

CANADA / JUDGMENT

Cowie v. Duperon

2025 BCSC 2320

COURT

Supreme Court of British Columbia

DECIDED

6 November 2025

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2025 BCSC 2320 Cowie v. Duperon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cowie v. Duperon,

2025 BCSC 2320

Date: 20251106

Docket: E223106

Registry: Vancouver

Between:

Rhonda Amy Cowie

Claimant

And

Jordie Kenneth Duperon

Respondent

Before: The Honourable Justice Greenwood

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

L. Slater

Place and Date of Hearing:

Vancouver, B.C.

September 25 and 28, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 6, 2025

- [1] THE COURT: The claimant applies for a final order in an undefended family law proceeding. The order sought includes an order for divorce, retroactive and ongoing child support, s. 7 expenses, spousal support, division of property, and parenting.
- [2] The claimant has made all reasonable efforts to ensure that the respondent has had every opportunity to respond, both to the notice of family claim and to the specific application that is currently under consideration. In essence, for reasons that are not known to the court, the respondent has simply declined to participate in the court process.
- [3] For the reasons that follow, I am satisfied that the claimant's approach reflects a fair settlement of the family issues at play, considering the respondent's non-participation and the resulting absence of updated information. With some slight adjustments that I will discuss, I would grant the orders sought by the claimant so that there can be some certainty and finality to this family law case.

Legal Framework

- [4] Under Rule 1-1(1) of the Supreme Court Family Rules, BC Reg. 169/2009 an undefended family case includes a family case where no response to family claim has been filed. To obtain a final order in an undefended family law case a party must apply in accordance with Rule 10-10, which includes an application by way of summary trial, as in this case.
- [5] The power of the court to grant judgment on a summary trial application is set out in Rule 11-3(15):
 - (15) On the hearing of a summary trial application, the court may
 - (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
 - (b) impose terms respecting enforcement of the judgment, including a stay of execution, and
 - (c) award costs.

- [6] Where a person served with a notice of family claim does not file a response, they are not entitled to receive notice of any part of the family law case, including future hearings: Rule 4-3(2).

Procedural History

- [7] The parties' separation began with efforts before any formal litigation to resolve their situation. In June 2022, the respondent began paying voluntary bi-monthly payments of child support and a small payment toward the mortgage on the family home.
- [8] On June 7, 2022, the claimant wrote to the respondent in an attempt to explore settlement of the family case prior to any court proceedings. The respondent was at that time represented by counsel. On July 6, 2022, the respondent's counsel wrote to advise that she had recently been retained and financial disclosure materials were being gathered. However, no financial disclosure was made.
- [9] In August 2022, the parties exchanged correspondence about various family issues, including the apparent sale of assets by the respondent. The respondent's counsel again stated that she was gathering relevant financial documents, but none were forwarded to the claimant.
- [10] After September 30, 2022, the respondent stopped paying child support and contributing to the mortgage. He did not contribute to any expenses related to the family residence thereafter and never did provide financial information.
- [11] On December 23, 2022, the claimant filed a notice of family claim. The respondent was served with the notice of family claim and a notice of judicial case conference on January 9, 2023. The JCC was scheduled for February 16, 2023.
- [12] Counsel for the respondent wrote to the claimant and requested an adjournment of the JCC, but the claimant did not agree in light of the absence of financial disclosure, child support, or responsive communication.
- [13] On February 16, 2023, neither the respondent, nor his counsel, attended the JCC. The claimant was granted leave to bring court applications without completing a further JCC but was also granted leave to arrange a further JCC if required. By letter to the respondent the same day, the claimant advised the respondent that if a response to family claim was filed a further JCC would be scheduled.
- [14] On February 21, 2023, counsel for the respondent wrote and advised that she planned to file a response by the end of the following week. No response was filed.
- [15] On March 7, 2023, counsel wrote to the claimant and advised she was no longer acting for the respondent.

- [16] In September 2024, the respondent advised the claimant that she could obtain whatever financial information she wanted from his accountant. However, the accountant advised that no financial documents were in his possession and no financial statements or tax returns had been filed on behalf of the respondent or his company.
- [17] This case was originally set for a summary trial application on January 9, 2025. On that date the application was adjourned, and Justice Giaschi ordered that notice of the application and supporting materials be provided to the respondent by email and by leaving a copy at the respondent's residential address.
- [18] The claimant provided the materials in accordance with the order of Justice Giaschi by leaving them at the respondent's residence on January 20, 2025.
- [19] In August 2025, the claimant again requested financial disclosure from the respondent but got no response. The claimant contacted the respondent's former accountant, who advised that he was no longer providing services for the respondent or his company and had not done so since the 2022 fiscal year.
- [20] The next available date that the claimant obtained for her summary trial application was the first day of this hearing - September 25, 2025. Given the passage of time, the evidence and the materials were updated. The application was again served in accordance with the order of Justice Giaschi on September 9, 2025, by leaving them at the respondent's residence. The materials were also emailed to the respondent on September 22, 2025.
- [21] The respondent has never formally responded to the application that is before the court, but he did advise the claimant that he, in fact, received the materials that were served on him in January 2025.

Should this case be decided in the absence of the respondent?

- [22] I have no hesitation in concluding that this case should proceed in the absence of the respondent. The claimant has made repeated efforts to communicate with the respondent. There is evidence that the respondent has been aware of various steps taken in the litigation and has simply declined to participate.
- [23] The claimant has complied with this court's order for service of the application and there is evidence that the respondent acknowledged receipt of the very application that is before the court, with the only difference being that the application before me has been updated.
- [24] The fact that the respondent has received the application and done nothing to respond is consistent with a pattern of non-participation in the proceedings from the beginning. In my view, the claimant is entitled to some resolution of the issues she has put forward and it is in the interests of justice to consider her summary trial application on the merits.

- [25] I am also mindful of the Rules. Rule 21-6 gives the presiding judge a broad discretion to determine how a hearing should proceed in the absence of a defence or a defendant. The rule provides that if a party fails to attend "at a trial or hearing" the court may after receipt of any evidence it considers appropriate do one of three things, which include: proceeding with the hearing, drawing any inference from the failure to attend court it deems appropriate, and granting some or all of the relief sought.
- [26] I would also note that while I have received evidence of service that I consider appropriate in the circumstances and which comply with the orders of this court, this is also a situation in which the respondent was not strictly entitled to the amount of notice he actually received given he never filed a response to family claim: Rule 4-3(2).

Is this an appropriate case to decide summarily?

- [27] I am also satisfied that this is an appropriate case to decide summarily. The claimant has put forward a comprehensive body of evidence in support of each of the orders that are sought. While there are some gaps in exact financial information as a result of the respondent's non-participation in the process, there is sufficient evidence to support reasonable inferences and impute income in a fair and reasonable manner.
- [28] Under Rule 11-3(15), I am satisfied that I am able to find all of the facts necessary to decide the issues that are before me and that it would not be unjust to determine those issues summarily. Most of the orders sought are, in my view, reasonable and well-supported by the evidence.
- [29] One of the objects of the Rules is to secure a just, speedy, and inexpensive determination of every family law case on its merits. That goal is met in the present case by the summary trial proceeding. The respondent has failed to respond to the proceeding. The facts in evidence are therefore not in dispute. As I had indicated, the evidence appears to represent a fair inclusion of everything the claimant has at her disposal as opposed to a selective choice of only that evidence that might support her claim.

Background

- [30] The evidence establishes that the parties were married in 2010. They had been living together at the time and continued to live together in the family home. They have three children. The oldest is currently 20 years old and was the claimant's son from a previous relationship but was legally adopted by the respondent. The younger children are natural children of both parties and are currently 16 and 11 years old.
- [31] On February 1, 2021, the parties separated. The respondent travelled to Alberta where he operated the parties' jointly held business, a towing company referred to as Jordie's. After May 2022, the respondent operated Jordie's independently from the claimant. The company continues to operate in BC, but the claimant is unaware of whether it is operating in both provinces.

- [32] After May 31, 2022, although, she is an equal shareholder of Jordie's, the claimant ceased to have access to any of the financial information with respect to the towing company; that is Jordie's, such that she only has information from earlier years. She also has limited information as to the respondent's income. She has some tax summaries from 2018 to 2021 but no complete tax returns and nothing from 2022 on.
- [33] The parties have had infrequent communication since the summer of 2021, although they have communicated on occasion about the children. The respondent has had limited contact with the children. In late 2022, he obtained a residence in BC again but he rarely saw the children. The parties' younger daughter stayed with the respondent for a week in Alberta and occasional overnights at his residence in BC, but those visits stopped in February or March 2025.
- [34] The respondent has normally contacted the children directly to arrange visits. He has not arranged to see his adopted son in over a year or either of his daughters for approximately seven months. As the claimant explains in her affidavit, she is generally not contacted by the respondent, so she is unaware of exactly what is driving his decision making as regard to the children, or anything else.
- [35] The respondent, as I have indicated, paid child support in an amount of his choosing between June 1, 2022 and September 30, 2022 and nothing since. Fortunately, the children are doing relatively well. They have lived with the claimant continuously in the family home since the separation. The parties' daughters both do reasonably well academically and neither has any significant health issues.

Divorce

- [36] The parties have lived separate and apart since 2021 and there is no prospect of reconciliation. All the other criteria have been satisfied in the affidavit evidence. The assessment of child support, which I will address, will ensure that reasonable arrangements have been made for the support of the children. Accordingly, I would grant the order of divorce to take effect on the 31st day after pronouncement of the order.

Parenting issues

- [37] The parenting issues relate to the two minor children who have lived with the claimant and have been cared for by her continuously since 2014. She has dealt with their school, medical, and dental appointments with little participation from the respondent, particularly recently.

- [38] Despite the non-participation of the respondent in the lives of the children, the claimant does not seek sole guardianship but proposes orders pursuant to the "Joyce model" that envisions discussion and agreement over significant decisions, but provides that if the parents cannot agree, despite their best efforts, the claimant will be entitled to make such decisions.
- [39] I am satisfied that the claimant's proposal is reasonable in the circumstances. There is uncertainty about her ability to contact or hear from the respondent regarding significant decisions relating to the children and there must be a mechanism for her to make necessary decisions if consultation is not possible or unsuccessful. Accordingly, I would grant the order for guardianship on the terms sought.
- [40] With respect to parenting time, the evidence supports an order that the claimant have primary residence, providing continued continuity and stability for the children.
- [41] Parenting time for the respondent is more challenging, but in light of the fact that the respondent has arranged informal visits with the children on his own and the claimant is not opposed to a similar arrangement when and if the father wishes to visit again, I would grant the order sought by the claimant that the respondent have parenting time with the minor children "as agreed between the parties," but with an order that the respondent is not entitled to remove either of the minor children from the Lower Mainland without the written agreement of the claimant or court order.
- [42] I am satisfied that all of the parenting orders sought are in the best interests of the children. As outlined at the conclusion of the oral reasons for judgment, and in accordance with the submissions received, the order for parenting time will also specify that the views of the children may be taken into account.

Child Support

- [43] The claimant seeks retroactive child support for her two daughters and her son until he ceased to become a minor. The claim was brought under the Family Law Act, SBC 2011, c. 25.

Retroactivity

- [44] I am satisfied that a retroactive child support award to October the 1, 2022 is appropriate. The notice of family claim seeking child support was filed on December 23, 2022, so there was no real delay to speak of, and the respondent had, in fact, been paying child support prior to October 2022 when he suddenly stopped. Moreover, the claimant gave effective notice by letter to the respondent on August 10, 2022. I am satisfied the principles outlined in *Michel v. Graydon*, 2020 SCC 24, support a retroactive order.

Respondent's income

- [45] The first step in determining child support is to determine the payor spouse's income under the Federal Child Support Guidelines. The Court of Appeal outlined the process in *Brown v. Brown*, 2014 BCCA 152, at para. 16. The court begins under s. 16 of the Guidelines at the total income on the payor parent's tax return, makes whatever adjustments to that amount are required, then looks to ss. 17 to 20 of the Guidelines to determine if any of the special considerations in those sections should be given effect on the facts.
- [46] Section 17 of the Guidelines is not limited to straight averaging. The court has a discretion to consider the factors set out in s. 17 and take whatever steps are appropriate to arrive at an income, provided there is a logical basis for it. The goal of the exercise is to fairly calculate the amount of income reasonably available to pay child support: *Harras v. Lhotka*, 2016 BCCA 246, at paras. 24 and 35.
- [47] Also, if s. 16 does not reflect all of the income available to a party for child support, s. 18 of the Guidelines allows a court to include all or a portion of the pre-tax income of a corporation for which the party is a director or a shareholder.
- [48] In this case, it is a challenge to calculate the respondent's income as a result of his failure to respond to the proceedings and his failure to disclose relevant financial information. The respondent has not disclosed his tax returns for the years in question or the financial information relative to his income from Jordie's.
- [49] As a result, the claimant has set out evidence of the respondent's available tax documents from 2018 to 2021, which are summaries only, and financial statements for Jordie's for 2017 to 2022. I am satisfied that the calculations set out in the claimant's affidavit evidence and submissions represent a fair calculation of the respondent's income for child support purposes. Accordingly, I would set the respondent's income for support purposes at \$203,068 from 2022 onward.
- [50] This was arrived at by including the lowest amount of his T4 income from Jordie's in the four years where information was available, the inclusion of reported T4 income from a company named Entertainment Auto, \$624 of self-employment income, and inclusion of \$40,874 of dividend income annually.
- [51] The dividend income reflects the fact that the respondent reported dividends from Jordie's and funds were generally available from which dividends could be paid. Under s. 18 of the Guidelines, where a spouse is a shareholder or director of a corporation, as the respondent is, and income under s.16 does not fairly reflect all the money available for the payment of child support, the court may include all or part of the pre-tax income of the corporation.

- [52] Between 2019 and 2021, actual dividend income ranged between \$33,592 and \$80,335. The company had positive retained earnings from which it could pay dividends after payment of all salaries and expenses of approximately \$140,000 in 2019 and 2020 and approximately \$127,000 in 2021.
- [53] From this information, the claimant originally proposed that \$50,000 annually be included in the respondent's income. The \$50,000 figure did not adequately account for a downturn in the available income in 2022 which the claimant attributed in part to the Covid pandemic. When the matter was back in court for a continuation the claimant revised her position downward and suggested using the figure of \$40,874, representing an average of the six years available, including the down year of 2022.
- [54] As set out in cases such as *Harras v. Lhotka*, supra, and *A.J.B. v. J.M.*, 2020 BCSC 242, there is considerable discretion in how a court imputes income based on ss. 17 to 19 of the Guidelines. Sometimes a straight averaging will not be appropriate, but in other cases the court may have regard to averages beyond three years. As stated, the goal of the exercise is to fairly calculate the amount of income reasonably available to pay child support.
- [55] I am satisfied that it is appropriate to bring additional income from Jordie's into the respondent's income for support purposes. The income is highly variable in the six fiscal years that are available leading to and including 2022. While there is an annual loss in 2022, there is no evidence of a downward trend, and the fiscal year of the company did include the Covid pandemic. Over a five-year period prior to 2022, the average earnings were approximately \$70,000. And, of course, there is no indication of the exact money available since the respondent has never provided up-to-date information. In all the circumstances, I am satisfied it is fair and reasonable to include \$40,874 annually in the respondent's income.
- [56] I find that the claimant's proposed income figures are fair on the basis of ss. 16 to 18 of the Guidelines, but I would also note that under s. 19-1(f) the court may consider situations where the spouse has "failed to provide income information when under a legal obligation to do so," which is the situation in the present case and is an additional reason that I accept the claimant's submission as to income.
- [57] Overall, I find the claimant's approach has been to fairly estimate the respondent's income rather than to always try to maximize his income in light of the fact that he has not responded.

Section 7 expenses and the claimant's income

- [58] The claimant seeks retroactive s. 7 expenses, including hockey expenses for her son and nanny expenses between June and September 2025. The claimant spent \$9,900 on hockey expenses in the fall of 2022 without any contribution from the respondent. With respect to the nanny expenses, the claimant is employed full time and recently started in a new position. She paid \$11,693.43 for childcare to allow her to work, which was consistent with the parties' practice when they were in a relationship together.
- [59] The availability of s. 7 expenses depends on a variety of factors, including the parents' combined incomes and the nature and number of the child's special activities and unique talents. They must be necessary having regard to the child's best interest and reasonable having regard to the parents' means and spending prior to the separation: *Santelli v. Trinetti*, 2019 BCCA 319, at para. 151.
- [60] The claimant has documented the amounts paid and I am satisfied they should be treated as special and extraordinary expenses under s. 7 of the Federal Child Support Guidelines. The hockey expenses were within the means and spending of the parties prior to separation, and were necessary as a special activity. The nanny expenses were necessary to support the claimant's employment.
- [61] Since the hockey expenses are a one-time expense that occurred in 2022 and the nanny expenses for employment purposes occurred in 2025, the claimant's income in those years must be considered to allow for proportional sharing of s. 7 expenses. The claimant has provided DivorceMate calculations which I have relied on.
- [62] By the time the hockey expenses were incurred the claimant had ceased working for Jordie's Towing. I accept that her income from Mundie's Towing and other sources was \$144,505. Using the respondent's income of \$203,068 the respondent's share of the hockey expenses incurred by the claimant is approximately 58 per cent of \$9,900 or \$5,782.
- [63] With respect to the nanny expenses to allow the claimant to work, the situation is very different because the claimant's income rose considerably. Her income in 2024 was approximately \$300,000, but in 2025 she received a bonus of \$840,000. I accept that her income for 2025 will be \$1,020,000. Again, using the respondent's income of \$203,068, his proportionate share of the \$11,693.43 nanny expenses incurred by the claimant is approximately 16 per cent of that total or \$1,918.

Calculation of Retroactive Child Support

- [64] The table amount of child support payable based on the income I have found was \$3,630 per month from October 1, 2022 to October 31, 2024; \$2,785 from November 1, 2024 (when the son ceased to become a minor) to the end of September 2025; and \$2,894 from October 1, 2025 onward in light of recent legislative changes to the table amounts.

[65] The claimant seeks retroactive child support up to and including September 2025, when this application was brought and prospective child support from October 1, 2025 onward. I accept the method of calculation of retroactive child support set out by the claimant, apart from some mathematical discrepancies. It appears to me that the claimant's submitted amount of child support for the first nine months of 2025 is based on an income of \$212,194 rather than the income I have found of \$203,068. By my calculations, the claimant is entitled to retroactive support of \$121,385 and a total of \$7,700 in s. 7 expenses.

Prospective Child Support

- [66] As noted, child support for the parties' two daughters based on the respondent's income is \$2,894 a month according to the Guideline tables. The claimant's calculation based on \$3,011 per month that was originally filed again appears to be based on a higher income of \$212,194 rather than the \$203,068 I found.
- [67] The claimant seeks an order for lump sum payment of child support. Both s. 11 of the Guidelines and s. 170(c) of the Family Law Act recognize a discretionary power to grant lump sum awards. As noted in *Santelli v. Trinetti*, at para. 166, lump sum child support payments should be reserved for special circumstances. Nevertheless, I am satisfied that such circumstances exist in this case and that a lump sum is appropriate.
- [68] The primary reasons I have arrived at that conclusion include the lack of financial disclosure on the part of the respondent, the sudden stop in voluntary child support payments, and the complete failure or refusal on the respondent's part to participate in the family law process. All of that took place despite the respondent's access to legal advice.
- [69] Based on the evidence before me, I do not see any realistic prospect that the respondent is likely to pay a monthly amount in the future. Moreover, the respondent is able to make a lump sum payment based on offsetting the amount from the respondent's share in the family residence. Accordingly, the claimant is entitled to a lump sum award for their two daughters until they turn 19, which was the approach adopted in *Santelli*, *supra*, and *G.K.D. v. C.S.D.*, 2021 BCSC 367.
- [70] I would leave it to the claimant to calculate the present value of lump sum child support based on the respondent's Guideline income of \$203,068 that would represent monthly support until the girls are 19 years old and based on a discount rate of 1.5 per cent provided for in s. 56(2)(a) of the Law and Equity Act, RSBC 1996, c 253. That appears to be the approach adopted by the Court of Appeal in *Santelli*, *supra*, and I would adopt it here.
- [71] Apart from any necessary mathematical adjustments to accord with these reasons, I would grant the order for lump sum prospective support in the terms sought.

Spousal Support

- [72] The notice of family claim included a claim for spousal support, but circumstances have changed. Since her parents have passed away, the claimant is in a better financial position and has considerably more employment income in recent years. Accordingly, and with the consent of the claimant, the claim for spousal support is dismissed as having been withdrawn.

Division of Family Assets and Debts

- [73] While the parenting and support orders are sought under the Family Law Act, it is important to recognize that the division of property in this case falls to be determined under the Family Relations Act, RSBC 1996, c 128 since the parties entered into a cohabitation agreement in 2007. The relief sought includes enforcing the agreement.
- [74] Section 252(2) of the Family Law Act specifies that unless the parties agree otherwise, a proceeding to "enforce, set aside, or replace an agreement respecting property division made before the coming into force of this section is governed "under the former Act," namely the Family Relations Act. Where s. 252 applies and an agreement is set aside, division of property will take place under the Family Relations Act. *Bingham v. Bingham*, 2023 BCCA 69, at para 7.

The family residence

- [75] In the present case, the parties entered into a cohabitation agreement on December 5, 2007, each with the benefit of independent legal advice. The next day, the claimant purchased a property for the parties to live in. She provided approximately \$335,000 as a downpayment and to cover purchasing costs and taxes. That money was derived from the sale of other property she owned prior to cohabiting. This accounted for 56.5 per cent of the price of the property.
- [76] The cohabitation agreement provided that the parties would share in the expenses of the mortgage and would be entitled to share in the lesser of 43.5 per cent of the equity in the property or the equity in excess of the claimant's contributions.
- [77] The agreement in question meets the definition of a marriage agreement under the former Family Relations Act. As noted in *Hartshorne v. Hartshorne*, 2004, SCC 22, at para. 11, where there is a marriage agreement the terms of the agreement represent the parties' presumptive entitlement.
- [78] I have no hesitation in concluding that the terms of the marriage agreement should be enforced. The parties subsequently sold the first property in 2014 for a small loss and purchased what then became the new family home.

- [79] The claimant was entitled under the cohabitation agreement to the proceeds of \$293,603,30 from the sale of the first property as it was less than her initial contribution. That money flowed into the purchase of the new family residence when the parties purchased it in 2014.
- [80] While the respondent would normally be entitled under s. 56 of the Family Relations Act to an undivided half interest in each family asset upon a triggering event, his interest is expressly subject to a marriage agreement: s. 56(3)(d). Accordingly, I am satisfied the claimant is entitled to retain the \$293,603.30 that was used to contribute to the family residence as her own property.
- [81] The next issue is whether she is entitled to also keep the sum of \$286,397 that was used to contribute to the family residence. This money was a gift to the claimant from her parents who had lent her money to purchase the home but then forgave the loan as a gift or an advance on her inheritance.
- [82] The claimant submits that granting the respondent an undivided half interest in the money given to her as an advance on her inheritance would be unfair under s. 65(1) of the Family Relations Act and she should be able to retain the entire amount.
- [83] The evidence before me is that the parties discussed the purchase of the family home in 2014 and the respondent agreed at that time that the claimant was to retain her own monies, including the money from the claimant's parents that allowed them to purchase the house. The affidavit evidence states that the respondent confirmed this again at the time of separation but very few details are provided.
- [84] I accept the claimant's evidence as to the origin and nature of the gift from her parents. With respect to the conversations, no specific details are provided, but I accept that there were conversations in which the respondent acknowledged the claimant's right to retain the gift or inheritance monies. I have no reason not to accept the claimant's assertion as to the common understanding between the parties.
- [85] I am satisfied that treating the gift from the claimant's parents as a family asset to be divided equally would be unfair, having regard to all of the factors under s. 65(1) of the Family Relations Act. One of those factors is s. 65(1)(d), which directs a court to have regard to the extent to which property was acquired by one spouse through inheritance or a gift.
- [86] However, I must also consider such factors as the date the property was acquired, the duration of the marriage, and the date of separation. Section 65(1)(f) is also relevant and allows other circumstances to be taken into account. In this case, the other circumstances would include:
- (1) the fact that the respondent contributed no capital to the purchase of the property;
 - (2) the fact that he stopped paying 50 per cent of the mortgage in 2022;

- (3) the claimant cared for the children in the home, paid down the mortgage, and discharged family debt after separation; and
- (4) the respondent would still receive an equal share in the growth and equity of the home as a result of the claimant's investment.
- [87] The claimant acknowledges that all of the factors in s. 65(1) have to be considered and has directed me to the law regarding gifts and inheritances under the Family Relations Act and in what circumstances courts have reapportioned gifts rather than direct that they be equally shared and in what percentages.
- [88] While it is clear that funds that were a gift or inheritance is an important factor, the significance of that fact in a reapportionment diminishes according to the length of time that a marriage subsists after the receipt of the inheritance. Here, the parties did not separate until six years after the funds were provided to the claimant and both parties contributed to the maintenance of the house after it was purchased.
- [89] Despite some countervailing considerations, I would still place considerable weight on the fact that the funds came directly from a gift as an advance on the claimant's inheritance and some weight on the fact that it was understood by the parties that the claimant would retain these monies both in 2014 and 2021.
- [90] Each case depends on its own facts. When I weigh the factors in s. 65(1) and consider the case examples provided by the claimant, I am satisfied it would be unfair to divide the gift from the claimant's parents equally.
- [91] In circumstances where equal division would be unfair, s. 65(1) allows the court to order that the property be divided into shares fixed by the court. I am satisfied that the gift or inheritance from the claimant's parents should be reapportioned 75 per cent in favour of the claimant. Therefore, from that money the claimant is entitled to \$214,798 and the respondent is entitled to \$71,599. I would add that I have also considered the bigger picture with respect to the residence and other assets in assessing the question of fairness.
- [92] The equity in the family residence today based on an appraised value of the family residence of \$2,500,000 net of the existing mortgage of \$720,688 is \$1,779,332. From that total, I would grant the orders sought that the claimant is entitled to \$508,401, representing the sum of her entitlement under the marriage agreement and her 75 per cent share of the gift or inheritance she received that was invested in the property. I would grant the respondent \$71,599 from his share of the gift or inheritance. The parties will share the remaining \$1,199,332 equally, with each party receiving \$599,666. The result of that calculation by my calculation is that the respondent is entitled to \$671,265 from the property, but that amount may be offset by any amounts owing to the claimant.

- [93] As an aside, the claimant argued that the oral agreement entered into by the parties with respect to the gift from the claimant's parents could also be considered as a post-nuptial settlement under s. 68 of the Family Relations Act and it would be reasonable to enforce the agreement. I would not accede to that argument as in the absence of more detailed evidence about the conversations that took place, their content, and their timing. I am not prepared to infer a contractual intent.
- [94] I would grant the necessary ancillary orders sought with respect to title on the property to reflect the fact that the family residence is to become the claimant's sole property. The Scotiabank mortgage and line of credit is, of course, a family debt, but the mortgage will be discharged or the claimant will obtain a written release of the respondent's liability under the mortgage.

Shares in Jordie's towing

- [95] There is no real dispute that the shares in Jordie's Towing are a family asset under the Family Relations Act as the parties were joint shareholders and the company was used to generate income for the family. The parties both worked at Jordie's.
- [96] As noted, however, the claimant has not been involved in Jordie's since May 2022 and the respondent has operated it independently. He is also the sole director and officer. I am satisfied that it is appropriate to order that the respondent retain all shares in Jordie's as his sole property and that the claimant transfer her shares to him.
- [97] Given the respondent's sole management of Jordie's from June 1, 2022 onward, the claimant's lack of knowledge, and the respondent's failure to produce corporate documents, updated financial information related to the company or his personal tax returns, I would grant the order sought that the respondent indemnify the claimant for any debt, liabilities, or costs associated with Jordie's, including statutory remittances and corporate tax liabilities. I would also grant the order that the respondent retain any amount due to the shareholders and is responsible for any amount owing by shareholders to Jordie's. In light of the lack of contact between the parties and the non-disclosure, a clean break for the claimant from the affairs of Jordie's is necessary and reasonable.
- [98] While the appropriate date for valuation of an asset will generally be the trial date, there is a dearth of information in order to arrive at a present valuation of Jordie's. The challenge in valuing shares of Jordie's arises as a direct result of the respondent's non-disclosure and non-participation. In *Wu v. Sun*, 2011 BCCA 239, at para. 41, Donald J.A. described non-disclosure as the Achilles heel of family assets litigation, but also stated that one cannot make something out of nothing and favoured a cautious approach to adverse inferences despite stating that strong measures are justified in discouraging non-disclosure.

- [99] The claimant has drawn my attention to *Hamouth v. Hamouth*, 2022 BCSC 1798, as an example of a case where the court drew an inference from limited information about the value of retained family assets where there was incomplete and inadequate disclosure.
- [100] Considering those authorities, I am prepared to draw an inference of value with respect to the shares in Jordie's based on imperfect information. What I know from the evidence is that the retained earnings in 2022 were a deficit of \$106,353 even though the year before there had been a positive value of \$122,688. However, there is also the respondent's confirmation in August that Jordie's sold a Peterbilt truck for \$375,000. That amount exceeded the depreciated value of the truck as set out in the capital assets ledger at the end of 2021 by \$248,887.54. Thus, one can arrive at a rough adjusted retained earnings total of \$142,534.54. once one subtracts the deficit on the books from the funds retained from the sale of the Peterbilt. In the circumstances, I am satisfied it is appropriate to order that the respondent compensate the claimant for 50 per cent of that total being \$71,268. And that amount again can be offset against the value of the family residence that is due to the respondent.
- [101] Another factor that supports the inference I have drawn is that as of the date of the records that are before the court, Jordie's owned several other vehicles whose market value may also have exceeded their book value. The respondent has not only been responsible for the running of the company and any gain or loss, but he has the benefit of those assets, which I am satisfied had commercial value, and the claimant has not made a claim for a portion of those vehicles. In my view, this is indicative of the claimant's attempt to be fair and reasonable rather than take advantage of the respondent's non-appearance.

2015 Freightliner Truck

- [102] A 2015 Freightliner truck was also the subject of correspondence between the parties. On June 7, 2022, the claimant sought to have joint conduct of sale of any assets and requested particulars about a 2015 Freightliner truck owned by the respondent.
- [103] Under s. 58(2) of the Family Relations Act, property owned by one or both spouses and ordinarily used by a spouse for a family purpose is a family asset. I am prepared to accept that the 2015 Freightliner owned by the respondent is a family asset since it was purchased during the marriage with monies earned during the marriage and was used in Jordie's where both parties were employed at the time to earn income to support the family.
- [104] The same challenge arises when it comes to valuation. The respondent confirmed that the Freightliner truck was owned by him personally and not by Jordie's, but he did not provide any further information. As a result, the only information available is historical.

- [105] The truck was purchased in August 2016 for \$109,000. The claimant argues that the truck which is now nine years old should be valued at \$109,000, both because Jordie's added value to various assets by adding paint and accessories and because the truck was likely to hold its value as evidenced by the sale of the Peterbilt truck which held more than 90 per cent of its value. The claimant also argues it is fair to use a different valuation date considering the respondent's non-disclosure.
- [106] The presumptive date for valuing property for the purpose of compensation is the date of trial. I accept that the respondent is responsible for the lack of updated disclosure, but, in my view, it is not reasonable to value the Freightliner truck for the full purchase price given it was already six years old when the parties separated and is now nine years old. I would do the best I can with the evidence I have. I think it is reasonable to infer some depreciation of the Freightliner truck based on the passage of time and despite any paint or accessories that may have been added. I would value the Freightliner at \$80,000 and order that the respondent compensate the claimant for 50 per cent of that value, namely \$40,000. The payment of that amount again may be offset from the respondent's share of the family home.

The claimant's interest in the Cowie family trust

- [107] The claimant has a beneficial interest in a family trust that has considerable value and includes shares in her parents' companies. The trust was settled in 2019 while she was still married, but she had little knowledge of the trust prior to separation and her parents' death in 2022.
- [108] The claimant had not received any distributions under the trust prior to separation, had not discussed the trust with the respondent; nor had the parties made any future plans with respect to the trust or income from it. Finally, although the claimant has become a trustee, she does not control the trust entirely as her brother is also a trustee and any decisions affecting the assets in the trust must be made unanimously.
- [109] I would grant the declaratory order sought by the claimant that her interest in the family trust is not a family asset. The onus under s. 60 of the Family Relations Act is on her to establish that the property in question is not ordinarily used for a family purpose. In my view, she has met that onus as the evidence establishes that the trust was not used for a family purpose at any time during her relationship with the respondent.

Post separation gifts and inheritances

- [110] After the parties separated the claimant received gifts and inheritances from her parents which were invested and used to acquire additional assets. The assets from the mother's estate have not yet resulted in any distribution and, as such, could not be treated as family assets under the Family Relations Act. The other funds were all received post-separation and with one exception were not used in any way for family purposes, let alone ordinarily so used.
- [111] The one exception was a receipt of a \$480,000 gift the claimant received from her mother. While that money was received after separation, it was used in part to pay off \$82,000 of income tax liabilities of the parties. As outlined in *Hanemayer v. Hanemayer*, 2012 BCSC 329, at paras. 13-16, casual or occasional use of an asset for family purposes will not be sufficient to establish ordinary use for family purposes.
- [112] I am satisfied that all gifts and inheritances received by the claimant after separation were not ordinarily used for family purposes and therefore would grant a declaratory order to the effect that they are not family assets.

Other Assets

- [113] The parties have joint bank accounts of no value and I would grant the order sought for closure of the accounts. I would also grant the order for division of Canada Pension Plan credits in accordance with the statutory scheme.
- [114] The claimant holds accounts for the children's post-secondary education, and I am satisfied it is appropriate that she continue to hold those accounts on their behalf on the terms sought. The claimant has a very small RRSP account with Coast Capital Savings for some \$727, but I would not make any order for a division of that amount in light of how small it is, a lack of clarity as to whether it is a family asset or not, and due to the non-participation of the respondent.
- [115] There are also children's bank accounts held by the claimant, but no order is necessary as the amounts are nominal, and the claimant will continue to hold the accounts for the children's benefit.
- [116] The parties will retain any other assets and liabilities that are not addressed in these reasons or reflected in the order of the court as their own.

Family Debts

- [117] In order to ensure fairness, both debts and assets must be considered after the breakdown of a marriage. The complete financial picture of the parties needs to be considered and that includes debts even where they cannot be precisely valued. *Stein v. Stein*, 2008 SCC 35, at paras. 10-11.

- [118] Under the Family Relations Act, where funds are used to acquire or maintain a family asset, discharge a family burden, or maintain the family assets, fairness will generally require the debt to be shared. On the other hand, if funds are used entirely for personal purposes, the party whose debt it is may bear the whole burden of the debt after the triggering event: *Mallen v. Mallen*, 1992 CanLII 4034 (BC CA).
- [119] I have already addressed the mortgage debt in relation to the family residence. That is clearly a debt used to maintain a family asset and should be equally shared, which will be achieved by paying off the debt and/or accounting equally for that amount when dividing equity in the house.
- [120] In this case, the parties incurred additional tax debts totalling \$82,790.46. Of that total, \$47,695.92 was a tax liability in the claimant's name from the 2021 tax year and from prior years, while \$35,831.56 was a tax debt in the respondent's name. The parties were still cohabiting in the family residence in 2021 until July and their finances were pooled in joint accounts until May 31, 2022. I am satisfied that the tax liabilities arose from their time together and were incurred as part of maintaining the family finances and should be split equally.
- [121] As noted, upon receiving a gift from her mother, the claimant paid off all the outstanding tax liabilities of the parties in June 2022, after separation. I am satisfied therefore that the respondent should compensate the claimant for half of that amount being the sum of \$41,395. That amount may also be offset against the value of the family home.

Implementation

- [122] The claimant has provided a draft order and a summary of the resulting distributions from the proposed order. For the most part, I would grant the order in the terms sought. The amounts in the draft order will be subject to slight adjustments and variations to accord with these reasons; for example, with respect to the respondent's income and retroactive and prospective child support, the amounts from s. 7 expenses, the amount due to the claimant for the Freightliner truck, and other minor adjustments.
- [123] I will leave it to counsel to redraft an order that reflects those changes and I will dispense with the requirement for any signature from the other side.
- [124] I would also grant the order sought that the money due to the respondent based on the value of the family home after all the offsets are accounted for shall be paid into court pending further court order. That order is necessary given the difficulty in contacting the respondent.
- [125] If there is a lack of clarity in any of the relief described I am prepared to hear any further applications that are necessary in relation to implementation of the order resulting from these reasons.

[126] In conclusion, I am granting the orders sought as adjusted in accordance with these reasons. I would also direct that a copy of the resulting order be served on the respondent in accordance with the method of service outlined in previous proceedings.

Costs

[127] There is no order for costs.

"Greenwood J."

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