

CANADA / JUDGMENT

D.Z. v. R.H.Z.

2020 BCSC 891

COURT

Supreme Court of British Columbia

DECIDED

16 June 2020

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2020 BCSC 891 D. Z. v. R. H. Z.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D. Z. v. R. H. Z.,

2020 BCSC 891

Date: 20200616

Docket: E055576

Registry: New Westminster

Between:

D. Z.

Claimant

And:

R. H. Z.

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 5, 72 and 92 on July 6, 2020.

Before: The Honourable Madam Justice Adair

Reasons for Judgment

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Counsel for the Respondent:

R. Chambers

Place and Date of Trial:

New Westminster and

Vancouver, B.C.

October 21-25, 28-31, November 1, December 6, 2019 and

February 6, 2020

Place and Date of Judgment:

New Westminster, B.C.

June 16, 2020

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 1. Introduction

- [1] This is a high-conflict family case. The claimant ("Ms. Z") and the respondent ("Mr. Z") are in their 40s. They had been high-school sweethearts, and married in May 1998. They separated in April 2018. They have five children together, ranging in age from 20 to 9. Mr. Z and his new partner ("Ms. T") are the parents of a one-year-old.
- [2] Since early October 2018, the parties have been before the court frequently, mostly in relation to their younger children. The proceedings have been acrimonious and emotions have run very high. Scandalous accusations have been made, mostly by Mr. Z about Ms. Z. The evidence at trial fell well short of justifying those accusations. Despite that, they were repeated in closing submissions.
- [3] Limited financial resources have been consumed by litigation. The parties' most significant asset, the former family home, was sold in August 2018. As of trial, the net proceeds remaining were about \$70,000. The parties have few other family assets. As of trial, Ms. Z was unemployed, having taken a buyout from her former long-time employer, a large grocery store chain (the "Grocery"). Mr. Z has worked for many years as a manager in a number of the Grocery's stores. Although he earns a reasonable income, there is a large original family to support.
- [4] Members of the parties' respective families and friends have taken sides, and, to some extent fueled conflict. During the trial, I was informed of an apparent altercation outside the courtroom during one of the breaks, involving Ms. T and a friend of Ms. Z. Unfortunately, the acrimony between the parties spilled over into the relationship between counsel.
- [5] There were difficulties completing the trial efficiently. The trial was originally set for 10 days, commencing October 21, 2019. However, by the end of day 10 on November 1, 2019 (during which the court sat late), only the oral evidence had been completed. The documentary record still had to be settled, and the parties' respective document binders had only been marked for identification. The trial was scheduled to continue for submissions on December 6, 2019, at which time it was expected that the trial would be concluded. Counsel were encouraged during the interval between the evidence and submissions to agree on the documentary record, and, if they were unable to do so, to request an early start on December 6. On December 6, court time was required to settle the documentary record, and court began early, at 9:30. Submissions could not be completed on December 6, and a further day was required. Finally, on February 6, 2020, counsel concluded their submissions.
- [6] Despite the intensity of the bad feelings, the parties have been able to narrow the areas of dispute essentially to these: who should have final decision-making authority respecting the parties' two youngest children; what were the parenting arrangements for purposes of retroactive child support; what are the parties' respective Guidelines incomes for purposes of the Federal Child Support Guidelines; whether certain expenses are recoverable as s. 7 expenses under the Guidelines; whether Ms. Z is entitled to spousal support; and certain issues concerning family property and debts.

2. Background

- [7] Ms. Z was born in August 1976, and is now 43. Mr. Z was born in July 1975, and is now 44. Their five children are: CZ, born in August 1999; TZ, born in September 2001; SZ, born in July 2003; MZ, born in May 2008; and RJZ, born in October 2010.
- [8] Ms. Z and Mr. Z met one another and began dating when they were high school students.
- [9] Ms. Z graduated high school, and then completed a diploma program in make-up artistry. She has no other post-secondary education or training. She has never used her diploma to earn income. She worked as a nanny for a few years. In her early 20s, Ms. Z was hired as a cashier in one of the Grocery's stores in Vancouver. Apart from maternity leaves taken in connection with the birth of each of the children, and disability leaves taken from time to time, Ms. Z worked as a Grocery cashier until accepting voluntary severance in the fall of 2019. September 14, 2019 was her last day of work. As of the trial, she was looking for work.
- [10] Mr. Z was a year ahead of Ms. Z in high school, and graduated in 1993. He then worked at Honda and completed some accounting courses at Vancouver Community College. Mr. Z enrolled at Langara College in a one-year computer systems analyst program, which he completed. Mr. Z explained that, while he was at Langara, he was also working part-time at a Shoppers Drug Mart store.
- [11] Ms. Z and Mr. Z were married on May 16, 1998. Ms. Z explained that she has a big family, and the couple had a big wedding.
- [12] After they were married, Mr. Z was hired to work at the same Grocery store as Ms. Z. As Mr. Z recalled, he lost his job at Shoppers Drug Mart and then picked up more hours at the Grocery. According to Mr. Z, after completing his course at Langara, he applied to enter a program to qualify as a certified general accountant. However, according to Mr. Z, he had to give that up and was never able to pursue further post-secondary education. He explained that, once he was married, he needed to build up his hours at the Grocery because he needed to earn an income to support a family. That is what he did.
- [13] Soon, Mr. Z was promoted to managing one of the departments at one of the Grocery's stores, and he continued in a variety of department management positions at different stores thereafter. Mr. Z explained that, once he became a manager, the Grocery determined where he would be working, and managers changed stores every two or three years. That was his experience.
- [14] Ms. Z explained that, after she and Mr. Z were married, she wanted to have children right away. Their daughter CZ was born August 31, 1999. At the time, the family was living in an apartment on Heather St. in Vancouver. Their apartment was in a building managed by Mr. Z's parents, who also had an apartment there. Mr. Z's brother, Mr. DZ, and his family lived next door.

- [15] Ms. Z explained that, when CZ was born, she took maternity leave for a year. As Ms. Z recalled, when she returned to work, Mr. Z took early shifts and she took the later shifts. Mr. Z worked full-time, while she was working part-time. Both of them organized child care. Family members helped.
- [16] Ms. Z was pregnant again in 2001, and TZ was born September 21, 2001. Ms. Z and Mr. Z separated briefly during her pregnancy, but reconciled after a month. As Ms. Z recalled, after TZ was born, she suffered badly from post-partum depression. She again took maternity leave for a year, and then returned to work part-time as a cashier at the Grocery.
- [17] The parties' daughter SZ was born July 30, 2003. Ms. Z explained she was unable to keep working during the pregnancy and had to take time off. She again took a 12-month maternity leave, after which she returned to her job as a cashier at the Grocery.
- [18] In late 2003, the family moved from the Vancouver apartment to a townhouse they had purchased in Surrey. Ms. Z continued to work as a cashier at a Grocery store in Vancouver, while Mr. Z worked as a department manager in different Grocery stores in the Lower Mainland. They organized their respective work schedules, so that, for the most part, Mr. Z worked earlier shifts and Ms. Z was at home with the children. She worked later shifts, and Mr. Z then handled child care. Ms. Z often worked weekend shifts. The couple had occasional help from family members with child care.
- [19] MZ was born on May 19, 2008, and the parties' youngest child, RJZ, was born October 21, 2010. Ms. Z again took a 12-month maternity leave each time. When she returned to work in November 2011, Ms. Z was able under the union contract to restrict her hours, which she did. As a result, she worked between 24 and 32 hours a week.
- [20] As of November 2011, Mr. Z was working 40 hours a week in management positions at the Grocery. The Grocery moved him to a store in Langley, which was closer to home. Ms. Z was still working at a Grocery store in Vancouver.
- [21] In around 2012 or 2013, the parties sold the Surrey townhouse, making a profit on the transaction. They purchased a single-family home in the Clayton Heights neighbourhood, and Mr. Z's parents gave the couple \$10,000 to assist with the purchase. Ms. Z explained that the plan was to convert the basement into an apartment that could be rented, and she then could work less.
- [22] However, these plans never materialized. Instead, the family struggled financially and in other ways. At trial, Ms. Z complained that Mr. Z was spending money irresponsibly. As she recalled, for Christmas in 2014, she had to sell jewellery and personal items so that there was money for gifts. CZ reported to her parents that she had been sexually assaulted. According to Ms. Z, she was very upset and concerned for CZ. However, as she recalled, Mr. Z was unsympathetic and blamed his daughter for going out. Mr. Z has quite a different recollection of these events. As he recalled, he was also very upset and concerned for his daughter. In his view, if anyone was to blame, it was Ms. Z for allowing CZ too much

freedom.

- [23] As Ms. Z recalled, she became anxious and depressed. She explained that she was unable to work, and took a year off. She began attending counselling regularly at Surrey Mental Health. She found that the counselling and therapy she received helped her to manage her anxiety.
- [24] Ms. Z returned to work at the Vancouver Grocery store in the fall of 2015. However, according to Ms. Z, she continued to suffer regularly from anxiety and depression. She explained that, as a result, she frequently was unable to work, and was on disability for months at a time.
- [25] The parties sold the Clayton Heights house in early 2016. They again made a profit on the sale. As Mr. Z recalled, the net proceeds were about \$250,000, which the couple used to pay off all of their outstanding debts. They then had a clean slate and still had about \$150,000 left over. The family moved into rented accommodation in Langley, close to where Mr. Z was working.
- [26] In January 2017, Mr. Z moved into a new management position at a new Grocery facility in Langley. This was a non-union position, and Mr. Z was, therefore, required to terminate his union membership. As a result, he was no longer a member of the union pension plan. However, he became eligible for benefits under a defined-benefits pension plan. In the new position, Mr. Z was paid a salary, rather than an hourly wage, and overtime was no longer available.
- [27] When she was not on disability, Ms. Z continued to work between 24 and 32 hours a week as a Grocery cashier in Vancouver.
- [28] In late 2017, Mr. Z had a serious health crisis. He originally sustained a hernia at work. Mr. Z explained that, when that injury was being investigated, a tumour was discovered on one of his kidneys. It was cancer.
- [29] Unfortunately, instead of bringing Ms. Z and Mr. Z closer together, Mr. Z's cancer diagnosis and treatment drove them farther apart. As Mr. Z recalled, Ms. Z was completely insensitive to his situation, and preferred to spend time with new friends rather than support him in a difficult time. As of early 2018, Ms. Z and Mr. Z were estranged from one another and both were deeply unhappy in the marriage.
- [30] By mid-April 2018, Ms. Z and Mr. Z had separated, although they were both still living in the family home with the children. Mr. Z met Ms. T on-line in late March or early April, and they began a romantic relationship.
- [31] Mr. Z moved out of the family home on June 15, 2018. Ms. Z's notice of family claim was filed on June 19, 2018. When Mr. Z left the former family home, the parties agreed on an informal shared-parenting arrangement (alternating a week with each parent) for the four younger children. CZ, who was then a few months away from her 19th birthday, had moved out and

was living with her boyfriend. In the notice of family claim, Ms. Z sought child support for the four youngest children only. She formally asserted that CZ was independent of both parties.

- [32] The shared parenting arrangement worked uneventfully for a few weeks. Around July 20, 2018, Ms. Z left on what was to be a three-week vacation, during which she travelled to Saskatchewan with a friend. The plan was that Mr. Z was to take over parenting time for the four youngest children for those three weeks, after which the week-on and week-off arrangement was to resume. The former family home had been sold, and while she was away, Ms. Z asked TZ and a neighbour, who I will refer to as "Ms. AP," to help Ms. Z find an apartment. The sale of the former family home was scheduled to complete at the end of August.
- [33] Ms. Z returned home (to the former family home) on August 9, 2018. She described the house as having been "gutted," with belongings taken and items such as pot lights removed. Ms. Z explained that she had asked CZ to look after Ms. Z's dog while she was away, but the dog had been sold.
- [34] Most alarmingly for Ms. Z, Mr. Z refused to resume the informal shared parenting arrangement. Rather, Mr. Z's position was that the four youngest children would remain living with him.
- [35] The trigger for these events was, apparently, the discovery by CZ, while Ms. Z was away, of a make-up bag in Ms. Z's bedroom. The make-up bag, apparently, contained a white substance. I say "apparently," because CZ never testified at trial. According to Mr. Z, CZ gave him the bag, which he in turn gave to the police. Mr. Z also contacted the Ministry of Children and Family Development ("MCFD"), who opened a file. As Ms. Z recalled, on her birthday in late August, she was interviewed by a representative of MCFD in connection with these events.
- [36] Mr. Z suspected that the make-up bag contained cocaine, and that Ms. Z was using drugs. His suspicions have been a regular feature of this litigation. They have been communicated to at least TZ, who mentioned the discovery by CZ of the make-up bag during her evidence at trial. TZ also mentioned it to Dr. Laura Mills in connection with Dr. Mills' preparation of a "Views of the Child" report, which I discuss below. The proposition that the make-up bag contained cocaine has been repeated as if it has been established as a fact. However, it has not been.
- [37] What was in fact contained in the make-up bag is unknown. There was no attempt at trial to prove by admissible evidence that it contained anything in particular, much less that it contained drugs. Based on the evidence at trial, MCFD's involvement was brief and the file was closed. What the police did with the make-up bag after Mr. Z gave it to them is also unknown. However, it is undisputed that no charges were ever laid.

- [38] On August 10, 2019, Mr. Z filed his response to family claim and a counterclaim. In his response to family claim, he asserted that CZ had been living independently of both parents for "at least" six or seven months. In his counterclaim, he asserted the CZ was "independent," and sought child support for the four youngest children only.
- [39] The four youngest children lived with Mr. Z throughout August. Ms. Z saw TZ briefly, when TZ came to the former family home to pick up some belongings. However, as TZ described it, the encounter with her mother was brief and quite unpleasant. TZ was very hurt by her mother's behaviour at the time.
- [40] The sale of the former family home closed at the end of August. The net proceeds of sale were placed in trust with Mr. Z's lawyer. Ms. Z's apartment was not available for her to move into until October 1, 2018. Ms. Z explained that, for the month of September, she had accommodation with friends, and it would have permitted her to resume a shared parenting arrangement for at least MZ and RJZ. However, Ms. Z's evidence about her accommodation during September was vague and conclusory. She provided no meaningful details, such as the size, location, whether other people were living there and, if so, who they were.
- [41] According to Ms. Z, she saw MZ and RJZ only very briefly at the beginning of September, when they went to school. According to Mr. Z, he offered Ms. Z parenting time, but she was generally uninterested or did not respond. Ms. Z denied this.
- [42] On September 28, 2018, Ms. Z filed a notice of application, brought without notice, seeking short leave for a hearing that day and seeking orders that (among other things): MZ and RJZ be immediately returned to her care and placed in her primary care; she be appointed their sole guardian on an interim basis; and all parental responsibilities related to them be allocated to her. In the result, the application was adjourned to October 26, 2018.
- [43] On September 30, 2018 (a Sunday), a bridal shower was held for Ms. Z's sister, Ms. TV. MZ and RJZ were to be members of the wedding party, and Mr. Z arranged for them to attend the shower with CZ. As would be expected, Ms. Z, her mother, Ms. MV, and other members of the family were also there. According to Ms. Z, when it came time for MZ and RJZ to leave with CZ, RJZ refused to leave his mother's side and became very upset. Her evidence was largely confirmed by her mother and Ms. TV. Events escalated in an unfortunate way that must have created a great deal of distress for RJZ. According to Mr. Z, he had RJZ on a cell phone and told him that he needed to leave with CZ, as he had school the next day. In the end, CZ left with MZ, and RJZ went home with Ms. Z. When RJZ did not come back with CZ, Mr. Z called the non-emergency police line, and asked that a wellness check be done on RJZ. When police arrived at Ms. Z's home, RJZ was sleeping.
- [44] The following day was a school day for RJZ. However, Ms. Z did not take RJZ to school. She explained that RJZ was not feeling well. Mr. Z called the school to check whether RJZ was there, and, as he recalled, he was told that Ms. Z had called him in sick. Neither parent had communicated anything to the other about RJZ. Mr. Z explained that he was in his car when he spotted Ms. Z's car (with RJZ in it) pulling out of a Tim Hortons, and he followed it in his

vehicle. The two vehicles ended up at a police station. No doubt, the whole experience was an upsetting one for RJZ.

- [45] In the meantime, TZ posted on social media that her brother was missing. At trial, she acknowledged she did this although she knew that RJZ was with their mother.
- [46] On October 2, 2018, Mr. Z (through counsel) filed his own notice of application, also stated to be brought without notice and to be heard that same day, seeking a number of orders, including: that he have final decision-making and all parental responsibilities be allocated to him except during Ms. Z's parenting time; Ms. Z's parenting time be at his discretion; police enforcement under s. 231 of the Family Law Act; and conduct orders. The "Factual Basis" was to the effect that, on September 28, the parties agreed on the hearing date of October 26 for Ms. Z's application and were to work out a mutually agreeable parenting schedule pending that date; however, Ms. Z refused to return RJZ to Mr. Z on September 30.
- [47] RJZ remained with Ms. Z for three days, and missed three days of school.
- [48] On October 4, 2018, the parties' applications came on for hearing before Mr. Justice Crawford. The resulting order (the "Crawford Order") provided in relevant part that, on an interim basis:
1. For the period October 4, 2018 to October 26, 2018, the Claimant and Respondent shall have parenting time with the Children of the Marriage [MZ and RJZ] (the "Children") as follows:
 - a) With the Claimant from Monday until Thursday, when she will drop them off at school; and
 - b) With the Respondent from Thursday until Monday, when he shall drop them off at school
 2. The Children's school is to be used as the pickup and drop off location for the transfers between the Parties.
 3. The Parties shall not disparage one another in front of the Children.
- [49] No orders were made respecting TZ or SZ, who had been living with Mr. Z since July 20, 2018. I conclude that the parties accepted that, at least on an interim basis, this was the status quo for TZ and SZ, and that their primary residence was with Mr. Z.
- [50] Despite the parenting time set in the Crawford Order, Thanksgiving Monday generated more disputes. Essentially, Mr. Z took the position that the order was unclear concerning the time RJZ and MZ were to be dropped off by him on Mondays, and, since Thanksgiving Monday was a statutory holiday and schools were closed, he was not required to drop off MZ and RJZ until after his family's Thanksgiving dinner was complete, sometime later in the day.
- [51] RJZ's 8th birthday fell on a Sunday, when Mr. Z had parenting time pursuant to the Crawford Order. On Saturday afternoon, Mr. Z sent an e-mail message to Ms. Z, offering her four hours of parenting time, between 2:00 p.m. and 6:00 p.m. on Sunday, and after the party Mr. Z had arranged. Mr. Z's message read in part:

As you know I have family, friends and my new partner coming to his birthday so it would be in the best interests of [CZ, TZ, SZ, MZ and RJZ] and all the guests to not show up uninvited and make for an extremely uncomfortable situation for all parties involved.

[52] Ms. Z responded later that evening [all sic]:

[Mr. Z], I think it would be positive and healthy for [RJZ] to see that both his parents can be in the same place at once and to support his special day. I only planned on spending short time at the party to say hello to [RJZ]. I would not interact with you or your girlfriend. We need to move past the hostility that's been created.

[53] In my opinion, Ms. Z's response shows an unfortunate insensitivity to the realities of the situation. Rather than behave in a mature, responsible way and accept parenting time offered to her on her son's birthday, Ms. Z showed up at RJZ's birthday party, to which she had clearly not been invited. Her unwanted appearance was bound to create a scene, which it did. Even if I find Ms. T's description of the events is exaggerated and overly melodramatic, Ms. Z's conduct was inexcusable. At trial, Ms. Z was unapologetic for her behaviour. However, in my view, it created completely unnecessary stress for her son, and demonstrated very bad judgment on her part.

[54] The parties (and their counsel) returned to court on October 26 and October 30, 2018. On October 30, 2018, an order went by consent that both parties would undergo drug testing.

[55] During her cross-examination, Ms. Z admitted that her test was positive, although she also testified that she had never knowingly used cocaine. However, there was no attempt made at trial to prove, by admissible evidence, the results of the tests for either party, or to have someone with the necessary qualifications and experience interpret what the test results meant.

[56] A further order was made on October 30 that:

The Respondent's new spouse [Ms. T] shall not be in the home when the Children [MZ and RJZ] are in the Respondent's care. The Claimant's new spouses, or boyfriends or girlfriends, may not be in her home while the Children are in her care.

[57] This particular term was breached by Mr. Z almost immediately. He and Ms. T (who was then pregnant) moved in together in November 2018. Mr. Z's justification, essentially, was that complying with this term of the October 30 order was too difficult. So, he did not.

[58] The parties (and their counsel) were unable to come to a reasonable agreement concerning parenting time for MZ and RJZ over the Christmas and New Year's break. Both parents filed notices of application, which were heard on December 24, 2018. The court made a detailed order concerning parenting time over the holidays. The court ordered further that the Crawford Order was to remain in full force and effect until further court order, and adjourned generally other matters to a convenient date in January 2019.

- [59] The adjourned matters came on for hearing before Madam Justice Norell on January 29, 2019. She ordered that the parenting time set out in the Crawford Order would remain in effect until further court order or agreement between the parties, and adjourned the other matters to be reset for a one-day hearing.
- [60] Co-incidentally, those matters came on for hearing before me on March 5, 2019. At that time, I made a number of orders concerning the four youngest children (TZ, SZ, MZ and RJZ), who are referred to in the formal order as the "Children." Counsel advised that no orders (including for child support) were sought in respect of CZ because the position of both parents was that she was no longer a "child of the marriage." I ordered some clarification of the terms of parenting time pursuant to the Crawford Order, although the basic shared parenting arrangement for MZ and RJZ remained unchanged. In addition, and among other things, I also ordered that:
- (a) neither of the parents was to remove the Children from B.C. without the prior written consent of the other parent or a court order;
 - (b) within 30 days, the parties were to nominate a suitable person to prepare a report under s. 211 of the Family Law Act to assess the views of the Children;
 - (c) beginning April 1, 2019, and on an interim and without prejudice basis, Mr. Z pay child support to Ms. Z of \$148 per month, based on the parenting arrangements in place for TZ and SZ and shared parenting for MZ and RJZ;
 - (d) the parents were to share s. 7 expenses on the basis of 60% to Mr. Z and 40% Ms. Z; and
 - (e) beginning April 1, 2019, and on an interim and without prejudice basis, Mr. Z pay spousal support to Ms. Z in the sum of \$227 per month.
- [61] I also made a number of conduct orders.
- [62] I will refer to the results of the March 5, 2019 hearing as the "March 5 Order."
- [63] Mr. Z's and Ms. T's daughter was born in early March 2019.
- [64] In the months prior to trial, the relationship between Ms. Z and Mr. Z remained antagonistic and adversarial. For example, Ms. Z accused Mr. Z of giving a Mother's Day gift that RJZ meant for Ms. Z to Ms. T. Ms. Z and Mr. Z were unable - or unwilling - to discuss important issues relating to the children with one another in a civil or productive way. Mr. Z enrolled MZ and RJZ in a new school starting in September, without discussing it in advance with Ms. Z. After MZ and RJZ attended the new school the first day, Ms. Z moved them back, as RJZ was happier at the old school.
- [65] One of the important matters that Ms. Z and Mr. Z had not discussed with one another as of trial involved their daughter SZ. In the summer of 2019, SZ learned she was pregnant, with a baby due in April 2020. Her boyfriend is the father. SZ, who apparently has a learning disability and an independent education plan, was also not doing well in school. She had

been living with Mr. Z since August 2018. However, starting in about April 2019, and for some months thereafter, she did not have a stable home. Rather, she was moving back and forth between her parents' homes. This was not a new parenting-time arrangement that her parents had agreed on for her. Rather, I conclude that SZ was left on her own to decide where to go. Ms. AP, who has known both Ms. Z and Mr. Z well since they first became neighbours in December 2003, described SZ as "flopping" back and forth between her parents if she did not like the rules at one house or the other. Regrettably, I conclude this is an apt description.

- [66] As of trial, SZ was living on a more permanent basis with Ms. Z, sleeping on a pull-out couch. This move back to Ms. Z's followed her father's less than enthusiastic reaction to the news of her pregnancy, and a blow-up with Ms. T during the summer. The blow-up occurred when SZ went several times to Mr. Z's home, when Ms. T was there alone with her daughter, to pick up her passport. The fact that Ms. Z accompanied SZ on one occasion did nothing but inflame the situation, and resulted in another call to the police. The obvious solution - for SZ to contact her father directly and make arrangements to retrieve the passport, which was what eventually happened - did not occur to either SZ or her parents until after another ugly scene.
- [67] SZ was ambivalent about returning to high school in September 2019. As of September 9, she had not returned to classes, but was thinking about attending school on-line. Neither of SZ's parents had anything to say about such an arrangement. There is no indication they had any discussion or communication with either SZ or with one another about it.
- [68] While Ms. Z was firm that she and her immediate family would support SZ through her pregnancy, she was less clear about what this support would look like. She was also unclear about how she would support her daughter in making her way through other difficult aspects of her life, including completing high school. For his part, Mr. Z had little or nothing to offer in that respect.
- [69] Ms. Z remains estranged from TZ. As of the close of evidence in the trial, they had had virtually no contact for over a year. Ms. Z blames Mr. Z for not supporting her relationship with TZ. While there is, no doubt, some truth to what Ms. Z believes, this is not TZ's perspective. In her evidence, TZ acknowledged that, at one time, she and her mother had been very close. However, TZ explained that around the time that her parents separated, her mother involved her in inappropriate adult matters, including discussion about relationships her mother was having. TZ is embarrassed by her mother's behaviour and has lost respect for her. She feels that she cannot trust her. TZ believes that her mother's expressions of regret and apologies are not genuine, and that her mother has an ulterior motive.

- [70] TZ was hurt when her mother did not attend her high school graduation in June 2019. Ms. Z explained that she tried, unsuccessfully, to get a ticket. However, from TZ's perspective, her mother did not try hard enough. As TZ recalled, Ms. Z never approached her directly about tickets, and TZ had tickets available.
- [71] As of the fall of 2019, TZ was working. She had plans to enrol at Douglas College in January 2020, with the goal of becoming a social worker.
- [72] As for CZ, as of the fall of 2019, she was living with Ms. Z. CZ had returned to school full-time, with the goal of becoming a paralegal, and planned to graduate in June 2020. She was also working part-time.
- [73] As of the fall of 2019, the shared parenting arrangement for MZ and RJZ, pursuant to the Crawford Order (as modified by the March 5 Order) remained in place. However, MZ was reluctant to go to Ms. Z's, and she expressed as much during her two interviews with Dr. Mills for the "Views of the Child" report. According to Mr. Z, MZ complained to him (via on-line messages, including pictures) about how Ms. Z was treating her and also complained to him that there was no food in Ms. Z's fridge (something Ms. Z said was not true). It is distressing that MZ feels sufficiently emboldened to report on her mother to her father in this way. There was little sign that Mr. Z did anything to discourage it. It is another illustration of how the parents' inability to communicate effectively with one another is harming their younger children.
- [74] Dr. Mills is a clinical psychologist with expertise in the assessment and treatment of children and their families. She has prepared over 100 reports regarding children's mental health. Dr. Mills interviewed all five of the Z children, and her s. 211 report dated October 7, 2019 was admitted into evidence as Ex. 1.
- [75] Mr. Z and TZ (who had accessed the report on her father's computer) were apparently unhappy with the contents of the report, and Ms. Chambers, counsel for Mr. Z, wished to have Dr. Mills attend for cross-examination at trial. In the result, Dr. Mills testified at the trial. From my perspective, the cross-examination provided little additional benefit, although it confirmed that Dr. Mills approached preparation of the s. 211 report in a thoughtful, balanced and professional way. Counsel's questions appeared to be premised mostly on the mistaken belief on the part of Mr. Z and TZ that Dr. Mills' role was to repeat verbatim in her report what she had been told during the interviews with Ms. Z, Mr. Z and the five children. If that was the purpose, there would be no point in having someone with Dr. Mills' qualifications and experience prepare the s. 211 report.
- [76] TZ (and, I infer, Mr. Z) was particularly unhappy with the lack of discussion in Dr. Mills' report of a statement TZ had written in September 2018, as well as a statement allegedly written by SZ at the same time. TZ sent these two statements to Dr. Mills after her interview with Dr. Mills on September 28, 2019. In my view, the circumstances in which these statements (together with one apparently authored by CZ) were prepared are highly suspect. The statements drew TZ and SZ directly, and inappropriately, into the high level of hostilities

between their parents at the time. They had been living with Mr. Z exclusively since July 20, 2018, and there was a very high risk, particularly in the case of SZ, of influence and manipulation.

[77] Dr. Mills explained how she treated these statements in preparing her report. Her explanation was thoughtful and reasonable. In my opinion, there was no basis to conclude that Dr. Mills failed to consider relevant information in preparing her report. Dr. Mills was also very clear in her report concerning the limited scope of her recommendations, consistent with the nature of her assignment.

[78] Otherwise, Ms. Chambers' questions on cross-examination appeared to be designed to draw Dr. Mills' into a dispute between the parents over whether one of them was at fault for a delay in preparing the report. This was not an appropriate use of Dr. Mills' time, and, in my view, did not justify the expense associated with having Dr. Mills come to court.

[79] In August 2019, Ms. Z decided to leave her employment at the Grocery and accepted an offer of voluntary severance. Her last day of work was September 14, 2019. Ms. Z received severance of \$65,000 (gross). The net amount (after taxes) paid to her at the beginning of October was about \$47,000. Ms. Z explained that, although she had the option of sheltering her severance in an RRSP, she took the payment in cash. She explained that she used the money to repay her mother and sister, who had both loaned her money, to pay off a credit card and then "splurged" to buy things for the children.

[80] As of the close of the evidence at trial, Ms. Z was looking for work similar to the cashier's job that she had at the Grocery.

3. Discussion and analysis

[81] I will first comment on the witnesses, before turning to the issues I have been asked to decide.

(a) Comments on the witnesses

[82] In my view, neither Ms. Z nor Mr. Z was a very reliable witness. Ms. Z's memory for dates and details was often wanting. She was reluctant to accept responsibility for her inappropriate and immature behaviour after the parties separated. She blamed Mr. Z for her lack of skills in managing money and paying bills. Mr. Z seemed intent on diminishing the importance of Ms. Z's involvement in the care and upbringing of their children, while enhancing his own. He was defensive and evasive when questioned about his lack of proper financial disclosure.

- [83] In my view, the evidence shows that, after separation, neither parent modelled mature, adult behaviour for their children, or focussed on creating a secure environment to help their children manage the breakdown of their family. The three youngest children are struggling the most, although the two oldest are also struggling. Based on Dr. Mills' report, I conclude that CZ and TZ both wish to be free of family drama and conflict, and both are prepared to move away - essentially cutting ties with family - if need be.
- [84] It was plain from her evidence that Ms. Z has many grievances and complaints about the marriage, and about Mr. Z. In his evidence, Mr. Z aired his own grievances and complaints about Ms. Z. At trial, Mr. Z seemed intent on mudslinging and attacking Ms. Z's character and lifestyle, often adding salacious - and irrelevant - details. Mr. Z never presented admissible evidence to support the most serious and sinister of his accusations. Unfortunately, that did not stop Mr. Z (through his counsel) from repeating them in closing submissions. This was largely a waste of everyone's time, and did nothing to support the parents repairing their relationship to focus on the best interests of their children.
- [85] That, particularly by the time they separated, the parties' marriage was an unhappy one, is not a surprise. However, a party's past conduct is not relevant to parenting time and allocation of parental responsibilities, unless that conduct substantially affects what is in the best interests of the children.
- [86] Ms. Z called her mother, Ms. MV, and her sister, Ms. TV, as witnesses in her case. Both of them praised Ms. Z's parenting of the children, and described her as a devoted, caring mother. However, both were also able to acknowledge that Mr. Z has been a good father. Ms. TV described him as "like a brother" to her, and she visited him in hospital when he was having his cancer surgery. Neither Ms. Z's mother nor her sister is blind to Ms. Z's weaknesses in budgeting and managing money, and my impression was that this has been a source of some frustration for Ms. MV. Both Ms. MV and Ms. TV were firm that, to their knowledge, Ms. Z has never used drugs. They have rarely seen her consume alcoholic drinks.
- [87] Mr. Z's mother, Mrs. Z, and his brother, Mr. DZ were called as witnesses in Mr. Z's case.
- [88] From her evidence, it was obvious to me that Mrs. Z actively disliked Ms. Z, and her dislike was long-standing. She had virtually nothing positive to say about Ms. Z in any respect, including how Ms. Z cared for the parties' children. On the other hand, her son, Mr. Z, could do no wrong. For the most part, on any important issue, Mrs. Z's evidence is too biased to be reliable.
- [89] Mr. DZ's animus against Ms. Z was even stronger than his mother's. In his examination-in-chief, Mr. DZ made scandalous accusations against Ms. Z, none of which had been put to Ms. Z on cross-examination. I can only conclude that the purpose of this evidence was to try to persuade me that Ms. Z was completely unfit as a mother, even though this is not in fact a position advanced by Mr. Z. Why such evidence was tendered from Mr. DZ remains a mystery to me. Mr. DZ also made reckless allegations - the relevance of which was never

apparent - concerning Ms. Z's sister, Ms. TV. Generally, Mr. DZ had nothing good to say about Ms. Z or any of the members of her family. I conclude that Mr. DZ would say anything for his brother and that his evidence is simply not reliable. I cannot place any weight on it except where it is supported by other, credible and reliable evidence.

- [90] Ms. T, Mr. Z's current partner, also displayed a very strong dislike for Ms. Z. Indeed, she went so far as to say that she was afraid of Ms. Z. Her very strong feelings against Ms. Z coloured much of her evidence, including where Ms. T was reporting on events. Her description of the highly harmonious atmosphere in the household she shares with Mr. Z and his children (when he has parenting time) was, in my view, too perfect to be reliable. Ms. T's various opinions about Ms. Z, to whom she has never been introduced, are of little assistance to me.
- [91] Unless each of them is prepared to significantly modify her behaviour, Ms. T and Ms. Z appear to be incapable of having anything approaching a civil relationship with one another. Their animosity toward one another has already had unhappy consequences for RJZ, based on the scene at his 8th birthday party. In my view, there is an unhealthy element of competition between Ms. T and Ms. Z relating to MZ and RJZ, in which Ms. T is intent on demonstrating that she is the superior mother-figure, and that Ms. Z is someone to be feared and even avoided. In that respect, Ms. T is not a benign presence in the lives of MZ and RJZ. On the other hand, Ms. Z's unnecessary involvement in the drama surrounding SZ's collection of her passport from Mr. Z's home was a step in the wrong direction in terms of possibly improving her relationship with Ms. T. Although Ms. T and Mr. Z have no plans to marry, they are now a couple, and it would be in the best interests of MZ and RJZ for Ms. Z and Ms. T to move toward having at least a civil relationship with one another. Mr. Z must not consider himself merely a bystander in that process. In my opinion, all three adults would benefit from working with a skilled and experienced family counsellor, with a view to improving their relationships with one another, consistent with what is in the best interests of the younger Z children.
- [92] Mr. Z called Ms. AP as a witness in his case. As I noted above, Ms. AP (and her husband) have known Ms. Z and Mr. Z since the families became neighbours in December 2003. Ms. AP and her husband have three children, similar in ages to some of the Z children. Ms. AP is a registered nurse, and, in that capacity, she was able to provide some assistance to Mr. Z when he was in hospital for his cancer surgery. Ms. Z confided in her when the parties were separating, although the two women had a falling-out at the end of August 2018, when Ms. Z was moving from the former family home. They have had very little contact since then. Ms. AP contrasted her own parenting style, which she described as strict, with that of Ms. Z, which was not. However, she did not express any concerns about Ms. Z's parenting. Generally, I found Ms. AP's evidence balanced and fair, and I conclude that her testimony is reliable.

- [93] TZ also testified as a witness in Mr. Z's case, over the objections of Ms. Z. I have concluded that I must treat TZ's evidence quite cautiously, especially on factual matters concerning her mother, which, in my view, are coloured by her very strong feelings about her mother and their relationship. TZ's feelings very much cloud her objectivity.
- (b) Parenting time and parenting responsibilities
- [94] At trial, neither party sought to have orders made under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) Rather, both relied on the Family Law Act, S.B.C. 2011, c. 25.
- [95] The parties in fact agree on several orders as orders that are in the best interests of their children. Their agreement on these matters made the personal attacks on Ms. Z during the trial all the more unnecessary, in my view.
- [96] The parties agree that they should remain joint guardians of the four youngest children. The parties agree that parenting time for each of TZ and SZ should be in accordance with their respective wishes. The parties also agree concerning regular parenting time for MZ and RJZ, and agree that the shared parenting arrangement that has been in place since the Crawford Order (as modified by the March 5 Order) should continue. Finally, the parties agree that, with respect to the four youngest children, both of them should be entitled to exercise all parental responsibilities set out in s. 41 of the Family Law Act. In the event they are unable to agree on a matter, the parties agree that Mr. Z should have final decision-making authority in respect to TZ, and Ms. Z should have final decision-making authority in respect of SZ.
- [97] I am satisfied that, with minor adjustments, such orders are in the best interests of the four youngest children, TZ, SZ, MZ and RJZ (who I will refer to collectively as the "Four Children," and individually by their initials). Accordingly, I order that:
- (a) pursuant to s. 39(1) of the Family Law Act, Ms. Z and Mr. Z shall be guardians of the Four Children;
- (b) parenting time for TZ shall be in accordance with her wishes, and her primary residence shall be with Mr. Z;
- (c) parenting time for SZ shall be in accordance with her wishes, and her primary residence shall be with Ms. Z;
- (d) with respect to parenting time for MZ and RJZ:
- (i) Ms. Z will have parenting time beginning every Monday at the morning school drop off and ending every Thursday at the conclusion of the school day;
- (ii) Mr. Z will have parenting time beginning every Thursday at the conclusion of the school day and ending every Monday at the morning school drop off;

- (iii) unless the parents otherwise agree in writing, the school attended by MZ and RJZ shall be used as the drop off and pick up location;
- (iv) if a Monday is a professional development day or a statutory holiday, then Ms. Z will have parenting time beginning at 10:00 a.m. on such a Monday, and Mr. Z shall drop MZ and RJZ off at Ms. Z's residence at 10:00 a.m. on such a Monday;
- (v) subparas. (i), (ii), (iii) and (iv) are referred to as the "Regular Parenting Schedule";
- (vi) the parents will follow the Regular Parenting Schedule throughout the school year and summer break, except that, each year, on December 24, Ms. Z will have parenting time from 8:00 a.m. to 8:00 p.m., and Mr. Z will then have parenting time from 8:00 p.m. on December 24 to 2:00 p.m. on December 25, after which the parents will return to the Regular Parenting Schedule;
- (vi) as a further exception to the Regular Parenting Schedule, Ms. Z will have parenting time every Mother's Day from Noon to 8:00 p.m. Unless otherwise agreed in advance and in writing, Mr. Z will drop off MZ and RJZ at Ms. Z's residence at the beginning of Ms. Z's parenting time and Ms. Z will drop off MZ and RJZ at Mr. Z's residence at the end of Ms. Z's parenting time;
- (vii) the parents may vary the parenting time arrangements by agreement in writing.
- (e) pursuant to s. 40(2) of the Family Law Act, Ms. Z and Mr. Z will share equally all of the s. 41 parental responsibilities for each of the Four Children, which are as follows:
 - (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
 - (b) making decisions respecting where the child will reside;
 - (c) making decisions respecting with whom the child will live and associate;
 - (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
 - (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
 - (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
 - (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
 - (h) giving, refusing or withdrawing consent for the child, if consent is required;
 - (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;

- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.
- (f) in the event of an emergency in relation to any of the Four Children, the parent who is first notified of the emergency will make any emergency decisions regarding the affected Child or Children. That parent must notify the other parent as soon as practically possible about the emergency, and until that parent has notified the other parent regarding the situation, that parent will have the authority to make emergency decisions. After that parent has notified the other parent, the parties will make a joint decision regarding emergency care, taking into account professional advice to the extent it is available;
- (g) each parent will have the obligation to advise the other parent of any matters of a significant nature affecting any of the Four Children;
- (h) each parent will have the obligation to discuss with the other parent any significant decisions that have to be made concerning any of the Four Children, including significant decisions about the health (except for emergency decisions), education, religious instruction and general welfare, and the obligation to use their best efforts to try to reach agreement on those decisions;
- (i) in the event that the parents cannot reach agreement on a significant decision concerning either TZ or SZ, despite their best efforts, then:
 - (i) Mr. Z will be entitled to make those decisions respecting TZ;
 - (ii) Ms. Z will be entitled to make those decisions respecting SZ;
 - (iii) in each case, the other parent will have the right to apply for directions on any decision that parent considers contrary to the best interests of TZ or SZ (as the case may be), under s. 49 of the Family Law Act.

[98] However, the parties do not agree concerning who should have final decision making authority for MZ and RJZ.

[99] Ms. Z says that she should have final decision-making authority for both MZ and RJZ because Mr. Z has shown that he is unwilling to discuss matters relating to MZ and RJZ with her. She says that, for example, she did not find out until much later that RJZ broke his wrist in September 2018, and that Mr. Z changed MZ's and RJZ's school in September 2019 without consulting her. She says that Mr. Z is irresponsible and immature. Ms. Z says that she is

willing to co-parent with Mr. Z, but Mr. Z is either uninterested or unwilling to do so. She says that she is the parent who has taken on more of the key parenting tasks and is more likely than Mr. Z to make appropriate arrangements for schooling and extra-curricular activities.

- [100] On the other hand, Mr. Z says that he should have final decision-making authority for both MZ and RJZ. In closing submissions, for example, he pointed to the empty fridge, and implied that Ms. Z preferred to spend money advanced to her from the net proceeds of the sale of the former family home on herself, rather than on buying food for the children. However, Mr. Z conveniently ignored that, at the same time, he was not paying court-ordered child support. He relied on RJZ's non-attendance at school for three days after the bridal shower as evidence that Ms. Z was, essentially, not fit to make final decisions. Moreover, in closing submissions, he relied on other matters about which there was no evidence at trial.
- [101] Section 37 of the Family Law Act mandates that, in making orders concerning allocation of parenting responsibilities and parenting time, the best interests of the child are the sole consideration for the court.
- [102] There is no doubt that Ms. Z and Mr. Z have a dysfunctional relationship and, since at least July 2018, they have a very difficult time resolving even minor issues. This is an argument in favour of one parent having final decision-making authority: see *Q.P. v. Q.N.N.*, 2017 BCSC 400, at para. 57. However, it is not an argument that tips the scales in favour of either one of these parents, and, in my view, neither has made a convincing case to have final decision-making in preference to the other parent. The high conflict manner in which this case has been litigated, and the positions taken (through to closing argument) by Mr. Z, vilifying Ms. Z and attacking her character, have only inflamed the situation, contrary to the best interests of the parties' children. For her part, Ms. Z's immature and inappropriate behaviour, including in front of the parties' children, has also contributed to the very difficult circumstances being faced by the parties' youngest children.
- [103] Which of the parents should have final decision-making is a point on which the views of the children can have little weight: see *Fox v. Fox*, 2018 BCCA 359, at paras. 21-23. These parents cannot afford a parenting co-ordinator, or the imposition of mandatory joint decision-making through mediation.
- [104] I have concluded that, at this time, having regard to the relevant factors in s. 37(2) of the Family Law Act and the best interests of MZ and RJZ, the appropriate order is that, in the event that the parents cannot reach agreement on a significant decision concerning either MZ or RJZ despite their best efforts, and subject to review on application of either parent not earlier than one year after the date of these Reasons, then:
- (a) Mr. Z will be entitled to make those decisions respecting MZ;
 - (b) Ms. Z will be entitled to make those decisions respecting RJZ; and

- (c) in each case, the other parent will have the right to apply for directions on any decision that parent considers contrary to the best interests of MZ or RJZ (as the case may be), under s. 49 of the Family Law Act;

[105] In my view, this will give each parent time to demonstrate whether either of them can conduct herself or himself in a way that can give the court confidence in that parent's ability to exercise final decision-making only in the best interests of the child.

[106] I will be seized of the review application, unless I am not available.

[107] I remind both parents that s. 43(1) of the Family Law Act mandates that a child's guardian must exercise his or her parental responsibilities in the best interests of the child.

[108] In the draft order presented during her closing submissions, Ms. Glass sought a number of orders concerning conduct. In my view, conduct orders are justified and necessary in this case. Accordingly, I order that:

- (a) each parent must complete the on-line "Parenting After Separation" course, and file proof of completion of the course by not later than August 31, 2020;
- (b) except for out-of-province trips of 24 hours or less, neither parent shall remove any of the Four Children from the jurisdiction of the province of British Columbia without the prior written consent of the other parent or a court order;
- (c) neither parent shall make any negative, insulting, derogatory or disparaging comments about the other parent within the hearing or in the presence of any of the Four Children or CZ. Moreover, neither parent shall permit third parties to make any negative, insulting, derogatory or disparaging comments about the other parent within the hearing or in the presence of any of the Four Children or CZ;
- (d) unless agreed to in advance, neither parent is permitted to place any information concerning the other parent or concerning any of the Four Children onto any social media outlet;
- (e) neither parent will:
 - (i) question any of the Four Children about the other parent or about time spent with the other parent beyond simple conversational questions;
 - (ii) discuss with any of the Four Children any inappropriate adult, court or legal matters;
 - (iii) blame, criticize or disparage the other parent to any of the Four Children;
 - (iv) allow any of the Four Children access to e-mail or text communications between the parents or to court documents created for or filed with the court in this action;

(f) except for emergency health matters, all communications between the parents with respect to matters concerning the Four Children shall be by e-mail only, unless the parties agree in writing to some other form of communication. The parents shall access their e-mail accounts regularly, and read and respond to any e-mail from the other parent as promptly as practicable. Communications shall be concise, informative and deal only with matters concerning the Four Children.

(c) Child support (ongoing and retroactive)

[109] Since separation, no child support has ever been paid. No child support was paid by Mr. Z, even though he was ordered to do so in the March 5 Order.

[110] Each parent seeks ongoing and retroactive child support from the other.

[111] I will first address the parties' Guidelines incomes for 2018, 2019 and 2020. I will then address ongoing child support, including s. 7 expenses and whether, in that context, CZ should be considered a "child of the marriage" and entitled to support. Finally, I will address matters concerning retroactive child support, including whether, during any relevant time, CZ was, or was not, a child of the marriage.

(i) Guidelines incomes

[112] The parties agree that, for 2018, Ms. Z's Guidelines income was \$43,271, and Mr. Z's Guidelines income was \$67,944.

[113] However, there is no agreement concerning Guidelines incomes for 2019.

[114] Ms. Z says that her 2019 Guidelines income should be fixed at \$43,271. Her income reported in her F8 financial statement sworn September 10, 2019 is \$24,991. Ms. Z acknowledges that, later that month, she received her severance of \$65,000 from the Grocery. Ms. Z accepts that it would be appropriate to include at least a portion of her severance, so that her 2019 Guidelines income is equivalent to her 2018 Guidelines income. She says further that, although she is unemployed, it would be appropriate to impute a Guidelines income to her for 2020 of \$43,271, thus taking into account the balance of her buyout by imputing income to her. Ms. Z says that there is no justification for including the entire amount of the severance in her 2019 Guidelines income, and that this would not be reasonable. Ms. Z says that she never earned \$65,000 annually (a point that is not disputed), nor was she capable of earning that amount, either during the marriage or now.

[115] Mr. Z says that Ms. Z's 2019 Guidelines income should be fixed at \$86,000, and the entire amount of her severance should be taken into account in the year it was paid. In support of his position, Mr. Z cited *Abdalla v. Hanno*, 2014 BCSC 1598.

[116] However, in my view, *Abdalla* does not support the conclusion that Mr. Z says I should draw.

- [117] There can be no question that what Ms. Z received was a severance payment when her employment with the Grocery was terminated. As of trial, Ms. Z was unemployed, and her buyout was intended to compensate Ms. Z for the notice to which she was entitled as an employee who had worked for the Grocery for well over a decade. Abdalla does not stand for the proposition that, in every case, the whole of a severance payment should be attributed to the year in which the payment was received. Severance payments are a substitution for loss of employment income and generally should be considered as part of Guidelines income: see *Boucher v. Boucher*, 2018 BCSC 2191, at para. 43; and *McKenzie v. Perestrelo*, 2014 BCCA 161, at paras. 94-99. Ms. Z does not argue that her buyout should not be taken into account at all. Rather, she says that her buyout should be included in her Guidelines income for both 2019 and 2020, since it is intended to compensate her for loss of employment income over an extended period.
- [118] I agree with Ms. Z's position. Accordingly, I find Ms. Z's Guidelines income for 2019 is \$43,271.
- [119] Mr. Z says that I should find his 2019 Guidelines income to be \$67,944, the same as his Guidelines income for 2018. This is the income for purposes of child support reported by Mr. Z in his F8 financial statement sworn September 11, 2019, and it is equal to the line 150 income in his 2018 notice of assessment from the Canada Revenue Agency.
- [120] On the other hand, Ms. Z says that I should find Mr. Z's 2019 Guidelines income to be \$75,000, based on the 2019 earnings shown in the statement of earnings for the period ended August 31, 2019, a copy of which is attached to Mr. Z's F8 Financial Statement. Based on that statement, Ms. Z says that Mr. Z was earning \$6,284 gross per month, and on track to earn \$75,408 for the year.
- [121] Mr. Z had ample opportunity, before the evidence was closed at trial, to explain why the statement of earnings should not be used to arrive at his 2019 Guidelines income, and his 2018 line 150 income should be preferred. In my opinion, Mr. Z did not do that in any satisfactory way.
- [122] Accordingly, I find that Mr. Z's 2019 Guidelines income is \$75,000.
- [123] Child support payable for 2020 will be based on the 2019 Guidelines incomes for both Ms. Z and Mr. Z.
- (ii) On-going child support, including s. 7 expenses
- [124] I find that for purposes of ongoing child support:
- (a) TZ's primary residence is with Mr. Z, and he is entitled to child support on that basis;
 - (b) SZ's primary residence is with Ms. Z, and she is entitled to child support on that basis; and
 - (c) custody for MZ and RJZ is shared, and s. 9 of the Guidelines applies.

- [125] As of August 2019, CZ has been living with Ms. Z. The parties agreed that, at least as of the trial, CZ was a child of the marriage and entitled to support, although she was over the age of majority. On that basis, I find that Ms. Z is entitled to child support payable by Mr. Z in respect of CZ.
- [126] The result is, based on the above Guidelines incomes, where the children entitled to support are living, and sections 8 and 9 of the Guidelines, monthly support in the sum of \$912 is payable by Mr. Z to Ms. Z.
- [127] Accordingly, I order that Mr. Z pay child support to Ms. Z in the sum of \$912 per month commencing July 1, 2020, continuing on the first day of each and every month thereafter for so long as the children remain eligible for support or until further agreement of the parties or court order.
- [128] I turn then to s. 7 expenses.
- [129] In *Clarke v. Clarke*, 2014 BCSC 824, Baird J. provides a very useful discussion of special or extraordinary expenses under s. 7, beginning at para. 48:
- [48] Section 7 of the [Guidelines] gives the court the discretion to order payment of an amount over and above the regular table amount. However, in order to qualify for a s. 7 order, the expenses must be proven to be "special" or "extraordinary" in some way.
- [49] This is because the basic table amounts of child support are designed to cover all the "ordinary" costs of raising a child: [citation omitted]. Food, shelter, clothing and other necessities are all ordinary, as are many educational, extracurricular and recreational expenses: [citation omitted].
- [50] So when does an expense qualify as special or extraordinary? First, it must fit within one of the categories of expenses listed in section 7, as follows:
- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
 - (b) that portion of the medical and dental insurance premiums attributable to the child;
 - (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
 - (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
 - (e) expenses for post-secondary education; and
 - (f) extraordinary expenses for extracurricular activities.

- [51] That list is exhaustive. If the claimed expense does not fit into any of those categories, it cannot be a special or extraordinary expense: [citation omitted].
- [52] Even where an expense fits into one of the listed categories, that is not the end of the story. The expenses must be both "necessary" -- as defined in relation to the child's best interests -- and "reasonable," as measured against the combined financial means of the parents (and, where appropriate, the child) as well as the family's spending patterns prior to separation: see section 7(1) and *Yensen v. Yensen*, 2003 BCSC 1372 at para. 8. In addition if the expense is one listed under subsection (d) or (f) -- educational programs or extracurricular activities -- the party claiming the expense must prove that they are "extraordinary."
- [53] There is no straightforward definition for "extraordinary" although section 7.1, recently added to the Guidelines, provides some guidance; it requires a sort of proportionality inquiry, looking at the nature and number of activities, any special needs or talents of the child, the overall cost of the activities, and any other similar relevant factors: [citation omitted].
- [54] Because the tests are fact-specific, I cannot definitively say what types of expenses qualify in every case. But I can say what does not qualify as special or extraordinary:
- Expenses such as "entertainment, pets, vacations, school fees, school supplies, children's allowances, meals outside the home, personal grooming, and clothing" are not section 7 expenses: [citation omitted]
 - A home computer and other similar technologies do not qualify as extraordinary as they are "common item[s] found in most homes": [citation omitted].
 - Recreational sports and other similar extracurricular activities -- dance lessons, community sports leagues, ski trips, etcetera -- are generally considered "ordinary." The question is whether the participation goes beyond that of the "average child": [citation omitted].
- [130] At trial, Mr. Z sought an order that, on presentation of a "quote," the parties would "arrange to pay the special expense in advance" in accordance with their shares; and on presentation of a receipt, the other party would pay his or her share within 14 days of receiving proof of payment. Moreover, Mr. Z sought an order that special expenses "shall include" [underlining added] but were not limited to specific items. These included: expenses for post-secondary education; extraordinary expenses for extracurricular activities; and "other expenses such as driving lessons for the children, vehicle insurance for the children and 1 cellphone used primarily by each child."
- [131] In contrast, Ms. Z proposed that s. 7 expenses would be shared provided they were agreed to in advance in writing. She proposed that the parties would pay their proportionate shares within seven days of the other parent's request for reimbursement, and for any s. 7 expense incurred, the party incurring the expense would provide the other parent with a copy of the receipt or invoice and proof of payment.

- [132] In my opinion, Mr. Z's proposal must be rejected. While Mr. Z's list includes items that are set out in s. 7, his proposal purports to pre-determine that such items would automatically qualify as s. 7 expenses, and commit both parents to pay for them. Mr. Z's proposal is contrary to the express language in s. 7, which provides simply that "the court may . . . provide for an amount" [underlining added], and it is contrary to the approach described by Baird J. in *Clarke*, set out above. A cellphone would not qualify as a special expense, for example.
- [133] Moreover, in the context of this family's finances, the idea that "vehicle insurance for the children" should qualify automatically as a special expense is completely unrealistic and not reasonable. The parties cannot afford such an expense. On that point, I also note the observations of Kent J. in *Wiebe v. Treissmann*, 2017 BCSC 1523, at para. 124:
- [124] One can certainly question the wisdom of "spoiling" children by buying them vehicles at a young age. I will not pass judgment in that regard. Suffice it to say, however, that the cost of owning and operating a car for the children does not qualify as a "special or extraordinary expense" of the sort included in s. 7 of the Guidelines. . . .
- [134] In addition, in my view, in the context of this family's size and financial resources, funding for post-secondary education does not qualify as "reasonable." While the family was intact, the parents gave no priority to setting any money aside for any of their children to attend college or university or any post-secondary institution. If a child wished to do that, the child was going to be putting herself or himself through school.
- [135] In my opinion, given the existing demands on the parents' incomes, including in particular providing basic support for the children of the marriage, some additional limits need to be imposed on s. 7 expenses.
- [136] Accordingly, I order that, s. 7 expenses shall be shared by Ms. Z and Mr. Z in proportion to their incomes, namely, 40% to Ms. Z and 60% to Mr. Z. Except for health related expenses that do not exceed insurance reimbursement by more than \$100 annually, any expense must be agreed to in advance in writing. A parent will pay his or her respective proportionate share within 14 days of the other parent's request for reimbursement. For any s. 7 expense incurred, the parent incurring the expense will provide to the other parent a copy of the receipt or invoice, together with proof of payment.
- [137] Beginning in 2021, and for as long as any of the children is eligible to receive child support, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than May 31 each year; and (b) copies of any Notice of Assessment or Reassessment provided to them by the Canada Revenue Agency, immediately upon receipt.

(iii) Retroactive support issues

- [138] Each of the parents claims the other owes retroactive basic child support. Mr. Z also claims that Ms. Z owes him for retroactive s. 7 expenses.
- [139] The leading case on retroactive support is *D.B.S. v. S.R.G.*, 2006 SCC 37. The parental obligation to support a child or children of the marriage, like the children's concomitant right to support, exists independently of any statute or court order: see *D.B.S.*, at para. 54. Factors that the court will consider in exercising its discretion in making a retroactive child support order include: the circumstances surrounding the delay in applying; the payor parent's conduct; the child's or children's circumstances; and any hardship caused by a retroactive award. See *D.B.S.*, at paras. 100-116, and para. 133. An order for retroactive support is discretionary, but not exceptional: *D.B.S.*, at paras. 5 and 97.
- [140] Ms. Z says that, after Mr. Z left the former family home in mid-June 2018, they had a shared parenting, week-on and week-off, arrangement for the four younger children. Ms. Z says that arrangement continued up until August 9, 2018, and included the three-week period when she went to Saskatchewan on vacation. She says that while she was on vacation, the week-on and week-off arrangement was to be suspended and then resumed once she returned. However, Ms. Z says that, while she was away, Mr. Z unilaterally terminated the arrangement, without any justification, and then refused to allow her to have any parenting time until early October, when the Crawford Order was pronounced. Ms. Z says, citing *Street v. Street*, 2017 BCSC 981 (at paras. 137 and following), that no child support should be payable by her during the period in which she asserts Mr. Z wrongfully withheld the children.
- [141] Mr. Z says that, after he moved out of the former family home in June 2018, TZ and SZ lived with him, and there was shared parenting of MZ and RJZ. He says further that he terminated the shared parenting arrangement when Ms. Z returned from Saskatchewan on August 9, 2018 and the primary residence of all four children was with him until the end of September. He denies that, at any point, he wrongfully denied parenting time to Ms. Z.
- [142] I find that, beginning July 1, 2018 and for the balance of 2018, the parenting arrangements for the four youngest children, and the child support payable as a result (based on my findings above concerning the parties' Guidelines incomes for 2018), are as follows:
- (a) for July 2018, there was shared parenting for all children, and child support is payable based on s. 9 of the Guidelines. The result is that child support is payable by Mr. Z to Ms. Z in the sum of \$565;
 - (b) for August and September 2018, the children's primary residence was with Mr. Z, and child support is payable by Ms. Z. I find that, for this period, TZ and SZ had, in effect, voted with their feet and decided to live primarily with Mr. Z. I find further that Mr. Z has failed to prove that his concerns about drug use by Ms. Z and the presence of drugs in the former family home were justified. However, I have not been persuaded that, after Ms. Z returned from Saskatchewan, she in fact had suitable accommodation available that would have permitted a shared parenting arrangement for MZ and RJZ to continue. I find that such

accommodation was not available until Ms. Z moved into her new apartment in October. The result is that, for this period, child support is payable by Ms. Z to Mr. Z in the sum of \$1,084 per month, for a total of \$2,168;

- (c) for the balance of 2018 (October through to the end of December), TZ's and SZ's primary residence was with Mr. Z, and there was shared parenting of MZ and RJZ. The result is that, for this period, child support is payable by Ms. Z to Mr. Z in the sum of \$30 per month, for a total of \$120 for four months.

[143] The parties agree that, in 2019, TZ lived with Mr. Z. The parties also agree that, continuing in 2019, MZ and RJZ have had a shared parenting arrangement.

[144] I turn then to SZ.

[145] I find that, since September 2019, her primary residence has been with Ms. Z, and child support is payable by Mr. Z to Ms. Z on that basis. However, I find that, for the period from January to August 2019, there was a de facto shared parenting arrangement in place with respect to SZ. As I noted above, SZ was moving back and forth between households, more or less at will. I have concluded that attempting to finely parse where SZ was living in any particular week or month would be largely fruitless.

[146] I turn next to CZ.

[147] At trial, CZ's parents agreed that, although she was then 20 years old, she was nevertheless a child of the marriage and entitled to support. Because of this agreement, the evidence tendered by Ms. Z concerning CZ's circumstances as of the fall of 2019 was somewhat sparse. CZ's parents also agreed that, for a period after she turned 19, CZ was not a child of the marriage. However, as of closing submissions, and although both parents agreed CZ was a child of the marriage, they did not agree on when she regained that status.

[148] Section 2(1) of the Divorce Act provides that a child who is over the age of majority is a "child of the marriage" if that child is under his/her parents' charge, "but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life." The definition of "child" in s. 146 of the Family Law Act is to the same effect.

[149] CZ reached the age of majority when she turned 19 on August 31, 2018.

[150] Mr. Z says that, beginning in January 2019 and although she was over the age of majority, CZ again became a child of the marriage when she enrolled in classes at Douglas College. Mr. Z says that, since January 2019, CZ has been entitled to support from her parents, and child support has been payable to the parent with whom CZ has her primary residence. Mr. Z says that CZ's primary residence was with him in January and February 2019 and that it was shared with Ms. Z in March. Mr. Z accepts that, since April 2019, CZ's primary residence has been with Ms. Z.

- [151] Ms. Z says that CZ did not resume status as a child of the marriage until August 2019, when she returned to school full-time. At that point, she was again entitled to support from her parents.
- [152] Once a child reaches the age of majority, the parent asserting that the child remains a child of the marriage has the burden of proof: see *Dring v. Gheyle*, 2018 BCCA 435, at para. 49.
- [153] In determining whether a child pursuing an education is unable to withdraw from her parents' charge or obtain the necessities of life, a court must consider the surrounding circumstances. Mere attendance at an educational institution is not sufficient. See *Neufeld v. Neufeld*, 2005 BCCA 7, at para. 18. In determining whether pursuit of education is a valid reason for continued dependence, a court must consider two questions. The first is whether, considering all of the child's circumstances, the child's educational pursuits are reasonable. If they are, the court must also consider whether it is appropriate that the pursuits be financed by the parents. These questions can be complex and value-laden. See *Nordeen v. Nordeen*, 2013 BCCA 178, at para. 16.
- [154] In my view, the evidence relied on by Mr. Z in support of his position that, when CZ was living with him in 2019, she had again assumed the status of a child of the marriage, is vague and unpersuasive. I find that he has failed to meet his burden to show that CZ was, at that time, a child of the marriage.
- [155] Moreover, I note that the first time Mr. Z applied for support for CZ was at the trial. Neither his response to family claim nor his counterclaim were ever amended to claim child support for CZ. In closing submissions, Mr. Z asserted that as of January 2019, he was paying for CZ to attend Douglas College and she should be considered a child of the marriage and entitled to support as of that date. However, his position as of March 5, 2019 was that she was not a child of the marriage, and, therefore, not entitled to support. Indeed, as of March 5, 2019, both parties took the position that CZ was not a child of the marriage. At trial, Mr. Z did not attempt to reconcile or explain the inconsistency in his positions, or justify his failure to give Ms. Z notice that, as of March 2019, he was advancing a claim for child support for CZ, including retroactive support.
- [156] Ms. Z did not amend her notice of family claim to claim that CZ was entitled to child support. However, in her trial brief filed on August 22, 2019, Ms. Z advanced a claim for child support for CZ on the basis that she was a full-time student and living with Ms. Z. Mr. Z's trial brief filed August 14, 2019 is unhelpfully ambiguous.
- [157] While not determinative, the failure of a parent to give effective notice to the other that a claim is being made for retroactive child support can be significant because of its connection to the question of whether there is unfairness in making a retroactive award. As of March 5, 2019, when it would have been logical and reasonable for Mr. Z to advance a claim for child support (including retroactive support) for CZ based on the facts on which he relied at trial, he did not.

- [158] I find that Mr. Z failed to give effective notice to Ms. Z that he was advancing a claim for child support for CZ, retroactive to January 2019. On the other hand, I find that, in her trial brief, Ms. Z gave effective notice to Mr. Z that she was making a claim for child support for CZ.
- [159] I find that, as of September 2019, and based on her full-time attendance at college, CZ was a child of the marriage and entitled to support. As CZ was then living with Ms. Z, Mr. Z is obligated to pay support for CZ to Ms. Z. The position taken by both parents was that support for CZ was payable pursuant to s. 3(2)(a) of the Guidelines.
- [160] Accordingly, I find that, beginning January 1, 2019, the parenting arrangements, and the child support payable as a result (based on my findings above concerning the parties' Guidelines incomes for 2019), are as follows:
- (a) for the eight months from January to August, TZ's primary residence has been with Mr. Z, and there has been shared parenting for SZ, MZ and RJZ. CZ was not a child of the marriage. The result is that, for this period, child support is payable by Mr. Z to Ms. Z in the sum of \$438 per month, for a total (for eight months) of \$3,504;
 - (b) for the period beginning September through to the end of December, TZ's primary residence has been with Mr. Z. CZ was again a child of the marriage and entitled to support. CZ's and SZ's primary residence has been with Ms. Z. There has been shared parenting for MZ and RJZ. The result is that, for this period, child support is payable by Mr. Z to Ms. Z in the sum of \$912 per month, for a total (for four months) of \$3,648.
- [161] For the period beginning January 2020 through to and including June 2020, TZ's primary residence has been with Mr. Z, CZ's and SZ's primary residence has been with Ms. Z, and there has been shared parenting for MZ and RJZ. Based on Guidelines incomes of \$75,000 for Mr. Z and \$43,271 for Ms. Z, the child support is payable by Mr. Z to Ms. Z in the sum of \$912 per month, for a total (for six months) of \$5,472.
- [162] Accordingly, based on these findings and after set-offs, the retroactive support for the period from July 2018 to (and including) June 2020 would be \$10,901 payable by Mr. Z to Ms. Z, which I round to \$10,900.
- [163] I turn then to the relevant factors. I find that Ms. Z had a reasonable excuse for the delay in applying for child support for CZ, which Mr. Z did not. Mr. Z engaged in blameworthy conduct in failing to pay the child support he had been ordered to pay pursuant to the March 5 Order. Ms. Z was struggling to support the children when they were living with her, and the circumstances of the children justify an award of retroactive child support. In my view, it is unconscionable for Mr. Z to point to a picture of an empty fridge at Ms. Z's home as evidence of her failures as a mother, and to spend thousands of dollars on a trip to Disneyland, at a time when he was paying no child support despite being ordered by the court to do so.

- [164] I conclude that an award of retroactive child support is justified. With respect to basic child support, I fix the amount payable by Mr. Z to Ms. Z at \$10,900. I consider this to be a fair amount, having regard to all of the circumstances.
- [165] I turn then to retroactive s. 7 expenses.
- [166] Mr. Z seeks reimbursement from Ms. Z for her proportionate share of what he asserts are s. 7 expenses, totalling approximately \$3,600. The details of the expenses are found at Exhibit 5, Tab 8. They include, for example, the cost of driving lessons for TZ, expenses relating to her high school graduation, ambulance service in March and April 2018, and back-to-school clothing (which appears to have been paid for by the children's paternal grandfather).
- [167] Based on the discussion above concerning s. 7 expenses generally, only a few of these (for example, orthodontic expenses for SZ, and dentist's expenses for MZ) might legitimately qualify. However, most would not.
- [168] I fix the retroactive s. 7 expenses at \$1,250. Ms. Z is responsible to pay 40% of those expenses, or \$500.
- [169] Ms. Z's share of the retroactive s. 7 expenses will be set-off against the retroactive child support owing by Mr. Z of \$10,900, with the result that Mr. Z is liable to pay Ms. Z \$10,400. I order that Mr. Z pay this amount in instalments of \$1,000 per month, commencing July 1, 2020, until fully paid. The balance owing can be paid in full at any time. There will be no interest on the amount outstanding from time to time.

(iv) Summary concerning child support and retroactive child support

- [170] In summary, based on Guidelines incomes for Ms. Z of \$43,271 for 2018, 2019 and 2020 of \$43,271, and for Mr. Z of \$67,944 for 2018 and \$75,000 for 2019 and 2020, and my findings above, I order that:
- (a) Mr. Z pay child support to Ms. Z in the sum of \$912 per month, commencing on July 1, 2020, and continuing on the first day of each and every month thereafter, for so long as the children remain eligible for support or until further agreement or court order;
 - (b) commencing July 1, 2020, special or extraordinary expenses under s. 7 of the Guidelines shall be shared 40% to Ms. Z and 60% to Mr. Z;
 - (c) except for health related expenses that do not exceed insurance reimbursement by more than \$100 annually, any s. 7 expense must be agreed to in advance in writing. A parent will pay his or her respective proportionate share within 14 days of the other parent's request for reimbursement. For any s. 7 expense incurred, the parent incurring the expense will provide to the other parent a copy of the receipt or invoice, together with proof of payment;

- (d) net retroactive child support, including retroactive s. 7 expenses, is fixed at \$10,400 payable by Mr. Z to Ms. Z. Mr. Z is to pay this amount in instalments of \$1,000 per month, commencing July 1, 2020, until fully paid. The balance owing can be paid in full at any time. There will be no interest on the amount outstanding from time to time; and
- (e) beginning in 2021, and for as long as any of the children is eligible to receive child support, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than May 31 each year; and (b) copies of any Notice of Assessment or Reassessment provided to them by the Canada Revenue Agency, immediately upon receipt.

(d) Spousal support

[171] Ms. Z says that she is entitled to spousal support on both compensatory and non-compensatory grounds. Mr. Z says that Ms. Z has not shown any entitlement to spousal support, and her claim should be dismissed.

[172] Ms. Z claims spousal support under both the Family Law Act and the Divorce Act. The provisions of these statutes respecting entitlement to spousal support mirror each other. However, it is important that the statutory basis of a court order is clear, for the purpose of future review or variation proceedings. As there is no material difference to the result, and the Divorce Act clearly applies, I will address the issue under the Divorce Act.

[173] The objectives of a spousal support order are set out in the Divorce Act, s. 15.2(6) which provides that:

An order . . . that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[174] No single objective set out in s. 15.2(6) is paramount, and all must be considered by the court: see *Moge v. Moge*, [1992] S.C.R. 813, at pp. 850-853. The first two objectives relate to compensatory support, and the last two objectives relate to non-compensatory support. A court is not required to decide one basis of support to the exclusion of the others, and the doctrine of equitable sharing is the overarching principle to be focussed on by the court: see *Chutter v. Chutter*, 2008 BCCA 507, at para. 49.

[175] Moreover, under the Divorce Act s. 15.2(4), courts must

... take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[176] In determining whether a spouse has been economically disadvantaged as a result of the marriage or its breakdown, the fact that the spouse pursued a career and was employed outside the home does not necessarily preclude entitlement to support on compensatory grounds: see Chutter, at para. 71. Moreover, both compensatory and non-compensatory support, particularly in longer marriages (such as this one), take into account the marital standard of living and the parties' post-separation standard of living: see Chutter, at paras. 52-58, 61 and 88.

[177] In my view, Ms. Z has shown an entitlement to spousal support on both compensatory and non-compensatory grounds.

[178] The parties had been married for almost 20 years when they separated in April 2018. Both of them worked outside the home throughout the marriage. They contributed to the best of their abilities, both financially and in non-financial ways, to support the family. However, priority was given to Mr. Z's career and his advancement: he clearly was the family's breadwinner. As a result, Mr. Z was able to develop skills and achieve a higher income-earning capacity than Ms. Z. Moreover, as a result of the maternity leaves taken in connection with the birth of each of the children, Ms. Z was out of the workforce for a total of five years. There is a significant and likely permanent difference in the income-earning capacities of the parties, which I find to be connected to the marriage itself. Moreover, I agree with Ms. Glass that Ms. Z has experienced financial hardship and a drop in her standard of living following the breakdown of the marriage. Ms. Z is not capable of achieving or sustaining anything roughly equivalent to the marital standard of living without support.

[179] I then turn to quantum.

[180] Ms. Z accepted that an income of \$43,271, based on what she was earning her last full year of employment at the Grocery, should be imputed to her for purposes of spousal support. I agree.

[181] In closing submissions, Ms. Glass sought an order that, at this time, a nominal amount of spousal support be paid by Mr. Z to Ms. Z, in the light of the requirement under s. 15.3 of the Divorce Act that priority to be given to child support. Section 173 of the Family Law Act is to the same effect. In Ms. Glass's submission, such an order is appropriate, given the child support payable by Mr. Z, and the limited financial resources available to meet those

obligations. Ms. Glass cited *Coupar v. Roh*, 2014 BCSC 1392, in support of her position that the court may order nominal spousal support where entitlement to support has been established but there is no current ability to pay.

- [182] I have concluded that, given the limited financial resources available to pay support, the priority required to be given to child support, and the changes that are likely as CZ and TZ (in particular) cease to be children of the marriage, the approach taken in *Coupar* makes sense in the context of this family. Such an approach is consistent with the exception under s. 12.11 of the Spousal Support Advisory Guidelines (the "SSAG").
- [183] I therefore order that, until further order or agreement between the parties, and subject to review respecting quantum on any of the children ceasing to be a child of the marriage, commencing July 1, 2020 and on the first of each month thereafter, Mr. Z pay Ms. Z spousal support in the sum of \$1.00. Either party may apply for a review of the quantum of spousal support concurrently with any of the children ceasing to be a child of the marriage.
- [184] The law is clear that either party can apply for a variation in spousal support if there is a material change which justifies a variation. No specific order is necessary in that respect.
- [185] Ms. Z also seeks retroactive spousal support. In closing submissions, Ms. Glass provided DivorceMate calculations using the SSAG. Depending on the assumptions made, these showed a range of retroactive support from \$826 (at the low end) to \$2,730 (at the high end), calculated up to December 6, 2019.
- [186] Similar considerations to those applicable in the context of child support are also relevant to deciding the suitability of a retroactive award of spousal support: the needs of the recipient, the conduct of the payor, the reason for the delay in seeking support and any hardship the retroactive award may occasion on the payor spouse. However, in spousal support cases, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal support, as compared with child support. See *Kerr v. Baranow*, 2011 SCC 10, at paras. 207-208. The same flexibility and regard for a holistic view of the matter on its merits is appropriate in the case of retroactive spousal support: *Kerr*, para. 212.
- [187] I conclude that ordering Mr. Z to pay Ms. Z retroactive spousal support in the sum of \$1,000, covering the period from the filing of Ms. Z's notice of family claim in June 2018 to June 30, 2020, is appropriate and fair to both parties, having regard in particular to Ms. Z's need for support and Mr. Z's failure to pay any support despite being ordered to do so in the March 5 Order. This amount is to be paid in full by Mr. Z by not later than August 31, 2020. No interest shall accrue in the interim.

(e) Family property and debt

- [188] Pursuant to s. 81 of the Family Law Act, each spouse is presumptively entitled to an undivided half interest in all family property as a tenant in common, and equally responsible for family debt. These rights and responsibilities accord to the parties regardless of their respective use or contribution. The date on which property rights vest is the date of separation.
- [189] I find that the date of separation is April 7, 2018.
- [190] Under the Family Law Act, property is categorized as either "family property" or "excluded property." All real or personal property owned by either spouse at the date of separation is broadly defined as family property (s. 84(1)).
- [191] Family debts are defined under s. 86(a) of the Family Law Act as all financial obligations incurred by a spouse during the period beginning when the relationship between the spouses began, and ending on their separation. Thus, any debt acquired during the relationship, regardless of whether it was for a family purpose, is a family debt.
- [192] Section 95(1) of the Family Law Act allows the Court to order an unequal division of family property or family debt if it would be significantly unfair to equally divide such property or debt. Section 95(2) enumerates factors the court may consider in weighing whether an unequal division should be ordered.
- [193] Pensions and a spouse's entitlement under a registered retirement savings plan are specifically identified as family property under s. 84(2)(e) of the Family Law Act. Part 6 of the Act deals specifically with pension division.
- [194] The main dispute here concerned family debts. Unfortunately, the evidence was not very satisfactory. For example, some of the debts included amounts that predated the sale of the Clayton Heights home, when, according to Mr. Z, everything was paid off and the parties had over \$100,000 left over. Ms. Z asserted that, as of trial, she had paid down some of the debts in her name.
- [195] Doing the best I can with the evidence presented, I find the following are family debts:

Description

Amount

Ms. Z's taxes paid under her 2017 notice of assessment

\$3,321.25

Ms. Z's debt for employment insurance overpayment

\$3,798.00

Ms. Z's VanCity credit card

\$2,061.00

Mr. Z's Costco credit card

\$952.20

Telus internet TV

\$177.07

Bell Mobility

\$1,616.48

BC Hydro

\$1,469.00

Nissan Leaf (approximate balance owing after sale following repossession)

\$13,121.00

Total:

\$26,516.00

[196] Ms. Z says that Mr. Z should pay her 50% of the debts in her name, and that the remaining debts, other than for the Nissan Leaf, should be paid directly to the creditors from the balance of the net proceeds from the sale of the former family home remaining in trust.

[197] With respect to the Nissan Leaf, Ms. Z says that there should be an unequal division and that Mr. Z should have sole responsibility for this debt. Ms. Z says the debt resulted from Mr. Z's failure to do as he agreed to do when the former family home was sold, and arrange to pay off the amount owing on the financing for Nissan Leaf out of the net sale proceeds. In the result, when Ms. Z was unable to keep up the payments, the car was repossessed and sold, leaving a balance owing. Ms. Z relies on s. 95(2)(b) of the Family Law Act in support of her position.

[198] In my view, the evidence at trial falls short of establishing that, when the former family home was sold, Ms. Z and Mr. Z had an agreement that the amount owing on the Nissan Leaf would be paid out of the net proceeds, and that this was Mr. Z's responsibility to accomplish. Ms. Z's evidence was to the effect that she asked Mr. Z "five times" to arrange for payment when the home was sold, and Mr. Z told her that he would. Her position is that he then just changed his mind, and did not do what he agreed to do. However, based on Mr. Z's evidence, things were not so simple. His evidence was to the effect that, while Ms. Z reached out to him to have the Nissan Leaf debt paid from the net proceeds after the sale of the former family home, she was not willing to agree to payment of other family debts, and therefore there was no agreement.

[199] In that light, I am not persuaded that it would be significantly unfair to divide this debt equally.

- [200] Mr. Z says that all of these debts (including any interest that has accrued) should be paid from the funds currently being held in trust, following which the balance remaining should be divided equally between the parties.
- [201] In my view, the appropriate disposition of these debts is as follows:
- (a) the amounts (including any interest or fees) owing in respect of Mr. Z's Costco credit card, Telus Internet TV, Bell Mobility, BC Hydro and the Nissan Leaf will be paid to the respective creditor from the net proceeds of sale of the former family home;
 - (b) the remaining balance net proceeds will then be divided equally between Ms. Z and Mr. Z;
 - (c) from Mr. Z's share, and before distribution of the net amount to Mr. Z, he will pay Ms. Z \$7,490.13, representing 50% of her family debts and 50% of the estimated value of the Nissan Cube retained by Mr. Z.
- [202] All other household items, including motor vehicles, retained by either of the parties on separation shall remain their sole and separate property without any further equalization between them.
- [203] I turn then to pensions and similar assets.
- [204] Here, the parties have CPP entitlements, of unknown value. These must be divided in accordance with Part 6 of the Family Law Act from the date they began accruing to the date of separation, and I so order.
- [205] Ms. Z's F8 financial statement filed September 10, 2019 discloses a "United Food and Commercial Workers Union" pension of unknown value.
- [206] In Mr. Z's F8 Financial Statement filed on December 24, 2018, he did not disclose any pensions or RRSPs under "Assets." Indeed, that section of his F8 is blank. However, when the F8 was sworn, Mr. Z had both a union pension (covering the period up until he left the union and took the new position at the Grocery in January 2017) and a defined-benefit pension with the Grocery. Mr. Z's F8 Financial Statement sworn September 9, 2019 lists a pension with the Grocery, but no details (either the date acquired or the value) are provided.
- [207] According to a certificate issued to Mr. Z and dated August 23, 2019, the value of his union pension was \$142,766.65. Mr. Z's evidence about this asset, and what happened to it immediately prior to trial was vague and unsatisfactory. He appeared to be reluctant to provide details. He suggested that the money was going into a "locked-in account" at Coast Capital Credit Union, that he did not know the number of the account, and that, somehow, it was mostly happening without his involvement, although he was firm in his evidence that he "couldn't touch" the money. Whether this was some form of registered retirement savings plan investment was unclear.

[208] Again the evidence is not very satisfactory. However, with respect to these assets, I order that:

- (a) the parties' employment pensions be divided pursuant to Part 6 of the Family Law Act; and
- (b) any registered retirement savings plans or equivalent in the name of either party, to include any funds that originated from any previously held employment pensions, will be equalized.
- (f) Divorce

[209] The parties are entitled to a divorce on the grounds that they have lived separate and apart for more than one year. Accordingly, subject to s. 12 of the Divorce Act, I order that the claimant and the respondent are divorced from each other, the divorce to take effect on the 31st day after the date of these Reasons.

(g) Penalties

[210] Ms. Z seeks an order pursuant to s. 230 of the Family Law Act that Mr. Z pay a fine in the sum of \$5,000 for "deliberate and persistent breaches" of court orders, such amount to be payable to Ms. Z's counsel.

[211] Section 230 provides in relevant part:

230 (1) . . . an order under this section may be made only if no other provision of this Act applies for the purposes of enforcing an order made under this Act.

- (2) For the purposes of enforcing an order made under this Act, the court on application by a party may make an order to do one or more of the following:

. . .

- (b) require a party to pay

. . .

(ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the party's actions, or

(iii) a fine not exceeding \$5 000.

[212] On behalf of Ms. Z, Ms. Glass submits that such penalty is justified on the grounds that Mr. Z failed to comply with his obligations to make financial disclosure and deliberately breached court orders. Ms. Glass says that Mr. Z's F8 financial statements were obviously incomplete, and failed to disclose his pension assets, for example. The breaches included breaching terms of the March 5 Order requiring that he pay child and spousal support, and that prevented the children from being taken out of B.C. without Ms. Z's agreement or a court order, and the October 30, 2018 order that prohibited Ms. T from being present in Mr. Z's home when he had parenting time with MZ and RJZ.

[213] On behalf of Mr. Z, Ms. Chambers submits that the penalties sought have not been justified.

[214] I do not condone Mr. Z's failure to make the financial disclosure legally required of him in the context of this proceeding. I do not condone his failure to comply with court orders, which is a very serious matter. The remedy where a party disagrees with an order made by the court is not simply to ignore it. Unless and until they are varied or reversed on appeal, court orders must be obeyed.

[215] However, s. 230 is designed to enforce and secure a party's future compliance with orders made under the Family Law Act. The matters on which Ms. Glass relies are, now, in the past. For example, the interim orders concerning child and spousal support have been replaced by the final orders I have made in these Reasons. I vacated the October 30 order at the end of the evidence at the trial. I have not been persuaded that, at this stage of the proceeding, an order under s. 230 is appropriate or can be justified. Ms. Z's request for such an order is dismissed.

4. Summary and disposition

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

- (a) unless otherwise expressly stated, all prior court orders made in this proceeding up to the date of these Reasons are hereby vacated and replaced with the orders pronounced herein;
- (b) subject to s. 12 of the Divorce Act, the claimant and the respondent are divorced from each other, the divorce to take effect on the 31st day after the date of these Reasons;
- (c) pursuant to s. 5 of the Name Act, R.S.B.C. 1996, c. 328, Ms. Z's name be changed in accordance with the order sought in Schedule 5 to the notice of family claim;
- (d) pursuant to s. 39(1) of the Family Law Act, Ms. Z and Mr. Z shall be guardians of TZ, SZ, MZ and RJZ (collectively, the "Four Children");
- (e) parenting time for TZ shall be in accordance with her wishes, and her primary residence shall be with Mr. Z;
- (f) parenting time for SZ shall be in accordance with her wishes, and her primary residence shall be with Ms. Z;
- (g) with respect to parenting time for MZ and RJZ:
 - (i) Ms. Z will have parenting time beginning every Monday at the morning school drop off and ending every Thursday at the conclusion of the school day;
 - (ii) Mr. Z will have parenting time beginning every Thursday at the conclusion of the school day and ending every Monday at the morning school drop off;
 - (iii) unless the parents otherwise agree in writing, the school attended by MZ and RJZ shall be used as the drop off and pick up location;

- (iv) if a Monday is a professional development day or a statutory holiday, then Ms. Z will have parenting time beginning at 10:00 a.m. on such a Monday, and Mr. Z shall drop MZ and RJZ off at Ms. Z's residence at 10:00 a.m. on such a Monday;
- (v) subparas. (i), (ii), (iii) and (iv) are referred to as the "Regular Parenting Schedule";
- (vi) the parents will follow the Regular Parenting Schedule throughout the school year and summer break, except that, each year, on December 24, Ms. Z will have parenting time from 8:00 a.m. to 8:00 p.m., and Mr. Z will then have parenting time from 8:00 p.m. on December 24 to 2:00 p.m. on December 25, after which the parents will return to the Regular Parenting Schedule;
- (vi) as a further exception to the Regular Parenting Schedule, Ms. Z will have parenting time every Mother's Day from Noon to 8:00 p.m. Unless otherwise agreed in advance and in writing, Mr. Z will drop off MZ and RJZ at Ms. Z's residence at the beginning of Ms. Z's parenting time and Ms. Z will drop off MZ and RJZ at Mr. Z's residence at the end of Ms. Z's parenting time;
- (vii) the parents may vary the parenting time arrangements by agreement in writing;
- (h) pursuant to s. 40(2) of the Family Law Act, Ms. Z and Mr. Z will share equally all of the s. 41 parental responsibilities for each of the Four Children;
- (i) in the event of an emergency in relation to any of the Four Children, the parent who is first notified of the emergency will make any emergency decisions regarding the affected Child or Children. That parent must notify the other parent as soon as practically possible about the emergency, and until that parent has notified the other parent regarding the situation, that parent will have the authority to make emergency decisions. After that parent has notified the other parent, the parties will make a joint decision regarding emergency care, taking into account professional advice to the extent it is available;
- (j) each parent will have the obligation to advise the other parent of any matters of a significant nature affecting any of the Four Children;
- (k) each parent will have the obligation to discuss with the other parent any significant decisions that have to be made concerning any of the Four Children, including significant decisions about the health (except for emergency decisions), education, religious instruction and general welfare, and the obligation to use their best efforts to try to reach agreement on those decisions;
- (l) in the event that the parents cannot reach agreement on a significant decision concerning either TZ or SZ, despite their best efforts, then:
 - (i) Mr. Z will be entitled to make those decisions respecting TZ;
 - (ii) Ms. Z will be entitled to make those decisions respecting SZ;

(iii) in each case, the other parent will have the right to apply for directions on any decision that parent considers contrary to the best interests of TZ or SZ (as the case may be), under s. 49 of the Family Law Act;

(m) in the event that the parents cannot reach agreement on a significant decision concerning either MZ or RJZ despite their best efforts, and subject to review on application of either parent not earlier than one year after the date of these Reasons, then:

(i) Mr. Z will be entitled to make those decisions respecting MZ;

(ii) Ms. Z will be entitled to make those decisions respecting RJZ; and

(iii) in each case, the other parent will have the right to apply for directions on any decision that parent considers contrary to the best interests of MZ or RJZ (as the case may be), under s. 49 of the Family Law Act;

Unless I am not available, I will be seized of the review application;

(n) each parent must complete the on-line "Parenting After Separation" course, and file proof of completion of the course by not later than August 31, 2020;

(o) except for out-of-province trips of 24 hours or less, neither parent shall remove any of the Four Children from the jurisdiction of the province of British Columbia without the prior written consent of the other parent or a court order;

(p) neither parent shall make any negative, insulting, derogatory or disparaging comments about the other parent within the hearing or in the presence of any of the Four Children or CZ. Moreover, neither parent shall permit third parties to make any negative, insulting, derogatory or disparaging comments about the other parent within the hearing or in the presence of any of the Four Children or CZ;

(q) unless agreed to in advance, neither parent is permitted to place any information concerning the other parent or concerning any of the Four Children onto any social media outlet;

(r) neither parent will:

(i) question any of the Four Children about the other parent or about time spent with the other parent beyond simple conversational questions;

(ii) discuss with any of the Four Children any inappropriate adult, court or legal matters;

(iii) blame, criticize or disparage the other parent to any of the Four Children;

(iv) allow any of the Four Children access to e-mail or text communications between the parents or to court documents created for or filed with the court in this action;

- (s) except for emergency health matters, all communications between the parents with respect to matters concerning the Four Children shall be by e-mail only, unless the parties agree in writing to some other form of communication. The parents shall access their e-mail accounts regularly, and read and respond to any e-mail from the other parent as promptly as practicable. Communications shall be concise, informative and deal only with matters concerning the Four Children;
- (t) based on Guidelines incomes \$43,271 for Ms. Z and \$75,000 for Mr. Z, Mr. Z pay child support to Ms. Z in the sum of \$912 per month, commencing on July 1, 2020, and continuing on the first day of each and every month thereafter, for so long as the children remain eligible for support or until further agreement or court order;
- (u) commencing July 1, 2020, special or extraordinary expenses under s. 7 of the Guidelines shall be shared 40% to Ms. Z and 60% to Mr. Z;
- (v) except for health related expenses that do not exceed insurance reimbursement by more than \$100 annually, any s. 7 expense must be agreed to in advance in writing. A parent will pay his or her respective proportionate share within 14 days of the other parent's request for reimbursement. For any s. 7 expense incurred, the parent incurring the expense will provide to the other parent a copy of the receipt or invoice, together with proof of payment;
- (w) beginning in 2021, and for as long as any of the children is eligible to receive child support, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than May 31 each year; and (b) copies of any Notice of Assessment or Reassessment provided to them by the Canada Revenue Agency, immediately upon receipt;
- (x) net retroactive child support, including retroactive s. 7 expenses, is fixed at \$10,400 payable by Mr. Z to Ms. Z. Mr. Z is to pay this amount in instalments of \$1,000 per month, commencing July 1, 2020, until fully paid. The balance owing can be paid in full at any time. There will be no interest on the amount outstanding from time to time;
- (y) until further order or agreement between the parties, and subject to review respecting quantum on any of the children ceasing to be a child of the marriage, commencing July 1, 2020 and on the first of each month thereafter, Mr. Z pay Ms. Z spousal support in the sum of \$1.00. Either party may apply for a review of the quantum of spousal support concurrently with any of the children ceasing to be a child of the marriage;
- (z) retroactive spousal support payable by Mr. Z to Ms. Z is fixed at \$1,000, and that amount is to be paid in full by Mr. Z by not later than August 31, 2020. No interest shall accrue in the interim;
- (aa) family property (including pension assets) and family debt are divided as set out above; and
- (ab) Ms. Z's application for an order under s. 230 of the Family Law Act is dismissed.

[217] I consider that success has been divided and, subject to any submissions the parties may wish to make, each party will bear her and his own costs, with this exception: Mr. Z will be responsible for payment of the costs and expenses associated with Dr. Mills' attendance at the trial. If the parties wish to make submissions concerning costs, they may do so in writing, provided that all submissions shall be filed within 60 days of the date of these Reasons. I will leave counsel to agree on a suitable schedule for the exchange of submissions. Submissions must be no more than 10 pages in length, double-spaced and in a font size no smaller than 12 point, except for quotations.

"Adair J."

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