
CANADA / JUDGMENT

Cotton v. Berry

2017 BCSC 907

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 907 Cotton v. Berry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cotton v. Berry,

2017 BCSC 907

Date: 20170531

Docket: E133296

Registry: Victoria

Between:

Sarah Elizabeth Cotton

Claimant

And

Andrew Robert Douglas Berry

Respondent

Before: The Honourable Madam Justice Gray

Reasons for Judgment

Counsel for the Claimant:

B.E. Bate

The Respondent, Andrew R. D. Berry:

In Person

Place and Date of Trial:

Victoria, B.C.

November 1-4 and 14, 2016

Place and Date of Judgment:

Victoria, B.C.

May 31, 2017

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INTRODUCTION

- [1] The parties to this family law proceeding were in a common law relationship for almost four years, from January 1, 2010 to September 13, 2013. They have two children. Their older daughter, to whom I will refer as "CB", was born in June 2011, and their younger daughter, to whom I will refer as "AB", was born in January 2013.
- [2] The claimant mother ("Mother") is self-employed, managing a commercial property she owns. The respondent father ("Father") works as an economist for B.C. Ferries.
- [3] The issues between the parties relate to parenting time and responsibilities, child support for extraordinary expenses, and asset division. The primary asset in issue is the former family home ("Cranmore Home"). During argument, the parties agreed on how to divide the parties' pensions, RRSPs, and savings bonds. The Mother has many concerns about the Father's parenting.
- [4] The issues proceeded to a five-day trial. The Mother was represented by legal counsel, Ms. Bate. I am grateful to Ms. Bate for her organized and efficient presentation of the case. The Father acted on his own behalf. While he is not a lawyer, he is articulate and made his points clearly.

FACTS

- a) Before the parties met
- [5] The Father was born in February 1974. He is an economist. He has also been active in athletics and in playing musical instruments.
- [6] The Mother was born in December 1975. She is an only child. Her parents separated when she was five years old, but maintained an amicable relationship with each other. When the Mother was eight years old, her mother moved into the back of a building and her father lived in the front of it. This arrangement continued throughout the lifetimes of the Mother's parents. The Mother and her parents celebrated holidays together, despite her parents' separation.

- b) January 1, 2010 to September 13, 2013 (the period of cohabitation)
- [7] Both parties were employed by B.C. Ferries at the time they began living together. Both parties brought furniture and household items into the relationship. Both parties had pensions with B.C. Ferries.
- [8] The Mother also had an RRSP at the commencement of the parties' cohabitation.
- [9] Unfortunately, the Mother's mother passed away in April 2011.
- [10] CB was born in June 2011. As a result, the parties were parents for about 27 months of the period during which they cohabited.
- [11] The parties purchased the Cranmore Home in December 2011. They each contributed a similar amount to the down payment, and they contributed equally to the mortgage and other expenses of the Cranmore Home while they lived together.
- [12] At the time the parties purchased the Cranmore Home, the municipality had placed a notice of bylaw infraction against title. The vendors had finished the basement without municipal permission. The municipality required that the basement be returned to a single car garage, which required removal of drywall, tiling, and a bathroom.
- [13] The mortgage company advanced \$45,000 for the remediation of the bylaw infraction in addition to funds for the purchase price. The \$45,000 ("Remediation Trust Monies") was placed in a lawyer's trust account, on the basis that the funds would be paid out upon proof of completion of the remediation. At present, the Remediation Trust Monies remain in the trust account, because the remediation has not occurred. The Remediation Trust Monies are to be paid to indemnify the parties for the costs of remediation, and if any funds remain after that, to reduce the amount outstanding under the mortgage.
- [14] The Mother's position at B.C. Ferries was eliminated in January 2012. She had been scheduled to return to work in March 2012 after her maternity leave for CB, but she received severance pay until July 2012 and did not return to a workplace until July 2012. As a result, she was off work for about 14 months after CB's birth.
- [15] The Mother resumed working in July 2012, this time for B.C. Pension Corporation ("B.C. Pension"). Her salary there was about \$30,000 less per year than the amount she had been earning at B.C. Ferries.
- [16] There is a bank account in the name of CB. The Father froze the account in 2012.
- [17] AB was born in January 2013.
- [18] The Mother worked at B.C. Pension for about seven months before commencing her second maternity leave in about February 2013. She took a total of 18 months off work following AB's birth, one year of which was paid, and six months of which were unpaid.

- [19] The Mother was the primary caregiver for the children for most of the time that the parties cohabited. She was home full-time for 14 months after CB's birth, and for the further eight months that the parties lived together after AB's birth. That is a total of about 22 of the period of about 27 months that the parties cohabited as parents.
- [20] Unfortunately, the Mother's father passed away on March 30, 2013. The Mother was executor of her father's will.
- [21] The Mother's view was that following the passing of her own father, the Father became increasingly critical of her and called her foul names in the presence of the children, and the Mother felt she had lost her protector.
- [22] The Mother testified that around the summer of 2013, the Father took 2-year-old CB boating without a life jacket. The Mother testified that the Father was defensive when she asked him to put a life jacket on CB.
- [23] The Mother testified that at another time in the summer of 2013, the Father left 6-month-old AB in a stroller in a park while he and CB were at a distance of about perhaps 25 feet. The Father testified that he did not see this as being different from an occasion when the Mother left AB asleep in a stroller in the back yard of the Cranmore Home. In his view, being alone in a stroller in a back yard is similar to being alone in a stroller in a public park.
- [24] The Mother also testified that when the Father was angry with the Mother, he would drive over the speed limit, drive erratically, and omit use of turn signals, even with the children in the car. The Mother testified that the Father did not always buckle the children into their car seats properly, and refused to correct it when she pointed it out.
- [25] The relationship between the parties was tense around the summer of 2013. Around August 2013, the Mother told the Father that she was thinking about separating from him.
- [26] The Mother testified that around September 6, 2013, the Father threw clothing at her, hitting her with a belt buckle.
- [27] On the morning of September 11, 2013, the parties argued about what the Mother had done with the universal child care benefit proceeds. The Mother's evidence was that before he left for work, the Father threw a drink in anger and intimidated her. The Father did not testify about this.
- [28] Later that day, at 8:48 a.m., the Father sent the Mother an email asking for "visibility to CB's day care schedule/expense as well as family allowance (cheques from govt) funds." He requested "a breakdown of how much money we have received and how much money is spent." His email states that the parties agreed to two days a week of day care at 50% cost split. It also states that he will be contacting the daycare provider, Gene, for details of CB's day care.

- [29] The Mother testified that the Father returned home at lunch time and said that he would "blow up the house" if he did not get a breakdown of what happened to the funds, and that he looked angry and crazed. The Father did not testify about this and I accept the Mother's uncontradicted evidence.
- [30] The Mother responded by email of about 2:30 p.m. the same day to the Father's email and threat, stating that daycare was \$346/month for two mornings a week (9 a.m. - 1 p.m.). She sent a further email 15 minutes later stating, "I need to know that you'll have calmed down by the time you get home from work today. If you don't, I'll need to take action. I won't live like this anymore."
- [31] The Mother's RRSP increased by \$2,517.35 during the period of the parties' cohabitation.
- c) From Separation on September 13, 2013 to Trial
- i) Balance of 2013
- [32] Around 3 a.m. on September 13, 2013, the Mother was in bed. Her evidence is that the Father pulled the covers off her, and then jumped on her and pinned her on the bed. She testified that she told the Father she would call the police, and he got in his car and drove away. After he left, she called the police. The Father did not testify about this and I accept the Mother's evidence.
- [33] The Father was arrested. The Mother says that he was charged, but he says he was not. It is not necessary for me to try to resolve this conflict in the evidence.
- [34] The Mother stayed in the Cranmore Home. As stated, the Mother was on maternity leave at the time the parties separated. CB was 2 years old and AB was 7 months old.
- [35] An order restraining the Father from contacting the Mother and the children was in effect from about September 13, 2013 to mid- or late November, 2013. The Father did not see the children during that period.
- [36] Each party kept her or his own vehicle after separation. The Mother has a 2005 Land Rover and the Father has a 2003 Subaru. Each party kept the separate bank account she or he had held during the time the parties cohabited.
- [37] The parties started mediation in November 2013. By that time, the Father had moved into a two-bedroom apartment about 1 or 1 ½ km from the Cranmore Home.
- [38] In November 2013, the Father entered into a peace bond requiring that he stay away from the Mother and the girls. This was amended to enable the Father to have parenting time.
- [39] Since separation, the Mother has arranged for the girls to see their paternal grandparents roughly monthly when the paternal grandparents are in town. They live in Nanaimo, but go south during the winters. The Mother arranges activities like meals and daytrips.

[40] The parties entered into a written agreement entitled "Minutes of Settlement" ("First MOS") dated November 28, 2013. It was described as an interim agreement. It included the following:

- a) the parties would each remain guardians of the children;
- b) the parties would participate in the New Ways for Families program as soon as possible;
- c) neither party would consume or be under the influence of alcohol when the children were in their presence;
- d) the Father would have specified parenting time commencing November 29, 2013;
- e) the Mother would provide the Father with listed items from the Cranmore Home, including kitchen equipment;
- f) the parties would share equally in the total cost of accommodation for both parties, being both the Father's rent and the Cranmore Home mortgage payments and expenses, with each party being responsible for \$2,089.00 monthly;
- g) the Mother would provide all relevant information about bringing the Cranmore Home to code;
- h) each party would obtain quotes as to the cost and schedule for work on the basement of the Cranmore Home;
- i) the parties through their lawyers would confer regarding proceeding with the renovations, and the parties would equally share the expense of the renovation;
- j) on removal of the non-compliance note from title to the Cranmore Home, the parties would meet and confer as to an appraiser; and
- k) the parties would return for mediation on January 8, 2014.

[41] The estate of the Mother's father was settled in late 2013. The Mother inherited money, two properties, and numerous antiques. The Mother's father had been an antique dealer. One of the properties was a condominium on Meares Street in Victoria. The other was a property (the "Fort Property") which included a front commercial space, a retail shop, and two second-floor apartments. The Mother's parents had lived in the two apartments. The Fort Property is a two-storey Tudor- style property which was built in 1932 and has aging plumbing and other aging parts.

[42] Also around late 2013, the Father received a payment of about \$80,000 in settlement of a claim arising from a motor vehicle accident. He did not testify about what happened to those funds, although he stated in argument that they were spent on lawyers in relation to the peace bond and to the efforts to resolve the disputes amicably.

[43] The Mother's line 150 income in 2013 was about \$52,300. This consisted of income from employment and from employment insurance.

ii) 2014

[44] On January 8, 2014, the parties signed further Minutes of Settlement, which are undated ("Second MOS"). The Second MOS set out a transitional interim parenting plan providing that the Father would have parenting time as follows:

- a) on Tuesdays and Thursdays from 3:30 p.m. until 6:00 p.m.;
- b) on Saturdays from 8:45 a.m. until 1 p.m. for AB, and from 8:45 a.m. until 5:30 p.m. for CB; and
- c) on Sundays from 7:45 a.m. until 1 p.m. for AB, and from 7:45 a.m. until 5:30 p.m. for CB.

[45] The Second MOS also provided that the parties would work with coaches to select a child specialist and obtain recommendations regarding additional parenting time for the Father, including regarding overnight visits.

[46] At the time of the Second MOS, neither child was in any type of schooling. CB was 2 ½ years old and AB was about one year old.

[47] The back apartment of the Fort Property has had a tenant since March 2014.

[48] The parties attended a "four way meeting" on April 8, 2014, together with a divorce coach for each parent. The Mother wanted to take the children to Greece for about two weeks for the wedding of a cousin of the Mother's, to whom the Mother is emotionally close. The Father did not consent to that, in part owing to the length of the proposed trip, and did not sign the passport forms.

[49] The parties corresponded by email in the period commencing in April 2014 about remediating the bylaw infraction of the Cranmore Home and listing it for sale. They also corresponded about their frustrations in having contractors work on the Cranmore Home.

[50] By email of June 9, 2014, the Mother advised the Father that CB had obtained an afternoon spot at a Montessori preschool.

[51] The Father responded with a list of questions, asking the following:

- a) what will be the arrangements for CB's care on other days and the arrangements for AB's care;
- b) who will be taking CB to the Montessori preschool;
- c) what are the alternatives;
- d) when else will the girls need someone who is not their parents to look after them; and
- e) besides an answer, what else does the Mother expect from the Father?

- [52] The Mother responded with an email dated June 10, 2014. She proposed a live-out nanny whose wage would likely be between \$13 to \$16 per hour. The Mother advised that she expected her own work hours at B.C. Pension would be Tuesday to Friday for seven hours a day, and she suggested the nanny work for eight to 8 ½ hours on those four days each week. The Mother also described a daycare program and a nanny service. She suggested that the parties split the costs of the Montessori preschool and childcare. She asked the Father for his thoughts.
- [53] Around June 2014, the parents both interviewed Ms. Morin as a prospective nanny, and hired her. The Father agreed that \$13.00 per hour was a suitable wage.
- [54] CB was enrolled in the Montessori preschool which the Mother had proposed, and the Father attended the parent meetings. The Father testified that he thought he had made it clear to the Mother that he could not afford the cost of the Montessori preschool, but if the Mother paid for it, he was happy to be included in selecting the preschool.
- [55] The Mother paid Ms. Morin's wages, but the Father has not contributed. At trial, he did not dispute that he owed the Mother something as his contribution to Ms. Morin's wages, but he argued that the Mother did not supply him with sufficient detail about the expenses. He argued that she should provide more detail than the hourly rate and the broad explanation of hours worked. He appeared to seek something in the nature of timesheets.
- [56] Around June 2014, CB started spending Thursday nights at the Father's home. Over the next months, she started spending Saturday nights at the Father's home as well. AB started spending full weekend days with the Father, but continued to return to the Cranmore Home to sleep overnight.
- [57] The Mother returned to work at B.C. Pension on July 22, 2014. She continued working there for 11 months, until about June 2015.
- [58] Around September 1, 2014, CB told the Mother that the Father had driven the children in the car. The Mother knew that the Father's car insurance had expired on July 21, 2014. The Mother sent the Father an email dated September 1, 2014, in which she described risks of driving in an uninsured vehicle, and offered to drive CB from her preschool to the Father's home.
- [59] By the end of October 2014, the Mother had emailed the Father saying her position was that the Cranmore Home should not be listed for sale until the bylaw infraction was remedied. Both parties understood that lenders would be unlikely to provide a mortgage to prospective purchases if the bylaw infraction notice remained on title to the Cranmore Home.
- [60] By email of November 5, 2014 to the Mother, the Father proposed using a contractor named Derrick to work on the basement of the Cranmore Home, and stated that he required a retainer of \$750.
- [61] The Mother responded by email of November 7, 2014, which included the following:

I am fine with Derrick doing the work and we need to get this infraction off. Before I provide a retainer though, I would like a signed agreement from you saying that any money I put towards the renovations, I will get out of the holdback and/or the proceeds of the house (if there are any). I would also like more of an estimate from Derrick once we know exactly what needs to be done as I had budgeted \$22,500 to get work done on the house and I have now spent a few thousand on the plumbing infraction coming off and the stucco.

If you are agreeable to the signed agreement, let me know and we can get it drafted. Once signed, I can give Derrick the retainer.

[62] The Father did not agree to provide a written agreement as requested by the Mother before she spent money on remediating the Cranmore Home. He did not respond to the Mother's request. He testified that he simply "gave up". Neither party took further steps to advance the remediation of the bylaw infractions.

[63] The Mother received a gift of about \$92,000 in November or December 2014 from an aunt, who has since passed away.

[64] For 2014, the Mother claims that she paid extraordinary expenses for the girls of about \$17,700. This consists of about \$9,800 for nanny wages, about \$6,600 for Montessori preschool fees, about \$750 for recreational centre fees, and about \$450 for gymnastic fees.

[65] The Mother's line 150 income in 2014 was about \$46,300. This included income from employment, employment insurance benefits, universal child care benefits, and net rental income of about \$20,800. The gross rental income from the Fort Property was about \$86,000, and was reduced by expenses including the cost of renovations to make the property fit for rental. The unit in question had not been rented since 2003 and had last been renovated in 1975.

iii) 2015

[66] On April 15, 2015 and May 5, 2015, the Mother sent emails to the Father trying to arrange parenting time on Mother's Day, May 10, 2015, and trying to arrange a birthday party for CB on a farm on either a Saturday or Sunday in early June. The Mother also asked the Father to pay child support for January to May, for the nanny, and for CB's preschool expenses.

[67] The Father did not respond. His position at trial was that because he could not obtain access to his equity in the Cranmore Home, he would not pay child support.

[68] The Mother emailed the Father on May 8, 2015 and said that if she did not hear from him, she would go ahead and make plans for the birthday party on the Sunday. She did not hear from him and she made plans for the Sunday.

- [69] On the Sunday morning of the birthday party, the Father demanded that the parties meet at the police station. They did so, but had not met there before and have not met there since. The Father did not explain to the Mother why he wanted to meet there. The Father testified that it was a sensitive time and he wanted to meet at the police station as a "precaution".
- [70] On May 26, 2015, the Mother asked the Father if he would agree that she could take the girls to the school fair on Saturday, June 13, 2015. The Father did not respond, and the girls did not go to the fair with the Mother. The evidence did not disclose whether they went with the Father.
- [71] The Mother stopped working for B.C. Pension in June 2015. She stopped because she was feeling overwhelmed and wanted to spend more time with the girls. Her position at B.C. Pension was 80% of full-time. In addition to her paid employment, she was managing and renovating the Fort Property, and caring for the two young girls. She was paying the full costs of the nanny without receiving any contribution from the Father.
- [72] The Mother has taken a five year leave of absence from B.C. Pension. She can apply for an in-service position after that leave. She is considering doing so when both girls are in school.
- [73] Since she stopped working at B.C. Pension, the Mother has been self-employed managing the Fort Property. She works early in the mornings before the girls get up and when they are in school, and sometimes takes the girls with her to the Fort Property. As a result of the Mother's ability to be available for the girls during normal work hours, the childcare costs have dropped dramatically.
- [74] The parties both contributed to the Cranmore Home expenses and the Father's rent as set out in the First MOS until the end of June 2015. The Mother provided her contribution for July 2015 as set out in the First MOS, but the Father did not. As a result, the mortgage payment for July 2015 was not made on the date required. The Mother commenced paying the mortgage in full for the period commencing July 1, 2015 and has paid it in full since then.
- [75] The Father did not return the \$1,321.41 which the Mother paid him in June 2015 in respect of his rent.
- [76] The Father has not contributed to the mortgage on the Cranmore Home since June 1, 2015. The amount outstanding on the mortgage at June 1, 2015 was about \$578,000.
- [77] The front apartment of the Fort Property has had a tenant since August 2015.
- [78] In late August, 2015, AB started spending nights at the Father's home, as her sister CB had been doing for over a year. AB was about 2 ½ years old at that time. The background to this was that one day, in the presence of the girls, the Father refused to let the girls return to the Mother unless the Mother agreed that AB could spend overnight time with him. Although unhappy with the Father's tactic in raising the issue in the presence of the girls, the Mother agreed to start with AB staying overnight once a week with the Father, and to consider

further nights after six or eight weeks.

- [79] Around October 2015, the Father insisted on having AB for two nights per week. The Mother was unhappy that the Father did not discuss this with the Mother and instead, simply decided unilaterally that things would change. The Mother did not have her current legal counsel and did not know what to do about the Father's insistence, so the change was made.
- [80] In October 2015, AB developed a urinary tract infection and was on antibiotics for a week. AB said things to the Mother which raised a concern that the Father may have been touching AB inappropriately. The Mother understood that she had a legal obligation to report any suspected abuse, and she made a report to the Ministry of Children and Family Development ("MCFD") about this.
- [81] At some point, Ms. Morin told the Mother things that the girls had told her. While Ms. Morin thought that this conversation with the Mother was around February 2016, it seems more likely that it was around October 2015. AB told Ms. Morin that the Father had hurt her vagina. Ms. Morin did not know what to do, so she recorded a memo on her phone. She did not ask AB anything more because she did not want to pry or to misunderstand.
- [82] Ms. Morin asked CB why her younger sister AB would say that, and CB simply would not respond. Ms. Morin found this troubling, because CB is usually talkative. Ms. Morin also remembered one of the girls saying something about being tickled on the vagina, although she did not make a note of it. Ms. Morin passed this information on to the Mother.
- [83] MCFD conducted an investigation over the next few weeks. As part of that, the Father's parenting was supervised for one or two weeks around the period including Halloween 2015.
- [84] The police also conducted an investigation, including interviewing CB. They did not interview AB owing to her young age.
- [85] The Father testified that he tickled AB, although not on the vagina, and that he might have touched her vagina to dry it after a bath. He testified that MCFD told him it was not appropriate to touch the girls' vaginas.
- [86] The Mother understood that MCFD concluded that the Father had acted inappropriately but not with criminal intent.
- [87] MCFD recommended to the Mother that the girls attend counselling. MCFD also recommended that the Father take parenting courses and another course. He took a course called "Stuck in the Middle", but has not taken the parenting courses.
- [88] The Mother sent an email to the Father advising him that the girls would be attending counselling, and provided details including the counsellor's name and telephone number. The Father did not speak to the counsellor, at least in part because she was on vacation when he made the first call to her.

- [89] Around November 2015, the Father won \$100,000 in a lottery. The Father said these funds went to legal expenses and savings.
- [90] For 2015, the Mother claims that she paid extraordinary expenses for the girls totalling about \$21,000. This consists of about \$13,000 for nanny wages, about \$6,400 for Montessori fees, about \$1,000 for gymnastic fees, about \$250 for recreational centre fees, and about \$230 for dance fees.
- [91] The Mother's line 150 income in 2015 was about \$143,000. This included about \$69,000 in capital gains, and about \$44,000 in net rental income. The capital gain was from the sale in December 2014 of the Meares St. condominium.
- [92] The Mother's Statement of Real Estate Rentals included in her 2015 income tax return reported about \$80,000 in gross rents. This amount reflected the fact that the Fort Property was not fully-tenanted until August 2015. The expenses claimed in 2015 were a total of about \$36,000, consisting of about \$22,000 for property taxes, about \$4,000 for professional fees, about \$3,700 for utilities, about \$3,400 for insurance, and about \$1,400 for maintenance and repairs. The professional fees included fees for negotiating a lease with the retail tenant.

iv) 2016 to Trial

- [93] On January 18, 2016, the Mother was visiting a cemetery with the girls when she noticed that AB appeared to have a large soft spot on her head. AB told the Mother that she hurt her head at the "Warm Park", a reference to a play place in a fast food restaurant.
- [94] The Mother took AB for a medical checkup which had already been scheduled, and was advised to take AB to an emergency ward. The Mother asked the Father what had happened, but he did not think it happened when AB was with him.
- [95] Both parents went to the hospital, but there was no pediatrician on duty. Medical staff recommended that AB go to a different hospital the next day in the hope of seeing a pediatrician and to have a full follow up.
- [96] The Mother had noticed that AB had been restless, tired, and crying for a few days before the cemetery visit.
- [97] The Mother took AB to the other hospital, but a pediatrician was not available on site. The Mother was advised to monitor AB. The medical staff in Victoria were reluctant to conduct a CAT scan on AB because of the risk of that procedure for young children. The Victoria medical staff contacted medical staff in Vancouver, who recommended a CAT scan. The Victoria medical staff did not pursue a CAT scan on the basis that they could physically examine AB and were in the better position to assess the need for a CAT scan. While the Father did not go to this hospital, medical staff telephoned him with a report.

- [98] The following day, an MCFD worker visited the Mother, expressing concern that AB did not have a recommended CAT scan. The Mother assumed that a social worker at the hospital misread the notes and contacted MCFD. The Mother did not contact MCFD.
- [99] However, during the MCFD investigation relating to AB's soft spot, the Father's visits were supervised again for a short period of probably less than a week.
- [100] The parties both signed a "Safety Plan" dated January 29, 2016. It was apparently prepared by an MCFD child welfare worker, and sets out an agreed form of communication in a Communication Book "every day". It includes "update on plans with the kids if you plan to leave Victoria (only to inform but not for the other parent to approve)." The parties used the Communication Book pursuant to the Safety Plan until September 2016.
- [101] At some point, CB told Ms. Morin that she knew what the word "selfish" means, that it means you only care about yourself, and that the Father says that the Mother is really selfish. Ms. Morin told CB that the Father is wrong, and the Mother is not selfish, and loves CB so much.
- [102] Ms. Morin testified that the Mother had not said negative things to her about the Father, but the Father had told Ms. Morin negative things about the Mother, sometimes in earshot of the girls.
- [103] The Cranmore Home was appraised at \$680,000 as at February 2, 2016. The Father testified that he thought it was worth more, although he recognized he had missed the deadline for providing an alternate appraisal at trial.
- [104] In 2016, the Mother obtained a quotation from a contractor to remediate the Cranmore Home in order to comply with the bylaws. The estimate is for about \$24,100 including taxes.
- [105] On March 31, 2016, the Mother emailed the Father and asked if he would take CB to a T-ball program on Saturdays and pay half the costs. She provided details like eligible ages and location. The Father did not reply. As a result, CB did not enroll in the T-ball program.
- [106] In April and May, 2016, the girls attended six counselling sessions, which the Mother also attended.
- [107] By emails of May 3, 2016 and May 5, 2016, the Mother suggested to the Father that the parties exchange 5.5 hours of parenting time to permit the Mother to spend that period of time on Mother's Day with the girls, starting at noon. The Father responded on Friday, May 6, 2016 that he would let her know on Saturday how early he could be at the Mother's home on the Mother's Day Sunday, but it would not be noon.
- [108] The Father returned the girls to the Mother at 4 p.m. on Mother's Day, being 1½ hours earlier than the usual 5:30 p.m. return time. CB was upset that she did not get to spend Mother's Day with the Mother.

- [109] On June 29, 2016, the Mother emailed the Father and asked whether he had any objections to CB attending a summer arts camp and if he would pay half the cost. The Father did not respond, and the Mother went ahead and registered CB in the program.
- [110] The bank account in the name of CB, which the Father froze in 2012, had a balance of \$1,824.21 as of July 10, 2016.
- [111] On July 20, 2016, the Mother emailed the Father asking if he would pay half the cost of swimming lessons for early August. The Father did not respond.
- [112] On July 29, 2016, a judge of the court ordered that the Mother was relieved of the requirement for personal service on the Father, and was permitted to serve documents alternatively, either by mail to his home or employment address, or by email to his personal or employment email address.
- [113] Each girl attended ten individual counselling sessions in the period of roughly July through October 2016.
- [114] On several occasions, including August 13, 2016, the Mother sent an email to the Father stating that the children had told her that they had been out of Victoria, such as to Salt Spring Island or camping, without the Father advising the Mother accordingly.
- [115] The Father agrees that he has taken the girls out of Victoria several times without providing the Mother with advance notice as set out in the Safety Plan. His explanation is that the trips have been short daytrips, such as a trip to waterslides in the Vancouver area near the Tsawwassen ferry terminal, or a day trip to Mount Washington, and that he has not planned these sufficiently in advance to include in the Communication Book. He says that he has sometimes reported them in the Communication Book after they occurred.
- [116] By letter dated August 29, 2016 to the Father, the Mother's legal counsel proposed a change to the parenting schedule, referring to CB's upcoming school year. The Father did not respond.
- [117] The Mother unilaterally changed the parenting schedule as set out in Ms. Bate's September 2, 2016 letter. The changed schedule provided for the Father to have parenting time on Wednesdays from after school until 6:30 p.m., and on alternating weekends from Fridays at 5:00 p.m. to Sundays at 5:30 p.m. This essentially reduced the Father's parenting time by one-half, since he had previously had parenting time for two afterschool periods a week and on every weekend.
- [118] The Father did not respond to the September 2, 2016 letter either.
- [119] While the Mother was in the process of picking up the children on the first Wednesday, the Father texted her asking where they were. He then arrived at AB's preschool, and the Mother was there with both girls. AB asked if they were having a sleepover. The Father said "yes".

- [120] The Mother objected that spending overnight with the Father was not in the schedule, so he should bring the girls to the Mother at 6:30 p.m. The Father responded that since the Mother had changed the schedule, he could too. The Father blocked the Mother from kissing AB goodbye. The Mother threatened to call the police and dialed the number, but while the number was ringing, the Father agreed to return the girls to the Mother by 6:30 p.m.
- [121] Shortly afterwards, CB asked the Mother if she would phone the police if the girls were not home by 6:30 p.m.
- [122] In the Mother's Financial Statement dated September 6, 2016, she anticipates her net annual income from self-employment to be approximately \$55,000. She reports about \$1.766 million in assets, including half of the estimated equity in the Cranmore Home.
- [123] At trial, the Mother testified that when the Father was returning the girls to the Mother, she would ask how the girls were doing, and the Father would not respond. The Father agreed that he had not followed the script for pickups and drop-offs suggested in the program known as "New Ways For Families". He agreed that he had been silent to the Mother during exchanges of the children, but said he would communicate something important, like a burn on a child's foot.
- [124] The Father said that, for example, on a day when AB was not wearing her boots and was on his shoulders at an exchange, the Mother was accusatory, and he thought it was better to say nothing. He said that he would put information in the Communication Book like nap times.
- [125] In September 2016, the Father stopped sending the Communication Book with the girls. The Mother asked him to send it, and asked him why he stopped sending it, but he did not tell her. He sent some text messages for the Mother, but he initially sent them to the wrong number.
- [126] At trial, the Father testified that the children started ripping pages in the Communication Book and colouring them. He testified that he did not want the Communication Book on days when he was only seeing the girls for a few hours, because it would take him too long to read the Mother's entries. He testified that he prefers email because the children will not rip it or write in it.
- [127] On September 26, 2016, the Mother sent an email to the Father setting out the information she would normally write in the Communication Book. The Mother sent texts on September 26 and 28, 2016 asking the Father to bring the Communication Book back.
- [128] On September 29, 2016, Mr. Justice Gaul ordered the Father to contact his employer, B.C. Ferries, and request copies of his T4 slips for 2013 and 2014, and deliver copies forthwith to the Mother's lawyer.

- [129] On October 4, 2016, the Mother sent the Father an email asking if he wanted the girls to stay with him overnight on Sunday until 3 p.m. on Thanksgiving Monday. The Father did not respond.
- [130] On October 5 and 6, 2016, the Mother sent emails to the Father setting out information that she would otherwise write in the Communication Book.
- [131] The Mother emailed the Father on October 7, 2016, stating that she expected him to return the girls at 5:30 p.m. on Sunday.
- [132] The parenting schedule since September 2016 has been that the children are primarily in their Mother's care. Every two weeks, they spend two full days and two late afternoon periods with the Father. They have parenting time with the Father every Wednesday, from after school (where the Father picks them up) until 6:30 p.m. (when the Father returns them to the Mother's home), and alternate weekends, from Friday at 5:00 p.m. (when the Mother takes them to the Father's residence) until Sunday at 5:30 p.m. (when the Father returns them to the Mother's home).
- [133] The girls get out of school at 2:45 p.m. and 3:15 p.m., and on alternate Fridays the Mother often picks the girls up at school and takes them to the Father's home for 5 p.m.
- [134] The Father is active with the girls during his parenting time, reading books, doing crafts and projects, and going to events at libraries. The girls often laugh with him. He testified that he deals with their misbehaviour by showing them the consequences of their actions, such as the need to clean up something thrown on the floor. His neighbour considers that the Father is a bit "soft" on the girls when they have temper tantrums.
- [135] The parties consented to the Order of Madam Justice Dorgan of October 21, 2016 ("Dorgan Order"). This order provides that the Father has a guideline income of \$80,372.09 per annum, and that he will pay the Mother child support in the amount of \$1,214.00 per month for the period commencing January 2015. The order fixed the arrears of child support as at October 21, 2016 at \$26,708.00.
- [136] The Mother did not apply prior to the trial for an order regarding child support and extraordinary expenses. She did not know she could make such an application until she retained Ms. Bate as counsel. Shortly after she retained Ms. Bate, the matter was set for trial.
- [137] Around October 2016, AB suffered a burn on her left foot from knocking over a hot drink. The Mother first observed the burn on a Sunday night, and AB said it occurred on the morning of the previous day. The Mother took AB to the doctor the next day, and it was treated with burn cream and a breathable bandage for a couple of weeks.

- [138] The Mother testified that on that Sunday in October 2016, the girls were exhausted, hungry, emotional, and in need of a bath. She testified that the girls were in a similar state the majority of the Sundays following their parenting time with the Father and, as a result, she is hesitant to make any plans for Sunday evenings.
- [139] Ms. Morin noticed that the girls were usually very tired on mornings after they had spent the night with their Father. She noticed that they were often upset, cranky, and had messy hair. Ms. Morin was present at some exchanges between the parties, and observed that the Father would not respond to the Mother's questions about how the children were doing or appear interested in hearing about how the children were doing.
- [140] CB has told the Mother that the Father says that the schedule is silly, the Mother is selfish, the Father is poor and the Mother is rich, and the Father is going to steal all of the Mother's money.
- d) At the time of trial in November 2016
- [141] The Father continues to work full-time for B.C. Ferries. His scheduled hours are 9 a.m. to 5 p.m., and he is usually away from home from about 8:30 a.m. to 5:30 p.m. However, he has some flexibility in his hours, which permits him to leave early on Wednesdays. He still owns the 2003 Subaru, but it is not insured. His parents and sister live in Nanaimo. His sister has 8-year old twins, and is separated from the twins' other parent. The Father testified that he has a difficult relationship with his mother, but they are repairing their relationship.
- [142] The Mother continues to work for herself, managing the Fort Property. The Mother's self-employment allows her to care for the children outside of their school hours, so neither party is incurring costs for external child care.
- [143] At the time of trial, CB was 5 years old and in full-time kindergarten at W Elementary School. AB was 3 years old and attending afternoon-only preschool at SC Montessori. When CB and AB stay overnight with the Father, one girl sleeps in each bedroom. The Father sleeps sometimes in a bed with one of the girls, and sometimes on a pullout sofa.
- [144] Ms. Morin testified that she thought that over the previous six months to a year, AB had become more aggressive, and CB had become a little more reserved, and less likely to complain if AB hurt her.
- [145] At the time of trial, the Father had not paid child support for almost two years, since December 1, 2014, despite the consent order of October 21, 2016. He had not paid anything towards the children's extraordinary expenses since separation in September 2013. The amount outstanding to November 1, 2016 for child support pursuant to the Dorgan Order was \$27,922.00.
- [146] The Father testified that he had not made the child support payments required by the Dorgan Order because he was waiting for the trial to conclude. The Father testified he had not taken the parenting courses recommended by MCFD because "a lot has been going on".

- [147] At the time of trial, the Father had net assets totalling about \$200,000. This included about \$100,000 as the estimated net value of his interest in the Cranmore Home, about \$55,000 in savings, and about \$50,000 in his pension. It is his position that he needs the \$55,000 in savings to purchase a home for himself in the future, and because he does not know what will be the outcome of the trial.
- [148] For 2016, the Mother claims that she paid extraordinary expenses of about \$5,000. This consists of about \$2,400 for Montessori fees, \$900 for nanny wages, \$700 for gymnastics fees, \$300 for recreational centre fees, \$300 for bicycle group fees, \$200 for girl guides fees, and \$100 for dance fees.
- [149] The Mother anticipated that the gross revenue from the Fort Property for 2016 would be about \$92,000 in 2016, because it has been fully-tenanted throughout that calendar year. The Mother anticipated that she would spend about \$20,000 in 2016 or 2017 to replace the floor in the commercial part of the Fort Property.
- [150] The parties consented on November 14, 2016, the last day of the trial, to an order that the children would be with the Mother from noon on December 24, 2016 to noon on December 25, 2016, and with their Father from noon on December 25, 2016 until noon on December 26, 2016.

ANALYSIS

a) Parenting

- [151] The Mother's position is that she should primarily parent the children and should primarily make the decisions concerning the children. The Father seeks an order that the parents share parenting time equally and that they have an equal voice in the children's classes and activities.
- [152] The Mother also seeks authority to travel with the children without the Father's consent, on providing reasonable notice to him of the travel details, and an order that permits her to apply for the children's passports without the Father's consent.
- [153] The Mother did not propose a specific parenting schedule. Instead, her counsel argued that the Court could set a schedule providing the Father with some overnight parenting, but not on consecutive nights, so that the Mother could address any concerns about the care of the children or their need for medical attention. With respect to holiday periods, the Mother's position was that the schedule should either be as agreed between the parties, or as specifically ordered by the Court.
- [154] The Father's position is that the children should spend alternating weeks with each parent and alternate holidays.
- [155] The Mother has a long list of concerns about the Father's parenting. I would describe her concerns as follows:

- a) acting poorly with the children, such as touching them inappropriately, supervising them inadequately, speaking negatively about the Mother to the children and in front of the children, failing to seek appropriate medical care, and insisting that the Mother exchange the children at the police station;
- b) dealing poorly with the Mother, such as failing to return the children to the Mother at the end of his parenting time when scheduled, failing to advise the Mother when he removes the children from the Victoria area, failing to respond to her questions about appropriate activities for the children, failing to honour written agreements and court orders by paying child support, failing to provide consent for the children to travel to visit extended family, and failing to be flexible about parenting time for events like birthday parties proposed for the children; and
- c) acting poorly with the children's caregivers, such as by failing to respond to the counsellor at the MM Centre.

i) Parenting Time

[156] The Mother argued that the Father has displayed poor judgment and, as a result, the girls should not stay overnight more than one night in a row with the Father. The Mother referred to the Father touching the girls inappropriately and failing to deal with AB's head injury appropriately, both of which led to investigations by MCFD. She also referred to the Father sharing a bed with the girls, which the Mother apparently first learned about when the Father testified.

[157] The Father argued that the girls should spend alternating weeks with each parent. However, he did not provide a plan for how he would care for the girls while he was working and they were not in school, which at present includes every morning for AB, and before and after school periods for both girls.

[158] The Father suggested that the parenting time on Thanksgiving Mondays alternate each year, so that he can take the girls to Nanaimo to visit his sister on his years. He suggested that the children should spend some time with both parents on their birthdays and on the birthday of each parent and on Mother's Day and Father's Day. He suggested that the parties share the Christmas break, and that the children see both parents on Christmas Day. He argued that he would like to be able to take the girls to Arizona to visit their paternal grandparents, and that he would probably do so over a Christmas/New Year's Day break from school.

[159] Ms. Bate argued on the Mother's behalf that one parent should have the children from noon on December 24 until noon on Christmas Day, the other parent should have the children from noon on Christmas Day to noon on Boxing Day.

[160] The Mother's position is that alternating weeks would be entirely inappropriate for these girls, particularly at their present young age.

[161] The Family Law Act, S.B.C. 2011, c. 25 [FLA], provides as follows at sections 37, 38 and 40:

Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (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 care;
 - (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;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

Parenting arrangements

40 (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.

- (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.
- (3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by
 - (a) one or more guardians only, or
 - (b) each guardian acting separately or all guardians acting together.
- (4) In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed:
 - (a) that parental responsibilities should be allocated equally among guardians;
 - (b) that parenting time should be shared equally among guardians;
 - (c) that decisions among guardians should be made separately or together.

- [162] The Mother has been the primary parent since the children's birth and throughout the separation. This is partly because, for much of the children's lives, the Mother has been on a maternity or other leave, and in the period since she commenced self-employment, she has been able to work while the girls were otherwise occupied.
- [163] In light of the difficulties between these parents, it is appropriate for the Court to fashion a particularized parenting schedule. It can be hoped that, at least in time, both parents can focus on what is best for the children, and can agree to flexibility in the schedule to maximize opportunities for the children.
- [164] The Mother's self-employment permits her complete flexibility in the hours she works. Most children have parents who must both work regular hours, and the time available for parenting time is limited to the non-working hours. It is appropriate for children to have the benefit of time with a parent when the other parent is working.
- [165] Here, the children should have the benefit of time with the Mother during regular working hours when the Mother does not have to work. As a result, it is in the best interests of the children to spend more time with their Mother than their Father.
- [166] At present, the Father works full-time, generally from 9 a.m. to 5 p.m. Monday through Friday, although he has some flexibility. He has picked the girls up from school on Wednesdays, but often on the alternate Fridays, the Mother has delivered the girls to the Father's house at 5:00 or 5:30 p.m. This suggests that the Father may have difficulty caring for the girls for the period from after school until 5:00 p.m. more than one day per week. However, the Father seeks more time with the girls, and it is appropriate to set a schedule which would require him to care for the girls starting after school two or three days a week. Exchanging the children at school is preferable because it will minimize the number of times that the parties must meet in person. Hopefully the Mother can continue to be flexible if the Father cannot pick up the girls at school.
- [167] CB is presently in school full days, but AB is in school only for two hours in the afternoons.
- [168] The Father's aggressive behaviour around the time of separation and during some exchanges of the children has been transient and relatively minor. It has not been directed at the children but may have affected their well-being because they have sometimes been present. This is not a case where family violence is a significant factor for determining parenting arrangements. However, minimizing contact between the parents will be better for the children as well as the parents.
- [169] The Father has displayed poor judgment in dealing with the children. That has included saying negative things to the girls about the Mother, the touching which led to the MCFD investigation, and his present arrangement of sometimes sleeping together with one or the other of the girls. It can be hoped that, on reflection, the Father will recognize that it is a poor idea for him to say negative things about the Mother to the girls and to sleep with the girls.

- [170] It is concerning that the girls are often over-tired when the Father returns them to the Mother. This may be due, at least in part, to the Father's view that he has insufficient time with the girls, leading him to overdo activities when the girls are with him. It can be hoped that, on reflection, the Father will ensure that the girls have adequate rest. As the girls get older, it will be increasingly important for them to be well-rested in order to learn properly.
- [171] The Father has displayed poor judgment in dealing with the Mother. That bad judgment has included failing to honour the Safety Plan about advance notice to the Mother of trips out of Victoria and about using the Communication Book, and making exchanges of the children cold and uncomfortable. It also includes the Father's failure to honour court orders and written agreements, including failing to pay child support.
- [172] It can be hoped that, in time, the Father can act in the best interests of the children by showing the maturity to honour court orders and his agreements, and by ensuring the children are not exposed to his disputes with the Mother.
- [173] The Mother also raised concerns about the Father's failure to provide appropriate medical care and supervision.
- [174] It is not possible to determine whether the soft spot on AB's head resulted from poor supervision by the Father, or even whether the injury occurred during the Father's parenting time. The evidence is consistent with the Father first learning of it when the Mother learned of it, and it was dealt with appropriately afterwards.
- [175] The Mother raised other concerns about medical care, including the Father's failure to treat AB's burn on her foot. It is not clear on the evidence whether the Father ought to have taken AB for medical attention to her foot.
- [176] It is concerning that the Father has failed to ensure that the girls were using car seats and life jackets properly, and that he left a child at a distance in a stroller in a public place. It can be hoped that, on reflection, the Father will recognize the importance of ensuring the girls' safety.
- [177] The children appear to be generally happy and healthy, although suffering some stress from the breakdown of their parents' relationship. There was no evidence of the children's views, and in light of their young age, it is not appropriate to consider them. The children have a strong relationship with both parents, but have been primarily cared for by the Mother, who has been on maternity and other leaves and who is now available to the girls during normal, working hours. The girls need stability like any children their age. Both parents are able to care for the children, although there are some concerns about the Father's parenting.
- [178] The Father is a loving Father who has much to offer his daughters. It is in the best interests of the girls to have significant parenting time with the Father.

[179] On balance, I am not persuaded that the Father's displays of poor judgment regarding the children have reached the level that the children should be deprived of significant parenting time with their Father. However, they are sufficiently concerning that the Father should not have parenting time with the children for two consecutive nights which are followed by school.

[180] As a result, the appropriate parenting schedule will provide both parents with significant parenting time, but provide the Mother with more parenting time. The children will be with their Mother or at school (or preschool or kindergarten) during most of the hours when the Father is working. The children should spend time with each parent during days off school, such as weekends and holidays. However, because they will spend more time with their Mother while the Father is working, they should spend more weekend time with the Father. The other holiday time should be divided approximately equally.

[181] The regular parenting schedule will be as follows:

- a) The parties have liberty to vary or adjust the schedule by written agreement;
- b) Where the word "School" is referred to in the schedule, it also includes daycare, preschool, and kindergarten;
- c) The Father's parenting time is on a 14-day rotating schedule, commencing on June 1, 2017, as follows:
 - i) The Father will pick up the girls from School on Tuesdays and take them to School on Wednesday mornings;
 - ii) The Father will pick-up the girls from School on Thursdays, and return them to the Mother at 6:30 p.m.;
 - iii) On the first Friday, the Father's parenting time will begin after School and continue until Sunday at 6:30 p.m.; and
 - iv) On the second Friday, the Father's parenting time will begin after School and continue until Saturday at 6:30 p.m.

[182] Both parents are required to take the girls to all activities scheduled during their parenting time. Both parents are entitled to attend and watch the girls' sports and other activities when the people running the activities permit parents to be present.

[183] This schedule provides that the Father will have weekend day parenting time every Saturday and alternate Sundays, overnight parenting time every Tuesday and Friday night and alternate Saturday nights, after-school parenting time every Tuesday, Thursday, and Friday, and before-school parenting time every Wednesday. On a two-week rotation, that is three weekend days out of four, five overnights out of fourteen, six after-school periods out of ten, and two before-school periods out of ten. As set out below, the Father will also have parenting time for half of holidays.

- [184] The Mother will have substantially more parenting time because of her ability to limit work to when the children are occupied. While the Mother will have parenting time only one weekend day out of four, she will be able to attend the girls' activities while they are with their Father, and will have significant time with them during weekdays.
- [185] This schedule does not provide the Father with equal parenting time. This is because the Father works regular working hours while the Mother does not, and because the Father has not demonstrated his ability to care for the children significantly more of the time than he has been, in particular because he does not always pick up the girls at school on Fridays.
- [186] With respect to the parenting schedule for special days and holidays, the schedule will be as follows:
- a) The parties have liberty to vary or adjust the schedule by written agreement;
 - b) Where the word "School" is referred to in the schedule, it also includes daycare, preschool, and kindergarten;
 - c) With respect to Christmas, in every odd-numbered year, the girls will have parenting time with the Father from noon on December 24 to noon on December 25, and with the Mother from noon on December 25 until noon on December 26, in even-numbered years, the parenting time for noon December 24 to noon December 26 will be with the opposite parent. Apart from that, every year the children will spend half of the school break period in December and January with each parent, spending the first half with the Father in odd-numbered years and the first half with the Mother in even-numbered years;
 - d) With respect to the girls' birthdays, if the regular parenting schedule provides that the girls will not be with a parent on the birthday of one of the girls, the regular parenting schedule will be interrupted so that the parent who is not scheduled to have parenting time will have parenting time from after School until 7:00 p.m. if it is a day when the girls are in School, and from noon to 5:00 p.m. if it is not a day when the girls are not scheduled to attend School;
 - e) With respect to the parents' birthdays, if the regular parenting schedule provides that the girls will not be with a parent on that parent's birthday, the regular parenting schedule will be interrupted so that the parent having the birthday will have parenting time from after School until 7:00 p.m. if it is a day when the girls are in School, and from noon to 5:00 p.m. if it is not a day when the girls are scheduled to attend School;
 - f) With respect to Mother's Day, if the regular parenting schedule provides that the girls will not be with the Mother on Mother's Day, the regular parenting schedule will be interrupted so that the Mother will have parenting time from 9:00 a.m. to 5:00 p.m.;
 - g) With respect to Father's Day, if the regular parenting schedule provides that the girls will not be with the Father on Father's Day, the regular parenting schedule will be interrupted so that the Father will have parenting time from 9:00 a.m. to 5:00 p.m.;

- h) During spring break from School, the regular parenting schedule will be interrupted to provide that the girls have parenting time with the Father from after School on the commencement of spring break until noon on the day half-way through spring break, and with the Mother from noon on the day half-way through spring break until the morning School resumes;
- i) The regular parenting schedule will continue through the Easter long weekend, except that it will be interrupted to provide that the parent who is not scheduled to have parenting time on Easter Sunday will have parenting time from noon to 5:00 pm.;
- j) The regular parenting schedule will be interrupted on the Canadian Thanksgiving long weekend to provide that in even-numbered years, the girls will have parenting time with the Father from after School Friday (or 5:00 p.m. if they are not in School), until noon on Thanksgiving Sunday, and with the Mother from noon on Thanksgiving Sunday until School begins (or 8:00 a.m. if they are not in School) on the Tuesday after Thanksgiving Monday. The opposite schedule will apply in odd-numbered years;
- k) The regular parenting schedule will be interrupted on the February B.C. Family Day and July Canada Day holiday weekends to provide that in odd-numbered years, the girls will have parenting time with the Father for the long weekend, from after School Friday (or 5:00 p.m. if they are not in School), until School begins (or 8:00 a.m. if they are not in School) on the Tuesday after the weekend. The opposite schedule will apply in even-numbered years;
- l) The regular parenting schedule will be interrupted on the May Victoria Day and August B.C. Day holiday weekends to provide that in odd-numbered years, the girls will have parenting time with the Mother for the long weekend, from after School Friday (or 5:00 p.m. if they are not in School), until School begins (or 8:00 a.m. if they are not in School) on the Tuesday after the weekend. The opposite schedule will apply in even-numbered years;
- m) The regular parenting schedule will be interrupted on the Labour Day long weekend to provide that in the girls will have parenting time with the Father from after School Friday (or 5:00 p.m. if they are not in School), until noon on the Sunday, and with the Mother from noon on the Sunday until School begins (or 8:00 a.m. if they are not in School) on the Tuesday;
- n) The regular parenting schedule will apply over the Remembrance Day holiday;
- o) The regular parenting schedule will be interrupted on Hallowe'en to provide that in odd-numbered years, the girls will have parenting time with the Father from 8:00 a.m. until School (or until noon if there is no School), and with the Mother from after School (or from noon if there is no School) until 8:00 p.m. The opposite schedule will apply in even-numbered years; and
- p) The regular parenting schedule will be interrupted in the summer to provide that the girls will have one entire week of parenting time with each parent in both the month of July and the month of August, so long as the weeks are not consecutive. So long as the Mother is self-

employed, the Father may choose his weeks of parenting time, so long as he advises the Mother in writing of his chosen dates by June 15 for the summer of 2017, and by April 30 in subsequent years. The Mother must then advise the Father in writing of her selected weeks by June 30 for the summer of 2017, and by May 15 in subsequent years. If the Father fails to advise the Mother by the specified date of his chosen weeks, the Mother will be free to choose any two weeks in July and August that are not consecutive. If the Mother returns to employment, the parties will alternate who has the first choice of summer holiday weeks, with the Mother having the right to choose weeks by May 15 in even-numbered years, and the Father having the right to choose weeks by May 15 in odd-numbered years.

v) Decision-Making

[187] The Mother seeks an order that she will make parental decisions pursuant to s. 45 of the FLA, and that the Father will have the right to review the Mother's decisions pursuant to s. 49 of the FLA. The Mother argued that she tried to involve the Father in making decisions regarding the children's activities and school, but that for the most part, the Father simply did not respond.

[188] The Father argued that he is willing to work to improve not only the volume but also the quality of his communications with the Mother. He argued that he would like to report on special things the children do, such as a first swim across the pool, and would like to have phone calls and discussions and a partnership.

[189] The Father argued that he would like the parties to communicate almost daily by telephone. He suggested that the parties begin with two phone calls a week of 5 or 10 minutes each, progressing to calls daily.

[190] Ms. Bate argued that she was not sure it was realistic to hope that the parents could have daily phone calls.

[191] The FLA provides as follows, in relevant part at sections 40, 41, 45, and 49:

Parenting arrangements

40 (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.

(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.

(3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by

(a) one or more guardians only, or

- (b) each guardian acting separately or all guardians acting together.
- (4) In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed:
 - (a) that parental responsibilities should be allocated equally among guardians;
 - (b) that parenting time should be shared equally among guardians;
 - (c) that decisions among guardians should be made separately or together.

Parental responsibilities

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 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.

Orders respecting parenting arrangements

45 (1) On application by a guardian, a court may make an order respecting one or more of the following:

- (a) the allocation of parental responsibilities;
 - (b) parenting time;
 - (c) the implementation of an order made under this Division;
 - (d) the means for resolving disputes respecting an order made under this Division.
- (2) An order under subsection (1) must not be made if the child's guardians are the child's parents and are not separated.
- (3) The court may make an order to require that the transfer of a child from one party to another, or that parenting time with a child, be supervised by another person named in the order if the court is satisfied that supervision is in the best interests of the child.
- (4) Despite subsection (1), a person applying for guardianship may apply, at the same time, for an order under this section.

Referral of questions to court

49 A child's guardian may apply to a court for directions respecting an issue affecting the child, and the court may make an order giving the directions it considers appropriate.

[192] The Father has been strangely unresponsive to the Mother concerning parenting matters. The evidence included many emails and texts between the parties. The Mother's requests for responses from the Father were consistently polite, brief, and informative. There was nothing provocative or insulting in the Mother's communications.

[193] The girls missed out on several things because the Father failed to respond. Both girls missed the chance to go to the school fair, at least with the Mother, in the spring of 2015; CB missed out on T-Ball in the spring of 2016; and both girls missed the opportunity to spend extra time with the Mother on Mother's Day 2016. The Mother put the girls in other activities, initially paying for them herself, when the Father maintained his silence.

[194] The Father's failure to focus on what is in the children's best interests regarding these activities and other questions is troubling and demonstrates poor judgment. It also demonstrates an inability to work cooperatively in parenting the girls.

- [195] In these circumstances, it is appropriate for the Mother to make decisions on behalf of the children if the parties are unable to agree or if the Father simply chooses not to respond within a reasonable time, which will usually be 48 hours. The Father will have the right to apply to court to set aside any decision the Mother has made if the court is satisfied that the decision is not in the best interests of the children. This could be called a "Joyce Model" joint guardianship.
- [196] The Father argued that the girls should see a counsellor. He did not provide any specifics about who should do the counselling or when. It may be a good idea for the children to have counselling, and the Mother should consider it. The Father may wish to provide the Mother with his suggestions about who should give the children what form of counselling so that she can consider those suggestions.
- [197] The order regarding guardianship is that the parties are to share all parental responsibilities on the basis of joint guardianship, and if the parties cannot agree on a significant decision despite their best efforts, or the Father is unresponsive within 48 hours, the Mother is entitled to make the final decision, and the Father has the right to apply for directions from the court. For the purposes of joint guardianship, decisions about taking the children outside the Greater Victoria area for more than 48 hours and about what extracurricular activities the children will be enrolled in will be considered "significant decisions".
- [198] The Mother is to arrange non-emergency medical and dental appointments for the children, with the appointments to occur during the Mother's parenting time, and the Mother is to take the children to such appointments. In cases of emergency, the parent who is parenting the girls at the time must look after medical or dental care.

iii) Communication and Travel

- [199] Communication and travel arrangements have been areas of difficulty for the parents.
- [200] The Father unilaterally decided to stop using the Communication Book, and prefers email.
- [201] The Mother did not oppose the use of email. The continued use of email would avoid the Father's concerns about the girls drawing in the Communication Book and about taking time at the start of a period of parenting time to read it. There has not been a history of inappropriate email communication.
- [202] This Court orders, regarding communication between the parties, as follows:
- a) Unless the parties otherwise agree in writing, they will communicate with each other by email except in cases of emergency. Within seven days of the release of these reasons for judgment, each party will provide the other party with an email address and a telephone number which permits both immediate text messaging and telephone calls. Each party will at all times maintain an email address and a telephone number with such capacity, and each party will advise the other forthwith of any changes to the number or address.

- b) The parties shall not communicate by telephone or text messaging except for matters of an emergency nature regarding the children (including but not limited to medical emergencies or unavoidable delays in picking up or dropping off the children due to traffic, accident, or the like).
- [203] The Mother also seeks authority to travel with the children without the Father's consent, on providing reasonable notice to him of the travel details, and an order that permits her to apply for the children's passports without the Father's consent. The Father did not oppose those terms, and they are reasonable and in the best interests of the girls so long as the travel does not interfere with the Father's parenting time. They are therefore ordered.
- [204] Neither parent can take the children outside the Greater Victoria area without giving the other parent at least 24 hours' advance notice of the proposed trip, together with information about how the other parent can contact the children in that period in case of emergency.
- b) Child Support
- [205] The Mother is seeking ongoing basic child support, and contribution from the Father towards both ongoing and past Extraordinary Expenses. The Mother also seeks an order that the parties will exchange financial documentation annually as required by the Federal Child Support Guidelines, SOR/97-175, and that either party can seek a review of the amount of child support payable by the Father as a result of any changes in the income of either party.
- [206] The Federal Child Support Guidelines provide at s. 3 that the amount of child support for children under the age of majority will ordinarily consist of the applicable amount in the table ("Basic Table Child Support"), plus any amount determined under s. 7 ("Extraordinary Expenses"). Section 7 provides as follows:

Special or extraordinary expenses

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;

- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expenses means

- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
- (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
 - (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
 - (ii) the nature and number of the educational programs and extracurricular activities,
 - (iii) any special needs and talents of the child or children,
 - (iv) the overall cost of the programs and activities, and
 - (v) any other similar factor that the court considers relevant.

Sharing of expense

- (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

Subsidies, tax deductions, etc.

- (3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

Universal child care benefit

- (4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

i) Ongoing Basic Table Child Support

[207] Pursuant to s. 9 of the Federal Child Support Guidelines, if both parents have the children for at least 40 percent of the time over the course of a year, the court must determine the amount of child support taking into account a number of factors. Otherwise, the amount payable by the parent with less than 40 percent of parenting time is the amount set out in the table, using the parent's guideline income and the number of children.

[208] In this case, the Father has had and will continue to have the children for less than 40 percent of the time over the course of a year. As a result, the Father shall continue to pay Basic Table Child Support of \$1,214 per month to the Mother as set out in the Dorgan Order.

[209] The Mother also seeks an order requiring the Father to maintain the children on his MSP plan as well as his extended medical and dental plan. The Mother is self-employed while the Father works for B.C. Ferries, and he is presumably entitled to benefits. There was no evidence that the Father would incur extra expenses for including the girls on his MSP, and his extended medical and dental plans. As a result, the Father is required to include the girls on those plans.

ii) Extraordinary Expenses

[210] There are three issues regarding Extraordinary Expenses, as follows:

- a) what proportion must each parent contribute to Extraordinary Expenses;
 - b) what expenses will be considered Extraordinary Expenses; and
 - c) how should the parties contribute to Extraordinary Expenses on an ongoing basis?
- a. What proportion should each parent contribute to extraordinary expenses?

[211] The Mother proposes that the parties contribute equally to past and ongoing Extraordinary Expenses. The Father did not address that question directly.

[212] The Federal Child Support Guidelines provide at s. 7(2), quoted above, that the parents will share Extraordinary Expenses in proportion to their incomes.

[213] The Father's Guideline income is set out in the October 21, 2016 Dorgan Order as \$80,372.09.

- [214] Determination of the Mother's income is more difficult. The Mother's Financial Statement anticipates that her income will be \$61,740 on an ongoing basis, including universal child care benefits and interest income. She anticipates approximately \$55,000 in net rental income from the Fort Property.
- [215] While the Father did not make submissions addressing this directly, I was concerned that the Mother's income may in fact be greater than she estimated. I considered the following issues concerning whether the Mother's income is properly stated as about \$62,000.
- [216] First, the rental income from the Fort Property is likely to be greater in future years, because it has been fully tenanted only since August 2015. The gross revenue on an ongoing basis is likely to be about \$92,000.
- [217] Second, the expenses for the Fort Property are likely to be less in future years than in 2014, because there were significant renovations in 2014. However, the expenses in 2015 appear to be reasonable on an ongoing basis, and total about \$36,000. Deducting that from the gross revenue of \$92,000 leaves net income of \$56,000.
- [218] Third, there can be benefits of self-employment not available to employees, such as the ability to claim telephone, home office, and automobile expenses. However, the Mother's income tax returns did not include such claims for determining the net rental income and the Mother accepted that the entire net rental income was her self-employment income.
- [219] As a result, assessing the Mother's income on the basis that it is \$56,000 from the Fort Property (being the rental income from the Fort Property net of expenses of about \$36,000), plus about \$3,800 in respect of universal child benefits, plus a further sum of about \$2,200 in respect of interest, I assess the Mother's guideline income at \$62,000.
- [220] I would ordinarily consider the proportion relevant to Extraordinary Expenses to be 56% payable by the Father and 44% payable by the Mother. That is because the total family income is about \$142,500, and the Father earns about \$80,500, being 56%, and the Mother earns \$62,000, being about 44%.
- [221] However, because the Mother is willing to share Extraordinary Expenses equally, because 50/50 sharing is relatively close to my calculations, and because equal sharing may reduce the friction between the parents for the benefit of the children as well as the parents, it is appropriate for these parties to share Extraordinary Expenses equally.
- b. What past expenses should be considered "Extraordinary Expenses"?
- [222] As set out in s. 7(1) of the Federal Child Support Guidelines, the court can consider the necessity of the expense in relation to the child's best interests, and the reasonableness of the expense in relation to the means of the spouses.

- [223] The Father is agreeable to contributing proportionately to Extraordinary Expenses, with the exceptions of the nanny wages and the preschool costs. Those two items are the biggest items in the Mother's claim.
- [224] The nanny wage expenses arose primarily in the period when the Mother was working for B.C. Pension and unable to care for the children during working hours. The Father benefited during those periods when the nanny cared for the children until the Father picked them up.
- [225] The preschool attendance was in the girls' best interests and the related fees were necessary.
- [226] As a result, the expenses which the Mother has paid, including nanny wages and preschool costs, were necessary in the best interests of the children.
- [227] Were they reasonable in relation to the means of the spouses? The Father's employment income in the applicable years was about \$80,000 and the Mother's was about \$52,000 in 2014 and about \$143,000 in 2015. The Mother also received a significant inheritance of over \$1 million in late 2013 and a significant gift of \$92,000 in late 2014. The annual Basic Table Child Support was about \$14,400 (about \$1,200 per month for 12 months), leaving the Father with annual gross income of about \$65,600. In addition, he received \$80,000 in late 2013 and \$100,000 in November 2015.
- [228] The daycare and preschool expenses were reasonable in relation to the means of the spouses. As a result, the Father is required to pay half of the past Extraordinary Expenses claimed by the Mother at trial.
- [229] The Mother paid Extraordinary Expenses totalling \$17,653.13 for 2014, \$21,035.54 for 2015, and \$5,016.56 for 2016, being a total of \$43,705.23. As set out above, the claimed expenses included claims for nanny wages, Montessori fees, girl guide fees, and recreational centre fees. I have reviewed the documentation about the Extraordinary Expenses, and I am satisfied that the expenses were all necessary in the children's best interests, and reasonable in light of the means of the parents.
- [230] The Father is required to pay the Mother \$21,852.61, being one-half of the amount paid by the Mother for the Extraordinary Expenses during the period prior to trial. This is less than the amount set out in the Mother's written argument because it is shared equally rather than in proportion to the parties' incomes.
- c. How should the parties contribute to Extraordinary Expenses on an ongoing basis?
- [231] The Mother suggested that the Father be ordered to pay \$395 per month as his contribution to ongoing Extraordinary Expenses. This was calculated as an average of \$305 per month for half of the preschool costs, plus \$90 per month for half of the other expenses.

- [232] Alternatively, the Mother argued that the Court should set out a list of expenses to be considered appropriate Extraordinary Expenses, and provide that the only other expenses to be shared would be those which the parties have agreed upon, in writing, prior to either party incurring the expense, but that neither party can unreasonably withhold his or her consent to shared expenses. The Mother's concern with this option is that the Father may not provide his consent despite such a term, in light of the fact that he had not paid any Extraordinary Expenses prior to the trial, and was unresponsive to many questions the Mother asked him by email.
- [233] The Father's position was that he assumed that the family allowance cheques were sufficient to cover the cost of Extraordinary Expenses. He argued that government funds should be applied to the cost of classes for the children.
- [234] As set out above, s. 7(4) of the Federal Child Support Guidelines provides that the court shall not take into account any universal child care benefit. The Mother's receipt of such benefits has been taken into account in determining her income for the purposes of determining the proportionate sharing of Extraordinary Expenses.
- [235] Section 7(1) of the Federal Child Support Guidelines permits Extraordinary Expenses to be estimated.
- [236] The Mother's estimate of a total of \$790 per month in Extraordinary Expenses, consisting primarily of preschool costs, is reasonable.
- [237] Some advantages of an order that the Father pay a fixed monthly amount as a contribution to the Extraordinary Expenses for the children are that it enables easier budgeting for both parties, and is enforceable through the Family Maintenance Enforcement Program ("FMEP").
- [238] In light of these advantages, and the difficulties between the parties over money and communication generally, it is appropriate in this case to estimate the Extraordinary Expenses. The Father shall pay the Mother \$395 per month for the children's Extraordinary Expenses on an ongoing basis, for the period commencing December 1, 2016.
- [239] The Mother shall provide the Father with a listing of all Extraordinary Expenses she actually incurred for the periods ending June 30 and December 31 each year, within 30 days of such dates. The parties will be required to exchange income tax information. Either party can apply for an order varying the terms regarding Extraordinary Expenses upon a material change in circumstances.
- c) Division of assets
- i) Cranmore Home

- [240] The Mother's position is that the parties should receive equal shares of the value of the Cranmore Home plus the \$45,000 holdback, after deducting the mortgage and the costs of remediating the ways in which the Cranmore Home contravenes bylaws. The Mother seeks to buy the Father's share in the Cranmore Home, in part by setting off the amounts he owes her for outstanding child support. The Father was not opposed to this set-off.
- [241] The appraised value of the Cranmore Home as at February 2, 2016 was \$680,000. The 2016 assessed value of the Cranmore House was \$665,000. There was no other evidence about the value of the Cranmore House. Although the Father suggested the Cranmore Home might be worth more, the court must base its decision on evidence. As a result, I conclude that the value of the Cranmore House is \$680,000.
- [242] In addition, the sum of \$45,000 is being held by Robert Maquire as the Remediation Trust Monies. Together with \$680,000, that is a total of \$725,000 in respect of the value of the Cranmore Home.
- [243] The parties contributed equally to the down payment and the mortgage and other expenses of the Cranmore Home until June 1, 2015. As of July 1, 2015, the amount outstanding on the mortgage was \$578,832.87.
- [244] The Cranmore Home requires remediation. The Mother claims that the remediation costs will be \$24,097.50. This estimate was supported by the evidence.
- [245] The total deductions are therefore about \$602,000, being about \$578,000 for the mortgage plus about \$24,000 for the remediation.
- [246] The net value of the Cranmore Home is therefore \$123,000. It is appropriate to divide it equally, so that each party is entitled to \$61,500.
- [247] The Mother seeks to buy the Father's interest in the Cranmore Home, and she is entitled to do so. She is also entitled to set-off the arrears of child support, including the Extraordinary Expenses for the period prior to trial, and any other arrears that have accrued following trial. She is also entitled to set-off the \$1,321.41 which the Mother paid to the Father in June 2015 for his rent pursuant to the First MOS regarding sharing accommodation costs.
- [248] On the basis that the amount owing by the Father to the Mother at trial for outstanding Basic Table Child Support was \$27,922.00, the outstanding amount of the Father's contribution for Extraordinary Expenses was \$21,852.61, and the Father owes the Mother \$1,321.41 regarding the payment she made to him in June 2015, the Mother is entitled to set-off \$51,096.02, plus any amounts owing by the Father to the Mother since trial. On that basis, the Mother must pay the Father \$10,403.98 (\$61,500 less \$51,096.02) less any Basic Table Child Support and Extraordinary Expenses arising and unpaid since trial for his interest in the Cranmore Home. If the parties cannot agree on the exact amount payable, the question is referred to the registrar for determination.

[249] So long as the Mother provides the funds to the Father within 90 days of the release of these reasons for judgment, the Father must execute all documents required to transfer his interest in the Cranmore Home to the Mother, and the Mother must execute all documents required to release the Father from any obligation to pay the mortgage on the Cranmore Home. The parties have liberty to apply for any further orders required to effect this transfer and release.

[250] Any obligations remaining under the First MOS and Second MOS are cancelled and replaced by the terms of this order.

ii) Pensions

[251] The parties agreed during argument that each party should retain his or her own pension, and that the Mother should retain her RRSP and Canada Savings bonds.

[252] Both parties have pensions which gained value during the period of the relationship. The Father's contributions to his pension were continuous, while the Mother's were interrupted while she was unemployed and while she was on maternity leave.

[253] The Father's pension increased more during the relationship, because there were lengthy periods when the Mother was not contributing to her pension, such as when she was unemployed and when she was on maternity leave. However, in light of the relatively short period of cohabitation and the Mother's agreement, it is appropriate to simply permit each parent to retain his or her own pension, RRSPs, and Canada Savings Bonds.

iii) CB's Bank Account

[254] There is a bank account in the name of CB. As of July 10, 2016, the balance in that account was \$1,824.21. The bank has been deducting \$2.00 per month as a "dormancy charge".

[255] The parties agreed during argument that CB's bank account should be closed, with the balance divided equally between the parties. That would mean that each party would receive about \$900.00. This would enable the parties to choose individually whether to open a new account for CB.

[256] The parties are required to take all steps required to close CB's account and divided the balance equally between the parties.

iv) Chattels

[257] During argument, the Father suggested that there were items in the Cranmore Home which he would like to have. The Mother's position was that the division of chattels had been agreed in the First MOS, but despite that, she was willing to provide the Father with the deep freeze.

[258] In light of the terms of the First MOS, and in the absence of my evidence about the value of the chattels, it is not appropriate for the court to make any order regarding division of chattels except that the Mother will provide the Father with the deep freeze.

COSTS

[259] The Mother seeks an order that the Father pay her costs.

[260] The order substantially reflects the relief sought by the Mother. The Father failed in respect of who should make parenting decisions, whether there should be alternate week parenting time, whether nanny and preschool costs would be considered to be Extraordinary Expenses, and regarding the value of the Cranmore Home.

[261] As a result, the Mother was substantially successful at trial, and is entitled to her costs.

SUMMARY

[262] In summary:

- a) the parenting time schedule, and the guardianship, communication, and travel arrangements will be as set out above;
- b) the Mother is entitled to purchase the Father's interest in the Cranmore Home for \$61,500, less the amounts owing to her by the Father. Such amounts include the \$27,922 outstanding pursuant to the Dorgan Order, the \$21,852.61 in respect of the Extraordinary Expenses paid by the Mother prior to the trial, the \$1,321.41 regarding the Mother's payment to the Father in June 2015, and any other amount owing by the Father to the Mother arising since trial;
- c) if the parties cannot agree on the amount owing by the Father to the Mother, the registrar shall determine the amount;
- d) the Father shall pay the Mother \$395 per month for the children's Extraordinary Expenses on an ongoing basis, for the period commencing December 1, 2016;
- e) the parties shall keep their respective chattels and assets in their name or in their possession, including any pensions, RRSPs, and bonds, except that the Mother shall provide the Father with the deep freeze;
- f) the parties shall divide the funds in CB's bank account equally between themselves;
- g) the parties are required to provide each other with a copy of all T4 and other income tax forms within 30 days of receipt, a copy of their respective income tax returns by May 30 of each year, and a copy of all notices of income tax assessments and reassessment within 30 days of receipt. Either party can seek to vary the amount of basic table child support and Extraordinary Expenses payable as a result of any material changes in the income of either party; and

- h) the Mother is entitled to her costs from the Father on the basis that the case involved ordinary difficulty.

"Gray J."

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