever deposited into the Joint Bank Account. Given Mr. L.'s admission that he was using the ATB

Account for his own personal purposes, and given his failure to produce the records for the ATB Account, I make the adverse finding against him that he was using the funds paid by W.R. for his own purposes (such as the purchase of his truck and boat) and not for family purposes. Thus, even if a loan was made by W.L., I find that the loan was made to Mr. L. personally and not to Mr. L. and Ms. J. jointly.

[120] Mr. L.'s claim is therefore dismissed.

Funds for sale of cows

[121] Mr. L. alleged in closing argument that \$1,400 was owed to his brother J.L. for the sale of two cows from the Family Home. There was no testimony or evidence at all adduced at trial on this issue, and Mr. L. has therefore failed to meet the civil standard of proof. This claim is dismissed.

Cost or repairing and replacing equipment and items

[122] Mr. L. alleged in closing argument that he should be reimbursed for the alleged cost of repairing damaged equipment returned to Mr. L and the cost of equipment and items either unreturned to Mr. L. or sold by Ms. J.

[123] This argument suffers from the same weakness as the alleged sale of cows above. At trial, Mr. L. adduced no evidence of the existence or value of any of these items (such as for example, original purchase receipts or an inventory list, or any evidence relating to market value), nor were most of them even referenced in his testimony (let alone proved). I also note that Mr. L. seems to have failed to understand that, even if these items were left at the Family Home, the bulk of them would constitute family property and not his own personal property and the value would need to be shared.

[124] Accordingly, this claim is dismissed.

6. Conduct Orders

[125] The February 2018 Order and the April 2020 Order contained certain conduct orders. Given the continued animosity displayed by Mr. L. toward Ms. J., I am satisfied these orders should remain in place.

V. Order

[126] In summary, I make the following orders:

- (a) Mr. L. and Ms. J. are, jointly, guardians of B.L. under the FLA;
- (b) Pursuant to s. 40(2) of the FLA, Mr. L and Ms. J. will share equally all of the s. 41 parental responsibilities for B.L., which are as follows:
 - (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;

- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- (f) subject to section 17 of the Infants Act, R.S.B.C. 1996, c. 223 giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.
- (c) Each of Mr. L. and Ms. J., as guardians, will have the obligation to advise the other guardian on any significant matters that arise for B.L. during their respective parenting time;
- (d) Each of Mr. L. and Ms. J., as guardians, will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the children, including significant decisions about their health (except for emergency decisions), education, religious instruction, and general welfare, and are obligated to try to reach agreement on those decisions;
- (e) In the event Mr. L. and Ms. J., as guardians, cannot reach agreement on a significant decision despite their best efforts, Ms. J. as the guardian with primary decision-making authority, will be entitled to make those decisions;
- (f) Mr. L. will have the right to apply for directions from the court on any decision of Ms. J. that he considers contrary to the best interest of B.L. under s. 49 of the FLA; and

- (g) Mr. L. and Ms. J., as guardians, have the right to obtain information concerning the children directly from third parties, including but not limited to, teachers, counsellors, medical professionals, coaches or instructors, and caregivers.
- (h) The period during which B.L. is residing with a parent will be referred to as "Parenting Time" for that parent;
- (i) The schedule for regular parenting time ("Regular Parenting Time") will operate over a two-week cycle. An "Exchange Day" during Regular Parenting Time is a weekday on which one parent's Parenting Time ends and the other parent's Parenting Time begins;
- (j) During Regular Parenting Time, on the basis of Mr. L. having a work schedule of two weeks on and two weeks off with his start date being Tuesday mornings and his end date being Monday afternoons 14 days later, each parent will have Parenting Time as follows (subject to the parties agreeing on different start and end times, and subject to the parties agreeing on different arrangements concerning responsibility for drop-off and pick-up):
 - (1) Mr. L. will have Parenting Time from:
 - a. 9:15 am on the first Tuesday following the end of his work shift to the following Tuesday at 5:00 pm ("Week 1");
 - b. From 5:00 pm on the following Friday to 5:00 pm on the following Monday ("Week 2"); and
 - (2) Ms. J. will have Parenting Time from:
 - a. Tuesday at 5:00 pm at the end of Week 1 to 5:00 pm on the Friday at the start of Week 2; and
 - b. From 5:00 pm on the Monday at the end of Week 2 and then until the end of Mr. L.'s two-week work shift.
- (3) Each party shall be responsible on Exchange Days for dropping off B.L. at the end of Parenting Time and picking up B.L. at the commencement of Parenting Time. All pick-ups and drop-offs of the child B.L. shall be at the Active Beginnings Day Care for so long as they are willing or at such other place as the parties may agree.
 - a. The parties may vary by agreement in writing the pick-up and drop off times.
- (k) During B.L.'s summer break at the end of the school year, the Regular Parenting Time schedule will be modified to a "Summer Parenting Time" schedule as follows:
 - (i) subject to para. (ii), beginning the Sunday after B.L.'s last day of school, Ms. J. and Mr. L. will have equal Parenting Time on a two weeks-on and two weeks-off basis. If the number of weeks in the summer is not equally divisible, the parent who receives less days of Parenting Time in an odd-numbered year will receive that amount of days as compensatory Parenting Time in the following even-numbered year;

- (ii) each parent is entitled to have a 14-day block of uninterrupted Parenting Time each summer, on a schedule to be agreed to between the parties by April 1 each year. In odd-numbered years, Mr. L. will have the first choice of the 14-day block, and in even-numbered years, Ms. J. will have the first choice;
- (iii) unless the parties otherwise agree, the parent whose Parenting Time is ending will be responsible to deliver B to the other parent for the beginning of the other parent's Parenting Time; and
- (iv) the Regular Parenting Time schedule will resume at 5:00 p.m. on Labour Day;
- (l) With respect to the Spring school break, the Regular Parenting Time schedule will be modified so that in even-numbered years, Mr. L will have Parenting Time the first week of the break, and Ms. J. will have Parenting Time the second week of the break. In odd-numbered years, the schedule will be reversed;
- (m) With respect to the Christmas break, the Regular Parenting Time schedule will be modified so that in even-numbered years, Mr. L. will have Parenting Time from B.L.'s last day of school until 1:00 p.m. on December 25, at which time Mr. L. will drop off B.L. at Ms. J.'s home or another mutually agreed location, and Ms. J. will then have Parenting Time until 1:00 p.m. on January 1, at which time Ms. J. will drop off B.L. at Mr. L.'s home or another mutually agreed location. Mr. L. will then have Parenting Time until the first day of school, after which the Regular Parenting Time schedule will recommence. In odd-numbered years, the schedule will be reversed and the parties will alternate Parenting Time for the Christmas break in each subsequent year;
- (n) With respect to Mother's Day and Father's Day, the Regular Parenting Time schedule will be modified if and as required so that Ms. J. will have Parenting Time on Mother's Day from 10:00 a.m. to 5:00 p.m., and Mr. L. will have Parenting Time on Father's Day from 10:00 a.m. to 5:00 p.m.;
- (o) During Ms. J.'s Parenting Time, Mr. L. will be entitled to phone or FaceTime (or equivalent) contact with B.L. once each day for a maximum of 20 minutes. During Mr. L.'s Parenting Time, Ms. J. will be entitled to phone or FaceTime (or equivalent) contact with B.L. once each day for a maximum of 20 minutes. The parties may, by agreement, vary the frequency or the duration (or both) of such contact;
- (p) This Court orders, regarding communication between the parties, as follows:
 - a) The parties shall communicate regarding B.L. through Our Family Wizard Website (www.ourfamilywizard.com). The parties are ordered to visit the website and each enroll in the program for a one-year subscription not later than 10 calendar days from today, and after that, to visit the website at least once every 48 hours. The parties shall thereafter conduct all communications regarding shared parenting matters using the website's features, except regarding emergencies as discussed below.

- b) The parties shall utilize the Messaging feature only when information cannot be conveyed in the Calendar, Expense, and Info Bank features of the Our Family Wizard Website.
- c) The parties shall not communicate by telephone or text messaging or email except for matters of an emergency nature regarding B.L. (including but not limited to medical emergencies or unavoidable delays in picking up or dropping B.L. off due to traffic, accident, or the like) that must be acted upon in less than 48 hours. In the case of such an emergency, both parties shall make a Journal entry about the subject and general content of any such communication in the Calendar feature of the Our Family Wizard Website.
- d) The parties shall use the Our Family Wizard Website pay expense feature to record and formalize all potentially reimbursable expenses in order to reduce the need to go to court in the future over such matters. Each party shall attach an electronic file of the receipt for payment to each request or record. Each parent shall preserve the original of any scanned or photographed document posted.
- e) Both parties will enable viewing of all entries to any lawyer acting on behalf of either party and any parenting coordinator or other person authorized by the court or agreed upon in writing by the parties.
- f) The use of the Our Family Wizard Website shall remain in effect for one year from today, at which point it will continue if the parties agree in writing or the court so orders. If the parties do not continue to use the Our Family Wizard Website, they will communicate by email except in cases of emergency.
- (q) The parties will not:
 - (i) question B.L. about the other parent or time spent with the other parent beyond simple conversational questions;
 - (ii) discuss with B.L. any inappropriate adult, court or legal matters; or
 - (iii) speak disparagingly about the other parent or the other parent's family to B.L. or in his presence;
- (r) Beginning September 15, 2022 and on the 15th of each month thereafter, Mr. L. shall pay child support for B.L. to Ms. J. in the sum of \$38 per month, based on a Guidelines income for Mr. L. of \$89,242.50 and Guidelines income for Ms. J. \$85,198, and the consideration of matters under s. 9 of the Guidelines;
- (s) Any s. 7 expenses shall be shared in proportion to the parties' Guidelines incomes;
- (t) Mr. L. shall pay any arrears of child support that may have accumulated up to the date of this Order, and these amounts shall be payable directly to Ms. J. from the Trust Account prior to any other withdrawals;

- (u) So long as B.L. is entitled to child support and there is shared parenting for purposes of s. 9 of the Guidelines, by May 31 each year beginning in 2023, the parties will exchange their complete T1 General tax returns and notices of assessment;
- (v) Either party shall be entitled to bring an application to review child support payments at any time after September 1, 2023;
- (w) \$5,000 on account of the value of the tractor shall be payable to Ms. J. out of the Trust Account;
- (x) Any costs to be assessed following this Order will be payable to Ms. J. out of the Trust Account;
- (y) The outstanding bill to Grasshopper Storage shall be paid out of the Trust Account; and
- (z) After payment of child support arrears, the \$5,000 for the tractor, the Grasshopper Storage bill and assessed costs to Ms. J., the remainder of the Trust Account funds shall be released to the parties on a 50/50 basis.

[127] I find that Ms. J. has been substantially successful at trial on over 75% of the matters at issue, including the most important issues: *Kakavelakis v. Boutsakis*, 2017 BCCA 396 at para. 94. Accordingly, she shall have her ordinary Scale B costs of the trial, to be assessed.

"M. Taylor J."

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