
CANADA / JUDGMENT

D.N. v. M.R.

2019 BCSC 537

COURT

Supreme Court of British Columbia

DECIDED

10 April 2019

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2019 BCSC 537 D.N. v. M.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.N. v. M.R.,

2019 BCSC 537

Date: 20190410

Docket: E181167

Registry: Williams Lake

Between:

D. N.

Claimant

And

M. R.

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 124, 233(d), and 233(g) on January 15, 2021.

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Claimant:

M. J. Long

Counsel for the Respondent:

C.A.H. Hauser

Place and Date of Trial:

Williams Lake, B.C.

November 19 to 23, and

November 26 to 28, 2018

Place and Date of Judgment:

Williams Lake, B.C.

April 10, 2019

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I. Introduction

- [1] In this family law trial there were two main issues before the Court, the first being whether the parties were "spouses" under the Family Law Act, S.B.C. 2011, c. 25 [FLA], and the consequences of the same, and the second relating to their daughter born December 2016 (the "Child").

II. Litigation Background

- [2] The respondent father filed an ex parte application seeking a protection order, non-relocation of child order, and a police enforcement order in the Williams Lake Registry under Court Registry No: 18-1153 ("1153 Action"). On January 3, 2018, Justice Winteringham ordered that the claimant mother shall not remove the Child from Williams Lake, B.C., without the written consent of the respondent or further court order.
- [3] On January 15, 2018, during the hearing of an application filed by the claimant mother in the 1153 Action, the parties agreed to a consent order dealing with parenting time.
- [4] According to this consent order, the respondent father would have interim parenting time with the Child as follows:
- Week One: Monday from 8:30 a.m. to 5:00 p.m.; Wednesday from 5:00 p.m. to 7:00 p.m.; Friday from 5:00 p.m. to Sunday at 12:00 midnight; and
 - Week Two: from 12:00 midnight on Monday to 5:00 p.m.; Wednesday from 5:00 p.m. to Thursday at 8:30 p.m.; and then returning [the Child] to daycare.
- ("Interim Parenting Order")
- [5] At the trial the parties advised that the following interim parenting schedule was being followed:
- Week One: Wednesday from 5:00 p.m. to 7:00 p.m. and Friday from 5:00 p.m. to Monday at 5:00 p.m.
 - Week Two: Wednesday from 5:00 p.m. to Thursday at 8:30 a.m.
 - The remainder of the parenting time was with the claimant mother.

- [6] The claimant filed her notice of family claim on February 6, 2018, in Williams Lake under Court Registry No: 18-1167 ("1167 Action") alleging the parties began to live together in a marriage-like relationship on or about May 2016 and separated on November 23, 2017. She also sought relief pursuant to the FLA for child support, spousal support, a relocation order, and division of family property. She filed an amended notice of family claim on February 13, 2018, alleging the parties began to live together in a marriage-like relationship on or about August 18, 2015.
- [7] On April 9, 2018, the respondent filed his response to family claim in which he admitted that the parties began to live together in a marriage-like relationship on or about May 2016 and separated on January 2, 2018. The respondent disputed the claimant's entitlement to spousal support and division of property. He sought an order that the Child not be relocated.
- [8] On April 10, 2018, Justice Winteringham's order in the 1153 Action was varied to replace the word "remove" to "relocate" and requiring that each party provide the other party with 24 hours' notice before leaving Williams Lake with the Child.
- [9] On May 11, 2018, Justice Church made the following orders in the 1167 Action:
1. The Claimant's application for interim spousal support is dismissed;
 2. The Respondent's income shall be imputed in accordance with the Guidelines to \$90,100;
 3. The Respondent shall pay to the Claimant interim child support for the parties' child, in the amount of \$861 per month with such support payable starting March 1, 2018, and continuing on the first of every month thereafter;
 4. The Respondent pay to the Claimant his proportionate share of the [Child's] s. 7 childcare expenses in the amount of \$197 per month with other expenses payable starting March 1, 2018, and continuing on the first day of every month thereafter;
 5. The Respondent shall receive a credit for any payments made to the Claimant for child support and s. 7 expenses on those arrears that have accrued since March 1, 2018;
 6. BY CONSENT, pursuant to s. 225 of the Family Law Act, the parties shall only communicate in writing via email or text message and shall only communicate about matters relating to [the Child], and the parties shall not communicate with the each other through third parties during parenting exchanges;
 7. BY CONSENT, pursuant to s. 222 of the Family Law Act, the parties shall not make disparaging remarks about each other in the present of [the Child] or the Respondent's other children;
 8. Costs of this application shall be payable in the cause.

("Interim Support Order")

III. Background Facts

- [10] The claimant and respondent have a daughter who was born in December 2016 and is currently two years old.
- [11] The respondent has three other children. The respondent's firstborn son ("TR") died in February 2006. His other two children, both sons are eight years old ("MR") and four years old ("LR"). MR's mother is AW and LR's mother is KW. The respondent shares parenting time for both children with their mothers.
- [12] The claimant was born December 1986 and raised in the Lower Mainland. She moved to 100 Mile House in the summer 2012 with her then-boyfriend. She began working at Sunrise Ford in 100 Mile House in late 2012 or early 2013.
- [13] While working at Sunrise Ford she met the respondent. He commenced work at the same dealership in 2014. At this time the respondent was living in a house located in Williams Lake (the "Home") with KW and his son, LR. He had purchased this Home in May or June 2014.
- [14] The parties started a sexual relationship in 2015. The claimant asserts that it began in the early summer and the respondent says it began in late September or early October 2015. The parties do not agree as to the nature of the relationship prior to the claimant moving into the respondent's Home in May 2016.
- [15] The claimant asserts that by August 2015 she was in a committed relationship with the respondent, arguing that it was in essence a "marriage-like relationship". In October 2015, the claimant started working at the Sandman Inn in Williams Lake. She was still living in 100 Mile House. In early 2016, the claimant moved to Williams Lake but not into the respondent's Home. In March 2016 the Child was conceived.
- [16] The respondent asserts that in August 2015 he was still in a committed relationship with KW and continued to live with her. At this time, he says that his relationship with the claimant was an affair or that they were "friends with benefits". He denies that he had ended his relationship with KW and claims they were still engaged in a committed relationship until the spring of 2016.
- [17] The parties agree that KW moved out of the Home in approximately April 2016, that the claimant moved in, and that from May 2016 onward they were in a committed relationship. The parties initially separated in November 2017 for a few days and then again on January 2, 2018, and have remained so ever since.
- [18] The respondent was born in January 1984 in Germany. His parents separated when he was young. He moved to Canada in August 1995 with his father. He grew up in northern B.C. He graduated from high school and attended BCIT and obtained a license as an automotive service technician in approximately March 2007.

- [19] He worked at a number of auto dealerships in West Edmonton and Williams Lake. In May or early June 2014 he began working at Sunrise Ford in 100 Mile House, where he met the claimant. He left that job in September 2016.
- [20] In August 2016 the respondent started Lake City Automotive ("Lake City"), a sole proprietorship, located in Williams Lake. The business is an auto mechanics shop. He continues to work full time at this business.

IV. Issues

[21] The pleadings, evidence, and submissions raise the following issues:

- a. Are the parties "spouses" under the FLA?
- b. Should the claimant be permitted to relocate with the Child to Kamloops?
- c. Should there be a change to the current order concerning the parenting time and responsibilities with the Child? Specifically:
 - i. Should there be a change in the allocation of parenting time?
 - ii. Should there be a change in the allocation of parenting responsibilities?
- d. Should there be a change in the respondent's current child support obligations?
- e. Should the respondent pay any retroactive child support?
- f. What s. 7 expenses should be paid?
- g. Should there be an award of spousal support and if so, in what amount and for what period of time?
- h. Does the claimant have a claim to any property owned by the respondent?
- i. Should there be an award of costs?

V. Spousal Status

1. Statutory framework

[22] Section 3 of the FLA provides the following definition of "spouses":

Spouses and relationships between spouses

3(1) A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
- (i) has done so for a continuous period of at least 2 years, or

(ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

(2) A spouse includes a former spouse.

(3) A relationship between spouses begins on the earlier of the following:

(a) the date on which they began to live together in a marriage-like relationship;

(b) the date of their marriage.

(4) For the purposes of this Act,

(a) spouses may be separated despite continuing to live in the same residence, and

(b) the court may consider, as evidence of separation,

(i) communication, by one spouse to the other spouse, of an intention to separate permanently, and

(ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[23] As the claimant was never married to the respondent, she does not meet the definition of "spouse" under s. 3(1)(a). Under s. 3(1)(b), the claimant may prove that she is a "spouse" if she establishes on a balance of probabilities, first, that she lived with the respondent in a "marriage-like relationship". If she is able to establish that they lived in a "marriage-like relationship", she will be considered a spouse under s. 3(1)(b)(ii) of the FLA because she and the respondent have a child together. Under this section, however, the claimant would not be considered a spouse for the purposes of property (Part 5 of the FLA) and pension division (Part 6 of the FLA). Therefore, to be subject to the FLA's property division regime, she must establish that they lived in a "marriage-like relationship", and that they did so for a continuous period of at least two years.

[24] I turn now to that question: whether the parties lived in a "marriage-like relationship" for a period of at least two years.

2. Did the parties live in a "marriage-like relationship?"

A. Legal principles

[25] The question of whether parties are living in a marriage-like relationship is largely fact-driven and depends on the individual circumstances of each case.

- [26] Under the predecessor to the FLA, the Family Relations Act, the following factors have supported a finding of a marriage-like relationship: the decision to have a child together; the purchase of a home together; the pooling of finances for family and other expenses; the financial assistance the parties provided to one another throughout their relationship; the length of the relationship; and the joint efforts to preserve the relationship by attending counselling: *Stace-Smith v. Lecompte*, 2011 BCCA 129 at para. 15.
- [27] In *Dey v. Blackett*, 2018 BCSC 244, citing *Austin v. Goerz*, 2007 BCCA 586, the court held that the "determination of whether a relationship was marriage-like requires a 'holistic approach', in which all of the relevant factors are considered and weighed, but none of them are treated as being determinative of the question": at para. 192.
- [28] Parties can continue to "live together in a marriage-like relationship" even though they do not actually reside under the same roof: *Thompson v. Floyd*, 2001 BCCA 78 at para. 34.
- [29] In *Roach v. Dutra*, 2010 BCCA 264, the Court of Appeal upheld the trial judge's conclusion that the parties were spouses under the Family Law Act, even though they began living in separate residences, but with a view to preserving their relationship.
- [30] I note that in both *Thompson* and *Roach*, the couple had lived together prior to the separation and the issue was the nature of the relationship after they started living in separate residences.
- [31] A marriage-like relationship can be found in the absence of cohabitation where there is evidence that supports that a couple were in a loving and intimate relationship for many years. An example is found in *Connor Estate*, 2017 BCSC 978, where the court found at paras. 48-51 that even though the parties in question did not live together (they were unable to do so because of illness), they were in a "marriage-like relationship" for the purposes of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13. The evidence was that they had a "loving and intimate relationship" and that they supported each other emotionally, "loved each other, were faithful to each other, communicated with each other almost every day when they were not together, considered themselves to be (and presented themselves to be) "husband and wife" and were accepted by all who knew them as a couple": at para. 50.
- [32] A determination as to whether or not parties are "spouses" or in a "marriage-like relationship" is a question of mixed fact and law: *Austin v. Goerz*, 2007 BCCA 586; see also *Weber v. Leclerc*, 2015 BCCA 492 at para. 22, leave to appeal ref'd [2016] S.C.C.A. No. 19.
- [33] There are a myriad of factors that can be taken into account some of which include the questions listed in *Molodowich v. Penttinen*, (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), which the Court of Appeal noted in *Weber* at para. 25 "are helpful as indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship". That said, the Court of Appeal also emphasized that these factors should not be approached as a checklist, and that the circumstances should be addressed holistically. The approach in *Molodowich* is as follows:

[17] I propose to consolidate the statements just quoted by considering the facts and circumstances of this case with the guidance of a series of questions listed under the seven descriptive components involved, to varying degrees and combinations, in the complex group of human inter-relationships broadly described by the words "cohabitation" and "consortium":

(1) SHELTER:

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?

(2) SEXUAL AND PERSONAL BEHAVIOUR:

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

(3) SERVICES:

What was the conduct and habit of the parties in relation to:

- (a) Preparation of meals,
- (b) Washing and mending clothes,
- (c) Shopping,
- (d) Household maintenance,
- (e) Any other domestic services?

(4) SOCIAL:

- (a) Did they participate together or separately in neighbourhood and community activities?
- (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?

(5) SOCIETAL:

What was the attitude and conduct of the community towards each of them and as a couple?

(6) SUPPORT (ECONOMIC):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?
- (b) What were the arrangements concerning the acquisition and ownership of property?
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

(7) CHILDREN:

What was the attitude and conduct of the parties concerning children?

[34] To the foregoing must be applied the following caveat of Justice Blair in the *Warwick v. Ontario (Minister of Community & Social Services)* (1978), 91 D.L.R. (3d) 131:

The extent to which the different elements of the marriage relationship will be taken into account must vary with the circumstances of each case.

B. Analysis

- [35] The claimant submits that the period of time from August 2015 to when she moved in with the respondent in May 2016 ("the disputed period") they were in a marriage-like relationship and were, in essence, living together albeit in separate residences.
- [36] The respondent submits that during the disputed period he was in a committed relationship with KW, was living with her, and his relationship with the claimant was in essence an affair.
- [37] A key question is whether the couple intended their relationship to be one of indeterminate, lengthy duration, and whether the parties' evidence in this regard is consonant with objective evidence of the parties' lifestyle and interactions: Weber at paras. 17 and 24.
- [38] During the disputed period the respondent was living in Williams Lake at his Home with KW and their child, LR. He claims that they were living as a couple and not in separate bedrooms.
- [39] It is not disputed that, up until early 2016, the claimant was living in 100 Mile House. When she moved to Williams Lake she lived separately from the respondent until May 2016 when she moved into the Home. The claimant was aware that KW, LR and KW's mother (LR's grandmother) were living in the Home prior to her moving in.
- [40] While it is clear that the parties had a sexual relationship, the nature and scope of that relationship is disputed. The claimant says that they frequently were having sex at her residence, once at the respondent's Home, at a hotel, and once in the respondent's truck.

- [41] The claimant testified that their sexual relationship began in the early summer of 2015. The respondent testified at this time, the claimant was still in a committed relationship with her boyfriend. He testified that he attended a wedding with KW in August 2015 and went on a number of family trips with her. On his evidence, his sexual relationship with the claimant only started at the end of September or early October 2015.
- [42] The respondent testified that from the time the sexual relationship commenced in September or early October 2015 until the claimant moved in with him in May 2016, they would see each other at work, meeting for occasional sexual encounters, but during this period he was living with KW, having a sexual relationship with her, and they were still a couple. Essentially, he claims he was having an affair with the claimant during the disputed period.
- [43] The claimant relied on her Facebook posting in which under the heading Relationship posted "In a relationship since August 18, 2015". She testified that this was a public announcement of her relationship with the respondent. This, in itself, does not mean that it was akin to a marriage-like relationship. There has to be something more than a Facebook posting to provide evidence that the parties entered into a marriage-like relationship.
- [44] The claimant also testified that people at work knew she was in a committed relationship with the respondent because he sent her flowers, wrote her love notes, and placed post it notes on her work station. The respondent does not deny that he on many occasions wrote and told the claimant he loved her but denies that this was an indication of a serious relationship. His evidence is that he would tell a woman he loved her for the purpose of getting her to sleep with him. He agreed that he used this line on the claimant in order to trick her into sleeping with him.
- [45] The claimant's sister-in-law testified that when the respondent came to the Lower Mainland in approximately October 2015, the claimant spent the night at his hotel, and her understanding, from the claimant, was that the two were in a committed relationship. She agreed that the respondent never told her that.
- [46] There is evidence in text messages that the parties were in the Lower Mainland on October 6, 2015. The respondent conceded that they would have slept together at least one night in the hotel.
- [47] During Christmas 2015 the respondent alleges that the claimant was on the website "Plenty of Fish", a dating website, looking for new friends. The claimant denies this suggesting that she went on this website prior to the relationship with the respondent. Text messages placed in evidence reference "POF", being Plenty of Fish, by the claimant although they are not clear when the claimant accessed this website.
- [48] It may well be that the claimant felt that she was in a committed relationship with the respondent but clearly the respondent did not have the same intentions. His intentions were to mislead the claimant by saying that he loved her for the purpose of having a sexual

relationship with her while still in a committed relationship with KW. The evidence supports that this was a past pattern for the respondent: meet a woman, tell her he loved her, start a sexual relationship with her, have a child, and then, as he testified, the relationship would end when his partners found out he was having affairs. His explanation for the affairs was because the "grass was greener on the other side". He testified that this is how his relationship with AW ended, how his relationship with KW ended, and ultimately how this ended his relationship with the claimant as well.

[49] It is clear that the respondent has no concept of fidelity towards his partners. As he testified to the number of relationships that were destroyed as a result of his infidelities.

[50] The claimant testified that during the period from early summer of 2015 until the time she moved in with the respondent, they were seeing each other and having sex frequently, going out for dinners including having dinner with the respondent's son, MR, and taking him to movies. The respondent denies that the claimant spent any time with MR during this period of time. The claimant testified that she saw the respondent "almost everyday" from the spring of 2015 to May 2016. This claim was contradicted by both the respondent and by the text messages she sent to the respondent, which state:

- "It's just frustrating going days without you. Not knowing when I get to see you " (on February 28, 2016);

- "We haven't had sex in 3 weeks." (on March 2, 2016); and

- "I never see you." "I wait for you night and day to see you for a few minutes a fucking day." (on March 4, 2016).

[51] The respondent's evidence is that he was still in a relationship with KW until April 2016. The reason for the breakup with KW was that she found out he was sleeping with the claimant and the claimant was pregnant. He testified that until he found out that the claimant was pregnant he did not plan to break up with KW.

[52] In her 2015 tax return, the claimant stated that her marital status on December 31, 2015 was single. This changed in her 2016 tax return where she stated that her marital status on December 31, 2016 was living common law and her spouse was MR. This is further support that marriage-like relationship commenced in 2016 and not in August 2015 which the claimant alleges.

[53] There is no evidence that any financial support was provided by either party to the other during this period, other than the evidence from the claimant that she paid \$6,800 towards the purchase of a 2016 F150 Ford in mid April 2016 which vehicle was placed in both their names. The evidence suggests that the claimant drove this vehicle. They were both working full time and there is no evidence of any sharing of financial resources.

- [54] With respect to children, prior to becoming pregnant, the claimant testified that when she and the respondent discussed children that the respondent told her he did not want to have any more children. She claims that at some point this changed and that she stopped using birth control after a discussion with the respondent.
- [55] The respondent testified that during the sexual encounters condoms were used. He does not recall a discussion of birth control but concedes he might have told the claimant he wanted more children.
- [56] The claimant became pregnant in early March 2016. She disclosed the pregnancy to the respondent in March 2016. Her evidence was that the respondent was extremely happy. The respondent's evidence was that the claimant asked him to stop sleeping with KW and that initially the claimant was uncertain if she wanted to have the baby.
- [57] In my view, the evidence in this case supports that, as of May 2016 when the claimant moved into the respondent's Home, the parties commenced living together in a "marriage-like" relationship. The evidence does not support that prior to May 2016 the parties were in a marriage-like relationship. The burden was on the claimant to prove, on a balance of probabilities, a marriage-like relationship prior to May 2016 and she has failed to do so: *Ashton v. Hales*, 2017 BCSC 1928 at para. 30.
- [58] The evidence does not support any other trappings of a marriage-like relationship. At most, the claimant believed that the respondent was committed to her but the respondent did not share the same beliefs. Nor does the objective evidence of the parties' lifestyle and interactions support that a marriage-like relationship was entered into until May 2016.
- [59] To be considered a "spouse" for the purposes of s. 3(1)(b)(i) of the FLA, a claimant must establish that the parties cohabited in for at least two years. This has not been met on the facts of this case.
- [60] As noted in *Asselin v. Roy*, 2013, BCSC 1681 at para. 5:
- [5] The effect of the Act, insofar as it relates to the parties, is to modify the definition of "spouse" so as to include unmarried parties who have resided together for in excess of two years in a relationship akin to that of marriage. The Act removes the requirement on the claimant to demonstrate an entitlement to certain of the properties in issue premised upon trust principles.
- [61] As such, the claimant can only be considered a spouse under s. 3(1)(b)(ii) of the FLA due to the fact that parties had a child together.
- [62] This section permits an application for spousal support but does not permit the application of Part 5 or 6 of the FLA. As such any claim for property must be made under equitable principles and not the property division scheme in the FLA.

- [63] As such in this case the only claim the claimant has against the property, being the Home and the respondent's company, Lake City, is under trust principles.

VI. Relocation

- [64] Under the FLA, "relocation" is defined in s. 65(1) as a "change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship" with a guardian or other person with a significant role in the child's life.
- [65] What constitutes a "significant impact" and a "significant role" will require judicial consideration. In my view, a move from Williams Lake to Kamloops can be reasonably expected to have a significant impact on the relationship between the Child and the respondent, and the Child's half-brothers. The claimant did not dispute that such a relocation would have such an impact.
- [66] Part 4 of the FLA provides two mechanisms for the relocation of children: (a) one where there is no order or written agreement respecting parenting arrangements in place (s. 46); and (b) one where there is a "written agreement or an order respecting parenting arrangements or contact with the child" (s. 65).
- [67] Option (a) directs a consideration of whether the relocation is in the best interests of the child, and the reasons for the proposed change.
- [68] Option (b) involves a more nuanced approach. Where the relocating guardian and the other guardian do not have substantially equal parenting time with the child, the relocating guardian is given some deference in the sense that where the court is satisfied that the relocation has been made "in good faith" and there are "reasonable and workable arrangements" to preserve the child's relationship with the other guardian and other significant persons in their life, the proposed relocation in s. 69 must be considered in the best interests of the child, unless the other guardian satisfies the court otherwise. Where the relocating guardian and other guardian have "substantially equal parenting time", there is a consideration of the same factors, but the relocating parents do not benefit from deference: they must establish that the relocation is in the best interests of the child: *Pepin v. McCormack*, 2014 BCSC 2230 at para. 56.
- [69] When the notice of family claim was filed on February 6, 2018 in Action 1168, which contained the request for relocation, there was an Interim Parenting Order in place. That Interim Parenting Order provided that the claimant had substantially more parenting time than the respondent. The parties proceeded on the basis that s. 69(4) of the FLA applied, which is option (b) described above.
- [70] Therefore, pursuant to s. 69(4) of the FLA, the approach to determine whether the claimant should be permitted to relocate is as follows:

- (4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,
- (a) the relocating guardian must satisfy the court that
 - (i) the proposed relocation is made in good faith, and
 - (ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
 - (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.

Analysis

A. Is the proposed relocation made in good faith?

[71] To determine if the relocation is in good faith, the court must consider all relevant factors, including those enumerated in s. 69(6):

- (6) For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following:
- (a) the reasons for the proposed relocation;
 - (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
 - (c) whether notice was given under section 66 [notice of relocation];
 - (d) any restrictions on relocation contained in a written agreement or an order.

[72] Based on the evidence before me the main reason for the relocation is to allow the claimant to pursue an educational program of her choice so that her ability to become self-sufficient is enhanced. She further claims that such a relocation would increase her access to her parents, since it would be easier for her family to fly to Kamloops than Williams Lake because her brother is an Air Canada pilot and he gets discount rates for family members. The other reason is she claims that there exists better daycare opportunities for the Child in Kamloops.

[73] The respondent produced evidence that there were programs in Williams Lake that offered a similar program as the one that the claimant wanted to take. These programs were online programs. I am not convinced that an online course is equivalent to attending an educational facility in person. Furthermore, the online programs were not of the same type in that for the most part they referred to a Bachelor's degree and not a diploma. The claimant testified that she wanted to attend the course in person since that would provide

the opportunity to apprenticeship with hands-on experience that could lead to a career after the program finished. Her view was that online courses were "not as credible as hands-on courses" and that online courses "sound very isolated".

- [74] The other reasons she provided for relocating, that her family would be more accessible and that better educational daycares existed in Kamloops, were less persuasive. The only "family" member that live in Kamloops is the claimant's mother's boyfriend's family. The claimant has never visited these individuals in Kamloops.
- [75] There may be more varied daycare facilities in Kamloops, however the claimant testified that there were two educational daycare facility in Williams Lake but that they are not easily accessible and have a waitlist. There is no evidence that supports the claimant has actively tried to get the Child into these educational daycares.
- [76] Ultimately, I find that the educational reasons provided by the claimant for the move establishes that the proposed relocation was made in good faith.
- [77] In assessing whether the move is likely to enhance the well-being of the Child and the claimant, I find that the evidence is divided. The assertion is that if the claimant moves to Kamloops she will pursue further education which in turn will lead to greater financial security for her which will benefit the Child. The claimant will also have a better quality of life if she is able to pursue her educational dreams and have access to more job opportunities.
- [78] I do accept that the claimant's emotional well-being will be enhanced by leaving Williams Lake. She has had to endure running into a number of the respondent's friends and finds these encounters upsetting. As she put it, she needs to get away to stop being harassed, and for "peace of mind". She has no established network of friends or relatives in the Williams Lake community. I accept that it is also likely that she will have more job opportunities in that Kamloops is a much larger community. That said, she has not made any plans to achieve the pre-requisites to permit her to apply to take the two year diploma course at Thompson Rivers University. She also has not secured any potential employment in Kamloops.
- [79] In my view, the proposed relocation will not likely enhance the Child's general quality of life since she will be uprooted from the community she has lived in since birth, her relationship with her half-brothers and father will be impacted, and she will have to endure lengthy car rides on alternative weekends to be transferred between communities.
- [80] The claimant appropriately has sought the relocation order as part of her notice of family claim.
- [81] There exists an ex parte order obtained in the 1153 Action that the Child must not be relocated outside of Williams Lake pending the agreement of the parties or further court order.

[82] In all of the circumstances, I am satisfied that the claimant has established that the proposed relocation is made in good faith and she has satisfied the first condition in s. 69(4).

B. Does there exist reasonable and workable arrangements?

[83] The second component under s. 69(4) is whether there exists reasonable and workable arrangements to preserve the child's relationship with the respondent and other significant persons in the child's life.

[84] The claimant's proposal if the relocation to Kamloops is permitted is that the respondent will have parenting with the Child from Friday at 7:00 p.m. to Monday at 7:00 p.m. on alternative weekends. Alternatively, she proposes that the parenting time be from Thursday at 7:00 p.m. to Monday at 7:00 p.m. on alternative weekends.

[85] The exchange of the Child will be made at the Shell gas station in Clinton, B.C.

[86] This proposal means that the Child would not see the respondent for 10 to 11 consecutive days, depending on which arrangement is granted. This arrangement will also significantly decrease the amount of time that the Child will have with her half-brothers.

[87] It is clear that once the Child reaches school age this proposal will not be workable since it would require the Child to miss from 2 to 3 days of school.

[88] I am concerned that in the interim while the Child is not yet in school, this proposal is workable, but I have reservations on the reasonableness of this proposal to preserve the relationship between the Child, the respondent, and her half-brothers.

[89] I also have a serious concern that this will only be workable for the next three years when the Child is in daycare and will cease to be once the Child is attending school.

[90] A further concern is that a relocation greatly impacts a move towards a shared parenting regime of the Child which I will discuss later in these reasons.

[91] I find that the claimant has not proposed a reasonable and workable arrangement to preserve the relationship between the Child and the respondent.

[92] Although I found that the claimant has not established a reasonable and workable arrangement under s. 69(4)(a)(ii), this Court in *C.M.B. v. B.D.G.*, 2014 BCSC 780, considered whether courts should nevertheless go on to consider the best interests of the child. In that case, Justice Fleming comments at para. 78:

78 To summarize, I have concluded that the correct approach under s. 69(4) and (5) is for the court to consider whether the proposed relocation is made in good faith and whether reasonable and workable arrangements have been proposed. If one or both of these criteria are not met, the court must still go on to consider whether the proposed relocation is in the child's best interests. Satisfaction of good faith and reasonable workable arrangements is necessary in order for a relocating guardian to benefit from the presumption under s. 69(4)(b) that the move is in the best interests of the child.

[93] I turn now to the best interests of the Child.

C. Best interest of the child

[94] Section 37 of the FLA states that all orders for guardianship, parenting arrangements or contact with a child must be made with consideration of only the best interests of the child. The applicable factors from s. 37(2) of the FLA are as follows:

- (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.

i. Analysis

a. Health and emotional well-being

[95] The evidence demonstrates that the Child's medical and emotional needs are met by both parents. There was some evidence led that the Child is not excited to see the claimant when she attends to pick her up at daycare but I place little weight on that evidence. It is clear that both parents are prepared to provide for the Child's needs. The evidence supports that the Child is a generally healthy two year old.

[96] The past animosity between the parents, if it continues, may have a negative impact on the Child. Since both parents want the best for their child, I anticipate that the past behaviours will cease and all future exchanges will be done in a respectful, courteous fashion.

- [97] If the parents are living in two separate communities, this will impact their ability to attend medical appointments together, daycare meetings, and as the Child enters school, the various school related activities, such as meet the teacher, sports days, school productions, and the like. It is not in the best interests of the Child to impede the ability of both of her parents to be involved in all aspects of her life including her school environment. I make this observation accepting that parents have a right to relocate as noted in *A.B. v. C.D.*, 2014 BCSC 1081 at para. 128:
- [128] Custodial parents, like other Canadians, have the right to relocate. Courts are not arbiters of the reasonableness of every decision a custodial parent makes. In *MacPhail v. Karasek*, 2006 ABCA 238, the Alberta Court of Appeal made this pithy observation:
- [44] [I]t is not an option to conclude a child's best interests are served by both parties living in the same place any more than it is an option to consider that it is in the child's best interest that their parents remain together.
- [98] I am further concerned that if there is a relocation to Kamloops, the Child will spend many hours in a vehicle as part of the transfers. The drive between Williams Lake and Kamloops is three hours. If there are winter driving conditions there is the potential for the drive to take much longer. If due to winter conditions the roads are not safe then potentially the transfers will have to be changed. This will cause further tension and friction between the parents on how make up time can be achieved.
- b. Relationships between the Child and significant persons in her life
- [99] The Child has two half-brothers who she should continue to spend time with and develop a sibling relationship with. The evidence demonstrates that MR and LR love their little sister. In my view, if the Child is allowed to be relocated to Kamloops it will have a significant impact on the respondent and the Child's half-brothers.
- [100] There are no relatives living in Williams Lake, other than her half-brothers, whom the Child has a relationship with.
- [101] In Kamloops, the only relatives are the claimant's mother's boyfriend's family. Of significance is that the claimant has never visited these relatives at any time.
- [102] The claimant submits that the Child will have greatly enhanced access to her maternal grandparents who reside in the Lower Mainland. This is on the basis the claimant's brother works for an airline that flies to Kamloops and not Williams Lake. The brother can obtain discounted tickets or passes for his family. It is not known how long the claimant's brother will have access to these discounted tickets. There is evidence that the claimant has taken the Child to the Lower Mainland for these visits, if the maternal grandparents want to see their grandchild.
- c. History of childcare

[103] The claimant has been the Child's primary caregiver since she was born. She was a full-time, stay-at-home mother for the first year of the Child's life. After her maternity leave ended, she returned to work on a full-time basis using daycare for the Child's care during the day. The respondent also works full-time.

[104] There is nothing in the history of the Child's care that raises issues as to the ability of these parents to care for her. The claimant has arranged for the Child to participate in some extracurricular activities, such as swimming lessons and riding lessons. During the respondent's parenting time with the Child, he describes the various activities he does, which are allowing the children family time, making crafts and cookies.

[105] I am satisfied that both parents are capable of caring for the Child, and that that care, of both parents, is beneficial to her.

d. The Child's need for stability

[106] The Child needs stability and to have relationships with both her parents. As I have discussed above, I am concerned about the travel time required to share parenting time if the claimant were to relocate. While, once again, I recognize that parents have a right to move, I note that stability is best be accomplished with her parents living in the same community so that when she is in school and participating in extracurricular activities both of her parents can be involved and she is not subject to lengthy transit between communities.

e. Ability of the parents to exercise parenting responsibilities

[107] I have no concern with either parents or their ability to carry out their parenting responsibilities. The evidence led by the respondent is that he has successfully maintained a parental relationship with his two sons from his prior relationships and cares for them approximately 50% of the time. He was described by a number of witnesses as a loving and caring father.

[108] The claimant has had primary care of the Child's needs since her birth. She is clearly a loving and caring mother.

f. Impact of any family violence

[109] Both parties make allegations of violence against the other. The claimant alleges that the respondent has acted in a coercive and intimidating manner, has shoved her, used abusive language, and has failed to delete intimate photos of her that she had sent to him. The respondent alleges that the claimant hit him with a vehicle requiring him to receive medical care and resulting in three cracked ribs. He also alleges that she has used abusive language, and has acted in a threatening manner during some of the parenting exchanges. The veracity of the allegations is hard to discern.

[110] In my view, both parties have acted in ways that reflect poorly on them as parents when they should be acting as positive role models for their Child. I emphasize here that all of these negative past behaviours should cease. If this behaviour continues, it will adversely impact the Child. The parties should remain focussed on the Child's well-being rather than the disputes that may exist between each other.

g. Ability of the guardians to cooperate

[111] The evidence does raise a concern about whether these parents can cooperate on issues affecting the well-being of the Child. I am hopeful that the future will see a change and the parties will realize that the Child's needs should come first. The understandable anger that the claimant has towards the respondent needs to be put aside when dealing with the Child's best interests.

[112] In my view, both parents should take the "Parenting After Separation" course offered by the government, if they have not already done so. The course can be taken online and, after completion of the course and an exam, a certificate of attendance can be obtained and should be exchanged between the parties.

[113] It is imperative that the parties learn how to better co-operate.

ii. Conclusion on relocation

[114] In all of the circumstances, it is my conclusion that relocation to Kamloops is not in the Child's best interest for the following reasons:

- a. The Child should have the stability and support of both her parents being involved in all aspects of her care including medical, daycare, and ultimately schooling;
- b. The Child's relationship with her half-brothers are best met with her remaining in the same community;
- c. The Child at her young age should not have to endure car rides for many hours on potentially dangerous snow covered roads for transfers every other week; and
- d. Any relocation will make a future shared parenting regime unworkable.

VII. Parenting Arrangements

[115] Since the Child will not be relocated to Kamloops, I turn now to whether the current parenting arrangements meets the Child's best interests.

[116] The Child is just over two years old. She has spent the majority of her time with the claimant. As the Child gets older, it is my view that it is in her best interests that she ultimately spends equal time with both parents.

[117] The issue is when and how this should best be accomplished.

- [118] In my view, by the time the Child is four year old, (so in approximately two years), the parents should be on a shared parenting schedule. It would seem to make the most sense that the parenting time that the respondent has with the Child should try and overlap with some of the time the respondent has with LR and MR so the Child can see her half-brothers.
- [119] According to the custody agreement which was filed on July 31, 2018, between KW and the respondent, the respondent has LR every Monday from 8:00 a.m. to Friday at 5:30 p.m. and KW has LR from Friday at 5:30 p.m. to Monday at 8:00 a.m. At this stage, it is not known whether the current parenting schedule that the respondent has with LR will continue.
- [120] The respondent seeks equal parenting time, alternating weeks with the Child, and sharing holidays.
- [121] Ultimately I am satisfied that to provide the most stability for the Child and allow her to spend time with her half-brothers, the following schedule should be followed:
- Week 1: Respondent to have parenting time with the Child from Thursday at 5:00 p.m. to Monday at 5:00 p.m.
 - Week 2: Respondent to have parenting time with the Child from Wednesday at 5:00 p.m. to Friday at 5 p.m.
 - The Claimant will have the balance of the parenting time.
- [122] The parties shall exchange the Child at daycare when she is in daycare and at Kiwanis Park, when she is not in daycare.
- [123] The parties shall share holiday time as follows:
- Each party shall be entitled to two one-week holidays with the Child, upon two months' written notice. The two one-week holidays may occur consecutively.
 - On even years, the claimant will have parenting time with the Child from 7:00 p.m. on December 23 to 7:00 p.m. on December 27. In odd years, the respondent will have parenting time with the Child from 7:00 p.m. on December 23 to 7:00 p.m. on December 27.
 - On even years, the respondent will have parenting time with the Child on New Year's Eve and New Year's Day. In odd years, the claimant will have parenting time with the Child on New Year's Eve and New Year's Day.
- [124] This schedule should remain in place until the Child turns four, in December of 2020, at which time the parties should share parenting time equally. At that time, if the parties cannot agree on the equal sharing of the parenting time, an application can be made.
- [125] The parenting time may be adjusted, if agreed to in writing, between the parties or on further court order.

VIII. Parenting Responsibilities

[126] It is my view the Master Joyce Model, as it is commonly described, should be followed in this case. It provides that:

1. in the event of the death of a guardian, the surviving guardian(s) will be the only guardian(s) of the child;
2. each guardian will have the obligation to advise the other guardian(s) of any matters of a significant nature affecting the child;
3. each guardian will have the obligation to discuss with the other guardians any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
4. the guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
5. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child will be entitled to make those decisions and the other guardian(s) will have the right to apply for directions on any decision the guardian(s) consider(s) contrary to the best interests of the child, under s. 49 of the Family Law Act; and,
6. each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
7. the guardians will maintain a common exchange journal which is to be exchanged when the child is transferred to the other guardians. Each guardian is to record on a daily basis while the child is in its care matters relating to the child including:
 - i. School - such as events, key dates, report cards, newsletters, outings, assignments, home reading, parent/teacher meetings and homework;
 - ii. Health - observations of the child, child's complaints, doctors' appointments, dental appointments, medications, injuries, and diet;
 - iii. Social - invitations, activities taken and family events;
 - iv. Extracurricular activities - registration, schedules, equipment, and events;
 - v. Clothing;
 - vi. Key contact information for doctors, dentists, daycare, sitters, parents emergency contact numbers; and
 - vii. Any other matter relating to the care of the child.

[127] If the parties cannot reach agreement despite their best efforts, the claimant shall have the right to make the decision, and the respondent shall have the right to apply for directions under s. 49 of the FLA. In my view because of the degree of animosity the parties have shown one another in the past, there needs to be an ultimate decision maker in place.

[128] The allocation of these responsibilities can be revisited once the parties are sharing parenting time with the Child equally.

IX. Child Support

[129] Under the Interim Support Order, the respondent is paying child support in the amount of \$861 a month based on an imputed guideline income of \$90,100.

[130] The claimant asserts that the amount of income that should be imputed to the respondent should be \$172,137 from December 2017 to November 2018, and moving forward.

[131] The respondent asserts that the amount of income that should be imputed to him is \$90,100.

1. Legal principles

[132] The relevant sections of the Federal Child Support Guidelines, SOR/97-175 [Guidelines] are as follows:

Calculation of annual income

16 Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

...

Imputing income

19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

Reasonableness of expenses

- (2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.

Obligation of applicant

21 (1) A spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:

- (a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;
- (b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;
- (c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration;
- (d) where the spouse is self-employed, for the three most recent taxation years
 - (i) the financial statements of the spouse's business or professional practice, other than a partnership, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;
- (e) where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;

- (f) where the spouse controls a corporation, for its three most recent taxation years
- (i) the financial statements of the corporation and its subsidiaries, and
- (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;
- (g) where the spouse is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and
- (h) in addition to any income information that must be included under paragraphs (c) to (g), where the spouse receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information.

Obligation of respondent

- (2) A spouse who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, must, within 30 days after the application is served if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court, as well as the other spouse or the order assignee, as the case may be, with the documents referred to in subsection (1).

Special expenses or undue hardship

- (3) Where, in the course of proceedings in respect of an application for a child support order, a spouse requests an amount to cover expenses referred to in subsection 7(1) or pleads undue hardship, the spouse who would be receiving the amount of child support must, within 30 days after the amount is sought or undue hardship is pleaded if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court and the other spouse with the documents referred to in subsection (1).

Income over \$150,000

- (4) Where, in the course of proceedings in respect of an application for a child support order, it is established that the income of the spouse who would be paying the amount of child support is greater than \$150,000, the other spouse must, within 30 days after the income is established to be greater than \$150,000 if the other spouse resides in Canada or the United States or within 60 days if the other spouse resides elsewhere, or such other time limit as the court specifies, provide the court and the spouse with the documents referred to in subsection (1).

Making of rules not precluded

- (5) Nothing in this section precludes the making of rules by a competent authority, within the meaning of section 25 of the Act, respecting the disclosure of income information that is considered necessary for the purposes of the determination of an amount of a child support order.

Failure to comply

22 (1) Where a spouse fails to comply with section 21, the other spouse may apply

- (a) to have the application for a child support order set down for a hearing, or move for judgment; or
- (b) for an order requiring the spouse who failed to comply to provide the court, as well as the other spouse or order assignee, as the case may be, with the required documents.

Costs of the proceedings

- (2) Where a court makes an order under paragraph (1)(a) or (b), the court may award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

Adverse inference

23 Where the court proceeds to a hearing on the basis of an application under paragraph 22(1)(a), the court may draw an adverse inference against the spouse who failed to comply and impute income to that spouse in such amount as it considers appropriate.

[133] The relevant sections of Schedule III of the Guidelines provide:

Net self-employment income

9 Where the spouse's net self-employment income is determined by deducting an amount for salaries, benefits, wages or management fees, or other payments, paid to or on behalf of persons with whom the spouse does not deal at arm's length, include that amount, unless the spouse establishes that the payments were necessary to earn the self-employment income and were reasonable in the circumstances.

Additional amount

10 Where the spouse reports income from self-employment that, in accordance with sections 34.1 and 34.2 of the Income Tax Act, includes an additional amount earned in a prior period, deduct the amount earned in the prior period, net of reserves.

Capital cost allowance for property

11 Include the spouse's deduction for an allowable capital cost allowance with respect to real property.

- [134] The party seeking to impute income bears the onus of showing, on a balance of probabilities and rational and evidentiary basis, that income should be imputed: *D.M.B. v. D.W.A.L.*, 2018 BCSC 1254 at para. 140. It is sufficient to show that the other party has deducted business expenses to meet this initial evidentiary burden on the claimant: *C.M. v. V.M.*, 2016 BCSC 2144 at paras. 39-40; *Sobiegraj v. Sobiegraj*, 2014 ONSC 2030 at paras. 65-67.
- [135] Once the claimant establishes this evidentiary foundation, the onus shifts to the responding party to show that his business expenses are a reasonable deduction from his income for child support purposes: *C.M.* at para. 39, citing *Sobiegraj*.
- [136] According to the court in *D.M.B.*, "determining what are reasonable deductions should involve a detailed analysis of the deductions claimed in order to assess the items that make up the sums deducted": at para. 148. Notwithstanding the failure of the respondent to provide documents necessary to analyse the business expenses in detail, the Court may still undertake an assessment of the claimed deductions: *D.M.B.* at para. 149.
- [137] Expenses must be reasonable and for legitimate business purposes, in all the circumstances. Where expenses are personal in nature (providing a personal benefit to the party) and/or constitute an ordinary living expense, it is not appropriate to deduct the expenses and the expenses should be added back into the party's income: *D.M.B.* at para. 150, citing *Ursel v. Ursel*, 2014 BCSC 1219; *Kowalewich v. Kowalewich*, 2001 BCCA 450.
- [138] As provided for in s. 19(2) of the Guidelines, the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.
- [139] The Court has discretion, in assessing income, to employ common sense when analysing financial information. Expenses may be added back where no evidence is adduced on the point: *D.M.B.* at para. 150, citing *Ursel*.
- [140] The Court of Appeal in *Vincent v. Vincent*, 2012 BCCA 186 at para. 35, set out a three step process to determine a parent's Guideline income. First, find the spouse's Line 150 income. Second, make whatever adjustments to that amount are required by Schedule III. Third, and once these first two steps are complete, the court must examine ss. 17 and 20 of the Guidelines to determine whether any of the exceptions apply, and, if so, what effect they should be given.

2. Evidence regarding the respondent's income

[141] Prior to starting up Lake City, the respondent worked at various automobile dealerships. In August of 2016, he started Lake City.

[142] His tax returns provide:

Year

Total Income

Total Income

Deductions

Net Income

2015

\$90,121 (employment income)

\$90,121

\$1,700

\$88,421

2016

\$68,839.09 (employment income)

\$2,385.98 (RRSP income)

\$10.00 (other income)

\$179.15 (net self-employment income)

· gross self-employment income: \$51,974.13

· business expenses: \$30,074.06

\$71,414.22

\$0

\$71,414.22

2017

\$43,878.94 (net self-employment income)

· gross self-employment income: \$268,578.88

· business expenses: \$94,212.48

\$43,878.94

\$1,998.76

\$41,880.18

- [143] The disparity between 2015 and 2016 is that in 2014 the respondent received a signing bonus that was claimed in his 2015 income. The respondent agreed that some of the business expenses, relating to the truck expenses, should be included in his income. He suggests an appropriate figure would be \$90,100. The respondent conceded that his income in 2017 would have been higher but for the wild fires. He also conceded that he sometimes receives payments in cash.
- [144] The claimant suggests several approaches in calculating the respondent's income.
- [145] Under the first approach, the claimant relies on a profit and loss statement that was attached to the financial statement of the respondent sworn and filed on April 30, 2018. The profit and loss statement shows a profit of \$81,002.45. She submits that the expense figure for tools of \$26,976.76 should be included in the profit since they should not have been fully expensed. Her rationale is that the shop tools are ones that last more than one year and could be sold.
- [146] Under this approach, the claimant argues the respondent's income should be \$107,981. However, she says that this approach should not be taken, as it would not do justice to her since the respondent's bank statements for 2017 showed the following deposits:
- a. RBC Personal account: \$139,758.84
 - b. RBC business account: \$304,297.98
 - c. Scotia One account: \$32,378.28

Total: \$479,435.10

- [147] The second approach suggested by the claimant is that the profit and loss statement has \$187,000 in expenses. Using this figure, the respondent's profit would be \$479,435.10 (in bank deposits) minus the expenses of \$187,000, equalling a profit of \$292,435.
- [148] The third approach would be to assume that the respondent's true income is represented by the deposits into his personal accounts being \$139,758.84 plus \$32,378.28, for a total of \$172,137.
- [149] The respondent disputes that the profit and loss statement is accurate. He testified that it had not been reconciled and that it did not include capital costs allowances, leases, and GST. Further, under the first approach, he says that not all of his tools are sellable assets. The respondent also takes issue with the claimant simply adding up all of the deposits without any consideration of the withdrawals. He notes that some of the deposits were e-transfers. He further notes that some of the deposits would have included taxes and at the end of the year he had to pay back to the government. In addition he testified that in some cases deposits were paid on parts and the clients would sometimes overpay and a refund would be provided.

3. Evidence regarding the claimant's income

[150] The claimant began working at Sunrise Ford in 100 Mile House in late 2012 or early 2013. In October 2015, she began working for the Sandman Inn in Williams Lake. In 2016, she took a second job working for Tsi Del Del Enterprises ("Tsi Del Del") one day a week. The claimant was on maternity leave from November 10, 2016 to November 22, 2017. After her maternity leave ended, she returned to work at Tsi Del Del on a full time basis, working approximately 40 hours a week.

[151] The claimant switched from full-time to part-time work in August 2018, working approximately 20 hours per week. She was terminated from this job on October 30, 2018, for missing too much work. As at the date of the trial she had not secured any new employment. She has been dependent on her father to assist her. She described her financial situation as "extremely dire".

[152] Her future plans are to get an education in law enforcement and become self sufficient for herself and her daughter.

[153] Her tax returns and notices of assessment show the following income:

Year

Type of Income

Income

2014

Employment

\$27,475

2015

Employment

Other Income

Total

\$36,155

\$50

\$36,205

2016

Employment

Employment insurance

Other Income

Total

\$33,844

\$1,455

\$1,297

\$36,636

2017

Employment

Employment insurance

Total

\$3,016

\$22,795

\$25,811

[154] When working full time for Tsi Del Del enterprises in 2018, she was earning \$19.00 an hour. If she was working 40 hours a weeks that would amount to \$760 a week. She is currently paying \$850 a month in rent. She is relying on her father to pay her rent at this time.

[155] The claimant submits that her income should be imputed as follows:

- \$37,648 - December 2017 to October 2018
- 0 - November 2018 to December 2018
- \$37,648 - January 2019 onwards

[156] The rationale for this is that on October 30, 2018, the claimant was terminated from her job and for November and December 2018 the claimant had to focus on the litigation and giving evidence at the trial and was not in a position to locate and secure new employment.

[157] The claimant admits that she received \$1,520.00, less applicable taxes and payroll deductions, from Tsi Del Del on October 30, 2018 which was equivalent to two weeks' pay.

4. Analysis

A. Respondent's income

- [158] I do not find that the appropriate approach is to add up all deposits made into the respondent's two personal bank accounts and find that this is the correct income to be imputed to the respondent. However, the deposits into his various accounts does raise a concern in respect how to best calculate the respondent's Guideline income.
- [159] In D.M.B., the claimant's wife's position was as follows:
- [134] The claimant submits the respondent's income is greater than he acknowledges both regarding his claimed gross income and his net income. His gross income relates to deposits shown to his business account exceeding his gross income declared for tax purposes. The net income issue involves both the issue of his true gross income and the legitimacy of business expenses claimed by the respondent for tax purposes. The claimant submits that income should be imputed to Mr. L. of \$175,000 per year starting with 2014 based on the records disclosed, his spending habits and his lifestyle.
- [160] In that case there was evidence to support that the respondent's income exceeded his reported gross income and that the respondent was living a lifestyle that exceeded his Line 150 income. The judge notes evidence given about lavish vacations and gifts purchased by the respondent: D.M.B. at paras. 163-165. This type of evidence does not exist in this case.
- [161] I find that the claimant has met the initial evidentiary burden of showing that income should be imputed to the respondent because he has deducted business expenses. So the onus shifted to the respondent to show that the deductions were justified. The respondent now bears the onus of establishing that the deductions were reasonable. The respondent had the obligation of disclosing financial information and documentation to justify the deduction of each of the expenses: D.M.B. at para. 94. For the most part, he failed to do so.
- [162] The respondent admitted that some of the transportation expenses should be included in his Guideline income. The particulars of which expenses were not itemized in his evidence. The respondent submits that \$46,221.06 should be included back into his Guideline income. There was no explanation how this figure was arrived at, other than suggesting that the approach taken by Justice Church in setting the amount for interim support in the Interim Support Order should be followed.
- [163] The respondent's 2017 tax return shows a gross business income of \$268,578.88 for self-employment. The deposits into the RBC business account \$304,297.98, a discrepancy of \$35,700. The respondent's explanation for this discrepancy was that he transferred money back and forth from his business and personal accounts and that, as a sole proprietor, he had some petty cash. He also testified that he sold his own belongings to fund his business account because he was trying to make it successful, and that he could have sold guns to make that money.

- [164] A combination of the lack of evidence from the respondent on the various business expenses, combined with the deposits into his business bank accounts, raises the concern that not all income has been accounted for and not all expenses are reasonable and legitimate business expenses.
- [165] It is difficult to conduct a detailed analysis due to the failure of the respondent to provide evidence to support the deductions made.
- [166] The respondent pays child support for LR in the amount of \$400 per month plus splitting the day care costs in accordance with a filed custody agreement. He also pays expenses for MR to attend private school. He is not, at this time, paying any monthly child support for MR.
- [167] In light of the evidence before me, I find that the respondent's Guideline income should be imputed at \$115,000.

B. Claimant's income

- [168] I accept that it is reasonable to give the claimant until January, 2019 to secure new employment. She did receive the termination pay from Tsi Del Del that should be accounted for. I find the Guideline income that should be imputed to the claimant is:

- \$38,000 - December 2017 to October 2018
- \$1,520 - November 2018 to December 2018
- \$38,000 - January 2019 onwards

5. Conclusion on child support amounts

- [169] The commencement date for payment of child support will be February 1, 2018. During January 2018, the Child was residing with the respondent exclusively until the middle of the month. After that date the Interim Parenting Order came into effect.
- [170] The table below sets out the set-off the respondent should be paying during the various time periods:

Year

Income of Claimant

Table Amount

Income of Respondent

Table Amount

Set-off payable

February-October

2018

\$38,000

\$2,864

\$115,000

\$8,576

\$5,712

November-December

2018

\$9,120*

\$0

\$115,000

\$2,144

\$2,144

January-April 2019

\$38,000

\$1,431

\$115,000

\$4,288

\$2,857

*based on earnings of \$1,520 in November and December 2018

[171] The amount that the respondent paid for child support from March 2018 to March 2019 (\$861 per month) must be deducted from the amounts payable. The amounts are summarized in the below table along with the amount of child support outstanding.

Year

Child support paid

Child support payable

Amount overpaid/outstanding

February-October 2018

\$6,888

\$5,712

\$1,176 (overpaid)

November-December 2018

\$1,722

\$2,144

\$422 (outstanding)

January-April 2019

\$3,444

\$4,288

\$844 (outstanding)

Total

\$12,054

\$12,144

\$90 (outstanding)

[172] Therefore, the respondent owes \$90 in retroactive child support.

X. Special and Extraordinary Expenses

[173] The Interim Support Order requires that the respondent contribute \$187 for the Child's day care expenses.

[174] In accordance with the Guideline calculations, the percentage sharing of the Child's section 7 expenses are 35% by the claimant and 65% by the respondent.

[175] In respect to the daycare costs, there was some evidence that a further subsidy may be available. The parties should be applying for whatever subsidies are available to offset these shared costs.

XI. Spousal Support

1. Legal principles

[176] As I have determined that the claimant meets the definition of "spouse" from s. 3(1)(b)(ii) because her and the respondent have a child together, she qualifies as a spouse for spousal support purposes: *Matteucci v. Greenberg*, 2016 BCCA 116 at para. 52.

[177] In determining the quantum and duration of spousal support it is also necessary to bear in mind the three models of spousal support described in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, namely: compensatory, contractual, and non-contractual (needs-based) and the objectives set out at para. 161 of the FLA:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[178] The nature and significance of compensatory spousal support is discussed in numerous authorities including *Moge v. Moge*, [1992] 3 S.C.R. 813, and *Bracklow*. Compensatory grounds recognize the causal connection between losses incurred during the relationship or its breakdown: *Moge*. But the appropriate measure of compensatory support is not assessed by doing a detailed accounting at the end of a marriage to determine what financial "losses" a spouse suffered as a result of expenditures made during the marriage (including the period of cohabitation). Instead, the Court must have regard to the statutory provisions governing support, the relevant authorities, and the Spousal Support Advisory Guidelines [SSAG].

[179] Non-compensatory support is "grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union": *Chutter v. Chutter*, 2008 BCCA 507 at para. 54. Upon marriage dissolution, it falls on the former partner to meet the needs of a disadvantaged spouse, not the state: *Chutter* at para. 54. "Need" alone may be sufficient to ground a claim for spousal support: *Bracklow*, at para. 43.

[180] According to the Court in *Chutter*, "need" is something more than basic necessities, at para. 55:

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

[181] "Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[182] Likewise, the court in Chutter notes at para. 56 that economic self-sufficiency is a relative concept:

The Ontario Court of Appeal in *Allaire v. Allaire* (2003), 170 O.A.C. 72, 35 R.F.L. (5th) 256, held that self-sufficiency, a spousal support objective primarily related to non-compensatory support (Bracklow, at paras. 41-42), was a relative concept informed by the standard of living previously enjoyed by the parties:

[21] self-sufficiency is not a free-standing concept. It must be seen in the context of the standard of living previously enjoyed by the parties. Where, as here, the economic consequences of the marital relationship were to permanently reduce Ms. Allaire's income, it is inappropriate to consider Ms. Allaire's annual income of \$68,000 as "sufficient" without considering whether Mr. Allaire can financially assist her to live a lifestyle closer to what they shared as a couple.

[183] The factors to consider when determining an award for retroactive spousal support are set out in *Kerr v. Baranow*, 2011 SCC 10 at paras. 207 and 212:

- a) The needs of the recipient, both at the time support should have been paid and at present;
- b) The conduct of the payor;
- c) The reason for the delay in seeking support; and
- d) Any hardship the retroactive award may occasion on the payor spouse.

2. Claimant's position

[184] The claimant seeks spousal support for an indeterminate period of time on an imputed income of the respondent at \$172,137. There was no interim order for spousal support made. As such, she seeks the mid-range of the SSAG for the following periods:

\$2,921/month for December 2017-October 2018
\$4,349/month for November 2018-December 2018
\$2,921/month for January 2019 onwards

3. Respondent's position

[185] The respondent submits that the spousal support application should be dismissed or, in the alternative, he should only pay spousal support at the low end of the scale for three years. He submits that his Guideline income should be \$90,100.

4. Analysis

- [186] There was no interim order made for spousal support. The claim for spousal support was made in the notice of civil claim filed in February 2018. The application for interim support was made on May 9, 2018. There was no delay occasioned by the claimant. I also do not find that the respondent will suffer any hardship if a retroactive award is made based on his current income levels.
- [187] The income level for the spousal support is calculated on the same imputed incomes for child support.
- [188] The claimant was living with the respondent during December 2017 and as such no claim for spousal support should be granted for this month. She moved out on January 2, 2018.
- [189] It is clear that the claimant has struggled financially to meet her needs. Her financial statement show her monthly expenses at just over \$2,300 a month. She has no savings, no pensions, no real estate, and no RRSPs. As of the date of trial she is not employed.
- [190] It is my view that the only basis to award any spousal support in this case would be on the basis of need. The claimant is not entitled to compensatory support since throughout the relationship she worked full time except for when she was on maternity leave. After her maternity leave she return to the work force in the similar job, earning similar income on a full time basis until the summer of 2018. There is no evidence that supports that her time off during maternity leave impacted her career or job opportunities.
- [191] Since losing her job at the end of October 2018, her financial circumstances are dire and is relying on her father to support her. She has to secure new employment.
- [192] The length of the relationship will usually have an impact on the amount of the spousal support award. As Justice Prowse explained at para. 57 of *Foster v. Foster*, 2007 BCCA 83:
- [57] In general terms, a shorter term marriage will usually attract a shorter term award. This result is consistent with the view that the shorter the period the parties live together, the less intertwined their financial lives are likely to be, and the more likely they are to be able to resume their pre-marital status without suffering a significant economic loss. Clearly, that general proposition is subject to the facts of each case and will be less applicable, for example, where there are children of the marriage for whom the dependent spouse assumes primary responsibility, or where, as here, the marriage has resulted in the dislocation of [the claimant] from her country of origin and her support networks there.
- [193] This was a very short marriage-like relationship of less than 20 months. I find that the respondent should pay spousal support from January 2018 to present and then a further 3 more years, totalling four years. The respondent's obligation to pay spousal support will end on January 1, 2022.

[194] A reason for the further three years is, by that date, the Child will be attending school. This should allow the claimant to focus more on her career and if she wants to take online courses to upgrade her education. In addition, by that period of time, the parties should have moved into a shared parenting regime where the claimant is no longer primarily responsible for the care of the Child.

[195] The spousal support should be paid on the low range of the scale. While the claimant is entitled to spousal support, she submitted that she was unable to maintain her employment because of the stress of this litigation. Now that the litigation is resolved, I expect that her needs will be less salient. More importantly, the length of the relationship was fairly short and I have ordered the respondent to pay the claimant spousal support for four years, a fairly significant period of time. In my view, therefore, an award on the low end of the scale is appropriate.

[196] The table below shows the amount of retroactive spousal support owed:

Time Period

Amount owed per month

Total owed

January-October 2018

\$1,169

\$10,690

November-December 2018

\$2,214

\$4,428

January-April 2019

\$1,162

\$4,648

[197] The total retroactive spousal support owed is \$19,766.

[198] The respondent will pay spousal support on a monthly basis at \$1,162 with the last payment being made on January 1, 2022.

[199] I note that the respondent is paying \$400 per month in child support for LR but no compelling argument was advanced that paying the appropriate amount of child and spousal support would cause him hardship.

XII. Equitable Claims

1. Unjust enrichment

[200] In *P.N.K. v. C.L.*, 2013 BCSC 1856, Justice Punnnett succinctly described the framework for an unjust enrichment claim and said:

[58] A claim for unjust enrichment in a common-law relationship requires that the claimant establish that:

- a) there was an enrichment to the respondent;
- b) there was a corresponding deprivation of the claimant;
- c) there was an absence of any juristic reason for the enrichment.

(see also *Moore v. Sweet*, 2018 SCC 52; *Peter v. Beblow*, [1993] 1 S.C.R. 980 at 987)

[201] In order to prove that there was an enrichment and corresponding deprivation, the claimant must establish that she gave something tangible to the respondent that he received and retained: *Ostere v. Harding*, 2016 BCSC 819 at para. 68.

[202] The contributions made must be more than minimal and reach a certain threshold to justify a monetary award or an interest in the property as explained in *Kirkthanasatit v. Lount*, 2016 BCSC 599 at para. 113:

[113] I conclude that any other contributions Ms. Kirkthanasatit may have made to the construction project were minimal. They do not rise to the level of a claim in unjust enrichment, whether for a monetary reward or an interest in the property. As stated by Blair J. in *Strudwick v. Morrison*, 1996 CanLII 2240 (BC SC):

The courts in the *Clarkson* (supra), *Peter v. Beblow* (1993) 1993 CanLII 126 (SCC), 77 B.C.L.R. (2d) 1 (S.C.C.), and *Guzzo v. Catlin Estate* (1989) 1989 CanLII 2767 (BC CA), 33 E.T.R. 163 (B.C.C.A.), canvassed claims for unjust enrichment. In these three cases the evidence reflected the plaintiffs' substantial efforts in providing a substantial benefit at considerable detriment to themselves. In reviewing these cases I conclude that the efforts made by the plaintiff must attain a certain threshold in which the benefit provided and detriment suffered by the plaintiff must be substantial before a claim for unjust enrichment ought to be allowed. Even if I had concluded that there was no juristic reason for the enrichment, I do not find the benefit to either Harry Strudwick or Joan Strudwick and the detriment to Anthony Strudwick to be of such a nature and of such substance as to conclude that there has been unjust enrichment from which I might then proceed to determine the existence of the constructive and resulting trusts alleged by the plaintiff.

[203] Finally, if the claimant proves that there was an enrichment and corresponding deprivation, she must show that there is no justification in law or equity for the fact of the enrichment: *Moore* at para. 54.

A. Claimant's position

- [204] The claimant submits that the equitable claim against the Home and Lake City, the respondent's business (collectively the "Property"), flows from the claimant's unpaid services, and contributions to the acquisition, preservation, maintenance, or improvement of the Property and/or the unequal division of the Property upon the breakdown of the relationship, and the respondent's unjust enrichment. Further, the claimant argues that Lake City was a joint family venture.
- [205] The claimant argues that the respondent was enriched and she was correspondingly deprived in the following ways:
- a. Performance of a majority of the household tasks of cooking, cleaning and laundry;
 - b. Caring for the Child and regularly caring for the respondent's other children;
 - c. Unpaid labour provided to Lake City including distributing flyers and promotional materials, administrative tasks such as paying bills, filing, and bookkeeping, pickup and dropping off of vehicle parts, dropping off customers from home and work, and painting the Lake City premises over 2-3 days; and
 - d. A direct financial contribution by paying Lake City's first month's rent.
- [206] The claimant argues that there was no juristic reason for the enrichment and corresponding deprivation.
- [207] Further, the claimant submits that Lake City was a joint family venture based on the following factors from Kerr:
- a. Mutual effort: the parties worked as a team to build a business and raise a newborn child with the claimant focused on household services, while the respondent worked long hours and focused on the business;
 - b. Economic integration: the claimant contributed her income from maternity leave into the household finances, traded in her vehicle to assist with the acquisition of the vehicle that the respondent drives, and says she was financially dependent upon the respondent while she resided with him;
 - c. Actual intention: the respondent admits he desired to take care of the claimant after she became pregnant, they anticipated they would marry in the future, purchased a vehicle in joint names, and the claimant claims she was promised a future role in the business in exchange for her efforts.
- [208] As a result, the claimant seeks a 50% interest in the value of Lake City and a 50% interest in the increase in value of the Home.

[209] The claimant seeks to rely upon a notice to admit dated and served on October 18, 2018, that sought the admission that the value of Lake City was \$94,099.02 as of December 31, 2017 and the date of trial. The respondent seeks to set aside the notice to admit on the basis that due to inadvertence of counsel the admission was not responded to and that it is in the interest of justice that the notice to admit be set aside on the basis that it is clear that the business is not that valuable.

[210] The evidence in support of the appreciation of the value of the Home from 2016 to 2018 is \$14,400 based on property tax assessments for the Home.

B. Respondent's position

[211] The respondent denied much of the evidence of the claimant in respect to any services provide to Lake City and household services.

[212] The respondent concedes that the claimant assisted in painting the Lake City premises which took approximately two days. He also concedes that she paid the damage deposit on the Lake City premises which was equivalent to one month's rent. She did so, he says, because the cheque books for the company were not yet ready. He claims that he repaid her in cash.

[213] The respondent denies that the claimant played much of a role in Lake City and testified that she sometimes ran an errand as a favour and she provided her with gift cards as a thank-you.

[214] In respect to the book keeping, the respondent agrees that the claimant assisted in doing the books but says that after the first month the statements did not balance. As a result he started to figure out how to do it himself. He testified that while he was doing the books in the evenings the claimant would quickly file the paperwork, do the GST and PST, and do filing.

[215] He denies that she did the majority of the housework but agrees when she was on maternity leave, she did provide the majority of care to the Child since she was at home and he was at work. After the claimant returned to work on a full time basis the Child was in daycare and the household duties were shared.

[216] During the period that the parties lived together in the Home, the respondent paid for the mortgage, property taxes, and utilities. There is no evidence that supports that the claimant made any financial contribution to the acquisition, preservation, maintenance or improvement of the Home.

C. Analysis

i. Claim against the home

[217] I turn now to whether the respondent was enriched at the expense of the claimant. While I accept that the provision of domestic services can support a claim for unjust enrichment (Kerr v. Baranow, 2011 SCC 10), in my view the claimant has not discharged her burden to demonstrate that she was deprived and the respondent enriched. I accept that the claimant may have purchased groceries and other items for the Home, provided services such as doing housework and looking after the Child, but in my view those contributions were offset by what the respondent was making and contributing to the household. The parties shared responsibilities and household tasks. While the claimant contributed domestic and childcare services, the respondent paid for the mortgage, property taxes, and utilities. Furthermore, prior to going on maternity leave, the claimant worked full time. She returned to full time work after her maternity leave ended. She did not give up her career to provide these services nor did she give more than she received back.

[218] Therefore, the claimant has failed to establish that the respondent was enriched at her expense and her claim in unjust enrichment must fail with respect to the Home.

ii. Claim against Lake City

[219] With respect to the business, I find that the claimant similarly has not established the first two elements of her unjust enrichment claim: that the respondent was enriched and she was correspondingly deprived.

[220] The evidence does not demonstrate that the claimant was working at the business a 'few hours' a day. The evidence of the other witnesses called by the respondent, whose evidence I accept, suggest that the claimant was not working at Lake City on a daily basis.

[221] The specific allegation that the claimant advanced, that the first month's rent for Lake City was paid by her, is disputed by the respondent on the basis that the claimant paid the damage deposit and he reimbursed her for the amount paid.

[222] The claimant's allegation that she was promised a future role in Lake City is also not supported by the evidence: she never did take on any type of role in the business. Further, in the extensive text messages adduced as evidence, there was no reference to any such role being agreed to.

[223] The parties did not have a joint bank account. There was no sacrificing of the claimant's career, working life, or educational advancement as a result of this relationship: Kerr at paras. 98-99.

[224] I do not find any link between the limited contributions the claimant made to the establishment and maintenance of Lake City and the value of this asset, as required by the case law: Kerr at paras. 100, 102.

[225] In my view, the claimant exaggerated the services she provided while the respondent downplayed them. The evidence does not disclose that the respondent was enriched at the claimant's expense. Nor would I find that the parties engaged in a joint family venture in the creation of Lake City Auto. There was no mutual effort, common goals, or collaboration between the parties.

D. Conclusion of unjust enrichment

[226] As I have found that the claimant has not discharged her burden to establish unjust enrichment, her claims in constructive trust and monetary relief calculated on a quantum meruit basis must also fail.

2. Trust claims

[227] The claimant seeks an order recognizing and compensating her for her interest in the Property arising from an express, resulting, constructive, or other trust held in the claimant's favor arising from the claimant's contributions to the acquisition, maintenance, or improvement of the Property by contribution of money or goods, labour and household and child rearing responsibilities.

A. Resulting trust claim

[228] In *Pecore v. Pecore*, 2007 SCC 17 at paras. 20-22, Rothstein J. described resulting trusts in the following terms:

20 A resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner: see D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (3rd ed. 2005), at p. 362. While the trustee almost always has the legal title, in exceptional circumstances it is also possible that the trustee has equitable title: see *Waters' Law of Trusts*, at p. 365, noting the case of *Carter v. Carter* (1969), 70 W.W.R. 237 (B.C.S.C.).

21 Advancement is a gift during the transferor's lifetime to a transferee who, by marriage or parent-child relationship, is financially dependent on the transferor: see *Waters' Law of Trusts*, at p. 378. In the context of the parent-child relationship, the term has also been used because "the father was under a moral duty to advance his children in the world": A. H. Oosterhoff et al., *Oosterhoff on Trusts: Text, Commentary and Materials* (6th ed. 2004), at p. 575 (emphasis added).

22 In certain circumstances which are discussed below, there will be a presumption of resulting trust or presumption of advancement. Each are rebuttable presumptions of law: see e.g. *Re Mailman Estate*, [1941] S.C.R. 368, at p. 374; *Niles v. Lake*, [1947] S.C.R. 291; *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436, at p. 451; J. Sopinka, S. N. Lederman and A. W. Bryant, *The Law of Evidence in Canada* (2nd ed. 1999), at p. 115. A rebuttable presumption of law is a legal assumption that a court will make if insufficient evidence is adduced to displace the presumption. The presumption shifts the burden of persuasion to the opposing party who must rebut the presumption: see *Sopinka et al.*, at pp. 105-6.

[229] In my view, the conceptual framework of a resulting trust is not particularly helpful in determining the current issue. The case at hand does not involve a transfer of property from one party to another, such as the case of a parent transferring property to an adult child. Instead, it involves the assertion that certain services performed results in a claim being made against the property. Counsel for the claimant has not provided a cogent argument for how a resulting trust analysis should apply in this case. As a result, I am unable to find a resulting trust.

B. Express trust claims

[230] There was no evidence and no argument advanced that there was an express trust in existence, as such, the claim for an express trust is rejected.

XIII. Other issues

[231] The respondent repossessed the F150 vehicle and the amount owing to Lake City Ford Sales Inc. is \$9,168.59. According to a promissory note executed by the respondent he is making monthly payments of \$1,000 per month with the account to be settled by the end of March 2019. This debt is the sole liability of the respondent.

[232] If there are any documents, such as insurance documents, that the claimant needs to sign respecting the F150 she shall do so.

XIV. Summary of Orders Made

[233] A summary of the orders made are as follows:

- a. Pursuant to s. 222 of the Family Law Act, the respondent shall forthwith delete and destroy all intimate photos of the claimant in his possession or control.
- b. The application of the claimant to relocate to Williams Lake is dismissed.
- c. The claimant and the respondent share equally all of the s. 41 parental responsibilities for the child under s. 40(2) of the Family Law Act, pursuant to the Joyce model as follows:
 1. In the event of the death of a guardian, the surviving guardian will be the only guardian of the child;
 2. Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;
 3. Each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 4. The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;

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5. In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the claimant will be entitled to make those decisions and the respondent will have the right to apply for directions on any decision the respondent considers contrary to the best interests of the child, under s. 49 of the Family Law Act; and,
 6. Each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
 7. The guardians will maintain a common exchange journal which is to be exchanged when the child is transferred to the other guardians. Each guardian is to record on a daily basis while the child is in its care matters relating to the child including:
 - i. School - such as events, key dates, report cards, newsletters, outings, assignments, home reading, parent/teacher meetings and homework;
 - ii. Health - observations of the child, child's complaints, doctors' appointments, dental appointments, medications, injuries, and diet;
 - iii. Social - invitations, activities taken and family events;
 - iv. Extracurricular activities - registration, schedules, equipment, and events;
 - v. Clothing;
 - vi. Key contact information for doctors, dentists, daycare, sitters, parents emergency contact numbers; and
 - vii. Any other matter relating to the care of the child.
 - d. The parenting time until December 2, 2020, shall be as follows:
 1. Week 1: Respondent to have parenting time with the Child from Thursday at 5:00 p.m. to Monday at 5:00 p.m.
 2. Week 2: Respondent to have parenting time with the Child from Wednesday at 5:00 p.m. to Friday at 5:00 p.m.
 3. The Claimant will have the balance of the parenting time.
 - e. The parties shall exchange the Child at daycare when she is in daycare and at Kiwanis Park, when she is not in daycare.
 - f. The parties shall share holiday time as follows:
 1. Each party shall be entitled to two one-week holidays with the Child, upon two months' written notice. The two one-week holidays may occur consecutively.

2. On even years, the claimant will have parenting time with the Child from 7:00 p.m. on December 23 to 7:00 p.m. on December 27. In odd years, the respondent will have parenting time with the Child from 7:00 p.m. on December 23 to 7:00 p.m. on December 27.
3. On even years, the respondent will have parenting time with the Child on New Year's Eve and New Year's Day. In odd years, the claimant will have parenting time with the Child on New Year's Eve and New Year's Day.
- g. The parenting schedule should remain in place until the child turns four in December 2020 at which time the parties should be equally sharing parenting time. If the parties cannot agree at that time on the equal sharing of the parenting time an application can be made.
- h. The parties are at liberty to change the parenting time upon a written agreement being made.
- i. The claimant is found to be a resident of British Columbia and is imputed to have a gross income of \$38,000 except for November and December 2018 when her gross income is imputed at \$9,120.
- j. The respondent is found to be a resident of British Columbia and is imputed to have a gross income of \$115,000.
- k. The respondent will pay to the claimant the sum of \$741 for the support of the child, commencing on May 1, 2019 and continuing on the first day of each and every month thereafter, for so long as the child is eligible for support under the Family Law Act, or until further agreement of the parties or Court order.
- l. The respondent will pay to the claimant for retroactive child support the sum of \$90.
- m. The parties will pay their proportional share of the Child's special or extraordinary expenses. The parties' respective proportional shares are the claimant at 35% and the respondent at 65%.
- n. The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement.
- o. The parties agree that the following shall be considered special or extraordinary expenses for the Child: daycare expenses.
- p. No other expenses will be considered special or extraordinary unless agreed to by the parties in advance or by further Court order.
- q. For the purposes of calculating support payments under the Spousal Support Advisory Guidelines, the respondent's income is set at \$115,000 a year.
- r. The respondent will pay to claimant for her support the sum of \$ 1,162 per month, commencing on May 1, 2019 and continuing on the 1st day of each and every month thereafter until January 1, 2022, at which time spousal support will be terminated.

- s. The respondent will pay to the claimant for retroactive spousal support the sum of \$19,766.
 - t. The respondent will pay to the claimant a minimum of \$1,000 per month towards the arrears in spousal support, in addition to the regular spousal support payments, commencing on May 1, 2019 and continuing on the 1st day of each month thereafter until the arrears are paid in full or until further agreement of the parties or Court order.
 - u. The parties, commencing on June 1, 2019, and each year thereafter, the parties will exchange by June 1 of each year their personal income tax returns.
 - v. Going forward child support and special or extraordinary expenses shall be adjusted on July 1 of each year to reflect the financial disclosure. If the parties cannot agree to the appropriate amount for child support and special or extraordinary expenses then an application should be brought.
 - w. By Consent the Child's last name should be change to R-N.
 - x. The parties will participate in the Parenting after Separation course and provide their certificate of completion to the other party by August 1, 2019.
 - y. The order of Madam Justice Winteringham dated April 10, 2018 is varied and no written notice is needed to remove the Child from Williams Lake if the removal is only for 24 hours. If the trip is for longer than 24 hours then written notice of 48 hours before shall be given by each party to the other.
 - z. The claimant's claim for unjust enrichment is dismissed.
 - aa. The respondent is solely responsible for the debt owed to Lake City Autos Inc. in respect to the F150 vehicle.
 - bb. The claimant will sign any documents required for the transfer of the F150 vehicle to the respondent.
- [234] As there has been divided success, there will be no orders as to costs. I adopt the views expressed by Justice Humphries in *Hansen v. Mantei-Hansen*, 2013 BCSC 876 at p 143:
- [143] In general, costs in family matters follow the event. However, this is a case where each parent has a legitimate and well-founded case to put forward. It would not be in the interests of justice to pronounce one parent successful in this action and one not. The only consideration is the best interests of the children, and as I have made clear, the children would be well served living primarily with either parent. Given the parents' determination to live apart, and their equal devotion to their children, a decision had to be made for the children by a court. In these circumstances it is appropriate that the parties bear their own costs.

[235] If I have failed to deal with any matter that I ought to have or if there are any issues arising out of the orders I have made, either party is at liberty to arrange with Supreme Court Scheduling for a further appearance before me.

"Forth J."

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Prepared on 25 October 2026 · Esheria