

CANADA / JUDGMENT

Carlson v. Shay

2023 BCSC 222

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Supreme Court of British Columbia

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2023 BCSC 222 Carlson v. Shay

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Carlson v. Shay,

2023 BCSC 222

Date: 20230214

Docket: E83420

Registry: Nanaimo

Between:

Tara Lee Carlson

Claimant

And

Christopher Ryan Shay

Respondent

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Claimant:

K. Rongve

Counsel for the Respondent:

R.E. Peters

Place and Dates of Trial:

Nanaimo, B.C.

November 1-4 and 14, 2022

Place and Date of Judgment:

Nanaimo, B.C.

February 14, 2023

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Introduction

[1] There were four main issues before the Court in this short family law trial, being:

1. when the parties had entered into a marriage-like relationship;
2. issues relating to their two children;
3. imputation of income to the respondent; and
4. whether any spousal support should be paid.

Background Facts

- [2] The claimant and respondent met on a dating site in August or September 2012. They first met in person on October 17, 2012 in Victoria, BC. The claimant was living in Victoria and the respondent was working in Alberta. At the time that they met, the respondent was living in a travel trailer in a campground in Leduc, Alberta. The parties separated on December 3, 2017.
- [3] Their first child, a son, was born in April 2014, and he is currently 8 years old. Their second child, a daughter, was born in September 2015 and is currently 7 years old. I will refer to the two children collectively as the "Children" in these reasons.
- [4] The claimant is 45 years old and has lived her entire life on Vancouver Island, except for a short period of time for an educational program. She works as a licensed practical nurse ("LPN") after completing her one-year LPN course in September 2009.
- [5] The respondent is 40 years old and grew up in Nova Scotia. When the parties first met, he was a linesman that worked all over Canada.
- [6] On April 22, 2014, the parties and their Children moved to Nanaimo, BC where the respondent owned a townhouse. In June, 2017, the family moved to Nova Scotia and lived in a cabin. It was on December 3, 2017 when the parties separated. Since the reason for the separation is not an issue, I will not go into any details. Suffice to say, I accept the claimant's evidence on the highly inappropriate, insulting, and distressing language that the respondent used towards her. That type of language should never be used when addressing any female and, even more disturbing, is that he used the language in the presence of the Children. The respondent did express remorse the way some of the conversations happened and for some of the things that occurred in the past. He has since engaged in counselling and is seeing a therapist to make efforts to better himself.
- [7] The claimant and the Children returned to Vancouver Island on December 7, 2017 and began residing in Campbell River with the claimant's parents. The respondent remained in Nova Scotia.

Overview of Litigation

- [8] On December 13, 2017, the notice of family claim was filed.
- [9] On February 22, 2018, by order of Master Dick, the claimant was allocated all parenting responsibilities on an interim basis. Interim child support of \$806 per month was ordered based on the respondent's imputed income at \$56,400.
- [10] On July 17, 2018, the judicial case conference was held before Master Dick. The respondent did not attend and he was ordered to pay \$250 for his non-attendance.

- [11] On April 4, 2019, the parties were back before Master Dick, who ordered that the respondent file his response to the notice of family claim and an updated Form F8 financial statement by April 30, 2019. Based on the respondent's income imputed at \$81,000, a variation in the monthly child support was made and the interim child support was increased to \$1,138. It was also ordered that Commencing April 1, 2019, the parties were ordered to share the costs of the s. 7 special and extraordinary expenses ("s. 7 expenses") in proportion to their respective incomes.
- [12] On April 29, 2019, the respondent filed a response to family claim and counterclaim. The claimant filed a response to counterclaim on May 9, 2019.
- [13] On May 16, 2009, the parties were back before Master Dick, who ordered a variation of her April 4, 2019 order for the respondent to pay an interim child support of \$1,461 monthly based on his gross income being \$95,500, retroactive to July 1, 2018. The respondent was also ordered to pay an interim spousal support of \$323 monthly commencing on July 1, 2018, as well as arrears in spousal support.
- [14] On March 19, 2021, the respondent filed an amended counterclaim stating that the parties commenced living together in a marriage-like relationship on May 1, 2014 and seeking parenting time with the Children. He raised the issue of undue hardship arising from the significant costs to have parenting time with the Children. The claimant filed an amended response to amended counterclaim on April 15, 2021.
- [15] On March 4, 2022, a consent order was filed allowing for the Canada Pension Plan ("CPP") credits earned by the parties during the marriage-like relationship to be divided, with the period to be determined by the Court and all other property or debt division between the parties being dismissed.
- [16] On November 14, 2022, at the conclusion of the closing submissions, I made an order for the respondent to pick up the Children for a parenting visit over the holiday break in 2022. The order provided:
1. The Respondent shall be entitled to parenting time for 8 days commencing on any day between December 21, 2022 and December 23, 2022, with such parenting time to be in Nova Scotia if that is his preference, on the following conditions:
 - a. He shall provide an itinerary for the travel to the Claimant in advance of the trip;
 - b. He shall provide the Claimant with the names of any adult who will be in the same home as the Children overnight;
 - c. He shall pick up the Children and return the Children to the Comox airport (or any other airport agreed upon between the parties); and,
 - d. He shall solely pay the costs of the travel.

2. The Claimant shall be entitled to have contact with the Children every second day during the visits referred to in paragraph 1 of this Order but shall also have telephone or Facetime contact with the Children on both December 24 and December 25, 2022.
3. During the Christmas parenting time that the Respondent has with the Children, he shall make any health and general welfare decisions that need to be made for the Children.

Issues

[17] The outstanding issues to be resolved are:

1. when did the parties enter into a marriage-like relationship?
2. for what period of time should CPP be divided?
3. who should have the parenting responsibilities?
4. what parenting time should the respondent have?
5. what is the respondent's income under the Federal Child Support Guidelines, SOR/97-175 [Guidelines]?
6. what are the appropriate s. 7 expenses and how much does the respondent owe in arrears?
7. is the claimant entitled to spousal support, and if so, for how long and in what amount?
8. is the respondent entitled to claim for an undue hardship due to unusually high access expenses?
9. should the joint Registered Education Savings Plan ("RESP") account be transferred from Nova Scotia to BC?
10. should the claimant be required to pay for costs of the respondent attending in BC for the examinations for discovery in February 2020?

[18] Before considering each of the issues, I will comment on issues relating to the credibility of the parties.

Comments on Credibility

[19] The factors to be considered when assessing credibility are usefully summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013). Such an assessment involves consideration of the witness's ability and opportunity to observe events, the firmness of the witness's memory, the ability of the witness to resist the influence of interest in modifying recollection, a consideration of whether the witness's evidence harmonizes with independent evidence that has been accepted, whether the witness changes his or her evidence during direct examination and cross-examination (or between examination for discovery and trial) or is otherwise inconsistent in his or her recollections, the witness's demeanour generally, a consideration

of whether the witness's evidence seems generally unreasonable, impossible, or unlikely, and whether the witness has a motive to lie.

[20] Credibility assessment is aimed at considering whether the evidence is "consistent with the probabilities affecting the case as a whole and shown to be in existence at the time": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356, 1951 CanLII 252 (B.C.C.A.).

[21] Here, the claimant asserts that there were significant inconsistencies and problems with the respondent's evidence and seeks the Court to accept her evidence over his. The examples she gave were:

1. the respondent showed carelessness in giving evidence, particularly respecting a mortgage document and a document relating to his Medical Services Plan ("MSP") account;
2. there were areas of contradiction, particularly in respect to the financial evidence presented by the respondent; and
3. there were two incidences where the respondent was proven to give directly opposite testimony between the trial and his discovery.

[22] The claimant says her evidence was consistent, thoughtful, and supported by events that both parties testified to and documents she provided. Much of her evidence was not cross-examined on and when it was, her evidence was not successfully challenged.

[23] I agree there were some inconsistencies in some of the respondent's evidence, particularly concerning the nature of the "mortgage" and the MSP documents. In my mind, the respondent was not attempting to deceive, he simply was not careful in examining what those documents really were. As he conceded, he "guessed" when he saw former girlfriend, Andrea White's name on the mortgage document.

[24] The respondent admitted that he did not understand the financial documents and that he left those matters to Cambridge Financial who prepared all the financial records. There were a number of issues respecting the financial statements that may well have been fully answered by the financial professional who drafted them. The respondent's lack of knowledge on the particulars of the financial statements does not reflect on his credibility but just the nature of his approach to financial affairs. He relied on others, including his present girlfriend, Chantal Routhier, to look after financial issues. As he put it, he is not a "technology guy" and he does not understand how the numbers were arrived at.

[25] The errors between his discovery and trial evidence were not, to my mind, significant ones as they relate to the issues that I have to determine.

- [26] Overall, I found that the respondent was a credible witness who attempted to tell the truth, but who pays little attention to, nor fully understands, his financial affairs. He further conceded that he could not remember "every detail". His lack of interest in financial affairs means that I must carefully scrutinize the financial issues, but that does not detract from the respondent's overall credibility as a witness.
- [27] I agree that the claimant presented in a credible and forthcoming manner. I have no hesitation in accepting her evidence.
- [28] I further note that both parties present as loving parents to the Children. I accept that they will work together to provide the Children the best upbringing and will always put their Children's best interests first. I commend the respondent for preserving a relationship with his Children despite the great distance between them. I equally acknowledge the heavy burden the claimant has carried over the past five years single-handily caring for and nurturing the Children.

Issue 1: When Did the Parties Enter Into a Marriage-like Relationship?

Legal Principles

- [29] The question of whether parties are living in a marriage-like relationship is largely fact-driven and depends on the individual circumstances of each case.
- [30] In *Dey v. Blackett*, 2018 BCSC 244 at para. 192, citing *Austin v. Goerz*, 2007 BCCA 586, the court held that the "determination of whether a relationship was marriage-like requires a 'holistic approach', in which all of the relevant factors are considered and weighed, but none of them are treated as being determinative of the question".
- [31] Parties can continue to "live together in a marriage-like relationship" even though they do not actually reside under the same roof: *Thompson v. Floyd*, 2001 BCCA 78 at paras. 33-36.
- [32] In *Roach v. Dutra*, 2010 BCCA 264 at paras. 17 and 20, the Court of Appeal upheld the trial judge's conclusion that the parties were spouses under the Family Law Act, S.B.C. 2011, c. 25 [FLA], even though they began living in separate residences, but with a view to preserving their relationship.
- [33] I note that in both *Thompson* and *Roach*, the couple had lived together prior to the separation and the issue was the nature of the relationship after they started living in separate residences.
- [34] A marriage-like relationship can be found in the absence of cohabitation where there is evidence that supports that a couple were in a loving and intimate relationship for many years. An example is found in *Connor Estate*, 2017 BCSC 978, where the court found at paras. 48-51 that even though the parties in question did not live together (they were unable to do so because of illness), they were in a "marriage-like relationship" for the purposes of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13. The evidence was that the parties had a

"loving and intimate relationship" and that they supported each other emotionally, "loved each other, were faithful to each other, communicated with each other almost every day when they were not together, considered themselves to be (and presented themselves to be) 'husband and wife' and were accepted by all who knew them as a couple": Connors at para. 50.

[35] A determination as to whether or not parties are "spouses" or in a "marriage-like relationship" is a question of mixed fact and law: *Weber v. Leclerc*, 2015 BCCA 492 at para. 22, leave to appeal to SCC ref'd, 36812 (21 April 2016).

[36] There are a myriad of factors that can be taken into account, some of which include the questions listed in *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 at 381-382, 1980 CanLII 1537 (Ont. Dist. Ct.), which the Court of Appeal noted in *Weber* at para. 25 "are helpful as indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship". That said, the Court of Appeal also emphasized that these factors should not be approached as a checklist, and that the circumstances should be addressed holistically.

[37] In *H.S.S. v. S.H.D.*, 2016 BCSC 1300 at para. 49, rev'd on other grounds 2018 BCCA 199, Justice Dardi outlined the following factors which informed her analysis of whether the parties were living as spouses:

- whether they vacationed together;
- the presence or absence of marital relations;
- how they conducted their financial affairs, including any financial planning they undertook as a couple and how they filed their tax returns;
- estate planning;
- making shared plans for the future; and
- participation in joint social activities and the manner in which the spouses presented themselves to others.

[38] Intention of the parties is a factor that must be considered. While intention is, of course, subjective, the courts have looked to objective factors to test the veracity of the parties' expression of intent. As Justice Schultes says in *Dey*:

[235] []. While an intention to enter into a relationship similar to marriage - of an indeterminate, lengthy duration - is the essential requirement for finding a marriage-like relationship, a consideration of objective indicators are helpful as a means of testing the parties' professed intentions (or lack of intentions) in that regard, and may also form the basis of inferences as to what their intentions were. Put another way, while intention is the key, a partner who claims or disavows such an intention may not be believed if all of the surrounding circumstances strongly imply the contrary. All of that said, *Takacs [v. Gallo]* (1998), 48

B.C.L.R. (3d) 265 (C.A.)] offers the reminder that relationships can fulfill many of the accepted indicators without the couple "intending or in fact entering the kind of psychological and emotional union that one associates with marriage."

- [39] In *Lariviere v. Coad*, 2019 BCSC 1691 at para. 191, Justice Walker sets out a helpful summary of the factors that the courts may utilize:
- (a) The parties' intentions, particularly their expectation of whether the relationship would be lengthy and of indeterminate duration: *Weber*, para. 23.
 - (b) Objective evidence of the parties' lifestyle and interactions supporting a finding that their interactions "closely resembled those typical of married couples": *Weber*, paras. 24, 29.
 - (c) Whether the parties treat themselves as a family unit: *Weber*, para. 29.
 - (d) Whether cohabitation was coupled with romantic and sexual relations: *Weber*, para. 29; *Austin*, para. 58.
 - (e) Evidence of emotional interdependence, mutual commitment, and attachment: *Robledano v. Queano*, 2019 BCCA 150], para. 60.
 - (f) Whether the parties co-mingled assets and shared expenses: *Austin*, para. 62.
 - (g) Whether the parties treated themselves as single or cohabiting for income tax purposes: *Weber*, para. 30.
- [40] Significantly for this case, the courts have looked to mutual intent in order to find a marriage-like relationship: *L.E. v. D.J.*, 2011 BCSC 671; *Buell v. Unger*, 2011 BCSC 351.

Position of the Parties

- [41] The parties agree that they lived in a marriage-like relationship but dispute when it commenced.

Position of the Claimant

- [42] The claimant submits that a marriage-like relationship began on October 17, 2012, when the respondent came and stayed at her rental home in Victoria and they commenced having a sexual relationship.
- [43] She argues that commencing October 2012, the parties spent almost all of the respondent's off-work time together in Victoria. During the October 2012 trip, there was a discussion of commitment and the claimant spoke to the respondent's mother by telephone. When the respondent left her home at the end of his October 2012 visit, he left her some candy and a note that the candy would have to be kept until he was "home".
- [44] The parties agreed to take down their online dating profiles in November 2012. They began spending holidays together. The respondent provided her Christmas gifts in 2012, Valentine's Day gift in 2013, and gave her a six-month anniversary gift.

- [45] In May 2013, the parties decided they would stop preventing pregnancy, since they both wanted children, and the claimant became pregnant in August 2013. By the fall of 2013, the claimant states the parties started considering the purchase of property together, first in Victoria, and then in Campbell River. In January 2014, the claimant described the respondent as her "partner" in an email.

Position of the Respondent

- [46] The respondent submits, in his closing submissions, that the marriage-like relationship began in April 2014 when they began living together. The respondent says, prior to that, he did not have any belongings or clothing at the Victoria property.
- [47] The respondent points out that the claimant filed her 2012, 2013, and 2014 income tax returns as "single". In her 2015 income tax return, she filed as common law. The respondent submits that at no time did they share assets, have joint properties and a joint bank account, and that they each maintained separate bank accounts.
- [48] The respondent claims that it was not until April 2014 that the claimant or their first child, the son, were added to his MSP account.
- [49] The respondent argues that there is no cogent evidence that supports that the parties were in a marriage-like relationship until at least 2014.

Analysis

- [50] A key question is whether the couple intended their relationship to be one of an indeterminate, lengthy duration, and whether the parties' evidence in this regard is consonant with the objective evidence of the parties' lifestyle and interactions: Weber at paras. 17, 24.
- [51] I am not persuaded that as of the first day the respondent stayed at the claimant's home, being on October 17, 2012, that a marriage-like relationship was created. At that time, the parties barely knew each other, but it is clear that they were interested in each other. I accept that they had decided to pursue a relationship with one another, but not one that meets the characteristics of a marriage-like relationship.
- [52] When the respondent went to visit the claimant after the October 2012 meeting, he stayed with her. That makes sense since the claimant did not have another residence to stay in Victoria.
- [53] The fact that the parties engaged in sexual activity during the respondent's October 2012 trip to Victoria does not create a marriage-like relationship. It would seem a most unusual proposition that the first time a couple have sexual intimacy, it accords with the creation of a marriage-like relationship. Something much more than sexual intimacy is needed.

- [54] The claimant testified that she spoke to the respondent's mother on the phone during his October 2012 visit. The claimant's evidence is that the respondent phoned his mother and told his mother that there was someone he wanted her to meet and then handed the claimant the phone. This does not support that, by this time, any real commitment was being made by the respondent--at the time that they had only been physically together for a few days.
- [55] The respondent leaving candies at the end of the October 2012 visit supports that the respondent was interested in the claimant and wanted to establish a relationship with her. The same applies to the Christmas gifts, Valentine's gift, and six-month anniversary gift, and the decision to stop using online dating services. They were in a relationship, like many, that started out with a form of dating, and then culminated into a marriage-like relationship. As the respondent testified, they did not spend 2012 Christmas together but he went home to Nova Scotia to see his family.
- [56] In December 2012, the respondent purchased a house in Leduc, Alberta. The claimant was not part of this purchase arrangement. In April 2013, the respondent purchased a cabin at Lake Mushamush in Nova Scotia. If the parties were already in a marriage-like relationship, one would have expected the couple to discuss these purchases. The claimant was not part of the plan to purchase the cabin nor the house and did not contribute to the respondent's purchases.
- [57] The respondent suggests that the MSP document produced supported that it was only when the claimant moved into his townhouse in Nanaimo that she or their first child were added to his MSP plan. Since the child was only born in April 2014, it makes sense that the child would be added to the MSP plan in April that year. The MSP document supports it was a change of address and the addition of a child to the plan. As noted, it is signed by the respondent as the MSP account holder and the claimant as the account holder's spouse. What is not clear is when the claimant was added to the respondent's MSP plan. I find that it was at some point in time prior to April 2014 that the claimant was added to the respondent's MSP plan and reject that she was being added in April 2014.
- [58] The respondent points out that in 2013 and 2014, the claimant filed her income tax returns declaring she was single. The claimant testified that she was told by H&R Block that until there was children, she should claim as being single and that this was more beneficial to both parties.
- [59] The claimant says that after their October 2012 meeting, she was in daily contact with the respondent via email and text messages. If the parties were in a marriage-like relationship, and separated due to the respondent's work, one would have expected a great deal of written communication to be produced. It is puzzling that none of those emails and texted messages were produced at the trial.

[60] It is my view that a significant change in the nature of the relationship occurred when the claimant got pregnant and the parties decided to make their relationship more serious. The respondent agrees that in September 2013, in response to the pregnancy, the parties discussed living together or spending more time together. The decision to bring a child into this world together is one that, in my mind, created the expectation that the relationship would be lengthy and of indeterminate duration. It is demonstrative of an intention to enter into a relationship that goes beyond dating, but one of more permanency. It is also at this time, and I accept the claimant's evidence, that they began considering purchasing a property to live together in. As the respondent put it, he knew he "was going to be there for her".

[61] I find that the marriage-like relationship commenced on October 1, 2013, shortly after they became aware that the claimant was pregnant in August 2013, when they began discussing purchasing a home together, and when they met with a realtor in Victoria. The relationship ended when the claimant and respondent separated on December 3, 2017.

Issue 2: For What Period of Time Should the CPP be Divided?

[62] The only issue in contention is the period of time the CPP should be divided. That has now been determined by my finding that the marriage-like relationship commenced on October 1, 2013 and the parties separated on December 3, 2017.

Issue 3: Who Should Have the Parenting Responsibilities?

[63] Section 40(2) of the FLA provides as follows:

40 (2) Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.

[64] Parental responsibilities are delineated in s. 41 of the FLA as follows:

41 For the purposes of this Part, parental responsibilities with respect to a child 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 Indigenous child, the child's Indigenous 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.

[65] The parties agree that the claimant should have day-to-day care of the Children. The respondent consents to the claimant having sole decision-making authority under ss. 41(a), (b), (c), (d), (h), (i), and (k) of the FLA.

[66] The respondent seeks an order that the authority under s. 41(b)-- making decisions respecting where the child will reside--does not extend to relocating the Children off of Vancouver Island or outside of BC. I agree that is a reasonable limit on the claimant.

[67] Since the Children will be living in BC with the claimant, it makes sense she has the majority of the parenting responsibilities. However, the respondent wants to be a part of the Children's life and, as such, he should jointly share with the claimant the decision-making responsibilities as set out in ss. 41 (e), (f), (g), (j), and (l) of the FLA.

Issue 4: What Parenting Time Should the Respondent have?

[68] The parties agreed to a joint retainer of Dr. Michael Elterman, psychologist, to conduct a s. 211 report. The report is dated August 18, 2022. Dr. Elterman made the following recommendations for parenting time for the respondent which he suggested be in place for two years:

1. Eight days during Christmas;
2. Eight days during spring break; and
3. Eleven days during July or August.

[69] Dr. Elterman recommends that the respondent take the Children back to Nova Scotia for each of the trips. The respondent agrees with Dr. Elterman's recommendations. The claimant does have some concerns respecting the report, but she is willing to accept the recommendations proposed. She does ask that the following further conditions be considered:

1. that the eight-day Christmas and spring break visits occur in BC;
2. that the respondent confirms the address the Children will be at and the names of any other person who will be staying with the Children overnight;
3. that the respondent advises at least six weeks before any visit whether the visit will take place in BC or elsewhere; and
4. that the claimant will have telephone or video contact with the Children every other day while they are with the respondent.

[70] The respondent's position is that during the first visits it makes sense for the Children to call the claimant every second day, but then they should be able to go for a longer period of time.

Analysis

[71] I accept the views of Dr. Elterman that the respondent should have three parenting times with the Children per year in Nova Scotia, if that is what the respondent wishes. This will provide the Children the opportunity to see their father in his home province, reacquainted with their paternal grandparents, uncle, and cousins. I also agree with the respondent that seeing the Children more often would be in the Children's best interests. In addition to Dr. Elterman's recommendation, I will allow the respondent to have a further ten days of parenting time with the Children in BC. As Dr. Elterman commented "it is better that the parenting time be more frequent and shorter rather than infrequent and longer" and "more frequent visits are more beneficial". Together this amounts to 37 days a year of total parenting time for the respondent; this is a very restricted amount of time for the father to interact, in person, with the Children.

[72] It is appropriate that the pick-ups and drop-offs take place at the Comox airport, unless otherwise agreed to by the parties.

[73] The requests for the claimant to know where the Children will be and who will be spending the nights with them is reasonable in light of their current ages. I further agree that during the spring break and summer parenting time in 2023, the Children should be in contact with the claimant every second day. Thereafter, that can be reduced to once every three days. Of course, these parents will continue to act in the best interests of the Children. If the Children request or require further contact with the claimant during their parenting time with the respondent, it should not reasonably be denied on the basis of this order. The respondent shall also give the claimant notice at least six weeks before the parenting time where the visits will take place so that she can organize the Children's schedules.

- [74] Parenting time on Christmas Eve and Christmas day should alternate annually. Since I ordered the respondent to have the Children on Christmas Eve and Christmas Day in 2022, the claimant should have the Children on those days in 2023.
- [75] I understand that the respondent paid for Dr. Elterman's report at a cost of \$8,000. The particular need for this s. 211 report was the removal of the Children from Nova Scotia and the resultant significant challenge for the respondent to have parenting time. The cost of the s. 211 report should be shared equally by the parties.

Issue 5: What is the Respondent's Guidelines Income?

Legal Principles

- [76] A determination of Guidelines income requires a consideration of ss. 16-20 of the Guidelines. The Court of Appeal in *Vincent v. Vincent*, 2012 BCCA 186 at para. 35, set out a three-step process to determine a parent's Guidelines income. First, find the spouse's Line 150 (now Line 15000) income. Second, make whatever adjustments to that amount are required by Schedule III. Third, once these first two steps are complete, the court must examine ss. 17-20 of the Guidelines to determine whether any of the exceptions apply and, if so, what effect they should be given.
- [77] Section 19(1)(a) of the Guidelines allows for imputing income where a party is intentionally underemployed or unemployed. Under s. 19(1)(a), the court considers a party's capacity to earn income, and whether the party is not earning to capacity: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37; *Koch v. Koch*, 2012 BCCA 378.
- [78] The party seeking to impute income bears the onus of showing, on a balance of probabilities and a rational and evidentiary basis, that income should be imputed: *D.M.B. v. D.W.A.L.*, 2018 BCSC 1254 at para. 140.
- [79] The principles of imputation of income were canvassed by the Court of Appeal in *Willms v. Willms*, 2020 BCCA 51 at para. 41, in which they quoted extensively from the decision in *Marquez* at paras. 36-38:
- [41] []
- [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.

- [38] Although the legal foundation for awarding spousal support is different from that of child support (see Kerr v. Baranow, 2011 SCC 10, [2011] 1 S.C.R. 269 at para. 208), the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: Myers v. Myers (1995), 65 B.C.A.C. 226, 17 R.F.L. (4th) 298 at para. 10, Moge v. Moge, [1992] 3 S.C.R. 813 at 870, Bracklow [Bracklow, [1999] 1 S.C.R. 420] at para. 36. "Means" has been interpreted to include all capital and other sources of income (Leskun v. Leskun, 2006 SCC 25, [2006] 1 S.C.R. 920 at para. 29).

Position of the Claimant

- [80] The claimant suggests a Guidelines income of \$130,000 for the respondent. She seeks to impute income on the basis of the following employment income in the respondent's tax returns:

- 2015: \$127,134.01
- 2016: \$101,681.09
- 2017: \$121,840.66

- [81] She argues that it was only after separation and the first child support order made in February 2018 that the respondent's employment income began to shrink. She claims that the respondent has chosen to be underemployed and has worked to manipulate his income downward. She submits an imputed income of \$130,000 is reasonable given the respondent's 2015 and 2017 employment income.

- [82] The claimant further submits that if one looks at the respondent's historical earnings over the past five to seven years, he has the ability to earn income in the range of \$130,000.

Position of the Respondent

- [83] The respondent suggests that his Guidelines income be set at \$110,000. This reflects his employment and dividend income plus some additional expenses being added back in.

- [84] The respondent notes that in 2018, while working full-time, he earned an employment income of \$95,469.09.

- [85] The respondent explains that his higher earning years were as a result of being paid premiums on top of hourly wages for working on complex jobs, jobs requiring helicopters, working on higher transmission lines, and working overtime. He says he is no longer able to make that type of income.

Analysis

- [86] In February or March 2019, the respondent started a company, 3323362 NS Ltd. (the "362 Company") with his current girlfriend, Ms. Routhier. There are three businesses that the 362 Company runs: two businesses operated by the respondent, namely, Live Wire Tree Works and Shay Line, and a photography business operated by Ms. Routhier. The respondent works full-time.
- [87] In the respondent's Form F8 financial statement sworn October 27, 2022, he sets out his Guidelines income at \$97,329.60. This comprises of \$80,079.60 in employment income and \$17,250 in dividend income.
- [88] I find that the claimant has met the initial evidentiary burden of showing that income should be imputed to the respondent because he deducted business expenses; the onus then shifts to the respondent to show that the deductions are justified: C.M. v. V.M., 2016 BCSC 2144 at paras. 39-40.
- [89] It appears that the vast majority of the expenses claimed are ones related to the business expenses for running Live Wire Tree Works and Shay Line. I do find that the following expenses are ones that need to be examined more closely:

2021 Deduction

Amortization:

\$5,320

Telephone:

\$1,790

Meals & Entertainment:

\$1,060

Travel:

\$2,004

Home Office:

\$2,670

TOTAL

\$12,844

- [90] Ms. Routhier testified that they both use their cell phones for personal use.

- [91] The approach taken by the respondent was to add back into his employment and dividend income some of the expenses claimed to arrive at a Guidelines income of \$110,000. Based on my review of the financial information and the potentially personal aspect of some of the business expenses deducted, this is a reasonable approach.
- [92] The claimant suggest that one should look at the respondent's 2015 employment income of \$127,134.01 and his 2017 employment income of \$121,840.66 to support imputing an income of \$130,000. This disregards that in 2016, the respondent's employment income was \$101,681.09 and that in 2018, his employment income was \$95,469.09. If an average of the four years is taken, when the respondent was not self-employed, this works out to an average of \$111,531.21. This average is similar to the amount suggested by the respondent.
- [93] I disagree that one should look at the higher earning years to support what the respondent can now earn. Those years required him to be away from home, travelling across Canada and the United States, and working on complex jobs that paid premiums. The respondent is entitled to have a job that allows him to be home on a nightly basis and not live in a travel trailer or out of a hotel room.
- [94] I see no basis for imputing an income of \$130,000 to the respondent as submitted by the claimant.
- [95] I find that the respondent's Guidelines income in 2021 is imputed at \$110,000.

Issue 6: What Are the Appropriate s. 7 Expenses and How Much Does the Respondent Owe in Arrears?

- [96] In *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 29, Justice G.P. Weatherill laid out a two-pronged approach to assessing whether an expense ought to be considered a s. 7 expense:

[29]

- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
- i the combined income of the parties;
 - ii the nature and amount of the individual expense;
 - iii. the nature and number of the activities;
 - iv. any special needs or talents of the children;
 - v. the overall cost of the activities; and
 - vi. any other similar factor that the court considers relevant.

- b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:
- i. the means of the spouses and those of the child; and
 - ii. the family spending pattern prior to separation.
- [97] Overall, for an expense to be considered a s. 7 expense, it must meet the threshold of being necessary, reasonable, and affordable. The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: L.A.M. at para. 30.

Position of the Parties

- [98] The claimant says that she does not recall the respondent paying anything for s. 7 expenses. She has receipts for daycare, summer camp, sporting activities, medical, and dental expenses.
- [99] The respondent agrees to reimburse for expenses related to medical and dental expenses, as well as preschool and daycare expenses.
- [100] The respondent testified that he had reimbursed the claimant for the son's orthotic expense and the claimant could not recall if he had.
- [101] The respondent disagreed with paying for the daughter's skates and skate sharpening expenses. He further submits that the various extracurricular activities, such as skating and dance lessons or swimming lessons, are typically covered by regular child support payments.

Analysis

- [102] The respondent shall reimburse the claimant for the medical and dental, as well as the daycare expenses and pre-school expenses incurred. I also accept that in light of the claimant having taken on all of the day-to-day care of the Children over the last five years, it is an appropriate extraordinary expense to have the Children in summer camps in June of 2021.

- [103] I find that the following expenses should be reimbursed for:

2018

Christian Life childcare and pre-school:

Medical, dental, and prescriptions:

\$1,516.85

\$417.87

2019

Christian Life childcare:

Medical, dental, and prescriptions:

\$149.32

\$231.88

2020

Medical:

\$70.00

2021

Summer Camp:

Medical and prescriptions:

\$350.00

\$111.09

2022

Daycare:

\$275.82

[104] For 2020, I have left off the orthotics of \$160 for the son, since the respondent says he paid for this and the claimant could not recall. If there is evidence that the respondent did not pay for this item, it should be included as an outstanding s. 7 expense.

[105] I am not persuaded that the soccer, skating, dance, and swimming lessons and supplies constitute s. 7 extraordinary expenses in light of the reasoning of the Court in *McLaughlin v. McLaughlin*, 57 B.C.L.R. (3d) 186, 1998 CanLII 5558 (C.A.), which was more recently cited by the Court of Appeal in *Bodine-Shah v. Shah*, 2014 BCCA 191. In *McLaughlin*, the Court of Appeal considered the meaning of the phrase extraordinary expenses for "extracurricular activities" in s. 7(1)(f) of the Guidelines. In that case, the mother had claimed a proportionate contribution from the father for the children's extracurricular activities, including soccer, softball, field hockey, outdoor school, swimming, and hockey. The chambers judge ordered that the father pay his proportionate share of these expenses after taking into account the respective incomes of the parties. In discussing what extracurricular activities properly fall within s. 7(1)(f), the Court of Appeal in *McLaughlin* acknowledged that courts had struggled to determine what expenses could properly be classified as "extraordinary":

- [30] It is apparent from my perusal of many of the dozens of cases decided under s. 7(1)(f) across the country that judges in British Columbia and elsewhere have been struggling to find some principled basis for deciding what expenses can properly be added to the base table amounts as "extraordinary expenses" within the meaning of s. 7(1)(f). The inability of judges to ascertain what Parliament intended to be included as ordinary expenses for extracurricular activities under the tables has resulted in a variety of approaches to the interpretation of s. 7(1)(f) with an accompanying inconsistency in results.
- [106] After canvassing the various approaches that had been taken by courts on this issue, the Court of Appeal sets out the preferred approach to s. 7(1)(f) as follows:
- [64] There is no dispute in the case law as to the meaning of the word "extraordinary". All of the decisions utilize dictionary definitions, including such synonyms as "unusual", "out of the ordinary" and "exceptional". Nor is there any dispute amongst judges that the use of the word "extraordinary" in s. 7(1)(f) to describe the type of expenses which can be added on to the basic table amounts, implies that "ordinary" expenses are included within the table amounts. The problem has been the difficulty of ascertaining the nature and extent of the extracurricular activities (in the case of s. 7(1)(f)), which are "ordinary" and, thus, included in the basic table amounts. If this could be determined, one could simply define extraordinary expenses as being those which are not ordinary; that is, those which are not included in the basic table.
- []
- [81] In the result, I conclude that, in deciding whether an expense, or the totality of expenses claimed on behalf of children under s. 7(1)(f) are extraordinary, the court should take into consideration the combined income of the parties, as well as the nature and amount of the individual expense, the nature and number of the activities, any special needs or talents of the children, and the overall cost of the activities. This list is not intended to be exhaustive, as considerations may arise in other cases which may also be relevant. I note that in the only other decision of this Court dealing with s. 7(1)(f), *Cochrane v. Zarins* (1998), 36 R.F.L. (4th) 434 (B.C. C.A.), the Court concluded that a particular child's talents are a relevant factor in determining whether an expense for an extracurricular activity is extraordinary.
- [82] As earlier stated, once an expense or expenses are found to be extraordinary it is necessary for the court to proceed to determine whether the expenses are necessary in relation to the children's best interests and reasonable, having regard to the means of the spouses and those of the child, and to the family's spending pattern prior to separation. There appears to be a consensus in the authorities dealing with s. 7(1)(f) that those questions do not need to be addressed until the expense or expenses in question have been found to be extraordinary. That would also be true of "extraordinary" educational expenses under s. 7(1)(d). With respect to the other expenses included under s. 7(1), which fit under the rubric of "special" expenses as that word is used in the heading of the section, the expenses need not be extraordinary, but they must meet the tests of necessity and reasonableness.

- [107] The Court of Appeal in McLaughlin applied this analytical approach and determined that common, extracurricular activities are not "extraordinary expenses" under s. 7(1)(f):
- [102] [], none of these expenses, individually, can be viewed as extraordinary expenses. The activities are common extracurricular activities for children of these ages and there are not, as there are in some cases, additional fees for such things as camps, trips, or expensive equipment. Nor is the total monthly amount associated with these expenses high, either in absolute terms, or in relation to the joint incomes of the parties (\$120,000). In my view, Mr. McLaughlin's proportionate share of these expenses (\$70 per month) must be treated as being included within the amount of maintenance he is paying under the basic table.
- [108] In this light, I am of the view that the various sports activities and expenses related to them cannot be classified as s. 7 extraordinary expenses.
- [109] The respondent did not dispute his responsibility to pay the past s. 7 expenses incurred by the claimant since 2018. Although this is beyond the usual three-year period as provided for in the Supreme Court of Canada's reasons in D.B.S. v. S.R.G., 2006 SCC 37, in light of the respondent's agreement to pay, I will order the reimbursement for the awarded s. 7 expenses back to 2018. The total past s. 7 expenses amount to \$3,122.83.
- [110] The claimant proposes that 70 percent be paid for by respondent and she pay 30 percent. The respondent did not comment on the appropriate split. With my finding of the respondent's imputed income at \$110,000 and his past incomes, that appears to be a reasonable apportionment.
- [111] In the future, the claimant should be providing the receipts to the respondent and seeking reimbursement on a timely basis.

Issue 7: Is the Claimant Entitled to Spousal Support and, if so, for How Long and in What Amount?

Position of the Parties

- [112] The claimant seeks compensatory spousal support for an additional two years and in the amount currently being paid, which is \$323 a month. The rationale for this is that for the period the claimant was home providing full-time care for the Children, she has lost earnings of approximately \$125,300 and a loss of pension of slightly under \$16,000. The claimant submits that since she can never be fully compensated for the loss of income she suffered as a result of the relationship and the ages of the children, the spousal support payment should remain the same.
- [113] The respondent argues that no further spousal support should be paid on the basis of the claimant has managed to grow her assets since separation. She has been paid interim spousal support back to July 2018. He submits that there is no evidence that the claimant's career has suffered or that she has lost advancement opportunity.

Legal Principles

- [114] The provisions relating to spousal support are found in ss. 160-165 of the FLA. The objectives of spousal support are set out in s. 161:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [115] In determining the ongoing application for spousal support, the law recognizes three models of spousal support as described in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 15, 1999 CanLII 715, namely: compensatory, contractual, and non-compensatory (needs-based).
- [116] In this case, only the compensatory comes into play with the primary rationale is the existent of dependent children. As noted in *Bracklow*, spouses must "compensate each other for foregone careers and missed opportunities during the marriage upon the breakdown of the union": at para. 1.
- [117] The purpose and rationale underlying the compensatory grounds for spousal support was summarized by Justice Rowles in *Chutter v. Chutter*, 2008 BCCA 507, where the sacrifices made by a recipient spouse in assuming primary child care and household responsibilities often results in a lower earning potential and fewer future prospects of financial success: *Chutter* at paras. 50-53.
- [118] A compensatory award should continue until compensation is achieved even if the spouse has achieved self sufficiency: *Chutter* at para. 79; *Morigeau v. Moorey*, 2015 BCCA 160 at para. 37

Analysis

- [119] During this relationship, the claimant had the primary responsibility for the care of the Children. As a result of the claimant becoming a full-time homemaker after the birth of their first child, she has suffered a disadvantage and loss at the end of the marriage-like relationship, warranting compensatory support. In this case, the claimant will continue to be the primary caregiver for the Children, with her essentially being akin to a single mother except when the Children visit with the respondent in Nova Scotia. Although the marriage-like relationship was just over four years, the obligation to pay spousal support flows from the fact that the claimant has to provide support and care for the dependant Children. The

continuing economic disadvantage flows from the ongoing child care responsibilities.

- [120] The claimant had to take a medical leave when pregnant with their son and left work on March 1, 2014. She did not return to work until January 9, 2018. When she returned to work, she had lost all her seniority. I accept that when the claimant left her employment to provide full-time care for the Children, she lost almost four years of income, pension, and seniority. The precise loss is difficult to quantify but it is a significant amount.
- [121] The claimant has received spousal support retroactive to July 2018.
- [122] The duration of the spousal support should not be calculated using the length-of-marriage test, but the age-of-children test. This test is more applicable for shorter marriages, like the case at bar, involving dependent children.
- [123] The upper end of the range of spousal support would be when the youngest child finishes high school and the lower range would be when the youngest child starts full-time school. I note that this lower range has already been surpassed since both children are in elementary school.
- [124] In this case, the claimant has achieved a degree of self-sufficiency but has not returned to the ability to work a full-time job due to her ongoing child care responsibilities. I accept that she should be there for the Children to wake them up in the morning, get them breakfast, take them to school, and participate in after school activities. The current set-up, with the claimant working the night shift and sleeping when the Children are at school, is one that maximizes her income while still allowing her time with the Children.
- [125] It appears that if the claimant had worked full-time, she would earn some more money but it would result in her spending less time with the Children when they are still young, when they need to be cared for, and when there is a lack of any consistent care provided by the respondent. The Children are entitled to at least one of their parents to be involved in their school, to attend school activities, and participate as an involved parent in field trip activities. As a result, the claimant is still facing an economic disadvantage flowing from the post-separation child care responsibilities.
- [126] The claimant's 2021 line 15000 income was \$52,542.15 with union dues of \$916.83. This included \$3,876.09 paid in spousal support.
- [127] I agree with the claimant's position that she is entitled to another two years of spousal support. I disagree with the claimant that it should continue at the current amount of spousal support, being paid, which is \$323 per month.
- [128] Based on the DivorceMate software calculations using the incomes of the parties, the amount of child support payable, assuming no undue hardship claim, is \$1,506 a month. On those calculations, there is no spousal support payable on the low- and mid-ranges. At the high end, the spousal support is \$173 a month.

[129] In my view, the appropriate range is the mid-range and on the current incomes, there is no spousal support payable. If during the next two years, the incomes of the parties change such that there is a mid-range spousal support amount, then that amount should be paid by the respondent.

Issue 8: Is the Respondent Entitled to Claim for an Undue Hardship due to Unusually High Access Expenses?

Legal Principles

[130] Section 10 of the Guidelines allows for an undue hardship claim to be made to reduce the amount of child support that would otherwise be paid under the Guidelines. Under s. 10(2) (b), one of the circumstances to consider is whether a spouse has unusually high expenses in relation to exercising parental time with a child. Section 10(3) does not permit a claim for undue hardship if the household of the spouse claiming the undue hardship, after determining child support, has a higher standard of living than the household of the other spouse.

[131] The Court of Appeal in *Kelly v. Kelly*, 2011 BCCA 173 confirmed the test described in *Van Gool v. Van Gool*, 59 B.C.L.R. (3d) 395, 1998 CanLII 5650 (C.A.) and summarized the test in s. 10 in the following paragraphs:

[133] A claim for undue hardship under s. 10 of the Guidelines encompasses a two-step analysis. First, the parent applying for relief must demonstrate the undue hardship that will be caused by paying Guidelines support. Section 10(2) sets out a non-exhaustive list of factors that may be considered at this stage, including "an unusually high level of debts" incurred prior to the separation or "to earn a living", and "unusually high expenses in exercising access". This first step has a high threshold. The hardship that must be established is described in the authorities as severe, extreme, improper, unreasonable, or unjustified: *Van Gool v. Van Gool* (1998), 59 B.C.L.R. (3d) 395, 44 R.F.L. (4th) 314 at paras. 48-51.

[134] If, and only if, this first requirement is met, the second step engages a comparison of the standard of living in each parent's household under s. 10(3) of the Guidelines, to ensure the payor of child support will not have a higher standard of living than the recipient if a reduction in Guidelines support is made.

[135] If the applicant establishes these two requirements, the court has a discretion to order child support in an amount other than that required by the Guidelines. This is a narrow discretion, however, and should be exercised cautiously to avoid thwarting the Guidelines' objectives of predictability and consistency: *Julien D. Payne and Marilyn A. Payne*, *Child Support Guidelines in Canada* (Irwin Law: Toronto, 2009) at 302.

[132] The issue of spousal support should be considered before considering an undue hardship claim since it may have a bearing on that issue: *Kelly* at para.16.

Position of the Respondent

- [133] The respondent's position is that as a result of the claimant's decision to relocate from Nova Scotia, he has incurred significant financial costs in order to see the Children. The respondent's cost to travel and stay in BC are very expensive. All of his extra money goes towards paying to come to BC and see the Children. He has not acquired any new vehicles, has not travelled on vacation, and has not purchased any new properties or made any investments. The estimates for travelling to and from Nova Scotia with the Children for three visits could amount to approximately \$25,000 a year, or \$2,083 per month.
- [134] The respondent submits that having to pay child support and then thousands of dollars to have parenting time a few times a year is excessive and undue. It was a situation created by the claimant in which the respondent has no choice at this point.
- [135] The respondent claims that the calculations supports that the claimant will have a higher household income ratio. The respondent has had to assume all expenses in order to exercise parenting time with the Children.

Position of the Claimant

- [136] The claimant's position is that the respondent should not be entitled to an undue hardship award if his standard of living is higher than hers. Based on the DivorceMate software calculation with the respondent's income imputed at \$130,000 and an undue hardship amount of \$12,000, the respondent's household ratio, at the low-end of support, is 5.022 and the claimant is 4.316. This support that the respondent's standard of living remains higher and does not support any undue hardship.
- [137] The claimant submits that reducing the amount of child support should not be ordered since reducing the funds used to support the Children's need for shelter, food, and other expenses are not in the Children's best interests.
- [138] She argues that the high threshold for a reduction has not been met.
- [139] The claimant is willing to share some of the burden of transporting the children to Nova Scotia to see the respondent. She has proposed that for the summer of 2023 and the summer of 2024 she purchase her own ticket, and the respondent purchase the Children's tickets, and she would accompany the children to Nova Scotia. Her plan would be that she would remain in Nova Scotia while the Children visited the respondent. She would then be responsible to accompany the Children home. This would assist in reducing the respondent's parenting time expenses.

Analysis

- [140] The claimant and the Children live in Campbell River, Vancouver Island and the respondent lives just outside of Halifax, Nova Scotia. A distance of over 4,500 kilometres between the two locations. I accept the evidence of the respondent that it is a significant expense for

him to travel from Nova Scotia to Vancouver Island in order for him to have parenting time with the Children. There were varying examples given to show the costs. Using a conservative estimate, if each return flight ticket is \$1,500, then the cost to the respondent to fly to Vancouver Island and return on two occasions, in order to pick up and drop off the Children, is \$3,000. The cost to purchase return flights for the Children would be \$3,000. This is assuming that one could purchase four return tickets for \$1,500 each. The respondent is looking at a minimum for flights alone of \$6,000 per visit. Since two of the parenting times would be during the winter holidays and spring break, it is highly likely that the cost of those flights would be significantly more. This is not factoring in any of the other associated costs.

- [141] In addition, the respondent needs to take time off work to travel across the country a total of six times each year. If he opted to have one visit in BC or some additional time with the Children, he then would incur the cost of renting a car and accommodation.
- [142] I have performed the comparison of household standards of living test and I am satisfied that the claimant does have the higher standard of living.
- [143] Although the respondent is faced with unusually high expenses to exercise his parenting time with the Children, I note that the claimant has offered to assist in bringing the Children to Nova Scotia over the two summer parenting visits. She will pay for her return flight which should assist. I am operating on the basis that the claimant will follow through on this offer and will be the one to transfer the Children to Nova Scotia in the summer of 2023 and summer of 2024. The respondent would remain responsible for paying for the return tickets for the Children.
- [144] I am concerned that if I reduce the amount of child support the respondent pays, it will have an impact on the Children and there will be less money for them to engage in extracurricular activities. I have not required the respondent to pay for any of the sports that the Children engage in as s. 7 extraordinary expenses. I anticipate as the Children get older the costs of participating in sports, and the purchase of various sporting supplies, will increase. I have allowed all of those costs to be paid out of the child support payments.
- [145] In ensuring that the best interests of the Children are kept at the forefront of my considerations, I am not persuaded that I should reduce the child support payable due to the high parenting time costs incurred by the respondent and I decline to do so.

Issue 9: Should the Joint RESP Account be Transferred from Nova Scotia to BC?

- [146] The claimant seeks the transfer of the joint RESP account since the Children are residing in BC. The respondent's position is that the RESP is held jointly by the parties, was purchased by the parties, and is located at the Canadian Imperial Bank of Commerce, a bank the respondent typically uses. The claimant has a separate RESP for the Children.

[147] I am not persuaded that there is any reason to move the joint RESP account that the respondent funded to a bank in BC. It will remain in Nova Scotia.

Issue 10: Should the Claimant be Required to Pay for the Costs of the Respondent Attending in BC for the Examinations for Discovery in February 2020?

[148] The respondent takes the position that he flew out to Vancouver Island to attend the discovery of the claimant which was set for February 7, 2020. He claims that the discovery was not adjourned and the claimant failed to show up. The claimant never told the respondent nor his counsel that she was not going to show up. As a result, the respondent was left to pay for the attendance, room costs, and the costs thrown away in preparation.

[149] The claimant had a positive obligation to advise the respondent and his lawyer that she was not attending at her scheduled discovery on February 7, 2020. She failed to do so. In my view, the out-of-pocket expenses the respondent had to pay for the room rental and any cancellation fees to the court reporter should be paid by the claimant.

[150] I am, however, not persuaded that the respondent's airfare should be reimbursed considering that he also then had the opportunity of seeing the Children for a one-night sleepover and going skating with them.

[151] In my mind, any time spent by counsel to prepare for the discovery of the claimant would have been useful for when the discovery did proceed in November 2020. I will not award any amount for costs thrown away for preparation.

Conclusion

[152] The following orders are made:

1. The parties commenced a marriage-like relationship in October 1, 2013 and separated on December 3, 2017.
2. The claimant is a resident of BC and is found to have a gross annual income of \$52,542.
3. The respondent is a resident of Nova Scotia and he is imputed to have a gross annual income is \$110,000.
4. The respondent's application for an undue hardship claim is dismissed.
5. The respondent will pay the claimant the sum of \$1,506 per month for the support of the Children in accordance with the Guidelines for the province of Nova Scotia, commencing on the first day of March 2023 and continuing on the first day of each and every month thereafter, for as long as the Children are eligible for support under the Family Law Act or until further agreement of the parties or Court order.
6. The following orders for parenting time are made under the Family Law Act:
 - a) The respondent will have parenting time with the Children as follows:

- i. Eight days during the holiday season in 2023 and 2024;
 - ii. Eight days during spring break in 2023 and 2024;
 - iii. Eleven days during summer vacation in 2023 and 2024.
- b) The respondent can exercise this parenting time in BC or Nova Scotia, or anywhere else agreed to by the parties.
 - c) The respondent will have an additional ten days of parenting time to be exercised only in BC once a year.
 - d) The cost of the parenting time is the sole responsibility of the respondent.
 - e) The claimant will arrange to have the Children dropped off and picked up from the Comox Airport, or some other location as agreed to between the parties, for each of the respondent's parenting times.
 - f) During the parenting time for the spring break 2023 and for the summer 2023, the respondent will facilitate telephone and/or electronic communication, such as SKYPE or Face Time, calls between the Children and the claimant every other day. Thereafter, the calls and/or electronic communication will be every three days.
 - g) The Children shall spend Christmas Eve and Christmas Day in 2023 with the claimant and the parenting time with the respondent will commence at some time on or after December 26, 2023.
 - h) The Children will spend Christmas Eve and Christmas Day in 2024 with the respondent.
 - i) The respondent will advise the claimant at least six weeks prior to any parenting time when and where his parenting time will be exercised.
 - j) During the parenting time, the respondent will keep the claimant advised of where the Children are staying and who is spending overnights with them.
 - k) While the Children are with the respondent for parenting time, he is entitled to have decision making authority, upon consultation with the claimant, over any needed medical or dental care which is in the Children's best interests.
 - l) The respondent's parenting time will be reviewed at the end of December 2024.
- 7. The respondent shall have telephone calls and/or video calls twice a week with the Children on a schedule that works for the parties and the Children while the Children are under the care of the claimant.
 - 8. The claimant will have the following s. 41 parental responsibilities for the Children under s. 40(2) of the Family Law Act:

- a) Making day-to-day decisions affecting the Children and having day-to-day care, control, and supervision of the Children;
 - b) Making decisions of where the Children will reside subject to not relocating the Children off of Vancouver Island or outside of BC without the written consent of the respondent;
 - c) Making decisions about with whom the Children will live and associate;
 - d) Making decisions about the Children's education and participation in extracurricular activities, including the nature, extent, and location;
 - e) Giving, refusing, or withdrawing consent for the Children, if consent is required;
 - f) Receiving and responding to any notice that a parent or guardian is entitled to or required by law to receive; and
 - g) Subject to any applicable provincial legislation, (i) starting, defending, compromising, or settling any proceeding relating to the Children, and (ii) identifying, advancing, and protecting the Children's legal and financial interests.
9. The parties will share equally the other parental responsibilities listed at ss. 41(e), (f), (g), (j), and (l) under s. 40(2) of the Family Law Act.
10. The parties unadjusted Canada Pension Plan credits shall be divided in accordance with the Canada Pension Plan, R.S.C. 1985, c. C-8 for the period from October 1, 2013 to December 3, 2017.
11. The claimant's claim for spousal support is granted for a period of two further years being until February 1, 2025, at which time it will end. Based on the parties' current respective incomes, there is no monthly spousal support payable.
12. The respondent will pay to the claimant their proportional share for the Children's s. 7 special or extraordinary expenses. The parties' respective proportional shares are the respondent 70 percent and the claimant 30 percent. The following expenses will be special or extraordinary expenses:
- a) Medical, dental, medication, and orthotic expenses;
 - b) Afterschool care expenses; and
 - c) Such other expenses as agreed to by the parties.
13. The past s. 7 special or extraordinary expenses owed by the respondent to the claimant is \$2,185.98.
14. The party incurring a s. 7 special or extraordinary expense shall provide the other party with a receipt for reimbursement.
15. For as long as the Children are eligible for child support, the parties will exchange:

- a) Copies of their respective income tax returns for the previous year, including all attachments, not later than the first day of June each year;
 - b) Copies of any Notices of Assessment or Reassessment provided to them by Canada Revenue Agency immediately upon receipt; and
 - c) Copies of financial statements for any company that the respondent has a shareholding in, upon their completion.
16. The parties shall conduct a review of child and spousal support and the Children's s. 7 special or extraordinary expenses on an annual basis and payments shall be adjusted as necessary by September of each year.
17. If the parties cannot agree to an adjustment of child support and the Children's s. 7 special or extraordinary expense, an application to the Court should be made on a timely basis.
18. The claimant is responsible to pay for the costs relating to the room rental and any court reporter fees to the respondent for her failure to attend at her scheduled discovery on February 7, 2020.
19. The claimant's request to have the RESP located at the CIBC in Nova Scotia transferred to BC is denied.
20. The claimant will reimburse the respondent for one-half of the cost for the s. 211 report of Dr. Michael Elterman.

Costs

[153] In my view, there was divided success as between the parties. If the issue of costs cannot be resolved between the parties, they are granted leave to make written submissions to be served and provided to the Court no later than 60 days from the pronouncement of these reasons.

"Forth J."

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